

**LEGAL ANALYSIS OF THE RIGHT TO EDUCATION: ADEQUATE EDUCATION
FOR BORDERLINE LEARNERS**

By

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DECLARATION

I, Makoma Evelinah Molokwane, declare that the Mini-Dissertation hereby submitted to the University of Limpopo, for the degree of Maters of law: Human Rights, Educational Law, Children's Rights, has not previously been submitted by me for a degree at this or any other university, that is my work in design and in execution, and that all material contained herein has been duly acknowledged.



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Molokwane ME

22/01/2020

Date

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ABSTRACT

The history of the South African education system is one that is tainted by inequalities and restricted access. The Bantu educational system, with its racially separated education facilities, ensured that the black child stayed a marginalised group. Within the new constitutional dispensation, the hope existed that all students will have access to equal levels of quality education, with Section 29 of the Constitution specifically guaranteeing that everyone has the right to basic education. To repair the injustice and discriminatory practices of the past, a system of inclusive education has been introduced, with the aim of granting educational access to all children. However, it has become apparent that this system could be perpetuating a form of the injustice that it aimed to fight. Inclusive education, with the aim of making no distinction in the student body, is creating a new marginalised student: the borderline student. These are students who do not have a cognitive impairment, but have what is known as a “below average IQ”. Recent studies show that, for many of these students, the inclusive education system is failing to address their unique educational needs, limiting their participation and pushing them to the peripheral edge of the educational system. This is a complex and serious problem that needs to be addressed at a policy level. This legal-educational presentation aims to provide an exploration of the borderline student and addresses the question as to why they are falling between the cracks of the inclusive education system.

Keywords: education, borderline students, discrimination, dignity, inclusive education

Chapter 1: Introduction

The history of the South African education system is one that is tainted with inequalities and restricted access. After 1994, the democratically elected government inherited an education system that was characterised by racial discrimination and disproportionate distribution of resources. Historically, the so called 'white schools' (also referred to as Model-C schools) received more funding, better qualified educators and resources than the schools of other racial groups.¹ During the apartheid era, the right to access to adequate basic education was offered to the white minority while the marginalised black majority was provided with an inadequate level of basic education. The apartheid government made it clear that *Bantu Education*²

was designed to teach black children how to be drawers of water and fetchers of wood for the white community, regardless of one's abilities and aspirations.³

The free basic education that was offered to the black majority restricted them to hold certain positions while white minority's educational system gave them an opportunity to obtain better, professional employment.⁴

After the apartheid legal system, which also did not cater for the educational needs of the disabled,⁵ was abolished, South Africa moved into an era of transformation. With democracy came a Constitution that, for the first time, recognised the right to basic education as a fundamental human right for all.⁶ Section 29 recognises the need to redress the injustice of the apartheid government with regard to the right to basic education.⁷ As such there are legislative measures which were enacted for the realisation of section 29 of the Constitution and prohibiting any act of discrimination when realizing the right to education.⁸

¹ Newman, Fine and Ashman "The developmental state and post liberation South Africa" 23-45.

² Bantu Education Act 85 of 1909.

³ Baard and Schreiner *My Spirit Is Not Banned*. Bauer P Bantu Education Act South Africa [1953] <https://www.britannica.com/event/Bantu-Education-Act> accessed 02 June 2018. Unequal education: apartheid's legacy

https://ccnmtl.columbia.edu/projects/caseconsortium/casestudies/130/casestudy/www/layout/case_id_130_id_919.html accessed 02 June 2018.

⁴ Hartshorne *Crisis and challenge: Black education* 1-394.

⁵ Read *South African Human Rights Council Report: Towards a barrier-free society* 3, 2002.

⁶ Nuugweda *An educational law perspective on early childhood development provision in rural Namibia* 99.

⁷ S 29 (2) (c) of the Constitution of the Republic of South Africa, 1996(hereafter referred to as the Constitution).

⁸ S 29 (1) (b) & (3) of the Constitution.

The right to basic education is also recognised in international instruments which South Africa is party to, for example it is articulated in Article 26 of the *Universal Declaration of Human Rights*⁹ together with the *African Charter*¹⁰ (article No. 25). In South Africa, the government regards basic education as the cornerstone of any modern society and that this right aims to give all citizens equal opportunities.¹¹

Within the framework of this transformative constitution and international standards, South Africa now provides for inclusive education.¹² However, there are not enough schools that provide adequate basic education for those learners that are not intellectually disabled, but intellectually challenged (hereafter referred to as borderline learners)¹³ and a situation is arising where their rights to basic education is being limited.

2 Problem statement

The end of the apartheid era and the beginning of the constitutional dispensation, the democratic government of South Africa aimed to extend and transform the education system. As a way to amend past injustices the right to basic education was thus included as a fundamental human right enshrined in the Bill of Rights Section 29(1) (a) of the Constitution.¹⁴

One of the ways in which this right is fulfilled is by means of inclusive education.¹⁵ If a student cannot be accepted in a mainstream inclusive school, there also exist state funded schools for mentally disabled learners.¹⁶ Although these two main groups are technically provided for, there exist a group of learners that are seemingly falling through the cracks South Africa provides for inclusive education. There is a dire shortage of schools that provide adequate basic education for borderline children. The

⁹ As adopted and proclaimed by General Assembly Resolution 217A (III) on 10 December 1948.

¹⁰ A 25 of the African Charter on Human and Peoples' Rights (1981).

¹¹ White Paper Notice 196 Education and Training (March 1995).

¹² Inclusive education can be defined as a system where "all students attend and are welcomed by their local schools in age-appropriate, regular classes and are supported to learn, contribute and participate in all aspects of the life of the school." <http://www.inclusionbc.org/our-priority-areas/inclusive-education/what-inclusiveeducation>.

¹³ Borderline Intellectual Functioning, also called borderline mental disability, is a categorization of intelligence wherein a person has below average cognitive ability (generally an IQ of 70–85) but the deficit is not as severe as intellectual disability (below 70). It is sometimes called below average IQ (BAIQ). This is technically a cognitive impairment; however, this group may not be sufficiently mentally disabled to be eligible for specialized services. Further discussed in chapter 2.

¹⁴ S 29(1) (a) of the Constitution.

¹⁵ Note 11 above.

¹⁶ Miles and Singal 2009 *International Journal of Inclusive Education* 1-20.

right to access to adequate basic education and the aims of inclusive education entails meeting all the needs of learners including the intellectually challenged learners. Hence, adequate education means different things to different learners.

The South African education system only provides for two groups or categories of learners, the so called “normal learners” and disabled learners. In this distinction it is uncertain where borderline students fit and whether their right to basic education is being fulfilled?

3 Hypothesis and assumptions

3.1 Assumptions

- a) Borderline learners do not fit in the requirement for ‘normal’ nor disabled learners, their intellectual capacity places them outside the scope of both ‘normal’ and disabled learners.
- b) Borderline learners in South Africa are also, by virtue of section 9 and 29 of the Constitution and other international instruments, entitled to have access to adequate basic education.

3.8 Hypothesis

The current South African education system is not fulfilling the right to basic education for borderline students.

4 Literature review

Different scholars and writers have their assertion on what the right to basic education is, whereas some share the same assertions and definitions others argue that the right to basic education is a core human right internationally. The education that is being provided is not adequate and that it doesn’t meet the requirements of adequacy. On the other hand, case law sets out the duties of school districts in ensuring that the rights to basic education of all learners are realised.

Mavimbela¹⁷ argues that public education is intended to readdress the injustices of the apartheid regime. This supports the assertion that the right to adequate basic

¹⁷ Mavimbela *Learners' right to education and the role of the public school in assisting learners to realize this Right 40.*

education seeks to readdress the past injustices of the apartheid regime in the sense that the current free basic education that is offered to all individuals meets the requirements that the person require to occupy good job positions. Netshitahame¹⁸ argues that due to the change of the educational system the development led to the right of education being given the status of a 'core' human right. Chrizzell¹⁹ supports the assertion of Netshitahame²⁰ by stating that the right to basic education as written in the Constitution is regarded as a fundamental human right because it promotes both social and economic well-being of the country and people. Taiwo²¹ agrees with them by stating that if or when the right to adequate basic education is denied it precludes the enjoyment of all other rights.

In Rao's²² discussion he quotes Lord Bryce who already in 1921 cautioned that:

do not give to a people institution for which it is unripe in the simple faith that the tool will give skill to the workman's hand.

Taking into account the caution of Lord Bryce, the provision of inadequate education that does not equip borderline students with knowledge that help them cope in the corporate world is a waste of State resources. Akbar²³ supports Lord Bryce in arguing that the State must provide adequate facilities for the realisation of the right to basic education for all educational classes. Taiwo²⁴ agrees with them by stating that the right to basic education is an empowerment right which is given wide recognition not only in the South African Constitution but also in a number of important national, regional international human rights instruments. He further argues that the right to basic education which is multiplying in effect, where it is properly given recognition and application, enhances the enjoyment of all other socio-economic rights and freedoms.²⁵

Netshitahame²⁶ argues that the rights in the Bill of Rights, as enshrined in the Constitution, are provided for all persons in the country regardless of one's disability,

¹⁸ Netshitahame *An analysis of learners knowledge and understanding of human rights in South Africa* 87.

¹⁹ Taiwo *The implementation of the right to education in South Africa and Nigeria* 39.

²⁰ Chrizzell *Child's right to a basic education: a comparative study* 55.

²¹ Note 19 above.

²² Rao 2008 *Journal of the Indian Law Institute* 585.

²³ Akbar 1952 *The Indian Journal of Political Science* 90.

²⁴ Note 20 above.

²⁵ Note 20 above.

²⁶ Note 19 above 25.

which entails that the right to adequate basic education doesn't mean basic education for only normal children but for all children inclusive of the disabled. According to Netshitahame, everyone, regardless of their citizenship or nationality, who is within the territory of the Republic of South Africa, is entitled to exercise the rights as enshrined in the Constitution, as they are the bearer of the rights in the Constitution and this applies to children, adults, citizens and aliens.

Mokate²⁷ states that the right to basic education is a constitutionally protected right that is guaranteed to every child in South Africa, it is a central right which cannot be restricted by the means of available resources, progressive realisation of the right and reasonable legislative measures which are applicable to other socio-economic rights. Girma²⁸ agrees with Mokate by stating that the right to basic education includes access to basic education by children with disabilities.

The *White Paper 6* acknowledges that the most vulnerable group in South Africa with regards to education are learners with disabilities and impairments (learners with intellectual ability).²⁹ In *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa and Another*, Molteno³⁰, stated that:

It is my professional experience and opinion that children with profound or severe intellectual disability are able to benefit very substantially from appropriately designed and supported educational programs. Their needs are substantially greater than those of children without these disabilities.

This case give light to the fact that it is not every learner who can strive or acquire knowledge in inclusive education who has intellectual disability.³¹

This study focuses on the right to access to adequate basic education as a fundamental human right both nationally and internationally taking into account the

²⁷Mokate Charter of children's basic education rights *South African Human Rights Council* 2012 available at http://www.sahrc.org.za/home/21/files/SAHRC%20Education%20Rights%20Charter_Part1.pdf Accessed on 19/04/2018.

²⁸Girma A Charter of children's basic education rights *South African Human Rights Council* 2012 available at http://www.sahrc.org.za/home/21/files/SAHRC%20Education%20Rights%20Charter_Part1.pdf Accessed on 19/04/2018.

²⁹White Paper issue paper 6 Special Needs Education (July 2001).

³⁰*Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa and Another* 2010 5 SA 87 (WCC) para 544.

³¹*Newport Mesa Unified School District v State of California Department of Education* No. SACV 04-512-GLT (ES) (California) (2005) 317 (United States District Court, Southern Division).

different legal systems that have been put into place nationally and internationally for the realisation of this right. This study will be done from the same premise that have been given by authors such as Netshitahame,³² namely that the right to basic education is a core human right and the South African educational system is not fulfilling this right.

5 Aim and Objective

This research aims to do legal analyses of the realisation of the right to access to adequate basic education for intellectually challenged children in South Africa. Therefore, it will establish whether there is a need to categorise learners in terms of intellectual abilities in public school in order to ensure effective realisation of right to basic education.

The objectives of the research are as follow:

- To analyse the right to basic education;
- To define access to adequate basic education;
- To ascertain what adequate basic education for disabled learners entails; and
- To investigate the extent to which this right is being fulfilled with regard to borderline students.

6 Significance of the Study

This research study seeks to address, analyse and define section 29(1) of the Constitution with regard to the needs of borderline students. Furthermore, to ensure that there is effective realisation of the right to access to adequate basic education, irrespective of the intellectual capacity of a learner.

7 Limitation of the study

This research study is be limited to the investigation of the right to basic education within the public sector, therefore state funded education. The issue of language, religion and culture when providing the right to education is not dealt with. This study is be limited to the right to basic education for borderline students.

8 Research Methodology

³²Note 19 above.

Research entails the gathering, evaluation and analysis of primary and secondary sources of law. Hence, the research methodology that is to be adopted is the qualitative research method. The Constitution provides for the right to basic education and serves as the supreme law of the country, thus any law inconsistent with its provisions is invalid. Legislation provides clear understanding of the provisions of the Constitution. Additionally, the judicial precedents and international law assist in the interpretation and application of the rights as entrenched in the Constitution.³³ Legal writings provide a broader understanding of the concept of rights.

The dissertation starts with a discussion of the vulnerable condition of children with intellectual challenges or the so called “borderline students” residing in South Africa. It focuses on the arguments of various writers with regard to the right to adequate basic education for intellectually challenged learners in public schools internationally and nationally. Legislative framework, international, national and regional will be analysed in order to evaluate what the law states with regard to right to access to adequate basic education for such students. Legislation will also assist to ascertain as to what extent this right is being enforced or applied focusing on basic educational rights of borderline students in South Africa taking into account the cognisance of the Constitutional dispensation and basic educational right as guaranteed in terms of national, regional and international law.

In addition to this, the general principles governing right to basic education is analysed in order to determine the content of this right. This will demonstrate that children with intellectual challenges require special care and protection and that all educational matters relating to such a child must be adjusted with their best interest in mind. Therefore, within the context provided by these principles the right to access to adequate basic education is interpreted in conjunction with the States obligation in section 29 of the Constitution. Only when the right to access to adequate basic education is defined will the limitation be tested. This study argues that these limitations are not justifiable when read within the context provided and creates a disjunction between the right to adequate basic education for the so-called normal children and the disabled children and that which the intellectually challenged child is

³³ See S 39 (1) (a)-(b) of the Constitution.

entitled to. This will serve to illustrate that the intellectual capacity of a child should not be used as a barrier to their access to adequate basic education.

In light of the above analysis the implementation of the right to access to adequate basic education for borderline students within South Africa will be evaluated. By comparing the right which intellectually challenged children have with regard to access to adequate basic education are entitled to both international and national laws this study argues that the restriction of their educational rights is unjustified and the current situation makes the unalienable and inviolable right to access adequate basic education unenforceable and rendering them rightless to this right and forcing them to remain uneducated or homeschooled.

9 Outline of the chapters

Chapter 1

This chapter consists of an introductory where the problem statement, the aim and objective of the research study, the literature review and a brief overview of the research study are outlined.

Chapter 2

This chapter focuses on the theoretical legal framework of basic education in South Africa with regard to the right to basic education as enshrined in the Constitution. The research study establishes what adequate basic education is and whether the current educational program caters for the needs of all children or only for a particular class. The study also considers the Children's Act, The South African Schools Act, White Paper 5 and 6, judgment in decided cases, and international instruments and their relevance in promoting inclusive education.

Chapter 3

This chapter examines the legal and theoretical framework of inclusive education. It looks at the brief history of Bantu education, the relation between inclusive education and social justice, the aim of inclusive education, it establishes what inclusive education is in accordance with the White Paper 6, judgement in decided cases and also international instruments, it also investigates whether inclusive education benefits the borderline child/student.

Chapter 4

This chapter examines the current inclusive education system in South Africa. This is done by investigating the teaching quality, teacher training, creativity in teaching, the effect of classroom size to the learners/students, the state of South African teachers. It further investigates the quality/adequacy of education facilities which includes classroom size, proper temperature and control of temperature and sanitary facilities.

Chapter 5

This chapter focuses on whether the categorisation of students amounts to unfair or fair discrimination, this will be determined by analyzing the application of section 9 of the Constitution as applied in the case of *Harksen v Lane* and also investigates what human dignity mean to the borderline student.

Chapter 6

This chapter consists of recommendations and a conclusion.

Chapter 2: A theoretical and legal framework of basic education

2.1 Introduction

Section 29 of the Constitution provides every student with the right to basic education. This right complements the global notion of access to education.³⁴ However, when conducting research surrounding the definition and understanding of basic education within South Africa, one quickly finds that there is no definite or clear definition.

This is clearly problematic as a vaguely defined right leads to, amongst others, legal uncertainty.³⁵ Within this indeterminate arena of basic education, it will, for example, prove difficult to ensure compliance with section 29 of the Constitution by the State. One can hardly enforce what you cannot define. The ambivalence surrounding the right to basic education is in urgent need of a resolution. This is perhaps best illustrated by recent statistics that show that the majority of South African learners are innumerate

³⁴ United Nations Children's Fund (hereinafter referred to as UNICEF) 2017 <https://www.unicef.org/education> accessed 02/04/2019 "On any given school day, over 1 billion children around the world head to class. More children and adolescents today are enrolled in pre-primary, primary and secondary education than ever before." "Education is the manifestation of divine perfection which already exists in man". – Swami Vivekananda (1863 – 1902). Such manifestation is the outcome of the development of the individual in all aspects namely physical, intellectual, emotional and spiritual. The education, one receives, is the greatest input for advancing towards this objective since education helps the total development of human personality. Education holds the key to human progress. Education plays an important role in bringing change. The Education Commission (1964-1966) has emphasised, 'Education is the one and the only instrument that can be used to bring about a change towards the social and economic betterment of India'. So, education must be used as a powerful instrument of social, economic and cultural transformation necessary for the realisation of the national goals. Inculcating 'Social Responsibilities' and 'National Integration Values' are a few of the national goals. The teachers with good leadership traits are required in this regard. The prospective teachers, during their education, should be sensitised in this regard. <http://www.lisbdnet.com/basic-concept-education/> accessed 17/01/2020.

³⁵ D'Amato 2010 *Northwestern University School of Law Faculty Working Papers 108* 1-53. <http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/108> accessed 02/04/2019. States that by "legal uncertainty" I mean the situation that obtains when the rule that is relevant to a given act or transaction is said by informed attorneys to have an expected official outcome at or near the 0.5 level of predictability." Maxeiner 2009 *Houston Journal of International Law* 15. Provides that "The legal system needs to permit those subjects to the law to regulate their conduct with certainty and to protect those subjects to the law from arbitrary use of state power. Legal certainty represents a requirement that decisions be made according to legal rules, i.e. be lawful. The concept of legal certainty may be strongly linked to that of individual autonomy in national jurisprudence. The degree to which the concept of legal certainty is incorporated into law varies depending on national jurisprudence. However, legal certainty frequently serves as the central principle for the development of legal methods by which law is made, interpreted and applied". https://www.jstor.org/stable/3480139?seq=1#page_scan_tab_contents accessed 02/04/2019.

and illiterate.³⁶ Chiedza³⁷ explains that these statistics are proof that the State is failing to ensure that every child receives basic education and it has become vital that the focus must shift to firstly properly defining basic education. A nationally accepted definition of basic education would provide guidance to the Department of Education and assist in ensuring that all relevant parties are fulfilling their obligation to provide basic education to learners.

There are two basic understandings of the right to basic education.³⁸ The first links fulfilment of the right to a required minimum period of schooling (time-based approach).³⁹ The second looks past the semantics and measures the fulfilment of the right to basic education as directly correlated to the quality of the available education (the adequacy-approach).⁴⁰ These two approaches are discussed in more depth throughout the chapter. This study agrees with most policy makers⁴¹ and the courts, by favoring the adequacy-based approach, whilst still acknowledging the time factors linked to basic education.

Although this study focuses on the adequacy-based approach, a brief overview of the time-based approach will be included. Supporters of this approach defines basic education as a minimum period of time that a student is enrolled in school. According to the *South African Schools Act*,⁴² a student has to attend school for 10 years or to the age of 15, whichever comes first.⁴³ According to this approach, irrespective of the quality of education, the right to basic education will be met if the time periods are being met.

³⁶ Spaul 2011 *Southern and Eastern African Consortium for Monitoring Educational Quality Working Paper 8* 1-75. Spaul 2013 *Centre for Development and Enterprise* 1-65. Spaul 2013 *International Journal of Educational Development* 436-447. Hungi, Makuwa, Ross, Saito, Dolata, van Capelle 2005 *South and Eastern Africa Consortium for Monitoring Educational Quality* 1-56. Ross, Saito, Dolata, Ikeda, Zuze, Murimba 2005 *South and Eastern Africa Consortium for Monitoring Educational Quality* 1-342. "SA's child illiteracy time bomb" Pretoria News (15 December 2017) <https://www.iol.co.za/pretoria-news/sas-child-illiteracy-time-bomb-12427420> accessed 24 September 2019.

³⁷ Simbo *Law democracy & development: Defining the term basic education in the South African Constitution: An international law approach* 477-500 <http://dx.doi.org/10.4314/idd.v16i1.9>. Simbo refers to the writings of Parker F "Myths busting the matric pass rate" <http://mg.co.za/article/2012-01-07-myth-busting-the-matric-pass-rate> (accessed 27 July 2012). Woolman and Fleisch *Constitution in the Classroom* 113.

³⁸ *ibid* 172.

³⁹ *ibid*.

⁴⁰ *ibid*.

⁴¹ The Schools Act.

⁴² Note 44 above.

⁴³ S 3 (1) of the Schools Act.

In an attempt to analyse the understanding of basic education, this study discusses basic education as defined by the Constitution, *White Paper 6*, the *United Nations Convention on the Rights of the Child*⁴⁴ and the *World Declaration on Education for All*.⁴⁵

2.2 The Constitution: Section 29

In the post-apartheid era, the Constitution marked a dramatic shift with regards to the obligations of the state to provide basic education for all children.⁴⁶ The right is encapsulated in section 29 of the Constitution:

Everyone has the right –

- (a) to a basic education, including adult basic education;
- (b) which the State through reasonable measures must make progressively available and accessible

In order for the State to realise this right to education, it released a National Development Plan which aims to establish a country in which, by the year 2030, all citizens, including those with disabilities, will be given adequate basic education that will enable them to grasp the opportunities available. However, irrespective of the perceived value placed on the right to education, Section 29(1)(a) provides no understanding or meaning of what constitutes basic education.⁴⁷

However, regardless of the lack of definition, the section does provide us with an indication of the obligation of the state. Firstly, with regard to the unqualified nature of the right and secondly, the negative and positive duty imposed.

2.2.1 The unqualified nature of the right

⁴⁴ United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series (1577) 3. The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entered into force on 2 September 1990, in accordance with A 49.

⁴⁵ World Declaration on Education for All 1990. Adopted by the World Conference on Education for All, Jomtien, Thailand, 5- 9 March 1990.

⁴⁶ Malherbe 2004 *European Journal for Education Law and Policy* 49.

⁴⁷ Manuel, MP Minister in the Presidency, On Behalf of the National Planning Commission *National planning commission, national development plan* 2011.

Human rights fall into three, different yet not so different, categories namely qualified rights⁴⁸, unqualified rights⁴⁹ and absolute rights.⁵⁰

Unqualified or an absolute right, are those rights of which the realisation of the right is not subject to limitation of budgetary constraints of progressive realisation. ⁵¹ It is a basic human right that may be limited by government or court of law only where exercising that right will encroach on other peoples' rights or group of persons. Subject to the limitation clause found in section 36 of the Constitution.⁵² A qualified right on the other hand however has different qualifiers to an unqualified right,⁵³ in this case the State can lawfully limit the right as provided in the constitution not realising it as an immediate right when there is a need for the State to interfere.⁵⁴ From the above

⁴⁸ Batende CPK Daily monitor "Qualified rights are rights that the State has the right to interfere with namely a right to life (one could be sentenced to death), the right to private life and family life, freedom of thought, conscience and religion; freedom of expression, assembly and association".

⁴⁹ An unqualified right is that right that the State cannot interfere with and its applied as put in the Constitution examples of an unqualified right are enjoyment of property and, to some extent, the right to education.

⁵⁰ Absolute rights are those that no one has a right to interfere with for instance, the right to fair trial, etc.

⁵¹ Coomans *Reviewing Implementation of Social and Economic Rights: An Assessment of the "Reasonableness" Test as Developed by the South African Constitutional Court* 170 states that a number of "unqualified" social and economic rights can be identified. They are unqualified, because they do not contain references to reasonable measures, available resources and progressive realisation. These include the right to basic nutrition, shelter, basic health care services and social services, as well as basic education, including adult basic education. Sections 28(1)(c) and 29(1)(a). Section 29(1)(b) lays down the right to further education, which the state, through reasonable measures, must make progressively available and accessible. This right does not have a reference to "available resources".

⁵² S 36 of the Constitution provide as follows: (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

⁵³ Note 53 above. "There are provisions on the basis of which "everyone has the right to have access to" adequate housing, health care services, sufficient food and water and social security. The state has an obligation to take "reasonable legislative and other measures, within its available resources, to achieve the progressive realisation" of these rights. Due to inherent limitations on state resources, these rights may be characterised as "qualified" social and economic rights. Secondly, a number of "unqualified" social and economic rights can be identified." See also S 26(1) of the Constitution reads: Everyone has the right to have access to adequate housing. Section 27(1): Everyone has the right to have access to – (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance; S 26(2) and 27(2) are almost identical: The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right / of each of these rights."

⁵⁴ S 26(1) reads: "Everyone has the right to have access to adequate housing." S 27(1): "Everyone has the right to have access to – (a) health care services, including reproductive health care; (b) sufficient food and water;

definitions of an absolute right and a qualified right they are different and entail the alternative of each other.⁵⁵

From the text of section 29(1) one can, from the lack of an internal qualifier, deduce that the fundamental right to access to basic education is unqualified⁵⁶ and therefore must be directly and immediately implemented.⁵⁷

2.2.2 *The positive and negative duty of the State*

The judiciary recognises that the lack of internal qualifier entails both a positive and negative component, for example in the case of *Ex Parte Gauteng Provincial Legislature*⁵⁸ the court held that:

...(section 29(1)(a)) creates a positive right that basic education be provided for every person and not merely a negative right that such a person should not be obstructed in pursuing his or her basic education.⁵⁹

The Constitution therefore grants the right but does not support or disregard either the adequacy or time-based approach. The focus is more on the obligation on the state to actually deliver education and within this deliverance it is evident that both a negative and a positive duty rests on the state.

The idea of positive and negative rights and correspondent duties have been discussed and developed in depth by various philosophers. Philosophers identify the

and (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance"; S 26(2) and 27(2) are almost identical: "The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right / of each of these rights."

⁵⁵ Cayman Constitution shaping our future together 2010-08-16. "The Difference between Absolute, Limited and Qualified Rights- Not all rights are written in the same way. The Bill of Rights uses these terms in defining them. Absolute rights. These rights cannot be limited in any way. They cannot be reduced or amended. Examples include the right to protection from slavery or torture. Limited Rights. These rights come with exceptions. An example is the right to liberty, which can be lawfully restricted. Lawful arrest is an example of a limited right." Qualified Rights. Government interference with these rights is allowed in special circumstances, and only when necessary in a democratic society. The interference must fulfill a pressing social need; pursue a legitimate aim; and be proportionate to the aims being pursued. An example is government restrictions on the right to assembly and association, in order to calm a riot <http://www.constitution.gov.ky/www.constitution.gov.ky/portal/pageb59e.html> accessed 15 October 2019

⁵⁶ Which is unlike the right to social security which is limited by section 36 of the Constitution.

⁵⁷ Woolman and Bishop "Education" 57-11; Seleoane "Right to Basic Education" 224-225; *Viljoen International Human Rights Law in Africa* 549.

⁵⁸ *Ex Parte Gauteng Provincial Legislature: In Re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995*, 1996 3 SA 165 (CC) para. 9.

⁵⁹ *Ibid.*

difference between positive and negative right.⁶⁰ In basic terms, the realisation of a negative right is not subjected to an action of another individual or a group of people, rather it permits and obliges inaction as part of full realisation.⁶¹ For example, the right to freedom of speech is a negative right in the sense that the State should not hinder a citizen from practising this right. No action is demanded from the state for realisation, but rather inaction.⁶² On the hand a positive right is a right that fulfilment is subjected to an action, or another individual or group of people, it permits and obliges action. For example, the right to healthcare places a duty on the State to act positively and provide health care services, therefore the State must act to fulfil the right.⁶³

Liebenberg⁶⁴ argues that human rights require both negative and positive conduct from the state and different resources to ensure their realisation.⁶⁵ Therefore, the State has a positive and negative duty to satisfy the essential levels of human rights.⁶⁶ This is in accordance with international agreements, for example States that have ratified the International Covenant on Economic, Social and Cultural Rights must adopt a detailed plan for the realisation and implementation of the right to basic adequate education for all persons.⁶⁷ As such these rights are deemed as capable of being of immediate application and unconditional implementation. Due to the fact that the right to education is unqualified, this entails that the realisation should immediate.⁶⁸ Negative duties are regarded as suitable for enforcement against complaints of individuals violation of independent body of experts.⁶⁹

⁶⁰ Note 58 above.

