

A CHILD'S RIGHT TO A BASIC EDUCATION: A COMPARATIVE STUDY

by

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Abstract

Education is since the inception of the world regarded as the formal process by which society conveys its accumulated knowledge, skills, customs and values from one generation to another. Today, education is a human right and the right to education and specifically the right to (a) basic education is acknowledged and emphasised worldwide. In South Africa, the right to a basic education is entrenched in the Constitution and is regarded as one of the most crucial constitutional rights, particularly because it promotes economical and social well-being. The protection of a child's right to a basic education in terms of the South African Constitution together with the most important international instruments pertaining to education will be extensively discussed and the most important similarities and differences between, and challenges in the legal systems of South Africa, New Zealand and Namibia regarding a child's right to (a) basic education will be addressed with due consideration of factors such as early childhood development and education, mother tongue education and HIV/AIDS which may affect a child's right to (a) basic education. It is submitted that the success of any country, whether it is social, financial or economic success, depends on how its citizens are educated. Moreover, a good education system is crucial, not only for ensuring that its populace are well educated, but also for optimal human development and for the maintenance and preservation of socially responsive economic and political systems. Education is a life-long process and in order to give effect to the right to (a) basic education, the adoption and implementation of the recommendations made throughout this study are proposed.

Key terms

The right to (a) basic education; Early childhood development and education; Mother tongue education; HIV/AIDS; Constitutional protection of the right to (a) basic education; Protection of the right to education in international law; State obligations; Children's rights; International instruments; Education systems.

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List of abbreviations and acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired immune deficiency syndrome
ALL SA	All South African Law Reports
BCLR	Butterworth's Constitutional Law Reports
CAPS	Curriculum and Assessment Policy Statement
CC	Constitutional Court
CME	Continuing Medical Education monthly (of South Africa)
CRC	UN Convention on the Rights of the Child
CREID	Christian Research, Education and Information for Democracy
ECE	Early childhood education
ECD	Early childhood development
ESOL	English for Speakers of Other Languages
FHISER	Fort Hare Institute of Social and Economic Research
HIV	Human immunodeficiency virus
HSRC	Human Sciences Research Council
HTS	Hervormde Teologiese Studies/Reformed Theological Studies
ICESCR	International Covenant on Economic, Social and Cultural Rights

IIEP	International Institute for Educational Planning (UNESCO)
LiEP	Language in Education Policy
MT-based MLE	Mother tongue-based multilingual education
NGO	Non-governmental Organisation
NC	Northern Cape
NZCF	New Zealand Curriculum Framework
NZSL	New Zealand Sign Language
OVC	Orphans and other vulnerable children
PaNSALB	Pan South African Language Board
PER	Potchefstroomse Elektroniese Regstydskrif Potchefstroom Electronic Law Journal
PGL	Persistent generalised lymphadenopathy
PLUS	Appears as a supplement to <i>Stellenbosch Papers in Linguistics</i>
PRAESA	Project for the Study of Alternative Education in South Africa
PULP	Pretoria University Law Press
SA	South African Law Reports
SAHRC	South African Human Rights Commission
SAJHR	South African Journal on Human Rights
SCA	Supreme Court of Appeal
Stud Home Comm Sci	Studies on Home and Community Science

T	Transvaal
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
TSAR	Tydskrif vir die Suid-Afrikaanse Reg
UCT	University of Cape Town
UN	United Nations
UNCRC	UN Convention on the Rights of the Child
UNESCO	UN Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
VUWLR	Victoria University of Wellington Law Review

CHAPTER 1

Introduction

“Education is the most powerful weapon which you can use to change the world.”¹

1 PROBLEM STATEMENT

1.1 Background

The right to basic education is acknowledged and emphasised worldwide. In South Africa the right to a basic education is entrenched in the Constitution² and is regarded as one of the most important constitutional rights, particularly because it promotes economical and social well-being. The state has an obligation, through reasonable measures, to progressively make this education available and accessible.

Education is most valuable in a human rights culture. Not only does it equip the learner with the necessary abilities and skills for a meaningful occupation, but it is also a suitable instrument to convey the fundamental tone of a human rights culture to a young and upcoming generation.³

Education, which includes basic education, enriches lives, enhances living standards, ensures the development of knowledge and skills and broadens the viewpoint of persons. Children learn about discipline and are educated to live in harmony with their fellow human beings. Access to basic quality education promotes a healthy generation and national prosperity.

¹ Nelson Mandela.

² Constitution of the Republic of South Africa, 1996 s 29.

³ Oosthuizen & Rossouw “Die reg op basiese onderwys in Suid-Afrika” 2001 *Koers* 656.

During the process of educational teaching every learner experiences human dignity on the one hand, but at the same time they are also taught how to respect and to regard the human dignity of others.⁴

The right to a basic education in South Africa is challenging, since not all South African children currently receive basic education. Circumstances differ and access to basic education can be problematic as a result of various factors. Factors such as the lack of proper early childhood development and education, the deprivation of mother tongue education in schools and the detrimental effects of the HIV/AIDS epidemic, can adversely affect a child's access and right to a basic education.

Many South African schools are situated in poor residential areas where basic and essential facilities are scarce on account of a shortage of funding. As a result of the prevalent poverty these schools simply don't have the financial capacity to cope. In many cases there is not sufficient funding or qualified and skilled educators to successfully provide early childhood development and education. This has a negative impact on children's academic prowess which will ultimately affect important societal issues such as democracy and equality. Education is sometimes received in a language or languages other than a child's mother tongue which are difficult to understand and which can hamper a child's right to a basic education in all its dimensions.

HIV/AIDS also has an effect on a child's education. On the one hand HIV-infected learners are often discriminated against on account of their HIV-status. On the other hand a huge responsibility is placed on learners to generate an income for the household because their parents and/or family members have AIDS and are unable to do any work at all. This means that the demand for education, the supply of education and the quality of education are adversely affected.

⁴ *Ibid.*

The adoption and implementation of certain international instruments, policies and action plans, as well as the proper enforcement of mechanisms and stricter enforcement of laws must be implemented in order to enhance the right to a basic education. South Africa has a supreme Constitution which ensures this right and all natural as well as legal persons are obliged to respect this right.

Various international instruments underwrite the importance of education and will be discussed fully during the course of this study.

In order to address these problems, a comparative legal study will be done. A study of other jurisdictions will assist in determining guidelines which can be implemented to realise a child's right to basic education.

1.2 Research Problem

The Constitution as well as various other statutes and international instruments stipulate that everyone has a right to a basic education. However, there are factors which encroach on this right and prevent it from being exercised fully. The nature and extent of these factors, the impact of the encroachment and the consequences associated therewith must be determined from a legal as well as a social point of view. The proper enforcement of legislation with reference to basic education will also be scrutinised.

1.3 Purposes

The purpose of this study is to make a legal comparison of every person's right to a basic education in South Africa and countries such as New Zealand, and Namibia. Positive and negative factors will also be taken into account and sufficient solutions and possible recommendations will be suggested in order to ensure the right to a basic education.

1.4 Significance

The search for sources and the tremendous availability of these sources, which is necessary to finalise the study, indicated that sufficient literature is available for the purpose of the study. The field of study is extremely suitable for research because basic education is of the utmost importance in everyday life and the mentioned objectives of the study are thus realisable.

The legal profession, Department of Education, teachers, parents and learners will benefit from this study. It will provide guidelines with regard to how to deal with difficulties as well as which resources are available. The study will also make a huge contribution towards the law of education, the law with regard to children and constitutional law.

2 POINTS OF DEPARTURE, ASSUMPTIONS AND HYPOTHESES

A paradigm of constitutionality (constitutional system) within a theoretical framework of subjective rights is followed. An applied research study and an interdisciplinary research study will be used.⁵ Due to the complex nature of societal challenges and difficulties, it became necessary to follow more than one disciplinary approach. Thus, an interdisciplinary approach meets the demands of many societal challenges and difficulties that cannot be sufficiently addressed by single disciplines alone.⁶ Moreover, the interdisciplinary nature of this study is important since it “tackles” the difficulties and problems pertaining to basic education and a child’s right to a basic education. In fact,

⁵ It is important to note that the University of South Africa fully supports and encourages interdisciplinary research since the source of new ideas and insights is often located at the interface of established disciplines. Interdisciplinary research is thus “commonplace and customary in the generation of new knowledge today, regardless of the formal labelling of research into ‘disciplinary,’ ‘multidisciplinary’ or ‘interdisciplinary’”. See, in general, Bruun et al *Promoting Interdisciplinary Research* (2005) 10.

⁶ Songca *Theorising children’s rights as a multi- and inter-disciplinary field of study* in Viljoen (ed) *Beyond the law: Multi-disciplinary perspectives on human rights* (2012) 139-140.

by bringing law and education together, it allows for a greater common understanding of a child's right to a basic education as a whole.

The research methodology used in this study comprises legal comparison at a large scale, in other words on macro level. The legal systems of New Zealand and Namibia as well as the principles and methods applicable to these countries will be looked at since South Africa, New Zealand and Namibia have similar-socio economic circumstances. Like the South African society, the New Zealand and Namibian societies are characterised by multilingual and multicultural diversity.

There are differences and similarities between New Zealand and South Africa with regard to a child's right to basic education, but these two countries can still learn from each other, irrespective of their differences and similarities. New Zealand is just like South Africa a signatory to several international instruments and it is therefore informative to see how New Zealand meets its international obligations regarding a child's right to basic education. It is also important to see how New Zealand manages and promotes multicultural and multilingual societies.

A comparative study with Namibia is important since the Namibian legal system regarding a child's right to basic education is almost the same as the South African legal system. Namibia is just like South Africa a signatory to important international instruments and it is therefore of great value and importance to see how Namibia, South Africa's neighbouring country, meets its international obligations and duties regarding a child's right to basic education. Furthermore, Namibia and South Africa have similar constitutions and it is in my opinion important to compare these two constitutions in order to identify possible shortcomings as well as good features in each country's constitution. It will also be of great value to get a comparative perspective on how Namibia deals with cultural and linguistic diversity.

The study will also have certain legal historical elements. Positive and negative components in the South African legal system will be considered. The changes over periods of time and the impact that these changes caused will be emphasised.

All data will be collected by way of the internet, library, legal periodicals, legal journals, legal textbooks, legislation and court cases. It is important to note that, throughout this study, various internet resources are used. The use of internet resources is inevitable due to the nature of this topic (a child's right to a basic education with particular reference to factors such as early childhood development and education, mother tongue education and HIV/AIDS which may affect a child's right to a basic education). All the internet resources used in this chapter are official websites of the South African, New Zealand and Namibian governments or credible and trustworthy academic articles and books, which were only electronically available to me.

2.1 Hypotheses

2.1.1 Education is crucial for human development and lifelong learning. Education is a way to set people free from their lack of knowledge, fear and false notions and it furnishes people with dignity, self-respect and self-assurance. Education is a basic human right on which the realisation and fulfilment of many other rights depend.

2.1.2 The right to basic education is protected in the Constitution, but as a result of certain factors, this right is realised with difficulty.

2.1.3 The present high percentage of non-school going children indicates that the constitutional values and the constitutional right to education are not yet enforced effectively.

2.1.4 Legislation which regulates the right to a basic education will be enforced effectively if positive steps are taken to eliminate negative factors.

3 FRAMEWORK OF THE THESIS

In order to achieve the aim and the envisaged research result of this thesis, chapter 2 will consist of an overview of the philosophy and history of education. This chapter is important since the philosophy and history of education can be regarded as the narrative of humankind. A study of the history of education illuminates the importance of education through time. When one realises the importance of education, one also understands the need to protect the right to education as a fundamental right. A study of the history of education also provides information on the meaning and content of the concept of education – the way in which children were taught during the “primitive period,” still forms the foundation of the way in which children are taught and educated today.

Chapter 3 consists of a historical overview of South African education. This chapter is important because it outlines a clear background on how the South African education system arose, events that hampered the education system, but also major events and turning points that promoted the South African education system. In a study of the right to education in a country such as South Africa, it is important to take cognisance of the history of education in that country. This is especially true if one keeps in mind that the purpose of the constitutional protection of the right to education is to redress past inequalities and segregation. If one is to properly redress past injustices, it is imperative to know and understand what these past injustices were.

Chapter 4 consists of the definition(s) of (a) basic education in South Africa; it is impossible to formulate guidelines and recommendations without first of all establishing exactly what basic education is. Two possible constructions with regard to basic education are discussed and early childhood development and education are compared

with basic education in order to determine whether early childhood development and education form part of basic education.

Chapter 5 consists of an in-depth discussion of the South African Constitution and the right to a basic education in South Africa. The most important areas in the South African system are discussed with an emphasis on section 29 of the Constitution (which guarantees everyone's right to a basic education) as well as South Africa's constitutional and international obligations to give effect to the right to a basic education. The importance of this chapter lies in the fact that one cannot determine whether the current protection of children's right to a basic education is in accordance with South Africa's constitutional and international obligations, without first looking what those constitutional and international obligations are.

Chapter 6 addresses the role of proper early childhood development and education in South Africa with an emphasis on the importance of play during this period. The cumulative effect of the South African Constitution, the Children's Act and several international instruments, as well as the interaction between them and their effect on early childhood development and education, will also be examined. This chapter is important since early childhood development and education will not only have a myriad of ripple effects on children's well-being, but also on children's basic education. The adoption of a child-to-child approach, combined with an integrated approach will be proposed.

Chapter 7 consists of an in-depth discussion of the importance of mother tongue and mother tongue education. The most important areas with regard to mother tongue education are discussed and emphasis is placed on the most important international instruments, national legislation and several groundbreaking cases pertaining to mother tongue education. The discussion of mother tongue education as part of this study is important because the use of mother tongue education has a tremendous influence and impact on the quality and final outcome for learners individually and collectively. The adoption and implementation of a strong bilingual model and/or a MT-based MLE

education model will be proposed as such models are favourable for an education system rich in language and cultural diversity.

Chapter 8 consists of an in-depth discussion of HIV/AIDS and its detrimental effects on education. The demand for education, the supply of education and the quality and standard of education will be highlighted. Emphasis will also be placed on the vicious cycle HIV/AIDS causes in the South African education system, national legislation, international instruments, policy documents and plans of action. The discussion of HIV/AIDS as part of this study is important since the HIV/AIDS epidemic has severe implications for education systems. It will be concluded that the design of education in a world with HIV/AIDS will be of cardinal importance in order to enhance and improve the demand for education, the supply of education and the quality and standard of education.

Chapter 9 consists of an in-depth discussion and analysis of the right to basic education together with factors such as early childhood development and education, mother tongue education and HIV/AIDS which may have an impact on a child's right to basic education in New Zealand and Namibia. This chapter is important since it gives a comparative perspective on how New Zealand and Namibia meet their national and international obligations regarding the right to basic education. Moreover, it is also informative and important to see how New Zealand and Namibia manage and promote their multicultural and multilingual societies.

Chapter 10 addresses the most important similarities, differences and challenges in the legal systems of South Africa, New Zealand and Namibia regarding a child's right to (a) basic education with due consideration of factors such as early childhood development and education, mother tongue education and HIV/AIDS which may affect a child's right to (a) basic education. The South African position with regard to a child's right to a basic education, including the aforementioned factors, will be compared with New Zealand's and Namibia's position. Shortcomings and virtues will be identified and

several recommendations relating to the successful provision of basic education will be proposed.

CHAPTER 10

Conclusion

“Education is the most reliable human development undertaking capable of moving the poor away from the myriad debilitating circumstances that poverty engenders and perpetuates.”¹

1 INTRODUCTION

The importance of education and more specifically a child's right to (a) basic education is emphasised as crucial throughout this study. The success of any country, whether it is social, financial or economic success, depends on how its citizens are educated. It can therefore be convincingly submitted that a country who lacks an adequate education system is heading for a disaster.

This chapter addresses the most important similarities and differences between, and challenges in the legal systems of South Africa, New Zealand and Namibia regarding a child's right to basic education, with due consideration of factors such as early childhood development, mother tongue education and HIV/AIDS which may affect a child's right to basic education. The South African position with regard to early childhood development, mother tongue education and HIV/AIDS will also be compared with the position in New Zealand's and Namibia. Shortcomings as well as virtues will be identified and several recommendations relating to the successful provision of basic education will be proposed.

¹ Justice N Pillay, United Nations High Commissioner on Human Rights.

2 SOUTH AFRICA, NEW ZEALAND AND NAMIBIA: THE RIGHT TO (A) BASIC EDUCATION

2.1 Introduction

South Africa has a comprehensive and deep-rooted constitution. Chapter 2 of the Constitution of the Republic of South Africa consists of the Bill of Rights, which is the cornerstone of democracy in South Africa, and encourages and affirms the democratic values of human dignity, equality and freedom.² The South African Constitution guarantees the right to a basic education in section 29(1)(a). In order to give effect to the right to a basic education, there are a number of positive and negative obligations on the state.³ The South African Schools Act 84 of 1996 is another important statute with regard to the right to education since it provides for a uniform education system, the organisation, governance and funding of schools, the amendment and repeal of certain laws relating to schools, and matters connected therewith.

New Zealand, on the other hand, has a constitution which consists of constitutional convention, statute and common law.⁴ The right to education, and, more specifically the right to basic education is not guaranteed in the New Zealand Constitution. Neither is it specifically stated in New Zealand law, although it is regarded as an important right. The right to education is reflected in several pieces of national legislation of which the Education Act 1989 is regarded as the most important.⁵ Section 3 of the Education Act states that “every person who is not a foreign student is entitled to free enrolment and free education”.

Just like South Africa, Namibia has a comprehensive and deep-rooted constitution. Chapter 3 of the Constitution of the Republic of Namibia consists of “fundamental human rights and freedoms” and various rights are protected.⁶ The importance of

² Sec 7(1) of the Constitution.

³ See ch 5 par 2.3 and 4 above.

⁴ See ch 9 par 1 above.

⁵ See ch 9 par 2.1 above.

⁶ See ch 9 par 1 above.

education, especially the right to education is explicitly emphasised in article 20 of the Namibian Constitution, which stipulates that “all persons shall have the right to education”. In order to realise the right to education, the state is obliged to actively promote and maintain the welfare of the people by adopting several policies which aim to ensure that every citizen has the right to fair and reasonable access to public facilities and services in accordance with the law. The Namibian Education Act 2001 is also an important statute with regard to the right to education and forms (together with the Namibian Constitution) the basis for the National Curriculum for Basic Education in Namibia.⁷

An interesting difference between South Africa, New Zealand and Namibia is the fact that section 29(1) of the South African Constitution provides for the right to a basic education to “everyone” and it can be submitted that “everyone” has been explicitly interpreted to also include foreigners or non-citizens. In New Zealand, foreigners are excluded from the right to free enrolment and free education, since section 3 of the New Zealand Education Act 1989 clearly stipulates that formal education is free for all New Zealand citizens. Article 20(1) of the Namibian Constitution stipulates that all persons have the right to education and it can be submitted that “all persons” include foreigners or non-citizens. However, article 20(2) clearly states that “primary education shall be compulsory ... for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge”. It can therefore be submitted that all persons (citizens and non-citizens) have the right to education in Namibia, but primary education will only be provided free of charge to every resident within Namibia.

Section 3(1) of the South African Schools Act⁸ stipulates that schooling is compulsory for children aged seven to fifteen years or attendance in grades 1 to 9, whichever comes first. Section 3 of the New Zealand Education Act stipulates that schooling is compulsory for all New Zealand children from the age of six to sixteen years. Section

⁷ See ch 9 par 3.2 above.

⁸ Act 84 of 1996.

53 of the Namibian Education Act 2001 stipulates that school attendance is compulsory for every child from the beginning of the year in which the child reaches the age of seven years, until the day the child completes primary education before reaching the age of sixteen years; or until the last school day of the year in which such child reaches the age of sixteen years.

The South African government is principally responsible to provide for education in South Africa.⁹ The New Zealand government is the central actor in any claim to the right to education.¹⁰ The Namibian government is obliged and responsible to give effect to the right to education.¹¹

The different phases of basic education in South Africa can be categorised as follows:¹²

- Foundation phase (Grades R – 3)
- Intermediate phase (Grades 4 – 6)
- Senior phase (Grades 7 – 9)
- Further education and training phase (Grades 10 – 12)

The different levels of basic education in New Zealand are as follows:¹³

- Early childhood (Pre-school)
- Primary school (Years 1 – 8)
- Intermediate school (Years 7 – 8)
- Secondary school (Years 7 – 13)

In Namibia, basic education can be divided into five phases:¹⁴

⁹ See ch 5 par 4 above.
¹⁰ See ch 9 par 2.1 above.
¹¹ See ch 9 par 3.2 above.
¹² See ch 4 par 1 above.
¹³ See ch 9 par 2.1.1 above.
¹⁴ See ch 9 par 3.4 above.

- Pre-primary
- Lower primary (Grades 1 – 4)
- Upper primary (Grades 5 – 7)
- Junior secondary (Grades 8 – 10)
- Senior secondary (Grades 11 – 12)

South Africa, New Zealand and Namibia are all signatories to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and are therefore obliged in terms of article 13(2) of the ICESCR to make education available, accessible, acceptable and adaptable.¹⁵ These three countries are also signatories to the UN Convention on the Rights of the Child (UNCRC) and they are obliged in terms of article 28 of the UNCRC to recognise the right of a child to education. All state parties are also obliged to make primary education compulsory and available free to all.¹⁶ Moreover, South Africa and Namibia are signatories to both the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child (ACRWC). Article 17 of the African Charter on Human and Peoples' Rights states that "every individual shall have the right to education". Article 11 of the ACRWC states that every child shall have the right to education. It can therefore be unequivocally submitted that South Africa, New Zealand and Namibia have the responsibility (nationally and internationally) to recognise and to give effect to the right to education.

South Africa currently has an outcomes-based education system,¹⁷ but this system will be revised, improved and renamed as "Schooling 2025". Schooling 2025 is a new action plan to improve the education system in South African schools. It aims to improve and promote all aspects pertaining to education such as teacher recruitment, learner enrolment, school funding, mass literacy and numeracy and overall quality of education. This new action plan (new curriculum) will enable learners to be educated in their mother tongues for the first three years of their schooling. English will still be a

¹⁵ See ch 5 par 6.2 above.

¹⁶ See ch 5 par 8.2 above.

¹⁷ Outcomes-based education is student-centred which means that it focuses on empirically measuring student performance. See, South African Government "Education" <http://www.info.gov.za/aboutsa/education.htm#Curriculum>, last visited 2012-05-22.

compulsory subject, but will not replace the mother tongue or home language in the early grades. Each grade will have its own study programme.¹⁸ This new action plan seems to be in favour of a strong bilingual education and MT-based MLE model where instruction or academic content is taught in a home language (mother tongue or first language) and secondary language; or where a child begins his or her educational career in his or her mother tongue with later transitions to additional languages.¹⁹ There is also the so-called CAPS (Curriculum and Assessment Policy Statement). CAPS will provide clear guidelines and directives on what educators (teachers) should teach and assess on a grade-by-grade and subject basis. CAPS is defined as follows:²⁰

“A National Curriculum and Assessment Policy Statement is a single, comprehensive, and concise policy document, which will replace the current Subject and Learning Area Statements, Learning Programme Guidelines and Subject Assessment Guidelines for all the subjects listed in the National Curriculum Statement Grades R – 12.”

The Department of Basic Education is responsible for the implementation of CAPS. The implementation of CAPS has already taken place in the Foundation phase (Grades R – 3) and Grade 10. CAPS for the Intermediate phase (Grades 4 – 6) and Grade 11 will be introduced in all schools in 2013.

New Zealand has a curriculum framework to which all state schools must adhere. This curriculum sets out the norms, standards and learning requirements. The vision of the curriculum is to educate children who will be confident, connected, actively involved; and lifelong learners. The curriculum can be described as a comprehensive document which consists of certain values, key competencies, learning areas and principles.²¹

¹⁸ South African Government “Education”
<http://www.info.gov.za/aboutsa/education.htm#Curriculum>, last visited 2012-05-22.

¹⁹ See ch 7 par 5.2 & 5.3 above.

²⁰ Department of Basic Education “Curriculum Assessment Policy Statements (CAPS)”
<http://www.education.gov.za/Curriculum/CurriculumAssessmentPolicyStatements/tabid/419/Default.aspx>, last visited 2012-05-22.

²¹ See ch 9 par 2.1.3 above.

Namibia has a National Curriculum for Basic Education and the major goal of this curriculum is to develop a knowledge-based society where education is the foundation of all success life. The purpose of the curriculum is multifaceted and education must

“[P]rovide a coherent and concise framework in order to ensure that there is consistency in the delivery of the curriculum in schools and classrooms throughout the country. It describes the goal, aims and rationale of the curriculum, the principles of teaching, learning and assessment, language policy, and curriculum management at school level. It makes provision for all learners to follow key learning areas, and outlines the end-of-phase competencies which they should achieve, as well as the attitudes and values to be promoted throughout the curriculum. It outlines the structure of each phase, what electives and subject combinations are available and overall time allocation. It sets in place effective assessment procedures, ensuring that assessment is closely integrated in the teaching/learning process”.²²

In a nutshell: it is clear that South Africa, Namibia and New Zealand regard education and the right to (a) basic education as vital for human development. The governments of these countries are in terms of their national legislation responsible for the provision of appropriate and proper basic education and they are also internationally obliged to give effect to the right to basic education.

2.2 Some challenges and shortcomings

There are several challenges regarding the right to (a) basic education. Challenges include discrimination, the lack of quality education in a safe environment, insufficient funds for the provision of basic education, inadequate buildings, a shortage of qualified and skilled educators and the detrimental effects that the HIV/AIDS epidemic has on education systems, to name but a few. There are many challenges that must be overcome before the right to basic education (not only in South Africa, New Zealand

²² Ministry of Education “The National Curriculum for Basic Education”
<http://www.nied.edu.na/images/National%20Curriculum%20for%20Basic%20Education%20Jan%2010.pdf>, last visited 2012-05-16; see also ch 9 par 3.2 above.

and Namibia, but worldwide) can be realised successfully. Several recommendations can be given on how to provide proper and adequate basic education, but the provision of this education will still depend on each country's unique situation and financial capacity.

2.3 Recommendations for the successful provision of basic education

In order to give effect to the right to a basic education in South Africa, the following is recommended:

- Improve and develop every child's readiness to start primary school on time. It is also necessary to give extra attention to disadvantaged and vulnerable children's readiness to start primary school.
- Reduce all forms of discrimination and other inequalities that hamper increased access to participation in and completion of quality basic education.
- Improve and encourage education quality and increase retention, completion and achievement rates.
- Safeguard education systems against the detrimental consequences of the HIV/AIDS epidemic.

Moreover, in order to provide proper and adequate basic education, flexible delivery of a flexible curriculum, combined with new teaching methodologies, need to be implemented. This will give all children from an early age the opportunity for development through education. It will also motivate children to take up entrepreneurial opportunities which will ensure that they are well equipped with appropriate skills, competencies, abilities and attitudes. Children will develop into adults with flexible

enquiring minds and critical thinking skills, capable of adapting to new situations, challenges and demands, and will constantly learn from their own initiatives.

3 SOUTH AFRICA, NEW ZEALAND AND NAMIBIA: EARLY CHILDHOOD DEVELOPMENT AND EDUCATION

3.1 Introduction

Although early childhood development and education is not compulsory in South Africa, it is regarded as crucial for a full and prolific life for a child.²³ It is submitted that child survival and development are inseparable. The South African Constitution does not explicitly provide for a child's right to survival and development, but certain rights are guaranteed which will ensure the survival and development of children when they are realised. The guaranteed rights include everyone's right to have access to adequate housing, everyone's right to have access to health care, food, water and social security and everyone's right to education. One can thus say that the concepts of survival and development are incorporated in these guaranteed rights. A child's right to survival and development is also incorporated in section 28 of the Constitution, which deals exclusively with children.²⁴ Section 9(1) of the Children's Act 38 of 2005 makes provision for early childhood development services and also describes exactly what is meant by early childhood development services.²⁵ South Africa is also a signatory to the UNCRC and the ACRWC, which stipulate that state parties should to the maximum extent possible ensure the survival and development of all children. This means that South Africa also has an international obligation to provide, promote and encourage early childhood development and education.²⁶

Early childhood development and education is not compulsory in New Zealand either. However, the majority of parents prefer to enrol their children for early childhood

²³ See ch 6 par 1 above.

²⁴ See ch 6 par 3.3 above.

²⁵ See ch 6 par 3.4 above.

²⁶ See ch 6 par 3 above.

education since early childhood development and education is vital for the well-being of children.²⁷ The New Zealand Constitution does not directly or indirectly provide for the survival and development of children, but it is a signatory to the UNCRC and is therefore internationally obliged to ensure, to the maximum extent possible, children's right to survival and development. Unlike the South African Constitution, the New Zealand Constitution does not have a section that deals exclusively with children. However, section 4 of the Care of Children Act 2004 stipulates that "the welfare and best interests of the child must be the first and paramount consideration...". It can therefore be submitted that it will be in the best interests and welfare of every child to ensure the proper survival and development of the child.

Although early childhood development and education in Namibia is not yet a precondition for entry into basic education, it is regarded as the foundation of human development.²⁸ The Namibian Constitution does not explicitly make provision for the survival and development of children, but certain rights are guaranteed in article 15 of the Namibian Constitution which will ensure the survival and development of children when these rights are realised. The guaranteed rights include children's right to have a name from birth, the right to acquire a nationality, subject to legislation enacted in the best interests of children, and, as far as possible, the right to know and be cared for by their parents.²⁹ It can therefore be submitted that the concepts of survival and development are incorporated into these guaranteed rights. It is important to note that article 15 of the Namibian Constitution deals exclusively with children. Just like South Africa, Namibia is a signatory to the UNCRC and the ACRWC and is therefore also internationally obliged to ensure the survival and development of children.

South Africa, New Zealand and Namibia provide for early childhood development and education. South Africa provides for early childhood development and education through the Education White Paper 5 on Early Childhood Education and the Nationwide Audit of Early Childhood Development provisioning in South Africa (White Paper 5).

²⁷ See ch 9 par 2.2.1 above.

²⁸ See ch 9 par 3.6.3 & 3.6 above.

²⁹ Article 15(1) of the Namibian Constitution.

New Zealand provides for early childhood development and education through a national early childhood curriculum also known as the Te Whāriki.³⁰ Namibia provides for early childhood development and education through the Namibian Pre-Primary Syllabus.³¹

Since the term “educare” was previously used, the term “early childhood development and education” is a fairly new and unknown term in the South African vernacular. In South Africa, early childhood development is more than just the mere “looking after children”. Early childhood development also includes the creation and development of secure, nurturing environments in which children receive the necessary care, protection and stimuli in a holistic model which provide for all their physical, developmental, emotional and cognitive needs.³² Early childhood development in South Africa is also occasioned by seven trends which stress the importance of adequate early childhood development.³³ It can be submitted that the emotional intelligence of children, namely self-assurance, inquisitiveness, thoughtfulness, self-discipline, the ability to communicate and cooperativeness will also be successfully promoted when sufficient consideration and attention are given to these seven trends. The provision of early childhood development and education in South Africa also places a strong emphasis on the importance of play. Play is regarded as important for a child since it stimulates all areas of development and play activities also promote healthy and balanced growth among children. It can therefore be submitted that play is the natural tool for learning and communication. The main objectives of early childhood development and education in South Africa are as follows:³⁴

- ensuring children’s safety and welfare;
- the preparation of children’s social, emotional and intellectual levels, and
- the promotion of economic wellbeing.

³⁰ See ch 9 par 2.2.3 above.

³¹ See ch 9 par 3.6.2 above.

³² See ch 6, par 5.1 above.

³³ *Ibid.*

³⁴ See ch 6, par 5.6 above.

In South Africa, early childhood development and education is also regarded as the foundation of democracy and equality, the protection of children's rights, and community development.³⁵

Early childhood development and education is an established concept in the New Zealand vernacular, and the Te Whāriki is described as a comprehensive, bicultural document which clearly outlines the national early childhood curriculum of New Zealand. The Te Whāriki is also known as a “woven mat for all to stand on” with two specific focuses: that learning is lifelong and that we learn from each other. Like White Paper 5 in South Africa, the Te Whāriki underlines the importance of early childhood development and education by providing for four broad principles that are considered as the foundation of the early childhood curriculum. The Te Whāriki also makes provision for strands and goals which, together with the principles, form the framework of the early childhood curriculum. The Te Whāriki also provides for the clear exposition of early childhood education by categorising “different groups of children”. These groups of children are classified as infants, toddlers and young children. For each of these groups of children there are specific curriculum requirements to be met in order to ensure the successful development of children.³⁶

Early childhood development and education is also a fairly new and unknown term in the Namibian vernacular – the Namibian Pre-Primary Syllabus was implemented in selected schools in 2008 and the full implementation of this syllabus only took effect in 2011. In Namibia, there is a strong focus on young children and early childhood development and education also includes the provision of favourable opportunities for sustainable human development, social change, transformation, economic well-being and a bright future. The Ministry of Education makes provision for one year's pre-primary education, and in order to attend pre-primary education, the child must be five years of age. Proper pre-primary education can only be provided if the child attends at least twenty hours of pre-primary education per week. Early childhood development

³⁵ See ch 6 par 5.7; 5.8 & 5.9 above.

³⁶ See ch 9 par 2.2.3; 2.2.4; 2.2.4.1; 2.2.4.2 & 2.2.4.3 above.

and education in Namibia also places a strong emphasis on the importance of play: the Pre-Primary Syllabus aims to provide balanced, appropriate and plausible programmes which will enable children to learn through structured play. Play is regarded as important since it develops a child's personal, social and emotional well-being, and it also develops a child's social, attention and communication skills. It is therefore believed that play forms part of the foundation of life-long learning. It can be submitted that Namibia has a progressive and thriving early childhood development and education policy aimed at the promotion of the best interests of every young Namibian child.³⁷

In a nutshell: South Africa, New Zealand and Namibia emphasise the importance of early childhood development and education and underline the fact that early childhood development and education is unequivocally part of a child's right to basic education, since it is during this period that children begin to discover, learn, explore and understand basic concepts and values.

3.2 Which approaches should be followed with regard to early childhood development and education?

New Zealand's Te Whāriki explicitly states that a socio-cultural approach should be followed with regard to the provision of early childhood development and education. This means that learning dispositions will be resolved, bi-culturalism will be promoted and encouraged and the realities of young children in the early curriculum services will be reflected.³⁸ The socio-cultural approach works well in New Zealand and it is also favourable for the New Zealand early childhood curriculum.

Namibia follows a multi-sectoral community-based approach combined with a learner-centred approach with regard to the provision of early childhood development and education. This means that parents, other family members and community

³⁷ See ch 9 par 3.6.1 & 3.6.2 above.

³⁸ See ch 9 par 2.2.3 above.

organisations are involved in the early development of children and children are therefore enabled to grow and develop according to their own ability which will also smooth the transition from pre-primary schooling to formal schooling.³⁹

In South Africa, White Paper 5 does not explicitly state which approach should be followed with regard to the provision of early childhood development and education.

In my view a child-to-child approach combined with an integrated approach should be followed. This means that appropriate services and programmes will be provided in a comprehensive and interwoven manner which will ensure the proper development of children. A child-to-child approach combined with an integrated approach will also ensure a smooth and uncomplicated transition for children from pre-primary school to primary school.⁴⁰

3.3 Some challenges and shortcomings

Insufficient human and financial resources and limited access to early childhood development services are two of the biggest challenges with regard to the provision of early childhood development and education worldwide. Developing countries such as South Africa and Namibia are heavier burdened by the provision of early childhood development and education than developed countries such as New Zealand. The reason for this can be attributed to the fact that developed countries usually have the advantage of sufficient funding for the provision of early childhood development and education services, and for the training of educators. Early childhood development and education is well-established in most developed countries, which means that the provision of early childhood development and education has been implemented for quite some time whereas, in developing countries, early childhood development and education is quite new and unknown.

³⁹ See ch 9 par 3.6.1 above.

⁴⁰ See ch 6 par 5.11 & 6 above.

3.4 Recommendations for the successful provision of early childhood development and education

In order to conquer these challenges, many different approaches can be followed.⁴¹ It is important to remember that every country is unique and that different approaches will work for different countries. However, in addition to the adoption of these approaches, early childhood development and education provision will only be successful if every country recognises and includes all its official languages and cultures (where reasonably possible) and commits to fair and just practises.

It is also in my opinion that South Africa and Namibia can expand their early childhood development and education policies. As in the New Zealand case, provision can be made for different childhood age groups, namely infants, toddlers and preschoolers. The classification of childhood age groups will in my opinion make the provision of early childhood development and education easier as each group will have its own curriculum requirements to meet.

4 SOUTH AFRICA, NEW ZEALAND AND NAMIBIA: MOTHER TONGUE EDUCATION

4.1 Introduction

South Africa is characterised as a country rich in linguistic and cultural diversity. With eleven official languages, one cannot help but bring the issue of “mother tongue education” under discussion. Language is regarded as a fundamental right in South Africa and the Pan South African Language Board (PANSALB) was appointed in terms of section 6(5) of the Constitution to promote and protect language as a fundamental right. Mother tongue is globally regarded as one of the most efficient ways to function cognitively and socially. It is also true that mother tongue is invaluable for personal and

⁴¹ See par 3.2 above.

cultural identity as well as for intellectual and emotional development. It can therefore be submitted that it is important for children to be educated and instructed in their mother tongue.⁴² The South African Constitution provides for the right to education, and section 29(2) stipulates that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where such education is reasonably practicable. Other legislation such as the National Education Policy Act⁴³ and the South African Schools Act determines the norms and standards of schools' language policies. However, despite this legislation and various international instruments,⁴⁴ to which South Africa is a signatory, the issue of mother tongue education still remains a problematic one since it is not always possible or reasonably practicable to make provision for mother tongue education. The question is: What can be done to promote mother tongue education as far as reasonably practicable and possible? This question will be contemplated below.⁴⁵

Just like South Africa, New Zealand is rich in language and cultural diversity. New Zealand has only three official languages, but the National Language Policy of New Zealand stipulates that other languages besides the official languages should also be recognised. These languages are indigenous to the New Zealand realm and include the following: Pacific languages, community and heritage languages and international languages. Despite the fact that the New Zealand Constitution does not protect the right to mother tongue education, the importance of mother tongue and mother tongue education is emphasised in the Treaty of Waitangi and the National Language Policy.⁴⁶ The New Zealand government thus has a positive duty to promote mother tongue education in schools. Just like in South Africa, it is not always possible or reasonably practicable to make provision for mother tongue education. The question once again is: What can be done to promote mother tongue education as far as reasonably practicable and possible? This question will be dealt with below.⁴⁷

⁴² See ch 7 par 1 above.

⁴³ Act 27 of 1996.

⁴⁴ See ch 7, par 6 above.

⁴⁵ See par 4.3.1 below.

⁴⁶ See ch 9 par 2.3.2; 2.3.3 & 2.3.4. above.

⁴⁷ See par 4.3.2 below.

Namibia can also be characterised as a country rich in linguistic and cultural diversity. Namibia has thirteen recognised languages, but only one official language, namely English. The implementation of English as the only medium of instruction in schools caused huge problems and difficulties as teachers and learners lacked the necessary skills and capabilities to effectively communicate and learn in English.⁴⁸ The Namibian government had to develop a language policy that would apply to all schools in the country. The language policy of Namibia sets out the following guidelines:⁴⁹

- Mother tongue or a predominant local language will be used as medium of instruction for grades 1 to 3.
- Grade 4 is the transitional year which means that the medium of instruction changes from mother tongue to English.
- English is the medium of instruction with mother tongue as a supportive role in grades 5 to 7.
- In grades 8 to 12, English is the medium of instruction with mother tongue as a subject only.

However, despite the fact that Namibia has only one official language, the use of mother tongue is still regarded as a fundamental right. The Namibian Constitution and Education Act emphasise the importance of language and the use of mother tongue education in schools wherever possible and reasonably practicable. Article 3(2) of the Namibian Constitution stipulates as follows:

“Nothing contained in the Constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools financed or subsidised by the State, subject to compliance with such requirements as may be imposed by law, to ensure proficiency in the official language, or for pedagogic reasons.”

⁴⁸ See ch 9 par 3.7.3 above.

⁴⁹ See ch 9 par 3.7.4.2 above.

Section 35(3) and (4) states the following:

- “(3) The Minister must determine the grade level for all state schools from which English must be used as medium of instruction, and may determine different grade levels for different categories of schools.
- (4) The Minister, after consultation with the school board concerned and by notice in the Gazette, may declare a language other than English to be used as medium of instruction in any state school as the Minister may consider necessary.”

Article 10 of the Namibian Constitution also states that every person is equal before the law and that no person may be discriminated against on the basis of sex, race, colour, ethnic origin, religion, creed or social or economic status. It can be argued that discrimination on the ground of language is prohibited since language is closely linked to ethnic origin and social status. Namibia is also signatory to various international instruments and is therefore obliged to provide mother tongue education in schools, especially primary schools where possible and reasonably practicable. Nevertheless, the issue of mother tongue education in Namibia is faced with some challenges since it is not always possible or reasonably practicable to make provision for mother tongue education. The question (as in the case with South Africa and New Zealand) is: What can be done to promote mother tongue education as far as reasonably practicable and possible? This question will be discussed below.⁵⁰

In a nutshell: South Africa, New Zealand and Namibia recognise the cardinal importance of the use of mother tongue and mother tongue education in schools. These countries are obliged to provide for mother tongue education where possible and reasonably practicable.

⁵⁰ See par 4.3.3 below.

4.2 Challenges

In South Africa and Namibia, challenges such as insufficient funding, the lack of skilled educators, and insufficient resources are raised, but these challenges can in my opinion not be regarded as sufficient reason for failing to provide mother tongue education. Although it is true that the provision of mother tongue education is not always possible or reasonably practicable (worldwide, and specifically in South Africa, New Zealand and Namibia), there are in my opinion certain school/education models that are able to conquer and overcome these challenges. The impact of these models will promote mother tongue education as far as reasonably practicable and possible.

4.3 What can be done to promote mother tongue education as far as reasonably practicable and possible? - Recommendations

4.3.1 *South Africa*

It is in my opinion that mother tongue education can be successfully promoted through the implementation of certain education models. Strong bilingual education is one of the best education models to use in South Africa, since mother tongue and mother tongue education retain a prominent role in the upbringing and education of children.

Another education model that will also flourish in the South African context is the MT-based MLE education model. This model entails that a child's education will start with his or her mother tongue and additional languages will only be added at a later stage. However, which model will work best remains an open question and it is necessary to consider the unique situation and circumstances of every South African school before an education model can be implemented. Although there will obviously be obstacles, respect and fairness towards all official languages and the proper allocation of funds and resources will in my opinion ensure the successful provision of mother tongue education in South Africa.

4.3.2 *New Zealand*

Since it is not always reasonably practicable and possible to provide mother tongue education, the following school models were developed in New Zealand:⁵¹

- Two-way, two literacy bilingual education.
- Dual medium 50% - 50% (two languages, two literacy).
- Transitional early exit / one literacy programmes.
- ESOL (English as a second language programmes).
- Submersion, Sink or swim, Osmosis learning.

In my opinion, the two-way, two literacy bilingual education school model will be the most effective model in the New Zealand context, since this model is almost similar to South Africa's strong bilingual education model and holds a huge advantage for children: Children do not only "learn" their own language and culture, but they are also exposed to another unfamiliar language and culture. Unfortunately there are currently no two-way, two literacy bilingual education school models in New Zealand, and in my opinion this state of affairs hampers the successful provision of mother tongue education in New Zealand.

In my opinion, the implementation of a strong bilingual education model or an MT-based MLE education model will be successful in the New Zealand context since New Zealand is a multicultural and multilingual country like South Africa. It is therefore submitted that New Zealand will successfully promote and provide mother tongue education if one of the aforementioned models (depending on each school or district's unique needs) is implemented.

⁵¹ See ch 9 par 2.3.4.2 above.

4.3.3 *Namibia*

The fact that Namibia only has one official language and that English is the primary medium of instruction in most Namibian schools, remains a problem. Although the Language Policy for Schools in Namibia makes provision for mother tongue education or a predominant local language as medium of instruction, children from grade four are deprived of mother tongue education since the medium of instruction will then be English with mother tongue as a supportive role or subject only. In my opinion, this hampers the successful provision of mother tongue education in Namibia. There are, however, solutions. The Namibian Constitution and Education Act emphasise the importance of mother tongue and mother tongue education and it is therefore submitted that nothing prevents Namibia from implementing a strong bilingual education model and/or an MT-based MLE education model.

The costs of implementing these models could be a challenge, but the implementation of these models can be done systematically when funds and resources are available. It can therefore be submitted that Namibia will be able to successfully promote and provide mother tongue education if one of the aforementioned models (depending on the unique needs and circumstances of every Namibian school) is implemented.

5 SOUTH AFRICA, NEW ZEALAND AND NAMIBIA: HIV/AIDS

5.1 Introduction

South Africa is heavily burdened by the HIV/AIDS epidemic. Not only is this virus one of the greatest destroyers of human life, but it is also one of the most dangerous threats to the fulfilment of children's rights in South Africa. HIV/AIDS has damning and ruinous consequences for the South African education system. The demand for education, the supply of education and the quality of education are negatively affected, which hampers

the realisation of children's right to a basic education as protected in section 29 of the Constitution.⁵² It is recommended that all South African schools:

- develop their own HIV/AIDS policies in order to respect and value the rights of all learners and educators;
- treat HIV infected and affected learners and educators with respect;
- do everything possible to prevent further HIV/AIDS infection; and
- create and promote a non-discriminatory learning environment.⁵³

Strong emphasis is placed on HIV/AIDS and the right to non-discrimination in South Africa. South Africa has several national statutes, policies and programmes (and is also a signatory to several international instruments) which make provision for the protection of HIV infected and affected persons. It can therefore be submitted that South Africa has both a national and an international obligation to prevent, to the maximum extent possible, discrimination on the grounds of HIV/AIDS.⁵⁴

The HIV/AIDS epidemic affects children in many different ways and also has an impact on different basic rights of children. The right to survival and development of children, as well as children's best interests are two of the basic rights that are the worst affected by this epidemic. With regard to the right to survival and development,⁵⁵ HIV infected and affected children's right to optimal survival and development is plagued and the end result is that these children are disadvantaged on various levels of development. The best interests of children⁵⁶ are also adversely affected since this virus causes circumstances and consequences which are definitely not favourable to children. Child-headed households are one of the many examples that can be mentioned: these

⁵² See ch 8 par 1 above.

⁵³ See ch 8 par 8 above.

⁵⁴ See ch 8 par 10 above.

⁵⁵ See ch 8 par 9.2 above.

⁵⁶ See ch 8 par 9.3 above.

children are “obliged” to look after their siblings, parents and sometimes other family members who are HIV-infected which hampers the realisation of their right to (a basic) education. It can therefore be unequivocally submitted that HIV/AIDS causes a vicious cycle in the South African education system. However, despite several international instruments, pieces of national legislation, policy documents and plans of action, there are still several challenges that South Africa need to overcome. These challenges will be discussed below.⁵⁷

The prevalence of HIV/AIDS in New Zealand is relatively low, and so is the prevalence of HIV/AIDS in New Zealand schools. New Zealand is therefore in the fortunate position that it is not heavily burdened by the HIV/AIDS epidemic. However, New Zealand has sufficient national legislation which provides for the prevention and combating of HIV/AIDS as well for the protection of HIV infected and affected persons.⁵⁸ An addition, New Zealand is a signatory to several international instruments with similar provisions.

Just like South Africa, Namibia is heavily burdened by the HIV/AIDS epidemic. This epidemic has several negative effects on the Namibian education sector:⁵⁹

- the supply of skilled and qualified educators is reduced due to AIDS-related illnesses and deaths;
- children may be kept out of school to look after sick relatives and family members or to work in order to ensure an income for survival; and
- children may drop out of school if their parents or families are unable to pay for school fees due to the heavy financial burden of AIDS-related illnesses and deaths.

⁵⁷ See par 5.2 below.

⁵⁸ See ch 9 par 2.4.2 above.

⁵⁹ See ch 9 par 3.9.1 above.

Namibia also has several national statutes, policies and programmes (and is also a signatory to several international instruments) which provide for the protection of HIV infected and affected persons. It can therefore be submitted that, like South Africa, Namibia has both the national and the international obligation to prevent, to the maximum extent possible, discrimination on the ground of HIV/AIDS.⁶⁰

In the context of the HIV/AIDS pandemic, both children's rights to optimal survival and development and their best interests are adversely affected. It is therefore important that Namibia uses all possible national statutes, policy documents, plans of action and international instruments to reduce the impact, effects and consequences of this epidemic. However, despite the implementation of these legislative provisions, policies, plans of action and international instruments, there are still several challenges that Namibia needs to overcome. These challenges will be discussed below.⁶¹

In a nutshell: South Africa and Namibia are both heavily burdened by the HIV/AIDS epidemic and face similar challenges and obstacles with regard to this epidemic. New Zealand, on the other hand, has a very low prevalence of HIV/AIDS in the country and in its schools and therefore the country does not currently have any challenges to overcome.

5.2 Challenges

South Africa and Namibia are challenged in countless fields with regard to the HIV/AIDS epidemic, but there are three main challenges that need to be overcome.⁶²

- a concerted effort must be made to combat the further spread of HIV/AIDS among infants and the youth;

⁶⁰ See ch 9 par 3.9.3 above.

⁶¹ See par 5.2 below.

⁶² See ch 8 par 11 above.

- greater care, attention and support must be given to all neglected HIV/AIDS infected and affected persons; and
- every possible effort must be made to alleviate the impact that HIV/AIDS has on persons affected by HIV/AIDS.

It should also be emphasised that the HIV/AIDS epidemic is evolving in an explosive-exponential way which means that two HIV-infected persons become four and four HIV-infected persons become sixteen and so forth.⁶³ It is therefore my opinion that the highest priority should be given to the prevention and combating of HIV/AIDS, before it reaches an irreversible situation.

5.3 Recommendations

In order to overcome the aforementioned challenges, the following active steps should be taken:⁶⁴

- resources should be increased for comprehensive prevention, care, treatment and support services;
- prevention should remain the “moral fibre” of all AIDS control programs;
- the public health infrastructure and capacity for delivery of services must be further developed and improved;
- the technologies used for HIV/AIDS treatment and prevention must be improved;

⁶³ Jena & Kuanr “Combatting HIV/AIDS: A challenge ahead” 2010 *Orissa Review* 23.

⁶⁴ See ch 8 par 11 above.

- drastic steps must be taken to combat poverty, illiteracy and other social, economic and political factors that contribute to the HIV/AIDS epidemic; and
- the stigma and discrimination associated with this virus, must be reduced and eliminated.

Moreover, HIV/AIDS can only be prevented and combated if the following steps are taken.⁶⁵

- proper and appropriate policies must be developed;
- adequate planning and management are crucial;
- preventive education should be one of the main focal points;
- vulnerability and exposure to the HIV/AIDS virus must be drastically reduced;
- life skills education must be implemented, and if this education is already implemented, it must be improved;
- a culture of compassion, empathy and care must be promoted; and
- the impact and consequences of HIV/AIDS as well as the prevention of HIV/AIDS must be integrated as one of the most important parts of the national curriculum.

In addition to this, it is my opinion that in order to save the education systems of South Africa and Namibia from destruction, a human rights based approach should be followed in order to fight HIV/AIDS. Such an approach will promote greater flexibility; ingenuity and openness to change; open-mindedness and tolerance for a diversity of solutions and models; readiness to renounce bureaucratic constraints and procedures; collaboration with other government sectors, civil society and communities; reminiscent devolution based upon school autonomy and the effective involvement of local stakeholders; enhanced comprehension and understanding of what education is all about; and compassion and sympathy for those affected and infected with HIV/AIDS.

⁶⁵

Ibid.

6 CONCLUSION

The importance of the right to a basic education and the importance of protecting the right to a basic education in South Africa were constantly emphasised throughout this study. Several factors which can have an impact on a child's right to a basic education, such as early childhood development and education, mother tongue education and HIV/AIDS, were extensively discussed and several recommendations were made in order to successfully give effect to the right to a basic education in South Africa.

The legal systems of New Zealand and Namibia relating to the right to basic education, including early childhood development and education, mother tongue education and HIV/AIDS were compared with the South African legal system and relevant legislation, international instruments, policies, action plans, principles and methods were compared and discussed. Shortcomings, virtues and challenges were identified and several recommendations were made.

After intense research and study, it can be unequivocally declared that a good education system is vital, not only for ensuring that all citizens are well educated, but also for optimal human development and for the maintenance and preservation of socially responsive economic and political systems.

The adoption and implementation of the recommendations made throughout this study should address the shortcomings of the South African system which will also enable the South African government to successfully provide proper and adequate basic education.

Education is a life-long process and the following should be remembered:⁶⁶

“If your plan is for one year, plant rice. If your plan is for ten years, plant trees. If your plan is for one hundred years, educate children.”

⁶⁶ Chinese proverb.

CHAPTER 2

The philosophy and history of education – an overview

“Our first teachers ... are our nose, ears, feet, hands and eyes. To substitute books for them does not teach us to reason; it teaches us to use the reason of others rather than our own; it teaches us to believe much and know little.”¹

1 INTRODUCTION

This chapter consists of a historical overview of the philosophy of education and how education was developed. For purposes of the historical overview, it is necessary to discuss the ancient educational systems of countries such as Egypt, China, India, Greece and Rome. The influence that some major thinkers had on education and its development is also discussed. The most important eras in education are discussed under the headings of Christian Education, Medieval Education, and Education in the Renaissance and Education during the Enlightenment. It is explained below that education is inevitable – it is part of our daily lives. Emphasis is laid on the fact that without education, no educated world can exist. The cardinal importance of education for all people, especially young children is also discussed below.

A study of the history of education illuminates the importance of education through time. When one realises the importance of education, one also understands the need to protect the right to education as a fundamental right.

A study of the history of education also provides information on the meaning and content of the concept of education – the way in which children were taught during

¹ Boydston (ed) *The middle works 1899-1924* Vol 8 (1979) 217.

primitive times still forms the foundation of the way in which children are taught and educated today.

As education is the formal process by which society conveyed its accumulated knowledge, skills, customs and values from one generation to another, the philosophy and history of education shape the way we view the present, and therefore dictate what answers and solutions we offer for existing educational predicaments with regard to a child's right to a basic education.

2 PHILOSOPHY OF EDUCATION

Philosophy of education is one of the oldest yet one of the newest disciplines. It is one of the oldest since Plato. He was a philosopher who devoted considerable attention to the nature, purposes and content of education. It is also one of the newest since philosophy of education became known as a separate discipline in the twentieth century.²

Education is the art or process of imparting or acquiring knowledge and habits through instruction or study.³ Philosophers of education are concerned with analysing and clarifying concepts and questions related to education.⁴ Thus, philosophers of education are challenged to answer some of the crucial questions related to education. They seek to institute a system of principles that can be used in directing the educational process.⁵

Education is, in its broadest sense, the process of transmission of culture from one generation to the next. Education can be categorised into formal or informal education.

² Dupius & Gordon *Philosophy of education in historical perspective* 2nd ed (1997) 1.

³ Sharma *Philosophy of education* (2007) 1.

⁴ Noddings *Philosophy of education* 2nd ed (2007) 1.

⁵ Sharma (2007) 1.

Informal education refers to the general social process by which human beings acquire the knowledge and skills needed to function in their culture.⁶

Culture is the way members of a group think, believe and live; what they do, say and hold as morals. There has been some sort of education since the beginning of humankind. First there was the great human achievement of spoken language, followed by how to create and use equipment, how to hunt and gather food and how to make fire.⁷ By using language, people learned to create and use symbols, words or signs to express their ideas. These symbols grew into pictographs and letters and human beings invented a written language and made the great cultural leap to literacy.⁸

3 EDUCATION IN ANCIENT EGYPT

3.1 The rise of formal education

Formal education in Egypt arose initially to prepare specialists. The need for trained specialists grew out of the conditions induced by the urban revolution. The revolution itself was conditioned by the capacity of societies in particular districts to deliver more than they needed for survival. Such a surplus of production is technically known as an economic “left over”. The immediate effect was to let a small percentage of the population loose for activities other than primary production.⁹

The centres of administration were mostly the great temples and courts. Priests and royal officials were the technical administrators. “The early stages of writing and mathematics as well as the standardisation of weights and measures, coincide in time with the revolution.”¹⁰

⁶ *Ibid.*

⁷ Murphy *The history and philosophy of education: Voices of educational pioneers* (2006) 1.

⁸ *Ibid.*

⁹ Smith *Ancient education* (1969) 34.

¹⁰ *Ibid.*

The aim of writing and mathematics was thus in the beginning strictly practical. Only with the passing of time did the former become a literacy medium and the latter an instrument of research. However, both soon became specialised arts that could be mastered only through long-lasting training.¹¹

Consequently, temple and court schools arose, and, with the establishment of these, specialised formal education was in full swing.¹² Priests taught religion as well as principles of writing, sciences mathematics and architecture.¹³ In due time these schools were of course intended to do much more than teaching professional scribes. They were to serve additionally as centres of research and also as the systematisation of knowledge.¹⁴

3.2 Elementary training

The process of education in Ancient Egypt developed in a purely natural way. The schools of Egypt were not separated from the actual activities of life as they are today. Education was important and an apprenticeship in all the affairs of life under the guidance of the father or of someone who replaced the father.¹⁵

The history of ancient Egyptian civilisation was divided into three eras: the Old Kingdom, from 3000 to 2000 B.C.; the Middle Kingdom, from 2000 to 1600 B.C. and the New Kingdom, down to 1000 B.C. During the Old Kingdom, education was almost completely in the hands of the father of the child. Several writings from this period survived which reflected the interest of fathers in the moral guidance and vocational success of their sons. The first mentioned school came during the era of the Old Kingdom. During the Middle Kingdom era, slower progress was made, and the writings

¹¹ Smith (1969) 35.

¹² *Ibid.*

¹³ Anon “*The life of Ancient Egyptians – education and learning in Ancient Egypt*”
<http://www.touregypt.net/HistoricalEssays/lifeinEgypt7.htm>, last visited 2012-04-23.

¹⁴ Smith (1969) 35.

¹⁵ Eby & Arrowood *The history and philosophy of education, Ancient and Medieval* (1940) 70-71.

were less. During the New Kingdom, the former era writings were copied by schoolboys to improve their style and to learn the accepted ideas in morals and manners. The scribe was the mainspring of all affairs and promotion in office depended upon the literary training of the individual.¹⁶

Thus, Egyptian education was concerned with vocational training, how to write and good conduct. Educational principles were summarised in some ancient Egyptian treatises now commonly known as the Books of Instruction. The advice given in these Books were designed to ensure personal victory consonant with the needs of the state and the moral norms of the day. The ancient Egyptians nevertheless held education in high regard and saw it as a privilege.¹⁷

4 EDUCATION IN ANCIENT CHINA

4.1 Introduction

China had been an educated society for a very long period of time. Formal schools existed during Hsia and Shang dynasties, as early as 2000 B.C. Religion had always been one of the primary aspects in Chinese life and education. The Chinese had a great devotion to tradition – the father had the absolute authority to enforce obedience to himself as the carrier of tradition. The state was thus an enlargement of the family, and the emperor functioned as the Great Father of all the people. Filial piety as well as dedication was important to the country. Chinese education aimed to conserve the past and maintain things as tradition dictated.¹⁸

¹⁶ *Ibid.*

¹⁷ Anon “*The life of ancient Egyptians – education and learning in ancient Egypt*”
<http://www.touregypt.net/HistoricalEssays/lifeinegypt7.htm>, last visited 2012-04-23.

¹⁸ Murphy (2006) 3-4.

4.2 The Chinese curriculum

The Chinese curriculum relied heavily on tradition. Classical subjects such as history, poetry, literature of antiquity, government documents and law were studied. China had no state system of schools or public education. Formal education was strictly for men, and only to those men who could afford it. Education for women was limited, but there were reported incidents where women received some formal education. Those women, as well as the men, were able to quote from the Book of Poetry and other books.¹⁹

The curriculum as a whole embodied “the six virtues, the six praiseworthy actions and the six arts.” The six virtues were “wisdom, benevolence, goodness, righteousness, loyalty and harmony.” The six praiseworthy actions were “honouring one’s parents, being friendly to one’s brothers, being neighbourly, maintaining cordial relationships with relatives through marriage, being trustful and being sympathetic.” The six arts consisted of “rituals, music, archery, charioteering, writing and mathematics.” The methods of teaching and learning were noticeably modern – far ahead of those which came into use subsequently.²⁰

4.3 Chinese educational institutions

There were three levels of ancient Chinese education: elementary, academies and examinations. The elementary school students gathered at the teacher’s house. The hours were lengthy and the work was complex. The private academies were more like “cram” or “drill” schools in which the youth studied the Chinese classics, grammar and prose in order to pass the examinations. The methodology at every level of Chinese education was incredibly formal, stressing memorisation and a precise replica of textual material.²¹ The discipline in Chinese schools was firm, and corporal punishment was

¹⁹ Murphy (2006) 4.

²⁰ Smith (1969) 82.

²¹ Murphy (2006) 4.

frequently used. Teachers gave emphasis to repetition and students were instructed and encouraged to imitate the teacher.²²

Thus, formal education in China stressed philosophy, poetry and religion in accordance with the teachings of philosophers such as Confucius.²³

4.4 Confucius, the Great Teacher

Confucius's philosophy of education was primarily an ethical theory intended to guide people into leading the benevolent – the good – life, by doing what is right.²⁴

Confucius was the first private teacher in China who taught men the value of teaching itself. He was a well-trained educator in the great classics of Chinese literature as well as in history, poetry, music and archery.²⁵ Confucius used his own house as a school and charged small payments to teach his students. He taught the art of thinking through conversation with his students about their own outlooks on key matters.²⁶

Confucius's aspiration was to furnish all students with an education that would be both practical and moral; an education that would “cultivate the person” and train them to solve the daily problems of governmental service and bring the finest benefits to the people they served. Confucius saw his role as a teacher to be a “transmitter of knowledge,” one who should motivate students with the truths of great ideas. His technique of instruction consisted of conversation and dialogue. He established the curriculum of reading and studied the six Chinese classics instead of obtaining practical

²² Mayer *A history of educational thought* 3rd ed (1973) 67.

²³ *Ibid.*

²⁴ Gutek *Historical and philosophical foundations of education* 4th ed (2005) 15.

²⁵ Kaizuka *Confucius: His life and thought* (2002) 42.

²⁶ Murphy (2006) 6.

knowledge. His emphasis on liberal instead of vocational education had a momentous impact on the history of Chinese education.²⁷

Confucius was profoundly confident that learning and morality were inseparable. According to him, education enhanced the moral character of a person as well as the intellect. Morality needs good education, and a good education is rooted in moral principles.²⁸ He designed a curriculum that emphasised literature, poetry, music, the study of rites and ceremonies, and the practice of civility.²⁹

However, Confucius and his followers had an enormous influence on Chinese society and education. Confucius emphasised the following: “Those who excel in office should learn; those who excel in learning should take office.”³⁰

5 EDUCATION IN ANCIENT INDIA

5.1 The rise of formal education

The rise of formal education in India was unique in two respects: It occurred without benefit of a system of writings; and its motivation was exclusively religious.³¹ Priests conducted most of the formal education. Indian priests taught the principles of the Vedas,³² as well as science, grammar and philosophy. The Vedas were conveyed orally, and not committed to writing until the eighth or ninth century.³³

²⁷

Ibid.

²⁸

Ibid.

²⁹

Gutek (2005) 23.

³⁰

Murphy (2006) 6.

³¹

Smith (1969) 60.

³²

The Vedas are a large body of texts originating in ancient India. They form the oldest layer of Sanskrit literature and the oldest sacred texts of Hinduism.

³³

Smith (1969) 60.

5.2 Brahman education

During the earliest stages, Brahman education was administered by the father. Afterwards, when the various family traditions had been incorporated in the Vedas, schools or associations of priests corresponding to the several Vedas arose. The ceremonial functions of these became differentiated and somewhat specialised. From this time onwards, the Brahman student received his³⁴ training from a priest of the school in which the student wished to specialise. There were thus no schools in the technical sense of the term.³⁵

The central part of the student's curriculum was the Veda of his particular school. The student was of course free to master all four³⁶ of them, but it took approximately twelve years to master one of them.³⁷

The set of laws that governed Brahman education was incorporated in the *Dharma Sastras*.³⁸ The greatest of these was the Code of Manu. Enormous emphasis was placed on the relationship between the student and the teacher. The student was obliged to lead a rigorously disciplined life.³⁹

³⁴ Although the author of this thesis prefers to use gender neutral language, care was taken in this chapter not to blindly change the language used in the sources to gender neutral language. The reason for this is that it was not always clear if the sources only referred to boys or men, or if they meant to include girls or women as well.

³⁵ Smith (1969) 63.

³⁶ The Veda consists of four parts, namely Samhitas, Brahmanas, Aranyakas and Upanishads.

³⁷ Smith (1969) 63.

³⁸ The Dharma Sastras are texts in Hinduism that are concerned with the legal precedent or law that is in relation to dharma. Dharma means to uphold, to maintain, to support, to nourish and to sustain. Dharma can therefore be described as a guide to what a Hindu person must do in order to fulfil and accomplish his dharmic duty. (See Zysk (ed) *The origins and development of classical Hinduism* (1989) 101).

³⁹ Smith (1969) 64.

5.3 Buddhist education

Buddhist education varied from Brahman education in a number of important aspects. The main differences were laid in the fact that it ignored class distinctions and the Vedas. Buddhist education was thus monastic in character. Beyond this, the two had very much in common. There was the same close connection between student and teacher, and oral instruction and memorisation were noticeable in both.⁴⁰

With the Vedas out of the way, the essence of the general curriculum naturally shifted to Buddhist literature – the Tripitaka⁴¹ and several related works.⁴² Tremendous emphasis was placed on grammar. The monk was prepared to teach others, but he was enjoined to remain a life-long student himself.⁴³

6 ANCIENT GREEK EDUCATION

6.1 Introduction

The Greeks were the first real educators of the western world. No history of education can neglect them; they were the first western people to think seriously and profoundly about educating people, the first nation to ask questions regarding education and its purpose along with how children and men should be educated.⁴⁴

Ancient Greek education set the foundation for modern education. The history of their culture and forms of training unfolded like a laboratory experiment reduced to a miniature scale for convenience of observation. The uncomplicated origin, the swift and significant growth, the worldwide acceptance and ultimate decline of their literature and

⁴⁰ Smith (1969) 65.

⁴¹ The Tripitaka (three baskets) is the Sanskrit term used by Westerners for a Buddhist canon of scriptures.

⁴² Smith (1969) 65.

