

**THE PROVISION OF EDUCATION TO MINORITIES,
WITH SPECIAL EMPHASIS ON SOUTH AFRICA**

by

MATOANE STEWARD MOTHATA

submitted in accordance with the requirements
for the degree of

DOCTOR OF EDUCATION

in the subject

COMPARATIVE EDUCATION

at the

UNIVERSITY OF SOUTH AFRICA

PROMOTER: PROF EM LEMMER

JUNE 2000

**THE PROVISION OF EDUCATION TO MINORITIES,
WITH SPECIAL EMPHASIS ON SOUTH AFRICA**

by

MATOANE STEWARD MOTHATA

submitted in accordance with the requirements
for the degree of

DOCTOR OF EDUCATION

in the subject

COMPARATIVE EDUCATION

at the

UNIVERSITY OF SOUTH AFRICA

PROMOTER: PROF EM LEMMER

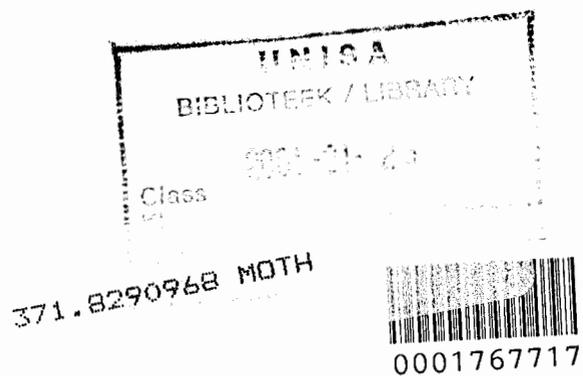
JUNE 2000

Acknowledgements

Appreciation is extended to my promoter Professor E. Lemmer for her professional guidance and mentorship. To Professor Elmene Bray and Advocate MA Ramolotja from the University of South Africa for going through the manuscript. To Professor Keren Le Roux who edited this thesis. To all the informants who unselfishly shared their views with me regarding the topic under investigation. I appreciate your assistance.

Dedication

To my first teachers, my parents.



SUMMARY

Against the background of the lack of consensus on the definition of the concept *minority* and the continuing debates on minorities and their rights in education, a need exists for adequate provision of education suitable to different minorities. This study investigates the provision of education to minorities. A literature survey investigated how various countries make provision for minorities in their education systems, starting from the Constitutions and various education laws to educational practice. These countries include Belgium, Germany, the Netherlands, the United Kingdom (UK) and Italy. Regarding South Africa, an analysis of documents dealing with the provision of education to minorities was undertaken. Unstructured interviews, from a small sample of informants selected by purposeful sampling, elicited additional data to the document analysis. Data was analysed, discussed and synthesised. The major findings are: there is no international consensus on the definition of the concept *minority*; the concept *minority* does not even appear in the Constitutions of some of the countries under investigation; the South African Constitution uses the concept *communities* rather than *minorities*. However, no definition of the concept *community* is provided and despite reservations expressed by a key informant on *group rights*, generally the South African Constitution contains enough sections regarding the provision of education to minorities. Subject to certain limitations, minority groups may open their own schools and use their own language. Based on these findings, recommendations for educational provision for minorities are made.

Key terms:

Minorities; minority rights in education; volkstaat; Khoi and San; international instruments on minorities; Commission; own schools; Constitution; communities; Afrikaner homeland.

CHAPTER 1

INTRODUCTION, AIMS AND STRUCTURE

1.1	INTRODUCTION	1
1.2	MINORITY RIGHTS IN SOUTH AFRICA PRIOR TO 1994	4
1.2.1	Education for minorities during the apartheid era	5
1.2.2	Minority rights after 1994	8
1.3	THE NATIONAL CONSULTATIVE CONFERENCE (24 SEPTEMBER 1998)	11
1.4	THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT (4 MARCH 1999)	12
1.5	DEFINITION OF TERMS	13
1.5.1	Minority	13
1.5.2	Education provision	16
1.6	CHOICE OF OTHER TERMS FOR THE STUDY	17
1.7	PROBLEM FORMULATION	18
1.8	AIMS OF THE RESEARCH	19
1.9	LITERATURE REVIEW	19
1.10	RESEARCH DESIGN AND METHOD	20
1.10.1	Document analysis	20
1.10.2	Interviews	22
1.11	RATIONALE FOR THE STUDY	22
1.12	LIMITATIONS OF THE STUDY	24
1.13	CHAPTER DIVISION	25
1.14	SUMMARY AND CONCLUSION	27