⁶¹ Ibid "A negative duty was seen as a forbiddance on the state not to conduct or act in a certain manner for example not to torture transgressors of the law"

⁶² S 16 of the Constitution.

⁶³ Mattperman *The difference between negative rights and positive right* states that J.P. Moreland, professor of philosophy at Biola University January 30 provides that "Positive rights are often associated with second and third generation rights and negative rights are associated with first generation rights" <http://mattperman.com/2009/01/the-difference-between-negative-rights-and-positive-rights/> accessed 16 October 2019.

⁶⁴ Liebenberg 1995 *South African Journal on Human Rights* 359.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ In addition to a mandatory reporting procedure (Art 40), States Parties to the International Covenant on Civil and Political rights may declare acceptance of a system of inter-state complaints (Art 41 to 43) and may ratify the First Optional Protocol, 1966. This Protocol provides for individual complaints of violations of the rights to the Human Rights Committee, an independent, expert body of eighteen members established under the Covenant. With regards to basic education, apart from judicial remedies, implementation will include, amongst

Liebenberg⁷⁰ goes further to argue that the majority of economic and social rights do not impose only a positive duty on the State. Social rights and economic rights are seen as imposing a positive duty on the State to ensure their full realisation as such the State has the duty to ensure that resources are available to ensure their realisation.⁷¹ The State has both a positive and negative duty in providing basic education to the borderline child in that the State need to ensure that the borderline child has access to adequate basic education, has adequate educational infrastructure and skilled teachers to educate him/her while it has a negative duty to ensure that the borderline child doesn't go to school when the weather dictates otherwise or is dangerous for the borderline child to go to school for that day to ensure their safety. This would imply that the State has the obligation to repeal any legislation that is discriminatory and doesn't conform or promote the positive measures to ensure that poverty and other structural factors impeding on the equal enjoyment of education.⁷² The duty to protect human rights places a positive duty on the state especially in situations where a non-governmental actors can effectively undermine or encroach on the right in question.⁷³ This can be seen when those that are tasked with education of such learners fail to ensure that they meet their educational needs.

Form the above it is quite clear that the right to provide adequate basic education, as found in sec 29(1) of the Constitution, to all learners, places a duty on the state to make it possible for all learners to attain it. Furthermore, this right should be realised without any internal qualifiers or arguments of progressive realisation. In order for this to be realised the State must put in place educational facilities, equip teachers and resources to provide for the educational needs of all learners, including those with borderline functioning.

others, educational nature (what is this?) as well as adaptation of policies and comprehensive plans by the government.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Section 28 and 29 of the Constitution. The 'Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly para 38. The 'Limburg Principles' were adopted in June 1986 by a group of respected international experts, and are regarded as an authoritative guide to the interpretation of States Parties' obligations under the Covenant on Economic, Social and Cultural Rights.

⁷³ On the general question of the horizontal applicability of human rights obligations, see Forde1985 *British Yearbook of International Law*. Alkema EA *The third-party applicability or 'Drittwirkung' of the European convention on human rights*. Matscher and Petzold (eds) *Protecting human rights: the European dimension. Studies in honour of Gérard J. Wiarda*. Carl Heymanns Verlag KG, Köln

2.3 The South African Schools Act 84 of 1996

The Act was enacted in order to give effect to the right to access to basic education for all persons in South Africa in the Constitutional dispensation. The *Schools Act* defines education for purposes of section 29(1)(a) as “level of education that covers a period of 10 years up to grade 9 or the age of 15 years, whichever comes first.”⁷⁴ The Act doesn’t provide a comprehensive definition of what constitute basic education rather it provides that every child in South Africa has a right to basic education as provided in the Constitution.⁷⁵ It goes further to provide the age groups of those whom basic education should be provided and also the minimum school going age.⁷⁶ The purpose of the Act was to make provision for legislation that will lay an obligation on the government to make financial provision in the education sector.⁷⁷

2.4 The Children’s Act 38 of 2005

This Act provides that all children have a right to education,⁷⁸ but similarly to the Constitution, it provides no definition of what is basic education or what constitutes basic education. It however provides for the best interest of the child thus the provision of adequate basic education then shall be in the best interest of the borderline child. It is thus of paramount importance to observe and to also implement adequate basic education that is in the best interest of the borderline child in South Africa.

This Act provides that the best interest of the child is of paramount importance, in line with section 28 of the Constitution. In all matters concerning the child their best interest must be taken into account. The *World Declaration on the Rights of the Child* also provide that children must be consulted in matters concerning the child and they must be heard.⁷⁹ The Children’s Act also state that all children have the right to basic education.⁸⁰ It however also doesn’t provide the definition and scope of what basic education is. The Children’s Act read in conjunction with section 28 of the Constitution both provide that the best interest of the child is of paramount importance and the right

⁷⁴ Section 3 (1) of the Schools Act 84 of 1996 see also Murungi, 2015 *Potchefstroom Electronic Law Journal* 360.

⁷⁵ S 29 (1) of the Constitution and S 14 (2) (a) of the Schools Act.

⁷⁶ Note 81 above.

⁷⁷ S 34 (1) of the Schools Act 84 of 1996.

⁷⁸ Section 1 (1) (e), section 11 and section 158 of the Children’s Act.

⁷⁹ Article 12 of the World Declaration on the Rights of the Child.

⁸⁰ Note 78 above.

to basic education is in the best interest of the child. Children with borderline intellectual functioning also have a right to adequate basic education as this will be in the interests of the borderline child.

2.5 *White Paper 5 on Early Childhood Education*

The *Education White Paper 5* deals with early childhood education and meeting the challenge of early childhood development in South Africa, with specific focus on the provision of basic education. The paper emphasises that every child in South Africa has the right to access to basic education at an early stage in life.⁸¹ It focuses on the basic educational needs of learners. *White Paper 5* discusses basic education for all learners without distinction of their intellectual capacity. In order to accommodate all learners, the government thought it best to introduce a new legislation to make provision for the needs of various students.

2.6 *White Paper 6*

White Paper 6 acknowledges that the government has a special responsibility with regard to education to ensure that all learners with or without disabilities pursue their learning potential to the fullest.⁸² Nevertheless, *White Paper 6* contains conflicting statements, especially with regards to the understanding of basic education.

For instance, the document initially recognised the definition of basic education as defined in the World Declaration on Education for All,⁸³ which defines basic education in terms of the learning needs appropriate at the age and experience.⁸⁴ This recognition suggests that the Department of Education was adopting a definition of basic education which equates it to the meeting of the learning needs of all learners in South Africa. Therefore, at the outset it seems the *White Paper* is following the adequacy approach.

⁸¹ White Paper 1 on Education and Training of 1995. Education White Paper 5 on Early Childhood Education page 21 para 3.2.1. provide that "Informed by the constitutional provisions on the provision of basic education to all South Africa's children, Education White Paper 1 on Education and Training on the public provision of one year of Early Childhood Development (the Reception Year), and the Interim Policy on Early Childhood Development that provided a framework for Early Childhood Development from age 0 to 9 years, the Department of Education in 1997 launched the National Early Childhood Development Pilot Project."

⁸² White Paper 6 2001 Department of Education Department of Basic Education 11. White Paper on Education and Training 1995, para. 12.

⁸³ World Conference on Education for All Meeting Basic Learning Needs Jomtien, Thailand 5-9 March 1990

⁸⁴ Department of Basic Educ., White Paper on Education and Training (1995), para. 12.

The disjunction exists later in the text, when it then states that for the purposes of basic education in section 29(1)(a) of the Constitution the right is defined by the total length of time which the State provide a child with education.⁸⁵ This is clearly indicative of the time-based approach. This type of approach is also envisaged in the *Schools Act* as discussed above in paragraph 2.3.

Scholars have argue that the inconsistencies with regards to the definition of basic education by the Department of Education should be interpreted as an attempt to accommodate both perspectives on the definition of basic education in the country's educational framework.⁸⁶ Murungi⁸⁷ argues that it isn't rational to:

interpret basic education solely in terms of levels because an organisational structure and the sufficiency of education are complementary aspects of an education system. He goes further to argue that learning is also a function of time, and therefore it would not be sufficient to define 'basic education' exclusively with respect to its content.⁸⁸

The Department's definition of the right to basic education in terms of the *White Paper 6* and *Schools Act* with regard to the interpretation of the right enshrined in section 29(1)(a) of the Constitution is not sufficiently clear.⁸⁹ Thus, it is of necessity to adopt a holistic approach to the interpretation of section 29(1)(a) of the Constitution. The judiciary's explanation of the right to education must be taken into account when interpreting this right.⁹⁰

2.7 International instruments on the right to education

South Africa by virtue of being a constitutional democracy makes international law a pillar of its democracy.⁹¹ International instruments are useful in guiding states with

⁸⁵ Calderhead V. *The Right to an 'adequate' and 'equal' education in South Africa: An analysis of s. 29(1) (a) of the South African Constitution and the right to equality as applied to basic education* 1-51.

⁸⁶ Murungi 2015 *Potchefstroom Electronic Law Journal* 3161-370.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ 'Inclusive education learners with learning barriers the right to an equal and quality education' Equal Education Law Centre www.eelawcentre.org.za / info@eelawcentre.org.za.

⁹⁰ Ibid. The judiciary's definition of basic education will be discussed later on in the chapter.

⁹¹ Dugard *European 1997 Journal of International Law* 77-92. "The World Declaration form part of international law "soft law" (all sources of non-binding international law that can provide guidance on the interpretation of international treaties)."

regard to their conduct and also provide a sizeable guidance in interpreting section 29(1)(a) of the Constitution.⁹²

In the interpretation of human rights section 39 of the Constitution makes it peremptory to consider international law in interpreting Chapter 2 of the Constitution.⁹³ Thus, international customary law is part of South African law unless it is in contradiction with Constitutional provisions or South African legislation.⁹⁴ Section 233 provide that when interpreting legislation the approach that is consistent with international law is much more preferable than that which contradicts it.⁹⁵

Even though South Africa has a principle of recognizing international law the weight and principles of international law recognised will vary on a case by case basis.⁹⁶ This entails that South Africa as a country is not in all instances bound to use international legislation in its interpretation of legislation especially if such interpretation encroaches on individuals fundamental human rights.⁹⁷

2.7.1 The United Nations Convention on the Rights of the Child

The *United Nations Convention on the Rights of the Child* definition of basic education requires countries to implement an educational system that develops the child's potential, talents and abilities to the fullest.⁹⁸ South Africa signed this Declaration in January 1993 and ratified it on the 16th of June 1995. Therefore, the mandate section 29(1)(a) places on the State, doesn't simply require the government to provide basic education for a defined period but requires a system that maximises the child's social and intellectual abilities.⁹⁹ Therefore, yet again, a more adequacy-based approach.

⁹² Convention on the Rights of the Child: Office of the United Nations High Commission for Human Rights 'International Law' 1996-2007 A 1. <http://www2.ohchr.org/english/law/> accessed 10 March 2020.

⁹³ S 39 Constitution of South Africa

⁹⁴ S 232 of the Constitution.

⁹⁵ S 233 of the Constitution. The Constitutional court addressed and responded to this issue in the case of *S v Makwanyane* 1995 2 SACR 1 para 35. by stating that "the international law that must be considered in the interpretation of Chapter 2 of the Constitution refers to both the binding and the non-binding international law. The court went further to emphasise that customary law and international agreements should be considered in interpreting Chapter 2 of the Constitution because they make available a framework in which the Bill of Rights is understood."

⁹⁶ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 1 SA 46 (CC) para 26 state that "The relevant international law can be a guide to interpretation but the weight to be attached to any particular principle or rule of international law will vary. However, where the relevant principle of international law binds South Africa, [28] it may be directly applicable."

⁹⁷ *Ibid.*

⁹⁸ Article 28 and 29 of the United Nations Convention on the Rights of the Child.

⁹⁹ United Nations Convention on the Rights of the Child, article 29 of 1990

2.7.2 World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs

Article 1 (1) provide the following definition with regard to basic education:

These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning. The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time.¹⁰⁰

This definition is the most comprehensive with regard to the adequacy approach. Within the definition one can still find many terms that need further exploration, however, for the extent of this study it is adequate to acknowledge that basic education cannot simply be defined at a time period. It is the acquisition of basic learning needs which comprises of essential learning tools (essential learning tools include “literacy, oral expression, numeracy, and problem solving”) and the basic learning content. This definition entails that basic education is quality and outcomes orientated. Simply being in school or attending school is not the attainment of basic education, correspondent to this the right to basic education is not fulfilled simply by providing buildings and proclaiming a minimum time period for students to be seated in these buildings.

2.8 A theoretical framework of basic education

When the above discussion is taken into account it is clear that international instruments and even domestic documents prefer an adequacy approach, as opposed to a time-based approach. In accordance with this, this study attempts to provide a definition of basic education within the framework of quality education. Basic education should be equated to quality or adequate education;¹⁰¹ the aim is therefore to have a

¹⁰⁰ World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs. Adopted by the World Conference on Education for All Meeting Basic Learning Needs Jomtien, Thailand (1990).

¹⁰¹Slade S “What Do We Mean by a Quality Education?” Huffpost (22 February 2016) https://www.huffpost.com/entry/what-do-we-mean-by-a-qual_b_9284130 accessed 15 January 2020 states that “A quality education is supported by three key pillars: ensuring access to quality teachers; providing use of

coherent understanding of quality education. This study argues that education should not simply be understood as a content delivery system but rather a system designed to help all children, of any intellectual levels, to meet their full potential and ultimately enter society as productive citizens. The United Nations Former Secretary General Ban Ki-moon declared that every child must be in school, and the quality of schools must improve so that students are prepared to be productive citizens and ready to lead in the future.¹⁰² He went further to state that

Education must fully assume its central role in helping people to forge more just, peaceful and tolerant societies.¹⁰³

Slade¹⁰⁴ states that quality education can be defined in many ways, but this paper agrees with the Association for Supervision and Curriculum Development and Educational Initiative which defines quality education as:

A quality education is one that focuses on the whole child: the social, emotional, mental, physical, and cognitive development of each student regardless of gender, race, ethnicity, socioeconomic status, or geographic location. It prepares the child for life, not just for testing.¹⁰⁵

A holistic approach to education should therefore be followed, this is especially appropriate when educating a borderline student.

Quality education provides resources and directs policy to ensure that:

Every child enters school healthy and learns about and practice healthy lifestyle; learns in an environment that is physically and emotionally safe for students and adults; is actively engaged in learning and is connected to the school and broader

quality learning tools and professional development; and the establishment of safe and supportive quality learning environments.”

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid. “The SDGs reflect a global consensus in our young century that education is a human right and a public good that is critical to the health and future of the world. But ours is a world of severe challenges, with millions of students under fire, unsettled and unschooled due to conflict and governments globally failing to meet their funding commitments to education, especially with regard to their poorest citizens. Education advocates have a responsibility to promote policies that integrate schools, communities, and nations into a system that supports development of the whole child, ensuring that each student is healthy, safe, engaged, supported, and challenged.”

community; has access to personalized learning and is supported by qualified, caring adults; and is challenged academically and prepared for success in college or further study and for employment and participation in a global environment.¹⁰⁶

This affirms that quality education goes beyond the normal reading and learning in the classroom but that it also contributes to their day to day running of the children's lives and to help them to develop as individuals in the community. It goes further to ensure that schools align and integrate fully with the communities they are situated in and access to arrange of services designed to support the educational development of the learners.

Quality education is¹⁰⁷

- a human right and a public good.
- provides the foundation for equity in society.
- one of the most basic public services. It does not only enlighten but also empowers citizens and enables them to contribute to the maximum extent possible to the social and economic development of their communities.

2.9 Conclusion

The right to education is regarded as one of the most valuable prerequisites pertaining to global progress and advancement.¹⁰⁸ It doesn't just equip a learner with skills for eloquent profession, it also bears the fundamental tone of a human rights culture to a young and upcoming future generation.¹⁰⁹

As already discussed above there are two definitions pertaining to what basic education is construed as which consist of the time-based education which refers to the time one needs to go to school and the other refers to adequacy approach which refers to the quality education that a child receives at school.¹¹⁰ However, South African legislation provides no definition of what basic education and as such leaves

¹⁰⁶ Ibid.

¹⁰⁷ Ibid. A campaign for educational international <https://www.unite4education.org/about/what-is-quality-education/> accessed 15/01/2020. <https://enedupedia.blogspot.com/> accessed 15/01/2020

¹⁰⁸ Note 10 above.

¹⁰⁹ Ibid.

¹¹⁰ Note 39 and 40 above.

it the schools to determine what it is or the writer to opine on what then shall constitute basic education in South Africa.

International educational framework on the other hand define basic education. It is defined as one that focuses on skills development of the learner, the social, emotional, mental, physical, and cognitive development of each student.¹¹¹ This shows that it goes way beyond the classroom, that it involves their day to day lives in their various communities with various norms. It focuses not only on the survival of the learner in class but also in the real world where challenges are faced on daily basis.

This study defines basic education based on the adequacy approach by Simbo¹¹² and will also take into account the definition by international instruments below. This study considers both what the borderline child requires in school and what also what is required for his/her survival in the outside world. Thus, one can define basic education as education that provides the learner with a learning environment that is conducive to their health and also caters for their different abilities, that equips learners with skills to face the working environment and activities in school, that caters for their various educational needs and one that does not discriminate or marginalise anyone.

It is of importance to look into the current situation in South African schools and to determine what amounts to discrimination and what constitutes mere differentiation in education. In order for one to understand what differentiation is, we ought to look at the current educational system in South Africa with specific reference to the promotion of inclusive education and whether this is working for South Africa or against it. Chapter 3 examines the current situation in the South African education system and a determination is made whether the categorization or creation of another school system for the borderline child will amount to mere differentiation or discrimination.

¹¹¹ Note 69 above.

¹¹² Ibid note 8 above.

Chapter 3: A legal and theoretical framework of inclusive education

3.1 Introduction

Prior to the paradigm shift from the apartheid system to a constitutional democracy in 1993, education was segregated on the basis of race and disability (intellectual ability). The apartheid system used the medical approach to disability, and as a result an estimated 20% of learners with disabilities were accommodated in schools. What worsened the situation is the fact that special schools for learners with disabilities are that the schools and resources were unreasonably distributed across South Africa which resulted in disparities between the incidents of disabilities and the availability of special schools country wide. Due to the then government's apathetic approach and the general lack of educational support children with disabilities have historically been the most vulnerable group and thus susceptible to learning barriers and subject to exclusion in the then South African education system.¹¹³

The right to basic education is a fundamental human right.

It is being stipulated that the right to basic education is adequate as it helps with the development of a learner, their morals, social, political and economic development of the South Africa at large the development of the nation bring about advancement of democracy, human rights and a peaceful dispute resolution. For quite a long time not only in South Africa but all around the world the most vulnerable marginalised group of learners, the borderline child, have been excluded from schools.¹¹⁴

¹¹³ <https://eelawcentre.org.za/wp-content/uploads/2016/08/Inclusive-Education-Final.pdf> accessed 11 July 2019. See also "South Africa: Soweto and its Aftermath" Available at <http://www.country-data.com/cgi-bin/query/r-12130.html> accessed 11 June 2019. "A History: Turning Points- The coming of Apartheid", Available at http://www.sahistory.org.za/classroom/education-350years/history_4.htm accessed 21 June 2019. Khumalo and Hodgson *chapter 5 the right to basic education for children with disabilities* 105-127 states that "Medical model of disability followed by the apartheid government assumed that disability is caused by the physical or intellectual impairment of an individual. It regarded people with disabilities as suffering from an inherent deficiency that requires or is capable of a medical cure or treatment. The medical model of disability has contributed to widespread stigma about people with disabilities as somehow sub- or inhuman; and in the context of education, as 'ineducable'. Under the medical model of disability, people are often isolated in specialised institutions such as 'special schools', away from 'normal' children." 107. Calderhead V. "The Right to an 'Adequate' and 'Equal' Education in South Africa: An analysis of s. 29(1)(a) of the South African Constitution and the right to equality as applied to basic education" 1-51 states that "e.g., .28% of learners in the Eastern Cape were enrolled in special schools, yet the overall incidence of disabled persons in the region was 17.39%." Christie *The rights to learn* 30-31

¹¹⁴ Centre for Justice and Crime Prevention and the Department of Basic Education, 2012 Pretoria www.cjcp.org.za/ www.education.gov.za accessed 02 April 2019.

From the statement above it is apparent that there always has been that vulnerable group of children in the education system, which is the child with limited intellectual functioning (the borderline child). Thus, if the child with average intellectual functioning has always being marginalised then what will then happen to the borderline child? It is of paramount importance to take care of the educational needs of those with borderline intellectual functioning so that they can participate fully in their communities and the employment sector. In order to understand the influence that the apartheid government had in education one should go back and look at legislation that was promulgated in relation to provision of education, and to look at the change in legislation in education in post- apartheid South Africa. The education system had a dramatic shift since the inception of the constitutional democracy, and this is apparent from legislation as discussed below.

3.2 Bantu Education

The *Bantu Education Act*,¹¹⁵ which was later amended to *Black Education Act*,¹¹⁶ was a piece of legislation in South Africa that legalized aspects of apartheid system which resulted in the separation of certain individuals/groups in South Africa on the basis of the colour of their skin in the educational sector.¹¹⁷ The then Apartheid Government therefore in turn enforced racially separated education facilities. As a result the bantu education, which was designed for the black child, had few financial institutions funding it.¹¹⁸ It was argued, as previously stated above, that this type of education was created to direct the black child or the non-white¹¹⁹ child to the unskilful labour market, however Hendricks Verwoerd¹²⁰ claimed that:

it was aimed to resolve ethnic problems by creating corresponding economic and political units for different ethnic groups.¹²¹

¹¹⁵ Bantu Education Act 47 of 1953.

¹¹⁶ Black Education Act of 1953.

¹¹⁷ The national authorities of the time is often said to have viewed education as having a rather pivotal position in their goal of eventually separating South Africa from the Bantustans entirely.

¹¹⁸ Moore *In class of their own: the Bantu Education Act (1953) revisited* 1-10. See also Clark and Worger *South Africa - The rise and fall of apartheid. Seminar studies in history. Pearson education limited* 110-120.

¹¹⁹ Note 111 above.

¹²⁰ The "Architect of Apartheid" Hendrik Verwoerd the then Minister of Native Affairs.

¹²¹ Byrnes *South Africa: A Country Study* 1-135.

The Minister of Native Affairs at the time¹²² stated that:

There is no place for the Bantu education in the European community above the level of certain forms of labour ... What is the use of teaching the Bantu child mathematics when it cannot use it in practice?¹²³

This led to poor funding in the African (Black) schools and the underpaying of the black teacher, this was also influenced by the fact that only one third of the black teachers were even qualified to teach in the classroom.¹²⁴ This fact in turn shows that the black child had no importance before the eyes of the apartheid government, and if the black child bared no particular interest in the eyes of the apartheid government then of what importance was it for the apartheid government to adequately educate them.¹²⁵

This Act was later on repealed by the *Education and Training Act of 1979* which nonetheless also continued with segregation in education. However, the preceding Act eliminated discrimination in tuition fees and the segregation of Bantu Education allowing both native language of instruction and attendance of private school for the black child.¹²⁶

During the promulgation of the Interim Constitution in 1994, which was later repealed by the 1996 Constitution, segregation and discrimination in education became unconstitutional and as a result even the Bantu Education system became unconstitutional. This led to the introduction of inclusive education in South Africa during the constitutional dispensation. Thus, inclusive education aims to do away with

¹²² Head of Department of Native Affairs in South Africa. Hendrik Verwoerd was made responsible for the education of black South Africans; in 1958 the Department of Bantu Education was established.

¹²³ Clark and Worger *South Africa - The rise and fall of apartheid. Seminar studies in history. Pearson education limited* 110-120.

¹²⁴ Ibid "This lead to an decrease of government funding to African schools and as a result the government had to power to train black teachers as they deemed fit, the teachers' salaries in 1953 was too low and it resulted in many black teacher trainees drop and only one third of black teachers were qualified to teach."

¹²⁵ Ibid "argue that the schools reserved for the country's white children were of Western standards. 30% of the black schools did not have electricity, 25% no running water and less than half had plumbing. The education for Blacks, Indians and Coloureds was substantially cheaper but not free." Byrnes *South Africa* 1-135 provides that the "Washington: GPO for the Library of Congress stated that in the 70s, the per capita governmental spending on black education was one-tenth of the spending on white. This shows that black children had no qualified teachers to teach them during the bantu education and also the fact that the government cared less about the black child receiving proper education as the black teachers were also under paid as compared to the white teacher."

¹²⁶ Study Commission on U. S. Policy toward Southern Africa 1981 *University of California Press*.

past discriminatory education laws and to integrate South Africans into a single educational system.

3.3 Inclusive education and social justice

Social justice issues require inclusive education practitioners to reform their educational structures and to go beyond that, thus social justice cannot be realised if learners are still excluded from educational institutions due to discriminatory grounds such as their gender, race, or ability.¹²⁷ Social justice gives provision for theoretical support for inclusive education.¹²⁸ Thus, the promoters of social justice asked whether they should take into account learners different abilities and disabilities from the medical or social model of disability.¹²⁹ There has been criticism on the medical model approach¹³⁰ due to the fact that it views abilities of learners in an education system as an example of deviance which at the end was treated and handled separately from the mainstream schools.¹³¹ The medical model has assisted in the rationalisation of unequal treatment in education from the view that educational rights and human rights

¹²⁷ Ryan *Inclusive leadership and social justice for schools: Leadership and policy in schools*. See also Social Justice: 7 Theories of Social Justice – Explained <http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830> accessed 18 March 2020 “Justice is the evolution of the basic social and political institutions, particularly with respect to the consequent distributions of benefits and burdens, which are standardly expressed in terms of justice or injustice. On its most general sense the concept of justice requires that each individual has what is due to him or her (Outhwaite and Bottomore, 1993).” See also Davis *Maverick Citizen* state that “Some argue that social justice is promoted to the extent that society can enhance the collective good without infringing upon basic individual freedoms. Others stress that social justice reflects a concept of fairness in the assignment of fundamental rights and duties, economic opportunities and social conditions”

¹²⁸ Pendlebury and Enslin 2004 *Journal of Education* 31-50.

¹²⁹ Social Justice: 7 Theories of Social Justice – Explained <http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830> accessed 18/03/2020 “In the Roman-Greek tradition, it was Cicero, who elaborated the concept of social justice, when he declared, “we are born for justice, and that right is based, not upon man’s opinion, but upon nature. This fact will immediately be plain if you once get a clear conception of man’s fellowship and union with his fellow – men, for no single thing is so like another, so exactly, its counterpart, as all of us are to one another” (Sabine, 1973). For Cicero, a state cannot exist on crippled conditions; in fact, “It depends upon, and acknowledges and gives effect to the consciousness of mutual obligations and the mutual recognition of rights that bind its citizen together. The state is a moral community, a group of persons who in common possess the state and its law”. That is why he called the state, “the affair of the people”. In essence, for Cicero “Justice is intrinsic goods,” which holds the people together by normal ties and rights.”

¹³⁰ Massoumeh and Jamshidi *An investigation of medical model and special education methods* 1877-0428 (Elsevier Ltd. 2012) “Medical model is used to justify a wide range of educational strategies in special education, and it has a major influence on special education methods and strategies. This model is based on the view that all learning problems are the result of some organic disorder or disease.”

¹³¹ Loreman, Deppeler and Harvey 2005 *Australasian Journal of Special in Inclusive Education* 89. Sydney: Allen & Unwin “Discussions in this regard have criticised the medical model as it views different abilities as example deviance that must be treated and handled separately from the mainstream classes/schools”

fall short in advancing teaching-learning approaches/mechanisms in order to address the needs of the learners in the whole world.¹³²

Tariq and Mullick¹³³ state that Ainscow and Miles came up with the following points as the principal approach to education:

- Process of enhancing participation of learners in and reducing their exclusion from, the curricula, cultures, and communities of local schools;
- Restructuring the cultures, policies and practices in schools so that they respond to the diversity of students in their locality; and
- The presence, participation and achievement of all students vulnerable to exclusionary pressures, not only those with impairments or those who are categorised as having special educational needs.¹³⁴

It can be deduced from this approach that the “inclusion” model is aims to uphold equity and fairness in schools of which these are the fundamental doctrines of social justice.¹³⁵ It is thus agreed that within the scope of knowledge in the social justice concept the focal point is on equal participation of all persons in different societal groups which results in fairness and well-faire of all learners of various abilities.¹³⁶ This in turn promotes the vision that no child will be left behind due to the grounds set out in section 9 (3) of the Constitution and thus even the borderline child will in turn be protected and provided adequate basic education in the education sector/system.¹³⁷

¹³² Tariq and Mullick 2013 *United Nations Educational, Scientific and Cultural Organization (UNESCO) IBE Prospects* 152-154.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Davis *Maverick Citizen* provide that “In turn, the debate then shifts to three different ideas: legal justice which is concerned with what people owe society, commutative justice which concerns the extent of obligations that the citizenry owe to each other and distributive justice, that is what society may owe to each citizen.” See also For further reading on the concept of social justice in South Africa Pendlebury and Enslin 2004 *Journal of Education* 31-50.