⁴³ *Ibid.*

⁴⁴ Castle *Ancient education and today* (1961) 11.

learning stand forth with remarkable clearness. It is especially remarkable that Greek culture and education were of purely humanistic origin. All the varied forms of art in which their genius revelled, had their beginnings in the simple and spontaneous activities of gifted childhood. Their education was the simple outgrowth of the unfolding activities of Greek art and thought.⁴⁵

6.2 Periods of Greek education

These periods can be characterised as the Old Greek Education and the New Greek Education. The Periclean Age, (the middle of the fifth century B.C.), forms the dividing line.⁴⁶

These periods can be subdivided. The earlier period was the Homeric period. This period can be described as the archaic period: there were no schools and formal education was non-existent. The Homeric period was followed by the historic period (down to the middle of the fifth century) which was also known as the second period. The second period can be described as the period of “educational change” since it was the period of transition in educational, religious and moral ideas – the time of philosophical activity and the development of formal education.⁴⁷

⁴⁵ Kumar & Kumar *Ancient educational philosophy* (2005) 145-146.

⁴⁶ Monroe *Source book of the history of education for the Greek and Roman period* (1939) 1.

⁴⁷ *Ibid.*

6.3 Education during the Homeric Period (900 – 750 B.C.)⁴⁸

This education was known as the “education of primitive people”. It was an education that had little or no place for definite instruction of a literary character, but was in essence a training process in major practical activities.⁴⁹

The education during this period, as with all primitive peoples, consisted of practical training which prepared them for the immediate duties and responsibilities of life. This training was given at home for the humbler needs of life – those connected with the securing of food, clothing and shelter. The rest of their education was received in council, wars and marauding expeditions.⁵⁰

6.4 Old Greek education

The old education was throughout its history known as the education of Sparta, because Sparta never accepted the new educational ideas and they never had tolerated the new practices.⁵¹

Sparta, however offered the finest old education - a much more extreme type of education than anywhere else in Greece. The explanation for Spartan education was founded in Plutarch’s Life of Lycurgus. Plutarch was a moralist rather than a historian, who was more concerned with emphasising the morals of an incident or life, than with the accuracy of his facts.⁵²

⁴⁸ The century and a half from 900 to 750 B.C. is considered as the Homeric Age; see in general, Burrage “Education in the Homeric Age” 1947 Vol 43 No 3 *The Classical Journal* 147. It should also be kept in mind that Homer did not live during the time period which was named after him. He lived three hundred years after the Homeric Age (see, in general <http://library.thinkquest.org/19300/data/homersgreece.htm>, last visited 2012-04-23).

⁴⁹ Monroe (1939) 2.

⁵⁰ *Ibid.*

⁵¹ Monroe (1939) 5.

⁵² *Ibid.*

6.5 Spartan education

Sparta was a dictatorship that used education for military training and drill. The Spartan philosophy of education was one where all softness of life was held in contempt and the standards of living were those of a soldier on active service.⁵³

Spartan education was almost identical with Spartan life in general. Sparta was practically a military camp organised for the training of warriors. The Spartans were a small group of conquerors among a large subject population. Their national existence depended on the military excellence of their citizens, and their whole life was organised to this end. There was no definite school, childhood was schooling - absolutely systematised for educational purposes; and the most important occupation of adults was to educate the younger generation. This education was almost completely physical and moral.⁵⁴

Physical education on the one hand, consisted of definite training - a replacement for school work, as well as strict discipline. A proper system of exercises and games, which also included military exercises, was however seen as training. Moral training on the other hand, intended to produce and encourage self-control in action and speech, patience, respect, unselfishness and subjection of all emotional expression.⁵⁵

The aim of Spartan education was "to promote and secure the national interest by building a totalitarian morale that rested on an ideal of absolute patriotic devotion to the state".⁵⁶

The Spartan system of education for boys concentrated on physical and military training for the sake of its community – the Spartan state. Young boys were educated mainly at

⁵³ *Ibid.*

⁵⁴ Monroe (1939) 9.

⁵⁵ Monroe (1939) 10.

⁵⁶ Lewis "Individual and community needs in education: a historical exemplaric view of ancient Greek education" 2002 *Educare* 143.

home and at times were taken by the father to the army barracks to familiarise them with their future profession.⁵⁷

At the age of seven, those youths who survived the initial inspection were taken from their mothers to begin their formal education in discipline and obedience at the *agoge*, a system of public, compulsory training. These youths were known as cadets or *ephebi*. A civilian male of seniority was the youth's primary teacher. This adult was assisted by several assistants who had a more hands-on approach to education.⁵⁸

Spartan education included hunting, fending for themselves, athletic contests, gymnastics, military drill and mock battles which served as preparation for war to protect the Spartan community. Little emphasis was placed on individual intellectual development: if a boy wanted to enhance his intellect, it had to be done in his own time.⁵⁹

Girls received domestic training from their mothers and a limited amount of military training. Their most important role was to produce future Spartan warriors. The Spartan women did, however, derive some positive aspects from this kind of education. They were usually in good physical shape, showed a passionate love for their country and exhibited pride in the brave deeds their men folk established in the face of war.⁶⁰

Furthermore, not all Spartan education was negative. The moral education of Spartans represented many positive aspects. Spartan youth showed great admiration for their parents and elders.⁶¹ Sparta also achieved a stable state, a united community whose institutions resisted corruption. It was desired by others. They had an organised

⁵⁷

Ibid.

⁵⁸

Lewis 2002 *Educare* 143-144.

⁵⁹

Lewis 2002 *Educare* 144.

⁶⁰

Ibid.

⁶¹

Lewis 2002 *Educare* 145.

system of education and it was a system which had a fundamental appeal to courage and obedience.⁶²

Thus, the most evident characteristic of Spartan education was the complete submergence of individuality in a system where the state possesses the child, body and soul. It was a type of regime not solely attributable to Sparta.⁶³

6.6 Athenian education

6.6.1 Introduction

In contrast to the rigid militaristic education of the Spartans, Athenian education in general strove towards the attainment of a more balanced individual.⁶⁴

Athenian education can be divided into two time periods, namely early and late Athenian education.

6.6.2 Early Athenian education (640 – 550 B.C)⁶⁵

The old Athenian education existed roughly from the earliest beginnings to the post-Persian War era. The main goal was to develop citizens – not through military regimentation, but rather through the all-around physical, aesthetic and intellectual development of the individual. Education was thus not a state or public affair in early Athens.⁶⁶

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Woody *Life and education in early societies* (1949) 285.

⁶⁵ Murphy (2006) 14.

⁶⁶ Smith (1969) 132.

Education was public only with reference to close state supervision. Education was usually obtained in private schools, at homes or other private institutions. This education was more literary in character than Spartan education; its dominant motive was moral and social. The main purpose was preparation for active Athenian citizenship – a citizenship which insisted on political as well as military services.⁶⁷

Education was reserved for the freemen minority and not for the masses. There was therefore sufficient free time for individual self-development and reflection, which was primarily achieved by means of education.⁶⁸

The military character of early Greek education had come to an end, but a strong flavour of its aristocratic foundation still prevailed, which Greek education never entirely lost. It remained, however, an education for the élite and privileged.⁶⁹

The Athenian educational ideal was fourfold, namely bodily beauty, balance and proportion in body and soul, positive service to the state and the development of morals and manners.⁷⁰ The main aim of education was: “a beautiful body” which was attained by “a harmonious union of physical and intellectual culture.”⁷¹

Although the early Athenians led a more balanced lifestyle and had a more balanced education than the Spartans, emphasis was placed on the individual to the detriment of the community. Education was not directed at a vocation or professional skill, but rather at an expansion of things cultural.⁷²

Education for women was home education in domestic or household duties. The general propensity was to restrict women to the house as much as possible, where they

⁶⁷ Monroe (1939) 11-13.

⁶⁸ Lewis 2002 *Educare* 146.

⁶⁹ Castle (1961) 44.

⁷⁰ Lewis 2002 *Educare* 147.

⁷¹ Painter *A history of education* (1905) 55.

⁷² Drever *Greek Education: Its practice and principles* (1912) 23-27.

lived in almost “Oriental seclusion”, with the least possible connection with the outside world. Their position was thus lower than the position of women in Sparta.⁷³

The primary responsibility for education during the early Athenian times was on the family. Education was seen as an individual interest, and state education only took place roughly between the ages of sixteen and eighteen. Education in Athens was not compulsory, but it was a matter of family pride to be educated.⁷⁴

Until the age of seven, education was performed mainly at home. A reliable slave or *paidagogos* was placed in a position of authority and accompanied the boy wherever he went. The slave thus acted as a servant, guardian, counsel and moral reviewer. From the age of seven, boys went to private primary schools for gymnastics known as the *palaestra*. There were also schools which taught music, literature and poetry – known as *citharist*, as well as a school for reading, writing and letters – known as *grammatist*. These two schools were usually linked with the *palaestra*.⁷⁵

To perfect those elementary physical skills acquired at the *palaestra*, sons of the élite attended the most famous gymnasium, which was important for the completion of their secondary education.⁷⁶

Ephebic training was the final stage of the Athenian boy’s education. It started more or less at the age of eighteen. The direct state controlled the boy. The focus of ephebic training and ephebic education fluctuated from mainly military training in times of war to intellectual training in times of peace.⁷⁷ After two years, their military service was rewarded by gaining full Athenian citizenship.⁷⁸

⁷³ *Ibid.*

⁷⁴ Lewis 2002 *Educare* 148.

⁷⁵ *Ibid.*

⁷⁶ Power *Main currents in the history of education* (1970) 65-66.

⁷⁷ Lewis 2002 *Educare* 148.

⁷⁸ Gutek *A history of the Western educational experience* (1995) 30.

6.6.3 *Late Athenian education*

The new Greek educational systems and practices were gradual. The change had occurred during the period of Athenian political supremacy, between the end of the Persian Wars (479 B.C.) and the outbreak of the Peloponnesian War (431 B.C.).⁷⁹

Education now had a practical function. The changes in education were a natural development of the older education. The new system brought important changes in social as well as economic conditions. Education itself was affected directly and indirectly through the development of new influences, predominantly literary and philosophical.⁸⁰

A group of paid, independent teachers came to Athens from several colonies. They were also known as the Sophists who had modified their education to the transforming times.⁸¹ The Sophists “set up a new sanction for human conduct to replace the old external authorities of tradition – family, class, gods and state. The foundation of the new authority was based on the individual himself”.⁸²

Thus, a more individualistic approach was circulated. Intellectual development was encouraged in favour of moral education. Gymnastics and military training were substituted with literary and intellectual subjects.⁸³

The Sophists adapted their teachings to the realities of political, social and economic change, even though they denied the universal and objective standards of morality and behaviour. However, the emphasis that Sophists placed on language, grammar, rhetoric and logic, were of cardinal importance regarding the influence it exercised on

⁷⁹ Monroe (1939) 51.

⁸⁰ Drever (1912) 30.

⁸¹ Lewis 2002 *Educare* 149.

⁸² Freeman *Egypt Greece and Rome: Civilizations of the ancient Mediterranean* (1996) 227.

⁸³ Lewis 2002 *Educare* 50.

Western educational development. The Sophists improved the liberal arts and oratorical education, and the motive was therefore to overshadow Roman education.⁸⁴

To conclude: the Athenians saw no inconsistency between training for state service and developing vital original qualities of character. Athenian education was thus more affluent in content and more imaginative in conception than Spartan education.⁸⁵

7 MAJOR GREEK EDUCATORS

Philosophers of education were engaged with analysing and clarifying concepts and questions fundamental to education. Difficulties regarding education were studied from a philosophical perspective.⁸⁶

7.1 Socrates

Socrates⁸⁷ believed that truth was absolute. Socrates stated that the duty to ask questions and to probe the ideas of mankind relied on teachers. Socrates was convinced that the beginning of education was the recognition of limitation. Teachers were the leaders of civilisation, as indicated by Socrates. Teachers had the obligation to follow the truth even when their colleagues opposed them. Integrity, above all, was demanded from the schoolmaster.⁸⁸

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Noddings *Philosophy of education* 2nd ed (2007) 1.

⁸⁷ Socrates was known as a classical Greek philosopher who was credited with laying the foundation of modern Western philosophy. He invented the teaching practice of pedagogy. With this pedagogy, a teacher questions a learner in a manner that draws out the correct response.

⁸⁸ Mayer (1973) 95.

Socrates was primarily a moralist in education. He followed a different way of thinking concerning education. He considered nature less important than the problem of man.⁸⁹

Socrates was also the developer of an explicit educational theory which was the very first philosophy of education. He had clear opinions on the role of the teacher, the student, the curriculum, the methods used to educate as well as the reason for teaching. He had a unique concept of education without teaching students *per se*. Teachers had to ask the right questions and then had to lug the facts and information out of students. Socratic education was based on the principle that both the teacher and the student harboured knowledge as well as ignorance within themselves. He defended teachers' academic freedom to think, question and teach. He was of the opinion that no knowledge could be transmitted from a teacher to students.⁹⁰

According to Socrates, the most important purpose of real education was to cultivate morally excellent people. Moral education was thus the only defensible educational objective for any society, and knowledge was to be sought for the good of the person as well as the state.⁹¹

Socrates taught by engaging others in dialogue, not by writing, and most students of education immediately associated his name with the "Socratic method." This method was well-liked, especially in law schools where a teacher posed a deceptively simple question. When the student answered the question, the teacher responded with a new question that encouraged the student to think more deeply and then to answer the question more explanatorily.⁹² This method brought out truth through a process of intellectual definition and finally achieved an absolute definition.⁹³

⁸⁹

Ibid.

⁹⁰

Murphy (2006) 25.

⁹¹

Murphy (2006) 26.

⁹²

Noddings (2007) 3.

⁹³

Mayer (1973) 96.

Socrates believed that the rich and the poor, the wise and the ignorant, the young and the old all needed real education, because an educated person is cultivated and civilised. Education was thus a spontaneous process; it did not require formal schooling nor organised student bodies.⁹⁴

Socrates was certain that education had an ultimately social function. The teacher was anything but a specialist. Education, philosophy, ethics and religion were all in one and aimed at the creation of a rational individual.⁹⁵ The teacher had a major responsibility: he had to be the conscience of his time and had to treasure the ideals of knowledge, even when he was confronted with social disapproval and persecution.⁹⁶

Socrates' dictum, "Know thyself," is still admired by most educators and intellectuals.⁹⁷

Thus, Socrates' teaching was a career – a profession which defined his life and without which his life would be virtually worthless. His career defined who he was.⁹⁸

7.2 Plato

"A proper cultural education would enable a person ... even when young... and still incapable of rationally understanding why ... rightly to condemn and loathe contemptible things. And then the rational mind would be greeted like an old friend when it did arrive."⁹⁹

Plato dedicated his life to the vindication of Socrates' memory and teachings.¹⁰⁰ He became one of the most suggestive educational theorists in the history of civilisation.¹⁰¹

⁹⁴

Ibid.

⁹⁵

Ibid.

⁹⁶

Mayer (1973) 97.

⁹⁷

Noddings (2007) 6-7.

⁹⁸

Flanagan *The greatest educators ever* (2006) 13.

⁹⁹

Palmer et al *Fifty major thinkers on education* (2001) 10.

¹⁰⁰

Murphy (2006) 32.

¹⁰¹

Mayer (ed) *Bases of ancient education Vol I* (1966) 155.

Plato's model of education is "functionalist" – an ideal intended to produce competent adults to accede to the needs of the state. He developed his thought on education in the context of describing the ideal state. The ideal state consisted of educators and they had to develop people who were both self-actualised and useful to the state.¹⁰² The ideal state, according to Plato, could only be reached through a proper system of education. He also believed that education was a method of social control.¹⁰³

The purpose of education was to help the students to grow and develop their character and ability to do well. Plato chose his curriculum with great care. The curriculum included the following: training for the spirit (music) and training for the body (gymnastics). More difficult academic subjects were added when the child was developmentally ready and capable. Plato was primarily interested in education for character. A significant principle proposed by him was: "The quality of the State depends on the kind of education that the members of the state received."¹⁰⁴

Plato was the first to write about education in a systematic and reflective way. He established an agenda for education - the state had to control and provide education. His education programme was firmly located within a broader political programme as an essential ingredient. The Western world followed Plato's agenda for nearly 2,500 years!¹⁰⁵

The Republic was Plato's greatest work. It presented an advanced and brilliant argument regarding the philosophy of education. Plato's educational view was a manifestation of his metaphysical, epistemological, moral and political beliefs. His criticism on occupational education followed from the separation of knowledge and action implicit in his Theory of Forms, as well as from his creation of an intellectual and moral elite that rules over and is served by the labour force.¹⁰⁶

¹⁰² Noddings (2007) 8.

¹⁰³ Mayer (ed) (1966) 155.

¹⁰⁴ Murphy (2006) 33.

¹⁰⁵ Flanagan (2006) 22.

¹⁰⁶ Cahn *Classic and contemporary readings in the philosophy of education* (1997) 3.

The Republic summarised a plan for education: it was a manifesto for an education system completely controlled by, and secondary to, state interests.¹⁰⁷ Thus, *The Republic* demonstrated the close link between education and citizenship.¹⁰⁸

The fundamental aim of education was to help people to become acquainted with the idea of the Good. An important statement made by Plato, was that a just society always tries to give the finest education to all of its members in accordance with their skills and abilities.¹⁰⁹

According to Plato, early childhood was an essential phase regarding the total education of the person. It was also of cardinal importance because the entire attitude and values – the cultural, social and intellectual predispositions of the child were formed.¹¹⁰

Plato believed that the beginning was the most important part of any work, especially in the case of the education of children – this was the time that the character of the person was formed. Young children were allowed to only hear stories specially selected for their fineness and beauty; all other indecent stories had to be rejected. Only those ideas and beliefs which were in harmony with the foundational values of the state were allowed. Thus, for Plato's goal of proper character-formation in early childhood to be realised in practice, stories for young children had to be subjected to some form of screening.¹¹¹

Plato was one of the first educator-philosophers that established the importance of early childhood development. This entailed the forming of tendencies or attitudes that would be conducive to a specific concept of society.¹¹²

¹⁰⁷ Flanagan (2006) 23.

¹⁰⁸ Gutek (2005) 41.

¹⁰⁹ Murphy (2006) 33.

¹¹⁰ Gutek (2005) 43.

¹¹¹ Domanski "Principles of early education in Plato's laws" 2007 *Acta Classica* 68.

¹¹² Gutek (2005) 43.

Plato's philosophy of education had an important influence on the modern day informal educators on a number of levels:¹¹³

- 1) First, he believed that educators must have a profound concern for the well-being and future of their students. Educating is a moral enterprise and it is the responsibility of educators to search for truth and goodness.
- 2) Secondly, there was the "Socratic teaching method." The teacher must be an expert in his subject, but to be a first-class philosopher, the secret lies in the fact that one should always know where the limits of one's knowledge are.
- 3) Thirdly, there was the lifelong education model. Children entered school at the age of sixteen where they first learned to read, write and count. Thereafter, they engaged with music and sports. They also had military and physical training at the age of eighteen and at 21, they entered higher studies. At thirty years of age, they began to study philosophy and served the *polis* in the army or civil service. Men were only ready to rule at the age of fifty. Thus, education was never-ending.

Plato's interest in soul, dialogue and continuing education continued (and still continues) to provide informal educators with rich insights.

7.3 Aristotle

"The best and most pleasant life is the life of the intellect since the intellect is in the fullest sense the man."¹¹⁴

¹¹³ Anon "Plato" <http://www.infed.org/thinkers/et-plato.htm>, last visited 2012-04-23.

¹¹⁴ Palmer et al (2001) 14.

Aristotle was one of the greatest and most influential educational philosophers of all time.¹¹⁵ He had significant educational ideas and played an enormous role in the education of Greek citizens. Aristotle believed that every human being was a “rational animal,” whose function was to reason, and that the best life was one dedicated to the Golden Mean. Aristotle’s ideal person practiced to behave reasonably and properly until he or she could do so naturally and without effort. The result was thus a happy person, and happiness was the goal of all human beings.¹¹⁶

According to Aristotle, the aim of education was to help persons to shape themselves as human beings by developing their intellectual potential as well as their moral qualities. He believed that morality was a matter of avoiding extremes in behaviour and finding instead the mean that lies between the extremes.¹¹⁷

Aristotle’s ideal educational system emphasised the enjoyment of beauty in all its forms through the pursuit of leisure. The intention was to develop many-sided interests so that life would become more profound and invigorating for a free society.¹¹⁸

In Aristotle’s view, education has to rely on nature and develop its potential energies. This recognition did not lead him towards any educational naturalism. In fact, to become culture, nature needs stimulations, effort and art. He said: “For all art and education, aim at filling up nature’s deficiencies.” The educator can only be successful if the learner is eager to absorb suggestions and to undergo all training necessary for the development of a morally and intellectually formed character.¹¹⁹

The Aristotelian ideal of education was based upon a definite view of man. Aristotle argued that the most important quality of every human being is rational capacity, and for this reason he believed in the cultivation of the intellect. One’s emotional life is only an

¹¹⁵

Ibid.

¹¹⁶

Murphy (2006) 41.

¹¹⁷

Ibid.

¹¹⁸

Mayer (ed) (1966) 225.

¹¹⁹

Ulrich *History of educational thought* (1950) 37.

introduction to one's rational development and we as human beings are endowed with three souls: a vegetative soul, an animal soul and a rational soul. The rational soul is the most important of the three and it has two parts: one is practical and the other is theoretical. Thus, the rational soul is the faculty which allows us to make judgments and evaluations.¹²⁰

Aristotle regarded leisure as the most important component in education and labour was regarded as a secondary activity. Aristotle saw the state as the fulfilment of social drives. The state was thus in charge of education, and it should prohibit all rude and improper activities.¹²¹

Aristotle was attracted to the systematic presentation of knowledge. He believed that experience was the guide and induction to guide a person's reasoning. He emphasised that, without the right method, education and philosophy cannot move forward.¹²²

Education has to bear in mind that there are three principles which limit development: nature, habit and intellect. *Nature* cannot be controlled by the educator – it is a function of geographical location and climate which means that little can be done to modify its effects.¹²³ The second principle, *habit*, implies the control of our irrational activities. Children tend to act instinctively, like animals; by instilling good habits in their lives; they can progress in a creative manner.¹²⁴

The utmost important part in education, according to Aristotle, is the third principle: *the cultivation of the intellect*. Reason can understand the totality of life; it can give order to chaos. When we use our reason we almost achieve divine status and we rise above the unimportant events of the present.¹²⁵

¹²⁰ Mayer (1973) 106.

¹²¹ *Ibid.*

¹²² Mayer (1973) 108.

¹²³ Flanagan (2006) 36.

¹²⁴ Mayer (1973) 108.

¹²⁵ *Ibid.*

Education was divided into a number of phases: From birth to the age of seven, the child should have been brought up in a healthy and safe manner. Special attention was given to his physical development and the child was taught how to endure hardship. Association with slaves was inadmissible.¹²⁶

Up to the age of five children were only allowed to play and grow. This was Aristotle's viewpoint of an "early childhood education" which was remarkably liberal. Children of this age were not taught anything that could interfere with their growth. They needed plenty of physical exercise, which they got through playing on their own or with their peer group.¹²⁷

From the age of seven to puberty, children were exposed to a broad curriculum which included the study of the fundamentals of music and gymnastics as well as reading, writing and arithmetic.¹²⁸ From puberty up to the age of seventeen, the boy would study rhetoric, grammar, literature and geography as well as instrumental music and mathematics. Great emphasis was given to exact knowledge. The peak of education was attained when boys reached the age of twenty-one. Only top students continued with their studies. These young men now studied the biological and physical sciences, psychology and ethics, rhetoric as well as philosophy.¹²⁹

Education was thus concerned with the development of one's physical, moral and intellectual capacities. This Aristotelian view of education was compared to that of Confucius. These thinkers believed in the Golden Mean; they were both concerned with the right habits and both had confidence in the powers of reason.¹³⁰

One of education's primary missions for Aristotle, perhaps its most important, was to produce excellent and honourable Greek citizens. Aristotle stated the following: "All

¹²⁶ Mayer (1973) 108-109.

¹²⁷ Flanagan (2006) 37.

¹²⁸ *Ibid.*

¹²⁹ Mayer (1973) 108-109.

¹³⁰ Mayer (1973) 109.

who have meditated on the art of governing mankind have been convinced that the fate of empires depends on the education of youth.”¹³¹

Aristotle had faith in the fact that people had to be educated for a proper position in life. As they performed their duties and fulfilled their specific functions, they developed brilliances peculiar to these duties and functions.¹³²

Thus, in Aristotle we saw how education was stripped of many of the trappings of classrooms, timetables and examinations, with which we are still familiar today. He reduced education to its simple purpose – to assist in the formation of persons.¹³³

8 ANCIENT ROMAN EDUCATION

The focal point of Roman culture was the Roman citizen - everyday life was organised around the Roman citizen, who held various positions such as soldiers, voters, farmers, politicians or orators. Citizenship meant freedom but it came with responsibilities and duties too. The Roman citizen had only one aim – to glorify his name in the eyes of the people by operating in extraordinary ways. Great deeds for his city, his community and culture were performed. Only honourable deeds were considered good. Thus, from an early age, one had to prove his goodness as a worthy man by doing well.¹³⁴

8.1 Early Roman education

Little is known of early Roman education, but one fact is certain: family life was of importance to all Romans. Roman law allowed the father a dominion over his children

¹³¹ *Ibid.*
¹³² Noddings (2007) 11.
¹³³ Howie *Aristotle* (1968) 31.
¹³⁴ Murphy (2006) 49.

hardly less absolute than the dominion exercised over slaves. The father was thus the head of the household and could do whatever he thought was right.¹³⁵

As the father by law had the absolute right of regulating the life of the son as he pleased, he also had the entire control of his education.¹³⁶ Children had to develop their moral qualities along with their intellectual capacities and the father could criticise his son if he failed to do his best.¹³⁷

The position of women in Rome differed from the way it was in Greece. The wife was her husband's subordinate, but still, she was acknowledged in her own sphere as his equal. A Roman mother was thus competent enough to educate her children as desired.¹³⁸

Therefore, in early Rome parents were the teachers of their children, and the aim of early education was to initiate children into the Roman standard of living, to pass on traditional customs and attitudes, to induce respect for these values and to lead children to become model Roman citizens. The purpose of early Roman education was thus to transmit culture.¹³⁹

8.2 The mother as educator

The mother was the child's first educational influence and principle teacher. Children were usually educated by their mothers until the age of six or seven. Every Roman

¹³⁵ Gwynn *Roman education from Cicero to Quintillian* (1926) 12.

¹³⁶ This is also known as *patria potestas*. In Roman family law, the male head (usually the father) of a family had the power to control and regulate the lives of his children and his more remote descendents in the male line. The *patria potestas* had absolute control over the persons of his children (See, Frier & McGinn *A casebook on Roman family law* (2004) 189; see also Kruger *Judicial interference with parental Authority: A comparative analysis of child protection measures* (2003) 13-14.

¹³⁷ Wilkens *Roman Education* (1905) 6.

¹³⁸ *Ibid.*

¹³⁹ Wooten in Grant and Kitzinger (eds) *Civilization of the ancient Mediterranean Greece and Rome* Vol II (1988) 1109.

child had to learn how to read and write first. The mother served as a model of Roman womanhood to her daughters as she taught them household skills. Besides teaching them how to read and write, mothers also taught their daughters the management skills necessary for an effective home. Only upper middle class women were more formally educated.¹⁴⁰

8.3 The father as educator

A Roman boy's education consisted of daily familiar intercourse with his parents.¹⁴¹ At the age of six or seven, a boy's education passed into the care of his father, who became his tutor; and the basis of the next stage in his education was known as imitation. The child followed the father ubiquitously and was supposed to learn from his example. The boy assisted his father on the land – most Romans were farmers. He also attended debates in the *Forum*¹⁴² or in the senate¹⁴³ and participated in religious ceremonies.¹⁴⁴

There was a clear distinction between the education of the upper-class children and that of the lower classes. Basic family education of all Roman children was on the same standard and there was thus no difference. Children in lower classes received a far more modest education. These children's education was more focused on their position in society.¹⁴⁵

¹⁴⁰ Murphy (2006) 51.

¹⁴¹ Gwynn (1926) 16.

¹⁴² The Roman Forum was the political, economic, cultural, and religious centre of the city.

¹⁴³ The senate was initially an advisory council of the ranking nobility.

¹⁴⁴ Wooten in Grant and Kitzinger (eds) (1988) 1109.

¹⁴⁵ Murphy (2006) 51.

Only children from the wealthiest families received a fully bilingual education. A very young boy or girl from a wealthy family spent many hours with a Greek servant or slave and it was the servant's chore to teach the child Greek before Latin.¹⁴⁶

Domestic education was straightforward. The aim was to turn the boy into a good Roman, and a good Roman was an uncomplicated character. Physical training was not important, but strength and endurance were the midpoint because the boy might be the better fitted to fight for his country. This education was strictly utilitarian: it influenced the training of both body and mind. A spirit of obedience and devotion was important and formal teaching was the atmosphere of discipline in which he lived.¹⁴⁷

8.4 Early education in the Roman Empire

The most important aims of early Roman education were to provide children with a sense of tradition, to encourage them to think of themselves not as individuals but as continuators of the family. In essence, early Roman education encouraged the group ethic.¹⁴⁸

Early Romans doubted the competence of professional teachers. They felt that professionals would be less concerned about the wellbeing of the child, which meant that the training of future Roman citizens could be ruined. They believed that a child's parents were the "best" teachers. Professional teachers were periodically expelled from the state on the grounds that they were a harmful influence on Roman society.¹⁴⁹

While boys were in the care of their fathers, girls continued to be trained by their mothers in household tasks such as weaving and sewing. A Roman girl was usually

¹⁴⁶ Anon "Ancient Roman Education" <http://www.crystalinks.com/romeducation.html>, last visited 2012-04-23.

¹⁴⁷ Poynton "Roman education" 1934 *Greece & Rome* Vol IV 1.

¹⁴⁸ Wooten in Grant and Kitzinger (eds) Vol II (1988) 1110.

¹⁴⁹ *Ibid.*

married at the age of twelve or thirteen, at which time her education at home came to an end. A boy's education continued until the age of sixteen. A ceremony was held to indicate the next stage of the boy's education.¹⁵⁰ The boy discarded the purple bordered toga he wore "as a child" and got dressed in a pure white toga, which marked his new adult stage.¹⁵¹

Early Roman education was thus little concerned with the development of intellectual achievements. The principal aim was to develop a spirit of self-discipline and filial submission which Roman feeling demanded of the young. Its advantage was that it fostered a great respect for childhood which made every boy and girl an object of almost religious worship.¹⁵²

8.5 Later Roman education

At the height of the Roman Republic and later the Roman Empire, the Roman educational system gradually found its final form. Formal schools were established, which served paying students. Normally, both boys and girls were educated, though not necessarily together.¹⁵³

The Romans based their educational institutions on the Greek schools, curriculum and teachers. The Roman curriculum consisted of language and literature as a whole. The Romans developed effective school systems. Roman education in the late Republic evolved into a formal school system that included three distinct phases:¹⁵⁴

¹⁵⁰

Ibid.

¹⁵¹

This event was better known as the *toga virilis* or garb of manhood, which was the outward sign that the boy was now regarded as fit to take upon himself the duties of citizenship (see also Gwynn (1926) 16).

¹⁵²

Gwynn (1926) 17.

¹⁵³

Ibid.

¹⁵⁴

Murphy (2006) 52.

8.5.1 *The education of women*

The Roman elementary school, or *ludus litterarius*, was established for children ages seven through twelve. These schools were private and voluntary. Aristocratic children were taught how to read and write Latin and learned how to count by using pebbles. The emphasis was on literacy – reading, writing and arithmetic. A household slave, or *pedagogues*, accompanied the students to school. The school hours were lengthy – classes began at dawn and ended late in the afternoon. When the Roman child was familiar with the letters of the alphabet, he or she would learn to read by repeating aloud and tracing against the text as his teacher was reading. The discipline was extremely strict; the teacher or *magister* used corporal punishment every time a mistake was made. A cane (*rattan*) was used to beat the child.¹⁵⁵

8.5.2 *The education of men*

A grammar school appeared as an institution of secondary education. The grammar teacher, a *Grammaticus*, taught Roman boys from the ages of ten to sixteen Greek and Latin grammar and composition. The curriculum included grammar, rhetoric, dialectic, arithmetic, geometry, music and astronomy. Modules in rhetoric or the art of public speaking was available. This was a key skill for anyone interested in a political career. Rhetoric and literature also served as moral education, which gave students an ethical ground and encouraged them to strive for determination, justice and prudence.¹⁵⁶

8.5.3 *The orator*

The ideal Roman orator was generally and liberally educated, and educated men were attracted to affairs of the republic. Status was a very important aspect and positions

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

such as senators, lawyers, teachers or politicians were held by orators. Rhetoric was the main component of higher education and Roman men were only well-educated if they could use their gifts of oratory in the service of their country.¹⁵⁷

Thus, Roman education was essentially practical. The boy was expected to become an orator. The *grammaticus* learnt him a little music, a little history, a little mathematics as well as calculations.¹⁵⁸

The practical nature of the Romans were summarised as follows: philosophy was of cardinal importance and they had little interest in the abstract speculations of the Greeks. Romans were moralists, but there were always some Romans who had extensive cultures, and they appreciated the beauty in art and literature. However, the upper class Romans were pretentious in this regard. In most instances, the ordinary citizen's education ended with the *grammaticus*. They found the intellectual food they needed in pantomimes and gladiatorial shows.¹⁵⁹

9 MAJOR ROMAN EDUCATORS

During the Roman period, evidences of educational practices were less important than some writings concerning the theory of education. During the Roman period, there were two outstanding writings regarding the development of education and they were Cicero's *De Oratore* and Quintillian's *Institutio Oratoria*.¹⁶⁰

¹⁵⁷ Murphy (2006) 52.

¹⁵⁸ Poynton 1934 *Greece & Rome* Vol IV 12.

¹⁵⁹ *Ibid.*

¹⁶⁰ Chiappetta "Historiography and Roman education" 1953 *History of Education Journal* Vol IV 153.

9.1 Cicero

Cicero was a top Roman senator, a distinguished orator and an excellent example of the Roman ideal of *humanitas*. He was well-educated in Latin and Greek, grammar, literature, history and rhetoric.¹⁶¹

Cicero's most significant work was his writings on the preparation of the orator that appeared in *De Oratore*. The dialogue contained the fullest statement of his educational theory and had a permanent influence on the history of Greek, Roman and European culture. *De Oratore* was a masterpiece written by Cicero who proposed major educational reform in the way the orator was educated.¹⁶² *De Oratore* consisted of three books, and all of them dealt with the complete education of the orator and the development of the oration according to Ciceronian form.¹⁶³

The first book was the most important with regard to education. It emphasised that the education of the orator had to produce a well-rounded and liberally educated person. Thus, the finest way to prepare a person for a special pursuit was to give him a liberal, well-rounded general education.¹⁶⁴

Cicero discovered that oratory had practical consequences, such as the winning of debates in the *Forum*, which differed from the Greek view. According to the Greeks, the orator was a person of broad culture or *humanitas*. He suggested that the orator should be broadly educated in the liberal arts. This type of education was very important because his skills were used for the public good and promoted public interest as well.¹⁶⁵

¹⁶¹ Murphy (2006) 55.

¹⁶² *Ibid.*

¹⁶³ Chiappetta 1953 *History of Education Journal* Vol IV 154.

¹⁶⁴ *Ibid.*

¹⁶⁵ Murphy (2006) 55.

Cicero did not develop a systematic strategy for education at primary or secondary levels. He was more concerned with Roman higher education or rhetoric.¹⁶⁶

Cicero suggested that the orator acquired a general knowledge of ethics, psychology, military science, medicine, natural science, geography and astronomy, but the most important subjects were history, law and philosophy. All Romans were dedicated to study the Laws of the Twelve Tables, which was the basis for Roman jurisprudence. Cicero's ideal of the Roman man was the orator. His concept can be expressed in one word only: *humanitas* – human excellence embodied in a cultured and articulated man.¹⁶⁷

Cicero described his educational theory as follows: “We must borrow our virtues from Rome and our culture from Greece.”¹⁶⁸ The wise conduct of life was, according to Cicero, the goal of education. This meant recognition of public duties and responsibilities, prudence in the governance of one's affairs, integrity in political life and a sense of duty toward one's fatherland. Cicero had faith in justice and he was certain that justice was also the basis of civilisation. Without justice, education could not flourish.¹⁶⁹

9.2 Quintilian

“The teacher must decide how to deal with his pupil. Some boys are lazy, unless forced to work; others do not like being controlled; some will respond to fear but others are paralysed by it. Give me a boy who is encouraged by praise, delighted by success and ready to weep over failure. Such a boy must be encouraged by appeals to his ambitions.”¹⁷⁰

¹⁶⁶

Ibid.

¹⁶⁷

Murphy (2006) 55-56.

¹⁶⁸

Ibid.

¹⁶⁹

Mayer (ed) (1966) 245.

¹⁷⁰

Anon “Roman Education” [http://www.historylearningsite.co.uk/roman_education,htm](http://www.historylearningsite.co.uk/roman_education.htm), last visited 2012-04-23.

The Roman model of character and education was best symbolised by Quintilian.¹⁷¹ The most important work of Quintilian was his *Institutio Oratoria*.¹⁷² The *Institutio Oratoria* underlined the importance of the practical side of education, especially the education of the orator, who represented the vertex of human perfection.¹⁷³

Quintilian was concerned with the education of individuals from the earliest possible age, because the development of a career in public life was of great importance. Early educational experience with regards to the life and interests of the adult the child would become, was recognised by Quintilian.¹⁷⁴

According to Quintilian, a boy's education began at the cradle. The parents and the nurse had the duty to teach the child to speak well and to build his character. A personal relationship between teacher and pupil, similar to the relationship between parent and child was very important, because it promoted organised education in an elementary school. Quintilian was a proponent of "public" or group education. The best teachers had to be placed with the beginners.¹⁷⁵

Quintilian was totally against corporal punishment; if the child did not learn, the teacher was blamed for not teaching correctly at the child's developmental level.¹⁷⁶ He believed that corporal punishment only created fear and an attitude of submission. The intelligent teacher would use a method of positive rewards and thus appeal to the idealism of students. Education was to be conducted in such a way that the student would develop a sense of honour as well as a sense of integrity.¹⁷⁷

Quintilian favoured the teaching of the liberal arts and moral education within the professional education of the orator. A teacher's role was that of an expert who had to

¹⁷¹ Mayer (1973) 118.

¹⁷² The most accurate translation in English is *The education of an orator*.

¹⁷³ Ulrich (1950) 51.

¹⁷⁴ Flanagan (2006) 56.

¹⁷⁵ Murphy (2006) 60-61.

¹⁷⁶ *Ibid.*

¹⁷⁷ Mayer (1973) 119.

take the developmental level and needs of students into consideration. The teaching methods educators used was also an important aspect, because students had to be motivated and stimulated to learn.¹⁷⁸

Quintilian held that all parts of knowledge were interrelated: the elements of reading, writing and arithmetic was important, but a boy had to be familiar with poetry and science as well.¹⁷⁹

The education of the orator was divided into three stages. From birth up to the age of seven there was the infant school, from seven to fourteen years, the child went to secondary or grammar school and from fourteen years up to adulthood, an advanced specialist education was followed.¹⁸⁰

During the first seven years of the child's life, the child was educated at home. The home education had to be very carefully supervised, because only the best education was good enough for the future orator. The parents of the child had to be cultured people and the child's nurse had to "be of good character" and "she should speak correctly as well."¹⁸¹

The boy's *paedagogus*¹⁸² was a well-educated person. The future orator's companions were also good models regarding linguistic and moral behaviour. Most of all, the tutors had to be competent.¹⁸³

Quintilian advised upper-class Roman parents to send their sons to school rather than having them tutored at home. Schools provided the necessary opportunities for

¹⁷⁸ Murphy (2006) 61.

¹⁷⁹ Mayer (2006) 119.

¹⁸⁰ Flanagan (2006) 56-57.

¹⁸¹ *Ibid.*

¹⁸² It was also known as the slave who supervised the boy and the one who took him to and from school.

¹⁸³ Flanagan (2006) 57.

socialisation and peer-group interaction. These schools also provided competition which was essential for the development of the best orators.¹⁸⁴

Thus, Quintilian's goal of education was to form an orator, a public servant who could be employed in teaching, civil administration or law. The purpose was to use the power of speech for high, ethical and noble purposes to serve the country. Quintilian stated: "It is the perfect orator that we are training and he cannot even exist unless he is a good man."¹⁸⁵

10 CHRISTIAN EDUCATION

Christianity, the teaching of Christ's message, became a strong force with which the rest of the world had to reckon. Jesus Christ was born in Bethlehem. He lived a hidden life and worked unnoticeably for thirty years without following the normal educational studies to become a Jewish preacher. Jesus taught from the Bible and emphasised God's love for all.¹⁸⁶

Jesus' disciples spread His Word and doctrines by travelling throughout the Roman Empire. They relied solidly on Christ's pedagogical devices and it made such an impression on them, that they became characteristics of Christian preaching and Christian teaching. Paul, the scribe, was a powerful teacher and preacher who trained people by using textual teaching and writing in the style of the Jewish rabbis. He emphasised that Christianity was for all human beings, not only for the Jewish people, and this included women as well. He was known as the "apostle to the gentiles," accommodating Christian tenets to Hellenistic thoughts.¹⁸⁷

¹⁸⁴ Gutek (2005) 68.

¹⁸⁵ Murphy (2006) 61.

¹⁸⁶ Murphy (2006) 69.

¹⁸⁷ *Ibid.*

The Christian religion provided a new motive power for the regeneration of personality and the reorganisation of society. "Christianity arose because men saw in the teachings and conduct of Jesus the concrete exemplification of those attributes which they associate only with their most exalted ideals, the concept of God."¹⁸⁸

Christianity was thus a new-found phase in the process of human evolution. Mankind was gradually lifted to a higher level of emotional and ethical existence. This evolutionary movement took the individual out of the narrow confines of selfhood and filled the individual with a universal spirit.¹⁸⁹

10.1 The building blocks of Christian Education

Four essential building blocks formed the foundation for Christian education and it was important to understand the purpose of these "blocks".

10.1.1 God

The Bible taught us that God created heaven and earth. God exists and He has the supreme control over the world. He is called Father, Judge, Lord and the Almighty Redeemer. He initiated means by which man could be restored to his original status in relationship to Him.¹⁹⁰

Jesus Christ was God in the flesh. He took on our form, our limitations and our lifestyle to identify with us, to relate to us and to relate us back to God. This Jesus, fully God but also fully human, set about God's eternal business of creating people for himself.¹⁹¹

¹⁸⁸ Eby & Arrowood *The history and philosophy of education, Ancient and Medieval* (1940) 578.

¹⁸⁹ *Ibid.*

¹⁹⁰ Daniel, Wade & Gresham *Introduction to Christian education* (1993) 71.

¹⁹¹ *Ibid.*

God set up a program of education and the overall educative purpose was that every human being had to realise that without God the Almighty, he or she was totally helpless and lost.¹⁹²

10.1.2 Man

Man was unique among all of God's creations.¹⁹³ He was created with a body and physiological functions. He was made in God's image; an emotional, rational, moral creature with an everlasting spirit. Man was thus made to relate to and to glorify God.¹⁹⁴

10.1.3 The Bible

The Bible is the record of the history of God's work for and with men. It is the beginning of a special historical revelation within the limits of the general history of mankind – a revelation of the eternal purpose of God for the salvation of men.¹⁹⁵

The Bible is thus the main source for the philosophy. It is the norm for the content to be taught. A major decision in Christian education is its source of authority. Christian education rests directly upon the Bible. It is not just a source; it is the source of information about God.¹⁹⁶

The Bible is the history of salvation and not the history of Christian education. God is not reliant upon men, but He does use human beings to carry out His purpose.¹⁹⁷

¹⁹² Eavy *History of Christian education* (1964) 23.

¹⁹³ Daniel, Wade & Gresham (1993) 72-73.

¹⁹⁴ *Ibid.*

¹⁹⁵ Eavy (1964) 19.

¹⁹⁶ Daniel, Wade & Gresham (1993) 73.

¹⁹⁷ Eavy (1964) 19.

The Bible had an important aim throughout early Christian education: people came to faith in God through Jesus Christ. Christian education inspired the learner to grow closer to Christ, so that he or she could have a life with God eternally.¹⁹⁸

The Bible is thus not primarily a history of Christian education; it is rather concerned with an education which centres around God. God is the focal point in every aspect regarding education. History shows Christian education as a process in which continuity and change are inseparably united.¹⁹⁹

The Bible taught us that effective teaching must include content and application, information input and life exploration. Faith involves all of a person – his or her reason, emotions, physical behaviour and spirit. Therefore, a biblical approach to education, defines the teacher's role and function.²⁰⁰

10.1.4 Church

The church is the family of God. It is made up of people who have been reconciled to God and who seek to live a life of faith. It is seen as the body of God, the bride of Christ – those called out of the world. The goal is to be delivered from this natural world into God's spiritual world, to live forever in eternity with God.²⁰¹

The church is a family, characterised by a specific lifestyle, and education is designed to reproduce that lifestyle in a family atmosphere of telling, correcting, showing and discovering on one's own.²⁰²

¹⁹⁸ Daniel, Wade & Gresham (1993) 73.

¹⁹⁹ Eavy (1964) 19-20.

²⁰⁰ Daniel, Wade & Gresham (1993) 74-75.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

10.2 Christian Educators

Every Christian educator must develop an approach regarding the task of Christian education. The biblical material and the world, to which the Word of God is to be presented, must be taken into account. There is a duty on the Christian educator to develop an understanding of what Christian education is and how it is to be accomplished.²⁰³

Preaching and teaching were of equal importance to the early Christians. Provisions were made for the training of educational leaders through an apprenticeship system. Catechumen schools opened and these educators taught students the fundamentals of doctrine. They were also taught from the Bible, from the sayings of the Apostles and also from *The Epistle of Barnabas*. Scholastic centres developed and became famous throughout the ancient world.²⁰⁴

The teachers, also known as apologists, taught the converts the difference between Christianity and other philosophies. Christian literature was based on pagan sources and a Christian system of schooling was developed. The aim was to ensure that no conflict between faith and culture occurred.²⁰⁵

Thus, Christian education was concerned with teaching methods, curriculum, materials and other educational matters. One should remember that these factors must always rely on the biblical foundations. All these factors were weighed against biblical truth. A person's teaching skills were always guided by his or her most deeply held convictions.²⁰⁶

²⁰³ Daniel, Wade & Gresham (1993) 69.

²⁰⁴ Mayer (1973) 135.

²⁰⁵ Murphy (2006) 70.

²⁰⁶ Daniel, Wade & Gresham (1993) 70-71.

11 JEWISH EDUCATION²⁰⁷

Jewish education taught God's servants how to be obedient to His Law. The main goal of their education was to make the boy a good son, one who had great respect for God and one who feared the Lord. God was high and exalted and He lived in His people's hearts through the Holy Spirit. The comprehensive aim of education was *righteousness*, which consisted of three subsidiary overlapping aims: happiness, good character and fellowship with God.²⁰⁸

God planned education for His chosen people. This people regarded education as the most important activity of life, next to doing God's will. To Jews, religion and education were synonymous. They used the word "Torah" to describe the similar meanings of religion and education. "Torah" appears several times in the Old Testament and means "The Teaching."²⁰⁹

The education of children began at home. Children were regarded as a gift from God and parents were responsible to teach them according to God's will. Religious education was the concern of the family. The child's parents were his first teachers and the home was the fundamental educational institution.²¹⁰

Both the parents taught the child. His education began at a tender age – as soon as he was able to speak. The Jews emphasised the importance of memorisation. As the child grew older, he was required to memorise portions of the Scriptures. The mother

²⁰⁷ One of the main differences between Jewish education and Christian education is as follows: Jewish education entails the need to read and understand the Torah (Jewish Bible) as well as other holy scriptures. The Torah and the holy scriptures were the driving force to educate all Jews. The studying of the Scripture (the Bible) and of biblical commentary was the pinnacle of Christian education.

²⁰⁸ Eavy (1964) 49.

²⁰⁹ Eavy (1964) 51.

²¹⁰ *Ibid.*

was the main educator during the child's first years, but it was the duty of the father to take up responsibility for directing the more advanced phase of the child's education.²¹¹

Jewish family life and education required obedience on the part of the child. The child had to respect and honour his parents according to the Bible. The Jews believed in strict discipline, if there was a lack of obedience, parents had to develop it by the use of rigorous measures. The "sparing of the rod" and "soft pedagogy" did not exist in the Jewish vocabulary. Parents brought up their children with love and care, but obedience was the cornerstone. The authority of the father was absolute and he taught his children to be fearful of the Lord because it emphasised "the beginning of wisdom."²¹²

12 MAJOR CHRISTIAN EDUCATORS

12.1 Jesus, the Teacher

"Rabbi, we know you are a teacher who has come from God."²¹³

The instrument through which Jesus carried out his mission was teaching. At the age of thirty, Jesus and his disciples preached in the synagogues and those who heard him preaching addressed him as Rabbi and Teacher. Jesus emphasised that all people should obey God's laws. He also taught the people that God could be described in one word: Love. God's followers must love Him and they must love their fellow men. Every human being is thus the child of a loving, heavenly Father who cares for his children.²¹⁴

Jesus taught in words as well as deeds. He was kind-hearted and loving towards everyone with whom he came in contact. Jesus showed a masterly use of language to teach. He did not write anything down because His most important method of teaching

²¹¹ Eavy (1964) 52.

²¹² Eavy (1964) 53.

²¹³ Zuck *Teaching as Jesus taught* (1995) 23; see also *The Holy Bible: New International Version* 1st ed (1986) 169.

²¹⁴ Murphy (2006) 73.

was to speak in a way that would be remembered. The majority of people were uneducated and Jesus taught orally and asked his followers to pass down his oral tradition of teaching. Jesus' style of speaking had variety, originality, immediacy and congruence.²¹⁵

Jesus used short sayings or proverbs to communicate familiar cultural and moral truths. An example of such a familiar proverb is: "No one puts a lamp under a lamp stand." This proverb encouraged His disciples to share the good news that Jesus was (and still is) the Light of the World.²¹⁶

When Jesus spoke to the people of His country, He used the parable²¹⁷ in order to communicate His wisdom to them. To Jesus, the parable was "an artistic or didactical artifice, and it was a part of His personality, growing out of His feeling of union with the great mysteries of life."²¹⁸

Jesus' teaching also reflected the daily life and experience of people, and can be linked to the wisdom traditions of Israel. He often used short sayings that communicated familiar truths about human experience.²¹⁹

The diversity of Jesus' methods and principles showed His adaptability as well as mastery of teaching. Furthermore, Jesus exhibited all the methods and principles of today and set the standard for the future, anticipating the whole of modern educational science and modern scientific pedagogy.²²⁰

²¹⁵ Murphy (2006) 74.

²¹⁶ *Ibid.*

²¹⁷ A parable may be defined as any figure of speech containing an arresting and illuminating image, allegory or analogy. Jesus' popular preaching was described as consisting wholly of "parables," which modern scholars would variously categorise as similes, proverbs, metaphors, aphorisms and fables. See also Porter *Jesus Christ: The Jesus of history, the Christ of faith* (1999) 137.

²¹⁸ Ulrich (1950) 69.

²¹⁹ Perkins *Jesus as teacher* (1990) 42.

²²⁰ Murphy (2006) 74.

Thus, Jesus' teaching was not dialectical as Socrates' was. It was rather participatory. Jesus did not give answers – He asked questions and provided direction, a universal guide to the personalised moral life. He made use of stories, proverbs, figures, analogies and metaphors to illustrate and enliven the essential moral and ethical message He had inherited.²²¹

The teachings of Jesus were far removed from the intellectual elitism of the Academy. It was also very different from the spiritual elitism of the Indian theological schools, which demanded a high level of spiritual and emotional maturity as “antecedent conditions” for the “enquiry into the Brahman.” No such demands were made by Jesus. His teaching was open to anyone including women, “little ones,” illiterate people and sinners who had no moral or religious standing whatsoever. The only requirement was an open heart and an indescribable willpower to be taught the Word of God.²²²

Finally, the purpose of education was to reach one's supernatural end by following God's will and law. Every human being should do good while on earth.²²³

“You shall love the Lord your God with all your heart, with all your soul, and with all your mind. And you shall love your neighbour as yourself. There is no other commandment greater than these.”²²⁴

12.2 St Augustine

St Augustine built his philosophy upon the intellectually provable existence of God. According to him, knowledge was relative and limited; no one could be certain of anything unless an absolute standard of truth was present: God.²²⁵

²²¹ Flanagan (2006) 53.

²²² Soares-Prabhu *The Dharma of Jesus* (2003) 30.

²²³ Murphy (2006) 74.

²²⁴ *The Holy Bible: New International Version* 1st ed (1986) 120-121.

²²⁵ Mayer (1973) 138.

Only three of St Augustine's works dealt particularly with education. The first was *The Teacher (De Magistro)*. It was written in dialogue form and dealt with problematic communication between teacher and student. The second was *On Christian Doctrine, De Doctrina Christiana* and it dealt with the difficulties in Christian education. The Christian classical liberal arts education was also described and explained. The last work of St Augustine, *The Instruction of the Uninstructed, De Catechizandis Rudibus*, dealt with the principles of teaching; the Christian teacher had to consider his teaching skills, especially when he instructed students regarding the understanding of faith.²²⁶

The principle task of education was to avoid independent judgment and to subordinate private ideas to religious organisation. The Christian scholar had to be familiar with literature, rhetoric, logic, arithmetic, ethics and natural philosophy.²²⁷

Discipline was very important. The teacher had to control the child and if necessary, had to use the cane and the strap. Learning could not be promoted without discipline. With the effective enforcement of discipline, the child learnt how to control his evil impulses and became aware of the importance of obedience. St. Augustine was certain that children were naturally evil; therefore, their nature had to be changed by the schoolmaster.²²⁸ He was thus a proponent of a rigid educational system which would curb worldly pride.

According to St Augustine, the teacher had to love his students and he had the duty to teach them with enthusiasm. The strife to impart knowledge was thus not important. It was more important to ensure that the child understood words, signs and concepts completely. St Augustine believed that all human beings could be teachers, but only in an analogical sense. God was the only real teacher and He illuminated us and helped us to understand certain aspects.²²⁹

²²⁶ Murphy (2006) 81.

²²⁷ Mayer (1973) 141.

²²⁸ *Ibid.*

²²⁹ Murphy (2006) 81.

Finally, he emphasised that the teacher had to be a role model to all his students. In other words, St Augustine wanted the teacher to be a model of goodness and quality.²³⁰

St Augustine emphasised the need for discipline and Puritanism and because of this, he made education a rigorous process. He and his followers were not interested in new ideas. They wanted to protect the orthodoxy of the past. They were conservators rather than creators and they laid the foundations of both Protestant and Catholic education.²³¹

13 MEDIEVAL EDUCATION

“To the medieval mind, debate was a fine art, a **serious** science, and a fascinating entertainment, much more than it is to the modern mind, because the medievals believed, like Socrates, that dialectic could uncover truth. Thus a ‘scholastic disputation’ was not a personal contest in cleverness, nor was it ‘sharing opinions’; it was a shared journey of discovery.”²³²

The period of the Middle Ages²³³ was an era of agonising and slow resuscitation of culture and education which included the arts, literature, drama, philosophy and all classical traditions. Europe was recovering from a period of economic and cultural weakening. Barbarian hordes were invaded, people migrated, the Roman Empire fell down and civilisation disintegrated. Universal education was still far in the future and illiteracy and ignorance reigned.²³⁴

²³⁰ Mayer (ed) (1966) 325.

²³¹ Mayer (1973) 142.

²³² Sharpes *Advanced educational foundations for teachers: The history, philosophy and culture of schooling* (2002) 107.

²³³ 500AD – 1400AD.

²³⁴ Sharpes (2002) 107.

13.1 Education during the early Middle Ages

Formal education was rare during the Middle Ages, although by the fifteenth century there were schools which prepared the child for the future. Some schools were open for both boys and girls and these children attended school during the day. They learned how to read and write – a skill that became a requirement for acceptance as an apprentice in many Guilds.²³⁵

Moral problems of man in intellectual speculation were resolved through Greek and Roman philosophy and Christianity solved difficulties regarding man's moral nature. Unavoidably, this led to an indifference on the part of the early and medieval Christians to the intellectual and aesthetic features of Greek and Roman education.²³⁶

The schools discussed below, were a typical feature of education during the Early Middle Ages.

13.1.1 Early Christian Schools

The early Churches focused completely on the moral education of its members. As they awaited full membership in the Church, probationers were rudimentarily instructed in so-called catechumenal schools.²³⁷ The main goal of these schools was the simple instruction in the doctrine and trial of the Christian life. Bishops organised the schools dealing with the training of the clergy for the churches. This led to a structured system and method of training. Church councils decided that children destined for priesthood should attend Episcopal (bishop) or cathedral schools. Cathedral schools and the

²³⁵ Tuck "The medieval child, part 5" http://historymedren.about.com/od/medievalchildren/a/child_learn.htm, last visted 2012-04-23.

²³⁶ Cordasco *A brief history of education* (1976) 23.

²³⁷ *Ibid.*

schools of the monasteries were the only remaining schools after the fall of the Roman Empire.²³⁸

13.1.2 Monastic and conventional schools

The monasteries developed monastic schools during the tenth century. There were inner monastic schools for those who intended to take the vows (*oblati*), and then there were outer monastic schools for those not so intending (*externi*). The *oblati* belonged to the brotherhood and they participated in the religious services and helped the monks with their work and duties. A separate building outside the main portion of the monastery was provided for the *externi*.²³⁹

The instruction in the inner school was insufficient, and it was almost a certainty that instruction in the outer school did not exist. Reading, writing, music, simple reckoning, religious observances and rules of conduct constituted the range of instruction. The alphabet method was used to teach reading and writing was taught by the use of wax tablets and the stylus. The Latin articulation was very important and much attention was given to it.²⁴⁰

Latin was used in almost all conversations and it was also reflected in some of the old lesson books. The teaching of rules of conduct to the *oblati* was emphasised and special attention was given to these rules. The use of corporal punishment was supported and it was believed that this was the only way to facilitate learning. Up to the eleventh century, instruction constituted the whole of the preparatory training necessary for the study of theology and the start of a career in the Church.²⁴¹

²³⁸ Cordasco (1976) 24.

²³⁹ Cubberley *The history of education* (1920) 150.

²⁴⁰ *Ibid.*

²⁴¹ Cubberley (1920) 151.

13.1.3 Monasticism

The main characteristic of monasticism was denial. Monasticism in the East arose from the intimate relation of the new Christianity and the oriental religions; it was transferred to Rome. In the West the monks lived in communities and not in isolation as hermits as they did in the East. The different groups formulated some rules. An important rule among these was the rules of St Benedict. The Benedictine rule recognised the value of manual labour in education, and it emphasised the importance to read at least two hours each day. The ideals of monasticism were summarised in the three ideals of chastity, poverty and obedience. These ideals developed into an educational force of great importance to society as a whole.²⁴²

Monasticism made the largest contribution to the maintenance of education. Study within the monastery was encouraged by various writers and philosophers. One of them was St. Benedict, who educated students in traditional Roman schools. He required that a portion of each day be set aside for religious reading as it was important for a well educated life.²⁴³

13.1.4 Song and parish schools

Music and the mere reading of Latin as the language of worship were taught. These schools had the power of development, which sometimes carried them beyond their own modest function and into the sphere of the grammar school.²⁴⁴

The supervision of these church schools was delegated by the bishop, or abbot, to the chancellor, who was also known as the *scolasticus*, *archiscolus* or *archiscola*. His duties included the licensing of all schoolmasters within the district. Further, he had to

²⁴² Cordasco (1976) 24.

²⁴³ Zacour *Introduction to Medieval institutions* 2nd ed (1976) 203.

²⁴⁴ Adamson *The illiterate Anglo-Saxon and other essays on education, Medieval and modern* (1946) 69.

determine whether a school was necessary in a specific region and he took measures to prevent overlapping and excessive competition. He further had jurisdiction over several schools which were associated with chantries either by express foundation or by custom.²⁴⁵

13.1.5 Chantry schools

Dying men, who felt guilty about their misdeeds on earth, left a sum of money to a church to endow a priest. The priest sang many songs for the repose of these men's souls. Sometimes these priests had the need for an additional occupation and some of them began voluntarily to teach the elements of religion. A very elementary type of school was provided, where the children were taught how to pray and to know the Lord's Prayer, the Creed, and the Salutation to the Virgin, certain psalms, to sign themselves rightly with the sign of the cross and to read and write in Latin.²⁴⁶

13.1.6 Cathedral and higher monastic schools

Throughout the Middle Ages the primary and leading subject of instruction was grammar. Thus, advanced schools came to be known as *grammar schools*, as well as Cathedral or Episcopal schools. These schools were the secondary-school systems of the early Middle Ages. They were for a long period of time – for at least six hundred years – the only advanced and highly developed teaching institutions in Western Europe. The advanced studies at these schools led to the development of universities and more advanced grammar schools were established.²⁴⁷

²⁴⁵

Ibid.

²⁴⁶

Cubberley (1920) 152.

²⁴⁷

Cubberley (1920) 152-153.

13.1.7 *The seven liberal arts*

The seven liberal arts consisted of the verbal arts (*trivium*) – grammar, rhetoric and logic or dialectic, and the mathematical arts (*quadrivium*) – arithmetic, music, geometry and astronomy. This term was designated to those arts as they were codified by the Latin encyclopaedists. Their work provided the basic content and form of intellectual life for several centuries.²⁴⁸

There was no specific order in which the study of the seven liberal arts was conducted. Grammar formed part of the Latin classics, with an explanation of their historical and mythological allusions. Theology was the focal point of the seven liberal arts and the preparation to understand the Holy Scriptures and writings of the church fathers was of cardinal importance.²⁴⁹

The *trivium* was concerned with “the power of language.” Without the arts of the trivium, the base for mastering the arts of the *quadrivium* was impossible. The study of grammar was the most frequently taught and it was considered as the most important subject. It was subdivided into prose, meter, rhythm and poetry. Grammar gave students a profound understanding of what language meant and a greater ability to understand complicated concepts that were used in poetry and scripture.²⁵⁰

The *quadrivium* on the other hand, was concerned with “the secrets of nature.” It comprised the four subjects mentioned and was taught in medieval universities after the *trivium*. The word was descended from the Latin language and meant “the four ways” or “the four roads.” The *quadrivium* thus followed the preparatory work of the *trivium*.

²⁴⁸ Wagner (ed) *The Seven Liberal Arts in the Middle Ages* (1983) 1.

²⁴⁹ Cheyney “Review: A History of the Middle Ages” 1903 *The ANNALS of the American Academy of Political and Social Science* 6.

²⁵⁰ Mazzei “The Medieval trivium” <http://www.triviumpublishing.com/articles/trivium.html>, last visited 2012-04-23.

The *quadrivium* was also considered as the foundation for the significant study of philosophy and theology.²⁵¹

The content of the seven liberal arts was much wider than suggested. Grammar included literature; rhetoric included history; geometry included the rudiments of geography and astronomy included physics. The smaller monasteries only offered grammar, with only a little of the studies beyond. Other monasteries emphasised the *trivium*, but only a small number of monastery schools taught the whole range of medieval learning. Those schools who taught the full range of medieval learning were regarded as the great schools of the period.²⁵²

In short, the *trivium* laid the groundwork for the *quadrivium*, which emphasised the theoretical world of numbers. With these two foundational programmes, students were prepared for the medieval university of philosophy and theology and the focus was on dialectical reasoning.²⁵³

13.2 Education during the late Middle Ages²⁵⁴

During this period, elementary and grammar schools were obscure. Schools were the servants of society, sometimes accepted, welcomed and appreciated, and at other times almost ignored. Latin was the primary language and students adopted a Humanistic perspective.²⁵⁵

251

Ibid.

252

Cordasco (1976) 25.

253

Ibid.

254

1300AD – 1400AD.

255

Binder *Education in the history of Western civilization* (1970) 90.

13.2.1 Scholasticism and scholastics

Scholasticism was described as a type of education or intellectual life that flourished from the eleventh to the fifteenth centuries. The chief goal was to bring reason to the support of religious faith and to strengthen the church by the development of human intellect.²⁵⁶

The educational purposes of scholasticism were to develop the power of disputation, to systematise knowledge, and to give individual mastery of this system of knowledge.²⁵⁷

Scholasticism rendered a magnificent service to science and education. As its name implies, it was a movement of the schools, and the leaders were schoolmen. Scholasticism produced a library of educational literature and educators were united by a common name and profession.²⁵⁸

Scholasticism was dominant in the medieval Christian schools and universities of Europe. With its philosophic and theological movement, natural human reason was used to understand the paranormal content regarding Christian revelation. The fundamental ideal was thus to integrate into a well-organised system both the natural wisdom of Greece and Rome and the religious wisdom of Christianity.²⁵⁹

“Scholastic” was an old term which came from Scholasticus, a title that was given to headmasters generally in the Middle Ages. This term also expressed the system of teaching that was used – better known as the scholastic method, philosophy and theology.²⁶⁰

²⁵⁶ Cordasco (1976) 31.

²⁵⁷ *Ibid.*

²⁵⁸ McCormick *History of education: A survey of the Development of Educational Theory and Practice in Ancient, Medieval and modern times* (1953) 260.

²⁵⁹ *Ibid.*

²⁶⁰ McCormick (1953) 260.

Scholasticism brought a large amount of scholarly works such as law, philosophy and theology into being. However, there were many restrictions in its educational system, which included its interest in argument, its abstract and metaphysical character and its discussion which possessed no reality and no relation to the world about it.²⁶¹

During the Scholasticism era, education was summarised as follows:²⁶²

“[N]o mere imparting or infusion; it is rather a solicitation, suggestion and direction, by which the mind is prompted to exert its natural power in normal ways... While chief stress is laid upon the development of intellectual functions, due notice is taken of the subordinate faculties. Sense, imagination and memory cooperate both in the acquisition of knowledge and its retention.”

13.2.2 *The education of chivalry*

This system of education was developed for the children of the nobility. They were an “exclusive” class. The parents of these children were usually Lords and Ladies, Dukes and Duchesses and even Kings and Queens. The children were taught by a priest and by their mother. If the mother was for some reason not able to teach her own children, another female of high rank in the castle was usually appointed to teach the children. A large part of these children’s lives was surrounded by strict rules. They had to behave politely in any given situation and the most important thing for a noble child was thus to learn etiquette.²⁶³

The nobility will be briefly discussed as follows:

²⁶¹ Cordasco (1976) 32.
²⁶² McCormick (1953) 272.
²⁶³ *Ibid.*

13.2.2.1 Page

A child was trained at home by his mother to the age of seven or eight. He learned what was meant with obedience, trained in politeness and courtesy and the foundations of his religious education were laid down.²⁶⁴ The age of seven to fourteen was known as Pagewood, and the child was educated and instructed at court by a royal lady. Instruction included religion, music, courtesy, the etiquette of love and honour and the rudimentary work in reading and writing the vernacular language also formed part of his instruction.²⁶⁵ Pages performed various duties such as bringing water into the keep for washing, sweeping the floors, carving the meat, serving the table and helping in the kitchen.²⁶⁶

13.2.2.2 Squire

At the age of fourteen or fifteen, the boy became a squire and he was then the personal servant and bodyguard of the lord whom he served.²⁶⁷ He was in a sense a valet for the lord. He would dress the lord, pray for guidance on how to be a good knight, and learn to fight with maces and shields, to follow his knight into battle and to look after the horses.²⁶⁸

When the boy reached the age of twenty-one, he chose a lady-love, who was older than him and who might be already married. He swore to her that he would be devoted to her, even though he married someone else. He also learned to rhyme, to make songs, sing and dance, play the harp and observe the ceremonials of the Church. Girls were

²⁶⁴ Cubberley (1920) 166.

