

EDUCATION

# Human rights in diverse education contexts

Edited by:

J.P. Rossouw & Elda de Waal

NWU Education and Human Rights in Diversity Series  
Volume 1

# **Human rights in diverse education contexts**



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## Research Justification

The focus of this publication is on answering the central research question: *How can Human Rights be advanced with regard to different kinds of diversities, and in different educational settings?* The publication pays special attention to the advancement of human rights in a variety of education-related contexts, in keeping with human rights as a declared national priority for both society at large and the education system. One strategic priority of the Faculty of Education is *research based on market requirements and needs*. This book strives towards meeting this expectation by directly aiming at building human rights and social justice in the South African society, public schools and higher education institutions. Adjudication in the education context of the constitutional values of dignity, equality and freedom focusses regularly on learners. The book highlights the value of education for full-fledged citizenship by delineating what schooling should entail to inspire learners towards both claiming equal freedoms and rights and taking accountability for the responsibilities attached to citizenship. Although freedom of religion, belief, thought, conscience and opinion is protected as a human right in most democracies, the fundamental difference between allowing freedom of religion in the private sphere and accommodating religious diversity at school deserves scholarly scrutiny. Aggression and violence at South African schools unfortunately seem to not only be in an upward spiral, but research also shows that destructive behaviour makes school environments unsafe, inhibiting effective teaching and learning. Social ills from communities and families have a deleterious impact on schools, pointing to the need for analysing the value of human rights-based approaches at the school level. With the world taking shape in the 21st century, the intersection between Human Rights Education and Global Citizenship Education is explored. On the teacher level, four concepts in South African schooling – namely, teacher professionalism, professionalisation of teaching, teacher unionism and the law – need to be promoted collectively and congruently to improve the quality of education in general. In Higher Education (HE), the role of affect as an integral part of reason in discursive interactions that deal with moral dilemmas, such as those related to the practice of racism, is deliberated. Aspects of fairness and competitiveness in diverse drives towards research productivity are explored, and how they relate to social justice. The rights and satisfaction of students as paying consumers and HE interested parties have become more prominent, which has led to a 'customer-care revolution'. The revolution concerning customer care requires increased responsibility towards students as 'clients' on the one hand and as 'critical resources' on the other, given that the survival of universities has become dependent on strong enrolments. The methodologies used in the ten chapters include content and discourse analysis, discourse analysis, deliberation from complexity theory, democratic discourse, discursive analysis, document analysis, investigative exploration, and thematic document analysis. The readership of the book is academics, professionals and researchers interested in matters related to human rights in education. This publication contains only original research. No part of the book was plagiarised from another publication or published elsewhere.

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# Abbreviations, Boxes, Figures and Tables Appearing in the Text and Notes

## List of Abbreviations

AACU	Association of American Colleges and Universities
AARE	Australian Association of Research in Education
ACRWC	African Charter on the Rights and Welfare of the Child
ALTC	Australian Learning and Teaching Council
ANC	African National Congress
AZASCO	Azanian Student Convention
BCG	Boston Consulting Group
CAPS	Curriculum Assessment Policy Statement
CC	Constitutional Court
CESCR	Covenant on Economic, Social and Cultural Rights
CHE	Council of Higher Education
COACHE	Collaborative on Academic Careers in Higher Education
CPTD	Continuous Professional Teacher Development
DHET	Department of Higher Education and Training
DoBE	Department of Basic Education
DoE	Department of Education
EEA	<i>Employment of Educators Act 76 of 1998</i>
EFF	Economic Freedom Fighters
ERA	Excellence in Research for Australia
GEFI	Global Education First Initiative
GTCS	General Teaching Council for Scotland

Abbreviations, Boxes, Figures and Tables Appearing in the Text and Notes

HE	Higher Education
HOD	Head of Department
HRBA	Human Rights-based Approaches
HRDC	Human Resources Development Council
ICRC	International Convention on the Rights of the Child
ICT	Information and Communications Technology
IQMS	Integrated Quality Management System
ITE	Initial Teacher Education
LRA	<i>Labour Relations Act 66 of 1995</i>
MEC	Members of the Executive Council
NCS	National Curriculum Statement
NPFTED	National Policy Framework for Teacher Education and Development
NQFA	<i>National Qualification Framework Act 67 of 2008</i>
OBE	Outcomes-based Education
OGOD	Organisation for Religions Teaching and Democracy
PANEL	Participation, Accountability, Non-discrimination and Equality, Empowerment, and Legality
PASMA	Pan African Student Movement of Azania
PIRLS	Progress in International Reading Literacy Study
PISA	Programme for International Students Assessment
QC	Quality Councils
RNCS	Revised National Curriculum Statement
SACE	South African Council for Educators
SADTU	South African Democratic Teachers' Union
SAELPA	South African Education Law and Policy Association
SAQA	South African Qualifications Authority
SBM	School-based Management
SETA	Sectoral Education and Training Authorities
SGB	School Governing Body
SHRC	Scottish Human Rights Commission

TFC	Teachers' Federal Council
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
USA	United States of America
US	United States
WSE	Whole School Evaluation
YASS	Yunnan Academy of Social Sciences

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# Preface

**J.P. Rossouw**

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The year 1994 marked the development of one single, new democratic system that includes, among others, the provision of quality education to all South Africans. Even though the Constitution protects individuals' human rights, several of these rights are violated on a daily basis. Different scholars, including the authors of this book, have different perspectives on the concept of human rights. As portrayed in this book, some scholars have developed a focus on human rights that is closely linked to the notion of social justice. Another viewpoint included is the notion of Human Rights Education, which has developed since the 1990s into a public discourse and a distinct field of scholarship. In addition, various authors have a strong legal outlook on human rights, bringing it into the context of fundamental rights and constitutional rights. These differing perspectives on the meaning of human rights add to the diversity portrayed in this single publication, and they should be seen as complementing each other rather than being in conflict.

This book not only provides a novel approach towards addressing diversity in the context of human rights but also covers an assortment of human rights topics related to primary,

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secondary and Higher Education (HE). In this regard, curriculum development, education law, social justice and Human Rights Education form part of the topics discussed. This book intends to add value to the current debate concerning the diversity of our country's religions, beliefs, cultures, traditions and sexual orientations as they come into play especially, but not only, at the school level. Many of the principles associated with the one or the other of the above can comfortably be transferred to discussions of the other. All are based on the founding values of the South African Constitution, namely, human dignity, equality and freedom.

Against an international background, we hope to broaden the perspectives of a variety of scholars and educationists (academics, specialists and researchers) regarding a number of significant human rights and social justice aspects in different education settings in the following ways:

- enriching the available literature on human rights in diverse education contexts
- adding unique perspectives to this debate concerning the diversity of our country's religions, beliefs, cultures, traditions and gender
- advancing the main aim of the Education and Human Rights in Diversity (Edu-HRight) Research Unit at the North-West University, which is to explore, compare and interpret vigilantly towards generating knowledge on a variety of aspects connected to education and human rights, for the benefit of our society.

The book reflects both the central focus of and the cross-disciplinary diversity of scholarly work within the Edu-HRight research unit. This publication promises to meet a variety of expectations, as expressed in policy documents at the national, institutional and faculty level.

# The precarious position of policy implementers in the conundrum of politics, policy-making and implementation in education

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## ■ Abstract

In the early 1990s, South Africa initiated the process of dismantling its social and legal system of racial separation and discrimination, known as apartheid, which touched every facet of South African society, the education sector is no exception. Primary, secondary and HE institutions at the time were legally separated by race and colour. The dismantling of apartheid culminated in the first democratic elections in April 1994. When the new dispensation dawned on South Africa in 1994, those in power first had to address the past legacy of the apartheid education system and then, through redress and other corrective measures, build a new system which would provide all South Africans with quality education and equip them with the necessary knowledge, skills, values and attitudes to find their place as independent, yet responsible, members in the new South African society. The year 2019 marks the 25th anniversary of the dawn of democracy in South Africa, and it is therefore appropriate that some aspects of the provision of education are scrutinised. Policy creation, implementation and assessment are topics worthy of assessment after the first quarter-century of democracy.

## ■ Introduction

After 1994, those responsible for the creation and management of the new education system were guided, in the first place, by the education provisions in the Constitution of the Republic of South Africa 1996 (Republic of South Africa 1996a). They were guided in particular by the founding values of the new dispensation as set out in Section 1 of the Constitution – the human rights entrenched in Chapter 2 (the Bill of Rights) of the Constitution, the education-specific provisions of Section 29 of the Constitution and the provisions of Chapter 4 on co-operative governance.

The administrators of the new system were provided with several laws to guide them in carrying out their duties. Among these laws were the *Constitution of the Republic of South Africa*

of 1996 (Republic of South Africa 1996a), the *South African Schools Act* 84 of 1996 (Republic of South Africa 1996b), the *National Education Policy Act* 27 of 1996 (Republic of South Africa 1996c), the *Employment of Educators Act* 76 of 1998 (Republic of South Africa 1998 [hereinafter referred to as the EEA]) and the *South African Council for Educators Act* 31 of 2000 (Republic of South Africa 2000).

However, the first comprehensive policy as distinguished from a law on the provision of education and training in South Africa was published in 1995, namely, White Paper 1 on Education and Training (DoE 1995). Since 1994, more than 70 national-level policies and regulations have been developed in terms of the existing national laws. To that number, one should add policies at the provincial as well as school levels. These numbers make it clear that a policy implementer at the school level, such as the principal, faces an enormous challenge in dealing with the policies that have been promulgated. Managing the policy process from the preparation of a policy to its implementation at the relevant point in the system is in itself a huge challenge, and there are indications that the policy process itself is deficient.

Inputs from all stakeholders at the national, provincial and school levels were considered for the development and adoption of educational policies. Apart from the fact that policies were introduced to guide administrators in the provision of education, it soon became clear that they were also intended to monitor and control the actions of administrators and leaders in education. It became a practice that, as soon as a problem cropped up in the education sector, a new policy was developed to address the problem, and it was assumed that mere adoption and publication of the policy would solve the problem. This simplistic, linear view of policies led to many of them heading for failure and many of them just 'disappearing' or being replaced with newer ones. Examples of such policies are HIV and AIDS and the Learner Pregnancy Policies.

All policies, including curriculum policy, are developed by a number of interested parties, are published by some agency

(the policymaker) and are implemented by an implementer, who is usually the head of a division or an institution at some level of education or another. It is precisely the involvement of such a great number of interested parties or role-players that has complicated the work of policy implementers, leading to problems in policy implementation.

Naturally, the easiest way out for those involved is to blame policy implementers, such as district directors, heads of education departments and school principals, whenever a policy is not implemented successfully. This is part of the problem that will be examined in this chapter.

## ■ Approach followed

We mainly used document analysis coupled with an analytic attitude (Rapley 2007:111) to investigate the problem and focus on *the Language in education policy*, which provided insights into all the points that we wanted to analyse and which is a fiercely contested issue in South Africa at the moment. At the same time, it localised the debate to schools as most of the research on policy issues is generally focussed on international (Utterwulghe 2017), regional (Organisation for Economic Cooperation and Development [OECD]; Viennet & Pont 2017) and national policy perspectives (in South Africa, the Centre for Development and Enterprise and Education Policy Units at certain universities are examples of such national agencies). While all of these research efforts provide valuable insights into policy-related issues at the local level, the dilemmas and challenges of policy implementers at school or institutional level are not their main focus. These international and national perspectives address policy issues from the top down, as it were.

At the same time, our approach of using document analysis coupled with an analytical attitude underpinned our attempt at cross-examining and reading the identified official documents, legislation and case law as primary sources (Rapley 2007:16).

Supported by Rapley (2007:111), concentrating on the Language in education policy afforded us the chance of investigating both 'what is not said' (lapses or disparities) and 'what is said' (the development of the point) to gain a wider understanding.

## ■ The policy process (including language in education)

Generally, the process of law-making is initiated when the government becomes aware of a problem or an issue that needs to be regulated, appoints investigative bodies to make recommendations concerning the issue at hand, receives recommendations from these investigative bodies and responds to such recommendations by publishing the work-in-progress document in a *Green Paper*. The public's comments are invited and, once they have been received, the government considers them and uses them together with the *Green Paper* to construct a draft policy (called a *White Paper*) with its proposed recommendations to regulate the problem or issue at hand. Normally, the *White Paper* is discussed in Parliament, the final decisions are written in law shaped and promulgated by Parliament, and they come into effect only once they have been signed into law by the president of the country.

In the above paragraph, we refer to law-making processes, but these processes also apply to policy-making because laws and policies serve the same purpose to all intents and purposes, namely, dealing with issues in education and seeking solutions to problems. The most important difference is that policies are guidelines for functionaries in education and do not have the power of laws, which need to be obeyed by everybody to whom they apply. However, if policies comply with all the legal prescriptions, they also have the power of the law – the only exception is that they can never be used to amend a law. In the practice of education, practitioners tend to view and refer to laws and to policies together as *policy*. Although that perception is

erroneous, we will also consider laws when exploring policy-making in this chapter.

The above processes suggest thorough and wide-ranging consultative processes to ensure buy-in and implementation of policies by the interested parties. The *National Education Policy Act 27 of 1996* (Republic of South Africa 1996c) provides for aspects of national education policy which include the following:

1. The Minister of Basic Education determines national education policy (for basic education) (s. 3[1]).
2. The Minister of Basic Education must 'take into account the competence of the provincial legislatures in terms of [Section] 146 of the Constitution' (Education Labour Relations Council 2003:7). To comply with the constitutional requirements of co-operative government in Chapter 3 of the Constitution of 1996 (s. 3[2]).
3. 'If there is a conflict between national and provincial' (Education Labour Relations Council 2003:7) laws, national laws prevail (s. 3[3]).
4. Section 3(4) determines the areas concerning which the minister may make national policy (which include those of planning, coordination, monitoring and interests of the education system), and Section 4 lists the principles that direct national education policy - a major part of which is the Bill of Rights (Ch. 2 of the Constitution of 1996).
5. Section 5 compels the minister to carry out certain consultations before promulgating national policy. Among others, the minister has to consult with consultative bodies that the minister may establish (s. 11).
6. Section 7 compels the minister to give notice of the determination of national policy in the Government Gazette within 21 days of determining the policy and to table the policy instrument in Parliament.

While provincial policy-makers are bound by similar laws, schools are covered by the *South African Schools Act 84 of 1996* (*Schools Act*) in which Section 8(1) determines explicitly 'that the

governing body of a public school must adopt a “code of conduct for the learners”, after consultation with the learners, parents and [teachers] of the school’ (Zondo 2016:19). Interested parties in education are generally satisfied that, initially, the consultative process was inclusive and thorough with regard to, for example, the White Paper on Education and Training of 1995 and the *Schools Act*. Of late, the policy processes have appeared to be too short and exclusive to comply with legal requirements. Parts of our argument will become clear in the paragraphs below, where we discuss Language in education policy.

In a multilingual country like South Africa, Language in education policy is bound to be contested. South Africa has 11 official languages, and the choice of language as medium of teaching and learning is often a contentious issue at schools.

It is a well-known fact that one’s mother tongue is undoubtedly the best medium for teaching and learning at school; however, it may not be practical to declare that, in South Africa, the learners’ mother tongues should be a language medium at their schools. There are many reasons for this seeming impracticability, including the fact that there are not enough teachers to allow for all of the 11 official languages to be used as languages of teaching and learning or even as languages of communication at schools. Of the 11 languages, only Afrikaans and English have been used as media of instruction at all scholastic institutions, because they are ‘academically developed’, with education materials available in both languages for all the school grades. Currently, the policy is that the home language of a child is used as the medium of instruction till Grade 3, after which a learner may choose one of the official languages as a medium of instruction (Republic of South Africa 1996a:s. 29[2]). In practice, learners choose either English or Afrikaans, with the number of learners choosing Afrikaans diminishing year by year.

Many educationists blame the poor performance of the education system on the language policy in light of the argument that the mother tongue is the proven best medium of instruction,

but approximately 80% of the learners in Grades 4-12 do not receive education in their mother tongue. According to Hlatshaneni (2019), Essien, a Professor in Mathematics at the University of the Witwatersrand, quotes research conducted in four countries that strongly suggests learners' poor performance in Mathematics and Mathematics Literacy can be attributed to their not being proficient in more than one language. Hlatshaneni (2019) points out that Essien believes 'that the ability to learn [M]aths was more of a function of language skills than just logical thinking'. According to Hlatshaneni (2019), Essien also argues that research:

[H]as found a correlation between the delay of switching from mother tongue to English medium in primary schools and the ability to learn [M]aths. [...] If a child is learning in a language other than English, the longer you delay the switch, the better the child's chances of achieving good grades in [M]aths. (p. xx)

Essien (cited in Hlatshaneni 2019) therefore believes that the Language in education policy, as set out above, needs to be revisited urgently. His arguments seem to be in line with the general perception that the mother tongue is the best medium for teaching and learning.

From 1948 to 1994 (the apartheid era), English and Afrikaans were predominantly used as media of teaching and learning. Before 1976, the government announced a new policy that led to riots at schools; this was, according to many observers, the beginning of the end of apartheid. In Volume 1 of the official report of the commission (Republic of South Africa 1979) appointed by the then State President, Nico Diederichs, to investigate the riots in Soweto and elsewhere from 16 June 1976 to 28 February 1977, the chairperson of the commission, Justice PM Cillie, reported that the government instructed schools under the auspices of the Department of Education and Training (the so-called black schools) to change the language policy in high schools so that at least three of the subjects were taught in either Afrikaans or English. However, there was a possibility of schools that fell under the jurisdiction of the Department of

Education and Training being exempted from this policy. The instruction did not meet with the approval of parents, teachers or learners and led to the so-called Soweto riots that began on 16 June 1976 and quickly spread to other parts of the country.

All policy documents that appeared since 1994 touched upon the possible repercussions of a language policy and provided for formulating policies that would accommodate all or most of the learners in the country. White Paper 1 on Education and Training of 1995 (DoE 1995) indicates that those who drafted it had consulted education rights in an international human rights context when they formulated the following rights of parents regarding the education of their children:

Parents have an inalienable right to choose the form of education which is best for their children, particularly in the early years of schooling, whether provided by the state or not, subject to reasonable safeguards which may be required by law. The parents' right to choose includes choice of the language, cultural or religious basis of the child's education, with due regard for the rights of others and the rights of choice of the growing child. (Ch. 4, para. 3)

The Constitution of 1996 (Republic of South Africa 1996a:s. 29[2]) refers specifically to a child's right to choose his or her language of education:

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. (p. 50)

It needs to be noted that the part beginning with 'In order to' up to the end of the provision was an addition to the original version of Section 29(2). The addition makes it clear that single-medium institutions only had to be considered by the state if it was a reasonable educational alternative, which means that the right to choose a language of education was not necessarily a right to choose your mother tongue as the language of education. It is

not quite clear what message one has to take from the provisions in sub-provisions (a-c), but it seems possible that some people may have feared that a very open choice to choose a language as the medium of education might afford people an opportunity to revive discriminatory practices of the past and to exclude some learners and students from accessing an educational institution of their choice.

In 1997, the Department of Education (DoE) published the Norms and Standards for Language Policy in Public Schools (DoE 1997a). These norms and standards do not differ markedly from the two documents discussed above, except that they provide for the rights and duties of, among others, the school and the Department, that they spell out the Language in education policy as a multilingual policy and that they suggest that 40 learners per grade in Grades 1-6 and 35 learners in Grades 7-12 could constitute a viable number of learners that could approach the particular department for assistance where education through a particular language medium was not available at a particular school.

Section 6 of the *Schools Act* (Republic of South Africa 1996b) states the following regarding the language policy of public schools:

1. 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.
2. 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.
3. No form of racial discrimination may be practised in implementing policy determined under this section. (n.p.)

As it stands, this provision protects learners from racial discrimination brought about by the application of a language policy drafted by the governing body. It (Republic of South Africa 1996b) provides that 'the governing body of [the] public school

may determine the language policy’, while the Minister of Basic Education ‘may [...] determine norms and standards for the language policy [at] public schools’ (Republic of South Africa 1996b).

This Section 6 provision has been causing the most problems in schooling, occurring mostly when education departments want to place learners who wish to use English as the medium of education at single-medium Afrikaans schools. In general, schools are willing to take learners who wish to be educated in English, provided that the authorities support them with the necessary facilities and resources. Many schools have actually agreed to take such learners but have been complaining that the authorities never gave them the extra facilities and services that had been promised. The dilemma should be seen in conjunction with the backlog that exists with regard to the provision of new schools and the responsibility that provincial Members of the Executive Council (MECs) for Education and Heads of Departments (HODs) of the provinces have for providing places at schools for all the learners in their province. Sometimes, these MECs and their HODs seem to be unprepared for the number of learners in total and then have to make provision in a certain year by trying to force schools to accept learners for whom they do not have the relevant facilities or teachers.

The latest court case in this regard is *Hoërskool Overvaal and Another v Head of Department of Education and Others (Overvaal) 86367/2017 (Unreported)*, which also became a Constitutional Court case as we will point out later. It arose when the MEC of the Gauteng Province attempted to enrol learners who wanted to be taught through the medium of English at this Afrikaans-medium school, which was full, according to their numbers, with no room to accommodate any further learners. It became clear that there were at least two English-medium schools in the vicinity of Overvaal that could have accommodated these learners and so the judge ruled in favour of the Afrikaans-medium school. In the ‘Political role-players interfering in policy processes and implementation to introduce ideas-based policy’ section, we will

again deal with this legal matter, which is also referred to in Chapter 7, with a focus on offering promising solutions to prevent violation of learners' rights because of diversity in schools' skills capacity.

## ■ Policy implementer appointments

In the above section, we pointed out that the policy process is a complicated one and that the person who is responsible and accountable for policy implementation could face a daunting task and be subjected to demands from various interested parties and even face possible court cases. In this section, we take a look at who the implementers of education policy at schools are and explore their possible roles in the success or failure of policy implementation.

Seeing as the focus of this debate is on schools, this section discusses the role of the principal as the designated policy implementer at a school. One always has to bear in mind the legacy of apartheid when discussing issues of leadership in the education system. Apartheid was indeed a very authoritative system, during which principals accepted any communication from higher levels as the law. In the new democratic era, principals have to view their role slightly differently.

It is interesting to note that, in the Policy on the South African Standard for Principalship, which the Department of Basic Education (DoBE) released in 2015, reference is made to eight key areas (defined by knowledge and skills) that determine the expectations the employer and the public have of principals. There is no specific reference to policy development, implementation and accountability (DoBE 2015). We consider it a serious omission, as policies whose proper implementation is not ensured may not have any impact on the education system whatsoever.

Apart from the absence of a reference to policy skills for principals of schools, the appointment requirements for principals of schools are also a cause of concern. It is common knowledge

that to qualify for appointment as a principal of a school, a person only needs a qualification at the M+ 3 level (i.e. a National Senior certificate plus three years of Higher Education [HE]) and seven years' teaching experience. The teaching experience is not qualified, and such a person may have no management or leadership experience at all. We argue that it would be unfair to expect a person who only meets the minimum requirements, as set out above, to be able to manage the complex policy process so that the policies are implemented successfully and the school benefits from them.

If we consider the appointment of education district directors to be policy implementers in their districts, it becomes even less apparent whether they are necessarily qualified to act as education policy implementers. They are not subject to appointment in terms of the EEA and are classified as public servants. It is quite possible that they can be appointed as directors without any educational experience or qualifications, and they could even be placed in such posts based on the African National Congress (ANC) Cadre Deployment practice, which means that they are appointed without having to comply with all the formal requirements for the post in question.

What would one then expect of policy implementers at the school level? If one keeps the rest of this chapter in mind, the following are the expectations:

1. Policy implementers should be abreast of all the policies that apply to them that have been developed at the provincial and national levels and also within the school itself. At face value, this expectation might seem to be redundant, as one would expect the employer to ensure that the employees have knowledge of all the policies at their disposal and are informed of their existence and importance, for example, through relevant in-service professional training. However, practical experience showed that the communication of policies has serious flaws and policies often never reach the school level. In his research, Morifi (2018) explores the implementation of

the Learner Pregnancy Policy and concludes that only one participating school was really aware of the policy.

In terms of the law and the common expectations of a professional such as a school principal, the onus lies on the school principals to ensure that they have access to, and are familiar with, the content of all policies that apply to their work. They should not only have copies of all the policies and make sure that they obtain any updated versions, but they should also make sure that their staff and other members of the school community are also familiar with all the policies applicable to them. As far as school policies are concerned, principals should have them reviewed regularly.

One would expect to read all the policies on the websites of the National Department of Basic Education and the provincial departments of education. However, that is not the case. At the moment, the best a principal can do to be aware of national education policies is to subscribe to Juta's *Education Law and Policy Handbook* (Juta and Company 2018), which has the added advantage of a revision service available on the content every 4 months. In this regard, it needs to be noted that the revision services are not free of charge, which burdens, especially school principals, even further.

Teacher unions play an important role in informing the members of new policies and we hold the opinion that, especially in this regard, a principal would do well to be an active member of a recognised teacher union.

2. The first thing policy implementers should do when they receive a new policy is to read it critically and communicate with the people to whom they are responsible, should there be obstacles in the implementation of the policy. The National Policy on HIV and AIDS for Learners and Educators in Public Schools and Students and Educators in Further Education and Training Institutions (DoE 1999) is a case in point. At first glance, policy implementers will see that their institutions will need first-aid kits and teachers who are specially trained, although the policy does not make provision for funds to buy

first-aid kits or train teachers for their specific roles in this regard. This is an example of an unfunded mandate, which applies to quite a number of policies.

Morifi's research (2018) indicates that the same applies to the Learner Pregnancy Policy (DoE 2007), which requires schools to provide facilities for pregnant learners who require special medical attention and also to provide access to appropriate nursing services. Morifi argues that the policy may require teachers to do the work of nurses and other health services staff, which would be unlawful.

3. Furthermore, policy implementers should have the skills to contextualise a policy in their specific institution. They should know the status of a policy, as policies do not necessarily apply to everybody who receives them, and should be able to analyse policies so that they can convey the meaning and importance of the policies to their subordinates. The policy implementers should take the lead in the implementation of the policy.
4. Policy implementers should know how to lead the development of a policy at the school level.
5. Lastly, policy implementers should never lose their integrity and professionalism as they confront all the demands made on them (see also Reform Support Network 2015).

At this point, we are convinced that policies can have very high expectations of the policy implementers, such as school principals, which could result not only in policy fatigue but also in the unsuccessful implementation of policy at the school level.

## ■ Policy fatigue

Taking a brief look at the education system just before 1994, Hoadley (2011:144) mentions two attempts at curriculum transformation that the previous government made during the 1980s and 1990s. The first attempt was part of a series of actions labelled 'People's Education', and it considered alternate

suggestions for what was then called apartheid education. This attempt originated from the Pedagogy of the Oppressed (Freire 1972), which proposed, among others, exploring schooling as a cultural act and highlighting differences between education practices that regard people as objects rather than subjects. In general, even though it was written in the 20th century, Freire's approach to teaching aims at developing a relationship between teacher, learner and the general public – an aspect that was neglected or even disregarded at the time. According to Hoadley (2011:144-145), the Freirean concept of schooling was an attempt at shifting the core of teaching-learning from 'a strong transmitter model and a given body of knowledge' to a core that highlighted both the governmentally powerful role of schooling and the significance of learners' experiences and environments. As should have been expected, the People's Education series of actions had limited impact.

The apartheid government's second attempt was to start a curriculum review route, labelled 'Education Renewal Strategy', to justify and remodel curricula by making them more appropriate to fiscal and labour force demands specifically. Even this second attempt failed at addressing the autocratic control over content and teaching theory that had been selected according to white, Christian, nationalist guidelines.

If one relates the number of official education papers that ensued in democratic South Africa to the image of the perpetual movement of an ocean, then the image of waves of policy documents that have been flooding education institutions since 1994 comes to mind. This image can, to some extent, be attributed to authorities struggling not only to establish a completely new education system but also to organise the system towards pursuing new values and morals. It appears that the continuous struggle led to policy analysts coining the term 'policy fatigue' to describe the response of teachers and school principals to the huge number of policies forced upon them and to indicate how the many revisions of policies worsened the fatigue.

In this regard, Naidoo (2012:33) strikes a chord when she points out that, even if policies can be typified as being uniform, schools, classrooms and teachers cannot. In an environment of contradictory understanding and uncertainty, several teachers are still incapable of making sense of the transformation process that had not been brought into line with their own academic and subject identities (Naidoo 2012:33–34). By standardising teachers' uniqueness, several policy documents have been dislocating the ethnic identities of South African teachers. As the authors of this chapter, we would like to emphasise that schools, classrooms and their teachers should *never* be the same and should therefore *never* be standardised.

Davids (2018) considers it essential to differentiate between individual and professional distinctiveness when one addresses teacher identities: professional teacher distinctiveness is obviously affected by specific formal settings, and such distinctiveness is pre-determined by structures or guiding principles concerning the expected behaviour. Concepts about personal teacher distinctiveness are much more complex than professional teacher distinctiveness, as it is not clear how to synchronise the personal identities of teachers. In the words of Davids (2018):

A teacher might, for example, because of particular religious or cultural beliefs, believe that meting out corporal punishment is in the best interests of a child. This might be his or her personal belief, which might also be institutionally promoted and reinforced. This belief might be at odds with his or her professional teacher identity, which deems corporal punishment as not only unacceptable, but also illegal. There appears to be accepted agreement among scholars that teacher professional and personal identities are fluid and dynamic, and that these shift and reshape in relation to their context – thereby confirming their relationality. (p. 4)

While we included the reference to *corporal punishment* here to underscore the complexity of trying to synchronise teachers' personal identities, references to the same controversial matter occur in Chapter 5 by Smit. In his first reference to corporal punishment, Smit asks rhetorical questions aimed at addressing challenges that arise from multiplicity and religious diversity at

South African schools. His second reference deals with discussing a Constitutional Court finding concerning the constitutional justification or not of limiting one religious group's right to freedom of religious belief.

As a result of the facets that we have already mentioned, as well as several other relevant aspects, it becomes clear that we have not yet gathered much knowledge about teachers and their professional identities (Hoadley 2002:44–45), even though the education system expects teachers to not only *support* but also *adopt* waves of curriculum reform (Naidoo 2012:66–68). While we were contemplating the tricky truth about lacking in knowledge about professional identity and teachers, it struck us that Jansen (2001:242) perhaps comes closest to pinpointing the trickiness by indicating that the link between policy image (such as policy prediction of what teachers should look like) and a teacher's personal identity (such as the trust teachers put into their own training) becomes awkward at times and causes anxiety when teachers adjudicate their own skills at implementing a suggested policy. It is clear to us that a significant step in addressing policy fatigue would be to look into such anxiousness and awkwardness in an informed way to offer realistic counteractions towards lightening both.

## **■ Reform moments: Significant policies since 1994**

As could be expected, several ministerial and education department task teams and groups took on the daunting task of devising a workable 180-degree turn away from the previous divisions under apartheid. Among others, the previous eight official departments that not only presented dissimilar curricula but also presented different standards of teaching–learning played a significant role in the restrictive divisions: nationwide departments for black people, for Indian people and for people of mixed race, one for independent schooling and departments

in the four former provinces for white people. In addition, because of the apartheid policy, some of the Bantustans (the name of areas that were reserved for black people in South Africa and what was then known as South West Africa, now Namibia) had individual departments too. It has become common knowledge that, since 1996, one nationwide DoE has served as the umbrella for the provincial departments in each of the nine provinces. On a positive note, after 1994, principles of democracy were, and are, taken seriously, also at the school level.

The architects of the South African version of outcomes-based education (OBE) not only designed it as a didactic trail out of apartheid schooling after 1994 but also used it as the philosophy that steered Curriculum 2005 in 1997 (Chisholm 2003:3-5). With OBE as the pillar, Davids (2018:2) identifies four of the post-apartheid curricula education and schooling policies as most significant: firstly, in the form of Curriculum 2005 (introduced in 1997); secondly, in the form of the National Curriculum Statement (NCS) (introduced in 2002); thirdly, in the form of the Revised National Curriculum Statement (RNCS) (introduced from 2004 to 2008); and most recently and fourthly, the revised adaptation of the NCS in the form of Curriculum Assessment Policy Statement (CAPS) (introduced from 2012 to 2014).

## □ Outcomes-based Education

As pointed out by Naidoo (2012:6-7), OBE in South Africa intended to focus on providing a curriculum structure to alter the ideological and educational legacy. In this regard, the intention was, among others, to meet all learners' education needs, notwithstanding economic status, milieu, disabling conditions or ethnicity. In Naidoo's (2012) own words:

The critical outcomes in the transformational OBE approach would ensure that new competencies in terms of knowledge, skills, values and attitudes would create lifelong learners. Learning would become more than memorizing content and earning marks as learners would now take ownership of their knowledge and would be able

to integrate, synthesize and apply their knowledge across a broad spectrum of education. The role of the teacher was to create a curriculum that would meet all the needs of the learners and at the same time be transformational in nature. OBE, a vehicle of integration, was received by teachers in the form of Curriculum 2005 (C2005). This vehicle, designed to integrate education and learning in South Africa, had major implications for teaching, learning and assessment in both formal and informal education. (p. 6)

Although education researchers and concerned parties look back on OBE with divergent views and interpretations, on the one hand (Hargreaves & Moore 2000; Harley et al. 2000; Jansen & Christie 1999), OBE could, on the other hand, be viewed as an aspiring curriculum policy developed soon after the democratic government took over in 1994 (Jansen 1999:324; Jansen & Christie 1999). Based on documents of the DoE (n.d., 1997b, 1997c), OBE emphasised results and achievement by stating outcomes that had to be reached and that allowed opportunities for all learners to be successful at diverse tempos and times rather than their success being measured by a content-burdened, subject-constrained curriculum. In addition to this, the intention of the DoE was for OBE to symbolise putting a fundamental stop to everything that had been restrictive and belittling in South African education up to that point.

As if in support of the reference to the original governmental intention of OBE, as mentioned in the above paragraph, Weldon (2009) argues as follows:

[/]n transition societies, education policy becomes a crucial arena for asserting political visions for a new society and signalling a clear break with the past. Part of the process of 'moving on' is creating a common national identity, which reflects memories that acknowledge the trauma of the past in a way that prevents denial. (p. 177)

## □ Curriculum 2005

Naidoo (2012:7) refers to Curriculum 2005 not only as 'a titanic paradigm shift' away from the traditional curriculum but as also '[bringing] in a wave of local curriculum construction, group work

[...], recognition of prior learning [...] local choice of content and learner-centeredness'. At the same time, Curriculum 2005 emphasised learners' competency by also supporting the acquiring of everyday knowledge above and beyond school knowledge (Hoadley 2011:148). Curriculum 2005 moved beyond the so-called 'traditional disciplines of knowledge' by allowing teachers to outline their own content while meeting the necessary learning outcomes with the learners. The new curriculum reiterated concepts such as learner-centredness, understanding, active learning and group work in contrast to previous concepts such as teacher-centredness, rote learning and passive learners (DoE 1997b). Knowledge and teaching moved from being grounded in a content-based approach to being grounded in an outcomes-based approach (DoE 1997c:5).

In response to early concerns about the 1997 implementation of Curriculum 2005 in classrooms across the country, a project labelled the President's Educational Initiative set out to report on the list of concerns in 1998. At the end of the initiative, Taylor and Vinjevold (1999) reported on the 35 individual studies that made up the project, with the intention of providing direction to the implementation of Educator Development and Support. According to Taylor and Vinjevold (1999), the initiative focussed on probing concerns about, among others, curriculum, teacher practice and teacher-learner resources in an analytical (investigating which models would possibly represent specific values best) and evaluative manner (investigating which models function best under given circumstances). The general intention was to support policy implementers and policy-makers towards implementing more successfully the objectives of the democratic education system after 1994.

Affirming convergence about several reported matters, Taylor and Vinjevold (1999:237) claimed their finding of participating teachers' weak understanding of the subjects they taught placed a vital limitation on the quality of teaching-learning activities as the 'most definite point of convergence'. The authors also

concluded that participating teachers were incompetent not only in interpreting Curriculum 2005 but also in ensuring that the prescribed everyday approach led to learners forming rigorous conceptual frameworks (Taylor & Vinjevold 1999:230). Another noteworthy finding was that not much learning was taking place in classrooms, even though participating teachers were implementing modes of co-operative learning and learner-centred practices.

We want to point out that Curriculum 2005 brought about novel debates concerning the possibilities of content-driven content being supported by the skills and know-how that everyday knowledge could afford learners. Several researchers (Chisholm 2003; Davids 2018; Harley et al. 2000; Hoadley 2011; Jansen 1998; Taylor & Vinjevold 1998) have identified Curriculum 2005 as the reason for bringing aspects such as teaching, assessment, teachers' subject knowledge, learner involvement, curriculum content, classroom practices and assessment under the magnifying glass. In Naidoo's opinion (2012:8), while Curriculum 2005 propelled change, particularly in assessment and pedagogics, several weaknesses in its design necessitated a review process in 2000.

## □ Language in Education Policy

On the contentious level of language, Home Language was protected in Curriculum 2005 as one of the eight learning areas that had pre-determined outcomes. Although the content was unclear and unstipulated, a rigid policy was in place. While OBE brought about holistic transformational change to education, the current experience of change for English Home Language teachers began as far back as 1996. In this regard, in terms of Section 3(4) (m) of the *National Education Policy Act 27 of 1996*, the Language in Education Policy recognised the strains, sensitivities and ambiguities that characterised the inherited apartheid education system's language policy, which was known for its linguistic and racial discrimination that affected learners' success. This new

Language in Education Policy that was focussed on supporting a non-racial South Africa formed part of the transformational aim of OBE and was therefore included in Curriculum 2005.

Chisholm, as the chairperson, and a Ministerial Review Committee were appointed to draw up recommendations aimed at strengthening Curriculum 2005 and its outcomes in 2000. The committee recommended ‘a major revision of the curriculum in order to make it more understandable in the classroom’ (Chisholm 2003:1) by specifically revising the three most significant shortcomings, namely, assessment, teaching and curricular content. The extensive revision, firstly, shaped the RNCs for Grades R-9 and, secondly, the NCSs for Grades 10-12 as well in 2003.

## □ National Curriculum Statement

According to Hoadley (2011:151-152), finding a middle ground in the sense of a compromise curriculum was the only option when one reflected on the contradictions and compromises that were indicated in the Ministerial Review Committee’s report on Curriculum 2005 (Chisholm 2003:2; DoBE 2008-2009). Such a compromise curriculum would, in essence, not only be bolstered by conceptual unease but could also be interpreted in numerous ways (Hoadley 2011:144-145). The NCS was introduced at schools in 2002, and in 2008 learners for the first time wrote the Grade 12 certificate examination based on the new curriculum and the revision process came on track again in 2009. Although the next curriculum review process started in 2009, it yet again mainly reviewed its *implementation* rather than the curriculum itself (Hoadley 2011). Two significant factors that necessitated this review were:

1. continued weak performances of the learners in international and national standardised tests
2. constant reporting in the media on the public disapproval of OBE education.

In the opinion of the DoE (2003), curriculum and schooling together form a vital part in appreciating the full circle of supporting learners to develop not only according to their potential but also as worthy citizens of South Africa as a developing democracy. In line with the Constitution of the Republic of South Africa which, among others, finds its basis in transformation and development ideals, some noteworthy principles delineated in the NCS for Grades 10–12 include human rights, social transformation, inclusivity, social and environmental justice, and appreciating indigenous systems of knowledge (DoE 2003:1). However, close scrutiny indicates that the NCS policies have failed in their attempt to focus on the possible implications of a brand-new wave of curriculum policy, specifically on experienced teachers fixed in their ways of teaching.

The probing of OBE was no longer based just within the field of education; it also had ramifications within the political circles (Hoadley 2011:152), as there were various voices filled with outrage at the government's apparent failure in the education arena. The incoming Minister of Education made her two-way intent clear: to review what could be done to augment the curriculum itself and to address specific inefficiencies in and condemnations of the schooling system (Motshekga 2009). During a parliamentary session, the minister who avowed that she had 'signed [OBE's] death certificate' indicated her intent to guide the DoBE towards developing 'a curriculum that is teachable' and also referred to the following aspects (Motshekga 2009):

[T]he introduction of both Curriculum 2005 and the National Curriculum Statement were highly contested. These involved professional, business and religious constituencies. We should be steadfast and not let them determine what is good for education now. In order for there to be learning outcomes and educational experiences of the majority to improve, we need to focus attention on dedicated, inspired teaching based on a curriculum that is teachable [...] To make sure that as we debate we have a common focus, we will focus on the curriculum as a starting point because the curriculum is the core or the main business of education. (n.p.)

It became clear from the recommendations of the 2009 Ministerial Review Committee's Report (Taylor & Vinjevold 2011) and the official *Report of the Task Team for the Review of the Implementation of the National Curriculum Statement* (DoE 2009) that the minister was faced with the task of urgently addressing vital shortcomings in the curriculum, based on four main concerns (Du Plessis & Marais 2015):

1. overburdening teachers with paperwork
2. interpreting prerequisites of the curriculum in different ways
3. implementing the NCS
4. with regard to underperforming learners, a more comprehensive review of the NCS took place during the course of 2011. (p. 115)

The 2011 comprehensive review of the NCS effected specific adjustments or amendments for the policy that is currently officially known as the NCS (CAPS).

## □ NCS (CAPS)

According to the official policy (DoBE 2011b), CAPS only *amends* the NCS policy and should thus not be seen as a new curriculum, as it is still adhering to the prerequisites of the same procedure and process as the original NCS policy. In the words of Du Plessis and Marais (2015:114), NCS (CAPS) is not an adjustment of *how* to teach (teaching techniques or methods), rather it is an adjustment of *what* to teach (curriculum) at South African schools.

Not many people know and understand that the NCS (CAPS) policy advocates the following constitutional principles (DoBE 2011a):

- Human rights, inclusivity, environmental and social justice: instilling practices of environmental and social justice as well as of human rights into teaching.
- Appreciating indigenous systems of knowledge: recognising our rich heritage and history as contributing significantly towards cultivating the constitutional values.

- Social transformation: confirming the redress of education disparities of the past and providing equal education opportunities for all sectors of the population.

Dauids (2018:9) expresses her concern as to whether South African teachers are sufficiently prepared to teach democratic citizenship not only in terms of their capability but also in terms of their inclination. As mentioned before, the current curriculum does not make allowance for any notions that concern teacher identities or even how such identities could have an influence on the teaching of democratic citizenship (Dauids 2018). Although the teacher identity arena remains essentially unmapped, the NCS (CAPS) policy expects of teachers to encourage and foster the principles.

While the Foundation Phase (Grades R-3) and Grade 10 (Further Education and Training [FET]) were implemented in January 2012, the Intermediate Phase (Grades 4-6) and Grade 11 (FET) were implemented in January 2013 and the Senior Phase (Grades 7-9) and Grade 12 (FET) were implemented in January 2014. Although officially CAPS only *amended* the original NCS, Du Plessis and Marais (2015:115, 117-118) argue that a few major changes need to be noted from NCS to NCS (CAPS) in the Foundation Phase, as this phase is generally regarded as the grounding that needs to be solid for successful learning up to Grade 12:

- Teaching time increases in the NCS (CAPS) Foundation Phase.
- The term *Language* replaces the previous term *Literacy*, and the term *Mathematics* replaces the previous term *Numeracy*.
- *First Additional Language* has been added to the Foundation Phase.
- Grades R-3 use a 7-point assessment scale.
- NCS (CAPS) gives a week-by-week teaching plan (DoBE 2011b).

In this regard, it is obvious to us that, although teachers have more time for actual teaching, the rigidity of the 7-point assessment scale also for Grade R, the added language category

and the week-by-week planning increase, among other things, the possibility of policy fatigue and work overload even for dedicated teachers who are passionate about their learners. As if in support of our arguments, in their report on exploratory research conducted with Foundation Phase teachers, Du Plessis and Marais (2015:125) conclude that, although NCS (CAPS) directs teachers in what they must schedule and teach against what they must assess, imaginative teachers could find CAPS slightly limiting in that they have an insignificant say in '*what* they teach and *when*' and that providing and implementing textbooks continue to be challenging.

Reflecting critically on the NCS (CAPS) policy of 2011, Chetty (2015:1) points out the irony and the worry embedded in what she refers to as 'the liberation rhetoric', which advocates social transformation principles but fails to live up to them. The DoBE promises to redress the schooling disparities of the past, to provide equal education opportunities for all sectors of our population and to encourage critical and active approaches to learning instead of the memorisation and gullible learning of given truths (DoBE 2011b:4). Nevertheless, in spite of the NCS (CAPS) policy backing liberal prerogatives in writing, there are hints of national schooling being drawn back to 'a pre-1994 programme of memorisation' by, as Chetty (2015:1, 7) calls it, 'retrograde impulses'. Her specific concern is that the structural implementation shortcomings of the initial curricular changes to OBE have ironically opened the pathway towards retrograde, outdated teaching that seems to favour the textbook and teacher as the only authorities in the classroom.

Having pointed out the danger of reverting to pre-1994 teaching that replicates, Chetty (2015:7) concludes on a positive note that alternate curriculum stratagems could refute the pedagogy of oppression and safeguard the intervention of diagnostic didactic studies.

## ■ A snapshot of policy implementers' dilemma

'South Africa does not differ from other countries, as all over the world school systems need' to be revised, redesigned and restructured continuously' (Du Plessis & Marais 2015:125). In the opinion of Ball (2003:216), reform in schooling is moving across the world much like an unbalanced, top-heavy, unstoppable tidal wave of ideas that aim at reorienting and invading education systems in their diverse social and political settings.

For South Africa, the Organisation for Economic Co-operation and Development (OECD 2008) identified several constraints that have not only influenced the appraising but also the implementing of policies in our education system in the past 25 years:

- the extent of current backlogs
- the slow economic growth rate from 1995 to 2000
- rivalry for government funding from other social sectors
- ineffectiveness in education administration and delivery and inadequate capacity at district and provincial levels
- complications with controlling expenditure on staff and in redirecting funds to other expenses
- the aspiration to even out per capita learner expenses regardless of large discrepancies between schools and provinces. (p. 24)

On the one hand, the volume of policies makes it difficult for principals to lead policy implementation effectively and for teachers to concentrate on their main task of educating learners to become adults. On the other hand, many policies are not only promulgated as unfunded mandates but are also silent on how the supportive facilities and necessary resources will be acquired and distributed to schools. Both these aspects cause further stress for school principals and teachers who already are bogged down in keeping up with curriculum changes and amendments to policies. Some policies furthermore simply prove to be *not*

*implementable*, as is the case with the introduction of an African language from Grade 1 onwards for all learners.

Policies are also used worldwide to control teachers' work through many audits and reports that have to be completed. Such forms of control are generally known as *compliance* as opposed to *accountability*, the latter being the more suitable term in teaching-learning to pinpoint especially teachers' responsibilities while teaching learners. At the same time, Ball (2003:220–221) warns that the overemphasis of audits and reports is referred to as *performativity*, generally known as being obsessed with aspects such as grades, testing and statistics in education. He rings his warning bell, especially concerning principals and teachers being subjected to countless targets, gauges and comparisons that all aim at recording, collecting and publishing information continuously, causing a prominent level of insecurity. Policy implementers are then overcome by 'a flow of changing demands, expectations and indicators' that make them constantly recorded and continually accountable (Ball 2003:220).

## ■ Political role payers interfering in policy processes and implementation to introduce ideas-based policies

In political and policy studies, we refer to the separation of the powers of the legislative, executive and judicial structures. The separation is deemed to be an essential defining feature of a democracy. In considering the possible interference of political role-players in policy and executive functions, one must bear in mind that many of the current political office bearers have never been in positions of authority and power that have been part of the struggle against the regime they rejected. They, therefore, sometimes lack sensitivity about the distinction between political and executive power and the problems such a lack of sensitivity can cause for policy implementers.

Ideally, all policy and strategies in education should be based on research and facts. However, the interference of political role-players may lead to efforts to introduce policies and strategies based on the ideals and even dreams of individual political office bearers, groups of political office bearers or even a whole political party. Specific policies or laws can often be traced back to the political role-player whose ideas they represent and embody. In a chapter such as this, it would amount to speculation to name people whose ideas are represented by specific policies and laws and so we will just give some examples where the person with whom a policy or law originated can be identified in terms of reasonable requirements.

The late Professor Kader Asmal, a former Minister of Education, often said in public that the idea of a policy on religion in education came to him and a colleague while they were strolling down the passages of the Parliament building in Cape Town. The policy was promulgated in 2003 (DoE 2003), which was a time when there was no religious conflict whatsoever at South African schools and where all schools and their governing bodies were quite willing to implement the provisions of Section 7 of the *Schools Act* (Republic of South Africa 1996b) and Section 15 of the Constitution (Republic of South Africa 1996a). These provisions allow religious observances in public schools, subject to certain restrictions, while also allowing religious observances to be held in terms of a specific religion. The policy promulgated by Professor Asmal was not received well in the education community and was seen as an effort to force religious neutrality or a secular approach on schools. Available evidence shows that very few schools ever implemented the policy promulgated by Professor Asmal.

In 2017, the Basic Education Laws Amendment Bill was published (DoBE 2017). It still has to be debated in Parliament and is not yet law; but, should it become law, the appointment procedures of teachers would change radically and Post Level I

teachers, for example, would be appointed by the provincial education department and the governing body of the particular school would then not have the right and duty to make a recommendation to the provincial education department concerning the appointment. There are serious reservations about the capacity of departments to take over the appointments of such large numbers of teachers. The point is, however, that some role-players in education are able to identify the person whose idea the proposed change reflects.

About three years ago, the University of Cape Town was challenged by a student movement, which demanded the removal of the statue of Cecil John Rhodes from the university campus. This campaign was followed by various similar campaigns all over the country and students at most universities participated in a campaign called 'Fees Must Fall', which demanded free HE for students. A campaign to remove Afrikaans from certain campuses and a campaign to decolonise universities took place simultaneously. To the public eye, it seemed that the Students Command of the Economic Freedom Fighters (EFF) political party instigated all these campaigns. It is interesting, however, that the former president of the country and the then leader of the ANC announced that, from 2018, HE would become free to students from households with a joint annual income of less than R300 000.

Ngqakamba (2018) reports that the 'EFF Students Command demands fee-free registration at universities' or else they will 'take to the streets' with their protests and will cause overall anarchy. They aver that registration fees cannot be charged in HE that is free.

Two court cases illustrate very clearly how politics can interfere in the implementation of policy at schools. The cases of *MEC for Education in Gauteng Province and Other v Governing Body of Rivonia Primary School and Others (Rivonia)* SA 582 (CC) and *Governing Body Hoërskool Overvaal v Head of Department of Education (Overvaal)* (86367/2017) (2018)

ZAGPPHC 1 (15 January 2018), both originated at Gauteng schools and ended up as CC judgements.

## ■ Rivonia

In Chapter 4, Serfontein and De Waal refer to the Rivonia case to illustrate the significance of school partner collaboration related to admission policies as, among others, fostering learners' best interests. We included this case to illustrate a court's adjudication that indicated the transgression that results from an organ of the state that abuses its authority to bully another organ of the state.

In the discussion of this case below, we have made use of a case summary published in Juta's *Education Law and Policy Handbook* (2018).

The incident at a school concerned the admission of a learner and happened from 2010 to 2011. The case summary shows that a policy implementer who is implementing a policy at his or her school correctly is not thereby assured that there would be no political interference or attempts to interfere in his or her work. In this case, the interference was from the HOD of the Gauteng DoE, instructed and/or supported by the MEC.

In terms of the school's admissions policy drafted in terms of Section 5(5) of the *South African Schools Act* (Republic of South Africa 1996b), a parent of a learner whose application for admission was rejected, appealed to the Gauteng DoE. The Department instructed the principal to admit the learner (who was not near the top of the waiting list), but the principal refused on the basis of the school's admission policy. The HOD then withdrew the principal's function to admit learners, and some officials of the Department placed the learner at the school. The school took the matter to the South Gauteng High Court after which it appealed to the Supreme Court of Appeal. The Gauteng DoE then appealed to the Constitutional Court.

The findings of the Constitutional Court included the following:

1. Although the School Governing Body (SGB) of a school determines the admissions policy, the policy may be subject to intervention by the provincial authority if the *Schools Act* or provincial legislation allows such intervention.

An HOD or another state official may not simply ignore or violate the school's admission policy. Even if an official has been authorised to intervene in the admission of a learner to school, his or her actions must still be reasonable and procedurally fair. In case of a dispute, in the spirit of the Constitution of 1996, the governing body and the relevant official are obliged to communicate or liaise in good faith. The *Schools Act* (Republic of South Africa 1996b) indicates that the Department has the ultimate control over the implementation of admissions policies, and policies should allow for flexible implementation (which would have made it possible for the principal to admit the particular learner to Rivonia Primary if there was space available).

The Constitutional Court concluded its findings by stating that one organ of the state (such as a DoE) may not use its powers to bully another (such as a school). All participants need to work in partnership to find workable solutions. Even though the governing body may determine the admissions policy, the department still has control over the practical application of policies at school level.

## ■ Overvaal

In Chapter 7, Du Plessis and Küng (already alluded to in the section on the policy process) use the Overvaal case (*Governing Body Hoërskool Overvaal v Head of Department of Education [Overvaal]* [86367/2017] [2018] ZAGPPHC 1)<sup>1</sup> to illustrate how

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1. This court case (*Governing Body Hoërskool Overvaal v Head of Department of Education [Overvaal]* [86367/2017] [2018] ZAGPPHC 1) is the sole reference document for this section, entitled 'Overvaal'. Thus, all page references here are to this court case.

education authorities are at times driven by motives other than learners' best interests. We included this case to illustrate political role-players' attempts at intervening in schools' admission policies and practices more clearly than we could with the above-mentioned *Rivonia* case.

On 05 December 2017, the District Director of Sedibeng-East, under whose jurisdiction the *Hoërskool Overvaal* falls, instructed this single-medium Afrikaans secondary school to place 55 Grade 8 English learners at the school for the 2018 school year. The school refused, arguing that it was full and also that at least two neighbouring English-medium schools had sufficient capacity to accommodate the 55 English learners (p. 2). Principals of both the neighbouring English-medium schools made depositions under oath on 08 January 2011 that they had the capacity to enrol additional learners in 2011 (pp. 9-10).

Overvaal argued that the ratio of 36 learners per class, prevailing at the school then, already exceeded the safety limits that had been prescribed by the school's expert consultants:

There was 'a dramatic development on 11 January when the respondents [...] applied to file new evidence in the form inter alia of shorthand written affidavits by the same two principles [*principals*] dated 9 January to the effect that the affidavit they had made on 8 January were after all incorrect and their schools are in fact full'. (p. 12)

Pages 26 and 27 of the judgement state that:

[7]he department did not make the effort to verify the school's capacity [...] it rejects it and demands that the school enrolls a number of additional learners which would substantially exceed its learner capacity. (pp. 26, 27)

On pages 47 and 48, the court reports that the two principals from the English-medium schools, who had indicated that they had extra capacity, were called to the office of the District Director in connection with the affidavits they had filed on their available extra capacity. One of the principals said that he was threatened with dismissal and loss of pension and, because of that, he

succumbed to the duress under which he was placed and signed a second affidavit saying that he had provided incorrect figures in his first affidavit. The other principal said he had been threatened with dismissal, 'was accused of being a racist, was accused of not looking after the [interests] of [the] school', and it was suggested that he was deliberately daring to help an Afrikaans school - at this point, the principal 'expressly stated that he was in favour getting more English learners, it would be to the benefit of his school'. He, too, succumbed to the pressure and signed the second affidavit saying that his first affidavit was wrong and that he had used figures that had not been verified.

On pages 49 and 50, the judge comments at length on the conduct of the District Director in terms that one does not usually find in a court judgement. We quote the judge's words in full as they clearly demonstrate the political interference that policy implementers may expect to encounter:

It also saddens me to refer to the following unsolicited remarks by the second respondent [*District Director*] who played the leading role in respect of these occurrences in the answering affidavit.