¹³⁶ Bell “Theoretical foundations for social justice education”. Miller *Principles of social justice*. Nussbaum 2006 *Frontiers for Justice: Disability, Nationality, Species Membership*. Rawls 1971 *A Theory of Justice*. Sen 2005 *Journal of Human Development and Capabilities*.

¹³⁷ Pendlebury and Enslin 2004 *Journal of Education* 31-50 provide the following “The topic for tonight has been made somewhat easier for me in that the issue of social justice is coupled to that of economic exclusion. I need to deal with the distributive component if I am to show fidelity to the advertised topic of this lecture. In this connection, the South African reality at present stands in sharp contrast to our constitutional ambition as is evidenced in the text. The preamble refers to a Constitution designed to “heal the divisions of the past and, establish a society based on democratic values, social justice and fundamental human rights”. Section 9, the equality clause, provides that equality includes a full and equal enjoyment of all rights and freedoms. To this end, a series of social and economic rights are included in the Constitution, including the right to housing, healthcare, food, water, social security and education. In addition, powerful rights are given to employees

Thus, even beliefs ability/disability will not be used as a strategy to leave behind the borderline child out of school/classroom. This helps the borderline child to participate fully in educational activities. However, whether this is possible in an inclusive classroom is a question that have many writers entangled about.

It is being illuminated that education does not only provide knowledge, rather it also provides the ground that people need in order to fully exercise their citizenship in stirring in the direction of social justice, thus all the learners must be included in schools/receive adequate basic education.¹³⁸ It is clear that, from the social model and principle approach of education, that inclusive education is bigger than bringing all the learners into general education. It is a process aimed at offering quality/adequate basic education for all learners despite their various abilities and basic educational needs, characteristics and learning expectations of the learners while eliminating all forms of discrimination.¹³⁹

The provisions prepared by *United Nations Educational, Scientific and Cultural Organisation*¹⁴⁰ based on the 2008 International Conference on Education suggested that:

All member States are to acknowledge inclusive education as their reform strategy through the development of their national and intersectoral policy frameworks to address social inequality also the International Conference Education report suggested that all the states develop their policies and strategies that will ensure high quality/adequate education for all learners from diverse backgrounds.¹⁴¹

including the right to form and join a trade union, to participate in the activities and programmes of trade unions and to strike. The current reality is depressingly different. While there is evidence that money metric poverty declined in South Africa during the democratic period of our history, a 2019 report by Statistics South Africa shows that, despite a decline in poverty between 2006 and 2011, poverty levels have again risen; from a low of 53.2% in 2011 to 55.5% in 2015. At that time 30.4 million people were living in poverty. Inequality in South Africa, measured in terms of the Gini coefficient of income, has consistently been above 0.6 from 1993 to 2015 which easily places South Africa in the top five most unequal countries on the global scale. Regrettably, there has been no significant reduction in overall inequality or poverty in post-apartheid South Africa.”

¹³⁸ Note 131 above. For further reading on the concept of social justice in South Africa see Pendlebury and Enslin 2004 *Journal of Education* 42.

¹³⁹ United Nations Educational, Scientific and Cultural Organisation *Inclusive education: The way of the future. Final report of the International Conference of Education (48th session)*. Paris: United Nations Educational, Scientific and Cultural Organisation 2009 18.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

Hence is it of importance that all signatory States' policies and strategies towards quality basic education do not contravene the values of inclusive education.¹⁴²

Mitchell¹⁴³ states that the *Universal Declaration of Human rights* was used by the United States to set a common standard on human rights through its adaptation. She goes further to argue that even though it is not at all binding on domestic jurisdictions, by the mere fact of it being recognised by all states gives it great moral weight.¹⁴⁴ Mitchell¹⁴⁵ goes further to argue that the CRC sets global standards which the rights of the children across the world must comply with. It is provided that it gives great support and justification for the level of institutional capacity development which is needed for the effective protection and advancement of children's rights.¹⁴⁶

Mitchell¹⁴⁷ in her argument states as follows in relation to the rights of the child:

The *African Charter on the Rights and Welfare of the Child* (1990)¹⁴⁸ is based on the same principles as the *Convention on the Rights of the Child*, but developed to address issues specific to the continent of Africa.¹⁴⁹ South Africa had played a crucial role in the development of the *African Charter on the Rights and Welfare of the Child*.¹⁵⁰ The *African Charter on the Rights and Welfare of the Child* likewise gives children the right to the best possible state of physical, mental and spiritual health and an inherent right to life. It is argued that the rights in this section have to be interpreted in a broad sense that acknowledges a qualitative dimension to such an extent that not only physical health but also mental, emotional, cognitive, social and cultural development forms part of the rights.¹⁵¹ Thus, the Charter places an even heavier burden on the state in respect of the implementation of legislation and policies to promote the rights of the borderline child. It can be

¹⁴² Note 131 above.

¹⁴³ Mitchell *The unenforceability of the unalienable socio-economic rights of undocumented children in South Africa* 133.

¹⁴⁴ *United Nations Children's Fund* 2009 http://www.unicef.org/crc/index_framework.html accessed 20 July 2020.

¹⁴⁵ Note 139 above.

¹⁴⁶ Note 139 above.

¹⁴⁷ Note 139 above 5.

¹⁴⁸ Hereafter referred to as *African Charter on the Rights and Welfare of the Child*.

¹⁴⁹ African Committee of Experts on the Rights and Welfare of the Child 2011 <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc>. Accessed 20 March 2019.

¹⁵⁰ *Ibid*.

¹⁵¹ Holmström en Karlbrink *United Nations Human Rights Fact Sheets* 32.

deduced then that children in South Africa are entitled, both in international and regional law, to these basic socio-economic rights.¹⁵²

From this argument one can clearly see that the African Charter principles are indeed in line with the principles as outlined in the *White Paper 6*. These educational instruments seek to promote the educational well-being of the African child thus they both promote the principles of inclusive education as outlined in international instruments. They promote equality and access to equal opportunities of all children.¹⁵³ They place an obligation on the State to ensure the realisation of the social rights of all children, of which social rights include educational rights for learners with borderline intellectual functioning.¹⁵⁴ It must be noted that the legislations discussed above does not however directly address educational rights of learners with borderline intellectual functioning. However, provides a generalised view on educational rights as they do not seek to discriminate against anyone (this is due to the fact that they promote inclusive education, thus inclusivity in the classroom).

3.4 *White Paper 6 and inclusive education*

The *White Paper 6* is focused on inclusive education and improving specialised schools as they also form part of inclusive education as outlined by the Minister of Education in *White Paper 6*.¹⁵⁵ The Former Minister of Education, Professor Kader Asmal MP, stated that education and training did not start now rather dates way back to 1996 which is evidently marked by the appointment of the National Commission on Special Education and Training and the National Committee on Education and Support Services.¹⁵⁶ He goes further to acknowledge the fact that he knows that parents, educators and learners are concerned about the future of special schools and specialised settings in an inclusive education and training system.¹⁵⁷ Educators, parents and learners are concerned whether the kind of educational expertise that this specialised learners with severe and mild disabilities need in order to attain adequate basic education need will then be made readily available to them in mainstream school

¹⁵² An interpretation of this concept is done in chapter 4, but for clarity socio-economic rights can be understood as the entitlements bestowed on the bearer of human rights to guarantee the wellbeing or welfare of the child as a vulnerable subject of society.

¹⁵³ Note 134 above.

¹⁵⁴ For further reading on the concept of social justice in South Africa note 128 above.

¹⁵⁵ White Paper 6, 3 Minister of Education Professor Kader Asmal, MP.

¹⁵⁶ Note 86 above.

¹⁵⁷ Note 86 above.

settings.¹⁵⁸ The Minister states that he understands their concerns, and goes furthermore to state that he observed the difference that specialised education makes when provided with quality and relevant learning experience.¹⁵⁹ This clearly indicates that the Minister does see the value of specialised schools and the effect that it can have if it has proper financial assistance and infrastructures to cater for the educational needs of all special learners. In the Minister's speech it is not mentioned in any way as to how does the borderline child fit in the whole set-up of the new educational system.

The Minister makes it clear without ambiguity that specialised schools must be strengthened as opposed to abolishment.¹⁶⁰ The Minister supports his latter statement by stating further that developmental investment plans shall be put in place to ensure the improvement and attainment of quality education across all of them.¹⁶¹

He states that those with severe disability will be placed in the improved special schools of which this is part of the new education system being inclusive education.¹⁶² This statement provides clarity that special school will not be abolished rather they will also form part of special education and as a result the question will be since learners with borderline intellectual functioning don't fall in the "severe disability" category nor "mild disability" category so which school will best cater for their educational needs as they are neither "normal" nor disabled.

It is said that the current process to identify, assess and enrol learners in special schools may be put to a halt and replaced by structures that know the important role played by educators, lecturers and parents.¹⁶³ As such resources that were/are made available to special schools shall also be made available to other full-service schools.¹⁶⁴ It is being elaborated that this inclusion goal can be achieved by making special schools' part of district support services so that they can be in a position to become resourceful for all schools.¹⁶⁵ The Minister also points out that he is aware of the concerns of all parties affected by this new educational system as they fear the challenges that come with

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid 3.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

inclusion¹⁶⁶ which can be furthered by professional, physical development, information dissemination and advocacy. This concern is specifically addressed in this White Paper.

The *White Paper 6* defines inclusive education as:

an acknowledgement that all children and youth need support, enabling education structures, systems and learning methodologies to meet the needs of all learners, acknowledgement and respect of different learners, acknowledgement that learning also occurs in the home and community, and within formal and informal structures, changing the attitude, behaviour, teaching methods, curricula and environment to meet the needs of all learners, maximising the participation of all learners in the culture and the curriculum of educational institutions and uncovering and minimising barriers to learning.¹⁶⁷

This definition of inclusive education does not in any ways exclude or marginalise any group of learners and it seeks to provide equalised and adequate basic education for all learners. Certain key steps ought to be taken in order to attain inclusive education in South Africa and in order to determine what those key principles are the Ministry of Education appointed a Commission to investigate this.¹⁶⁸

The National Commission on Special Needs in Education and Training and the National Committee on Education Support published a report in 1998 and the report had the following central findings:

- (i) specialised education and support have predominantly been provided for a small percentage of learners with disabilities within 'special' schools and classes;
- (ii) where provided, specialised education and support were provided on a racial basis, with the best human, physical and material resources reserved for whites;
- (iii) most learners with disability have either fallen outside of the system or been 'mainstreamed by default';
- (iv) the curriculum and education system as a whole have generally failed to respond to the diverse needs of the learner population, resulting in massive numbers of drop-outs, push-outs, and failures; and,
- (v) while some attention has been given to the schooling phase with regard to 'special

¹⁶⁶ *ibid* 3 "This refers to teaching, communication, costs, stereotyping and the safety of learners".

¹⁶⁷ *ibid* 6.

¹⁶⁸ *Ibid* 5.

needs and support', the other levels or bands of education have been seriously neglected.¹⁶⁹

Based on these findings both these institutions agreed that the education system must promote education for everyone and to enforce the development and adaptation of inclusive education system and supportive centres for learning which would enable learners to participate equally and develop to their full potential. Principles to guide this vision of inclusive education included amongst others:

acceptance of principles and values contained in the Constitution and White Papers on Education and Training; human rights and social justice for all learners; participation and social integration; equal access to a single, inclusive education system; access to the curriculum, equity and redress; community responsiveness; and cost-effectiveness.¹⁷⁰

This doesn't provide for a separate curriculum for those with disabilities rather accommodates them in inclusive education as this is the aim objective of inclusive education. The report went further to suggest strategies to attain the principles outlined above:

(i) transforming all aspects of the education system, (ii) developing an integrated system of education, (iii) infusing 'special needs and support services' throughout the system, (iv) pursuing the holistic development of centres of learning to ensure a barrier-free physical environment and a supportive and inclusive psycho-social learning environment, developing flexible curriculum to ensure access to all learners, (v) promoting the rights and responsibilities of parents, educators and learners, (vi) providing effective development programmes for educators, support personnel, and other relevant human resources, (vii) fostering holistic and integrated support provision through intersectoral collaboration, (viii) developing a community based support system which includes a preventative and developmental approach to support, and (ix) developing funding strategies that ensure redress for historically disadvantaged communities and institutions, sustainability, and - ultimately - access to education for all learners.¹⁷¹

¹⁶⁹ Ibid 5.

¹⁷⁰ Ibid 5.

¹⁷¹ Ibid 6.

The Commission came up with the above recommendations and principles on all aspects with regard to special needs and support services and education training in South Africa.

The rest of the chapter will largely be based on the information put forth in *White Paper 6*, this includes the definition of inclusive education.

3.5 Theoretical Framework of Inclusive Education

“Give me your tired, your poor, your huddled masses yearning to breathe free.”¹⁷²

Previously it was stated that the education systems were segregated due to race, gender and ability and this guided to inclusive education in South Africa and other countries in the world.¹⁷³ The United States of America came up with inclusive education in which all children regardless of their gender, race, ethnicity and ability are taught in the same educational setting without any form of segregation or discrimination.¹⁷⁴ Children born with disabilities were deemed as shameful and seen as a source of guilt for many families for various reasons. And in most instances, these learners were thrashed away in many educational institutions.¹⁷⁵

The Anti-Defamation League¹⁷⁶ stated that (2005):

The stigmatization of disability resulted in the social and economic marginalization of generations of Americans with disabilities, and like many other oppressed minorities, left people with disabilities in a severe state of impoverishment for centuries. In the 1800s, people with disabilities were considered meager, tragic, pitiful individuals unfit and unable to contribute to society, except to serve as ridiculed objects of entertainment in circuses and exhibitions.¹⁷⁷

This does not even touch on the case of those with borderline intellectual disability rather on those with disabilities in general so what then was or is still is the case of the

¹⁷² Boroson 2017 *Educational Leadership* 18-23.

¹⁷³ Note 12 above.

¹⁷⁴ Curt and Burns *Two perspectives on Inclusion in the United States* 14-31.

¹⁷⁵ Note 55 above.

¹⁷⁶ Anti-Defamation League <https://www.adl.org/> accessed 10 November 2019.

¹⁷⁷ A Brief History of the Disability Rights Movement <https://www.adl.org/education/resources/backgrounders/disability-rights-movement> accessed 05 October 2019

borderline child. The United States of America¹⁷⁸ clearly states that all children have the right to basic and appropriate education but left the issue of resolving or indicating what constitutes basic education to its judiciary.¹⁷⁹ Despite the legislation that are promulgated the issue of the inclusion of those learners with special needs is still not fully accepted by teachers as it would result in a waste of a teacher's time.¹⁸⁰

Due to various legislation promulgated in the United States of America their learners now have the right to basic education that is not discriminatory, but meaningful and measurable and which is provided in an open setting so that all learners with their different capabilities and abilities can be able to attain adequate basic education without any hindrances.¹⁸¹ As a result, learners with disabilities receive education in inclusion classrooms (mainstream schools).¹⁸² However, educators are still faced with being able to balance the needs of the minority, being the borderline student, with those of the majority, being the "normal" student, in educating them. It is not only teachers who are worried about students with special needs destroying the integrity of the classroom environment, it is being stated that advocates of philosophy are also worried about this.¹⁸³

Children/learners were not excluded only by reason of race but also of gender and ability, those with borderline intellectual functioning are not counted, inclusive education came about because it's primary aim is treat all children/learners equally. In South Africa inclusive education is enshrined in the *White Paper 6*. Furthermore, *White Paper 6* also outlines what inclusive education entails and who is included in inclusive education.

Since the advent of democracy¹⁸⁴ there has been radical changes in the education system from an apartheid framework to providing services to all South Africans on an

¹⁷⁸ The federal Education for All Handicapped Children Act of 1975

¹⁷⁹ Esteves and Rao 2008 *Scholarship and Professional Work – Education* 1-3.

¹⁸⁰ West, 2000

¹⁸¹ In the 1980s, activists began to lobby for a broader civil rights statute. As a result, the Americans with Disabilities Act (ADA) was passed in 1990, ensuring equal access and equal treatment for people with disabilities. Since then, the EHA has been reauthorized and renamed numerous times. The current version, the Individuals with Disabilities Education Improvement Act, together with the ADA, the Every Student Succeeds Act,

¹⁸² Snyder, de Brey and Dillow 2016 *Digest of education statistics 2015* 577-580.

¹⁸³ Note 171 above.

¹⁸⁴ Note 53 above.

equitable basis.¹⁸⁵ As stated above basic education for all is a constitutionally recognised right in conjunction with that the State may not discriminate when providing this education.¹⁸⁶

South Africa, being a signatory to the various declarations on education, has adopted into its educational system an inclusive education system.¹⁸⁷ Inclusive education mandates that

schools must accommodate all children and to not only provide quality education to all children on an equal basis but to also help change discriminatory attitudes, create welcoming communities, develop an inclusive society and act as the training ground for a people orientated-society that respects the differences and dignity of all children.¹⁸⁸

The South African government has obligated itself to creating an inclusive education and in terms of its operating legal framework it acknowledges the right to basic education as a right that is immediately realisable. It is however still elusive that an inclusive basic education that is equal can be realised.¹⁸⁹

3.5.1 What is the aim of inclusive education?

To understand the aim of inclusive education one needs to also understand the purpose of inclusive education, and the efficiency of inclusive education to improve the learning for students of all abilities. What needs to also be taken into account is the need for the government to choose this model of learning for all the children of South Africa and this can better be understood from the aim and purpose of inclusive education.

¹⁸⁵ Dalton, Mckenzie and Kahonde 2012 *African Journal of Disability* 21-22. Maile Education and poverty reduction strategies: issues of policy coherence: colloquium proceedings ed. Carter E *Education in South Africa: Some points for policy coherence* 21-22.

¹⁸⁶ Section 9 of the Constitution.

¹⁸⁷ United Nations Convention on the rights of the child 1989. New York: United Nations. United Nations Educational, Scientific and Cultural Organisation (1990). World declaration on education for all and framework for action to meet basic learning needs. Paris: United Nations Educational, Scientific and Cultural Organisation. United Nations Educational, Scientific and Cultural Organisation (1994). Salamanca statement and framework for action on special education needs. Paris: United Nations Educational, Scientific and Cultural Organisation. United Nations Educational, Scientific and Cultural Organisation (2000). The Dakar framework for action. Paris: United Nations Educational, Scientific and Cultural Organisation. UN Enable (2008). Convention on the rights of persons with disabilities. New York: UN Enable.

¹⁸⁸ Salamanca Statement, p. 6-7

¹⁸⁹ "Inclusive education learners with learning barriers the right to an equal and quality education", Equal Education Law Centre www.eelawcentre.org.za / info@eelawcentre.org.za. ACCESSED 19/07/2019.

Even though the association is not South African one the benefits outlined are of importance, they support the aims of basic education and inclusive education. Inclusive education came with its own benefits which are outlined in an article by New Brunswick Association for Community Living stating as follows:

Inclusive education is about looking at the ways our schools, classrooms, programs and lessons are designed so that all children can participate and learn. Inclusion is also about finding different ways of teaching so that classrooms actively involve all children. It also means finding ways to develop friendships, relationships and mutual respect between all children, and between children and teachers in the school. Inclusive education is not just for some children. Being included is not something that a child must be ready for. All children are at all times ready to attend regular schools and classrooms. Their participation is not something that must be earned.¹⁹⁰

From the above statement it is clear that inclusive education was meant for all children despite their different abilities.¹⁹¹ The article, by New Brunswick Association for Community Living, also states that inclusive education was also designed so that the teachers can provide different teaching methods for varying learners with varying abilities and educational needs. The question whether this is being practiced or not is yet to be concluded.¹⁹² The article goes further to stipulate that inclusive education

¹⁹⁰ "Inclusive Education and its Benefits" New Brunswick association for community living <https://nbacl.nb.ca/module-pages/inclusive-education-and-its-benefits/> accessed 30 December 2019

¹⁹¹ Erin Aguilar "The Benefits of Inclusion" Easter Seals Blake Foundation. State that "the benefits of inclusion are as follows: The benefits of inclusion are numerous, not only for children with special needs and their families, but for all children. When we include all children in our programs, they learn acceptance of other people, and that each person has unique abilities. Children learn from each other. With inclusion in place, children with special needs are provided equal opportunity to participate in the same types of programs and activities as children without special needs. Some of the benefits of inclusion for children with (or without) disabilities are friendship skills, peer models, problem solving skills, positive self-image, and respect for others. This can trickle down to their families as well, teaching parents and families to be more accepting of differences. Since parents are a child's first teacher and know their child best, it is important to have good communication with families, creating consistency between home and school. Working together and creating a partnership with families is an important part of inclusion, and can help children reach their developmental potential."

¹⁹² Ibid "Inclusive education is a way of thinking about how to be creative to make our schools a place where all children can participate. Creativity may mean teachers learning to teach in different ways or designing their lessons so that all children can be involved." See also Erin Aguilar "The Benefits of Inclusion" as she states that Strategies that promote inclusion are also strategies that promote meeting children at their individual developmental level. This can benefit all children. Providing a wide range of developmentally appropriate materials and activities let's all children be successful when working and playing. Consistent routines and transitions help children know what to expect and feel comfortable. It is also important to consider the type of assistance given to children. It is important to help children learn independence, and give them just enough help to be successful without helping them too much. When planning interventions, start with the least restrictive

reflects the fact that everyone wants their children to be accepted and appreciated throughout their lives.¹⁹³ The above mentioned are the principles and values of inclusive education and thus must be promoted by all countries or schools which practice inclusive education.

The purpose of inclusive education as outlined by Palliser School Division¹⁹⁴ is that all learners must be afforded an opportunity to receive adequate basic education, to reach their full potential and for all learners to be included in the same learning environment.¹⁹⁵ Inclusive education seeks to do away with segregation in the education environment, that all learners receive adequate and equitable education.¹⁹⁶

It is safe to say that South Africa chose this model of learning due the concepts enshrined within inclusive education.¹⁹⁷

Inclusive education is a policy that seeks to achieve educational gains for all learners of various abilities.¹⁹⁸ In South Africa however it features as an endeavour for the

changes like changing the environment, activity, or materials before providing direct assistance. Provide opportunities for children to have sustained social interactions and participate fully in the program. “

¹⁹³ Ibid.

¹⁹⁴ Palliser School Division “Goals, Beliefs and Values” <https://www.pallisersd.ab.ca/inclusive-education/goals-beliefs-and-values> accessed 30 December 2019.

¹⁹⁵ Ibid provide the following that “the goal of an inclusive education system is to provide all students with the most appropriate learning environments and opportunities for them to best achieve their potential. All children can learn and reach their full potential given opportunity, effective teaching and appropriate resources, programs will be offered to best meet the individual needs of each child and student within the school community, a student's program must address the intellectual, learning, communication, social, emotional and physical aspects of a child's development, Parents play a key role in the education of their child in that they are the most complete information source and have the greatest investment in their child's future, “*All students will have equitable opportunity to be included in the typical learning environment.*” (Alberta Education 2010) this means educating children/students with special supports and service needs in inclusive settings is the first placement option, providing the opportunity to participate in regular classrooms with same-aged peers in their neighbourhood school, all students shall be given the opportunity to participate in all aspects of school life, subject to limitations based on reasonableness in each circumstance, whenever possible, the student should be a partner in his/her educational program, Student program needs are best met by a team approach, for children and students to receive the services they need, school personnel will work together with service providers in the community, there must be a balance between individual and group rights within the classroom setting, in every case, the best educational interest of students is the paramount consideration for decision-making and programming, and awareness and support by the school community is essential to successful inclusion. Diversity must be valued in order for inclusion to be successful.”

¹⁹⁶ Ibid

¹⁹⁷ Note 45 above provides that: Inclusive education encompasses the following principles: (i) All children can learn; (ii) all children attend age appropriate regular classrooms in their local schools; (iii) all children receive appropriate educational programs; (iv) all children receive a curriculum relevant to their needs; (v) all children participate in co-curricular and extracurricular activities; (vi) all children benefit from cooperation and; (vii) collaboration among home, among school, among community

¹⁹⁸ Phasha “Inclusive education in the South African context” 163

advancement and promotion of the best interest of the child.¹⁹⁹ However it is safe to ask the question as to which child's best interest are now served by this new educational system in South Africa? And whether it can be said to be in the best interest of the borderline child?

The South African inclusion initiative as already elucidated upon 'inclusive education in South Africa' seeks a comparable teaching and learning model that will enable it to support the necessary adaptation in curriculum. This is not the only ideal but it also seeks to do away with discrimination in the education against the most vulnerable groups in education the disabled learners and learners with borderline intellectual functioning.

3.6 Legal framework of Inclusive Education

3.6.1 White Paper 6

The Minister of Education states that:

She has realised that many parents are worried or rather concerned about their children and the kind of education they are receiving thus the *White Paper* is issued as a response to the concerns raised to address the issues at hand.²⁰⁰

Hence, *White Paper 6* serves as a response to a critical issue concerning education and training system which began, in October 1996, with the appointment of the National Commission on Special Needs in Education Training and the National committee on Education Support in Education Service. The inadequacy, to deliver adequate basic education to the borderline child, by the Government is unacceptable and it is an extremely serious violation of the rights of hundreds of thousands of children's' right to access to adequate basic education and has a serious and tragic consequence on their lives.²⁰¹ *White Paper 6* characterise inclusive education.²⁰²

¹⁹⁹ Ibid see also Michael, Sayed, Nekhwevha et al 2007 *Semantic Scholar* "for Department for International Development, United Kingdom; by ensuring that the inequalities and barriers in education are dealt with in favour of the previously labelled special education needs learners, most notably those with physical, sensory and intellectual barriers; section 28 of the Constitution shares the same sentiments."

²⁰⁰ Note 154 above.

²⁰¹ Aziz 2016 *University of Cape Town the Department of Basic Education's*. The 2015 Report on the Implementation of Education White Paper 6 on inclusive education: Overview for the Period 2013-2015 (the Progress Report), confirms this.

²⁰² White Paper 6 of 2001, 15 provide that: all learners can learn and that they all need support; learners are different thus have different learning needs which are equally valued; Enabling educational structures, systems and learning methodologies to meet the needs of learners; Maximising participation of all learners and

3.6.2 *Governing Body of the Juma Masjid Primary School v. Essay (hereafter Juma Masjid)* ²⁰³

The court interpreted the right to basic education as a basic standard of education adequacy that is achieved by providing the required learning outcomes. It was in this case that it was found that education must promote and develop a child's personality, talents and mental and physical abilities to their fullest potential.²⁰⁴ The court went further to endorse the definition of inclusive education as provided by the UN on the Rights of the Child.²⁰⁵

3.6.3 *Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa*²⁰⁶

The court endorsed an extensive interpretation of section 29(1) (a) which included the growth of abilities or skills that are not educationally available.²⁰⁷ This case dealt with the exclusion of learners with mild²⁰⁸ and profound²⁰⁹ disabilities from all government institutions of basic education. In argument that learners with disabilities do not have full benefits to adequate basic education the court provided that the right to access to adequate basic education is not limited to maximising academic outcomes.²¹⁰ By this the court provides that the main objective of basic education should be to maximise the potential of learners rather than attaining good marks or a high pass rate, as if this is the case then those with borderline intellectual functioning will be in most instances left out as they require a particular method of learning.

As already illuminated from the above court case education should not be restricted or conveyed as a method for only the enhancement of intellectual development of a child but also the advancement of their potential, personality talents and creativity of

uncovering and minimising barriers to learning; and; Empowering learners by developing their individual potential and strength.

²⁰³ *Governing Body of the Juma Masjid Primary School v. Essay* 2011 8 BCLR 761 (CC).

²⁰⁴ *Ibid* para. 43.

²⁰⁵ *Ibid* this repeats the sentiments found in the White Paper 6.

²⁰⁶ *Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa* 2011 5 SA 87 (WCC) para 52.

²⁰⁷ Similar to the recognition of homebased skills and learning identified by white paper 6

²⁰⁸ IQ levels of 20-35

²⁰⁹ IQ levels of less than 20

²¹⁰ Note 205 above para. 19-26.

which this will illuminate their minds and expand their horizons.²¹¹ This is in line with the provisions of the *United Nations Convention on the Rights of a Child*. Based on this definition the court found that the government was:

infringing the rights of the affected children, both in respect of the positive dimension of the right, by failing to provide the children with a basic education and also in respect of the negative dimension of the right, by not admitting the children concerned to special or other schools.²¹²

3.7 International Instruments on inclusive education

It is important to examine international instruments as they provide more insight and also simplify constitutional provisions of the rights contained in the Bill of Rights. International instruments are also a basis of most rights in the Bill of Rights most especially the rights of the child. This is reason behind the court²¹³ acknowledgement of international instruments which provide reasonable explanation that is in line with international law over the interpretation that is inconsistent with international law or provisions. It must however be recognised that socio-economic rights may be created on the grounds of internationally recognised human rights.

Inclusive education system is one system that most educational systems in the world have taken into account. It is also recognised by several human rights declarations and conventions worldwide. It began around 1948 and the United Nations gave legal recognition for the right to education for all in article 26 of the *Universal Declaration of Human Rights* in 2007.²¹⁴ Various key guiding laws relating to inclusive education have been released this, among others, include:

- the *Convention of the Rights of the Child* 1989,²¹⁵
- the *World Declaration on Education for All* 1990,²¹⁶

²¹¹ Murungi 2015 *Potchefstroom Electronic Law Journal* 3164 he summarized the definition adopted by the Court in Western Cape Forum for Intellectual Disability.