²⁶⁵ Cordasco (1976) 34.

²⁶⁶ *Ibid.*

²⁶⁷ Cordasco (1976) 34.

²⁶⁸ *Ibid.*

given the same instruction, but their training was mainly focussed on household duties, good manners, conversational ability, music and religion.²⁶⁹

13.2.2.3 *Knight*

Most squires were knighted by the age of twenty-one. The church then held an impressive ceremonial. The squire fasted and spent a night at the altar in holy meditation, and with communion in the morning, the ceremony of dubbing the squire a knight took place in the presence of the court. The priest took his sword and sanctified it upon the altar.²⁷⁰

After this, he took the oath “to protect the Church, to fight against treachery, to reverence the priesthood, to defend the poor from injustice, to keep peace in his own province, to shed his blood for his brethren and if necessary, to lay down his life.”²⁷¹

The sword was given back to him and the priest emphasised that he had “to protect the widows and orphans, to restore and preserve the desolate, to revenge the wronged, and to confirm the virtuous.”²⁷²

13.2.3 *The chivalric ideals*

The abovementioned training did not focus on the intellectual well-being of students *per se*. Attention was rather given to the material life of students, and chivalry acted as an ameliorative to the crudities and barbarities in life. The educational importance laid in the fact that this was the only education members of the nobility received.²⁷³

²⁶⁹ Cubberley (1920) 167.

²⁷⁰ *Ibid.*

²⁷¹ Cordasco (1976) 34.

²⁷² Cubberley (1920) 168.

²⁷³ Cordasco (1976) 34.

The education of chivalry was essentially an education for secular ends, and prepared for the active participation in the feuds and warfare of the time, as well as for the Seven Perfections of the Middle Ages which consisted of Riding, Swimming, Archery, Fencing, Hunting, Whist or Chess and Rhyming. This was an important discipline for nobilities and later on it developed into an education of a gentleman, which was quite different from the education of a scholar.²⁷⁴

The objective of medieval education was thus first and foremost concerned with revealing transcendental truths that would lead a person back to God through a life of moral, ethical and religious choice.

13.3 The philosophy and contributions of Medieval educators

The following table provides an overview of the educational contributions made by some major thinkers during the Middle Ages:²⁷⁵

Educator	Role of teacher & learner	View of curriculum & methodology	Purpose or goal of education	Major contribution
Charlemagne and Alcuin	Teachers should teach all students – both boys and girls a standard curriculum in an ordinary way.	The <i>trivium</i> and the <i>quadrivium</i> taught demanding accuracy in students.	The conservation of culture, through a revival of learning including a new form of writing.	The <i>trivium</i> and <i>quadrivium</i> ; and to propose universal and free primary education for all students.
Thomas	The teacher was a moral	The classics of Greek and	The goal was to help	Philosophic synthesis of

²⁷⁴ Cubberley (1920) 168.
²⁷⁵ Murphy (2006) 119-120.

Aquinas	mentor who lectured and disputed or debated with the students in order to help them discover true knowledge on their own.	Latin literature with the Fathers of the Church who taught through the Scholastic Method.	students develop their intellect as well as their will to live a life of decency and to make good moral decisions so that they can live a happy and joyful life on earth which will get them to heaven.	faith and reason; and the Scholastic Method.
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14 EDUCATION IN THE RENAISSANCE AND THE REFORMATION

The Renaissance²⁷⁶ had a profound influence on educational ideas. This era marked the revival of classical Greek and Roman antiquities as well as the Protestant Reformation. Momentum to this era’s social transformation was given via the humanistic writers in philosophy and science.²⁷⁷

The term “renaissance” means “rebirth” and it was an era that witnessed a dramatic revival of an interest in and a desire to emulate the art, literature and spirit of classical Greece and Rome. The Renaissance was more than just the worship of the past. It represented a radical change in certain aspects; it was a period of rebellion against many things, such as the ascetic views of man and the restrictions of medieval church

²⁷⁶ 1400AD – 1600AD.
²⁷⁷ Sharpes (2002) 153.

authority. Scholars and their interests and creations were directly involved in this period of change.²⁷⁸

To have a sound understanding of the Renaissance, one had to know that science, neutral with regards to religion, became a new faith for some people. However, humanism, the new liberated thinking, spurred by interest in the classics, threw off the rigid bonds of scholasticism. Humanism still had a great interest in the people of the past and revisited the languages, customs, visions and dreams of those who lived at the height of certain civilised eras.²⁷⁹

The Renaissance was an era which had a huge impact on education as well as educational thought. Educators clamoured for a return to the classics, because the best means of cultivating was the intellect. In this sense, it was a reactionary movement and a reaction against the dominance of theological concerns in the lives of men. Finally, it was a reaction against subjecting the products of the human mind to the surveillance of theology.²⁸⁰

On the whole, the Renaissance was the protest of individualism against authority in the intellectual and social aspects of life.²⁸¹

14.1 Educational significance of the Renaissance

The revival of the idea of liberal education and the humanism in education, were two educational features by which the Renaissance was characterised.²⁸²

²⁷⁸ Binder (1970) 122.

²⁷⁹ Sharpes (2002) 154.

²⁸⁰ Dupuis & Gordon *Philosophy of education in historical perspective* 2nd ed (1997) 71.

²⁸¹ Cordasco (1976) 41.

²⁸² *Ibid.*

14.1.1 *The revival of the idea of liberal education*

The educational aim during the Renaissance period was defined as “the formation of the man who participated in the activities of the dominant social institutions.” This aim was exemplified in a book called *On Noble Character and Liberal Studies*. The author, Paulus Vergerius, said the following:²⁸³

“We call those studies liberal that are worthy of a free man; those studies by which we attain and practice virtue and wisdom; that education which calls forth, trains, and develops those highest gifts of body and mind, which ennoble men and are rightly judged to rank next in dignity to virtue only.”

14.1.2 *Humanism in education*

The revival of the classics and the sudden explosion of creative activity in architecture, sculpture, painting and literature gave momentum to the humanism movement. Humanism was a reaction to the excessive rationalism of the Middle Ages, which emphasised man’s place in the universe. A man’s role in the world as well as his creative powers were emphasised as well. This differed from the medieval view where man was only seen as a small part of God’s plan.²⁸⁴

Humanism was seen as the softer, gentler approach to philosophy, which refocused the role of humanity. Little focus, if any, was laid on the role of the cosmos or theological principles in intellectual discussion regarding literature and the arts.²⁸⁵

Language and literature, which was descended from ancient Greece and Rome, formed the main content of humanistic education and were known as humanities. Humanistic education had a liberally orientated definition and denoted the narrow linguistic

²⁸³ Cordasco (1976) 43.

²⁸⁴ Sharpes (2002) 157.

²⁸⁵ *Ibid.*

education that dominated European schools. This narrowing led to the abolition of most of the desirable elements of the early humanism.²⁸⁶

Thus, humanistic education “drew from psychoanalytic writings to emphasise human freedom, natural goodness, human growth and potential and other personal and social values.”²⁸⁷

14.2 Types of humanistic schools

The main part of the student’s energies was engaged through the study of grammar, rhetoric, and the perfect exemplars of grammar and rhetoric. The purpose of the school was to cultivate or develop the intellectual powers of the student by studying the best products of the human intellect – also known as the classics.²⁸⁸

The Renaissance humanists made a clear distinction between the broad purposes of education and the specific purposes which schools had. Education included activities of the family, the church, the community, the school and other educational agencies. Character formation, civic responsibility and vocational competence were only considered as legitimate educational goals when the abovementioned agencies assisted the young with their education.²⁸⁹

14.2.1 The universities

At first, universities refused to accept the new learning techniques. As time went by, authority was modified and broadened. Further, linguistic study was added, and

²⁸⁶ Cordasco (1976) 43.
²⁸⁷ Sharpes (2002) 158.
²⁸⁸ Dupius & Gordon (1997) 78-79.
²⁸⁹ *Ibid.*

classical Latin was substituted for ecclesiastical Latin. However, humanism at the universities had deteriorated into ciceronianism.²⁹⁰

14.2.2 Schools of the court and nobility

Many new schools were established under patronage of the nobility because of hostility of monastic and Church schools to new learning. The German *Gymnasium* was one of the most important schools followed by the German *Fürstenschulen* (schools for princes). The German *Gymnasium* was a humanistic school of the North and developed from the burgher and Church schools. It substituted classical for Medieval Latin, mathematics for philosophy and Greek and Hebrew were added in some instances.²⁹¹

14.2.3 The English public schools

These schools were self-governed and independent of Church and State. They were essentially humanistic schools whose foundation was before the Renaissance. They became the leaders in curriculum, method and purpose.²⁹²

To conclude, the study of the classics was invigorated by Renaissance humanists and the importance of the individual was emphasised. The Renaissance educators believed that the ideal Renaissance man was cultured and well experienced in the classics, humanities and moral philosophy.²⁹³

²⁹⁰ Cordasco (1976) 46-47. Ciceronianism can be defined as follows: "In the High Renaissance, Rome was the center of the literary movement known as 'Ciceronianism' that aimed to standardize Latin diction by modelling all prose on the writings of Cicero (see, in general, <http://www.ibiblio.org/expo/vatican.exhibit/exhibit/c-humanism/Humanism.html>, last visited 2012-04-23.

²⁹¹ Cordasco (1976) 46-47.

²⁹² Cordasco (1976) 48.

²⁹³ *Ibid.*

The Renaissance era transformed education in several positive ways. The educating of a virtuous, well-rounded, upper class man changed into educating a man who attained knowledge for practical purposes and exemplified the Renaissance values of wisdom, morality and virtue.²⁹⁴

Intellectual values were still of cardinal importance. Humanists described moral values as priceless, but stated that it was not the school's responsibility to develop the moral character. The responsibility was on parents to help their children with the development of their moral characters.²⁹⁵

The educational beliefs of the humanists were similar to those of their conservative ancestors. The purpose of the school was mainly intellectualistic. The classical curriculum and formal teaching was proof thereof. Evaluation depended on the way one responded orally to questions regarding the testing of mental alertness, oral fluency and knowledge of grammar and literature. The freedom of students was almost nonexistent and discipline was strict.²⁹⁶

The Renaissance was thus a time of change that began long ago, and has not ended since. Humanistic culture was reborn and education flourished.

14.3 Renaissance educators' philosophies and contributions to education

The following table is an illustration of the philosophy and contributions of Renaissance and Reformation Educators:²⁹⁷

²⁹⁴ *Ibid.*
²⁹⁵ Dupius & Gordon (1997) 88.
²⁹⁶ *Ibid.*
²⁹⁷ Murphy (2006) 158.

Educator	Role of teacher & learner	View of curriculum & methodology	Purpose or goal of education	Major contribution
Christine de Pizan	A wise and virtuous teacher guides her students by exposing them to stories of famous moral models.	A classical curriculum of history, mythology, poetry, oratory and physical education taught to young children by doing and using rhyming verse for memorisation.	Moral education for civic responsibility.	First to advocate liberal education for all women in a school for women.
Erasmus	Parents gently taught virtues to young children using good fables and poems.	A broad humanistic curriculum with the classics read from the original. Teaching contents and reasoning were more important than rhetoric and style.	To enlighten the youth and improve the civil state to promote understanding and tolerance among all peoples.	Reading of the original works in order to develop critical skills of analysis, synthesis and evaluation.

Martin Luther	Teachers are <i>in loco parentis</i> and should speak kindly and gently to their students.	History, singing, Biblical language and mathematics should be taught in a motivating way.	Public schooling was important so that the entire population could learn to read the bible.	Promoted mass literacy by advocating education for all. The first compulsory educational law was found in Germany.
Comenius	Important to teach according to the developmental level of the child. Learning styles had to be taken into consideration.	Curriculum should be a systematic sequencing of content and objects should be used in instruction.	Universal education for all. The goal of education was to educate the child on all levels – religious, moral, social, emotional, aesthetic, intellectual and physical.	Child-centred education was important as well as the use of pictures in books. The promotion of education for all was emphasised, even for children with special needs.

15 NEW EDUCATIONAL IDEAS IN THE ENLIGHTENMENT

The eighteenth century became known as “The Age of Enlightenment” and “The Age of Reason.” The Enlightenment era was described as follows:²⁹⁸

“[A] man’s release from his self-incurred tutelage. Tutelage was man’s inability to make use of his understanding without direction from another. Self-incurred was this tutelage

²⁹⁸ Hyland (ed) *The Enlightenment: A sourcebook and reader* (2003) 54.

when its cause lay not in lack of reason but in lack of resolution and courage to use it without direction from another.”

Authoritarianism and absolutism in all their diverse forms – religious, political, economic, philosophical, social and educational – were challenged during this era by the men of ideas and the men of action. The ancient explanations of the status of man and his institutions were rejected and an examination of nature to provide rational new answers was implemented.²⁹⁹

The proliferation of knowledge was a method of overcoming social and political evils and it was advocated by the philosophy of enlightenment. The aforementioned was based on assumptions that reason could lead to the truth by means of an analytical process and, by being universal and free, mankind would be emancipated from “error and ignorance, which certainly were the actual cause of its hardships and misfortunes.”³⁰⁰

Human happiness was regarded as the supreme good and the optimistic view prevailed that it could be achieved by “spreading enlightenment,” by means of education. There was confidence in the fact that education would promote freedom as well as morality in the community and because of this belief, a corollary of the general conception of man and ethics prevailed in the age of enlightenment.³⁰¹

According to the Enlightenment view and contention, human progress would continue and lead to the “abolition of inequality between nations, the progress of equality within each nation, and the true perfection of mankind.” The abolition of inequality in education and the spread of science and knowledge to the general population were some of the crucial preconditions.³⁰²

²⁹⁹ Binder (1970) 195.

³⁰⁰ Clifford-Vaughan “Enlightenment and education” 1963 *The British Journal of Sociology* 135.

³⁰¹ *Ibid.*

³⁰² Shapiro & Hughes “Information Literacy as a Liberal Art – Enlightenment proposals for a new curriculum” 1996 *Educom Review* 1.

Thus, educated citizens will be able to do the following:³⁰³

“[G]overn themselves according to their own knowledge; they will no longer be limited to a mechanical knowledge of the procedures of the arts or of professional routine; they will no longer depend for every trivial piece of business, every insignificant matter of instruction on clever men who rule over them in virtue of their necessary superiority.”

The Enlightenment period brought major changes in education.³⁰⁴ Two features were highly significant: the increasing participation of governments in educational provision and the emergence of new conceptions of man and society that were to provide controversial, challenging and exciting alternatives to the conventional assumptions. Both these features were co-dependent; neither could be realised without the other.³⁰⁵

The Enlightenment gave schools a new purpose – student’s ability to reason was to be cultivated. Schools became progressive institutions that encouraged students to get pleasure from learning, to learn through discovery by using the empirical method of science, and finally, to be open-minded and to question everything. The reformers strived to create a school which was based on scientific reasoning. During the Enlightenment, a great spread of literacy and a change in the nature of reading arose: more reading material was available and the broader reading public had done more reading than ever before. This was perhaps the reason why the Enlightenment ideas spread so much and penetrated every level of society in many different countries.³⁰⁶

The philosophies, views and contentions during the Enlightenment period depended essentially upon the thought of John Locke and Jean-Jacques Rousseau, which affected educational practice in the later decades of the eighteenth century and which became very influential during the nineteenth century.³⁰⁷

303

Ibid.

304

Bowen *A history of Western education* Vol III (1981) 169.

305

Ibid.

306

Murphy (2006) 160.

307

Bowen (1981) 169.

15.1 John Locke

John Locke was part of the first rousing of enlightened educational thought. One of his most important educational works was titled *Some Thoughts Concerning Education* in which he expressed a fundamentally Christian understanding of human beings. According to him, virtue and rationality were inseparably linked, because virtue had to be learned and practiced and taught by parents and tutors.³⁰⁸

Locke stipulated the importance of education, and insisted on an education that was relevant to the lives of young men. To succeed in such training, the development of the body as well as the mind was of great importance and useful knowledge along with the traditional classical curriculum were emphasised.³⁰⁹

Locke was totally against the traditional methods of teaching. The stress on memorisation and rote repetition of moral precepts and constant resort was unacceptable. He replaced the abovementioned and urged affection, attention to the child's interests as well as the employment of the senses.³¹⁰

Thus, Locke believed in the child's potential and his educational plan was a whole program for intellectual as well as moral enrichment. He laid emphasis on the importance of character formation and his educational theory and philosophy regarding education was a public appeal for a general reformation of education.³¹¹

15.2 Jean-Jacques Rousseau

Along with John Locke, Jean-Jacques Rousseau was a significant theorist during the Enlightenment period, whose ideas contributed a great deal to the transformation of

³⁰⁸ Murphy (2006) 160.

³⁰⁹ Binder (1970) 198.

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

education in Europe. His beliefs regarding the individual child-centred approach to education were expressed in his educational work, known as *Emile*. He provoked a revolution in education which had a profound influence on subsequent educational thought during the nineteenth and twentieth centuries.³¹²

Rousseau applied his philosophy regarding naturalism to a boy's education. His work, *Emile*, was divided into four books, which represented every stage in a child's development. The four books consisted of infancy (from birth to the age of five), childhood (from five to the age of twelve), early adolescence (from twelve to the age of fifteen), and later adolescence (from fifteen to the age of twenty). Rousseau believed that during the first two stages of a child's life, his needs were largely physical. It was of cardinal importance to allow the boy to develop his body and senses which would enable him to satisfy his natural inclination towards play and manual activities.³¹³

Rousseau placed much emphasis on his viewpoint that nature will teach a child. He was certain that during the third stage of a child's life, the age of reason began. During this stage, an interest in nature's subjects was developed and it included geography, astronomy, natural sciences, agriculture and the crafts.³¹⁴

Thus, educational philosophy and instructional methods were dramatically changed by Rousseau – it became modern day progressive education. Rousseau stated the following:³¹⁵

“I will say little of the importance of a good education nor will I stop to prove that the current is bad. I will only note that for the longest time there has been nothing but a cry against the established practice without anyone taking it upon himself to propose a better way.”

³¹² Murphy (2006) 161.

³¹³ Binder (1970) 209.

³¹⁴ *Ibid.*

³¹⁵ Murphy (2006) 173-174.

16 SUMMARY AND CONCLUSION

Education was one of the most important foundations for the development of the world. Without education, no world would have existed. Education formed and still forms an inevitable part of our daily existence. Education also smoothed the progress of the development of different languages, societies and cultures. Through education, intellectual stability was brought into the world and it developed uncivilised, uncultured human beings into civilised, cultured human beings.

Education was viewed from many different perspectives throughout the different eras. Education was often seen as the transmission of accumulated knowledge in a society. In primitive cultures, education frequently involved little formal education and perhaps no schools as such. Only one or perhaps a few sacred books were studied. In more complex societies the sheer quantity of accumulated knowledge took many years of formal education to transmit it to the next generation, even if it was broken up into specialised areas of study. Education itself in such advanced cultures became a matter of study since efficient and integrated means of transmission of knowledge became more and more critical.³¹⁶

Throughout the discussion of this chapter, it was clear that the intellectually talented members of the community were often attracted by education into the teaching profession. However, many individuals, among them the greatest geniuses such as Socrates, preferred to remain outside the officially constituted body of educators. These individuals emphasised the importance of independency with regards to the “Academy” of their time. These individuals believed that one should work in isolation on his own or at least followed his own paths and perspectives. It was certain according to them that

³¹⁶ Carmack “Classical vs. Modern Education: The Principal Difference”
<http://classicalhomeschooling.com/classical-homeschooling-second-issue/classical-vs-modern-educationthe-principal-difference/>, last visited 2012-04-23.

education was the principal means of communication among the various classes of society and practically the only hope for a talented student to advance himself.³¹⁷

Society is of cardinal importance to our daily lives because it formulates the goals and methods which are essential for the youth to improve and develop their skills, morals and viewpoints. This is the reason why education can never be separated and considered apart from society. They are thus interdependent to each other.

We also saw that even during the ancient times, education improved and advanced the human mind. It made imperative contributions to ancient cultures in general, to the communities, to the improvement of citizenship responsibility and it contributed in several ways to the development of the individual and the individual's needs.

Education can thus be seen as the process of assisting the individual in undergoing appropriate needed experiences, and in organising those experiences into meaning for his life activities.³¹⁸

The importance of education, whether in the ancient world or modern world, can be summarised as follows:³¹⁹

“It prides itself on being able to produce healthy contributing citizens. It implies the improvement of the individual condition and preparation for something to be accomplished in life. The more educated a society becomes, the more that society can advance in the world. In reality, the more a society advances in education, the more that society loses the relationship between cause and effect. The more educated any society becomes, the more its citizens believe that they and their nation can act with complete impunity.”

³¹⁷ Molnar *The future of education* (1970) 46.

³¹⁸ Pounds & Garretson *Principles of modern education* (1962) 399-400.

³¹⁹ Carreiro *Modern education – one size fits all* (1988) 49.

Thus, the duty of true education will always be the perfecting of the intellect and the acquisition of genuine culture.

CHAPTER 3

The history of South African Education: Turning points

“The school is only one of several institutions that interrelate one with the other in any other organized educational system. Among those that are intimately involved in shaping the school are the state, the church, the community and the family.”¹

1 INTRODUCTION

This chapter consists of a historical overview of South African education and how South Africa’s education and educational system developed. For purposes of the historical overview, the history of education in South Africa is discussed against the background of broader historical events. These events include Pre-colonial education, seventeenth century education, eighteenth century education, the Union of South Africa and the control regarding education, education under apartheid, post-apartheid education as well as education under the South African Constitution. Major problems in the South African education system such as inequality, under-funding, classroom shortages, overcrowding and lack of qualified teachers are also discussed below.

The discussion of the history of South African education is important for purposes of this study since it outlines a clear background on how the South African education system arose, which events hampered the education system, but also which major events and turning points promoted the South African education system. In a study of the right to education in a country such as South Africa, it is important to take cognisance of the history of education in that country. This is especially true if one keeps in mind that the purpose of the constitutional protection of the right to education is to redress past

¹ Behr *New perspectives in South African education – A review of education in South Africa, 1652-1984* 2nd ed (1984) 3.

inequalities and segregation. If one is to properly redress past injustices, it is imperative to know and understand what these past injustices were.

2 PRE-COLONIAL EDUCATION

South Africa's educational system was mainly formed by the first European settlers who established themselves during 1652 in South Africa from abroad,² but they were not the first people who lived on the land.

When the first European settlers arrived, there were diverse groups of African people who occupied the land.³ They were known as the San herders and Khoikhoi hunters who lived around the Cape. The transmission of cultural values and skills within kinship-based groups was one of the key responsibilities of the adult San herders and Khoikhoi hunters. Education was however part of pre-colonial societies' everyday life, and the transmission of religious values were a vital element of education. Education also included oral histories of the group,⁴ heroism tales and treachery. The practicing of survival skills in a changing environment was also seen as education, and children learned by experience, from doing tasks. Initiation ceremonies and rituals formed part of education as well.⁵

3 THE FIRST SETTLERS FROM ABROAD

The Portuguese explorers were the first Europeans who set foot on South African soil. They passed through South Africa and had no intention to colonize the country. The Dutch settlers and the French Huguenots on the other hand, were the first Europeans

² *Ibid.*

³ Christie *The right to learn: The struggle for education in South Africa* (1991) 30.

⁴ History was learned through songs, poems and stories that were orally passed.

⁵ Christie (1991) 30.

who settled permanently in South Africa, and they were also the first to colonize their population.⁶

Education and religious instruction were of cardinal importance for the Dutch settlers. It was essential for every colonist to qualify for membership of the Dutch Reformed Church. In order to become a member of the Church, a measure of literacy and a degree of education were required. This included the ability to read the Bible, recite the Catechism or articles of faith and to write one's name.⁷

However, the first formal school in South Africa was opened by the Dutch East India Company⁸ in 1658. Commander Jan van Riebeeck established this school, which was specifically intended for the slave children from the Dutch ship, the *Amersfoort*.⁹

Van Riebeeck wrote the following in his diary:¹⁰

“Began holding school for the young slaves. To stimulate the slaves to attention while at school, and to induce them to learn the Christian prayers, they were promised each a glass of brandy and two inches of tobacco, when they finish their task.”

The establishment of the school was extremely oppressive. Slave children were obliged to take new identities and no recognition regarding their past was given in the school. The treatment of these children was harsh and ruthless, and they were plied with alcohol in exchange for their obedience and respect. However, they rejected this

⁶ Abdi *Culture, education and development in South Africa: Historical and contemporary perspectives* (2002) 1; see also Behr *Education in South Africa* 2nd ed (1971) 1.

⁷ Behr (1971) 2.

⁸ The Dutch East India Company was a trading company which established a kitchen garden for the supply of fresh fruits and vegetables to its sailors in South Africa.

⁹ See, in general, <http://www.sahistory.org.za/classroom/education-350years/history.htm>, last visited 2012-04-24.

¹⁰ Christie (1991) 32.

degraded education by “voting with their feet”. They ran off from the school into the mountains surrounding the Cape.¹¹

A second school opened for children of the colonists in 1663. This school was known as a multi-racial school and seventeen pupils attended: twelve white children, four slaves and one Khoi.¹²

In 1682, a colonial decree obliged all slave children under the age of twelve to attend school. The older slave children were only required to attend school twice a week. The settlers as well as the slaves disregarded this decree and some slaves concealed themselves in mountain caves to avoid going to school.¹³

By 1685, however, segregated schooling had been instituted. This school was exclusively for slave children below the age of twelve. The boys were taught by Jan Pasqual and the girls by a freed slave named Margaret.¹⁴

It is thus apparent that the traditional African society in South Africa did not have any formal and organized systems of learning in place – the settlers established and organized limited systems of learning upon their arrival in South Africa.¹⁵

4 SEVENTEENTH CENTURY EDUCATION

The earliest, more formal European schools in South Africa were established during the settlement of the Cape Colony in the seventeenth century. Dutch Reformed Church

¹¹ See, in general, <http://www.sahistory.org.za/classroom/education-350years/history.htm>, last visited 2012-04-24.

¹² Cranmer *Southern Africa* (1980) 2.

¹³ See, in general, <http://www.sahistory.org.za/classroom/education-350years/timeline.htm>, last visited 2012-04-24.

¹⁴ Cranmer (1980) 2.

¹⁵ Abdi (2002) 2.

elders (committed to biblical instruction), brought a few church-run elementary schools into being where itinerant teachers (also known as *meesters*) taught basic literacy and math skills.¹⁶

In 1714, Governor de Chavonnes decreed the first educational ordinance: “the Ordonantie van de School Ordening”. This was the first attempt for proper educational legislation. The Ordinance agreed to the principle that the content of education should be almost entirely religious. The final authority in education, however, rested with the state.¹⁷

In order to be employed as a teacher, the approval of the governor as well as the Council of Policy was needed.¹⁸ The Scholarchs was established in order to oversee education. The committee consisted of the secunde,¹⁹ the clergyman, and the military captain.²⁰ The duties of teachers were emphasised and regulations pertaining to school organisation were also laid down.²¹

These measures were the actual first steps towards the formalisation of education in the Cape. The education system was described as follows:²²

“During the whole period of the Dutch regime at the Cape, formal elementary education meant instruction in the doctrines of the Dutch Reformed Church. The pupils learned prayers, passages from the Bible, and the catechism. These they would recite to the teacher. There would also be singing lessons in preparation for church services. Some of the abler pupils would also acquire the basics of reading, writing, and arithmetic.”

¹⁶ Johnson “Education: Keystone of Apartheid” 1982 *Anthropology & Education Quarterly* Vol 13 No 3 215. See also in general, <http://country-studies.com/south-africa/education.html>, last visited 2012-04-24.

¹⁷ McKerron *A history of education in South Africa (1652-1932)* (1934) 16.

¹⁸ *Ibid.*

¹⁹ A man next in rank to the Governor.

²⁰ McKerron (1934) 16; see also, <http://www.sahistory.org.za/classroom/education-350years/timeline.html>, last visited 2012-04-24.

²¹ *Ibid.*

²² Christie (1991) 32.

A monitorial system of education for working children in England was established in 1798, and this system was later used in South Africa as well.²³

British mission schools proliferated after 1799, when the first members of the London Missionary Society arrived in the Cape Colony. It was during this time that the first school, specifically for Africans, opened near King William's Town.²⁴

The latter half of the seventeenth century can with good explanation be seen as the "Dark Ages" of South African education.²⁵ The reason for this conclusion is that it has the following points in common with the European Middle Ages: firstly, the Church was the leading element in education; ignorance and a lack of knowledge beyond what was required for merely religious purposes was prevalent amongst the common people; and lastly, relatively little is known about this period.²⁶

5 EIGHTEENTH CENTURY EDUCATION (CAPE COLONY)

There were no radical changes in education when the British took over the Cape from the Dutch.²⁷ There was no need for the English to interfere unsuitably with the domestic concerns of the people. Moreover, no well-organised system of elementary education was put into operation. Their elementary educational system did not progress well and the content was almost always restricted to religion.²⁸

The beginning of this century also brought along some changes. The Education Commission had been extended – it did not only consist of three Scholarchs anymore,

²³

Ibid.

²⁴

See in general, <http://www.sahistory.org.za/classroom/education-350years/timeline.html>, last visited 2012-04-24.

²⁵

Malherbe *Education in South Africa (1652-1922)* Vol I (1925) 19.

²⁶

Ibid.

²⁷

McKerron (1934) 18.

²⁸

Ibid.

but also included the Governor, two members chosen by the President from the Burgher Senate and the Directors of the Orphan Chamber, two clergymen of the Dutch Reformed Church in Cape Town, and a Lutheran clergyman.²⁹

During 1812, the Chief Justice was required to inspect the status of education, especially educational progress in country areas. The observations and commentaries in his report were unfavourable and the Government was obliged to take some action. The only possible solution was to stimulate local interest in education and to improve teaching in schools by providing better teachers.³⁰

Koster Scholen were instituted – these schools were run by church clerks and they were also ultimately under Government control.³¹

In 1822, Lord Charles Somerset established free schools in some of the main centres. One of the goals was to strengthen the English language in the Cape.³² In order to do so, Lord Somerset and the British authorities wanted to use education as a way of spreading their language and traditions in the Colony. The aforementioned was done by declaring English the official language and to anglicize the church, government offices and schools. Several schools were set up according to the British tradition and a number of teachers were imported from Britain.³³

It is clear from the above that South Africa was in desperate need of a consistent, vigorous educational policy. The Education Commission was still in control of education, but there was a mutual feeling that the best way to secure such a policy would be to appoint a professional leader of education.³⁴

²⁹ *Ibid.*
³⁰ McKerron (1934) 18.
³¹ *Ibid.*
³² McKerron (1934) 22.
³³ Christie (1991) 34.
³⁴ McKerron (1934) 22.

There was need to establish a Department of Education and in 1839, a Department of Education was set up in the Cape Colony. All mission schools were controlled by the Department, Education Law was passed and approved in the Cape Colony and financial aid was given to local schools. There was also a limit with regard to religious instruction and more attention was given to classical languages such as Greek and Latin.³⁵

The office of the Superintendent-General of Education was also created and shaped during this period. Innes, a professor from the South African College of Cape Town was appointed as the Superintendent-General of Education.³⁶

The schooling system improved a lot, and primary schooling became free of charge. However, parents provided financial support for secondary education. People were allowed to establish their own schools. This led to an increase in a number of private schools. There were also some state schools, which consisted of a large number of state-aided schools and mission schools.³⁷

Nevertheless, the invention of the office of the Superintendent-General of Education was indisputably one of the most important steps that were taken regarding the administration of education in South Africa. It gave education a new prestige and it brought back the “proud tradition” of education.³⁸

The Government Minute of 1839 stated that first and second class schools were also instituted. They were completely maintained by Government and were better known as established schools. First class schools were founded in the larger areas, and primary and secondary education was free. Second class schools originated in the smaller areas and only primary education was provided. All primary instruction was provided at

³⁵ Christie (1991) 34; see also, <http://www.sahistory.org.za/classroom/education-350years/timeline.html>, last visited 2012-04-24.

³⁶ McKerron (1934) 22.

³⁷ Christie (1991) 34.

³⁸ McKerron (1934) 22.

no cost, but fees were payable for secondary education. During 1843, schools in agricultural areas were established, which later became known as third class schools.³⁹

There were several attempts to establish English as a means of anglicisation in education, and because of this, the importance of the expansion and renewal of the teaching content was overlooked.⁴⁰ It was therefore necessary to look at some of the aims of education in order to promote education and to place emphasise on the importance of education.

The Government Minute of 1839 identified the following general aims of education:⁴¹

- the formation of good habits;
- the acquisition of useful and practical knowledge;
- the development of intellectual abilities and aptitude, and
- the training of good citizens, equipped for both the temporal and eternal life.

Primary education of first-class schools included subjects such as reading, writing, arithmetic, general history, drawing, elementary principles of natural science and mechanics, English grammar and religion.⁴² Secondary education of first-class schools consisted of Latin, Greek, French, mathematics, trigonometry, physical geography, geology and astronomy.⁴³

Until 1893 the aforementioned curriculum remained the same. However, in 1893, new syllabi were compiled, based on the following principles:⁴⁴

- the proper grading of tutorial matter,

³⁹ McKerron (1934) 24.

⁴⁰ Venter & Verster *Educational themes in time perspective* Part 3 (1988) 103.

⁴¹ *Ibid.*

⁴² Venter & Verster (1988) 104.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

- the choice of tutorial matter in accordance with the ability of the average pupil,
- a subject approach from a South African and a cosmopolitan standpoint.

These principles brought about some new developments regarding the curriculum. New subjects like singing, woodwork, cookery and agriculture were added for primary schools, and secondary schools included subjects such as English, Latin or a modern language, arithmetic, mathematics and a science.⁴⁵

After 1893, mission schools were funded by government in order to provide education for less fortunate white communities. Children were however not obliged to attend school and many children received no schooling and education at all.⁴⁶

It is thus apparent that the schooling system in the Cape Colony became more complex as society became more multifaceted and complex. There were also different divisions in society – divisions based on racial classification as well as social class divisions.⁴⁷

6 EDUCATION IN THE OTHER PROVINCES

The educational systems of the Orange Free State, Transvaal and Natal were very similar to that of the Cape in a number of ways. The experience of education at the Cape was however brought over to these provinces by the original settlers.⁴⁸

⁴⁵

Ibid.

⁴⁶

Christie (1991) 34.

⁴⁷

Ibid.

⁴⁸

McKerron (1934) 35.

6.1 The Orange Free State (OFS)

During the early years of the trekker states, not much attention was given to education. No educational system was properly developed and education was primarily taught by the parents and the church. Basic education was however taught by travelling teachers.⁴⁹

Some obstacles were difficult to overcome: there were not sufficient buildings – most of the buildings were dilapidated and ruined; there was also a shortage of skilled and trained teachers and school attendance was scanty.⁵⁰

The Act of 1872 resolved some of the obstacles and problems regarding education. Control of the financial side of education was given to the executive Council of the Volksraad and a superintendent was employed in order to manage and control the more directly professional aspects regarding education.⁵¹

The Act also made provision for the establishment of local school committees in various districts. The members of these committees included the landdrost, minister and three other members nominated by the Executive of the Volksraad. They were required to visit the schools frequently and to administer examinations.⁵²

Problems regarding efficiency occurred and there were complaints that the majority of these committees were lazy and slow-moving – no efforts were made to promote education and their viewpoints and attitudes towards education were scandalous. Regulations were adapted in an attempt to make these local bodies more effective, but without much success.⁵³

⁴⁹ Christie (1991) 40.

⁵⁰ *Ibid.*

⁵¹ McKerron (1934) 36.

⁵² *Ibid.*

⁵³ McKerron (1934) 37.

The Anglo Boer War complicated the development of education. The towns were crammed full, since a lot of farmers were unable to return to their farms due to the damage and destruction caused by the war. However, schools did open in country areas, but the conditions were unfavourable and teachers taught under tough and difficult circumstances:⁵⁴

“[T]he country teacher with weather-beaten bell tents pitched near to some unroofed farmhouse, of which only one or two rooms had been made habitable by sheets of iron nailed overhead, a smoky stove, tinned rations brought from the nearest depot.”

The material damage caused by the war was not the only factor that crippled the development of education. The development of education was also restricted by the war’s legacy of racial resentment and abhorrence.⁵⁵ It is thus clear from the above that the re-establishment of the educational system that had broken down during the war years was in need of drastic attention.

The Orange River Colony came under new administration, which meant “a highly centralised Colony”. This centralisation was to be welcomed, because drastic attention was given to the struggling educational system: Ordinance No. 27 of 1903 recognised the Lieutenant Governor as the supreme authority in education. He had the power to appoint local committees, and to describe, identify and characterise their functions. Instruction in schools was in English, and Dutch could be studied as a language.⁵⁶

In June 1907, General JBM Hertzog became Minister of Education. He drafted a new Education Act, which became law in 1908.⁵⁷ The rationale behind this Act was to place Dutch and English on terms of complete equality. Every pupil, from grade 1 up to standard 4, had to be taught through the mother tongue, which was either Dutch or English. The second language, whether it was Dutch or English, had to be used as a

⁵⁴ McKerron (1934) 38.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ School Act 35 of 1908.

subsidiary medium to familiarise the pupil with that language. In and above standard 5, three main subjects had to be taught through the medium of English and another three through the medium of Dutch.⁵⁸

In the Orange Free State, almost all of the schooling was at a primary level. Some provision was however made for secondary schooling. Wealthy parents often sent their children to the Cape for secondary schooling or to Holland or England for their secondary education.⁵⁹

6.2 Transvaal

The Voortrekkers had many physical hardships to endure during the Great Trek, but despite these difficulties and suffering, they continued to devote their attention to the education of their children.⁶⁰ The schoolmaster amongst the trek party would usually teach the children, but if there was no schoolmaster, the parents did the teaching. The alphabet was firstly mastered, and then the simple combination of letters, followed by the reading of an elementary textbook named *Trap der Jeugd*. After this came the reading of the Bible, as well as the memorising of names and events in Biblical history.⁶¹

The necessity for an organised government existed, and in order to fulfil this need, a Volksraad was established. There were also teachers and ministers from the Netherlands. H van der Linden was one of them. He was responsible for the drafting of the first school regulations. These regulations were seen as the very first written attempt in position to formulate an education policy.⁶²

⁵⁸ Behr (1984) 19.

⁵⁹ Christie (1991) 41.

⁶⁰ Behr (1984) 11.

⁶¹ Behr (1984) 12.

⁶² Behr (1984) 12.

The church was now responsible for education. The state was however not in the position to release itself from the control of education, and for this reason, an education committee was introduced. This committee had the duty to supervise and administer educational provision. The ZAR Education Ordinance of 1859 was almost immediately adopted. This legislation identified, specified and described the duties and requirements of teachers:⁶³ Dutch Reformed Church membership was an essential precondition and every teacher had to be declared competent to teach by the Education Committee. The teachers were further required to give instruction in reading, writing, arithmetic, geography, Bible and general history as well as in “het zingen der Psalmen en Gezangen, bij de Nederduitsche Gereformeerde kerk in gebruik”.

However, the Education Committee did not meet the necessary expectations, and the consequence of this was the abolishment of the Committee.⁶⁴ One could see from the above that education was in drastic need of attention.

In 1872, TF Burgers became the president of the Boer Republic. He developed a plan for education, which was embodied in his Education Act 4 of 1874 (also known as the Burgers Act). This Act provided for three types of schools: (a) ward schools, for the farming community, where the curriculum consisted of reading, writing and arithmetic, together with some history, geography and singing,⁶⁵ (b) town schools, which made provision for education up to standard 4 or 5,⁶⁶ and (c) a gymnasium at Pretoria to provide secondary and higher education.⁶⁷

In 1891, N Mansvelt, a former teacher and professor of Dutch at Victoria College (now known as the University of Stellenbosch), became Superintendent of Education.⁶⁸ He convinced the Volksraad to implement new legislation with regard to education. Shortly

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Also known today as grade 6 and 7.

⁶⁷ Behr (1984) 12.

⁶⁸ Behr (1984) 13.

after this, the Education Act 8 of 1892 was placed on the statute book.⁶⁹ Education became more organised and the Transvaal was also more prepared for any challenges pertaining to education. This Act explains the approach towards education, as well as the way in which education was viewed.⁷⁰

“The Government of De Zuid-Afrikaansche Republiek accepts the principle that it is primarily the duty of parents to provide education for their children. It limits its action to:

- 1 the encouragement and support of private schools by giving grants to aid them;
- 2 the supervision of schools with a view to ensuring that pupils receive the necessary Protestant Christian education;
- 3 the establishment of an institution for higher education principally for the training of teachers and officials.”⁷¹

Provision was made for three categories of schools: primary schools up to and including standard 3, secondary schools embracing standards 4 to 6 and institutions for more advanced education.⁷²

Dutch was the only medium of instruction and this caused a lot of controversy between the Government and *uitlanders* (also known as immigrants). This conflict needed to be solved and educational legislation for *uitlanders* was published in August 1896. This legislation stipulated that English would be the medium for instruction, but the regulations laid down that “a child during his first year in school was to devote one hour per day to instruction in Dutch; in his second, two hours; and in his third year, three

⁶⁹ *Ibid.*

⁷⁰ Christie (1991) 40.

⁷¹ Behr (1984) 13. See also Christie (1991) 40.

⁷² Behr (1984) 13-14.

hours; whilst in his fourth year he was expected to take the whole of his instruction through the medium of that language”.⁷³

However, these schools were not very successful and more English schools were established – almost entirely self-governing.⁷⁴

6.2.1 *The Anglo-Boer war and its after-effects*

The Anglo-Boer War had a negative impact on education. During this period, the administration of education came to an end since the Boers devoted their attention to military operations.⁷⁵ Education for children was thus neglected, and the need for education during the formative years of the child existed. Residents of the non-combat zones used their own initiatives and started schools. These schools were funded by the Netherlands and soon became the core system of Christian national schools.⁷⁶

The British took the Boer women and children from their farms and put them in concentration camps. Schools were started in large marquee tents and religious instruction was given in Dutch. All other subjects were however taught through the medium of English.⁷⁷ After the war, camp schools came to an end; all women and children returned to their farms and all of the teachers were spread out all over the country.⁷⁸

However, the war brought changes of cardinal importance to the education, culture and tradition of the Afrikaners.⁷⁹ The Afrikaner people were now challenged “with a world

⁷³ Behr (1984) 14.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Behr (1984) 15.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

view and liberal philosophy quite unlike the puritan and 17th-century outlook and way of life to which they were accustomed".⁸⁰

Education developed progressively in the Transvaal: all existing educational laws were rescinded and a new Public Education Ordinance of the Transvaal⁸¹ was enforced.⁸² A department of public education was instituted under the leadership of the director of education. This ordinance made provision for free basic education at government schools to children whose parents were of white birth or ancestry.⁸³

In 1907, the Transvaal became an independent colony, and a new Education Act⁸⁴ was promulgated: Children between the ages of seven and 14 years were obliged to attend school regularly. All public schools had to begin the day with prayer and the reading of the Bible. Religious instruction was given in English or Dutch or any other European language. No persons, except teachers, were allowed to teach Bible history, and only if the parents insisted on such instruction.⁸⁵

6.3 Natal

The government was accountable for education in Natal. A schooling system was gradually established, with state schools, state-aided schools and a system of inspection. Several teachers came from England to teach, passing on the influence of the English school system to the Natal schools. There were also church schools and a lot of private academies providing different types of education. Schooling was neither free of charge nor compulsory. Schooling in rural areas was however neglected.⁸⁶

⁸⁰ Behr (1984) 15.
⁸¹ No 7 of 1903.
⁸² *Ibid.*
⁸³ *Ibid.*
⁸⁴ Act 25 of 1907.
⁸⁵ Behr (1984) 16.
⁸⁶ Christie (1991) 41.

In 1872, an education commission was appointed, who was in favour of a system consisting of local school committees. They insisted on primary education for every child at public cost. Three grades of primary schools were envisaged: first-grade schools for the rural areas; second-grade schools for the towns; and second-grade higher primary schools which had the duty to furnish pupils with the necessary preparation for secondary education.⁸⁷

Two Acts, Act 15⁸⁸ and Act 16⁸⁹ came into force in 1877. This was seen as the milestone of education in Natal. There were two categories of schools:⁹⁰ (1) state schools, which were categorised into ordinary primary schools and model primary schools; and (2) state aided schools, which were established by private individuals or local committees.

All primary schools had the same curriculum, which included the following subjects:⁹¹ Bible study, reading and writing in English, English composition and grammar, arithmetic up to and including decimal fractions, the history of England and South Africa, elementary geography, elementary science, elementary drawing, singing, physical exercises, and needlework and domestic science for girls.

It is thus clear from the above, that despite certain challenges, a fairly strongly centralised education system remained in Natal.

⁸⁷ Behr (1984) 10.

⁸⁸ Primary Education Act 15 of 1877.

⁸⁹ Higher Education Act 16 of 1877.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

7 THE UNION OF SOUTH AFRICA AND THE CONTROL REGARDING EDUCATION

The four colonies – the Cape, Orange Free State, Transvaal and Natal were combined by the Act of Union to form the Union of South Africa.⁹² These four colonies were self-governing and each of them had a deep-rooted system of primary and secondary education, together with a system of teacher training.⁹³

Thus, the responsibility to provide general basic education for Europeans, Indians, Coloureds and Natives, rested upon the provinces. The Union as a whole was responsible for higher education, vocational education and special education, and the funding for all these educational purposes came from the national funds.⁹⁴

The Union was, however, confronted with two curricular difficulties: (1) Shall English or Afrikaans be the medium of instruction; and (2) What should be the nature of character training in schools?

7.1 Shall English or Afrikaans be the medium of instruction?

The Union made provision for both Afrikaans-speaking and English-speaking schools. In Afrikaans schools, pupils had to take English as one of their subjects of study, and the same applied to pupils in English schools – Afrikaans was a compulsory subject of study. However, some schools carried on instruction by rotating the language medium so that classes could be held in Afrikaans every other day, and likewise with English.⁹⁵

⁹² Hlatshwayo *Education and independence – Education in South Africa 1658-1988* (2000) 35.

⁹³ Behr (1984) 20.

⁹⁴ Todd “Schools and the social order in the Union of South Africa” 1950 *The Elementary School Journal* Vol 50 No 9 512.

⁹⁵ Todd 1950 *The Elementary School Journal* Vol 50 No 9 515.

7.2 What should be the nature of character training in schools?

One of the requirements was to have Bible-reading and non-sectarian religious instruction as one of the subjects. This meant that teachers also had to undergo training in teaching religion. If a teacher felt that he or she could not present non-sectarian views, permission could be given for such teacher not to give religious instruction. Pupils could also have been excused from religious instruction, but only if the pupil's parents asked for exclusion from such instruction. The Union supported a Christian viewpoint and the tenets of Christianity were the basis of its ethics.⁹⁶

8 EDUCATION UNDER APARTHEID

“Apartheid was a system of government in South Africa, abolished in 1994, which systematically separated groups on the basis of race classification. The Apartheid system of racial segregation was made law in South Africa in 1948, when the country was officially divided into four racial groups, White, Black, Indian and Coloureds.”⁹⁷

The struggle to abolish this system in South Africa was a long, drawn-out process and extremely difficult. The reason for this is “because it has been sustained by external forces, or the old international order, which provided it political and economic support, and obstructed action for its abolition”.⁹⁸

The structure for education was characterised by the core principle of apartheid, where provision was made for a separate schooling infrastructure for separate groups. During the apartheid era, nineteen education departments were established, and each particular ethnic group had its own education infrastructure.⁹⁹

⁹⁶ *Ibid.*

⁹⁷ Kalantzi & Cope *New learning: Elements of a science of education* (2008) 94.

⁹⁸ Reddy “Education against apartheid: Some observations” Paper presented to the International NGO seminar on Education against Apartheid, 1989.

⁹⁹ Kalantzi & Cope (2008) 94.

Each department also had its own curriculum development and protocols. Committees attached to the white House of Assembly were in charge of the curriculum formation in South Africa. This system was rigid, with a network of inspectors and subject advisors on the one side, and several generations of unskilled and poorly qualified teachers on the other. Conditions such as authoritarianism, rote learning and corporal punishment ruled and these conditions worsened the impoverished and underprivileged environments of schools for children of colour.¹⁰⁰

Afrikaans and English children were obliged to attend school from the age of seven until sixteen or until they had passed the school leaving certificate. Schooling was completely free, and books and stationary were also included.¹⁰¹

Education for Africans was however neither compulsory nor free. Education contained an eight-year primary course and the medium of instruction had to be one of the African languages.¹⁰²

However, this system continued to lower the position of the African population and the limitation of African access to certain skills and knowledge resulted in a number of negative consequences: The lack of education downgraded almost all Africans to positions where they received the smallest remunerations in the economy.¹⁰³

A further obstacle to the African community was the forced use of African languages as the medium of instruction throughout primary school. The English language was, with regard to some material, more understandable, and difficult pieces of work were more easily presented in English. However, the forced use of these languages placed an impediment on learning and it also constituted a lack of language preparation. The use

¹⁰⁰

Ibid.

¹⁰¹

Johnson 1982 *Anthropology & Education Quarterly* Vol 13 No 3 219.

¹⁰²

Johnson 1982 *Anthropology & Education Quarterly* Vol 13 No 3 220.

¹⁰³

Ibid.

of African languages only limited African children's skills and achievements, and they were unable to compete successfully with other population groups.¹⁰⁴

To conclude, African education was of poor quality and in drastic need: Schools were overloaded and jam-packed with insufficient teacher numbers. Teachers were usually poorly trained and chronic shortages of books, stationary and equipment caused more difficulties and circumstances to cope with. Children were unable to prepare for school in a proper way and they were also unable to break out of their subordinate economic and social position.¹⁰⁵

It is thus clear from the above that "a self-perpetuating dimension was active within the system,"¹⁰⁶ and the way in which education was structured needed drastic attention. A turning point for education was now inevitable.

8.1 Bantu Education

"In 1953 the government passed the Bantu Education Act, which the people didn't want. We didn't want this bad education for our children. This Bantu Education Act was to make sure that our children only learnt things that would make them good for what the government wanted: to work in the factories and so on; they must not learn properly at school like the white children. Our children were to go to school only three hours a day, two shifts of children every day, one in the morning and one in the afternoon, so that more children could get a little bit of learning without government having to spend more money. Hawu! It was a terrible thing that act."¹⁰⁷

The formation and launching of the Bantu Education Act of 1953 was one of the most important steps taken in education in South Africa. This Act specified that the education

¹⁰⁴ Johnson 1982 *Anthropology & Education Quarterly* Vol 13 No 3 221.

¹⁰⁵ *Ibid.*

¹⁰⁶ Johnson 1982 *Anthropology & Education Quarterly* Vol 13 No 3 222.

¹⁰⁷ Anon "Bantu education" <http://overcomingapartheid.msu.edu/sidebar.php?id=3>, last visited 2012-04-24.

of the Bantu (also known as the African) had to be removed from the provinces and had to be placed under the control of the central Government as part of a separate Department of State. The Department of State was however responsible for the integration of a uniform educational policy with the development of the Bantu community as a whole.¹⁰⁸

The Act was characterised by two key features, and the aim was to inaugurate a new system with regard to the education of Africans:¹⁰⁹

- “(1) by a system of apartheid to place the education of the Bantu under the control of the Native Affairs Department, a step which implied taking it away from the control of the Provincial Councils of the Cape, Transvaal, Orange Free State and Natal, which had hitherto been responsible for the primary and secondary education of all races and which will still deal with the education of Europeans, Coloureds and Indians; and
- (2) to take Bantu education out of the hands of the Churches and Missions, which have borne the burden of it since its inception about 140 years ago, and to place it in the hands of the Bantu people themselves, through committees or other tribal authorities working under the Department of Native Affairs.”

Bantu Education was inexpensive and a huge advantage for government, since it led to an enormous reduction of government aid to the already poor learning institutions of black Africans.¹¹⁰ The National Party¹¹¹ had control over the employment and training of teachers and only “fit and proper” teachers were employed. The salaries of black teachers were shockingly low, and the outcome of this was a dramatic drop in the number of trainee teachers. It is thus clear from the above that the policy of Bantu

¹⁰⁸ MacMillan “Education and legislation in South Africa” 1962 *Comparative Education Review* Vol 6 No 1 59.

¹⁰⁹ Shepherd “The South African Bantu Education Act” 1955 *African Affairs* Vol 54 Issue 215 138-142.

¹¹⁰ *Ibid.*

¹¹¹ The National Party was the ruling party during the apartheid regime.

education was aimed at directing “black or non-white youth to the unskilled labour market, to ensure white control and prosperity”.¹¹²

The National Party’s program of apartheid was also supported by Christian National Education. This program consisted of calling on educators to reinforce cultural diversity and to rely on “mother-tongue” instruction with regard to the first years of primary school. Strong management control was also given to school boards, and these boards were elected by parents in each district.¹¹³

The purpose of the Bantu Education Act was thus two-fold. The missionary control of the education of black people was brought to an end, and a system of mass education was instituted.¹¹⁴

8.2 Soweto 1976 and some other important dates

During June 1976, the Soweto uprisings began. These uprisings marked the commencement of the process of rejection by young people of apartheid education. Formal education was interrupted and disrupted and the “nature of the contemporary South African school, with all its marks of strength, youth vitality, and weaknesses, poor teaching and learning cultures, [was] established”.¹¹⁵

Developments and changes in black education occurred during the late 1970s: numbers increased and more students attended school. The ANC also made an effort to establish new and alternative approaches to schooling – an attempt to steer the youth rebellion. This period was also marked as a period where great alternative schools of

¹¹² Shepherd 1955 *African Affairs* Vol 54 Issue 215 138-142.

¹¹³ See, <http://country-studies.com/south-africa/education.html>, last visited 2012-04-24.

¹¹⁴ See, <http://www.sahistory.org.za/classroom/education-350years/history.html>, last visited 2012-04-24

¹¹⁵ *Ibid.*

the People's Education came into being, like the African National Congress School in exile, as well as the Solomon Mahlangu Freedom College.¹¹⁶

Education during the apartheid regime was a political issue – an issue between black schools and white schools and the difference in quality of education in these schools. The further development of education during this era will however only be briefly discussed below.

Some of the important dates in this period are as follows:¹¹⁷

- 1979 The Bantu (Black) Education Act of 1953 was replaced by the Education and Training Act. The Department of Education and Training had control over African education. More money was spent on African education and there was a big improvement in the quality of teachers and teaching methods. A number of schools were also built, but education for Africans remained segregated, unfair and imbalanced.
- 1980 The De Lange Commission was established. This Commission did an extensive investigation into education, and recommendations were to be made for a proper education policy for South Africa. A single department of education for all South Africans, education of equal quality for all, and a changed schooling structure was suggested by the De Lange Report of 1981.
- 1983 A White Paper was issued by government which accepted the De Lange recommendations and guiding principles, but the major recommendation of a single education department for all was refused. Technical education was emphasised and industries were encouraged to establish training programmes to improve the skills of black workers. Trade unions now became active role players in providing education for workers.

¹¹⁶ Christie (1991) 57.

¹¹⁷ Christie (1991) 57-59.

1984 The National Policy for General Education Affairs Act¹¹⁸ was approved and accepted. Education was now brought in line with the new constitution of 1983. Two education departments were set up: a “general affairs” department had to administer finance, teachers’ salaries as well as registration and curriculum. “Own affairs” Departments of Education and Culture were established for whites, coloureds and Indians. The Department of Education and Training still had the power over African education, and education in the ten “homelands”¹¹⁹ fell under their own departments.

1986 The Private Schools Act¹²⁰ was approved and accepted. This Act made provision for racially mixed private schools.

1990 Government proposed the “Class Models”, which provided for conditions under which white state schools could admit black students.

It is apparent that black education in South Africa had been neglected and abandoned for several years. The result of this is that some African people lack proper skills, since they did not receive quality education. This fact carried two fundamental implications for the social and economic welfare of the country: The first barrier was that African people “have not received a sufficient basic education for induction directly into industrial training programmes”. The second barrier was the “overall inadequacy of young blacks who have completed part or all of their secondary level schooling within an education system so low in quality as to make it difficult for them to meet the demands of modern society”.¹²¹

¹¹⁸ Act 76 of 1984.

¹¹⁹ The South African government divided South Africa into a number of separate states (also known as homelands), each of which was supposed to develop into a separate nation-state for a different ethnic group. Ten homelands were allocated to different black ethnic groups. Lebowa (North Sotho, also known as Pedi), QwaQwa (South Sotho), Bophuthatswana (Tswana), KwaZulu (Zulu), KaNgwane (Swazi), Transkei and Ciskei (Xhosa), Gazankulu (Tsonga), Venda (Venda) and KwaNdebele (Ndebele).

¹²⁰ Act 104 of 1986.

¹²¹ Mncwabe *Post-apartheid education: Towards non-racial, unitary and democratic socialization in the new South Africa* (1993) 3.

One can thus argue that the oppressive and domineering system of apartheid left a complex, difficult and painful legacy behind, which is still present in all facets of society, including education.¹²² After apartheid, policy makers were challenged with the drafting of plans for a comprehensive education reform. However, the main objective was to use education as a tool, not only to overturn apartheid practices, but also to overturn ways of thinking.¹²³

9 POST-APARTHEID EDUCATION

The first major transformation in educational administration took place in 1994. The previously separated departments of education were modernised and restructured into one national department of education. The national department of education and all other provincial departments of education worked in conjunction with each other and under this new and modern system, responsibilities were shared between the national and provincial departments. The previously known homelands were also abolished and were replaced by nine provinces.¹²⁴

The reorganisation of education was one of the most difficult tasks the government was faced with, because all apartheid laws had to be repealed. President FW de Klerk emphasised the drastic need for a non-racial school system which includes sufficient flexibility for communities in order to maintain and protect their religious and cultural values as well as their mother-tongue language.¹²⁵

Experts in the field of education were brought together and a policy framework for the restructuring of education was prepared and formulated. The new school year of January 1995 began with great success since all government-run primary and

¹²² Tihanyi *Blending in the rainbow nation* (2006) 51.

¹²³ *Ibid.*

¹²⁴ *Ibid.* South Africa is still divided into nine provinces, namely: Gauteng, Mpumalanga, North West, Limpopo, KwaZulu Natal, Eastern Cape, Western Cape, Free State and Northern Cape.

¹²⁵ See, <http://country-studies.com/south-africa/education.html>, last visited 2012-04-24.

secondary schools were officially integrated. New policies were tough to put into practice and several policy details remained to be worked out. Children between the ages of seven and sixteen were obliged to go to school, but there were some obstacles to overcome: Resources to provide adequate schools and teachers for the total school-age population were scanty and schools received government aid for teachers' salaries only. Education was not free, and fees were charged for equipment and supplies.¹²⁶

Besides the reorganising of the system of government, educational reform has included the introduction of new curricula. The White Paper on Education and Training placed emphasis on a new framework called Outcomes-Based Education (OBE). The reason behind OBE was to groom and prepare all young South Africans for a "system producing high ability-high quality products [sic] with the ability to solve problems, think critically and apply new skills and techniques to different situations." The aim of OBE is thus to establish a student-centred environment which emphasises practical and active learning that is directly relevant to the student's life and promoted by teachers who play the role of a facilitator.¹²⁷

It is apparent from the above that the focus of the new system was on fairness and freedom.¹²⁸ Another important factor in post-apartheid education was the consolidation of different schooling systems into a single department, which led to the strengthening of the national education department where "nineteen racially fragmented education departments needed to be brought under one united, non-racial department".¹²⁹

Access to education was flourishing across the board, but an education that was suitable for the present time was still required.¹³⁰ A reconstructional education was thus needed.

¹²⁶*Ibid.*¹²⁷

Tihanyi (2006) 51.

¹²⁸Maile (ed) *Education and poverty reduction strategies: Issues of policy coherence* (2008) 20.¹²⁹

Maile (ed) (2008) 21.

¹³⁰Manala "Education for reconstruction: A post-apartheid response to the education crisis in South Africa" 2002 *HTS* 58(3) 1036.

For reconstructional education to be successful, it should be able to do two things concurrently: “firstly to undo the destruction that was caused and secondly, to rebuild all that needs rebuilding”. This kind of education must also symbolise a tremendous amount of hope. In order to succeed with a proper reconstructional education system, transformation must be unavoidable and the poor and suffering people need to be empowered. It must be remembered that education for reconstruction can only succeed if it is open and applicable to the entire South African society.¹³¹

One can thus see from the above that the wider society had changed with time, and so did education. These changes in society as well as the change from the apartheid regime to the post-apartheid period brought the need to establish and develop new legislation. The Constitution of the Republic of South Africa, 1996 was developed for the new democratic South Africa and will be discussed below.

10 EDUCATION UNDER THE SOUTH AFRICAN CONSTITUTION

“Basic education is a legal entitlement to which every person has a claim ... Attaining this level of availability of opportunity for basic education will be an immense achievement in the reconstruction and development of the country.”¹³²

The interim Constitution of the Republic of South Africa¹³³ dealt with education in section 32, which read as follows:

- 32 Every person shall have the right –
(a) to basic education and to equal access to educational institutions;

¹³¹ *Ibid.*

¹³² The White Paper on Education and Training published in March 1995 (DoE, 1995d). See also Motala & Pampallis (eds) *The state, education and equity in post-apartheid South Africa: The impact of state policies* (2002) 20.

¹³³ Act 200 of 1993.

- (b) to instruction in the language of his or her choice where this is reasonably practicable; and
- (c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race.

The interim Constitution was replaced by the final Constitution of the Republic of South Africa, 1996,¹³⁴ which deals with the right to education as follows:

- 29(1) Everyone has the right –
 - (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –
 - (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.

- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that –
 - (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.

¹³⁴ Hereinafter “the Constitution”.

- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

Section 29 stipulates explicitly that everyone, including children, have an immediate enforceable right to basic education. The State has the primary duty to provide support, facilities as well as services for the realisation of this right.¹³⁵

The pre-1994 school system made provision for education for all children, but African children were subjected to poorer and low-quality education. As a matter of fact, all school-going children of colour, whether black, coloured or Indian, were victims of unequal and racially defined education. The new constitutional dispensation was however challenged with the formation of an education system that will guarantee that the “human resources and potential of our society are developed to the full”.¹³⁶

The right to a basic education in section 29(1)(a), also makes provision for an immediate entitlement to access free education services of a high and satisfactory standard. The reason behind the high and satisfactory standard is to redress all educational needs such as past inequalities.¹³⁷

A person’s right to a basic education will definitely be violated if barriers such as distance, disability, financial resources or any of the various deprivations of poverty, preclude them from accessing schools of an adequate and acceptable standard.¹³⁸ It can be concluded that the right to a basic education “implies equal access to equally well-resourced educational institutions”.¹³⁹ Section 29 stipulates that everybody has the right to a basic education, which also implies that everyone is entitled to the same

¹³⁵ Robinson “Children’s rights in the South African Constitution” 2003 *Potchefstroom Electronic Law Journal* 13-14.

¹³⁶ Robinson 2003 *Potchefstroom Electronic Law Journal* 12.

¹³⁷ Wilson “Taming the Constitution: Rights and reform in the South African education system” 2004 *SAJHR* 436.

¹³⁸ *Ibid.*

¹³⁹ Wilson 2004 *SAJHR* 437.

benefits and advantages. The state must however ensure that these benefits are equally distributed amongst all citizens.¹⁴⁰

The Constitution as well as other important Acts such as the National Education Policy Act¹⁴¹ and the South African Schools Act¹⁴² will be discussed in detail later.

11 CONCLUSION

The history of race relations and education in South Africa demonstrate that racial separation and differential treatment based on racial differences had a centuries' long and extended history in the country.¹⁴³

The education system of South Africa developed and transformed over the years, as society did. Education was seen as the broader procedure of social change which occurred continuously. The schooling system was however crippled with segregation and inequality, and it is clear that South African schools did not only separate on lines of colour, but also on social class lines.¹⁴⁴ The separations based on colour were one of the main reasons why "education for all" was promoted and encouraged. One of the most important advantages of equal education is that it allows a society to incubate the youth as well as citizens. There is a responsibility on the nation; more specific on the government, to educate its youth with knowledge and skills, which can only be done through equal and quality education. With the necessary education, our youth will be integrated into the community, church, industry and the global community, but all of this depends on the quality of education.

¹⁴⁰

Ibid.

¹⁴¹

Act 27 of 1996.

¹⁴²

Act 84 of 1996.

¹⁴³

Tihanyi (2006) 55.

¹⁴⁴

Christie (1991) 59.

It can thus be argued that the future of South Africa depends on the nature and quality of its education system.¹⁴⁵ Our present system still has some imperfections and shortcomings and basic qualitative standards are not met yet. The South African education system is challenged in many ways – ways such as skills shortages, teacher-people ratios and the building of a rainbow nation with many different cultures and values.

A successful South African education system “must affirm people’s humanity; on that foundation alone can skills and knowledge and wisdom be most meaningfully acquired”.¹⁴⁶

However, when developing an education system, one should remember the following:¹⁴⁷

“Education can equip people for life” and “education can affirm life.”

¹⁴⁵ Cosser (ed) *Education for life: The challenge of schooling for all* (1991) 8.

¹⁴⁶ Cosser (ed) (1991) 9.

¹⁴⁷ *Ibid.*

CHAPTER 4

Definition(s) of basic education

“Basic education is more than an end in itself. It is the foundation for lifelong learning and human development on which countries may build, systematically, further levels and types of education and training.”¹

1 INTRODUCTION

The term “basic education” is controversial and for purposes of this study, it is important to attempt to clarify the meaning of “basic education”.

The South African Schools Act² stipulates that schooling is compulsory for children aged seven to fifteen years or attendance in grades one to nine, whichever comes first. Section 3(1) of the South African Schools Act stipulates as follows:

“Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.”

However, the full duration of a child’s “school life” is 13 years or grades: from grade 0, also known as grade R or “reception year”, through to grade 12, also known as “matric – the year of matriculation”.³

¹ See, in general <http://www.unesco.org/education/framework.pdf>, last visited 2012-04-24.

² Act 84 of 1996.

³ See, in general <http://www.education.gov.za/EducationinSA/tabid/327/Default.aspx>, last visited 2012-04-24.

The different phases of basic education in South Africa are as follows:⁴

- Foundation phase incorporates grades R to 3.
- Intermediate phase incorporates grades 4 to 6.
- Senior phase incorporates grades 7 to 9.
- Further education and training (FET) incorporates grades 10 to 12.