CHAPTER 2

AN OVERVIEW OF MINORITY RIGHTS IN EDUCATION PROVISION IN SELECTED COUNTRIES

2.1	INTRODUCTION	28
2.2	DEFINITION OF MINORITIES IN INTERNATIONAL INSTRUMENTS	28
2.2.1	Interpretation of the concept <i>minority</i> by the Permanent Court of International Justice	31
2.2.2	Definition proposed by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities	32
2.2.3	Provisional interpretation of the term <i>minority</i> by the Special Rapporteur	33
2.2.4	Observations from other members of the Sub-Commission	36
2.3	MINORITY-RELATED TERMS	40
2.3.1	Culture and cultural diversity	41
	2.3.1.1 <i>Nation</i>	45
	2.3.1.2 <i>Race and racial group</i>	46
	2.3.1.3 <i>Ethnicity</i>	48
2.4	OTHER MINORITY- RELATED CONCEPTS	52
2.4.1	Assimilation	52
2.4.2	Integration	53
2.4.3	Fusion	53
2.4.4	Pluralism	53
2.4.5	Segregation	54
2.5	MINORITY RIGHTS IN EDUCATION: INTERNATIONAL LAW	55
2.5.1	The League of Nations and the protection of minorities	56
2.5.2	International instruments	57
	2.5.2.1 <i>Universal Declaration of Human Rights (UDHR)</i>	58
	2.5.2.2 <i>Convention against Discrimination in Education</i>	59
	2.5.2.3 <i>The International Covenant on Economic, Social and Cultural Rights (ICESCR)</i>	61
	2.5.2.4 <i>The International Covenant on Civil and Political Rights</i>	

	<i>(ICCPR)</i>	63
2.5.2.5	<i>The Convention on the Rights of the Child</i>	66
2.5.2.6	<i>Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities</i>	68
2.5.2.7	<i>The Framework Convention for the Protection of National Minorities</i>	69
2.6	THE RIGHT TO EDUCATION IN INTERNATIONAL LAW	70
2.7	EDUCATION FOR MINORITIES IN SELECTED COUNTRIES	72
2.7.1	EDUCATION OF MINORITIES IN BELGIUM	72
2.7.1.1	<i>Definition of minority</i>	73
2.7.1.2	<i>Types of minorities</i>	73
2.7.1.3	<i>Constitutional protection of minorities</i>	74
2.7.1.4	<i>Forgotten minorities</i>	76
2.7.2	EDUCATION FOR MINORITIES IN GERMANY	76
2.7.2.1	<i>Definition of minority</i>	76
2.7.2.2	<i>Types of minorities</i>	78
2.7.2.3	<i>Constitutional protection of minorities in education</i>	80
2.7.2.4	<i>Education law</i>	82
2.7.3	EDUCATION FOR MINORITIES IN ITALY	83
2.7.3.1	<i>Definition of minority</i>	84
2.7.3.2	<i>Types of minorities</i>	84
2.7.3.3	<i>Constitutional protection of minorities in education</i>	88
2.7.3.4	<i>Protection of minorities within the education system</i>	90
2.7.4	EDUCATION FOR MINORITIES IN THE UNITED KINGDOM (UK)	90
2.7.4.1	<i>Definition of minority</i>	92
2.7.4.2	<i>Types of minorities</i>	93
2.7.4.3	<i>Constitutional protection of minorities in education</i>	96
2.7.4.4	<i>The right of religious minorities to establish schools of their own within the maintained sector</i>	98
2.7.4.5	<i>The right of members of religious minorities to wear clothing distinctive of their particular faith</i>	99
2.7.5	EDUCATION FOR MINORITIES IN THE NETHERLANDS	101
2.7.5.1	<i>Definition of minority</i>	101
2.7.5.2	<i>Types of minorities in education</i>	102
2.7.5.3	<i>Constitutional protection of minorities in education</i>	104
2.8	SUMMARY AND CONCLUSION	108