²¹² Note 205 above para. 45.

²¹³ Note 96 above.

²¹⁴ United Nations 2007, *Universal declaration of human rights: Dignity and justice for all of us*. New York: United Nations.

²¹⁵ United Nations 1989, *Convention on the rights of the child* 1989. New York: United Nations.

²¹⁶ United Nations Educational, Scientific and Cultural Organisation 1990, *World declaration on education for all and framework for action to meet basic learning needs*. Paris: United Nations Educational, Scientific and Cultural Organisation.

- the *Salamanca Statement and Framework of Action* 1994,²¹⁷
- the *Dakar Framework for Action* 200,²¹⁸ and
- the *United Nations Convention on the Rights of Persons with Disabilities* 2008.²¹⁹

The root of the above-mentioned instruments is that they all address the same key issue which is the right to access adequate basic education and also the rights of the child. They address these two key concepts in regardless of the child's abilities or disabilities. International instruments seek for equal treatment of all children in the world and seek to ensure that they are at all times protected and their best interests put forward in all matters concerning children. These international instruments seek equal treatment of learners in special schools and also in the communities that they live in. The main thrust of inclusive education is that it changes the education system to fit the learners not for the learners to fit the operating education system/setting. It goes further to reject the notion of excluding learners that don't fit in its operating basic education system/settings.

3.7.1 Basic education as outlined or explained by international instruments

The *Convention on the Rights of the Child* provide a definition for what constitute basic education and also put emphasis on what the purpose of education as a tool, to inspire and empower learners.²²⁰ It provides the following specifically with regard to basic education:

The education which every child has a right is designed to provide them with skills to strengthen the ability to enjoy all the other human rights and to promote a culture which is infused by appropriate human rights values."²²¹ The focus of this education must "be on actual learning acquisition and outcome, rather than exclusively upon enrolment, continued participation in organised programmes and completion of certification requirements."²²²

²¹⁷ United Nations Educational, Scientific and Cultural Organisation 1994, Salamanca statement and framework for action on special education needs. Paris: United Nations Educational, Scientific and Cultural Organisation.

²¹⁸ United Nations Educational, Scientific and Cultural Organisation 2000 the Dakar framework for action. Paris: United Nations Educational, Scientific and Cultural Organisation

²¹⁹ UN Enable 2008 Convention on the rights of persons with disabilities. New York: UN Enable.

²²⁰ United Nations Convention on the Rights of the Child 1990

²²¹ A 29 (1) Committee on the Rights of the Child, General Comment No. 1: The Aims of Education of 2001 para 2

²²² World Declaration on Education for All 1990 para IV.

The *Committee on Economic, Social and Cultural Rights* provide the following in its General Comments on what basic education must in the first place be designed to attain:

The full development of the human personality and the sense of its dignity, and to strengthen the respect for human rights and fundamental freedoms.²²³

Inclusive education seeks to provide equal educational opportunities for all learners and to maintain the dignity of all learners. The committee's comments are in line with the principles and goals of inclusive education as outlined above in *White Paper 6*.²²⁴

Originally inclusive education was based on the philosophical medical model, but significant change was observed in the early 1980's which supported the integration of children with special needs into mainstream schools.²²⁵ Inclusive education does actually support or seek the participation of all learners in the classroom.

Inclusion involves the process of changing attitude, values and policies and practices within the school setting and beyond. This entails that inclusive education was intended to make provision for all types of learners and to cater for their different educational needs in order for the education that they are receiving to qualify or fall under the scope of quality/adequate basic education.

3.8 Inclusive education and the borderline student

Learners with Borderline intellectual functioning are children whose intelligence test scores are between 70 and 85 and they mostly fall in-between the gap of special and general education groups. They are a large population at risk for school failure, and nation-wide this population makes up approximately 14% of the population, which is more than all the students in special educational programmes/schools, of which have a test score that fall in between 2nd and 16th percentage and mostly have difficulty in acquiring academic skills, and are often not eligible for special educational services.²²⁶

²²³ Committee on Economic, Social and Cultural Rights 1966.

²²⁴ Ibid par 3.1. above.

²²⁵ Opertti and Belalcazar 2008 *Prospects* 113–135. See also Polat 2011 *International Journal of Educational Development* 50–58.

²²⁶ Lynam Moffitt and Stouthamer-Loeber 1993 *Journal of Abnormal Psychology* 187-196. Shaw 2000a *NASP Communiqué* 4.

These learners have been called different names²²⁷ due to the fact that they rarely meet the eligibility criteria for special education but have high failure rates in the general education setting.²²⁸ The names that these learners are being referred to by are deemed to be pejorative, outmoded and also offensive.²²⁹ The term now adopted to identify learners with borderline intellectual functioning is 'children with diverse learning needs' and it is the most acceptable term in education.²³⁰ In the United States of America most of the learners with borderline intellectual functioning currently receive access to education or basic education in the general education classroom however a large minority of them receive their educational services/basic education in special needs schools.²³¹

In the United States of America there are few educational support systems or services in education for these learners although many schools develop local programming to provide remedial instruction.²³² Therefore there are many learners with borderline intellectual functioning who are languishing between being eligible for education services and being unable to compete academically with their "higher-ability(normal) peers."²³³ To a large degree these learners have been over-looked or ignored by their educators.²³⁴ This methods can be used in South Africa on a test base to see if whether inclusion of learners with borderline intellectual functioning in mainstream schools will yield positive result or negative one

A specialised education programme framework that deals with the specific needs of learners with borderline intellectual functioning can help address the daunting challenges facing educators.²³⁵ Educators are faced with a challenge of teaching

²²⁷ slow learners, shadow children, gray area children, low achievers, educationally subnormal, and crack kids simply because they fall in between the cracks.

²²⁸ MacMillan, Gresham, Bocian and Lambros 1998 *Education & Training in Mental Retardation & Developmental Disabilities* 83-94. Stuebing and Shaywitz 1998 *Learning Disabilities Research & Practice* 186-203. Zetlin and Murtaugh 1990 *American Journal on Mental Retardation* 463-469.

²²⁹ Cooter and Cooter 2004 *Reading Teacher* 680-688.

²³⁰ Coyne, Kame'enui and Carnine *Effective teaching strategies that accommodate diverse learners* 3rd ed.

²³¹ MacMillan, Gresham, Bocian and Lambros 1998 *Education & Training in Mental Retardation & Developmental Disabilities* 83-94.

²³² Kaznowski 2004 *National Association of Secondary School Principals* 31-45. Zetlin and Murtaugh 1990 *American Journal on Mental Retardation* 463-469.

²³³ MacMillan, Gresham, Siperstein and Bocian 1996 *American Journal on Mental Retardation* 161-174.

²³⁴ Zetlin and Murtaugh 1990 *American Journal on Mental Retardation* 463-469.

²³⁵ Jimerson, Burns and VanDerheyden *The handbook of Response to Intervention: The science and practice of assessment and intervention*. Lau, Sieler, Muyskens, Canter, Vankeuren and Marston *Perspectives on the use of the problem-solving model from the viewpoint of a school psychologist, administrator, and teacher from a large Midwest urban school district. Psychology in the Schools* 117-127. Marston, Muyskens, Lau and Canter *Problem-*

“normal” learners and learners with borderline intellectual disability in the same setting and are also expected or pressurised to get certain results from the learners and this is impossible as already indicated above as learners with intellectual disability don’t excel academically at the same level with “normal” learners.²³⁶ Thus, in the United States of America, group standardised achievement test scores have become the most valued metric in majority of the education systems.²³⁷ This resulted in most students who have borderline intellectual disability being underprepared for reading, writing and mathematics.²³⁸

Shaw²³⁹ proposes an educational framework programme that will ensure effective education for children with borderline intellectual disability and the framework requires the following:

- Can be implemented by general education teachers.
- Does not interfere with the instructional needs of other children in classrooms that are heterogeneous for academic skills.
- Is flexible enough to meet the needs of children from elementary to high school.
- Has potential to raise achievement test scores.
- Can be evaluated.
- Meets the specific needs of students with borderline intellectual functioning.

solving model for decision making with high-incidence disabilities: The Minneapolis experience 187-200: state as follows “With the revision of the Individuals with Disabilities Education Improvement Act it was found that there are other methods that can be used to measure learning disabilities other than the discrepancy models that are being used currently. In the United States Response to Intervention has been used to determine special education eligibility. These models involve providing support services for all students with severe strain in acquiring academic skills based on the curriculum-based measurement models assessment. Those learners that fail to improve to a certain set level with academic interventions and support services will then be considered for intensive services and specialised instruction. With the exception that their test scores don’t affect the response to Intervention models though there is no formal differentiation between students with borderline intellectual functioning and learners with learning disabilities. Thus the Response to Intervention models may bring more learners with borderline intellectual functioning into the special education setting.”

²³⁶ Heubert *First, do no harm: How the misuse of promotion and graduation tests hurts our neediest students* 26-31. Kame'enui *Diverse learners and the tyranny of time: Don't fix the blame; fix the leaky roof* 700-703. Verguts and DeBoeck *On the correlation between working memory capacity and performance on intelligence tests* 37-56.

²³⁷ Elliott and Thurlow *Improving test performance of students with disabilities . . . On district and state assessments* 2nd ed).

²³⁸ Ibid.

²³⁹ Shaw 2008 *Hammill Institute on Disabilities* 291–299.

The following are characteristics that learners with intellectual functioning disabilities that make general classroom learning and successful test performance difficult

- They prefer concrete learning, rather than abstract, learning activities
- They have difficulty mentally organising and storing new information learned. This is due to the fact that Learners with borderline intellectual functioning have rote memory skills in the average range.
- They have difficulty generalising materials to new situations
- They require additional practice to master academic material
- They have problem with academic motivation of which is the core of all these characteristics because once academic motivation is lost interest in learning also fades as the years go by.²⁴⁰

This results with learners with borderline intellectual functioning having limitation in working memory.²⁴¹ Thus they require more practice than other learners so that they are able to understand fully and apply the concepts being taught. Hence they cannot be classified under the category of slow learners as they are not slow learners, they just need more time to learn due to the fact that they require more examples to be given to them so that they can memorise the concepts and not forget them, so that in the next lesson they can be able to connect the previous lecture with the current and know the relation thereof, thus, they are extremely inefficient in their ability to understand and apply academic information.²⁴²

3.9 Conclusion

From the above discussion on the education system that is currently being used it is shown that the system is not working for the borderline students as their needs are not been taken care of. The borderline student as stated above require special teaching methods and it's not due to the fact that they are slow learners rather because they

²⁴⁰ Singh *Education of the slow learners*. Sarup. Verguts and DeBoeck *On the correlation between working memory capacity and performance on intelligence tests* 37-56. Rodden-Nord and Shinn 1991 *Journal of Special Education* 441-453 states that "Rote memorization is often a relative strength of students with borderline intellectual functioning". Jensen *The g factor*. Cooter and Cooter *One size doesn't fit all: Slow learners in the reading classroom* 680-688. Guay F and Vallerand *Social context, student's motivation, and academic achievement: Toward a process model. Social Psychology of Education* 211-233.

²⁴¹ Verguts and DeBoeck *On the correlation between working memory capacity and performance on intelligence tests* 37-56 "Working memory is the capacity to hold information in mind for the purpose of completing complex tasks". Sandberg *Reading and spelling, phonological awareness, and working memory in children with severe speech impairments: A longitudinal study, AAC: Augmentative and Alternative Communication* 11-26.

²⁴² Born and Moore 1978 *Journal of Personalized Instruction* 33-36. Bateman '1991 *Journal of Reading, Writing, and Learning Disabilities* 1-16.

grasp information more suitably through those teaching methods. As a result, this leads teachers to think or conclude that they are slow learners as they fail to understand their education needs or special teaching method. Newer and more advanced teaching methods need to be adapted so that the borderline child can also benefit from the State's education system. Inclusive education was meant to accommodate all learners with different learning abilities and as such it is important to take a look at what inclusive education originates from and how it was incorporated into the South African education system and whether what is being practiced now or applied in schools is indeed the principles behind inclusive education or not.

Chapter 4: The current inclusive education system

4.1 Introduction

As already outlined in the chapters above the South African education system was tainted with discriminatory provisions which resulted in segregation in schools.²⁴³ The Constitution now affords all children equal educational opportunities. The government of the new South Africa regards education as the cornerstone of modern society and aims to grant this right to its citizens equally.²⁴⁴ In moving away from the segregating system in education various statutes were promulgated to ensure the equal realisation of the right to education for all learners/children of South Africa.²⁴⁵ However, when analysing the educational landscape of South Africa there seems to be too many schools, and circumstances in which these “equal educational opportunities” have become little more than talk.²⁴⁶

In support of this, the following discussion will highlight the various ways in which the South African education system is failing to meet the minimum requirements to provide adequate education. The discussion focuses on education generally and not necessarily on the unique requirements of borderline students. This is done to illustrate that the system is lacking in meeting the needs of mainstream students. From this one begs the question, to what greater extent is the system failing borderline students?

4.2 Factor 1: Teaching quality

²⁴³ <https://equaleducation.org.za/campaigns/school-infrastructure/> accessed 12/02/2020 “Education in South Africa is highly unequal. Decades of Apartheid policy meant that previously White schools received more funding than schools in Black, Coloured and Indian communities. Many of the inequalities created during Apartheid remain today – 19 years into our new democracy.”

²⁴⁴ Section 29 of the Constitution.

²⁴⁵ Veriava F. “Education Rich school, poor school – the great divide persists” Mail and Guardian (28 September 2012) <https://mg.co.za/article/2012-09-28-00-rich-school-poor-school-the-great-divide-persists/> accessed 12 February 2020. See also the Constitution of the Republic of South Africa, the South African Schools Act, the White Paper 5 and 6.

²⁴⁶ Minister of Basic Education v Basic Education for All 2016 1 SA 369 (SCA) “The Supreme Court of Appeal held that the government appellants violated the rights to education, equality, and dignity under the Constitution by failing to provide learners in Limpopo with prescribed textbooks before the academic term commenced.” See also Mtantato ‘Basic education is failing the economy’ 23/11/2018 <https://mg.co.za/article/2018-11-23-00-basic-education-is-failing-the-economy/> accessed 20 April 2020. “South Africa is failing the rights of children to education and health” <https://theconversation.com/south-africa-is-failing-the-rights-of-children-to-education-and-health-112707> accessed 20 April 2020.

As the African proverb says, “It takes a village to raise a child.” When this ethos of collaboration and care is applied to the learning process, we believe it takes a team to educate a child.²⁴⁷

The following discussion focuses on the elements that affect the teaching quality students receive: teacher training, teacher creativity and classroom size. Brief reflection of the current state of teachers in South Africa is discussed.

4.2.1 Teacher training

One can argue that, compared to curriculum content, teaching methods and creativeness have a far smaller impact on student achievements. However, research has repeatedly shown the impact that teaching methods, teacher training and creativity have on student achievement.²⁴⁸ In support of this²⁴⁹ Newman and Newman²⁵⁰ state:

Since teachers have the most direct, sustained contact with students and considerable control over what is taught and the climate for learning, improving teachers’ knowledge, skills and dispositions through professional development is a critical step in improving student achievement

Therefore, the quality of the teacher and their training plays a vital role in student development. Qualified teachers are capable of bridging the gap of achievement that various forms of diversity create, especially amongst those learners who are

²⁴⁷ Transforming the Education Workforce: Learning Teams for a Learning Generation <https://educationcommission.org/wp-content/uploads/2019/09/Transforming-the-Education-Workforce-Full-Report.pdf> accessed 16 May 2020.

²⁴⁸ Harris and Tim 2011 *Journal of public economics* 95, 798-812. Douglas and Tim 2008 *National Center for Analysis of longitudinal data in education research* 1-10. National Research Council. *Educating Teachers of Science, Mathematics, and Technology: New Practices for the New Millennium* Washington DC "*The Critical Importance of Well-Prepared Teachers for Student Learning and Achievement*" The National Academies Press 2001. doi: 10.17226/9832. Narayanan 2017 *International Journal of Academic Research in Business and Social Sciences* 7 1-2. Rao and Muhammad 2018 *Global Journal of Management, Social Sciences and Humanities* 402-424.

²⁴⁹ National Research Council. *Educating Teachers of Science, Mathematics, and Technology: New Practices for the New Millennium* Washington DC "*The Critical Importance of Well-Prepared Teachers for Student Learning and Achievement*" The National Academies Press 2001. doi: 10.17226/9832. <https://www.nap.edu/read/9832/chapter/5#65> accessed 10 March 2020.

²⁵⁰ The National Commission on Teaching and America’s Future (NCTAF, 1996) and other national groups, such as the Education Trust (1998), “reached similar conclusions based on research that tracked the academic achievement of individual students over long time periods (see, for example, Sanders and Rivers, 1996).”

economically disadvantaged and their well-off peers.²⁵¹ Those teachers who are not qualified cannot be expected to teach that which they do not know either.²⁵²

This begs the question, what is the criteria that a teacher must meet to be considered as well trained. Providing a comprehensive answer is outside the scope of this study. However, Smuts provides a starting point, by describing a quality basic education teacher as one that is:

...sound in content knowledge, has the capability of making good decision simultaneously, who is able to plan ahead and possess emotional intelligence.²⁵³

Furthermore, the Global Education Commission²⁵⁴ elaborates on the importance of teacher training:

Increasing teacher training that is aligned to the trainee's competencies can produce a more effective teacher; and professional development opportunities can be a motivational tool to continue improving as a teacher.²⁵⁵

It is evident that teachers should be trained according to their own strengths and professional development opportunities. It also entails that if the teachers are frequently trained to familiarise themselves with the changing times and what works with students currently then the teachers will be in a good position to interact and teach learners. Teachers should also be trained and developed holistically.

Students need quality teachers, especially those that require special attention. To achieve a higher level of quality, the focus must be on the type of training provided to teachers. Teacher training programs that are considered as being adequate for the

²⁵¹ Note 247 above.

²⁵² Transforming the Education Workforce: Learning Teams for a Learning Generation <https://educationcommission.org/wp-content/uploads/2019/09/Transforming-the-Education-Workforce-Full-Report.pdf> accessed 16 May 2020. See also Truter *FunDza Literacy Trust* <https://live.fundza.mobi/home/fanz/essays/i-stood-completely-still/> accessed 03/04/2020 provides that "There are many challenges being a teacher in South Africa today."

²⁵³ Smuts M "Bad education: It starts with how we train teachers" Daily Maverick (04 April 2018) <https://www.dailymaverick.co.za/opinionista/2018-04-04-bad-education-it-starts-with-how-we-train-teachers/HOMETPS> accessed 13 March 2020

²⁵⁴ The Education Commission is a global initiative dedicated to greater progress on Sustainable Development Goal 4 – ensuring inclusive and quality education and promoting lifelong learning for all.

²⁵⁵ "Transforming the Education Workforce: Learning Teams for a Learning Generation" <https://educationcommission.org/wp-content/uploads/2019/09/Transforming-the-Education-Workforce-Full-Report.pdf> accessed 16/05/2020.

provision of quality basic education are those that have strict selection criteria and provide rigorous training which include extended classroom practice which continues after years that a teacher is qualified.²⁵⁶ Training should therefore be two-fold, both before and after qualifying as a teacher.

With regards to proper ongoing training for already qualified teachers, this aspect seems to be neglected in South Africa. There is increasing complaints that South African teachers spend most of their time dealing with administrative issues and meetings rather than spending their time in the classroom teaching.²⁵⁷ Worsening this situation is the dire training many of these teachers had received prior to entering the profession. There seems to be global concern regarding teacher training in developing countries. For example, in Sub-Saharan Africa only 64% of teachers receive proper training before entering the classroom.²⁵⁸ Research has suggested that the ratio between quality basic education teachers to students is dropping and becoming unbalance. ²⁵⁹ Outside the sub-Saharan African region, it is estimated that there are countries, world-wide of which more than half of the teachers²⁶⁰ have not received proper training, knowledge and skills which are required to teach learners. As a result, the teachers are unable to teach learners as they lack vital, foundational teaching techniques and class management skills which has a detrimental effect on student achievement. It is beyond dispute, that the education

²⁵⁶ Note 251 above.

²⁵⁷ TALIS Report, Volume 2 is released <https://www.education.gov.za/ArchivedDocuments/ArchivedArticles/TALIS2Released.aspx> accessed 30 July 2021. Minister Angie Motshekga releases TALIS Research Study results, 2 Jul, 30 June 2019 <https://www.gov.za/speeches/minister-basic-education-release-talis-south-africa-country-report-30-jun-2019-0000> accessed 30 July 2021. T Kubheka Eye witness news *Motshekga: dept to monitor why teachers spend less time teaching* <https://ewn.co.za/2019/07/03/motshekga-dept-to-monitor-why-teachers-spend-less-time-teaching> accessed 29 July 2021. '5 of the biggest problems South African teachers struggle with' SA News 02 June 2019 "South African teachers are spending a hefty amount of time on administrative tasks – time which could be better used on teaching in the classroom. At least 66% of classroom time is spent on actual teaching and learning in South Africa, compared to 78% in other countries. Administrative burdens and keeping order in the classroom are some of the challenges cited by South African teachers as chipping away from their teaching time. This is the finding from the Teaching and Learning International (TALIS) research survey released by the Basic Education Department on Tuesday."

²⁵⁸ The importance of effective teacher training 05 October 2019 <https://www.bridgeinternationalacademies.com/effective-teacher-training-and-development/> accessed 20 April 2020.

²⁵⁹ Ibid provide that "Trained teachers in primary education (% of total teachers)."

²⁶⁰ Ibid provide that "When exploring individual countries, the statistics look even worse. In Liberia, for example, under half of all teachers are effectively trained and have the knowledge and skills required to teach a class of pupils."

received by a student is only as good as the teacher providing it. A deeper analysis of the situation in South Africa will be done later in this chapter.

4.2.2 Creativity in teaching

Only once a teacher has received proper foundational training are they able to become fully creative in class.²⁶¹ This is vital when teaching diverse students, and especially students with varying intellectual abilities and educational needs.²⁶² The creativity of a teacher can potentially also help learners with borderline intellectual functioning to build their self-esteem and deal with the social and emotional difficulties in schools.²⁶³ Thus, ideally educators should teach based on the curriculum but have the knowledge and training to adjust their teaching creatively.²⁶⁴

The current teaching model is mostly based on a theoretical model of teaching rather than the reality of teaching.²⁶⁵ Teaching is based on what is being prescribed by the Department of Education and cannot always take into account the varying realities in which many learners have to be taught. These possess a major challenge in the teaching field as teachers are not well prepared realistically to teach diverse learners and especially not within challenging circumstances.²⁶⁶ However, when a teacher has

²⁶¹ Piske, Stoltz, Santinello et al *The Importance of Teacher Training for Development of Gifted Students' Creativity: Contributions of Vygotsky* 131-141 state that "In the scope of the school and the teacher education, Guérios (2002) defends that the development of the creative potential of the individuals is associated with the motivation to make it and, because of this, to learn it. If to think about the school, in turn, creative teachers in their methods of education can motivate the students to learn it."

²⁶² *ibid.* Ben Johnson 28 July 2015 "Creative Teacher" Is Not an Oxymoron" <https://www.edutopia.org/blog/creative-teacher-not-oxymoron-ben-johnson> accessed 20 April 2020. Trnova 2014 *Science Education International* 8-18.

²⁶³ Note 259 above "Creativity can be defined as the quality or characteristic of who or what is creative. Create is an important act to avoid a monotonous and tiring teaching. So if we think about teaching students with high potential, creativity can be an attribute considered essential to make these students interested in learning and attending school."

²⁶⁴ *Ibid.* Renzulli and Reis *The Schoolwide Enrichment Model* 2nd ed 271-284. Renzulli "The Three-Ring Conception of Giftedness: A Developmental Model for Creative Productivity" 55-90. Gross "Developing Programs for Gifted and Talented Students" 61-76.

²⁶⁵ Moritz, Ehlert and Fritz 2017 *African Journal of Research in Mathematics, Science and Technology Education* 37-48. Chijioke and Mafu *How "basic" is basic education: restructuring basic education in post-apartheid South Africa within the context of EFA* 427-451. Ramoroka and Engelbrecht *The dialectics of historical empathy as a reflection of historical thinking in South African classrooms* 46-71.

²⁶⁶ <https://www.bridgernationalacademies.com/effective-teacher-training-and-development/> accessed 10/03/2020 "It's true that teachers have the capability to change lives as they are the instillers of knowledge to the youth but this can also be derailed by not focusing on the learning and development of the very same teachers before they enter the classroom"

received proper training, both theoretical and in class training, they will be better prepared to face the various hurdles in class and be creative in their solutions.

4.2.3 Effect on classroom size to learners

The capacity of a classroom affects the quality teaching of the educator. If a classroom is overcrowded, then the teacher is faced with multiple difficulties. Firstly, the teacher is unable to move freely around the classroom which hinders the teachers' ability to identify struggling students. The second difficulty is class management, as a single teacher cannot control and therefore effectively educate a class of, for example, 40 students or capacity of over 60²⁶⁷ learners.²⁶⁸ This will be the case, irrespective of how well the teacher was trained.²⁶⁹

Overcrowded classrooms have an effect on the participation of students in the classroom and if students are not participating in the classroom this also creates a barrier for their learning and teachers in such overcrowded classroom setting often do not even notice that some students are not participating.²⁷⁰ This in turn defeats the purpose of inclusive classroom and provision of adequate basic education as interaction and balance between teacher and students' ratio drops.²⁷¹ The ideal classroom size in which a teacher can be able to interact and assist students effectively is that of 20 learners per teacher.²⁷² However in South Africa the Minister of Education provided that the ideal number of students in one classroom is 30.²⁷³

²⁶⁷ Thomas S "What are the Challenges in Teaching Profession?" Elephant Journal (14 March 2019) <https://www.elephantjournal.com/2019/03/what-are-the-challenges-in-teaching-profession/> accessed 03 April 2020.

²⁶⁸ Muthusamy *Teachers' experiences with overcrowded classrooms in a mainstream school* 1-10.

²⁶⁹ Khan and Mohammad 2012 *University of Science and Information Technology* 10162-10165.

²⁷⁰ Yusuf 2004 *Nigeria Journal of Social Studies* 23-36. Mokhtar *The effect of overcrowded classrooms on teachers' performance*.

²⁷¹ Jacob 2015 *International Journal of Science, Environment and Technology* 1218-1225. See also Molagun 2007 *African Journal of Historical Science in Education* provide that "Consequences of overcrowded classroom on the implementation of UBE objectives."

²⁷² Tanner 2000 *Minimum Classroom Size and Number of Students Per Classroom*.

²⁷³ Angie Motshekga Minister of Education 12/07/2012 "Pupil teacher ratio at 30.4:1" <https://www.politicsweb.co.za/party/pupil-teacher-ratio-at-3041--angie-motshekga> accessed 27/04/2020. Bayat, Louw and Rena 2014 *International Journal of Educational Sciences* 41-55. See also Hernando-Malipot News. "Department of Basic Education 2018/19 Budget & Annual Performance Plan Basic Education 17 April 2018 Chairperson: Ms N Gina (ANC)" <https://pmg.org.za/committee-meeting/26122/> accessed 27/04/2020.

It is also stated that overcrowded classroom results in frustration of the learners and as such most learners often develop a negative attitude towards learning.²⁷⁴ This clearly indicates that overcrowded classrooms not only have an effect on the teachers but also on the learners in the overcrowded classroom.²⁷⁵

4.2.4 *The state of South African teachers*

“The quality of an education system cannot exceed the quality of the teachers in that system.”²⁷⁶

Since 1994 there has been various changes to the South Africa basic education curriculum,²⁷⁷ which included the introduction of the *School’s Act* in 1996 and Outcome Based Education²⁷⁸ in early 2000. The study will not dwell on the changes the curriculum has undergone but will concentrate on the problems that the basic education system is presently experiencing. After an in-depth study of the failing standard of basic education in South, The Africa Institute of South Africa²⁷⁹ found the following as some of the most glaring issues:

The quality of education remains very poor, and the output rate has not improved. Furthermore, classrooms are still overcrowded: the ratio of teachers to learners is 1:32 in South African public schools. The dropout rate is very high, and literacy and numeracy levels are low. Other challenges include: poor teacher training; unskilled teachers; lack of commitment to teach by teachers; poor support for learners at home; and a shortage of resources in education despite the large budgetary commitments by government.

To discuss each in depth would exceed the length of this study, so only some of the issues will be emphasised in an attempt to highlight to difficulties that all students, and to an even larger extent, borderline students are facing.

²⁷⁴ Amarat 2011 *International Education Science* 37-48.

²⁷⁵ Shah and Inamullah 2012 *The Journal of Educational Strategies* 772-789 provide that “Overcrowded classrooms have not only affected learner performance but also put immense stress on teachers.” Muthusamy *Teachers’ experiences with overcrowded classrooms in a mainstream school* 1-10 claims that Fin (2003) contended that overcrowded classrooms impacted negatively on teacher morale and enjoyment of their profession. Overcrowded classrooms have created a scenario in which teachers face many challenges in the classroom”

²⁷⁶ Note 248 above.