2 DEFINITION OF BASIC EDUCATION

There is no clarity about what exactly is meant by the term “basic education”. The term “basic education” has not been clearly defined within any of the relevant Acts or policy documents (such as the South African Schools Act, The National Educational Policy Act,⁵ the relevant white papers and the Constitution of the Republic of South Africa, 1996). The courts have also not yet interpreted the term “basic education”.⁶

Due to the uncertainty regarding the exact meaning of “basic education”, it is obvious that there will be many different opinions. Oosthuizen and Rossouw are of the following opinion:⁷

“Die eerste probleem waarmee 'n mens te kampe het, is die feit dat die betekenisinhoud wat daaraan gekoppel word, wissel van land tot land en van kultuur tot kultuur. 'n Volgende probleem wat in gedagte gehou moet word, is die feit dat die betekenisinhoud nie staties is nie aangesien dit mettertyd verander.”

⁴ *Ibid.*

⁵ Act 27 of 1996.

⁶ Carter, Irvine & Westaway “Providing basic education” 2010 *FHISER* 8; see also Woolman & Fleisch *The Constitution in the classroom* (2009) 127.

⁷ Oosthuizen & Rossouw “Die reg op basiese onderwys in Suid-Afrika” 2001 *Koers* 660-661.

However, two possible constructions with regard to the term “basic education” appear to be plausible:⁸

- Firstly, the term “basic education” could refer to a specific period of schooling: primary school.
- Secondly, the term “basic education” could also refer to a standard of education: the quality or the adequacy of education.

Section 29 of the Constitution stipulates clearly who is entitled to “basic education” and who should benefit from “basic education”, but the exact meaning of “basic education” still remains uncertain.

According to the White Paper on Education and Training,⁹ the meaning of “basic education” must be “settled by policy in such a way that the intention of the Constitution is affirmed”. The White Paper on Education and Training further states:¹⁰

“Appropriately designed education programmes to the level of the proposed General Education Certificate (GEC) (one year reception class plus 9 years of schooling), whether offered in school to children, or through other forms of delivery to young people and adults, would adequately define basic education for purposes of the constitutional requirement.”

Nonetheless, the clearest definition of “basic education” in my view is the UNESCO definition of “basic education”. Since South Africa is a signatory to the Education For All (EFA) initiative of UNESCO, the assumption can be made that UNESCO’s definition of “basic education” is the appropriate definition of “basic education” for South African

⁸ Woolman & Fleisch (2009) 127.

⁹ General Notice No 196 of 1995.

¹⁰ White Paper on Education and Training para 14.

purposes. Moreover, the White Paper on Education and Training also cites the definition of UNESCO:¹¹

“Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.”

Thus, the simplified definition of basic education is as follows:¹²

“It refers to the competencies, knowledge, attitudes, values and motivations that are deemed necessary in order for people to become fully literate and to have developed the educational foundations for a lifelong learning journey.”

One can therefore say that basic education is the foundation of lifelong learning.

3 DOES BASIC EDUCATION INCLUDE EARLY CHILDHOOD DEVELOPMENT?

In order to determine whether early childhood development forms part of basic education, it is necessary to compare early childhood development and basic education:

¹¹ Woolman & Fleisch (2009) 127; Carter, Irvine & Westaway 2010 *FHISER* 8.

¹² See, <http://cyberschoolbus.un.org/briefing/education/education.pdf>, last visited 2011-11-29.

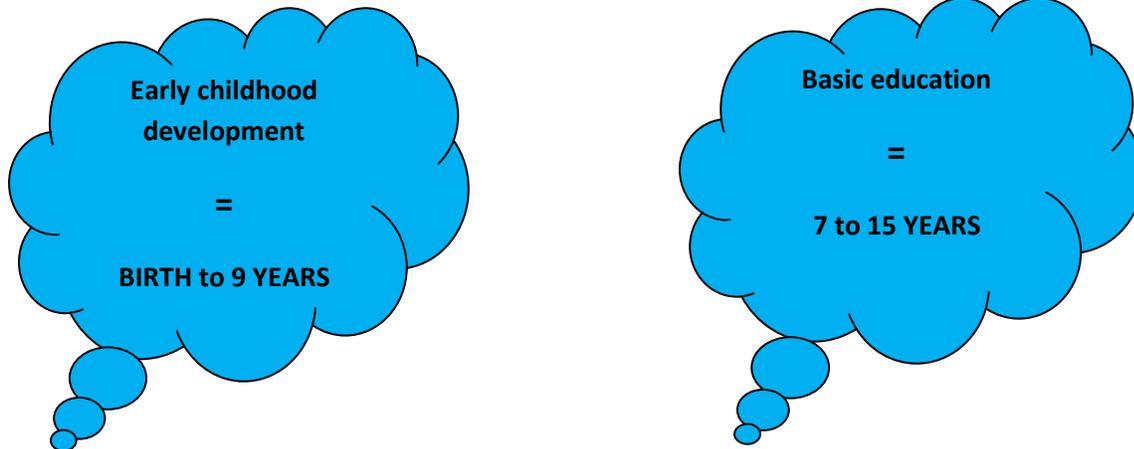
Early childhood development	Basic education
<p>Early childhood development is defined as a “comprehensive approach to policies and programmes for children from birth to nine years of age with the active participation of their parents and caregivers. Its purpose is to protect the child’s rights to develop his or her full cognitive, emotional social and physical potential”.¹³</p> <p>In South Africa, early childhood development is an “umbrella term” used for “the processes by which children from birth to nine years grow and thrive, physically, mentally, emotionally, morally and socially”.¹⁴</p>	<p>In South Africa, the scope and meaning of “basic education” is defined through policy, but unfortunately policy is inconsistent with regard to the definition of “basic education”. The Department of Education defines basic education as “spanning grades 1 – 9 and as compulsory from age seven to 15 (whichever is reached first)”.¹⁵</p>

Basic education ranges from the age of 7 years until the age of 15 years. It is important to note that early childhood development overlaps with basic education from the age of 7 to 9 years:

¹³ Education White Paper 5 on Early Childhood Education: *Meeting the challenges of early childhood development in South Africa* (2001) 5.

¹⁴ New & Cochran (eds) *Early childhood education: An international Encyclopaedia* 4th ed (2007) 1194.

¹⁵ Chisholm “Monitoring children’s rights to education” in Dawes, Bray & Van der Merwe *Monitoring child well-being: A South African rights-based approach* (2007) 148.



The Draft Norms and Standards for Grade R Funding argues that “until Grade R is available and accessible to all children (aged six years), enrolment cannot be compulsory for all, but for those who are enrolled it is compulsory. The implication is that once Grade R is rolled out, basic education will include Grade R but Early Childhood Development (ECD) below Grade R is not included”.¹⁶

It is therefore apparent from the aforementioned that early childhood development is not entirely part of basic education, but only partially. It is clearly stipulated that early childhood development **below** Grade R is **not** part of basic education.¹⁷

Despite the fact that early childhood development is not entirely part of basic education, early childhood development is still of cardinal importance since early childhood development is in my view the foundation for basic education.

In conclusion: “basic education is more than just learning how to read, write and calculate. It encompasses the broadest possible sense of learning – formal, non-formal and informal – at any stage of life”.¹⁸

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ See, <http://cyberschoolbus.un.org/briefing/education/education.pdf>, last visited 2012-04-24.

CHAPTER 5

The protection of a child's right to a basic education in the Constitution of the Republic of South Africa, 1996 and international instruments

"The challenge that we face at the dawning of a democratic society is to create an education and training system that will ensure that the human resources and potential in our society are developed to the full. It is the challenge posed by the vision of the Freedom Charter: 'to open the doors of learning and culture to all.'"¹

1 INTRODUCTION

Section 29 of the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (hereinafter "the Constitution") guarantees the right to education. Government is required to "protect, respect, promote and fulfil" the right to education. This can only be done if laws and regulations are passed by government, policies are developed and programmes are established. It can therefore be said that the right to education is justifiable and government can be confronted and challenged in court if it does not succeed with its constitutional obligations regarding education.²

Education is of cardinal importance, especially as far as human rights are concerned, because it is a way to set people free from their lack of knowledge, false notions and fear. Education furnishes people with dignity, self-respect and self-assurance and is seen as a basic human right on which the realisation and fulfilment of many other rights

¹ African National Congress *A policy framework for education and training* (1995) 3; see also Bray *Law, education and the learner* in Davel (ed) *Introduction to child law in South Africa* (2000) 268.

² Pendlebury, Lake & Smith (eds) "Meaningful access to basic education" 2008/2009 *South African Child Gauge* 19.

depend. International law as well as many national constitutions makes provision for the right to education. One can thus say that meaningful and significant human existence is dependent on education.³

As education cannot take place in a vacuum, it is also directly connected to and associated with culture. All education involves “a cultural dimension and the imparting of a system of values”.⁴ Fundamentally, education carries out both a socialisation and a qualification function: “[I]t provides access to knowledge, skills and the acquisition of a qualification in preparation for employment”.⁵

The South African government is principally responsible to provide for education in South Africa. However, national regional and international borders go beyond to provide universal rules and standards with regard to education. These rules and standards are vital for the progression and development of education and training worldwide.

This chapter consists of an in-depth discussion of the South African Constitution and the right to a basic education⁶ in South Africa. The most important areas in the South African education system are discussed under the following headings: the right to basic education in South Africa, the relationship between section 29 of the Constitution and other fundamental rights, the constitutional obligations of the state regarding a child’s right to basic education, and rights to, in and through education as described in the Constitution. The protection of the right to education in international law is also discussed below.

³ Devenish *The South African Constitution* (2005) 153.

⁴ Devenish *A Commentary on the South African Bill of Rights* (1999) 395.

⁵ Bray in Davel (ed) *Introduction to child law in South Africa* (2000) 276.

⁶ It is important to note that most of the resources used in this thesis refer to “a right to education”. However, the Constitution refers to “a right to a basic education”. For purposes of this study (and to be consistent and in line with the Constitution), the author of this thesis will refer to “a right to a basic education”.

Emphasis will be placed on different international instruments with regard to the right to (basic) education.⁷

This study with regard to the South African Constitution and international law is necessary and important, because education is not only of cardinal importance on national level, but also on international level. Children acquire knowledge, skills and attitudes and this can only be provided to them if we as adults and government have a thorough knowledge of education and the provisions on education in various international instruments. The importance of this chapter for the remainder of this study also lies in the fact that one cannot determine whether the current protection of children's right to education, and more specifically children's right to a basic education in South Africa are in accordance with South Africa's constitutional and international obligations, without first looking what those constitutional and international obligations are. Strong emphasis will therefore be placed on constitutional and international obligations which South Africa must meet in order to give effect to the right to education, and more specifically to the right to a basic education.

⁷ It is important for purposes of this study to differentiate between the "right to education" and the "right to a basic education". The right to education is "broader" than the right to a basic education since the right to a basic education refers only to a person's basic learning needs (such as literacy, expression, numeracy and problem solving) and the basic learning content (such as knowledge, skills, values and attitudes). The right to education is a universal entitlement to education and also includes the responsibility to provide basic education for all individuals. In other words, the right to education is not restricted to basic education: it is something more – it is a tool that improves the quality of life. (See, in general, Unesco "World Declaration on Education for All: Meeting basic learning needs" <http://www.unesco.org/education/wef/en-conf/Jomtien%20Declaration%20eng.shtm>, last visited 2012-06-05.

2 THE RIGHT TO A BASIC EDUCATION IN SOUTH AFRICA

2.1 Introduction

The right to a basic education is enshrined in section 29(1)(a) of the Constitution – for both adults and children. Section 29 consists of a bunch of education rights and is also known as a “hybrid” right because section 29(1) typifies the socio-economic nature of the right while sections 29(2) and (3) are categorised as civil and political rights. There is an obligation on the South African government in terms of section 29(1) to make education available and accessible to everyone; the Constitution explicitly guarantees the right to a basic education.⁸ However, it is important to note that section 29 does not specify the content and quality of education the South African government must provide,⁹ nor has the South African Constitutional Court considered the scope and content of the right to a basic education.¹⁰ One should also note that section 29 does not refer to all universally accepted education rights.¹¹ Free and compulsory education does not form part of the right to a basic education, although provision is made for compulsory education in section 3(1) of the South African Schools Act. There is also no explicit right of equal access to educational institutions, but it can be assumed that this right is absolutely and completely enclosed and protected by section 9 of the Constitution, which specifically deals with equality.¹²

⁸ Arendse “The obligation to provide free basic education in South Africa: An international law perspective” 2011 *PER* 97.

⁹ Taiwo *The Implementation of the right to education in South Africa and Nigeria* (2011) 116.

¹⁰ Arendse 2011 *PER* 98.

¹¹ Universally accepted rights are the following: the right to education, equal access to educational facilities, freedom of choice, education in the language of one’s choice, the right to establish private educational institutions, availability, accessibility, acceptability and adaptability. See also Malherbe *Education rights* in Boezaart (ed) *Child law in South Africa* (2009) 400-402.

¹² Malherbe “A fresh start I: Education rights in South Africa” 2000 Vol 4 *European Journal for Education Law and Policy* 51. With regard to the right to education for the “girl child”, see Mwambene *Implementing the girl child’s right to education in selected countries in Africa* in Sloth-Nielsen (ed) *Children’s rights in Africa: A legal perspective* (2008) 219-235.

An important question pertaining to section 29 is: “[D]oes section 29 promise merely a place to go to school, or does it provide for an ‘adequate’ education?”¹³

It is submitted that the right to a basic education compels the South African government to provide adequate education in order for the right to be enjoyed and fulfilled.¹⁴ The right to a basic education can therefore be described as “an unqualified right requiring the priority attention of the State, also in respect of budgetary allocations. This requires the State to provide sufficient schools, educators and support, and other incidental services in order to ensure reasonable access to basic education for everybody. The right refers to education up to a level of functional literacy, in other words, reading, writing, arithmetic, and an elementary knowledge or awareness of economics, culture and politics”.¹⁵ With regard to the meaning of “adequate” education, Malherbe submits as follows:¹⁶

“In the South African context ‘adequate’ education could refer to a standard of education that empowers people to rise above the poverty cycle and compete effectively in the labour market, enables people to understand and enjoy their newly acquired democratic values, rights and freedoms, encourages people to participate in and protect the fledgling democratic system, and enhances their dignity and feeling of self-worth as human beings.”

The right to a basic education is also a second generation right and gives “manifest expression to essentially first generation rights”. The enforcement of second generation rights is, however, challenging and specific questions must be asked. Firstly, what

¹³ Taiwo (2011) 116.

¹⁴ See, in general *Ex parte Gauteng Provincial Legislature: In Re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995* 1996 (3) SA 165 (CC) para 8-9.

¹⁵ Taiwo (2011) 117.

¹⁶ Malherbe “The constitutional dimension of the best interests of the child as applied in education” 2008 *TSAR* 274-275.

precisely is meant with basic education, and, secondly, can the state be held liable by a court of law to provide basic education to individuals?¹⁷

2.2 What precisely is meant with basic education?

As already mentioned in chapter 4, it is difficult to determine the exact or precise meaning of basic education. However, before the concept of basic education can be explained, it is necessary to define “education”. Education can be defined as follows:¹⁸

“Education in its broadest, general sense is the means through which the aims and habits of a group of people lives on from one generation to the next. Generally it occurs through any experience that has a formative effect on the way one thinks, feels, or acts. In its narrow, technical sense, education is the formal process by which society deliberately transmits its accumulated knowledge, skills, customs and values from one generation to another.”

The concept of “basic education” can be explained as follows:

“Basic education is that whole range of educational activities in different settings that aim to meet basic learning needs. It comprises both formal schooling (primary and sometimes lower secondary) and a variety of non-formal, informal, public and private educational activities offered to meet the defined basic learning needs of people of all ages.”¹⁹

It can therefore be submitted that the difference between basic education and education is situated in the fact that basic education focuses on the “stage” when children first

¹⁷ Devenish (1999) 398.

¹⁸ Dewey *Democracy and education: An introduction to the philosophy of education* (1944) 1-4.

¹⁹ HSRC & EPC *Emerging voices: A report on education in South African rural communities* (2005) 141.

start learning (their basic learning needs), and education focuses on the overall transmission of aims, values and habits from one generation to another.

The concept of basic education can also be defined as follows:

“[D]aardie tipe opvoedende onderwys wat ‘n leerder ontvang en wat hom [en haar] toerus met die basiese vaardighede van funksionele geletterdheid (wat die basiese vaardighede van lees, skryf en rekenkunde insluit) sowel as ‘n basiese kennis en bewustheid van ekonomie, kultuur en politiek”.²⁰

With regard to the interpretation of the concept of basic education, the Department of Education noted the following in its White Paper on Education and Training:²¹

“Basic education is a flexible concept which must be defined so as to meet the ‘learning needs appropriate to the age and experience of the learner, whether child, youth or adult ...’, and should also provide access to nationally recognised qualifications.”

The term “basic education” in subsection (1) must therefore be construed in the light of what the state can afford. In other words, basic education should fulfil the “learning needs appropriate to the age and experience of the learner, whether child, youth or adult”.²² As already mentioned, section 29(1)(a) does not stipulate that all education is free and compulsory. It does, however, make provision for the educational rights of impoverished children and does not “preclude a sliding scale of fees” in relation to parents’ children who are enrolled at public schools.²³

There are several academic writers and scholars who argue that the South African definition of basic education is too narrow. The reason for this argument is simple:

²⁰ Oosthuizen & Rossouw “Die reg op basiese onderwys in Suid-Afrika” 2001 *Koers* 662.

²¹ The White Paper on Education and Training was published on 15 March 1995 in terms of its obligations in terms of s 32(a) of the Interim Constitution of South Africa.

²² Bray in Davel (ed) (2000) 279.

²³ Devenish (1999) 400.

Learners who barely completed grade 9 are not properly equipped with the necessary knowledge, skills and experience to “tackle” the outside world. The consequence of this is that they will be unable to develop to their full potential, to live and work with dignity, pride and self-respect, and to improve the quality and virtues of their lives.²⁴ It is submitted that basic education should include the whole schooling career of a learner. In other words, basic education should not be defined in terms of age or the completion of a specific level of schooling; it should rather include primary as well as secondary education.²⁵

Thus, basic education “should evolve with increasing educational standards and capacities in South Africa, in order to meet the changing requirements of a dynamic society in the process of political and social transformation”. Basic education must also provide learners with the foundation for being successful and flourishing in society, including the minimal necessary learning equipment and tools of literacy and numeracy.²⁶

2.3 Can the state be held liable by a court of law to provide basic education to individuals?

Section 7(2) of the Constitution imposes an obligation on the state to “respect, promote and fulfil the rights in the Bill of Rights”. The following case makes it clear that there are positive- and negative obligations on the state to give effect to the right to a basic education: In *Ex parte Gauteng Provincial Legislature: In re Dispute Concerning the*

²⁴ Khoza (ed) *Socio-economic rights in South Africa* 2nd ed (2007) 420.

²⁵ Taiwo (2011) 122.

²⁶ Devenish (1999) 398.

Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995,²⁷
the court stated as follows:²⁸

“[The right to [a] basic education] creates a positive right that basic education be provided for every person and not merely a negative right that such person should not be obstructed in pursuing his or her basic education.”²⁹

It is therefore submitted that the right to a basic education imposes both positive and negative obligations on the state to provide for education. With regard to the positive obligation, government is required to take effective steps in order to guarantee that every child has access to educational facilities and that every child benefits from the right to education. The negative obligation, on the other hand, poses a duty on the state and its agencies not to impede or hinder children’s access to education.³⁰

The state also has the obligation in terms of article 13(2) of the ICESCR to make education available, accessible, acceptable and adaptable. It is also known as the “4-A scheme”.

The “4-A’s” are interrelated and essential features of education and contribute to the successful provision of the right to a basic education:³¹

²⁷ 1996 (3) SA 165 (CC).

²⁸ Although this case was decided under the Interim Constitution (Constitution of the Republic of South Africa 200 of 1993), it is still of great value because it emphasises the state’s duty to promote and to give effect to the right to a basic education.

²⁹ *Ex parte Gauteng Provincial Legislature: In re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995* 1996 (3) SA 165 (CC) at para 9.

³⁰ Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 19.

³¹ Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 20; see also Coomans “Identifying the key elements of the right to education: A focus on its core content” <http://www.crin.org/docs/Coomans-CoreContent-Right%20to%20EducationCRC.pdf>, last visited 2012-05-07.

Availability	Accessibility	Acceptability	Adaptability
<p>The state has the duty to provide education and to make it available to all children. In other words, the state has the duty to make educational institutions and programmes available in sufficient quantity in order to meet the needs of children. The availability obligation can be fulfilled through a public educational system and to allow non-state actors to establish non-public schools. The government will then have a combination of both public schools and non-public (private) schools.</p>	<p>The state has the duty to make educational institutions and programmes accessible to everyone, without discrimination as stipulated in section 9 of the Constitution. In order to meet the accessibility criteria, schools must be physically and economically accessible and affordable.</p>	<p>The state has the duty to ensure that the form and substance of education, as well as the curricula and teaching methods, are acceptable, relevant, culturally appropriate and of high quality to children. In order to meet the acceptability obligation, the state must ensure that the education provided is stable, reliable and consistent with the rights of children set out in the human rights instruments such as the ICESCR and the CRC.</p>	<p>The education system has to be flexible and expandable in order to adapt to the needs of changing societies and communities, and to respond to the needs and requirements of learners and students within their social and cultural circumstances. Thus, there should be the necessity for curriculum flexibility, liveness and adaptation to meet the needs of children.</p>

It is clear from the above that the state has several obligations in order to give effect to the right to a basic education, and the state can in my opinion be held liable by a court of law to provide basic education. This opinion can be substantiated by the *Juma Masjid Primary School* case.³²

“It is important ... to understand the nature of the right to ‘a basic education’ under section 29(1)(a). Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be ‘progressively realised’ within ‘available resources’ subject to ‘reasonable legislative measures’. The right to a basic education may be limited only in terms of a law of general application which is ‘reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.’”

3 THE RELATIONSHIP BETWEEN SECTION 29 OF THE CONSTITUTION AND OTHER FUNDAMENTAL RIGHTS

Rights are mutually dependent and when the right to education is dealt with, it is important to interpret it in the context of the Bill of Rights. The ethical standards for a democratic system of education are set through the right to equality (s 9) and the right to human dignity (s 10). It is stipulated that : “[E]very child – regardless of race, gender, culture, language, religion, ability or disability – is equally entitled to learn, under conditions that respect, protect and promote the inherent human dignity of each child”.³³

There is a compendium of socio-economic rights, which includes rights of access to adequate housing, health-care services, sufficient food and water, and social security, and the right to education is part of this compendium of rights. It is important to bear in mind that a child’s right to a basic education is distinguishable from other socio-

³² *Governing Body of the Juma Masjid Primary School v Essay* 2011 (7) BCLR 651 (CC) at para 37. See also Arendse 2011 *PER* 116.

³³ Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 20.

economic rights in the Constitution in the sense that it is not dependent on the progressive realisation thereof. In other words, a child's right to a basic education is not subject to the same internal constraints and restrictions such as "reasonable legislative and other measures", or "progressive realisation within the state's available resources", which limit other socio-economic rights. There is thus a duty on the state to ensure the full and immediate enjoyment of the right to a basic education.³⁴

The way in which the courts adjudicate the right to a basic education, differs from the way in which other socio-economic rights are adjudicated. An explanation of how the adjudication of the right to a basic education differs from the adjudication of the right to housing can be summarised as follows:

Socio-economic right: Housing.

Constitutional provision: Section 26(1): "Everyone has the right to have access to adequate housing."

Case law: *Government of the Republic of South Africa v Grootboom*.³⁵ In this case, the Oostenberg municipality evicted a group of squatters who had moved onto privately owned land that had been allocated for low-cost housing. Mrs Grootboom challenged section 26(1) of the Constitution. The government failed to provide for the needs of the most susceptible members in society. The court held that the state has the duty to take the necessary steps to realise the right to have access to adequate housing within its available resources.

Obligation(s) on the state: The state has the duty to take reasonable legislative and other measures, within its available resources to achieve the progressive realisation of the right to have access to adequate housing. In other words, the state is obliged to take progressive steps to realise this right over a period of time. This means that the

³⁴ *Ibid*; see also, in general <http://www.erp.org.za/htm/frame1.htm>, last visited 2012-04-26.

³⁵ 2001 (1) SA 46 (CC).

state needs to consider its available resources and it also does not mean that any person is entitled to insist or to demand a house immediately.³⁶

Socio-economic right: Education.

Constitutional provision: Section 29(1)(a): “Everyone has the right to a basic education, including adult basic education.”

Case law: *Governing Body of the Juma Masjid Primary School v Essay*.³⁷ The High Court authorised the eviction of a public school conducted on private property. However, the eviction order had a major impact on every learner’s right to a basic education in terms of section 29(1) of the Constitution and on the best interests in terms of section 28 of the Constitution. This case ended up in the Constitutional Court and the court confirmed that the right to a basic education is not subject to progressive realisation. The court held that the right to a basic education is immediately realisable and “there is no internal limitation requiring that the right be ‘progressively realised’ within ‘available resources’ subject to ‘reasonable legislative measures’”.³⁸

Obligation(s) on the state: The government is not required to realise the right to a basic education over a period of time – the right to a basic education is immediately realisable and does not carry the same limitations as other socio-economic rights contained in the Constitution (such as the right of access to adequate housing).

It is clear from the above that the right to a basic education is a cardinaly important socio-economic right which aims to promote, improve and develop a child’s personality, talents and mental and physical abilities to their fullest extent.

The importance of education, especially basic education, can be emphasised again – it is nearly impossible to “survive” without education in an educated world. Education makes human beings powerful to claim and realise their other rights, and the right to

³⁶ See, in general, Liebenberg *Socio-economic rights: Adjudication under a transformative constitution* (2010) 233-242.

³⁷ 2011 (7) BCLR 651 (CC).

³⁸ *Governing Body of the Juma Masjid Primary School v Essay* 2011 (7) BCLR 651 (CC) at para 37; see also Arendse 2011 *PER* 116.

basic education is seen as a “central facilitative right in South Africa’s constitutional democracy”. One can thus argue that through basic education, people are better able to recognise the value of their human rights and they are in a better position to exercise the full range of these rights.³⁹

4 CONSTITUTIONAL OBLIGATIONS OF THE STATE REGARDING A CHILD’S RIGHT TO A BASIC EDUCATION

In terms of section 29 of the Constitution, the state is obliged to provide education. Schools, which are also organs of state, are obliged to realise the right of the learner to receive basic education. When there is non-cooperation, the learner may (through the parent or guardian) approach a court in order to enforce his or her right to education. The specific school will be obliged to admit the learner to school and to pay damages or compensation, whatever the case may be. One should remember that this right may also be limited in terms of section 36 of the Constitution, especially if the fact that the state has only limited resources available for the providing of facilities is taken into account.⁴⁰

Be that as it may, the state has the following obligations in terms of section 29:⁴¹

- to provide for basic education in adequate provisions;
- to ensure effective access to public educational institutions;

³⁹ Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 21.

⁴⁰ Bray in Davel (ed) (2000) 280.

⁴¹ De Groof in De Groof & Bray *Education under the new Constitution in South Africa* (1996) 63.

- to ensure, where reasonably possible, that a course of education is conducted in the official language or languages of their choice in public educational institutions;
- to watch over the introduction of standards and the checks on the observance of equivalent standards in the so-called “independent” educational institutions and the registration of these institutions.

In terms of section 7(2) of the Constitution, the state is also required to “respect, protect, promote and fulfil the rights in the Bill of Rights”. The following four obligations rest on the state: the obligation to respect, protect, promote and fulfil. Every obligation imposes a related set of duties on the State:⁴²

- Respect: the state is required to avoid measures that prevent children’s enjoyment of the right to basic education;
- Protect: the state is required to prevent other parties such as parents and caregivers from interfering with and hindering children’s enjoyment of the right to basic education;
- Promote: the state has the duty to encourage and promote educational participation and to make citizens aware of their educational rights; and
- Fulfil: the state must take positive measures that enable all children to enjoy the right to basic education.

⁴² Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 22.

It is thus clear from the above that the South African government intends to establish an education system that is inclusive, efficient and attentive to the quality of learning conditions and outcomes.⁴³

5 RIGHTS TO, IN AND THROUGH EDUCATION AS DESCRIBED IN THE CONSTITUTION

The following table will illustrate the rights to education, rights in education and rights through education protected in the Constitution:⁴⁴

Rights to education	Rights in education	Rights through education
<ul style="list-style-type: none"> • Everyone has the right to a basic education (s 29(1)(a)). • Everyone has the right to further education (s 29(1)(b)) • Everyone has the right to learn in their official language of choice (s 29(2)) • Children have the right to be protected from work 	<ul style="list-style-type: none"> • Everyone has the right to dignity (s 10) • Everyone has the right to equality (s 9) • Everyone has the right to an environment that is not harmful to health (s 24) • Children have the right to protection from abuse and neglect (s 28(1)(d)) 	<p>Basic education facilities: access to a wide range of political, social and economic rights.</p> <p>This includes, amongst others:</p> <ul style="list-style-type: none"> • the rights to equality and dignity (ss 9 & 10); • the right to further education (s 29); • the right to information (s 32); • the right to health care and social security (s 27);

⁴³ *Ibid.*

⁴⁴ Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 21.

<p>that places their education at risk (s 28(1)(f))</p>	<ul style="list-style-type: none"> • Children have the right to basic nutrition (s 28(1)(c)) 	<ul style="list-style-type: none"> • the right to just administrative action (s 33); • the right to freedom and security of the person (s 12); • the right to freedom of religion, belief and opinion (s 15); and • the right to freedom of expression and association (s 16).
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6 THE PROTECTION OF THE RIGHT TO EDUCATION IN INTERNATIONAL LAW

Most international conventions have an education clause which offers comparable definitions of the right to education. There are, however, two core aspects regarding the right to education: the purpose and process of education.⁴⁵

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights will only be briefly discussed. The Declaration of the Rights of the Child and the Children's Charter of South Africa will also be discussed below. However, the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the child will be thoroughly discussed.

⁴⁵ Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 20.

6.1 The Universal Declaration of Human Rights

The first international instrument to give recognition to the right of education was the Universal Declaration of Human Rights.⁴⁶ Article 26 reads as follows:

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Education is thus of cardinal importance for children since it assists them to realise their full potential. Article 26(1) of the Universal Declaration of Human Rights admit that children are the main beneficiaries of education, but the focal point of international law is not only on the rights of the child, but also on the right of parents regarding the control of a child's education.⁴⁷

⁴⁶ Devenish (1999) 397.

⁴⁷ Van Bueren *The international law on the rights of the child* (1995) 232; (see also a 26(3) of the Universal Declaration of Human Rights.

6.2 The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights also contains a right to education.⁴⁸ Article 13 stipulates the following:

- (1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
- (2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

⁴⁸ Devenish (1999) 397.

- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

- (3) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

- (4) No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

The International Covenant on Economic, Social and Cultural Rights places a duty on States Parties to “provide different levels and types of education and sets out the time frame for the provision of free primary education”. This refers to the progressive implementation of aspects regarding the right to education. States Parties are thus obliged to improve the current conditions relating to education to the greatest extent of their available resources, and it is also of the utmost importance to take the best interests of the child into consideration when allocating limited resources.⁴⁹

6.3 The African Charter on Human and Peoples’ Rights

The African Charter on Human and People’s Rights also contains an education clause. Article 17(1) states the following:

⁴⁹ Van Bueren (1995) 233.

- (1) Every individual shall have the right to education.

It is thus apparent from the above that the international conventions have several common elements with regard to the process of education which includes: non-discriminatory access to public educational institutions and programmes; compulsory, free primary education for all; free choice of education; minimum standards and a transparent, effective monitoring system.⁵⁰

The Declaration of the Rights of the Child and the UN Convention on the Rights of the Child will be discussed below.

7 THE DECLARATION OF THE RIGHTS OF THE CHILD

Children are a susceptible group in society who are in a weak position due to their tender age and inexperience. They are unable to “effectively articulate the rights which accrue to them and to successfully enforce them,” and they do not have a “lobby which is committed to promoting” their rights. It is against the background of the aforementioned that the United Nations adopted the Declaration of the Rights of the Child in 1959 and the Convention on the Rights of the Child in 1989.⁵¹ The right to education is stipulated in both the Declaration and Convention and will be discussed below.

Principle 7 of the Declaration of the Rights of the Child states the following:⁵²

“The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his

⁵⁰ Pendlebury, Lake & Smith (eds) 2008/2009 *South African Child Gauge* 20.

⁵¹ Beiter *The protection of the right to education by international law* (2006) 113-114.

⁵² *Ibid.*

individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities, shall endeavour to promote the enjoyment of this right.”

It is thus apparent from the above that a general right to education is conferred and that the realisation of education at elementary level is prioritised and of cardinal importance. Principle 7 emphasises the fact that this education “shall be free and compulsory”. Principle 7 also stipulates that parents have the primary responsibility for the education of their children. When parents carry out this responsibility, “the best interests of the child” must be “the guiding principle” in this regard. Finally, Principle 7 does not refer to the child as the principal bearer of the right to education, but refers to the entitlement of the child to receive education. This differs from the Convention on the Rights of the Child, where the child is seen as the bearer of rights.⁵³

8 THE UN CONVENTION ON THE RIGHTS OF THE CHILD 1989

The UN Convention on the Rights of the Child⁵⁴ is the most highly praised human rights treaty in the world. The universal objectives of the CRC are to emphasise the recognition, care and protection of children. Many countries have ratified and incorporated the CRC into their legal systems, which means that States Parties also agreed to the central notions of the CRC.⁵⁵

⁵³ Beiter (2006) 114.

⁵⁴ Hereinafter “the CRC”.

⁵⁵ Todres, Wojcik & Revaz *The U.N. Convention on the Rights of the Child: An analysis of treaty provisions and implications of U.S. ratification* (2006) 9.

“[T]hat children are to be recognized as individuals with their own voice; that they should be nourished through education and healthcare; that they must receive protection from those that would hurt, exploit, or discriminate against them; and that they must be treated with their best interests at the forefront.”

The CRC can be seen as a pioneering intervention where the needs and desires of children are put into the “kingdom of human rights”. The CRC is definitely a positive development for children, since it makes provision for a legally binding instrument which is relevant to all children.⁵⁶

The CRC can thus be described as the fundamental commanding instrument which presides over children’s rights,⁵⁷ as well as a “powerful yet peaceful agent of social change”.⁵⁸

8.1 CRC Principles

The following principles of the CRC are of cardinal importance:⁵⁹

- a child’s best interests are of cardinal importance and it must be the main consideration in all decisions or actions pertaining to the child (a 3);
- no discrimination must take place against the child (a 2);
- every child has the right to survival and development in all aspects of his or her life (a 6);

⁵⁶ Oudenhoven & Wazir *Newly emerging needs of children: An exploration* (2006) 89.

⁵⁷ Berry “Protecting South Africa’s children: What difference will the new Children’s Bill make?” 2007 *CME* 168.

⁵⁸ Van Bueren in Davel (ed) (2000) 202.

⁵⁹ Todres, Wojcik & Revaz (2006) 9.

- every child has the right to be heard, especially in all matters affecting him or her, and every child has also the right to freedom of expression (a 12 and 13).

The CRC seeks “to guard the child against an obtrusive or unresponsive state, while nurturing his or her development undertaken through the family”.⁶⁰

8.2 Article 28: The right to receive education

Article 28 of the UN Convention on the Rights of the Child, states the following:⁶¹

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measure such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;

⁶⁰ Todres, Wojcik & Revaz (2006) 10

⁶¹ Verheyde *A commentary on the United Nations Convention on the Rights of the Child: Article 28 – the right to education* (2006) xi-xii.

- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
- 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
- 3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

States Parties are obliged to develop and maintain an educational system. States Parties also have the responsibility to take care of such an educational system in order to provide education to all children at primary, secondary and tertiary level, and depending on the level, to make provision for cost-free and compulsory education.⁶²

The concepts of “free primary education” and “compulsory primary education” have the following in common: to ensure that all persons enjoy no less than a fundamental education in their childhood years. In order for children to enjoy equal access to primary education, the state has the duty to provide such education at no cost to all children.⁶³

Article 28(1) and article 4 of the CRC must be read jointly.⁶⁴ Article 4 reads as follows:

“States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such

⁶² Verheyde (2006) 11.

⁶³ Detrick *A Commentary on the United Nations Convention on the Rights of the Child* (1999) 479.

⁶⁴ Beiter (2006) 118.

measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

The right to education in article 28(1) is considered as an economic, social and cultural right. This can be seen as the social aspect of the right to education and States Parties are in terms of article 4 obliged to take positive steps to realise the right to education. The right to education can only be flourishing if States Parties dedicate the maximum amount of available resources to it.⁶⁵

8.3 Available and accessible education

The right to education will only be achieved when education is made “available” and “accessible” at all levels (primary, secondary and tertiary education). Both these terms are of great importance to all levels of education, since “availability” and “accessibility” are interwoven. This means that education, on the one hand, can only be accessible if it is available, and that education, on the other hand, would make no sense if it is made available, but not accessible. Article 28(1) thus obliges all States Parties to fulfil and achieve the right to education by making it “available” and “accessible”.⁶⁶

8.3.1 The availability aspect

States Parties have the responsibility to take financial and technical actions to guarantee a high quality education system.⁶⁷ The type of facilities needed for a good educational system, depends on the developmental context within each state. The

⁶⁵ *Ibid.*

⁶⁶ Verheyde (2006) 15.

⁶⁷ *Ibid.*

fulfilment of the availability aspect can therefore only be answered on a case-by-case basis.⁶⁸

8.3.2 *The accessibility aspect*

States Parties have the duty to ensure access to education. The accessibility aspect has three related dimensions:⁶⁹

Firstly, children must have access to educational institutions and programmes without unfairness and prejudice on any of the prohibited grounds. These institutions and programmes must also be accessible to the most vulnerable groups in society, and there is a duty on States Parties to provide extra attention to these vulnerable groups. The words “all” and “every child” in article 28(1), with regard to primary and secondary level, confirm general accessibility of educational institutions as well as other forms of education. Every child is unique with his or her own capacity or ability and no distinction should be drawn on the basis of such a child’s capacity or ability.⁷⁰

Secondly, reference is made to the physical accessibility of education: Sufficient and acceptable education has to be provided within a safe and reasonable distance.⁷¹ A child should be able to receive education at some practical geographic location, or the child should receive education through modern technology, such as open distance learning programmes. Children in rural areas may struggle to have access to education. This places another obligation on States Parties: Special attention must be given to these children and special measures are required, such as the facilitation of transport and the building of new, additional schools in these rural areas.⁷²

⁶⁸ Verheyde (2006) 16.

⁶⁹ Verheyde (2006) 17.

⁷⁰ *Ibid.*

⁷¹ Verheyde (2006) 18.

⁷² Verheyde (2006) 18-19.

Thirdly, reference is also made to economic accessibility – education must be affordable (inexpensive) to all. More positive obligations are imposed on States Parties: Scholarships and study assistance should be introduced and access to education must be without charge. The obligations on States Parties will vary, however, depending on the level of instruction. Nevertheless, article 28(1) demand that primary education should be free of charge for all children.⁷³

8.4 Free education

There is an obligation on States Parties to provide education. However, a question to be asked is whether States Parties are obliged to provide free education. The answer to this question is that the level of education will determine whether education is free or not.⁷⁴ The CRC requires all States Parties to provide free education at primary level. Therefore, States Parties must take all possible steps to provide primary education at no cost. Free education must be provided for all children – rich or poor.⁷⁵

Article 26(1) of the Universal Declaration of Human Rights states that education should be free of charge, “at least in the elementary and fundamental stages”. Article 13 of the International Covenant on Economic, Social and Cultural Rights stipulates as follows: “[W]ith a view to achieving the full realisation of the right to education, States Parties should make primary education compulsory and available free to all”.⁷⁶ Article 28 of the CRC restates this standard.

It is thus apparent that all States Parties which are party either to the ICESCR or to the CRC are obliged to make free primary education available to all its children.⁷⁷ States

⁷³ Verheyde (2006) 19.

⁷⁴ Van Bueren (1995) 234.

⁷⁵ Verheyde (2006) 19-20.

⁷⁶ Van Bueren (1995) 235.

⁷⁷ *Ibid.*

Parties to the CRC and ICESCR have the obligation to make primary education compulsory and available free to all. This can be tabulated as follows:

CRC	ICESCR
<p>Article 28(1)(a):</p> <p>“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular make primary education compulsory and available free to all.”</p>	<p>Article 13(2)(a):</p> <p>“The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right, primary education shall be compulsory and available free to all.”</p>

There are several similarities and differences between the CRC and ICESCR. For purposes of providing free and compulsory primary (basic) education, the following similarities and differences can be highlighted:

States Parties of both the CRC and ICESCR are obliged to make primary education compulsory and available free to all. However, the CRC and ICESCR’s views on this right (primary education) differ. The CRC has “a view to achieving this right progressively...” while the ICESCR has “a view to achieving the full realization of this right”. In other words, the obligation on States Parties to provide free education under article 13(2)(a) of the CESCO is stronger than the obligation under article 28(1)(a) of the CRC. This obligation is only carried out in a progressive manner by States Parties to the CRC, and not “immediately” as the CESCO requires. There is also no obligation on States Parties to the CRC to “draw up a national action plan for progressively implementing the right to free primary education”.

8.5 Compulsory education

Both adults and children have the right to education, but the principle of compulsory education is only applicable to children.⁷⁸ States Parties are obliged to make primary education compulsory. By making education at primary level compulsory, the best interests of the child are served. This means that education cannot be refused below a particular level. It guarantees that the child's right to receive education shall not be hindered by for example parental neglect, abuse or ignorance, cultural resistance or child labour. Compulsory education can also not be seen as a compulsion by the state or the family to follow a certain type of education. Compulsory education is seen as the protection of a child's rights.⁷⁹

It is thus clear that the principles of free education and compulsory education are interrelated. By placing a duty and responsibility on governments to provide free education, attendance can be made obligatory by law.⁸⁰

There are, however, some positive obligations on States Parties with regard to education. Firstly, legislative measures should be taken into account in order to impose compulsory education to a specific minimum age, and secondly, alternative strategies should be adopted where the aim of such adoption must be to encourage school attendance.⁸¹

8.6 Content of education

States Parties have a discretion with regard to the content of the curriculum at primary, secondary and tertiary level. It is of cardinal importance for States Parties to ensure

⁷⁸ Van Beuren (1995) 237.

⁷⁹ Verheyde (2006) 23-24.

⁸⁰ Verheyde (2006) 24.

⁸¹ *Ibid.*

that all levels of education are “acceptable” to every child. This means that the essence of education should be relevant, culturally appropriate and of good quality.⁸²

Article 29, which deals with a child’s right to a comprehensive and respectful school curriculum, is therefore important and should also be taken into account. The curriculum should be composed in such a way that the education offered⁸³ –

- (a) enables a child to develop his or her personality, talents, mental and physical abilities without restraint;
- (b) has a high regard for human rights, fundamental freedoms and the maintenance of peace;
- (c) develops admiration for one’s parents, national values of one’s country and those of other nations and cultures;
- (d) enables a child to partake in an open society in the spirit of mutual tolerance and show consideration for other civilizations, cultures, religions, sexes; and
- (e) has a high value for the natural environment.

It can be concluded that primary education should “ensure that the basic learning needs of all children are satisfied. Basic learning needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to

⁸² Verheyde (2006) 26.

⁸³ Verheyde (2006) 26-27.

participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.”⁸⁴

8.7 Conclusion

The CRC embodies new progress and growth in international human rights law. The implications of the CRC are far beyond its status as an act of international law. One can thus say that the CRC is a “result of the process of consciousness-raising and commitment created by the drafting”. Through the CRC, all States Parties have an impetus of concern for children’s rights and their well-being in general. States Parties must take advantage of this impetus to ensure our children a better future.⁸⁵

9 THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Charter on the Rights and Welfare of the Child (hereinafter “the ACRWC”) is seen as a comprehensive Charter which can be viewed from a number of different perspectives. The Charter is separated into two parts. Part I has 31 articles that create and define specific substantive and procedural rights. Freedoms and responsibilities of the child together with correlative duties on the part of parents and State Organs are also a component of Part I. The establishment and organisation of the eleven-member African Committee of Experts on the Rights and Welfare of the Child is a component of Part II. This Committee is well-known for its promotion and protection of the rights of

⁸⁴ Verheyde (2006) 28-29.

⁸⁵ Miljeteig-Olssen “Advocacy of children’s rights – the Convention is more than a legal document” 1990 *Human Rights Quarterly* 155.

children, which is guaranteed by the ACRWC. The CRC was however “a source of inspiration” for the drafting of this Charter.⁸⁶

A variety of contingencies with regard to social security are addressed by the ACRWC.⁸⁷ The following rights of children are protected by this document: the right to survival, protection and development,⁸⁸ education,⁸⁹ health and health services⁹⁰ and the right not to be exploited economically.⁹¹

The right to education will be discussed and emphasised for purposes of this study.

Article 11 of the ACRWC protects the right to education. This article stipulates the following:

1. Every child shall have the right to education.
2. The education of the child shall be directed to:
 - (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;

⁸⁶ Davel “The African Charter on the Rights and Welfare of the Child, family law and children's rights” 2002 *De Jure* 281.

⁸⁷ Brand & Heyns (eds) *Socio-economic rights in South Africa* (2005) 232.

⁸⁸ A 5.

⁸⁹ A 11.

⁹⁰ A 14.

⁹¹ A 15. See also Brand & Heyns (eds) (2005) 232.

- (c) the preservation and strengthening of positive African morals, traditional values and cultures;
 - (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
 - (e) the preservation of national independence and territorial integrity;
 - (f) the promotion and achievements of African Unity and Solidarity;
 - (g) the development of respect for the environment and natural resources;
 - (h) the promotion of the child's understanding of primary health care.
3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
- (a) provide free and compulsory basic education;
 - (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
 - (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
 - (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
 - (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children schools, other than those established by public authorities, which conform to such minimum standards as may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child [sic].
5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.
6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.
7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States [sic].

The ACRWC is the African matching part of the CRC. The provisions of article 11 of the ACRWC can be weighed against articles 28 and 29 of the CRC on the right to education.⁹²

Article 11(1) states that every child shall have the right to education. The aims of education are set out in article 11(2). Article 29(1) of the CRC and article 11(2) of the

⁹² Beiter *The protection of the right to education by international law* (2006) 217.

ACRWC can be compared. Like article 29(1) of the CRC, article 11(2) of the ACRWC mentions:⁹³

- (1) the full development and improvement of the child's personality, talents and mental and physical abilities;
- (2) the reinforcement of respect for human rights and fundamental freedoms;
- (3) the training and preparation for the efficient and successful participation in a free society;
- (4) the promotion and encouragement of understanding, tolerance, lenience and friendship among different people and cultures, and
- (5) the development of a high regard of respect for the natural environment.

The CRC on the one hand, refers to education where children develop a high regard of respect for their parents and for their own and other cultures. The ACRWC, on the other hand, considers it to be an aim of education to “preserve and strengthen positive African morals, traditional values and cultures”. Three new, innovative educational aims have been introduced by the ACRWC: “the preservation of national independence and territorial integrity (article 11(2)(e)), the promotion and achievements of African Unity and Solidarity (article 11(2)(f)) and the promotion of the child's understanding of primary health care (article 11(2)(h)).”⁹⁴

The social aspect of the right to education is embodied in article 11(3). States Parties are obliged to take “all appropriate measures” with a view to achieving “the full realisation” of the right to education. Article 11(3)(a) foresees compulsory and free primary education. The concept of progressiveness does not apply to the obligation

⁹³ *Ibid.*

⁹⁴ Beiter (2006) 217-218.

with reference to primary education under the ACRWC. The CRC stipulates that States Parties should “**make**” primary education available whereas the obligation under the ACRWC is to “**provide**” compulsory and free primary education.⁹⁵

The freedom aspect of the right to education is embodied in article 11(4) and (7). States Parties are obliged in terms of article 11(4) to respect and value the choice of parents when they choose to place their children in non-state schools which accede to the minimum standards approved by the state. States Parties must also recognise and respect the right of parents with regard to the religious and moral education of the child. This should be done “in a manner consistent with the evolving capacities of the child”.⁹⁶

There is also an obligation on States Parties, in terms of article 11(7), to respect the freedom of individuals and bodies when educational institutions are established and directed by them. When providing education at such institutions, the aims of education must be observed and the provision of education must comply with the minimum standards which were set down by the states.⁹⁷

Article 11(5) obliges States Parties to administer school discipline in such a way that it is in accordance with the child’s inherent dignity.⁹⁸

Article 11(6) makes provision for girls who become pregnant before finishing their education, to complete their education on the grounds of their individual ability, without disruption. One should remember that pregnancy is not a reasonable ground for any type of discrimination.⁹⁹

⁹⁵ Beiter (2006) 218.

⁹⁶ Beiter (2006) 218-219.

⁹⁷ Beiter (2006) 219.

⁹⁸ *Ibid.*

⁹⁹ Beiter (2006) 219. See also Memzur “The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero-sum game?” 2008 *SA Public Law* 23.

States Parties will still face many challenges with regard to education, but when realising this right, the following should be remembered:

“Education can and should be made to implant human values that should manifest themselves in the endeavours of groups and individuals and in the struggle to improve the quality of life.”¹⁰⁰

Thus, in order to achieve the African dream, States Parties have the duty to “demonstrate the political will to revisit policies and adapt budgets to give context to children’s rights”.¹⁰¹

10 THE CHILDREN’S CHARTER OF SOUTH AFRICA

Not much has been written about the Children’s Charter of South Africa,¹⁰² but it is important to briefly mention this Charter, which can be read together with the South African Constitution.

Article 8 of the Children’s Charter of South Africa stipulates as follows:

1. All children have the right to free and equal, non-racial, non-sexist and compulsory education within one department as education is a right not a privilege.
2. All children have a right to education which is in the interest of the child and to develop their talents through education, both formal and informal.

¹⁰⁰ Spring *The universal right to education: Justification, definition and guidelines* (2000) 5.

¹⁰¹ Davel 2002 *De Jure* 296.

¹⁰² The Children’s Charter of South Africa was adopted in June 1992 at the South African Children’s Summit on the Rights of Children in Cape Town. The Charter was drafted by 200 children from 20 different regions, “marking a turning point in realising a culture of children’s participation in issues that affect them”. See, in general, http://www.unicef.org/southafrica/SAF_publications_soulbuddiez.pdf, last visited 2012-05-08.

3. All teachers should be qualified and should treat children with patience, respect and dignity. All teachers should be evaluated and monitored to ensure that they are protecting the rights of the child.
4. Parents have the duty to become involved in their children's education and development and to participate in their children's education at school and at home.
5. All children have the right to play and to free and adequate sports and recreational facilities so that children can be children.
6. All children have the right to participate in the evaluation and upgrading of curriculum which respects all the traditions, cultures and values of children in South Africa.
7. All children have the right to education on issues such as sexuality, AIDS, human rights, history and background of South Africa and family life.
8. All children have the right to adequate educational facilities and the transportation to such facilities should be provided to children in difficult or violent situations.

It is thus clear from the above that the Children's Charter of South Africa and the Constitution have the same aims and intentions in common: every child should enjoy the right to basic education since it is of inestimable value with regard to the development and upbringing of the child.

11 CONCLUSION

All children worldwide have exactly the same needs and desires. Without proper education, children would be unable to develop in a progressive manner. It is therefore important for children to be at a proper school where they can enjoy the companionship

of friends and benefit from creative thinking tactics that will help them to “make a positive and meaningful contribution to the world in which they live”.¹⁰³ Education is a fundamental human right and plays a vital role nationally and internationally in the elimination of poverty. One can therefore declare that education is of cardinal importance to both society and worldwide economies.¹⁰⁴

The South African Constitution as well as all the international instruments discussed, emphasise that children have rights in and through education, as well as to education, and that the duty is on States Parties to furnish children with education and to assist them with their educational needs. The South African government is therefore obliged to meet its constitutional obligations, since the constitution “is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”.¹⁰⁵ South Africa is also a State Party to all the international instruments discussed and is therefore obliged to give effect to the right to education (also the right to a basic education). There are several obstacles and difficulties (such as insufficient funds, the HIV/AIDS epidemic, unqualified teachers, and inadequate classrooms and buildings) that hamper the right to education, but as already mentioned, the right to education is immediately realisable and the state thus has the obligation to fulfil this right without any constraints.

The importance of education (and basic education) is emphasised throughout this chapter, and it is also necessary to emphasise the importance of the protection of the right to education since the right to education is in an interrelationship with the right to development.¹⁰⁶

¹⁰³ Fourie “The UN Convention on the Rights of the Child and the crisis for children in South Africa: Apartheid and detention” 1990 *Human Rights Quarterly* 113.

¹⁰⁴ www.oecd.org/dataoecd/34/19/38538652.pdf, last visited 2012-05-08.

¹⁰⁵ S 2 of the Constitution of the Republic of South Africa, 1996.

¹⁰⁶ See, in general, http://www.unicef.org/publications/files/A_Human_Rights_Based_Approach_to_Education_for_All.pdf, last visited 2012-05-08.

The protection of the right to education is not restricted to primary or basic education or the first stage of basic education, or to children of a specific age group. The right to education is also not an end in itself, but one of the most important instruments to improve the quality of life. Education is crucial to economic development worldwide and the enjoyment of many other human rights such as political and civil rights. It can therefore be said that education provides a means through which every person can become aware of their rights, duties and responsibilities which is an indispensable tool for achieving the goals of equality and harmony.¹⁰⁷

It can be concluded that without a democratic system of education, governments worldwide will be unable to meet the educational needs of their children.

In summary:

“[T]he right to education is a prerequisite for the defence and enjoyment of all other human rights, and degree to which education is instrumental for enhancing democracy and social and cultural development, and recognizing education, especially basic education, as a public good”.¹⁰⁸

¹⁰⁷ See, in general, http://www.hrea.org/index.php?doc_id=402, last visited 2012-05-08.

¹⁰⁸ See, in general, http://www.unicef.org/publications/files/A_Human_Rights_Based_Approach_to_Education_for_all.pdf, last visited 2012-05-08.

CHAPTER 6

Early childhood development and education

“Learning starts in infancy, long before formal education begins, and continues throughout life.”¹

1 INTRODUCTION

Early childhood development is crucial for a full and prolific life of a child and immeasurable to the growth of a nation.² The discussion of early childhood development as part of this study is important because it is eminent across the world that positive growth, learning and development of all children hinge on the quality and excellence of their early childhood development and education.³ It can therefore be said that the link between early childhood development and education is one of the most valuable links with regard to a child’s education, especially basic education, and vital for assisting children with their changeover to formal/primary schooling.

This chapter addresses the role of proper early childhood development and education with an emphasis on the importance of play during this period. Appropriate early childhood development and education will have a myriad of ripple effects on children’s well-being, as well as on society’s well-being as a whole. Since early childhood development and education affects children’s academic prowess, this will ultimately affect important societal issues such as democracy and equality. A healthy democracy

¹ Heckman “Invest in the very young” 2004 *Encyclopedia on Early Childhood Development* 1. See also <http://www.child-encyclopedia.com/documents/HeckmanANGxp.pdf>, last visited 2012-05-09.

² Anon “Early childhood development: the key to a full and productive life” <http://www.unicef.org/dprk/e.cd.pdf>, last visited 2012-05-09.

³ See, in general, <http://unesdoc.unesco.org/images/0010/001055/105505e.pdf>, last visited 2012-05-09.

and equality will in turn promote community development. Moreover, early childhood education is indispensable and of central importance in achieving appropriate development and well-being of children. The cumulative effect of the South African Constitution (Constitution of the Republic of South Africa, 1996), the Children's Act 38 of 2005 and several international instruments, as well as the interaction between them and their effect on early childhood development will also be examined. It will be concluded that the adoption of a child-to-child approach, combined with an integrated approach, will be invaluable to proper early childhood development and education.

2 SURVIVAL AND DEVELOPMENT OF CHILDREN

“Child survival is inextricably linked to child development. The right to maximum survival and development speaks to a continuum that begins at maximum survival and progresses to an endpoint represented by the optimum development of the child. Children therefore have the right to survive under conditions that enable them to develop to their full potential.”⁴

It is clear from the above that child survival and development are inseparable. A child's right to life can only be realized and fulfilled when measures and procedures are put into place to ensure such a child's survival and optimal development. In order to realize a child's right to life, the state has the responsibility to put measures and procedures into place to protect a child's life and to preclude the “arbitrary deprivation of a child's life”.⁵ Moreover, the state must act positively to “reduce infant mortality and increase life expectancy [and] ... adopting measures to eliminate malnutrition and epidemics”.⁶

⁴ Dutschke & Abrahams “Children's right to maximum survival and development” http://www.ci.org.za/depts/ci/pubs/pdf/health/resource/Rights_in_brief_survival.pdf, last visited 2012-05-09.

⁵ Mahery “The United Nations Convention on the Rights of the Child: Maintaining its value in international and South African child law” in Boezaart (ed) *Child law in South Africa* (2009) 320.

⁶ *Ibid.*

Therefore, the state is obliged to “ensure and guarantee for the child an adequately provided for and fulfilling life”.⁷

There are many international instruments which deal with human rights and/or the rights of children. The two most important human rights treaties concerning the right to survival and development are the UNCRC⁸ and the ACRWC.⁹ South Africa has ratified both the UNCRC and the ACRWC and is bound by the obligations stipulated in these treaties.¹⁰ South Africa also has a Constitution¹¹ that specifically makes provision for the protection of human rights in the Bill of Rights, and section 28 of the Constitution deals exclusively with children. The Children’s Act¹² is also an important piece of legislation with regard to the development of children and will be discussed later in this chapter.

3 INTERNATIONAL INSTRUMENTS AND NATIONAL LEGISLATION

As mentioned earlier, there are many international instruments which deal with human rights and/or the rights of children. These instruments can be categorized into two categories: “Child-Specific Instruments” and “Non-Child-Specific Instruments”. The “Child-Specific Instruments” deal solely with the rights of children, whereas the “Non-Child-Specific Instruments” deal with human rights in general, which include a number of standards and guidelines that are also applicable to children.¹³ National legislation such as the South African Constitution and the Children’s Act make provision for the development of children as well.

⁷ *Ibid.*

⁸ UN Convention on the Rights of the Child (1989).

⁹ African Charter on the Rights and Welfare of the Child (1990).

¹⁰ Dutschke & Abrahams “Children’s rights to maximum survival and development” http://www.ci.org.za/depts/ci/pubs/pdf/health/resource/Rights_in_brief_survival.pdf, last visited 2012-05-09.

¹¹ Constitution of the Republic of South Africa, 1996.

¹² 38 of 2005.

¹³ See, in general, <http://www.unrol.org>, last visited 2012-05-09.

The table below provides a brief summary of the two most important “Child-Specific Instruments” and national legislation with regard to the development of children:

Early Childhood Development			
UNCRC	ACRWC	SA Constitution	Children’s Act
<p>Article 6:</p> <ol style="list-style-type: none"> 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child. 	<p>Article 5:</p> <ol style="list-style-type: none"> 1. Every child has an inherent right to life. This right shall be protected by law. 2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child. 	<p>The South African Constitution does not specifically make provision for a right to survival and development, but it guarantees rights which will ensure the survival and development of children when such rights are realised.¹⁴</p>	<p>Section 92:</p> <p>(1)The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development</p>

¹⁴ Mahery in Boezaart (ed) *Child Law in South Africa* (2009) 320. See also par 3.3 below.

			<p>system, giving due consideration as provided in section 11, to children with disabilities or chronic illnesses.</p> <p>(2)The MEC for social development must–</p> <p>(b)within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed early childhood development system.¹⁵</p>
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¹⁵ Bosman-Sadie & Corrie *A practical approach to the Children's Act* (2010) 106.

3.1 The UN Convention on the Rights of the Child

A child's right to development is fundamental and is seen as one of the most essential principles of the UN Convention on the Rights of the Child.¹⁶ The UNCRC stipulates that all children, irrespective of their age, have the right to survival, development, protection and participation.¹⁷ Article 6 of the UNCRC emphasises the importance of the survival and development of the child. It is, however, important to bear in mind that governments have the responsibility to promote and encourage the optimal development of all children.¹⁸ One should remember that article 6 of the UNCRC contains all aspects of development and that a child's health and psychosocial well-being are in many respects interdependent. The right to survival and development can only be implemented and put into effect when all of the other provisions of the UNCRC are enforced. These provisions include rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, as well as education and play.¹⁹

It can be concluded that children are bearers of all the rights protected in the UNCRC and proper early childhood development is of cardinal importance for the fulfilment and realisation of these rights.

¹⁶ Woodhead "Early childhood development: A question of rights" 2005 *International Journal of Early Childhood* 1.

¹⁷ Child Youth Family & Social Development Human Sciences Research Council "Indicators for early childhood development" <http://www.hsrc.ac.za/Document-1667.phtml>, last visited 2012-05-09.

¹⁸ Woodhead "Early childhood development: a question of rights" 2005 *International Journal of Early Childhood* 3.

¹⁹ See, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf>, last visited 2012-05-09.

3.2 The African Charter on the Rights and Welfare of the Child

The ACRWC is a comprehensive instrument that specifies rights and describes universal principles and standards which relate specifically to the status of children in Africa. The ACRWC acknowledges every child's unique and privileged place in the African society, and that optimal early childhood development will only be possible if a child grows up in a family environment, and in an atmosphere of happiness, love and understanding. Article 5(2) of the ACRWC accentuates the importance of the survival, protection and development of children and that states parties have the responsibility to ensure children's survival, protection and development. Moreover, article 11(1) states that "every child shall have the right to an education", and article 11(2)(a) stipulates that the education of every child shall be directed to "the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential".

It is thus apparent that similar to the UNCRC, the ACRWC aims to promote the development of children to the full.²⁰

3.3 The South African Constitution

Although the Constitution does not explicitly make provision for a child's right to survival and development, certain rights are guaranteed which will ensure the survival and development of children when they are realized.²¹

²⁰ Child Youth Family & Social Development Human Sciences Research Council "Indicators for early childhood development" <http://www.hsrc.ac.za/Document-1667.phtml>, last visited 2012-05-09.

²¹ Mahery in Boezaart (ed) *Child law in South Africa* (2009) 320.

However, the concept of survival and development is incorporated in a diversity of socio-economic rights, which include everyone's right to have access to adequate housing,²² everyone's right to have access to health care, food, water and social security²³ and everyone's right to education.²⁴ A child's right to survival and development is also incorporated in section 28 of the Constitution which deals exclusively with children.

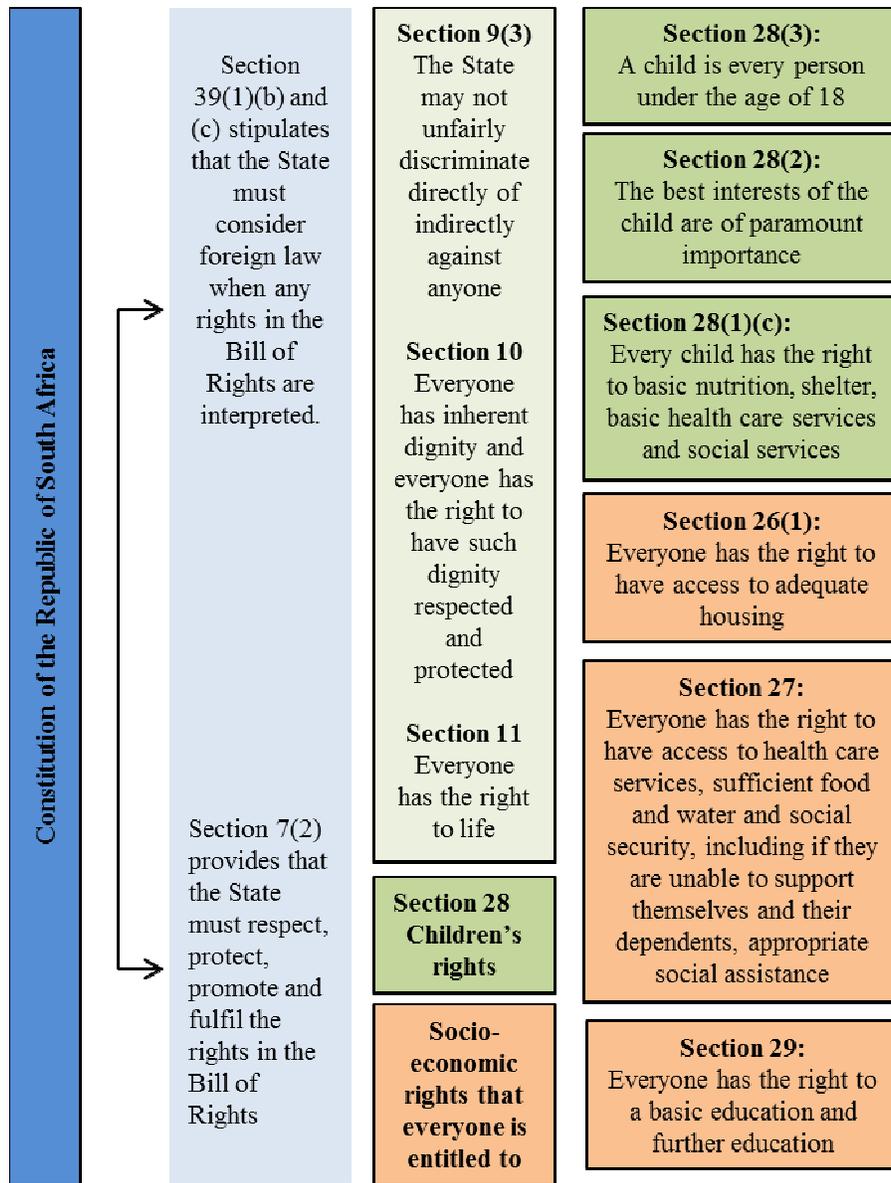
The diagram below will explain children's right to survival and development in the South African Constitution:²⁵

²² S 26.

²³ S 27.

²⁴ S 29.

²⁵ Dutschke & Abrahams "Children's right to maximum survival and development"
http://www.ci.org.za/depts/ci/pubs/pdf/health/resource/Rights_in_brief_survival.pdf, last visited 2012-05-09.



The reference to section 39 above is important since the state must consider international law when a right in the Bill of Rights is interpreted. Section 7 above is also important because the state is bound to discharge its responsibilities at several levels and the state is required to respect, protect, promote and fulfil the rights in the Bill of Rights. The state has a negative duty that is not to take the lives of children. The state has positive duties as well: it is obliged to give effect to the rights listed in the far-right

column of the above diagram. These rights are relevant and important with regard to the optimal survival and development of every child.²⁶

3.4 The Children's Act

The Children's Act makes provision for all the rights of South African children and can be described as empowering legislation. This Act is consistent with international law and a variety of international conventions such as the UNCRC and ACRWC.