4.6. If one is to look at the heart of the application, it has nothing to do with capacity of the school but the admission of English learners at the school. It is unbelievable and/or unfortunate that even until today in this constitutional democracy we still have a society that sees nothing wrong with a language that was used as a tool of segregation and discrimination during apartheid which 90 percent of South Africans bemoan; a language whose legacy is sorrow and tears to the majority of whom it was not their mother tongue. Today in this constitutional democracy we still fight the same separatist language exacerbated by denial of transformation by certain sectors of society. This is not acceptable. (pp. 49, 50)

He expresses the same sentiments on more than one occasion in the answering affidavit:

It is regrettably difficult to see how one can realistically expect any measure of objectivity or fair play towards the embattled minority group and their language by a senior official intimately involved in these proceedings who is prepared to disclose her obvious bias in the answering affidavit. (pp. 49, 50)

The judge ends with these words:

In my view there are clear signs of an attempt by the second respondent [*District Director*] to defeat the ends of justice for the reasons mentioned and I respectfully suggest that some senior peers of hers may consider investigating her conduct. (pp. 49, 50)

The judge set aside the instruction to the school on 05 December 2017. In his conclusion, he commented that the District Director and perhaps also the HOD and the MEC:

[A]cted in conflict with the constitutional principle of legality and for that reason irrespective of whether there was capacity or not the 5 December decision was unlawful and forced to be set aside on review and ancillary relief to be mentioned in the order should also be granted. (pp. 51–53)

This part of the chapter illustrates quite clearly that policy implementers can expect political interference in their policy implementation in the form of direct intervention by a political role-player (e.g. an MEC) or an intervention by a state official (e.g. an HOD or a District Director) at the behest of political role-players. Sometimes, they can even be put under pressure by members of a political party who resort to protests. The last part shows quite clearly the high demands with which policy implementers will have to contend and also the pressure they will be put under, not only to retain their integrity and professionalism but also to use their professional discretion appropriately even if it brings them into conflict with other role-players.

## ■ Conclusion

The question we addressed is *why policies almost always fail* in improving the quality of teaching and learning and education, with the focus on the challenges rooted in policy implementers' position within the current triad of politics, policy-making and implementation. A clear distinction between *policy-making* and *implementation* was offered. In addressing the question

of *which challenges* implementers are currently facing, we considered, among others, a seemingly flawed policy-making process:

- inadequate consultation of all interested parties in the formulation process
- inadequate alignment with existing laws and policies
- a flawed communication process
- inadequate capacitating of policy implementers
- a lack of commitment to review these policies effectively.

To an extent, this chapter holds the promise of adding a fresh focus on the precarious and unenviable position of policy implementers, addressing the multiplicity dilemma at implementation level, and, by necessary implication, also drawing human rights into the curriculum and policy implementation debate. It has become clear that the professional and other qualifications that policy implementers may have can never be as important as the personal and professional integrity of the policy implementers themselves.

Drawing the net of blame closer, so to speak, concerning the threat of policy fatigue and unsuccessful implementation of policies, this chapter concludes that it would be unfair to take the easy route out by blaming school principals as policy implementers for the failures of putting into practice so many revisions and amendments to curricula and policies. The gravity of the dilemmas and challenges that policy implementers face in fulfilling their commitment to education at their schools must serve as significant indicators of the most significant glitch in attaining effective policy implementation at the national level. A meaningful baseline appraisal of such dilemmas and challenges and workable resolutions would encourage the required personal and professional integrity of policy implementers.



# The intersection between Human Rights Education and Global Citizenship Education

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## ■ Abstract

Two forceful trends sweeping through today's world are that of the Creed of Human Rights and that of globalisation. One pivotal facet of the Creed of Human Rights is Human Rights Education, while one corollary of globalisation is Global Citizenship Education. This chapter aims to tease out the intersection between Human Rights Education and Global Citizenship

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Education – the thesis of the chapter is that this intersection forms an essential foundation for both. The current world taking shape in the early 21st century is characterised by momentous changes, with their concomitant opportunities, challenges and threats. At least a sizeable percentage of these challenges (such as the ecological crisis, technological development or economic internationalism, to name a few) calls for a response built on a global mindset; the national parameter just seems to be increasingly obsolete and inadequate. The obvious way to cultivate such a global mindset, in the upcoming generation in particular, is through Global Citizenship Education. The Global Citizenship Education offered should be along the lines of Critical Global Citizenship Education. However, a critical interrogation of matters globally needs a datum framework. The obvious beacon of reference is the Creed of Human Rights. To be educated in Global Citizenship Education and the Creed of Human Rights, such education should take into account the fact that identity is a complex phenomenon and, in order to be meaningful for students, both cannot hover in the abstruse realm of the globe without touching base with their experience and situation at the grass-roots level. Such critical acquisition of Global Citizenship Education and Human Rights Education, aligned to the reality of identity being a complex, encompassing local and myriad group of identities, nestled in a global identity, can equip students for the exigencies as well as unprecedented opportunities of life in the 21st century.

## ■ Introduction

Two forceful trends sweeping through the world of today are that of the Creed of Human Rights and that of globalisation. One pivotal facet of the Creed of Human Rights is Human Rights Education, while one corollary of globalisation is Global Citizenship Education. The objective of this chapter is to tease out the intersection between Human Rights Education and Global Citizenship Education – the thesis of the paper is that this

intersection forms an essential foundation for both Human Rights Education and Global Citizenship Education. The chapter commences with a reconstruction of the rise of the Creed of Human Rights in modern history, followed by narrowing the focus to education as a human right. The concept of Human Rights Education is then explored. Subsequently, the focus shifts to Global Citizenship Education, with its concept being clarified and interrogated and its rise in the global education project being reconstructed. In conclusion, the intersection between Human Rights Education and Global Citizenship Education is explored.

## ■ The rise of the Creed of Human Rights

At the risk of being criticised as being biased, Euro-centric or Western-centric, or of fostering Global North hegemony, this discussion will commence in Western Europe, as the Creed of Human Rights, in the form it has been formalised in global society today, can be traced back to that geographical region. During the Middle Ages, European society was theocentric – God was regarded as the centre and final destination of everything (Pistorius 1966:90). In the post-Middle Ages, Humanism as life and world philosophy came to the fore (Suid-Afrikaanse Regskommissie 1989:24). This philosophy places humans at the centre and subscribes to the notion of equality of all human beings and a ban on discrimination on the basis of race, gender, religious conviction, age or descent (Suid-Afrikaanse Regskommissie 1989:28).

The above turn in Western life and world philosophy was reinforced by scientific-technical development increasingly experienced by the Western world after the Middle Ages (Wolhuter 1993:47). Scientific-technical progress has had a radical effect on Western society (Idenburg 1975:34). Traditional power structures were undermined. Hierarchical structures, where some people were placed higher than others,

were no longer accepted (Idenburg 1975:36). Furthermore, humankind live in a world created by themselves, where no secrets or unexplained phenomena abound anymore (Idenburg 1975:35). These developments gave momentum to a reorientation of the modern human being's life and world philosophy where the accent was changed from vertical to horizontal causality (Idenburg 1975:40). According to Idenburg, where, in the former, empirical phenomena were ascribed to God, gods, benevolent or malevolent supernatural forces (such as guardian angels or demons), in the case of the latter, they are explained from empirical causes.

A strong advocate of the humanistic school of thought was Jean Jacques Rousseau (1712-1778). In his *Le Contrat Social* (The Social Contract), he put forward the idea of the 'natural' state, where all human beings are born equal. According to Rousseau, innate personal qualities do exist, but they do not imperil social justice, as long as society rewards people according to merit and not according to descent or wealth (Husén 1979:73).

In contrast to the medieval idea, as formulated by St. Augustine (354-430), that the authority of government finds its origin in God and not in the will of the people, John Locke (1632-1704) tabled the idea that the only justification for the existence of authority (i.e. government or the state) is that it protects and guarantees the basic rights of the individual – the basic rights that human beings are entitled to according to natural law (Suid-Afrikaanse Regskommissie 1989:10).

Other important philosophers of the 18th century who advocated the idea of human rights deriving from natural law include Christian Wolff (1679-1754), Immanuel Kant (1732-1804) and Johann Gottlieb Fichte (1762-1814). Herbert Spencer (1820-1903), likewise, held the view that the quality of life in society depended on the respect for human rights.

By the end of the 18th century, the belief in human rights, based on natural law, found expression in a number of constitutions and declarations of human rights, such as the Bill of Rights in the

United States of America (USA), the French Declaration of Human Rights (1789) and the French Constitutions of 1791, 1793 and 1795 (Suid-Afrikaanse Regskommissie 1989:11-12). According to these documents, human rights do not originate from the will of the state or from a democratic majority, but from a higher authority – natural law and the natural rights of human beings (Suid-Afrikaanse Regskommissie 1989). Human rights are regarded not as the product of a particular political system, but as existing independently from the will of the state, and as being inalienable.

The above-mentioned declarations incorporated not only protection against the tyranny of kings but also against the intolerance of democratic majorities. The idea of an unlimited, unchecked sovereignty of the people is rejected (Suid-Afrikaanse Regskommissie 1989:12).

The much-acclaimed preamble to the Constitution of the USA, written by Thomas Jefferson – who was strongly influenced by Rousseau – states that all people are created equal and accorded the same rights; this does not mean that they all have the same capabilities or qualities (Husén 1979:74). When Jefferson used the term ‘natural autocracy’, he meant the same as Rousseau, namely, that no artificial barriers should be placed in the way of individuals that prevent them from achieving a status commensurate with their talents.

The father of the Common School in America, Horace Mann, belonged to the same tradition as Jefferson. He saw the school as an instrument to achieve social justice, according to Husén. Each individual should be granted an equal opportunity to education – that is, an equal opportunity to progress and to achieve on the condition that he or she has the talent and energy required, irrespective of the person’s gender, race or social background (Husén 1979:79).

The events of the 20th century, in particular the two world wars, underscored in the eyes of the global community the danger of contempt for human rights even more. Since the Second World War, the entire question of human rights has been

internationalised, *inter alia*, by the international jurists who entered the debate in 1952 (Wolhouter 1993:37), and by the Universal Declaration of Human Rights, accepted by the United Nations in 1948 (United Nations 2016). Human rights became the signature feature of a free society, associated with the freedom of the individual (Suid-Afrikaanse Regskommissie 1989:18-21). The many other manifestos of human rights adopted by the United Nations include the International Convention with respect to the United Nations (1965) and the Convention against Discrimination (employment and work) of Women.

Besides the international level, attempts were also made to entrench respect for human rights at the regional and national levels, such as the Council of Europe's European Convention for the Protection of Human Rights and the Inter-American Convention of Human Rights, between the two Americas. In Africa, too, interest in human rights took hold, as is visible in the Organisation of African Unity's (predecessor of the African Union) Manifesto of Human Rights, proclaimed in 1984, and binding to all member states. Not only did human rights declarations appear at the regional level, it also became part of the civil law and constitutions of many individual countries.

## ■ Education as a human right

While, as has been noted above (in the case of Horace Mann, for example), education had figured in the broad discourse on human rights for centuries, after the Second World War, education increasingly became expressly part of the set of accepted human rights. Even the United Nations Universal Declaration on Human Rights, a fundamental document on human rights, dating from 1948, states the following about education (United Nations 2016):

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 human development of the human personality.
  3. Parents have a prior right to choose the kind of education that shall be given to their children. (p. 63)

On 14 December 1960, the United Nations Educational, Scientific and Cultural Organization (UNESCO) accepted its Convention against Discrimination in Education after having been accepted by the General Assembly of UNESCO. This Convention proclaimed the principle that discrimination in education based on race, colour, gender, language, religion, political or other beliefs, or social or economic position or descent constitutes a violation of human rights. The Convention also contains detailed prescriptions regarding the provision of education (Suid-Afrikaanse Regskommissie 1989:64).

By 1989, research by the South African Law Commission revealed, even at that stage, a long list of countries where the right to education was acknowledged, either by means of a Bill of Human Rights or by means of a Constitution: in Africa – Algeria, Burundi, Cape Verde, Egypt, Mali, Morocco, Mozambique, Somalia, Sudan and Zaire (presently Democratic Republic of Congo); in Asia – Afghanistan, Burma, India, Marshall Islands, Pakistan, People’s Republic of China, Republic of Korea, Taiwan, Vietnam and the Union of the Socialist Soviet Republics (since then, disbanded as a unitary state); in Europe – Albania, Belgium, Denmark, the German Democratic Republic (since then, amalgamated with Germany), Greece, Hungary, Italy, Poland, Portugal, Romania, Spain and Czechoslovakia (no longer a unitary state); in Latin America – Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Guyana, Haiti, Panama, Paraguay, Suriname and Venezuela; and in the Middle East and Near East – Yemen, Iran, Jordan, Syria and Turkey (Suid-Afrikaanse Regskommissie 1989:113-127).

It should be mentioned that the whole notion of human rights is not without its share of problems. These include the following:

- How or where or from whom can an individual lay claim to his or her human rights? This is all the more problematic when the state does not have the resources or capacity to deliver on human rights, constitutionally or legally guaranteed, and this is totally unrealistic in the case of dysfunctional or failed states. In this regard, it should be mentioned that Karel Vasak (1977) introduced the often-used distinction between three categories of human rights. First Generation Human Rights comprise essential liberties, such as the right to vote, freedom of speech, freedom of religion and the right to be treated equal to all other people in terms of the law. Second Generation Human Rights are economic and social rights, such as the right to housing, health services and social security. The granting of such rights depends on the resources the state has at its disposal. Third Generation Rights are group rights, such as the right to self-determination. This is a vague categorisation of rights.
- In the international legal, scholarly and political discourse, there is no unanimity as to whether group rights do exist (i.e. is it only individuals who can claim human rights, or can cultural, religious, linguistic or other groups also do the same?). Furthermore, what if group rights are in conflict with what are commonly regarded as universal human rights? Respected leaders, such as Lee Kuan Yew and Mahathir bin Mohamad, former Prime Ministers of Singapore and Malaysia, respectively, have claimed that Asian values are not the same as Western values, and have affirmed that Western values, proclaimed as universal human rights, cannot be foisted on Asians (cf. BBC World Service n.d.; Halper 2010:133).
- In human rights documents, such as the United Nations Universal Declaration of Human Rights, the right to education is described rather vaguely. How much education is a person entitled to? What kind of education? Nothing is said about the quality of education. The prior right of the parent is acknowledged, but how much right do parents have, especially

if their wishes come to stand in opposition to that of the state? In an age when the rights of children are increasingly acknowledged, how much right does the child have to have a say about the kind of education he or she is to receive?

Problematic aspects of the Creed of Human Rights have been elaborately described by David Kennedy in his article 'The International Human Rights Movement: Part of the problem' (Kennedy 2001:18), updated in his book *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Kennedy 2004). Kennedy discusses the question as to whether human rights are really natural, that is, do they pre-exist efforts to articulate them? He also raises the problem of the Creed of Human Rights serving as a factor to silence emancipatory narratives and to negate the role of non-state actors. Furthermore, according to Kennedy, this Creed creates an abstract understanding of the human experience and suppresses activism and alternative ways of expression.

Despite these deficiencies, this chapter departs from the premise that the Creed of Human Rights is the best available option to provide a legal-political framework for humankind. This can be substantiated by, for example, just looking at how people on a global level vote with their feet. Countries upholding human rights invariably have a problem with illegal immigrants and refugees pouring in; the opposite holds true for countries disregarding human rights. Carlos Torres (2015) tabled the 'three global commons', yearnings shared by all people on Earth, regardless of culture, religion or socio-economic status (Wolhuter 2018b):

- we all have only one planet
- we all desire peace
- we all have a right to pursue life, prosperity and happiness. (p. 78)

In order to ensure peaceful co-existence on a planet characterised by increasingly multicultural or diverse societies, the philosophy of interculturalism and intercultural education has been developed.

Markou (1997 in Wolhuter 2018b) explains the four principles of intercultural education as follows:

- [e]ducation with empathy, which means showing deep understanding for others and trying to understand their position
- [e]ducation with solidarity, which means that an appeal is directed to the cultivation of a collective conscience and to the promotion of social justice
- [e]ducation with intercultural respect
- [e]ducation with ethicist thinking, which assumes the presence of dialogue. (p. 77)

The Creed of Human Rights seems to be the obvious way to provide a framework for a collective conscience, for ethicist thinking and for the waging of dialogue in this regard.

The author also favours Capability Theory as a way to promote the Global Common of 'We all have a right to pursue life, prosperity and happiness' (Wolhuter 2018b:78). Capability Theory has as its main advocates, economist Amartya Sen (2010) and legal scholar Martha Nussbaum (2000). The philosophy of Capability Theory emphasises individual emancipation in the form of personal choice and freedom (Steyn, Van der Walt & Wolhuter 2016:143). The term 'capability' as used by protagonists of Capability Theory does not have the narrow meaning of technical skills, such as driving an automobile or managing a business, but is defined as 'the functions, freedoms and opportunities people have to pursue goals they value and to bring about change which is meaningful to them' (Steyn et al. 2016:143). It is the contention of the author that the Creed of Human Rights offers the best hope of setting in place a sociopolitical dispensation enabling all people to realise capability.

## ■ Human Rights Education

In the meantime, Human Rights Education has grown into an area of public discourse and a field of scholarship in its own right. This interest in Human Rights Education has been driven by an

organisation no lower than the United Nations, which has accorded much importance to Human Rights Education. The United Nations declared the 10-year period from 1995 to 2004 as the United Nations Decade for Human Rights Education, and at the end of the decade, in December 2004, the General Assembly of the United Nations ‘launched the World Programme for Human Rights Education “as a global initiative, structured in [sequential stage], to [promote] the implementation of human rights education [everywhere]”’ (Froese-Germain & Riel 2013:1).

The first stage of the programme (2005–2009) concentrated ‘on integrating human rights education into elementary and secondary school systems’ (Froese-Germain & Riel 2013:1). ‘The second [stage] (2010–2014) [focussed] on [imbuing] human rights education in higher education systems [and in the] training [of] civil servants, law enforcement officials and military personnel’ (p. 1). UNESCO also published a *Plan of Action: World Programme for Human Rights Education* in 2006 (UNESCO/Office of the United Nations High Commissioner for Human Rights 2006).

A good conceptual clarification of the concept of Human Rights Education can be found in the United Nation’s Declaration on Human Rights Education and Training, dated 20 December 2011. Article 2 of this declaration describes Human Rights Education as comprising education *about* human rights, education *for* human rights and education *through* human rights (United Nations 2011):

1. Education about human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection.
2. Education through human rights, which includes learning and teaching in a way that respects the rights of both educators and learners.
3. Education for human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others.

It should be stated that the concept of Human Rights Education – at the least in the form it has played out itself in the world of today – too received its share of criticism. Apart from the criticism levelled against the Creed of Human Rights outlined above, Coysh (2014) summarised problematic aspects of Human Rights Education; Human Rights Education hands down to students a Creed formalised in forums such as the United Nations, with little space for reflection or precisising the Creed to local context or to personal situation. Local experience is negated. Thus, Human Rights Education presents a narrow conceptualisation of human rights, and the transformative potential of Human Rights Education is not realised.

## ■ **Global Citizenship Education**

### ■ **Rise of Global Citizenship Education**

This discussion on the rise of Global Citizenship Education consists of two parts. Firstly, the development of societal trends, constituting the societal antecedents of Global Citizenship Education, is outlined before discussing the rise of the movement of Global Citizenship Education per se.

### ■ **The societal antecedents of Global Citizenship Education**

A basic theorem in the scholarly field of Comparative and International Education is that education systems and institutions have no haphazard or incidental structure, but that education systems are shaped by or are the outcome of societal forces (cf. Wolhuter 2015). A number of forceful trends defining the world of the 21st century point to the *national* as becoming an increasingly obsolete framework to discuss and develop education policy, discourse and practice. While the term

‘globalisation’ is a handy term to collate all these trends under one descriptor, it will be illuminative to use as analytic framework the set of societal forces commonly used in Comparative and International Education to analyse societal forces shaping education systems, namely, geographical, demographic, state of science and technological development, and economic, social, political and religious-philosophical forces (Bray & Thomas 1995; Manzon 2014; Sobe & Kowalczyk 2014; Steyn & Wolhuter 2008).

### ■ **Geographical factor: The ecological crisis**

As far back as 1962, Rachel Carson’s best-seller *The Silent Spring* (which focussed on the devastating effects of insecticides) probably first sensitised public opinion about the devastating effects of human activities on the environment. Since then, analysts have regularly and with increasing concern drawn attention to an impending ecological disaster imperilling not only the survival of the human species, but even of the planet. The title of Thomas Friedman’s book *Hot Flat and Crowded* (2008) encapsulated his thesis on the three most formidable challenges facing humanity at present, namely, an ecological crisis (particularly global warming, an information and communications technological revolution and a population explosion) (see Wolhuter 2016:30), while Harari (2018:115–120) identifies the ecological challenge as one of the global problems which requires a global response, rendering national or regional political and policy frameworks obsolete. Global Footprint Record calculates that the human species currently uses 1.7 times Earth’s resources than what the Earth can replenish (1.0 replenishable level). In 2018, Earth Overshoot Day (i.e. the day in the year when, for the year, the human species used as much as was what could be replenished in one year) was 01 August; in 1970, it was still 01 January of the next year (Global Footprint Record 2018).

The global population growth, increasing industrial activity and consumption of an ever more numerous and affluent global population results in the increasing use of and pressure on environmental resources and increasing amounts of waste products. The main aspects of the ecological crisis are air pollution (one consequence of which is global warming, which, some years ago, was brought to the attention of the public through the documentary film *An inconvenient truth*), depletion and pollution of freshwater resources, pollution of the oceans, deforestation, soil erosion and the destruction of biodiversity (cf. Steyn & Wolhuter 2008:16–18). The example of the river Nile (of depletion of freshwater resources) is telling; the lower reaches of the river Nile used to carry 32 billion litres of water per year, but this is now down to 2 billion litres per year (Lean 2006:16).

## ■ **Demography: A growing, uneven and mobile population**

Since the mid-20th century, the world has been characterised by a population explosion. Since 1950, the global population has tripled, from 2525 149 312 in 1950 to 7 515 284 153 by 2017 (Population Pyramids 2017). While the rate of increase is slowly decreasing – currently, the rate of growth stands at 1.1% per year (United Nations 2017:1) – it increased by 1.6% per year during the period 1990–1998 (World Bank 2000) and by 1.2% per year during the period 2000–2015 (Population Reference Bureau 2016); 89 795 313 people are still added to the total global population each year (Population Reference Bureau 2016). What is important for the theme under discussion in this chapter is the stark differences that exist in the rate of population growth in various parts of the world. Ninety-eight per cent of the growth takes place in developing countries: 88 661 107 in developing countries, compared to only 1 134 242 in developed countries (Population Reference Bureau 2016). On the next level, the differences became even more pronounced: the growth rate

varies from 0.3% per year in Europe and Central Asia, where some countries have already entered the stage of negative population growth - for example, Georgia (-1.2% per year), Hungary (-0.2% per year) and Bulgaria (-0.9% per year) - to sub-Saharan Africa with its swift population growth of 2.7% per year (World Bank 2017).

The communication and transport revolution (explained in more detail later in this chapter) meant that the world's population has become increasingly mobile. In 1800, people in the USA travelled on average 50 m per day; by the beginning of the 21st century, they were travelling 50 km per day (Urry 2007:3-4). It is not only daily or short-term mobility that increased: the same applied to long-term or permanent migrations. The number of international migrants in the world increased from 79 million in 1960 to 175 million in 2000 (Steyn & Wolhuter 2008:16), to 214 million in 2012 (International Organisation for Migration 2012) and to 232 million in 2015 (International Organisation for Migration). In the year 2000, one in every 35 people on Earth was an international migrant (Steyn & Wolhuter 2008:16), in 2002 this rose to one in every 33 people and in 2015 one in every 31.6 people were international migrants (International Organisation for Migration 2015).

In the international migration patterns, two vectors are conspicuous: a south to north and an east to west migration - from the Global South (Africa and Latin America) to the Global North (Western Europe and North America), and from the East (Middle East and rest of Asia) to Eastern Europe, Western Europe and North America. Besides the differential growth patterns between North and South and the differential age pyramids (an ageing population in the Global North and a youthful population profile in the Global South) between East and West, pushing factors, such as political instability, more unemployment, violence and poverty, as well as pulling factors, such as affluence, political stability and freedom, and employment opportunities, are here at play.

## ■ State of science and technological development

### □ The technological revolution

The ever-receding edges of science and the geometric growth in technological innovations will have a significant influence on the future if the experience of the 20th century is anything to draw a conjecture from. In his book, *The Third Wave*, futurologist Alvin Toffler (1980 in Kalathaki 2016) maintains that:

[T]he three [*main signposts*] in human history are the agricultural revolution of 10 000 years ago [*(the first wave)*], the industrial revolution [250] years ago (the second wave) and the [*present emergence*] of high technology-based society (the third wave). Particularly [*noteworthy*] areas of [*the surging scientific*] and [*technological*] progress, are agricultural development and transformation, biotechnology, the [*robotics revolution*] and [*above all, the Information and Communications Technology (ICT) Revolution*]. (p. 76)

Harari (2018:114-122) is of the view that, just as the nuclear threat has forced a global approach to political issues of the past 70 years, the technological development in the foreseeable future will set in place an even stronger imperative for a global approach. In this regard, he mentions the new looming development of artificial intelligence.

### □ The information, communication and transport revolution

In the contemporary world, an instant 24-h planetary information network is thriving because of free access to and widespread use of personal computers, the Internet, fax machines and mobile telephones. Currently, more than 200 billion emails are sent across the world each day (Dijkstra 2017:62).

The information and communication technology revolution has radical implications for knowledge. For the purposes of

this chapter, information refers to data that have been grouped into categories, classes or other patterns. Knowledge refers to information that has been further refined into general patterns and interpreted within a framework, structure or other existing knowledge. The stock of knowledge is multiplying at an ever-increasing rate. Furthermore, knowledge has become democratised as everyone has access to knowledge by means of electronic media and sources.

## ■ Economic trends

### □ Growing affluence

From 1990, one of the most protracted and forceful economic upswings took off. Even the 2008 slump could not slow this trend, when it is looked at over a longer term. In the period from 2005 to 2015, the global annual economic output has more than doubled, from US\$29.6 trillion to US\$78.3 trillion (World Bank 2016) to grow further to US\$80.684 trillion in 2018 (estimated) (World Bank 2018).

### □ Neo-liberal economics

Since the late 1980s, a global economic order has been taking shape. While it commenced in the West (Western Europe and North America), it diffused to the East (Eastern Europe and Asia) and a short time later reached Africa and South America. The share of government in the economy became reduced, and market forces are given freedom of reign.

### □ Globalisation or economic internationalism

The economies of the world are becoming increasingly integrated owing to, among other things, the communication technology revolution, the dwindling power of the nation-state

(to be discussed below) and the role of the World Bank and the International Monetary Fund. Multinational companies are coming increasingly to the fore, and a massive international financial market, which operates 24/7/365, is evolving.

## ■ Social trends

### □ A decline in the dominance of primary and secondary social units and a rise of tertiary social units

The dominance of the primary social unit, that is, the family, is on the decline (the family is much less a production, consumption and recreation unit than it used to be a generation or two ago), as is the secondary social grouping, namely, the workplace (with the rise of work from home, contract work, temporary work, the decreasing occurrence of having a 'work for life' and, especially in the countries of the Global South, the rise of the informal economic sector). Tertiary social groupings - functional interest groups, such as sports clubs and hobby clubs - by contrast, are growing in importance, facilitated by the information technology revolution.

### □ The emergence of multicultural societies and the empowerment of minorities

The waves of immigrants from the Global South entering the developed countries, the modern-day Creed of Human Rights and denudation of the power of centralised nation-states (to be discussed below) have all contributed towards the trend whereby the long-standing idea of the policy of homogenisation - where the state has foisted one centralised, state-sanctioned culture, and has suppressed the cultures of minority groups, as these cultures were deemed to be a threat to the power of the state - has given way for policies of multiculturalism, where positive recognition is given to diversity. The same applies to

minority interest groups, such as women's rights groups, eco-conscious groups and other single-issue lobbies.

## ■ Political trends

### □ The shrinking of the once omnipotent nation-state

The information and communication revolution, as discussed above, the globalisation of economies and downscaling of the activities of the state have all contributed to the loss of the power of the state.

With the (central nation-) state losing power, the locus of power has been shifting from the nation-state in opposite directions: upward towards supranational (of which the European Union is perhaps the best example) and international structures (examples of this include the role of the World Bank and the International Monetary Fund in effecting a neo-liberal economic revolution, and the United Nations, for example), and downward towards subnational and local structures, right down to the level of the individual.

### □ Individualisation

Customer-tailored manufacturing, individual access to a variety of information, the loosening of state controls and the rise of the Creed of Human Rights all promoted individualisation (raising the importance of the individual). How business through the advertising industry contributes towards this feeling of self-importance among individuals was strikingly depicted in the much-spoken-of 2002 BBC documentary 'The Century of the Self', which was watched by millions of people all over the globe. During the past decades, the explosion of CDs, Walkmans, videos, customisation, the Internet, the Selfie and the like have contributed to a growing self-centredness, as each individual is now free to make his or her own choices without consulting others.

## ■ Religious trends

### □ The persistent but changed presence of religion

Despite the often stated claims ‘that the modern age is a post-religious secular age’ (Wolhuter, Karras & Calogiannakis 2015:29), religion remains a strong factor in individuals’ lives as well as in social dynamics. A recent survey in 230 countries found that 84% of the global population still regard themselves as belonging to some religious affiliation (Pew Forum on Religious and Public Landscape 2012). Sometimes, religious convictions can lead to unsavoury events; here, the events of 9/11, as well as happenings at present in Myanmar, could be cited.

Three aspects complicate matters further. Firstly, the existence of multi-religious societies (part of the multicultural make-up of modern societies explained above). Secondly, many of the 16% of the global population who do not regard themselves as part of any formal religious structure (e.g. church domination) are not atheistic or agnostic – for example, 68% of people in the USA who belong to no religious association believe in the existence of a God (Pew Forum on Religious and Public Landscape 2012; cf. Butler-Bass 2012). Thirdly, in an age of individualism, people can no more be classified into cut and dried ‘categories, such as “Christian” or “Sikh Muslim,” but an infinitely more rich and complex tapestry of [individualised] religious convictions’ (known as ‘cafeteria Christianity’ or ‘supermarket religion’) is taking shape (Wolhuter et al. 2015:29; cf. Van der Walt, Potgieter & Wolhuter 2010).

Together, all of these trends indicate that humanity is facing challenges and is negotiating issues for which national frameworks are inadequate. The global ecological crisis; the threats and opportunities of technology; the information, communication and transport technology revolution, making people globally mobile and enabling social group formation to transcend geographical limits; and finally, the demise of the once

omnipotent nation-state, being replaced by international structures on the one hand, and, on the other, making space for more individual autonomy, mean that a global mindset and a global framework are the obvious apparatuses available. It is within this societal context that Global Citizenship Education made its appearance.

## ■ The trajectory of Global Citizenship Education

Schools in all regions of the world have a long history of serving as institutions for the inculcation of national citizenship. Very few scholars have thus far attempted to research or explain the origin of schools as institutions in society. However, anthropologist Cohen (1970) has tabled an interesting theory. According to him, schools have come into being for the first time in what he calls ‘civilisation states’. These states – as examples he cites Egypt, Mesopotamia, ancient Athens, ancient Israel, Rome, ancient China, ancient Japan, ancient India, ancient Ethiopia and the states of the Incas and Aztecs in Mesoamerica – all developed out of the amalgamation of smaller political entities such as clans, families or small local communities. In these civilisation states, a small elite carrying out the administration of the state had to exist. In order to keep the integrity of the state intact, smaller, localised identities had to be suppressed and replaced by a loyalty towards the state.

The term ‘citizenship’ has taken on many meanings throughout history, but as a point of departure for this chapter, the definition considered will be that given by British Sociologist T.H. Marshall in his book *Citizenship and Social Class and Other Essays* (1950), namely, that citizenship refers to a status accorded to those who are full members of a community. That status entails both rights and obligations. Marshall elaborates further that, while these rights and obligations may change from one time to another and from one place to the next, they are usually of a civil, political and

social nature. Civil rights and duties refer to individual freedoms (e.g. freedom of expression and speech), political rights to the right to take part in the exercise of political power, while (Sociology Group 2017):

[T]he social element [*refers*] to [*being*] able to live in a society as a civilized being, [*in accordance with*] the prevailing standards in society with economic welfare and security to the right to share [*fully*] in [*that*] social heritage. (n.p.)

Renowned Multicultural Education scholar John Banks (2008:130) contends that a cultural element should be added to the civic, political and social elements of citizenship. Banks (2008) argues that, in order to realise equality and social justice, the rights of cultural groups should be built into the equation. This is more urgent in the modern world of multicultural societies in which the structures of a homogeneous nation-state could be taken to guarantee that the cultural rights of its citizens have become obsolete (insofar as it ever could in past times). This argument supports the author's endorsement of group rights (an issue raised earlier in this chapter) and also assists in forming an answer (presented in the conclusion) to the criticism that Human Rights Education is not in sync with people's grass-roots experiences and lives (also enumerated above).

The concept of 'culture', being a concept to which many interpretations have been attached, and in some quarters being a very controversial term, needs to be clarified at this stage. As used in this chapter, the following definition synthesised by Wolhuter (2018a) will be attached to the term:

[C]ulture refers to an integrated pattern of human knowledge, belief, social forms, material traits and behavior shared by a group of people that depends upon the capacity for learning and transmitting knowledge to succeeding generations. (p. 13)

Hitherto, in the public discourse in general, in education policy and practice, and in scholarly inquiry, citizenship and Citizenship Education, in particular, have been circumscribed by the parameters of the modern nation-state (Evans & Kiwan 2017:236;

UNESCO 2017:2). However, such an understanding of citizenship and of Citizenship Education is increasingly being critiqued, not the least from the argument that Citizenship Education should be extended to include Global Citizenship Education (Torres 2017:15–17).

While a call for education towards international solidarity and a global mindset by the international community in its organised form can surely be traced back to the establishment of UNESCO in 1945, it was only by 1990 that the international community commenced with an explicit, deliberative initiative. The term appeared in the 2015 INCHEON vision of the international community's vision for education in the world by 2030. In this vision, Global Citizenship Education is named as one aspect of quality education needed to prepare students for the 21st century (UNICEF 2015). In 2012, the United Nations launched its Global Education First Initiative (GEFI). This drive was launched by none other than United Nations Secretary-General Ban Ki-moon himself. Global Education First Initiative spells out a vision for education, to be implemented by its education arm, UNESCO, by 2030. The three pillars of GEFI are putting every child in the world in school, improving the quality of education and Global Citizenship Education (United Nations 2012). Since then, UNESCO has organised three Global Citizenship Education fora in various parts of the world (cf. Torres 2017:8–10) and has published three documents on Global Citizenship Education: *Global Citizenship Education: Preparing learners for the twenty-first century* (UNESCO 2014); *Global Citizenship Education: Topics and learning objectives* (UNESCO 2015b); and *A Review of Education for Sustainable Development and Global Citizenship Education in Teacher Education* (UNESCO 2017). At the University of California, Los Angeles, a UNESCO chair in Global Citizenship Education has been established (incumbent Dr Carlos Torres), while Routledge publishers has commenced a book series on Global Citizenship Education (series editor: Dr Carlos Torres).

## ■ **Global Citizenship Education: Conceptual clarification**

The United Nations Educational, Scientific and Cultural Organization (UNESCO 2015b) defines Global Citizenship Education as:

[A] framing paradigm which encapsulates how education can develop the knowledge, skills, values and attitudes learners need for securing a world which is more just, peaceful, tolerant, inclusive and sustainable. (p. 9)

It should be noted, however, that Global Citizenship Education is not an exact concept, with divergently defined and different meanings attached to it by different scholars (e.g. Abdi, Shultz & Pillay 2015; Andreotti 2006, 2010, 2011; Bourn 2015; Davies 2006; Dower 2003; Hartung 2017; Heater 2002; Jefferess 2008; Oxley & Morris 2013; Pike & Selby 1988; Torres 2017). Tarozzi (2019) places these conceptualisations on a spectrum between two extremes: on the one hand, Global Citizenship Education is understood as an approach to prepare the global elites for a flexible and competitive global labour market, developing human capital for the international knowledge economy; on the other hand, it can be understood as a way to challenge global inequality, providing a pedagogy for global social justice, or to advocate a postcolonial or decolonisation perspective.

## ■ **Global Citizenship Education: Typology**

Besides the range of definitions (and the summary thereof by Tarozzi 2019) presented above, these should be distinguished between passive, active and critical Global Citizenship Education.

Passive Citizenship Education refers to the transmittance of – in the vocabulary of the UNESCO definition cited above – the knowledge, skills, values and attitudes required by learners in order to secure a world which is more just, peaceful, tolerant, inclusive and sustainable (i.e. students receive these learning contents passively).

Banks (2008:136) distinguishes what he terms 'active citizenship'. This refers to citizenship going beyond actualising existing laws and conventions and voting (Banks 2008:136) – that is, to actively take charge of matters pertaining to citizenship in society (author). For example, to return to the definition of Global Citizenship Education, active Global Citizenship Education calls for the educated students to, for example, be agents in creating a more peaceful, just or tolerant world.

Critical global citizenship education is explained by Kumi-Yeboah and Smith (2016) as including a critical reflection and consciousness by students of their situation, going over, if need be, to transformative action.

## ■ Conclusion

### ■ The intersection between Human Rights Education and Global Citizenship Education

The current world taking shape in the early 21st century is a world different from the world at any other time in history, and it is filled with opportunities, challenges and threats. At least a substantial part of these challenges (such as the ecological crisis, technological development or economic internationalism, to name a few) calls for a response built on a global mindset; the national parameter seems to be inadequate to negotiate these. The obvious way to cultivate such a global mindset, in the upcoming generation, in particular, is by means of Global Citizenship Education. Passive Global Citizenship Education, however, would be of no effect, and an unconsidered active Global Citizenship would be dangerous. The kind of Global Citizenship Education offered should be that of a Critical Global Citizenship Education. However, a critical interrogation of matters global needs a normative superstructure. The obvious beacon of reference is the Creed of Human Rights. Harari (2018) is of the view that the Creed of Human Rights

evolved in a past context and seems blunt against the global challenges facing humanity today (nuclear threat, looming ecological disasters, the spectre of technological developments such as artificial intelligence). This author takes the opposite view. With technology, such as artificial intelligence, becoming a real possibility, with the fourth Industrial Revolution emerging and with the blurring of the borders between physical, biological and digital worlds as a signature feature, the Creed of Human Rights presents a bulwark or a guiding light more than ever before to interrogate and to preserve what is considered to be humane. To be educated in Global Citizenship Education cum Creed of Human Rights, such education should take into account that identity is a complex phenomenon, and to be meaningful for students, both cannot hover in the abstruse realm of the global without touching base with their experience and situation at the grass-roots level. Such critical acquisition of Global Citizenship Education and Human Rights Education, aligned to the reality of identity being a complex, encompassing local and myriad of group identities, nestled in a global identity, can equip students for the exigencies as well as unprecedented opportunities of life in the 21st century.

# An education law perspective on teacher professionalism, professionalisation and unionism

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## ■ Abstract

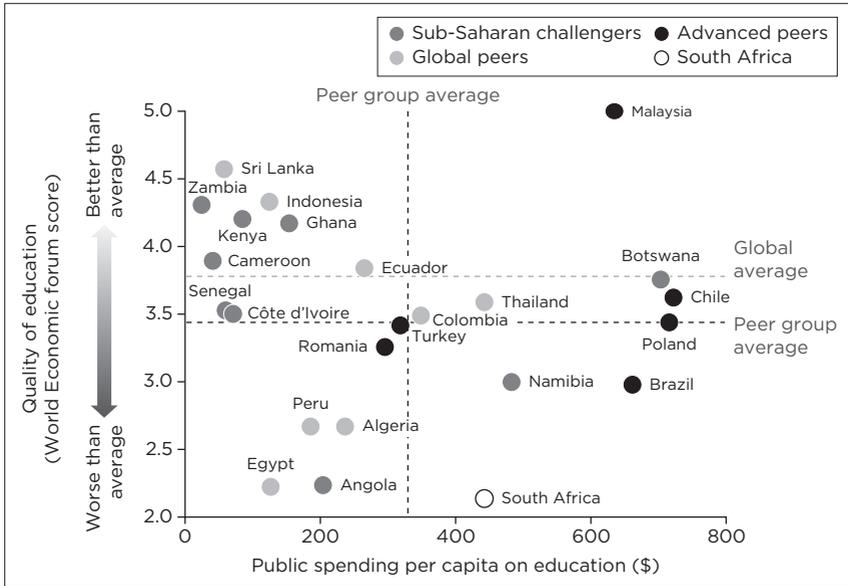
The concept of teacher professionalism appears to be clear and unambiguous. However, an analysis of policy and practice in the teaching profession reveals confusion caused by the co-existence and interaction of at least four concepts, namely, teacher professionalism, professionalisation of teaching, teacher unionism and the law. The authors believe that a lack of understanding of a legal perspective on the interrelatedness of the four concepts is a major cause for the confusion. The following four research questions are addressed using legal and policy documents analysed through content and discourse analysis:

1. What are the implications of the standing or status of teaching as a profession?
2. What does the professionalisation of teaching involve?
3. What is the influence of teacher unionism on education?
4. How does education law regulate teachers' professional status, professionalisation of teaching and teacher unionism?

This chapter recommends that these four concepts should be promoted both collectively and individually and work in harmony to improve the quality of education provided to South African learners. Teachers and the community should distinguish a profession from an occupation or a job. The South African Council for Educators (SACE) should make a significant contribution to the quality and competence of teachers. Teaching in South Africa is being professionalised, for which all stakeholders should work together. Teacher unionism can promote the professionalisation of teaching and increase the quality of education.

## ■ Introduction

The literature suggests that the quality of education and of educators in South Africa leaves much to be desired. On 03 June 2015, *BusinessTech* published an article titled 'This graph shows just how bad South Africa is at education'.



Source: BusinessTech (2015).

**FIGURE 3.1:** South Africa's educational performance.

Figure 3.1 (the graph), which was developed by the Boston Consulting Group (BCG), compares South Africa with its sub-Saharan challengers, global peers and advanced peers, and it shows that 'South Africa spends more money than most of its peers on education - with worse outcomes' (BusinessTech 2015). In terms of the World Economic Forum score on the quality of education, South Africa achieved worst of all (2 as against the peer group average of 3.5 and the global average of 3.0), while it spent more *per capita* on education than 15 of its 22 peers (BusinessTech 2015).

Spaull (2013), one of South Africa's pre-eminent scholars on education system matters, makes worrying comments about South Africa's education:

While there have been some recent improvements in pupil outcomes, as well as some important policy innovations, the picture that emerges

time and again is both dire and consistent: however one chooses to measure learner performance, and at whichever grade one chooses to test, the vast majority of South African pupils are significantly below where they should be in terms of the curriculum, and more generally, have not reached a host of normal numeracy and literacy milestones. As it stands, the South African education system is grossly inefficient, severely underperforming and egregiously unfair. (p. 3)

These two references to the literature will suffice to indicate the poor state of South African education.

An analysis of policy and practice in the teaching profession reveals the confusion caused by the co-existence and interaction between at least four concepts: teaching as a profession, the professionalising of teaching, teacher unionism and the law, all of which could be linked to the poor performance of the system. This chapter aims to provide clarity on these four concepts and to suggest how they should be promoted collectively and individually and work in harmony to better the standard of education in South Africa.

The profession of teaching in South African public schools is regularly tarnished by reports of unprofessional conduct by teachers, which may be aggravated by a misunderstanding or lack of understanding of the four concepts. Based on the stated problem, the authors submit that there is a lack of understanding of the legal perspective on the interrelatedness of the four concepts at play: professionalism, professionalising, teacher unionism and education law. In addition, what should be the focus of education, namely, the education of the child – guiding him or her to adulthood – is often neglected or does not feature at all.

This chapter aims to address the following research questions:

1. What are the implications of the standing of teaching as a profession?
2. What does the professionalising of teaching involve?
3. What is the relationship between teacher unionism and education?

4. How does education law regulate educators' professional status, the professionalising of teaching, educational outcomes and teacher unionism?

The authors sought answers to the above questions mainly from legal and policy documents analysed through content and discourse analysis.

## ■ Teaching as a profession

Although it is common in South Africa to refer to the teaching profession, it is doubtful whether people (teachers and others) who use the expression 'teaching profession' are always aware of what the word 'profession' implies, whether teaching is indeed a profession, what the characteristics of teaching as a profession are and what demands practising a profession makes on them. It is also doubtful as to whether people are able to distinguish a profession from an occupation or a job. The fact that the leaders of the teachers' organisations have chosen to associate teaching with the world of trade unions by joining trade union alliances and subjecting themselves to the legal requirements that apply to unions tends to add to the confusion about the status of people who work as teachers and of the work itself.

Historically seen, a profession is more than merely an occupation or a work or a job. 'Professions have their origins in the world of the guilds that existed in Europe in medieval times up until the Industrial Revolution of the early 19th century' (Gustafsson 1987). The American Society for Quality (ASQ 2018, [*authors' added emphasis*]) captures the essential characteristics of guilds as follows:

[C]raftsmen across medieval Europe were organized into unions called guilds. These guilds were responsible for developing strict rules for product and service quality. Inspection committees enforced the rules by marking flawless goods with a special mark or symbol.

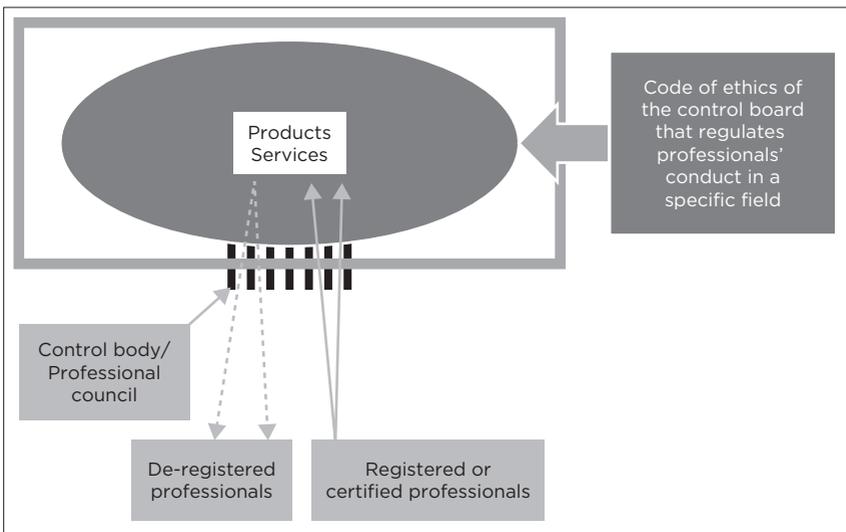
Craftsmen themselves often placed a second mark on the goods they produced. [...] over time the mark came to represent a craftsman's

good reputation. For example, stonemasons' marks *symbolized each guild member's obligation to satisfy his customers and enhance the trade's reputation.*

*Inspection marks and master-craftsmen marks served as proof of quality for customers throughout medieval Europe. (n.p.)*

What has been said above can be represented graphically, as in Figure 3.2.

In Figure 3.2, the big rectangle with the blue borders represents an area of human endeavour where products (e.g. pacemakers) are made and services (e.g. legal advice) are delivered to people who are dependent on others for services and products of the best quality. To deliver the products and the services, intensive and robust academic and professional training is required along with permission from practitioners of the specific profession (through their professional council) to enter the ranks of the profession.



**FIGURE 3.2:** Conceptualisation of a profession versus a non-professional occupation.

The red vertical lines in the gaps in the border of the big rectangle represent a gate that provides access to the specific field or excludes people from the field controlled by a body of representatives (control body or professional council) of the group of people themselves. The professionals themselves deem a person qualified and acceptable to deliver the service or provide the product. On the contrary, they may sanction or decide to expel a person whose conduct is unbecoming of a professional.

The oval shape in the rectangle refers to the fact that all professionals are subject to a strict professional code of ethics when performing their duties. In South Africa, educators are subject to the SACE *Code of professional ethics for educators* (SACE 1998). A contravention of the code may lead to sanctions and even expulsion and barring from the profession.

Modern, recognised professions normally function in accordance with a specific law, which demarcates the products or services offered by the profession and which empowers a council or board elected from the ranks of the profession itself to control the profession by determining who may practise it, how such a person should be trained to be licensed to practise the profession, what services a person may render to clients for profit, how the service should be rendered, what is impermissible in the practice of the profession, what a person should do to retain his or her licence to practise the profession and how action may be taken against a person who acts unethically and unprofessionally towards people who make use of his or her services or products. In South Africa, education is a recognised profession, which is regulated by its own professional council in terms of the *South African Council for Educators Act 31 of 2000* (Republic of South Africa 2000).

The governing body of a profession, a council such as SACE for which the *South African Council for Educators Act 31 of 2000* (Republic of South Africa 2000) provides, has the power to demarcate the terrain in which only authorised or registered

members of the profession may work. It also has the power to decide who will be allowed to practise within the particular sphere and has the authority to decide when a person has acted in such a way that the right to practise the profession should be taken away from him or her.

A professional council also has the power to impose other sanctions and expulsions from the profession. Such sanctions should be aimed at rehabilitating the professional to be able to continue his or her career. A controlling authority of a profession, therefore, controls admission to the profession by means of registration or certification and (co)determines how a person should be trained for the profession, whether there are reasons why a person should not be admitted to the ranks of the practitioners of the profession, what someone must do to retain the right to practise the profession (e.g. through the regular acquiring of credits for further training) and with which code of ethics a practitioner should comply.

A practitioner's registration with a registration authority, therefore, offers a guarantee to the users of the service or products of the profession in question that the professionals have been properly trained. Furthermore, they practise their profession within the framework of a particular ethical code and their involvement with the service user will be to the advantage of the latter. A registration authority also undertakes to act against practitioners who contravene the ethical code and who disadvantage the users of the service.

Professions form professional associations and unions and other groups of professional people – this is a fact of which a significant number of teachers in South Africa are probably not aware. This can be blamed partially on the lack of communication with them on their professional status, on the nature and being of education as a profession and, partially, because of the dominant position of the unions in education, which may create the impression that these unions are like any other union. Unlike other professions like medicine, where

practitioners take the Hippocratic Oath, teachers do not take an oath to submit themselves to the demands and the ethical code of the teaching profession when they qualify as teachers. This is unlike other recognised professions where the taking of an oath is a special highlight in the development of a person to take up a position in a profession.

One of the authors has made the above comments on education as a profession mainly from his own experience (he was involved in professional teachers' organisations for more than 20 years of which he spent 11 and a half years from July 1980 in the service of the then South African Teachers' Council for Whites). This was the first professional control body for the education profession in South Africa and was modelled to a large extent on the General Teaching Council for Scotland (GTCS) (which was the first professional council for education in the world) (Matheson 2015). Its racial exclusivity meant that this council had very little legitimacy, and it was no surprise when it was changed and named the Teachers' Federal Council (TFC), which kept on performing the functions of the South African Teachers' Council for Whites and which also assumed the role of a federation of teachers representing teachers and looking after their interests in their relationship with their employers. When the new political dispensation dawned in 1994, it eventually led to the closing down of the TFC and to the establishment of the SACE in terms of the *South African Council for Educators Act 31 of 2000* (Republic of South Africa 2000). The author's involvement with SACE has been sporadic but sufficient to provide a basis for his comments. It needs to be pointed out that SACE is not to be seen as the successor of the TFC but is an entirely new professional body.

The author's personal experience was augmented by a study of the literature on professions in general and on professional councils in education in particular. We will refer to two pivotal references in this regard. The first one is Prinsloo and Beckmann's (1995) reference to Wilensky's formulation

of the two characteristic qualities of professions, namely, a legal monopoly and a code of ethics:

The legal monopoly is given to a profession and has as a counterpart the spirit of public service. From a philosophical point of view, the community will give a legal monopoly to a group of professional men but in exchange for that they claim the spirit of public service from the profession.

The public service is achieved by having a code of professional conduct. The philosophy underpinning the recognition of the profession is the willingness of the community to allow a group of persons to control the practice of a profession and that, as a *quid pro quo*, the profession undertakes to render a public service. A code of conduct gives effect to this understanding as it furnishes certain guarantees regarding the rendering of the service.<sup>2</sup> (p. 326)

Secondly, Van Wyk (1989) referred to Bondesio (1983:27–28) and Spies (1977:38–44) and formulated the following characteristics of a profession:

- specialised ‘knowledge, skills and training as well as continued research’
- the establishment of professional associations and autonomous control over own affairs and the development, enforcement and maintenance of ethical codes
- the ‘sanctioning of the authority of the profession’ by the law which grants the profession the right to exercise control over the ‘exercising of the profession’. As a *quid pro quo*, ‘the profession undertakes to render service of high quality and to protect the interests of the community in respect of the specific service’
- the professional practitioner (the service provider) as professional authority. The authority derives from the practitioner’s academic and professional studies and specific skills. (pp. 150–151)

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2. Unfortunately, more details are not available of Wilensky’s work as the information was part of the official information provided during the announcement of the Act and regulations on professional discipline. As far as we could ascertain, this information has not been archived anywhere.

Van Wyk therefore names professional training, professional task rendition, professional conduct and professional control the cornerstones of professionalism.

In light of the above, one could, with some justification, expect SACE to make a significant contribution towards helping ensure that quality and competent educators are teaching in South African classrooms. In practice, that is not necessarily the case, because of the following reasons:

- The South African Council for Educators does not have a high profile in the educational environment compared to trade unions, and people are therefore not adequately aware of the role that it should play (SACE 2011a:2, 22; Roodt 2018:7-8).
- The South African Council for Educators does not play a decisive role in determining who will be allowed into the profession and who will not be allowed (SACE 2011a:7-9). In practice, SACE allows everybody who complies with formal modification requirements to register, unless their attention is drawn to clear indications that a person has been guilty of misconduct that makes him or her unsuitable for the profession (SACE 2011a:8, 9).
- The South African Council for Educators reports sporadically only and then relatively little on the service they provide to the country to whom teachers render their service. This shows a 'lack of communication with the profession' (SACE 2011a:2). Approximately twice a year, there are short news reports in which SACE mentions how many teachers have been removed from the register of teachers. The numbers that are mentioned are obviously smaller than the number of incidents of teacher misconduct (especially sexual misconduct) on which the media reports regularly (SACE 2011b:12). This inadequate reporting may be ascribed to the dominant influence of trade unions in the ranks of SACE (Sibiya 2017:7) and their tendency to protect their members against disciplinary action even when they have committed misconduct (Sibiya 2017:20, 50, 54, 79).
- The South African Council for Educators does not play a prominent role in the admission of prospective teachers to Initial Teacher Education (ITE) (SACE 2011a:9, 10). The result is

that ITE institutions virtually have sole decision-making power over the people who are admitted to ITE.

- It seems that SACE could also play a more prominent role regarding the further professional in-service training of teachers, especially regarding quality assurance in this regard (SACE 2011a:10). The South African Council for Educators does decide what qualifications and programmes will provide educators with Continuous Professional Teacher Development (CPTD) credit points (SACE 2018:9, 10), but it is debatable whether there is authentic accountability concerning the quality of the training which leads to these credits to bearing qualifications. Formal compliance measures such as having to sign registers every day, submitting assignments and assessing assignments are carried out. Perhaps a comprehensive, structured investigation into the authentic quality of in-service training should be instituted.
- It is an undeniable lacuna in the functioning of SACE that it plays no meaningful role in the appointment of teacher trainers at universities (SACE 2011a:7), the professional conduct of such staff and the in-service training in which such staff should participate. The South African Council for Educators could start planning to register and regulate teacher trainers (lecturers) just like the GTCS, which registers educators in the following sectors: primary education, secondary education, further (college) education and teacher education institutions (GTCS 2019).
- Where unqualified people trespass on the demarcated functional area of teachers – for example, in unregistered and authorised independent schools – SACE does little to defend the professionalism of educators (SACE 2011a:7).

The above bulleted list represents the observations and experiences of the authors as academics and educators interested in, and passionate about, the promotion of the status of education to improve the quality of education available to South Africa's children. Some of the information can be verified relatively easily by consulting the *SACE Act* and other laws. However, we believe that an impression could be created that the content represents nothing but the prejudiced opinions of the authors – an impression

that may be difficult to gainsay because very little empirical research has been done about SACE and its activities. In an attempt to obtain external opinions, we thought a SACE insider-outsider who is a member of the SACE Council and of its Ethics Committee, is also employed by a SGB association and is the President of the South African Education Law Association, Dr Jaco Deacon, would be a suitable expert to use as a sounding board (J. Deacon, pers. comm., 10 April 2019).