CHAPTER 3

RESEARCH DESIGN

3.1	INTRODUCTION	110
3.2	RESEARCH QUESTIONS	110
3.3	RESEARCH APPROACH	111
3.3.1	Qualitative methodology - A theoretical basis	111
3.3.2	The researcher's stance	114
3.3.2.1	<i>Disciplined subjectivity</i>	115
3.4	DATA COLLECTION	116
3.4.1	Document or content analysis	116
3.4.1.1	<i>Primary documents used in the study</i>	118
3.4.1.2	<i>Cross checking data</i>	121
3.4.2	Interviews	121
3.5	SAMPLING	123
3.5.1	Selection of informants	123
3.5.1.1	<i>Locating the key informants</i>	123
3.5.1.2	<i>Size of sample</i>	124
3.6	FIELD NOTES	124
3.7	DATA ANALYSIS	125
3.8	VALIDITY AND RELIABILITY	126
3.8.1	Validity	126
3.8.2	Reliability	127
3.8.2.1	<i>Reliability of design</i>	128
3.8.2.2	<i>Reliability in data collection</i>	129

3.9	LIMITATIONS OF THE STUDY	130
3.10	SUMMARY AND CONCLUSION	131

CHAPTER 4

DISCUSSION OF FINDINGS: MINORITY RIGHTS IN EDUCATION IN SOUTH AFRICA

4.1	INTRODUCTION	132
4.2	AN OVERVIEW OF THE DEBATE: MINORITY GROUPS IN SOUTH AFRICA	133
4.2.1	Population composition	138
4.2.2	Defining minorities in South Africa	139
4.2.3	Types of minorities	144
	4.2.3.1 <i>Cultural minorities</i>	145
	4.2.3.2 <i>Religious minorities</i>	146
	4.2.3.3 <i>Linguistic minorities</i>	147
4.2.4	SUMMARY	149
4.3	FINDINGS OF DOCUMENT ANALYSIS: THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA (RSA)	150
4.3.1	The Constitution of the RSA (Act no. 108 of 1996)	150
4.3.2	The South African Constitution and International Law	150
4.3.3	Sections of the Constitution with implications for minority rights in education	154
	4.3.3.1 <i>Section 9 (Equality)</i>	155
	4.3.3.2 <i>Section 15 (Freedom of religion, belief and opinion)</i>	156
	4.3.3.3 <i>Section 29 (Education)</i>	165
	4.3.3.4 <i>Section 30 (Language and Culture)</i>	183
	4.3.3.5 <i>Section 31 (Cultural, Religious and Linguistic Communities)</i>	185
	4.3.3.6 <i>Section 36 (Limitations of Rights)</i>	186
4.3.4	SUMMARY	188
4.4	FINDINGS OF DOCUMENT ANALYSIS: EDUCATION LAW	189
4.4.1	The National Education Policy Act (NEPA) (Act no. 27 of 1996)	190
4.4.2	The South African Schools Act (SASA) (Act no. 84 of 1996)	192
	4.4.2.1 <i>Admission</i>	192
	4.4.2.2 <i>Language</i>	194
	4.4.2.3 <i>Freedom of conscience and religion at public schools</i>	196

4.4.3	SUMMARY	197
4.5	FINDINGS OF OBSERVATION AT AND ANALYSIS OF DOCUMENTS PRODUCED BY THE NATIONAL CONFERENCE ON THE ESTABLISHMENT OF THE COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES	197
4.5.1	Origins of the Commission	200
4.5.2	The first conference (1998)	200
4.5.3	Synopsis on conference submissions	202
4.5.4	The second conference (1999)	204
4.5.5	Functions of the Commission	204
4.5.6	SUMMARY	208
4.6	CONCLUSION	208
4.7	DISCUSSION OF FINDINGS: INTERVIEWS	209
4.7.1	Introduction	209
4.7.2	Background data and characteristics of informants	210
4.7.2.1	<i>Setting and characteristics of informants</i>	211
4.7.2.2	<i>Observations and discussion of the interview process</i>	212
4.8	PRESENTATIONS AND DISCUSSIONS OF KEY THEMES	214
4.8.1	The Constitution	215
4.8.1.1	<i>Defining minorities in South Africa</i>	215
4.8.1.2	<i>Constitutional provisions</i>	218
4.8.2	Own schools and own language	222
4.8.3	The <i>Volkstaat</i>	229
4.8.4	The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.	233
4.9	SUMMARY AND CONCLUSION	236
4.10	CHAPTER SUMMARY AND CONCLUSION	238