Section 91(2) of the Children's Act stipulates as follows:

- (2) Early childhood development services means services –
 - (a) intended to promote early childhood development; and
 - (b) provided by a person, other than a child's parent or care-giver, on a regular basis to children up to school-going age.²⁷

The minimum standards for early childhood development services are also set out in the Children's Act, and it makes provision for the registration and regulation of early childhood services and partial care.²⁸

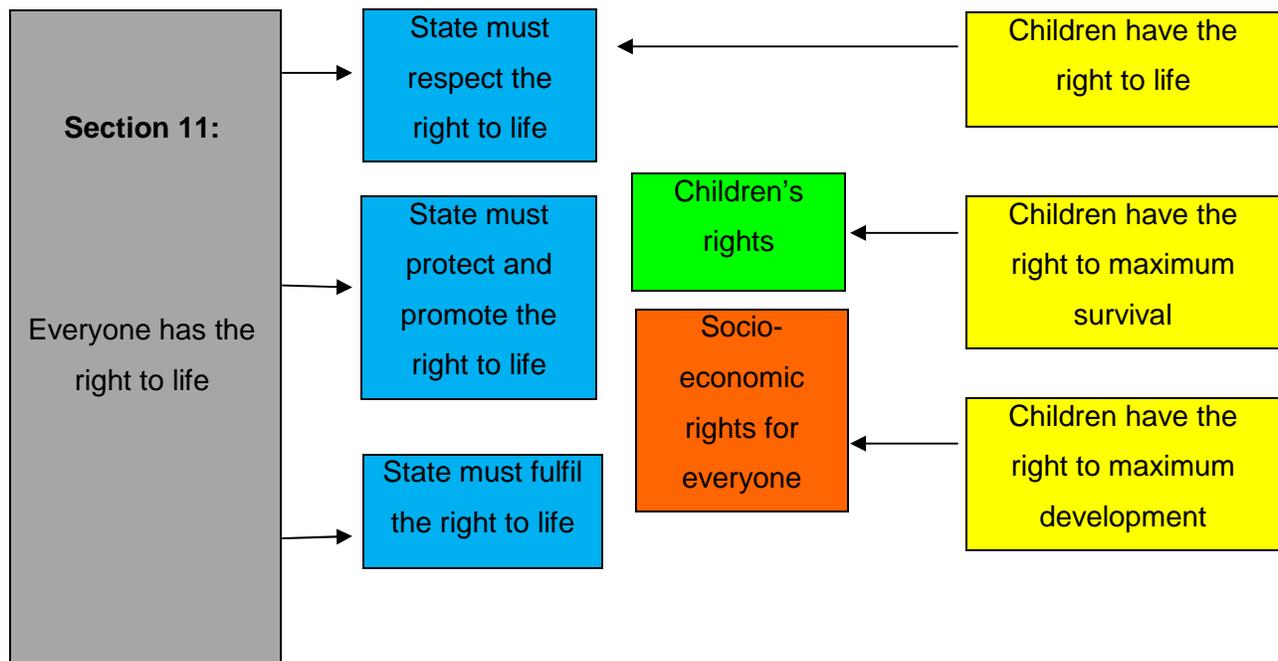
²⁶ *Ibid.*

²⁷ The school-going age is six to seven years in terms of the South African Schools Act 84 of 1996.

²⁸ Child Youth Family & Social Development Human Sciences Research Council "Indicators for early childhood development" <http://www.hsrc.ac.za/Document-1667.phtml>, last visited 2012-05-09.

4 INCORPORATING THE RIGHT TO MAXIMUM SURVIVAL AND DEVELOPMENT FROM INTERNATIONAL LAW INTO THE SOUTH AFRICAN CONSTITUTION

The diagram below illustrates how the right to maximum survival and development is incorporated in the South African Constitution:²⁹



Section 11 states that everyone has the right to life. The state thus has the responsibility to respect, protect, promote and fulfil the right to life as stipulated in the Constitution. International law states that every child has the right to life and to maximum survival and development. The state's duty to respect the right to life (as stipulated in the Constitution), reflects the right to life of every child as stated in

²⁹ Dutschke & Abrahams "Children's right to maximum survival and development" http://www.ci.org.za/depts/ci/pubs/pdf/health/resource/Rights_in_brief_survival.pdf, last visited 2012-05-09.

international law. The state's duty to protect, promote and fulfil the right to life ties in with the duty to ensure the right to maximum survival of every child.³⁰

5 EDUCATION WHITE PAPER 5 ON EARLY CHILDHOOD EDUCATION AND THE NATIONWIDE AUDIT OF EARLY CHILDHOOD DEVELOPMENT PROVISIONING IN SOUTH AFRICA³¹

5.1 Introduction

Early childhood development (ECD) was a fairly new and unknown term in the South African vernacular, but became more eminent as time went by. ECD includes “an ideological and political struggle towards the creation of a society founded on human rights, which acknowledge the centrality of childhood in human and social development and children as individuals and citizens”.³²

Prior to the first democratic election in 1994, the term “educare” was used. There was the ideological belief that the care of young children should not only be restricted to the mere act of “looking after children”. It was believed that childcare should also include the creation and development of secure, nurturing environments in which children receive the necessary care, protection and stimuli in a holistic model which provide for all their physical, developmental, emotional and cognitive needs.³³

³⁰ *Ibid.*

³¹ The main discussion focuses on the “Education White Paper 5 on Early Childhood Education and the Nationwide audit of Early Childhood Development provisioning in South Africa,” but general concepts with regard to early childhood development are also discussed under this heading. The reason for this is that it is important to first “sketch” a background on early childhood development, to define early childhood development and to place early childhood development in context.

³² Williams *et al* “The nationwide audit of ECD provisioning in South Africa” http://www.westerncape.gov.za/Text/2003/national_audit_eed.pdf, last visited 2012-05-09.

³³ *Ibid.*

A huge amount of care is of cardinal importance during the pre-natal period and the first months and years of every child's life, since the kind of care a child receives from parents, nursery school teachers and caregivers determines how a child learns and interacts within the school environment and life in general.

It is also during early care that a child develops all the most important elements of emotional intelligence, namely self-assurance, inquisitiveness, thoughtfulness, self-discipline, connectedness, ability to communicate and cooperativeness.³⁴

Early childhood development in South Africa is occasioned by seven trends:³⁵

- a) A unique opportunity for all children to grow up in dignity and equality.
- b) Increasing evidence from child development research that the greater part of brain development occurs before a child reaches the age of three. During this period, a child develops the ability to think and speak and to learn and reason. The foundation of every child's values and principles, as well as their social behavior as grown-ups, are also laid down during this period.
- c) A growing acknowledgement that all reasonable plans with regard to human development commence at an early stage with actions and procedures to safeguard the rights of the child instead of waiting for eighteen years later.
- d) A consensus that children are less likely to suffer from infirmities, repeat grades, drop out or the need of remedial services if they are provided with a rock-solid foundation during the first months and years of their lives.

³⁴ Education White Paper 5 on Early Childhood Education: *Meeting the Challenge of Early Childhood Development in South Africa* (2001) 3.

See also http://www.polity.org.za/polity/govdocs/white_papers/education.html, last visited 2012-05-09; <http://www.education.gov.za>, last visited 2012-05-09.

³⁵ *Ibid.*

- e) A growing understanding that children's needs and inseparable rights cross the areas of health, nutrition, a safe environment as well as psychosocial and cognitive development.
- f) A consensus among professionals and even more, among parents that the care of young children should furnish them with appropriate educational experiences.
- g) Growing evidence that young children are competent learners and that appropriate educational experience during pre-school years can have a positive and encouraging impact on school learning.

Early childhood development is also very important with regard to the acquisition of concepts, skills and attitudes, since the foundation of lifelong learning is laid down in this way. This includes the acquisition of language, perception-motor skills (which is essential for learning to read and write), basic numeracy concepts and skills, problem-solving skills and a fondness of learning. Moreover, with quality early childhood development provision, educational efficiency will improve since children obtain the basic concepts, skills, abilities and attitudes for successful learning and development prior to or soon after entering the education system. Proper early childhood development would reduce children's chances of failure to the minimum, and the education system would also be free of under-aged and under-prepared learners.³⁶

One can thus say that "early childhood development is the period where early intervention can be most effective in reducing the burden on state resources in future years".³⁷ Hence, early childhood development will have a lasting impact on the rest of a child's life.

³⁶ *Ibid.*

³⁷ *Ibid.*

In conclusion, the provision of appropriate stimulation, nutrition, care and health services during this vulnerable and crucial developmental period will result in increased primary school enrolment, improved school performance, lower and smaller drop-out rates, reduction in juvenile crime rates, lower remedial medical and welfare costs as well as enhanced economic and social productivity statistics.³⁸

5.2 Definition of early childhood development

Early childhood development is defined as a “comprehensive approach to policies and programmes for children from birth to nine years of age with the active participation of their parents and caregivers. Its purpose is to protect the child’s rights to develop his or her full cognitive, emotional, social and physical potential”.³⁹

In South Africa, early childhood development is an “umbrella term” used for “the processes by which children from birth to nine years grow and thrive, physically, mentally, emotionally, morally and socially”.⁴⁰

One can thus see from the definition above that the importance of an integrated approach to child development is of the essence. This approach signifies an awareness and understanding of the importance of taking into consideration a child’s health, nutrition, education, psychosocial and other environmental factors within the context

³⁸ Williams *et al* “The nationwide audit of ECD provisioning in South Africa”
http://www.westerncape.gov.za/Text/2003/national_audit_eed.pdf, last visited 2012-05-09.

³⁹ Education White Paper 5 on Early Childhood Education: *Meeting the Challenge of Early Childhood Development in South Africa* (2001) 5.
See also http://www.polity.org.za/polity/govdocs/white_papers/education.html, last visited 2012-05-09; <http://www.education.gov.za>, last visited 2012-05-09.

⁴⁰ New & Cochran (eds) *Early Childhood Education: An International Encyclopaedia* 4th ed (2007) 1194.

and framework of the family and the community.⁴¹ The integrated approach will later be discussed in full.

5.3 The importance of play

“... to give time for play in school is not to give a ‘break’ or rest from learning; it is not a concession to immature minds. Rather it is a way of making teaching and learning more productive ... We do not know what the knowledge is, and the skills are that the children of today will most need in the future. Flexibility, confidence and the ability to think for oneself – these are the attributes one hopes will not let them down. If play is conducive to the development of these, we had better have it in the school.”⁴²

Children learn best through play! It is therefore of the utmost importance to provide playing opportunities for young children. Play is vital for children because it will enable them to grow up as well-adjusted, self-reliant and caring people – capable to respond to change and to take action when they are under pressure.⁴³

Play is more than a single act or action – it is a combination of different acts, actions and ways of doing something that is easily defined. Play has a strong connection with learning as well as with people’s potential, persistence and motivation for learning. Play can thus be described as “the engagement of people in a variety of activities over which they have ownership and which motivates them to persist towards new learning”.⁴⁴

⁴¹ Education White Paper 5 on Early Childhood Education: *Meeting the Challenge of Early Childhood Development in South Africa* (2001) 5.

See also http://www.polity.org.za/polity/govdocs/white_papers/education.html, last visited 2012-05-09; <http://www.education.gov.za>, last visited 2012-05-09.

⁴² Gammage & Meighan (eds) *Early Childhood Education: Taking Stock* (1993) 15.

⁴³ Moyles in Smidt *The Early Years: A Reader* (1998) 22.

⁴⁴ *Ibid.*

Generally, play is a person's way to develop an understanding of the world in order to gain an awareness of the individual's place in the world as well as the individual's control over the world.⁴⁵

Each and every play activity fulfils an important role with regard to the stimulation of all areas of development. Play activities also promote healthy and balanced growth. Cheerfulness, togetherness, delightfulness, fun and joy are some of the well-known outcomes of playing which contribute a great deal to the welfare and continuous development of children.⁴⁶

As children grow and develop, they learn to discover, interact, communicate and share through playing together. Children also become more open-minded and they adapt easier to changing circumstances.⁴⁷ Furthermore, play is a "natural tool for learning and for communication... Play is a motivator for curiosity and a means to explore problems without that being a problem in itself".⁴⁸

Young children learn through their senses – by smelling, touching, hearing, tasting and seeing. By using their senses, they form opinions and create pictures in their minds on how the world works. The creation of pictures in their minds is seen as the foundation of their developing ideas and conceptions of the world. The basis of knowledge and understandings are formed out of concepts and ideas which are also interconnected with language development. It is during the "language development period" that "issues of fantasy and reality are explored, imagination and creativity develop, and general understandings of the world are evolved, tried out and re-evaluated until 'learning' has occurred".⁴⁹

⁴⁵ *Ibid.*

⁴⁶ Balagopal "Early childhood years" 2007 *The Child-to-Child Newsletter* 5.

⁴⁷ *Ibid.*

⁴⁸ Moyles in Smidt *The early years: A reader* (1998) 23.

⁴⁹ *Ibid.*

Play fulfils a key function in motivating children's inquisitiveness. In addition to this, play also ensures that children explore and discover materials in a playful and pleasant way which enables them to "learn about properties, textures, shapes, smells, colours, feelings and so on which form the building blocks of all learning".⁵⁰ It is therefore important to remember that if children do not "learn" through play, their development will be impecunious.⁵¹

The impact and importance of play cannot be emphasised enough. When we see children play, the following should always be borne in mind:⁵²

"Play enables children to interrogate the world in which they find themselves without loss of self-esteem and, above all, play enables children to learn what learning is – and should be – fun and enjoyable. This is the vital feature if we are to have happy and well-balanced, flexible learners and citizens for the future."

5.4 The importance of early childhood development

"Early child development is the first and essential step toward achieving primary school completion. Learning begins at birth, if not before. It does not wait for kindergarten or primary school. It develops in relation to broad environmental forces. Both the content of learning and learning behaviours are influenced by the immediate surroundings of a child's family, home and community. Education begins here – neither in the confines of a school building, nor when a child reaches primary school age."⁵³

Early childhood development will not only improve academic performance, but will also enhance and strengthen society in a number of ways: it enhances democracy and equality, protects children's rights and promotes community development. However,

⁵⁰ *Ibid.*

⁵¹ Moyles in Smidt *The early years: A reader* (1998) 24.

⁵² *Ibid.*

⁵³ Anon "Early Child Development (ECD)" <http://go.worldbank.org/OTAXO53K80>, last visited 2012-05-09.

early childhood development and its services are intended for very young children and can intervene to ensure children's health and well-being. Early childhood development also "creates accessibility to children in an environment that aims to be nurturing and caring".⁵⁴

Early childhood development creates several important opportunities:⁵⁵

- the opportunity to keep an eye on overall well-being;
- the opportunity to take instant remedial action and respond early when difficulties are discovered, and
- the opportunity to involve parents and guardians in the planning and preparation for remedial action.

Numerous positive outcomes are achievable from basic, directed investments in early childhood. A number of these outcomes are listed below:⁵⁶

- increased emotional or cognitive development for the child;
- improved parent-child relationships and better interaction between parent and child;
- improved progress with regard to educational processes and outcomes for the child;

⁵⁴ Frank *Missed opportunities: The role of education, health, and social development in preventing crime* (2006) 35.

⁵⁵ *Ibid.*

⁵⁶ Frank *Missed opportunities: The role of education, health, and social development in preventing crime* (2006) 35-36.

- enhanced economic independence;
- reduced dependence on welfare, and higher incomes;
- diminution of criminal activity; and
- enhanced health-related indicators with regard to child mistreatment and abuse, maternal reproductive health and substance abuse.

The investment in early childhood development is thus advantageous, and convincing economic viewpoints can be given in this regard:⁵⁷

- there will be an increase with regard to productivity over a lifetime and a higher standard of living when a child reaches adulthood;
- further cost-savings regarding remedial education, health care services and rehabilitation services;
- parents, especially women, would be able to earn higher incomes since they are entitled to enter the labour market. The freeing of women from the errands of early childhood development will result in raised incomes for women and their families, and poverty will also be alleviated. Moreover, this will lead to major social and economic development in local communities, regions and the nation.

Therefore, intervention in the earliest years will help to reduce the social and economic differences as well as race and gender inequalities that segregate our society. Early childhood development is especially important for children in poor rural and poor urban

⁵⁷ Education White Paper 5 on Early Childhood Education: *Meeting the Challenge of Early Childhood Development in South Africa* (2001) 4.
See also http://www.polity.org.za/polity/govdocs/white_papers/education.html, last visited 2012-05-09; <http://www.education.gov.za>, last visited 2012-05-09.

communities since they are the most likely to benefit from it. Investments in early childhood development can put an end to inter-generational cycles of poverty, diseases, violence and discrimination.⁵⁸ One can thus argue that “failure to invest in early childhood development can result in development delay and disability as well as inhibit the optimal development and performance of children throughout their lives”.⁵⁹

It can therefore be concluded that early childhood development “increase[s] the progress and achievement of children in primary schools and lay[s] the foundation for future growth, learning and development...”.⁶⁰

5.5 The main categories of early childhood development

Early childhood development institution-based provision can be divided into two categories:⁶¹

- public; and
- independent.

Provincial departments of education are subsidised by public early childhood development institutions. These public institutions consist of pre-primary schools and they provide early childhood development services and programmes for children between the ages of three to five years.⁶²

⁵⁸ *Ibid.*

⁵⁹ Anon “Early childhood development: the key to a full and productive life” <http://www.unicef.org/dprk/ecd.pdf>, last visited 2012-05-09.

⁶⁰ *Ibid.*

⁶¹ Education White Paper 5 on Early Childhood Education: *Meeting the challenge of early childhood development in South Africa* (2001) 7-8.

See also http://www.polity.org.za/polity/govdocs/white_papers/education.html, last visited 2012-05-09; <http://www.education.gov.za>, last visited 2012-05-09.

⁶² *Ibid.*

Independent early childhood development institutions have various early childhood development services, which are subsidised through parents' contributions, community fundraising and donations of different materials. There is hardly any financial support from government. Independent early childhood development provision includes the following:⁶³

- Grade R at independent schools.
- Grade R attached to public schools. However, this Grade R is administered by the school governing body and operated by a private individual or the community.
- Independent pre-primary schools that provide for children between the age of three and five years.
- Privately operated or community run pre-school playgroups or nursery schools which accommodate children from birth to the age of five years.
- Home-based provision for children from birth to the age of five years.

Community-operated institutions and independent pre-primary schools are therefore the main providers of independent early childhood development services and programmes.

5.6 The main objectives of early childhood development

The main objectives of early childhood development can be summarised as follows:⁶⁴

⁶³ *Ibid.*

⁶⁴ International Institute for Educational Planning *Guidebook for planning education in emergencies and reconstruction* (2006) 1.

- a) To ensure the safety and well-being of children on playgrounds and to improve their developmental and educational needs.
- b) To prepare children socially, emotionally and intellectually for further education.
- c) To enable older siblings or young mothers to attend educational activities or to enable them to enter the labour market.

Early childhood development also plays a vital role in matters such as democracy and equality, the protection of children's rights, the promotion of community development and the encouragement of partnerships between home, preschool and primary schooling which will be discussed below.

5.7 Early childhood development as a foundation of democracy and equality

The socialisation process of children is vital, since it is during this process that children's attitudes, state of minds and prejudices develop. The early years are also the ideal period to impart and encourage democratic and human rights values among children.⁶⁵ The inclusion of anti-racist, anti-sexist and human rights programmes in early childhood development can provide a "primary point of intervention against the prejudices and discrimination that have been endemic in South African society".⁶⁶ Furthermore, a proper early childhood development system will promote diverse cultural and religious traditions, and such a system will, in addition to this, smooth the progress of multiculturalism.⁶⁷

⁶⁵ Williams *et al* "The nationwide audit of ECD provisioning in South Africa"
http://www.westerncape.gov.za/Text/2003/national_audit_eed.pdf, last visited 2012-05-09.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

The Preamble to the Constitution plays a key role with regard to the encouragement of democracy and equality. It states that we (as a nation), need to “heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights”.⁶⁸ This goal, as stated in the Preamble, has been incorporated through the development and improvement of appropriate guiding values and standards across all levels of education. Moreover, equality, tolerance, multilingualism, openness, accountability and honour were identified as the main values for promotion through education. These values are drawn from the Constitution, more specifically, from the Bill of Rights and from educational philosophy. There are, however, two main driving forces behind the values in education: Firstly, there is a huge responsibility on all centres of learning to develop the intellectual and critical abilities of learners and secondly, to successfully challenge discrimination, unfairness, inequity and prejudice on the grounds of race, gender and culture.⁶⁹

5.8 Early childhood development as protecting children’s rights

The Right to Early Childhood Development
Several rights enshrined in the UNCRC and ACRWC are relevant in this regard, and will be briefly discussed below:
<p>Article 6(2): (UNCRC) States Parties shall ensure to the maximum extent possible the survival and development of the child.</p>
<p>Article 18(2): (UNCRC)</p>

⁶⁸ The Constitution of the Republic of South Africa, 1996, Preamble.

⁶⁹ Williams *et al* “The nationwide audit of ECD provisioning in South Africa” http://www.westerncape.gov.za/Text/2003/national_audit_ecd.pdf, last visited 2012-05-09.

... States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 20(2)(b) and (c) of the **ACRWC** is also important with regard to the development and education of children. It states that States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and to ensure that the children of working parents are provided with care services and facilities.

The Right to Education

The UNCRC, the ACRWC and the South African Constitution make provision for the right to education, and these provisions will be discussed below:⁷⁰

Article 28 of the UNCRC: (1) States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) make primary education compulsory and available free to all; (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 11 of the ACRWC: (1) Every child shall have the right to education. (2) The education of the child shall be directed to: (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential.

⁷⁰ See, in general, SAHRC/UNICEF "South Africa's children: a review of equity and child rights" <http://www.polity.org.za/article/south-africas-children-a-review-of-equity-and-child-rights-march-2011-2011-03-25>, last visited 2012-05-09.

Section 29(1) of the South African Constitution: Everyone has the right – (a) to a basic education, including adult education.

Section 29(1)(a) benefits children and adults and this section is an unqualified socio-economic right which can also be described as a “strong positive right”. This means that the State has a positive obligation to provide a basic education for both children and adults.

The right to education must be seen and understood in the light of the aim of education. Education must strive for the full development and growth of the human personality as well as the encouragement of a sense of dignity. Education must also strive for the full and effective participation of all persons in a free society. The successful provision of education will bestow every person with the ability to appreciate and exercise human rights. All learners’ ability to make political and civil choices will be developed in full and recipients will have the necessary skills and aptitudes to enjoy and value human existence.⁷¹

The State has the obligation to provide and maintain an education system with all the necessary educational programmes. These programmes must be available in all the relevant forms and at all levels. The State also needs to ensure the proper functioning of all educational institutions as well as the building of schools, the employment of qualified educators and the development and upgrading of the curricula.⁷²

The purpose of the South African education system should be to make education available, accessible, acceptable and adaptable. It is also known as the “Four A” standards.⁷³

⁷¹ See, Anon “The right to education”
http://www.sahrc.org.za/home/21/files/Reports/3rd%20ESR%20report%20chapter_3.pdf,
last visited 2012-05-09.

⁷² *Ibid.*

⁷³ See, <http://www.communitylawcentre.org.za/clc-projects/socio-economic-rights/2nd-ed-of-resource-book>, last visited 2012-05-09.

Availability

Educational institutions and programmes must be available in sufficient quantity in order to realise the right to education. The following must be available:

- proper buildings which are furnished with hygienic sanitation facilities and clean drinking water;
- qualified teachers;
- sufficient teaching materials; and
- facilities such as a library, computer laboratory and information technology where necessary.

Accessibility

- Education should be accessible to every person without any discrimination.
- Education should be physically accessible – within physical reach.
- Education should be economically accessible – it must be affordable to every person.

Acceptability

- The curricula and syllabuses as well as the way of teaching/instruction, must meet the aims of education.

Adaptability

- South Africa is a country with diverse social and cultural groups. Education should therefore be flexible and variable to adapt to the needs and desires of changing societies and communities.

Section 28 and 29 of the Constitution can be read together since they are of cardinal importance with regard to children and the protection of their rights. Section 28 deals specifically with children. Section 28(2) emphasises that “a child’s best interests are of paramount importance in every matter concerning the child”. Section 29 deals with the right to education and section 29(1)(a) states that “everyone has the right to a basic education”. It can therefore be argued that it is in the best interests of every child to have the right to a basic education. When the right to a basic education is not realised and fulfilled, the full enjoyment of other rights that will enable children to develop to their full potential and to participate meaningfully in society, are jeopardised.⁷⁴

One can thus see from the above that there is a clear imperative to protect the rights of all children. However, there is still a need to redress the past which can only be done if the following key considerations are taken into account:⁷⁵

- the prioritisation of historically deprived and underprivileged communities;
- the empowerment of historically deprived and underprivileged parents, families and communities. Extra awareness and care should be given to those with little or no access to basic resources, in order to foster and promote the care and development of their children;

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

- the need for childhood development programmes which are effective and of desirable quality, as well as an integrated social response to meet the above needs;
- the need to create opportunities for all children to enable them to participate and develop fully to their potential;
- the formation and development of democratic governance structures which engage with parents and communities; and
- the formation and development of allocation policies in order to support and facilitate social and economic reconstruction.

5.9 Early childhood development as community development

Parents and communities play pivotal roles in the care and education of children. The care and education of children are also seen as fundamental with regard to children's environments.⁷⁶

Early childhood development sites are structured as community-based, where children's needs and desires are dealt with in an integrated manner. The fast growing number of early childhood development sites can be ascribed to community needs. Not only will these early childhood development sites ease the needs of communities, but it will also empower and invest in the development of the broader community. Therefore, early childhood development sites "can play a role in bringing together different community groupings and organisations and providing an integrated community service".⁷⁷

⁷⁶ Williams *et al* "The nationwide audit of ECD provisioning in South Africa"
http://www.westerncape.gov.za/Text/2003/national_audit_e.cd.pdf, last visited 2012-05-09.

⁷⁷ *Ibid.*

Moreover, early childhood development and the roles of women are interrelated, since community-based early childhood development services are seen as a component of the “broader goal of women’s empowerment”. In the past, responsibilities with regard to the care and nurturing of children were solely placed on women. Nowadays, women have the freedom and choice to decide on their lifestyles and on the developing of their careers.⁷⁸

In conclusion, early childhood development services enhance family needs and community wealth, and will, in the long term, “facilitate increased economic activity and productivity within the community”.⁷⁹

5.10 Early childhood development and its partnerships

The proper development of children is not possible without solid partnerships between home, preschool, and the early years of primary schooling. These partnerships will only succeed if challenges such as parents’ lack of time, confidence and the understanding of early education are conquered. Furthermore, the value and importance of parental inputs are often underestimated, and teachers are sometimes hesitant to involve parents in their children’s educational programmes and activities,⁸⁰ which mean that there is a need for partnership(s) with families. The purpose of these partnerships is to make contact with the majority of children who are unable to access centre-based services.

In order to successfully reach the majority of children, certain programmes need to be in place. These programmes have been developed and administered by NGOs with the core function of assisting and encouraging primary caregivers in their role as educators

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ New & Cochran (eds) *Early childhood education – An international Encyclopedia* Vol 4 (2007) 1198.

and providers for young children. Moreover, the outreach workers involved in these programmes play a pivotal role in linking parents with resources such as health centres, social grants, and income generation as well as “focusing on developing their knowledge of how to support early learning”.⁸¹

Educational media programmes for young children can also be used to enhance the development of children. Takalani Sesame is the best known educational media programme in South Africa. The Takalani Sesame initiative was launched in 2000 with the following aims.⁸²

- to provide greater access to resources for parents, caregivers and educators in providing children with early learning experiences;
- to encourage learning in the areas of literacy, numeracy and life-skills.

However, without proper access to media (in this context, proper access to educational media programmes), all educational media programmes may be disadvantaged. It is therefore more advantageous to rely on face-to-face education.

Nonetheless, in evaluating any possible modifications to the education system, the following should always be borne in mind:

“We enter into a covenant that we shall build a society in which all South Africans, both black and white, will be able to walk tall, without fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world.”⁸³

⁸¹ *Ibid.*

⁸² See, in general, “Taking Takalani Sesame to the children”
<http://www.sciencein africa.co.za/2001/september/takalani.htm>, last visited 2012-05-09.

⁸³ The words of former President Nelson Mandela when he delivered his inaugural speech as South Africa’s first black and democratically-elected president – 10 May 1994. See also, in general, <http://www.sesameworkshop.org/aroundtheworld/southafrica>, last visited 2012-05-09.

5.11 Child-to-child approaches and early childhood development

One of the most promising and propitious alternative channels regarding the provisioning of cost-effective interventions in early childhood development, especially in developing countries, are child-to-child approaches. The reason for this is as follows.⁸⁴ The majority of young children spend most of the time with their primary caregivers who are usually their parents. However, pre-school children are predominantly influenced by other children – such as older siblings and playmates of the same peer group – with whom they interact almost every day. This interaction between pre-school- and older children is a natural occurrence and the education system can build on this natural occurrence “to influence child development and school readiness in a more systematic manner”.⁸⁵

Thus, the child-to-child approach ought to enable primary school children to meet the needs of pre-school children during a crucial phase in their development and preparedness for school. Such an approach aims to improve the child’s readiness to promote the best possible learning environments for its new and embryonic students.⁸⁶

Moreover, a child-to-child approach focuses on four facets:⁸⁷

- to enhance and strengthen prompt enrolment in primary school;
- to ensure that children enter primary school with a strong foundation in language, literacy and numeracy;
- to reduce early drop-out rates;

⁸⁴ Cuninghame “The child-to-child trust and ECD programming” 2007 *Child-to-child Newsletter 2*.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

- to improve primary school performance in general.

A child-to-child approach is also advantageous, for older children, parents, families, teachers and schools in several respects:⁸⁸

- early learning, cooperative learning and life skills are promoted;
- parents and families become more aware of the importance of child development; their skills improve with regard to the promotion of early learning, healthiness, and well-being, and they have a better understanding of “prompt enrolment”;
- enhanced child-centred teaching and learning techniques are developed by first-grade teachers;
- teachers realise the cardinal importance of early childhood for later learning, and a noticeable improvement on learning techniques and materials are visible;
- school systems promote relationships and partnerships between school and home, the needs of learners are recognised and child-friendly environments are created; and
- educational standards are improved.

Thus, a child-to-child approach will play a pivotal role in young children’s development, since such an approach is designed to educate pre-school children before they enrol in primary school.⁸⁹

⁸⁸ Cuninghame “The child-to-child trust and ECD programming” 2007 *Child-to-child Newsletter* 3.

⁸⁹ Anon “Getting ready for school programme: a child-to-child approach”
<http://www.child-to-child.org/action/gettingreadyforschool.htm>, last visited 2012-05-09.

A child-to-child approach in South Africa should therefore be welcomed since it is already proven that such an approach will improve and enhance the well-being of young children. Investment in a child-to-child approach will yield very high economic returns, and will offset disadvantage and inequality, especially for children from poor families.⁹⁰ In addition to this, the use of a child-to-child approach during the formative years of children, will promote brain growth and development.⁹¹

In conclusion, the importance of a child-to-child approach can be encapsulated as follows:

“Pre-school learning is an important component of early childhood development, which prepares children for primary school, decreases drop-out rates and increases learning achievements in the long term.”⁹²

5.12 The curriculum of early childhood development and the rationale for linking early childhood with education

The curriculum of early childhood development should be linked with the Foundation Phase curriculum in order to ensure a strong education base. For this reason, an early childhood development curriculum should consist of:⁹³

- the inclusion of knowledge, skills, processes, values, standards and standpoints that are apposite to the existing context of social, political and economic conditions;

⁹⁰ Cuninghame “The child-to-child trust and ECD programming” 2007 *Child-to-child Newsletter* 1.

⁹¹ *Ibid.*

⁹² Anon “Getting ready for school programme: a child-to-child approach”
<http://www.child-to-child.org/action/gettingreadyforschool.htm>, last visited 2012-05-09.

⁹³ Williams *et al* “The nationwide audit of ECD provisioning in South Africa”
http://www.westerncape.gov.za/Text/2003/national_audit_e.cd.pdf, last visited 2012-05-09.

- the drawing on multicultural experiences and fortes of all the diverse communities of South Africa;
- the adoption and implementation of a more learner-centred approach in the early learning years; and
- the development of a “pedagogy based on an interactive approach to learning and aimed at encouraging children’s curiosity, developing confidence in using linguistic and cognitive skills and achieving fundamental literacy and numeracy”.

However, the reason why early childhood development needs to have a strong education base, is because of the psychosocial aspects of children’s development “which have the most significance for long-term social change and sustained realization of children’s rights”. High-quality early childhood development programmes place emphasis on the development of children’s understanding and insight of their world; and the encouragement of self-assurance, communication skills and flexibility that children need in order to interact successfully with the world.⁹⁴

As children grow up, skilfulness becomes more important. It is evident that early childhood development programmes lay a sound foundation for learning and endurance in the early years of learning which will enable children to develop proper skills and abilities.⁹⁵

It is therefore important to bear in mind that, without high-quality early childhood development programmes, children would be unable to:⁹⁶

⁹⁴ Arnold “Early childhood development programs and children’s rights”
<http://www.crin.org/docs/resources/publications/ECD.pdf>, last visited 2012-05-09.

⁹⁵ *Ibid.*

⁹⁶ Arnold “Early childhood development programs and children’s rights”
<http://www.crin.org/docs/resources/publications/ECD.pdf>, last visited 2012-05-09.

- deal with real life challenges;
- obtain their rights;
- develop and progress as active, contributing members of society.

Therefore, early childhood development programmes are not only crucial and of cardinal importance for the achievement of major change in society, but also for the fostering of psychosocial, nutritional, health and educational development of young children.⁹⁷

The main reason for linking early childhood development with education, especially primary education, is to ensure a smooth and uncomplicated transition for children from one level of learning to another. The linkage must thus be designed to successfully stimulate and promote children's interest in learning, to guide and prepare them for further stages in education, and to ensure the mastering of certain basic skills in accordance with the mental and physical development of children.⁹⁸

5.13 Challenges

South Africa has made major efforts and contributions to fulfil and realise the rights of children, but there are still some challenges, especially with regard to early childhood development, that the country needs to deal with.⁹⁹

⁹⁷ The psychosocial part of early childhood development is inexorably dealing with the kind of people we want our children to turn out to be, as well as the kind of society we heading for. See also, Arnold "Early childhood development programs and children's rights" <http://www.crin.org/docs/resources/publications/ECD.pdf>, last visited 2012-05-09.

⁹⁸ See, in general, UNESCO education sector "Links between early childhood development and education and primary education" <http://www.unesdoc.unesco.org/images/0010/001055/105505e.pdf>, last visited 2012-05-09.

⁹⁹ Seleti "Early childhood development in South Africa: Policy and practice" <http://www.siteresources.worldbank.org>, last visited 2012-05-09.

- There is a lack of social cohesion and consistency which give rise to unequal access to economic benefits, facilities, services and resources.
- Poverty and neediness is one of South Africa's biggest challenges with regard to early childhood development.
- The HIV/AIDS pandemic has detrimental effects on the early childhood development system – this usually leads to child-headed households.
- There is improper early childhood development monitoring and evaluation due to lack of committed staff.
- Although large investments are made in early childhood development and social protection, early childhood development financing is still inadequate.
- Proper financial tracking mechanisms are not in place.

However, despite these challenges and obstacles, South Africa is capable of creating an environment where the progress and development of children are achievable since several international instruments were ratified and translated into national laws.¹⁰⁰

6 CONCLUSION

Early childhood development establishes the basic architecture and function of the brain. Early childhood development has an immeasurable effect on all the later stages of children's development. Poor early childhood development will have detrimental effects on children's health, behaviour and learning in later life. However, proper early

¹⁰⁰ See, in general, http://www.unicef.org/southafrica/8541_8543.html, last visited 2012-05-09.

childhood development represents without doubt the best opportunity to overcome and conquer the inter-generational cycle of multiple disadvantages such as malnutrition, illness, inequity and low socio-economic status.¹⁰¹

Proper early childhood development is also not possible without family involvement, because family involvement promotes and protects the well-being of children which is of inestimable value throughout the life cycle of young children.¹⁰² Family members “provide most stimuli for children and family largely control children’s contact with the wider environment”.¹⁰³ One can thus say that families are challenged to prepare children for a fast-changing world while “retaining a sense of values and cultural identity”.¹⁰⁴

Moreover, early childhood education is an indispensable tool with regard to the development of children since it is a “process of systematic training and instruction designed to transmit knowledge and acquisition of skill, potentials and abilities which will enable an individual to contribute efficiently to the growth and development of his or her society and nation”.¹⁰⁵

To this point, South Africa is faced with many challenges with regard to early childhood development provisioning. These challenges include limited access to early childhood development services; inequities in existing early childhood development provisioning; lack of sufficient human and financial resources for the high demand of the early childhood development sector; limited inter-departmental teamwork and collaboration to

¹⁰¹ Mustard “Early brain development and human development” 2010 *Encyclopedia on Early Childhood Development* 1. See also, <http://www.child-encyclopedia.com/documents/MustardANGxp.pdf>, last visited 2012-05-09.

¹⁰² *Ibid.*

¹⁰³ Hertzman “Framework for the social determinants of early child development” 2010 *Encyclopedia on Early Childhood Development* 2. See also, <http://www.child-encyclopedia.com/documents/HertzmanANGxp.pdf>, last visited 2012-05-09.

¹⁰⁴ Arnold “Early childhood development programs and children’s rights” <http://www.crin.org/docs/resources/publications/ECD.pdf>, last visited 2012-05-09.

¹⁰⁵ Osakwe “The effect of early childhood education experience on the academic performances of primary school children” 2009 *Stud Home Comm Sci* 143.

ensure adequate, effective and quality provisioning for children.¹⁰⁶ In order to conquer these challenges, many different approaches can be followed. The adoption of a child-to-child approach would be advantageous, but in order to provide comprehensive early childhood development programmes, an integrated approach, combined with a child-to-child approach needs to be adopted.

An integrated approach refers to the provisioning of services and programmes in a “comprehensive and interwoven manner, with the aim of ensuring the holistic development of children”.¹⁰⁷ By adopting such an approach, children will have adequate access to nutrition, water and sanitation, psychosocial care, early learning, and protection, because the capacity and ability of every community will strengthen and access to basic services will improve.¹⁰⁸

In the end, an integrated plan for early childhood development should create environments and favourable situations in which children, especially children at risk, can learn, develop and flourish socially, emotionally, physically and cognitively. Such a plan should also equip children with the necessary skills to enter primary school in a state of better preparedness and vigilance. Furthermore, adults should be provided with the necessary resources and skills which will enable them to educate young children effectively. Lastly, an integrated plan must lower the unfavourable and harmful developmental effects of poverty and other forms of deprivation on children.

The most important outcome of an integrated approach should be the creation of an environment “where children can grow, thrive and be able to be better prepared for their future roles and responsibilities in society”.¹⁰⁹

¹⁰⁶ Unicef “National integrated plan for early childhood development in South Africa 2005-2010” http://www.unicef.org/southafrica/SAF_resources_nip.pdf, last visited 2012-05-09.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

Thus, early childhood development in South Africa will flourish if a combination of both an integrated approach and a child-to-child approach is adopted. Surely there will be a lot of challenges, but a child's best interests are of paramount importance and in order to meet the best interests standard, proper early childhood development strategies and proper early childhood education plans need to be implemented. When implementing this, the following should be remembered: early childhood development and early childhood education is the first and most important phase of the lifelong learning process, and parents and educators have the responsibility to foster it.

It can therefore be concluded that "the purpose of learning is growth, and our minds, unlike our bodies, can continue growing as we continue to live".¹¹⁰

¹¹⁰ Mortimer J Adler.

CHAPTER 7

Mother tongue education

“Hulle praat Afrikaans by die huis, maar hul kinders moet liefers na Engelse skole toe gaan, omdat Engels 'n wêreldtaal is en dit kinders se kanse op sukses glo eendag sal bevorder. Dít, terwyl daar wêreldwyd al hoe meer stemme ten gunste van moedertaalonderrig opgaan omdat die meeste navorsing op die voordele hiervan wys.”¹

1 INTRODUCTION

Mother tongue is recognised worldwide as one of the most efficient ways to function cognitively and socially. Mother tongue is invaluable for personal and cultural identity, as well as for intellectual and emotional development. Mother tongue starts at birth and continues throughout life, and it is therefore important for children to be educated and instructed in their mother tongue.²

However, the issue of mother tongue education in South Africa remains a problematic one. On the one hand, it appears to be reasonable, acceptable and enviable to provide learners with education in their mother tongue if they wish to receive mother tongue education. Conversely, there are some obstacles and challenges in the implementation of this “mother tongue education” ideal.³

¹ Rademeyer “Taal van die skoolbanke” September 2005 *Taalgenoot* 22.

² Gabela “Language of education in South Africa”
<http://www.deta.up.ac.za/archive2007/presentations/word/language%20of%20education%20Gabela%20RV.pdf>, last visited 2012-05-11.

³ Foley “Mother-tongue education in South Africa”
<http://www.englishacademy.co.za/pansalb/education.pdf>, last visited 2012-05-11.

Along with this problematic issue, is the dilemma relating to the skills and ability of learners when the use of English as the primary medium of instruction is preferred.⁴ Presently, English enjoys recognition nationally and internationally. Consequently, English is the language in which most South Africans prefer their children to be educated. Most parents are convinced that it is to the advantage of their children to be “English-dominant” since the English language will ease their children’s access to training, work possibilities and economic freedom, and provide a stepping stone into the international arena.⁵ The preference given to English as the primary medium of instruction results in a situation where almost all learners will receive their education through the medium of English, while these learners – and sometimes teachers as well – are not capable and skillful enough to use English as a second language (and sometimes as a third language) in teaching and learning. Moreover, the value and quality of teaching and learning also become debatable.⁶

The motto of the South African Coat of Arms is: “!ke e: /xarra //ke” which means “Unity in Diversity”. One can thus argue that the current focus on English as a primary medium of teaching and learning constitutes the unity, and the principle of diversity is overlooked, which results in “no support for the provisioning of quality education to all”.⁷

The discussion of mother tongue education as part of this study is important because language is vital to a child’s right to a basic education in all its dimensions. Language is the way in which access to learning and education is made possible. Language is the end product of proper education, and language has a tremendous influence and impact on the quality and final outcome for learners individually and collectively. Language is of cardinal importance with regard to the identity of people and it is in itself a right and a

⁴ Gabela “Language of education in South Africa” <http://www.deta.up.ac.za/archive2007/presentations/word/language%20of%20education%20Gabela%20RV.pdf>, last visited 2012-05-11.

⁵ Louwrens “Moedertaalonderrig as moderator by die verband tussen intelligensiekwosient en akademiese prestasie” <http://etd.uovs.ac.za/ETD-db/theses/submitted/etd-08262004-170956/unrestricted/02Louwrens.pdf>, last visited 2012-05-11.

⁶ Steyn *et al* “Unity in diversity’ in South African education: inciting ideas from Europe” 2007 *SA-eDUC JOURNAL* 2.

⁷ *Ibid.*

way of identifying and observing the world. Furthermore, language is the foundation of self-knowledge, confidence and self-respect.⁸

Thus, without mother tongue education, every child's right to learn and to become a skillful adult, able to participate independently in society, is at risk.⁹

This chapter consists of an in-depth discussion of mother tongue, mother tongue education and the importance thereof. The most important areas with regard to mother tongue education in South Africa are discussed under the headings of: Language – a fundamental right; Language policy of South Africa; and the Pan South African Language Board. Different forms of language education and the importance of bilingual education and mother tongue-based multilingual education is also emphasised. The most important international instruments, national legislation and several groundbreaking cases pertaining to mother tongue education will also be discussed. It will be concluded that the implementation of certain education models will be invaluable to the promotion and advancement of mother tongue education.

2 LANGUAGE: A FUNDAMENTAL RIGHT

Language is a fundamental right, and the South African Constitution makes provision for the protection and promotion of the eleven official languages.

Section 6 of the Constitution stipulates that the official languages of the Republic of South Africa are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu. The Constitution stipulates that affirmative action must be taken with regard to the African languages that were marginalised in the past: These languages “must enjoy parity of esteem and must be treated equitably”. It

⁸ Le Mottee “Language in education”
http://www.osisa.org/.../2_3_language_p032-038_sherri_le_mottee.pdf, last visited 2012-05-09.

⁹ *Ibid.*

further states that the state has the obligation to take practical and positive measures to elevate the status and advance the use of these languages.¹⁰

In terms of section 9 of the Constitution, everyone is equal before the law and has the right to equal protection and benefit of the law. It also states that no one may unfairly discriminate directly or indirectly against anyone on one or more grounds, including language.

Section 29(2) states that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. Section 30 of the Constitution provides that everyone has the right to use the language and to participate in the cultural life of their choice. In terms of section 31 of the Constitution, persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community, to enjoy their culture, practice their religion and use their language, and these persons have the right to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

Section 35(3)(k) states that every accused person has a right to a fair trial, which includes the right to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language.

It is thus clear from the above that the use of any language for the purposes of exploitation, domination or separation should be avoided. In short: South Africa has a diversity of languages and cultures and these diversities must be recognised and protected, and the promotion of mother tongue should always be encouraged.¹¹

¹⁰ See, in general, Beukes "The first ten years of democracy: language policy in South Africa" http://www.linguapax.org/congres04/pdf/1_beukes.pdf, last visited 2012-05-11.

¹¹ Departement van Nasionale Opvoeding *Suid-Afrika se Nuwe Taalbeleid – Die Feite* (1995) 3.

3 LANGUAGE POLICY IN SOUTH AFRICA

3.1 Language management

Language policy in South Africa is managed at three levels of governance, namely at the national, provincial and local government level.¹²

3.1.1 National level

The responsibility of language management is attributed to: the Minister of Arts and Culture who is responsible for macro language policy matters; the Minister of Education who is responsible for language-in-education policy; the Minister of Communications who is responsible for language policy relating to the public broadcaster; and the Minister of Justice and Constitutional Development who is responsible for all language matters in the courts.

3.1.2 Provincial level

There is an obligation on all nine provincial governments to manage and administer their own language matters, which includes the customisation of language policies to regional circumstances, needs and preferences.

¹² Beukes "The first ten years of democracy: language policy in South Africa"
http://www.linguapax.org/congres04/pdf/1_beukes.pdf, last visited 2012-05-11.

3.1.3 *Local government level*

Municipalities have the responsibility to develop language policies that are well-matched with the applicable provincial policy. The language usage and preferences of all residents within the municipality district must also be taken into consideration.

3.2 **Language policy in schools**

Section 29(2) of the Constitution stipulates that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable.

Section 3(1) of the National Education Policy Act¹³ states that the minister shall determine national education policy in accordance with the provisions of the Constitution and this Act. Moreover, section 4(a)(v) stipulates that the policy contemplated in section 3 shall be directed toward the advancement and protection of the fundamental rights of every person guaranteed as stipulated in Chapter 3 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right of every student to be instructed in the language of his or her choice where this is reasonably practicable.

Section 6 of the South African Schools Act¹⁴ states that subject to the Constitution and this Act, the minister may, by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools. The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law. It further states that no form of racial discrimination may be practised in implementing policy determined under this section.

¹³ Act 27 of 1996.

¹⁴ Act 84 of 1996.

The aforementioned legislation emphasises the crucial importance of language, and it is on the basis of this legislation that the Language in Education Policy (LiEP) provides for the following: Schools are permitted to adopt either one language (mother tongue) as a medium of instruction or two languages (mother tongue in the early grades and a second language in the senior phases).¹⁵ The LiEP further states that:¹⁶

“Whichever route is followed, the underlying principle is to maintain home language(s) while providing access to and the effective acquisition of additional language(s).”

The National Curriculum Statement also suggests that “the learner’s home language should be used for learning and teaching wherever possible. This is particularly important in the Foundation Phase where children learn to read and write”.¹⁷

4 THE PAN SOUTH AFRICAN LANGUAGE BOARD (PANSALB)

As already mentioned, the state has an obligation to ensure that the African languages that were marginalised in the past now enjoy parity of esteem and equal treatment. In this regard a national body, namely the Pan South African Language Board (PanSALB),¹⁸ was established to ensure that all official languages, including the ancient indigenous languages of the Qoi (Khoi), San and Nama are developed and promoted.¹⁹

One can thus see that high priority is given to the development and promotion of all the official languages in South Africa. The Constitution also emphasises the importance of the development and promotion of all the official languages. Section 6(4) of the Constitution states as follows:

¹⁵ See, in general, <http://www.education.gov.za>, last visited 2011-10-14.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Act 59 of 1995.

¹⁹ Gabela “Language of education in South Africa” <http://www.deta.up.ac.za/archive2007/presentations/word/language%20of%20education%20Gabela%20RV.pdf>, last visited 2012-05-11.

“The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. ... All official languages must enjoy parity of esteem and must be treated equitably.”

The importance of PanSALB is also emphasised in section 6(5) of the Constitution which stipulates as follows:

“A Pan South African Language Board established by national legislation must –

- (a) promote, and create conditions for, the development and use of –
 - (i) all official languages;
 - (ii) the Khoi, Nama and San languages; and
 - (iii) sign language...”

It is thus evident from section 6 of the Constitution that Sign Language is recognised as an official language of South Africa. Thus, a recognised Sign Language for hearing impaired children will also enjoy the status of an official language relating to learning at a public school.²⁰

5 DIFFERENT FORMS OF LANGUAGE EDUCATION

5.1 Mother tongue education

5.1.1 Definition of mother tongue

According to UNESCO, mother tongue can be defined as “the language(s) that one has to learn first; the language(s) one identifies with or is identified as a native speaker of by others; the language(s) one knows best and the language one uses the most”.

The definition of mother tongue can also be tabulated as follows:²¹

²⁰ Bray “The South African Schools Act” in Boezaart (ed) *Child Law in South Africa* (2009) 481.
²¹ Skutnabb-Kangas *Linguistic genocide in education – Or worldwide diversity and human rights* (2000) 105-115.

CRITERION	DEFINITION
ORIGIN:	the language one learned first
IDENTIFICATION: a) internal b) external	a) the language one identifies with b) the language one is identified as a native speaker of by others
COMPETENCE:	the language one knows best
FUNCTION:	the language one uses most

5.1.2 *The importance of mother tongue education*

“As jy nie jou eie taal ken nie, is dit net so goed jy weet nie wie jy is nie.”²²

Mother tongue is the most effective language for initial instruction and learning; this can be justified from different perspectives:²³

- From a psycholinguistic perspective, mother tongue is cognitively the best for expression and reception.
- From a sociolinguistic perspective, mother tongue is a vital instrument for the identification of the relevant respective community/society.

²² Dugmore “Van Mikro tot moedertaalonderrig” <http://vryeafrikaan.co.za/site/lees.php?id=835>, last visited 2012-05-11.

²³ Louwrens “Moedertaalonderrig as moderator by die verband tussen intelligensiekwosient en akademiese prestasie” <http://etd.uovs.ac.za/ETD-db/theses/submitted/etd-08262004-170956/unrestricted/02Louwrens.pdf>, last visited 2012-05-11.

- From an educational perspective, a child will learn the best through mother tongue as primary medium of instruction.

Hence, children who enter primary school will certainly learn best through their mother tongue, and a second language (such as English) will be acquired without difficulty if the child already has a solid understanding, insight and knowledge of his or her home language or mother tongue. It can therefore be argued that one of the contributing factors to the “poor-throughput-rates problem” in South African schools is the use of a second language as the primary medium of instruction.²⁴

Already in 1951, a UNESCO meeting of experts advised “on educational grounds, that the use of mother tongue instruction be extended to as late a stage in education as possible. In particular, pupils should begin their schooling through the medium of mother-tongue”.²⁵ In addition to the aforementioned, the following three principles with regard to language in education are of cardinal importance.²⁶

- mother tongue instruction is a way in which education quality is improved by building upon the existing knowledge base of learners and teachers;
- bilingual and multilingual education promote and advance social and gender equality and is a vital component of linguistically diverse societies;
- language is an invaluable component of intercultural education, since it cultivates and encourages a greater understanding between different population groups and ensures respect for fundamental rights.

²⁴ Foley “Mother-tongue education in South Africa”
<http://www.englishacademy.co.za/pansalb/education.pdf>, last visited 2012-05-11.

²⁵ Le Mottee “Language in education”
http://www.osisa.org/.../2_3_language_p032-038_sherri_le_mottee.pdf, last visited 2012-05-09.

²⁶ *Ibid.*

In short, if children is taught and instructed in a language that they understand, they have a better chance of academic prowess and success. On another important level, the use of mother tongue instruction relates to self-actualisation, which refers to the fulfilling of one's individual potential. It is thus eminent that if schools offer mother tongue based bilingual education, children will develop in the best way possible and they will become fulfilled individuals.²⁷

5.1.2.1 Arguments in support of mother tongue education

There are several arguments that support the importance of mother tongue education:²⁸

- Mother tongue education facilitates the changeover from home to school, and the school is integrated into society in a positive way.
- Mother tongue education improves and strengthens the cardinal importance of localised language and identity.
- Emphasis must be given to the fact that mother tongue is the primary carrier of cultural identity.
- Linguistic and cognitive development is facilitated through mother tongue.

²⁷ Dugmore "Van Mikro tot moedertaalonderrig" <http://vryeafrikaan.co.za/site/lees.php?id=835>, last visited 2012-05-11.

²⁸ Louwrens "Moedertaalonderrig as moderator by die verband tussen intelligensiekwosient en akademiese prestasie" <http://etd.uovs.ac.za/ETD-db/theses/submitted/etd-08262004-170956/unrestricted/02Louwrens.pdf>, last visited 2012-05-11.

- Reading is one of the most important skills a child should master during his or her first school years. Research has shown that a child's progress with regard to the reading process is built on mother tongue.
- It is also important to remember that a child's "way of thinking" develops through language. Language confusion can therefore have detrimental effects on a child's "way of thinking".

The following educational arguments support mother tongue education:²⁹

- Mother tongue education facilitates the acquisition of knowledge and concept/idea, as well as the development of cognitive, affective and social skills in accordance with learners' potential.
- The use of mother tongue as a primary medium of instruction promotes the development of learners' language proficiency.
- The social, psychological and cultural functions of language are of vital importance in any teaching situation.

5.1.2.2 A practical example of the importance of mother tongue education

The following set of facts provides a clear example of the importance of mother tongue education:

All grade 7 learners in South African schools were obliged to write a "national science examination paper". This paper was available in Afrikaans and English. The results

²⁹ Webb "Perspektiewe op moedertaalonderrig" June 2006 *Tydskrif vir Geesteswetenskappe* 39-40.

were disappointing, and it was clear that the learners who wrote the paper in Afrikaans, performed better than those who wrote the paper in English.

The reason for the above is simple: One can presume that the learners, who wrote the paper in Afrikaans, had the advantage of writing in their mother tongue. Conversely, many of the learners had to write the paper in English and did not have the advantage of writing in their mother tongue, since English is in most instances a second (or sometimes even a third) language and learners are sometimes challenged to understand, read and write difficult concepts in a second language.

Professor Irma Eloff once said that “moedertaalonderrig het duidelik ‘n positiewer effek op kinders se selfvertroue en volgehoue prestasie as dié van hul maats wat hul skoollewe in ‘n nuwe taal moes aanpak”.³⁰ I fully agree with professor Eloff, since it is desirable and to the advantage of all children to be instructed in their mother tongues for as long as possible.

5.1.3 Challenges in the way of mother tongue education

The promotion of mother tongue education is hampered by several factors:³¹

- Ignorance with regard to the advantages of mother tongue education.
- The negative social meaning which is given to African languages and Afrikaans.
- The social and economic power of English.

³⁰ See, in general, Dippenaar “Moedertaal beslis beste medium vir onderrig” May 2010 *Burger* 4.

³¹ Webb “Perspektiewe op moedertaalonderrig” 2006 *Tydskrif vir Geesteswetenskappe* 45-46.

- Difficulties with the practical implementation of mother tongue education in linguistically diverse communities.

Despite these challenges, South Africa is still capable of creating favourable teaching environments and promoting mother tongue education, since there is strong national legislation which makes provision for the promotion and advancement of mother tongue education. However, in order to promote mother tongue education, it is important to implement approaches such as bilingual education³² and MT-based MLE³³ where reasonably possible and practicable. The implementation of “new approaches” will definitely not be without difficulties, but at least the importance of mother tongue education will *not* be suppressed.

5.2 Bilingualism (Bilingual education)

“Since a bicycle has two wheels and binoculars are for two eyes, it would seem that bilingualism is simply about two languages.”³⁴

5.2.1 Definition

Bilingual education can be defined as the instruction or teaching of academic content in two languages: a home language (mother tongue) and a secondary language where varying amounts of both languages are used in accordance with the relevant program model.

³² See par 5.2 below.

³³ See par 5.3 below.

³⁴ Baker *Foundations of bilingual education and bilingualism* 5th ed (2011) 2.

According to Snayers and Du Plessis, the term bilingual education can be defined as “die gebruik van twee tale in die onderrig van ‘n individuele leerder”.³⁵ Thus, the two languages are not only “subjects”, but are also used to teach “subject content”.³⁶

5.2.2 *Is bilingual education to the advantage of learners?*

There is no way that bilingualism or bilingual education can harm children. On the contrary, the learning and acquisition of a second language will improve children’s academic performance. It is therefore of cardinal importance that strong bilingual education models are used.³⁷

There are various forms of bilingual education and it is vitally important that bilingual education is promoted in such a way that equal educational opportunities are created for minority groups as well.³⁸

Additive bilingual education is in my view the best and most successful form of bilingual education, since learners start their school careers with mother tongue education, after which a second language (usually English) will be added. Additive bilingual education will be advantageous to learners and it will develop successful bilingual individuals. The reason for this can be attributed to the fact that the two languages (mother tongue and secondary language) and cultures are seen as “mutually enriching”.³⁹

Additive bilingual education models will flourish if schools and communities:⁴⁰

- provide sufficient funds to promote bilingual education extensively; and

³⁵ Snayers & Du Plessis “Moedertaalonderrig en tweetalige onderwys – perspektiewe op die voertaal-vraagstuk in Suid-Afrikaanse skole” 2006 *Tydskrif vir Geesteswetenskappe* 56.

³⁶ *Ibid.*

³⁷ See, in general, Freeman *Bilingual education and social change* (1998) 247.

³⁸ Snayers & Du Plessis 2006 *Tydskrif vir Geesteswetenskappe* 52.

³⁹ Snayers & Du Plessis 2006 *Tydskrif vir Geesteswetenskappe* 52-53.

⁴⁰ *Ibid.*

- make provision for sufficient teaching and learning time.

In other words, bilingual education will thrive with continued hard work and dedication.

5.2.3 Types of strong bilingual education models

There are seven types of strong bilingual education models, but for purposes of this study, only two types will be discussed. The reason for this is that these two types are the most related to the South African context.⁴¹

Maintaining model (*Handhawing*): Both the majority and minority language are used throughout the “minority child’s” school career. It takes place through the use of compartmentalisation, which aims to preserve and develop the minority language and to promote and expand the history and culture of the minority group.

Mainstream bilingual model: Two majority languages are used throughout the child’s school career.

The following table explains the functioning of the aforementioned two models and also illustrates the objectives and goals that can be achieved if these models are used:

Model	Language(s) used	Pedagogical objective/goal	Linguistic objective/goal
Maintaining model	Minority and majority language	Pluralism and enrichment	Bilingualism

⁴¹ Snayers & Du Plessis 2006 *Tydskrif vir Geesteswetenskappe* 54-56.

Mainstream bilingual model	Two majority languages	Enrichment and pluralism	Bilingualism
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It is apparent that these two models emphasise the maintaining and preservation of mother tongue within an education system and the pursuit of “strong bilingualism”. Mother tongue is central in both these models, which provides inimitable proof of the importance of mother tongue education.⁴²

In conclusion, when bilingual education is implemented, the following principles should be considered:⁴³

- Bilingual staff and administration
- Highly qualified bilingual teachers
- Active parent participation
- Bilingual context (the promotion of bilingualism and the prevention of monolingualism)
- Inclusive educational strategies
- Varied teaching material in respect of “language teaching”
- Fair and reliable evaluation

5.3 Mother tongue-based multilingual education (MT-based MLE)

“Language is not everything in education, but without language, everything is nothing in education.”⁴⁴

⁴² See, in general, Snayers & Du Plessis 2006 *Tydskrif vir Geesteswetenskappe* 56.

⁴³ Snayers & Du Plessis 2006 *Tydskrif vir Geesteswetenskappe* 58.

⁴⁴ Prof Ekkehard Wolff (2006); see also HSRC “Without language everything is nothing in education” 2006 *HSRC Review* Vol 4 No 3 1.

5.3.1 Definition

MT-based MLE refers to “first-language-first” in education, that is, a child’s schooling begins in his or her mother tongue and later transitions to additional languages”.⁴⁵ MT-based MLE is also defined as “the use of students’ mother tongue and two or more additional languages as Languages of instruction (LoI) in school. In other contexts, the term is used to describe bilingual education across multiple language communities – each community using their own mother tongue plus the official school language for instruction”.⁴⁶

5.3.2 Why MT-based MLE?

There is profound evidence from across Africa and several other parts of the world that MT-based MLE is the most apposite and favourable solution for “bridging language gaps and disparities” in education.⁴⁷ One can also say that “multilingual education helps linguistically marginalised communities bridge to the broader society, allowing them to acquire the national language without losing their own identity”.⁴⁸

Effective MT-based MLE programmes have three goals.⁴⁹

⁴⁵ Kadel “Mother tongue based multilingual education” <http://ldcnepal.org/wp-content/uploads/2010/04/MLE-Article-Newspaper-9-December-2010.pdf>, last visited 2012-05-12.

⁴⁶ Malone “Mother tongue-based multilingual education: implications for education policy” <http://resources.wycliffe.net/pdf/MT-Based%20MLE%20programs.pdf>, last visited 2012-05-12.

⁴⁷ Pinnock “Mother tongue based multilingual education: how can we move ahead?” http://www.seameo.org/_ld2008/documents/Presentation_document/Helen_Pinnock_mle_how_d_o_we_move_ahead.pdf. last visited 2012-05-12.

⁴⁸ Dr Kimmo Kosonen (2009); see also Kadel “Mother tongue based multilingual education” <http://ldcnepal.org/wp-content/uploads/2010/04/MLE-Article-Newspaper-9-December-2010.pdf>, last visited 2012-05-12.

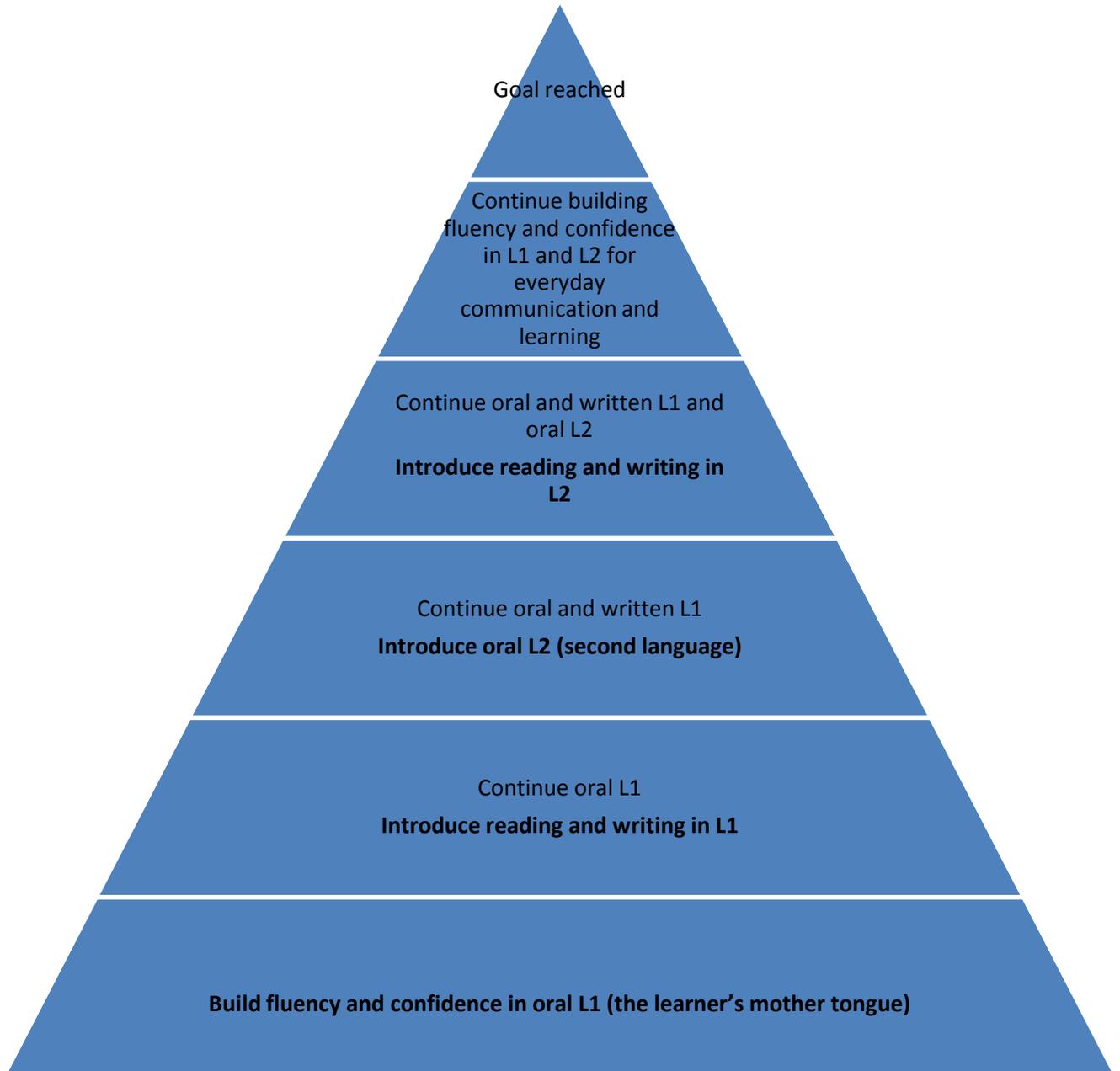
⁴⁹ Malone “Bridging languages in education” 2006 *id21 Insights Education* 6; see also, in general Webley “Mother tongue first: children’s right to learn in their own languages” <http://www.eldis.org/id21ext/insightsed5editorial.html>, last visited 2012-05-14.

- Language: Learners develop fluency and self-confidence when their mother tongue (L1) is used. An additional language (L2) is used for communication and learning in school.
- Academic: Grade-level academic competency is accomplished in each subject. Learners are now equipped with the necessary skills to move successfully into and through the mainstream education system where the majority language is mostly used.
- Socio-cultural: Learners treasure their heritage, language and culture and they are geared up to contribute to the development of their own community and the nation.

Thus, MT-based MLE programmes enable learners to begin their school careers in their mother tongue (L1) and to use their mother tongue for initial literacy. When initial literacy is obtained, a second language (L2) is added – firstly for listening and speaking purposes and then for reading and writing purposes. Once learners gain confidence in using the official language for everyday communication, they will also learn the vocabulary and grammatical constructions with regard to more abstract academic concepts.⁵⁰

The following pyramid diagram illustrates the six phases in bridging between languages in multilingual education:⁵¹

⁵⁰ *Ibid.*
⁵¹ *Ibid.*



It is thus evident from the above discussion that MT-based MLE can be successful and to the benefit of all learners if it is implemented correctly.

The radial diagram below is an example of a practice framework which supports and encourages MT-based MLE:⁵²



It can therefore be concluded that MT-based MLE is advantageous in several respects:⁵³

⁵² Pinnock “Mother tongue based multilingual education: how can we move ahead?” http://www.seameo.org/_Id2008/docments/Presentation_document/Helen_Pinnock_mle_how_d_o_we_move_ahead.pdf, last visited 2012-05-12.