²⁷⁷ For example, the introduction of the South African School Act of 1996 and the New Qualifications framework

²⁷⁸ Botha *International Journal of Leadership in Education* 361- 371

²⁷⁹ African Institute of South Africa 2012 *Policy Brief* 2.

To bridge to inequalities in education and directly address the discriminatory educational systems of the past, teachers must all have the same quality education training. This is the only way to ensure that fair education is being received by all the learners of South Africa regardless of where they are from and also of whether they are in rural or urban public schools.²⁸⁰ However upon the reflection of the South African education setting it's quite clear that the education system in this country in many instances, and for reasons extending training, sets teachers up for failure long before they even enter the classroom, this goes to affect the learners.²⁸¹

To analyse teacher quality in South Africa, it is of outmost importance to take a brief look at what training South African teachers receive and whether it qualifies as adequate basic education training.²⁸² The teacher training that basic education teachers receive influences the standards of provision of adequate basic education for all learners in the South Africa.²⁸³ From a policy point of view, it's imperative that teacher training is highly standardised and fundamentally equal.²⁸⁴ If it's done this way then all the learners will be receiving an equal chance of receiving adequate basic education. South Africa doesn't have a standardised teacher training system.²⁸⁵ A brief investigation into the bachelors in education as found on the South African Qualifications Authority official page, makes it evident that there training for education

²⁸⁰ Note 274 above. See also Savides M "South Africa: South African schools have 5,139 teachers who are unqualified or under-qualified" Times Live (06 June 2017) <https://www.news24.com/SouthAfrica/Local/Maritzburg-Fever/poor-quality-teachers-are-holding-back-south-africas-education-system-20190116-2> accessed 13 March 2020 state that "the national education department recently admitted that 5,139 teachers – the vast majority of which are in rural KwaZulu-Natal, which stands at the heart of the problem – are either unqualified or under-qualified." See also Daily Vox Team The Daily Vox. Sokutu B. "Education still unequal after 25 years of democracy" The Citizen (01 July 2019) <https://citizen.co.za/news/south-africa/education/2148832/education-still-unequal-after-25-years-of-democracy/> accessed 02 May 2020.

²⁸¹ Ibid. See also Gumede *TimesLive*.

²⁸² Modisaotsile *The Failing Standard of Basic Education in South Africa* <http://www.ai.org.za/wp-content/uploads/downloads/2012/03/No.-72.The-Failing-Standard-of-Basic-Education-in-South-Africa1.pdf> accessed 02 May 2020. Gumede *Times Live*.

²⁸³ Truter *FunDza Literacy Trust* in There are many challenges being a teacher in South Africa today provides that "One of the major problems is that the curriculum changes all the time. Educators to be flexible, but it is strenuous. Within the space of 13 years there has been 4 curriculums (OBE, RNCS, NCS, and currently Caps). Training duration is too short (3-4 years vs 3 days). Some subject advisers are not even clear about these changes. Our directors and the department expect best outcomes whereas their ideas are theory vs implementation, age-cohort vs learning. This causes teachers to resign left, right and centre."

²⁸⁴ Draft Policy on Minimum Requirements for Teacher Education Qualifications selected from the HEQF <http://www.dhet.gov.za/Reports%20Doc%20Library/Draft%20Policy%20on%20minimum%20requirements%20for%20Qualifications%20in%20Education.pdf> accessed 02 May 2020.

²⁸⁵ Note 248 above. See also Modisaotsile *The Failing Standard of Basic Education in South Africa*. Tlou and Feza 2017 *South African Journal of Childhood Education* 468.

students is not set.²⁸⁶ There rather seems to be exit level outcomes and associated assessment criteria. This should be revised to ensure quality teachers for all students. For example, in Singapore, despite the size of their country, they have a world-renowned teacher training programme,²⁸⁷ in which there is only one teacher training facility where all teachers receive the same quality teacher training. The size of South Africa would make one institution impossible, but we can learn from Singapore with regards to a universal training module.

South Africa used to have various teaching colleges as the only institutions where one could qualify as a teacher. These institutions had the sole focus of properly training teachers and worked within a semi-generic curriculum. There are increasing calls for these colleges to be reopened.²⁸⁸ In a reaction to calls for reopening teaching colleges, Johnathan Jansen, former rector of the University of the Free State, identified the major issues with the current university-based teacher training:

- University lecturers have little practical experience as teachers or have not been classroom practitioners for decades.
- Academics are “enthralled by high theory” and neglect practical skills and training.

He recommends the colleges be returned for primary school teachers and universities be reserved for high school teachers and that teacher training be 70 % practical training and only 30% theory. However, he again warns that colleges in South Africa did not offer the same quality education, especially those within the former homelands. This study suggests that educational policy be changed and generic curricula with minimum outcomes be written and instruction is done at institutions with practical instructors. This also is to address the pressing concern of the underproduction of teachers, as it is currently estimated that the system is only

²⁸⁶ SAQA <http://allqs.saqa.org.za/showQualification.php?id=20161> accessed 01 May 2019

²⁸⁷ <http://ncee.org/what-we-do/center-on-international-education-benchmarking/top-performing-countries/singapore-overview-2/singapore-teacher-and-principal-quality/> accessed 27 April 2020. Harry Fletcher-Wood (CPD, Education Around the World Education in Singapore: 6) “*The best trained teachers in the world*” 07 February 2018 <https://improvingteaching.co.uk/2018/02/07/education-in-singapore-6-the-best-trained-teachers-in-the-world/> accessed 27 April 2020. “*What other countries can learn from Singapore’s schools*” <https://www.economist.com/leaders/2018/08/30/what-other-countries-can-learn-from-singapores-schools> accessed 27 April 2020

²⁸⁸ Mundy “*Education: Decline of standards leaves learners at the bottom of the league*” FT.com Reports 2011 <http://www.ft.com/intl/cms/s/0/4ab617d4-cf3f-11df-9be2-00144feab49a>. accessed 05 May 2019. [html#axzz1muQO6NJE](http://www.ft.com/intl/cms/s/0/4ab617d4-cf3f-11df-9be2-00144feab49a) Jansen *Times Live*.

producing a third of the countries requirements.²⁸⁹ Current institutions should also be reviewed as the Centre for Development and Enterprise estimates that only a third of institutions currently training teachers would qualify for accreditation.²⁹⁰ Equal teacher training is the best safeguard for equal share of the education system for all. However, South Africa is failing in this regard.²⁹¹

Another point of concern is the commitment and quality of teachers currently in the system. As almost 10% of the teachers in South Africa are absent from school every day, and 20% are absent from school on Mondays and Fridays and teachers in “black” schools teach an average of 3,5 hours a day, whilst in “white” schools it is 6,5 hours.²⁹² For students, the difference in exposure to teaching is three and a half years. This while 79% of learners in grade 6 have insufficient content knowledge levels.²⁹³ It is also said that half of the learners who have attended basic education don’t even know basics of basic education it at all.²⁹⁴ Low or insufficient teacher standards are a consequence of lack of teacher accountability and this has been pin pointed as the one of the causes for poor quality education.²⁹⁵ It is therefore clear that, in order to eradicate poor teacher training teachers must not be allowed to enter a classroom unless they have met the standards for basic education and to also hold them accountable if they fall short.

²⁸⁹ Opinion South Africa battling with shortage of teachers in public schools <https://www.iol.co.za/the-star/opinion-analysis/opinion-south-africa-battling-with-shortage-of-teachers-in-public-schools-37696438>; Cullis *CapeTalk*.

²⁹⁰ “Centre for Development and Enterprise” 2011 https://media.africaportal.org/documents/VALUE_IN_THE_CLASSROOM_full_report1.pdf accessed 20 April 2020

²⁹¹ Note 283 above “So, if this is the ideal situation: how do we fare in South Africa? Unfortunately, we have largely gone wrong at every turn.” Note 278 above.

²⁹² African Institute of South Africa 2012 *Policy Brief 4*,

²⁹³ Tshetlo “*Report: 10% of teachers are absent daily at most South African public schools.*” 05 July 2017 <https://www.702.co.za/articles/271296//report-10-of-teachers-are-absent-daily-at-most-south-african-public-schools> accessed 04 April 2020. See also Okoye the Citizen “This has a diverse impact on the learners as they will be subjected to a substitute teacher due to the absence of the teacher who has been trained to teach them that particular subject because the teacher who replaces them for that day may not be qualified to teach that subject. Also if there is no substitute teacher for that day it means time wasted which will be recovered at the expense of the learners.”

²⁹⁴ Robinson *News24* provide that “This is according to a 2015 TIMMS report on mathematics achievements among Grade 5 pupils in SA.” <https://www.news24.com/SouthAfrica/Local/Maritzburg-Fever/poor-quality-teachers-are-holding-back-south-africas-education-system> 20190116-2 accessed 13/03/2020

²⁹⁵ Ibid. Centre for Development and Enterprise 2011 https://media.africaportal.org/documents/VALUE_IN_THE_CLASSROOM_full_report1.pdf accessed 13 March 2020

The results in public schools are dire and seem to be continuously decreasing, especially in subjects like maths and science.²⁹⁶ Despite this under qualified teachers keep being distributed among public schools.²⁹⁷ principals and teachers also need to be reintroduced to the current classroom management skills and teaching skills to be taught to them that work with the current generation.²⁹⁸

Another issue seems to be that, far too often, teachers do not teach subjects which they were trained to teach, but any subject that requires a teacher.²⁹⁹ For example, in a study done with 73 matric physical science teachers, only 60% could were able to solve basic problems.³⁰⁰ It also seems that teachers that do have specialist knowledge are underutilised.³⁰¹ This implies that specialist knowledge gets lost and subject content is taught at a superficial level. This again directly influences the level of education received by the learners. The system is failing teachers and teachers in turn are failing their students. Students are falling through the cracks and the first of them will be the students with special needs.

²⁹⁶ Centre for Development and Enterprise 2011
https://media.africaportal.org/documents/VALUE_IN_THE_CLASSROOM_full_report1.pdf

²⁹⁷ Modisaotsile 2012 *Africa Institute of South Africa*. See also Maroun and Maddock 2018 *South African Journal of Higher Education* 192–214. See also Savides M “South Africa: South African schools have 5,139 teachers who are unqualified or under-qualified” Times Live (06 June 2017) <https://www.news24.com/SouthAfrica/Local/Maritzburg-Fever/poor-quality-teachers-are-holding-back-south-africas-education-system-20190116-2> accessed 13 March 2020. “KZN had 2,875 unqualified or under-qualified teachers last year, 57% of the total number of such teachers across the country; The Northern Cape had the second most, with 400 teachers; and Limpopo was best off, with just 15 teachers. The response also showed that five districts across the country had more than 200 unqualified or under-qualified teachers: eMtshezi (231 teachers), Paulpietersburg (228 teachers) and Ixopo (219 teachers), all in KZN, and Ngaka Modiri Molema (218) and Dr Ruth Segomotsi Mompati (201 teaches), both in the North West. Figures for individual districts in the Free State were not provided.”

²⁹⁸ Engelbrecht 2006 *European journal of psychology of education* 253. See also Savides M “South Africa: South African schools have 5,139 teachers who are unqualified or under-qualified” Times Live (06 June 2017) <https://www.news24.com/SouthAfrica/Local/Maritzburg-Fever/poor-quality-teachers-are-holding-back-south-africas-education-system-20190116-2> accessed 13 March 2020

²⁹⁹ Savides M “South Africa: South African schools have 5,139 teachers who are unqualified or under-qualified” News 24 06 June 2017 <https://www.news24.com/SouthAfrica/Local/Maritzburg-Fever/poor-quality-teachers-are-holding-back-south-africas-education-system-20190116-2> accessed 13 March 2020 provide that “SADTU general secretary Mugwena Maluleke said the problem was not that teachers weren’t qualified, it was that they were being made to teach the wrong subjects. “The problem is now you allocate the teacher,” he said. “You get teachers who are qualified to teach a subject, they are they allocated to a different subject. The issue is misallocation of resources.” Maluleke said that this was largely because of a change in syllabus, with teachers not being properly trained to meet the new requirements and criteria.” See also Human Science Research Council <http://www.hsrc.ac.za/uploads/pageContent/2702/RESDI%20newsletter,%20November%202010%20issue.pdf> accessed 02 May 2020.

³⁰⁰ Note 294 above.

³⁰¹ Ibid.

4.3 Educational factor 2: Educational facilities

The discussion above focused on the human resource when educating students, the second factor that requires attention is the infrastructure in which this takes place. Educational facilities not only enhance learner's educational achievement, but also proper facilities help them in interacting and participating in school activities.³⁰²

It has been found that school facilities can have a profound impact on both teacher and student outcomes. With respect to teachers, school facilities affect teacher recruitment, retention, commitment, and effort. With respect to students, school facilities affect health, behaviour, engagement, learning, and growth in achievement. Thus, researchers generally conclude that without adequate facilities and resources, it is extremely difficult to serve large numbers of children with complex needs.³⁰³

The above statement illustrates the vital role educational facilities play in the educational achievement of a learner. Adequate educational facilities improves the rate of learning of a student as all their educational needs are at their disposal.³⁰⁴ This is non-negotiable for a borderline student, as they are simply unable to effectively learn in the educational settings currently at their disposal. This unfortunately holds true for a large number of schools in South Africa and is neither limited provincially or to rural schools:

Thousands of schools in South Africa lack the infrastructure necessary to provide learners with the quality education which they are legally entitled to receive. The Department of Basic Education's (DBE) National Education Infrastructure Management System (NEIMS) Report, published in May 2011, and indicates that schools in the Eastern Cape and KwaZulu-Natal are in the worst condition, but that the problem of poor infrastructure is not exclusive to rural provinces. Equal Education's recently conducted audit of sanitation in schools in Tembisa, Gauteng,

³⁰² <https://racoongang.com> accessed 14 March 2020. Ziwire E "Creating a conducive learning environment" The Herald (15 June 2015) <https://herald.co.za> accessed 14 March 2020.

³⁰³ The Importance of School Facilities in Improving Student Outcomes Introduction <https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/> accessed 12/02/2020

³⁰⁴ Veriava F. "Education Rich school, poor school – the great divide persists" Mail and Guardian (28 September 2012) <https://mg.co.za/article/2012-09-28-00-rich-school-poor-school-the-great-divide-persists/> accessed 12 February 2020 provide that "Other studies indicate that there is a direct correlation between the wealth of a school and its outcomes, so pupils in well-resourced schools perform better than their counterparts in the poorest quintiles. Given that pupils in the least well-off schools are mainly black, educational outcomes therefore have a clear race and class dimension."

echoed this finding. The audit, which surveyed 11 public secondary schools, revealed that the vast majority have insufficient infrastructure or a dysfunctional sanitation system. Gauteng, despite being the wealthiest province, suffers from significant infrastructural inadequacies.³⁰⁵

One only has to open the news to find further support of these statistics, stories of overcrowded classrooms and mud schools³⁰⁶ and appalling sanitary facilities. Eisau³⁰⁷ highlights 3 ways in which educational facilities influence academic achievement:

- Promoting a more interactive, fun and easy way to study.³⁰⁸
- Making the classroom environment more conducive to learning.³⁰⁹
- Providing a pleasant atmosphere where students are nurtured and cared for.³¹⁰

³⁰⁵ Equal Education <https://equaleducation.org.za/campaigns/school-infrastructure/> accessed 12 February 2020 provide that “The NEIMS Report also provides detailed statistics on the lack of resources at public schools across the country. It is noted in NEIMS that, of the 24 793 public ordinary schools: 3 544 schools do not have electricity, while a further 804 schools have an unreliable electricity source; 2402 schools have no water supply, while a further 2611 schools have an unreliable water supply; 913 do not have any ablution facilities while 11 450 schools are still using pit latrine toilets; 22 938 schools do not have stocked libraries, while 19 541 do not even have a space for a library; 21 021 schools do not have any laboratory facilities, while 1 231 schools have stocked laboratories; 2 703 schools have no fencing at all; and 19 037 schools do not have a computer centre, whilst a further 3 267 have a room designed as a computer centre but are not stocked with computers.”

³⁰⁶ How South Africa’s department of basic education is misleading the public <https://africacheck.org/reports/how-south-africas-department-of-basic-education-is-misleading-the-public/> accessed 25 February 2020 and Current state of South african schools https://www.bing.com/images/search?view=detailV2&ccid=2tg40L8r&id=D6753671C83B6B924CD3534EB7348E649633B89D&thid=OIP.2tg40L8r1-2sNPINO5MbsgHaEK&mediaurl=https%3a%2f%2fcs.mg.co.za%2fcrop%2fcontent%2fimages%2f2012%2f09%2f27%2fBomvini-8_i2edit.jpg%2f800x450%2f&exph=450&expw=800&q=current+state+of+south+african+public+schools&simid=607987327902485283&selectedIndex=4&ajaxhist=0 accessed 25 February 2020.

³⁰⁷ Eisau PhD in European Languages and Cultures (specialising in Literary Translation) Department of International Studies Macquarie University <https://www.eisau.com.au/blog/3-ways-school-facilities-and-equipment-influence-student-learning/> accessed 12 February 2020

³⁰⁸ Ibid “Utilising state-of-the-art instruments, quality school supplies and technological tools) provides various benefits to students. For example, advanced laboratory instruments provide learners with a more convenient means of conducting studies, testing theories and finding solutions to problems. Integrating technology in the academe also makes learning more enjoyable, interactive and fun. You can read more about this in our previous article.”

³⁰⁹ Ibid “With the use of quality furniture and proper lighting, students can concentrate on the lessons properly. For instance, using chairs made of soft, quality materials can prevent back pain and promote better breathing. Having durable desks, cabinets and shelves also creates a positive atmosphere in the classroom, thereby helping students develop their skills and enhance their knowledge. The same can be said about good lighting since it also supports optimal visual condition.” See also <https://africacheck.org/reports/how-south-africas-department-of-basic-education-is-misleading-the-public/> accessed 25/02/2019.

³¹⁰ Ibid “A clean, safe and well-maintained facility (e.g. restrooms, clinic, gym and swimming pool) keeps bacteria, viruses and toxins away from the students, which prevents the onset of ailments or diseases. The secret to creating a healthy and pleasant environment, of course, lies in enlisting the help of reputable cleaning contractors or facility management firms.”

Taking the role of educational facilities into account, it is of importance to analyse what constitute adequate educational facilities. The government also have norms and standards for classes. In 2013 the South African government issued the first legally binding Norms and Standards for School Infrastructure:

For the first time ever, it is now the law that every school must have water, electricity, internet, working toilets, safe classrooms with a maximum of 40 learners, security, and thereafter libraries, laboratories and sports facilities. Minimum Norms and Standards are regulations that define the infrastructural conditions that make a school a school. They stipulate the basic level of infrastructure that every school must meet in order to function properly.³¹¹

The governmental norms and standards are similar to universally accepted norms. According to research done in 2015 by Penn State Centre for Evaluation and Education Policy Analysis, the following are the few key features used to determine whether educational facilities that are being provided are adequate:

- Classroom size and space;³¹²
- Lighting;³¹³

³¹¹ <https://equaleducation.org.za/campaigns/school-infrastructure/> accessed 12/02/2020 “3 544 schools do not have electricity, while a further 804 schools have an unreliable electricity source; 2402 schools have no water supply, while a further 2611 schools have an unreliable water supply; 913 do not have any ablution facilities while 11 450 schools are still using pit latrine toilets; 22 938 schools do not have stocked libraries, while 19 541 do not even have a space for a library; 21 021 schools do not have any laboratory facilities, while 1 231 schools have stocked laboratories; 2 703 schools have no fencing at all; and 19 037 schools do not have a computer centre, whilst a further 3 267 have a room designed as a computer centre but are not stocked with computers. Thousands of schools in South Africa lack the infrastructure necessary to provide learners with the quality education which they are legally entitled to receive. The Department of Basic Education’s (DBE) National Education Infrastructure Management System (NEIMS) Report, published in May 2011, and indicates that schools in the Eastern Cape and KwaZulu-Natal are in the worst condition, but that the problem of poor infrastructure is not exclusive to rural provinces. Equal Education’s recently-conducted audit of sanitation in schools in Tembisa, Gauteng, echoed this finding. The audit, which surveyed 11 public secondary schools, revealed that the vast majority have insufficient infrastructure or a dysfunctional sanitation system. Gauteng, despite being the wealthiest province, suffers from significant infrastructural inadequacies.”

³¹² The Importance of School Facilities in Improving Student Outcomes Introduction <https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/> accessed 12 February 2020 “Overcrowded classrooms—and schools—have consistently been linked to increased levels of aggression in students. Overcrowded classrooms are also associated with decreased levels of student engagement and, therefore, decreased levels of learning. Alternatively, classrooms with ample space are more conducive to providing appropriate learning environments for students and associated with increased student engagement and learning.” See also Veriava F. “Education Rich school, poor school – the great divide persists” Mail and Guardian (28 September 2012) <https://mg.co.za/article/2012-09-28-00-rich-school-poor-school-the-great-divide-persists/> accessed 12 February 2020. “*Educate a child: a programme of education above all*” <https://educateachild.org/explore/barriers-to-education/infrastructure> accessed 12/02/2020.

³¹³ *Ibid* “Before the advent of cheap electricity, schools often relied on natural lighting. As electric power costs declined, the amount of artificial light used in schools increased. Research has shown that artificial lighting has

- Acoustics and Noise;³¹⁴
- Air Quality;³¹⁵
- Proper Temperature and Control of Temperature.³¹⁶ and
- Adequate separate sanitary facilities for boys and girls and for staff.³¹⁷

Educational facilities also affect the recruitment of skilled teachers as no teacher will want to work in an environment that is not conducive to the educational enrichment of their learners. It also influences teaching motivation and the effort that the teacher will put in their work. Thus, educational facilities not only affect the learner in the classroom but also the educator.³¹⁸ Inadequate educational facilities affect the flexibility of the

negative impacts on those in schools while natural lighting has positive impacts. In fact, research has shown that not only does classroom lighting boost the morale of teachers and students, appropriate amounts of natural lighting also reduces off-task behaviour and improves test scores. One study found that students with the most exposure to natural daylight progressed 20% faster in math and 26% faster in reading than students who were taught in environments with the least amount of natural light.” See also Veriava F. “Education Rich school, poor school – the great divide persists” Mail and Guardian (28 September 2012) <https://mg.co.za/article/2012-09-28-00-rich-school-poor-school-the-great-divide-persists/> accessed 12 February 2020.

³¹⁴ Ibid “Noise levels greatly affect teacher and student performance. In fact, excessive noise causes dissatisfaction and stress in both teachers and students. Research has found that schools that have classrooms with less external noise are positively associated with greater student engagement and achievement compared to schools with classrooms that have noisier environments. Thus, building schools that buffer external noise from classrooms can improve student outcomes.”

³¹⁵ Ibid “Indoor air quality is also a concern because poor air quality is a major contributor to absenteeism for students with asthma. Research also indicates that many schools suffer from “sick building syndrome” which affects the absenteeism and performance of all students.”

³¹⁶ Ibid “One consistent research finding across individuals of all ages is that the temperature in which a person works affects engagement levels and overall productivity—including student achievement. Anyone that has worked in a classroom or office that is too hot or too cold knows how difficult it can be when trying to work when the temperature is uncomfortable. According to the best analyses, the ideal temperature range for effective learning in reading and mathematics is between 68° and 74°..”

³¹⁷ “*Educate a child: a programme of education above all*” <https://educateachild.org/explore/barriers-to-education/infrastructure> accessed 12/02/2020. current state of South African schools <https://www.bing.com/images/search?view=detailV2&ccid=KWDCBy3E&id=32010D7984EC9CBAE1CCDD8B0C9B11327D9A53E6&thid=OIP.KWDCBy3Ej9JGiibqMz-i2QHafO&mediurl=https%3A%2F%2Fafrika.cgtn.com%2Fwp-content%2Fphoto-gallery%2F2018%2F04%2FSA.png&exph=404&expw=573&q=current+state+of+south+african+public+schools&simid=608045507519320016&selectedindex=167&ajaxhist=0&vt=0&sim=11> accessed 25/02/2020. <https://www.bing.com/images/search?view=detailV2&ccid=WKIJ0VQJ&id=356F008E7D092F8E733826ADFFE365D01A80E46A&thid=OIP.WKIJ0VQJwNDk6bdYc4Gc8AHaEo&mediurl=http%3A%2F%2Fwww.3smedia.co.za%2Finfrastructurenews%2Fwp-content%2Fuploads%2Fsites%2F4%2F2015%2F02%2FEC-schools-sanitation-1024x640.jpg&exph=640&expw=1024&q=current+state+of+south+african+public+schools&simid=607999602910627561&selectedindex=142&ajaxhist=0&vt=0&sim=11> accessed 25/02/2020.

³¹⁸ Ibid. current state of South African schools https://www.bing.com/images/search?view=detailV2&ccid=5zttFgD0&id=7BC487D9E918DE076346D9E6CED06CBA30213241&thid=OIP.5zttFgD0CdXILSOX-0AnlwHaFj&mediurl=http%3A%2F%2Fgroundup.org.za%2Fsites%2Fdefault%2Ffiles%2Fstyles%2Farticle_image%2Fpublic%2Ffield%2Fimage%2FEE%2520school%2520pics%2520.jpg%3Fitok%3DBf1Ow12Z&exph=450&expw=600&q=current+state+of+south+african+public+schools&simid=607998692362094821&selectedindex=84&ajaxhist=0&vt=0&sim=11 accessed 25/02/2020. <https://www.timeslive.co.za/ideas/2013-10-10-how-south-africas-department-of-basic-education-is-misleading-the-public-ilive/> accessed 25/02/2020.

teacher to teach variety of learners in the same educational setting³¹⁹ as some learners such as the borderline learner require extensive teaching.

From the above list of features determine adequate educational facilities, this thesis will focus mainly on the classroom size, proper temperature and control of temperature and adequate separate sanitary facilities. These factors are some of the most glaring issues within the South African setting.

4.3.1 Classroom size

Classroom size needs urgent attention as teachers struggle teaching in over-crowded classrooms. Reports have shown some classes having more than 50 learners in one classroom.³²⁰ There have been reports of teachers being unable to walk around freely in classrooms and having to climb over tables and learners to reach struggling students.³²¹ One cannot help to question the rationale that the Department of Education employs when placing a single teacher amongst such a large number of

³¹⁹ Ibid “Thus, facility quality is an important predictor of teacher retention and student learning. The physical and emotional health of students and teachers depend on the quality of the physical location, which makes establishing safe, healthy buildings essential.” Veriava F. “Education Rich school, poor school – the great divide persists” Mail and Guardian (28 September 2012) <https://mg.co.za/article/2012-09-28-00-rich-school-poor-school-the-great-divide-persists/> accessed 12 February 2020 that “According to the latest national education infrastructure management study released by the department of basic education in 2011, there are 24 793 ordinary public schools. It showed that: 3 544 schools have no electricity supply and 804 an unreliable electricity supply; 2 402 schools have no water supply and 2 611 an unreliable one; 913 schools do not have any ablution facilities, and 11 450 still use pit-latrines toilets; 2 703 schools have no fencing; 79% are without any library and only 7% have stocked libraries; 85% have no laboratory and only 5% have stocked laboratories; 77% are without any computer centres and only 10% have stocked computer centres; and 17% of schools lack any sporting facilities.”

³²⁰ Buso Cape Talk Thomas S “What are the Challenges in Teaching Profession?” Elephant Journal (14 March 2019) <https://www.elephantjournal.com/2019/03/what-are-the-challenges-in-teaching-profession/> accessed 03 April 2020. Mthusamy *Teachers’ experiences with overcrowded classrooms in a mainstream school* 1-10. Lynch *The Advocate*. Ziwira E “Creating a conducive learning environment” The Herald (15 June 2015) <https://herald.co.za> accessed 14 March 2020 provide that “A large body of research over the past century has consistently found that school facilities impact teaching and learning in profound ways. Yet state and local policymakers often overlook the impact facilities can play in improving outcomes for both teachers and students. While improving facilities comes at a financial cost, the benefits of such investments often surpass the initial fiscal costs. Policymakers, thus, should focus greater attention on the impacts of facilities and adopt a long-term cost-benefit perspective on efforts to improve school facilities.”