We asked him to scrutinise the content next to the bullets and to give us his opinion. His response (J. Deacon, pers. comm., 10 April 2019) was that there is very little literature on SACE and that he agreed with our views but wanted to point out that SACE is now ‘under new leadership’ and that it is making strides in the right directions – very good strides in some areas and less noticeable progress in others. The authors are aware of changes in the SACE leadership and are pleased to learn that there are indications that the Council may contribute its share to the promotion of the status and quality of education more effectively and purposefully in future. Although Dr Deacon’s views cannot be taken to mean that our observations are necessarily accurate and correct, they do suggest that our observations are not completely devoid of truth.

In the paragraphs below, we will turn to the notion of professionalising of education in order to create a clear picture of how that is to be distinguished from professionalism, although both issues are important in the provision of quality education in a country. We have used the concept of ‘professionalisation of teaching’ which is synonymous to ‘professionalising teaching’ in this chapter.

## ■ Professionalisation of teaching

Professionalisation refers to image building, which is ‘an ideology developed for the purpose of acquiring and maintaining power’ (Forsyth & Danisiewicz 1985:61). Ingersoll and Perda

(2008:107) define professionalisation as the degree to which an occupation exhibits ‘the structural or sociological attributes, characteristics and criteria identified with the professional model’. Hargreaves (2000:152) believes that professionalisation of teaching is an attempt to improve the status and standing of teaching. The Human Resources Development Council (HRDC) of South Africa’s *Report on Key Issues for Improving the delivery of Quality Basic Education and Schooling* (2014:20) (hereinafter referred to as the Report on Key Issues) defines professionalisation as the ‘process of improving the status and standing of teaching’.

Teaching in South Africa cannot be categorised as a full profession, as it is not yet stabilised and is still in the process of being professionalised. Professionalisation of teaching in South Africa is important in order for it to be viewed as a true profession. In order for teaching to become a stabilised profession, teachers should have professional power in ‘their social exchanges with society and individual clients’ (Forsyth & Danisiewicz 1985:61). Professionalisation of teaching should improve teaching to become a high-status and high-prestige occupation in South Africa (Ingersoll & Perda 2008:115).

Stakeholders such as SACE, teacher unions, the DoBE, the Department of Higher Education and Training (DHET), institutions of higher learning and independent professional associations should all play important roles in the professionalisation of teaching, with SACE taking the lead in professionalisation of teaching by engaging all stakeholders.

JET Education Services (2017:2) believe that ‘collaboration with other stakeholders is central to the professionalisation of teaching in which unions can help teachers’ voices to be heard’. The DoBE should be involved as a major employing organisation of teachers in South Africa. Quality Councils (QCs) that are responsible for teacher qualifications should play a quality assurance role to ensure that they are the service providers of teacher qualifications. Independent professional bodies or

associations that support teachers in providing quality education should also play a role.

Section 5 of the *South African Council for Educators Act* (SACE 2018) provides that the SACE Council has powers and duties to professionalise teaching by:

[R]egistering teachers, promoting and developing the education and training profession and compiling, maintaining and reviewing a Code of Professional ethics for educators who are registered or provisionally registered with the Council. (s. 5)

All stakeholders should play a role in advising SACE about this important role.

Forsyth and Danisiewicz (1985:62–65) claim that professionalisation should undergo three phases, namely, the potential phase, the formation phase and the stabilisation and maintenance phase. ‘The potential phase addresses the potential teaching has for establishing a claim to professional status’ (Forsyth & Danisiewicz 1985:62). The formation phase addresses the issue of professional autonomy and successful public recognition. The stabilisation and maintenance phase addresses image building and the code of ethics. The Report on Key Issues (2014:20) states that, in South Africa, the professionalisation of teaching should follow the ‘four key professionalising processes which are (i) initial teacher training (ITE), (ii) induction, (iii) continuing professional development (CPD), (iv) registration of teachers, and evaluation of teacher performance’. If these processes are effectively implemented, teacher professional status will improve. For the successful professionalisation of teaching in South Africa, the following aspects should be taken into consideration by all the stakeholders:

- teaching as an essential service
- the provision of quality service
- putting the client first
- competence
- autonomy, trust and high level of training
- recognition of the status of teaching.

## ■ Teaching as an essential service

In South Africa, teaching is essential, but it is not an essential service in terms of labour law (Equal Education 2013:1). It is important to define what an 'essential service' is. 'An essential service refers, in law, to an economic activity in regard to which it is permissible for a government to prohibit strikes totally' (Equal Education 2013:1).

Professionalisation requires that teaching should be recognised as an essential service. Teaching is essential because it is the mother of all occupations. In order for a child to succeed in any career that he or she chooses, teaching is required. It opens up the future for children to become what they want to be. In the court case of *Brown v Board of Education*, the United States (US) Supreme Court indicated that 'it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education' (Thro 2005:1).

The essential service (teaching) should be provided to all clients. In this chapter, when we refer to clients, we include the primary clients (learners), secondary clients (families, employers and employees) and external clients (the workplace, government and society) (Tohidi & Jabbari 2011:434). Teaching should enable the people of South Africa to have a better life. Professionalisation of teaching should change the attitude of teachers from teaching to educating. Education should be understood as the development of human potential.

The effects of the mistakes made by a teacher are very serious. Countries where teaching is considered as an essential service often become successful economically because they put education first.

The importance of teaching should not be defined based on the right to strike, but on its real importance. Education should be viewed as an essential service because it forms a basis for all careers. In order for our country to successfully professionalise teaching, we should recognise it as an essential service.

## ■ Provision of quality service

In teaching, the provision of better service means to provide quality education (*South African Schools Act* 84 of 1996). Teachers can enhance the quality of education by increasing the quality of their work, especially for children who are their primary clients. Professionalisation of teaching in South Africa should be based on the provision of quality teaching. South Africa should continue benchmarking its performance internationally to provide quality education that meets international standards. The benchmarking process will help South Africa to learn good practices from well-performing countries. There are 195 countries globally, and not all countries participated in the Trends in International Mathematics and Science Study (TIMSS) 2015 and the Progress in International Reading Literacy Study (PIRLS) 2016, whereas South Africa participated in both. The Trends in International Mathematics and Science Study 2015 – Mathematics had achievement results for 49 countries at the fourth grade and for 39 countries at the eighth grade (Mullis et al. 2016). The Trends in International Mathematics and Science Study 2015 – Science had achievement results for 39 countries at the eighth grade (Mullis et al. 2016). According to Mullis et al. (2016), South Africa secured the penultimate position in Mathematics for the fourth and eighth grades and the last position in Science for the eighth grade. Singapore was ranked first in Mathematics and Science in the fourth and the eighth grades (Mullis et al. 2016).

‘Of the 11 benchmarking participants in PIRLS 2016, South African Grade 5 learners achieved the lowest score’ (Howie et al. 2018:48). Singapore followed the Russian Federation as the highest average reading achievers. Against this background, the provision of teaching service in South Africa needs to be improved through the professionalisation of teaching. The National Development Plan developed by the National Planning Commission (2012:305) states that ‘improving the performance of the South African education system requires hard work

and focus'. One of the specific focusses that has been proposed by the National Planning Commission is that the next 18 years should focus on improving performance in international comparative studies.

## ■ Putting the client first

South Africa is using the concept of *Batho Pele* in enhancing service delivery to the clients. *Batho Pele* is an initiative requiring 'public servants to be service-orientated, to strive for excellence in service delivery and to commit to continuous service delivery improvements' (Nzimakwe & Mpehle 2012:281).

According to Nzimakwe and Mpehle (2012:285–286), in many areas, *Batho Pele* is not working, and there is an abundant 'care-free attitude of public servants in their interaction with clients due to inadequate training of public servants on client service'. Clients are not aware of their rights. Policies have been developed but are not being applied, which is how the public perceive teaching, especially in public schools.

The professionalisation of teaching should enhance the application of *Batho Pele* principles, and they should play an important role in client satisfaction. When learners, parents, employers and the community are satisfied with the service of teachers, it will lead to a good image of the teaching profession.

Teachers who are dedicated to the implementation of *Batho Pele* principles will contribute towards the creation of a true profession. Stakeholders should capacitate and train their members to become excellent implementers of *Batho Pele* principles in order to enhance clients satisfaction. Professionalisation of teaching should enable teachers to prioritise learners, parents, employers, colleagues, and society in terms of service delivery. The eight *Batho Pele* principles include 'consultation, setting of service standards, increasing access, ensuring courtesy, providing information, openness and transparency, redress and value for money' (Nzimakwe & Mpehle 2012:281–283). Stakeholders such

as SACE, employing organisations, QCs, teacher unions, professional bodies and institutions of higher learning should promote these principles and incorporate them in their programmes.

## ■ Competence

Professionalisation of teaching should enhance the competence of teachers. Professional competence includes being competent with regard to knowledge, skills and ethics. According to Ingersoll and Perda (2008:108), 'professional work involves a highly complex set of skills, intellectual functioning and knowledge that are not easily acquired and not widely held'. Professional competence is essential to an educator's pursuit of excellence (Nessipbayeva 2012:150).

Competent teachers have a detailed knowledge of the subject (Nessipbayeva 2012:150). This is what we call specialised knowledge. Ingersoll and Perda (2008:111) state that the most fundamental attribute of a profession is specialisation. The National Planning Commission (2012:307) provides that 'teachers should be helped to improve their knowledge of the subject they teach'. The National Development Plan 2030 further states that 'teacher development should build teacher subject knowledge and provide training in effective teaching methods' (National Planning Commission 2012:307). It is further indicated in the plan that the 'Department of Basic Education, school and professional bodies should be involved in organising and delivering teacher development' (National Planning Commission 2012:307).

Competent teachers are skilled in using new methods and techniques when teaching (Nessipbayeva 2012:150). They have creative skills that enable them to perform a non-routine application of a variety of teaching methods and techniques based on an in-depth analysis (Forsyth & Danisiewicz 1985:64). Focus on individual learners who need attention on a specific subject and behaviour moulding after the analysis is important.

The National Planning Commission (2012:308) mentions that ‘small classes allow teachers to give more attention to individual learners’. According to Pollari, Salo and Koski (2018:5), in ‘Finland, qualified teachers are equipped with skills to detect the challenges of learning, which should be detected as early as possible’. They have innovative skills that enable them to incorporate new and progressive theoretical ideas, principles and methods of training and education (Nessipbayeva 2012:150). Nessipbayeva further claims that teachers can use technology to solve different pedagogical tasks and set goals, plan, analyse and critique themselves. They hone their teaching skills to be in sync with the impending fourth Industrial Revolution. The National Planning Commission (2012:308) mentions that ‘teachers should be exposed to the use of technology in their own training, for them to use it in their teaching’.

Competent teachers are ethically competent. According to the Unilever Ethics Centre (2002:15), with competent teachers, values lie at the heart of professionalism. The SACE Code of Professional Ethics for Educators advocates promoting the well-being of teachers and avoiding harm to clients (The Unilever Ethics Centre 2002:16).

## ■ **Autonomy, trust and a high level of training**

The final aim of professionalisation is autonomy. Teachers must have control over their own work. Pollari et al. (2018:6) mention that a high level of training is considered vital to be autonomous professionally. They (Pollari et al. 2018:6) refer to Finland as a country with teachers who are very autonomous professionally and are highly qualified. Pollari et al. (2018:6) further state that Finnish teachers not only have a high level of training (a Master’s degree) but are also trusted as professionals in their work. This means that for teachers to be autonomous, they must have a high level of training and be trusted by their clients. In order to professionalise teaching successfully, the National Planning

Commission (2012:303) indicates that ‘attention should be given to continuing development of teachers and promotion of professional standards’. ‘South Africa needs to improve the quality of teacher training’ (National Planning Commission 2012:306). The quality of teacher training will lead to true professionalisation that exhibits autonomy from the client and the employing organisation (Forsyth & Danisiewicz 1985:65).

## ■ Recognition of the status of teaching

Teaching is no longer viewed as a noble calling, as the choice of becoming a teacher is influenced by various aspects rather than a ‘calling’. The study that was conducted in South Africa by Sibanda (2015:110) states that some of the aspects that influence the choice of becoming a teacher include, but are not limited to, teaching hours and prospects of long holidays. Sibanda (2015:113) found that ‘the reported ease of getting a teaching job was reported by respondents to be a great motivator for joining teaching’. She explains that this may lead to prospective teachers not remaining in the profession as they use teaching as a stepping stone to other careers.

In Finland, most learners in their final year at school indicate that they want to become teachers, which makes it possible to choose future subject and other teachers from among the ranks of talented and motivated learners (Pollari et al. 2018:6). The National Planning Commission (2012:306) states that for the teaching profession, South Africa needs to recruit candidates of a higher calibre than at present. This will restore the dignity of the teaching profession.

One of the requirements of teacher professionalisation is public recognition. While South Africa is not covered in the Global Teacher Status Index 2018, the global teacher status survey for 2018 states that ‘the average respect ranking for a teacher across the 35 countries was 7th out of 14 professions, indicative of a mid-way respect ranking for the profession’ (Dolton et al. 2018:12). Successful public recognition of teaching

is important in South Africa, as this is more important than legal recognition or licensure (Forsyth & Danisiewicz 1985:64). Image building may take place by 'seeking political legitimation and development of codes of conduct' (Forsyth & Danisiewicz 1985:65). This is supported by the National Planning Commission (2012:303), which provides that 'teachers should be recognised for their efforts and professionalism and teaching should be a highly valued profession'.

Hargreaves (2009) states that:

[S]ubjective status improved when teachers feel valued, feel trusted, are funded to engage in further professional training, can work with high-quality resources and facilities, get involved in research and become providers of continuous professional development for other teachers. (p. 226)

Dolton et al. (2018:125) suggest that 'there is a clear positive relationship between teacher status and Programme for International Students Assessment (PISA) scores' and claim that '[c]ountries in which teacher status is high, such as China, Taiwan, and Singapore have better student outcomes, as measured by PISA than countries in which teacher status is low'. Stakeholders should consider the above-mentioned aspects, which will help in professionalising teaching.

Professionalisation of teaching can play an important role in ensuring that the teaching profession earns the trust of the clients. This can be done by recognising teaching as an essential service. Education should be enhanced and valued as a national good. Teachers should receive a high level of training, which would enable them to provide quality service to all clients and be competent in terms of knowledge, skills and ethics, which in turn will earn them the trust of the general public as professionals. Teachers should not only focus on empowering themselves in knowledge and skills but also need to improve their conduct. Wilensky (1964:140) states that:

[T]he success of the claim to professional status is governed also by the degree to which the practitioners conform to a set of moral norms that characterise the established professions. (p. 140)

This will enable them to distinguish themselves from other professions. Eventually, trust and recognition from the clients and the public instils self-belief in teachers.

Teacher unionism is often seen as the opposite of teacher professionalism. One cannot deny the fact that teacher unionism sometimes tarnishes the image of the teaching profession, but in the next section, we postulate that teacher unionism does not necessarily have to run counter to the ideals of teacher professionalism. On the contrary, it could promote the professionalisation of teaching and the enhancement of the quality of education provided in South Africa.

## ■ Teacher unionism and education

There is a popular perception that unions and the union movement started during the industrial era when it was necessary to ensure that employees were treated fairly in the employee-employer relationship. Although it does not necessarily help develop the argument, it is interesting to note that as long ago as the time when slaves were rowing ships, there were indications of activities similar to what we would ascribe to unions today.

In South Africa, education unions are often mentioned as one of the problem areas contributing to the underachievement of the profession. However, this does not necessarily have to be so, and we will try to outline ways in which unions can be involved in education in a more productive manner. Mafisa (2017:76) supports this by indicating that 83% of the participants in his study agreed that teacher unions have professional responsibilities in education.

One should bear in mind that it is in fact unions who are in regular discussions with employers to ensure that educators are not treated unfairly in their service relationship. They try to ensure that teachers' service relationships are structured in such a way that they respect and affirm the professional status of educators. To talk of a professional union is not necessarily a contradiction in terms.

Although unions' conduct may be counterproductive, they could protect the status of educators by seeing to it that educators are not subjected to illegal and unfair conduct of employers. They could also ensure that teachers' remuneration packages are reasonable and fair and commensurate with the status of the profession and that unqualified people do not present themselves as educators and, by doing so, exploit the public.

Unions should participate more constructively in the national debate on education. Unfortunately, there is a view that unions smother many promising initiatives by simply alleging that they were not consulted regarding the initiatives. A recent example of such union conduct is the move by the South African Democratic Teachers' Union (SADTU) to thwart the attempt by the DoBE to introduce eight key knowledge and skills standards in the form of the *Policy on the South African Standard for Principalship* (hereinafter the Standard) (DoBE 2016) as guidelines for principalship in order to outline the core duties of all school principals (H. Hariram, pers. comm., 16 July 2018). In this instance, SADTU alleged that the DoBE did not consult adequately with them on the compilation of the Standard and that the Department had, consequently, amended the conditions of service of principals unilaterally (H. Hariram, pers. comm., 2018).

The Standard was intended to form the basis for government-subsidised training for school principals to get all principals to function at an acceptable level of service delivery. Universities such as the University of Pretoria (Department of Education Management and Policy Studies) developed complete and creative modules to meet this demand, but everything has now been put on hold, and a great deal of development costs have been lost.

Should unions be more positively involved in policy-making without trying to enforce their own will or allow themselves to be bound by political alliance partners, they could help develop a national policy that would be

accepted by everybody concerned and could be implemented purposefully. This will help to counter the perception that unions exist only to serve their own interests.

Purposeful attempts by unions to help implement jointly developed policy could bring greater calm to the world of education and make it a more attractive profession for potential teachers. In this manner, education can be established as a profession of creating national interest and could become the profession of choice for many talented South Africans. The National Planning Commission will have greater success prospects if unions help take responsibility for implementing its educational provisions (National Planning Commission 2012).

In order to achieve what is suggested above, unions will have to deliberately choose the 'best interests' of the child as contained in Section 28(2) of the South African Constitution (Republic of South Africa 1996a) (hereinafter referred to as the Constitution) as their first and most important priority. They should also consciously pursue the real aim of education, which is to help the child become mature (Van Rensburg & Landman 1988), so that he or she can take up his or her rightful place in society and contribute to the well-being and development of society. It may well be that unions will have to consider the requests from various sectors that education should be declared an essential service, which may limit unions' freedom to be involved in industrial actions. To argue that education is an essential service without which children will suffer greatly seems to be an argument that needs to be scrutinised carefully and not be rejected outright.

If one bears in mind that unions normally have access to considerable financial resources and that they also have access to funds of Sectoral Education and Training Authorities (SETAs), which obtain their funds from the money generated in terms of the *Skills Development Act 97* of 1998 (Republic of South Africa 1998b), it would seem that unions could generate sufficient funds to launch and sustain imaginative and purposeful

improvement initiatives. This Act obliges employers to pay part of their employees' remuneration into the Skills Development Fund created in terms of this Act. They could, for example, offer training programmes or (help) finance training programmes, solicit funds for awareness-raising programmes on the national importance of education, promote the case of South African education on international platforms, such as Education International (the International Association of Teachers Unions) and UNESCO, and exert pressure on the authorities to implement plans and initiatives that have been announced. If there are attempts to make education a more sought after and appreciated profession and an undisputed national priority, more talented young people may be recruited to the profession and the community may support it better. The National Planning Commission (2012:308) provides that 'teacher unions should be assisted in developing the capacity to implement continuous professional development strategies for their members'. The National Planning Commission 2030 further provides that 'professional development institutes that are linked to unions' should be accredited so that they can 'offer continuous professional development that earns points towards meeting the Continuous Professional Teacher Development requirements of SACE' (National Planning Commission 2012:308).

The above paragraphs can be summarised by the following key contributions that unions can make to the quality and status of education:

- they can organise teachers to make sure they are recognised as professionals and not as 'workers'
- they can reaffirm the focus on the best interests of the child in education
- they can help develop the country by helping to improve the quality of education
- they can improve the status of educators by participating appropriately in policy debates and policy and other initiatives
- they can help fund appropriate initiatives to promote education as a national priority.

## ■ Regulation of teacher professional status, teacher professionalisation, educational outcomes and teacher unionism

Teacher professional status, teacher professionalisation, educational outcomes and teacher unionism are regulated by the education law. This chapter discusses how education law in South Africa regulates aspects of the teaching profession, the production of highly trained and competent teachers, entrance into the teaching profession, teaching in schools and CPTD.

## ■ Choosing the teaching profession

Section 22 of the Constitution provides that everyone has a 'right to choose a trade, occupation and profession'. Even though this right seems to allow everyone who is interested to become a teacher, other legislation may bar people who do not have a passion for teaching and who would bring the profession into disrepute. Choosing the right profession refers to people who are suitable prospective teachers and who meet the requirements to enrol in institutions of higher learning to pursue studies enabling them to enter the teaching profession. Stakeholders who are responsible for the professionalisation of teaching should improve the criteria for selecting students who have a passion for teaching and who will not bring the profession into disrepute.

## ■ Delivering highly trained and competent teachers

Students admitted to institutions of higher learning to pursue professional teachers' qualifications should receive quality education and training. Institutions of higher learning should produce teachers who will be able to provide quality service to their clients. Section 7(b) of the *Higher Education Act* 101 of 1997 provides that the Council of Higher Education (CHE) should

perform its function in relation to qualifications, quality promotion and quality assurance in its capacity as the quality council for HE in terms of the *National Qualification Framework Act 67 of 2008* (Republic of South Africa 2008b) (hereinafter referred to as the NQFA). The CHE should ensure that the institutions of higher learning provide quality teacher qualifications. South African teachers should be highly trained. This is supported by Section 5 of the NQFA, which states that one of the objectives of the NQFA is to enhance the quality of education and training. Paragraph 1.12 of the Revised Policy on the Minimum Requirements for Teacher Education Qualifications (DHET 2015) indicates that the:

[S]pecification of a set of minimum requirements for teacher education qualifications is aimed at ensuring that the higher education system produces teachers of high quality, in line with the needs of the country. (n.p.)

## ■ Regulation of entrance into the teaching profession

Qualified unemployed teachers are not allowed to teach if they are not registered with SACE. South African education law regulates the entry of new teachers to the teaching profession. Section 5(a) of the *SACE Act* (Republic of South Africa 2000:s. [5][a][i]) states that the Council ‘must determine minimum criteria and procedures for registration or provisional registration’. Section 21(2) of the *SACE Act* provides that ‘no person may be employed as a teacher by any employer unless the person is registered with the council’. This law is supported by Section 6(3)(b)(iii) of the EEA (Republic of South Africa 1998a), which states that:

[T]he Head of Department of the Province may only decline the recommendation of the governing body of the public school or the council of the further education and training institution if the candidate is not registered, or does not qualify for registration, as a teacher with SACE. (s. 6[3][b][iii])

Section 22 of the *SACE Act* provides that those who want to join the profession of teaching should apply to the Council, which will

decide whether to approve the application or not. This is one of the important stages that determine the status of the teaching process. At this stage, SACE should ensure that the teacher who obtains a licence to teach has the required subject knowledge, skills and is ethically competent. No teacher who will detract from the reputation of teaching should be given a licence to teach. Stakeholders involved in the professionalisation of teaching should set strict but fair criteria for licencing teachers in South Africa.

## ■ Regulation of teaching in schools

The preamble of the *South African Schools Act* 84 of 1996 (Republic of South Africa 1996b) (hereinafter referred to as the *Schools Act*) indicates that 'teachers should provide a high-quality education that lays a strong foundation for the development of all our people's talents and capabilities'. This means that the success of students in other careers relies on the quality of education that is provided by our teachers. The preamble sets a standard for governing bodies or councils and employing organisations about the type of teacher we need in South Africa. In addition, Section 28 of the Constitution mentions that, whatever teachers will be doing should be in the 'best interests' of the child, that is, to provide quality education. In terms of Section 3 of the *General and Further Education and Training Quality Assurance Amendment Act* 50 of 2008 (Republic of South Africa 2008a), Umalusi should enhance the quality of general and further education and training by monitoring the provision of quality education by teachers. Umalusi is, therefore, one of the institutions that should play an important role in the professionalisation of teaching. If the public is convinced that Umalusi is doing justice to their commission, they will trust the results that are produced by teachers.

In order to enhance the status of the teaching profession, in addition to other requirements for appointment and promotion, the ability of the candidate should be carefully considered.

Section 7(1)(a) of the EEA (Republic of South Africa 1998a) and Section 8(a) of the *Schools Act* (Republic of South Africa 1996b) state that:

[/]n the making of any appointment or filling of any post on any teacher establishment including promotional posts, the ability of the candidate should be a pertinent point of consideration. (ss. 7[1] [a], 8[a])

The role of teacher union representatives should be to observe whether, in addition to other requirements for appointing teachers, the ability of the candidate is being considered.

Teachers should understand their roles. Paragraph 3.7 of the Norms and Standards for Educators (2000) (DoE) states that the seven roles of teachers include ‘learning mediator; leader, administrator and manager; scholar, researcher and life-long learner; community, citizenship and pastoral role; and learning area/subject/discipline/phase specialist’. These roles are also included as Appendix A in the Revised Policy on the Minimum Requirements for Teacher Education Qualifications 2015 (DHET 2015). Annexures A.2–A.7 also outline the core duties and responsibilities of teachers in different posts. Teachers should be trained in these roles and duties and how to implement them. These roles should be part of the continuous development of teachers. Teachers who understand and implement these roles and duties will make a difference in the teaching profession.

Better conditions of service will motivate teachers to work hard. The conditions of service for teachers also play a role in public recognition. This statement is supported by Dolton et al. (2018:54), who mention that ‘in many countries, status within a culture depends on how much you are paid in absolute or relative terms’. Section 4(1) of the EEA provides that ‘the Minister will determine the salaries and other conditions of service of educators’. The National Planning Commission (2012:309) indicates that ‘teacher salaries need to be competitive in comparison to other parts of the public service’. The National

Planning Commission (2012:309) further states that ‘the wage structure should recognise qualifications, experience and the scarcity of skills in specific or geographic areas’.

A teacher is expected to be ethically competent. Section 5(c) of the *SACE Act* provides that ‘the Council must compile, maintain and from time to time review a code of professional ethics for educators who are registered with SACE’. The code of professional ethics for educators recognises teaching as a noble calling and regulates how teachers should conduct themselves in relation to their clients. The conduct of teachers has a profoundly serious impact on the reputation of teaching. The more teachers behave in accordance with the code of professional ethics, the more they enhance the reputation of their profession and restore its status.

In terms of education law, teachers who do not display competence and ethics in their work could face disciplinary action. Section 5(c) (ii-v) of the *SACE Act* (Republic of South Africa 2000) states that, if a teacher does not adhere to the code of professional ethics for educators, he or she may face a fair disciplinary hearing. If found guilty, depending on the seriousness of the case, he or she may be cautioned or reprimanded, fined or removed ‘from the register for a specified period or indefinitely’. The South African Council for Educators should train teachers about the code of professional ethics for teachers.

Section 16 and Schedule 1 of the EEA provide a way of dealing with teachers who are found to be incapable. The incapability of teachers affects the performance of learners and the reputation of the teaching profession. Sections 17 and 18 of the EEA spell out the misconduct that may lead to the disciplinary process. Teachers should refrain from committing such misconduct. Teacher unions should discourage their members from committing misconduct or serious misconduct by providing them with appropriate training.

## ■ Continuous professional teacher development

We need highly trained teachers in our country so as to professionalise teaching. We cannot do it without effective continuous teacher development programmes. These programmes should be offered by institutions of higher learning, SACE, employing organisations, teacher unions and professional bodies (associations). It is highly recommended that the above-mentioned service providers should provide teacher development programmes that are registered and accredited by other quality assurers. These programmes must aim at helping teachers to be competent in knowledge and skills as well as being ethically competent.

Employing organisations should continue with their in-service training. These training programmes should be accredited through a prescribed process. In 2003, the DoE and the unions introduced the Integrated Quality Management System (IQMS) (Education Labour Relations Council 2003) with the intention of managing the quality of teaching in schools. 'Despite efforts to strengthen the implementation of the IQMS, schools have struggled to work with it' (Centre for Development and Enterprise 2015:9). We recommend that all the stakeholders of teacher professionalisation should review the implementation of IQMS or come with an effective alternative programme.

According to Section 5(b)(ii) of the *SACE Act* (Republic of South Africa 2000), SACE has:

[A] role in promoting and developing the education and training profession in South Africa by advising the Minister on matters relating to the minimum requirements for entry to all the levels of the profession, standards of programmes of pre-service and in-service educator education, the requirements for promotion within the education system and educator professionalism. (s. 5[b][ii])

The South African Council for Educators needs to receive support from all teacher professionalisation stakeholders in order to improve the quality of teachers.

Institutions of higher learning should also offer postgraduate qualifications. In addition, they should conduct quality research and be able to support teachers who are in the field with new knowledge, skills and ethical behaviour applicable to the situation in which they may need them. Schools should be encouraged to collaborate with institutions of higher learning.

Section 1(d)(5)(iii) of the *Labour Relations Act* 66 of 1995 (Republic of South Africa 1995) (hereinafter referred to as the LRA) provides that the purpose of the LRA is to 'promote employee participation in decision-making in the workplace'. Teachers can participate in decision-making in the workplace through their unions. Section 6(b) of the *SACE Act* provides that 14 teachers and four lecturers can be nominated by the organised professions (unions) to represent them on the SACE Council. This means that teachers are part of decision-making processes in SACE, and that they can play a role in deciding about continuous teacher development programmes and the Code of Professional Ethics for Educators.

Professional bodies can play an important role in the professionalisation of teaching by providing specialised subject knowledge and skills. In terms of Section 1 of the NQFA, 'a professional body means any body of expert practitioners in an occupational field, and includes an occupational body'. Section 13(1)(i) further states:

[7]The South African Qualifications Authority (hereinafter referred to as SAQA) must, in order to advance the objectives of the National Qualifications Framework (hereinafter referred to as NQF) with respect to professional bodies –

- (i) develop and implement a policy and criteria for recognising a professional body and registering a professional designation for the purpose of NQFA, after consultation with statutory and non-statutory bodies of expert practitioners in the occupation field and with the QC
- (ii) recognise a professional body and register its professional designation if the criteria have been met. (s. 13[1][i])

## ■ Conclusion

We trust that this chapter will benefit education in a number of ways, such as providing a greater understanding of the need to promote greater synergy between professionalism and unionism. It would also be good if animosity between professionalism and unionism could be alleviated and professional unions could be better developed to focus more on education and the 'best interests' of the child (Republic of South Africa 1996a), so that their political and other affiliations could gradually play more of a supporting role in their activities instead of dominating them.

Our final wish is that our contribution should enhance the status of educators and help develop the nation's evaluation of education as a national good and educators as indispensable national assets.

# Reflecting on and rethinking learners' equal worth and equal citizenship: The rear-view mirrors of courts

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## ■ Abstract

This chapter describes the often-forgotten value of court directives that could serve as rear-view mirrors with regard to the South African judiciary and, specifically, the Constitutional Court's adjudication of the predominant constitutional values encompassing human dignity, the realisation of equality and the development of human rights and freedoms, with specific emphasis on learners.

On account of equality's multi-layers stretching beyond the concept of respecting human dignity, rejecting unfair discrimination and appreciating diversity, grasping the full extent of equality is perhaps not only the most daunting but also the most noteworthy requirement to attain equal citizenship within a democratic dispensation. The value of education for full-fledged citizenship is highlighted by delineating what schooling should entail to inspire learners towards both claiming equal freedoms and rights and taking accountability for the responsibilities attached to citizenship. A selected number of court cases that deal with the equal worth of learners within a diverse South Africa are evaluated to demarcate the general stance of courts towards giving effect to learners' right to equality, in line with what is encouraged by Section 9 of the *Constitution of the Republic of South Africa, Act 108 of 1996* (Constitution).

Court verdicts are employed as interpretative lenses to provide direction for future behaviour and, thus, to appraise the manner in which (or not) education role-players have responded to such judgements effectively in aligning school environments with human rights and addressing diversity among learners. Adding to the lively debate on transformative constitutionalism and human rights, as applicable to schooling, this chapter suggests a multidimensional conception of *equality* to incorporate the diverse values and determinations of equality. Recommendations are made concerning the elimination of injustices at the school level in an effort to reach the ideal of delivering quality education,

while respecting the worth of all learners equally, for equal citizenship (as opposed to differential citizenship).

## ■ Introduction

Since 1994, South Africa has become a democratic country with a supreme constitution. Against our country's history of segregation, discrimination, humiliation and unequal opportunities, the 1996 Constitution is regarded as being a value-driven, transformative document. Its overarching aim is to overcome the injustices done to humankind in the past and to transform this country into one that extends equal citizenship to everyone.

The pathway that leads to attaining this overarching goal has not been easily paved, as is best portrayed by the pluralistic nature of our citizens. Various courts (*Minister of Home Affairs v Fourie [Doctors For Life International and Others, Amici Curiae]*; *Lesbian and Gay Equality Project v Minister of Home Affairs* 2006[1] SA 524 [CC]; *South African Human Rights Commission v Qwelane* 2018 [2] SA 149 [GJ]) have identified both the diverse nature of our population and the concurrent necessity of developing a sense of accepting differences that are either genetic or sociocultural in nature *actively*, rather than formally, to enable all South Africans (including learners at their level) to enjoy common and equal citizenship. In this regard, constitutional confirmation of the rights to democracy and equality symbolises the launching of social change and building an environment that will be favourable towards all persons being encouraged and eager to take on opportunities to improve their lives (Claassens 2014:765). To Ngwena (2013:427), building such an environment requires changes relating to the prospect of transforming a previously profoundly unjust political dispensation into a current inclusive society that upholds the equal worth of every South African, which we interpret as also including all learners.

In recognising that a transformative constitution involves more than simply removing injustices that were experienced by a particular section (or sections) of society, we place emphasis on creating a South African society that is characterised by every person as having respect for other peoples' differences *actively*, not by every person as merely *tolerating* differences. Even though the judiciary is limited in levelling out the root causes of past inequalities institutionally – as the judiciary is not accountable for crafting policy or sponsoring societal transformation *directly* – it is still tasked in a weighty manner with supporting and encouraging the type of fundamental 'transformative changes' that the Constitution envisions (Liebenberg 2015a:448). In addition to these aspects, the judiciary remains especially important to give effect to the equal worth of persons before the law and to hold the government accountable concerning its special obligation towards protecting and promoting the right to human dignity (Holness & Rule 2014:1909).

## ■ Approaches followed

In light hereof, we drew vigorously on court verdicts as interpretative lenses (Liebenberg 2015a) to obtain a fresh understanding of the equal worth and equal citizenship of learners by rethinking and reflecting on these two pillars of equality. Looking through these interpretative lenses of courts helped us, in the first place, to appraise the manner in which (or not) role-players in schooling are contributing to realising learners' equal worth and equal citizenship as South Africans. As a result, in the second place, reflecting on what our magnifying glass revealed made it easier to provide direction for future behaviour or actions, especially for learners and schools.

Using court verdicts as interpretative lenses is supported by Rapley (2007:1, 12), and he indicates that official documents, which would include court verdicts, are part of 'potential materials' that fall within a source variety that adds to analysing

so methodically that it could be described as involving ‘some related detective work’. It is in this respect that we acted like investigators in tapping court verdicts as if they were interpretative lenses.

Drawing on court judgements as interpretative lenses is particularly important if one considers the pivotal role of human rights adjudication in our transforming society in which such constitutionally guaranteed rights must be accorded their rightful places. It is recognised that court verdicts can indeed influence social and political perceptions and worldviews (Liebenberg 2015a:457). Consequently, how courts interpret human dignity, equality, rights and freedoms has an indirect bearing on institutional and broader public perceptions and responses relating to their realisation in the sphere of schooling. The goal of this chapter, therefore, is to contribute to a smarter understanding of learners’ equal worth and their expectations of becoming equal citizens who feel encouraged and eager to claim equal privileges and rights, while taking accountability for the responsibilities attached to such citizenship.

As equal worth and equal citizenship were investigated by drawing on court verdicts as interpretative lenses, the term *adjudication* is explained at the outset, after which human dignity and equality will be demarcated through the rear-view mirrors of courts.

## ■ Adjudication by courts: A Janus angle of incidence

In layman’s terms, the outcome of a completed court case is frequently referred to as, among others, the decision, verdict, finding, conclusion, discovery or settlement.

As one of the three tiers of government within a constitutionally assigned separation of powers doctrine, courts are entrusted with the responsibility of adjudicating all the matters brought before them in line with constitutional

imperatives and in adherence to the Constitution (Republic of South Africa 1996:s. 8[1]). Judicial authority is vested in courts (Republic of South Africa 1996:s. 165[1]) that function independently, and this kind of authority is subjected to only the Constitution and law. The basic independence requires of courts not only to remain impartial but also to adjudicate all matters effectively without fear, favour or prejudice (Republic of South Africa 1996:s. 165). It is in this regard that courts could be pictured as looking back at the past and forward to the future concurrently, as well as looking inwards at the facts and content, and outwards at aspects that lie beyond a first glance. This depiction is similar to what is attributed to the mythical Janus (in Roman mythology, the god with the key to bringing about transitions such as beginnings and endings, pathways and exits), recorded as being the definitive gatekeeper and always setting an upright example through his conduct.

In analogous fashion then, by judging honourably between right and wrong or acceptable and unacceptable, courts of law provide us with a rear-view mirror that points towards significant findings, court directives and legal indicators that could direct especially schools and learners' behaviour. Stating it in an even stronger manner in South African terms by referring to Moseneke's (2014:103) opinion, courts cannot negate their duty of instilling and transmitting the values to the youth that enabled the long and heroic South African struggle to succeed in 1994. Our choice of comparing the court's vital role of adjudicating matters to that of a vehicle's rear-view mirror, which reflects images of the nearest objects onto the inside mirror for the driver's sake to remain safe, was inspired by the driving instructor Musisi's warning observation (quoted by Matela 2015) about safe driving challenges. Not using a rear-view mirror and regarding it merely as a decorative object appears to be an everyday mistake; however, in reality, such a mistake impairs safe driving.

Even though our judiciary consists of a wide range of courts, this chapter emphasises on decisions of the Constitutional Court (CC) as the uppermost court in the country (Republic of South Africa 1996:s. 167[3][a]). On the one hand, the CC is held accountable for adjudicating constitutional matters and, on the other hand, it is ultimately responsible for making the final decision on whether governmental actions are constitutional or not (s. 167[5]). Bearing in mind that court verdicts bind all interested individuals as well as all organs of state (s. 165[5]), CC judges are specifically obliged to give effect to the implementation of all constitutional principles to develop a law consistent with the Constitution's general goals. What is more, CC judges have a specific obligation to develop those goals entrenched in the Bill of Rights (*Paulsen v Slipknot Investments 777 [Pty] Ltd.* 2015 [3] SA 479 [CC], paras. 115–116); to promote the values embedded in the Constitution; to interpret constitutional provisions purposively; and to induce and support conduct that is consistent with the Bill of Rights (Van der Berg 2017:584). To Smith (2014:631), CC judges fulfil a crucial role in harmonising available competing considerations and conflicting human rights according to 'a principled yet nuanced and flexible, case-by-case basis'. Regarding schooling, courts, in particular, need to take care when assessing the appropriate balance between the fundamental rights bestowed upon learners and the duty of the State, as performed by school managers, to uphold protected school environments (De Waal & Cambron-McCabe 2013:112).

## ■ A well-balanced rear-view mirror process

Both Liebenberg (2015a:448, 457) and Bilchitz (2012:314) assert the need for courts to follow a well-balanced process to shift public perceptions concerning the basic human rights and needs of a society and, thus, influence public discourse and provide appropriate relief where necessary. The judiciary is also

mandated to condemn all violations of human rights and to hold those who do not respect such rights accountable. As if in support of using a rear-view mirror Janus angle of incidence, Vice (2015:137) points out that such a mandate calls for an adjudication process during which judges reflect on past and current practices courageously with the intention of reaching decisions that can play a pivotal role in the social transformation this country so desperately needs. In addition to this, the CC indicated courts' obligation towards developing common law with the intention of bringing it in line with constitutional norms when deciding on the justification of limitations that could legally be placed on fundamental rights to mirror a social, moral and economically changed society optimally (*S v Thebus* 2003 [2] SACR 319 [CC]).

Court verdicts are generally significant in the effort to realise the predominant goals of the Constitution, which include recognising past injustices and ensuring a new, democratic and open South Africa in which everyone can be a part of and be unified in their diversity (social transformation). It is the duty of courts to ensure that social justice prevails, human rights are recognised as fundamental, and every citizen is protected equally by law, which, in turn, will improve citizens' sense of worth (quality of life; Serfontein 2015:2266) and allow their growth (Constitution: Preamble). In this regard, while we need to remind the reader that the law is not without limits, litigation is still recognised as 'one of the traditional ways' to acknowledge people's legal equal worth and to operationalise the responsibilities of governments to protect and promote every person's right to human dignity (Holness & Rule 2014:1909).

This chapter focusses on scrutinising the interpretation and application of the constitutional values that give rise to human dignity, the recognition of equality and the expansion of human rights and freedoms (Constitution 1996:s. 1) within the school sphere.

## ■ Human dignity: Rethinking equal worth

With Section 1 to Section 6, generally known as outlining the *founding provisions*, Parliament (n.d.:1–5) has a webpage that covers a crisp description of the *importance* of the Constitution by noting these very provisions as setting out and covering the values that not only ‘*guarantee* our democracy’, but which ‘are *common* to many democracies’ worldwide. Section 7(1) mentions it as the first democratic value, and Section 10 (Republic of South Africa 1996:s. 10) not only acknowledges everyone as having inherent dignity but also affords all persons ‘the right to have their dignity respected and protected’. The *importance* of human dignity is highlighted in Section 36(1) by recognising its protection as significant enough to justify the limitation of other fundamental rights, and in Section 39(1) by emphasising its promotion as significant when interpreting the Bill of Rights.

By referring to inherent human dignity, the Constitution recognises that all humans are valuable in a special way and that they enjoy dignity regardless of how they behave. Humans, thus, need not earn dignity or prove their worthiness (Vice 2015:142). Owing to its intrinsic nature, the right to human dignity, as such, is *not* guaranteed by the Constitution. As indicated in the previous paragraph, to be more precise, it is ‘the right *to have* [...] dignity protected and respected’. According to Vice (2015:142), respectful responses and behaviour towards people are demanded and limitations are placed on what can be done to them.

The Guidelines for Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (DoE 1998; Learner Code of Conduct Guidelines), developed as part of the *South African Schools Act 84 of 1996 (Schools Act)*, affirms the prominence of constitutional values in the realm of schooling by acknowledging all learners’ inherent dignity and need for mutual respect, regardless of diverse convictions and cultural traditions (r. 4.3). In addition, not only are all role-players forbidden to

discriminate unfairly against a learner (r. 4.2), but democratic values are also highlighted by ensuring that all schooling role-players enjoy the privilege of fair procedures being followed and being part of decision-making concerning issues that affect them. The Code of Professional Ethics (developed in terms of Section 14[2][a] of the *South African Council for Educators Act* 31 of 2000) similarly obliges all teachers to have a high regard for learners' dignity and beliefs (r. 3.1), as well as to promote the fundamental rights of learners (r. 2.3) and keep harmonious relationships with parents (r. 4.1), and to behave in a manner that does not disrespect the values, norms and customs of society (r. 5.2).

## ■ Protecting human dignity

The protection of human dignity entails protecting both the individual reputation of persons and their right to a sense of self-worth. In *Le Roux v Dey*, 2011 (3) SA 274 (CC) (para. 109), the CC holds that the publication of a ridiculed picture by a learner of, in particular, the school's deputy principal, aimed at undermining his authority, destroying his image and representing him as unworthy – or at least, less worthy – of respect by school's learners constituted to defamation of the deputy principal's character. Although the CC recognises that learners often make jokes of teachers and that they need not always be taken too seriously (para. 117), it also notes that 'there is a line that may not be crossed'. The CC subsequently found that learners cannot be released from their responsibilities to respect others in general and thus need to be held accountable for their actions in cases of disrespect.

It is in this sense that the protection of all persons' equal worth entails protecting them from any unfair discrimination (Burchell 2014:267), considering human life as being of equal worth and weight (Nhlapo 2017:2–3), and obliging all people to appreciate especially the dignity and equal worth of all citizens always (*Islamic Unity Convention v Independent*

*Broadcasting Authority* 2002 [4] SA 294 [CC], paras. 31-32; Mswela 2017:131).

Respect towards human dignity, seen from another angle, necessitates deferential responses and behaviour towards persons, with limitations also placed on what can be done to one another (Vice 2015:142). Seen from this angle, respect towards human dignity involves recognising the unique identity of each individual positively. Human identity embraces individual personal characteristics, such as gender, race, marital status, nationality, cultural origin, language, sexual preference, health, age, religious conviction and faith, as well as medical, financial, criminal and employment history (Burchell 2014:257). In this regard, mutual respect is expected, as people are required to respect others, especially those who may differ from themselves. In their interaction, no person should be disrespectful towards another person and people may not attempt to impose their vision of the good on others (Bilchitz & Williams 2012:168).

## ■ Respecting human dignity

In this regard, respect for dignity was regarded by the CC in *S v Makwanyane* 1995 (3) SA 391 (CC) (para. 329) as the touchstone of the new democratic order and as fundamental to any constitutional dispensation. This view is underscored by Botha (2015:488-489), who argues that human dignity is interwoven into a sequence of values such as nationhood, a sense of belonging, political equality, democracy and equal citizenship. In referring to the case of *August v Electoral Commission* 1999 (3) SA 1 (CC), Botha stresses that excluding any South African (in this case, excluding prisoners from voting) from the political or social realm, constitutes an infringement on their dignity as they are regarded as being incapable of meaningful participation and are held as unworthy of recognition.

In the absence of a clear constitutional definition of human dignity, Ackermann (2012:916) indicates this concept as being

interpreted differently and as having acquired diverse meanings over time. Concepts such as *status*, *intrinsic value* and *a right to respect* have become attached to human dignity as such. At the same time, human dignity has been regarded as including individual freedoms, as dignity includes the capability to shape oneself, enhance self-worth and individual potential, make independent decisions, develop a unique personality and stimulate self-determination individually and collectively (Burchell 2014:270; Holness 2014:314, 322–323).

A possible close link between dignity and equality has been recognised, especially when upholding diverse identities in society (Ackermann 2012:915; Van der Berg 2017:587). In this regard, the CC in *Minister of Home Affairs v Fourie* 2006 (1) SA 524 (CC) (para. 60) called for equal respect among people across differences founded on an ethical and equal worth basis to ensure that diversity is *celebrated* rather than used as a source for the exclusion, marginalisation and stigmatisation of others (Ngwena & Pretorius 2012:110). Human dignity was given a broader CC court definition in *Khumalo v Holomisa* 2002 50 SA 401 (CC) when it found that dignity does not merely confer value on the equal worth of individuals; it also confers value on an entire society's evaluation of its individual citizens.

## ■ Guarding against a too-narrow approach towards human dignity

Taking a too-narrow approach towards human dignity was criticised by court arguments (*August v Electoral Commission* 1999 3 SA 1 [CC], para. 17; *Lesbian and Gay Equality Project v Minister of Home Affairs* 2006 1 SA 524 [CC], para. 60), which indicated that human dignity cannot be merely aligned with equality and freedom. Human dignity also needs to be pronounced together with other values, such as democratic citizenship and participation.

Despite searching for a clear definition, Vice (2015:141) argues that people cannot be treated as mere objects to further the interests of others or to obtain social goals; they should rather be respected as subjects of their own lives. Along the same lines, infringement on human dignity has been regarded as leading to disrespectful attitudes towards and inappropriate treatment of others, disregarding the special kind of worth that is inherent in all persons (Vice 2015:142). Examples are found in distributing false or hateful information about others or merely being rude to others because of their differences (*Le Roux v Dey* 2011 [3] SA 274 [CC], para. 202; *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999[1] SA 6 [CC], para. 22–28, 124–132).

Even closer to schooling, the Learner Code of Conduct Guidelines provide, albeit still broadly, that learners should be equipped with the essential expertise, knowledge and skills to behave in a manner that would be expected of them, not only as worthy and responsible citizens but also as learners who conduct themselves at schools in a manner that will prepare them for social interaction (r. 1.4). These guidelines likewise advise on administering corrective punishment when learners misbehave, with the purpose of maintaining an orderly school environment (r. 8.1). Inappropriate behaviour among learners was defined in *Antonie v Governing Body, Settlers High School* 2002 (4) SA 738 (C) (para. 19) as covering conduct that is immoral, shocking or promiscuous.

Based upon South Africa's pluralistic community, Vice (2015:160), however, cautions that unjust prevailing circumstances in South Africa (availability of resources, attempts to redress past inequalities) could necessitate treating some persons in a manner that may be regarded as disrespectful. Under such conditions, the author argues that human dignity would have to be weighed against all other constitutional values, especially in terms of reaching social goals. Although not ideal and almost certainly not morally correct, Vice (2015) regards this as inevitable,

as realising social transformation in our country is often impossible without trumping the dignity of some groups of citizens. Despite the fact that the concept of human dignity has not been narrowed down by courts, Burchell (2014:270) notes that a dignity-centred ideology is at least well established. What is needed now is to accord its proper weight in practice.

In line with Ngwena and Prinsloo's view (2012:83), namely, that the attainment of equality is paramount in reaching South Africa's transformative constitutional goals through respecting the equal worth and dignity of all persons while acknowledging their right to be different, thus allowing for inclusive citizenship, the concept of equality is forthwith outlined.

## ■ Equality

Equality, together with human dignity and freedom, is recognised as the second founding constitutional (s. 1[a]) and democratic (s. 7[1]) value. It is cherished both as grounds for justification when limiting fundamental rights (s. 36[1]) and as of significant value when interpreting the Bill of Rights (s. 39[1]).

In view of South Africa's history of unequal treatment, equality is the first fundamental right guaranteed to everyone within its borders. By indicating everyone as equal in the eyes of the law and ensuring everyone's right to equal benefit of and protection by the law, Section 9(1) provides all persons with an enforceable right. Equality is defined in Section 9(2) as a concept comprising the complete and equivalent enjoyment of all freedoms and rights. Referring to providing a definition for equality, Albertyn (2013:460) suggests that it is a complex, multifaceted and at times even contradictory concept. Although there is no general consensus on the exact meaning of equality (Smith 2014:611), both Section 9(1) and Section 9(2) were interpreted by the Supreme Court of Appeal in *Head of Department, Western Cape Education Department v MS* 2018 (2) SA 418 (SCA) (para. 47) so as to award all persons the right to formal and

substantive equality. In this court case, a substantive equality approach was taken in view of the passionate manner in which the Constitution aims at addressing all social inequality by way of a deeply entrenched transformation process of the public schooling domain, in particular, as well as of society in general.

In addition, Section 9(2) is lenient towards affirmative action measures. As opposed to transformative strategies that necessitate the reform of social structures, affirmative plans aim at correcting undemocratic social outcomes without unsettling the basic social structures that create them (Liebenberg 2015a:447). In addressing affirmative action in the workplace to redress past inequalities, the CC in *Minister of Finance v Van Heerden* 2004 (6) SA 121 (CC) (para. 44) reiterated that courts, in determining whether such measures will promote the achievement of equality in the long run, should carefully evaluate the effect thereof in the context of the broader inclusive social aim, namely, to attain a truly non-sexist, non-racial society that will recognise and treat each individual as a person of equivalent worth and dignity, while taking into consideration the aspect of diversity.

To assist the predominant goal of the equality clause, namely, to prohibit all forms of unfair discrimination, Section 9(3) offers a non-conclusive listing of prohibited bases of discrimination that is binding on both public and private actors (Liebenberg 2015a:460). This list is specifically provided to give effect to the principal purpose of the Constitution, namely, to undo all deep-rooted injustices done to specific groups of people in this country (*Brink v Kitshoff* NO1996 [4] SA 197, para. 42), to reconsider established power relations within it (*South African Police Service v Solidarity obo Barnard* 2014 [6] SA 123 [CC], para. 29) and to contribute to the creation of a more equal society (Smith 2014:611). To Rautenbach (2017:354), the equality clause identifies the protection of the equal worth of all people as the prominent interest that needs protection by placing emphasis on the prohibition of unfair discrimination. In addition, this clause aims

at creating a non-racial and non-sexist society in which everyone is acknowledged and regarded as a person with equivalent dignity and worth.

In the case of *Federation of Governing School Bodies for SA Schools v MEC for Education, Gauteng* 2016 (4) SA 546 (CC), the CC emphasised that Section 9(3) prohibits unfair discrimination and does not allow for a separate right to discriminate fairly as contended by the applicant. The latter opposed reg. 3(7) of the Regulations on Admission of Learners to Public Schools, which prohibits schools from requesting a learner's previous school to furnish it with a confidential report concerning the financial status of the learner's parents. It was argued that prohibiting a school to obtain such a report interfered unreasonably with school governing bodies' authority to agree on and execute admission procedures, and to discriminate fairly against learners whose parents cannot pay school fees (para. 15).

Even though Section 9 provides equality as an immediate enforceable right, Vice (2015:140) opts for referring to the attainment of equality, given not only the complex nature thereof in South Africa but also with our country still identified as being 'one of the most unequal countries in the world'. Because of the different ways in which equality can be measured and owing to the different types of inequalities that exist in societies, McGregor (2014:298) doubts whether an ideal state of equality will ever be achieved or even be recognised if reached. Striving for equality is thus an ideal. In this sense, Vice (2015:140) differentiates between legal equality (that can be lost and regained) and equality of (legal) rights and freedoms (socio-economic equality) founded on moral equality and underpinned by human dignity (that cannot be regained once lost). The latter, from a moral viewpoint, is based on the equal importance of persons, entitling them to equal consideration in all matters in which they have an interest. In support of this, Smith (2014:610) maintains that the past inequalities South Africa faced were perhaps the

main reason behind including equality and human dignity, as well as socio-economic rights, in the Constitution as true revolutionary clauses.

## ■ Formal and substantial equality

In returning to interpreting Sections 9(1) and 9(2) as entitling everyone to formal and substantive equality, these two forms require further explanation. Formal or consistent equality entails that all similarly situated persons are treated exactly the same regardless of unique and group characteristics, such as race, gender or religion, or any cultural, political and legal choices (Smith 2014:612–613). This approach to equality is criticised by Albertyn and Fredman (2015:437) and Van der Berg (2017:587), as diverse identities are cherished parts of individuals' lives and conformity and the equalisation of capabilities cannot lead to equality as such. On the other side of the coin, substantive equality demands that such characteristics be accommodated to consider persons as 'substantive equals' by identifying and accepting their diversities. The benefit of substantive equality, according to Albertyn (2013:461), lies in its value to create equal outcomes and to direct positive measures to be taken to transform society into one that provides equal opportunities for everyone to free their potential, with schooling being of specific significance in freeing learners' potential (Liebenberg 2015b:424). Attaining equal outcomes or results, as put forward by Smith (2014:613), entails the free and equitable distribution of social resources, while providing equal opportunities requires the elimination of all existing barriers that exclude specific groups from active participation in the public domain and the workplace. The negative effects of the latter are highlighted by Woolman and Fleisch (2014:135). They indicate that disregarding and exclusion of individuals lead to feelings of inferiority, with learners – especially those who are still younger than 18 years and therefore classified as children (Constitution s. 28(3)) – needing distinct safeguarding.

As indicated by the CC's adjudication (e.g. in *City Council of Pretoria v Walker*, 1998 [2] SA363 [CC]; *Bhe v Magistrate Khayelitsha* 2005 [1] SA 580 [CC]), achieving substantive equality in South Africa would require an entire reconstruction of the country and its society. This reconstruction not only needs to include 'a redistribution of power and resources along equalitarian lines,' but at the same time implies the courageous elimination of the following specific aspects (Albertyn & Goldblatt 1998, [*emphasis in original*]):

The challenge of achieving equality within this transformation project involves the *eradication of systemic forms of domination and material disadvantage* based on race, gender, class and other grounds of inequality. (p. 249)

For the most part, the trick with figuring out *systemic forms of domination* originates firstly from these forms being for the most part carved into the law and institutes of society (as indicated 21 years ago by Albertyn & Goldblatt 1998:249) and secondly from being able to grasp domination as a concept. The former was dealt with in an incisive manner in the 19th century by Mill and Mill (1896:22), who alluded to domination constantly appearing to be *natural* to the people who have it, how strongly they cling to it and 'how slowly [...] institutions give way' to it (Mill & Mill 1896:13). According to Mill and Mill (1896:11), '[l]aws [...] convert what was a mere physical fact [domination] into a legal right'.