⁵³ Kadel “Mother tongue based multilingual education” <http://ldcnepal.org/wp-content/uploads/2010/04/MLE-Article-Newspaper-9-December-2010.pdf>, last visited 2012-05-12.

- Status is given to indigenous languages.
- Children are enabled to have links with their cultural backgrounds and to develop close relationships with their families and wider communities.
- Employment opportunities are increased.
- Access to the curriculum and to learning in school is made possible.
- Communication between different linguistic and cultural groups is improved.
- Children are provided with the ability to share in a variety of intercultural experiences such as literature, entertainment, religion and several other interests.

5.4 Conclusion

Mother tongue education is without a doubt the most important component with regard to the educational development of South African learners and the subsequent development of South African communities on social, cultural, political, religious and economic level. The suppression of mother tongue education results in reduced public access to basic rights, benefits and remedies, increased poverty and the uneven distribution of scarce resources. The denial of mother tongue education also results in increased prejudice, discrimination and exploitation.⁵⁴

⁵⁴ Webb "Perspektiewe op moedertaalonderrig" 2006 *Tydskrif vir Geesteswetenskappe* 46.

It is therefore patently obvious that mother tongue education is invaluable and to the advantage of all children. There is also a profusion of evidence in favour of mother tongue education:⁵⁵

“[A] mother tongue is a person’s natural means of self expression and represents a learner’s indigenous knowledge about his community’s values, history and experience that the education system should build on to when developing and education him/her.”

“... It is universally accepted that mother tongue education is good for education. It is also universally accepted that education is indispensable to development. Mother tongue education is therefore indispensable to development”.

A child, who is taught in a language other than his or her mother tongue, is confronted with many challenges and difficulties. When a child comes to the realisation that he or she will be receiving education in a foreign language, a sense of fear and insecurity may be developed.⁵⁶

“Anyone who has to struggle with the force of a new language when they enter into a new learning atmosphere would understand the confusion that is experienced ... you want to understand what is going on, but you cannot because your mind is blank. You have no words in the new language to offer expression. Soon nothing the child knows or wants to know or say matters because of this language barrier.”

The “narrow approach” that mother tongue education can only be successfully promoted in monolingual (single language) schools, is a misperception of the true state of affairs. In fact, mother tongue education can be successfully promoted through the implementation of certain education models. Strong bilingual education is one of the best education models to use in the South African context, because mother tongue and mother tongue education retain a prominent role in the upbringing and education of children. The bilingual education models which can be implemented with great success

⁵⁵ See in general <http://www.wimsa.org>, last visited 2011-10-30.

⁵⁶ *Ibid.*

in South Africa, is the Maintaining- and Mainstream bilingual models. These models will benefit all language groups since they promote pluralism, enrichment and bilingualism.

MT-based MLE education models can also be implemented with great success, since a child's education will start with his or her mother tongue and additional languages will only be added at a later stage. This model will definitely be favourable in the South African context since South Africa is a country with diverse cultures and languages and this model might be the solution for the bridging of language gaps and disparities.

In my view, bilingual education models and MT-based MLE education models will be advantageous to all language groups and should therefore be promoted and encouraged. However, one should remember that an education model which benefits only one language group should be approached with great care because such a model is ineffective and causes unnecessary language disputes.

The views and opinions that speakers of minority language groups should guard against language disputes, is only realisable and doable in an ideal world with no ideological undercurrents and where absolute equality reigns. It can therefore be argued that if a language is only spoken and not promoted and/or further developed, all the progress towards recognition and standardisation are disregarded.⁵⁷

Mother tongue education is thus the "cultural capital" of access, participation and inclusion and South Africa as a nation has the responsibility to combat language challenges and to promote and encourage multilingualism, equal language opportunities and educational justice.⁵⁸

It can therefore be unequivocally declared that mother tongue education is in the best interests of every child, but in my view, we must not be blinded by "monolingual

⁵⁷ Van Niekerk & De Wet "Supplementuitgawe: Tydskrif vir Geesteswetenskappe Moedertaalonderrig" 2006 *Tydskrif vir Geesteswetenskappe* 4.

⁵⁸ Le Mottee "Language in education"
http://www.osrsa.org/.../2_3_language_p032-038_sherri_le_mottee.pdf, last visited 2012-05-09.

education” only. Bilingual education and mother tongue based multilingual education can be successfully implemented in a country like South Africa where a diversity of language(s) prevails.

In conclusion, when mother tongue education comes under the spotlight, the following must always be remembered:⁵⁹

“To achieve success in education, we need to achieve success in our approaches to and celebration of language.”

6 INTERNATIONAL INSTRUMENTS AND NATIONAL LEGISLATION

The cardinal importance of language and mother tongue education is also emphasised in various international instruments and national legislation.

6.1 International instruments

There are several international instruments which deal with language and mother tongue education. For purposes of this study, seven international instruments will be discussed.

6.1.1 The Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Article 4(2) stipulates that states shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop

⁵⁹ *Ibid.*

their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

States are required in article 4(3) to take appropriate measure so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

Article 4(4) also stipulates that states should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.

6.1.2 The International Labour Convention (No 169) Concerning Indigenous and Tribal Peoples in Independent Countries

Article 28(1) stipulates that children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

Article 28(2) states that adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

Article 28(3) also states that measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

6.1.3 The UN Declaration on the Rights of Indigenous Peoples

Article 14(1) specifies that indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Article 14(2) states that indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

Article 14(3) stipulates that states shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

6.1.4 The UN Universal Declaration on Human Rights

Article 2 stipulates that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 stipulates that everyone has the right to education without discrimination. As seen from above, article 2 prohibits discrimination on the grounds of language.

6.1.5 The UN Convention and Recommendation against Discrimination in Education

Article 5(1)(c) stipulates that states parties to this convention agree that it is essential to recognise the right of members of national minorities to carry on their own education

activities, including the maintenance of schools and, depending on the educational policy of each state, the use or the teaching of their own language.

6.1.6 *The African Charter on the Rights and Welfare of the Child (ACRWC)*

Article 11 states that every child shall have the right to an education. Article 3 states that every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his or her parents' or legal guardians' language.

One can thus say that every child has the right to an education in his or her mother tongue, where reasonably practicable, since article 3 prohibits discrimination on the grounds of language. It would be in the best interests of the child to receive education in his or her mother tongue. In short, discrimination based on language is prohibited, which in turn is equivalent to the right to mother tongue education. However, to provide mother tongue education is not always reasonably practicable. Two questions need to be asked: What type of right is the right to mother tongue education; and what is meant by reasonably practicable?

The right to an education in one's mother tongue or language of choice is not an unqualified right, but a positive right. The extent of this right is "specifically demarcated by the requirement of reasonable practicability".⁶⁰ This means that circumstances must warrant the right to receive education in a language of choice and that the necessary resources and administrative capacity must be available in order to give effect to this right.⁶¹ However, with regard to reasonably practicable, the following can be emphasized: "[t]he standard of reasonableness means that where mother tongue education is not provided there must be an objective justification for the denial of the

⁶⁰ Prinsloo "The right to mother tongue education: a multidisciplinary, normative perspective" 2007 *Southern African Linguistics and Applied Language Studies* 34-35.

⁶¹ *Ibid.*

right. International practice suggests that denial of the right can be justified by reference to a sliding scale".⁶² The formula which is used to determine whether there is an objective justification for the denial of the right to receive education in a language of choice, is as follows: The greater the number of speakers of a particular language in a specific area, the greater the obligation of government to provide for instruction (education) in that language. However, the higher the level of education, the less pressing and urgent the obligation becomes to provide mother tongue education.⁶³

It must be borne in mind that the provision of mother tongue education at primary school level appears to be unavoidable since many children do not have the necessary understanding of any other language than their own mother tongue. However, the strongest case for the provision of mother tongue education lies on the internationally accepted right of access to good quality, basic education.⁶⁴

6.1.7 *The UN Convention on the Rights of the Child (UNCRC)*

The UNCRC can, with regard to language and education, be divided into two categories of rights, namely child rights and parental rights:

6.1.7.1 Child rights

Article 30 stipulates that in those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous, shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

⁶² De Waal, Currie & Erasmus *The Bill of Rights handbook* (2001) 484.

⁶³ Prinsloo *South African linguistics and applied language studies* 34-35.

⁶⁴ *Ibid.*

UNCRC General Comment 7 states that “young children are holders of all rights enshrined in the Convention. Early childhood (from birth to 8 years) is a critical period for realization of these rights. Programs and policies are required to realize rights in early childhood. These policies and programs must recognize and incorporate diversities in culture, language, and child rearing”.⁶⁵

6.1.7.2 Parental rights

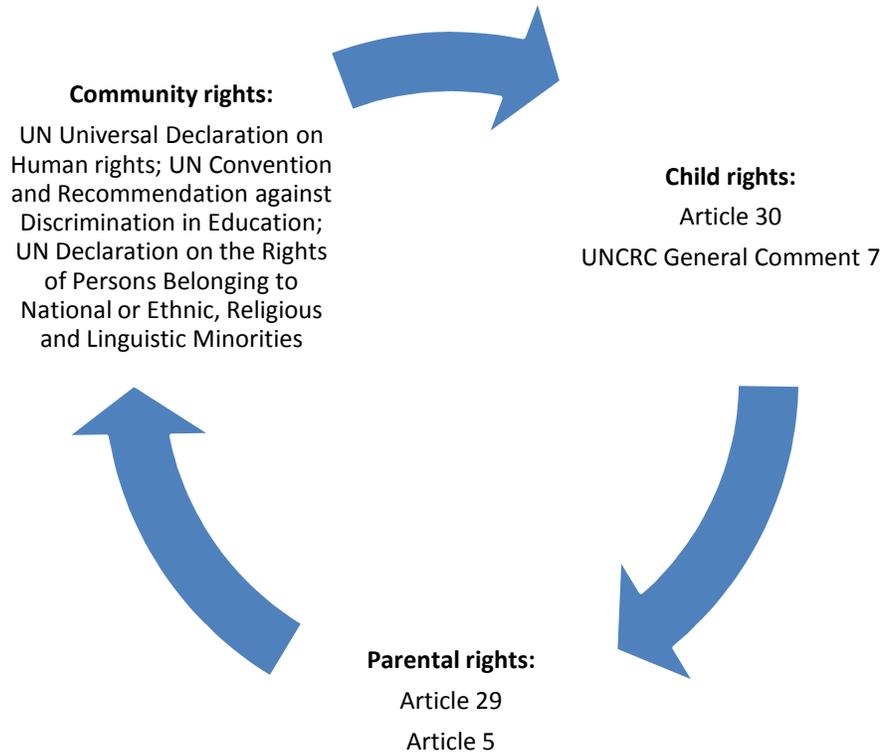
Article 29(1)(c) stipulates that states parties agree that the education of the child shall be directed to the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

Article 5 also stipulates that states parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

However, the rights with regard to language and education in general can be divided into three categories and the following figure illustrates these three classes:⁶⁶

⁶⁵ *Ibid.*

⁶⁶ See, in general Ball “Promoting children’s rights to use their mother tongue in early education” <http://www.seameo.org/.../doc/presentations/day1/JessicaBall-sn-ecd.pdf>, last visited 2011-10-18.



The position with regard to community rights has already been discussed in paragraphs 7.1.1, 7.1.4 and 7.1.5.

6.2 National legislation

South African national legislation also provides for “language rights”. Several sections of the South African Constitution, the National Education Policy Act and the South African Schools Act have already been discussed under paragraph 3.2. Section 29(2) of the South African Constitution, which specifically deals with education in one’s preferred language, will now be discussed in full.

6.2.1 Section 29(2)

Section 29(2) of the Constitution stipulates that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account equity, practicability and the need to redress the results of past racially discriminatory laws and practices.

In simple terms, section 29(2) can be explained as follows:

Section 29(2) states that everyone should enjoy the right to receive education in his or her preferred language in public educational institutions where that education is “reasonably practicable”.⁶⁷ The right to receive education in the official language of one’s choice in public educational institutions is therefore of a qualified nature. This means that the importance of mother tongue education is taken into account, but that the provision of mother tongue education should also be reasonably practicable.⁶⁸ Reasonably practicable means that every learner (in case of a minor, his or her parents or legal guardian(s)) must choose the preferred language of teaching on admission to a particular school. If the preferred language chosen is unavailable, the learner is allowed to request his or her preferred language. The question now is what is exactly meant by “reasonably practicable”? “Reasonably practicable” means something that is reasonable to the degree of being practical – something that can be done, implemented or achieved without difficulty. Accordingly “reasonably practicable” would be to provide education in a particular language if no less than 40 learners in grades one to six or 35 learners in grades seven to twelve request a particular language at a particular school.⁶⁹

⁶⁷ Anon “Language rights and schools” http://www.erp.org.za/htm/issuepg_lang.htm, last visited 2012-05-12.

⁶⁸ Robinson “Children’s rights in the South African Constitution” 2003 *PER* Vol 6 No 1 33-35.

⁶⁹ Anon “Language rights and schools” http://www.erp.org.za/htm/issuepg_lang.htm, last visited 2012-05-12,

When a particular language is requested and the number of learners is below the aforementioned numbers, the Head of the Department of Education is required to come forward with possible solutions. The Head of the Department of Education is obliged to consider the advice and recommendations of the school governing body, the principal and the school in general. Factors such as “the need to achieve equity and the need to redress racially discriminatory practices” should be taken into consideration.⁷⁰ Other relevant factors such as costs, availability of facilities and educators, as well as distances to comparable schools where the “preferred mother tongue education” is provided, should also be considered.⁷¹

If a learner or school governing body is not satisfied with the Head of Department’s decision, they may appeal to the MEC for Education in the relevant province within a time period of 60 days. If they are still not satisfied, they may approach the Pan South African Language Board or the Arbitration Foundation of South Africa.⁷²

Section 29(2) can thus be described as an empowerment clause, “because its actual intention is to extend educational opportunities to as many South Africans as possible”.⁷³

There are some implications with regard to section 29(2) that need to be emphasised:⁷⁴

- Section 29(2) states that ... in order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions ... This means that the state is obliged to give this right the attention it deserves and the state also has to prove

⁷⁰

Ibid.

⁷¹

Malherbe “Equal educational opportunities in South Africa: the constitutional framework” 2004 *TSAR* 439.

⁷²

Anon “Language rights and schools” http://www.erp.org.za/htm/issuepg_lang.htm, last visited 2012-05-12.

⁷³

Malherbe “Education rights” in Boezaart (ed) *Child Law in South Africa* (2009) 410.

⁷⁴

Malherbe “Equal educational opportunities in South Africa: the constitutional framework” 2004 *TSAR* 439-440.

that the right to receive education in one's preferred language is executed effectively.

- The right to receive education in one's preferred language is subject to the practicability test and not to the factors "equality, practicability and the need to redress the results of past racially discriminatory laws and practices" contained in section 29. These factors deal with the best alternative to provide the right effectively and is applicable only to the "determination of the best alternative to give effect to the right ...".
- Section 29(2) specifically refers to single-medium institutions. This means that dual and parallel medium education could also be included as alternatives, but within a range of possibilities.
- Any views and opinions that single-medium institutions impede the redress of past discrimination are unfounded and groundless, because the highest standard of education can be made available to all South Africans through mother tongue.
- Dual and parallel medium institutions are in some instances the best alternative to comply with the right to receive education in one's preferred language. However, it has the shortcoming that the reduced numbers of a particular language group can put enormous pressure on that language which may lead to single-medium instruction. Consequently, the right of those learners who prefer education in a particular language is then at risk.

To conclude, the Constitution explicitly provides for the right to receive education in one's preferred language. However, the following should be remembered:⁷⁵

⁷⁵ Malherbe "Equal educational opportunities in South Africa: the constitutional framework" 2004 *TSAR* 440.

“Single-medium educational institutions are not a guaranteed right, but must be considered whenever the best alternative to provide the right to education in one’s preferred language must be chosen. Even when a single-medium institution proves not to be the best alternative, the duty remains on the state to provide education in one’s preferred language effectively.”

7 MOTHER TONGUE EDUCATION – A SUBJECT OF LITIGATION

Section 29(2) has provoked strong reaction and led to several lawsuits.

7.1 *Laerskool Middelburg v Departementshoof, Mpumalanga Departement van Onderwys*⁷⁶

Laerskool Middelburg is an Afrikaans medium public school with Afrikaans as the exclusive medium of instruction. On 28 November 2011, the school was instructed to enrol 20 learners who wished to attend the school from January 2002 and to be taught in English. In other words, Laerskool Middelburg had to change from a single medium Afrikaans school to a parallel medium school. The school refused to comply with this instruction and informed the parents of these learners in writing that their applications for admission were not successful since Laerskool Middelburg is a single medium Afrikaans school. On 14 January 2002, the principal’s power to admit learners was revoked by the department. On 15 January 2002, a certain Mr Mampana (an official of the department) arrived at the school and enrolled eight learners who preferred English as medium of instruction.⁷⁷

⁷⁶ 2003 (4) SA 160 (T).

⁷⁷ 169 C-F.

The court argued erroneously that section 29(2) makes provision for a right to single medium schools, but in this case, the court held that the department had violated the “capacity regulation(s)”. The regulation(s) stated indisputably that “the schools which offered the tuition in the desired language had to be at full capacity before the status of a single medium school could be changed”.⁷⁸

However, from the report of the curator, it appears that the learners (a total of 24) could have been accommodated with ease at any of the other schools in the district. These learners could have been accommodated without difficulties in either Kanonkop Primary School or Dennesig Primary School, which are both parallel medium schools. There is also Middelburg Primary School, which is a single medium English school with English as medium of instruction. If these learners were enrolled in any of the aforementioned schools, there would have been no change to their language policies. However, the enrolment of these learners in Laerskool Middelburg would change its language policy and school setting(s).⁷⁹

It is thus clear from the above that the department had infringed the school’s and the governing body’s powers. As a result of the department’s “excess of powers”, Laerskool Middelburg approached the court to set aside the department’s and its officials’ decision to declare Laerskool Middelburg a parallel medium school.⁸⁰

Unfortunately, there was a long delay of almost nine months before the school brought its application to the court. The learners had already been attending the school for these eight months and it would be in the best interests of every learner to continue with schooling in Laerskool Middelburg.⁸¹ If the application was brought before the court at

⁷⁸ 171 G. See also Malherbe in Boezaart (ed) *Child Law in South Africa* (2009) 413.

⁷⁹ 172 D-E. See also Malan “Die Grondwet, onderwysowerhede en die pad vorentoe vir Afrikaanse skole” 2010 *Tydskrif vir Geesteswetenskappe* 268.

⁸⁰ 168 I-J.

⁸¹ 178 D-G. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 269.

an earlier stage, the decision would probably have been different: the department's infringement of the school's and governing body's powers would have been set aside.⁸²

The school's application to set aside the decision of the department to declare Laerskool Middelburg a parallel medium school was rejected.⁸³ The judgment was anchored in section 28(2) of the Constitution, which stipulates that "a child's best interests are of paramount importance in every matter concerning the child".⁸⁴ If the learners were turned away, their best interests would be affected. Their "right to education" would be disrupted because they would have to enrol and register at a new school. Moreover, possible close relations could have been formed with classmates by now – an indication that these learners have already to a large extent adapted to the school and school environment.

The Western Cape Education Department exercised the same pressure on the Mikro Primary School. The department instructed the school to change from an Afrikaans single medium school to a parallel medium school. The case is discussed below.

7.2 *Minister of Education, Western Cape, and Others v Governing Body, Mikro Primary School*⁸⁵

Mikro Primary school was founded in 1972 and has been a single medium Afrikaans school since 1973. On 2 December 2004, the principal was instructed to enrol a group of grade 1 learners for the upcoming year (January 2005). The principal was also instructed to offer this group of learners their education in English. The school was informed that if the principal (and school) refuse to comply with this instruction, disciplinary action would be taken against the principal. On 19 January 2005, two

⁸² *Ibid.*
⁸³ 179 C.
⁸⁴ 178 C-D.
⁸⁵ 2006 (1) SA 1 (SCA).

senior members of the Education Department arrived at the Mikro Primary School and enrolled 21 grade 1 learners who wished to be instructed in English.⁸⁶

There was also (as in the Middelburg-case), another parallel medium school, De Kuilen Primary School, that taught in both Afrikaans and English. The 21 learners could have been easily accommodated in this school.⁸⁷

Mikro Primary School brought a court application requesting the court to review and set aside the Department's decision regarding the admission of grade 1 learners and their wish to receive their education in English.⁸⁸

The court *a quo* ruled in favour of the Mikro Primary School and found that the Department acted unlawfully by compelling the school to admit learners contrary to the school's language policy.⁸⁹ The court also ordered that the department and its officials were not allowed to interfere with the school's professional activities and management. There was an obligation on the department and its officials to ensure that this group of learners are admitted in other schools.⁹⁰

The department appealed against the court *a quo*'s decision. The Supreme Court of Appeal also ruled in favour of Mikro Primary School, and the appeal was dismissed with costs.⁹¹

It is thus evident that the department exceeded its powers in an incorrect and unlawful manner. Visser's opinion on the Mikro case is without doubt correct. He said the following:⁹²

⁸⁶ 8 I – 27 B, see also Lubbe “Afrikaans-moedertaalonderrig onder beleg” 2006 *Stellenbosch Papers in Linguistics PLUS* 58-59.

⁸⁷ *Ibid.*

⁸⁸ 9 A-D. See also Lubbe 2006 *Stellenbosch Papers in Linguistics PLUS* 59.

⁸⁹ 9 C. See also Lubbe 2006 *Stellenbosch Papers in Linguistics PLUS* 59.

⁹⁰ See, in general, Malan “Die Grondwet, onderwysowerhede en die pad vorentoe vir Afrikaanse skole” 2010 *Tydskrif vir Geesteswetenskappe* 269-270.

⁹¹ 26 I. See also Lubbe 2006 *Stellenbosch Papers in Linguistics PLUS* 59.

“The judgment *in casu* is undoubtedly correct on the facts. The ill-advised interference from and high-handed action of the Cape education authorities, were clearly irregular and illegal.”

7.3 *Seodin Primary School v MEC of Education, Northern Cape*⁹³

The Seodin-case is another example that illustrates the huge amount of pressure that is placed on single medium schools to convert to parallel medium schools.

On 31 August 2004, six schools, namely Seodin Primary School, Kalahari High School, Kuruman Primary School, Wrenchville Primary School, Wrenchville Secondary School and the Northern Cape Agricultural High School, were instructed to convert to dual medium Afrikaans-and-English schools.⁹⁴

On 1 September 2004, the schools were informed by the head of the Education Department as follows:⁹⁵

“I propose to admit the learners as follows:

- (a) The learners presently in Grade 7 at Kuruman Primary School will be admitted to Grade 8 at Kalahari High School.
- (b) The Grade 7 learners at Wrenchville Primary School will proceed to Wrenchville Secondary School.
- (c) 200 Learners will be transferred from Wrenchville Primary School to Seodin Primary School.

⁹² Visser “Education law – language policy at single-medium public school – section 29(2) of the Constitution – irregular interference by provincial education department: *Western Cape Minister of Education v Governing Body of Mikro Primary School* Case no 140/2005 (SCA)” 2006 *THRHR* 339.

⁹³ [2006] 1 All SA 154 (NC).

⁹⁴ 156 para 3, see also Lubbe 2006 *Stellenbosch Papers in Linguistics PLUS* 60-61.

⁹⁵ 164 para 11.

- (d) 150 Learners will be transferred from Wrenchville Primary School to Kuruman Primary School.
- (e) The Grade 10 to 12 at Bankhara-Bodulong will be transferred to Kalahari High School and Bankhara-Bodulong will no longer offer grades in the FET (Further Education and Training) phase of the curriculum.
- (f) All new Grade 1 applicants will be distributed equitably among the primary schools.

You are called upon to comment on these proposals by 8 September 2004. The public will be informed immediately of the MEC's decision and the procedure outlined above. They will also be encouraged to start applying now to ensure that no time is lost in finalising the admissions for next year.

I am looking forward to receiving your advices.”

It is clear from the above that the schools had no other choice than to approach the court. Three of the schools, namely, Seodin Primary School, Kalahari High School and Northern Cape Agricultural School brought an application to the court requesting the court to review and/or set aside the MEC's decision to convert to and function as dual medium Afrikaans-and-English schools as well as the MEC's decision taken on 1 September 2004 (see above).⁹⁶

Unfortunately, the three schools' application was rejected, mainly on the grounds of “non-compliance with section 6(2) of the Schools Act”. Kgomo JP stated that none of the three schools had an approved language policy as determined in section 6(2) of the Schools Act.⁹⁷

⁹⁶ 156 para 3.

⁹⁷ 188 para 62; see also Lubbe 2006 *Stellenbosch Papers in Linguistics PLUS* 61.

7.4 *Head of Mpumalanga Department of Education v Hoërskool Ermelo*⁹⁸

Hoërskool Ermelo is a leading Afrikaans school in Mpumalanga. At the end of 2001, the head of the Mpumalanga Education Department disbanded the governing body of the school. The principal of the school was also dismissed, and the school was instructed to convert to a parallel medium school. The disbanded governing body had no choice other than to approach the court. The ensuing litigation brought some relief: the principal was reinstated in his post and the school remained a single-medium Afrikaans school.⁹⁹

A day before the schools reopened in 2007, the head of the Mpumalanga Education Department instructed Hoërskool Ermelo to also use English as a medium of instruction, because there were some learners who preferred to be taught in English.¹⁰⁰ The head of the Mpumalanga Education Department also appointed an interim committee, who had the task to amend the school's language policy. It was clear that the language policy had to be changed in such a way that 113 learners (who preferred English as a medium of instruction) who allegedly could not be accommodated elsewhere be accommodated in Hoërskool Ermelo. The interim committee met on the same day and decided that the language policy of the school would from then on be parallel medium.¹⁰¹

What is extremely disturbing is that this decision was taken without prior consultation of any kind. The interim committee's decision was solely based on information that was given by representatives of the Mpumalanga Education Department.¹⁰²

⁹⁸ 2010 (3) BCLR 177 (CC).

⁹⁹ See, in general *Schoombee v MEC for Education, Mpumalanga* 2002 (4) SA 877 (T). See also Malan "Die Grondwet, onderwysowerhede en die pad vorentoe vir Afrikaanse skole" 2010 *Tydskrif vir Geesteswetenskappe* 270.

¹⁰⁰ *Hoërskool Ermelo v Head, Department of Education, Mpumalanga* 2009 (3) SA 422 (SCA) at para 2 G-H. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 270.

¹⁰¹ *Hoërskool Ermelo v Head, Department of Education, Mpumalanga* 2009 (3) SA 422 (SCA) at para 11 F-I. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 270-271.

¹⁰² *Hoërskool Ermelo v Head, Department of Education, Mpumalanga* 2009 (3) SA 422 (SCA) at para 12 A-B. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 271.

Later that day, the head of the Mpumalanga Education Department addressed a letter to the school governing body in which they were told that the function of the governing body to determine the school's language policy was revoked with immediate effect.¹⁰³

The governing body approached the High Court for an interdict against the Mpumalanga Education Department, and their application was successful. However, a few days later, the "case" was reviewed and the school's application was dismissed.¹⁰⁴

Hoërskool Ermelo appealed to the Supreme Court of Appeal, and the decision of the court lead to a major turnabout in favour of Hoërskool Ermelo. The court ordered as follows:¹⁰⁵

1. The appeal is upheld.
2. The order of the court *a quo* is set aside and replaced by the following:
 - (a) The first respondent's decision to withdraw the function of the governing body of Hoërskool Ermelo to determine the language policy of the school is set aside.
 - (b) The first respondent's decision to appoint an interim committee to perform the function of the governing body to determine the language policy of Hoërskool Ermelo is set aside.
 - (c) The decision of the interim committee to amend the language policy of Hoërskool Ermelo from Afrikaans medium to parallel medium is set aside.

¹⁰³ *Hoërskool Ermelo v Head, Department of Education, Mpumalanga* 2009 (3) SA 422 (SCA) at para H-I. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 271.

¹⁰⁴ *Hoërskool Ermelo v Head, Department of Education, Mpumalanga* 2009 (3) SA 422 (SCA) para 13 C-D. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 271.

¹⁰⁵ *Hoërskool Ermelo v Head, Department of Education, Mpumalanga* 2009 (3) SA 422 (SCA) para 34 C-F.

- (d) Learners that have enrolled at Hoërskool Ermelo since 25 January 2007 in terms of a parallel medium language policy shall be entitled to continue to be taught and write examinations in English until the completion of their school careers.

The Constitutional Court held that the department was permitted in terms of section 22 of the Schools Act to withdraw the governing body's powers, which allowed the governing body in terms of section 6(2) of the Schools Act to determine the school's language policy. However, it can only be done on reasonable grounds.¹⁰⁶ In other words: the governing body of a school does not have the exclusive power to determine the language policy of a school.¹⁰⁷

The court also held that in terms of section 6(1) of the Schools Act, the minister may determine norms and standards for a language policy. Thus, the power to determine the language policy of a school is shared between the minister and the governing body of a school.¹⁰⁸

The court addressed another problem, namely the lack of space in schools to educate learners, especially those learners who prefer English as medium of instruction. This state of affairs hampers the right in terms of section 29(2) of the Constitution to receive education in the official language or languages of one's choice. The court was of the opinion that this problem could be partly solved by Hoërskool Ermelo, because the school had enough room to accommodate more learners, while other schools in the same district were jam-packed.¹⁰⁹

¹⁰⁶ *Head of Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (3) BCLR 177 (CC) at para 68-93. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 273.

¹⁰⁷ *Head of Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (3) BCLR 177 (CC) at para 77, 93. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 273.

¹⁰⁸ *Head of Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (3) BCLR 177 (CC) at para 60.

¹⁰⁹ *Head of Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (3) BCLR 177 (CC) at para 9, 12. See also Malan 2010 *Tydskrif vir Geesteswetenskappe* 276.

In view of this, the court ordered the governing body of Hoërskool Ermelo to review its language policy and report back to the court.¹¹⁰ It was also ordered that the department report back to the court “setting out the steps it has taken to satisfy the likely demand for an English or parallel medium high school in the Ermelo district, as well as on the situation at other high schools in the area”.¹¹¹

Finally, one should remember that the right to receive education in one’s preferred language is guaranteed in section 29(2) of the Constitution. Nonetheless, single-medium institutions are not guaranteed in the Constitution, but these single-medium institutions must be taken into consideration “whenever the most appropriate alternative to provide the right to education in one’s preferred language must be selected”.¹¹²

7.5 Middelburg, Mikro, Seodin and Ermelo: a comparison

The aforementioned cases have a lot in common, but there are some differences too. The following table sets out the similarities and differences:

Middelburg	Mikro	Seodin	Ermelo
Single medium Afrikaans school	Single medium Afrikaans school	Single medium Afrikaans school	Single medium Afrikaans school
School was instructed to enrol 20 learners who	School was instructed to enrol a group of grade 1	Several schools were instructed to convert to	School was instructed to also use English as a

¹¹⁰ *Head of Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (3) BCLR 177 (CC) at para 102, 106, item 4.

¹¹¹ Malherbe in Boezaart *Child Law in South Africa* (2009) 415. See also *Head of Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (3) BCLR 177 (CC) at para 104, 106, item 5.

¹¹² Malherbe in Boezaart *Child Law in South Africa* (2009) 415.

<p>wished to receive education in English.</p> <p>(School will have to convert to a parallel medium school)</p>	<p>learners who preferred English as medium of instruction.</p> <p>(School will have to convert to a parallel medium school)</p>	<p>dual medium Afrikaans-and-English schools.</p>	<p>medium of instruction, because there were some learners who preferred to be taught in English.</p> <p>Interim committee was appointed to change the language policy of the school.</p>
<p>Learners could have been easily accommodated in other parallel medium schools: Kanonkop Primary School or Dennesig Primary School OR in the single medium English school: Middelburg Primary School.</p>	<p>Learners could have been easily accommodated in another parallel medium school: De Kuilen Primary School.</p>		<p>Apparently, these learners could not be accommodated elsewhere – other schools were jam-packed.</p>
<p>School approached the court to set aside the department's decision to declare the school a parallel medium school.</p>	<p>School has brought an application requesting the court to review and set aside the department's decision regarding the admission of the grade 1 learners and their wish to receive education in English.</p>	<p>Three schools brought an application to the court requesting the court to review and/or set aside the MEC's decision to convert to and function as dual medium Afrikaans-and-English schools.</p>	<p>The governing body of the school approached the court for an interdict against the department.</p>

<p>Schools application to set aside the department's decision was rejected.</p>	<p>Court a quo ruled in favour of the school: department acted unlawfully.</p> <p>SCA also ruled in favour of the school. The department's appeal was dismissed with costs.</p>	<p>The school's application was rejected.</p>	<p>High Court: Application was successful but the case was reviewed and the school's application was dismissed.</p> <p>SCA ruled in favour of the school:</p> <ul style="list-style-type: none"> * department's decision to withdraw the function of the governing body to determine the language policy of the school was set aside. * appointment of interim committee to determine the language policy of the school was set aside. * decision of interim committee to amend the language policy of the school was set aside. <p>CC:</p> <ul style="list-style-type: none"> * Governing body does

			<p>not have the exclusive power to determine the language policy of the school – it is shared between the minister and the governing body.</p> <p>* Court ordered that the school must review its language policy and report back to the court.</p> <p>* Department must report back to the court “setting out the steps it has taken to satisfy the likely demand for an English or parallel-medium high school in the Ermelo district, as well as on the situation at other high schools in the area”.</p>
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8 CONCLUSION

A child’s constitutional rights may be violated and dishonored in different ways in the educational environment, and the question is whether South Africa meets its constitutional and international obligations with regard to mother tongue education.

This is not an easy question to answer, since there are several stakeholders who must work together in order to give effect to the right to a basic education, and more specifically the right to receive education in the language of a person's choice. Firstly, a culture of awareness, consciousness and responsibility among all the relevant stakeholders concerned, is required in order to make the provision of mother tongue education easier. This includes cooperation between the state, education authorities, school governing bodies, educators, parents and learners. Secondly, it is also important that all stakeholders accept their responsibility and duty to observe the rights of all learners.

The Constitution is a comprehensive document which clearly sets out all the basic democratic values and principles to be incorporated into the South African school system. However, the transformation of school education and the effective provision of mother tongue education is still slow and unsatisfactory. The transformation of school education is therefore a slow and ongoing process "which takes place within the wider socio-economic and political realities of the country – realities which have often hamstrung or prevented the achievement of educational ideals".¹¹³

With regard to international policies (international instruments), the basic principles and values of the right to education and the provision of mother tongue education, are also clearly set out. It is therefore submitted that in South Africa, the right to a basic education and the right to receive education in the language of a person's choice, will be realised only "to the extent that the state and all other stakeholders are capable of providing the necessary infrastructure in terms of facilities and human resources, and an effective system in terms of discipline and good governance".¹¹⁴

¹¹³ Malherbe "The impact of Constitutional rights on education" in Boezaart (ed) *Child Law in South Africa* (2009) 474.

¹¹⁴ Malherbe "Education rights" in Boezaart (ed) *Child Law in South Africa* (2009) 419.

CHAPTER 8

HIV/AIDS and its detrimental effects on education

“No war on the face of the Earth is more destructive than the AIDS pandemic.”¹

1 INTRODUCTION

One of the greatest humanitarian and developmental challenges in the world is the HIV/AIDS epidemic. Globally, especially across the African continent, HIV/AIDS has already taken millions of lives. The epidemic is getting out of control and it causes incalculable physical, emotional and psychological distress.² The HIV/AIDS epidemic can also be described as one of the most dangerous threats to the fulfillment of child rights in South Africa since it exacerbates the ongoing and widespread effect of poverty which undermines and destabilizes child well-being.³ Moreover, HIV/AIDS can be regarded as one of the three greatest threats to humanity and childhood. HIV/AIDS has an enormous impact on the human rights of children, which include the right to life, the right to the highest attainable standard of mental and physical health, the right to non-discrimination, equal protection and equality before the law, the right to privacy, the right to freedom of expression and opinion as well as the right to freely receive and impart information, the right to equal access to education, the right to an adequate standard of living, the right to social security, assistance and welfare, and the right to parental care.⁴

¹ Colin Powell.

² Ndebele “South Africa has experienced a late epidemic” <http://ujdigispace.uj.ac.za/bitstream/handle/10210/2409/Dinky%20Chapter%201%20%26%20%20Final.pdf?sequence=2>, last visited 2012-05-14.

³ Giese, Meintjies & Monson “Schools as nodes of care and support for children affected by HIV, AIDS and poverty” 2005 *Child Gauge* 37.

⁴ Sloth-Nielsen & Mezmur *HIV/AIDS and children’s rights in law and policy in Africa: Confronting hydra head on* in Sloth-Nielsen *Children’s rights in Africa: A legal perspective* (2008) 281.

It can therefore be submitted that HIV/AIDS destroys human existence. Worldwide HIV/AIDS is seen as one of the most devastating viruses. HIV/AIDS is unmerciful and destroys the lives and living standards of all ages and has detrimental effects on education systems.

HIV/AIDS is far more than just a health problem - it is a development crisis with astronomical negative consequences which results in the “non-reaching of development goals in the fields of human and economic well-being”. HIV/AIDS reduces life expectancy; increases child fatality; increases the number of orphans; places excruciating pressure on the health sector; emasculates economic development through increased labour costs; destroys the availability of skilled human resources and impoverishes households to a large extent.⁵

HIV/AIDS also has damning and ruinous consequences for education systems. With regard to learners, there is a decline in school enrolment and school attendance; high drop-out rates and increased absenteeism figures. With regard to educators, the quality and standard of education will dramatically decrease; educators will be confronted with early deaths and increased levels of absenteeism.⁶

Moreover, HIV/AIDS affects and encroaches on the education system as it affects and encroaches on the human body:⁷

“[F]or years the effects of the sickness remain unnoticed, business as usual. There are slightly more teachers absent, leaving the educational system, or dying, but the causes are so manifold that it seems unnecessary to really talk about it. And then suddenly the statistics come out on the proportion of skilled and highly educated manpower infected –

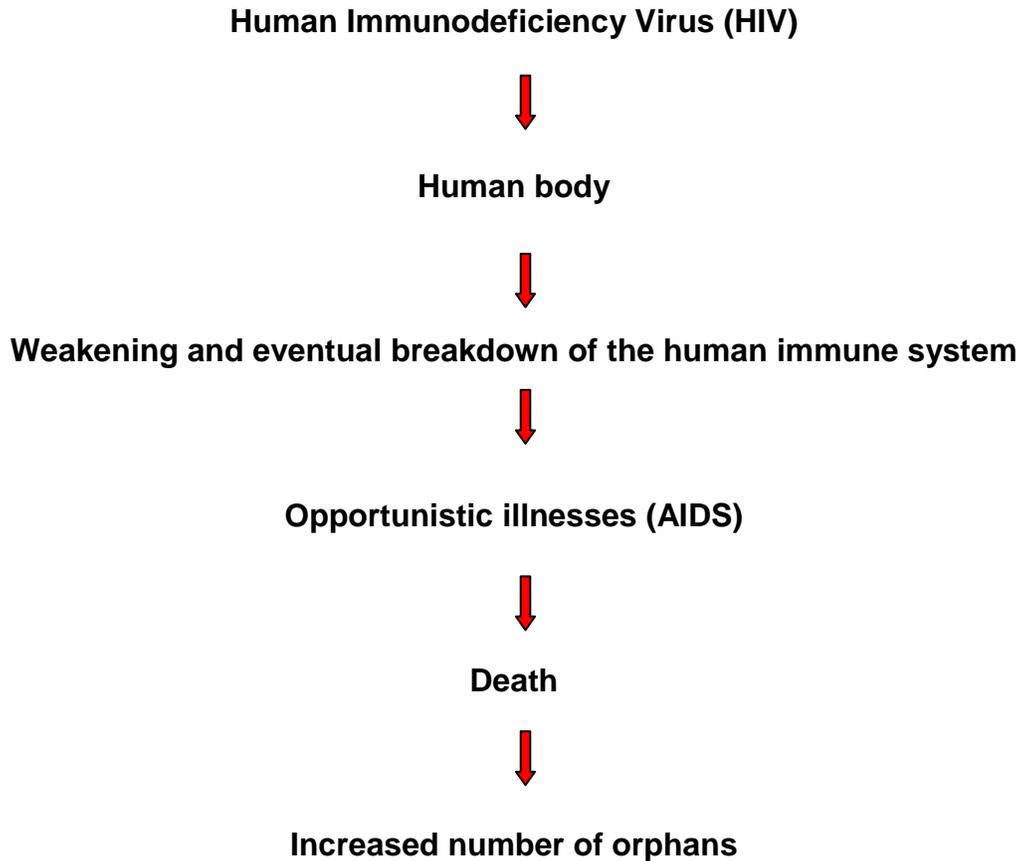
⁵ Kelly “Planning for education in the context of HIV/AIDS” <http://unesdoc.unesco.org/images/0012/001224/122405e.pdf>, last visited 2012-05-14.

⁶ Ndebele “South Africa has experienced a late epidemic” <http://ujdigispace.uj.ac.za/bitstream/handle/10210/2409/Dinky%20Chapter%201%20%26%20%20Final.pdf?sequence=2>, last visited 2012-05-14.

⁷ Kelly “Planning for education in the context of HIV/AIDS” <http://unesdoc.unesco.org/images/0012/001224/122405e.pdf>, last visited 2012-05-14.

much higher than for the rest of the population, on the number of teachers infected and dying, and on the decline in the number of pupils and students. It is no longer possible to speak about it”.

The course of HIV/AIDS can be illustrated as follows:⁸



In short, HIV/AIDS is an epidemic that can be described as follows:⁹

- it is globally one of the most destructive diseases and the leading cause of death in Africa;
- it threatens socio-economic growth and places huge burdens on all countries with regard to their health sectors;
- it spreads briskly, especially in developing countries;

⁸ *Ibid.*

⁹ *Ibid.*

- this epidemic established itself in the world's most famous countries;
- it is clawing its way into communities and countries which were previously unaware of this epidemic and its consequences;
- it defies and challenges developed countries' prevention efforts and strategies;
- it causes several disparities between rich and poor countries with regard to HIV infection rates and AIDS deaths;
- more and more young people become HIV/AIDS infected; and
- HIV/AIDS increases the number of orphans.

The discussion of HIV/AIDS as part of this study is important because the HIV/AIDS epidemic has severe implications for education systems. The demand for education, the supply of education and the quality of education is jeopardized due to the epidemic. The ultimate effect of the epidemic on the education system is that children are deprived of their constitutional right to a basic education. On the one hand, HIV/AIDS infected educators become unable to teach children as the virus takes its devastating toll – teacher absenteeism and teacher deaths increase, which results in the emasculating of the education system. On the other hand, HIV/AIDS affected children will not be able to attend school due to several household duties and other obligations. HIV/AIDS infected children's health worsens on a daily basis and the end result is that it becomes impossible for these children to attend school. One can therefore argue that the HIV/AIDS epidemic causes a vicious cycle in education systems which results in the "deprivation of a child's right to a basic education".

This chapter consists of an in-depth discussion of HIV/AIDS and its detrimental effects on education. The most important areas with regard to HIV/AIDS and its impact on the

education system are discussed under the headings of: The HIV/AIDS epidemic in South Africa; The impact of HIV/AIDS on the education sector; The impact of HIV/AIDS on children and their education; The impact of HIV/AIDS on children as learners; The impact of HIV/AIDS on educators; The vicious cycle of HIV/AIDS; HIV/AIDS policies in schools and International instruments, national legislation and other legislation, policy documents and plans of action. It will be concluded that the designing of education in a world with HIV/AIDS will be of cardinal importance in order to enhance and improve the demand for education, the supply of education and the quality and standard of education.

2 DEFINITION OF HIV AND AIDS

HIV is defined as the “human immunodeficiency virus”. This brings about a spectrum of clinical problems beginning at the time of infection and terminating years later in AIDS. Diagnosis of infection takes place by testing for the specific initial antibody response of the host (seroconversion).¹⁰

AIDS is the acronym for acquired immune deficiency syndrome and is defined clinically. AIDS is “an illness characterized by one or more indicator diseases (certain diseases when definitively diagnosed which are indicative of AIDS)”.¹¹

Research has shown that it may take ten years or more for AIDS to develop after the initial seroconversion. In 1992, the Centres for Disease Control in the USA developed a clinical classification based on the stages through which the infection progresses.

¹⁰ See, in general
http://www.patscotland.org.uk/medical_appendices/H/HIV%20INFECTION%20AIDS.pdf, last visited 2011-11-16.

¹¹ *Ibid.*

The classification is as follows:¹²

- Group 1 – Seroconversion illness, within first few weeks.¹³
- Group 2 – Asymptomatic phase.¹⁴
- Group 3 – Persistent generalized lymphadenopathy.¹⁵
- Group 4 – Symptomatic infection.¹⁶

2.1 Transmission of HIV/AIDS (Risk factors)

HIV/AIDS can be transmitted through three modes of transmission:¹⁷

- Sexual transmission – this mode of transmission occurs through sexual intercourse: vaginal, anal and/or oral sex with an infected partner.
- Transmission through blood – this mode of transmission takes place through the use and sharing of syringes and needles (for example, through needles that have

¹² *Ibid.*

¹³ “Seroconversion illness occurs in the early phases of HIV”. Seroconversion illness includes rash, fever, joint or muscle pain, nausea or loss of energy and swollen lymph nodes. See, in general, <http://www.hivsymptomsonline.com/seroconversion-illness.html>, last visited 2012-05-14.

¹⁴ “Asymptomatic HIV infection is a phase of chronic infection with HIV during which there are no symptoms of HIV infection. The length of this phase varies depending on how quickly the HIV virus is copying itself and the individual’s genetic differences that affect the way his or her immune system handles the virus”. See, in general <http://www.nlm.nih.gov/medlineplus/ency/article/000682.htm>, last visited 2012-05-14.

¹⁵ “Persistent generalised lymphadenopathy (PGL) is a chronic swelling of the lymph nodes in at least two areas of the body outside the groins, which lasts three months or longer. PGL is common in the neck and underarm areas”. See, in general <http://labspace.open.ac.uk/mod/oucontent/view.php?id=452603§ion=1.6.1>, last visited 2012-05-14.

¹⁶ “Symptomatic infection is a stage of infection with the HI-virus when symptoms are present but AIDS has not yet developed”. Some of the symptoms are “diarrhea [diarrhoea] that persists, excessive sweating or night sweats, fatigue that persists, fever that persists and mouth disorders. See, in general, <http://www.nlm.nih.gov/medlineplus/ency/article/000603.htm>, last visited 2012-05-14.

¹⁷ See, in general, <http://www.avert.org/children.htm>, last visited 2012-05-14.

not been sterilized and through injecting drug abuse). The transmission of HIV/AIDS is also possible through blood transfusions where the blood is contaminated.

- Transmission through pregnancy – this mode of transmission is obvious: HIV/AIDS is transmitted from mother to child (fetus) during pregnancy, labour and delivery and/or breastfeeding.

3 IMPACT OF HIV/AIDS ON THE EDUCATION SECTOR

The HIV/AIDS epidemic causes many complex and difficult challenges for the education sector. The education sector is affected in at least three ways: the demand for education, the supply of education and the quality of education.¹⁸

3.1 The demand for education

The HIV/AIDS epidemic has the effect that fewer children are being born since one or both of the child's parents die at an early age. Some of these children are born HIV positive and the majority of these children die before the school-going age is reached.¹⁹ The demand for education also decreases due to the opportunity costs and the affordability of the direct costs. HIV/AIDS affected families find it difficult to exempt children from their daily household and agricultural tasks and it is also not possible to exempt these children from their responsibilities to look after their younger siblings and

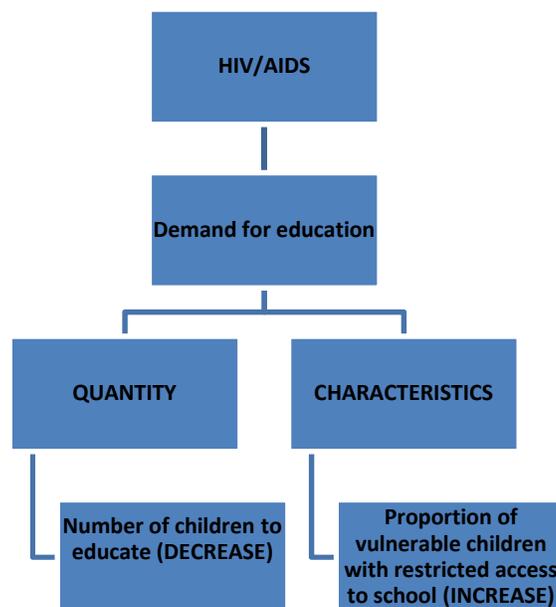
¹⁸ United Nations Department of Economic and Social Affairs/Population Division "Impact on education" http://www.un.org/esa/population/publications/AIDSimact/9_CHAP_VI.pdf, last visited 2012-05-14.

¹⁹ Carr-Hill, Kataro, Katahoire & Oulai "The impact of HIV/AIDS on education and institutionalizing preventive education" <http://unesdoc.unesco.org/images/0012/001293/129353e.pdf>, last visited 2012-05-14.

sick family members. As the HIV/AIDS epidemic takes its devastating toll, fewer children will be able to complete their basic education. The reason for this is that children themselves become HIV/AIDS infected or the workload and its accompanying responsibilities are simply too much to cope with. Moreover, the stigma, discrimination and trauma associated with this epidemic may also result in children's failure to complete their education with success.²⁰

Education also becomes unaffordable for HIV/AIDS affected families. This can be attributed to the direct loss of income due to HIV/AIDS, the illness and death of productive family members who had good careers and occupations and also to the loss of income due to very high costs regarding the treatment of HIV/AIDS.²¹

The following figure illustrates the impact of HIV/AIDS on the demand for education. Emphasis is given to "quantity and change in characteristics".²²



²⁰ *Ibid.*

²¹ *Ibid.*

²² See http://siteresources.worldbank.org/EDUCATION/Resources/2782001099079877269/547664-1099080042112/Modeling_impact_HIVeducation_systemsEn02.pdf, last visited 2011-11-21.

3.2 Supply of education

Many governments are challenged with the provisioning of adequate resources to put the process of education into place. These resources include teachers, management, parents, reading and writing materials, payment of fees and other related costs.²³

The supply of education is subject to the availability of teachers and teaching-learning materials in schools and to the capability of education systems to manage and administer the whole education sector. Schools that have staffing below a certain minimum may be prompted to close their doors and the consequence hereof is that the remaining learners have to be moved to other schools. One can thus say that the mere presence of school buildings without enthusiastic and financially strong parents to send their children to school “amounts to failure on the part of the government to provide sound education”.²⁴

Finance issues also play a pivotal role in the supply of education. As enrolment decreases, so will financial support also decrease. The supply of chalk, books, school maintenance and supplementary allowances for teachers will dramatically decrease and the education sector will be left with huge shortcomings. Thus, the absolute investment in education will almost certainly be less than anticipated.²⁵

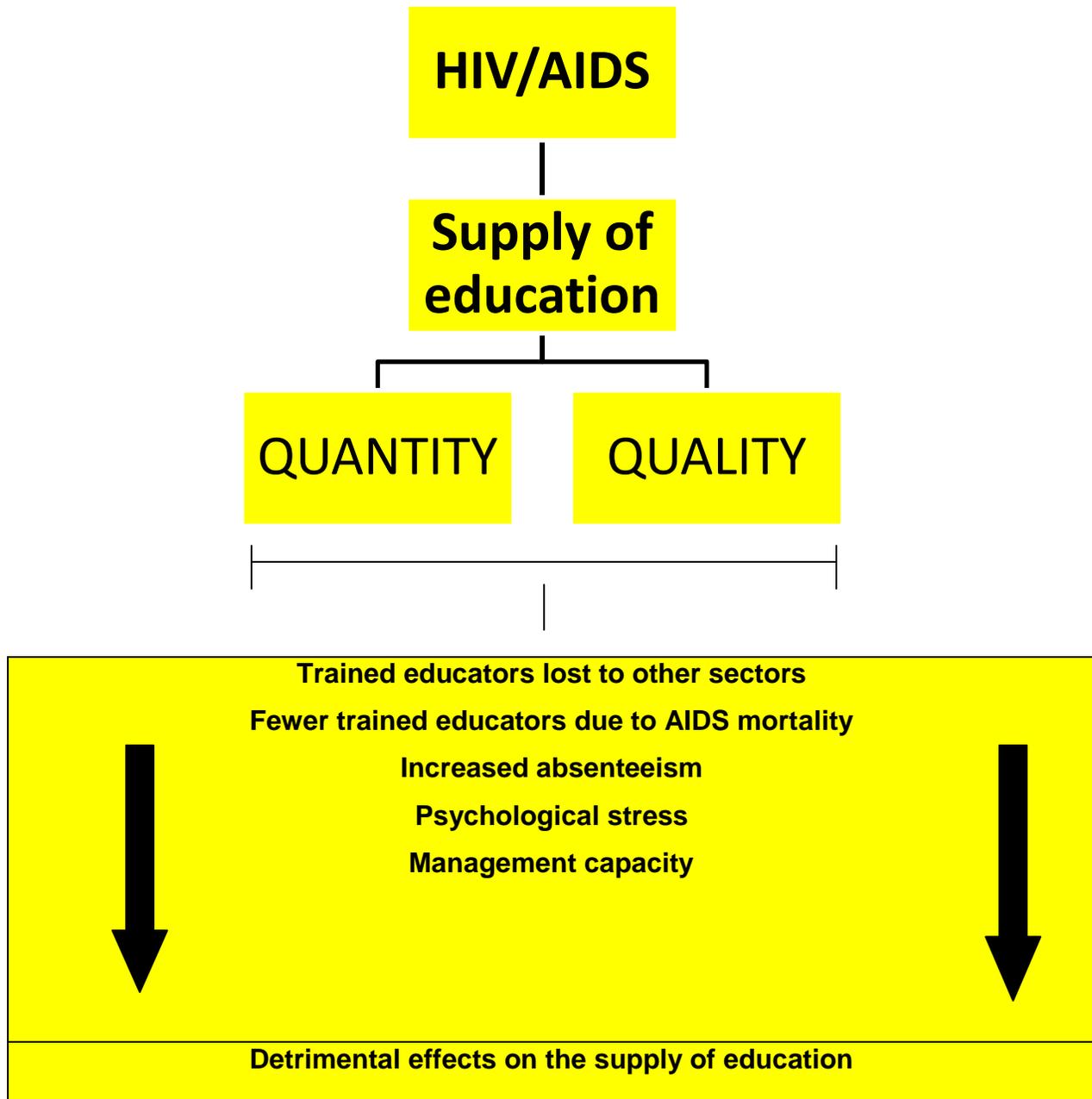
The following figure illustrates the impact of HIV/AIDS on the supply of education and can be divided into quantity and quality effects.²⁶

²³ Carr-Hill, Katabaro, Katahorie & Oulai “The impact of HIV/AIDS on education and institutionalizing preventive education” <http://unesdoc.unesco.org/images/0012/001293/129353e.pdf>, last visited 2012-05-14.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ See http://siteresources.worldbank.org/EDUCATION/Resources/2782001099079877269/547664-1099080042112/Modeling_impact_HIVeducation_systemsEn02.pdf, last visited 2011-11-21.



3.3 Quality of education

The quality of education will decline as the HIV/AIDS epidemic takes its toll. Education systems are already heavily burdened by teacher absenteeism and the loss of valuable

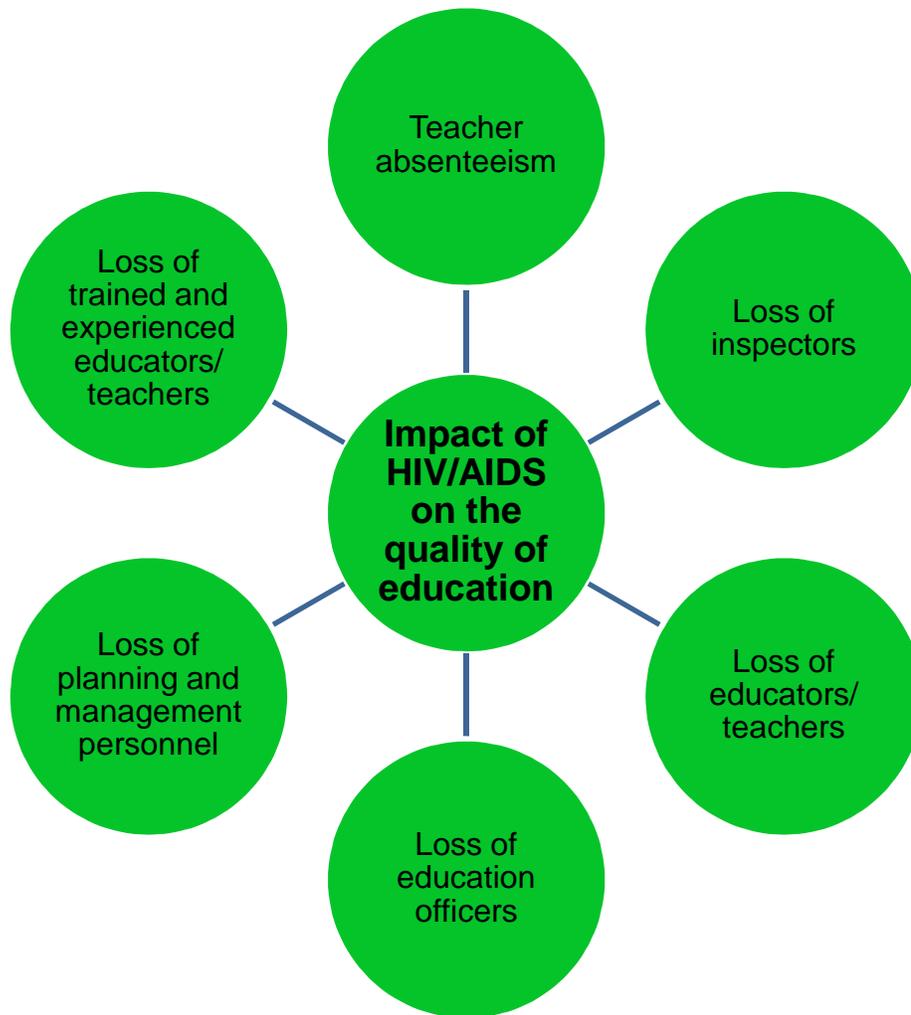
personnel such as inspectors, educators, education officers and planning and management personnel. This contributes to the decline in the quality of education. Moreover, the quality of teaching will also drastically decrease as older trained and experienced educators will be replaced with younger educators who do not necessarily have the relevant experience and training. It can therefore be said that the fate of this epidemic is that schools will be left without its significant role players.²⁷

The school itself may also suffer from the psychological effects of the HIV/AIDS epidemic: anxiety, anguish, avoidance, loneliness, social isolation, discrimination and ostracism can lead to behavioural disturbances, fatalism and self-stigmatisation – all factors contributing to the decline in the quality of education.²⁸

The following figure illustrates the detrimental impact of HIV/AIDS on the quality of education:

²⁷ Gachuhi “The impact of HIV/AIDS on education systems in the eastern and southern Africa region and the response of education systems to HIV/AIDS: life skills programmes <http://www.unicef.org/lifeskills/files/gachuhi.pdf>, last visited 2012-05-14.

²⁸ *Ibid.*



4 THE IMPACT OF HIV/AIDS ON CHILDREN AND THEIR EDUCATION

The trauma, destitution and suffering that children have to bear because of HIV/AIDS, cannot be overemphasised. The epidemic has not only resulted in children's loss of a parent or parents, but children are also ripped away from their childhood. One of the most dramatic consequences of HIV/AIDS is that children are plunged into the adult world – a world where obligations and responsibilities rest heavily on adults and much

more heavily on children.²⁹ Responsibilities and work in the household include domestic chores, subsistence agriculture and the provision of care to siblings and sick family members. Work outside the home includes a variety of forms of formal and informal labour such as farm work and begging for food and supplies in both the community and beyond.³⁰

Children are also pressurised to earn an income in order to meet and satisfy the daily needs of family members. As a result, it becomes more difficult for these children to access adequate nutrition, basic health care, housing and clothing.³¹ Moreover, in most instances children are unable to attend school because of their heavy workload at home. Even where children are not withdrawn from school, education often begins to compete with their heavy workload(s) which results in the decrease of school attendance. The reason for this is that children are exhausted after all the hard work and lose all interest in learning and school attendance. Sometimes children have no choice but to give up their schooling since the money which has been set aside for school expenses is now used for basic necessities, medication and healthcare services.³² The ultimate consequence hereof is that children are deprived of their right to a basic education, which is not only detrimental and damaging for children as such, but also for communities and the economy of a country. It can therefore be said that “AIDS destroys families, decimates communities and, particularly in the poorest areas of the world, threatens to destabilize the social, cultural, and economic fabric of entire nations...”³³

²⁹ See, in general <http://www.avert.org/aids-impact-africa.htm>, last visited 2012-05-14.

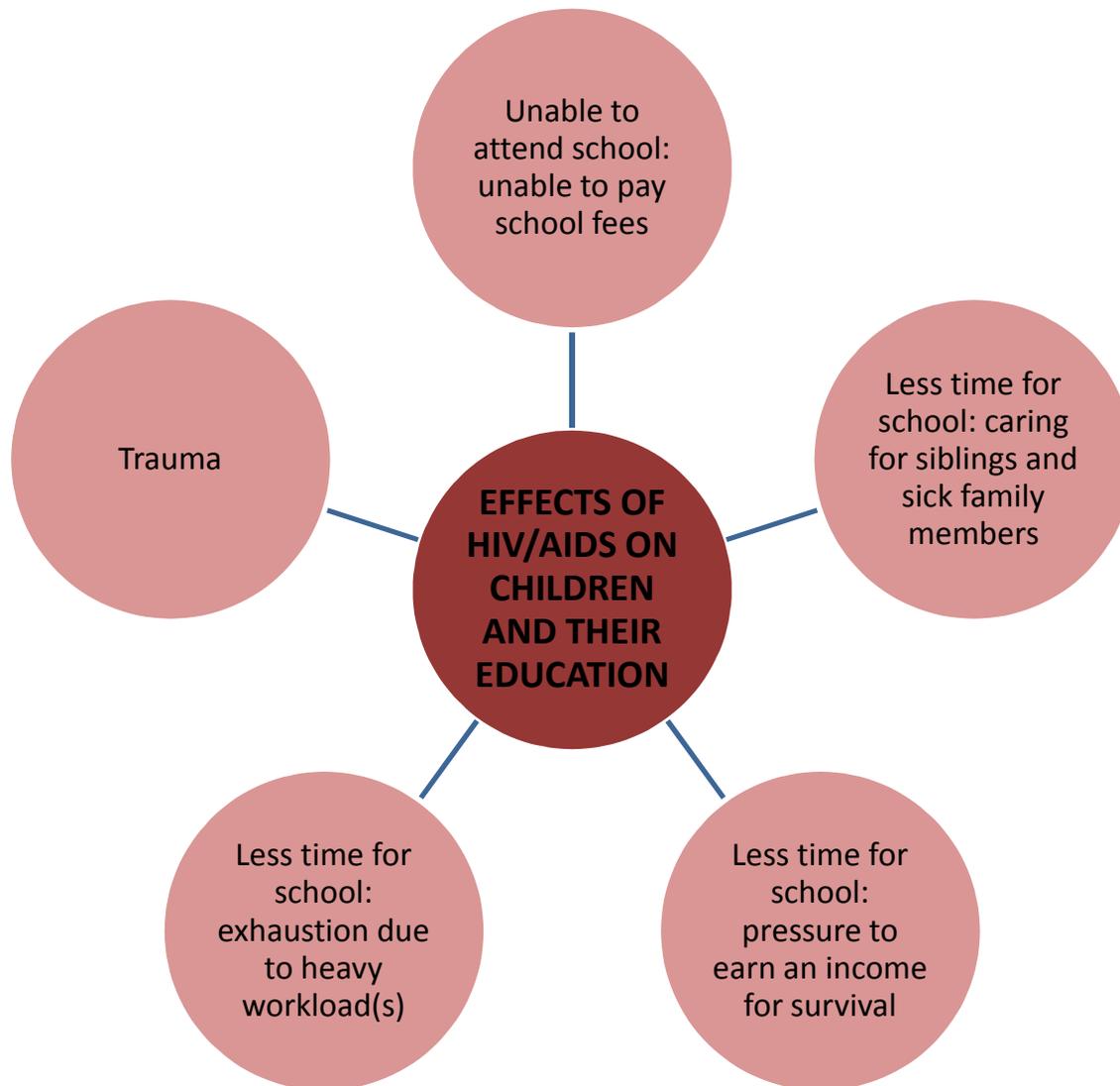
³⁰ Richter “The impact of HIV/AIDS on the development of children” <http://www.iss.co.za/pubs/Monographs/No109/Chap2.pdf>, last visited 2012-05-14.

³¹ See, in general <http://www.avert.org/aids-impact-africa.htm>, last visited 2012-05-14.

³² Richter “The impact of HIV/AIDS on the development of children” <http://www.iss.co.za/pubs/Monographs/No109/Chap2.pdf>, last visited 2012-05-14.

³³ Rabbi David Saperstein, Director of the Religious Action Center of Reform Judaism.

The following diagram illustrates the detrimental effects of HIV/AIDS on children and their education:³⁴



It can undoubtedly be said that HIV/AIDS has a debilitating impact on children and their education. Education is crucial for social and economic well-being and one of the most important keys to success.

³⁴ Carr-Hill, Kataro, Katahoire & Oulai "The impact of HIV/AIDS on education and institutionalizing preventive education" <http://unesdoc.unesco.org/images/0012/001293/129353e.pdf>, last visited 2012-05-14.

When it comes to a child's education, the following must always be remembered:

"Education is the way to move mountains, to build bridges, to change the world. Education is the path to the future. I believe that education is indeed freedom."³⁵

5 IMPACT OF HIV/AIDS ON CHILDREN AS LEARNERS

"The academic performance of learners affected or infected with this disease is poor. Not meaning that the performance is poor because they are not intelligent but because most of the time they are absent from classes and they lose almost 80% of what is learnt in class."³⁶

The impact of HIV/AIDS on learners can be tabulated as follows:³⁷

Impact of HIV/AIDS on learners	Affected and infected learners (children) are confronted with:
<ul style="list-style-type: none"> • Children are no longer able to attend school due to unaffordable school fees. • A feeling of inferiority because of inadequate school wear and learning materials. • Low concentration due to anxiety, anguish, grief and stress. 	<p>Poverty</p>

³⁵ Oprah Winfrey.

³⁶ Dlamini "Impact of HIV/AIDS on the didactic situation at schools in Mpumalanga" http://libserv5.tut.ac.za:7780/pls/eres/wpg_docload.download_file?p_filename=F1982178366/DlaminiST.pdf, last visited 2012-05-14.