³²¹ The Importance of School Facilities in Improving Student Outcomes Introduction <https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/> accessed 12 February 2020. “*Educate a child: a programme of education above all*” <https://educateachild.org/explore/barriers-to-education/infrastructure> accessed 12 February 2020; current state of South African schools <https://www.bing.com/images/search?view=detailV2&ccid=adlm1CDO&id=15DA634D6663B9843DC98B9EB80851D4FBBDC36E&thid=OIP.adlm1CDOvclDVzcBm8kp3wHaFj&mediaurl=https%3A%2F%2Fstatic.independent.co.uk%2F3fs-public%2Fthumbnails%2Fimage%2F2018%2F08%2F10%2F16%2Fsouth-africa-school.jpg&exph=1536&expw=2048&q=current+state+of+south+african+public+schools&simid=607994208443498987&selectedindex=137&ajaxhist=0&vt=0&sim=11> accessed 14 March 2020

learners. Currently, the government has no concrete plan to improve the situation.³²² A teacher in these classroom settings will most likely not be able to identify a potential borderline learner who requires special attention. In conjunction with over-crowded classroom many students also face the issue of being taught out-doors,³²³ or in so called “mud schools”.³²⁴ One should keep in mind that the rights to education is a directly enforceable right and therefore budgetary constraints should not have an impact on the conditions in which children are taught, a minimum threshold of basic and adequate facilities should be maintained. Progressive realisation of a directly enforceable right cannot be a justification for poor delivery. The government undertook to provide direct access to basic education and to also put the best interest of the child at the forefront in all matters concerning the child.³²⁵

4.3.2 *Proper temperature and control of temperature*

Temperature control is important in attaining good results and also academic participation of learners in the classroom.³²⁶ It is provided that the constant temperature changes turn out to affect the functioning of the brain as the brain has to adjust whenever temperature changes so that it can signal the body to adapt.³²⁷ It is stated that the perfect classroom temperature required for academic achievement is 22.22 degrees Celsius.³²⁸

The statistics show the following with regard to the performance of learners in the classroom at different temperatures:³²⁹

- At 16.11 degrees Celsius a learner’s average academic achievement is 76%
- At 22.22 degrees Celsius a learner’s academic achievement is 90%

³²² Buso Cape Talk provide that “Speaking to Africa Melane on the Weekend Breakfast Show, Maryke Bailey - History Teacher said, the reality is that, our teacher are working with larger classes, and we must explore different ways on how we can deal with that, and look at creative ways in which teachers can teach effectively in those conditions.”

³²³ Tombo Foundation <https://www.tambofoundation.org.za/wp-content/uploads/2017/05/education-south-africa.jpg> accessed 13 February 2020.

³²⁴ All Africa <https://allafrica.com/stories/202005250271.html>; <https://citizen.co.za/news/south-africa/government/2229724/improving-school-infrastructure-high-on-govts-agenda/> accessed 13 February 2020.

³²⁵ S 28 read in conjunction with S 29 of the Constitution.

³²⁶ VELUX Commercial “*thermal control in classrooms is key to an ideal learning environment*” 2019 <https://vms.velux.com> accessed 14 March 2020

³²⁷ Energy air <https://energyair.com> accessed 14 March 2020.

³²⁸ Ibid. See also Science fair projects www.all-science-fair-projects.com accessed 14 March 2020.

³²⁹ Note 329 above. For further reading Wargocki, Matysiak and Irgens 2005 *international centre for indoor environment and energy, technical university of Denmark*.

- At 27.22 degrees Celsius a learner's academic achievement is 72%

The above statistics show that classroom temperature has a significant impact on the academic achievement of a learner for if it's too cold the learner will not achieve at their best academically and same applies when it's too hot.³³⁰

South Africa has a temperate warm climate with summer temperatures reaching up to 38-40 degrees in summer. Public schools become so unbearable that students have protested and refuse to attend classes due to the heat in the classrooms.³³¹ With year-end exams being written in the heat of summer, the situation has become detrimental to student achievement. It is provided that high temperature levels cause learners to lose focus in classrooms and it also causes fatigue as such some learners end up not even going to school due to the unbearable heat conditions in classrooms.³³²

4.3.3 Sanitary facilities

The Minister of Finance Tito Mboweni during his budget speech stated that:

Nobody should learn in a school that is unsafe. Our children must have access to adequate sanitation.³³³

Various schools in South Africa do not have toilets and the learners are forced to go to the nearby bushes/fields in order to relieve themselves on a day- to-day basis.³³⁴

In 2018 the government of South Africa stated that South Africa aims to do away

³³⁰ <https://www.zehnder.co.uk> accessed 14/03/2020

³³¹ Scorgie F, Chersich M, Wright C and Mathee A "How climate crisis affects education in South Africa" Daily Maverick (26 July 2019) <https://www.dailymaverick.co.za/article/2019-09-26-how-climate-crisis-affects-education-in-south-africa/> accessed 07 April 2020. Mabuza Times Live provide that "In one study in Johannesburg, which has a relatively mild climate, temperatures reached as high as 47.5°C in the containers and the large majority of students reported experiencing heat-health symptoms every day, including drowsiness, poor concentration and thirst." Bidassey-Manilal S. & Wright, Engelbrecht, Albers, Garland and Matoane 2016 *International journal of environmental research and public health* 1-5.

³³² Mabuza Times Live provides that "He said in classes with poor ventilation, levels of carbon dioxide or stuffiness rose together with temperature, causing children to experience symptoms characteristic of "sick building syndrome". These symptoms affected concentration and learning, and even school attendance and rates of asthma attacks." Scorgie F, Chersich M, Wright C and Mathee A "How climate crisis affects education in South Africa" Daily Maverick (26 July 2019) <https://www.dailymaverick.co.za/article/2019-09-26-how-climate-crisis-affects-education-in-south-africa/> accessed 07 April 2020.

³³³ Somdyala K "Almost 4000 pit latrines in SA's schools, zero target set 'within the next 3 years'" News24 (11 March 2019) <https://www.news24.com/SouthAfrica/News/almost-4000-pit-latrines-in-sas-schools-zero-target-set-within-the-next-3-years-20190311> accessed 03 May 2020.

³³⁴ Ntshongwana Y "Learners use field as toilet: 'Our children are not safe', says worried mom" News24 (12 May 2018) <https://www.news24.com/SouthAfrica/News/learners-use-field-as-toilet-our-children-are-not-safe-says-worried-mom-20180512> accessed 13 March 2020.

with all pit latrines³³⁵ in its public schools. This came after the tragic drowning of a learner in a pit toilet.³³⁶ It was also determined that over 4500 schools don't have adequate sanitary facilities.³³⁷

Eastern Cape has 61 schools with no toilets at all, and 1,585 schools with pit latrines, Neighbouring KwaZulu-Natal province has 1,379 pit latrines in use, and Limpopo province, where Michael Komape went to school, has at least 932 unsafe toilets³³⁸

In 2000 the government of South Africa undertook to get rid of all pit latrines in all public schools in the country. However, in 2004 a learner in Limpopo died after drowning in a pit latrine.³³⁹ Again in 2019, The Minister of Education confirmed that there are still schools that use pit toilets.³⁴⁰ Nineteen years after the initial governmental promise of eradication, pit latrines are still very much a reality and the promised year of eradication has again increased from a two year to a three year deadline.³⁴¹

4.4 Conclusion

³³⁵ Pit latrines are holes in the ground covered with a platform - and many are shoddily built.

³³⁶ Lumka Mkhethwa's death in March in rural Eastern Cape province came four years after another five-year-old, Michael Komape, had also died after falling into a school toilet in the northern province of Limpopo

³³⁷ Note 335 above. "In 2018 the article stipulated that over 4500 schools in South Africa have pit toilets and in 2019 it was said that only 787 schools were built proper sanitation facilities and 841 schools still under either planning, design or building stage." Also see <https://www.news24.com/SouthAfrica/News/girls-pit-toilet-death-reveals-sad-state-of-school-sanitation-ngos-20180316> accessed 13 March 2020.

³³⁸ Ibid.

³³⁹ Makana *News24* provide that "Polokwane – The Department of Basic Education was warned about "sinking toilets" at Mahlodumela Primary School as early as 2004 - ten years before five-year-old Michael Komape fell into a pit toilet and drowned. Construction engineer David Still told the court on Monday that the school's principal had sent a letter to the department's local circuit office about the state of affairs at the school, in which intervention was demanded. According to Still, a series of letters were sent to the department - in 2004 and 2008 and 2009."

³⁴⁰ Note 335 above "Basic Education Minister Angie Motshekga says she is confident that her department will eradicate the remaining 3 898 pit latrines in the country's schools within the next three years." Ramalepe P "SA's school sanitation crisis drags on" *Business Live* (08 August 2019) <https://www.businesslive.co.za/fm/features/2019-08-08-sas-school-sanitation-crisis-drags-on/> accessed 02 February 2020 provide that "Almost six years after the education department adopted minimum standards for sanitation in SA's schools, as many as 3,800 still rely on pit latrines. Five years after Michael Komape, 5, drowned in a pit latrine at his school in Limpopo — and a year after Lumka Mthethwa, 5, met the same fate in the Eastern Cape — there are still 3,800 schools at which pupils have to use unsafe pit latrines." The article goes further to state that "Section27 attorney Samantha Brener adds: "While Michael's name is mentioned often when school infrastructure and sanitation are discussed by political officials, we have yet to see adequate prioritisation of this issue in the implementation of solutions. That schoolchildren are still forced to use pit latrines at school should be a source of collective shame to be remedied with utmost urgency." Makana *News24*.

³⁴¹ Ibid 335 above. See also Damba-Hendrik *News24*.

The fundamental question of this study is whether the system is realising the borderline student's right to adequate basic education. It is indisputable that borderline students require specialised teaching, small class sizes, a slower pace and individual attention. This paper has illustrated that a multitude of public schools are barely, if at all, fulfilling the right to basic education of the mainstream students. In these overcrowded classrooms, with undertrained teachers and inadequate resources, there is no rational argument that the neglected inclusive system is meeting the needs of the borderline student. With the dire situation in mainstream schools, the best chance for a borderline student will be a different system, at least separate classrooms with well-trained teachers and adequately equipped classrooms.

The next chapter will briefly analyse whether this type of separation constitute unfair discrimination.

Chapter 5: Fair and unfair discrimination

5.1 Introduction

The rights of all children in the continent have already been discussed in the above chapters in relation to the right to access to adequate basic education. The requirements and also the definition of what constitute basic education have been covered in the chapters above and it has been determined that South Africa is failing to meet the educational needs of its learners considering their different abilities and educational needs. As previously stated, the problem is not with inclusive education as an educational system, but rather the unpreparedness of the South African educational system to provide an adequate setting for this. Mainstream schools in their current state cannot accommodate the needs of borderline students. One solution this paper provides is providing separate institutions that have properly trained teachers and facilities that allow cater for the needs of these students. It should be noted that this study does not argue for a separate curriculum.

It is thus of paramount importance for one to look at whether the creation of a separate school for learners with borderline intellectual functioning will result in the encroachment of their right not to be unfairly discriminated against. We cannot go back to a system of discrimination as was the case during apartheid. In order to determine this, this study will briefly analyse the potential discrimination in line with the three-step approach outlined in the case of *Harksen v Lane*, and secondly within the paradigm of the right to human dignity.

5.2 The application of Section 9 in the case of *Harksen v Lane*

Even though the case of *Harksen* dealt with insolvency, the discrimination test as presented by this case is being used by judges to ascertain whether the right to equality, either relating to gender or equal treatment of certain individuals, has being infringed or not.³⁴² In this case the court, in line with the right to equality, distinguished

³⁴² See for example *Larbi-Odam v MEC for Education (North West Province)* 1998 1 SA 745 (CC) para 15; *East Zulu Motors (Pty) Ltd v Empangeni/Ngwelezane Transitional Local Council* 1998 2 SA 61 (CC) para 22; *Pretoria City Council v Walker* 1998 2 SA 363 (CC) para 43; *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 1 SA 6 (CC) para 17; *Jooste v Score Supermarket* 1999 2 SA 1 (CC); *Democratic Party v Minister of Home Affairs* 1999 3 SA 254 (CC) para 12; *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 2 SA 1 (CC) para 32; *Hoffmann v South African Airways* 2001 1 SA 1 (CC) para 24; *Minister of Defence v Potsane* 2002 1 SA 1 (CC) paras 43-4; *Satchwell v President of the Republic of South Africa* 2002 6 SA 1 (CC) para 20; *Du Toit v Minister of Welfare and Population Development* 2003 2 SA 198 (CC) para 24; *Jordan v S* 2002

between fair and unfair discrimination. Thus, there are cases where discrimination between individuals would be considered fair for a range of reasons which includes addressing past injustices and inequality.³⁴³

The case provided a three-step approach to determine whether a law or conduct constitute unfair or fair discrimination, or mere differentiation of persons. The three-step inquiry³⁴⁴ will now be superficially applied to this paper proposed separation of borderline students:

5.2.1 The first step:

Requires that the court must ascertain whether the provision differentiate between people or categories of people. If so, does the differentiation bear a rational connection to a legitimate government purpose? If it is found that the differentiation of students does not connect to a state purpose, then there is a violation of the right to basic education for learners with borderline intellectual functioning.

In accordance with these questions, the first is affirmative, as the conduct differentiates between the so called "normal" learners and learners with borderline intellectual functioning/disability on the basis of access to mainstream schools. With regards to the follow-up question the differentiation bears a rational connection to a governmental purpose as it seeks to provide adequate basic education for children with borderline disability by providing appropriate facilities that will cater for the educational and

6 SA 642 (CC) para 57 (there was endorsement and application by the minority; the majority of the court did not endorse or apply the Harksen test); *Khosa v Minister of Social Development* 2004 6 SA 505 (CC) paras 68 and 72; *Minister of Finance v Van Heerden* 2004 6 SA 121 (CC) paras 25, 80, 99, 11, 120, 121 and 131 where the court endorsed the Harksen test in relation to unfair discrimination matters but noted its unsuitability for analysis in terms of s 9(2); *Mabaso v Law Society of the Northern Provinces* 2005 2 SA 117 (CC) para 38; *Volks NO v Robinson* 2005 5 BCLR 446 (CC) para 48; *Van der Merwe v Road Accident Fund* 2006 4 SA 230 (CC) para 42; *Union of Refugee Women v Director: Private Security Industry Regulatory Authority* 2007 4 SA 395 (CC) para 34 (endorsement by the majority) and para 112 (the minority); *Hassam v Jacobs NO* 2009 11 BCLR 1148 (CC) para 23.

³⁴³ For example affirmative action in companies doesn't amount to unfair discrimination rather fair discrimination. But if one was to state that only white people can be employed by a certain company that will amount to unfair discrimination the rule unfairly discriminate based on the colour of an individual and also considering the inequalities of the past. Kruger 2011 South African Law Journal provide that "The formulation of the Harksen test was the culmination of the Constitutional Court's evolving equality jurisprudence which commenced with the court's decision in *Brink v Kitshoff NO*.¹⁰ Six months before the Constitutional Court's authoritative formulation of the test in *Harksen*, the court handed down the judgments in *Prinsloo v Van der Linde*" and *President of the Republic of South Africa v Hugo* on the same day.¹² *Prinsloo*, *Hugo* and *Harksen* were decided in terms of s 8 of the interim Constitution.¹³ The text of that Constitution in relation to the equality right differs from that of s 9 of the Constitution, but the precedents set by these cases remain authoritative.¹⁴"

³⁴⁴ The three question provided are from the case of *Harksen v Lane* The three question provided are from the case of *Harksen v Lane* 1997 11 BCLR 1489 (CC).

developmental needs of these learners taking into account their borderline intellectual functioning disability. This begs the question as to whether it is important for there to be differentiation or equality in the education system.

5.2.2 *The second step:*

Proposed by the court, is to determine whether the differentiation amount to unfair discrimination.³⁴⁵

A preliminary answer would be that it does not as the differentiation bears a rational connection to the governmental purpose to provide adequate basic education. The discrimination would specifically fulfil this for children with borderline intellectual functioning/disability by providing appropriate facilities that will cater for the educational and developmental needs of these learners. It will be the weighing of two interests, namely the conceptual ideal of equality for all students with an inclusive system or the providing of adequate education in a system of separation. The South African Schools Act encourages us to shift from the past and that all children have equal rights with regards to education that also fits their educational needs.³⁴⁶ Is it discrimination or differentiation? It amounts to fair differentiation not unfair discrimination. A court of law will have to determine if this will be discrimination, but a

³⁴⁵ The second step is as follows in full: "Does the differentiation amount to unfair discrimination? This requires a two-stage analysis: Firstly, does the differentiation amount to "discrimination"? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner; If the differentiation amounts to "discrimination", does it amount to "unfair discrimination"? If it has been found to have been on a specified ground, then unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation. If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation of section 29.

³⁴⁶ The Schools Act preamble states; "... for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination..."; S 4 sub-paragraph 4.2. "No person may unfairly discriminate against a learner. All learners shall enjoy equal treatment before the law and shall receive equal protection and benefits of the law." S2 of the South African Schools Act 84 OF 1999 <https://www.elrc.org.za/sites/default/files/documents/sa%20schools%20act.pdf> accessed 20 August 2020.

preliminary response would be that it will not amount to unfair discrimination and this will be in the best interest of the borderline student.

5.2.3 *The third step:*

Begs the question that if the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitation's clause. This study argues that the differentiation, as proposed, will not reach this stage. However, this step is analysed in line with Section 36 of the Constitution, the limitation clause, which states that a right in the bill of rights can be limited in terms of the law of general application as long as the limitation is reasonable and justifiable in an open democratic society based on the principles of human dignity, equality and freedom taking into account all the relevant listed factors.³⁴⁷ If learners with borderline intellectual functioning are not provided with access to adequate basic education then that will be in contradiction with the provision of section 28 (2) and section 29 (1) (a) of the Constitution as this will not be in the best interest of the borderline learner and also not justifiable as it infringes on their fundamental right to basic education and dignity.³⁴⁸ In this instance the discrimination is not fair as no limitation was placed on the right to basic education as it is an absolute right.³⁴⁹

From the above three step inquiry it is evident that creating a new category in the education system will not amount to unfair discrimination, rather it will amount to mere differentiation of learners and this study argues that it will be in their best interest and protect their right to dignity.

To determine whether the discrimination is unfair the court went further to set out guidelines of the factors that need to be taken into account cumulatively and objectively:

³⁴⁷ S 36 of the Constitution states that The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including- (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

³⁴⁸ S 10 of the Constitution states that "everyone has the right to human dignity."

³⁴⁹ Ibid chapter 2 above.

1. the position of the complainants in society and whether they have suffered from patterns of disadvantage in the past.
2. the nature of the provision or power that discriminates and the purpose it seeks to achieve and
3. with due regard to the aforementioned factors and any other relevant factor, the 'extent to which the discrimination has affected the rights or interests of the complainants and whether it has led to an impairment of their fundamental dignity or constitutes an impairment of a comparably serious nature.'³⁵⁰

Learners with borderline intellectual functioning have suffered a great deal from the past and even now as their right to basic education is being encroached by the current legislation of inclusive education as the facilities do not provide for their educational needs and requirements. The adaptation of inclusive education did seek to do away with discrimination on the basis of section 9 of the Constitution, but in its eradication of discrimination it ended up unconsciously discriminating against the marginalised group of learners with borderline intellectual functioning. Thus, it resulted to the impairment of not only their right to basic education but also their fundamental dignity as individuals.

5.3 The Right to Human Dignity

The right to human dignity is provided by section 10 of the Constitution³⁵¹ for all persons in South Africa. The right to be treated with human dignity is the foundation of all human rights and all the realisation of all other rights flows from the acknowledgement and respect of an individual's dignity. Human dignity is afforded to all individuals in the country regardless of their disability. Section 11 (c) of the Children's Act also provide for dignity for children with disabilities. This study argues that the differentiation of students within the education system, by placing borderline students in a separate educational environment, will be an active strive towards respecting their right to dignity.

5.3.1 Defining Human Dignity

Hawthorne defines human dignity as:

³⁵⁰ Ibid para 52

³⁵¹ Note 350 above.

An individual or group's sense of respect and self-worth, the physical and psychological integrity and empowerment.³⁵²

The right to dignity is associated to the constitutional purpose of creating a society in which all persons are given equal dignity and respect.³⁵³ The issue of how equal dignity can be established in the education system should be premised on what constitute dignity for different learners and their various educational needs. Intellectually disabled students are provided with facilities specifically suited to them, this paper argues that a similar situation should arise for students with borderline functioning.

Mitchell provide as follows with regards to dignity:

In the moral view dignity signifies the core of what it entails to be a human being, recognition of human rights, it also legalises the notion that the essence of human dignity should be acknowledged and respected in equal quantum.³⁵⁴

It is important that "equal quantum" not be understood as the same treatment for all. The vast differences between people, and their different capacities, requires that different measures be put in place to achieve dignity. In accordance with this, the right to dignity is an unalienable right and therefore independent of the State. Hence, the State cannot dispense or suspend this right and must actively promote the right. Learners/children as a vulnerable group require the utmost special treatment and

³⁵² Duhaime's Law Dictionary. Hawthorne *Constitution and Contract: Human Dignity, the Theory of Capabilities and Existenzgrundlage in South Africa* 27. See also Steinmann 2016 *Potchefstroom Electronic Law Journal* 19 provide that "The issue of human dignity is relatively new in international law and domestic Constitutional law. It can either be protected or valued as a right, or both. It is however difficult to define human dignity as the first international instrument that recognised inherent human dignity and the protection thereof, the Universal Declaration of Human Rights (1946) and many international (and national) documents enacted thereafter, didn't define it. Despite that differences of the use of human dignity thus right has come to display three elements in Constitutional adjudication after World War Two: the ontological element which entails that human beings have equal inherent human dignity that cannot be waived or diminished; the second element being the claim that inherent human dignity has to be recognised and respected; and the limited-state claim as the third element which entails that states have a positive obligation to progressively realise human dignity through the mechanism of socio-economic rights."

³⁵³ Jaco Van Den Berg 19 March 2018 "Human dignity is a central value of the objective, normative value system created by the Constitution. It is the pre-eminent value of the Constitution and it cannot be realised if socio-economic rights in the Bill of Rights are not realised as it is the foundation of other rights. Section 1 of the Constitution also puts emphasis on the fact that South Africa is indeed founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms. The recognition of human dignity is an acknowledgement of the inherent worth of human beings"

³⁵⁴ Note 142 above.

protection by all adults, and primary by the government.³⁵⁵ There rests a duty on the state to strive to promote the dignity of students with special needs.

5.3.2 *The borderline child's Right to Dignity*

Dignity entails an acknowledgement that some vulnerable members of society will require greater levels of the protection of their dignity.

In accordance with this, Kant provides as follows:

A human being possesses a dignity (an absolute inner worth) by which he exacts respect for himself from all other beings in the world. He can measure himself with every other being of this kind and value himself on a footing equal to them. Humanity in his person is the object of the respect which he can demand from every other human being.³⁵⁶

Thus, children with borderline intellectual functioning should not be used to achieve the aim of proving that indeed inclusive education or the currently adopted educational systems works for all children. Forcing them into an overcrowded, dysfunctional education system denies them an opportunity to develop and shape themselves and the environment surrounding them.³⁵⁷ As Kant³⁵⁸ explains, dignity requires the ideal that one should be on equal footing with those around him, a borderline child, within the current South African education system is not on equal footing. They enter the system with a disadvantage and the failing educational system simply increases the gap as time goes by. It is impossible to argue that a system that disregards the unique needs of a slower student and does not, in actual reality, provide special support, is empowering a slower student.

Thus, the mere promulgation of the right to education in different legal instruments in South Africa should not simply be accepted as an acknowledgement of all students'

³⁵⁵ United Nations in 1959 adopted the Declaration of the Rights of the Child

³⁵⁶ A. Kant's *Groundwork for the Metaphysics of Morals* 217. Kant expressed this idea through categorical imperative that everyone has inherent right to human dignity and that it has to be respected and protected universally. The preamble of the Universal Declaration of Human Rights (1946), article 1(1) of the German Basic Law and section 10 of the Constitution of the Republic of South Africa, 1996 embody the elements of Kant's categorical imperative. Thus, the three elements are applied as a definitional term of human dignity in German and in South African Constitutional adjudication. Based on these elements it can be argued that the idea of universal inherent dignity comports with Kant's ideal that a human being should never be used as a means to an end.

³⁵⁷ Botha 2009 Stell LR 183.

³⁵⁸ Note 349 above.

constitutional rights. The failure of action to provide quality education,³⁵⁹ suited to slower students' needs, is a blatant disrespect of the human dignity of learners with borderline intellectual functioning. The State should do more than promulgate laws, action should be taken in the realisation/promotion of those legal principles. Any treatment of human beings by the State that, lacks respect of that person's inherent dignity as a human being, that calls into question that person's quality as a subject, his status as a subject of law, is strictly forbidden.³⁶⁰

5.4 Conclusion

The case of *Harksen v Lane* (the three-step inquiry) provides an exemplary explanation that what is considered discriminatory is not in all instances that the discrimination is unfair. It shows that discrimination in the education sector for learners with borderline intellectual functioning to have their own method of teaching does not amount to unfair discrimination rather serves the purpose of the principles of access to basic education, that the right to human dignity for learners with borderline intellectual functioning is protected and upheld when receiving/accessing adequate basic education as the inclusive classroom is not protecting that right for them. The provision in section 10 of the Constitution that all persons must be treated equally doesn't in its entirety mean that all persons must be treated relatively the same way.³⁶¹ Equity in certain circumstances means equality. In certain circumstances the different treatment of persons ends up being fair and not discriminatory in any way. The whole concept is based on restorative justice for example affirmative action.³⁶² Thus, the categorisation of learners for the dignity and in the best interest of the child will not defeat the purpose of section 9 of the Constitution. Dignity for a normal learner and a learner with borderline intellectual functioning can never be the same as they are not the same. For a learner with intellectual functioning dignity would entail being treated with respect in the classroom and not being called names due to their intellectual capacity/ability and to be educated at a pace and in an environment that acknowledges

³⁵⁹ As discussed in chapter 2.

³⁶⁰ Naske and Nolte 2007 *American Journal of International Law* 466

³⁶¹ The cornerstone of Democracy. South Africa's Bill of Rights. SAHA archive for justice. south African history archive since 1988. <http://www.saha.org.za/billofrights/education.htm> accessed 10 September 2020

³⁶² *Ibid.*

their unique needs. In fact, this study argues that it rather promotes the principle of democracy.

Chapter 6: Conclusion and recommendations

This dissertation is a critical analysis of the right to basic education, but more specifically this right in relation to learners with borderline intellectual functioning in South Africa. This dissertation and its research question departs from the premises that the Republic of South Africa has adopted inclusive education or the so called “inclusive classrooms”.

In order to conduct an analysis of the applicability of the right to adequate basic education of the borderline child, the relevant and corresponding legislations and policies were analysed and investigated. This was followed by a comparison between the legal analysis and the practical realities of the South African education system.³⁶³

Throughout the dissertation it was emphasised that the main focus is that of the right to education and the best interest of the borderline child. It was shown that borderline students cannot be placed in the same categorisation as student with higher levels of intellectual functioning. Borderline students are a specifically vulnerable group who depend on their parents, government and educators (adults) for the protection of their rights and unique developmental curve. This study argues that that learners with borderline intellectual function, similar to intellectually disabled students, should be given a higher level of government consideration, specifically the acknowledgement that they require additional assistance, resources and access to basic education.

Firstly, the concept of inclusive education was analysed. South Africa currently uses a basic education system based on an inclusive pedagogy. Similar to other nations, it was adopted in the hope that it will eradicate inequality in the education system. The introduction of and need for this system in South Africa was mostly influenced by past discriminations in the apartheid education system with the differentiation between curriculums found in ‘white’ and ‘black’ schools.³⁶⁴ The aim was to create a system where all students, irrespective of their differing identities, would be exposed to the same curriculums and educational opportunities.

With reference to the understanding of “inclusive”, South Africa, in *White Paper 6*, followed the definition as provided for by the Convention Declaration on the Rights of

³⁶³ See chapter 2 above

³⁶⁴ See paragraph 1 above.

the Child This dissertation defined inclusive education as the inclusivity of all learners needs in an education system/setting that entails enabling education structures that allow for different learning methodology for various learners in accordance with their leaning capabilities. Furthermore, it provides a learning environment that is suitable for all learners and maximises the potential of all leaners.³⁶⁵

Secondly, the study explored the legislative framework related to basic education. All questions pertaining to a child must be dealt with in correspondent to the Constitution, *Children's Act*, *Schools Act* and the *United Nations Declaration on the Rights of the Child*. These instruments provide for (1) the principles of the best interest of the child and (2) the right to basic education.

The first principles which is arguably the most important when dealing with rights of the child is the best interest of the child. However, it causes confusion due to its lack of a definite definition. This paper holds that the interpretation can be done better when examining it from an individualised point of view. It was submitted that the best interest of the borderline child, as provided for in section 28 of the Constitution and the *World Declaration on the Rights of the Child*, in education is the provision of basic education that is adequate in all aspects which includes adequate educational facilities, temperature in classrooms that is conducive to learning, the protection of their integrity/dignity and to ensure that they are not unfairly discriminated upon in classrooms.³⁶⁶ However, at the end of the day it is the obligation of the state to ensure that a conducive and effective educational environment is created for the borderline child to further the best interest of the said child in order for them to be productive in the future. Thus, their access to adequate basic education rights should also be a priority in the budget allocations. Budgetary constraints can also not be used as a delay for the realisation of this right as the right to adequate basic education is an unqualified right, which the paper has shown excludes any notion of progressive realisation.

This dissertation argued that inclusive education doesn't cater for the best interest of all children as it doesn't protect the right of the borderline child to be treated with human dignity. Supportive of this, it was shown that the borderline child's educational

³⁶⁵ See note 166 above/paragraph 4, 5 and 5.1 and above.

³⁶⁶ See paragraph 5.2.2 above

needs are not being catered for in inclusive classrooms and the teaching methods that the teachers use cannot be applied effectively to borderline students. This is due to a range of reasons including a lack of proper training and the circumstances in which public school teachers must attempt to teach.