In a cutting-edge article from the previous century, L'Heureux-Dubé (1997:338) pinpoints an obligation towards re-visiting laws, re-examining institutions and reconsidering assumptions while taking into account how people 'whom "nature" did not place in a dominant position' experience reality. To Albertyn and Goldblatt (1998:249), facing up to accomplishing equality implicates stamping out systemic forms of measurable disadvantage and domination based on class, gender, race and other grounds to address social, economic and political exclusion. Completely eradicating such systemic forms and grounds of domination

would have to be replaced by opportunities for positive social relationships to blossom. To even consider a process towards such a complete eradication of domination and disadvantages calls for a contextual analysis of structural disadvantages towards treating all persons as equals or as ends in themselves (Albertyn & Fredman 2015:438). Structural change alone will, however, not be sufficient. The stereotyping attitudes and marginalising behaviour of the general public also need to be shifted towards respecting diversity and treating one another as equally valuable (Holness 2014:330; Ngwena & Pretorius 2012:84).

Albertyn and Fredman (2015:430) favour following a substantive equality approach for its ability to recognise equality in all its multidimensional forms and for not merely limiting it to a dignified, non-discrimination paradigm. These authors suggest a four-dimensional outline aimed at tackling labelling and bias, enabling democratic involvement, restoring socio-economic limitations, and appreciating and accommodating disparity through operational adjustment to understand substantive equality. In agreeing that substantive equality is complex, Krüger (2011:479) states that the Constitution, nevertheless, aims at achieving substantive equality by requiring the contemplation of the socio-economic circumstances of groups and individuals when determining the true meaning of equal treatment. Such contemplation can undo the long-standing cycle of inequality and disadvantage associated with membership of a particular group that has become so ingrained in South Africa's societal structure (Mcgregor 2014:287).

## ■ Best possible involvement of individuals

With regard to individual freedom, the CC identified individuals' freedom, also at everyday school level, to democratic involvement as crucial to the Constitution's set of values in *Head of Department, Department of Education, Free State Province v Welkom High School (Welkom)* 2014 (2) SA 228 (CC) (para. 137). In the exact words of the CC court:

The school governing bodies and HOD are organs of state [...] section 41(1)(h) [of the Constitution indicates] [...] an unequivocal obligation to co-operate [...] in mutual trust and good faith by assisting [...] supporting [...] informing [...] and consulting one another on matters of common interest, co-ordinating [...] and avoiding legal proceedings against one another. (para. 141)

As pointed out by Liebenberg (2015a:468), to be meaningful, such involvement needs to involve structured interaction between citizens and local authorities that is done in good faith and that reflects not only *transparency* but also citizens' *optimal involvement*. The best possible individual involvement is especially relevant when it comes to distributing primary goods in a society that requires social cooperation between free and equal citizens. Such social cooperation is based on two distinctive principles of justice: the first entails the notion that all citizens have a claim to equal basic freedoms and the second implicates a moral basis for distributing income and wealth in society (Liebenberg 2015b:436).

In a sense, we regard the *Welkom* CC judiciary's indication of individuals' freedom to democratic involvement as crucial to the Constitution's set of values to allude to *the integrity of our constitutional value system* in theory. Encouraged by this link between the moral set of values and constitutional integrity, we are convinced of the significance of advancing an optimistic outlook on the possibilities for similar integrity to inspire individuals' critical awareness at the school level of the necessity for positive discussion and relevant action with the intention of achieving the best possible involvement.

The CC based its decision in *MEC for Education in Gauteng Province v Governing Body of Rivonia Primary School* 2013 (6) SA 582 (CC) (para. 8) on the first principle of justice, by finding that the collaboration between schooling partners who are connected to schools' admission policies to ensure equal access to school and the delivery of quality schooling must be aimed at giving

effect to the common constitutional aim of confirming that learners' best interests are fostered while realising their right to a basic education. We regard the fostering of learners' best interests at the same time as acknowledging learners' rights to a basic education as also referring to the integrity of the Constitution, as if strengthening the *Welkom* CC reference to an individual's freedom to democratic involvement. Chapter 1 included the *Rivonia* case to illustrate a court's adjudication of the transgression that results from an organ of the state abusing its authority to bully another organ of the state. During our rethinking about the equal worth and citizenship of learners, *Rivonia* assisted our search in getting behind the complexities of these significant indicators for experiencing equivalent participation at relevant levels.

Substantive equality was also opted for by the CC in *National Coalition for Gay and Lesbian Equality v Minister of Justice* owing to its potential to eradicate segregation in a society, which uses diversity among individuals to create and legitimise specific group membership dominance. In opting for substantive equality, the CC acknowledged that following such an approach in contrast to following a formal equality approach will assist both in creating equal citizenship and in respecting the dignity of everyone while accepting human diversity in its widest sense possible. Such an approach is welcomed by Ngwena (2014:282) when he argues that substantive equality leads to a new understanding of equal citizenship as entailing inclusive citizenship equally for, in his case, people with disabilities. The same importance was awarded to diversity and a substantive equality approach in *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) (para. 61). While highlighting the rights to equality and association (Constitution 1996, s. 18), in this case, associated with Christianity, the CC found that diversity and substantive equality underscore the right of individuals to self-determination and, thus, to be different.

## ■ The right to equality in the schooling domain

Specifically, in the realm of schooling, the CC in *MEC for Education, KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) (hereafter *Pillay*) showed respect for diversity among learners (para. 65). The CC approved of a substantive equality approach to oblige schools to alter their codes of conduct to guarantee the reasonable accommodation of religious and cultural differences and to instil positive measures 'to allow all learners to participate and enjoy' (*MEC for Education, KwaZulu-Natal v Pillay* 2008) their right to equality fully, notwithstanding extra adversity or expenses (paras. 73, 107). Allowing learners who cannot conform to specific social norms (in this case, owing to religious beliefs, para. 73) to be exempted from strict adherence to codes of conduct was regarded by the CC as respecting the equal worth of such learners and preventing indirect, unfair discrimination against and the marginalisation of such learners (para. 185).

In a matter that addressed a learner's choice concerning the medium of instruction at school, it was held in *Nkosi v Vermaak & Durban High School Governing Body* (77/2007) (2008) ZAKZHC 83 (Equality Court, Durban, 30 September 2008) that an entire school's medium of instruction (in this case, English) could not be altered just because one learner chose to be educated in his or her mother tongue (in this case, isiZulu). In acknowledging the existence of numerous schools in close proximity that used isiZulu as the medium of instruction, the Court found the school's language policy to be fair discrimination. The Court, nevertheless, respected the learner's rights to dignity, equality and education in the language of choice. It was found that both isiZulu and Afrikaans as additional languages of instruction at the particular school should be accorded equal respect and resources to meet all learners' constitutional entitlements. In this regard, the Language in Education Policy (DoE 1997:n.p.) recognises multilingualism in the sense that it ought to be 'a defining characteristic of being South African'.

To Conover, Searing and Crewe (2004:1), equality as a principle is traditionally integral to citizenship as a concept, with citizenship then calling for respecting all people as participants in the political community. Moreover, citizens are then encouraged to participate in decision-making processes freely, democratically and equally while their choices about how to live are respected. Respecting choices about how to live is necessary as a form of distributive justice that entails respect for equal worth and individual responsibilities and choices regarding the kind of life individuals value (Callan 2016:88; Liebenberg 2015b:420, 422). With regard to the different lifestyles persons may choose to follow, the CC in *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC) underscored an ethics of inclusive citizenship founded on a legally normative concept of equal respect to and concern for everyone.

## □ Inclusive citizenship

In *Antonie v Governing Body, Settlers High School* 2002 (4) SA 738 (CC) (para. 16, 17), the CC concluded that justice, fairness and reasonableness – as reinforced in the Constitution – are not served if a school’s code of conduct prohibits learners from growing dreadlocks or female learners from wearing head-gear in line with their religious beliefs. Such prohibitions constitute impinging of such learners’ right to freedom of expression. This, conversely, remains a contentious issue. Late in 2018, the Ashton International College was accused of being racist, and their code of conduct was charged as being unconstitutional as it disallowed a Grade 8 learner (13 years of age) to grow a beard for religious (in this case, Islamic) purposes. Ashton International College claimed that it was an independent Christian school and that parents accept, sign and agree to its ethos and code of conduct voluntarily before their child is admitted. The matter was resolved at the school level as the school, after deliberation, agreed to allow the learner to grow his beard in line with his religious beliefs (Somduth 2018). During the same period,

Jeppe High School for Girls was also entangled in a debate for allegedly banning learners from wearing hijabs (headscarves) with their school uniform (News 24 2018). As recent as the second week of schooling in 2019, the DoE also instructed a school in the North-West Province to admit a Muslim learner and cautioned the school to revise their code of conduct concerning dress codes to respect the learner's religious beliefs. The father was transferred to Potchefstroom, and there was (at the time) no Muslim school nearby.

To Botha (2017:802–803), inclusive citizenship ensures that all individuals are encouraged to live with the confirmation that their equal entitlements to the rights, benefits and privileges of citizenship, with Section 3(2) of the Constitution as the guarantee, will be respected and that they will not be excluded from, but rather allowed, an equal standing in society. According to Botha, this was the reason why the CC found that forming a society, which respects every individual's human dignity despite differences, was the central underlying purpose of South Africa's constitutional order in *Republic of South Africa v Hugo* 1997 (4) SA 1(CC). Subsequent to this significant finding, Botha (2015:488–489) concludes that constitutional principles and democratic ideals are negated when South Africans are robbed of equal citizenship. According to Ngwena and Pretorius (2012:84), the concept of inclusive citizenship is a direct outcome of substantive equality as the latter is the driving force behind creating opportunities for equal citizenship to be realised in practice. To realise equal citizenship, diversity demands urgent adjustment to fit unique individual interests and needs (Holness & Rule 2014:1937) as well as the provision of high-quality, equitable and inclusive schooling (Mekoa & Molope 2018:11441).

## □ Equal citizenship obligations and challenges of schools

Equal citizenship consequently assigns several obligations to the government as it requires not only equal support and protection

of all citizens (Liebenberg 2015a:455) but also the provision of sufficient resources to meet their basic human needs (*Government of the Republic of South Africa v Grootboom* 2001 [1] SA 46 [CC]). The phrase *sufficient resources to allow for social citizenship*, according to Liebenberg (2015a:449), denotes providing resources, not merely allowing citizens to survive, but to live decent lives, thus encompassing advantages that will allow them to take part fully in the cultural, social, economic and political life of a community. This will, as suggested by Van der Berg (2017:591), entail that schools should, among others, provide safe and hygienic environments that are accessible to all learners and ensure sufficient learning and teaching resources that advance quality education as found in *Section 27 v Minister of Education* 2013 (2) SA 40 (GNP).

The problems attached to such an ideal of allowing for social citizenship was highlighted by the CC in *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (2) SA 415 (CC) where it noted the context in which the case had to be adjudicated. It was acknowledged that deep inequalities continue to exist in South Africa's schooling system. Emphasis was placed on the sharp differences concerning learners-per-class ratios at this school in comparison to neighbouring schools and, in doing so, the CC disclosed shocking disparities, which indicated an immense difference in available resources and, subsequently, the delivery of quality schooling. These disparities were found to account for the unequal distribution of skills and competencies acquired by learners through being educated at different schools in South Africa.

With a specific emphasis on the (re)distribution of resources, Claassens (2014:778) suggests that specific attention should be paid to South Africa's underlying configuration concerning poverty and marginalisation, which require a true governmental devotion towards reintegrating all of us as equal citizens. In this regard, the government still needs to show progress, as growth in this section has only been fractional, leaving many persons still at the margins

of citizenship (Ngwena 2013:427). Liebenberg (2015a:447) states that 'material deprivation and status hierarchies' block citizens from taking part in all facets of society as equals, leaving especially socio-economic rights vulnerable to never-ending violation. However, given the scarceness of available resources worldwide, guaranteeing equal citizenship for minority groups continues to be a tricky problem in multi-ethnic contemporary democracies (Conover et al. 2004:1) and may even, in specific contexts, lead to the sacrifice of some individuals' human dignity (Vice 2015:162).

For equal citizenship to be realised in practice, our government is obliged to establish a culture of human rights so that treating everyone with equal respect becomes a natural part of all public actions (Albertyn 2013:462). This entails a general duty of the government to have due regard for the need to eliminate all forms of unfair discrimination; promote equal opportunities; be equally responsive to the interests, needs and concerns of all; foster sound relations between different people; and to be equally accountable to all citizens – absence of these aspects would mean equal citizenship is denied (Mcgregor 2014:282, 297).

If equal citizenship were to be denied, Ngwena (2013:410–411) encourages everyone to use the law as a tool for safeguarding their equality rights as involving fair procedures in ensuring the protection of equal citizenship within a democratic dispensation committed to the rule of law. With these things in mind, the author argues that emphasis should not be placed on a particular human right's violation but rather on fulfilling procedural equality by addressing the executive tiers' failure to attend to its duties, namely, to implement legislation in order to respect, protect and fulfil human rights. The reason behind this argument is that accomplishing social justice requires not only the recognition of human rights but also the fulfilment thereof in a just manner that necessitates social cohesion (Ngwena 2013:421).

## ■ Human rights and Citizenship Education

The contemporary discourse of social justice or transformative constitutionalism, according to Madlingozi (2017:125, 128), serves as the framework for social emancipation, which will allow individuals to live improved lives. Social justice is similarly regarded as requiring of social redistributive justice (i.e. the redress of past injustices) to be at the core of South Africa's societal transformation process (Moseneke 2002:310) and thus to be elevated, as indicated in the Preamble of the Constitution, to the status of a leading foundational value (Moseneke 2002:314).

In addition, Holness and Rule (2014:1908) recognise the importance of schooling for the achievement of equal citizenship. Education is important as persons who receive no schooling or schooling of an inferior status cannot take part in society positively as citizens, much less become equal citizens (Liebenberg 2015b:426).

An immediate, enforceable right to a basic education, part of the broader socio-economic rights, is guaranteed to everyone (Republic of South Africa 1996:s. 29[1][a]). In addition, to learners at public schools, Section 29(2) guarantees the right to be taught in their preferred official language. Yet, it needs to be noted that the last sentence of Section 29(2) (Republic of South Africa 1996) not only qualifies and enforces this right if and where it would be 'reasonably practicable', but an obligation of the State is also mentioned 'to ensure the effective access to, and implementation of, this right' by considering every 'reasonable educational alternatives, including single medium institutions'. The State must take the three aspects of fairness, 'practicability' and the call for levelling out the domino effect of previous ethnically prejudiced practices and laws into account. We argue that the current shortcoming concerning sound definitions of weighty concepts (such as *reasonably practicable*, *effective access*, *reasonable educational alternatives* and *practicability*) weakens honest

attempts at giving effect to Section 29(1) and Section 29(2) in light of, among others, learners' equal worth and equal citizenship in practice (Republic of South Africa 1996).

To give effect to these education rights, the *Schools Act*, while noting our country's past inequalities concerning the provision of education, aims at providing a progressively high quality of schooling to all learners. In attaining this aim, it is the purpose of the nationally uniformed education system to provide a firm foundation to develop the capabilities and talents of all learners. Advancing democratic transformation, contesting all forms of unfair discrimination and intolerance, and protecting diversity are also recognised as key goals. The *Schools Act*, moreover, aims at sustaining the rights of all role-players in schooling, while also ensuring that such role-players accept concomitant responsibilities for schools and education in general.

## □ The goals of schooling for equal worth and equal citizenship

According to Van der Berg (2017:591), the main goal of schooling is to encourage learners towards experiencing lives distinguished by equality, dignity and freedom. A secondary aim is to instil in learners the necessary knowledge, capabilities, skills and values to live such lives. It is evident that the *Schools Act* propagates the establishment of equal access to schooling and the creation of equal education opportunities and participation for all learners of an increasingly high standard for which the equal distribution of available resources is necessary. Given the diversity among learners, achieving equal educational outcomes can be added to this list (Albertyn 2013:461; Liebenberg 2015b:424; Smith 2014:613). In this regard, the *National Education Policy Act 27 of 1996* (s. 4[a][ii]) reiterates the essence of all education policies to be directed at allowing equal access to a basic education at all educational institutions.

Considering the general scarceness of available resources, especially financial resources, in the South African schooling

system, Van der Berg (2017:581) requests a more 'proportionate state resource allocation' in education for its prospective ability to enhance the knowledge, capabilities and skills of future generations that will, in the long run, foster economic growth. Although the National Norms and Standards for School Funding (embedded by the *Schools Act*) expresses the need for a clear-cut state obligation to fund public schools equitably (s. 34[1]), it is acknowledged that all schools currently do not receive the same funding from government and that large inequalities pertaining to available educational resources exist among schools. It must equally be acknowledged that existing inequalities cannot merely be wiped out, even with a discriminatory system of unequal public funding strongly favouring poor learners and schools in poverty-stricken communities (Callan 2016:79). A long, steep road still lies ahead.

In this regard, an unexpected proposal is made by Callan (2016:81). In basing his argument on the willingness (or not) of learners to learn, the author suggests that, at least as far as some central tasks are concerned, achievement rather than opportunity must be the main criterion for distributing schooling funds, thus allocating financial support to those learners who are truly committed to learning. Whether agreeing or disagreeing with this stance, the importance of the duty of learners to learn cannot be ignored. From a teacher's perspective, Callan (2016:83), nevertheless, stresses the importance of providing the best schooling possible to all learners and encouraging them to become engaged optimally in order to free their potentials. From a government perspective, Callan also suggests the existence of compulsory education, although it cannot guarantee equal education outcomes.

It, nonetheless, remains the responsibility of education to embolden learners with the skills of how to participate competently in democratic decision-making for which scientific knowledge related to, among others, public policy and the history and culture of the country is important. Learners need to be guided to develop critical thinking skills that will enable them to

evaluate prevalent circumstances as well as to interact and cooperate with others meaningfully as democratic citizens (Callan 2016:81). Equally, enhancing the capabilities of all learners is regarded by Van der Berg (2017:605) as an all-encompassing normative aim of socio-economic rights (of which schooling is one), as it enables them to live in substantive equality with others by leading dignified and autonomous lives. It is, as such, the purpose of schooling to enhance the overall capacity of learners, of which enabling them to consult and learn from a variety of information-rich resources such as textbooks (Van der Berg 2017:591) is but one aspect. In this regard, Mekoa and Molope (2018:11443) highlight the close link between citizens taking their responsibilities seriously and the success of democracy. In doing so, they highlight the fact that learners, through Citizenship Education, should become knowledgeable about what citizenship entails, how it is acquired, and which rights and duties are attached thereto.

To attain equal education outcomes is, however, a daunting task as a one-size-fits-all approach cannot be taken. Due regard needs to be taken of the diverseness of learners and the different capabilities they bring to the table, while also noting the normative, social, historical and factual contexts in which learners' diverseness and different capabilities need to be realised (Van der Berg 2017:592). Applied to the South African context, Mcgregor (2014:298-299) is of the opinion that citizens are naïve in hoping for a non-racial society. The situation is far more complex as the majority of South Africa's population (65%) comprises people between the ages of 20 and 35 who are uneducated, lack life skills and are, thus, unemployed and unable to contribute positively towards attaining democratic ideals. Such a situation is troublesome as human rights cannot be protected and fulfilled by judicial enforcement alone (Smith 2014:632) - it rather requires individuals being aware of and knowledgeable about their human rights, being capable of meaningful democratic participation and possessing the

necessary skills to consider alternatives critically and make decisions that will affect the future of not only their own lives but also those of others.

Learners should be treated as equals, as their specific levels require equal support and protection for their diverse religious beliefs and practices, language, culture and abilities or disabilities, among others, to provide them with equal standing as future citizens (Conover et al.2004:4, 24). With specific reference to religious diversity, Osman (2014:1340) comments that our country does not endorse a stringent understanding of secularism, nor does it aim to build a particular countrywide identity for all the citizens – it rather aims at developing nationwide respect for diversity. Osman concomitantly advocates allowing Muslim learners to wear a headscarf at school in line with their religious convictions. In referring to the Supreme Court of Appeal's decision in *Department of Correctional Services v POPCRU* 2013 4 SA 176 (SCA), the author also strongly argues in favour of respecting the wearing of dreadlocks as a manifestation of the Rastafarian culture at schools, thus eliminating any unfair discrimination on the basis of religion or culture. Osman's (2014:1349) argument is in line with respecting the equal worth of learners and not compelling all of them to adopt a uniformed identity. The prominence of respecting all learners' equal worth without expecting a uniformed identity lies in the significance of belonging to a specific group towards forming of unique, personal and social identities upon which their individual autonomy, self-respect and quality of life may depend (Lenta 2008:260).

However, a learner's claim to exemption can never be without limits. Although the Canadian Supreme Court found in *Multani v Commission Scolaire Marguerite-Bourgeoys* [2006] SCC 6 (para. 79) that banning the wearing of a kirpan (a metal dagger/sword) to school undermines the value of the Sikh religion completely and leads to learners believing that some religious practices are not protected equally at schools,

Lenta (2008:289) holds that South African courts may disagree. The author bases his opinion on the decision taken by the CC in Paragraph 78 of *Pillay* – fairness calls for reasonable accommodation, the meaning of which needs to be clarified by way of a case-to-case starting point while considering specific contexts to which it could relate.

South Africans were shocked by the news of a learner killing another and injuring three others with a kirpan at Nic Diederichs Technical School in 2008. The case ended with the learner being sentenced to 20 years' imprisonment by the High Court. In view of the context in which this incident occurred and the devastating results, the negative effect of such incidents on the creation of safe and secure schooling environments for conducive teaching and learning to transpire, as well as the increasingly high number of violent incidents in schools in South Africa, it is doubtful whether disallowing a learner to bring a kirpan to school will be regarded by the South African courts as infringing upon the religious, cultural and education rights of learners who belong to the Sikh religion. The judiciary should be seen to act especially vigorously on events and incidents that disrupt schooling.

In the case of *Organisasie vir Godsdiens-te-onderrig en Demokrasie v Laerskool Randhart-(Randhart) and Others*, Case no 29847/14 – translated as *Organisation for Religious Teaching and Democracy v Randhart Primary School* – schools are, however, again reminded not to endorse one religion (in this case, Christianity) at the cost of others. As part of the public domain, such an endorsement will not only hamper realising the general impartiality principle concerning opinion and belief matters but also remind everyone of past inequalities in this regard (*S v Lawrence*; *S v Nagel*; *S v Solberg* 1997 4 SA 1176. para. 152). In another chapter of this book, Smit included the *Randhart* case as opening 'new frontiers' for our public schools, with possibly having a few significant inferences for other countries.

## ■ Conclusion

Taking a Janus angle of incidence in looking at the rear-view mirrors of court judgements as interpretative lenses has supported us in rethinking and reflecting on the equal worth and citizenship of learners at South African schools. We extracted different strands, especially of CC judgements, purposively to contribute to forming a smarter understanding of the current standing of learners' position in these regards. In the image of driving safely, it is clear that especially public school principals and governing bodies can learn from judicial decisions as they aim at manoeuvring their schools safely through each school year by, among others, following the advice and directives of the courts.

Although our laws, policies, regulations and schools' codes of conduct seldom discriminate unfairly against followers of cultural and religious groups or target religious and cultural practices intentionally, we must all remain conscious of the constitutional imperative of respecting diversity. Schools, in particular, should be made aware that merely taking a neutral stance to diversity among learners may have adverse effects and create unequal schooling opportunities for members of certain groups if room for exceptions (standing in the way of achieving true equality) is not allowed for. Granting exceptions should not be regarded as merely giving in to the whims and fancies of any and all of the learners who act impulsively and bring up new demands which require of their school to bend or amend the rules of conduct. More than ever, school principals and the governing bodies at their schools need to read school-relevant court cases to extract the essence of indicators that could show the pathway towards allowing exemptions and making allowances for requests that relate to learners' constitutional right to equality and dignity on their way to developing into citizens who will be accountable for their conduct and actions.

Given South Africa's quarter-century of democracy, governing bodies and schools need to lead by example in re-visiting their codes of conduct to address the need for granting exceptions that are specifically related to religion, belief and opinion. Schools can no longer be forgiven for not responding to continuous legitimate calls from learners and their parents concerning equal worth and equal citizenship. A school and its governing body that react positively in this regard would probably be notably surprised by the reaction of those who previously felt disregarded and unworthy. Any groups who respond negatively to such legitimate considerations by their school ought to be reminded of their own standing as worthy citizens of South Africa.

# Religious diversity in South African schools – The co-operative model and tolerance of school autonomy

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## ■ Abstract

Dealing with religious diversity and freedom of religion in public as well as independent schools has been the source of disputes in many countries. Although religion has lost its impact on social life in Europe, the freedom of religion and respect for religious

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diversity are still a moral tenor of society. Three models for dealing with parental rights to decide on the moral and religious content of their children's education in relation to the state's right to regulate education are considered. The European model, where the state funds faith-based schools, the American strict separation model and the South African co-operative model between the state and public schools were considered. The detrimental aspects of the secular education (separation between the church and state) of the USA are explained. Legislation and policy prohibit indoctrination of learners, but even secular education might be biased. Neo-Darwinian Evolution Theory is a possible example of indoctrination in public schools. This chapter argues for the tolerance of religious diversity in public and independent schools to avoid indoctrination of learners and promote freedom of education.

## ■ Introduction

In pluralist societies and liberal democracies such as South Africa, diverse interests regarding values, worldviews and religious or cultural traditions are almost certain. Although freedom of religion, belief, thought, conscience and opinion is protected as a human right in most democracies, there is a fundamental difference between allowing freedom of religion in the private sphere and accommodating religious diversity within the public realm and the education sphere.

Historically, the notion of allowing religious diversity was a significant source of strife and conflict in Europe for centuries since the Reformation, until religious justice was eventually attained to an extent by the 20th century (Glenn 2019:227–306). However, although the conflict about freedom of religion during the Reformation centred around doctrinal issues, the struggle eventually evolved to a tension between the interests of the state in determining the content of instruction and controlling the hearts and minds of its citizens and the

interests of parents wanting to educate and rear their children in the religion and culture of their own choice. Therefore, even today, progressive, developed, democratic states, such as Sweden and the USA, struggle with the idea of accommodating religious diversity in the public education system in a manner that is fair, equitable and equal to the satisfaction of parents and learners, on the one hand, and the state and other role-players on the other (Bilner 2018:1; Glenn 2019:302–306). Ultimately, it boils down to the challenge of allowing religious diversity in a manner that respects the plurality of heterogeneous communities.

This chapter thus aims to discuss religious diversity in schools and education and the right to religious freedom, belief and opinion of parents and children in a multireligious context. Part A of the chapter provides the contextual background; Part B of the chapter considers religious justice and the tension between the rights of parents to determine their children’s education and the state’s regulation of religion; and Part C discusses the notion of ‘neutral’ secular education, freedom from indoctrination and the role of the educator in teaching the curriculum content.

## ■ Part A: Background context: Religious diversity and pluralism in South Africa

South Africa is a multireligious society where the majority of the population (79.8%) are Christians, approximately 15% have no religion, and 1.4% are undecided about their faith. Other religions in South Africa are Islam (1.5%), Hinduism (1.2%), African traditional belief (0.3%), Judaism (0.2%) and other beliefs (0.6%) (StatsSA 2015:31). Among the adherents of Christianity, there is also significant diversity as the predominant form of Christianity among black South Africans is the independent and indigenous

Zion Christian faith (23.7%), whereas most white South African Christians (42.8%) belong to the Reformed churches, such as the Dutch Reformed Church. Also, 9.2% of white Christians are Methodist, 7.8% are Pentecostal or Charismatic, 7.7% are Apostolic and 7.6% are Catholic. Predominant churches among mixed-race Christians are Apostolic (18.6%), Pentecostal or Charismatic (14.2%), Anglican (10.4%) and Catholic (10.2%). Hinduism is the most common religion (47.3%) among the Indian and Asian population group, followed by Islam (24.7%) and Christianity (24.2%) (StatsSA 2015:31). The highest rate of unbelief, that is, 17.5%, is among black South Africans, followed by 8.8% of white people who claim to follow no religion (SAIRR 2017).

## ■ **Background context: Post-secular Europe and the re-emergence of religion in society**

Jürgen Habermas (2008), one of Europe's leading secular liberal thinkers, states the opinion that:

Secular citizens must be open to religious influence, especially since the very identity of Western culture is rooted in Judeo-Christian values. (p. 1)

There is now fairly widespread recognition in the fields of sociology, literary studies, art studies, education, philosophy, theology, psychology and political science that Western societies are becoming increasingly post-secular (Ascione 2015:403-434; Damberg-Nissen, Gildberg & Hvidt 2018:32; Nynäs, Lassander & Utriainen 2012). Post-secularism refers to a range of theories regarding the persistence or resurgence of religious beliefs or practices in the present. For instance, Tony Blair, the former British prime minister, 'converted to Catholicism in his political afterlife and established a Faith Foundation to press for religious literacy' (Gardels 2008:1) because he believed one 'cannot understand the modern world unless you understand the importance of religious faith' (Van Paasen 2010:1).

## ■ Background: The importance of freedom of religion, belief and opinion

'Religion is not just a [mere] question of belief or doctrine [-] it is part of a way of life, [part] of a people's temper and culture' (Sachs J in Van Der Vyver & Green 2008), and in many cases the essence of life and existence. Protecting the right to freedom of religion and the religious diversity of various faith communities is important, not only for believers but also for the proper and effective functioning of schools, the education system and society as a whole. In the matter of *Christian Education South Africa v Minister of Education* (2000) (CC), Justice Sachs eloquently explained the importance of the right to freedom of religion, belief and opinion as follows:

There can be no doubt that the right to freedom of religion, belief and opinion in the open and democratic society contemplated by the Constitution is important. The right to believe or not to believe, and to act or not to act according to his or her beliefs or non-beliefs, is one of the key ingredients of any person's dignity. Yet freedom of religion goes beyond protecting the inviolability of the individual conscience. For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe. For millions in all walks of life, religion provides support and nurture and a framework for individual and social stability and growth. Religious belief has the capacity to determine concepts of self-worth and human dignity which form the cornerstone of human rights. It affects the believer's view of society and founds the distinction between right and wrong. It expresses itself in the affirmation and continuity of powerful traditions that frequently have an ancient character transcending historical epochs and national boundaries. (para. 36)

For millions in all walks of life, their relationships with a deity (or deities) and acts of faith and worship are the key ingredients of human dignity. Religion regulates human behaviour and sets the moral rules for what is acceptable for society. Religion concerns the believers' capacity to determine concepts of self-worth, views of society and the world. It determines their work ethic and sense of responsibility, and founds the distinction between right and wrong. In general

schools with an ethos of religious freedom tend to develop a culture of tolerance and respect, experience increased levels of kindness, support and participation and gain a framework for individual growth and social stability. (para. 37)

Non-believers might find it difficult to fathom the value of religion, just as a person affirmed to celibacy or bachelorhood might question the merit of a marriage or having children. However, once a person has experienced God, the value of religion becomes an unquestionable truism.

## ■ Part B: Parental power to determine the religion of the child

In terms of the South African common law, parental authority and responsibility to decide on the nature and content of the education that a minor child should receive arise *ex lege* by virtue of parentage and are acquired over a child born alive at the time of his or her birth or on adoption (Spiro 1985:76). Parents are the primary educators of children and still have the parental power to educate their children (Spiro 1985:88). This entails that parents have the right and legal duty to care for, maintain, support and raise their child. It follows, therefore, that parents should have the first right to determine what type of upbringing, language, religion, culture and education would be best for their child or children. It is an established legal principle that the custodial parent can decide in which religion to raise the child, irrespective of the other parent's religion or wishes (Spiro 1985:297; Visser & Potgieter 1996:206).

However, neither the rights of parents nor children are absolute nor in terms of South African law; 'the High Court [of South Africa] is the upper-guardian of all children' (Van Der Vyver & Green 2008). As such, the High Court has inherent jurisdiction to decide on all matters concerning the child. In *Terblanche v Terblanche* 1992 (W), the Court stated that:

[W]hen a Court sits as upper-guardian in a custody matter, it has extremely wide powers in establishing what is in the best interests of minor or dependent children. It is not bound by procedural strictures

or by the limitations of the evidence presented or contentions advanced by the respective parties. It may in fact have recourse to any source of information, of whatever nature, which may be able to assist it in resolving custody and related disputes. (n.p.)

Various views of the relationship between democracy and education (and religion) have historically been constant features for consideration and theorisation over the centuries (Smit & Oosthuizen 2013:234). For this reason, if a child's interest conflicts with the rights and interests of parents or other parties, it may in the final instance be up to the High Court, as upper-guardian of all children, to adjudicate the matter by taking all considerations into account (Smit & Oosthuizen 2013).

## ■ **International law, the rights of parents, religious upbringing of the child**

International law is part and parcel of South African law. In terms of Section 39(3) of the Constitution (Republic of South Africa 1996b), international law must be considered when interpreting the Bill of Rights. A number of fundamental rights protected in terms of the South African Constitution (Republic of South Africa 1996b) have relevance to religious diversity and education (i.e. s. 15 – the right to freedom of religion, conscience, belief, thought and opinion; s. 28 – the rights of the child; s. 29 – the right to education; s. 30 – the right to language and culture; s. 31 – the right to cultural identity).

In terms of international law, South Africa has ratified international treaties (DIRCO 2018) circumscribing the rights and duties of parents and children, including those that follow.

The International Covenant on Economic, Social and Cultural Rights (CESCR) was signed on 3 October 1994 and ratified on 12 January 2015 by South Africa. Article 13.3 of CESCR provides that (UN 1966):

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. (n.p.)

The International Convention on the Rights of the Child (ICRC) was signed on 29 January 1993 and ratified on 16 June 1995 by South Africa. Article 14 of the ICRC provides that (UN 1989):

1. State Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. State Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. (p. 4)

Article 18 (UN 1989) provides as follows:

State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. (p. 5)

The African Charter on the Rights and Welfare of the Child (ACRWC), Article IX, provides that:

[P]arents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty to ensure that the best interests of the child are their basic concern at all times, and to secure, within their abilities and financial capacities, conditions of living necessary to the child's development. (n.p.)

Article IX(3) of the ACRWC also provides that:

State Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies. (pp. 1-3)

White Paper 1 (DoE 1995, [*author's added emphasis*]) acknowledged the primary role of parents in education in Principle 3 and confirmed the common law rights of parents as follows:

Parents or guardians have the *primary responsibility* for the education of their children, and have the right to be consulted by state authorities with respect to the form that education should take and to take part in its governance. Parents have the right to choose the form of education which is best for their children, particularly in the early years of schooling, whether provided by the state or not, subject to reasonable safeguards which may be required by law. The parents' right to choose includes choice of the language, cultural or religious foundation of the child's education, with due respect to the rights of others and the rights of choice of the growing child. (p. 3)

Advancing from the premise of parental power, it is clear that the initial decision-making authority over a child's education is vested with the parents (Smit & Oosthuizen 2013:234). The legal principle that applies with regard to religious diversity, religious freedom and the rights of parents and their children is that parents have the right to determine the religion, cultural identity and belief of their child, but that the child also eventually attains the autonomy of freedom of thought, conscience and religion in a manner that is consistent with the evolving capacities of the child. In essence, therefore, the parent or legal guardian may determine the child's religion until the child reaches a level of maturity that allows for independent choice and decision-making.

As a result of these international and domestic laws and educational policy provisions, parents may legitimately expect the state to ensure that public schools avoid teaching religious concepts, values and morals that do not accord with the religious or moral views of the parents. Parents may also request that their children be exempted from attending public gatherings or events at which religious observances of another religion than that of the parent and child are practised. This may present some practical challenges and may require some creative problem-solving skills from the school principal to deal fairly and equitably with a multireligious or multicultural setup in public schools.

Most principals manage to allow for exemptions from religious gathering and to provide alternate religious communities with similar and equitable opportunities at different venues in a public school setting. However, in circumstances where the number of different religions and cultures is too many, a school principal can opt for adapting a secular (i.e. non-religious) approach to deal with the diversity in a fair and consistent manner.

## ■ **Comparative law – religious diversity in schools: Three alternative models**

The first approach to religious diversity, which is followed in many European countries, such as Belgium, the Netherlands, Ireland, Germany and Britain, is to allow for publicly funded faith-based schools (Lopez-Muniz, De Groof & Lauwers 2006:29, 155, 197). The European approach to ensure religious justice in the education context is to allow for the establishment of faith-based denominational public schools (e.g. Catholic schools, Anglican schools, Lutheran schools, Dutch Reformed schools or schools based on a secular ethos) and to provide state funding for independent faith-based (religious) schools (e.g. Educate Together schools [Ireland], Jewish schools and Muslim schools). This model allows for freedom of education and freedom of school choice. Countries that apply this model, such as Ireland, the Netherlands and Belgium, usually rank highest on the Freedom of Education Index (Fernandez, Grau & De Lavernette 2018:19).

The second approach to dealing with religious diversity, as in the USA, Canada and Australia, has been to avoid religious practices and beliefs in public schools altogether and providing only secular education. However, secular education (i.e. complete separation of the church and state) seems inherently intolerant of any religious expression and faith-based values in public schools, which may have detrimental consequences for education. This is discussed in more detail in Part C of this chapter.

A third option, the so-called co-operative model, is followed in South Africa in terms of which the state and public schools cooperate to allow for religious expression in the public realm in a manner that is fair and non-coercive. The success and application of this model are discussed in the following paragraphs of this section.

## ■ South African schools and religious diversity: Legal principles of the co-operative model

South Africa 'has a long history of religious observance in public schools [in] all sectors of [its] population' (*Wittmann v Deutscher Schulverein, Pretoria and Others* 1999 [1] BCLR 92 [T]). During the constitutional negotiations in the early 1990s, the parties were acutely aware of the fact that the strict separation between the secular state and religion in the USA had developed into an intolerance of anything religious in the public realm. As a result, the drafters of the South African 'Constitution steered [the] constitutional ship on a religious course diametrically opposed to that of the United States' (*Wittmann v Deutscher Schulverein, Pretoria and Others* 1999 [1] BCLR 92 [T]). In South Africa, the co-operative approach is followed with regard to religion in the public realm. This means that there is no strict separation of the church and state and religious observances may be allowed at schools insofar as they comply with the South African Constitution (South Africa 1996b), *South African Schools Act* (South Africa 1996a) and provincial legislation.

The co-operative model also applies in the public education system of South Africa. In terms of this model, the state does not establish or favour a particular religion but cooperates with religious communities by permitting religious observances at state and state-aided institutions, subject to certain constitutional provisos. For the co-operative model to function optimally, a measure of tolerance and resilience among diverse religious and non-religious communities or individuals is required.

Religious observances may be conducted not only at independent schools but also at state and state-aided institutions, such as public schools, colleges and universities in South Africa, in terms of Section 15(2) of the Constitution (Republic of South Africa 1996b). This section places three conditional requirements on the manner in which religious observances may be conducted at state or state-aided institutions, namely that (Republic of South Africa 1996b):

- a. those observances follow the rules set by the appropriate public authorities
- b. they are conducted on an equitable basis
- c. attendance thereof is free and voluntary. (s. 15[2])

Section 15 of the Constitution of South Africa provides that everyone has the right to freedom of religion, belief, conscience, thought and opinion (Republic of South Africa 1996b:s. 15[1]). With regard to religion in schools, four concepts must be distinguished, namely:

- Religious instruction – Confessional instruction in a particular religion or worldview with the view to convert or proselytise a person to a particular religion or to strengthen that belief (*Wittmann v Deutscher Schulverein Pretoria*, 1998:74).
- Religion education – A subject that is part of a curriculum or course to study different religions, their holy or sacred texts, special days, beliefs and rituals (*Wittmann v Deutscher Schulverein Pretoria*, 1998:71).
- Religious observances – Acts, rituals or rites of a religious character that manifest belief and are in accordance with it, such as prayer, reading of sacred texts, meditation and reflection on sacred texts, praise and worship, witnessing, fasting and other dietary observances, dress, observance of days of the calendar year that are of special significance, gathering of adherents and religious rituals (*Wittmann v Deutscher Schulverein Pretoria*, 1998:60–61).
- Religious orientation – It is the ethos, life- and worldview, directional choice, or foundation of beliefs. Ethos is the characteristic belief system and spirit of a person, community, culture or era as manifested in its attitudes and aspirations, the prevailing character of an institution.

Section 7 of the *South African Schools Act* (South Africa 1996a) specifically provides that religious observances may be conducted at public schools and echoes the conditions of the Constitution by requiring that: the religious ‘observances follow the rules made by the SGB; are conducted on an equitable basis; and that attendance at them is free and voluntary’ (South Africa 1996b:s.15[2]). However, religious education (evangelising or proselytising) is not allowed at public schools and is regarded as the responsibility of parents and the religious community (e.g. members and leaders of a church, mosque, temple or synagogue).

## ■ Dilemmas arising from religious diversity and pluralism in South African schools

The following questions are examples of dilemmas that may arise from religious diversity and education in public schools:

- May educators evangelise or proselytise learners in their classrooms by teaching the beliefs and principles of a religion?
- May an independent religious school expel a learner who refuses to attend religious instruction classes or religious observances?
- May learners who adhere to a certain religion use drugs in accordance with their religious beliefs?
- A school’s code of conduct prohibits the wearing of religious garb or religious symbols as part of its dress code and uniform rules. May such disciplinary rules prohibit learners from wearing dreadlocks, nose studs, beards or sharia-veils in accordance with their religious beliefs and practices?
- May parents consent and give educators permission to give their children corporal punishment in accordance with their religious beliefs or cultural traditions?
- May a public school refuse to appoint an educator whose lifestyle or worldview conflicts with the religious policy of the school?
- May a public school dismiss an educator whose lifestyle conflicts with the religious policy of the school?

- May a school refuse to change its language policy if learners in the town or broader community or the education authorities of the province require it to do so?
- May learners refuse to comply with the school's dress or uniform code because it conflicts with their family traditions?
- May educators teach creationist theories or beliefs in conjunction with the official curriculum that favours the teaching of evolution?
- May educators give sex education to learners without obtaining the parents' consent?
- May educators teach sex education despite the conscientious or religious objection of parents of learners?

Sometimes religious, language and cultural dilemmas are complex and, in many cases, no straightforward answer is possible. The following sections of this chapter will provide some guiding principles to deal with these issues.

## ■ **Testing the South African approach: Implementation and practice of the co-operative approach – The OGD v Randhart Primary School case ('Randhart case')**

The right to conduct religious observances (such as public prayer, reading from Holy Scripture, singing hymns and giving sermons) at public schools in South Africa remained uncontested for approximately two decades since the promulgation of the *South African Schools Act*. However, it came to the fore when, in June 2017, the controversial and much-anticipated case of *OGD v Randhart Primary School and others (2017) (GJ)* about religion and worldviews at public schools was heard in the Johannesburg High Court. This case has opened new frontiers for South African public schools and may have some implications of importance for other countries. This section considers some implications and outcomes of the South African model when dealing with religious diversity in schools.

## ■ The facts of the Randhart case

The *Organisation for Religions Teaching and Democracy*, or OGOR, was represented by Mr Hans Petersen, an atheist. Initially, OGOR wanted to have all religions and religious activities banned from public schools. The Organisation for Religions Teaching and Democracy had *pro bono* support from a legal team and instituted action by specifically citing six public schools that identified themselves as Christian schools as well as the National Minister of Basic Education and other respondents. The case received wide media attention and many religious communities from various religions united their efforts to mobilise and launched public awareness campaigns in favour of religion at schools. The schools, and *amici curiae* ('friends of the court'), for example, Christian denominations, Jewish Council, Islamic Organisation, FEDSAS and AfriForum, contested the application.

The Organisation for Religions Teaching and Democracy applied for six declaratory orders based on the National Policy on Religion in schools and the South African Constitution. In addition, OGOR applied for 71 interdicts against public schools, *inter alia*, to prohibit the following religious activities:

- commencement of school during assembly with Bible reading and prayer
- any reference to God (the Christian God) in the school song or anthem
- reference to Christian values in the school's code of conduct
- teaching Grade R learners from the perspective of the Triune God
- attendance of Christian School Association activities during break time
- distribution of Bibles (through the Gideons organisation) at schools
- singing of religious songs or hymns
- evangelising learners at schools or during class or school time
- formulation of the school's mission within a Christian framework
- distribution of Christian literature

- making a room available at the school for prayer
- allowing for Christian activities and clubs at school
- advertising a public school as a 'school based on Christianity'
- displaying slogans and references to God on school insignia
- teaching the biblical version of creation (according to Genesis) or creation science at public schools.

## ■ The court's decision

Justice Van der Linde (*OGOD v Randhart Primary School and others* [2017] [GJ]) gave the opinion on behalf of the full bench court. Not a single interdict was granted, but the court granted two declaratory orders. Firstly:

[I]t offends section 7 of the *Schools Act* for a public school to promote, or allow its staff to promote, that [*the*] public school adheres to one or predominantly only one religion to the exclusion of others. (para. 102)

And, secondly, that it is unlawful for a public school to hold out that it promotes the interests of anyone religion in favour of others. In other words, the court held that all the listed religious observances and conduct at public schools were lawful and constitutional, but that a public school may not brand or market itself as a Christian school or one that predominantly adheres to single religion (*OGOD v Randhart Primary School and others* [2017] [GJ]:para. 102).

## ■ The outcome

Although *OGOD* (*OGOD v Randhart Primary School and others* [2017] [GJ]) claimed:

[T]hat the judgment was a 'victory' for secularism, the truth is that this *judgment* is rather a recognition of diversity *in South Africa*. Far from removing religion from schools, the judgment directs schools to create a space where all *learners* – whether Christian, Muslim, Hindu, atheist, *etcetera* – *should* feel free to give outward expression to their religious beliefs. This is in keeping with the Constitutional right to freedom of religion, rather than freedom from religion. (n.p.)

## ■ Reasons for the decision (*Ratio decidendi*)

In its reasoning, the court specifically held that South Africa is not a secular state and, therefore, the education system is not secular. The court held that OGOD had followed the incorrect legal procedure by failing to cite all interested parties as respondents and by neglecting to utilise provincial dispute resolution mechanisms in terms of provincial legislation and regulations. The court dealt with the core issues of fair religious observances at schools and whether a public school may promote itself as a school with a particular religious ethos.

## ■ The principle of subsidiarity

Carpenter (1999:43–54) explains that subsidiarity means that the power of decision-making and conduct:

Originally rests with the smaller, lower or more *local* entities, and *this authority* is delegated ‘upwards’ at the discretion of the latter, not at the discretion of the central authority. The essence of subsidiarity is the recognition that certain responsibilities and powers belong not to the centre but to the *lowest local level*. (pp. 43–54)

Carpenter explains that the principle of subsidiarity means that it is wrong for the higher echelons or central functionaries to ‘steal’ or usurp local functionaries or people’s responsibilities. In this regard, the higher echelons and central powers ‘play a “subsidiary” role insofar as they provide support and, possibly, take over the functions of the lower functionary if the latter is unable to perform them adequately’ (Carpenter 1999:46).

The court in the Randhart case (*OGOD v Randhart Primary School and others* 2017 [GJ]) shows that ‘an applicant who contends that religious conduct at a public school is unconstitutional must either found their case on a contravention of an applicable rule’ of the SGB or, ‘if it contains that the conduct is unconstitutional despite being consonant with the school governing body rules, it must attack the relevant rules as being

unlawful or unconstitutional'. In other words, the correct procedure would be to firstly contest the legality of religious conduct or the SGB rules at the local level of each particular public school. This means that a public school's internal dispute mechanisms, as well as provincial dispute mechanisms, should first be exhausted before legal action may be instituted.

Although, overall, the court's decision in the Randhart case is welcomed, the author is of the opinion that the court erred by finding that a public school may not brand itself as a predominantly single religion school, because its reasoning was based on an incorrect approach to the principle of legality. In terms of the principle of legality, the legislature and executive (national and provincial) are bound by the rule that it may not exercise any authority or power, nor perform any function, that has not been conferred upon it by law. On the other hand, however, the opposite applies to individuals and societal collectives who may do anything that is not explicitly prohibited by law. Therefore, a better outcome would have been an affirmation that, in principle, neither the South African Constitution nor the *South African Schools Act* prohibits a SGB from advertising and branding itself as a school that holds a certain religious ethos; therefore, schools may indicate their religious ethos if it is in line with the views and decisions of the SGB and members of the school community.

Furthermore, the judgement is somewhat disappointing as no guidelines were given as to the requirements for the equitable practice of religious observances. Instead of bringing more legal certainty, the Randhart case has unsettled the issue of religious freedom and freedom from indoctrination in schools. Importantly, the court made no decision on or reference to the plea to secularise the subject or curriculum content. The court avoided a decision on these matters and these issues were left to be decided in future case-specific litigations.

## ■ Religion, cultural practices, freedom of expression and school rules

The purposeful South African constitutional measure to allow for religious observances in state institutions (e.g. public schools and universities) and the tolerance of religious (or cultural) dress that may initially conflict with school rules are examples where a satisfactory balance between the law and free exercise of religion can and has been achieved.

Religious and cultural freedom of expression by learners in schools is allowed insofar as it does not result in the substantive disruption of school discipline or unlawfully harm the reputation of a person. 'South African courts have been called on to apply constitutional standards to determine the limits of religious freedom of expression in the education context' (Mawdsley, Smit & Wolhuter 2013:132-161). In *Antonie v Governing Body, the Settlers High School and Head, Western Cape Education Department* (2000) (WC) (in Mawdsley et al. 2013):

[T]he school governing body suspended a student from school for wearing dreadlocks in contravention of the school's uniform dress code. The student, *Antonie*, was a Rastafarian and wore dreadlocks as part of her religious practice. The matter was taken on review and the High Court held that the infringement of the school's uniform dress code was not a serious misconduct and did not warrant suspension.

In *MEC for Education, Kwa-Zulu-Natal v Pillay*, the Constitutional Court also upheld the right to freedom of expression of a student at Durban Girls High School to wear a gold nose stud to school, in keeping with her South Indian family traditions and culture. The student's main argument was based on the right to equality and the constitutional prohibition against unfair discrimination based on culture and religion (*paragraph [7 F]*). The Constitutional Court found that the norm embodied by the school's code (*i.e. that no body piercings such as nose studs, eyebrow and tongue piercings would be allowed*) was not neutral, but that it enforced mainstream and historically privileged forms of adornment, such as ear studs,

which also involve the piercing of a body part, at the expense of minority and historically excluded forms (*paragraph [44 B-D]*). The court thus held that the student's right to freedom of expression (*i.e. cultural and religious expression*) had been unjustifiably limited because her wearing of a nose stud posed no risk of substantial disruption to school activities and would not impose an undue burden on the school (*paragraph [45 F]*). (pp. 132-161)

The court instructed the school's governing body to revisit the school's code of conduct and provide for an exemption mechanism in terms of which a procedure should be allowed, whereby parents or learners could apply and motivate why they should be allowed to deviate from the school's code of conduct (*paragraph [75 C-D]*). Such an application would then be heard by the SGB, which must decide on the merits of each case. An exemption procedure can thus allow for exceptional cases where learners could wear religious garb or cultural symbols at variance to the school's particular uniform rules. The *Pillay* ruling thus provided a mechanism in terms of which schools could balance the need for order and discipline with the rights of learners to freedom of expression and religious freedom.

## ■ Religious instruction at independent faith-based schools

In the High Court matter of *Wittmann v Deutscher Schulverein Pretoria and others* (1998) (T), the plaintiff (Mrs Wittmann), an agnostic, instituted action against an independent (non-public) school in 'her capacity as custodian mother and natural guardian of [the] minor' child, Tania Wittmann (the learner attending the school), for a declaratory order declaring the actions of the school in compelling Tania to attend religious instruction classes at the school to be unconstitutional, unlawful and invalid. The school was a parochial, religious school under the direct supervision of the Evangelical Lutheran Church. The plaintiff contended that her daughter had the right to be 'excused from attendance at the religious instruction classes [conducted at] the school' (*Wittmann v Deutscher*

*Schulverein Pretoria and Others* 1998). In his judgement, Van Dijkhorst J extensively analysed foreign law of countries such as the USA, Canada, England, Germany, Malaysia, Nigeria, Namibia, as well as international law with regard to freedom of religion. Particular attention was given to the plethora of court cases in the USA that has given rise to a disharmonious controversy over the Establishment Clause and the ‘wall of separation’ that exists between the church and the state in the USA. The Court distinguished the South African legal position from the USA constitutional case law. In the USA, the courts described atheism or agnosticism as religion, whereas in South Africa the judge explained the position to be as follows (*Wittmann v Deutscher Schulverein Pretoria and Others* 1998):

The concept ‘religion’ when used in s1 of the [*Interim*] Constitution is not neutral. It is loaded with subjectivity. It is a particular system of faith and worship. It is the human recognition of superhuman controlling power and especially of a personal God or gods entitled to obedience and worship (The Concise Oxford Dictionary). It cannot include the concepts of atheism or agnosticism, which are the very antithesis of religion. The atheist and agnostic is afforded his protection under the freedom of thought, belief and opinion part of this section. There is conceptually no room for him under the freedom of religion part. Freedom of religion does not mean freedom from religion. It is clear therefore that the drafters of our Constitution steered our constitutional ship on a religious course diametrically opposed to that of the United States. (para. 54)

The court held that *Wittmann* (*Wittmann v Deutscher Schulverein Pretoria and Others* 1998) had voluntarily subjected herself to the independent school’s policy and rules when she enrolled at the school and:

[T]hat the right to exclusivity on the grounds of culture, language or religion includes the right to exclude non-users of that language and non-adherents of that culture or religion, or to require from them conformity. In *respect of independent schools*, the fundamental freedom of religion of outsiders is limited to the freedom of non-joiner. Outsiders cannot join on their own terms and once they have joined, *they* cannot impose their own terms. (para. 74)

## ■ Corporal punishment and religion

At times, the exercise of religious practices by parents and educators acting *in loco parentis* might be unlawful or unconstitutional. In such cases, the state may place legitimate limitations on the exercise of religious freedom. For instance, in the matter of *Christian Education South Africa v Minister of Education* (2000) (CC), the parents association, representing independent Christian schools, contested Section 10 of the *South African Schools Act*, which prohibits corporal punishment by anyone at a school. *Christian Education South Africa* argued that the parents' right to religious freedom had been infringed and that Section 10 was thus unconstitutional. In the High Court, the applicants failed to show that they had a sincere belief on religious grounds that educators and schools should be empowered by delegated authority from the parents to administer corporal punishment. Liebenberg J tested the validity of the religious beliefs according to the biblical precepts and concluded that the verses on which the parents relied to justify the administration of reasonable corporal punishment to discipline their children did not require or entitle parents to delegate the function to educators or other persons. In cases where religious beliefs were harmful or infringed the rights of others, the approach of the CC has been to avoid adjudication of the content and correctness (scope) of religious beliefs. Sachs J explained in his judgement for the CC that it did not question the sincerity of the Applicant's belief that corporal punishment was a central tenet of Christianity. Instead, the Court chose to resolve the case under the limitation clause, that is, Section 36 of the South African Constitution. After applying the proportionality test of Section 36, the Court concluded that the *South African Schools Act* was not unconstitutional and that the limitation of the freedom of religion of parents (to require corporal punishment for their children) was justified and reasonable. The prohibition of corporal punishment at schools is thus constitutionally valid and the right to freedom of Christian religious belief is justly limited with regard to this one aspect only.

## ■ Part C: Religious diversity, classroom instruction and non-neutrality of ‘secular’ education

In the Constitutional Court case of *S v Lawrence* (1997) (CC), O’Regan J confirmed that Section 15 of the South African Constitution does not include an ‘Establishment Clause’ as in the American Bill of Rights and that provisions or principles pertaining to the advancement or inhibition of religion by the state should not be read into the Constitution. O’ Regan J made an important distinction between the concepts (rigid) neutrality and impartiality. The ‘Establishment Clause’ in the American Constitution has to do with (rigid) neutrality, whereas the South African Constitution requires impartiality by the state, which implies that the state may not favour any religion or worldview above another in either a direct or an indirect manner, but that religion is allowed and tolerated in public institutions. Any belief system or worldview, including secularism, may not be favoured by the state above another.