³⁷ *Ibid.*

<ul style="list-style-type: none"> • Social isolation: marginalisation of children affected by HIV/AIDS. • Hostile and unfriendly learning environment. • It is difficult for children to participate in activities within the school environment. 	<p>Stigma</p>
<ul style="list-style-type: none"> • Special educational needs and assistance. • Difficulty to pay attention to school work. 	<p>Trauma</p>
<ul style="list-style-type: none"> • No motivation for learning due to depression, stress and angst. 	<p>Bereavement</p>
<ul style="list-style-type: none"> • Low pass rate, especially among orphans. • Lack of homework support or household encouragement of education. 	<p>Lack of family support</p>
<ul style="list-style-type: none"> • Exhaustion during classes. • Irregular school attendance. 	<p>Heavy workload(s)</p>
<ul style="list-style-type: none"> • Children lose interest in their education as there are too many domestic and agricultural tasks to be performed. • Insufficient time for education since there is a responsibility to look after 	<p>Adult roles and responsibilities</p>

siblings and other (sick) family members.	
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6 IMPACT OF HIV/AIDS ON EDUCATORS

Educators are regarded as some of the most significant role players in the education system. Educators have two important missions: to educate children to the best of their abilities and to promote children's intellectual and social well-being and development.³⁸ However, the HIV/AIDS epidemic also effects educators and has adverse consequences for educators:

6.1 Educator morbidity and mortality related to HIV/AIDS

The illness and premature death of educators have a huge effect on education delivery and maintenance. One of the main reasons for this is the poor student enrolment for the education profession at universities. Another reason for the decline in education delivery and maintenance is that universities are also confronted with a high prevalence of HIV/AIDS infected students. The increase in teacher mortality may also lead to a compromise regarding qualifications, expertise and experience.³⁹

³⁸ Ndebele "South Africa has experienced a late epidemic"
<http://ujdigispace.uj.ac.za/bitstream/handle/10210/2409/Dinky%20Chapter%201%20%26%20%20Final.pdf?sequence=2>, last visited 2012-05-14.

³⁹ *Ibid.*

6.2 Educator performance

The HIV/AIDS epidemic has a big influence on educators' teaching performance. Educators' performance is drastically affected when symptomatic illness emerges, because their health deteriorates and their ability to perform teaching duties weakens. As their performance declines, a sense of guilt develops because they feel that they do not put as much effort into their work, profession and teaching as they used to. The consequence hereof is that educators are overwhelmed by fear and they pressurise themselves even more to be successful educators, only to realise that they are no longer able to meet their own standards of excellence.⁴⁰

6.3 Absenteeism

Absenteeism among educators who are affected or infected with HIV/AIDS increases. On the one hand, affected educators often have no choice but to stay away from work due to family responsibilities which includes the "caring for HIV/AIDS infected children, siblings and other family members". The absence of HIV/AIDS infected educators causes additional workloads on educators who are not HIV/AIDS infected or affected, since they are prompted to share the duties of their colleagues. The consequence hereof is that these educators are burned out, which in turn has an impact on the quality and standard of teaching and education.⁴¹

On the other hand, HIV/AIDS infected educators become so ill that it is impossible for them to continue with their vocation as educators. One can thus say that it is physically and emotionally no longer possible for them to be educators.

⁴⁰ *Ibid.*

⁴¹ Dlamini "Impact of HIV/AIDS on the didactic situation at schools in Mpumalanga"
http://libserv5.tut.ac.za:7780/pls/eres/wpg_docload.download_file?p_filename=F1982178366/DlaminiST.pdf, last visited 2012-05-14.

6.4 Educator discrimination

HIV positive educators live in constant fear: fear that they might lose their jobs, fear of rejection and judgment by friends, family members and colleagues and fear of social isolation because of their HIV status. Educators also fear prejudice from parents and the school community and a sense of guilt develops, because these educators are of the opinion that their HIV status is in conflict with moral and ethical values. HIV positive educators most often develop a sense of self-pity which could worsen their fear and suffering.⁴²

6.5 Educator motivation and morale

HIV positive educators will gradually lose all interest in their profession, because they will be no longer physically and emotionally able to cope with their workloads, duties and responsibilities. Furthermore, their work as educators will be gravely compromised by their long-lasting illness. The majority of HIV/AIDS infected or affected educators are no longer productive and they are also no longer interested in professional development. It almost appears that they have lost the battle.⁴³

It can therefore be unequivocally declared that the HIV/AIDS epidemic causes a vicious cycle in the education system.

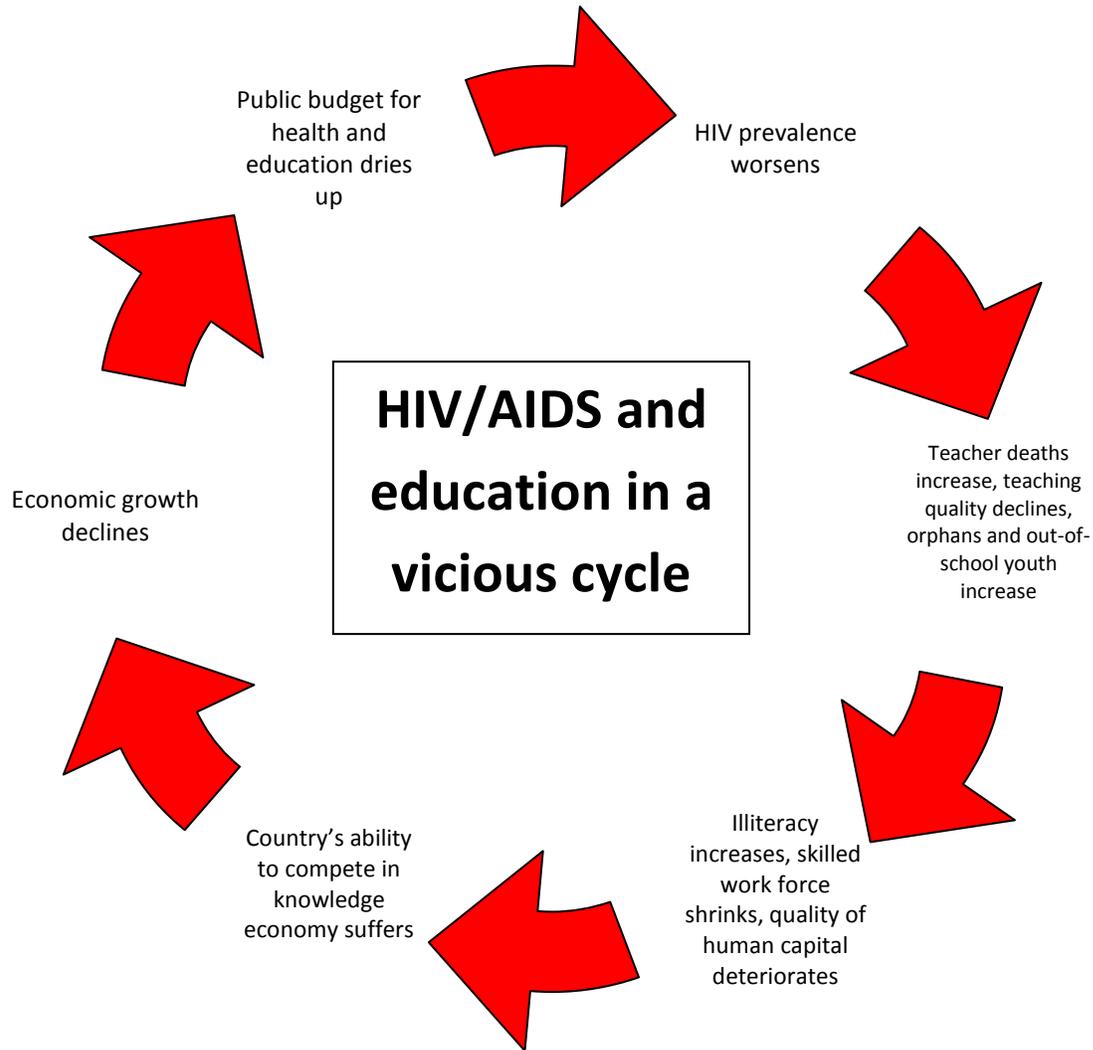
7 THE VICIOUS CYCLE OF HIV/AIDS

The vicious cycle that HIV/AIDS has on education, is illustrated as follows:⁴⁴

⁴² Ndebele "South Africa has experienced a late epidemic"
<http://ujdigispace.uj.ac.za/bitstream/handle/10210/2409/Dinky%20Chapter%201%20%26%202%20Final.pdf?sequence=2>, last visited 2012-05-14.

⁴³ *Ibid.*

⁴⁴ The World Bank *Education and HIV/AIDS: A window of hope* (2002) 10.



It is thus clear from the discussion so far that the HIV/AIDS epidemic holds serious and damaging consequences for the education sector. It is therefore imperative that all schools should have proper HIV/AIDS policies in place.

8 HIV/AIDS POLICIES IN SCHOOLS

Schools should develop their own HIV/AIDS policies and principals are responsible for the implementation of these policies in their institutions.⁴⁵

It is important for all schools to have HIV/AIDS policies with the intention that:⁴⁶

- the rights of all learners and educators are respected and valued;
- learners and educators who are HIV positive be treated respectful and humanely;
- everything possible is done to prevent further HIV/AIDS infection;
- a non-discriminatory and caring learning environment is created and promoted.

Moreover, HIV/AIDS policies should include guidelines to the following:⁴⁷

- non-discrimination on the basis of a person's HIV status;
- admission policy;
- HIV testing;
- prevention of HIV/AIDS;
- HIV/AIDS education programmes which should be integrated into the Life Orientation programmes of schools;
- refusal to study, teach or work with a person or persons infected with HIV/AIDS

⁴⁵ Coombe "Keeping the education system healthy: managing the impact of HIV/AIDS on education in South Africa" 2002 *Current Issues in Comparative Education* Vol 3(1) 19.

⁴⁶ See, in general <http://www.paralegaladvice.org.za/docs/chap09/07.html>, last visited 2012-05-14.

⁴⁷ *Ibid.*

9 INTERNATIONAL INSTRUMENTS AND NATIONAL LEGISLATION

There are several international instruments and pieces of national legislation which provide for the protection of persons affected and infected by HIV/AIDS. In other words, persons who suffer from the HIV/AIDS virus enjoy national and international protection. The HIV/AIDS epidemic affects children in many different ways and also has an impact on different basic rights of children. For purposes of this study, emphasis will be placed on HIV/AIDS and the right to non-discrimination; HIV/AIDS and the right to survival and development; and HIV/AIDS and the best interests of the child.

9.1 HIV/AIDS and the right to non-discrimination

“Even in school they treated me badly. My skin was bad-looking; it had funny things on it. They told themselves that I’ve got AIDS and they ran away from me. Even my friend told me she won’t eat with me again. One told me right to my face that I’ve got AIDS and I should stop going to school and stay at home. I would feel terrible. Cry deep down. I would sit alone and cry alone. People would be staring at you saying nothing, even those who used to be happy when they see you were not anymore.”⁴⁸

The following table provides a clear exposition of a child’s right to non-discrimination together with the most important international instruments, national legislation and implications for children infected or affected by HIV/AIDS:⁴⁹

⁴⁸ See, in general http://www.aln.org.za/downloads/HIV_AIDS_and_the_Law_Individual_Modules/HIV_AIDS_and_the_Law_Module_7.pdf, last visited 2012-05-14.

⁴⁹ Strode & Grant “Children, HIV/AIDS and the law – a legal resource” <http://www.ovcsupport.net/s/library.php?id=325>, last visited 2012-05-14.

International instrument / National legislation	Relevant article / section	Implication(s) for HIV/AIDS infected or affected children
United Nations Conventions on the Rights of the Child, 1989 ⁵⁰	Article 2: States Parties shall take appropriate measures to ensure that the child is protected against all forms of discrimination...	The rights in the UNCRC apply to all children, including those who are HIV/AIDS infected or affected. The UNCRC does not specifically refer to HIV/AIDS, but it recognises in its preamble that there are children living in “exceptionally difficult circumstances and that such child needs special consideration”.
African Charter on the Rights and Welfare of the Child, 1990 ⁵¹	Article 3: The right to non-discrimination is set out in this article and provides that every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his or her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other	As with the UNCRC, the rights contained in this Charter apply to all African children, including those who are HIV/AIDS infected or affected.

⁵⁰ Hereinafter “the UNCRC”.

⁵¹ Hereinafter “the ACRWC”.

	status.	
Constitution of the Republic of South Africa, 1996	Section 9: Everyone is equal before the law and has the right to equal protection and benefit of the law. It furthermore provides protection against any form of unfair discrimination.	Children, who experience unfair discrimination on the basis of their HIV/AIDS status, will be protected.
Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000	Section 6: Unfair discrimination is prohibited. This section stipulates that “neither the State nor any person may unfairly discriminate against any person”.	Children who are HIV/AIDS infected or affected have legal protection against unfair discrimination. Any law, policy or practice that imposes disadvantages on, or withholds benefits from children on the basis of their HIV/AIDS status is unfair discrimination.
Employment Equity Act 55 of 1998	Section 6: Unfair discrimination on the basis of a person’s HIV/AIDS status is prohibited. Employees are protected against unfair discrimination in any employment practices on the basis of a person’s HIV/AIDS status.	This Act protects employed children who are above the age of 15 from unfair discrimination in the workplace on the basis of their HIV/AIDS status.
South African Schools Act 84 of 1996	Section 5: No school may unfairly discriminate against any learner in its admission	Children who are HIV/AIDS infected or affected are protected from being excluded

	policies.	from school.
National Education Policy Act 27 of 1996	This policy is based on principles of non-discrimination, confidentiality, education, and measures to manage HIV/AIDS within the school environment.	Children (learners) are protected against unfair discrimination related to HIV/AIDS in schools.
Children's Act 38 of 2005	Section 6: All proceedings, actions or decisions in a matter concerning a child must protect the child from unfair discrimination on any ground, including on the grounds of the health status or disability of the child or family member of the child.	Children who are HIV/AIDS infected or affected may not be discriminated against.

9.2 HIV/AIDS and the right to survival and development

"When I finish my work it is after six. My heart is sore because I have not played."⁵²

The following table explains the protection of a child's right to survival and development in terms of the most important international instruments and national statutes, and the implications for children infected or affected by HIV/AIDS:⁵³

⁵² See, in general http://www.aln.org.za/downloads/HIV_AIDS_and_the_Law_Individual_Modules/HIV_AIDS_and_the_Law_Module_7.pdf, last visited 2012-05-14.

⁵³ Strode & Grant "Children, HIV/AIDS and the law – a legal resource" <http://www.ovcsupport.net/s/library.php?id=325>, last visited 2012-05-14.

International instrument / National legislation	Relevant article / section	Implication(s) for HIV/AIDS infected or affected children
UNCRC	Article 6: States Parties shall ensure to the maximum extent possible the survival and development of the child.	Children who are HIV/AIDS infected or affected are a particularly vulnerable group, and the state has an obligation to take measures, to the maximum extent possible, to ensure every child's right to survival and development.
ACRWC	Article 5: States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.	Children who are HIV/AIDS infected or affected are vulnerable, and the state is obliged to ensure, to the maximum extent possible, the survival, protection and development of the child.

<p>Constitution of the Republic of South Africa</p>	<p>The Constitution does not explicitly make provision for a child's right to survival and development, but certain rights are guaranteed which will ensure the survival and development of every child.⁵⁴ These certain rights include: the right to basic nutrition, shelter, basic health care services and social services;⁵⁵ the right to have access to adequate housing;⁵⁶ and the right to have access to health care services, sufficient food and water and social security.⁵⁷</p>	<p>Children who are HIV/AIDS infected or affected, have the right to survival and development.</p>
<p>Children's Act 38 of 2005</p>	<p>Section 6: All proceedings, actions or decisions in a matter concerning a child must recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age.</p>	<p>Children who are HIV/AIDS infected or affected, have the right to optimal survival and development.</p>

⁵⁴ Mahery "The United Nations Convention on the Rights of the Child: Maintaining its value in international and South African law" in Boezaart (ed) *Child Law in South Africa* (2009) 320.

⁵⁵ S 28(1)(c).

⁵⁶ S 26(1).

⁵⁷ S 27.

9.3 HIV/AIDS and the best interests of the child

“Children are a quality of life... when our children are happy, then we are better as human beings.”⁵⁸

The following table provides a clear exposition of the best interests of the child together with the most important international instruments, national legislation and implications for children infected or affected by HIV/AIDS:⁵⁹

International instrument / National legislation	Relevant article / section	Implication(s) for HIV/AIDS infected or affected children
UNCRC	Article 3: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.	In all actions taken with regard to children infected or affected by HIV/AIDS, in terms of the UNCRC, their best interests are to be a primary consideration.
ACRWC	Article 4: In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.	States parties must ensure that the special needs, circumstances and interests of children who are HIV/AIDS infected or affected are considered paramount in all actions concerning them.

⁵⁸ Whoopi Goldberg.

⁵⁹ Strode & Grant “Children, HIV/AIDS and the law – a legal resource” <http://www.ovcsupport.net/s/library.php?id=325>, last visited 2012-05-14.

<p>Constitution of the Republic of South Africa</p>	<p>Section 28: A child's best interests are of paramount importance in every matter concerning the child.</p>	<p>This is a flexible standard that can be used to ensure that the special needs, circumstances and interests of children who are HIV/AIDS infected or affected are considered paramount in all actions concerning them.</p>
<p>Children's Act 38 of 2005</p>	<p>Section 9: In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied.</p>	<p>The best interests of children who are HIV/AIDS infected or affected are of paramount importance and must be considered in all actions concerning them.</p>

10 OTHER LEGISLATION, POLICY DOCUMENTS AND PLANS OF ACTION

There are several other pieces of legislation, policies and programmes that are also important with regard to HIV/AIDS and its detrimental effects on children and the education system:

10.1 National Policy on HIV/AIDS for Learners and Educators in Public Schools, and Students and Educators in further Education and Training Institutions⁶⁰

Due to the high prevalence of HIV/AIDS in South Africa, especially among the youth, the Department of Education was prompted to formulate and implement a national HIV/AIDS policy for learners and educators in public schools and for students and educators in further education and training institutions.

The policy is based on principles of non-discrimination, privacy and education and it also administers HIV/AIDS within the school environment.⁶¹

10.1.1 Overall objective of the policy

The overall objective of this policy can be summarised as follows:⁶²

- the rights of all learners and educators as contained in the Constitution, enjoys full protection;
- no person may be compelled to reveal or disclose his or her HIV/AIDS status;
- the testing of learners as a prerequisite for school attendance or attendance at any institution, or the testing of an educator as prerequisite of service, is strictly prohibited;

⁶⁰ This policy was formulated in terms of the National Education Policy Act 27 of 1996.

⁶¹ Ndebele "South Africa has experienced a late epidemic"
<http://ujdigispace.uj.ac.za/bitstream/handle/10210/2409/Dinky%20Chapter%201%20%26%20%20Final.pdf?sequence=2>, last visited 2011-11-08.

⁶² Coombe "Keeping the education system healthy: managing the impact of HIV/AIDS on education in South Africa" 2002 *Current Issues in Comparative Education* Vol 3(1) 18-19.

- no discrimination in any way will be tolerated against any HIV-positive learner or teacher;
- learners and teachers who are HIV-positive, must live their lives to the fullest;
- safe and secure institutional environments must be ensured by applying the necessary infection control measures and procedures;
- learners must receive education about the causes and consequences of HIV/AIDS as well as the positive ways on how to deal with it. HIV/AIDS education must be part of the curriculum;
- educational institutions have the duty to ensure that learners obtain the necessary age- and context-appropriate knowledge and skills to enable them to behave in ways that will protect them from infection;
- educators must be “HIV/AIDS trained” in order to teach children the detrimental effects of HIV/AIDS. Teachers should also be trained in a way which will enable them to give the necessary support and assistance to HIV/AIDS infected children or to those children who are affected by HIV/AIDS.

It is thus evident from the above discussion that this policy does everything possible to conquer all obstacles with regard to HIV/AIDS in the education sector. However, despite this policy and other legislation and international instruments, HIV/AIDS still has tremendous effects on and consequences for children, learners, educators, the education system and education in general.

The National Policy on HIV/AIDS for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions (hereinafter “the

National Policy”) covers all aspects relating to HIV/AIDS in the education sector. However, for purposes of this study, emphasis will only be placed on the following:⁶³

10.1.2 *Non-discrimination and equality with regard to learners, students and educators with HIV/AIDS*

- No learner, student or educator with HIV/AIDS may be unfairly discriminated against directly or indirectly. Educators should be alert to unfair accusations against any person suspected to have HIV/AIDS.
- Learners, students, educators and other staff with HIV/AIDS should be treated in a just, humane and life-affirming way.
- Any special measures in respect of a learner, student or educator with HIV should be fair and justifiable in the light of medical facts; established legal rules and principles; ethical guidelines; the best interest of the learners, students and educators with HIV/AIDS; school or institution conditions, and the best interest of other learners, students and educators.
- To prevent discrimination, all learners, students and educators should be educated about fundamental human rights as contained in the Constitution of the Republic of South Africa.

⁶³ See, <http://www.elrc.org.za/ClientFiles/Laws/SECTION%201.doc>, last visited 2012-05-14.

10.1.3 *HIV/AIDS testing and the admission of learners to a school and students to an institution, or the appointment of educators*

- No learner or student may be denied admission to or continued attendance at a school or an institution on account of his or her HIV/AIDS status or perceived HIV/AIDS status.
- No educator may be denied the right to be appointed in a post, to teach or to be promoted on account of his or her HIV/AIDS status or perceived HIV/AIDS status. HIV/AIDS status may not be a reason for dismissal of an educator, nor for refusing to conclude, or continue, or renew an educator's employment contract, nor to treat him or her in any unfair discriminatory manner.
- There is no medical justification for routine testing of learners, students or educators for evidence of HIV infection. The testing of learners or students for HIV/AIDS as a prerequisite for admission to, or continued attendance at school or institution, to determine the incidence of HIV/AIDS at schools or institutions, is prohibited. The testing of educators for HIV/AIDS as a prerequisite for appointment or continued service is prohibited.

10.1.4 *Attendance at schools and institutions by learners or students with HIV/AIDS*

- Learners and students with HIV have the right to attend any school or institution. The needs of learners and students with HIV/AIDS with regard to their right to basic education should as far as is reasonably practicable be accommodated in the school or institution.

- Learners and students with HIV/AIDS are expected to attend classes in accordance with statutory requirements for as long as they are able to do so effectively.
- Learners of compulsory school-going age with HIV/AIDS, who are unable to benefit from attendance at school or home education, may be granted exemption from attendance in terms of section 4(1) of the South African Schools Act, by the Head of Department, after consultation with the principal, the parents and the medical practitioner where possible.
- If and when learners and students with HIV/AIDS become incapacitated through illness, the school or institution should make work available to them or study at home and should support continued learning where possible.
- Learners and students who cannot be accommodated in this way or who develop HIV/AIDS-related behavioural problems or neurological damage, should be accommodated, as far as practically possible, within the education system in special schools or specialised residential institutions for learners with special education needs. Educators in these institutions must be empowered to take care of and support HIV positive learners. However, placement in special schools should not be used as an excuse to remove HIV positive learners from mainstream schools.

10.2 Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System

The Education White Paper 6 is one of the most important policy documents that promotes and encourages the care and protection of vulnerable children. This policy

document acknowledges universal and individual barriers to learning and the principle of “Quality Education for All” is pursued.⁶⁴

The Education White Paper 6 is aimed at the following:⁶⁵

- recognising children’s ability to learn and that all children require support and encouragement;
- facilitating education structures, systems and learning methodologies in order to meet the needs of all learners;
- accepting and recognising the diversity of learners, whether due to age, gender, ethnicity, language, class, disability, HIV/AIDS status or other infectious diseases;
- recognising that learning also takes place at home and through the community;
- changing ways of thinking, attitudes, behaviour, teaching techniques, curricula and the learning environment in order to meet the needs and desires of all learners;
- maximising and intensifying the participation and involvement of all learners in the culture and curriculum of educational institutions and uncovering and reducing barriers to learning.

⁶⁴ Hoadley “The boundaries of care: education policy interventions for vulnerable children” in Maile (ed) *Education and poverty reduction strategies: Issues of policy coherence: Colloquium proceedings* (2008) 138.

⁶⁵ See, in general
<http://www.kzneducation.gov.za/Portals/0/snes/CHILD%20PROTECTION%20LEGAL%20FRAMEWORK.pdf>, last visited 2012-05-14.

Thus, the Education White Paper 6 provides all the necessary guidelines and strategies to overcome barriers to learning and education.⁶⁶

10.3 Tirisano

Tirisano means “working together” and was a response to the relentless problems in South Africa’s education system. Several priorities have been outlined and the priority on HIV/AIDS was set out as follows: “We must deal urgently and purposefully with the HIV/AIDS emergency in and through the education system.”⁶⁷

Tirisano was a plan of action which set out possible plans, structures and strategies to address and manage the HIV/AIDS epidemic, but unfortunately there were several problems and obstacles with the implementation thereof. Some of these problems and obstacles were due to “national and provincial departments’ lack of access to the expertise of people such as planners, demographers, economists, sociologists, anthropologists and care workers”. Another problem was inter-sectoral inactivity – a problem which had thwarted this plan of action.⁶⁸

11 CHALLENGES

Despite various international instruments, pieces of national legislation, policy documents and plans of action, there are still several challenges that South Africa is struggling with.

⁶⁶ *Ibid.*

⁶⁷ Hoadley “The boundaries of care: education policy interventions for vulnerable children” in Maile (ed) *Education and poverty reduction strategies: Issues of policy coherence: Colloquium proceedings* (2008) 139-140.

⁶⁸ *Ibid.*

South Africa is challenged in various fields with regard to the HIV/AIDS epidemic, but there are three main challenges that need to be conquered.⁶⁹

- concerted effort must be made to combat the further spread of this devastating epidemic among infants and the youth;
- greater care, attention and support must be given to all neglected HIV/AIDS infected and affected persons;
- every possible effort must be made to alleviate the impact that this epidemic has on persons affected by HIV/AIDS.

This is easier said than done. However, South Africa is capable of overcoming these challenges if the following steps are taken actively:⁷⁰

- resources should be increased for comprehensive prevention, care, treatment and support services;
- it is of the utmost importance to ensure that prevention remains the “moral fibre” of all AIDS control programs;
- the public health infrastructure and capacity for delivery of services must be further developed and improved;
- the technologies used for HIV/AIDS treatment and prevention must be improved;

⁶⁹ Lamptey, Johnson & Khan “The global challenge of HIV and AIDS” 2006 Vol 61(1) *Population Bulletin* 20.

⁷⁰ *Ibid.*

- drastic steps must be taken to combat poverty, illiteracy and other social, economic and political factors that contribute to the HIV/AIDS epidemic; and
- the stigma and discrimination associated with this virus, must be reduced and eliminated.

12 CONCLUSION

HIV/AIDS is a human tragedy, not only in South Africa but around the world. HIV/AIDS is an epidemic that destroys communities and families and a virus that ruins systems. Every day millions of people die due to this devastating virus and the question on everyone's lips is what can be done to save humanity from this virus.

First of all, humanitarian interventions must be in place in order to provide condoms, to establish home based care and school feeding schemes and to train peer health teams for all institutions.⁷¹ These interventions are of great value in the short term, but it is still not sufficient for the "long-term combating of the virus". However, the following major steps must be taken in order to fight this virus:⁷²

- proper and appropriate policies must be developed;
- adequate planning and management are crucial;

⁷¹ Coombe "Mitigating the impact of HIV/AIDS on education supply, demand and quality"
<http://www.hivpolicy.org/Library/HPP001135.pdf>, last visited 2012-05-14.

⁷² *Ibid.*

- preventive education should be one of the main focal points,⁷³
- vulnerability and exposure to the HIV/AIDS virus must be drastically reduced;
- life skills education must be implemented, and if this education is already implemented, it must be improved;
- a culture of compassion, empathy and care must be promoted; and
- the impact and consequences of HIV/AIDS as well as the prevention of HIV/AIDS must be integrated as one of the most important parts of the national curriculum.

The impact of HIV/AIDS on the education system is also a major concern. The demand for education, the supply of education and the quality and standard of education is drastically decreasing. The question now is what can be done to save the education system from destruction.

The answer is not simple, but educational policy-makers and planners are prompted to manifest certain qualities and to adopt certain approaches which would include:⁷⁴

- greater flexibility;
- ingenuity and openness to change;

⁷³ The CRC Committee's General Comment no. 3 also emphasises the importance of the mutual reinforcement of prevention, care, treatment and support on a continuum of responses. The General Comment underlines "that a crucial aspect of prevention in children's access to appropriate sex education and information about sexuality so that they can equip themselves to take measures against the acquisition of infection, even where this is not the cultural norm". (See Sloth-Nielsen & Mezmur in Sloth-Nielsen (ed) (2008) 282-283).

⁷⁴ Kelly "Planning for education in the context of HIV/AIDS" <http://unesdoc.unesco.org/images/0012/001224/124405e.pdf>, last visited 2012-05-14.

- open-mindedness and tolerance for a diversity of solutions and models;
- readiness to renounce bureaucratic constraints and procedures;
- collaboration with other government sectors, civil society and communities;
- reminiscent devolution based upon school autonomy and the effective involvement of local stakeholders;
- more purposeful use of the resources inherent in persons affected or infected with HIV/AIDS, community members and students;
- enhanced comprehension and understanding of what education is all about; and
- compassion and sympathy for those affected and infected with HIV/AIDS.

Concisely, “planning for education in the context of HIV/AIDS must be directed to a system that is more flexible, more diversified, and more universally affordable. But it must also be directed to a system that ensures high quality. Only in this way will education be able to respond to the needs of an AIDS-afflicted world”.⁷⁵

Despite concerted efforts to combat the HIV/AIDS epidemic, it continues its destructive march, but despair is out of the question because “at this juncture where success is within sight, we have to intensify our efforts more than ever before. We have come so far that we cannot accept failure”.⁷⁶

⁷⁵*Ibid.*⁷⁶Lamprey, Johnson & Khan “The global challenge of HIV and AIDS” 2006 Vol 61 no 1 *Population Bulletin* 20.

CHAPTER 9

The right to basic education in New Zealand and Namibia

“To succeed, you will soon learn, as I did, the importance of a solid foundation in the basics of education – literacy, both verbal and numerical, and communication skills.”¹

1 INTRODUCTION

Education is universally regarded as an important right. Education is not only a right – it is a human right which is “an indispensable means of realizing other human rights. Education is essential for the development of human potential, the enjoyment of the full range of human rights and respect for the rights of others”.²

There are also several international instruments which emphasise the importance of the right to education. Article 26 of the Universal Declaration of Human Rights, 1948³ states that “everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...” Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1976⁴ emphasises the importance of education and stipulates as follows:

“1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the

¹ Greenspan “Financial literacy”
<http://www.federalreserve.gov/boarddocs/speeches/2004/20040513/default.htm>, last visited 2012-05-15.

² Human Rights Commission “The right to education”
<http://www.hrc.co.nz/report/chapters/chapter15/education01.html>, last visited 2012-05-15.

³ See chapter 5, para 6.1.

⁴ See chapter 5, para 6.2.

respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all...”

Article 28 of the United Nations Convention on the Rights of the Child, 1989⁵ also emphasises the importance of children’s right to education. Article 28 states the following:

“1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular:

(a) Make primary education compulsory and available free to all...”

New Zealand and Namibia are both state parties to all three of these international instruments and is therefore obliged to give effect to the right to education.

It is important to remember that the New Zealand Constitution differs from most other countries’ constitutions. Most modern countries have a well-established and deep-rooted supreme-law constitution which is compiled in a single document or small number of documents comprising principal elements which govern and administer how public power is to be exercised and implemented within that state. The constitution of

⁵ See chapter 5, para 8.2.

New Zealand, on the other hand, consists of constitutional convention, statute and common law.⁶

Namibia has a comprehensive constitution. It is also known as the fundamental law of the Republic of Namibia and is compiled in a single document. In this constitution, various rights are protected. For purposes of this study, emphasis will be placed on the protection of fundamental human rights and freedoms.⁷

This chapter consists of a discussion of children's right to an education in New Zealand and Namibia. The position with regard to early childhood development and education, mother tongue education and HIV/AIDS in schools is also discussed. These discussions are important because, as will be pointed out, South Africa can learn some lessons from both the New Zealand and Namibian education systems. In addition, New Zealand and Namibia can learn several lessons from the South African education system.

There are both differences and similarities between New Zealand and South Africa with regard to a child's right to basic education. However, these two countries can learn from each other despite their differences. Although New Zealand's constitution differs from South Africa's constitution, New Zealand is a signatory to the UNCRC, the Universal Declaration of Human Rights and the ICESCR, just like South Africa., It will be informative to see how New Zealand meets its international obligations regarding a child's right to basic education. New Zealand is a multicultural and multilingual society, just like South Africa, and it is significant to determine how New Zealand manages and promotes education in a multicultural and multilingual society.

⁶ Palmer & Palmer *Bridled power: New Zealand's Constitution and Government* 4th ed (2004) 4-6.

⁷ See, the Preamble of the Namibian constitution.

A comparative study with Namibia is important since the Namibian legal system regarding a child's right to basic education is very similar to the South African legal system. Just like South Africa, Namibia is a signatory to important international instruments such as the Universal Declaration of Human Rights, the ICESCR, the UNCRC and the ACRWC. It is therefore of great value and importance to observe how Namibia, South Africa's neighbouring country, meets its international obligations and duties regarding a child's right to basic education. Furthermore, Namibia and South Africa have similar constitutions and it is in my opinion important to compare these two constitutions in order to identify possible shortcomings as well as good features in each country's constitution. The purpose of this comparison is that it will enable South Africa and Namibia to learn from each other's shortcomings and successes. Namibia is a multicultural and multilingual society, just like South Africa, and it will be of great value to get a comparative perspective on how Namibia deals with cultural and linguistic diversity.

Throughout this chapter, internet resources are often used. The use of internet resources in this chapter is inevitable due to the nature of this topic (a child's right to basic education in New Zealand and Namibia with particular reference to factors such as early childhood development, mother tongue education and HIV/AIDS which may affect a child's right to basic education). All the internet resources used in this chapter are either official websites of the New Zealand and Namibian governments or credible and trustworthy academic articles and books, which were only electronically available to me.

2 THE RIGHT TO BASIC EDUCATION IN NEW ZEALAND

2.1 Education and the right to education in New Zealand – a brief overview

The right to education is not specifically stated in New Zealand law, but education is regarded as an important right and forms an integral part of the New Zealand society.⁸ However, the right to education is reflected in the Education Act 1964, the Education Act 1989 and the Education Standards Act 2001 (as amended to the Education Act 1989) and the Private Schools Conditional Integration Act 1975.⁹ New Zealand has an inclusive education system and “inclusion” is one of the most important principles of the New Zealand curriculum. The New Zealand curriculum is a statement of official policy and is applicable to all learners in English-medium public schools irrespective of their gender, sexuality, ethnicity, belief, ability or disability, social or cultural background, or geographical location.¹⁰ Moreover, the New Zealand curriculum is described as “non-sexist, non-racist, and non-discriminatory; it ensures that students’ identities, languages, abilities, and talents are recognised and affirmed and that their learning needs are addressed”.¹¹

Section 3 of the Education Act 1989 states as follows:

“Every person who is not a foreign student is entitled to free enrolment and free education at any state school during the period beginning on the person’s 5th birthday and ending on the 1st day of January after the person’s 19th birthday.”

⁸ Ryan “Failing the system? Enforcing the right to education in New Zealand” 2004 *VUWLR* 735-736.

⁹ Section 35(1) of the Private Schools Conditional Integration Act stipulates as follows: “Every pupil enrolled at an integrated school shall be given free education on the same terms and in accordance with the same conditions as pupils enrolled at a State school are given free education.”

¹⁰ The Te Marautanga o Aotearoa is a parallel document to the New Zealand curriculum and applies to all Māori-medium schools. The New Zealand curriculum and the Te Marautanga o Aotearoa give effect to New Zealand’s founding document, the Treaty of Waitangi. (See paragraph 2.3.2 below).

¹¹ Ballard “Inclusive education in New Zealand: culture, context and ideology” 1996 Vol 26 *Cambridge Journal of Education* 33.

Section 3 of the Education Act thus clearly stipulates that formal education is free for all New Zealanders from the age of five to the age of 19. Schooling is compulsory for all New Zealand children from the age of six to the age of 16 years. However, the majority of children usually start their school career the day after their fifth birthday since schools have a continuous intake rather than only accepting new entrants several times a year.¹²

There is thus a positive obligation on the New Zealand government to provide free education to all New Zealand children from the age of five years. It can therefore be stated as follows:¹³

“[T]he state is the central actor in any claim to the right to education: it is the prime duty-bearer and the prime implementer; it is the guarantor; and it is the state’s signature vis-à-vis the international norms and standards which binds it to respect, protect and fulfil the right to education. The state must therefore be judged or challenged on its central text on the right to education, whether this be the constitution, the law or the policies”.

2.1.1 Levels of education in New Zealand

The New Zealand education system is characterised by the following levels of education:¹⁴

¹² Ministry of Education New Zealand “The New Zealand education system: An overview” <http://www.minedu.govt.nz/~media/MinEdu/Files/EducationSectors/InternationalEducation/ForInternationalStudentsAndParents/NZEdSysOverview.pdf>, last visited 2012-05-15.

¹³ Right to Education project “National Constitutional provisions – New Zealand” <http://www.right-to-education.org/country-node/478/country-constitutional>, last visited 2012-05-15.

¹⁴ Ministry of Education New Zealand “The New Zealand education system: An overview” <http://www.minedu.govt.nz/~media/MinEdu/Files/EducationSectors/InternationalEducation/ForInternationalStudentsAndParents/NZEdSysOverview.pdf>, last visited 2012-05-15.

Schooling level	Years/Grades	Age
Early childhood	Pre-school	From birth to the age of five years
Primary school	Years 1 – 8	From the age of five to the age of 13
Intermediate school ¹⁵	Years 7 – 8	From the age of 11 to the age of 13
Secondary school	Years 7 – 13	From the age of 11 to the age of 17 or 18
Tertiary institutions	University	From the age of 17 and onwards

2.1.1.1 Early childhood

Early childhood education is not a prerequisite for “primary schooling” and therefore not compulsory for New Zealand children. However, many children under the age of five attend kindergartens, play centres or childcare centres.¹⁶ Early childhood education will be discussed below.¹⁷

¹⁵ Intermediate schools are not always applicable since Years 7 – 8 are in most instances part of primary or secondary schools.

¹⁶ The Encyclopedia of New Zealand “Education” <http://www.teara.govt.nz/en/society/6>, last visited 2012-05-15.

¹⁷ See par 2.2 below.

2.1.1.2 Primary schools

Learners aged six to 11 attend primary school. The junior class is called J 1 and learners are promoted to J 4 over a two-year period. Learners are then promoted to Standard 1 through to Standard 4. Learners are in a standard for a year before they are promoted to the next standard.¹⁸

2.1.1.3 Intermediate schools

Learners aged 11 to 13 attend intermediate schools. These schools consist of two classes: Form 1 and Form 2. Learners are prepared for entry into secondary schools.¹⁹

2.1.1.4 Secondary schools

Learners aged 13 to 17 attend secondary school. Secondary schools consist of five classes: Form 3 (Year 9) to Form 7 (Year 13). University examinations are taken in Year 12, but the majority of learners complete Year 13 (the year in which learners are prepared for university). It is possible to gain access to university entrance in Year 12, but it is not encouraged.²⁰

In conclusion, all young New Zealanders enrolled at state primary, intermediate and secondary schools, receive free and secular education. Thus, free education is provided to learners from the age of five to the age of 19. Education is compulsory for all New Zealand children aged six to 16. However, parents are expected to pay school fees in order to cover expenses which are not covered by the state. It is important to

¹⁸ Ministry of Education New Zealand "The New Zealand education system: An overview"
<http://www.minedu.govt.nz/~media/MinEdu/Files/EducationSectors/InternationalEducation/ForInternationalStudentsAndParents/NZEdSysOverview.pdf>, last visited 2012-05-15.

¹⁹ *Ibid.*

²⁰ *Ibid.*

note that all state primary and intermediate schools are co-educational.²¹ Most state secondary schools are also co-educational.²²

2.1.2 The right to receive an education: available, accessible, acceptable, and adaptable

The four “A” standards, namely availability, accessibility, acceptability and adaptability form the basis of the New Zealand Right to Education Framework. It was due to this framework that the right to education was structured as part of the New Zealand Human Rights Commission’s scoping of the status of human rights. However, although New Zealand is providing numerous education opportunities, education in New Zealand is still not fully accessible, acceptable and adaptable. The following table illustrates the current shortcomings of in the New Zealand education system.²³

Four “A” framework	The right to education in New Zealand: Aspects of significance
Availability	New Zealand does very well.
Accessibility	Participation rates for males, Māori, Pacific people, disabled people, and those from poor and underprivileged communities are excessively low. Māori and Pacific students are more likely

²¹ Co-educational means mixed-sex education, in other words: both male and female persons receive education (integrated education) in the same institution.

²² The Encyclopedia of New Zealand “Education” <http://www.teara.govt.nz/en/society/6>, last visited 2012-05-15.

²³ Tomaševski “Human rights obligations: Making education available, accessible, acceptable and adaptable” 2001 *Right to Education Primers* 12-14.

	to bow out, to be expelled and to be excluded from certain activities than other ethnicities. They also have higher exclusion and expulsion rates, and males have higher rates than females.
Acceptability	There are unequal standards of education, particularly for disabled children and those from remote and isolated schools or deprived communities.
Adaptability	There are several disparities between the lowest achieving students and those who are average achievers are increasing. Achievement and success rates for males, Māori, Pacific people, disabled people and those from deprived communities are excessively low.

2.1.3 *The New Zealand Curriculum Framework – NZCF*

All New Zealand state schools are obliged to adhere to the national curriculum, which sets out the norms, standards and learning requirements. The national curriculum’s **vision** is to educate children who will be:²⁴

- confident;

²⁴ Ministry of Education “The New Zealand curriculum” <http://nzcurriculum.tki.org.nz/Curriculum-documents/The-New-Zealand-Curriculum>, last visited 2012-05-15.

- connected;
- actively involved; and
- lifelong learners.

The national curriculum also emphasises certain **values** that are fully pursued:²⁵

- excellence;
- innovation, inquiry and curiosity;
- diversity;
- equity;
- community and participation
- ecological sustainability;
- integrity; and
- respect.

The national curriculum also includes five **key competencies** that are the driving force behind shared visions, principles and values:²⁶

- the ability to think – to formulate opinions and ideas;
- the use of language, symbols and texts;
- the ability to function independently;
- the ability to relate with others; and
- the ability to participate in activities and to provide valuable inputs.

With regard to the **learning areas**, the following core subjects are included:²⁷

- English;

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

- health and physical education;
- languages;
- mathematics and statistics;
- science;
- social sciences;
- technology; and
- arts.

Secondary schools are eligible to offer additional subjects such as accounting, art history, media studies and specialised science and language studies.²⁸

The following eight **principles** exemplify beliefs about what is important and enviable in school curriculum, whether it is nationally or locally. It is also important that all curriculums are compatible with these principles:²⁹

- high expectations;
- Treaty of Waitangi;
- cultural diversity;
- inclusion;
- learning to learn;
- community engagement;
- coherence; and
- future focus.

²⁸

Ibid.

²⁹

Ministry of Education “The New Zealand Curriculum”

<http://nzcurriculum.tki.org.nz/Curriculum-documents/The-New-Zealand-Curriculum>, last visited 2012-05-15.

The NZCF can thus be described as a comprehensive document that provides guidance to all English-medium schools in New Zealand. The Te Marautanga o Aotearoa provides similar guidance³⁰ to all Māori-medium schools. In conclusion, the NZCF³¹

“provides the framework and common direction for schools, regardless of type, size, or location. It gives schools the scope, flexibility, and authority they need to design and shape their curriculum so that teaching and learning is meaningful and beneficial to their particular communities of students. In turn, the design of each school’s curriculum should allow teachers the scope to make interpretations in response to the particular needs, interests, and talents of individuals and groups of students in their classes.”

2.1.4 *Public and private education*

The New Zealand school system can be divided into three types, namely: state-funded, state-integrated, and private schooling. State-funded schooling provides education for learners from the age of five to the age of 19. Free education is provided to all New Zealand citizens, residents and children of a person(s) with a valid work permit at state-funded schools.

Parents are, however, expected to pay for expenses such as school books, stationary and school uniforms.³²

Children can also be enrolled at private schools. These schools are considerably more expensive than state schools and they receive only limited government funding. Each

³⁰ See fn 10 above.

³¹ *Ibid.*

³² Ministry of Education New Zealand “The New Zealand education system: An overview” <http://www.minedu.govt.nz/~media/MinEdu/Files/EducationSectors/InternationalEducation/ForInternationalStudentsAndParents/NZEdSysOverview.pdf>, last visited 2012-05-15. See also, in general <http://www.newzealand.govt.nz/education~290.html>, last visited 2012-05-15.

private school is allowed to set its own fees and these fees may vary from school to school.³³

The following table illustrates the main differences between state, state-integrated and private education:³⁴

Point of difference	State education	State-integrated education	Private education
Curriculum	These schools are obliged to adhere to the national curriculum, but additional subjects owned by the state may be offered.	The education is usually based on religious or philosophical teachings. The national curriculum is followed, but these schools may offer additional subjects.	These schools are eligible to choose their own curriculum. They may offer the national curriculum, but must meet government standards in order to be registered. The Cambridge International Examinations or International Baccalaureate is usually offered at senior levels.

³³ *Ibid.*

³⁴ *Ibid.*

Ownership	These schools are controlled by an elected board of trustees which reports to the minister of education through the Ministry of Education.	These schools are controlled by a board of trustees which reports to the Minister of education. The buildings are usually owned by proprietors.	These schools are owned by a charitable trust or private company, and controlled by a board of governors.
Religion	These schools are non-religious. Optional religious instruction classes are allowed.	The majority of these schools are affiliated to the Catholic Church. Some of these schools have Protestant, Muslim or Jewish links. Others are non-religious.	Several schools have a Protestant philosophy. Some have Muslim or Jewish links. Others have no religious affiliation.
Character	General education is offered and the national curriculum is followed.	Generally religious-based education is offered. Some of these schools base their education on Montessori, Rudolph Steiner and other philosophies.	These schools have their own special character, philosophy and values. Emphasis is given to co-curricular activities such as music, drama, arts and

			sport.
Co-educational or single-sex	The majority of these schools are co-educational at primary level, and most often at secondary level. There are, however, single-sex schools available at secondary level.	The majority of these schools are co-educational at primary level. These schools are usually single-sex at secondary level.	These schools are most often single-sex, but some of these schools offer co-educational education at secondary level.
Boarding (live-in) facilities	Boarding facilities are not offered at primary level, but some secondary schools may have boarding facilities.	Boarding facilities are usually not offered at primary level, but some secondary schools may have boarding facilities.	Boarding facilities are often available for all ages.

It is clear from the above table that there are real differences between state, state-integrated and private education. Parents therefore have the responsibility to choose the type of education which best suits their children's education.

2.1.5 Home zones and enrolment schemes

Home zones and enrolment schemes are regulated in terms of section 11 of the Education Act 1989. Section 11A stipulates as follows:

- (1) The purpose of the enrolment scheme of a State school is—
 - (a) to avoid overcrowding, or the likelihood of overcrowding, at the school; and
 - (b) to ensure that the selection of applicants for enrolment at the school is carried out in a fair and transparent manner; and
 - (c) to enable the Secretary to make the best use of existing networks of State schools.

- (2) In achieving its purpose, the enrolment scheme of every State school must, as far as possible, ensure that—
 - (a) the scheme does not exclude local students; and
 - (b) no more students are excluded from the school than is necessary to avoid overcrowding at the school

Many schools have a catchment area also known as a “zone” or “home zone”. This means that children are required to attend school in the area where they live. Every school is entitled to an enrolment scheme in order to limit the number of learners. However, the limiting of the number of learners can only be done in order to prevent overcrowding. Even if a local school has an enrolment scheme, such a school is still obliged to accommodate learners who live in the local home zone specified in the scheme.³⁵

There are certain requirements that the enrolment schemes must comply with: Such a scheme must specify a home zone for the specific school, and the school is obliged to

³⁵ Ministry of Education “Enrolment schemes”
<http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/SchoolOperations/PlanningAndReporting/EnrolmentSchemes.aspx>, last visited 2012-05-15.

accept and accommodate all learners who live in the specified home zone. If a learner wants to enrol at a school outside his or her home zone, such a learner is called an out-of-zone learner and will only be accepted under the school's enrolment scheme. Out-of-zone learners are selected by balloting and the order of priority in which the school must accept them is as follows:³⁶

- first, learners who are accepted for enrolment by means of a special programme run by the school;
- second, siblings of current students;
- third, siblings of previous students;
- fourth, children of previous students;
- fifth, children of school employees and children of members of the board of trustees;
- sixth, all other students who apply.

It can be concluded that home zones and enrolment schemes are of great value to the successful and equitable enrolment of learners in New Zealand.

³⁶ *Ibid.*

2.1.6 The New Zealand education system and curriculum – a summary



A brief summary of education in New Zealand and its national curriculum were given. For purposes of this study, the focus will now be on New Zealand's position with regard to early childhood development and education, mother tongue education and HIV/AIDS in schools.

2.2 Early childhood development and education in New Zealand

“Early Childhood Care and Education is the basis of education for life. Children are our future, therefore we are committed to support, value and nurture their growth and development, while respecting their uniqueness, dignity, beliefs, ethnicity, culture, gender and ability.”³⁷

2.2.1 Early childhood development and education

Early childhood education is not compulsory in New Zealand, although the majority of children’s parents do make the choice to enrol their children for early childhood education. The reason for this is that early childhood education benefits children in several ways:³⁸

- children have the chance to meet and make new friends;
- children have the opportunity to develop new skills;
- children are taught how to curb learning obstacles; and
- children are systematically prepared for elementary/primary school.

There are a number of early childhood services – each type is unique and has its own way of working with children and their parents. Distinction is made between all-day education and care and part-day education and care.

³⁷ Pakai “TE WHĀRIKI – The curriculum for early childhood education in Aotearoa/New Zealand” http://reach.uvic.ca/PPT/Pakai_paper.pdf, last visited 2012-05-15.

³⁸ See, in general, <http://newzealand.govt.nz/>, last visited 2012-01-23.

Some early childhood services are classified as teacher-led services (education and care are provided through teachers), and parent-led services (education and care are provided through parents, whānau³⁹ or caregivers).⁴⁰

It is important to take note that all early childhood education services are regulated by the Ministry of Education. The purpose of this is to ensure that all early childhood education services meet the required minimum standards.⁴¹

2.2.1.1 Teacher-led services

a Education and care centres

The Ministry of Education is responsible for the licensing of education and care centres. These centres usually offer full-day or half-day services. Education and care centres may also consist of workplace and childcare centres that provide for a specific language group or culture and are usually managed by the community or private owners.⁴²

Children from birth to school age are accepted, depending on the specific policy and admission requirements of a particular centre. Half of all teachers in control of these centres must be registered teachers and must have a Diploma in Teaching (ECE) or equivalent qualification. All other staff employed by these centres may have different qualifications or experience.⁴³

³⁹ Whānau is a Maori-language word for extended family.

⁴⁰ Ministry of Education “Choices in Early childhood education”
<http://www.minedu.govt.nz/Parents/EarlyYears/OtherInformationAndResources/Choices.aspx>,
last visited 2012-05-15.

⁴¹ *Ibid.*

⁴² Ministry of Education “Choices in early childhood education”
<http://www.minedu.govt.nz/Parents/EarlyYears/OtherInformationAndResources/Choices.aspx>,
last visited 2012-05-15.

⁴³ *Ibid.*

b Kindergartens

Kindergartens are run by kindergarten associations and the Ministry of Education is also responsible for the licensing of kindergartens. Children aged between two and five years usually attend kindergarten. Kindergartens normally organise their services in such a way that older children are able to attend morning sessions five days a week and that younger children attend afternoon sessions three days a week. A prerequisite for early childhood teachers working in kindergartens is that all teachers must be registered and they must have a Diploma in Teaching (ECE) or equivalent qualification.⁴⁴

c Home-based education and care services

With regard to home-based education and care services, education is provided by an educator to a small group of young children. The group is normally not larger than four young children. Education is provided in either the educator's home or in one of the children's homes as part of a Ministry of Education funded and regulated home-based care service. Home-based education and care services make provision for full-day or half-day education and care. The educator is supported by a coordinator who is a registered teacher. The coordinator has the responsibility to visit the home-based educator on a regular basis in order to ensure the safety and well-being as well as the learning progress of each child.⁴⁵

⁴⁴ Ministry of Education "Choices in early childhood education"
<http://www.minedu.govt.nz/Parents/EarlyYears/OtherInformationAndResources/Choices.aspx>,
last visited 2012-05-15.

⁴⁵ *Ibid.*

2.2.1.2 Parent-led services

a Play centres

In play centres, children's early learning is supported by parents, whānau and caregivers. Play centres are characterised by their "learning through play" approach for children from birth to school-going age. The majority of play centres are licensed by the Ministry of Education. Each play centre is entitled to determine its own times for play sessions and children are in a favourable position to attend up to five sessions a week.⁴⁶

When parents enrol their child or children at a play centre, such parents become members of the said play centre. Membership entails involvement in the "running" of the centre and participation in the daily programmes. Each centre is linked to a regional association which in turn forms part of the national New Zealand Playcentre Federation. These regional associations provide parent education programmes and parents; whānau and caregivers are encouraged to fully participate in play centre courses which will enable them to improve their child's or children's learning and learning abilities.⁴⁷

b Te Kōhanga Reo

The Ministry of Education is responsible for the licensing of Kōhanga Reo services. Kōhanga Reo services are aimed at the development and promotion of young children's and parents' knowledge with regard to the Māori language (te reo Māori) and the Māori culture (tikanga). Parents and whānau are closely involved in their children's learning and development. Children can attend Kōhanga Reo from birth. It is, however, important to take note that children are only taught in the Māori language. The

⁴⁶ *Ibid.*

⁴⁷ Ministry of Education "Choices in early childhood education"
<http://www.minedu.govt.nz/Parents/EarlyYears/OtherInformationAndResources/Choices.aspx>,
last visited 2012-05-15.

management and operation of Kōhanga Reo are vested in parents and they are also encouraged to participate in the daily programmes.⁴⁸

c Playgroups

Playgroups are community-based and parents, whānau and caregivers are given the opportunity to work closely together in order to provide meaningful play programmes for their children. There are two requirements that must be met: firstly, there must be parental supervision and secondly, no child is allowed to attend such a playgroup for more than four hours per day. Community halls are usually used for this kind of playgroups. The management, control and running of sessions are vested in parents, whānau and caregivers.⁴⁹

d Ngā Puna Kōhungahunga

These types of playgroups focus mainly on the Māori language and culture. Learning may be in both English and Māori or in Māori only.⁵⁰

e Pacific Islands early childhood groups

The main purpose of these playgroups is to promote and expand young children's knowledge of their own Pasifika language and culture. Pacific Islands early childhood groups include various Pasifika cultures from countries such as Samoa, Tonga, Cook

⁴⁸ *Ibid.*

⁴⁹ Ministry of Education "Choices in early childhood education"
<http://www.minedu.govt.nz/Parents/EarlyYears/OtherInformationAndResources/Choices.aspx>,
last visited 2012-05-15.

⁵⁰ *Ibid.*

Islands, Niue, Tokelau, Tuvalu and Fiji. Children are taught in both English and a Pasifika language or in a Pasifika language only.⁵¹

f The correspondence school

Learning programmes are offered for children between the ages of three and five years of age who live too far away to make use of early childhood education services. Correspondence schools are also of great value for children who cannot attend early childhood education services due to illness or disability. Children using correspondence schools can also attend a regular service for up to two sessions per week. Correspondence school's early childhood education teachers are working closely with parents, whānau or caregivers to develop appropriate programmes which satisfy and suit the needs of children.⁵²

2.2.2 Definition of early childhood education (ECE)

ECE is defined as follows:⁵³

“[A] process whereby young children learn and develop knowledge, skills, and understanding. Early childhood education can take place in any context at any time. In New Zealand ‘ECE’ has been adopted by Government and Government Departments and is used as a phrase or term to describe all licensed and regulated early childhood services and to exclude early childhood education that does not take place in the context

⁵¹ *Ibid.*

⁵² Ministry of Education “Choices in early childhood education”
<http://www.minedu.govt.nz/Parents/EarlyYears/OtherInformationAndResources/Choices.aspx>,
 last visited 2012-05-15.

⁵³ Child Forum “Early childhood jargon and terminology”
<http://www.childforum.com/early-childhood-jargon-terminology.html>, last visited 2012-05-15.

of a licensed and regulated setting predominantly not with parents or family but with teachers”.

2.2.3 *Te Whāriki*

Te Whāriki is known as the national early childhood curriculum of New Zealand – a woven mat for all to stand on. It can be defined as follows:⁵⁴

“The title of the curriculum, Te Whāriki, is a central metaphor. Firstly, the early childhood curriculum is envisaged as a Whāriki, a woven mat ‘for all to stand on’... Secondly, the metaphor describes a ‘spider web’ model of curriculum for children, in contrast to a step model.”

Te Whāriki follows a socio-cultural approach that aims to resolve learning dispositions, promote and encourage bi-culturalism and reflect the realities of young children in the early childhood curriculum services.⁵⁵

Te Whāriki consists of principles, strands and goals which emphasise the cardinal importance of early childhood development and education. The Te Whāriki (also known as the New Zealand early childhood development and education curriculum), can be summarised in a nutshell as follows:

⁵⁴ Directorate for Education “Starting strong curricula and pedagogies in early childhood education and care” <http://www.oecd.org/dataoecd/23/36/31672150.pdf>, last visited 2012-05-15.

⁵⁵ *Ibid.*

2.2.3.1 The principles

There are four broad principles that are the foundation of the early childhood curriculum:⁵⁶

Empowerment	Holistic Development	Family and Community	Relationships
The child is empowered to learn and develop.	The holistic way in which children learn and develop is reflected through Te Whāriki (the early childhood curriculum).	Family and community engagement are of cardinal importance during a child's early childhood development and education.	Building relationships forms an integral part of the early childhood curriculum as children learn through responsive and reciprocal relationships.

2.2.3.2 Strands and Goals

The strands and goals were developed from the four principles. The principles along with the strands (and their goals) form the framework for the early childhood curriculum. Each goal in each of the strands has specific learning outcomes and the end result of

⁵⁶ Ministry of Education "Te Whāriki: Early childhood curriculum"
<http://www.educate.ece.govt.nz/learning/curriculumAndLearning/TeWhariki.aspx>, last visited 2012-05-15.

this is that the Te Whāriki becomes an integrated foundation for every child's development.⁵⁷

The strands and goals are tabularised as follows.⁵⁸

Strands	Goals
Well-being	Children experience a favourable environment where their health is promoted; their emotional well-being is taken care of; they are kept safe from harm and impairment.
Belonging	Children and their families experience an auspicious environment where the links with family and the outside world are avowed and extended; they realise that they have a place in this world; they feel comfortable and at ease with the routines, customs, and regular events and procedures; they are well aware of the limits, restrictions and boundaries of acceptable and tolerable behaviour.
Contribution	Children experience an environment where they have fair and equal learning opportunities, irrespective of gender, ability, age, ethnicity or background; they

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

	<p>are recognised and respected as individuals; they are encouraged to learn and interact with and alongside other children.</p>
<p>Communication</p>	<p>Children experience an environment where non-verbal communication skills are developed for several purposes; children also develop verbal communication skills for a number of purposes; they experience stories and symbols of their own and other cultures; they discover and come across different methods and techniques to be creative, expressive and communicative.</p>
<p>Exploration</p>	<p>Children experience a favourable environment where their play is valued as significant and meaningful learning and the important and cardinal impact of “unstructured” play is recognised and acknowledged; they gain self-confidence in and control of their bodies; they learn several strategies and approaches for active exploration, thinking, and reasoning; working theories are also developed by children in order to understand the natural, social, physical, and material worlds.</p>

2.2.4 *Early childhood care and education: infants, toddlers and young children*

“Children experience the world with their whole being, body, spirit, energy, minds, hearts, compassion, tears, laughter, anger, pride, learning, understanding, love and soul. Children play, grow and feel the world around them.”⁵⁹

Te Whāriki provides for the early childhood development and education of children from birth to school-going age and distinguishes between three different age groups:⁶⁰

- infants – birth to eighteen months
- toddlers – one year to three years
- young children – two and a half years to school entry age

2.2.4.1 Infants

The early months of an infant’s life are crucial since it is during these months that the infant learns to anticipate events and to communicate their needs. The infant explores his or her everyday environment through touching, smelling, seeing, hearing and tasting. The infant also interacts with adults, siblings and other children in environments that are safe and protected – in other words, environments that provide sensory stimulation.⁶¹

⁵⁹ Ministry of Education “Characteristics of infants, toddlers and young children”
<http://www.lead.ece.govt.nz/ServiceTypes/Playgroups/Appendix2.aspx>, last visited 2012-05-15.

⁶⁰ Ministry of Education “Te Whāriki: Early childhood curriculum”
<http://www.educate.ece.govt.nz/learning/curriculumAndLearning/TeWhariki.aspx>, last visited 2012-05-15.

⁶¹ Ministry of Education “Characteristics of infants, toddlers and young children”
<http://www.lead.ece.govt.nz/ServiceTypes/Playgroups/Appendix2/Infants.aspx?p=2>, last visited 2012-05-15.

Early childhood care and programmes regarding infants are somewhat specialised as this age group requires considerable attention. The key curriculum requirements for infants (as stated in the Te Whāriki) are as follows:⁶²

- individual attention and one-to-one responsive interactions;
- an adult who is constantly responsible for, and available to, each infant;
- higher staffing ratios, in order to promote the welfare of each infant;
- compassionate, warm-hearted and physically responsive adults who are willing and determined to satisfy the needs of each infant to the best of their ability;
- individualised programmes that are adaptable to each infant's tempo, progression and development;
- a knowable, calm and peaceful environment that builds and encourages trust and anticipation;
- collaboration between parents and other adults involved in the caring and development of the infant.

It is thus clear from the above that the care of infants is a specialised task and that comprehensive and structured programmes are required in order to meet and satisfy the needs and welfare of infants.

⁶² Ministry of Education "Te Whāriki: Early childhood curriculum"
<http://www.educate.ece.govt.nz/learning/curriculumAndLearning/TeWhariki.aspx>, last visited 2012-05-15.

2.2.4.2 Toddlers

Toddlers can be described as a unique age group since they explore and discover in different ways and they are filled with loads of energy. Their desires are usually ahead of their language and physical abilities. Toddlers' main pastime is to put objects in and out of all kinds of containers by means of selecting, matching, sorting, loading and dumping.⁶³ It is also important to provide toddlers with the necessary space to play. Space for toddlers must comply with the following:⁶⁴

- it must be large enough to do suitable activities with them;
- it must promote and encourage play with other children since toddlers become more social; and
- there must be sufficient space for large-muscle activities – this will enable children to jump and run freely around.

In order to meet the needs of toddlers, it is necessary to develop specific programmes that will lessen boredom, frustration and disruptive behaviour. The key curriculum requirements for toddlers are as follows – toddlers need:⁶⁵

- a safe and secure environment and age-appropriate programmes where both challenges and predictable happenings are provided;
- chances and opportunities for exploration and movement without constraint(s);

⁶³ Ministry of Education “Characteristics of infants, toddlers and young children”
<http://www.lead.ece.govt.nz/ServiceTypes/Playgroups/Appendix2/Toddlers.aspx?p=2>,
last visited 2012-05-15.

⁶⁴ *Ibid.*

⁶⁵ Ministry of Education “Te Whāriki: Early childhood curriculum”
<http://www.educate.ece.govt.nz/learning/curriculumAndLearning/TeWhariki.aspx>, last visited
2012-05-15.

- pliable approaches and methods need to be followed in order to accommodate toddlers' spontaneity and whims at a tempo that allows them to function on their own;
- adults who encourage and promote toddlers' cognitive skills and language development;
- approachable adults who can realise and are aware of toddlers' developmental swings.

It can be concluded that toddlers learn best through hands-on and proactive experiences with persons, objects, materials, events and ideas and it is therefore imperative that programmes are developed in order to keep pace with toddlers' developmental stages.

2.2.4.3 Young children

Young children can be described as sponges – they absorb every ounce of information and they are fast learners. Young children make sense of their world through active exploration and interaction and it is therefore vital to equip them with real and authentic experiences.⁶⁶

Thus, in order to meet the needs and desires of these fast learners, key curriculum requirements need to be in place. Young children need:⁶⁷

⁶⁶ See <http://www.lead.ece.govt.nz/ServiceTypes/Playgroups/Appendix2/YoungChildren.aspx?p=2>, last visited 2012-05-15.

⁶⁷ Ministry of Education "Te Whāriki: early childhood curriculum" <http://www.educate.ece.govt.nz/learning/curriculumAndLearning/TeWhariki.aspx>, last visited 2012-05-15.

- adults, communities and environments to furnish them with resources, challenges and support in order to broaden their interests and problem-solving abilities;
- opportunities to explore unknown routines, new and self-directed challenges, co-operative ventures and paths, and sustained projects;
- adults who are acquainted with sustained conversations, questions; uncertainties and complicated thinking and reasoning;
- opportunities to make use of language and verbal communication in order to explore and discover direct thinking and learning tasks;
- an extensive range of resources for creative and inventive expression, symbolising, and representation;
- thought-provoking and challenging chances and opportunities which keep track with their physical co-ordination and development.

In conclusion, early childhood development and education is unequivocally part of a child's right to basic education, since it is during this period that the child begins to learn, discover, explore and understand basic concepts and values. The Te Whāriki also underlines the importance of early childhood development and education and can be described as a comprehensive document which sets out the New Zealand early childhood curriculum in detail. The principles, strands and goals are clearly outlined and this document provides for three early childhood age groups – each with its own curriculum requirements. The differences as well as the similarities between the South African early childhood curriculum and the New Zealand early childhood curriculum will

be discussed in chapter 10,⁶⁸ and cognisance will be taken of the fact that New Zealand is a developed country, in contrast to South Africa which is a developing country.

2.3 Mother tongue education in New Zealand schools

“For every culture, language plays a central part. It reflects the cultural environment and ways of viewing the world; provides access to valued beliefs, knowledge and skills; and provides its speakers with a unique cultural identity. Language is both part of a culture and the medium through which that culture is transmitted.”⁶⁹

2.3.1 Introduction

The importance of language, specifically mother tongue, cannot be overemphasised. Language and identity are inseparable from each other. A healthy and strong identity balances different aspects and characteristics of our personalities and it can also be argued that every community expresses and communicates part of its identity in its languages of instruction. This results in a healthy society, where the right choices are made and where well-balanced communities and self-assured individuals are promoted.⁷⁰

It is no longer news that children who begin their education in their mother tongue are more successful than children who start their school careers in a “new” language. However, the true state of affairs is not so rosy. Some languages simply lack the necessary vocabulary and concepts to be useful beyond the early stages of schooling

⁶⁸ See ch 10 par 3 below.

⁶⁹ Parliamentary Library “Te Reo Māori – te Māori language” <http://www.parliament.nz/NR/Rdonlyres/CAFFFF6F-70F6-4A82-99D5-C7D007312D00/428/004TeReo5.pdf>, last visited 2012-03-28.