It was argued that the right to basic education implies much more than the traditional concept of simply having a child attend some version of a school. This paper found that in order for basic education to qualify as adequate for the borderline child the following must be complied with: various teaching methods, adequate infrastructure, adequate separate sanitary facilities for boys and girls and for staff,³⁶⁷ classroom size and space,³⁶⁸ lighting, proper temperature and control of temperature.³⁶⁹ It is an important requirement necessary to sustaining not only live but also the socio-economic rights for not only the borderline child but also the 'normal' child. The state has a positive duty that it devotes certain resources for the education provided to the borderline child to be constituted as adequate under the scrutiny of both domestic and international law and also to fit within the scope of the principles behind inclusive education.

This study illustrated the current system is not fulfilling the right to basic education for borderline students, even though they have the fundamental right to access to basic education in term of section 29 of the Constitution.³⁷⁰ In fact, it is submitted that the current education system is not even adequately catering for the educational rights for the 'normal' child. In South Africa this dissertation found that the educational facilities are ones not to be desired as children are being taught in mud classrooms, the classrooms are overcrowded to the extent that even the teacher cannot move around to assist those learners who do not understand or require immediate assistance from the teachers, the temperature in the classrooms are not conducive to learning and the sustaining of prolonged focus, some schools do not even have classrooms to accommodate all learners of different grades and in some cases there are no adequate toilets and learners are forced to use the notoriously dangers pit toilet system. If the state is failing the "normal" child, this paper raised the question of where

³⁶⁷ See paragraph 4.3.3 above

³⁶⁸ See paragraph 4.3.1 above.

³⁶⁹ See paragraph 4.3.2 above.

³⁷⁰ See paragraph 3.1 above.

do the borderline students fit in the equation? Is their right to basic education being fulfilled?³⁷¹ In order to attempt to answer these questions legislation, scholarly writings, international law and also policies were taken into account.

Related to this is the right to human dignity this dissertation submitted that the right to dignity doesn't merely mean a person been viewed as a mere object or instrument but rather as an individual in a political community. It goes further to agree with the numerous definitions given by different scholars and writers,³⁷² that human dignity doesn't have to deal or do with one's self-worth but also the applicability of other social rights in their life, that the state and individuals, in this instance fellow learners and teachers, also recognise and apply those social rights to the borderline student. Equal treatment of all learners in a classroom doesn't necessarily result in all the learners treated with human dignity. Human dignity as provided by this study provides that it differs from one learner to the other.

Supportive of that the right to basic education as a socio-economic right implies that undue limitation would limit many human skills and abilities and have a detrimental effect on the borderline child's potential to realise their future plans and to effectively form part of the political, economic and social life. The borderline child must be empowered to have both physical and psychological integrity. It was argued that inclusive education for reason ranging from psychological harm to inadequate education, doesn't protect the integrity of the borderline student.

This study contends that if the only schooling available to a borderline child is the current, dire public inclusive education system, they do not have access to their right to adequate basic education, the right to human dignity, and their right to equality. One can hardly say that their best interests are being observed by the State. Policies and Acts promulgated insinuates that the borderline child is receiving adequate basic education under the concept and principles of inclusive education however this paper illustrate that this is not the case in South Africa. Where the State is successful in writing well-formed policies and laws, they are failing in the practical implementation thereof. This dissertation has shown that many of these policies are simply lip-service.

³⁷¹ See paragraph 2 above.

³⁷² See par 5.3.1 above.

This dissertation recommends that a new category of learners be recognised officially within the South African legal and educational system, which will cater for the basic education needs of the borderline student. This dissertation is not submitting that a separate curriculum be created for these learners rather that teachers be taught how to teach such a delicate group of learners. It is also recommended that educational facilities be upgraded to feature the infrastructure that is in compliance with the concept of basic education as provided above. Further that the inclusive education programme be revisited in order to amend those irregularities and disjunctions that are existent in the inclusive classrooms such as the facilities and also method of teaching used by the teachers in inclusive classroom so that they can cater for all the education needs of the variety of students in the classrooms. It is this dissertations recommendation that school facilities be significantly upgraded, classrooms be built especially in rural areas so that overcrowding of classrooms can eradicated, and the level of educational development and teacher training improved.

In conclusion it is contended that more research need be done on what constitute adequate basic education and whether inclusive education in it's current public-school format provides for this. Furthermore, more research should be done on the borderline student so that they can be properly understood, and learners be placed in education system that is compatible with their skills and educational needs. Equity is equality.

Bibliography

Literature

A

Akbar 1952 *The Indian Journal of Political Science*.

Akbar SA 'The Right to Education' 1952 *The Indian Journal of Political Science* 13(3/4).

Amarat 2011 *International Education Science*

Amarat SM 'The Classroom Problems Faced Teachers at the Public Schools in Tafila Province, and Solutions' *International Education Science* 2011 3(1) 37-48.

Aziz 2016 *University of Cape Town the Department of Basic Education's* 1-16

Aziz L 'Promoting the right to Education of Children with Disabilities: Position Statement on the Implementation of White Paper 6' 2016 *University of Cape Town the Department of Basic Education's* 1-16

Alkema *The third-party applicability or 'Drittwirkung' of the European convention on human rights*

Alkema EA "The Third-party Applicability or 'Drittwirkung' of the European Convention on Human Rights" in Matscher F, Petzold H (eds) *Protecting human rights: the European dimension. Studies in honour of Gerard J Wiarda, Carl Heymans Verlag KG, Koln* (1988) 33-45.

Allison *Kant's Groundwork for the Metaphysics of Morals*

Allison HE *Kant's Groundwork for the Metaphysics of Morals* (Oxford University Press New York 2011).

Aguilar *The Benefits of Inclusion Easter Seals Blake Foundation*

B

Bidassey-Manilal, Wright, Engelbrecht, *etal* 2016 *International Journal of Environmental Research and Public Health*

Bidassey-Manilal S, Wright C, Engelbrecht J, Albers P, Garland R and Matoane M 'Students' Perceived Heat-Health Symptoms Increased with Warmer Classroom Temperatures' 2016 *International Journal of Environmental Research and Public Health* 13 1-20

Bateman 1991 *Journal of Reading, Writing, and Learning Disabilities*

Bateman B 'Teaching word recognition to slow-learning children' 1991 *Journal of Reading, Writing, and Learning Disabilities* 7 1-16.

Bayat, Louw and Rena 2014 *International Journal of Educational Sciences*

Bayat, Louw W and Rena R 'Investigating the confluence of factors impacting on underperformance at selected secondary schools in the Western Cape, South Africa' 2014 *International Journal of Educational Sciences* 7(1):41-55.

Born and Moore 1978 *Journal of Personalized Instruction*

Born DG and Moore MC 'Some belated thoughts on pacing' 1978 *Journal of Personalized Instruction* 3 33-36.

Botha 2009 Stellenbosch Law Review 183

Botha H "Human dignity in comparative perspective" 2009 *Stellenbosch Law Review* 171-203

Baard and Schreiner *My spirit is not banned*

Bell *Teaching for Diversity and Social Justice New York: Routledge*

Bell LA 'Theoretical foundations for social justice education' (ed) Adams M, Bell LA and Griffin P *Teaching for Diversity and Social Justice New York: Routledge* (2007) 3–15.

Boroson 2017 *Educational Leadership*

Boroson B Inclusive Education: Lessons from History 2017 *Educational Leadership* 7 (7) 18-23.

Byrnes *South Africa: A Country Study*.

Byrnes RM *South Africa: A Country Study* (Washington, D.C.: Federal Research Division, Library of Congress 1996)

Botha *International Journal of Leadership in Education*

Botha Outcomes-based education and educational reform in South Africa
International Journal of Leadership in Education (2010) 361- 371

C

Cooter and Cooter 2004 *Reading Teacher*

Cooter KS and Cooter RB 'One size doesn't fit all: Slow learners in the reading classroom' 2004 *Reading Teacher* 57 680-688

Chijioke and Mafu *How "basic" is basic education: restructuring basic education in post-apartheid South Africa within the context of EFA*

Chijioke JE and Mafu N *How "Basic" is Basic Education: Restructuring Basic Education in Post-Apartheid South Africa Within the Context of EFA* (Education for all: Global Promises, National Challenges; International Perspectives on Education and Society 2008) 8 427-451.

Clark and Worger *South Africa - The rise and fall of apartheid. Seminar studies in history*.

Clark NL and Worger WH *South Africa - The Rise and Fall of Apartheid. Seminar Studies in History* (Pearson Education Limited 2004) 48–52.

Coyne, Kame'enui and Carnine *Effective teaching strategies that accommodate diverse learners*

Coyne MD, Kame'enui EJ and Carnine DW *Effective teaching strategies that accommodate diverse learners* 3rd ed (Columbus, OH: Merrill 2007)

Christie *The rights to learn* 152

Christie P *The rights to learn: The Struggle for Education in South Africa* (Raven Press 1991)

Curt and Burns Two perspectives on Inclusion in the United States 14-31

Curt and Burns Two perspectives on Inclusion in the United States 14-31 *Global education review* 1 (1)

Chrzell *A child's right to a basic education: A comparative study*

Chrzell C *A child's right to a basic education: A comparative study* (published (PhD) thesis-University of South Africa, Pretoria 2012).

D

D'Amato 2010 *Northwestern University School of Law Faculty Working Papers*

D'Amato A 'Legal Uncertainty' 2010 *Northwestern University School of Law Faculty Working Papers* 108 1-53

Dalton, Mckenzie and Kahonde 2012 *African Journal of Disability*

Dalton EM, Mckenzie JA and Kahonde C 'The Implementation of Inclusive Education in South Africa: Reflections Arising from a Workshop for Teachers and Therapists to Introduce Universal Design for Learning' 2012 *African Journal of Disability* 1 (1) 21-22

Dugard 1997 *European Journal of International Law*

Dugard J 'International Law and the South African Constitution' 1997 *European Journal of International Law* (8) 1 77-92

Douglas and Tim 2008 *National Center for Analysis of longitudinal data in education research*

Douglas NH and Tim RS 'Teacher Training, Teacher Quality and Student Achievement' 2008 *National Center for Analysis of Longitudinal Data in Education Research* 1-10.

E

Esteves and Rao 2008 *Scholarship and Professional Work – Education*

Esteves KJ and Rao S 'The Evolution of Special Education' 2008 *Scholarship and Professional Work – Education* 72 1-3.

Engelbrecht 2006 *European Journal of Psychology of Education*

Engelbrecht P 'The Implementation of Inclusive Education in South Africa After Ten Years of Democracy' 2006 *European Journal of Psychology of Education* (3) 21 253.

Elliot and Thurlow *Improving Test Performance of Students with Disabilities . . . On District and State Assessments*

Elliott JL and Thurlow ML *Improving Test Performance of Students with Disabilities . . . On District and State Assessments* 2nd ed. (Thousand Oaks, CA: Corwin Press 2006).

F

Ford 1985 *British Yearbook of International Law*.

Forde M 'Non-governmental Interferences with Human Rights' 1985 *British Yearbook of International Law* 56.

Fletcher-Wood 2018 *Education Around the World Education in Singapore: 6*

Fletcher-Wood H 'The best trained teachers in the world' 2018 *CPD, Education Around the World Education in Singapore: 6*

G

Gross "Developing Programs for Gifted and Talented Students"

Gross MUM "Developing Programs for Gifted and Talented Students" in

Piske FHR, Stoltz T, Machado JM, and Bahia S (ed) *Altas habilidades/Superdotação (AH/SD) e Criatividade: Identificação e Atendimento [Giftedness and Creativity: Identification and Specialized Service]* (Curitiba: Juruá 2016) 61-76

H

Harris and Tim 2011 *Journal of Public Economics*

Harris DN, and Tim RS 'Teacher training, teacher quality and student achievement' 2011 *Journal of Public Economics* 95 7-8 798-812.

Hungi, Makuwa, Ross, et al 2005 *The Conduct of the South and Eastern Africa Consortium for Monitoring Educational Quality III Project*

Hungi N, Makuwa D, Ross K, Saito M, Dolata S, van Capelle F, et al. 'The Conduct of the SACMEQ III Project' 2005 *The Conduct of the South and Eastern Africa Consortium for Monitoring Educational Quality III Project* 1-56.

Hartshorne *Crisis and Challenge: Black education*

Hartshorne KB *Crisis and Challenge: Black Education* (Oxford University Press 1992).

Heubert *First, do no Harm: How the Misuse of Promotion and Graduation Tests Hurts our Neediest Students*

Heubert JP *First, do no Harm: How the Misuse of Promotion and Graduation Tests Hurts our Neediest Students* (Educational Leadership 2002) 60 26-31.

Holmström and Karlbrink *United Nations Human Rights Fact Sheets no 1-25*

Holmström L en Karlbrink L (eds) *United Nations Human Rights Fact Sheets no 1-25* (Raoul Wallenberg Institute of Human Rights and Humanitarian Law Lund 1998)

Hawthorne *Constitution and Contract: Human Dignity, the Theory of Capabilities and Existenzgrundlage in South Africa*

Hawthorne L *Constitution and Contract: Human Dignity, the Theory of Capabilities and Existenzgrundlage in South Africa* (SUBB Jurisprudentia 2011)

J

Jacob 2015 *International Journal of Science, Environment and Technology*

Jacob ID 'The effect of teacher-pupil ratio on teaching learning process in Bauchi State primary school' 2015 *International Journal of Science, Environment and Technology* 4 1218-1225

Jimerson, Burns and Van Derheyden *The Handbook of Response to Intervention: The Science and Practice of Assessment and Intervention*

Jimerson S, Burns M and Van Derheyden A *The Handbook of Response to Intervention: The Science and Practice of Assessment and Intervention* (New York: Springer 2007).

Jensen AR *The g factor: The Science of Mental Ability*

Jensen AR *The g Factor: The Science of Mental Ability* (Praeger 1998)

K

Kaznowski 2004 *National Association of Secondary School Principals*

Kaznowski K 'Slow learners: Are educators leaving them behind?' 2004
National Association of Secondary School Principals 88 31-45.

Khan and Mohammad 2012 *University of Science and Information Technology*

Khan P and Mohammad I 'Overcrowded classroom: A serious problem for teachers' 2012 *University of Science and Information Technology* 49 10162-10165.

Kruger 2011 *South African Law Journal*

Kruger R 'Equality and Unfair discrimination: Refining the Harksen Test' 2011
South African Law Journal 128-479.

Kame'enui *Diverse learners and the tyranny of time: Don't fix the blame; fix the leaky roof*

Kame'enui EJ *Diverse Learners and the Tyranny of Time: Don't Fix the Blame; Fix the Leaky Roof* (Reading Teacher 1993) 48 700-703.

L

Liebenberg 1995 *South African Journal on Human Rights*

Liebenberg S 'The International Covenant on Economic, Social and Cultural Rights and Its Implications for South Africa' 1995 *South African Journal on Human Rights* 11 359.

Loreman, Deppeler and Harvey 2005 *Australasian Journal of Special in Inclusive Education*

Loerman T, Deppeler J and Harvey D 'Inclusive education: A practical guide to supporting diversity in the classroom' 2005 *Australasian Journal of Special Inclusive Education* 1-273.

Lynam, Moffitt and Stouthamer-Loeber 1993 *Journal of Abnormal Psychology*

Lynam D, Moffitt T and Stouthamer-Loeber M 'Explaining the relation between IQ and delinquency: Class, race, test, motivation, school failure or self-control?' 1993 *Journal of Abnormal Psychology* 102 187-196.

Lemmer and van Wyk "Inclusive Education in the South African Context" 117-127

Lemmer E and van Wyk N "Inclusive Education in the South African Context" in Berkhou SJ, Booyse J, Brandt C, Harber C, Lemmer E, Le Roux CS, Naicker S, Lau MY, Sieler JD, Muyskens P, Canter A, Vankeuren B and Marston D (eds) *Perspectives on the Use of the Problem-solving Model from the Viewpoint of a School Psychologist, Administrator, and Teacher from a Large Midwest Urban School District. Psychology in the Schools* (2006) 43 117-127.

M

MacMillan, Gresham, Bocian and Lambros 1998 *Education & Training in Mental Retardation & Developmental Disabilities*

MacMillan DL, Gresham FM, Bocian KM and Lambros K 'Current plight of borderline students: Where do they belong?' 1998 *Education & Training in Mental Retardation & Developmental Disabilities* 33 83-94.

MacMillan, Gresham, Siperstein, et al 1996 *American Journal on Mental Retardation*

MacMillan DL, Gresham FM, Siperstein GN and Bocian KM 'The labyrinth of IDEA: School decisions on referred students with subaverage general intelligence' 1996 *American Journal on Mental Retardation* 101 161-174.

Marston, Muyskens, Lau and Canter 2003 *Learning Disabilities Research & Practice*

Marston D, Muyskens P, Lau MY and Canter A 'Problem-solving model for decision making with high-incidence disabilities: The Minneapolis experience' 2003 *Learning Disabilities Research & Practice* 18 187-200

Maroun and Maddock 2018 *South African Journal of Higher Education*

Maroun W and Maddock L 'Exploring the present state of South African education: Challenges and recommendations' 2018 *South African Journal of Higher Education* 2 192–214.

Maciver, Hunter, Adamson, Grayson, Forsyth and McLeod 2017 *Disability and Rehabilitation*

Maciver D, Hunter C, Adamson A, Grayson Z, Forsyth K and McLeod L 'Supporting successful inclusive practices for learners with disabilities in high schools: a multisite, mixed method collective case study' 2017 *Disability and Rehabilitation* 40(14) 1708-1717.

Maxeiner 2009 *Houston Journal of International law*

Maxeiner JR 'Some realism about legal certainty in globalization of the rule of law' 2009 *Houston Journal of International law* 1 (31) 1-21.

Malherbe 2004 *European Journal for Education Law and Policy*

Malherbe R 'A fresh start 1: Education rights in South Africa' 2004 *European Journal for Education Law and Policy* 4 49.

Miller *Principles of social justice*

Miller D *Principles of social justice* (Cambridge, MA: Harvard University Press 1999).

Miles and Singal 2009 *International Journal of Inclusive Education*

Miles S and Singal N 'The education for all and inclusive education debate: conflict, contradiction or opportunity' 2009 *International Journal of Inclusive Education* 14 1-20.

Michael, Sayed, Nekhwevha et al 2007 *Researching the Issues Semantic Scholar*

Michael S, Sayed Y, Subrahmanian R, Soudien C, Carrim N, Balgopalan S and Nekhwevha F 'Education Exclusion and Inclusion: Policy and Implementation in South Africa and India' 2007 *Researching the Issues Semantic Scholar* 72 112-157

Moritz, Ehlert and Fritz 2017 *African Journal of Research in Mathematics, Science and Technology Education*

Moritz H, Ehlert A and Fritz A 'A competency model of place value understanding in South African primary school pupils' 2017 *African Journal of Research in Mathematics, Science and Technology Education* 21 37-48

Molagun 2007 *African Journal of Historical Science in Education*

Molagun HM 'Consequences of overcrowded classroom on the implementation of UBE objectives' 2007 *African Journal of Historical Science in Education* 3 1-12

Murunga 2015 *Potchefstroom Electronic Law Journal*

Murungi LN 'Inclusive Basic Education in South Africa: Issues in its Conceptualization and Implementation' 2015 *Potchefstroom Electronic Law Journal* 18, 3163 3160-3195

Maile "Education and poverty reduction strategies: Issues of policy coherence: colloquium proceedings"

Maile S "Education and poverty reduction strategies: Issues of policy coherence: colloquium proceedings" in Carter E (eds) *Education in South Africa: Some Points for Policy Coherence* (2008) 21-22.

Matscher and Petzold *Protecting human rights: the European dimension. Studies in honour of Gérard J. Wiarda. Carl Heymanns Verlag KG, Köln*

Matscher F and Petzold H (eds) *Protecting human rights: the European dimension. Studies in honour of Gérard J. Wiarda. Carl Heymanns Verlag KG, Köln* (1988) 33–45.

Mokhtar *The Effect of Overcrowded Classrooms on Teachers' performance*

Mokhtar K *The Effect of Overcrowded Classrooms on Teachers' performance* (University of MOHAMMED Ben Ahmed Oran 2019) 425-438.

Moore *In class of their own: the Bantu Education Act (1953) revisited*

Moore NL *In class of their own: the Bantu Education Act (1953) revisited* (Magister Hereditatis Culturaeque Science (History) University of Pretoria 2015)

Modisaotsile *The Failing Standard of Basic Education in South Africa*

Modisaotsile BM *The Failing Standard of Basic Education in South Africa* (Policy Brief 72 2012) 1-7

Mavimbela *Learners' right to education and the role of the public school in assisting learners to realize this right*

Mavimbela UJ *Learners' right to education and the role of the public school in assisting learners to realize this right* (unpublished Master of Education, thesis- University of South Africa, Pretoria 2001).

Mitchell *The unenforceability of the unalienable socio-economic rights of undocumented children in South Africa*

Mitchell L *The unenforceability of the unalienable socio-economic rights of undocumented children in South Africa* (LLM thesis North-West University 2016).

Muthusamy *Teachers' experiences with overcrowded classrooms in a mainstream school*

Muthusamy N *Teachers' experiences with overcrowded classrooms in a mainstream school* (thesis Master of Education in the discipline of Educational Psychology) University of KwaZulu-Natal 2015)

Massoumeh and Jamshidi *An investigation of medical model and special education methods* 1877-0428 (Elsevier Ltd. 2012)

Massoumeh Z and Jamshidi L *An investigation of medical model and special education methods* (46) 1877-0428 (Elsevier Ltd. 2012)

N

Narayanan 2017 *International Journal of Academic Research in Business and Social Sciences*

Narayanan S 'A study on the relationship between creativity and innovation in teaching and learning methods towards students academic performance at private higher education institution, Malaysia' 2017 *International Journal of Academic Research in Business and Social Sciences* 1-10

Naske and Nolte 2007 *American Journal of International Law*

Naske N and Nolte G 'Legislative Authorization to Shoot Down Aircraft Abducted by Terrorists If Innocent Passengers Are on Board' 2007 *American Journal of International Law* 101 466

Newman, Fine and Ashman "The developmental state and post liberation South Africa"

Newman S, Fine B and Ashman "The developmental state and post liberation South Africa" In Misra-Dexter N and February J (eds) *Testing Democracy: Which Way is South Africa Going?* (Institute for a Democratic Alternative 2010) 23-45

Nussbaum 2006 *Frontiers for Justice: Disability, Nationality, Species Membership*

Nussbaum M *Frontiers for Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press 2006).

Netshitahame *An analysis of learner's knowledge and understanding of human rights in South Africa*

Netshitahame NE *An analysis of learner's knowledge and understanding of human rights in South Africa* (published (PhD) thesis-University of Pretoria, 2008).

Nuugweda *An educational law prospective on early childhood development provision in rural Namibia*

Nuugweda LPK *An educational law prospective on early childhood development provision in rural Namibia* (published (PhD) thesis-North-West University, Potchefstroom Campus, 2015).

O

Onsomu, Nzomo and Obiero 2005 *South and Eastern Africa Consortium for Monitoring Educational Quality*

Onsomu E, Nzomo J and Obiero C 'The SACMEQ II Project in Kenya: A Study of the Conditions of Schooling and the Quality of Education' 2005 *South and Eastern Africa Consortium for Monitoring Educational Quality* 1-342

Opertti and Belalcazar 2008 *Prospects*

Opertti R and Belalcazar C 'Trends in inclusive education at regional and interregional levels: Issues and challenges' 2008 *Prospects* 38 (1) 113–135

P

Pendlebury and Enslin 2004 *Journal of Education*

Pendlebury S and Enslin P 'Social justice and inclusion in education and politics: The South African case' 2004 *Journal of Education* 34 1 31-50.

Polat 2011 *International Journal of Educational Development*

Polat F 'Inclusion in education: A step towards social justice' 2011 *International Journal of Educational Development* 31 (1) 50–58.

Phasha "Inclusive education in the South African context"

Phasha N "Inclusive education in the South African context" in Lemmer E and van Wyk N (eds) *Themes in South African Education* (Pearson Education South Africa (Pty) Ltd 2010) 163-180

Piske, Stoltz, Machado and Bahia *Giftedness and Creativity: Identification and Specialized Service*

Piske R, Stoltz T, Machado JM and Bahia S *Giftedness and Creativity: Identification and Specialized Service* (Curitiba 2016) 61-76.

Piske, Stoltz, Santinello *et al The Importance of Teacher Training for Development of Gifted Students' Creativity: Contributions of Vygotsky*

Piske FHR, Stoltz T, Guérios E, de Camargo D, Vestena CLB, de Freitas SP, de Oliveira Machado Barby AA and Santinello J *The Importance of Teacher Training for Development of Gifted Students' Creativity: Contributions of Vygotsky* (Creative Education 2017)

R

Rodden-Nord and Shinn 1991 *Journal of Special Education*

Rodden-Nord K and Shinn MR 'The range of reading skills within and across general education classrooms: Contributions to understanding special

education for students with mild handicaps' 1991 *Journal of Special Education* 24 441-453

Rao and Muhmmad 2018 *Global Journal of Management, Social Sciences and Humanities*

Rao A and Muhammad H 'Impact of Teachers' Training on Students' Learning Attitude and Organizational Performance' 2018 *Global Journal of Management, Social Sciences and Humanities* 5 3 402-424.

Renzulli and Reis *The Schoolwide Enrichment Model*

Renzulli JS and Reis SM *The Schoolwide Enrichment Model* 2nd ed. (Mansfield Center, Cape Town: Creative Learning Press 1997).

Renzuli "The Three-Ring Conception of Giftedness: A Developmental Model for Creative Productivity"

Renzulli JS "The Three-Ring Conception of Giftedness: A Developmental Model for Creative Productivity" in R. Sternberg, & J. Davidson (ed) *Conception of Giftedness Cambridge* (University of Cambridge 2005) 55-90

Ramoroka and Engelbrecht *The dialectics of historical empathy as a reflection of historical thinking in South African classrooms*

Ramoroka D and Engelbrecht A *The Dialectics of Historical Empathy as a Reflection of Historical Thinking in South African Classrooms* (Yesterday and Today 20 2018).

Ryan *Inclusive leadership and social justice for schools: Leadership and policy in schools*

Ryan J *Inclusive Leadership and Social Justice for Schools: Leadership and Policy in Schools* (2006) 1 5.

Rao 2008 *Journal of the Indian Law Institute*

Rao PP 'Fundamental right to education' 2008 *Journal of the Indian Law Institute* 50(4).

Rawls 1971 *A Theory of Justice*

Rawls J *A Theory of Justice* (Cambridge, MA: Harvard University Press 1971).

S

Shaw 200a *NASP Communiqué*

Shaw SR 'Slow learners and mental health issues' *NASP Communiqué* 2000a 28 4.

Shaw 2008 *Hammill Institute on Disabilities*

Shaw SR 'An educational programming framework for a subset of students with diverse learning needs: Borderline intellectual functioning' *Hammill Institute on Disabilities* 2008 5 (43) 291–299.

Shah and Inamullah 2012 *The Journal of Educational Strategies*

Shah J and Inamullah, HM 'Overcrowded classrooms: A serious problem for teachers' *The Journal of Educational Strategies* 2012 5 (1) 772-789

Snyder, de Brey and Dillow 2016 *Digest of education statistics 2015*

Snyder TD, de Brey C and Dillow SA *Digest of education statistics 2015* (National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC 2016).

Stuebing and Shaywitz 1998 *Learning Disabilities Research & Practice*

Stuebing KK and Shaywitz BA 'Intelligent testing and the discrepancy model for children with learning disabilities' *Learning Disabilities Research & Practice* 1998 13 186-203.

Steinmann 2016 *Potchefstroom Electronic Law Journal*

Steinmann R 'The Core Meaning of Human Dignity' *Potchefstroom Electronic Law Journal* 2016 19

Simbo *Law democracy & development: Defining the term basic education in the South African Constitution: An international law approach*

Simbo C 'Defining the Term Basic Education in the South African Constitution: an International Law Approach' in *Law Democracy & Development* 2012 16 477-500

Seleoane "Right to Basic Education"

Seleoane M "The Right to Basic Education" in Coetzee E and Streak J (eds) *Monitoring Socioeconomic Rights in South Africa: Achievements and Challenges* (IDASA Cape Town 2004) 221-272

Sandberg *Reading and spelling, phonological awareness, and working memory in children with severe speech impairments: A longitudinal study, AAC: Augmentative and Alternative Communication*

Sandberg AD *Reading and Spelling, Phonological Awareness, and Working Memory in Children with Severe Speech Impairments: A Longitudinal Study, AAC. (Augmentative and Alternative Communication 2001) 17.*

Singh *Education of the Slow Learners*

Singh VP *Education of the Slow Learners* (Sarup & Sons 2004) 2.

Sen 2005 *Journal of Human Development and Capabilities*

Sen A 'Human rights and capabilities' 2005 *Journal of Human Development and Capabilities* 6 (2) 151–166

Spaull 2013 *International Journal of Educational Development*

Spaull N 'Poverty & Privilege: Primary School Inequality in South Africa' 2013 *International Journal of Educational Development* (33) 5 436-447

Spaull 2011 *Paris: Southern and Eastern African Consortium for Monitoring Educational Quality Working Paper*

Spaull N 'Primary School Performance in Botswana, Mozambique, Namibia and South Africa' 2011 *Paris: Southern and Eastern African Consortium for Monitoring Educational Quality Working Paper* 8 1-75.