### ■ Prohibition of indoctrination

Legislation and guidelines by the provincial and national departments of education in South Africa contain provisions that prohibit the indoctrination of learners and promote critical thinking and freedom of expression (e.g. s. 10 of the *North-West Schools Education Act*; s. 9 of the *Northern Cape School Education Act*; s. 4[1][m] of *Limpopo Province School Education Act*; and s. 5[1][a] and [d] of the *Gauteng Education Policy Act*, 12 of 1998).

Indoctrination is the antithesis of academic freedom. Indoctrination is defined by the Oxford Dictionary as compulsory or forceful, closed (not open and transparent) and fake communication of a doctrine or dogma in a manner that does not allow for alternative views and critical thinking. ‘Indoctrination is [a] process of teaching a person or group to accept a set of beliefs uncritically’ (Oxford Dictionary 2010). Webster’s Dictionary

(2016) defines indoctrination as ‘to imbue with a usually partisan or sectarian opinion, point of view, or principle’. According to the Oxford Dictionary (2010), indoctrination is ‘the process of teaching a person or group to accept a set of beliefs uncritically’.

## ■ **Legislation and policy guidelines: Academic freedom, prohibition of indoctrination and encouragement of critical thinking**

In terms of Section 16(1) of the Constitution (Republic of South Africa 1996b), everyone has the right to freedom of scientific research. According to an essay on academic freedom (Nelson 2010):

Academic freedom is the *principle* that the freedom of inquiry by *scholars or scientists or faculty members of a tertiary institution* is essential to the mission of the academy as well as the principles of academia and that scholars should have freedom to teach or communicate ideas or facts (including those that are inconvenient to external political groups or to authorities) without being targeted for repression, *reprisal*, job loss, or imprisonment. (n.p.)

However, academic freedom in schools and universities is not unrestrained or absolute and may be limited in accordance with Section 36 of the Constitution on the grounds of academic or public policy.

The Directive Principles of National Education Policy (DoE 1996) provide that the education policy shall be directed towards:

1. The advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right (vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions.
2. Enabling the education system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the

nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes.

3. Encouraging independent and critical thought. (n.p.)

The *North-West Schools Education Act 3 of 1998* (South Africa 1998b) contains the following provisions on freedom of religion, freedom of expression and freedom of conscience. Section 10(1) provides that '[n]o person employed at any public school shall attempt to indoctrinate learners into any particular belief or religion'.

The directive principles of the *Northern Cape School Education Act 6 of 1996* (South Africa 1996c) on school policy provides that '[e]very learner and educator shall have the right to freedom of conscience, religion, thought, belief, opinion, speech and expression and the education process shall promote a culture of tolerance'. In addition, it provides in Section 20 (1) that '[n]o person employed at any public school shall attempt to indoctrinate learners into any particular belief or religion'.

The *Limpopo Province School Education Act 9 of 1995* (South Africa 1995) provides that:

(f) Every learner and educator shall have the right to freedom of conscience, thought, belief, opinion, speech and the expression and the education process shall promote a culture of tolerance.

(m) The education process shall be aimed at fostering independent and critical thought. (s. 4[1])

The *Gauteng Education Policy Act 12 of 1998* (South Africa 1998a) provides in Section 5 that all education policies must contribute to the development of an education system which:

(a) enhances democracy and human rights by -

(vi) fostering the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions

(v) encouraging independent and critical thought

(d) enhances the quality of education provision by -

(ii) promoting enquiry, research and the advancement of knowledge. (s. 5)

The skill and ability to apply and enjoy the rights to academic freedom, freedom of scientific research and freedom of thought, belief and opinion are an indispensable part of being appropriately trained and educated. Thus, the prohibition of indoctrination and the encouragement of independent and critical thought are regarded as part and parcel of the freedoms of conscience, religion, thought, belief, opinion and expression in schools or educational institutions.

It is conceivable that freedom of thought and academic freedom could be suppressed by indoctrination or ideological dogmatism in several fields of study, such as history, literature, sociology, psychology, philosophy, theology and life sciences. The question then arises whether secular education or the promotion of particular worldviews in the classroom amounts to indoctrination.

The prime example of possible indoctrination that comes to mind is the compulsory teaching of evolution (Evolution Theory: the neo-Darwinian theory that life originated from a single cell and evolved by random natural selection and mutation into the Earth's organic [plant and animal] diversity over billions of years). Ironically, at present, it is not a religious body or the church, but the mainstream secular scientific community that has been dogmatically suppressing or ignoring scientific evidence that flies in the face of Evolution theory. Contemporary dissenting scientists have data and evidence that controvert Evolution theory, including the following:

1. According to Sandford (2008:15-33), the Primary Axiom of the neo-Darwinian theory is that evolution is the result of random natural selection and mutation. However, natural selection and mutation (the basic mechanisms of Evolution) do not function as suggested, because natural selection reduces (removes, purges, eliminates) genetic information (Sandford 2008:123) and mutation damages (destroys, harms, impairs, reduces) pre-existing genetic information. Even beneficial mutation, gene duplication

and polyploidy are not viable mechanisms for evolution as these methods still require the presence of pre-existing genetic information (Sandford 2008:193). In other words, neither natural selection nor mutation creates new genetic information as these mechanisms function only because of already existing genetic information in an organism. Where did the initial genetic information come from? There is thus no increase of genetic information through natural selection and mutation, because the genetic information degenerates at measurable and calculable rates, which leads to the opposite result. The Primary Axiom of Evolution theory is thus dead in the water as natural selection and mutation are going in the wrong direction, i.e. eliminating information instead of 'creating' new information (Sandford 2008:206).

The first fact alone might be enough to obliterate Evolution theory. But several additional scientific proofs refute Evolution theory, such as:

2. The impossibility (based on mathematical probability calculations and information science) that undirected 'evolution' of even the simplest single-celled organism (i.e. *Mycoplasma genitalia*) could ever occur (Meyer 2009:173).
3. The repeated discovery of soft tissue (red blood cells, DNA, protein) in 'fossilised' dinosaur bones indicates that dinosaurs did not become extinct 65 million years ago (Schweizer, Wittmeyer & Horner 2007:183-197).
4. The irreducible complexity of the cell and many other features of living organisms point to the inevitable, i.e. intelligent design (Behe 1996; Meyer 2013).
5. The 'instantaneous' appearance of new kinds of animals and plants throughout the fossil record (Eldredge & Gould 1972:82-115). The self-identified atheistic authors, Gould and Eldredge admitted 'all palaeontologists know that the fossil record contains precious little in the way of intermediate forms; transitions between major groups are characteristically abrupt.

Indeed, if we do not invoke discontinuous change by small alteration in rates of development, I do not see how most major evolutionary transitions can be accomplished at all'. Thus, both these evolutionary biologists admitted to the fact that the fossil record does not reflect gradualism and emphasised the problem of stasis in the fossil record.

6. Absence of any viable evolutionary explanation for abiogenesis and the repeated long-term failure of the Miller–Urey experiments to produce any life (living organisms) from chemical mixtures (Sarfati 2010).
7. The absence of any visible or testable empirical evidence that shows one kind of organism evolving into another kind of organism (Moyers 2004). Some scholars and authors have suggested that Evolution theory is in a crisis (Denton 2016; Mazur 2010; Shapiro 2013).

Therefore, there seems to be plausible scientific evidence that refutes the mainstream 'orthodox' Evolution theory. To determine whether freedom of thought is suppressed and whether indoctrination occurs in a classroom, the following questions should be investigated and answered:

- What are the academic freedom principles that determine whether the contested theory should or must be included or may be omitted?
- What is the responsibility, legal duty of educators to teach controversial content or alternative scientific theories?
- How do educators teach the textbook content of the curriculum to students?
- How are the diverse worldviews of students accommodated in class while teaching controversial topics such as different views on history or the Neo-Darwinian Evolution theory?
- How do educators deal with erroneous facts in textbooks?
- How do educators deal fairly with students whose worldviews conflict with the Evolution theory?
- How do educators ensure that the controversial topic is not presented dogmatically?

- How is freedom of thought, belief and academic freedom respected or protected in a multicultural class or in a predominantly Christian class?
- Is it ethical to compel students to learn about a scientific theory, which does not accord with their religious or worldview beliefs?
- What pedagogical methods do educators utilise to teach the controversial topic (e.g. classroom debates or discussions, group work assignments, self-study)?
- Do educators have sufficient knowledge and understand the controversies, the conflicting interpretations and the refutations or invalidations of the 'evidence'?
- Are students exposed to alternative theories that contradict or refute the controversial theory?
- How do educators deal with scientific or religious objections from learners that dispute the veracity of the controversial topic?

## ■ Accommodating opposing worldviews in classrooms and educational institutions

To accommodate and manage the appropriate teaching of controversial topics that expose students' opposing worldviews, it is suggested that educators should have adequate knowledge and understanding of the nature and definitions of science and of appropriate methods of reasoning.

The following concepts and definitions should be understood.

**Worldview:** Every person (every scientist, every educator, every learner), whether he or she realises it or not, understands the issues of life in a worldview context. There are three fundamental components of a worldview. The first deals with the nature of reality (metaphysics), the second with how we know what we know (epistemology) and the third with how we live our lives (ethics) (Nickel 2001:252). A worldview is a network of

presuppositions not authenticated by the procedures of natural science. These basic pre-commitments (*a priori* assumptions) cannot be proved by scientific procedure; they are basic and foundational faith commitments (Nickel 2001:7). Worldviews are an attempt to explain why science works, not how science works. These presuppositions are the filters through which every aspect of knowledge and the experiences of life are understood and interconnected. According to Nickel, facts are always understood in the context of presuppositions (Nickel 2001:7).

**Science:** The classical notion of science (from the Latin: *scire* – to know; *scientiae* – knowledge) is the study of and quest for knowledge. The secular definition of science restricts science simply to the study of natural matter (i.e. natural materialism) and the obtaining of knowledge by means of the scientific process. This restrictive definition of ‘science’ is reductionist, as it artificially attempts to exclude the metaphysical from ‘natural science’. The reductionist view of science (i.e. natural materialism) denies the self-evident influence of metaphysical assumptions and presumptions on science. Nickel (2001) gives a convincing account of the profound and fundamental role that metaphysical beliefs have on the work of all scientists. This is the case even in a ‘hard’ science such as Mathematics. The following important assumptions and epistemological presuppositions of science are articles of faith; firstly, the scientist or educator must have faith in the external, objective world; secondly, the scientist or educator must believe in the orderliness of the external, objective world. To detect that order, the scientific *model* is engaged. Underpinning the scientific method are the following articles of faith:

1. faith that abstract scientific modelling can both explain and predict the workings of the objective world
2. faith that things behave in the same way, whether they are being observed or not
3. faith that memory is trustworthy
4. faith in the reports of other scientists

5. faith in the reality of distinctions (the distinction between you, it and I; the distinction between likeness and unlikeness; the distinction between unity and diversity).

It is not possible to divorce metaphysical ideas from the practice of science. The 'wall of separation' model of secular education that attempts to ignore religion is thus illusory.

The broader, classical definition of 'science' admits that the universe is not a closed system and that the metaphysical realm (which includes notions of intelligence, deity, reason, logic, etc.) is part and parcel of reality and should be out of necessity included or recognised (not discounted) in scientific ventures.

Characteristics of science are:

- Science is not democratic – science is based on evidence, not votes.
- Science is non-dogmatic – scientific claims are not to be accepted purely on faith. Evidence should determine acceptance of scientific claims.
- Scientific claims are subject to peer review.
- Science is a work-in-progress. Paradigms shift, scientific theories become outdated and knowledge progresses as erroneous theories or models are falsified.
- Scientific claims cannot make moral or aesthetic decisions.
- Science entails the application of the scientific method: a characteristic of science is to examine evidence carefully to determine whether there exists another, more feasible, explanation possible. This leads to the importance of falsification of theories of science.

In other words, scientific theories are not absolute truths and should be tested, debated, falsified and critically considered. This should ideally be explained to students in the classroom as well.

**Paradigm and paradigm shift:** In his influential book, *The Structure of Scientific Revolutions*, Kuhn (1962) explained another reason why scientists continue to work in a paradigm, even though it may be in a crisis:

Paradigms are not corrigible by normal science at all. Instead, [...] normal science ultimately leads only to the recognition of anomalies and to crises. And these are terminated, not by deliberation and interpretation, but by a relatively sudden and unstructured event like the gestalt switch. Scientists then often speak of the 'scales falling from the eyes' or of the 'lightning flash' that 'inundates' a previously obscure puzzle, enabling its components to be seen in a new way that for the first time permits its solution. (p. 123)

Examples of paradigm shifts that occurred in the history of science are:

- Aristotelian physics → Newtonian physics
- Phlogiston theory chemistry → Dalton's atomic chemistry theory
- Fluid electricity theory → Maxwell's electromagnetic theory
- Steno's deluge geology → Lyell's uniformitarian geology
- Creation theory → Darwin's Evolution theory
- Newtonian physics → Einsteinian physics.

Kuhn (1962:xx) explained 'that science does not progress via a linear accumulation of new knowledge, but undergoes periodic revolutions called "paradigm shifts"'. During the period of normal science (Kuhn 1962):

[T]he failure of a result to conform to the paradigm is seen not as refuting the paradigm, but as the mistake of the researcher. As anomalous results build up, science reaches a *crisis*, at which point a new paradigm, which subsumes the old results along with the anomalous results into one framework, is accepted. This is termed *revolutionary science*. (p. xx)

According to Kuhn, most scientists who practise 'normal science' are willing to tolerate anomalies and wait patiently for alternative explanations in keeping with the existing paradigm. There is a general reluctance amongst scientists to change paradigms, especially because they have invested so much time and energy in their life's work (Kuhn 1962:123). Therefore, if an anomaly in science is 'to evoke a crisis or paradigm shift, it must usually be more than just a mere anomaly' (Kuhn 1962:123). There are always difficulties somewhere in the

paradigm–nature fit; most of them are set right sooner or later, often by processes that could not have been foreseen. Scientists who pause to examine every anomaly they note will seldom get significant work done (Kuhn 1962:123). Max Planck (in Kuhn 1962), surveying his career in his *Scientific Autobiography*, sadly remarked that:

[A] new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it. (p. 123)

## ■ Is secular education neutral and unbiased?

It is usually assumed and accepted without question that secular education is neutral or unbiased, as it supposedly deals only with instructional practices and the teaching of scientific knowledge and facts. However, such an assumption is an overly simplistic understanding of a fairly complex issue.

The First Amendment to the American Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Amendment 1).

The Establishment Clause in Amendment 1 of the American Constitution – that is, the phrase ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof’ – gave rise to the Jeffersonian concept of a ‘wall of separation between the church and state’ (Alexander & Alexander 2005:150, 158, 164). Initially, the Establishment Clause was meant to prevent religious intolerance, religious persecution and strife. This should be understood in the Western historical context of the time dating from the Enlightenment era (1740–1800), and the American reaction against the establishment of a state religion or attempts to enforce religious orthodoxy.

The public schools in America are secular, not merely non-sectarian, as this is regarded as essential for complete separation of the church and the state (Alexander et al. 2005:150). These authors (Alexander et al. 2005:186) suggest 'that to be secular does not mean to be "godless"; it [was] merely a guarantee that the state will not dictate or encroach on religious beliefs of the individual'. The public school ideal in America requires 'neutral' schools and precludes religious indoctrination in public schools, but it allows 'opportunity for religious training outside the school by parents and churches' (Alexander et al. 2005:187). In *Everson v Board of Education* (1947) (US), it was ruled that, seen against the backdrop of the first and fourteenth amendments of the American Constitution, the separation between the state and the church was of such a nature that religious observances or exercises in government institutions were not permitted. This American point of view was expressed as follows in *Everson v Board of Education* (1947):

Neither the state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion above another. [...] Neither a state [*n*]or the federal government can, openly or secretly, participate in the affairs of any religious organisations or groups and vice versa. In the words of Jefferson, the clause against establishment or religion by law was intended to erect 'a wall of separation between church and state.' (p. 16)

Over time, however, this strict separation theory between the secular state and religion has generated a vast body of litigation and has developed into a new intolerance of anything religious in the public realm. This has led to a series of court cases in which it was ruled that it is unconstitutional for government action by state employees (e.g. teachers, principals, coaches, etc.) to give released time for religious instruction at public school facilities, post the Ten Commandments in classrooms, read from scripture, pray during a graduation ceremony, hold a period of silence for meditation or voluntary prayer, sing hymns, celebrate Easter or Christmas, or do anything that might be viewed as promoting religion in American public schools, and that student-led prayer

at extracurricular events was unconstitutional (Russo 2010:536–540). The legislation of federal states has also been habitually challenged. In *Lemon v Kurtzman* (1981) (US), the US Supreme Court enunciated (Russo 2010):

[A] three-part test to determine whether a [state] statute [is constitutional under] the Establishment Clause: (1) the statute must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion; and (3) [it] must not foster excessive government entanglement with religion. (pp. 536–540)

Alexander et al. (2005:211) state that the effort to secularise public schools in America ‘is a long-running melodrama that has produced much antipathy [towards] public schools. Attempts at incursions into public schools by religious groups are an unceasing phenomenon’. Alexander et al. (2005:150, 158) affirm that the ‘struggle to prevent public schools [in America] from being controlled by any church or religious sect has been the most difficult issue to face public schools’. There is a general acknowledgement that complete separation is nearly impossible to maintain, and it would not be desirable. The American Supreme Court has followed a bifurcated standard by which, on the one hand, strong secularisation of public schools is enforced with regard to religious observances, religious instruction and religious conduct and, on the other hand, ‘almost unlimited constitutional leeway [is given to] state and federal governments to provide public funds’ (Alexander et al. 2005:n.p.) to independent religious or parochial schools. The difference between these two standards is that any form of state action that might advantage a religion is regarded as potentially proselytising and thus coercive. Yet, student-initiated religious activity, such as prayer, bible reading, religious speech, rites, rituals and ceremonies, is constitutionally valid and may not be prohibited, ‘no matter how conventional, heretical or pagan so long as the activity is not under the supervision [or] oversight of the school’ (Alexander et al. 2005:n.p.). This is clearly an incongruous outcome as proselytising can occur under such circumstances as well (Alexander et al. 2005:211).

This interesting history of American jurisprudence on religion in public education attests to the impossibility and impracticality of total avoidance of religion in the public realm. The secular notion that religion is every person's own private affair does not accord with the very nature of religion. After all, every religion – be it Christianity, Judaism, Islam, Buddhism, Hinduism or Animism, etcetera – has a definite element of public and communal worship, which is regarded as an essential foundation of any religion. The denial or obstruction of religious observances in American public schools and institutions and the disregard for the public nature of religion by means of 'secularism' inevitably results in renewed religious strife, intolerance and brute state oppression of a very important part of religious freedom.

The word 'secular' and its underlying philosophy has gained a new meaning that is synonymous to atheism or agnosticism. In the contemporary sense of the word, 'secular' therefore denotes non-belief or scepticism towards any religion. Consequently, the greatest deficiency created by this strict separation approach lies in the fact that the 'exaggerated' neutrality of the state towards religion, over the course of time, has changed to a condition of hostility or antagonism towards religion. In the American court case of *Aguilar v Felton* (1985) (US), Burger J commented regarding this matter that, 'rather than showing the neutrality the Courts boast of, it exhibits nothing less than hostility towards religion and the children who attend church-sponsored schools'.

The separation theory's highly restrictive approach of walking the tightrope between the public and the private has resulted in wide-ranging and far-reaching religious intolerance in American public schools. The problem with rigid neutrality from the side of the state in the USA gave rise to the so-called 'neutrality dilemma'. In *Larson v Valente* (1983) (US), the court considered neutrality from a specific angle and explained that the dilemma results therein that students are protected against teaching or

instruction from a religious perspective, but not against teaching or instruction that is directly in conflict with religious convictions: 'The neutrality dilemma protects students against instruction that favours religious belief, but not against instruction that offends religious belief'.

The American experience is instructive, as it contains a dire warning against intolerance of any kind, be it secular or religious.

## ■ The secular worldview in the classroom and curriculum

There is a rift dividing the scientific community, especially in Western society, particularly in the fields of biology (life sciences) and geo-sciences that stifles freedom of thought, opinion, belief and academic freedom and freedom of scientific research, as a human endeavour (Deckard, De Witt & Patana 2003:71-73). Deckard et al. suggest that academic freedom in the USA is actively and intentionally restricted by the secular scientific community as a result of the conflict between natural materialism and theism. The two main conflicting worldviews in modern science, namely, natural materialism, on the one hand, and theistic creationism (Nickel 2001), on the other, are discordant and lead to incompatible scientific interpretations of the same phenomena or data. It is possible that the freedom of thought; freedom of conscience; academic freedom; and freedom of religion of learners, educators and parents who do not subscribe to Theory of Evolution, for instance, might be curtailed by secular indoctrination.

In view of the *Randhart* decision (that South Africa is not a secular state) and the *Lawrence* judgement (that distinguished secular 'neutrality' from the South African Constitution's endorsement of an 'impartial' role of the state), the USA's strict separation of the 'Church and State' will not apply in South African schools.

## ■ Summary and conclusions

In this chapter, the following matters were discussed (Van Der Vyver & Green 2008):

The importance of respecting religious diversity and protecting the right to freedom of religion, belief and opinion was affirmed as a key ingredient of any person's dignity. 'Religious belief has the capacity to determine concepts of self-worth and human dignity which form the cornerstone of human rights'. (pp. 337–356)

In terms of international law and South African law and policy, parents have the right to determine the religious education of their children.

In Part C, the question of whether classroom instruction in a secular public school could be neutral or impartial was considered. The effects of the separation theory were briefly described by discussing the 'neutral' American approach to prohibit any state action in public schools that might advance a religion.

The South African Constitution and legislation support the tolerance of religious diversity in public schools by providing that religious observances may be practised as long as they are in accordance with the rules of the SGB, are freely and voluntarily attended and are equitable towards all religions. This co-operative approach in the South African law affirms the imperative for religious tolerance, religious indoctrination and promotion of critical thinking on possible controversial issues of religion, morals and values. Unlike the South African co-operative model that allows for religious observances in public schools, it seems that public schools in the USA would have to be reformed to provide more religious freedom for parents and students and to tolerate and respect religious diversity and allow the reasonable practice of religious observances in schools.

Insofar as conflicting interests, values, worldviews and religious or cultural traditions are certainties in pluralistic societies and liberal democracies, the conflicting ideas and non-conformist practices should be tolerated to the extent that the legal consequences are minimal or negligible (Smit 2011:545).

However, unconscionable practices such as possible indoctrination in the so-called neutral, secular classrooms should not be tolerated if the right to freedom of thought and freedom of religion of parents and learners are violated (Smit 2011). According to Smit (2011:545-546), it is recommended that the courts remain responsive to societal values and religious worldviews. Failing to do so will inevitably promote prejudicial intolerance of religious diversity and freedom, which in turn will result in widespread disrespect for the law by virtue of firmly held religious beliefs.



# In search of ways of curtailing aggression and violence in schools: A human rights-based approach

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## ■ Abstract

A substantial body of research on aggression and violence in South African schools shows that destructive behaviour makes school environments unsafe and inhibits effective teaching and learning. It seems that one reason as to why aggression and

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violence are rife in schools is that social ills from communities and families have a deleterious impact on schools. Individuals' human rights as enshrined in the Constitution of the Republic of South Africa are grossly violated daily. Qualitative research was conducted to explore the extent to which human rights-based approaches (HRBAs) are utilised in the recommendations made in existing empirical research on how to curtail aggression and violence in South African schools. A thematic document analysis was conducted. This chapter highlights the value of adopting a HRBA in education to curtail the deleterious effects of aggression and violence in schools.

## ■ Introduction

As Botha and Wolhuter (2015) note:

[E]ducation has come to be seen as the 'panacea for all societal problems', the 'wonder-cure for all social ills' [*and that*] education is also looked to as a way of promoting peace and a society free of violence and aggression. (p. 431)

Regrettably, internationally, aggression and violence have always been part of the human experience. However, according to Botha and Wolhuter (2015), it is a matter of urgency that these are addressed as they have far-reaching effects on human development as well as educational systems globally. In South Africa, there is extensive research evidence that aggression and violence are deeply entrenched in South African society, which hinders the creation and maintenance of safe school environments (Bester & Du Plessis 2010; Botha 2014a; Muthukrishna 2011; Singh & Steyn 2013) and deleteriously affects teaching and learning (Botha 2014b).

Against this background, in this chapter, the findings of a thematic document analysis of selected empirical research on aggression and violence in South African schools are discussed and recommendations are made on how to curtail aggression and violence based on a HRBA. The following research question

guided this enquiry, *'to what extent are human rights-based approaches utilised in the recommendations or suggestions of previous empirical research as a way in which aggression and violence can be curtailed in South African schools?'*

This chapter is structured as follows: firstly, the phenomena of aggression and violence are considered; secondly, an outline of aggression and violence and their role in making South African school environments unsafe is used to show that human rights violations are involved; thirdly, an overview of the research methods is given; fourthly, the findings are discussed, and possible reasons for the apparent failure to curtail aggression and violence in South African schools are reviewed. This is followed by a discussion of the possible merits of a HRBA situated in the Constitution as a means of curtailing the aggression and violence that make school environments unsafe and effective teaching and learning at schools elusive.

## ■ Aggression and violence

Botha, Myburgh and Poggenpoel (2013) and Fiske (2010) describe aggression as disruptive, destructive, punitive or anti-social behaviour with the intent to physically, verbally or psychologically hurt, harm or injure other individual(s) or objects. Baron and Richardson (1994), however, suggest that a description of aggression also needs to take account of the adverse effect on the victim as well as his or her attempt to avoid or resist the perpetrator's aggressive behaviour. Violence is an extreme form of aggression. According to Bushman and Huesmann (2010), it has:

[E]xtreme physical harm as its goal, such as injury or death. One child intentionally pushing another child down is an act of aggression but is not an act of violence. One person intentionally hitting, kicking, shooting or stabbing another person is an act of violence. Thus violence is a subset of aggression. All violent acts are aggressive, but not all aggressive acts are violent (only the ones that are intended to cause extreme physical damage are called violent). (pp. 843–835)

Kruger (2012) asserts that if action is not taken to deal with bullying behaviour, it could develop into aggressive behaviour or even dangerous acts of violence. Similarly, Swearer et al. (2010) see a clear nexus between bullying and violence, bullying and aggression and bullying and delinquency as well as criminality. Kruger (2012) notes that:

[T]hese actions, apart from denying victims their fundamental rights, quite often fuel a tragic circle of violence which sometimes results in victims either engaging in self-inflicted harm, or reaction against the perpetrators. (n.p)

Aggression and violence result from socio-economic inequality, inequity, poverty, unemployment, economic and political climate, social exclusion, marginalisation, easy access to weapons (such as firearms), rape, robbery (criminality), inadequate early life socialisation, ineffective child-rearing, drugs and alcohol (substance abuse) and the normalisation of aggressive or violent behaviour (Botha 2014a; Centre for the Study of Violence and Reconciliation 2009; Mncube & Harber 2013; SACE 2011). Violence cannot, therefore, be ascribed to a distinct single cause but should be understood as ‘a series of interrelated factors [that] impact on young people in different ways’ (Burton 2007:12).

## ■ **Aggression and violence contributing to unsafe South African school environments: The face of human rights violations**

Certain schools in South Africa have been identified as high-risk schools (Prince 2010), but aggression and violence are endemic at most South African schools. The South African Institute of Race Relations study indicates that 77% of learners say they feel unsafe in their school environments (Manual 2014:10). As has already been noted, the causes of this violence and aggression are deeply rooted in society (Botha, Myburgh & Poggenpoel 2012; Lau & Stevens 2010; Mankayi 2010; Muthukrishna 2011;

Singh & Steyn 2013). Surty (2014:4) posits that urgent attention needs to be paid to the role of violent behaviour, sexual abuse, drug abuse and bullying in establishing a climate of abusive behaviour towards both educators and authority in schools. Soobrayan (2014) cautions that the role of ill-discipline should not be underestimated. A significant factor in encouraging violence and aggression is that incidents such as stabbing and shooting are sensationalised by being captured on videos, cell phones and even posted on YouTube by learners (De Klerk 2013; De Vries 2014; Wondergem 2011). It is a vicious cycle; school environments that are characterised by destructive behaviours encourage violence and aggression (Surty 2014:4).

Wondergem (2011) contends that most learners and parents are not aware of their human rights and are, therefore, not able to assert them. According to Kruger (2012), acts such as bullying are often dismissed as part of 'growing up'. This is also true of acts of aggression and violence. There is not much awareness that these acts violate victims' human rights with regard to human dignity (s. 10) and equality (s. 9). In addition, individuals' freedom and security are protected in Section 12: the right 'to be free from all forms of violence' (s. 12[c]), 'not to be tortured in any way' (s. 12[d]) or 'be treated or punished in a cruel, inhuman or degrading way' (s. 12[e]) (South Africa 1996a). In addition, everyone has the right 'to an environment that is not harmful to their health or well-being' (s. 24[a]) and the right to life (s. 11) (South Africa 1996a).

The widespread destructive behaviour in various South African schools infringes on individuals' fundamental rights. This raises the question of why aggression and violence continue to be rife at schools even though South Africa has a modern constitution (South Africa 1996a) as the supreme law, which includes as Chapter 2 the Bill of Rights and the *South African Schools Act 84* of 1996 (South Africa 1996b) that provide enforceable legislation. The Bill of Rights, the cornerstone of South African democracy, enshrines peoples' rights and the democratic values of human

dignity, equality and freedom, according to Section 7 of the Constitution. It specifically refers to an individual's right to 'freedom', 'security' as well as the right to be 'free from all forms of violence' and the right to 'environments' that are not harmful or detrimental to well-being or health. In terms of Section 20(1) (d) of the *South African Schools Act* 84 of 1996, every SGB should adopt a code of conduct for learners (South Africa 1996b). The 'purpose of a code of conduct is "to promote positive discipline, self-discipline and exemplary conduct, as learners learn by observation and experience"' (Reyneke 2013:167), as provided in Section 1.6 of the Guidelines for the Consideration of Governing Bodies in adopting a code of conduct for learners, schedule to the *SA Schools Act* 84 of 1996 (Republic of South Africa 1996b). This view resonates with Social Learning Theory that assumes that 'behaviour is learned through observation of others as well as through the direct experience of rewards and punishments' (Kassin, Fein & Markus 2011:449).

Learners who are obliged to attend school have the right to safe school environments that are free from aggression and violence, and their parents may also rightfully and reasonably expect their children to be safe at schools (De Wet 2013). Prinsloo (2005) defines a safe school as:

[O]ne that is free of danger and where there is an absence of possible harm; a place in which non-educators, educators and learners may work, teach and learn without fear of ridicule, intimidation, harassment, humiliation, or violence. A safe school is therefore a healthy school in that it is physically and psychologically safe. (p. 5)

Aggression and violence undoubtedly infringe on learners' fundamental right to safe school environments that are conducive or beneficial to learning. These, further, impact negatively on the 'common-law role of *in loco parentis*', which requires teachers to take care of and assure learners' safety and security, as well as their well-being (De Wet 2013:22). Clearly, there is an urgent need to explore ways in which aggression and violence can be

effectively addressed in schools. The rationale for this research was, firstly, to determine the various approaches to effectively curtail aggression and violence in schools; and secondly, to establish the possible role of a HRBA, either as a valuable alternative or as a supplementary approach to existing approaches for addressing aggression and violence in South African schools.

## ■ Methods

A qualitative document analysis was conducted using thematic document analysis process – an ‘analytic procedure [that includes] finding, selecting, appraising (making sense of), and synthesising data contained in documents’ (Bowen 2009:28). Bowen (2009:32) asserts that: ‘[t]hematic analysis is a form of pattern recognition within the data, with emerging themes becoming categories for analysis’. I explored the ‘design[s], methods, and instruments as well as the theoretical framework of each study’ of the ‘existing data’ (Rapley 2007:9) to find such patterns. In this case, data were drawn from various research studies on aggression and violence in South African school contexts and included documents such as a school-based violence report by the SACE (2011) and a report on the dynamics of violence in schools in South Africa (Mncube & Harber 2013). The selection criteria used included empirical research on aggression or violence as phenomena of interest, primary or secondary school environments as contexts and learners or teachers as people of interest. The document analysis was conducted in two phases. In Phase 1, documents were selected using the selection criteria provided above. Phase 2 involved a thematic analysis of these documents to identify the approaches used to effectively curtail aggression and violence in schools. The research question was, ‘how are HRBAs used in the recommendations or suggestions of previous empirical research as a way in which aggression and violence can be curtailed in South African schools?’

## ■ Phase 1: Selection of documents for the purpose of analysis

The selected research studies on aggression and violence in South African school contexts used a variety of research designs, approaches and data collection and analysis methods (Mncube & Harber 2013; Myburgh & Poggenpoel 2009; SACE 2011). The studies were conducted at various South African primary and secondary schools in a number of provinces in South Africa and included teachers' as well as learners' experiences and perceptions of aggression and violence in various contexts. Although research was conducted in both primary and secondary schools, and most of it was conducted in secondary school contexts (Mncube & Harber 2013; Myburgh & Poggenpoel 2009; SACE 2011).

The documents draw similar conclusions on the nature, causes and effects (detrimental impact) of aggression and violence in South African families, schools and communities. Various factors (risk, internal and external) that have a negative impact not only on learners and teachers in teaching and learning environments (schools) but also on families and communities are consistently emphasised (Mncube & Harber 2013; Myburgh & Poggenpoel 2009; SACE 2011). This suggests that individuals and their environments are constantly interacting and influencing one another at a micro-, meso-, exo-, macro- and chrono-system levels (SACE 2011).

South Africa has a history of aggressive and violent behaviour stemming from poverty, crime, overcrowding, entrenched inequality, oppression, drug and alcohol abuse, which is often normalised within the social construction of masculinity and masculine behaviour (Mncube & Harber 2013; Myburgh & Poggenpoel 2009; SACE 2011). This strengthens the view that aggressive and violent behaviour is socially and culturally constructed; individuals learn how to behave within various

contexts and situations. Such behaviour is explained by Social Learning Theory (SACE 2011).

These documents lend credence to the notion that aggression and violence affect people not only physically but also emotionally and socially (Myburgh & Poggenpoel 2009; SACE 2011). Destructive behaviour ‘corrupts the social fabric [to] communities and the nation as a whole and endangers the health of both children and adults’ (Mncube & Harber 2013:17).

## ■ Results

The following themes emerged during thematic document analysis.

### ■ Phase 2: Themes - Current tenets

The research on aggressive and violent behaviour in schools used in Phase 1 was underpinned by current tenets of safety and security and a whole-school approach (Mncube & Harber 2013; SACE 2011), a mental health approach (Myburgh & Poggenpoel 2009) and a systems approach (SACE 2011).

### □ Safety and security and a whole-school approach

Ensuring the safety and security of learners requires the commitment of learners, teachers, school management teams, as well as other stakeholders such as the DoE and communities to building a democratic and peaceful society. Mncube and Harber (2013:17) emphasise that a school is required ‘to protect and care for its learners by [adopting] a clear approach to safety and security’ to ‘[encourage] effective teaching and learning’ (Mncube & Harber 2013:4) and to foster ‘a culture of mutual respect, civility, and politeness’ within a democratically run institution (Mncube & Harber 2013:22).

## □ Mental health approach

Myburgh and Poggenpoel (2009) add that '[m]ental health involves constructive intrapersonal, interpersonal and environmental relationships' and claim that individuals who are mentally healthy will have the ability to:

[E]stablish and maintain positive relationships; responsibility for terminating relationships that may be viewed as harmful; validation of feeling; collaboration; acceptance of compromises; direct communication; and the use of body language to facilitate communication and respect for others in interpersonal relationships; [...] has the ability to organise the environment; exert control over or modify the immediate environment; adapt to change; engage in planned thoughtful responsible activity; and resolve power struggles by means of co-operation and compromise. (p. 446)

## □ Systems approach

A systems approach sees 'a person and environment [as] independent units that dynamically interact and influence one another' (SACE 2011:23). In their discussion of an eco-systemic framework, SACE (2011) shows how the various interacting systems within it, such as an individual, family, community and society, influence one another. These holistic approaches emphasise the need for the various role-players such as the Government, DoE, schools and communities to address aggression and violence in school environments collaboratively (Mncube & Harber 2013; Myburgh & Poggenpoel 2009; SACE 2011). They also point to the value of community structures that would be able to support schools. These could include churches, counselling services and other support centres (SACE 2011).

## ■ Support and intervention

### □ Learners

The recommendations made in the documents studied include the development and implementation of intervention programmes aimed at the development of learners. These include democratic

resolution skills; opportunities for reflection, negotiation and redefining of power; gender and racial imbalances; management of aggression; conflict management skills; assertiveness skills; problem-solving skills; leadership skills; stress management skills; and other skills needed to manage their environments (Burton 2007; Mncube & Harber 2013; Myburgh & Poggenpoel 2009; SACE 2011). Mental health approaches suggest intervention or support programmes that include relationship skills development. Some of the research analysed in this study particularly recommends the development of intrapersonal skills (positive self-concept, self-identity, self-knowledge, internal locus of control) and interpersonal skills (communication, respect, listening) (Mncube & Harber 2013; Myburgh & Poggenpoel 2009; SACE 2011). Learners who develop these skills gain the ability to understand themselves and establish and maintain effective relationships at various levels.

## □ Teachers

The recommendations highlight the need for more effective support and assistance from the DoE and school management teams. This is because a significant number of teachers seem to lack effective democratic conflict resolution skills, seem to have shortcomings with regard to discipline, including managing destructive behaviour and other insidious social ills that spill over from society into schools and classrooms, and seem to lack professionalism. Considerable attention is given to alternatives to corporal punishment, especially punishment that is reasonable, fair and justifiable (Cameron 2014:4; Mncube & Harber 2013), which serves an educational rather than a punitive function (Cameron 2014:2-3). Many of the recommendations focus on support programmes for teachers (employee assistance) that will enable them to deal with stress or conflict management, including counselling services for teachers who fall victim to aggressive and violent acts from colleagues or learners (SACE 2011). This accentuates the need for support of teachers' overall well-being (Myburgh & Poggenpoel 2009).

## □ Schools

The documents recommend that schools provide teachers with opportunities to become aware of, sensitised to and to reflect on coping strategies and to create time for them to engage in various contextual discourses that research has shown to be useful. School management teams need to provide institutional support so that teachers can apply the provisions of the *South African Schools Act 84 of 1996* (South Africa 1996b). They also need to provide opportunities for teachers to develop the ability to take effective disciplinary action (Mncube & Harber 2013; SACE 2011).

## ■ Legislation

The research urges the DoE and the government to provide more legislation in the form of anti-bullying policies; policies on alcohol, drugs and weapons; safety and security policies; policies on violence prevention; legislation in response to domestic violence, gender-based violence and child abuse; and guidance on the implementation of a School code of conduct as required by the *South African Schools Act 84 of 1996* (Mncube & Harber 2013). It also urges that measures need to be taken to make learner and teacher reporting of incidents of aggression and violence more effective – for instance, by providing feedback on reports sent and ensuring the protection of victims (Mncube & Harber 2013; SACE 2011).

## ■ Discussion

The recommendations focus on the personal and social development of individuals (teachers and learners). Most of these suggest collaborative approaches or skills, developmental programmes to enhance the well-being of learners and teachers and thus create environments that are free from aggression and violence. These include psychological services, welfare services and DoE directives. Although considerable attention is given to

discipline in schools, the alternatives suggested, for corporal punishment, in particular, are not situated in a constitutional framework. However, Cameron (2014) does make the following point with regard to the abolition of corporal punishment:

[C]orporal punishment was [...] much more than a reform of disciplinary conduct – it had a principled and symbolic function, intended to promote respect for dignity and physical and emotional integrity of all children. (p. 3)

It seems that there is a need for firm directives from the DoE to underline this as well as to provide guidelines on appropriate measures to curtail aggression and violence in schools.

Although some research recommends that schools should implement the *South African Schools Act* 84 of 1996 and that further legislation should be passed, or policies created, none of these recommendations included a HRBA or referred to the constitutional framework as the point of reference for policies on aggression and violence in schools.

## ■ What is a human rights-based approach?

A HRBA to human development is described in broad terms by the South African Human Rights Commission (South Africa 2010) as:

[E]ssentially a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to integrate the norms, standards and principles of the international human rights system into plans, policies and processes of development. (p. 13)

This resonates with the United Nations (2006:16) statement that a HRBA is ‘a conceptual framework’ designed to respect, promote, protect and fulfil human rights. The Scottish Human Rights Commission (SHRC 2014:11) takes a more participatory approach, as it describes HRBAs as ways in which people are empowered ‘to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible

for respecting, protecting and fulfilling rights'. Furthermore, people are to be involved (SHRC 2014):

[/]n shaping the decisions that impact on their human rights. It also means increasing the ability of those with responsibility for fulfilling rights to recognise and know how to respect those rights, and [ensuring that] they can be held to account. (p. 11).

The SHRC further indicates that a HRBA requires that 'both the standards and the principles of human rights are integrated into policy-making as well as the day to day running of organisations' (SHRC 2014:11). The central principles of a HRBA are 'participation, accountability, non-discrimination and equality, empowerment, and legality (PANEL)' (NHS n.d.:4; SHRC 2014:11).

Although some recommendations focus on the safety and security of school environments, they make no explicit reference to protecting the rights of individuals as enshrined in the Constitution. This is disquieting because perpetrators of aggression and violence are frequently accused of assault or *crimen injuria*, violations of fundamental human rights such as respect for human dignity, equality or individuals' freedom and security (South Africa 1996a).

Twenty years after the adoption of the Constitution, not to mention the legislation to protect human rights, aggression and violence are rife in South African schools. This raises the question of *why effective action has not been taken to create safe school environments free from aggression and violence*.

## ■ Possible reasons why current approaches have failed to prevent or counter aggression and violence in schools

Lohrenscheit (2005:7) urges the need for education to adopt a HRBA, highlighting the 'fundamental link between human rights and education'. This means that education at every level must be committed to fostering a culture of human rights in which learners, teachers and departmental officials uphold

human rights. All educational endeavours must be based on the Bill of Rights to create safe teaching and learning environments ‘in which effective teaching and learning can take place’ (Prinsloo 2005:8). The overall direction must come from the state that has to set the example regarding respect for and protection of the Bill of Rights, as provided for in the Constitution (South Africa 1996a, s. 7[2]). As Cameron (2014:1) argues, it is ‘reasonable to regard the State as being foremost in upholding Constitutional values’. According to Cameron (2014):

[T]he Constitution requires us to look with new eyes at the way we relate to people [a]nd when we do so, our view must be coloured by the Constitution’s founding values: human dignity, equality and freedom. (p. 1)

It therefore seems that a HRBA must be promoted at the state level, but that commitment to it is necessary in principle and practice at every level of education.

## ■ How does a human rights-based approach differ from current approaches as the norm or practice?

A HRBA aims at creating an environment in which human development is based on respect for people’s human rights. Although the approaches taken in the research that was reviewed aimed at human development, they are not rooted in a human rights legal framework, which advocates intervention and support programmes that are linked to the PANEL human rights principles. Such programmes aim to decrease the gap between the legal position and actual practice. They also make provision for support to both victims and perpetrators of aggression and violence because intervention or support is underpinned by the founding values of human dignity, equality and freedom.

A HRBA fundamentally differs from the approaches taken in the research in question in three ways. Firstly, it is concerned with the *fulfilment of human rights* through policy and

programme development that strengthens the position of *rights-holders* and calls on *duty-bearers* to meet their obligations (United Nations 2006:15). Secondly, a HRBA enhances development in practice through a combination of intrinsic and instrumental foundations to human development (United Nations 2006). Its moral value for human development lies in 'acknowledging that a [HRBA] is the right thing to do, morally or legally [intrinsically]', and also in 'recognizing that a [HRBA] leads to better and more sustainable human development outcomes [instrumentally]' (United Nations 2006:16). In this context, a HRBA encourages a respect for and a promotion of peoples' human rights as a prerequisite for achieving safe and secure teaching and learning environments free from aggression and violence. Thirdly, a HRBA has practical values. As stated by the United Nations (2006:16), it acknowledges the life-worlds of all individuals in diverse contexts. This includes establishing 'whose rights' are at risk of being violated, based on the premise that all people are entitled to human rights. Programmes that are based on HRBAs have a 'holistic view' of the environment that includes (United Nations 2006):

[T]he family, the community, civil society, local and national authorities [and] considers the social, political and legal framework that determines the relationship between institutions, and the resulting claims, duties and accountabilities. (p. 17)

This creates extended opportunities for a 'participatory process'. As aggression and violence are not restricted to school environments, a HRBA includes capacity building and the constructive participation and collaboration of stakeholders such as families, communities and society in the endeavours to address the challenges that these behaviours pose (United Nations 2006:17). It also seeks to attain 'transparency and accountability' through policies and other legislative frameworks (United Nations 2006:17). According to the United Nations (2006:17), this allows people, families, schools, communities and society 'to hold those who have a duty to act accountable, ensuring effective remedies where rights are violated'. A HRBA to human development

further includes ‘the monitoring of [s]tate commitments with the help of recommendations of human rights treaty bodies’ and the ‘[s]trengthening [of the] capacities of individuals and [in] institutions to carry out their obligations as expressed in local, national and international laws, policies and programmes’, thus fashioning *sustained results* (United Nations 2006:18).

The preceding discussion highlights the practical value of adopting a HRBA to curtail aggression and violence so that South African schools can be safe and effective teaching and learning environments.

## ■ What is the implication for practice?

To implement a HRBA, the various role-players involved have to be willing to play an active role in the ‘decision making’ necessary to create a viable HRBA within the framework of the Constitution (Burton 2014; South Africa 2010). This would include the DoE, schools, teachers and learners as well as parents and other stakeholders such as psychologists and social workers.

## □ Education

Du Preez (2012) emphasises that:

[E]ducation for human rights is in itself part of the human right to education [*that*] can only be realized when we carefully consider the curriculum, which is the study of education and society. (p. 55)

Academics involved in teacher education, particularly in life orientation and life skills teacher education, need to take responsibility for enabling pre-service and in-service teachers to develop an understanding and ‘knowledge of theory about rights [...] to perpetuate sound praxis in the classroom’ (Ferguson 2012:136). Kemmis and Smith (2008:4) explain that educational praxis implies ‘educational action that is morally-committed, and oriented and informed by traditions in a field’; thus, action that is referred to as ‘right conduct’ can also be comprehended as ‘history-making educational

action’ (Kemmis 2012:894). Ehrenreich (2014:12) emphasises that ‘schools should become values-driven’. Chetty (2014:16) puts this more strongly, arguing that teachers should be ‘value-driven’.

It is imperative that teacher education programmes include contemporary approaches to teaching human rights so that teachers are able to deal effectively with the human rights topics and themes in the life orientation and life skills curricula. Teachers will need to be thoroughly versed in dialogical learning, for instance, so that they can establish classroom environments that encourage dialogue. Learners need to have a willingness to engage and find commonality, empathy, a readiness to listen and to reveal their inner selves, honesty, accountability, humility, respect for the relativity of convictions and an openness to the views of others and a commitment to engagement (Botha & Du Preez 2014:43–44). Dialogical learning allows learners to engage with one another and accommodate one another’s values and experiences. In simple terms, it is ‘a search for meaning and eventually knowledge within a social context, rather than an action for simply conveying or analysing information, meaning and opinion’ that offers teachers a way of infusing a culture of human rights in their classrooms (Botha & Du Preez 2014:42).

## □ Schools

*Curriculum and teachers:* At present, the South African school curriculum includes compulsory subjects known as life orientation and life skills that explicitly address human rights themes and topics. The NCS, Curriculum and Assessment Policy Statement for Life Skills (Intermediate Phase Grades 4–6) (DoBE 2011a), Life Orientation Senior Phase (Grades 7–9) (DoBE 2011b) and Further Education and Training Phase Grades 10–12 (DoBE 2011c) make special provision for the teaching and learning of human rights and diversity through various topics. In the Intermediate Phase (Grades 4–6), children’s rights and responsibilities are

addressed as part of the topic ‘social responsibility’ (DoBE 2011a), and in the Senior Phase (Grades 7–9) as part of the topic of ‘constitutional rights and responsibilities’ (DoBE 2011b). In the Further Education and Training Phase (Grades 10–12), the topic ‘democracy and human rights’ is covered (DoBE 2011c). Teachers are the meaning-makers of the curriculum; therefore, they need to understand how important it is ‘to relate social matters such as human rights to the theory of curriculum’ (Du Preez 2012:55). Keet (2002:33) highlights the importance of recognising that ‘[t]he curriculum ought to enable learners to act in the interest of a just society’. This requires particular attention to ‘the development of the self-in-society’ (DoBE 2011b:8). Teachers need to relate the themes or topics to real-life matters and give learners the opportunity to create spaces that embrace the life-worlds of *others*. This will encourage learners not only to respect others’ human rights but also to seek solutions to challenging issues that accord with the precepts of the Constitution and the *South African Schools Act*. Teachers will need to draw on the insights of legislation, policies and curriculum to deal with any behaviour that violates individuals’ human rights as part of their responsibility to help learners develop an understanding of and respect for human rights. They will also have to accept the ‘responsibility to be a role model’ (Surty 2014:4).

Teachers need to move beyond the mere transmission of the life orientation and life skills curriculum content to practical real-life application ‘in a critical and caring context’ (Botha & Du Preez 2014:42). One way of doing this is to use practical examples of aggression and violence from the learners’ lived experiences in their own social contexts, including school, and family and community life. This creates opportunities for learners to become aware of human rights violations and *whose* rights are violated when violations occur and *how*. It also creates opportunities to find out how and where these violations can be reported, thus incorporating effective human rights remedies and support systems.

## □ Life-worlds and experiences

Learners will benefit from teachers who understand the curriculum and use dialogical learning to infuse a culture of human rights in their classrooms. Dialogical learning has the ‘potential to allow [learners] for deep engagement between [themselves] regarding real-life matters’ (Botha & Du Preez 2014:42). This may also provide opportunities for *learners* to be aware that they need to claim their rights to bring about the realisation of the rights (Botha & Du Preez 2014; United Nations 2006). Those who are victims must understand why aggressive and violent acts are violations of their human rights and why it is necessary to protect these rights. Orr (2014) argues that:

[S]imilar to liberationist theory, advocates of Choice and Will theory assume that individuals are the holders of rights and therefore the exercise of rights is dependent on the individual's choice or will. (p. 89)

When learners understand their rights and how to report incidents of human rights violations caused by aggression and violence, it is more likely that they will elect to report violations of human rights and play an active role in curtailing aggressive and violent behaviour.

## □ Department of Education

The DoE has to ensure effective monitoring of human rights observance and has to take action when human rights are violated (South Africa 2010). It should, therefore, ensure that teachers as well as parents are provided with opportunities to be trained in civic duties as well as in human rights and education law (Bower 2014; Smit 2014). This will cause all stakeholders to ‘shift attitudes and behaviour’ (Bower 2014:18). It also needs to take full account of documents such as the School Safety Framework provided by the Centre for Justice and Crime Prevention, and the DoBE (2012); the report of the Public Hearing on school-based violence (South African Human Rights Commission [SAHRC] 2006); the FW De Klerk Foundation

Conference (2014) on The New South Africa at 20: The need for real Transformation; and the report on 'Getting to know the *Child Justice Act* by the Child Justice Alliance' (Gallinetti 2009).

## ■ Conclusion

Aggression and violence are a reality in many South African schools. This poses a huge challenge to many South African schools and education institutions: entrenched aggression and violence make it almost impossible to maintain safe and effective teaching and learning environments. Although a great deal of sound empirical research has been conducted on these phenomena in South African schools, and useful recommendations and suggestions on ways to address them have been provided, none has suggested a HRBA. Until the legal framework that underlies a HRBA is used to restructure policy, people will fail to recognise, understand, claim, respect, promote, protect and fulfil their enforceable rights. Thus, they will be denied the intrinsic benefits of human development that are nurtured in safe and secure caring environments underpinned by a constitutional framework. This creates a gap between accountability and the promotion, protection and fulfilment of human rights to ensure that constructive remedial action is taken to eliminate the human rights violations caused by aggressive and violent individuals. The South African society must embrace the opportunity to respect, promote, protect, fulfil and realise human rights as envisioned by the Constitution.

A HRBA should be adopted as a matter of urgency, because it offers the prospect of human development without the aggressive and violent behaviours that lead to unsafe school environments. This approach could make safe and effective teaching and learning environments at schools a reality.



# Deliberating ways in which diversity in skills capacity of schools violates learners' rights: Possible solutions

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## ■ Abstract

Written from a complexity theory perspective, this chapter discusses the ways in which learners' rights are violated by the diversity in the capacity of South African teachers and proposes possible solutions. Although the South African education system has achieved success in providing access to basic education, equal access to quality education remains an elusive goal because of historical inequalities and contextual diversity within the South African education system, which has contributed to diverse levels of teacher capacity, resulting in learners not being exposed equally to quality education. In the first half of the chapter, the diversity in the capacity of South African teachers is juxtaposed with the principle that the best interests of a child must be paramount in all aspects concerning a child. This is done against a background of complex and multiple contextual nuances and issues relating to the need to address the imbalances of the past, language rights, idealistic education policies, managerialism, the training and appointment of teachers, continuing professional teacher development and local school and teacher autonomy. Using Ronald Dworkin's (1978) 'doughnut principle' and the ideas of Caldwell and Spinks (2013), a model for differentiated levels of school autonomy is proposed in the second half of the chapter. The purpose of this model is to address the violation of learners' rights as a result of diversity in skill capacity of teachers in schools by focussing on the need for interventions where it matters the most.

## ■ Introduction

Deeming a child's interest to be of paramount importance is a common law principle, which is included as a basic constitutional right in Section 28(2) of the Constitution of the Republic of South Africa (Republic of South Africa 1996a). This principle is re-enforced in Section 9 of the *Children's Act* (Republic of South Africa 2005:n.p.), which stipulates that '[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'. However, in the South African education system, there are massive disparities in performance between schools (Du Plessis 2014; Taylor 2008:4):

[Q]uestions are increasingly being asked regarding the quality of the education provided by our public schools. Maree (2010:86) describes subject matter knowledge of South African educators as 'woeful' and that South African learners perform disappointingly in the PIRLS study, whilst Taylor (2008:2) [*characterises*] the South African education system as a high cost, high participation, and low-quality system [...]. Definite inequalities in educational performance can be noted most dramatically in [*that*] fee-paying schools [*far outperform*] the poorer non-fee-paying schools to the extent that one might think that there are two separate education systems in South Africa (Spaull 2011:18). (p. 2)

This relates to the complexities of the diversity of socio-economic context, language, culture and religion of the community served by the school. These concerns are reflected in the National Policy Framework for Teacher Education and Development (NPFTED) in South Africa (Republic of South Africa 2007) where it is stated that:

[T]he majority of teachers have not yet been sufficiently equipped to meet the education needs of a growing democracy in a 21st century global environment. [...] This includes poor grasp of their subjects as evidenced by a range of factual errors made in content and concepts during lessons. Many teachers' poor conceptual and content knowledge contributes to low levels of learner achievement. (p. 4)

## ■ Complexity theory as the paradigm

Complexity theory is an emerging new paradigm of educational research (Cohen, Manion & Morrison 2011:28). The origin of complexity theory can be traced to the fields of chemistry, physics, biology (Mason 2008a:36), archaeology, psychology, law and sociology (Haggis 2008:165). Complexity theory also shares the focus that chaos theory places on, as articulated by Mason (2008a:36), 'the sensitivity of phenomena to initial

conditions that may result in unexpected and apparent random subsequent properties and behaviours'. As in the case of chaos theory, complexity theory is concerned with wholes, with larger systems or environments and the relationships among their constituent elements or agents, as opposed to the often reductionist concerns of mainstream science with the essence of the 'ultimate particle' (Mason 2008b:5). As stated by Larson-Freeman and Cameron (2008:201), 'complexity theory works at the system level, and explanation is in terms of the system's behaviour, not at the level of individual agents or elements'. According to Walby (2003:1), complexity theory not only 'offers a new set of conceptual tools to help explain the diversity and changes in contemporary modernity undergoing globalisation', but it also 'offers a new way of thinking about diverse inequalities and social change'.