⁷⁰ UNESCO “The mother-tongue dilemma” July-September 2003 *Education Today* 1.

without additional codification and the invention of new words. Another challenge is that there are not always sufficient funds available to promote mother tongue education. There are certainly several obstacles that need to be conquered, but it is important to remember that once children have grasped their mother tongue, they will also have the self-confidence and aptitude to communicate outside their own language group, either in another national language or in an international language.⁷¹

2.3.2 *The Treaty of Waitangi*

The Treaty of Waitangi consists of an English text and a Māori text. The wording of the English text differs from the wording of the Māori text. Although the different versions caused some problems and confusions, both represent an agreement “in which Māori gave the Crown rights to govern and to develop British settlement, while the Crown guaranteed Māori full protection of their interests and status, and full citizenship rights”.⁷²

The English version preamble states that the British intentions were the following:⁷³

- to protect and safeguard Māori interests from the infringing British settlement;
- to make provision for British settlement; and
- to establish a government to maintain peace and order.

The Māori text, however, differs from the English text. Emphasis is placed on the Queen’s main promises and undertakings to:⁷⁴

⁷¹ *Ibid.*

⁷² Palmer & Palmer (2004) 333; see also, <http://www.waitangi-tribunal.govt.nz/treaty/meaning.asp>, last visited 2012-05-15.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

- secure tribal rangatiratanga,⁷⁵ and
- secure Māori land owners

The Treaty of Waitangi also consists of four reconciling principles:⁷⁶

- the principle of active protection;
- the tribal right to self-regulation;
- the right of redress for past breaches; and
- the duty to consult.

The acknowledgment and compliance with regard to these principles guarantee “active protection” of the Māori language and culture.⁷⁷

In 1985, the Waitangi Tribunal⁷⁸ was asked to recognize the Māori language as an official language of New Zealand. The Tribunal came to the conclusion that the Māori language is a valued possession and that it is protected under Article II of the Treaty of Waitangi. Several recommendations were made, but the New Zealand government did not really consider these recommendations as important.⁷⁹ However, the implementation of the Māori Language Act 1987 accorded Māori with official language status within New Zealand.⁸⁰

⁷⁵ Rangatiratanga is the Māori term for “chieftainship”.

⁷⁶ Palmer & Palmer (2004) 333; see also <http://www.waitangi-tribunal.govt.nz/treaty/meaning.asp>, last visited 2012-05-15.

⁷⁷ *Ibid.*

⁷⁸ The Waitangi Tribunal is a permanent commission of inquiry established in terms of the Treaty of Waitangi Act 1975. This Tribunal has the duty to investigate and to make recommendations and suggestions with regard to claims brought by Māori ethnic groups or individuals pertaining to actions or omissions of the Crown that breach and violate the promises and undertakings made in the Treaty of Waitangi.

⁷⁹ Parliament Library “Te Reo Māori – the Māori language” <http://www.parliament.nz/NR/rdonlyres/CAFFFF6F-70F6-4A82-99D5-C7D007312D00/428/004TeReo5.pdf>, last visited 2012-03-28.

⁸⁰ *Ibid.*

2.3.3 *The official languages of New Zealand*

New Zealand has three official languages, namely English, Māori and New Zealand Sign Language. Although English is the most widely spoken language in New Zealand, it does not mean that the other two official languages are “inferior” to English. Being an official language means that such language can be used in court proceedings, parliament, schools and in the public sector. However, many other languages are also spoken that are indigenous to the New Zealand realm and includes the following: Vagahau Niue, Gagana Tokelau and Cook Island Māori. These languages are known as Pacific Languages and provision should be made to also address the needs of these language speakers.⁸¹

Māori was recognised as an official language of New Zealand in 1987. Section 3 of the Māori Language Act 1987 stipulates as follows: “The Maori language is hereby declared to be an official language of New Zealand.”

New Zealand Sign Language (NZSL) is also regarded as an indigenous language and achieved official status in April 2006. Section 6 of the New Zealand Sign Language Act 2006 states the following: “New Zealand Sign Language is declared to be an official language of New Zealand.”

The Pasifika Education Plan 2009-2012 is applicable with regard to Pacific languages. The Pasifika Education Plan 2009-2012 is a multi-pronged education initiative that aims to increase Pasifika achievement and success as well as the promotion of Pacific languages.⁸²

⁸¹ Māori Language Commission “Māori language planning”
http://www.tetaurawhiri.govt.nz/english/services_e/private_why.shtml, last visited 2012-05-15.

⁸² *Ibid.*

The vision of the Pasifika Education Plan 2009-2012 is to promote and encourage Pacific learners' knowledge in order to enable them to make valuable contributions to their communities, to New Zealand, to the Pacific Region and to the world.⁸³

However, English still remains the main language of national as well as international communication. The New Zealand Curriculum Framework (NZCF) lays emphasis on the ability and confidence to communicate competently in written and spoken English. The NZCF also promotes and encourages the learning of other languages as an area of the curriculum since it is vital to New Zealand's health and growth.⁸⁴

“All students benefit from learning another language from the earliest practicable age. Such learning broadens students' general language abilities and brings their own language into sharper focus. It enriches them intellectually, socially, and culturally, offers an understanding of the ways in which other people think and behave, and furthers international relations and trade. Students will be able to choose from a range of Pacific, Asian, and European languages, all of which are important to New Zealand's regional and international interests.”

It is therefore important to promote English, especially among students who come from non-English speaking backgrounds.⁸⁵

2.3.4 The National Language Policy of New Zealand

New Zealand is a diverse country with different population groups and the need for a national language policy has become inevitable and was identified in a ground-breaking report that was published by the Ministry of Education. However, the importance of a

⁸³ Ministry of Education “Pasifika education plan 2009-2012” <http://www.minedu.govt.nz/NZEducation/EducationPolicies/PasifikaEducation/PasifikaEducationPlan.aspx>, last visited 2012-05-15.

⁸⁴ *Ibid.*

⁸⁵ Spence “Curriculum matters: learning languages” <http://www.nzalt.org.nz/whitepapers/14.pdf>, last visited 2012-05-15.

national language policy was emphasised in the New Zealand Action Plan for Human Rights and at the New Zealand Diversity Forum in 2005.⁸⁶

The Statement on Language Policy was developed through the national language policy network of the New Zealand Diversity Action Programme, and aims to provide “an elementary framework to prioritise, implement and monitor language policy development in New Zealand pending the development of a more substantial strategy”.⁸⁷

The right to learn and use one’s mother tongue is an internationally recognised human right. There are several human rights treaties and declarations that particularly refer to rights and responsibilities with regard to indigenous languages, minority languages, learning and using mother tongue education, the inestimable value of learning international languages, and access to interpretation and translation services.⁸⁸ Under the Treaty of Waitangi and international law, New Zealand has an important duty to protect, safeguard and promote te reo Māori as the indigenous language of New Zealand as well as its other two official languages, namely English and New Zealand Sign Language. New Zealand also has a special responsibility to protect and promote other languages such as Vagahau Niue, Gagana Tokelau and Cook Islands Māori which are indigenous to the New Zealand realm. It is, however, of cardinal importance that New Zealand promotes and protects other Pacific languages since a significant number of Pacific people live in New Zealand.⁸⁹

The National Language Policy of New Zealand states that certain strategies need to be put in place in order to address the “dual goals of, first, language maintenance and development within minority communities, and secondly wider public acceptance of

⁸⁶ Human Rights Commission “Languages in Aotearoa New Zealand”
http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/21-May-2009_15-42-34_Statementonlanguagepolicy.html, last visited 2012-05-15.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

language diversity. It also suggests that sector strategies for language in the home, community, education, public services, businesses, and broadcasting be implemented”.⁹⁰

The importance of Pacific languages is also emphasised: the Languages Policy also provides that “all Cook Islands Māori, Niuean, and Tokelauan people living in New Zealand should have the opportunity and support to learn and use their heritage language. Other Pasifika peoples in New Zealand should also have the opportunity and support to learn and use their languages through public and community provision”.⁹¹

Section 20 of the New Zealand Bill of Rights Act 1990 also makes provision for the rights of minorities. It states the following:

“A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.”

It is thus eminent from the above that New Zealand legislation has made provision for the protection and promotion of several other languages.

2.3.4.1 Languages in the National Language Policy

The National Language Policy of New Zealand provides for the protection and promotion of the following languages:⁹²

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

a English

All New Zealanders should have the opportunity and encouragement to achieve oral competence and literacy in English through school, adult literacy programmes and ESOL (English for Speakers of Other Languages) programmes.

b Te reo Māori

All New Zealanders should have the opportunity and encouragement to learn and use te reo Māori in their homes, education and communities. Te reo Māori should also be promoted and safeguarded as part of New Zealand's national heritage and identity.

c New Zealand Sign Language

All deaf people should have the opportunity and support to learn and make use of New Zealand Sign Language in their homes, education and communities. They should also have access to interpreters and other New Zealanders should have the opportunity to learn and make use of New Zealand Sign Language.

d Pacific Languages

All Cook Island Māori, Niuean and Tokelauan people who live in New Zealand should have the opportunity and encouragement to learn and use their heritage language. Other Pacific people in New Zealand should have the same opportunities and encouragement to learn and use their languages through public and community provision.

e Community and heritage languages

People whose community or heritage language is a language other than English, Māori or Pacific should have the opportunity and encouragement to learn and make use of these languages through public and community provision.

f. International languages

It is vital that all New Zealanders should be supported and encouraged to learn international languages. The learning of international languages also contributes to high economic growth.

Thus, the purpose of the National Language Policy of New Zealand is to:⁹³

- link people and organisations with an interest and involvement in language issues;
- ensure that people and organisations are conversant with initiatives and activities pertaining to languages;
- provide forums which will enhance discussion and action on language policy;
- promote, encourage and support the implementation of the language policy goals of the New Zealand Action Plan for Human Rights; and
- promote and encourage the registration of language related organisations and projects with the New Zealand Diversity Action Programme.

⁹³ *Ibid.*

It is clear from the above legislation and National Language Policy that the New Zealand government has a positive duty to promote mother tongue education in schools. There is also a duty on the government to ensure that nobody discriminates against any person on the ground of linguistic minority.

New Zealand is a small country with many language diversities. It is therefore not always possible and reasonably practicable to fully promote mother tongue education since the necessary resources are not always to the government's disposal. As a result of this, the development of several school models was crucial in order to promote mother tongue education wherever possible.

2.3.4.2 School models

The following table illustrates the different types of school models from most effective to least effective:⁹⁴

School model	Definition of school model
Two-way, two literacy bilingual education	Two-way schools are schools where two groups of children from two different cultures learn and discover each other's languages. It is described as an additive approach where English is added to their first languages. Literacy and curriculum areas are taught through both a minority language as well as English.

⁹⁴ Bilingual Education New Zealand "Models" <http://www.bilingualednz.co.nz/models.html>, last visited 2012-05-15.

	<p>There are currently no two-way schools in New Zealand, but this model has the potential and capability to strengthen Pasifika children’s mother tongue.</p>
<p>Dual medium 50%-50% (two languages, two literacy)</p>	<p>Dual medium schools use the “two language/two literacy” strategy. In other words, learners are taught in their mother tongue/heritage language and English. This is also an additive approach since English is added to their first language and literacy.</p> <p>Most New Zealand Pasifika programmes will be of this type.</p>
<p>Transitional early exit/one literacy programmes</p>	<p>Transitional early exit programme schools operate as follows: children are taught 50% in their mother tongue and 50% in English or 90% in their mother tongue and 10% in English where mother tongue education is phased out between year 1 and year 3, which means that all education and literacy from then on will be in English.</p> <p>This school model is described as a subtractive approach where English is used to replace a child’s first language. The New Zealand Ministry of Education has this type of school model in mind for Pasifika learners in New Zealand.</p>

<p>ESOL (English as a second language) programmes</p>	<p>ESOL programme schools are defined as follows: “ESOL programmes with no mother tongue, where the learners were withdrawn for ESOL and / or where ESOL support was provided in class across the Curriculum is a subtractive approach where English is used to replace their first language over time”.</p> <p>Most mother tongue Pasifika children receive this type of education for 12 terms.</p>
<p>Submersion; Sink or swim; Osmosis learning</p>	<p>These schools leave learners to pick up English through osmosis and no special language or ESOL support is given.</p> <p>This type of education is found in most New Zealand schools where New Zealand Pasifika children are educated.</p>

It is thus clear that New Zealand is in favour of mother-tongue based education since it ensures educational quality. The differences as well as the similarities with regard to mother tongue education in South Africa and New Zealand will be discussed in chapter 10⁹⁵ below.

⁹⁵ See ch 10 par 4 below.

2.4 HIV/AIDS in New Zealand schools

2.4.1 Introduction

The prevalence of HIV/AIDS in New Zealand is relatively low and the prevalence of HIV/AIDS in New Zealand schools is also very low. There are few (if any) cases of discrimination against learners on the basis of their HIV/AIDS status. However, there are several national statutes that protect HIV/AIDS learners' right to an education.

Children who are HIV positive and who have the Hepatitis B infection should be able to participate in all school activities to the extent that their health allows them to. If their health deteriorates, the necessary programmes and inter-agency support must be in place to meet these children's right to an education. HIV/AIDS infected children can also be easily susceptible to other diseases such as chickenpox, measles or mumps. There is thus an obligation on all schools to keep parents informed of any outbreaks or other infections in schools.⁹⁶

2.4.2 National legislation

The following national legislation will apply to children or learners who are HIV/AIDS infected:

2.4.2.1 Education Act 1989

Section 3 emphasises every person's (who is not an international student) entitlement to free enrolment and free education at any State school during the period beginning on the person's fifth birthday and ending on 1 January after the person's 19th birthday.

⁹⁶ Ministry of Education "Education circular – HIV/AIDS and other blood-borne diseases"
<http://www.minedu.govt.nz/NZEducation/EducationPolicies/Schools/PublicationsAndResources/Circulars1999/Circular199921.aspx>, last visited 2012-05-15.

2.4.2.2 Human Rights Act 1993

Section 21(1)(h)(ii) stipulates that it is prohibited to discriminate against any person on the ground of his or her physical disability, which also includes physical illness. HIV/AIDS is a physical illness and it can therefore be said that schools are prohibited to discriminate against any HIV/AIDS learner. Section 57(1) also states that it is unlawful for an educational establishment to discriminate against any person on the prohibited grounds of discrimination. There is however an exception and this exception can be found in section 60(2) which states the following: "Subject to subsection (3), nothing in section 57 shall apply where the person's disability is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to be admitted to an education establishment and it is not reasonable to take that risk." Section 60(2) stipulates: "Nothing in subsection (2) shall apply if the person in charge of the educational establishment could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level."

2.4.2.3 Health Act 1956

The main purpose of this Act is to improve, promote and protect public health.

2.4.2.4 Health (infectious and notifiable diseases) Regulations 1996

These Regulations set out the legal responsibilities with regard to infectious diseases. Primary schools are required to maintain an immunisation register showing the immunisation status of children born from January 1995. The advantage of an immunisation register can be summarised as follows: "Having a highly immunised population at school also provides some protection for HIV infected children by reducing their exposure to vaccine preventable diseases."

2.4.2.5 Privacy Act 1993

This Act limits the disclosure of personal information. This means that HIV infected persons' HIV status is protected so that there is no unfair discrimination against these persons.

2.4.2.6 National Education Guidelines 1993, National Administration Guidelines

There is a duty on boards of trustees to “develop and implement strategies which address identified learning needs to overcome barriers to students' learning, provide a safe physical and emotional environment for students and comply with any legislation to ensure the safety of students and employees”.

It is clear from the above discussion of applicable legislation that New Zealand has sufficient legislation for the protection of HIV/AIDS infected persons. The differences and similarities regarding HIV/AIDS in South African and New Zealand schools will be discussed in chapter 10 of this thesis.⁹⁷

3 EDUCATION AND THE RIGHT TO BASIC EDUCATION IN NAMIBIA

3.1 Introduction

“Education is not the filling of a pail, but the lighting of a fire.”⁹⁸

The importance of education, especially the right to education, is explicitly emphasized in several Namibian statutes. The most important provision can be found in article 20(1)

⁹⁷ See ch 10 par 5 below.

⁹⁸ William Butler Yeats.

of the Namibian Constitution 1990, which stipulates as follows: “All persons shall have the right to education”.

The right to education is guaranteed in article 20 of the Namibian Constitution, which must be read together with article 10 of the Namibian Constitution, which guarantees equality and freedom from discrimination. Article 10 states the following:

- “(1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.”

Article 95(e) of the Namibian Constitution can be described as an additional buttress to the right to education since the state is obliged to “actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following: ensurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law”.⁹⁹

The right to education is regarded as a key public service and the state is therefore obliged to ensure that every citizen has the right to fair and reasonable access to education.

3.2 The Namibian Constitution and the Education Act 2001

The Namibian Constitution and the Education Act 2001 are for purposes of the right to education, specifically primary (basic) education in Namibia, the most important statutes and also form the basis for the National Curriculum for Basic Education in Namibia.

The following table illustrates the importance of these provisions concerning the right to basic education:

⁹⁹ *Ibid.*

Constitution	Education Act
<p>Article 20 emphasises the cardinal importance of primary (basic) education:</p> <p>(1) All persons shall have the right to education.</p> <p>(2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.</p> <p>(3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen (16) years, whichever is the sooner, save in so far as this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.</p> <p>(4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education...</p>	<p>Section 53 underlines the importance of compulsory school attendance:</p> <p>(1) Subject to subsection (2), school attendance is compulsory for every child from the beginning of the year in which the child attains the age of seven years, until –</p> <p>(a) the day the child completes primary education before reaching the age of 16 years; or</p> <p>(b) the last school day of the year in which the child reaches the age of 16 years.</p> <p>(2) Notwithstanding the provision of subsection (1), the Minister may –</p> <p>(a) on grounds of health or other considerations pertaining to the public interest, by notice in the <i>Gazette</i> determine that during a specified period compulsory school attendance does not apply –</p> <p>(i) to children who reside in a geographic area which is specified in the notice, or</p> <p>(ii) to children of an age group which is specified in the notice; or</p> <p>(b) exempt a child entirely or partially from</p>

	compulsory school attendance, if it is in the best interest of the child or in the public interest.
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In short, basic education is compulsory and free for all Namibian citizens and compulsory school attendance is vital for children aged between seven and sixteen years of age.

3.3 The National Curriculum for Basic Education in Namibia

The purpose of this curriculum is multifaceted. Education must¹⁰⁰

“provide a coherent and concise framework in order to ensure that there is consistency in the delivery of the curriculum in schools and classrooms throughout the country. It describes the goal, aims and rationale of the curriculum, the principles of teaching, learning and assessment, language policy, and curriculum management at school level. It makes provision for all learners to follow key learning areas, and outlines the end-of-phase competencies which they should achieve, as well as the attitudes and values to be promoted throughout the curriculum. It outlines the structure of each phase, what electives and subject combinations are available and overall time allocation. It sets in place effective assessment procedures, ensuring that assessment is closely integrated in the teaching/learning process”.

One can thus say that the major goal of this curriculum is to develop a knowledge-based society where education is the foundation of all success in life.

¹⁰⁰ Ministry of Education “The National Curriculum for Basic Education” <http://www.nied.edu.na/images/National%20Curriculum%20for%20Basic%20Education%20Jan10.pdf>, last visited 2012-05-16.

3.4 The structure and substance of basic education

Basic education can be divided into five phases.¹⁰¹

Schooling level	Years/Grades
Pre-primary	–
Lower primary	Grades 1 – 4
Upper primary	Grades 5 – 7
Junior secondary	Grades 8 – 10
Senior secondary	Grades 11 – 12

The foundation for all further learning is laid down in the pre-primary and lower primary phases. During the pre-primary phase, children develop communication, motor and social skills, and concept formation which are all essential for formal education. During the lower primary phase, children are taught to read and write in two languages; they learn basic mathematics and learn about the community and the environment. It is also during this phase that children's creative and expressive abilities are discovered and developed. Teaching and learning during grades one to three, are through the medium of the mother tongue or predominant local language with a changeover to English medium in grade four.¹⁰²

During the upper primary phase, children develop literacy and numeracy skills, and gain basic knowledge in Natural Sciences, Social Sciences, Technology, Arts, and Physical

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

Education. Teaching and learning is through the medium of English, and the mother tongue or predominant local language is still a subject through to the end of formal basic education.¹⁰³

The learning areas of the upper primary phase are the same as the junior secondary phase. The only difference lies in the depth of learning. During the junior secondary phase, learners are prepared for young adulthood and training, employment, or continued formal education. Learners are also required to choose two pre-vocational subjects. Those who meet the entry requirements may continue with senior secondary education. Those who do not meet the relevant criteria have the alternative to continue their education through distance education, which will enable them to re-enter formal education.¹⁰⁴

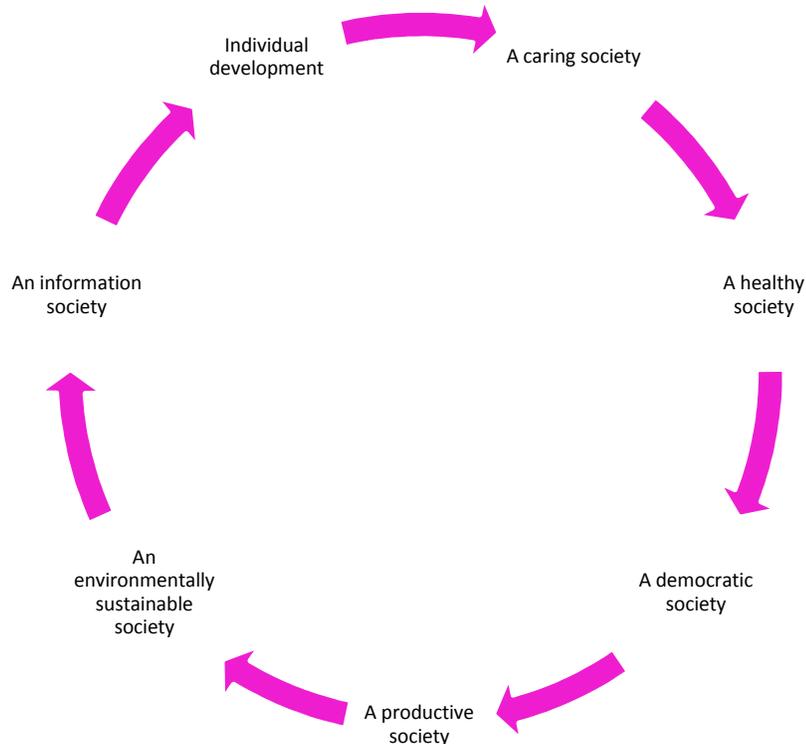
The main aim during the senior secondary phase is to prepare learners for adult life, tertiary studies or employment. Greater responsibility is placed on learners and greater demands are made on learners with regard to the level of cognitive, personal and social development. The requirements for admission into the senior secondary phase in the formal system are very strict and students are admitted based on the number of points achieved during their junior secondary phase. The medium of instruction is English, and all learners have to take the following compulsory subjects: Life Skills, Physical Education, ICT Literacy and at least six subjects for the Namibia Senior Secondary Certificate examination. Two of the six subjects must be English and Mathematics.

¹⁰³*Ibid.*¹⁰⁴

Ministry of Education "The National Curriculum for Basic Education"
<http://www.nied.edu.na/images/National%20Curriculum%20for%20Basic%20Education%20Jan10.pdf>, last visited 2012-05-16.

3.5 The aims of basic education: A successful Namibian society of the future

There are seven aims that Namibia pursues in order to achieve “a prosperous and industrialised Namibia developed by her human resources, enjoying peace, harmony and political stability”:¹⁰⁵



The national curriculum can thus be described as a comprehensive document where schools are guided on how to manage the teaching-learning process. Schools throughout the country are endowed with a coherent framework in order to ensure consistency, stability, equity and non-discrimination in the delivery of basic education.¹⁰⁶ A summary of the right to education in Namibia and its national curriculum were given. For purposes of this study, the focus will now be on Namibia’s position with regard to

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

early childhood development and education, mother tongue education and HIV/AIDS in schools.

3.6 Early childhood development and education in Namibia

“We recognize that the future of Africa lies with the well-being of its children and youth. The prospect of socioeconomic transformation of the continent rests with investing in the young people of the continent. Today’s investment in children is tomorrow’s peace, stability, security, democracy, and sustainable development.”¹⁰⁷

Early childhood development is described as the foundation of human development. A strong focus on young children and holistic early childhood development provides favourable opportunities for sustainable human development, social change, transformation, economic prosperity and a bright future.¹⁰⁸

3.6.1 *The pre-primary phase (early childhood development and education)*

The Namibian education system has been evolving since independence in 1990. Namibia has a progressive and thriving ECD policy aimed at the promotion of the best interests of every young Namibian child. This policy reflects its dedication to encourage and promote a “multi-sectoral community-based approach to early childhood development and care involving parents, the family and their community organisations, although its resource base is still in need of clarification”.¹⁰⁹

¹⁰⁷ Africa Fit for Children: The African Common Position.

¹⁰⁸ Garcia, Pence & Evans (eds) *Africa’s future, Africa’s challenge: Early childhood care and development in Sub-Saharan Africa* (2008) 29.

¹⁰⁹ ETSIP “Early childhood development and pre-primary education” http://www.etsip.na/docs/ecd_web.pdf, last visited 2012-05-16.

Prior to October 2006, pre-primary education was regulated by the Ministry of Gender Equality and Child Welfare. From October 2006, pre-primary education is regulated by the Ministry of Education. However, the early childhood phase (0 to 4 year-olds) will still be regulated by the Ministry of Gender Equality and Child Welfare, whereas pre-primary education for 5 to 6 year-olds will be regulated by the Ministry of Education.¹¹⁰

The investment in early childhood is invaluable since it leads to the following:¹¹¹

- enhanced nutrition and health;
- higher intelligence;
- greater success with regard to school enrolment;
- reduced repetition;
- lower drop-out rates;
- support and assistance for the disadvantaged;
- long-term cost savings to society.

In order to give effect to the provision of basic education in Namibia, the Ministry of Education compiled a Pre-Primary Syllabus and its purpose is to “lay a solid foundation for Lower Primary learning, establishing self-confidence and self-worth through personal and social development”.¹¹²

It is important to remember that the Namibian Pre-Primary Syllabus was implemented in selected schools in 2008. The full implementation of this syllabus took effect in 2011.

¹¹⁰ Ministry of Education “The National Curriculum for Basic Education” <http://www.nied.edu.na/images/National%20Curriculum%20for%20Basic%20Education%20Jan10.pdf>, last visited 2012-05-16.

¹¹¹ Penn “Working on the impossible: early childhood policies in Namibia” 2008 Vol 15 *Childhood* 381; see also Penn “Working on the impossible: early childhood policies in Namibia” <http://chd.sagepub.com/content/15/3/379>, last visited 2012-05-16.

¹¹² Ministry of Education “Pre-Primary Syllabus” <http://www.nied.edu.na/publications/syllabusses/PP%20%20Folder/Pre-Primary%20Education%20Syllabus%20English%20version%20January%202008.pdf>, last visited 2012-05-16.

3.6.2 *The Pre-Primary Syllabus*

The Ministry of Education makes provision for one year's pre-primary education. In order to attend pre-primary education which commences in January each year, the child should have turned five years of age by 31 December of the previous year. Proper pre-primary education can only be provided to children if they attend at least twenty hours of pre-primary education per week. By doing so, children will have equal opportunities to reach their full potential.¹¹³

The Pre-Primary Syllabus is thus designed to guide children through a learner-centred approach. In other words, children are enabled to grow and develop according to their own ability, which makes the adaptation from pre primary schooling to formal schooling (primary school) easier.¹¹⁴

The Pre-Primary Syllabus aims to provide balanced, appropriate and plausible programmes which will enable children to learn through structured play. The aims are the following:¹¹⁵

“[To] develop personal, social and emotional well-being in particular by supporting the transition to and between settings, promoting an inclusive ethos and providing opportunities for each child to become a valued member of the community so that a strong self-esteem is promoted; develop social skills by providing opportunities that will enable children to learn how to share, cooperate and work in harmony with each other and to listen to each other; develop attention skills to concentrate on their own play activities and on tasks given; develop children's language and communication skills with opportunities for all to talk and communicate in a widening range of situations, to listen carefully and to respond to others and further to practice and extend the range of vocabulary use; prepare children for reading and writing skills with opportunities for all to explore, enjoy, learn about signs and words in a broad range of contexts and to

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

experience a rich variety of printed matter; develop their understanding of numbers, measurement, patterns, shapes and space by providing a broad range of contexts in which they can explore, enjoy, learn, and practice; develop children’s knowledge and understanding of the world with opportunities for all to solve problems, make decisions, experiment, predict, plan, explore and find out about the environment, people and places that have significance in their lives; develop and practice their fine and gross motor skills and to increase their understanding of how their bodies work and what they need to do to be healthy and safe; develop children’s creativity with opportunities for all to explore and to share their thoughts, ideas and feelings through a variety of imaginative art forms”.

When pre-primary education comes to an end, children will have certain skills and competencies which form the foundation of life-long learning. The end-of-phase competencies with regard to the learning areas are tabulated as follows:¹¹⁶

Language	Children gather information through listening and they respond to what has been said. They have the ability to read signs and words from their immediate environment and they are able to communicate effectively in their mother tongue (or the locally most spoken language where the mother tongue is not possible).
Preparatory mathematics	Children are able to verbally express their insight and understanding of number concepts and mathematical symbols. They are also able to identify patterns and to distinguish between different forms and shapes. Moreover, age appropriate problem solving in everyday contexts is easily doable for these children.

¹¹⁶ *Ibid.*

<p>Environmental learning</p>	<p>Awareness is fostered in children to take care of their own basic health and nutrition. The end result is that children have a positive attitude towards the natural environment and they interact confidently in the social environment.</p>
<p>Arts</p>	<p>Children's creativity is so developed that they are able to demonstrate their personal and interpersonal skills through participation in creative activities. They express themselves through art forms and have a better understanding of others' expressions.</p>
<p>Physical development</p>	<p>Age appropriate physical activities are advantageous to children since these activities stimulate them to a large extent and their movement and motor development are also adequately promoted.</p>
<p>Religious and moral education</p>	<p>The importance of religion is fostered and children develop a basic understanding of their own beliefs, are tolerant and forbearing with regard to others' beliefs, and share common positive principles and values.</p>

It is thus evident that the Pre-Primary Syllabus strives to accommodate every child's interests, ability, personality, method(s) and tempo of learning as well as every child's rate of development. It can be concluded that the Pre-Primary Syllabus is inextricably part of the Ministry of Education's aim to promote the best interests of each child and to

provide a stimulating and favourable environment for the all-round development of the child which will lay a solid foundation for formal schooling.¹¹⁷

3.6.3 *The Education Act 2001*

Although the Namibian Constitution provides for the right to education, it makes no explicit provision for early childhood development and education. However, section 69 of the Education Act 2001 makes provision for pre-primary education (early childhood education) and stipulates as follows:

“The Minister may provide support and assistance to any registered person or community providing pre-primary education, including –

- (a) professional advice and training of early childhood developers; and
- (b) the provision of appropriate programs and materials.”

In Namibia, pre-primary education is not yet a precondition for entry to basic education, but it will be a pre-requisite in the near future.¹¹⁸ The differences and similarities with regard to early childhood development and education will be discussed in chapter 10 below.¹¹⁹

3.7 **Mother tongue education in Namibia**

“One should respect his motherland, his culture and his mother tongue because they are the givers of happiness.”¹²⁰

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ See ch 10 par 3 below.

¹²⁰ Rig Veda.

3.7.1 Introduction

The language scene in Namibia is somewhat complex and requires a lot of effort in order to enable citizens to properly communicate with each other. Effort should also be made to children from different ethnicities and mother tongues to enable them to effectively survive and function in a highly competitive world.¹²¹

Namibia is a country rich in culture and multiple languages and although it is difficult and expensive to have such a multitude of languages, it is still imperative for all Namibian citizens to retain their cultural diversity. There is thus a duty on the Namibian government to do everything possible to promote and protect cultural diversity.¹²²

3.7.2 Languages in Namibia

Namibia has 13 recognised languages, but only one official language. Ten of these languages are of African origin and is spoken by major ethnic groups. The African languages consist of two groups, namely Bantu and Khoe. The Bantu languages can be divided into eight different language groups: Oshikanyama, Oshindonga, Rukwangali, Otjiherero, Ruciriku, Thimbukushu, Silozi and Setswana. There are only two Khoesan languages and they are known as Khoekhoegowab and San. The other three languages are of European origin and they are English, Afrikaans and German.¹²³

¹²¹ Töttemeyer "Multilingualism and the language policy for Namibian schools" 2010 *PRAESA Occasional Papers* 9.

¹²² *Ibid.*

¹²³ Maho *Few people, many tongues: The languages of Namibia* (1998) 26; 97.

3.7.3 Official language(s) in Namibia

Before Namibia became independent in 1990, it had two official languages, namely Afrikaans and English. However, after independence, English became the only official language of the country.¹²⁴

The implementation of English as the only medium of instruction in schools caused huge problems and difficulties as teachers and learners lacked the necessary skills and capabilities to effectively communicate and learn in English. The Namibian Government was therefore compelled to develop a language policy that would apply to all schools in the country.

3.7.4 Language policy for schools in Namibia

The language policy was developed to provide guidance to Namibian schools on how national languages should be taught in schools, to promote and protect the cultural identity of all learners through the use of their mother tongue as a medium of instruction in Grades 1 to 3 and to ensure that English is used as the medium of instruction from Grade 4 and upwards.¹²⁵

There were certain aspects and criteria that had to be considered for the drafting and development of an appropriate language policy. The following criteria were considered:¹²⁶

¹²⁴ Töttemeyer "Multilingualism and the language policy for Namibian schools" 2010 *PRAESA Occasional Papers* 9.

¹²⁵ Ministry of Basic Education, Sport and Culture "The language policy for schools in Namibia" http://www.nied.edu.na/images/publications/Language%20Policy%20for%20schools%20in%20Namibia_discussion%20doc_Jan%2003.pdf, last visited 2012-05-16.

¹²⁶ *Ibid.*

- The expectation that a language policy should facilitate and ease the realisation of the substantive goals of education.
- The parity of all national languages irrespective of the number of speakers or the level of development of a specific language.
- Costs related to the implementation of the policy.
- Consideration of the fact that language is a way in which culture and cultural identity are transmitted.
- Consideration of the fact that for educational and pedagogical reasons, it is best for learners to be taught in their mother tongue, especially during the early years of formal schooling when basic skills of reading, writing and concept formation are acquired.
- The need and necessity for learners to be proficient enough in English after the completion of their seven-year primary school cycle in order to gain access to further education as well as to a language of wider communication.

3.7.4.1 Goals of the policy

- The seven-year primary education cycle should enable learners to obtain sufficient competence in English so that they are prepared to receive education through English as medium of instruction during the secondary cycle.
- Language and cultural identity is of cardinal importance and education should therefore promote and encourage language and cultural identity through the use of mother tongue as medium of instruction during the first three grades of formal

schooling. The teaching of mother tongue throughout formal education should also be promoted.

- Schools must ensure that not less than two languages are offered as subjects from Grade 1.

3.7.4.2 The language policy – an explanation

The language policy sets out the following guidelines:¹²⁷

- (a) Grades 1 to 3 will receive instruction either through their mother tongue or a predominant local language. If parents or the school prefer to use English as medium of instruction in the Lower Primary phase, they must obtain permission from the Minister of Basic Education, Sport and Culture and well-grounded motivation and justification must be provided.
- (b) Grade 4 is seen as the transitional year where the medium of instruction is changed from mother tongue or a predominant local language to English.
- (c) In Grades 5 to 7, English will be the only medium of instruction and the mother tongue will only play a supportive role. However, mother tongue will be offered as a subject.
- (d) English will be the medium of instruction during Grades 8 to 12 and the mother tongue will not play a supportive role anymore, but will be offered as a subject.

¹²⁷ *Ibid.*

- (e) Grades 7, 10 and 12 learners will conduct all national examinations in English, except for the mother tongue that is taken as a subject.
- (f) English is a compulsory subject from Grades 1 to 12.
- (g) All learners are required to take two languages as subjects from Grade 1 onwards, one of which must be English. Provision must be made for learners to study in their own mother tongue if there are a sufficient number of learners from the same language group to form a class. This applies to Grades 1 to 12.
- (h) The only exception with regard to the two-language minimum is where expatriate learners are permitted to opt for a one-language curriculum.
- (i) This policy will not prevent any learner to take English, a foreign language and a Namibian language. The only condition involved is that the languages are taken on either first or second language level.
- (j) The language options available are:
- First language level: Afrikaans; German; Khoekhoegowab; Oshindonga; Rukwangali; Setswana; Thimbukushu; English; Ju|'hoansi; Oshikwanyama; Otjiherero; Rumanyo; Silozi (Portuguese).
- Second language level: Afrikaans; English (other second languages will be developed according to demand).
- Foreign-language level: French; German; (Portuguese) (With the possibility of the further development of other third languages).
- (k) All these languages carry the same weight for promotional purposes.

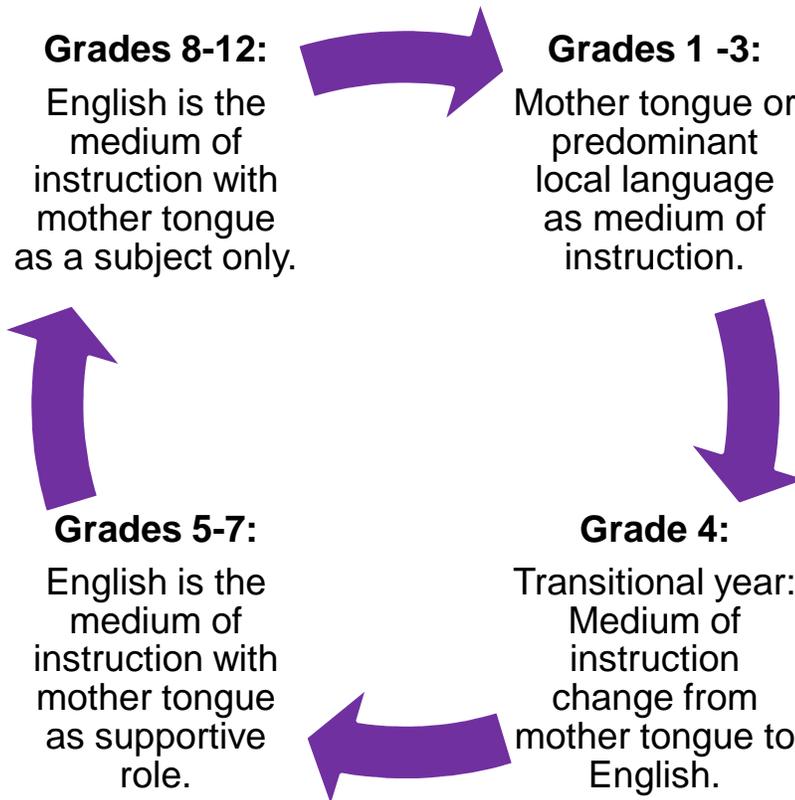
- (l) If there are 20 or more learners from different language groups, the school must make the necessary arrangements to provide instruction through the different languages.

- (m) Private schools are authorised to use a language other than English as medium of instruction with the condition that at least one other Namibian language will be offered as a subject and that Social Studies will be taught in English as provided in the National Curriculum (and as prescribed in articles 3 and 19 of the Namibian Constitution¹²⁸).

- (n) Schools are allowed to re-arrange co-curricular activities in order to promote any language and culture.

The language scene in Namibia can be summarised schematically as follows:

¹²⁸ See par 3.8 below.



3.8 National legislation on the importance of language

The Constitution and the Education Act of Namibia emphasise the importance of language and the use of mother tongue education in schools wherever possible:

The Constitution	The Education Act
<p>Article 3: Language</p> <p>(1) The official language of Namibia shall be English.</p> <p>(2) Nothing contained in this Constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools financed or subsidised by the State, subject to compliance with such requirements as may be imposed by law, to ensure proficiency in the official language, or for pedagogic reasons.</p> <p>(3) Nothing contained in Sub-Article (1) hereof shall preclude legislation by Parliament which permits the use of a language other than English for legislative, administrative and judicial purposes in regions or areas where such other language or languages are spoken by a substantial component of the population.</p> <p>Article 19: Culture</p> <p>Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights</p>	<p>Section 35: Medium of instruction in state schools</p> <p>(1) Subject to subsections (3) and (4), the English language is the medium of instruction in every state school.</p> <p>(2) Every state school must teach the English language as a subject from the level of the first grade.</p> <p>(3) The Minister must determine the grade level for all state schools from which English must be used as medium of instruction, and may determine different grade levels for different categories of schools.</p> <p>(4) The Minister, after consultation with the school board concerned and by notice in the Gazette, may declare a language other than English to be used as medium of instruction in any state school as the Minister may consider necessary.</p>

protected by this Article do not impinge upon the rights of others or the national interest.	
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It can therefore be said that Namibia follows a two-sided language policy:¹²⁹

“While it is essentially exoglossic by choosing English as the official language, the so-called local or national languages – that is the African Languages indigenous to Namibia (including Lozi from Zambia) as well as Afrikaans and German – are to be recognised on a par. For the purpose of education and language planning they are to be regarded as equal, regardless of the number of speakers or the level of development of a particular language”.

With regard to subsection (3) and (4) of the Education Act, the following can be reiterated: The Language Policy for Schools in Namibia (as compiled by the Ministry of Basic Education, Sport and Culture), makes provision for the following:

Grades 1 – 3 = Mother tongue or a predominant local language as medium of instruction + English as a subject.

Grades 4 – 12 = English as medium of instruction + mother tongue as a subject.

Article 10 of the Namibian Constitution states the following:

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

¹²⁹ Haacke “Language policy and planning in independent Namibia” 1994 *Annual Review of Applied Linguistics* 241.

It can also be argued that no persons may be discriminated against on the ground of language, since language is closely linked with ethnic origin and social status.¹³⁰

An example of discrimination on the ground of language can be found in *Diegaardt et al v Namibia*,¹³¹ where representatives of the Rehoboth Baster Community complained that “the lack of language legislation in Namibia has had a consequence that they have been denied the use of their mother tongue in administration, justice, education and public life”.¹³²

Civil servants were instructed by government to reply to authors’ written or oral communications including telephone conversations in Afrikaans. The Human Rights Committee found that such instructions were deliberately targeted against the possibility to use Afrikaans. The intention of this measure was to discriminate on the ground of language.¹³³ It is submitted that there was discrimination on the ground of language which is unconstitutional in terms of article 10 of the Namibian Constitution.

It is thus clear that Namibia supports and encourages the use of mother tongue education although there are several challenges with the implementation thereof. The differences, similarities and challenges with regard to mother tongue education in South Africa and Namibia will be discussed in chapter 10 below.¹³⁴

¹³⁰ *Ibid.*

¹³¹ 760/1997.

¹³² Right to Education Project “Diegaardt et al v Namibia” <http://www.right-to-education.org/node/653>, last visited 2012-05-16.

¹³³ *Ibid.*

¹³⁴ See ch 10 par 4 below.

3.9 HIV/AIDS in Namibian schools

“AIDS destroys families, decimates communities and, particularly in the poorest areas of the world, threatens to destabilize the social, cultural, and economic fabric of entire nations...”¹³⁵

3.9.1 Introduction

The first four cases of HIV/AIDS in Namibia were reported in 1986 by the Ministry of Health and Social Services. However, HIV/AIDS has increased so drastically that it is currently one of the main causes of death in the country.¹³⁶

The impact that HIV/AIDS presently has on the Namibian education sector is exorbitant and constitutes a major threat to the nation’s human capacity. The effect of this is that it jeopardises the country’s ability to sustain consistent and competitive performance.¹³⁷

HIV/AIDS has several negative effects on the Namibian education sector: The supply of skilled and qualified teachers will be reduced due to AIDS-related illness and death; children may be kept out of school in order to look after sick relatives and family members or children are kept out of school to work on the fields in order to ensure an income for survival. Children may also drop out of school if their parents or families are unable to pay for school fees due to the heavy financial burden of AIDS-related illnesses and deaths. Children are easily susceptible to HIV infection and it is therefore vital that the education system is suitably equipped to meet the needs of these children and to ensure that their constitutional right to education are realised and protected. The

¹³⁵ Rabbi David Saperstein, Director of the Religious Action Center of Reform Judaism.

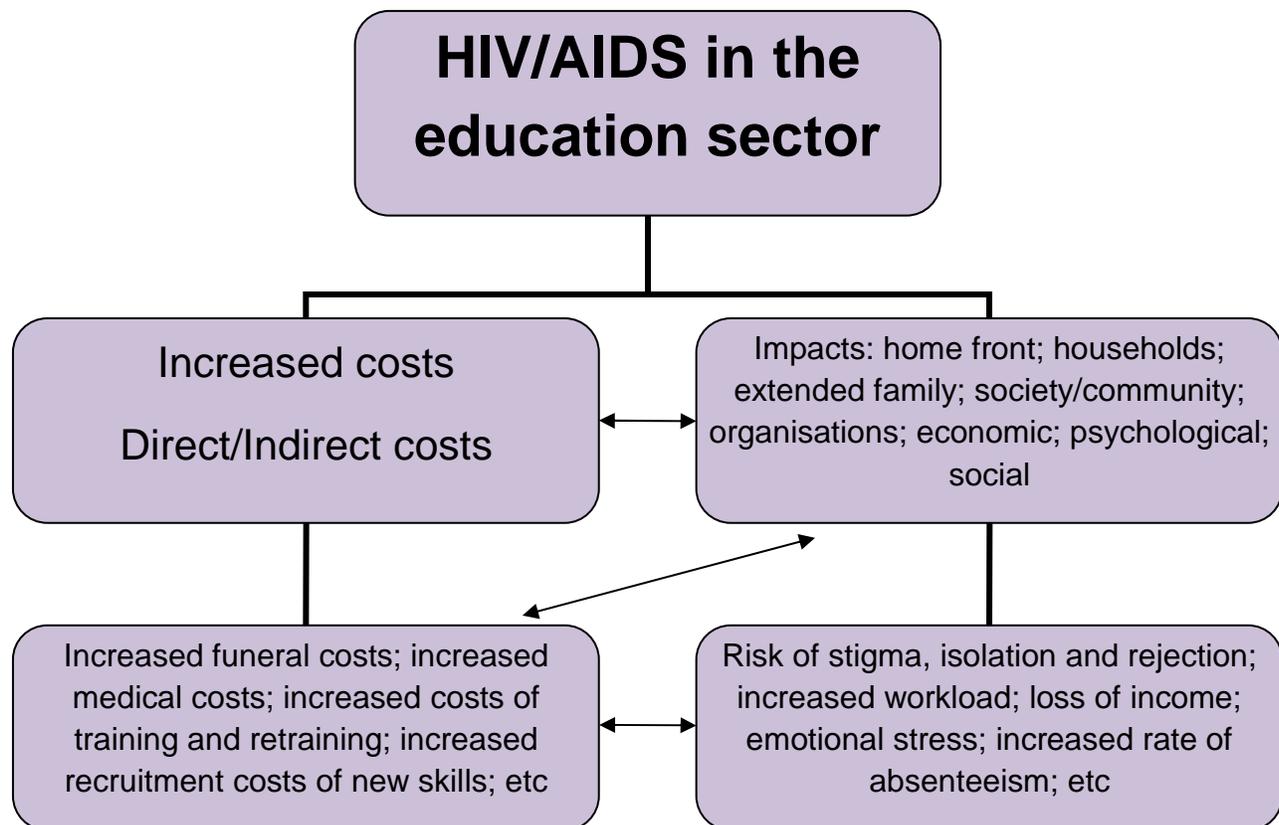
¹³⁶ Asemota “Impact assessment of HIV/AIDS on Namibian educational sector” <http://ir.polytechnic.edu.na/bitstream/10628/100/1/Asemota.%20Impact%20Assessment%20of%20HIV,%20Final%20submission.pdf>, last visited 2012-05-16.

¹³⁷ *Ibid.*

education system also faces a special challenge to educate children about HIV/AIDS and its detrimental consequences.¹³⁸

3.9.2 The impact of HIV/AIDS on the Namibian education sector

The following flow chart model demonstrates the detrimental impact of HIV/AIDS on the Namibian education sector:¹³⁹



¹³⁸ Bollinger & Stover "The economic impact of AIDS in Namibia" 1999 *The POLICY Project 7*.

¹³⁹ Asemota "Impact assessment of HIV/AIDS on Namibian educational sector"
<http://ir.polytechnic.edu.na/bitstream/10628/100/1/Asemota.%20Impact%20Assessment%20of%20HIV,%20Final%20submission.pdf>, last visited 2012-05-16.

However, the initial impact of HIV/AIDS starts at the home front (micro-level), and then it shifts to the education sector and, finally, it reaches the macro level of the economy.¹⁴⁰

Home front  Education sector  Economy

3.9.2.1 Home front (micro-level)

The impact that HIV/AIDS has on households differs from case to case, but it commonly involves the following: the loss of income when the breadwinner dies or becomes unfit to work as a result of the disease; increased impoverishment and widening economic disparities; increased medical expenses and care, as well as funeral and related expenses; increased workload on those who are not affected; emotional stress and anxiety; an increased number of child-headed household since children become the breadwinners in most cases. These children do not yet have the necessary abilities to fulfil adult roles and the end result is that children are left with no other choice than to leave school in order to look after sick siblings, relatives and family members. In this way, the right to education in terms of article 20 of the Namibian Constitution cannot be fulfilled. This will undoubtedly lead to increased learning disabilities amongst learners; low morale and poor motivation.¹⁴¹

3.9.2.2 Education sector

HIV/AIDS in the education sector leads to the following: augmented absenteeism amongst learners and educators; increased teacher replacement costs; increased training and retraining of skilled educators; and poor performance and low productivity amongst learners and educators. Consequently, HIV/AIDS leads to poor learners'

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

management which will eventually have an enormous negative impact on the future labour force of Namibia. Frail human capital development and low morale amongst staff are some of the serious consequences of the HIV/AIDS disease. Moreover, the reality of the disease increases the workload of teachers who are not infected or affected by the disease since they are expected to undertake the work and responsibilities of teachers who are infected or affected by HIV/AIDS. In the end, these teachers are so overloaded with work that their productivity becomes severely eroded.¹⁴²

3.9.2.3 Economy (macro-level)

HIV/AIDS has, on macro-level, a major impact on gross domestic product (GDP) coupled with increased expenses on health to the detriment of other productive sectors. It is also difficult and complicated to replace the existing labour force since it is almost impossible to replace acute and heightened skills shortage. HIV/AIDS also impacts negatively on sectors that are dependent on professional, managerial, and skilled technical staff from the education sector. As a result of this, there is increased impoverishment and widening economic disparities which in turn results in poorer and decreased human capital development stock formation. It can also be said that “while HIV/AIDS increases cost of doing business in Namibia; intellectual capital and knowledge management are incapacitated.”¹⁴³

3.9.3 *International instruments and national legislation*

Namibia has ratified both the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Both these instruments provide for the protection of children affected and infected by

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

HIV/AIDS. The Constitution of Namibia also makes provision for the protection of HIV/AIDS infected and affected children. Emphasis will be placed on HIV/AIDS and the right to non-discrimination; HIV/AIDS and the right to survival and development; and HIV/AIDS and the best interests of the child from a Namibian perspective. For purposes of this study, only the UNCRC, ACRWC and the Namibian Constitution are taken into consideration.

3.9.3.1. HIV/AIDS and the right to non-discrimination

The following table provides an exposition of a child's right to non-discrimination with reference to the UNCRC, ACRWC and the Namibian Constitution:

International instrument / National legislation	Relevant article / section	Implication(s) for HIV/AIDS infected or affected children
UNCRC	<p>Article 2:</p> <p>(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion,</p>	<p>The rights contained in the UNCRC apply to all children of States Parties, whether they are infected or affected by HIV/AIDS or not.</p>

	<p>national, ethnic or social origin, property, disability, birth or other status.</p> <p>(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination...</p>	
<p>ACRWC</p>	<p>Article 3:</p> <p>Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his or her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.</p>	<p>The rights contained in this Charter are applicable to all African children, whether they are infected or affected by HIV/AIDS.</p>
<p>Constitution of the Republic of Namibia</p>	<p>Article 10:</p> <p>(1) All persons shall be equal before the law.</p> <p>(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin,</p>	<p>Article 10 stipulates that all persons shall be equal before the law. This means that children are also included and that they are protected against any unfair discrimination on the grounds of HIV/AIDS.</p>

	religion, creed or social or economic status.	
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3.9.3.2. HIV/AIDS and the right to survival and development

The following table explains a child’s right to survival and development with reference to the UNCRC, ACRWC and the Namibian Constitution:

International instrument / National legislation	Relevant article / section	Implication(s) for HIV/AIDS infected or affected children
UNCRC	<p>Article 6:</p> <p>(1) States Parties recognize that every child has the inherent right to life.</p> <p>(2) States Parties shall ensure to the maximum extent possible the survival and development of the child.</p>	<p>Children who are infected or affected by HIV/AIDS are regarded as vulnerable and defenceless and States Parties are therefore obliged to take appropriate measures, to the maximum extent possible, to ensure that their right to survival and development are realised.</p>
ACRWC	<p>Article 5:</p> <p>(1) Every child has an inherent right to life. This right shall be protected by law.</p> <p>(2) States Parties to the</p>	<p>States Parties have the responsibility to ensure, to the maximum extent possible, the survival, protection and development of the child.</p>

	<p>present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.</p>	
<p>Constitution of the Republic of Namibia</p>	<p>Article 15:</p> <p>(1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.</p> <p>(2) Children are entitled to be protected from economic exploitation...</p>	<p>Children who are infected or affected by HIV/AIDS, have the right to be cared for by their parents and the right to be protected from economic exploitation. This means that the government must take the necessary measures and steps to ensure every child's right to optimal survival and development.</p>

3.9.3.3. HIV/AIDS and the best interests of the child

The best interests of the child are unequivocally some of the most important aspects to consider when it comes to children and it is therefore vital that all legislation applicable to children should make provision for a “best interests standard”.

International instrument / National legislation	Relevant article / section	Implication(s) for HIV/AIDS infected or affected children
UNCRC	<p>Article 3:</p> <p>(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.</p>	<p>The best interests of children prevail in all actions taken with regard to children, whether they are infected or affected by HIV/AIDS or not.</p>
ACRWC	<p>Article 4:</p> <p>(1) In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.</p>	<p>The best interests of children enjoy preference in all circumstances relating to children irrespective of their HIV/AIDS status.</p>
Constitution of the Republic of Namibia	<p>There is no such explicit provision in the Namibian Constitution and the task to consider the best interests of the child is left to the legislator.</p>	<p>The fact that no explicit provision is made for the best interests of children is problematic, because the Namibian Constitution is supposed to be the guiding document since it is the supreme law of the country.</p>

3.9.4 Other legislation, policy documents and charters

3.9.4.1 The Education Act 2001

The Education Act does not explicitly make provision for HIV/AIDS infected or affected children, but section 65 provides for “health inspections and examinations”.

Section 65 states as follows:

- “(1) The Minister, after consultation with the Minister of Health and Social Services and after notification of school parents, may cause medical and dental examinations and inspections to be carried out in respect of learners and staff at any school or hostel.
- (2) Subject to section 64(5)¹⁴⁴, the Minister may, after consultation with the Minister of Health and Social Services, cause an inspection and examination of the premises, buildings and accessories of any school or hostel to be carried out regarding any health hazard.
- (3) Subject to subsection (4), the Minister may, in consultation with the Minister of Health and Social Services, take such measures as may be necessary –
- (a) for the improvement of the physical and mental well-being of learners and staff referred to in subsection (1); and
 - (b) for the promotion and preservation of hygienic conditions in, at or on the buildings and premises referred to in subsection (2).
- (4) A learner or staff member referred to in subsection (1) or the learner’s parent –
- (a) has the right to have examinations and inspections and measures referred to in subsections (1) and (3), respectively, carried out at such learner’s or staff member’s own cost by a private medical practitioner of such learner’s or staff’s own choice; and
 - (b) must provide proof of such examinations or inspections or measures within a period determined by the Minister.”

¹⁴⁴ Section 64 deals with general inspections, investigation and information of schools.

3.9.4.2 The National Policy on HIV/AIDS for the Education Sector

This policy aims to reduce and minimise the detrimental consequences of HIV/AIDS to the Namibian education system, learners, students and educators. The policy is applicable to all government and private educational institutions and they strive to protect HIV/AIDS infected and affected persons and to take all the necessary steps possible to halt the further spread of HIV/AIDS.¹⁴⁵

There are several guiding principles, and the most important principles for purposes of this study can be summarised as follows:¹⁴⁶

- learners and employees should not be required or obliged to disclose their HIV status or HIV related information;
- HIV/AIDS infected and affected learners and students should, as far as reasonably possible and practicable live their life to the full. They should receive an education to the maximum of their ability;
- the constitutional rights of all learners, students and education sector employees must enjoy equal protection.

With regard to the non-discrimination and equality of learners and students living with HIV/AIDS, the policy stipulates as follows:¹⁴⁷

- Unfair discrimination, whether it is direct or indirect, against any learner or student on the basis of his or her HIV status, is prohibited.

¹⁴⁵ Ministry of Basic Education, Sport and Culture and the Ministry of Higher Education, Training and Employment Creation “National Policy on HIV/AIDS for the Education Sector” <http://www.lac.org.na/projects/alu/Pdf/edupol.pdf>, last visited 2012-05-16.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

- No educational institution may refuse any learner or student from attending classes or activities or from participating in sports or any other activities on the basis of his or her HIV status.
- Learners and students living with HIV/AIDS should be treated in an admirable, humane and life-affirming way and they should be provided with the necessary support and counselling.

Certain guidelines are laid down with regard to the HIV testing, admission and continued attendance at schools and institutions:¹⁴⁸

- The testing of learners or students for HIV as a prerequisite for admission to, or continued attendance at any educational institution, is not allowed and strictly prohibited.
- It is prohibited to deny any learner or student admission to or continued attendance at an educational institution based on his or her HIV/AIDS status.
- Learners and students infected with HIV/AIDS enjoy the same rights and protection as all other learners and students. The needs of learners and students infected with HIV/AIDS regarding their right to basic education should be accommodated in the educational institution as far as reasonably possible and practicable.
- Learners and students infected with HIV/AIDS are still required to attend classes and lectures in compliance with legal requirements for as long as they are able to effectively attend classes and lectures.

¹⁴⁸

Ibid.

- Learners of compulsory school-going age who are HIV/AIDS infected and who find it difficult to attend school or home schooling because of the nature and extent of the disease, can apply for exemption by the Regional Director provided that the principal, parent and medical practitioner have been consulted prior to the application for exemption.
- If HIV/AIDS learners and students become debilitated due to the HIV/AIDS disease, the Ministries must do everything within their power to support continued learning and to ensure that the necessary work and study material(s) are made available to them in order to study at home.
- Should it be not possible or doable to accommodate learners and students in this way, they must still be accommodated within the education system as far as reasonably possible and practicable.

The policy also stipulates that learners and students may not refuse to study with HIV/AIDS infected learners or students and they may also not refuse to be taught by an HIV/AIDS infected education sector employee. Likewise, education sector employees may not refuse to teach or interact with HIV/AIDS infected learners or students.¹⁴⁹

The National Policy on HIV/AIDS for the Education Sector is a comprehensive document with clear guidelines and stipulations. Regional directors, directors of the divisions in Ministries, inspectors and school or institution heads are thus responsible for the practical implementation of this policy.¹⁵⁰

¹⁴⁹ Ministry of Basic Education, Sport and Culture and the Ministry of Higher Education, Training and Employment Creation "National policy on HIV/AIDS for the education sector" <http://www.lac.org.na/projects/alu/Pdf/edupol.pdf>, last visited 2012-05-16.

¹⁵⁰ *Ibid.*

3.9.4.3 National Policy on Orphans and other Vulnerable Children (OVC Policy)

The Namibian government defines an orphan or vulnerable child (OVC) as “a child under the age of 18 whose mother, father, both parents, or a primary caregiver has died, and who is in need of care of protection”.¹⁵¹

This policy addresses the issues and difficulties with regard to orphans and vulnerable children and the most important objectives for purposes of this study are as follows:¹⁵²

- to protect and promote the well-being and interests of all orphans and other vulnerable children;
- to curb the vulnerability of orphans and other vulnerable children who are HIV/AIDS infected; to improve the provision of treatment, care and support for HIV/AIDS infected orphans and other vulnerable children, and to alleviate the detrimental impact of HIV/AIDS on orphans and other vulnerable children as well as their families;
- to ensure that orphans and other vulnerable children have adequate access to skills for sustainable development which include education, knowledge, life skills, preventive and curative health services, psychosocial care and support, clothing, shelter and sufficient nutrition as well as legal care and adequate protection.

It is important to note that the National Policy on Orphans and other Vulnerable Children is consistent with the provisions of the Namibian Constitution, the UNCRC and the ACRWC. The best interests of the child, the promotion and protection of human rights and the right to survival, life and development is tabulated as follows:¹⁵³

¹⁵¹ *Ibid.*

¹⁵² See, <http://www.healthnet.org.na/documents/policies/Namibia%20OVC%20Policy.pdf>, last visited 2012-05-15.

¹⁵³ *Ibid.*

OVC Policy	Namibian Constitution	UNCRC	ACRWC
<p>Best interests of the child: The best interests of the child are the overriding consideration in the national response to orphans and other vulnerable children.</p>	<p>Article 15: There is no explicit provision with regard to the best interests of the child, but article 15 states: "... subject to legislation enacted in the best interests of children ..."</p>	<p>Article 3: The best interests of the child shall be a primary consideration in all actions concerning children.</p>	<p>Article 4: The best interests of the child are the primary consideration.</p>
<p>Promotion and protection of human rights: International human rights law and the Constitution of Namibia guarantee the right to equal protection before the law and freedom from discrimination.</p>	<p>Article 10: Every person is equal before the law.</p>	<p>Article 2: Right to non-discrimination.</p>	<p>Article 3: The right to enjoy all the rights and freedoms in this Charter without discrimination.</p>
<p>The right to survival, life and development: Children and adolescents have the right not to have their life arbitrarily taken as well as the benefit from economic and</p>	<p>Article 15: The right to: name, nationality, care (by parents) and the right to be protected from economic exploitation.</p>	<p>Article 6: Inherent right to life.</p>	<p>Article 5: The inherent right to life.</p>

social policies that allow them to survive into adulthood and to develop, in the broadest sense of the word.			
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With regard to the strengthening of the capacity of children and young people in order to meet their own needs, the following can be outlined:¹⁵⁴

- it is crucial that orphans and other vulnerable children attend school as far as reasonably possible so that they are able to reach their full potential;
- It is important that all education sector employees and school board members are sensitised about the special needs of learners and students who are orphans or vulnerable children (including those who are HIV/AIDS infected or affected). Access to support systems, counselling services, rehabilitation services and treatment services should be facilitated, and after-school programmes, holiday activities and school feeding schemes should be made available wherever necessary;
- heads of educational institutions and heads of hostels should ensure that the most vulnerable learners and students (as well as HIV/AIDS infected children) enjoy preference when accommodation is allocated in hostels. It is the duty of heads of educational institutions to facilitate community-boarding alternatives in areas where there are limited or no hostel facilities;

¹⁵⁴

Ibid.

- networks of support should be developed and provided for orphans and other vulnerable children;
- there is a duty on the Namibian government to do everything in their power to assist orphans and other vulnerable children with regard to their tertiary education.

It is thus clear that this policy represents the Namibian Government's resolve to address the difficulties and impediments with regard to orphans and other vulnerable children in a structured and holistic manner.

3.9.4.4 The Namibian HIV/AIDS Charter of Rights

"Recognizing that the protection and fulfilment of human rights is essential in combating HIV/AIDS, the Namibian government developed a policy and legal framework in partnership with civil society that promotes a right-based approach to HIV/AIDS and outlaws discrimination based on HIV status. The Namibian HIV/AIDS Charter of Rights was developed through a broad consultative process involving government and civil society, and was adopted in December 2000."¹⁵⁵

This charter recognises the predicament in which HIV/AIDS infected persons found themselves. They suffer from stigmatisation and discrimination and the result is that they are precluded from accessing services and benefits. The charter promotes a rights-based response to the HIV/AIDS epidemic, and forbids discrimination based on a person's HIV/AIDS status.¹⁵⁶

¹⁵⁵ See, in general http://fidakenya.org/wp-content/uploads/2011/03/GG_Part-VI_HIV-AIDS.pdf, last visited 2012-05-16.

¹⁵⁶ *Ibid.*

The charter emphasises article 10 of the Namibian Constitution, which provides that all persons shall be equal before the law. One of the main focuses of the charter is the “equal protection of the law and equal access to public and private facilities and benefits” and it stipulates as follows:¹⁵⁷

- Discrimination against any person based on his or her HIV/AIDS status is prohibited. Each person is entitled to his or her basic human rights.
- Each person’s inherent dignity and the right to equal protection of the law must be respected and this also means that HIV/AIDS infected persons shall have equal access to public and private services, benefits and opportunities.
- Public measures should be adopted in order to protect and safeguard all HIV/AIDS infected persons (including children) from unfair discrimination in employment, housing, education, child care and custody and in the provision of medical, social and welfare services.

The charter lays strong emphasis on non-discrimination on the ground of HIV/AIDS and underlines that all forms of discrimination are prohibited.

3.9.5 Which approach should be followed?

It is my opinion that a human rights based approach should be followed in order to fight HIV/AIDS.

A human rights based approach will be favourable for the following reasons:¹⁵⁸

¹⁵⁷ See, in general <http://www.dredf.org/international/Namibia2.pdf>, last visited 2012-05-16.

¹⁵⁸ Chirawu “The intersection between HIV/AIDS and human rights” <http://www.wlsazim.co.zw>, last visited 2012-05-16.

- a human rights framework draws attention to the most important areas where the prevalence of HIV/AIDS is high and problematic;
- a human rights framework provides a “checklist” of all the measures that could possibly be taken in order to curb HIV/AIDS;
- policy makers are accountable for their actions;
- advocacy groups are enabled to monitor, scrutinise and evaluate the extent to which the government is fulfilling its obligations and responsibilities; and
- the identification of mechanisms in existing laws and policies deal with shortcomings and limitations.

3.9.6 Conclusion

In conclusion, children in Namibia are subjected to numerous challenges, and the lack of education and HIV/AIDS are two of the biggest challenges. Several legislative provisions and policies are in place which aims to curb HIV/AIDS, but the implementation of these legislative provisions and policies are not without difficulties. The question is: “where does one begin?” And the answer is quite simple: every person, regardless of his or her HIV/AIDS status, has the duty and responsibility to fight aids on a personal level: every person must do everything within his or ability to become “HIV/AIDS educated”. I believe that if there are effective and operative education systems, there is a possibility that today’s uninfected children will grow up into healthy and flourishing adults.

The differences and similarities with regard to HIV/AIDS in South Africa and Namibia will be discussed in chapter 10 below.¹⁵⁹

¹⁵⁹ See ch 10 par 5.

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