Spaull 2013 *Centre for Development and Enterprise*

Spaull N 'South Africa's Education Crisis: The quality of education in South Africa 1994-2011' 2013 *Centre for Development and Enterprise* 3 1-65.

T

Tariq and Mullick 2013 *United Nations Educational, Scientific and Cultural Organization (UNESCO) IBE Prospects*

Tariq A and Mullick J 'The journey towards inclusive education in Bangladesh: Lessons learned' 2013 *United Nations Educational, Scientific and Cultural Organization (UNESCO) IBE Prospects* 151–164.

Tanner 2000 *Minimum Classroom Size and Number of Students Per Classroom*

Tanner CK *Minimum Classroom Size and Number of Students Per Classroom* (The University of Georgia School Design and Planning Laboratory 2000)

Tlou and Feza 2017 *South African Journal of Childhood Education*

Tlou F and Feza N 'Grade R Educators Voluntarily Share Their Mathematics Practices: Authentic Realities in South Africa Showcased' 2017 *South African Journal of Childhood Education* 1 468.

Trnova 2014 *Science Education International*

Trnova E 'IBSE and Creativity Development' 2014 *Science Education International* 25 1 8-18.

Taiwo *The implementation of the right to education in South Africa and Nigeria*

Taiwo EA *The implementation of the right to education in South Africa and Nigeria* (published (PhD) thesis-Nelson Mandela Metropolitan University, 2011).

V

Verguts and De Boeck *On the Correlation Between Working Memory Capacity and Performance on Intelligence Tests*

Verguts T and DeBoeck P *On the Correlation Between Working Memory Capacity and Performance on Intelligence Tests* (Learning and Individual Differences 2001) 13 37-56

Viljoen *International Human Rights Law in Africa*

Viljoen F *International Human Rights Law in Africa* (Oxford University Press Oxford 2012)

W

Wargocki, Matysiak and Irgens 2005 *International Centre for Indoor Environment and Energy, Technical University of Denmark*

Wargocki P, Matysiak DP and Irgens S 'The effects of classroom air temperature and outdoor air supply rate on the performance of school work by children' 2005 *International Centre for Indoor Environment and Energy, Technical University of Denmark* 1 1 72-368

Woolman and Fleisch *The Constitution in the Classroom*

Woolman S and Fleisch B *The Constitution in the Classroom: Law and Education in South Africa 1994-200* (PULP 2009).

Woolman and Bishop "Education"

Woolman S and Bishop M "Education" in Woolman S et al *Constitutional Law of South Africa* (Juta Cape Town 2010) ch 57

Y

Yusuf 2004 *Nigeria Journal of Social Studies*

Yusuf A 'Effect of cooperative instructional strategy on students' performance in social studies' 2004 *Nigeria Journal of Social Studies* 8 2 23-36.

Z

Zetlin Murtaugh 1990 *American Journal on Mental Retardation*

Zetlin A and Murtaugh M 'Whatever happened to those with borderline IQs?' 1990 *American Journal on Mental Retardation* 5 463-469.

Case law

Board of Education of Evanston-Stockie Community Consolidated School District 65 v Risen et al No. 1:2012cv05073 (N.D. Ill. 2013) (Illinois) (2013) 63 (United States District Court, Northern Division)

Ex Parte Gauteng Provincial Legislature: In Re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995, 1996 3 SA 165 (CC).

Du Toit v Minister of Welfare and Population Development 2003 2 SA 198 (CC).

East Zulu Motors (Pty) Ltd v Empangeni/Ngwelezane Transitional Local Council 1998 2 SA 61 (CC). *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 1 SA 46 (CC).

Governing Body of the Juma Masjid Primary School v Essay 2011 8 BCLR 761 (CC).

Harksen v Lane 1997 11 BCLR 1489 (CC)

Hassam v Jacobs NO 2009 11 BCLR 1148 (CC).

Hoffmann v South African Airways 2001 1 SA 1 (CC).

Jordan v S 2002 6 SA 642 (CC).

Jooste v Score Supermarket 1999 2 SA 1 (CC); *Democratic Party v Minister of Home Affairs* 1999 3 SA 254 (CC).

Khosa v Minister of Social Development 2004 6 SA 505 (CC).

Larbi-Odam v MEC for Education (North West Province) 1998 1 SA 745 (CC).

Newport-Mesa Unified School District v State of California, Department of Education No. SACV 04-512-GLT (ES) (California) (2005) 317 (United States District Court, Southern Division).

National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000 2 SA 1 (CC)

Minister of Defence v Potsane 2002 1 SA 1 (CC).

Minister of Finance v Van Heerden 2004 6 SA 121 (CC).

Mabaso v Law Society of the Northern Provinces 2005 2 SA 117 (CC).

Minister of Basic Education v Basic Education for All 2016 1 SA 369 (SCA)

Pretoria City Council v Walker 1998 2 SA 363 (CC)

National Coalition for Gay and Lesbian Equality v Minister of Justice 1999 1 SA 6 (CC)

S v Makwanyane 1995 2 (SACR) 1.

Satchwell v President of the Republic of South Africa 2002 6 SA 1 (CC).

Union of Refugee Women v Director: Private Security Industry Regulatory Authority
2007 4 SA 395 (CC).

Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa and Another 2011 5 SA 87 (WCC).

Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa 2011 5 SA 87 (WCC).

Volks NO v Robinson 2005 5 BCLR 446 (CC)

Van der Merwe v Road Accident Fund 2006 4 SA 230 (CC).

Legislation

Bantu Education Act 85 of 1909

Black Education Act of 1953.

Bantu Education Act 47 of 1953.

Individuals with Disabilities Education Act of 1997.

National Education Policy Act 27 of 1996.

South African Schools Act 84 of 1996.

The Constitution of the Republic of South Africa Act 200 of 1993 (Interim Constitution).

The Constitution of the Republic of South Africa of 1996.

White Paper on Education and Training GG 16312 of 15 March 1995.

White Paper 6 on Special Needs Education July 2001.

International instruments

African Committee of Experts on the Rights and Welfare of the Child (2011)

African Charter on Human and Peoples' Rights (1986).

African Institute of South Africa 2012 Policy Brief 2.

Convention on the Rights of the Child (1989).

Committee on the Rights of the Child, General Comment No. 1: The Aims of Education (2001)

Committee on Economic, Social and Cultural Rights (1966).

The Education Trust (1998)

Fletcher-Wood H 'The best trained teachers in the world' CPD, Education Around the World Education in Singapore: 6 (2018)

National Research Council Educating Teachers of Science, Mathematics, and Technology: New Practices for the New Millennium Washington, DC The National Academies Press (2001)

United Nations. United Nations Educational, Scientific and Cultural Organisation (1990).

The National Commission on Teaching and America's Future (1996)

The Dakar framework for action. Paris: United Nations Educational, Scientific and Cultural Organisation.

The Universal Declaration of Human Rights Adopted and Proclaimed by General Assembly Resolution (1948).

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1987).

The Federal Education for All Handicapped Children Act (1975)

Study Commission on U. S. Policy toward Southern Africa South Africa: Time Running Out: the Report of the Study Commission on U.S. Policy Toward Southern Africa University of California Press (1981).

United Nations Educational, Scientific and Cultural Organisation Inclusive education: The way of the future. Final report of the International Conference of Education (48th session). Paris: United Nations Educational, Scientific and Cultural Organisation (2009) 18.

United Nations General Assembly, Convention on the Rights of the Child (1989)

United Nations Educational, Scientific and Cultural Organisation. United Nations Educational, Scientific and Cultural Organisation (2000).

United Nations Educational, Scientific and Cultural Organisation Salamanca Statement and Framework for Action on Special Education Needs (1994).

United Nations Enable Convention on the Rights of Persons with Disabilities (2008).

United Nations Universal Declaration of Human Rights: Dignity and Justice for all of us (2007)

World Declaration on Education for All (1990)

World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs (1990).

World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs (1990).

Internet sources

A

Anthony D'Amato "Legal Uncertainty" (2010) Faculty Working Papers. Paper 108 <http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/108> accessed 24 February 2020

A campaign for educational international <https://www.unite4education.org/about/what-is-quality-education/> accessed 15 January 2020

A History: Turning Points- The coming of Apartheid http://www.sahistory.org.za/classroom/education-350years/history_4.htm accessed 11 June 2020

African Committee of Experts on the Rights and Welfare of the Child 2011 <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc>. Accessed 20 March 2019.

Anti-Defamation League <https://www.adl.org/> accessed 10 November 2019.

All Africa <https://allafrica.com/stories/202005250271.html>;
<https://citizen.co.za/news/south-africa/government/2229724/improving-school-infrastructure-high-on-govts-agenda/> accessed 13 February 2020.

A Brief History of the Disability Rights Movement
<https://www.adl.org/education/resources/backgrounders/disability-rights-movement>
accessed 05 October 2019

B

Ben Johnson 28 July 2015 "Creative Teacher" Is Not an Oxymoron"
<https://www.edutopia.org/blog/creative-teacher-not-oxymoron-ben-johnson> accessed
20 April 2020

Bauer P Bantu Education Act South Africa [1953]
<https://www.britannica.com/event/Bantu-Education-Act> accessed 02 June 2018.

Baard F and Schreiner B My spirit is not banned (South African History Online1986).
<https://www.sahistory.org.za/archive/my-spirit-not-banned-frances-baard-and-barbie-schreiner> accessed 20 June 2018.

Batende CPK "Human rights are either qualified, limited or absolute" *Daily monitor*
(11
December 2013) <https://www.monitor.co.ug/OpEd/Letters/Human-rights-are-either-qualified--limited-or-absolute/806314-2107438-3jl3diz/index.html> accessed 15
October 2019.

Buso O "Overcrowded classrooms: Affecting the quality of teaching" *Cape Talk* (12
January 2019) <http://www.capetalk.co.za/articles/333684/overcrowded-classrooms-affecting-the-quality-of-teaching> accessed 25 February 2020

C

Centre for Justice and Crime Prevention and the Department of Basic Education, 2012
Pretoria www.cjcp.org.za/ www.education.gov.za accessed 20 January 2020

Centre for Justice and Crime Prevention and the Department of Basic Education, 2012
Pretoria www.cjcp.org.za/ www.education.gov.za accessed 02 April 2019.

Centre for Development and Enterprise 2011
https://media.africaportal.org/documents/VALUE_IN_THE_CLASSROOM_full_report_1.pdf accessed 20 April 2020

Centre for Development and Enterprise 2011
https://media.africaportal.org/documents/VALUE_IN_THE_CLASSROOM_full_report_1.pdf accessed 13 March 2020

Current state of South African schools
https://www.bing.com/images/search?view=detailV2&ccid=2tg40L8r&id=D6753671C83B6B924CD3534EB7348E649633B89D&thid=OIP.2tg40L8r1-2sNPINO5MbsgHaEK&mediurl=https%3a%2f%2fcs.mg.co.za%2fcrop%2fcontent%2fimages%2f2012%2f09%2f27%2fBomvini-8_i2edit.jpg%2f800x450%2f&exph=450&expw=800&q=current+state+of+south+african+public+schools&simid=607987327902485283&selectedIndex=4&ajaxhist=0
accessed 25 February 2020.

Calderhead V The Right to an 'adequate' and 'equal' education in South Africa: An analysis of s. 29(1) (a) of the South African Constitution and the right to equality as applied to basic education 2011 Research Reports, Right to Access Basic Education.
<http://www.section27.org.za/wp-content/uploads/2011/04/The-Right-to-a-Basic-Education.pdf> accessed 29 October 2020.

Cullis C "SA teacher shortage about to get worse" CapeTalk (22 September 2014)
<http://www.capetalk.co.za/articles/194/sa-teacher-shortage-about-to-get-worse>
accessed 24 April 2020

Coomans F Reviewing Implementation of Social and Economic Rights: An Assessment of the "Reasonableness" Test as Developed by the South African Constitutional Court (2005) 170.
https://www.zaerv.de/65_2005/65_2005_1_a_167_196.pdf accessed 20 July 2020

D

Draft Policy on Minimum Requirements for Teacher Education Qualifications selected from the HEQF
<http://www.dhet.gov.za/Reports%20Doc%20Library/Draft%20Policy%20on%20minimum%20requirements%20for%20Qualifications%20in%20Education.pdf> accessed 02 May 2020

Daily Vox Team “Educational Inequality: The Dark Side of SA’s Education System”
The Daily Vox (19 March 2019) <https://www.thedailyvox.co.za/educational-inequality-the-dark-side-of-sas-education-system-2/> accessed 02/05/2020.

Davis D “Social justice and economic inclusion: Where to South Africa?” Maverick Citizen (23 February 2020) <https://www.dailymaverick.co.za/article/2020-02-23-social-justice-and-economic-inclusion-where-to-south-africa/> accessed 03/2020

Dr Sizwe Mabizela “Umalusi explains matric mark adjustments” Politicsweb (03 January 2011) <https://www.politicsweb.co.za/documents/umalusi-explains-matric-mark-adjustments> accessed 13 January 2020

Damba-Hendrik N “At this school, pupils are forced to borrow a broken toilet seat from teachers to put on holes used as toilets” News24 (02 Dec 2018) <https://www.news24.com/SouthAfrica/News/at-this-school-pupils-are-forced-to-borrow-a-broken-toilet-seat-from-teachers-to-put-on-holes-used-as-toilets-20181202> accessed 13 March 2020

E

Equal Education Law Centre www.eelawcentre.org.za / info@eelawcentre.org.za.
Accessed 10 January 2020

Education Encyclopedia, the Enedupedia <https://enedupedia.blogspot.com/> accessed 15 January 2020

Equal Education Law Centre <https://eelawcentre.org.za/wp-content/uploads/2016/08/Inclusive-Education-Final.pdf> accessed 20 July 2018

Equal Education <https://equaleducation.org.za/campaigns/school-infrastructure/> accessed 12 February 2020

Eisau PhD in European Languages and Cultures (specialising in Literary Translation)
Department of International Studies Macquarie University
<https://www.eisau.com.au/blog/3-ways-school-facilities-and-equipment-influence-student-learning/> accessed 12 February 2020

Energy air <https://energyair.com> accessed 14 March 2020.

Erin Aguilar The Benefits of Inclusion Easter Seals Blake Foundation.
<https://www.easterseals.com/blakefoundation/shared-components/document-library/the-benefits-of-inclusion.pdf> accessed 20 February 2020

F

FT.com Reports 2011 <http://www.ft.com/intl/cms/s/0/4ab617d4-cf3f-11df-9be2-00144feab49a>. accessed 05 May 2019.

G

Globalization 101 Negative v Positive Rights
<http://www.globalization101.org/negative-vs-positive-rights/> accessed 16 October 2019.

Girma A Charter of children's basic education rights SAHRC 2012
http://www.sahrc.org.za/home/21/files/SAHRC%20Education%20Rights%20Charter_Part1.pdf Accessed on 19 April 2018.

Gumede M "Teacher training in spotlight" Times Live (31 July 2017)
<https://www.timeslive.co.za/news/south-africa/2017-07-31-teacher-training-in-spotlight/> accessed 02 May 2020.

H

Harry Fletcher-Wood (CPD, Education Around the World Education in Singapore: 6)
"The best trained teachers in the world" 07 February 2018
<https://improvingteaching.co.uk/2018/02/07/education-in-singapore-6-the-best-trained-teachers-in-the-world/> accessed 27 April 2020.

Human Science Research Council
<http://www.hsrc.ac.za/uploads/pageContent/2702/RESDI%20newsletter,%20November%202010%20issue.pdf> accessed 02 May 2020

How South Africa's department of basic education is misleading the public
<https://africacheck.org/reports/how-south-africas-department-of-basic-education-is-misleading-the-public/> accessed 25 February 2020

Hernando-Malipot M “DepEd reaffirms effort to achieve ideal class size, teacher-student ratio” News24 (20 March 2018) https://news.mb.com.ph/2018/03/20/deped-reaffirms-effort-to-achieve-ideal-class-size-teacher-student-ratio/?__cf_chl_jschl_tk__=72c33ad76f924eedc7d900dd9320331f742b38dd-1587976737-0-ASrk8j5mNXjUiLM__AfZYLRGfx14dRUUvmL1EqPCI0ERFB_UW-aofaRJOGY95XQx8RL00VP7slruOigKLeir0OiiyFdreoS3QWRCFFNXeZ9ECiE4d3TeCS--gjjyjWXwLPU1Q08k6PLUcfWoi-CXMiA765l1nJmiLkojX0iqEDT-OrLw3rKCsWN1zROr-vVBJB4NCZL3rSIMcJzcVynynrsvhd3MWSfi5tx0z7jTI3cWpabEZcMEHOIAzS7Oysb-8qRa8uy_oYQw-PWjWDtYsmIUcQdy_xMFu1e_TGXFEp6b8sBJtH-ipAPab_EtqUBxq26KyPSFO2yGrBIN38TUBtFCU2nEoLp4VXBeEkle3vmcuT89Ok7uhlfjFTVugX7H-A accessed 27 April 2020

I

Inclusion BC <http://www.inclusionbc.org/our-priority-areas/inclusive-education/what-inclusiveeducation> accessed 02 July 2018

Inclusive Education and its Benefits New Brunswick association for community living <https://nbacl.nb.ca/module-pages/inclusive-education-and-its-benefits/> accessed 30 December 2019

J

Jansen J “If SA wants good teachers, bring back colleges” Times Live (20 December 2018) <https://select.timeslive.co.za/ideas/2018-12-20-if-sa-wants-good-teachers-it-must-bring-back-colleges-of-education/> accessed 27 April 2020

K

Khumalo S and Hodgson TF Chapter 5 the Right to Basic Education for Children with Disabilities 105-127 <https://section27.org.za/wp-content/uploads/2017/02/Chapter-5.pdf> accessed 02 February 2018

Kubheka T Eye witness news Motshekga: dept to monitor why teachers spend less time teaching <https://ewn.co.za/2019/07/03/motshekga-dept-to-monitor-why-teachers-spend-less-time-teaching> accessed 29 July 2021.

L

Lynch M “Focus on these four areas to create a classroom environment conducive to learning” *The Advocate* (23 August 2016) <https://www.theedadvocate.org/focus-four-areas-create-classroom-environment-conducive-learning/> accessed 20 February 2019

M

Minister Angie Motshekga releases TALIS Research Study results, 2 Jul, 30 June 2019 <https://www.gov.za/speeches/minister-basic-education-release-talis-south-africa-country-report-30-jun-2019-0000> accessed 30 July 2021

Mokate L Charter of children’s basic education rights SAHRC 2012 http://www.sahrc.org.za/home/21/files/SAHRC%20Education%20Rights%20Charter_Part1.pdf Accessed on 19 April 2018.

Maxeiner, James R. (Fall 2008). https://www.jstor.org/stable/3480139?seq=1#page_scan_tab_contents accessed 24 February 2020

Moreland J.P., professor of philosophy at Biola University January 30, 2009 by mattperman “The Difference Between Negative Rights and Positive Rights” <http://mattperman.com/2009/01/the-difference-between-negative-rights-and-positive-rights/> accessed 16 October 2019.

Mtantato ‘Basic education is failing the economy’ 23/11/2018 <https://mg.co.za/article/2018-11-23-00-basic-education-is-failing-the-economy/> accessed 20 April 2020.

Modisaotsile BM The Failing Standard of Basic Education in South Africa <http://www.ai.org.za/wp-content/uploads/downloads/2012/03/No.-72.The-Failing-Standard-of-Basic-Education-in-South-Africa1.pdf> accessed 02 May 2020.

Mabuza E “Hot under the collar: How heat prevents school kids from learning” *Times Live* (01 October 2019) <https://www.timeslive.co.za/news/south-africa/2019-10-01-hot-under-the-collar-how-heat-prevents-school-kids-from-learning/> accessed 07 April 2020

Makana C “Basic education dept was warned of 'sinking' toilets 10 years ago, Limpopo court hears” *News24* (20 November 2017)

<https://www.news24.com/SouthAfrica/News/basic-education-dept-was-warned-of-sinking-toilets-10-years-ago-limpopo-court-hears-20171120> accessed 02 February 2020

Mundy S 'Education: Decline of standards leaves learners at the bottom of the league' FT.com Reports 2011 <http://www.ft.com/intl/cms/s/0/4ab617d4-cf3f-11df-9be2-00144feab49a.html#axzz1muQO6NJE>; Jansen 2018 <https://select.timeslive.co.za/ideas/2018-12-20-if-sa-wants-good-teachers-it-must-bring-back-colleges-of-education/> accessed 02 February 2020

MyBroadband "Half of 2016's matric subjects will have their marks adjusted upwards" (02 January 2017) <https://businessstech.co.za/news/government/148481/half-of-2016s-matric-subjects-will-have-their-marks-adjusted-upwards/>; accessed 13 January 2020

N

Ntshongwana Y "Learners use field as toilet: 'Our children are not safe', says worried mom" News24 (12 May 2018) <https://www.news24.com/SouthAfrica/News/learners-use-field-as-toilet-our-children-are-not-safe-says-worried-mom-20180512> accessed 13 March 2020

O

Office of the United Nations High Commission for Human Rights 1996-2007, "International Law" <http://www2.ohchr.org/english/law/> accessed 30 March 2019.

Okoye C.J. "One in 10 teacher's bunks school on any given day in SA" The Citizen (09 April 2019) <https://citizen.co.za/news/south-africa/education/2114187/one-in-10-teachers-bunks-school-on-any-given-day-in-sa/> accessed 04 April 2020.

Opinion South Africa battling with shortage of teachers in public schools <https://www.iol.co.za/the-star/opinion-analysis/opinion-south-africa-battling-with-shortage-of-teachers-in-public-schools-37696438> accessed 02 March 2020

P

Parker F "Myths busting the matric pass rate" <http://mg.co.za/article/2012-01-07-myth-busting-the-matric-pass-rate> accessed 27 July 2019

Palliser School Division “Goals, Beliefs and Values”
<https://www.pallisersd.ab.ca/inclusive-education/goals-beliefs-and-values> accessed
30 December 2019.

Public Protector Probes Teachers <https://www.vocfm.co.za/public-protector-probes-teachers/> accessed 25/02/2020.

Q

Qualified Rights
<http://www.constitution.gov.ky/www.constitution.gov.ky/portal/pageb59e.html>
accessed 15 October 2019

R

Ryan Inclusive leadership and social justice for schools: Leadership and policy in schools. See also Social Justice: 7 Theories of Social Justice – Explained
<http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830> accessed 18 March 2020

Ramalepe P “SA’s school sanitation crisis drags on” Business Live (08 August 2019)
<https://www.businesslive.co.za/fm/features/2019-08-08-sas-school-sanitation-crisis-drags-on/> accessed 02 February 2020

S

South Africa: Soweto and its Aftermath <http://www.country-data.com/cgi-bin/query/r-12130.html> accessed 11 July 2019.

South Africa is failing the rights of children to education and health
<https://theconversation.com/south-africa-is-failing-the-rights-of-children-to-education-and-health-112707> accessed 20 April 2020.

Science fair projects www.all-science-fair-projects.com accessed 14 March 2020.

S2 of the South African Schools Act 84 OF 199
<https://www.elrc.org.za/sites/default/files/documents/sa%20schools%20act.pdf>
accessed 20 August 2020.

Staff reporter “SA's child illiteracy time bomb” Pretoria News (15 December 2017)
<https://www.iol.co.za/pretoria-news/sas-child-illiteracy-time-bomb-12427420>
accessed 24 September 2019.

Slade S “What Do We Mean by a Quality Education?” Huffpost (22 February 2016)
https://www.huffpost.com/entry/what-do-we-mean-by-a-qual_b_9284130 accessed
15 January 2020

Smuts M “Bad education: It starts with how we train teachers” Daily Maverick (04 April
2018) <https://www.dailymaverick.co.za/opinionista/2018-04-04-bad-education-it-starts-with-how-we-train-teachers/HOMETPS> accessed 13 March 2020

Savides M “South Africa: South African schools have 5,139 teachers who are
unqualified or under-qualified” Times Live (06 June 2017)
<https://www.news24.com/SouthAfrica/Local/Maritzburg-Fever/poor-quality-teachers-are-holding-back-south-africas-education-system-20190116-2> accessed 13 March
2020

Sokutu B. “Education still unequal after 25 years of democracy” The Citizen (01 July
2019) <https://citizen.co.za/news/south-africa/education/2148832/education-still-unequal-after-25-years-of-democracy/> accessed 02 May 2020.

Scorgie F, Chersich M, Wright C and Mathee A “How climate crisis affects education
in South Africa” Daily Maverick (26 July 2019)
<https://www.dailymaverick.co.za/article/2019-09-26-how-climate-crisis-affects-education-in-south-africa/> accessed 07 April 2020

Somdyala K “Almost 4000 pit latrines in SA's schools, zero target set 'within the next
3 years” News24 (11 March 2019)
<https://www.news24.com/SouthAfrica/News/almost-4000-pit-latrines-in-sas-schools-zero-target-set-within-the-next-3-years-20190311> accessed 03 May 2020

Staff Writer “South Africans among the most illiterate in the world” BusinessTech (10
March 2016) <https://businesstech.co.za/news/lifestyle/116230/south-africans-among-the-most-illiterate-in-the-world/> accessed 24 September 2019.

Staff Writer “Big Matric 2016 upward mark adjustments” Mybroadband Trusted in Tech (02 January 2017) <https://mybroadband.co.za/news/government/192696-big-matric-2016-upward-mark-adjustments.html>; accessed 13 January 2020

Staff Reporter “Umalusi defends matric mark adjustments” Mail and Guardian (09 January 2012) <https://mg.co.za/article/2012-01-09-umalusi-defends-matric-mark-adjustments/> accessed 13 January 2020

SAQA <http://allqs.saqa.org.za/showQualification.php?id=20161> accessed 01 May 2019

Singapore: Teacher and Principal Quality <http://ncee.org/what-we-do/center-on-international-education-benchmarking/top-performing-countries/singapore-overview-2/singapore-teacher-and-principal-quality/> accessed 27 April 2020.

South African Human Rights Council Report: Towards a barrier-free society 3, 2002. https://www.sahrc.org.za/home/21/files/Reports/towards_barrier_free_society.pdf2002.pdf accessed 27 April 2020

T

TALIS Report, Volume 2 is released <https://www.education.gov.za/ArchivedDocuments/ArchivedArticles/TALIS2Released.aspx> accessed 30 July 2021

The Education Commission (1964-66) <http://www.lisbdnet.com/basic-concept-education/> accessed 17 January 2020.

Triple E training <https://eee.co.za/what-does-umalusi-mean/> Accessed on the 24 September 2019

Transforming the Education Workforce: Learning Teams for a Learning Generation <https://educationcommission.org/wp-content/uploads/2019/09/Transforming-the-Education-Workforce-Full-Report.pdf> accessed 16 May 2020

The National Academies Press 2001. doi: 10.17226/9832. <https://www.nap.edu/read/9832/chapter/5#65> accessed 10 March 2020.

Truter FunDza Literacy Trust <https://live.fundza.mobi/home/fanz/essays/i-stood-completely-still/> accessed 03 April 2020

The importance of effective teacher training 05 October 2019
<https://www.bridgeinternationalacademies.com/effective-teacher-training-and-development/> accessed 20 April 2020.

The Importance of School Facilities in Improving Student Outcomes Introduction
<https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/> accessed 12 February 2020

Tombo Foundation <https://www.tambofoundation.org.za/wp-content/uploads/2017/05/education-south-africa.jpg> accessed 13 February 2020.

The cornerstone of Democracy. South Africa's Bill of Rights. SAHA archive for justice. south African history archive since 1988.
<http://www.saha.org.za/billofrights/education.htm> accessed 10 September 2020

Thomas S "What are the Challenges in Teaching Profession?" Elephant Journal (14 March 2019) <https://www.elephantjournal.com/2019/03/what-are-the-challenges-in-teaching-profession/> accessed 03 April 2020

Tshetlo M "Report: 10% of teachers are absent daily at most South African public schools" (05 July 2017) <https://www.702.co.za/articles/271296//report-10-of-teachers-are-absent-daily-at-most-south-african-public-schools> accessed 04 April 2020

U

UNICEF 2017 <https://www.unicef.org/education> accessed 17 January 2020

United Nations Children's Fund 2009 http://www.unicef.org/crc/index_framework.html accessed 20 July 2020.

Unequal education: apartheid's legacy
https://ccnmtl.columbia.edu/projects/caseconsortium/casestudies/130/casestudy/www/layout/case_id_130_id_919.html accessed 02 June 2018.

V

VELUX Commercial "thermal control in classrooms is key to an ideal learning environment" 2019 <https://vms.velux.com> accessed 14 March 2020

Veriava F. "Education Rich school, poor school – the great divide persists" Mail and Guardian (28 September 2012) <https://mg.co.za/article/2012-09-28-00-rich-school-poor-school-the-great-divide-persists/> accessed 12 February 2020

W

What other countries can learn from Singapore's schools <https://www.economist.com/leaders/2018/08/30/what-other-countries-can-learn-from-singapores-schools> accessed 27 April 2020

Z

Ziwira E "Creating a conducive learning environment" The Herald (15 June 2015) <https://herald.co.za> accessed 14 March 2020

5 of the biggest problems South African teachers struggle with SA News (02 June 2019) <https://businesstech.co.za/news/government/326939/5-of-the-biggest-problems-south-african-teachers-struggle-with/> accessed 02 February 2020