Complexity theory requires investigations into a dynamically interacting system of multiple elements or components (actors) from the 'inside', rather than from the 'outside' or the 'view from above' (Haggis 2008:172). Haggis (2008) explains as follows:

This conceptualisation of the researcher looking as if from 'within' larger dynamic systems of connected factors is quite common in sociological research, but less so in many forms of small-scale educational research. (p. 172)

Key aspects of complexity theory are the interaction aspect, the aspect of feedback, the aspect of connectedness, the aspect of emergence (Cohen et al. 2011:29), the aspect of context (Haggis 2008:167), the aspect of unpredictability (Haggis 2008:168) and the non-linear aspect (Cohen et al. 2011:28, 30).

## ■ Learners' rights

Wasserstrom (in Sisilana 2016:21) opines that a society without rights will result in a morally impoverished society, and Bandman (in Sisilana 2016:21) argues that rights allow people to claim what they are entitled to with dignity, as well as express their discontent

when what they are entitled to is withheld. The same holds true for children – not only are they entitled to the majority of rights adults are entitled to, but they are also entitled to claim their rights.

The first awareness of children's rights in international law is found in the 1924 Declaration of Geneva, where a call is made for the protection of children. Hereafter, the 1948 Universal Declaration of Human Rights mentions children's rights, although the 1959 Declaration of the Rights of the Child shifted from merely calling for the protection of children to focussing on the rights of children (Sisilana 2016:7-8). The watershed in the history of the rights of children is considered to be the 1989 ICRC (UN 1989), as the document ensured that children's rights were recognised as human rights, although recognising the vulnerability of children in an ever-changing world, resulting in a need to provide for additional protection (Sisilana 2016:9-10).

South Africa has committed itself as a country to protect the rights of children, not only in domestic law through the Constitution and the *Children's Act* 38 of 2005, but also by ratifying the ICRC and the African Charter on the Rights and Welfare of the Child (hereafter referred to as ACRWC [1990]) (Sisilana 2016:13). In addition, Section 39(1)(b) of the Constitution (Republic of South Africa 1996a) requires of courts to consider international law in interpreting the Bill of Rights. Thus, when Section 28 of the Constitution is interpreted, courts have to consider the ICRC and the ACRWC (Sisilana 2016:13).

Although Section 28(1) of the Constitution (Republic of South Africa 1996a) lays out the special rights of children and Section 28(2) provides the yardstick for the protection of the rights of all children in South Africa, children are also entitled to all other rights in the Constitution of the Republic of South Africa, excluding rights relevant to adults only.

## ■ Best interests of the child

Within the South African context, the best interests of a child has formed part of South African common law for many years (Bonthuys 2005:24; Malherbe 2008:267; Reyneke 2016:4; Sisilana 2016:15; Visser 2007:459). However, the inclusion of Section 28(2) in the Constitution has the best interests of the child becoming an enforceable constitutional right (Reyneke 2016) or principle (Bonthuys 2005:25). To contextualise Section 28(2), it is necessary to consider the legal background to the best interests principle, as well as the wording of this particular section of the Constitution.

Article 3(1) of the ICRC (UN 1989) and Article 4 ACRWC (1990) stipulate that in all actions involving children, the best interests of children should be the primary consideration. In Section 28(2) of the Constitution, the best interests of a child is considered to be of paramount importance. Parker (in Sisilana 2016:12-13) points to increased strength in the wording of the provision in the three documents - the ICRC uses the words *a primary* consideration, and the ACRWC uses *the primary* consideration, while the South African Constitution stipulates that the best interests of the child is *of paramount importance*. Thus, where consideration of the best interests principle should purely be one of the many important aspects to consider according to the ICRC (UN 1989), the ACRWC (1990) requires it to be the first, or primary, consideration, while the Constitution (Republic of South Africa 1996a) calls for the principle to be considered supreme in matters concerning children. Sisilana (2016:11) is of the opinion that this points to an increased awareness of greater vulnerability of African children to become victims of human rights infringements. Be that as it may, the wording in Section 28(2) of the Constitution leaves little doubt about the importance of the best interests principle.

When one considers the wording of Section 28(2), 'a child's best interest is of paramount importance in every matter concerning the child', a number of facets in need of consideration emerge.

The authors will focus on the contextualisation of best interests, which is quite a dilemma, and the paramountcy thereof. Various authors (Bonthuys 2005; Sisilana 2016; Stefkovich 2006:20; United Nations High Commissioner for Refugees [UNHCR] 2008) comment on the variety of interpretations of the best interests principle by courts and authors alike.

The concept of *best interests* could be seen to refer to the well-being of a person (UNHCR 2008:14) or in this instance a child, that is, a person under the age of 18 as defined by Section 28(3) of the Constitution. A variety of circumstances, for example, the child's age, level of maturity, circumstances at home and individual experiences, can influence well-being and would differ from child to child (UNHCR 2008:14). Although the ICRC (UN 1989) does not offer a definition of the best interests principle, or explicitly list common facets of the principle, it is clearly stipulated that in certain circumstances actions taken must be determined by the best interests of the child (UN 1989:art. 9, art. 21), while all other actions affecting children must be guided by the best interests of the child as primary, but not the sole, consideration (UN 1989:article 9), no matter if the action is taken in a public or private capacity (UNHCR 2008:15). No rights or duties are created by Article 9, rather the creation of an expectation for the principle to be considered in any right a child is entitled to and in all proceedings involving or influencing children (Sisilana 2016:10).

According to Visser (2007:461), 'interest' implies concern, benefit or an advantage, and therefore 'best interests of a child' would be the 'most advantageous practically possible and desirable in view of the relevant law'. Sisilana (2016:6) is of the opinion that when the best interests of a child is determined, it implies the need to consider the interest of a child before any decisions that may affect the child's life are made. Reyneke (2016) calls for the same child-centred approach in the interpretation of Section 28(2) of the Constitution by calling attention to the CC's interpretations of the said section and how these verdicts highlight the need to follow a child-centred

approach when matters pertaining to children are considered. Based on various legal documents and the opinions of various academics, Reyneke (2016) is of the opinion that the best interests standard is not only applicable to the implementation of legislation relating to children, albeit individually or as a group, but also to actions, proceedings or decisions concerning children taken by an organ of the state, such as a public school. Walker in Stefkovich (2006:21) warns that one of the greatest obstacles in ensuring the best interests of children may be adult-centricity. Malherbe (2008:268) indicates that the best interests principle comes into play whenever any other legal right, including constitutional rights, are affected and is enforceable against private persons, institutions, the state, organs of the state and their functionaries.

Stefkovich (2006:27) proposes that when considering the context of a situation, it is imperative to take the child's voice into account in determining the best interests of a child. Integral to ensuring the Standard is the acknowledgement of individual rights (Stefkovich 2006:22), responsible exercising of rights (Stefkovich 2006:23) and respect for the rights of others, particularly the rights of the child (Stefkovich 2006:25). Although the supreme importance of the child's best interests is specified in Section 28(2) of the Constitution, one should keep in mind that a child's wishes are not synonymous with his or her best interests (Visser 2007:462). Thus, a child's best interests do not absolutely apply and cannot trump any other competing interest or right, but may be limited (Malherbe 2008:268).

Reyneke and Pretorius (2017) propose that it may be undesirable and even impossible to provide a precise definition of the best interests of a child, but consider it useful to use the following excerpt from *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development and Others* 2009 (4) SA 222 (CC) to attribute core meaning to the principle:

It is, as we put it in *Sonderup*, 'an expansive guarantee' that a child's best interests will be paramount in all matters concerning the child. This provision thus imposes an obligation on all those who make

decisions concerning a child to ensure that the best interests of the child enjoy paramount importance in their decisions. Section 28(2) provides a benchmark for the treatment and the protection of children. (p. 115)

## ■ The best interests of the child within the South African school system

According to Okoth-Obbo (in UNHCR 2008:5), reference has been made extensively, in both legal and academic circles, to the best interests principle, but the application of the principle remains challenging, with limited guidance as to how the principle should be applied. Stefkovich (2006:17) also mentions the lack of a clear indication of what constitutes a learner's best interests. According to Sisilana (2016:6), the best interests principle has been criticised because of the complexity of its application and how courts differ in the interpretation of the Standard.

This dilemma is also evident within the South African legal landscape. Section 28(2) calls for the paramountcy of the child's best interests, but it does not provide clarity on what factors should be used to establish the best interests of a child. Currie and De Waal (2005:617) indicate that the best interests test requires of the courts, in their capacity as the supreme guardian of minors, to use the discretion it has to ensure that the child's best interests trump the entitlement of the adult party in any case involving children. Acknowledging the difficulties of the concept, they opine that if the courts provide solid guidelines, it may create a basis to work from and even develop further obligations for the state or parents (Currie & De Waal 2005:618).

There are a number of court cases where the judgements made can act as a guideline for educational authorities with regard to their responsibilities in terms of the best interests principle. The judgements made in two cases dealing with language rights, *Laerskool Middelburg v Departementshoof, Mpumalanga Departement van Onderwys*, 2003 (4) SA 160 (T)

and *Western Cape Minister of Education v Governing Body of Mikro Primary School*, 2006 (1) SA 1 (SCA), differed significantly; however, in each instance, the consideration of the best interests of a child was deemed as being of paramount importance and comprised an integral part of the judgement (Küng 2015:34). In *Governing Body of Point High School v Head of Western Cape Education Department*, 208 (5) SA 18 (SCA), the Governing Body of Point High School challenged the amendments made to the Section 6(3) of the EEA. The amendments allowed for the DoE to appoint any one of three recommended candidates, without considering the indicated preferences made by the SGB. In this instance, the Department decided not to appoint the preferred candidates for the positions of principal and vice-principal. The court ruled in favour of the applicant and held that it was in the best interests of learners (children) to appoint the best candidate on merit to fulfil the constitutional requirement as found in Section 28(2). In the Constitutional Court case of *Governing Body of the Juma Musjid Primary School and Others v Essay NO and Others (Centre for Child Law and Another as Amici Curiae)* 2011 (8) BCLR 761 (CC), it becomes clear that the right to education and the best interests principle are inextricably linked. In the judgement, it was made clear that despite the fact that the DoE had not met its financial obligations in terms of paying rent to the trust owning the property, it would be unconstitutional to close the school before all learners had been enrolled in another school. It was deemed that the closure of the school would not be in the learners' best interests, as it would lead to an infringement of their right to education.

One cannot lose sight of the fact that education is one of the most, if not the most, prominent areas in the life of a child and that children spend the largest part of their day at school. Given that in their schooling children stand in a direct relationship with the state, the duty imposed on the state and state organs to 'respect, protect, promote and fulfil the Bill of Rights' (Republic of South Africa 1996a:s. 7[2]) gains prominence, especially in

terms of Section 28(2) of the Constitution. The significance of the statement made in the *Mikro*-case, as per Malherbe (2008), is that:

[T]he state must obey the law, and in the long run it would not be in the best interests of learners if they were allowed to grow up in a country where the state and its functionaries regard themselves above the law. (p. 284)

This leads to a realisation that in an education context, it is imperative for all role-players to inquire actively and self-reflect to ensure that decisions are made in the best interests of learners, rather than taking expedient decisions that serve their adult needs.

Within the complexity of the education sector, it is not always easy to determine what is in the best interests of children, especially given that there are factors that may not be easy to control. However, theoretically, the education provided and the environment in which it is provided should be in the children's best interests, and therefore all decisions made by the various role-players should at all times be measured against Section 28(2) of the Constitution (Visser 2007:463). Unfortunately, as argued by Visser (2007:468), the best interests principle has neither received sufficient recognition from role-players in the education sector nor has it been applied sufficiently to ensure efficient and proper training of educators, provision of high-quality education and control over educators. Disturbingly, Visser's words still ring true in 2019, especially in terms of quality education and the appointment of educators who lack the required skills to teach.

## ■ Vested interests and their effects on the best interests of children

Many stakeholders are involved in an education system, and they bring with them multiple and often contradictory interests (The World Bank 2018:190). These stakeholders include

'politicians, bureaucrats, the judiciary, private players' (The World Bank 2018:190), teacher unions, governing bodies, parents, religious groupings, cultural groupings and organisations, non-governmental organisations and business and industry. The World Development Report (The World Bank 2018) explains that as participants linked to the education system, these stakeholders:

[H]ave a vested interest in how the system works, including its structure and funding [and] in many cases policies are not chosen for their effectiveness in improving learning, [but] are guided instead by the vested interests of powerful actors. (p. 190)

This point is illustrated as follows (The World Bank 2018):

A textbook supplier may want to provide a quality product, but it also cares about profits. A politician may want to make teachers accountable, for student learning, but also realises the electoral risks of teacher opposition. A bureaucrat may support meritocratic admissions, but also 'accepts a token of appreciation' for ensuring the admission of an acquaintance's child to a desirable school. A parent may want to complain about a teacher, but worries that her child could suffer retaliation. (p. 190)

In the South African situation, the government has been, and is still, confronted with a diverse array of clashes of vested interests. In dealing with these vested interests, the preferred strategy of the government seems to be to amend applicable legislation. This approach is firstly chosen to avoid offending politically influential stakeholders or, secondly, in response to lost legal battles. Sadly, the best interests of learners (children) are forgotten in many cases. This is discussed and illustrated in the following subsections.

## ■ The impact of the South African Democratic Teachers' Union

According to the World Development Report (The World Bank 2018:193), implementation of policies can be compromised if they threaten powerful interests, and where the interests of a

powerful teacher union are in opposition to government policy, the best interests of learners (children) are often forgotten.

The SADTU, the largest teacher union in South Africa and affiliated to the Congress of South African Trade Unions (COSATU), a strategic partner in the [ANC-led] ruling tripartite alliance (African National Congress, COSATU and the South African Communist Party), waged a bitter battle to prevent testing and evaluation and to prevent its members from being evaluated (Letseka, Bantwini & King-McKenzie 2012:1197, 1199) in terms of the National Policy on Whole School Evaluation (WSE) which was introduced by the DoE in 2000 (Kara 2017:35). Whole School Evaluation was intended to be 'supportive and developmental rather than punitive and judgmental' (Letseka et al. 2012:1199). Hence, it was not meant to be used as a coercive measure, but rather to promote a better quality of education offered by schools. As articulated by Letseka et al. (2012:1199), '[it] would facilitate support and improvement of school performance using approaches of partnerships, collaboration, mentoring and guidance'. However, despite these intentions, the East Rand Gauteng branch of SADTU, for example, refused to allow the WSE to be implemented in their schools (Letseka et al. 2012:1199). Referring to Fleisch (2010), Letseka et al. (2012) describe the intensity and effects of the resistance demonstrated by SADTU as follows:

[H]undreds of teachers had missed more than two weeks of work, thousands of school children, including learners in the final years of secondary school, had missed their mid-year examinations, and a number of principals and teachers had been assaulted and intimidated. (p. 1199)

Such a collision between the Government and SADTU – an affiliate of COSATU – would have caused tension in the ANC-led ruling tripartite alliance, and the attempt of the education ministry to introduce WSE as an instrument of school improvement, thereby promoting the best interests of learners, was doomed to fail. It seems as if the influential position that SADTU occupied in the tripartite alliance, coupled with the danger of losing political

support, forced the government to choose the road of least resistance rather than act against the ill-discipline of SADTU members.

## ■ **Mismanagement and corruption in the provision of textbooks**

In 2012, mismanagement and corruption in the provision of textbooks came to the fore in the Limpopo province. Chisholm (2013) describes this debacle as follows:

Into the open was brought a report by a dismissed administrator full of details about fraud, corruption, mismanagement and maladministration in the province, an early whistle-blower left in the doldrums, and a shadowy textbook distributor with close links to the ruling party whose cancelled contract it was fighting through the courts. (p. 7)

The best interests of learners at especially non-fee-paying schools in Limpopo province were negatively affected by this fiasco in that not only was the learners' right to basic education violated, but their rights to dignity and just administrative action as well. Unfortunately, the affected learners were let down by the very people who needed to protect their best interests. Diversity of skills capacity thus stretches further than the school level. Lack of management capacity and the absence of a moral obligation towards learners from provincial authorities not only promote diversity in skill capacity in schools but also contribute to the neglect of the best interests of learners.

## ■ **Political and ideological objectives of education authorities**

The interests of schools at the local level may clash with the national norms and objectives (The World Bank 2018:193). This is demonstrated by court battles pertaining to the language and admission policies of schools between provincial education departments and school governing bodies. A recent example of

such a case is *Governing Body Hoërskool Overvaal and Another v Head of Department of Education and Others* 86367/2017. In this case, the court found that the Gauteng DoE had a blatant disregard for just administrative action and acted unlawfully in the manner in which they tried to force *Hoërskool Overvaal* (Overvaal High School) to admit English-speaking learners. The political and ideological motives of the education authorities are summed up by the following statement by the MEC for Education in the Gauteng Province (Lesufi 2018):

This philosophy of racial division, and cultural and language individualism remain entrenched in our education system. That is why Hoërskool Overvaal's legal victory in keeping out 55 grade 8 English learners from the Afrikaans school in Vereeniging was a major setback for transformation and the struggle for a non-racial society. (n.p.)

It seems that the education authorities were driven by motives other than the best interests of learners. It can be questioned whether it would have been in the best interests of the 55 English-speaking learners to be admitted to *Hoërskool Overvaal* as the school had no teachers who could teach in English. Therefore, this school would have become an example of learners' rights to basic education (and dignity) being negatively affected by a lack of capacity of teachers to teach in both Afrikaans and English. In addition, the insistence of the Gauteng DoE that the school convert specialist classrooms, such as laboratories, into ordinary classrooms to accommodate the additional 55 learners to be taught in English, indicates a disrespect for the best interests of current learners of the school who were enrolled in subjects for which these specialist classrooms were intended.

## ■ Differentiated levels of school autonomy: A possible solution

As indicated earlier in the chapter, there is a distinct discrepancy between the performances of fee-paying schools that have greater levels of autonomy afforded to them in terms of Section 21

of the *South African Schools Act* 84 of 2006 (Republic of South Africa 1996b), and that of non-fee-paying schools that do not have the same levels of autonomy. Karlsson (2002:331) opines that the contextual conditions of poverty and the 'widespread apartheid-era capacity deficit', which are prevalent in most communities, may be reinforcing existing inequalities. A similar view is held by Van den Berg et al. (2011:20) who explain that the South African education system is essentially two 'sub-systems', each having very different historical backgrounds and each performing at different levels of effectiveness. The majority of South African children find themselves in the historically disadvantaged sub-system, remaining disadvantaged because of the unfavourable factors associated with poverty. Against this backdrop and to place paramount importance on the principle of the best interests of the child (learner), it is proposed that a model for differentiated levels of school autonomy is introduced into the South African education system. Such a model for differentiated levels of school autonomy should be based on the notion that different settings and times will call for responses, such as actions of leadership or actions of management (Strain 2009:69). In addition, this model takes cognisance of Marishane's (2016:167) argument that contextually intelligent school leadership needs to be applied to ensure relevant and sustainable improvement in schools. Also, this model links the focus on the capacity building of schools at the local level to the importance of taking context into account, including the political climate and the ethnic and cultural diversity (Dyer & Rose 2005:109). In other words, this model promotes a keen awareness of one's surroundings, which is required to diagnose context. Because individuals may be dealing with more than one 'context' at a time, a unique skill set is required, which, according to Kutz (2011:8), 'is forcing an accelerated evolution of how management and leadership are practiced'. The model thus promotes consideration of contextual diversity and more contextually intelligent approaches to capacity building and school improvement. The model endorses the recommendations of the National

Development Plan that appropriate support must be provided where it is needed most and that schools that demonstrate continued improvement must be rewarded (Republic of South Africa 2012:303). It provides an incentive to school governing bodies and school management teams to be rewarded for their efforts for improvement by paving a way towards upward progression. In addition to the above, the model corresponds to the National Policy on WSE, which ‘indicates ways in which very good schools should be recognised and under-performing schools supported’ (DoE 2002:5) to promote the best interests of every child.

## ■ A model for differentiated levels of school autonomy rationalised

Dyer and Rose (2005:109) state that experiences in school-based management (and governance) have shown that the introduction of school-based management (and governance) ‘must be accompanied by strategies to strengthen capacities and leadership and [that, without such] support’, school-based management is likely to be ineffective. The level of training of principals in developing countries is such that only a few of them can be considered as strong and well-trained professionals. De Grauwe (2004:5, 2005) claims that in these countries, policy declarations are often not ‘accompanied by sufficient measures to strengthen the position of’ principals (and school governors) and that many of them do not understand their roles. ‘[S]chools may [therefore] not possess the same capacity to [...] implement [school-based management] and [governance, hence lowest-performing] schools will require different types of support than higher-performing schools’ (Briggs & Wohlstetter 2003:369).

In this regard, De Grauwe (2005) explains as follows:

It is worth emphasising that certain pre-conditions need to be met if school-based management [*and governance - own insertion*] is to be feasible. Schools need to have a minimum of resources and

competent teachers. Schools in which the principal has no management training whatsoever, in which teachers have few teaching materials, and where the surrounding community is extremely poor with little expertise in education, can hardly be expected to enthusiastically adopt strategic planning and self-evaluation. Where teachers are recognised professionals, benefitting from the accompanying status, privileges and working conditions, decentralisation, especially to the school level, makes much more sense. (p. 280)

Fullan and Watson's (2000:459) assertion that external accountability structures must be underpinned by a capacity-building philosophy is supported by De Grauwe (2004:9). De Grauwe (2004:9) states that because school-based management (and governance) requires that more support be given to schools, the roles of local district offices also need to change. 'They will need quality information on schools [in order] to [determine] who needs [support] and what type of support will be [the most] useful' (De Grauwe 2004). De Grauwe (2004) explains:

Their role will be transformed from control over the respect of official roles and regulations to supporters of innovation and initiative-taking - or in other words, from a supervisor to a colleague. (p. 9)

One may thus interpret that support underpinned by a philosophy of capacity building and improvement relates to the expansion of autonomy and decision-making powers at the local school level. On the other hand, support that is underpinned by a philosophy of ensuring compliance will relate to a restriction of local autonomy that, although ensuring that a school functions relatively well, will put constraints on capacity building and improvement. In this regard, Caldwell and Spinks (2013:5) are of the opinion that the extent to which a command-and-control approach unnecessarily constrains self-managing (and self-governing) schools is concerning, and that in many systems it is being strengthened beyond what is necessary.

De Grauwe (2005:282-283) stresses three points in 'relation to school support structures. Firstly, [the establishment] of support [structures] is not [as] simple [as it sounds]'. Existing structures could be used and transformed to provide support to

self-managing schools. The prevalent culture of the existing structures will in many cases, however, be difficult to transform. The obvious alternative would be to establish new structures. A negative aspect of new structures would be that it may lead to ‘conflict and incoherence between [the] new functionaries and the supervisors [who view their role as more “traditional”]’ (De Grauwe 2005:283).

The second point made by De Grauwe (2005:283) relates to the difficulty of finding the ‘correct balance between support and control, “between offering advice and enforcing accountability”’. De Grauwe (2005) explains:

A system which is overly focussed on accountability might have a detrimental impact on poorly performing schools, which will no doubt be told that they are doing a poor job, but perhaps not given advice on how they could improve. Finding the balance between support and control depends partly on the quality of the schools and the resources available within the school. Arguably, the transposition of the concept of school evaluation, within a context of a demand for greater public accountability, to developing countries and under-resourced schools can have adverse effects. The school evaluation strategy which is being promoted is generally not appropriate to such schools. They need genuine support, not simply pressure. (p. 283)

Thirdly, for support for school-based management to be significant and sustainable, it must be regular and consistent. In many countries, this means that because of a lack of resources, it cannot be offered to all schools. De Grauwe (2005:283) is of the opinion that ‘a good argument can be made that support should be extended first of all to the schools most in need of it’. A similar view is held by Briggs and Wohlstetter (2003:369). Based on their research, they contend that higher-performing ‘schools will require different types of support than [the lowest] performing schools’ (Briggs & Wohlstetter 2003). Because all schools do not have the same capacities, the implication is ‘that each school needs to be treated as an individual’ institution (De Grauwe 2005). Policies, therefore, need to be flexible to grant autonomy to schools based on their individual strengths

and needs (De Grauwe 2005:284). Briggs and Wohlstetter (2003) propose increased levels of school autonomy based on performance that 'might be structured as follows':

- Allowing the highest-performing schools to 'earn' the privilege of local autonomy.
- Until they can demonstrate the capacity to bring about improvements, low-performing schools receive little autonomy. Support provided by the district will then focus on the needs of these schools through technical assistance and coaching.
- Middle-performing schools will receive less support than the under-performing schools, but they could be organised into collaborative networks where they can work collectively, the premise being that by working [*together*], schools can make improvements that could not [*be made*] on their own. (p. 369)

Based on their classification of education systems according to autonomy, control and outlook, a more detailed but similar proposal is suggested by Caldwell and Spinks (2013:5). They refer to an 'inappropriate chaining' of self-managing schools. The appropriate response to excessive command-and-control (inappropriate chaining) is to break the chain. This will afford schools the opportunity to move towards a greater level of self-management (and governance), to eventually become self-transforming schools, thereby promoting upward progression. It is, however, important to stress that the chain does not entirely disappear as the accountability framework and the need for transparency still remain (Caldwell & Spinks 2013:6).

The above arguments put forward regarding the importance of support and flexibility in policy towards school-based autonomy are aptly summarised by Fullan and Watson (2000) as follows:

In brief, SBM (school-based management and governance – own insertion) is local capacity-building operating within an external framework. While SBM has a structured element, it is culture that is the primary agent of change, that is, a culture that focusses on that

of continuous improvement. It is when SBM contributes to the local problem solving and mobilisation of effort by all stakeholders that it succeeds. (p. 460)

Fullan and Watson (2000:471 in De Guzman 2006) conclude that school-based management (and governance) must be viewed ‘as a means [to alter] the capacity of [a] school and community to make [improvements]’. This will, however ‘require training, support and other aspects of capacity building over a period of time’ in the context of national goals and accountability (Fullan & Watson 2000). School-based management must therefore not be viewed as a programme, but rather as a process ‘that relocates power and resources from officials at the centre to others at the periphery’ (Faguet & Sánchez 2008:1311).

This relates to Dworkin’s (1978:31) doughnut principle where the hole represents the space for discretion or ‘space for autonomy’, and the circle of the doughnut represents the ‘belt of restriction’ (Wallender & Molander 2014:1). Creating space for local autonomy suggests ‘making room for’ acting with greater autonomy, which would indicate a less restrictive context than one would expect in a hierarchical bureaucracy. This could allow for more creativity and autonomy by principals and school governing bodies as compared with the strict impersonal compliance to elaborate rules and regulations characterising bureaucratic hierarchies. The recently published Policy on the South African Standard for Principals (Republic of South Africa 2016:3) recognises that, because of the diversity of school contexts and the complex issues that it brings, principals require particular knowledge, action and ‘context-specific practical [applications] within the key areas of principalship’, which require more discretion from principals and school governing bodies than to be bound by rules and regulations (Truter 2015:64). These can only be determined by individual principals and school governing bodies working within the school and its wider community.

The 'ring of the doughnut' (belt of constriction) implies that when exercising autonomous discretionary powers, good judgement is required, which is exercised within an accountability framework. One can therefore portray the action of exercising autonomous discretion as being careful, prudent, cautious, responsible and mature. Maile (2002:329) uses the expression 'answerability', which implies being judged by someone.

## ■ A model for differentiated levels of school autonomy explained

Aligned with the proposals of the National Development Plan (Republic of South Africa 2012) and the reasoning as presented above, it is proposed that the model for differentiated levels of school autonomy be based on the current National Policy on WSE and that schools be allocated differentiated levels of school autonomy according to the five levels of overall performance rating on the scale as contained in the National Policy on WSE (DoE 2002:8):

1. needs urgent support
2. needs improvement
3. acceptable
4. good
5. outstanding.

The model further proposes that school evaluations will focus on the nine performance areas as prescribed in the National Policy on WSE (DoE 2002:7). These performance areas are:

1. basic functionality of the school
2. leadership, management and communication
3. governance and relationships
4. quality of teaching and learning, and educator development
5. curriculum provision and resources
6. learner achievement

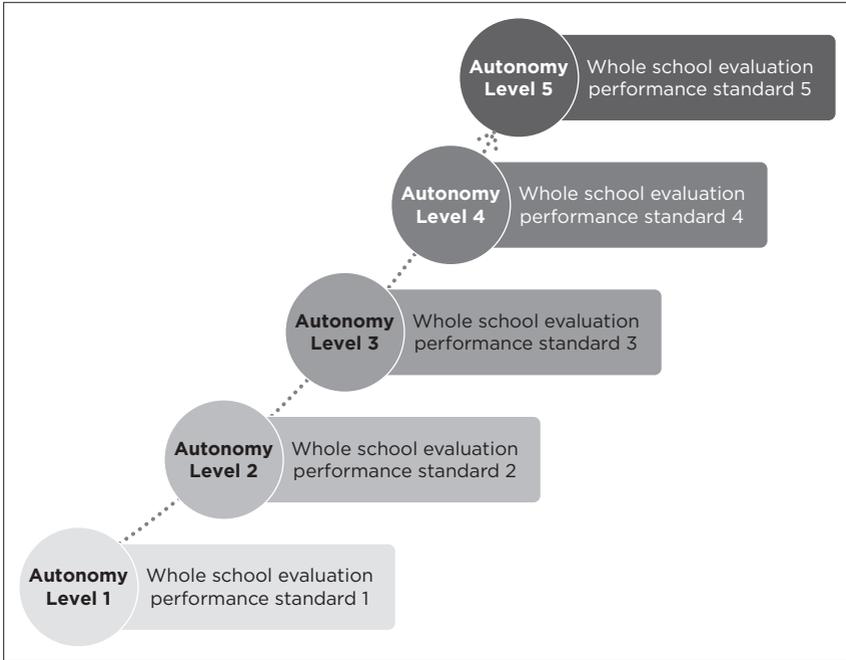
7. school safety, security and discipline
8. school infrastructure
9. parents and the community.

Although the above elements of WSE are used in the model, the model differs from the National Policy on WSE (DoE 2002) in that school governing bodies and school management teams are encouraged to strive – as part of their vision – for greater levels of autonomy by increasing the quality of education at their schools. Schools at Autonomy Level 1 are schools that achieve an overall rating of one (1) and are thus in the greatest need of assistance and intervention by the provincial DoE. Schools at Autonomy Level 5 are schools that achieve an overall rating of five (5) and are regarded as being outstanding, thus requiring the least amount of support. These levels of school autonomy are shown in Figure 7.1.

School governing bodies and school management teams are encouraged to apply to the provincial HOD to be evaluated and assessed for them to proceed to the next level of autonomy. This is done by means of the current WSE process.

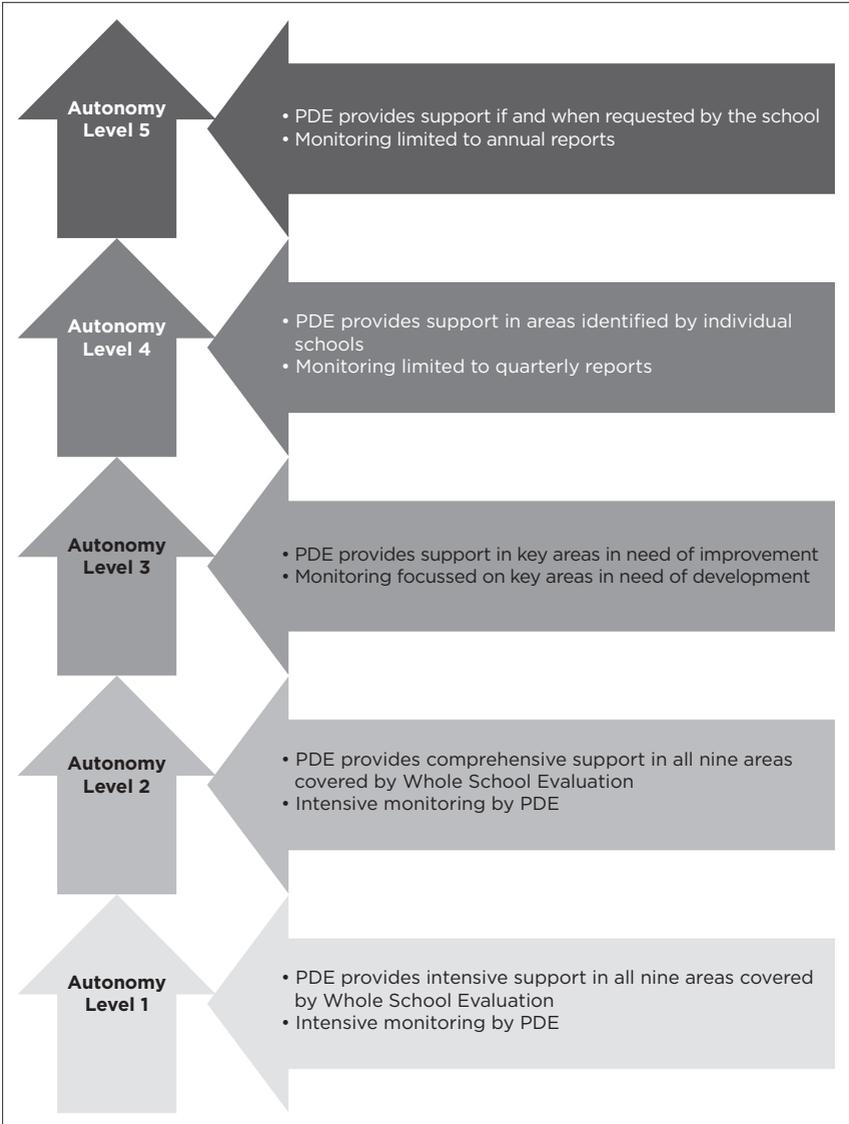
By applying the self-assessment instrument provided by the Policy on WSE, schools identify their priorities for improvement and prepare themselves for a higher autonomy level. They then determine, within time frames as determined by the DoBE, as to when they will be ready for external assessment and evaluation and notify (invite) a panel appointed by the provincial DoE to evaluate the school. The underlying philosophy is that the current top-down ‘one-size-fits-all’ approach to school improvement initiatives is replaced with an approach that incentivises schools to initiate school improvement initiatives themselves, thus promoting an approach that encourages bottom-up progression.

Linked to the levels of school autonomy are the levels of monitoring and support that need to be provided by the relevant provincial departments of education. Corresponding with Dworkin’s (1978) doughnut principle in which the thickness of the



**FIGURE 7.1:** Proposed levels of school autonomy.

ring of the doughnut represents a belt of restriction, the width of the black borders of the arrows shown in Figure 7.2 illustrates the intensity levels of monitoring by departments of education. The lower the level of autonomy, the higher the level of monitoring and support provided, and the higher the level of autonomy, the lesser the level of monitoring and support. The emphasis is on improving the quality of the education system; therefore, the quality of the support provided by the provincial DoEs is extremely important. However, as argued by Fullan and Watson (2000:471), this support must be underpinned by a focus on improvement.



PDE, professional designation examination.

**FIGURE 7.2:** Levels of control and support at different levels of autonomy.

## ■ Advantages of differentiated levels of school autonomy in the South African education system

Acknowledging that the proposed model of differentiated school autonomy is largely untested, the merits of such a model deserve to be considered and researched. Allowing for differentiated levels of school autonomy could potentially strengthen the partnership model as envisaged in the preamble of the *South African Schools Act* (Republic of South Africa 1996b:n.p.), in that it not only allows for the provision of 'education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities', thereby 'advance[ing] the democratic transformation of our society'. In addition, such a model for differentiated school autonomy could, as articulated in the preamble of the South African Schools Act (Republic of South Africa 1996b):

[C]ontribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators, and promote the acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State [...]. (n.p.)

In this way, the unique contexts of schools and local communities will not only be respected and accommodated but also be protected and advanced. National and provincial resources can be used where most needed and differentiated levels of school autonomy may give credence to the recommendations of the National Development Plan. It could promote the upward progression of school quality and hence provide an avenue to escape the poverty trap. Last but not least, the implementation of a model for differentiated school autonomy could provide a means to bridge the policy-practice gap, in that those local school communities who have the required capabilities will be given the freedom to flourish by themselves, whereas the

capabilities and human resources available to the state could be directed to be utilised where needed most. However, the successful implementation of a model for differentiated school autonomy will be highly dependent on certain preconditions.

## ■ **Preconditions for differentiated levels of school autonomy in the South African education system**

The primary point of reference is that the Standard contained in Section 28(2) of the Constitution (Republic of South Africa 1996a) and Section 9 of the *Children's Act* 38 of 2005 (Republic of South Africa 2005) 'which determines that "a child's best interests are of paramount importance in every matter concerning the child"' must be applied at all times (Bonthuys 2005). Decisions regarding a child's best interests are made by adults, and adults therefore possess great power in determining what a child's best interests are (Stefkovich 2006:21). Hence, adults as educational leaders – including the political and executive functionaries – need to place a learner's best interests at the centre 'of the ethic of the profession, which encompasses the ethics of justice, care, and critique and is strongly influenced by the community' (Stefkovich 2006:21; Stefkovich & Begley 2007). Stefkovich (2006:21) and Stefkovich and Begley (2007) argue that 'it is [easy] to ignore the voices of "those who have the most to lose"', and Walker (1998:291) explains that 'adult-centricity may be one of the largest obstacles to securing the best interests of children'.

Based on the above, it is thus necessary in terms of education that the role of political leadership must be aligned with that of educational leadership. This denotes a shift in focus from legislation and regulation of education to legislating and regulating for education. In other words, legislation and regulation in the realm of education need to promote the best interests of children rather than that of adults. Thus, for a differentiated

model of school autonomy to succeed in the South African context, the constitutional principles relating to the rule of law, just administrative action and co-operative government must not only be respected but must also be promoted together with the rights of children as contained in the Bill of Rights given in Chapter 2 of the Constitution. Political and executive functionaries as formulators and implementers of policies are thus required to submit to an even higher standard of ethics to ensure that the policies they formulate and implement are indeed educational, promoting the best interests of children. This implies that the unique contexts of schools must be accommodated. This relates to the complexities of diversity of the socio-economic context, language, culture and religion of the community served by the school.

## ■ Conclusion

Ensuring the best interests of children (learners) is not only an ethical and moral obligation but also mandatory. However, the complexities within the South African education system make this goal elusive. Only by placing children and their best interests at the centre of the education system will the system succeed in addressing skills diversity within the system and among schools. This means that in the transformation in the education system, efforts to address skills diversity within the system need to be prioritised, rather than issues relating to language and culture. By doing so, economic diversity would ultimately also be addressed. Unfortunately, efforts to ensure the best interests of children are marred by the vested interests of adults.

The implementation of a differentiated model for school autonomy could be the way to go. This will not only allow education authorities to focus their efforts on addressing the skills diversity within the system where most needed but also

to realise the vision as expressed in the preamble of the *South African Schools Act* (Republic of South Africa 1996:n.p.), namely, to 'uphold the rights of all learners, parents and educators, and promote the acceptance of responsibility for the organisation governance and funding of schools in partnership with the State'.



# The changing nature of teaching-related work and resulting professional security of the higher education lecturer

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## ■ Abstract

Although a vast literature exists on students, their learning, their rights and the importance of the student's voice, writings on lecturers, their teaching, their rights and their professional security continue to lag behind. This chapter explores changes in the HE environment over the past two decades and the influence thereof on the professional security of lecturers. The widening of access to HE for more students has been a strategic priority worldwide and also of the South African DHET over the past decade. Lecturers are increasingly held to account for providing quality teaching and delivering employable graduates. Yet, their work environment is characterised by poor support, lack of recognition for teaching efforts and an absence of both a clear delineation of what their teaching-related work should entail and of legal protection when failing to fulfil the undefined yet high accountability expectations in their teaching-related work. It is evident from literature that the teaching-related responsibilities of lecturers have become exceedingly diverse, while professional recognition and academic standing are still dependent on research outputs only. The teaching-related responsibilities and roles of the HE lecturer with a view to achieving quality provisioning are explored, together with the issues of fair teaching-related workload, lack of rewards and recognition for teaching excellence and the resultant influence thereof on the security of lecturers. The 12-roles model of Harden and Crosby (2000) is adapted to illustrate the six areas of responsibility of the HE lecturer, namely, the lecturer as information provider, role model, facilitator, assessor, planner and resource developer. The nature of each of these areas of responsibility and the ensuing roles that the lecturer fulfils are explained and supported by the views of various researchers. Ultimately, it is suggested that the implementation of such a model will be hugely beneficial to articulate job specifications to be included in the employment contracts of academic staff, thereby

contributing to the regulation of their working conditions, the monitoring of excellence in the teaching environment and ultimately the enhancement of their professional security.

## ■ Introduction

A statement by the American Association of University Professors (2006) regarding the work of the HE lecturer is as relevant to the South African HE context today as it is in the USA, the United Kingdom (UK) and other parts of the world:

Faculty workload combines teaching, scholarship, and service; this unity of components is meant to represent the seamless garment of academic life, and it defines the typical scholarly performance and career. Higher education works best when faculty members teach with enthusiasm, engage in scholarly activities and research, and are deeply committed to collegial, community, and professional service. All of these are vital components of the work of faculty. Ideally they reinforce each other, to the benefit of students and institutions and as major motives and sources of satisfaction in the life and career of each faculty member. (p. 196)

Although the statement strongly advocates refraining from separating the three main activities of HE lecturers, it is overly idealistic within the context of the modern-day university to argue that the three components bear equal weight. While many lecturers might have a predilection for teaching and find research rather cumbersome, teaching prowess is not afforded the same status as research when it comes to establishing a professional reputation or competing for promotion to a full professorship or tenure at an elite university (Davies & Thomas 2002:181; Morley 2003:28).

Regardless of promotion to professorship being dependent on accredited research and publications, the call for excellence in teaching, and undergraduate teaching in particular, has steadily been increasing over the years, proclaiming a need for a balance between undergraduate teaching quality (for enhanced student learning) and research productivity (Bathmaker & Avis 2005:47;

Healey 2000:177-178; Nicholls 2004:611-612; Trigwell 2001:65; Young 2006:198). This change in focus is largely because of the 'customer-care revolution' in HE where the rights and satisfaction of students as paying consumers and HE stakeholders have become more prominent (Morley 2003:129). Morley (2003:134) points out that, in the modern UK HE environment, the rights and satisfaction of students seem to have become the responsibilities of institutions and their lecturers. This phenomenon is also prevalent in the South African context, as Jansen (2004:309) indicates that the new managerialism evident in South African HE requires increased responsibility towards students not only as clients but also as 'critical resources', as the survival of universities in a competitive environment has become dependent on strong enrolments.

In the HE environment, it is, however, risky to define the quality of teaching and learning only in terms of student satisfaction - to the detriment of the expectations of other stakeholders, such as graduate employers. Student satisfaction will always mean different things to different groups in different contexts and should therefore not be the only yardstick for quality measurement (Houston 2008:64; Schuck, Gordon & Buchanan 2008:544). Houston (2008:62) explains that endeavours to determine teaching quality should ultimately aim at improving teaching and learning, not merely customer satisfaction, and should therefore be measurable. Measurability necessitates standards - clear task requirements and criteria for adherence to expectations and acceptable conduct. If institutions or other stakeholders want to hold lecturers to account for teaching quality and student learning, acceptable standards for teaching quality should thus first be defined, and teaching-related responsibilities should then be delineated.

The assurance and enhancement of teaching and learning quality in HE are major concerns for institutions worldwide (Biggs 2002:221; Cretchley et al. 2014:653; Devlin & Samarawickrema 2010:111; Fitzmaurice 2010:45). According to Devlin and Samarawickrema (2010:111), 'having a shared understanding of

what it means to be an effective university teacher forms the basis of ensuring quality', not only at the institutional level but also at the national level. For the purposes of this chapter, Houston (2008) provides an appropriate introductory focus for defining quality in the work of a HE lecturer, placing effective learning at the heart of teaching, research and service activities:

Everything in the university is about how to produce knowledge and capabilities – how to bring about learning. Teaching, research and community service are not ends in themselves, but rather means to promote learning. Teaching promotes learning for individuals through knowledge being formed which is new to the individual. Research contributes to learning for humanity through the formation of knowledge that is new in the absolute sense. Service and consultancy contribute to local learning for communities (geographical, industrial and other types) through knowledge being formed for particular purposes. (p. 69)

In the light of the above definition, it can be questioned as to whether, in the absence of quantifiable measurement criteria for the quality of the teaching-related work of the lecturer, a clear foundation for the teaching-related responsibilities of a lecturer can be developed and then be used as a yardstick to assess and appropriately reward quality teaching. The subsequent discussions focus on the changing nature of academic work, the research versus teaching debate and the teaching-related responsibilities that lecturers accept with reference to their many roles in the HE environment. The deteriorating working conditions of lecturers and the resultant influence on the security of lecturers are also discussed.

## ■ The changing nature of academic work worldwide

The work of HE lecturers at any institution of higher learning worldwide includes teaching in some form or another. Based on research conducted in New Zealand, Houston (2008:71) found that, although the HE respondents found research to be important, they rated teaching as more meaningful to society and the

general workforce, thereby placing quality teaching at the centre of the work of a lecturer.

Bryson (2004:38-39) and Lea and Callaghan (2008:178-179) demonstrate that, although the 'timing, pace and extent of [developments in HE] show some variation [across] countries' (Smeenk et al. 2009:591), there is broad consensus that the main changes that impact on the teaching-related work of lecturers encompass, among others:

- The requirement of massification and the resulting ever-expanding student population without a corresponding increase in funding or resources, resulting in a much-reduced staff-student ratio.
- The merging of colleges and universities, resulting in increased demands on institutional and employee diversity within the HE sector and greater competition for available resources.
- A focus on standards and increased accountability to demonstrate value for money via external accountability mechanisms such as institutional audits.
- The changing teaching-learning environment wherein lecturers are no longer guardians and disseminators of knowledge, but facilitators and coaches for student-centred learning via different educational information technologies.
- The much lower value associated with teaching and learning efforts in relation to the value of research outputs.
- Increasing pressures on lecturers for student achievements, pressures founded on the prevalent social, economic and political context within which HE operates.
- Emphasis on producing employable graduates.

With regard to the public nature of HE teaching and the responsibilities of lecturers towards society, Poskanzer (2002:63) proclaims that teaching must stimulate critical thinking and problem-solving skills in students – skills that ought to be evident when students are assessed by faculty, government audit panels and graduate employers. Although quality teaching is thus not always clearly defined, the outcomes of teaching practices can come under scrutiny from various internal and external

stakeholders holding lecturers to account for what happens in university classrooms. Students, external stakeholders and society at large undoubtedly have a vested interest in making sure that whatever happens in the university classroom is worth the cost of tuition.

Davies and Thomas (2002:182) and Morley (2003:133) maintain that students in the UK have become increasingly critical of the quality of their education, and that those who are dissatisfied with the outcomes and content thereof will more readily turn to the courts for restitution. Teaching methods, materials and tools should, therefore, keep pace with developments in the HE environment to ensure acceptable learning outcomes and avoid court actions or disciplinary procedures by authorities. According to McInnis (2000:150), the high status afforded to research in the Australian HE context, with the concomitant increase in time spent thereon, does not negate the demand for quality teaching. This imbalance puts academics under excessive pressure and forces universities to improve the teaching capabilities and skills of lecturers. Teaching-only positions at Australian universities have thus become a common occurrence with a view to lessening the teaching workloads of tenured academics and allowing them more time for research endeavours.

It is logical to assume that the quality of teaching is central to the effectiveness of student learning, but Brew (2003:4) adds another dimension when stating that there must also be a more pronounced connection between what is taught and what society and industry need. An institution should appoint lecturers for classroom teaching who have proven that they can enhance student learning and the employability of graduates. This can only be ensured if the expected roles and responsibilities that will result in effective teaching are clearly defined. In addition, lecturers who prove that they can fulfil such roles and responsibilities effectively may rightly expect to be appropriately rewarded with promotion or alternative types of public recognition to sustain such behaviours.

Asklings (2001:171) proves the above statement by noting that a negative attitude towards teaching workload in Swedish HE was countered when the national system for appointments and promotions was amended to include a teaching-oriented career path that balanced research outputs with HE teaching qualifications and student throughput rate. Similarly, Shin and Jung (2014:610) emphasise that academic job satisfaction is high in countries such as Mexico, Brazil, Malaysia and Argentina where strong teaching-oriented HE systems exist. Healey (2000:176) asserts, however, if teaching value is to be equalised with the esteem afforded to research, lecturers will have to be willing to open their teaching practices to the observation and scrutiny of their peers and appointed assessors for evidence of effectiveness and quality, or with a view to improving teaching practice. This would, of course, require appropriate criteria for teaching excellence, and corresponding rewards when such criteria are equalled or surpassed. Any accountability mechanism for the teaching-related duties of the HE lecturer should thus include peer observation and evaluation of teaching practices (Lea & Callaghan 2008:27), given that these activities are implemented with a clear purpose of quality improvement and according to transparent criteria.

## ■ The deteriorating working conditions of the lecturer

The workload of any HE lecturer worldwide typically encompasses the aggregate of hours spent on various forms and demands of teaching (inclusive of many hours of preparation, student assessment, curriculum revision and development, laboratory work, group tutorials, practical training of students in clinics or studios or moot courts, fieldwork, mentoring and guiding of postgraduate students, etc.), of research and resulting publications, participation in and presentations at conferences and other academic endeavours, as well as various professional and community service activities. An increased demand for

academic support to high numbers of students, the development of study materials for new technologies and learning to use new teaching methods such as problem-based learning and collaborative learning strategies in the classroom have added substantially to lecturers' working hours and job stress (AAUP 2006:197; Cheng 2010:267; Kinman, Jones & Kinman 2006:25; McInnis 2000:145).

In the Swedish context, Askling (2001:170) describes the working hours of the different categories of academic staff as 'substantially more than the stipulated 40-h week'. A statement by the AAUP (2014) indicates that, on average, academic staff at American universities work approximately 55h a week, inclusive of paid and unpaid hours, on and off campus. The same can be said for the culture of long working hours in universities in the UK (Kinman & Court 2010:415; Morley 2003:93). The Association of American Colleges and Universities (AACU 2006:1) notes that the responsibilities of lecturers centre around student mastery of learning outcomes or the so-called graduate attributes that students should demonstrate upon completion of their studies.

The South African Qualifications Authority (SAQA 2012) developed the level descriptors as a national guideline for determining expected learning achievement and applied competencies of graduates for qualifications at different exit levels on the Higher Education Qualification Sub-Framework (DHET 2012). These descriptors accentuate similar responsibilities for South African lecturers as stated by the Association of American Colleges and Universities above. Lecturers not only have to develop these outcomes at the expected competency levels but also have to facilitate student learning to ensure the attainment of expected attributes to enhance graduate employability. The responsibility for the facilitation of student achievement of learning outcomes does not begin and end in the university classroom. On the contrary - that which precedes outcome mastery is what distinguishes a good lecturer from a true teaching scholar.

The changing HE environment has thus resulted in the diversification of lecturers' roles and functions to that of a HE teacher, curriculum developer, policy implementer, researcher, tutor, administrator, manager, writer, facilitator, advisor and others, and this has taken its toll on faculties in terms of job-related stress and levels of work dissatisfaction (Askling 2001:170; Churchman & King 2009:509; Rothmann, Barkhuizen & Tytherleigh 2008:404). Kinman et al. (2006:20) profess furthermore that the lack of corresponding increases in remuneration and support has augmented job stress to the level where many UK academics are considering leaving the HE sector. Moreover, the measure of psychological distress experienced by academics 'exceeds those of other professional groups and the general population' (Kinman et al. 2006:25). The increasing workloads have left lecturers with little time to reflect on what quality teaching entails (Feigenbaum & Iqani 2013:46).

Marginson (2000:34-35) reasoned that the status of the academic profession and its customary practices and traditional norms were eroded by an increasing loss of lecturer autonomy in curriculum development and teaching practices; increased lecturer workload without corresponding increase in resources; loss of job security with the growing use of casual and part-time academic staff; and the growing managerialism evident within all institutions. He therefore advocated a careful demarcation of academic, administrative and professional support labour to ensure a constructive, collaborative environment for strengthening the recognition of the academic profession.

Although accountability for the quality of teaching towards enhancing learning is becoming more prominent, teaching is seldom recognised and rewarded to the same extent as research endeavours and outputs worldwide (Akerlind 2005:5; Carney 2013:66; Chalmers 2011:25; Cretchley et al. 2014:649; Young 2006:192). Lecturers who purposefully choose teaching excellence as a career path experience less prestige and

academic value than those who pursue research paths, with the status of teaching being much lower and rewards for teaching efforts noticeably lacking (Young 2006:194). Lecturers committed to their teaching rather than to research outputs thus often sacrifice career promotion opportunities (Chalmers 2011:25; Morley 2003:29).

In this regard, the AAUP (2006:197) stresses the high priority that should be accorded to teaching and the institutional reward systems that need to be in place to reflect 'the fundamental importance of effective teaching'. There is, however, a dearth of universally agreed-upon measures for evaluating teaching quality, leading to poor recognition and low rewards (Adams 1998:425). Young (2006:197) agrees when he argues that teaching is valued less highly than research, because research outputs are easily assessed by means of peer review and quantifiable in the number of publications in academic journals. The assessment of the quality of teaching presents greater challenges.

Fair labour practices, inclusive of favourable and healthy working conditions, are required by the South African Constitution and the stipulations of South African labour legislation. Security of lecturers will, therefore, be enhanced if lecturer-specific working conditions are established that will have a positive impact on determining fair teaching-related workload and subsequent rewards and recognition for teaching-related efforts.

When lecturers experience satisfactory legal, environmental and psychological security, they should be secure in their professional identity and committed to act in an accountable manner. Bothma and Rossouw (2019) conclude that the professional security of lecturers in the HE context encompasses:

1. Legal security in terms of an adequate national and institutional legal framework for the protection of lecturer constitutional and labour rights, and the strict regulation of minimum working conditions specific to the unique nature of the lecturer's work.

2. Environmental security in terms of effective strategies to retain, recognise, professionally develop and adequately support lecturers while protecting them against work overload and empowering them to effectively fulfil all expected teaching-related responsibilities.
3. Psychological security in terms of protection of lecturer psychological health and well-being through professional recognition and the enhancement of personal value, respect, trust and overall job satisfaction, inclusive of trust in their knowledge and capabilities to be used to the benefit of the institution, its stakeholders and the lecturer himself or herself. (pp. 46–47)

Governments and universities should, therefore, collaborate to regulate and manage workload and quality issues for the benefit of the lecturer. A fair and transparent workload allocation model to determine the correct mix of duties of every individual lecturer should contribute positively to the professional security of academic staff.

## ■ The professional status of the lecturer and its influence on the professional security of lecturers

Until the late 1950s, the position of a university professor was held in high esteem globally and was recognised as professional in nature (AAUP 2014). Mainly to facilitate the throughput of the growing number of undergraduate students and to free the established professors to continue with their research, the less senior position of university lecturer was established at that time, causing a ‘division of labour between categories of academic staff’ (Askling 2001:166–167). Although this division of labour in effect created two different career paths within the HE sector, the career of a lecturer is yet to be formally endorsed with professional status.

A generally accepted perception of professional status in terms of careers is afforded to engineers, doctors, advocates,

chartered accountants and the like owing to the recognition of their professional qualifications. Professional qualifications are accredited by professional bodies, which are the watchdogs guarding over the quality of the qualifications delivered by certain select universities. Professional Bodies also hold the practising professional workers accountable for upholding certain standards in work delivery, including ethical standards, which usually entail an ethical code. The question is whether lecturers, who also have professional qualifications in their respective disciplines, are also viewed as following a professional career in their teaching capacity? Another question is whether professional career status is synonymous with professionalism as such, which is defined as 'an individual's adherence to a set of standards, code of conduct, or collection of qualities that characterise accepted practice within a particular area of activity' (Universities UK 2004:1).

Postareff, Lindblom-Ylänne and Nevgi (2007:557) argue that lecturers need to acquire expertise in pedagogical thinking and skill to be recognised as effective (also professional) university teachers. In recent years, HE institutions worldwide have begun to require of lecturers to undergo some form of professional training in the art of teaching. Formal teaching qualifications are already compulsory for lecturers at universities in Norway, the UK and Sri Lanka, whereas non-formal training (i.e. periodic short courses without accreditation as qualifications), although not yet compulsory, is strongly advocated at universities in Finland, Holland, Australia, New Zealand and Sweden (Postareff et al. 2007:557; Trowler & Bamber 2005:80). Flexner (2001:155) supported such a notion when he maintained that a profession cannot be built merely on academic and theoretic expertise but has to include a clear field of practice with concrete tasks and a definite purpose, like the field of architecture, which relies on design principles, mathematical equations, physics and so forth to design and construct buildings. In this context, university lecturers can only be deemed professionals if they are strongly grounded in the knowledge and understanding of the specific

discipline of teaching-learning, within a clear field of practice, namely, HE teaching, 'with the aim of preparing students for the [world of] work' (Pritchard 2012:137).

Koliba (2007:322) adds that a focus on the scholarship of teaching, with ensuing publications about lecturer teaching practices in peer-reviewed disciplinary teaching journals, provides further professional development opportunities as well as recognition for lecturers as master teachers. He also points out that there is a growing acceptance in the academic community to recognise the scholarship of teaching as viable for promotion opportunities and thus as a contributing factor to lecturer professional status (Koliba 2007:325). Braxton (2011:80) adds academic rank, a concomitant of scholarship, as a further determinant of a lecturer's professional status. Higher rank such as professorship equates with higher professional status which, in turn, increases the lecturer's visibility, accountability and expected professional conduct.

Irrespective of the opinions of different researchers on the topic of professionalism of the lecturer, professionalism as such is always connected to accountability to internal or external stakeholders (Cheng 2012:790; Dill & Beerkens 2012:342, 344; Hazelkorn 2011:13,15; Jansen 2004:310; Morley 2003:53; Teelken 2012:274). Schuck et al. (2008) agree that accountability is closely associated with professionalism because professionalism implies:

[7]he ability to take responsibility for our own actions – to make decisions and judgements based on sound thinking, reflection and knowledge of the context in which we are operating. (p. 541)

They question the so-called positive impact of external accountability in HE worldwide and advocate that internal accountability better 'aligns with a core aim for higher educators: being professionally responsible'. Their view is reiterated by Cheng (2012:786), who emphasises that academics often view external accountability mechanisms as a lack of trust in their professional judgement and a threat to their academic freedom.

One of the aims of a qualitative study conducted by Bothma and Rossouw (2019) was to find an all-encompassing delineation of such accountability from a lecturer's perspective:

Lecturers perceive their teaching-related accountability to encompass answerability to external and internal stakeholders. External accountability requires of lecturers answerability to government, prospective graduate employers, professional bodies and the broader public for teaching quality that ultimately aims for graduate employability. Internal accountability requires of lecturers answerability to themselves, institutional and faculty management, colleagues and students for: (a) agreed task requirements and performance standards in pre-teaching, teaching, and post-teaching responsibilities, (b) expected lecturer conduct, and (c) student success. (p. 46)

This definition underscores the importance of a clear exposition of the roles and responsibilities of the lecturer within the teaching environment, especially with a view to enhancing professional security.

One of the guiding principles of the recommendation concerning the status of HE teaching personnel (UNESCO 1997) reads as follows:

Teaching in Higher Education is a profession: it is a form of public service that requires of Higher Education personnel expert knowledge and specialized skills acquired and maintained through rigorous and lifelong study and research; it also calls for a sense of personal and institutional responsibility for the education and welfare of students and of the community at large and for a commitment to high professional standards in scholarship and research. (p. 27)

The above principle speaks directly to the professional status of the work of lecturers and recognises expertise and skills that are essential for the education of the future workforce of a country. Akerlind (2005:12, 15; 2011:183) is of the opinion that a stronger focus on the professional development of HE lecturers and recognition for their excellence in teaching will increase the productivity, efficiency and quality of their work. This, in turn, will enhance their credibility in the eyes of the public and will improve academic standing and the attractiveness of a career in HE

(Akerlind 2011:183). Governments and institutions should, therefore, take responsibility to improve such status through measures such as professionalising a career in academics, requiring continuous professional development and adjusting remuneration befitting to such status (Locke & Bennion 2013:223).

When conducting a qualitative study in the UK, Cheng (2009:196–197) found that all the academic participants believed their work was a profession, although their interpretation of what it meant to be a professional varied. Those who taught in disciplines accredited by professional bodies viewed ‘being professional to mean being recognised and accredited by a professional body or being a member of that body’. The remaining participants not directly associated with a specific professional field or board provided the following reasons for viewing their work as a profession (Cheng 2009):

- The nature of their job is not manual.
- Their job has standards and practices agreed as good and defensible by professionals in the same discipline area (high level of education and qualification or degree; and regular training in proper procedures).
- They possess the ability to do their job efficiently and effectively in their discipline field (skills; high-level expertise; and a specialist role).
- They conduct themselves according to acceptable behaviour for the promotion or development of their discipline (adherence to standards; conscientious workmanship to [...] known standards; enacting the principles embodied in the [code] of their profession to ensure that one meets the high standards expected in their work).
- They work ethically (committed to standards and rules of the profession; responsible to students and to the development of knowledge).
- They have academic freedom (determine their own work practice), peer governance and autonomy. (pp. 196–197)

McGettrick (2005:4–5) also views HE teaching as a profession because university teachers are entrusted with the responsibility of preparing students to fulfil their future roles in society with

competence, displaying positive values to the benefit of the communities in which they will serve. In this context, lecturers should account for the influence that their teaching and behaviours have on the development of their students' personal and professional competences. Indirectly, this view supports Davies and Thomas' (2002:181) notion that the status of HE lecturers is derived from a reputation earned from students and the academic community at large. They explain that passion for and dedication to teaching and service, and recognition of research outputs and discipline expertise, rather than strict institutional accountability mechanisms, determine lecturer esteem.

Du Toit (2007:28) notes that professionalism in the HE context should be grounded in professional self-regulation where academics determine the standards for teaching quality, the grounds for promotion and the legitimacy of scholarly work through peer review. The security of a lecturer should thus be strengthened with the establishment of HE as a profession, which would, according to Cheng (2012:791), require a recognised code of conduct whereby members of the HE profession can hold each other to account, along with 'a set of internalized values and specific standards congruent with professional integrity and loyalty, what is referred to as a professional habitus' (Beck & Young 2005:188). The argument made by Postareff et al. (2007:557) that lecturers need to acquire expertise in pedagogical thinking and skill (i.e. attain a professional qualification in HE teaching and learning) to be recognised as effective (also professional) university teachers also applies.

## ■ The requirements of teaching quality and its influence on the professional security of lecturers

The global drive for accountability in HE over the past decade has seen several governments establishing bodies and frameworks to monitor and measure teaching quality, yet

without necessarily providing a clear definition of what teaching quality entails. Quality in this context is complex and often contextual in nature, but substantive research has revealed that lecturers across disciplines, cultures and international borders view quality in HE teaching as inextricably linked to the quality of student learning, thus signifying the existence of an international community of practice in this regard (Kember & McNaught 2007:13-17, 23). A general definition of quality teaching should thus aim to provide general principles as to what constitute good teaching practices for the purpose of enhancing student learning.

According to Devlin and Samarawickrema (2010:111), quality teaching 'draws on extensive professional skills and practices and high levels of disciplinary and other contextual expertise'. Such teaching is characterised by the meticulous planning of discipline-specific learning that is appropriately quality-assessed and focussed on active student learning and empowerment to think critically and creatively. Within this context, teaching develops a deep approach to learning whereby students will relate new knowledge to their own previous knowledge and experiences, thereby enhancing their own understanding and ability to apply what they learn (Kember & McNaught 2007:25). Teaching should thus be student-focussed rather than lecturer-centred, and learning must be viewed as a continuous process of knowledge construction rather than knowledge transfer, with students as co-creators of knowledge and partners in learning (Brew 2003:11-12; Starr-Glass 2011:1; Trigwell & Shale 2004:534). Lecturers should furthermore assess and document their teaching practices for publishing the results in the growing number of disciplinary peer-reviewed teaching journals, thereby creating opportunities for peer and student assessment of, and feedback on, the perceived effectiveness of teaching as a means to improve teaching quality and student learning experiences (Horspool & Lange 2012:74). Such research could then lead to nationally and internationally agreed-upon standards for excellent teaching practices.

Berk (2005:50) is one of the advocates of rigorous peer review of teaching according to the same high standards applied to any other form of scholarship, if teaching is to be rewarded in the same manner as research. Berk (2005:48) emphasises that, before teaching quality can be determined, there is a need for a clear indication of the purpose of such assessment. He distinguishes between measurement for formative purposes, where the results are used for professional development to improve the quality of teaching, and measurement for summative purposes, where the results are used as evidence to determine the status of a lecturer's teaching to inform decisions on annual merit pay, teaching awards or promotion. Peer review for both purposes will contribute to the enhancement of the working conditions of lecturers in that professional development and recognition for teaching excellence are requirements for enhanced security of lecturers.

Devlin and Samarawickrema (2010:115) advocate the value of a national understanding of teaching excellence that enables improved management and rewards for the quality thereof. The Australian Learning and Teaching Council (ALTC) award system is offered as an example of national criteria for determining teaching quality (Australian Government Department of Education and Training 2007). The ALTC (since replaced by the Office of Learning and Teaching) was established and funded by the Australian Government in 2004 with a view to engage, via collaboration, the entire Australian HE sector in the identification of, support and reward for excellence and innovation in teaching practice (Australian Government Department of Education and Training 2007; McDonald 2014:10). The ALTC (in Devlin & Samarawickrema 2010) identified the following national criteria for the identification of teaching excellence:

- approaches to teaching that influence, motivate and inspire students to learn
- development of curricula and resources that reflect a command of the field
- approaches to assessment and feedback that foster independent learning

- respect and support for the development of students as individuals
- scholarly activities that have influenced and enhanced learning and teaching. (p. 115)

Each criterion is further qualified by teaching quality indicators. The measure of adherence to the quality indicators thus provides proof of the quality of a lecturer's teaching practice during peer review, resulting in corresponding recognition and rewards. The ALTC principles and criteria (as shown in Table 8.1) have had a significant impact on the improvement of teaching and learning across Australian HE (Devlin & Samarawickrema 2010:120).

The above criteria and quality indicators clearly stipulate the requirements of quality teaching to enhance student learning and are exceedingly valuable to the purpose of this study in that they provide a clear foundation for a quality benchmark for lecturer teaching-related accountability that can ultimately enhance professional security within the field of HE teaching. Because true accountability calls for answerability for clear task requirements, there is a need for clear guidelines as to what such responsibilities entail in the lecturer's teaching-related work. It is posited that, if the teaching-related responsibilities of lecturers are clearly delineated in either national or institutional regulatory documents (e.g. employment contracts), lecturers can be held accountable for such responsibilities by their concerned stakeholders.

## ■ The teaching responsibilities and corresponding roles of the lecturer

Criteria for effective teaching comprise specific skills, practices and corresponding responsibilities that must be applied within particular contexts (Devlin & Samarawickrema 2010:111; Fitzmaurice 2010:47). Should a prospective lecturer wish to enter into HE teaching practice, he or she would have to accept certain teaching roles and responsibilities, which would have to be

**TABLE 8.1:** Australian Learning and Teaching Council national criteria and quality indicators for teaching excellence.

<b>Criterion</b>	<b>Teaching quality indicators</b>
<b>Approaches to teaching that influence, motivate and inspire students to learn</b>	<ul style="list-style-type: none"> <li>• fostering student development by stimulating curiosity and independence in learning</li> <li>• contributing to students' critical thinking skills, analytical skills and scholarly values</li> <li>• encouraging student engagement through enthusiasm shown for learning and teaching</li> <li>• inspiring and motivating students through high-level communication, presentation and interpersonal skills.</li> </ul>
<b>Development of curricula and resources that reflect a command of the field</b>	<ul style="list-style-type: none"> <li>• developing and presenting coherent and imaginative resources for student learning</li> <li>• implementing research-led approaches to learning and teaching</li> <li>• demonstrating up-to-date knowledge of the field of study in the design of the curriculum and the creation of resources for learning</li> <li>• communicating clear objectives and expectations for student learning.</li> </ul>
<b>Approaches to assessment and feedback that foster independent learning</b>	<ul style="list-style-type: none"> <li>• integrating assessment strategies with specific aims and objectives for student learning</li> <li>• providing timely, worthwhile feedback to students on their learning</li> <li>• using a variety of assessment and feedback strategies</li> <li>• implementing both formative and summative assessment</li> <li>• adapting assessment methods to different contexts and diverse student needs.</li> </ul>
<b>Respect and support for the development of students as individuals</b>	<ul style="list-style-type: none"> <li>• participating in effective and empathetic guidance and advising of students</li> <li>• assisting students from equity and other demographic subgroups to participate and achieve success in their courses</li> <li>• influencing the overall academic, social and cultural experience of HE.</li> </ul>
<b>Scholarly activities that have influenced and enhanced learning and teaching</b>	<ul style="list-style-type: none"> <li>• showing advanced skills in evaluation and reflective practice</li> <li>• participating in and contributing to professional activities related to learning and teaching</li> <li>• coordination, management and leadership of courses and student learning</li> <li>• conducting and publishing research related to teaching</li> <li>• demonstrating leadership through activities that have a broad influence on the profession.</li> </ul>

Source: Devlin and Samarawickrema (2010:116–117).

performed according to clear quality standards. The employer has the responsibility of specifying such responsibilities and holding lecturers to account for adherence to certain known standards. Unfortunately, task requirements and responsibilities for teaching-related work are often vague, contributing to lecturer work overload and insecurity.

The University of Gloucestershire (2011) emphasises that a clear exposition of the roles and responsibilities of lecturers will achieve the following objectives:

- educational provision of a high standard
- recognition of the professional contribution that academics make to the HE sector
- avoiding academic staff undertaking unreasonable workloads
- enabling the fair distribution of work within the university, taking into account the local circumstances. (p. 2)

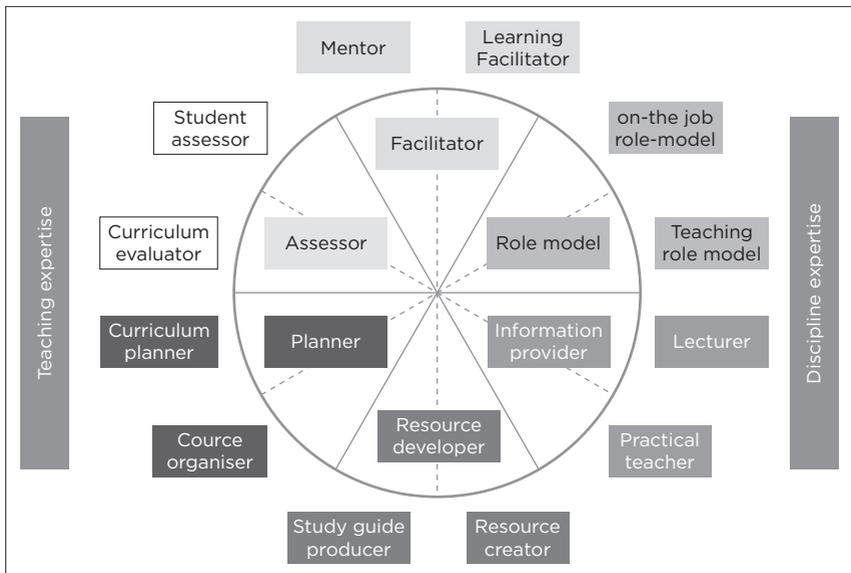
Within the context of the discussion on lecturer workload in Paragraph 3, the above objectives are sufficient motivation for a clear delineation of the expected teaching-related responsibilities of lecturers to define their accountability and security in the workplace. The ensuing discussion lays no claim to being comprehensive on all current research into the teaching-related work of the lecturer but merely strives to indicate that it is possible, and indeed preferable, to organise the different roles of the lecturer into a coherent model, an example of which is subsequently offered, with a view to assisting HE stakeholders and lecturers themselves in their estimation of the nature of teaching-related functions.

## ■ The 12-roles model

In a study conducted by Harden and Crosby (2000:336) regarding the responsibilities of a lecturer in medical education in the UK, a model was constructed wherein they identified six main areas of lecturer responsibility divided into 12 different teaching-related roles. This model, slightly adapted for the purpose of this chapter to encompass lecturers in general and not specific to medical

education, is shown in Figure 8.1. Harden and Crosby (2000:342) emphasise that the model is not to be used as a guideline for teaching methods, but rather as representative of the main functions related to teaching in the HE environment.

In the reading of the said study, the value of this 12-roles model as a foundation to determine the teaching-related responsibilities of a HE lecturer in the global context became evident. The six areas of responsibility identified are the lecturer as ‘information provider, role model, facilitator, assessor, planner and resource developer’ (Shafie & Nayan 2010:262). Each of the six areas of responsibility of the lecturer is subdivided into two roles as shown in Figure 8.1. It is important to note that the roles depicted on the right-hand side of the figure require more content or discipline expertise of the lecturer, and the roles depicted on the left side of the figure require that lecturers possess and demonstrate more teaching (pedagogical) expertise (Harden & Crosby 2000:336).



Source: Adapted from Harden and Crosby (2000:336).

**FIGURE 8.1:** The 12-roles model of the lecturer.

Although each of the 12 roles is forthwith discussed separately, they are closely related and interconnected, and the lecturer often takes on several of the roles simultaneously (Harden & Crosby 2000:342). The following discussion demonstrates not only the unique nature but also the diverse demands of the lecturer's teaching-related work and underscores the necessity of lecturer-specific labour conditions to ensure the regulation of workload and subsequent professional security.

## □ Information provider

As shown in Figure 8.1, Harden and Crosby (2000:337) identify two roles for the lecturer as information provider, namely, the classroom teacher and the practical teacher. As a classroom teacher, the lecturer is viewed as the subject expert with the responsibility to teach relevant knowledge and stimulate understanding by using appropriate teaching strategies, media and technology. Because students can retrieve information from relevant web search engines at any time from any location (Marques 2012:35), the lecturer's role is situated in leading students to an understanding of fundamental concepts through the relation of theory to practice rather than covering as much content as possible (Kember & McNaught 2007:viii). Whatever is taught in the university classroom must enable students to think critically and to connect classroom theory to the world of work (Kember & McNaught 2007:56; Marques 2012:35).

Effective HE teachers are characterised by approachability, up-to-date discipline knowledge, a sensitivity to student needs, enthusiasm for what is being taught, the ability to communicate in a clear and coherent manner, the ability to generate and sustain student interest in the subject under discussion and a focus on developing a repertoire of teaching methods to employ in different contexts and for different student profiles (Akerlind 2007:29; McMillan 2007:212; Zepke & Leach 2010:170). Prevalent HE teaching practices worldwide expect of lecturers to follow student-centred teaching approaches that focus on student

learning and development of critical understanding to enhance the quality of student learning (Akerlind 2007:22, 28; McMillan 2007:213).

As a practical teacher, the lecturer must function as skills developer in the practice setting of the discipline being taught (Harden & Crosby 2000:338). The lecturer has the responsibility to create challenging and appropriate work-integrated learning opportunities for students so that students can learn how to apply theory to solve problems related to the real-life practice of their discipline in preparation of future employment (Fitzmaurice 2010:51; Zepke & Leach 2010:171). The lecturer's collaboration with industry and business, as HE stakeholders and future graduate employers, is the essence of ensuring that practical issues addressed and skills developed are current and relevant to practice (Chan, Chan & Liu 2012:1039).

## □ Role model

Harden and Crosby (2000:338–339) distinguish between an on-the-job role model with the responsibility of demonstrating to students those standards of conduct and professional behaviour required by the profession for which they are being trained. The second part of being a role model is that of a professional classroom teacher, exhibiting enthusiasm, positive attitude and ethical conduct, and expert knowledge of the discipline and its practice to stimulate curiosity and an eagerness to learn in their students. 'Role models inspire and teach by example', and learning occurs through a blend of conscious and unconscious observation and reflection activities (Cruess, Cruess & Steinert 2008:718–719; Kember & McNaught 2007:ix).

Trigwell (2001:69) adds the importance of displaying subject expertise as well as 'general pedagogical principles needed to transform the concepts of the discipline into terms that are understandable to their students'. Lecturers who are willing to participate in professional development opportunities to improve their teaching practices and ultimately their students'

opportunities to learn exemplify the type of professional, self-reflective behaviours that lecturers want to stimulate in their students. Lecturers who set demanding but reasonable learning targets for their students motivate them to expect greater achievements for themselves. Moreover, positive feedback on student achievements will develop feelings of satisfaction in their learning achievement, thereby ensuring further motivation to work harder and achieve more (Kember & McNaught 2007:54). McGettrick (2005:5) provides a fitting quote to underscore this notion, that 'great teaching does not come from the application of prescriptive outcomes, but from the inspiration that characterises relationships and motivation for learning in the service of thought'.

## □ Facilitator

As shown in Figure 8.1, as a facilitator, the lecturer fulfils the roles of learning facilitator and mentor (Harden & Crosby 2000:339). As mentor, the lecturer has the responsibility to build a relationship of trust with students when encouraging, supporting and guiding them to gradually accept responsibility for their own learning progress and to use their prior knowledge to continuously construct new meaning and develop contextual understanding to prepare them for the workplace (Cruess et al. 2008:718; Houston 2008:71; Starr-Glass 2011:1; Trigwell & Shale 2004:534). Good teaching practice requires the adoption of effective interactive facilitation approaches to stimulate active student engagement for meaningful learning, necessitating the development of students' cognitive competences and practical skills rather than theoretical knowledge and understanding (Kember & McNaught 2007:56; Morley 2003:143; Postareff et al. 2007:558–559). Kember and McNaught (2007:56) emphasise that theory and practice can only be integrated if the facilitator can initiate and guide discussions to make what is taught relevant through real-life examples, local materials or current affairs.

In the role of a mentor, the lecturer is required to act as a guide, a coach and a trusted counsellor to students, with collaboration at the heart of the lecturer–student relationship (Harden & Crosby 2000:339–340; Ilevbare 2011:197). The role of the mentor is closely associated with being a critical friend, a supporter and a motivator, and with the building of genuine empathetic relationships with students to enhance valuable in-class collaboration (Kahn & Walsh 2006:100; Kember & McNaught 2007:ix; Tillema & Van der Westhuizen 2013:1318). Fitzmaurice (2010:52) notes that, in the building of caring relationships with students, lecturers must design learning environments wherein different personalities will be willing and able to engage in opportunities for academic and personal growth. A successful mentor must be sensitive to students' needs and development, will demonstrate a willingness to assist students through difficult situations, will always maintain confidentiality and will work diligently to develop students' self-confidence (Ilevbare 2011:202; Meyers 2009:206).

## □ Assessor

The fourth area of responsibility of the lecturer centres around assessment, which is seen as an integral yet specialised part of the teaching-related work of the lecturer. According to Harden and Crosby (2000:340), the lecturer must act as both student assessor and curriculum assessor. Harden and Crosby (2000:340) maintain that formative student assessment must include a teaching and development factor. This approach is also advocated by Fitzmaurice (2010:53), who places emphasis on an assessment approach that demonstrates lecturers' commitment to invest time and effort in appropriate formative feedback on continuous assessments that will facilitate improvement in student learning. The role of the lecturer in summative assessment is viewed as that of a judge, determining whether the level of competence of students is such that they can pass a subject and ultimately graduate. In their role as student assessors, lecturers must therefore use a wide range of

appropriate instruments to ensure a valid, reliable, open and fair assessment of outcomes and mastery of a diverse student population (Fry, Ketteridge & Marshall 2003:59; Harden & Crosby 2000:340). This view is supported by Srinivas and Adkoli (2009:7), who emphasise that student assessment in HE 'has shifted to the [implementation] of multiple-methods for testing a wide gamut of learning outcomes, such as higher cognitive abilities, communication skills, IT skills and professionalism including ethical behaviour'.

Kember and McNaught (2007:ix) emphasise that there must always be an alignment between the nature of the assessment tasks and the desired learning outcomes within a specific disciplinary context. Teaching and learning activities, as well as assessment methods and tasks, should therefore be selected and implemented with a view to realising specific learning outcomes.

As curriculum assessors, lecturers must assess the quality of the curriculum and the quality of their own teaching (Healey 2000:172). Curriculum quality and the quality of own teaching practices are determined through graduate employer feedback, external evaluations by relevant professional bodies, internal institutional evaluations, such as student and peer assessments of teaching, and government audits (Harden & Crosby 2000:340). These mechanisms provide valuable feedback on the standard of the teaching and learning design and aspects that need to be addressed to enhance curriculum and teaching quality.

## □ **Planner**

According to Trigwell (2001):

[G]ood teachers draw upon the literature of their discipline, their knowledge of student learning and student-focussed conception to design a learning experience for students that is aligned with their learning objectives and assessment. (pp. 69, 71)

This quotation highlights the importance of careful planning of the teaching and learning design of a curriculum to ensure the realisation of learning outcomes.

The responsibility of planning, as shown in Figure 8.1, requires of the lecturer to act as both curriculum and individual course planner (Harden & Crosby 2000:341). When planning the curriculum of an academic programme, the lecturer has an important role to play in ensuring that the different components are constructively aligned to ensure an optimal learning experience for the student (Biggs 2003a:140). Kember and McNaught (2007:63, 71) maintain that effective curriculum planning requires the design of learning activities consistent with the intended learning outcomes and that planning of every learning opportunity needs to be flexible to allow for different student reactions and monitoring of student learning.

According to Biggs (2003a:140), constructive alignment requires the formulation of learning outcomes as a first step in the process of curriculum design, whereafter assessment criteria can be developed to indicate what students will have to demonstrate to realise the set outcomes. Teaching and learning activities can then be planned and scaffolded to ensure that students are guided to meet the assessment criteria actively, thereby mastering the learning outcomes and developing significant employment skills and generic attributes, such as critical thinking skills, effective communication skills and the ability to work effectively as part of a team (Kember & McNaught 2007:ix, 61; Meyers & Nulty 2009:565). According to Biggs (2003b:1), constructive in this context means that 'students construct meaning through relevant learning activities [while] teaching is simply a catalyst for learning'. Alignment indicates how the lecturer plans the teaching environment to support student activities that are appropriate for achieving the desired outcomes. This indicates the importance of the planning function of the lecturer, not only in classroom teaching but also in decisions with regard to curriculum design, a function that significantly contributes to lecturer teaching-related workload.

## □ Resource developer

The sixth area of lecturer responsibility is divided into the roles of resource creator and study guide producer (Harden & Crosby 2000:341–342). Student-centred teaching approaches require lecturers to develop appropriate resources to ensure the active participation of individuals or groups inside and outside of the university classroom. Resource materials must be fit for the purpose and must stimulate the attainment of learning outcomes. Lecturers should, therefore, keep abreast of educational technology and multi-media developments to be able to select correctly, contextualise and implement resources effectively to provide appropriate and accessible formats of learning materials to enhance independent student learning.

The development of a growing number of digital technologies provides lecturers with new possibilities to enrich contact and distance teaching with a variety of resource materials, while the planning and implementation thereof significantly add to lecturer workload. For example, McGarr (2009:310) points out the benefits of podcasting (course materials in video and audio formats) to enhance learning flexibility and accessibility, while the design of learning objects, ‘small instructional components that can be re-used a number of times in different learning contexts’, is beneficial to students in that the use thereof presents opportunities for exploration and problem-solving in either a collaborative environment or for individualised learning (De Salas & Ellis 2006:4). Because lecturers must be creative in the preparation and presentation of resources and course materials to pique students’ interest and focus their learning, they often need professional training for the role of resource developer to ensure appropriate implementation within an increasingly technology-supported HE environment (Harden & Crosby 2000:341; Marques 2012:35).

Furthermore, with regard to the role of study guide producer, the reduction of face-to-face contact time between lecturers and students worldwide has made a carefully planned interactive

study guide an effective substitute for lecturer presence to focus student attention on learning activities to master set learning outcomes (Harden & Crosby 2000:341). Al-Hazimi (2012:6) refers to a study guide as a 24/7 tutor available to advise students with regard to the ‘what and how’ of their studies. The planning and development of study guides, although time-consuming and often complicated, are part of the lecturer’s responsibilities for which he or she seldom receives any recognition.

## □ Concluding remarks

In conclusion, Harden and Crosby (2000:343) accentuate that not all lecturers are skilled at fulfilling all of the 12 indicated roles, underlining the importance of staff development programmes to equip lecturers with the necessary competencies where they are lacking in skill. In addition, and of significance to this chapter, they advocate that a roles profile should be included in the employment contracts of academic staff, and recognition for teaching efforts to attain excellence in the different roles need to be addressed (Harden & Crosby 2000:345). The following citation is a selection from the summary offered by Harden and Crosby (2000) regarding the value of implementing the 12-roles model:

1. to make explicit an institution’s commitment to teaching and to the different roles expected of a teacher
2. to assist with [*identification*] of the teaching skills required within an institution
3. to identify staff recruitment needs and to contribute to the job [*specifications*] and contracts with staff
4. to identify the needs for staff development programmes and to relate these to the requirements of individual teachers
5. to evaluate staff. Recognition of the different roles is important with [*regards*] to teacher evaluation
6. to inform an analysis of teaching activities. Such an analysis may be required for the allocation of resources within the institution or for other purposes

7. [*to facilitate*] change. Less resistance from [*lecturers*] to change may be experienced if [*university teaching*] roles are made more explicit and it is [*recognised*] that traditional teachers' roles continue to have an important part to play in addition to new roles. (n.p.)

The above summary is deemed to be sufficient to motivate the importance of a clear delineation of the lecturer's accountability in teaching-related work and the recognition of the diversity of a lecturer's roles, responsibilities and cumbersome workload. In such recognition, and indeed in the addressing of the lecturer's diverse workload, lies the key to enhancing the professional security of lecturers.

## ■ Conclusion

The initial sections of this chapter focussed on global changes and reforms in the HE environment over the past 20 odd years – for example, demands for increased student access to higher learning, increased lecturer workload and a corresponding decrease in working conditions and demands on lecturer accountability in the teaching environment. It was evident from the discussion that the teaching-related responsibilities of the lecturer have become exceedingly diverse, although professional recognition and academic standing are still dependent on research outputs. It became evident that the existence of a professional code of conduct and formalised professional-pedagogical development of lecturers will be of value to regulate the expected behavioural standards and subsequent standing of lecturers that will positively contribute to the accountability and security of lecturers. It was concluded that the improved juridical foundation for the accountability of the lecturer should include lecturer-specific conditions of work that will have a positive impact on determining fair teaching-related workload and subsequent rewards and recognition, thereby enhancing the security of lecturers.

Next, the focus shifted to an exposition of the complex nature of teaching quality in the HE environment. It was found that, irrespective of culture or country, institutional mission or external stakeholder demands, the unmistakable link between the quality of teaching and the quality of the student learning experience overshadowed the search for a definition of teaching quality. The importance of an institutional focus on the scholarship of teaching, recognition of scholarly outputs and teaching excellence, and the relevance of peer review and subsequent improvement of teaching practices to enhance the status of teaching were particularised. In conclusion, it was advocated that there should exist a national understanding of what teaching quality entails, while the value of minimum standards for quality teaching in the HE environment must include clear standards that must be contextualised for implementation at the institutional level. The ALTC national teaching criteria for the award of quality teaching in Australian HE were proposed as an effective foundation for the development of such standards in the South African context. This led to a discussion on the teaching-related responsibilities and roles of the HE lecturer with a view to achieve quality provisioning. In this regard, the 12-roles model of Harden and Crosby (2000) was slightly adapted to illustrate the six areas of responsibility of the HE lecturer, namely, the lecturer as 'information provider, role model, facilitator, assessor, planner and resource developer' (Shafie & Nayan 2010:262). The nature of each of these areas of responsibility and the ensuing roles that the lecturer fulfils were explained and supported by the views of various researchers. In Harden and Crosby's conclusive remarks on the implementation of the 12-roles model in the teaching environment of the lecturer, they provide seven explicit benefits, inclusive of the fact that the implementation of such a model will be hugely beneficial to articulate job specifications to be included in the employment contracts of academic staff. The value of this model for the purposes of this study is significant to inform the juridical foundation of lecturer teaching-related accountability,

the regulation of lecturer workload and recognition of teaching excellence.

Finally, Kinman et al. (2006:26) offer a noteworthy perspective:

Higher education is a labour-intensive industry that relies heavily upon the capabilities and goodwill of its employees to provide educational quality. In circumstances where institutions are finding it increasingly difficult to recruit, retain and nurture suitably qualified academic staff that reputation could be at risk. Whilst some of the reported problems faced by academic staff may be solved at the individual or organisational levels, national initiatives are probably necessary if the underlying malaise is to be addressed. (p. 26)

This underscores the value that a clear delineation of lecturer accountability at the national legislative level can add to the security of lecturers.

# An analysis of affective discursive practices of South African academics on an online university forum

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## ■ Abstract

This chapter explores academics' affective discursive practices in an online forum on the intranet of a university. The communicative model of democratic discourse directs the interpretation of a transformative discursive interaction. The proponents of the deliberative model of democratic discourse negate the presence of emotion in discourse by classifying it as inferior to rationality and a threat to objectivity. The findings indicate that rationalistic

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discursive interactions are marked by expressions of affect that accompany the demonstration of power, such as the assumption of positions of authority and superiority. The discourse that models the communicative paradigm indicates an understanding of a participant's context and an expression of affect, which is mitigating and sympathetic, which also enables the development of affective criticality. The rhetoric practices of the communicative model of discourse inform the recommendations, which a moderator could follow in enabling a democratic discourse.

## ■ Introduction

The focus on affect in research in several sciences since the 1990s has been coined by Clough and Halley (2007) as 'the affective turn'. Zembylas (2013, 2018) focusses on the importance of affective criticality in critical pedagogy, such as the role of emotion in Human Rights Education towards social change. He also focusses on addressing troubled knowledge in pre-graduate education students. This movement towards the acknowledgement of affect has also influenced studies in information systems.

Critical analyses of information systems have excluded the role of affect. Scholars have mostly been informed by the rational or deliberative model of moral discourse of Habermas (Čečez-Kecmanović 2001; Klein & Myers 1999). Avgerou and McGrath (2005) draw upon Foucault's analytical perspective on power, knowledge and morality in critical analyses of information systems.

In response to the affective turn in critical studies that focus on real and virtual spaces, this chapter looks at the impact of discursive affective interactions in academics' participation in a virtual space of an online forum. Young's (1996, 2003) communicative model of moral discourse offers a means to broaden the rational scope of Habermas (1984, 1987, 1990). The researcher can also look at the role of affect as an integral part of reason in discursive interactions dealing with moral issues related to the practice of racism.

Young's (1996, 2003) theory informs the question explored here, as the rational interest is broadened and becomes an appropriate way to analyse the potential of a forum. This, in turn, contributes to a discourse that enables participants to look critically at and eventually transform their own affective experiences. The questions that ask for an analysis are therefore informed by a theory that emphasises the importance of affect in transformative discourse: Which role does the expression of affect play in an online forum discussion? How can the expression of affect be used to change this forum into an enabling and transformative space?

The chapter will refer to the relationship to affect in the two models of democratic discourse, followed by a description of scholars' affective relationship to online communication. The affect in the participants' motivation to become involved in the forum, their perceptions of and interactions with others will be analysed, and their modelling of the discourse paradigm will be indicated. Salient quotations of participants and their relationships to the two models of discourse will be discussed. An explanation will be provided as to why these types of affect expressions contribute to the transformative potential of the forum.

Finally, the findings developed from the qualitative textual analysis will be used to recommend ways in which the potential of the forum can be realised, such as implementing positive discursive strategies of affect that Young (2000:52-77) recommends.

## ■ Relationships to and the use of affect

### ■ Online environments

Scholars describe the affective relationship of participants to online environments by indicating both idealistic and pessimistic views regarding the emancipatory potential that virtual spaces have. In the 1980s, theorists held that these environments were created by information specialists who had a democratic ideal in

mind (McGuire, Kiesler & Siegel 1987). According to this idealistic view, participants regarded virtual spaces as inviting, as they have an equalising potential, and the hierarchical power exerted in face-to-face communication was eliminated. The other side of the coin became apparent in the 1990s and the first decade of the 2000s when researchers indicated that these spaces are frequently marked by existing hierarchical power, which implements these spaces to further managerial agenda. Researchers found that the management of a university used email communication only to create the impression that academics had been consulted in a decision-making process (Čečez-Kecmanović, Moodie & Busutill 1999). The decisions were eventually made in an authoritative manner. The management profited from employees regarding the space as equalising and the decisions of management to be transparent.

One can derive from the above that the initial positive affect in theorists' idealisation of equalising virtual spaces has diminished. Democratisation attempts were brought about by disappointment and negativity in practice, which was effected especially by the hierarchical exertion of power through online communication.

It is clear from the above that people have certain affective relationships to virtual spaces, as these spaces are experienced as real and as having an impact on their lives. In online communication, reality is presented through discourse and also created by discourse. Management in the above case used the virtual environment to create the impression that they are transparent in their functioning.

When people are involved in online communication or in virtual space, the virtual space becomes real. According to Postma and Blignaut (2013):

This presented or created reality is just as real as face-to-face discourse, as it influences [*the affective positions of people in*] real life and can lead to [*disappointment, negativity and*] trauma. The virtual does matter and becomes 'embodied matter' (Van Doorn 2011). The fact that [*discourse*] happens in a virtual space, does not diminish the reality of its influence. Participants in virtual space are

[*emotionally*] materialized, or embodied through [*expectations, experiences, perceptions and*] their presentations of themselves: 'In this sense, the performative practices in digital spaces [...] resemble everyday physical experiences in their simultaneous incorporation of virtual and concrete elements to make sense of daily life [...] the digitally virtual is embedded in the ongoing life of the concrete and forms an important extension of the notions of reality and the context' (Shields [*in*] Van Doorn 2011:534). (p. 279)

## ■ Discursive models

The two models of democratic discourse have contrasting views about the role of affect in moral discourse. Moral discourse can be explained as a discourse that deals with moral issues, such as the practice of inclusion, equality, diversity and non-racism.

Proponents of the deliberative democracy of Habermas (1984, 1987, 1990) hold that the exercise of objectivity is only possible when emotion is excluded. This is strengthened by the idea that objectivity is expressed neutrally, universally and dispassionately. According to Sprangens (in Young 2000:63), rational democracy rather engages the mind than passion, or affect.

The deliberative model of Habermas has its origin in the philosophical tradition of the West from the time of Plato until the present, with a favouring of reason over emotion. Emotion was regarded as subversive to knowledge. 'Reason was associated with the mental, cultural, public and the male, while emotion was associated with the irrational, physical, the particular, the private, and the female' (Jaggard 1996:151).

The ideal in the deliberative model of democracy is to practise objectivity in debate, which can be undermined if the specifics or particularities of individuals' socio-historical contexts are taken into consideration. It is important for deliberatists to maintain a clinical, uninvolved distance in debate in the pursuit of universal truth. The exposure to subjectivity might lead the deliberatist astray by emotion, which is regarded as an obstacle in the practice of objectivity.

Young (2000:63) indicates that these are false assumptions as those who hold that they are impartial and dispassionate in their rational arguments do have 'particular social positions and relations'. She further asserts that 'no discourse lacks emotional tone' and that 'dispassionate discourse carries an emotional tone of calm and distance' (Young 2000:65).

Not only does Young (2000:57) emphasise the presence of affect in all forms of discourse but she also proposes everyday communicative practices, such as greeting, narrative and rhetoric, which capitalise on the positive use of affect. These are strategic devices, which can be used to 'lubricate' the discourse and alleviate the conflict between parties with persistent differences.

In this sense, she adds to the ideal speech prescription of the deliberative model (Habermas 1984), which holds that the only legitimate form of discourse consists of the presentation of arguments and evidence. One can, therefore, regard narratives as a legitimate form of discourse and as an everyday form to communicate a certain opinion or persuasion. In this sense, one can regard graffiti, slogans, pamphlets, drawings, photos, tweets, Facebook messages and other informal ways of communication as part of the communicative model of discourse. These forms of everyday communicative practices are better indications of the social and historical positions of individuals. The form and content of expression reflect the subjective and affective positions of people in their everyday lives.

## ■ **Description and interpretation of the forum participations**

### ■ **The forum and its participants**

The online forum originated when criticism of the university's management was posted in the advertisement section of its intranet. When the human resources team realised that employees desired to voice their opinions on issues they regarded as important, a separate space was created by the technological

department of the university, entitled 'Have your say'. The space was referred to as an online forum with an exposition of its rules on the landing page. The rules prohibited the use of foul language and slanderous speech.

Participants were making contributions under their own names and could provide texts, emoticons and also attach photos or articles. Temerarious participants used the space to criticise management and the traditions of the institution, while others posted mundane thoughts for the day and comments about life in general.

The management regarded the forum as an indication of the emotions on campus and as a place where employees could raise issues that could not be raised elsewhere - that is, in official meetings. A member of the management team also revealed that the transformation of the university and the merging of its different campuses created feelings of insecurity. It was pointed out that the forum created the possibility for employees to raise their opinions in a relatively safe space.

The forum had its regular, active participants, that is, those who started and contributed to the conversations. The majority of participants only assumed the role of viewers and one could easily see which threads were popular by checking the viewer count that the forum provided. Some of the participants became well-known names on the campus and employees started siding themselves informally with or against their views. Participants saw it as an opportunity to further a viewpoint, and their contributions and conflicts with others did eventually assume strategic value. Many people resisted voicing their opinions, as they regarded the space as too public, too immediate and too permanent. 'What you say in the heat of a moment stays there forever' was one participant's response.

A thread on racism had a discussion for two weeks on the forum, which one participant referred to as the 'culmination of emotions' in the expression of opinions on transformation. This thread was viewed by more than 4000 employees in the limited time span of

12 days. Eleven people participated in the thread with 24 contributions. This means that some participants made more than one contribution to the discussion. The popularity of the thread motivated me to look closer at the conversation. Like the other readers, I also supported or opposed the views of the participants in the thread. The opinions of those who became well-known names were also imprinted in my memory, and I found it difficult to read their consequent posts with a measure of objectivity. This struggle to be objective accompanied me in my analysis of the thread of texts on this specific forum and resulted in caution regarding my own feelings when I had to conduct the interviews.

I am mainly referring to three participants, Bettina, Stephen and Pieter, to establish how their expressions of affect contribute to the emancipatory potential of the forum. I also refer to other participants who played a marginal role in the thread, but whose comments were crucial in answering the research question.

Ethical clearance was obtained to analyse the forum text and also to interview the participants. Although the forum participations were signed, I used pseudonyms for participants to protect their identities. The verbatim transcriptions of the interviews were sent to the participants so that they could choose the parts of the transcriptions to be deleted from the data analysis. Some of the participants did indicate their discomfort with the potential publishing of their opinions about other participants, and these texts were therefore omitted.

I sent the specific thread, which was titled 'Racism, the other side', to the selected participants with the objective that they could reflect on the discussion. The questions asked in the interviews were of a generic nature, although I used the specific thread as a reference and as a point of departure. The questions were:

- Why did you participate in the forum?
- How did you experience the other participants' reactions to your opinions?
- Did you learn anything?
- Why did you decide to continue or end your participation?

## ■ Description of categories

The analysis of the texts is informed by Miles and Huberman (1984). The categories procured by the analysis are:

- The *intent* of the participants can be described as their motivation to participate in the forum. Their intent can be informed by either the wish to contradict or show their support for opinions. When the intent is not to become involved in an argument, some marginal participants only wish to share an idea or a narrative.
- The *perceptions or social positions* which the participants hold. This category refers to the affective opinions and perceptions, which participants have of others and also their perceptions of their micro- and macro-contexts, of the university and their own positions within a socio-historical and political environment. This category also refers to the perceptions participants have of their own and others' interaction on the forum – it does, therefore, include self-reflection.
- The *strategy of interaction* refers to the ways participants interact with each other on the forum. The interactions can be marked by the participants' articulateness in the conduct of a formal argument and the provision of evidence. The interaction can also be a sharing of ideas, where the language used is more informal. The narratives which the participants present can be in the form of a story, where life experiences are shared. Narratives can also be understood as ways to support an idea or argument, such as a photo, a life story or quotations from any source, such as newspaper articles.
- The *effect* of their interactions and perceptions refers to the affect which participants exert concerning the discursive strategies of other discussants, how they react to their opinions and perceptions and eventually what the effect of the affective discursive interactions is on them – they can either terminate their involvement as a result of frustration with the content of the forum or they can remain interested in the views of others and remain involved.

The categorisation resembles the axial coding of Strauss and Corbin (2008) where the intent of the participants can be

described as causal conditions, the perceptions and social positions of the participants as contextual and intervening conditions, although the effect of participation matches the consequential conditions of the paradigm. The central phenomenon of the participation on the forum should reflect the research question, which can be described as ‘the development of affective criticality’. This means that all the conditions relate to the attainment of affective criticality. The development of affective criticality can be described as the potential of people to reach a state where they can assess and transform their affective positions and perceptions. This is a notion, which is also explored by feminist education theorists (Barad 2003, 2007; Danvers 2015).

## ■ Display of micro- and macro-coding

In the following section, the different categories will be presented as established in the analysis of all the participants’ texts, while an interpretation and motivation are provided of the model of discourse of which the participations display elements. The names given to describe the participants are derived from the way they referred to each other; for instance, Bettina is described by Stephen as ‘The Colonial’ and Stephen is described by Bettina as ‘The Liberal’. I refer to Pieter as ‘The Mediator’, as this seemed to be the role he fulfilled in the discussion.

Box 9.1 illustrates the forum text of three participants, including the coding and categorisation and also the model of discourse under which the quotations reside. The analysis of the text units can be described as a form of micro-coding, which occurs at a descriptive level of analysis. The choice of model to which the coding resorts can be seen as the interpretive level of the process of analysis.

### □ Bettina, the colonial

*Intent:* In her interview, Bettina states her frustration with the current discourse on racism on the forum, which she thinks is dominated by the minority of ‘liberals’. Her motivation is to counter their views. She wants to act as a spokesperson for the majority of silent voices

### BOX 9.1: The descriptive and interpretive analysis of the forum text.

<b>Forum text of Bettina</b>	
<i>Bettina</i> : How extremely ridiculous is the expectation that I have to make all the sacrifices so that their idiotic ideas can continue about values, education and Africa?	
<b>Codes and categories</b>	<b>Rational (deliberative) model of discourse</b>
SID – students' ideas disregarded (category – perception)	
FOD – focusses [??] on own discomfort (category – way of interaction)	Not interested in the specific situation (particularity) of the students or their values
ACA – assumes a condescending attitude (category – perception/position)	
UDS – uses declarative style (category – way of interaction)	
<b>Forum text of Stephen</b>	
<i>Stephen</i> : Listing endless examples is not good enough, use them, make an argument, build something convincing by clearly explaining how it is that the evidence you are presenting supports the assertion that you are trying to make. This is called reasoning, and it is the most important section of academic writing.	
<b>Codes and categories</b>	<b>Rational model of discourse</b>
ERE – expects rational engagement (category: perception/position)	Expects a rational engagement from Bettina – she has to provide arguments with sufficient and convincing evidence
APP – assumes a prescriptive position (category: perception/position)	
<b>Forum text of Pieter and Bettina</b>	
<i>Pieter</i> : I believe in your good intentions and your commentary is also worth much more than that of the silent majority. Therefore, I think that people think you are a big racist, which might not really be true, as I said, I believe in your integrity. But your way of writing creates the wrong impression with people, perhaps a milder tone might help. Just a diplomatic advice.	
<i>Bettina</i> : Thank you Pieter. I do not have the gift of the gag (sic), and it might be the reason for the way I am writing.	
<b>Codes and categories</b>	<b>Communicative model of discourse</b>
ECC – expression of care and compliments (category: way of interaction)	Uses the rhetoric devices such as the expression of care, and complimenting
ANMP – assumes a non-moralistic position (category – way of interaction)	
ANAP – assumes a non-authoritative position (category: way of interaction)	
EDC – expression of doubt in the consensus (category: way of interaction)	

who share her views. In the thread, she ‘opens the discussion [which she] titles “Racism, the other side” (Postma 2018:215), with the intention of providing an opposing view to the liberal ideas.

Bettina introduces the thread by providing quotations from posters that the student organisations PASMA (Pan African Student Movement of Azania) and AZASCO (Azanian Student Convention) distributed as a call to a protest against racism. The call to the protest was based on the apparent racist remarks of a male lecturer.

The content of the posters by PASMA is quoted below. The italicised comments in the text are made by Bettina and the text is quoted as it was originally provided by her (Postma 2018):

PASMA:

This university is ours because it is Africa and Africa is our land, we do not appreciate fools that still uphold and embrace the values of apartheid or white supremacy maybe in Holland. We are made to believe that they are stupid because they are black and they are not products of Hoë[??]rskool. The same person we are arguing about came in a ship in 1652 very late 18:00[?]. (*language????*) (*Shall later explain where this comes from, but just want to say that if I am correct, it only proves my point that the logic of certain people leaves much to be desired*)

He will never make us feel offended by our past and our blackness because black is beautifull he can utter such nonsense black will still be beautifull. (*language????*)

Therefore on 13 May 2008 at 11:00 we are marching against this stupid man. Figthing students battles against academic terrorism. (*WOW!!*). (n.p.)

*Perceptions and strategy of interaction:* In her opposing reaction to the content of the protest posters, Bettina creates a distance between herself and the protesting students. She accentuates the fact that she is opposed to the black students’ ideas of the role of African identity, values and heritage in education. Bettina uses the adjective ‘idiotic’ to describe the students’ opinions. She portrays herself as a proud descendant of Europeans who brought civilisation to Africa, and she identifies with the ‘achievements’ and ‘supremacy’ of the Western civilisation.

In a later comment, Bettina describes the capacity of the West proudly and portrays herself as part and parcel of that (Postma 2018:n.p.), ‘and of course we are special because we can. We can discover, innovate, develop, solve, plan in advance, create, sustain, do and progress’.

Distancing herself from the black students’ sentiments in their protests is also underscored by her own identification with pride in, understanding of and satisfaction with white superiority (Postma 2018):

How many times is boasted in the public domain with what the Western civilisation has accomplished, with the innovation, the scientific discoveries and progress? I am tired of living apologetically because I am white and because my ancestors arrived here 300 years ago and brought civilisation here. (n.p.)

The above view is in contrast with her opinion of Africa (Postma 2018):

[/]s wonderful Africa not an example of progress with its African-style education and its Black Consciousness and dictatorial, corrupt, backwards, war-loving, lawlessness and genocides an example of values???? (n.p.)

She also distances herself from the students with her disinterest in their reasons for feeling disempowered and unacknowledged. She describes only her own feelings of indignance. Her lack of insight into the students’ motivations leads her to call their ideas ‘irrational’, their reactions ‘poisonous’, caused by ‘minimal provocation’. This negation of the reasons for the students’ protests can be seen as an echo of a position within the deliberative model, which prescribes that the specific situation of the other should not be considered in democratic discourse.

According to Postma (2018):

An interest in and appreciation for the students’ sentiments and particular socio-political situation are mediated in the communicative model of Young (1990:[5]). The absence of these traits leads to a moralistic distancing [*and*] the [*adoption of a feeling of superiority,*] as seen in the attitude Bettina assumes towards the students. (p. 216)

Bettina contrasts herself in many respects with the black students in a discourse, which is marked by opposing words, such as white versus black, I versus them, those people, the superiority of the West versus the 'backwardness' of Africa.

Bettina shows indignance and also aggression (I will fight); feelings she does not acknowledge are also experienced by the students: they too feel disempowered and unacknowledged. The students also express their sentiments in an aggressive way. In the poster, they also state their intent to fight: 'fighting students [...] against academic terrorism'. Like Bettina, the students also indicate that they are proud of their race (black is beautiful). To the same extent that Bettina celebrates white supremacy, the students resist it and celebrate their blackness by stating that 'black is beautiful'.

The lack of interest in the students' feelings of distress and indignance as displayed by Bettina reveals a self-focussed interest and a lack of consideration of the other. This focus on her own interests and the description of herself as a victim 'who has to make all the sacrifices' blinds her to the extent that she fails to understand and appreciate the positions of others. The willingness to put yourself in the shoes of the other is referred to by Hannah Arendt as 'enlarged thought' (in Benhabib 1992; Thorseth 2008). This willingness to be altruistic develops the position of affective criticality.

*Effect.* Bettina's expression of affect and her position or perception of Africans cause a growing alienation between herself and the other participants in the forum. The emotional traits, which she attributes to the students, are echoed in the reaction of participants who also perceive her as venomous. Her main opponent, Stephen, describes her by saying that 'Bettina is racism dressed as reason and concealed behind some quotes' (Postma 2018:217). It becomes clear that the distance she creates between herself and the African students is noted in the other participants' judgement of her, as seen in the response of Mandy (Postma 2018):

Do you have children? If so, I do hope with sincere condolences on their behalf that you do not impart to them the nonsense which you said about 'more stupid' black people. If you do that, you are making their lives (in a country where they live, work and learn side-to-side with black people) more difficult than necessary. I was shocked by the content of your piece of 'research' in your post and then specifically the venom with which you support it. (n.p.)

As I was affected by the sentiments expressed by Bettina and given the reactions she caused, I approached her with caution. What interested me was the following remark she made in the forum text (Postma 2018:n.p.), 'we shall see if the "march" will take place and will it be disciplined and if it will as usual take place in chaos and anargy [*sic*]'.

In the interview, Bettina described her experience in a former work environment where the protesting students caused extensive damage to classrooms and buildings. As I also knew about the destruction caused and the fear, especially among white female employees, during that time, I interpreted the experience as having been traumatic to Bettina. If Bettina had told this story, the reactions of the others might have been more sympathetic. However, as she was determined to provide a judgement of the students without contextualisation of her own experience, the reaction she provoked was equally judgemental.

The expression of emotions in a moment of anger or fear becomes an enduring feature on the forum. It is as if Bettina's opinions became frozen in cyberspace. If participants can provide a glimpse into their context in the form of a narrative, one might be able to understand their situation. The affective positions which others might hold towards her might also change.

## □ Stephen, the liberal

*Intent.* Stephen's intention was to counter the conservative views on the forum, which he regarded as representative of a general orientation within the Old University (pseudonym).

*Position or perception, strategy of interaction.* Stephen acts as Bettina's prime opponent concerning his political positioning.

He perceives her as someone who adheres to ‘a grand racist narrative’ and attributes emotional characteristics to her, such as being ‘ungrateful and uncaring’.

In describing Bettina’s opinions as questionable, Stephen’s interaction with her reflects the ideal speech of the rational paradigm, according to which the only legitimate form of discourse lies in the formulation of proper arguments, supported by suitable evidence (Habermas 1984). He acts condescendingly when challenging Bettina to provide academic writing, which follows the rules of deliberative discourse (Postma 2018):

Listing endless examples is not good enough, use them, make an argument, build something convincing by clearly explaining how it is that the evidence that you are presenting supports the assertion that you are trying to make. That is called reasoning, and it is the most important part of academic writing. (n.p.)

*Strategy of interaction and effect.* As the animosity between Stephen and Bettina grows, a point is reached where they find their interaction with each other exhausting and unproductive. Stephen and Bettina are in a constant negative affective interaction with each other, which is visible in their practice of rationalistic strategies by minimising the other’s arguments (questionable arguments) and by creating a distance between them (the references to each other as colonial vs liberal). Stephen’s sentiments are transmitted in the form of authoritative judgements of her and also in minimising her arguments, which he describes as ‘questionable’.

## □ Pieter, the mediator

*Strategy of interaction and effect.* Pieter’s interaction with Bettina assumes a different tone and a positive expression of affect. ‘His expression of care towards Bettina is a [trait] which is mediated in Young’s [(2000)] model’ of communicative discourse (Postma 2018:217). According to Postma (2018):

He furthers his mediating position by expressing doubt [...] about the consensus that Bettina is a racist. He offers a mitigating interaction with Bettina which has the potential of leading her to inspect her own

attitudes and position regarding the African students critically. His reaction shows that he tries to be more understanding by not taking a confrontative or opposing stance, but by displaying a probing and inquiring attitude. Pieter acts sympathetically and affirms his belief in Bettina's good intentions, and therefore complimenting her. (p. 217)

'Using words which have a positive emotional appeal is a way in' (Postma 2018:217) which to create and attain respect and trust according to the communicative model (Young 2000):

Pieter:

I believe in your good intentions and your commentary is also much more worth than the silent majority

Therefore I think, that people think you are a big racist, which might not really be true, as I said, I believe in your integrity. But your way of writing creates the wrong impression with people, perhaps a milder tone might perhaps help. Just a diplomatic advice.

Bettina:

'Thank you Pieter. I do not have the gift of the gag [*sic*] and it might be the reason for the way I am writing'. (n.p.)

*Effect.* According to Postma (2018):

This mitigating participation brings another character to a thread which has been dictated by Stephen and Bettina who have disdain for each other's position and are focussed on winning the argument. The remark of Pieter, 'I believe in your good intentions' creates trust in [*her*] and the intent not to vilify her creates a respectful relationship between [*them, something which is absent in the interaction*] between Bettina and [*Stephen*].

Pieter does not attribute [*affective*] characteristics to Bettina, [*either,*] as [*happens when Stephen*] describes her as: 'ungrateful and uncaring'. He [*allows doubt in*] the consensus [*achieved by*] her adversaries that she is a racist and does not presume that he knows her. Pieter adopts a stance of 'moral humility' (Young 1997) when he acknowledges that even if he does not know Bettina, he states his belief in her integrity instead of judging her as [*morally*] inferior.

The communicative model (2000, 2001, 2003) recognises feelings of doubt versus the forms of sure knowledge of the rational model. Pieter refrains from putting Bettina in the racist category [*and*] thereby he [*does not presume that he knows her, as done by*] those who operate in the rational model.

It becomes clear that those strategies of discursive interaction which are more sympathetic and which allow for doubt in the dominating consensus of the group (e.g. that Bettina is a racist), have more potential to bring participants to a form of [*affective criticality*] than the [*authoritative*] and moralistic forms of the rational [(*deliberative*)] model of discourse. (pp. 217–218)

*Intent.* During the interview with Pieter, he describes his discomfort with the level of racism that he experiences. Being an immigrant, he expresses his love for the country and explains how racial hatred saddens him. His way of addressing Bettina as ‘diplomatic advice’ indicates which position he wants to assume – he wishes to transform the sentiments of white people to be more aware of the impact of their attitudes.

## □ Other participants

The contributions of Tshepiso and Susan deserve mentioning. As an African man, Tshepiso feels extremely humiliated by Bettina’s opinions. His reaction indicates Bettina’s ignorance and insensitivity concerning the effect of the expression of her opinions of Africans.

Susan’s participation illustrates the emotional impact of the narrative as a communicative practice of inclusion (Young 2000:57). The reaction of Stephen demonstrates the attitude of someone who operates in the deliberative paradigm.

In reaction to Bettina’s posts, Tshepiso reveals his disappointment and horror with her ideas (Postma 2018):

lol 😏 it is funny someone so educated can think like that, I thought if you are educated you are the one who should lead by good examples then I will say Mandela is more educated more innovative, implemative [*sic*], conquering all those big words, He is black and he thinks better than some whites that think they are superior because they are white what a bunch of crap coming from an academic it is such a crap it maks [*sic*] me sick. (n.p.)

Bettina does not, in her reaction to Tshepiso, take his sentiments to heart, the same way in which she negates the students’ feelings of disempowerment. She only reacts by saying ‘Ag Tshepiso’.

This short, dismissive reaction indicates her inability to consider the effect of her affective attitude and her speech. Tshepiso is horrified by Bettina's demonstration of superiority to the black students.

Tshepiso reacts differently to the narrative of Susan, where she provides an account of her experience, which can be interpreted as racist. She reveals in her interview that her motive was to share her experience and to see what sort of reaction she would get (Postma 2018):

I am sorry it happened to you Susan, because I know you I have worked with you, the funny is it happen on the people who are not racist or who are there to make a difference. (n.p.)

Stephen, on the other hand, does not sympathise with Susan. The following comment shows the clinical distance, which is characteristic of followers of the deliberative paradigm. Similar to his disregard of the narratives that Bettina offers, he judges the experience which Susan had, as not convincing enough to be interpreted as racism. He does not address Susan by using her name as Tshepiso does, either, thereby not acknowledging the person behind the statement (Postma 2018):

It is not possible to say, on the basis of the information contained in your description, whether or not these incidents were in any way racially motivated. You certainly have described situations in which people acted extraordinarily rudely, but their rudeness cannot with certainty be ascribed to their racial attitudes. (n.p.)

## ■ Conclusion and recommendations

### ■ The attainment of affective criticality

Bettina and Stephen's interaction echoes elements of the deliberative model. Their motivation to downplay the other's opinions leads to the expression of negative emotions. The effect of their discursive interaction is an experience of fatigue, as well as a resoluteness not to alter their perceptions. This could explain the reason why they terminated their involvement in the forum.

Bettina achieves partial insight into the effect of her discursive presentations, but she does not develop a full realisation of the impact of her expressions of affect. Stephen does indicate in the interview that he would change his affective relationship with his opponents in the way he interacts with Bettina and reveals in retrospect that he would not be as 'hardcore' in his participation again. In our interview, he concedes to the negative impact of his interaction with Bettina. He describes his insistence that she should provide proper arguments and evidence as 'hermeneutic bullying'.

One can conclude that the discursive interactions in the forum, which echo elements of the deliberative model (such as the Bettina-Stephen interaction), do not have the potential to bring participants to a critical inspection of their affective relationships with others. Their discourses were marked by a display of power in their assumptions of authoritative moralistic and rationalistic positions. Mandy and many other participants resorted to the same type of interaction as that of Bettina and Stephen.

It became evident that the time taken between the sending and receipt of the forum thread allowed the interviewees an opportunity to reflect on their perceptions and interactions with the other participants. This time-lapse allowed Stephen to gain an insight into the fact that he could have developed a constructive relationship with Bettina. Bettina was able to change her argumentative and authoritative position in the interaction with Pieter whose expression of care and respect gave her an insight into the negative effect which her participation had on others.

As the researcher, I realised in retrospect how easy it is to conform to rationalistic judgements of the other as one is deluded by this sure form of knowledge. As an interviewer, I had to familiarise myself with the forum text, and I was also sure of my impression of the participants as a consequence of the personalities they portrayed on the forum. I experienced a distance between myself and Bettina on account of her textual persona, which made me cautious about our interview. As I agreed with the opinions of Stephen, I was looking forward to

our interview as it would be an exchange of opinions and ideas that we agreed about, which proved to have been the case.

The important difference in my interaction with Bettina and Stephen was that I did not have to make an effort to understand who Stephen as a person was, as I was in agreement with his opinions. I had to make a greater effort to understand Bettina's opinions, which resulted in a better understanding of her as a person. I did eventually manage a better insight and appreciation of Bettina through our personal contact, as I experienced her emotions face-to-face and developed sympathy for her for the trauma she had experienced in her previous work environment.

As I agreed with the opinions of Stephen, I did not make an effort to understand why he held them and eventually the impression I had of him was similar to the opinion I formed on account of his textual presentation of himself. I did not have to make an effort to understand his situation emotionally, as I presumed that I knew him. In this way, I actually also assumed a rationalistic position concerning him as I had thought that I had sure knowledge about him. My approach to Bettina was also rationalistic, as I presumed to have sure knowledge of her because I experienced a distance in our opinions. Our interaction made me more aware of her emotions and I came to an understanding of her, especially as I had to make an effort emotionally to this end. I derived from this experience that the change of affect is not easy, the effort to understand someone different from you is not easy either and to be critical about your own prejudice is not an easy process, as we are consoled by our sure knowledge and the process of understanding differences leads to emotional discomfort.

## ■ Strategies to develop affective criticality

The online forum of the university can be regarded as an important educational vehicle for participants to develop an affective criticality that eventually results in the transformation of the individual.

The participants in the forum can be referred to as a community, bound by a shared interest in discussing issues (such as racism) which they regard as of moral importance. The strong presence of emotion in the interactions shows that the participants are adamant in declaring their moral positions.

A moderator can change an online community from a toxic environment where participants are set to create enemies in their hostile and moralistic interactions to a friendly, inclusive and inviting environment. This community can be characterised as a community of friendship, where the development of affective insight is more possible than in a rationalistic community, which is marked by competition and toxic relationships.

In his *Nicomachean Ethics*, Aristotle (in Jacquette 2001) links the highest type of friendship (understanding as a community) with justice and morality and states that one needs friends (understanding as participants in the community) to develop morally (Kowch & Schwier 1997). It is, therefore, necessary for the forum to develop into an inclusive, friendly space for the development of the moral values of its participants.

The positive use of affect would create a community of friendship where moral values can develop, which also entails the development of affective criticality, that is, an insight into opinions and perceptions and ways of interaction that are evident of oppression.

The use of modes of communication in the model of Young (2000:52–60), such as the narrative, greeting and rhetoric, which are characterised by their positive uses of affect, can serve as helpful strategies to lead participants to a position where they can critically assess their own emotions and the effect it has on others.

The moderator can make a forum more inclusive by inviting a diversity of people from multiple cultural groups to participate in any way they prefer. Instead of prescribing the form of participation, participants can be encouraged to provide narratives or stories which tell of their experiences and specific socio-historical situations. The forum in its current state is dominated by

argumentative, polarised, political positions that reflect the life experiences of only a selected group of white employees in spite of the fact that the university is otherwise characterised by its cultural diversity and multiple ways of communication. The moderator can also encourage all participants from diverse languages (Sotho, Tswana, Afrikaans and English) to write in their own languages with provisions of interpretation to develop an appreciation, especially for indigenous languages.

Life stories, or narratives, can be helpful in understanding the contexts and particularities of groups that are different from the self. Young (2000:129) allows for narratives that 'supplement argument by providing ways of speaking across differences in the absence of shared understandings'.

Narratives include the elements of subjectivity and affect, which appeal to the emotions of the reader and bring a deep understanding of, care for and also respect for the other. Jaggar (2015:1127) emphasises the negative impact of the impartiality and universality of the rational movement. The rationalistic approach neglects the moral significance of feeling and the appreciation of others, which has an impact on the moral positioning towards care and friendship.

The affirmative use of rhetoric can be applied in a forum where a moderator can act exemplary in his or her greeting, welcoming and complimenting of the participants. This will motivate those who always assume only the position of a reader to be more active and have their voices heard. A moderator can affirm participants' presence by acknowledging and not judging the emotion which they express. Further affective involvement of a participant can be encouraged by asking 'why do you feel this way, can you explain from your own life experience why you feel this way so that we can understand what you mean?' In this way, the moderator also acknowledges the person behind the opinion and contributes to shift the forum from a clinical, distant place to a place where people with their particular experiences are welcomed. By building an inclusive community, the moral development of its participants is enhanced.

Even if the discourse of the participants echoes the elements of the rational paradigm, which excludes the role of emotion, there is a pervasive presence of emotional interaction between the participants. This is ironic, as the rational (deliberative) model does acknowledge the presence of emotion that it, therefore, does not value. If affective interactions are not seen or valued, the effect it might have will also be overlooked. This effect can be either empowering or disempowering for those who participate in an online environment. People feel distraught by the use of rational strategies and feel alienated and exhausted by the discourse, which leads to their participation being discontinued.

This finding is in agreement with the view which Young (2000) holds, as it explains the relationship between the proponent of the rational model and affect:

The deliberatists do [...] not have any recognition of the negative emotional affect their style of arguing has, such as their opponents might feel devalued or silenced, frustrated and angry. (p. 124)

It is therefore concluded that the affective expressions and relationships of those whose participation echoes the deliberative model are not conducive to the transformative potential of the forum. In comparison with those who participate in the communicative model of democratic discourse, the affective discursive interaction has the potential to lead to a re-inspection of attitude and creates the opportunities to gain an insight into corrosive attitudes.

‘Living in a post-apartheid society asks for an affective education, as [the existing] social-historical context of racial division brought feelings of hatred and fear’ (Postma 2018:218). The affective includes more than emotions and has to do with how others are affected and being affected by others and how ‘these affections can be empowering for both [sides of] the [spectrum. The] affective is not only a reaction, but has to search for constructive relationships’ (Postma 2018:219).

# Drives towards research productivity: International trends

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## ■ Abstract

This chapter explores the expectations of present-day researchers with regard to growing research productivity requirements. Attention is paid to the factors that promote and prevent research productivity in HE institutions internationally. In connection to a social justice orientation, aspects of fairness and competitiveness

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in diverse drives towards research productivity are explored. The findings of this study are meant to be informative rather than generalised as they rely on a sample of 32 international researchers belonging to a specific research community.

## ■ Introduction

The rise of the knowledge society places universities at the forefront of economic development in any nation. Academics are expected to play a crucial role in economic growth through research and development of the next-generation researchers. As a result, academics across nations are faced with constant demands to engage in research projects, secure funding and produce research knowledge in tangible outputs. The demands in terms of research productivity are growing and becoming increasingly important in HE institutions.

Although a vast majority of universities internationally focus on teaching having a limited research profile, the priority is devoted to research outputs. Altbach (2015:6) claims that only about 1000 out of 18000 universities appear in research rankings. Thus, any discussion on research productivity 'is limited to a small but important minority of academic institutions' (Altbach 2015:6). According to Conroy (2009:39), university research in the Western world makes a significant contribution to the total research undertaking of a country. Conroy adds that university research penetrates into various sectors, making it essential for the development of a country. In addition, Li, Millwater and Hudson (2008) point out that:

[S]ome of the roles played by university research in the west include maintaining research infrastructure in all existing academic disciplines and creating new disciplines, maintaining the research standard and the nation's research excellence in specific areas, and training new researchers and informing university teaching. (p. 2)

Scholarly literature provides evidence that present-day academics work longer hours than they did 20 years ago, identifying research as the main factor contributing to this increased workload (Milem, Berger & Dey 2000). 'Academics hold central positions in the

knowledge society through their roles as producers of knowledge' (Bentley et al. 2013:n.p.). Meanwhile, universities have become a key role-player in innovation as well as economic and social developments (Etzkowitz et al. 2007), roles that were previously mainly played by governments and businesses.

In his work, Scott (2009) argues that 'universities have engaged in "mission stretch," which has brought formerly peripheral activities, such as knowledge dissemination and entrepreneurialism, into the core' (Bentley et al. 2013:n.p.). According to him, this stretch is a strategy used to maximise the income of some institutions and individuals. According to Bentley et al. (2013):

Enders and De Weert [(2009)] consider [*the*] newer roles and expectations [*of researchers*] as opportunities in the knowledge economy. They characterise [*current*] academic careers as T-shaped, with entrepreneurial knowledge [*and*] dissemination roles extending out of traditional disciplinary and institutional bases, in ways which [*previously*] may have been considered contradictory. (n.p.)

It is important to note that university-driven innovation is reliant upon individual academics who are able to successfully meet the expectations of the changing role and to balance competing demands. Yet, not all academics are able to adapt to growing demands, which call for new competencies (e.g. fundraising, networking and publishing). In some instances, the non-academic community described such academics as 'heroic complainers' (Economist 2011) and a 'bunch of whingers' missing the 'good old days' (Petersen 2011). It is our stand, however, that new demands placed on academics and their associated response to it should not be dismissed or undermined. Attention to research productivity in HE institutions is imperative as it defines their success. The increasing demands are affecting academics' work, health and lifestyle. To that end, this chapter explores the expectations of present-day researchers pertaining to research productivity requirements. Factors that promote and prevent research productivity in HE institutions internationally are considered. In connection to a social justice orientation, aspects of fairness and competitiveness in diverse drives towards research productivity are taken into account.

## ■ Background

According to Bentley et al. (2013):

The 1980s and 1990s saw governments – in [*developed*] and developing countries – reducing per-student funding of universities, at the same time expecting universities to move towards a system of universal access (massification). Higher education was becoming increasingly measured according to economic benchmarks, commodifying activities that previously did not have an explicit market value. Teaching students and the pursuit of truth through scientific research (formerly social goods without clear economic value) were ascribed economic value and measured by governments and administrators based on their contribution towards human resource and economic development. From China to the [*United Kingdom*] (UK), universities appeared to be facing similar pressures to privatise through deregulation, with funding gaps to be covered by private contributions on a user-pays basis. (n.p.)

At the same time, academics progressively started to be ‘pressured into new roles involving external [*fundraising*] and service in order to maintain university resources in times of [*declining funding and*] growing public expectations’ (Bentley et al. 2013).

Li et al. (2008) claim that globalisation has a strong impact on universities:

Globalization has significantly impacted on universities and a new relationship between state and higher education has evolved. Governments become the buyers of the service, while higher education institutions are the service providers. (p. 3)

One prominent element of the above-mentioned relationship is the subsidies governments pay universities in return for research outputs. Universities, being highly dependent on such an income, demand from academics higher research productivity. Such demands, as a result, create severe pressures. In Australia, Dalton (2011) argues that the entire HE system has developed into a research drive:

In Australian universities at the moment research is everything. They obsess over the rankings in the new ERA (Excellence in Research for Australia) system which measures research performance. For academics publishing in the top journals isn’t just part of playing the game, it’s the whole game. (para. 1)

This predominant focus on research outputs can be understood in the context of intense competition between HE institutions for funding from the government. In the UK, such competition became predominant in the 1990s when polytechnics were redesigned as universities. Li et al. (2008:4) refer to the polytechnics and point out that, 'after being granted university status, they joined the competition for the unregulated research money, which makes research in UK universities more desirable'. Although governments worldwide make funding and subsidies available for research productivity of HE institutions, the pressure placed on individual academics and aspects of fairness attached to it need to be taken into consideration.

Academics in HE are citizens of a specific nation and typically employees of specific institutions. Therefore, it is assumed that most scholars enter into an employment contract with the university as an employer. With such employment, a wide array of legal instruments as well as social justice principles protect them in their capacity as scholars working towards a certain level of research productivity besides other duties. All employees are protected in such a contract through binding provisions that specify the obligations of both the employer and the employee. Democratic countries also promulgate general labour legislation, and employers must apply very specific legal principles applicable to employment. When considering demands in terms of increased research productivity, a combination of legal imperatives and adherence to social justice principles is one way of ensuring fairness for the researchers faced with high expectations from both the state and their employers.

Hueneke et al. (2017:422) report the almost universal fact that 'increased research activity leads both to increased revenue and to higher rankings' and state that this has a positive effect on student applications. Increased publications, therefore, become a useful lever to simultaneously enhance the status of the university regarding teaching and research, gaining benefits from both the community and the government. Not only universities but also the careers of individual academics benefit from increased productivity.

Huenneke et al. (2017:426) go further to point out that productive researchers 'have generally enjoyed positive outcomes for promotion and tenure decisions'. Li et al. (2008:9) add that 'the research performance of individual academics not only affects the reward they get within the institutions, but it exerts influence on academics' inter-institutional mobility, especially upward mobility'.

Although the necessity of and different reasons for a drive towards increased research outputs have been recognised, it has led to a debate as to how research productivity can or should be measured. The determination of specific criteria is of crucial importance for all assessment, ranking and auditing processes of HE institutions, faculties and individual academics. McGinn (2012) points out that evaluations are sought on a regular basis for research, teaching and community involvement, adding that research performance is considered in much higher regard. She argues that research is the principal commercialisable output from universities and therefore, from individual researchers. To be able to accurately measure and compare the outputs referred to, specific criteria should be agreed upon.

Although the majority of universities worldwide position themselves as teaching rather than research institutions, Altbach (2015:6) states that it is easier to measure research productivity than teaching or community engagement. The latter two are 'difficult to define and quantify. Thus, research is not only the gold standard, but almost the only semi-reliable variable' (Altbach 2015:6). Abramo and D'Angelo (2014:1131) claim that an assessor is only able to measure any new knowledge that is actually codified. According to them (Abramo & D'Angelo 2014:1131), '[the] prevalent form of codification for research output is publication in scientific journals'. Internationally, publication in distinguished refereed journals is a major indicator of academic success in HE. Altbach (2015) adds that:

Appearing in internationally circulated journals published in English is especially prestigious. Universities are engaged in a global arms race of publication; and academics are the shock troops of the struggle. (p. 6)

McGinn (2012) asserts that, in the assessment process:

[P]eer-reviewed publications in top-tier scholarly journals and academic presses are seen as superior and perceived as essential to academic success; publications in lesser-known or more professionally focussed outlets gain limited favour. Similarly, research that is supported through external grants is rated more highly than research that does not require such funding. Large-scale collaborations involving huge grants are seen as particularly favourable. (p. 15)

The importance of a considerable volume of publication by a scholar or institution comes forward in discourses in the field of bibliometrics. It is important to recognise that, where the system gives preference to an increased number of outputs, research drives may also lead to a decline in research quality. Abramo and D'Angelo (2014:1129) claim that 'it has become a norm in bibliometrics to define the research productivity as the number of publications per researcher'. By implication, the impact of such publications, measured by citations, is not taken into consideration when productivity is assessed. Similarly, McGinn (2012) points out that questions about quality, quantity and impact in connection with the measurement of research productivity have become increasingly prevalent:

Talk has turned to the importance of impact factors, h-index, lists of ranked journals, citation counts, and a host of other bibliometric measures, along with corresponding concerns about the reliability and validity of each of these measures. (p. 16)

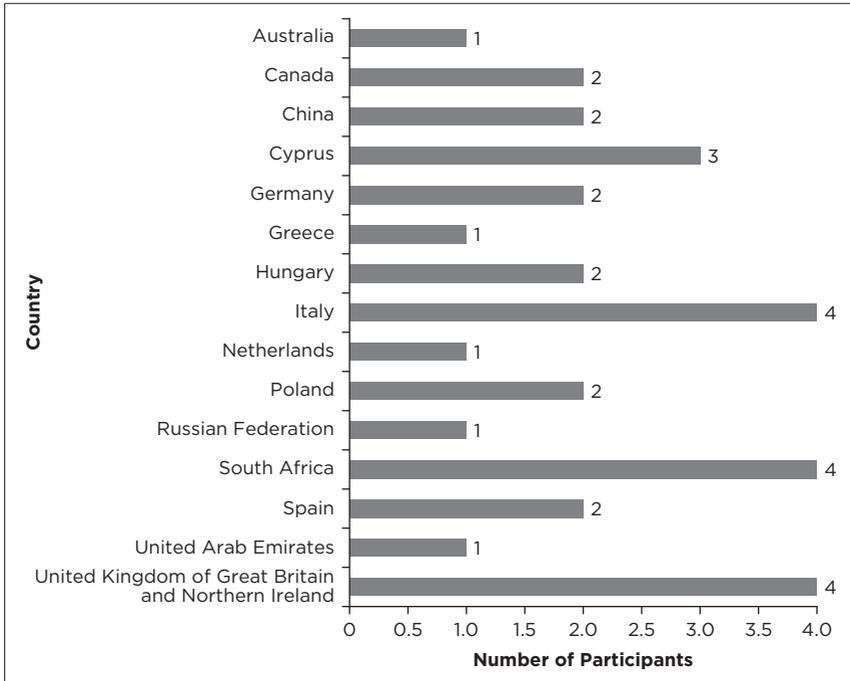
According to Danchisko and Thomas (2012:6), more elements than publications play and should play a role. According to them, 'research awards and expenditures, publications, citations, degrees conferred, and credit hours that students complete under faculty' are criteria when a specific scholar's productivity is measured for the purpose of promotion. In bibliometric terms, they note that not only productivity (publications) but also impact (citations) is, and should be, taken into consideration. They add that research funding and expenditures may be seen as the most objective measures of faculty research productivity. Danchisko and Thomas offer a broad list of indicators of an individual scholar's research productivity,

which includes grant award funding, institution and field-specific honours, total research expenditures, publications, citations, degrees conferred and the number of post-doctoral appointees. When it comes to considering grants awarded as criteria, Altbach (2015:6) cautions, however, that there are significant differences between countries and that specific amounts cannot be directly compared to determine productivity. Regarding differences that prevent proper comparison, he also points out the fact that other measures of productivity have recently developed as well as alternative forms of knowledge distribution, including open access journals that are currently not fully taken into consideration in international measuring instruments.

## ■ **Qualitative interpretative research design**

This qualitative study with an interpretative research approach received ethics clearance from the institution where the research originated. It was our aim to make meaning of the data gathered and authentically describe participants' responses to understand the topic under investigation (Given 2008). The pool of participants is small; therefore, interpreted data are not meant to be generalised but rather informative, as is customary with qualitative research designs. The findings have the potential to be relevant, especially to research directors, faculty deans, scholars, postgraduate students and anyone else engaged in research and research capacity building. As is evident in the following paragraph, this exploratory research covers perspectives from several countries to get a general sense of international trends with regard to research productivity.

The participant pool includes 32 members affiliated with the Comparative Education Society of Europe. The participants come from 15 countries (Figure 10.1) across five continents, and the majority are females (71%). Twenty-three participants are professors (at various ranks), six are doctoral or post-doctoral students and three are research managers. Overall, participants represent a broad range of educational disciplines and research interests.



**FIGURE 10.1:** Participants' location.

In alignment with the purpose of this chapter – to explore researchers' perceptions on research productivity requirements at their respective institutions – special attention is given to participants' views on the following four questions:

1. What are the demands on researchers at your institution in terms of research productivity?
2. Are the research productivity requirements fair or easy to meet?
3. Are there any factors preventing or limiting meeting the expected demands?
4. Are there any benefits (personal and professional) attached to the drive towards research productivity?

This research draws on the results of data collected in September 2018 by means of an open-ended questionnaire developed in a

cloud-based SurveyMonkey software. Participants of the previously mentioned educational society were invited to complete the questionnaire, knowing that their responses were anonymous. The participation was voluntary, and the completion of the e-questionnaire was equivalent to participants' consent to participate in this study. After the time for the completion of the questionnaire, data were exported from the SurveyMonkey software to an Excel file where it was coded to identify the main themes in each of the four questions represented in this study as four subsections. The main emerging themes, corresponding to specific descriptors, characteristics and activities, are shown in Box 10.1 to Box 10.4. The themes are listed as per the frequency in which they were reported. Therefore, the top entries in each box reflect the most common responses, and the bottom entries, the unique ones, thus less frequent. The wording of the reported themes reflects as close as possible authentic words used by the participants. In addition, to provide credibility and transparency to the interpretation of data, verbatim quotes from participants' responses were carefully selected (Roller & Lavrakas 2015). As Morrow (2005) warns, it is important to maintain a good balance:

An overemphasis on the researcher's interpretations at the cost of participant quotes will leave the reader in doubt as to just where the interpretations came from [*however*] an excess of quotes will cause the reader to become lost in the morass of stories. (p. 256)

## ■ Findings: International trends

This section is divided into subsections organised according to the four questions addressing the focus of this work. The findings are linked to international studies to directly situate participants' voices in the broader literature.

As stated earlier, participants in this study represent 15 different countries, spread over five continents, which implies that they operate in diverse contexts and conditions. The focus of this study is not on grounding the responses in a particular institutional or national context but rather to illustrate the overall demands in terms of research productivity across nations. Further research is

needed to explore the responses of participants linked to the setting in which they work. Having said that, it is also important to notice that commonality for the participants under investigation lies in the fact that expectations of universities and demands on researchers have changed significantly across nations.

It is also important to mention that there are only a few countries fulfilling the actual requirements of being considered as research-intensive. As indicated by Jørgensen (2018), such nations are expected to invest a minimum of 1.5% of their gross domestic product on research and innovation. Only a limited number of nations make such an investment: Australia, Canada, China, the UK, Iceland, Israel, Japan, South Korea, Norway, Singapore, Switzerland and the USA.

## ■ Demands on researchers

This subsection relates to the first question, namely, ‘what are the demands on researchers at your institution in terms of research productivity?’ Box 10.1 shows the most salient themes that emerged during the analysis.

Collectively, participants reported similar expectations at their respective institutions in terms of research productivity. At the top were publications in international, peer-reviewed journals,

### **BOX 10.1:** Demands on researchers.

- Publishing in high-impact refereed journals
- Securing external funding
- Engaging in collaborative international projects
- Attending conferences
- Writing books and monographs
- Supervising doctoral students
- Co-authoring publications
- Securing multi-institutional grants

preferably in high-impact factor journals, followed by the expectation to secure external funding and engage in collaborative international research. 'Publish, publish, publish and then PUBLISH in accredited journals – preferably in internationally accredited, ISI-journals – ad nauseam! Nothing else even comes close to this demand' (Professor, South Africa, n.d.).

In addition to the anonymously acknowledged need to publish in accredited journals, a few participants also mentioned a need to publish book chapters, attend conferences and supervise doctoral students:

At my institution associate professors (likewise full professors) are public employees hence bound to 'teaching productivity' by contract, yet with pressing demands on research productivity in terms of number of publications (the highest the better) and type of publications (e.g. publications in foreign languages are valued more than those in national languages, publications in (nationally) ranked top journals are valued more than those in other journals, book chapters or books)...Moreover, there is an increasing demand for partaking in collaborative, international research projects that are externally funded. (Professor, Italy, n.d.)

Research productivity is measured by a number of grant applications, PhD supervisions, publications, subjects delivered, courses (non-standard) delivered, money brought in, international collaborations, co-authored publications and multi-institutional grants. (Senior Lecturer, Australia, n.d.)

One professor from Hungary made a distinction between strict and semi-strict research productivity requirements. Strict requirements, according to him, encompass publications in high-impact journals and bring money to the university, whereas semi-strict ones involve attending national and international conferences.

The responses of participants resonate with scholarly literature on measuring research productivity. As Altbach (2015) accurately stated:

Publication in high status refereed journals has become a major criterion of academic success in the competitive environment of global higher education. Appearing in internationally circulated journals published in English is especially prestigious. (p. 6)

Overall, professors across nations were more animated about the demands shown in Box 10.1, although doctoral students emphasised the necessity to promote themselves in terms of securing teaching and research assistantships to set up their academic career.

## ■ Realisation of research productivity

This second subsection relates to the following question, ‘are the research productivity requirements fair or easy to meet?’ The main themes that emerged are shown in Box 10.2.

Most participants clearly indicated that it is not easy to meet demands with regard to research productivity. An Italian professor stated that ‘[d]emands are generally high, sometimes to such an extent that I feel exhausted’. In addition, a professor from South Africa indicated that the requirements are not only difficult but also not fair as they may have a damaging impact on researchers’ personal well-being:

No, [*the requirements are*] not fair at all. Reason: most academics who take these instructions seriously, are getting sick/ill sooner than ever before in the history of mankind – especially cancer and cancer-related illnesses. (Professor, South Africa, n.d.)

The remaining small group believed that it is easy to meet the requirements of research productivity if one is strategic and focussed on quantity rather than quality. Participants also reported that substantial teaching workload made it difficult to meet the requirements. In addition, they felt that a massive teaching load

### **BOX 10.2:** Realisation of research productivity.

- Clashes between research and teaching
- Compromising quality for quantity
- Productivity at the expense of personal time
- Competitive external funding
- Difficulty to publish in peer-reviewed Anglophone journals
- Lack of resources, financial and organisational support

allows very little time to do research and produce research outputs. According to several participants, fulfilling obligations of teaching and researching meant sacrificing personal time. In line with this statement, Abramo, D'Angelo and Murgiac (2017) state that:

Time is often perceived as the most critical ingredient for the achievement of scientific advancement, in part because of the other personal and academic activities in which the scientist is engaged. (p. 1018)

Other international studies indicated that focus on accountability for research productivity affects scholars' personal lives, the way they organise working time, and how they interact with colleagues (McGinn 2012; Sparkes 2007; Zabrodska et al. 2011).

Securing external research funding was also on top of participants' lists in terms of difficulty in meeting research productivity requirements. Participants referred to funding as extremely competitive and time-consuming. According to Altbach (2015:7), in 'most disciplines funding is difficult to obtain, and the resources available are quite limited'. Participants also highlighted that competing with colleagues for excellence and funding affected their sense of professional success, because securing funding is seen as a measure of accomplishment:

External funding is difficult due to the competitive nature of the process. The remaining requirements are not easy but with hard work, it can be done. (Professor, Cyprus, n.d.)

Of course, it is not easy - it depends on the opportunities created within the institution - mentoring available, good supervision, existing collaborations and networks. In the current climate of funding being cut for higher education, all academics here feel that: we cannot afford research if it is not funded externally; we have to teach a huge number of students so the institution can pay our salaries. (Senior Lecturer, Australia, n.d.)

It is nothing new or surprising that governing bodies are concerned with rankings when evaluating universities' performance. Similarly, HE institutions assessing research productivity of individual scholars take into account the ability to obtain research funding. McGinn (2012:5) reported that 'research that is supported through

external grants is rated more highly than research that does not require such funding. Large-scale collaborations involving huge grants are seen as particularly favourable’.

In terms of research outputs, participants were very clear that becoming part of an international research community involves publishing in English. On the one hand, this practice seems to promote inclusion in the sense that publishing becomes borderless; on the other hand, Anglicisation of published research often creates a barrier for non-native English speakers. In fact, in Europe, many journals shifted to publishing purely in English as they recognised the benefit of indexing and broader exposure (Swales 2004). As reported by Hyland (2012), scholars across nations ‘are increasingly less likely to publish in their own languages [as] their English-language publications [are more frequently cited]’.

It is important to note that rejection rates for high-impact journals are very high; therefore, some scholars decide to publish their work in more accessible journals. In non-English-speaking countries, an issue on the horizon on this topic relates to the fact that, at times, scholars with average English language fluency undertake activities like translating and proofreading. In such cases, the quality of work can be compromised, and authors who rely on their competence are often unaware of poor-quality service. As one of the participants stated, referring to his own context, ‘I consider the productivity demands a trick as the quality of the articles is really not revised’ (Professor, Spain, n.d.).

In addition, considering that English is the language of science, scholars with little or no-English language proficiency are often not informed by international literature about developments in their own field (Baruch & Hall 2004).

Lack of resources was also reported by a few participants as an impediment to meet research productivity expectations. Mullen, Murthy and Teague (2008) discovered in their work that limited time, lack of proper assistance and extensive paperwork

restricted scholars' research engagement and thus productivity. They argued that institutions should expand their research support services as much as possible.

Two participants expressed being opposed to pressures of research productivity and massive production of poor research outputs. Their argument was that some researchers use the formula just for promotion and prominence in academia. This reflects literature reporting that scholars are torn between competing objectives, wondering if it is better to 'play the game', or devote efforts to critiquing the proposed processes (McGinn 2012).

According to a doctoral student:

I do not respect them [*research productivity requirements*] as they are premised upon a measurement and ranking culture which I oppose. So I do the bare minimum towards meeting them and continue to work as I believe I should. (Doctoral Student, UK, n.d.)

## ■ Limiting factors

This subsection addresses a particularly important question, namely, 'are there any factors preventing or limiting meeting the expected demands?' Box 10.3 shows the most salient themes that have emerged.

### **BOX 10.3:** Limiting factors.

- Lack of dedicated time to research activity
- Teaching overload
- Lack of research funding
- Administrative work and bureaucratisation
- Tensions between international criteria and national context
- Lack of mentoring or collaborations with senior researchers
- Long peer review process
- Rivalry between colleagues

Some of the themes reported for this third question overlap with the themes addressed in the previous question. Therefore, special attention will be paid to unique entries that emerged. *Teaching overload* and *lack of research funding* will not be addressed as they were focal concerns extensively explored in Question 2.

Many participants referring to restrictions to their research productivity commented on competing demands and limited time for research. Most notably, participants indicated the need to allocate time for research activity as it is dedicated to tuition. As expressed by one senior lecturer from Poland, this would allow scholars to 'divide time between didactics and research activity'. A similar stand was shared by a participant from Italy:

One factor is the lack of dedicated time to research, as it is the teaching calendar (and related deadlines) that frames the everyday academic life at mine as well as other Italian institutions. (Associate Professor, Italy, n.d.)

The difficulty in allocating time for research identified by the participants as limiting research productivity reflects the concerns reported in other studies. In general, scholars are confronted with increasing pressures and competing demands where they must skilfully balance workloads of teaching, community engagements and research productivity requirements. Such demands may lead to role overload or role conflict to which activities devote more attention (Briggs 2005). International scholarly literature informs that the most successful researchers dedicate specific time for their research activities. The way they organise or schedule such time is based on personal preference, but the common denominators are (1) to set aside adequate uninterrupted time to work just on research, and (2) to determine non-negotiable deadlines so as to finalise projects on time.

Another factor viewed by participants as shaping and limiting their research productivity was tension between international criteria and the national context. The interpretation of this factor can be quite broad as national circumstances and agendas vary

across nations. Some scholars in Europe or other parts of the world may feel excluded and disadvantaged by global research productivity trends. For instance, Anglicisation of published research, conference presentations and general practices of internationalisation impose limitations on non-native English speakers. In South Africa, blending notions such as decolonisation and internationalisation of education may also be problematic. Countries going through a transformation process to decolonise their systems may struggle to simultaneously infuse their education with English legitimacy. It is undeniable that English tends to be unconditionally respected and recommended in academic research communities:

One would have to be naïve not to recognize that [*the*] English language plays a huge role in the economy, politics and preserving Western ways of knowing. It is quite an interesting phenomenon to observe. British Empire dissolved and yet English is still dominating the world at many levels, including academic endeavours. (Post-doctoral student, South Africa, n.d.)

Approaches to education and academic work vary from one place to another as they are influenced by history, culture, national practices and regulations. Therefore, one can conclude that there are no harmonised international trends. To that end, scholarly literature shows that global trends guiding research demands may provide conflicting agendas as well as affect institutional stability. For instance, understanding of the so-called *relevant research* in one context may not always be applicable in another context; thus, competition for targeted research funding is not always a fair play (Chan & Fisher 2008; Enders & Musselin 2008; Olssen & Peters 2005). It is also important to realise that global trends are not easily implemented everywhere. In terms of internationalisation, mobility is highly promoted and yet not easy to accomplish for some countries. As reported by Enders and Musselin (2008:11), '[i]nbreeding is frowned upon and institutional mobility is promoted, thus encouraging faculty members to become more mobile'. Spain, for instance, went to the extent of forbidding public universities to permanently hire former doctoral students at the same

institution from which they graduated. On the one hand, at first, this seems to be a good approach, allowing the flow of knowledge, competencies and ideas. On the other hand, institutions that invested in training quality doctoral or post-doctoral students may highly benefit from hiring them internally instead of excluding them. The question that emerges is whether one size fits all (global trends) or if trends should fit local needs?

The next factor reported by participants as hindering research productivity was a lack of mentoring or collaborations with senior researchers. The findings suggest that some HE institutions may lack essential support for research and researchers (Rockwell 2009). Considering the high expectations set for researchers to engage in international research, one would expect more institutional support dedicated to research capacity building (Niemczyk 2018).

In McGinn's (2012:14) study, exploring pleasures and pains of academic researchers in the Canadian context, respondents who were in a position of tenured scholars 'expressed concerns for the fate of junior colleagues along with implications for themselves and their own practices'. This group of tenured respondents indicated their inclination to fulfil extra scholarly responsibilities to support the career development of junior colleagues. Their comments referred mainly to allowing time for younger researchers to publish and thus secure tangible outputs for their promotion. This is a commendable example of support; however, we can assume that such practice depends on individual commitment and institutional culture that may not be widely present. In addition, it is worth noting that academics are time-poor. This makes it challenging to create space for mentoring relationships with junior colleagues.

The need for researchers to collaborate has become a global trend. This is indeed a major shift from researchers working in isolation to being involved in international and, at times, interdisciplinary research teams. Collaborations made up of senior and junior scholars provide a platform for increased research productivity, because team members can support each other and

produce more outputs. However, internal bureaucratic structures may pose some difficulty to successfully embark on research collaborations with other national and international partners.

Connecting to the above-mentioned bureaucratic structures, participants recognised bureaucracy and unnecessary administrative work as interferences to their research productivity. Although they acknowledged that all involved in research have to deal with administrative tasks to some extent, bureaucracy was identified as a source of concern. The main frustrations related to filling out an excess of unnecessary forms and participating in meetings amounting to little progress. 'Meetings take too long there's a lot of institutional inefficiency' (Doctoral student, Netherlands, n.d.).

The responses of participants were echoed by Glaser (2015) who discovered in her work that:

[A]cademics are spending less and less time thinking, reading and writing, and ever more time filling out forms. It seems clear that bureaucracy is somehow intertwined with the transformation of what were once institutions devoted to the pursuit of knowledge into commercial enterprises. (para. 10)

Rockwell (2009) investigated burdens placed on a faculty conducting research. One of the explored aspects related to how much time researchers with government grants spent on administrative activities. The findings demonstrated that, on average, the faculty spent around 42% of the time allocated to their projects on administration activities rather than on the actual research (Rockwell 2009). The findings also showed 'low levels of institutional support across all administrative tasks' (Rockwell 2009:10). The reported administrative burdens had a negative effect 'on the productivity of researchers [as well as] careers of young faculty members' (Rockwell 2009:1). Rockwell (2009) concluded that:

[E]fforts to reduce unnecessary expenses associated with research and to improve the productivity of the research enterprise should be a top priority for everyone involved in research and

research administration. Reducing the administrative burden on the faculty who perform research would accomplish both goals. (p. 13)

The last theme identified as limiting research productivity was the long peer-review process. According to the participants, the total reviewing process of manuscripts and book chapters is significantly too lengthy. Considering that the system has evolved and the emphasis is placed on tangible outputs, reviews should be more time-efficient. Participants' criticism is in line with literature, clearly articulating the slow process of peer-reviewed journals (Lotriet 2012).

According to a post-doctoral student:

It is quite frustrating to wait almost one year, in case of some academic journals, to receive reviews for a submitted manuscript. On top of that, you often get reviews that are contradictory in nature. One reviewer says accept and another reject. I think there needs to be a more effective system in place to speed up the waiting period and obtain some sort of clear consensus between the reviewers' comments. (Post-doctoral student, South Africa, n.d.)

We learn from scholarly literature that there are about 28 000 scientific journals across nations, publishing 2.5 million scientific articles annually (Huisman & Smits 2017; Plume & Van Weijen 2014; Ware & Mabe 2015). Huisman and Smits (2017:634) had a critical look at the peer review process, which they described as 'one of the weakest links in the process of scientific knowledge production'. As expressed by the authors, at times, manuscripts remain untouched for long periods of time 'on reviewers' desks and in editorial offices before they get evaluated' (Huisman & Smits 2017:n.p.). Such delays mean a substantial loss of time for the reviewing process. This, of course, connects to a reality that reviewers have many academic duties over and above being reviewers – a position that is rarely compensated (Moizer 2009). Writing a review may also take several weeks or even months before it gets submitted to the editor (Ware & Mabe 2015). In addition, at times, reviewers provide contradictory commentaries, which can be very frustrating for the editors and the authors.

A few participants listed rivalry between colleagues as a factor affecting meeting the expected demands. This can be interpreted as competition for limited funding, competition for professional status as well as tensions between scholars with a significant number of research outputs and those less published. To that end, McGinn's study (2012) provided evidence that displaying accomplishments in terms of research productivity could lead to envy or resentment from others. Participants in McGinn's study, who achieved success in publishing and securing external funding, reported feeling hurt, discouraged or even accused by others of having those accomplishments at the expense of teaching and supporting students. To be everything in one seems a mission impossible:

My observation is that some 'overly-enthusiastic' scholars elevate research productivity and scholarly achievements as professional virtues to unwarranted levels. Such an approach is marked by elitism and snobbishness, leading to a decline in motivation for young or less established researchers who are perceived as being inferior. In extreme cases, it even resulted in demoralising bullying tactics at the expense of younger colleagues when post-graduate students were allocated for supervision. (Research manager, South Africa, n.d.)

## ■ Professional and personal benefits

The fourth question, 'are there any benefits (professional and personal) attached to the drive towards research productivity?', is reflected in the last subsection. Box 10.4 shows the five main identified themes.

### **BOX 10.4:** Professional and personal benefits.

- Career promotion
- Development of professional skills and knowledge
- Networking and exchanging knowledge
- Visibility and professional recognition
- Personal satisfaction

Participants listed personal and professional benefits attached to the drive towards research productivity. Five participants indicated that there were no benefits or that they were unable to identify any benefits attached to research productivity.

The most commonly identified benefit was career promotion, showing participants' recognition of the strong impact of research productivity on promotion to a higher rank. MacIntosh and O'Gorman (2017), providing advice on climbing the career ladder, claimed that to demonstrate readiness for promotion, one needs to demonstrate achievements in a range of domains, including teaching, research, knowledge exchange and internationalisation. They were also clear about the fact that serious scholars need to pay attention to downloads, citations and their h-index.

Scholarly literature exploring promotion to professorship provides evidence that research productivity is the key ingredient and determinant of successful promotion (Buch et al. 2011; Crawford, Burns & MacNamara 2012; Gardner & Blackstone 2013; Matthews 2014; Wilson 2012). It was also evident in the literature that many scholars advocate for recognition of a broader range of faculty contributions for promotion criteria (Buch et al. 2011). This would reduce the number of scholars who experience career plateaus because of lower research productivity than expected by their institutions.

Some participants also recognised that the benefit of tenure and career promotion comes at a certain price:

I am very ambivalent on this issue. Among the benefits, at individual level are, for instance, that those doing well in meeting productivity demands have better economic means to support their work (e.g. for attendance to conferences, short visit abroad for research purposes, etc.) and can gain further formal academic qualification required for career progression. At the same time, research productivity contrast at times with teaching obligations, hence may provoke overwork, stress and burn out. In addition, the national and institutional criteria and standards for research productivity tend to value [a] certain type of research, while devaluing other[s]. (Associate Professor, Italy, n.d.)

The next reported benefit entails the development of professional skills and knowledge. Participants voiced the importance of being

open to collaborations and new opportunities within and outside of one's area of expertise to grow as scholars. As expressed by a doctoral student from the Netherlands, career growth is dependent on 'developing your skill and knowledge about a particular field of expertise'. It is not surprising that participants, as inquisitive researchers, recognised the value of new opportunities and associated challenges as part of their professional development:

You have to be open to new challenges, taking up subjects or projects that may not align with your expertise. This sometimes may create new opportunities for publications, or collaborations. I developed [a] completely new set of skills when [s/c] had to design and coordinate a 12-month teacher professional development programme even though I had no previous school experience. It enabled me to expand my professional skills and knowledge. (Senior Lecturer, Australia. n.d.)

In HE, there is a strong emphasis on engagement in international and interdisciplinary research where researchers can gain multiple perspectives into one phenomenon. The National Science Foundation (2004) in the USA describes interdisciplinary research as an opportunity for researchers to share perspectives, theories and techniques to inform each other and enrich their specialised knowledge and research practice. Collaborating and benefitting from a variety of knowledge and skills that each team member brings to the table is of reciprocal benefit to all involved. As stated by Mantikayan and Abdulgani (2018), scholars play a key role in advancing knowledge throughout society. Their knowledge and skills contribute to the mission and purpose of HE - to advance learning and promote human knowledge.

The above-mentioned aspects, associated with the development of professional skills and knowledge, closely connect with the third reported theme, namely, networking and exchanging knowledge. Participants were animated about the benefit of networking and the value of exchanging knowledge to research productivity. According to a senior lecturer from Poland, 'exchanging knowledge and methodology and multicultural experiences are the main benefits of networking'.

The advantages arising from different types of research collaborations and their impact on research productivity have been evidenced by several empirical studies (Ductor 2015; McFadyen & Cannella 2004). Abramo et al. (2017) claimed that to understand how research productivity is influenced by research collaboration, it is essential to know the determinants of high research performance, measurable through the quantity of tangible outputs and their impact. It is also key to realise that knowledge production demands require a spectrum of competencies from researchers, allowing them to conduct ethical, quality research (Niemczyk 2018). In fact, the increasing complexities of research, including expectations of engaging in cross-cultural, cross-disciplinary and cross-sectoral studies, often pose limits to a single researcher. One researcher does not have all the necessary knowledge and skills to undertake such complex research studies (Beaver 2001). Meanwhile, networking and collaboration allow space for the inclusion of several researchers with diverse skills and complementary scientific knowledge. It is important to note that the involvement of multiple researchers also allows for more effective use of time and division of labour. Collaborators may share their tasks effectively and thus maximise their preparation of publications and other research outputs. Collaborations have the potential to stimulate researchers' motivation to publish as it offers a way to overcome work in isolation.

The next reported theme speaks of visibility and the associated professional recognition of researchers. Several participants identified the value of creating online research profiles as the best way for scholars to showcase their work (Ward, Bejarano & Dudás 2015). Undeniably, online exposure has the potential of increasing the number of times researchers are cited and may serve as a mechanism for them to become internationally recognised:

I strongly believe in a sound combination of both credibility and visibility for every ambitious scholar. Credibility is established by high-quality research publications, while direct visibility at conferences

and other meetings is essential for effective networking. Virtual visibility – establishing and belonging to international online research communities, regular e-mail contact within networks and exposure through a well-designed social media scholarly profile – can enhance every researcher’s productivity and lead to intra- or inter-disciplinary publications of high quality. (Research manager, South Africa, n.d.)

Scholarly literature (Ale-Ebrahim & Salehi 2013; Bar-Ilan et al. 2012; Norman 2012) shows the value of publishing in high-impact online journals to increase researchers’ visibility and accessibility of their work. According to Norman (2012), research outputs should be accessible, thus visible to various online audiences. This implies that researchers’ work is accessible and downloadable for viewing and referencing by other researchers (Czerniewicz & Wiens 2013).

Current literature also highlights the importance of online research presence (Alsagoff 2012; Goodier & Czerniewicz 2012). This concept refers to individual researchers creating and managing their research profiles within a specific virtual research community on an ongoing basis. Joining a specific research community (e.g. Research Gate, Google Scholar) allows researchers not only to share and promote their work but also to network and potentially engage in collaboration with other researchers. Such academic networking is highly valuable to all productive researchers as it maximises the international circulation of their research reports in various forms. This, in turn, brings visibility and recognition to individual scholars as well as to their respective institutions (Mantikayan & Abdulgani 2018). As we learn from Wilson (2012), the academic profession is not looking for scholars who will sit back and collect paycheques. The academic profession nowadays calls for scholars who are able to set high standards for themselves, think about creative ways to be productive and attract funds to their universities.

A few participants identified personal satisfaction and increased confidence as immediate benefits attached to the drive towards research productivity:

Personal benefits include intrinsic satisfaction and an increase in confidence. Professional benefits include the fact that your work may facilitate your promotion to higher ranks. (Professor, Cyprus, n.d.)

Investigation of personal satisfaction appears to be an important focus, considering that researchers across nations experience a rise of demands in terms of research productivity. Yet, scholarly literature about job satisfaction within universities is mainly based on studies within a single country (Bozeman & Gaughan 2011; Mamiseishvili & Rosser 2010). In a recent exploration of academic job satisfaction across 12 countries, Bentley et al. (2013) showcased that most scholars in their study were satisfied with their work. 'However, the results for what factors are associated with job satisfaction were ambiguous' (Bentley et al. 2013:n.p.). As stated by the authors, it was challenging to consistently measure academic job satisfaction internationally (including research element), because 'cultural differences influence the degree of satisfaction [scholars derive] from different [aspects] of academic work' (Bentley et al. 2013:n.p.). As indicated by the authors, it is essential to define what job satisfaction means. They took in consideration the work of Locke (1969:316), who claimed that '[j]ob satisfaction is the pleasurable emotional state resulting from the appraisal of one's job as achieving or facilitating the achievement of one's job values'. Locke (in Bentley et al. 2013:n.p.) also explained that '[the] causes of job satisfaction are not in the job nor solely in man but lie in the relationship between them'. As regards research productivity, this connects to previously reported relationships between more and less accomplished researchers.

## ■ Considerations and conclusions

As is evident from the interpretation of the findings, a drive towards research productivity has both positive and negative ramifications in HE contexts. Although universities are not contributing the major part of research outputs in most countries, and admitting that a rather small percentage of universities in the world can be classified as research-intensive, increased research productivity is of crucial importance to innovation and the development of all nations. The findings show that research production requirements have an impact on individual scholars

as well as institutions who are ranked according to their research performance. Matters such as research funding, knowledge and skills development, career advancement and personal well-being, to mention but a few, are all connected with increased research productivity.

Scholarly literature shows that it is problematic to quantify research outputs because of the variety of criteria that can be used. Yet, bibliometricians point out that research can be more accurately measured than the other important HE activities such as teaching and community engagement. In fact, the volume of codified research outputs, normally in the form of scholarly publications, remains the central criterion to assess an individual scholar's productivity as well as that of the faculty or institution. In other words, publications or tangible outputs make up equal research productivity, whereby universities and individual scholars can be evaluated. Some say that these are not accurate measurements of worth or quality. Yet, opting out of this kind of evaluation means giving up on status and recognition.

As is evident throughout the research, the findings of this international qualitative enquiry to a great extent concur with the relevant literature. The data from four open-ended questions, presented in four subsections, reflect participants' perceptions and personal experiences of drives towards research productivity. The responses indicate that the majority of the participants were aware of the demands placed upon them in terms of research productivity; however, not all recognised the benefits associated with it. Although the contexts in which participants are situated play a role in the nature and strictness of the drives, and admitting that the nature of the drives has changed internationally over the past decades, the enquiry did not elicit information on the real differences between the countries involved in this study.

Reporting on the fairness of research productivity requirements, the majority of participants voiced that meeting demands is not only difficult but also not fair. It was evident that increasing demands with regard to research productivity interfere with

researchers' other scholarly duties and their personal lives. In fact, among the main reasons for not realising the expected levels of productivity were the universal clash between teaching and research, going hand in hand with excessive workloads. Participants also reported the effect of these drives on their personal time and well-being, as well as the detrimental effect on interpersonal relationships within the academic context.

Another aspect put into perspective by some participants entails compromising quality in the name of rewarded quantity. This, in turn, begs the question if research productivity pressures in terms of quantity may stimulate unethical research practice to some extent. For instance, are researchers in pursuit of tangible outputs prepared to (1) become co-authors, even in instances where they do not substantially contribute to a written piece, (2) produce an abundance of articles based on a modest dataset, (3) excessively use students' datasets instead of conducting their own original studies or (4) compromise quality of the research process at the expense of getting data in an expedited way. These queries are only hypothetical at this point and call for further research.

The majority of participants were clear about benefits deriving from research productivity and the impact thereof on their professional development and career advancement. To some extent, it was surprising to learn that a couple of participants did not see any benefits associated with meeting the requirements of research productivity. This may be because of several reasons, which, unfortunately, were not evident in the participants' responses. We can only assume that the participants were not well informed about the impact of research productivity or that they were under excessive workload pressure and thus unable to focus on research. The role of research managers and mentors is of the essence here. In fact, relationships are very important in research to achieving desired research productivity. Universities and research managers have a responsibility to nurture a research culture of support and collegiality. In a way, they are responsible

for building an institutional research community that allows for a balanced approach to research productivity – in other words, a community where the professional demands of a dynamic research environment do not interfere with or compromise personal well-being. Nurturing a supportive research culture at the institutional level benefits not only individuals but units, the faculty and the institution at large, encouraging and maybe even rewarding collaborative and carrying practices that foster a healthy approach towards research drives.

Higher education institutions are committed to building research capacity, increase research activity rankings and thus compete for research excellence. It is important to realise, however, that institutional policies and practices highly influence the productivity of researchers (Harkavy & Hartley 2012; Kyvik & Aksnes 2015). Perhaps, in the current demanding research productivity environment, more attention needs to be devoted to an institutional approach based on social justice and holistic human development. Such an approach should be about equity, inclusion and a responsibility towards well-being. To ensure that the above-mentioned principles are respected, research managers and universities as institutions need to provide the necessary support to ensure that high research productivity demands can be accomplished without compromising researchers' professional and personal well-being.

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In South Africa, democracy is based on principles of human rights, as captured in the constitution. This manuscript makes a significant contribution to the discourse on human rights, as it looks at human rights and diversity in the education context from many different perspectives. Current issues are discussed, based on recent literature and appropriate methodologies and theories. The different authors are experts in their fields, and able to capture the essence of human rights in the spectrum of the South African education system, related to the different topics, with authority. The structure of the manuscript is appropriate, as it moves from underpinning issues such as policy, law and an international perspective to issues particular to our own educational context. These include problems that schools and society are grappling with, including religious diversity in schools within a non-secular state, the important problem with violence and aggression in South African schools, and the complexity of inequalities in terms of education provision as a result of different skills capacities of teachers.

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This book is a critical treatise exploring how the struggle for human rights permeates diverse education contexts in South Africa. Interestingly, with dominant discourse on human rights maintaining that it is only through education that human rights might be disseminated and society be socially transformed, this volume alerts us to the hazards of such dominant thinking. Instead, critical readers of this volume will quickly realise that the education frontier is where human rights are fraught. The court battles that many of the chapters in this volume foreground are testimony to the fact that human rights do not reside in eloquently crafted constitutions and international conventions but are rather hotly contested in the everyday experiences of learners and educators. This book is a must read for policy makers and academic scholars. It is urgently needed in the research and policy market.

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