CHAPTER 5

SYNTHESIS OF FINDINGS, RECOMMENDATIONS FOR EDUCATIONAL PROVISION AND CONCLUSION

5.1	INTRODUCTION	239
5.2	OVERVIEW OF THE INVESTIGATION	240
5.3	SUMMARY OF KEY ISSUES	241
5.3.1	Definition of the concept <i>minority</i>	242
5.3.2	Are there minorities in the RSA?	243
5.3.3	Constitutional provision	244
5.3.4	Own schools and own language	245
5.3.5	The <i>Volkstaat</i>	245
5.3.6	The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities	246
5.4	RECOMMENDATIONS FOR EDUCATIONAL PROVISION	247
5.4.1	The constitutional provision	247
5.4.2	School curriculum	248
5.4.3	Teacher training	248
5.4.4	Marginalised languages in education	248
5.4.5	Support measures and structures	249
5.4.6	Governance	250
5.4.7	Finance	250
5.4.8	Monitoring	251
5.4.9	Group rights	252
5.5	FURTHER RESEARCH	252
5.6	LIMITATIONS OF THE STUDY	253
5.7	IN CONCLUSION	254
	BIBLIOGRAPHY	256
	ANNEXURES	
	ANNEXURE 1: Section of the Constitution Act no. 108 of 1996	270
	ANNEXURE 2 : Declaration of confidentiality	277
	ANNEXURE 3 : Interview guide	278

LIST OF ABBREVIATIONS

CNE	Christian National Education
EU	European Union
FF	Freedom Front
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IFP	Inkatha Freedom Party
IFRB	Independent Forum for Religious Broadcasting
LANGTAG	Language Plan Task Group
LiEP	Language in Education Policy
NCOP	National Council of Provinces
NEPA	National Education Policy Act
NEPI	National Education Policy Investigation
PANSALB	Pan South African Language Board
RSA	Republic of South Africa
SAHRC	South African Human Rights Commission
SASA	South African Schools Act
SASI	South African San Institute
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WIMSA	Working Group of Indigenous Minorities in Southern Africa

CHAPTER 1

INTRODUCTION, AIMS AND STRUCTURE

1.1 INTRODUCTION

Numerous recent social and political developments around the world, such as the fall of communist regimes which resulted in the new world order, the end of the Cold War, the disintegration of the Union of Soviet Socialist Republics (USSR), the conflict between the Catholics and Protestants in Northern Ireland, the ethnic cleansing in Bosnia, the fight for political and ethnic domination in the Great Lakes between the Hutus and Tutsis in both Burundi and Rwanda, the demise of apartheid¹ in South Africa, and many other developments have brought the issue of minorities and minority rights in the limelight more than ever before. Ethnic, religious and national minorities groups are making more demands for the rights to enjoy and practise freely their basic rights and freedoms. Their demands are based on the idea of equality, which is acknowledged in one form or another in most

¹ Described in Article 1 of the United Nations Educational Scientific and Cultural Organisations (UNESCO) declaration on Race and Racial Prejudice of 1978 as an extreme form of racism and as a collective form of slavery. It was further described in Article 4 as a crime against humanity and something that disturbed international peace and security. In his address to delegates in a Conference on Nation Building through the Promotion and Protection of the Rights of Cultural, Linguistic and Religious Communities on the 24 September 1998, President Thabo Mbeki indicated that the long years of apartheid rule endowed the concept of *group rights* with the inhumane consequences that derived from the practice of white minority domination and the oppression and super exploitation of the black majority. To be white, Afrikaans-or English-speaking, meant that you were superior to those who were inferior by virtue of their being Black, and Afrikaans, Tamil or Zulu speaking. The fact of belonging to a cultural, language or racial group served to define one's place in a society, with the disastrous consequences with which all South Africans were familiar or should be familiar.

national constitutions and in international law,² particularly articles 26(2) and (3) and 27 of the Universal Declaration for Human Rights (UDHR) of 1948;³ article 1 of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 1978; and article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1996.⁴ However, the UDHR is not enforceable legally and it is not an international treaty, but simply an agreed upon opinion of what constitutes human rights and how they should be applied (Veny 1997:177-178; UNESCO Declaration on Race and Racial Prejudice November 1978; UN Action in the Field of Human Rights 1988:95; Togni 1994:12).

Therefore, to minorities throughout the world, minority rights, be it in education, politics, or any other sphere, is a human right, guaranteed by, among others, the

² Daes Erica-Irene, special rapporteur of the UN, in her report entitled *Status of the Individual and Contemporary International Law: Promotion, Protection and Restoration of Human Rights at National, Regional and International Levels* (1992:3) gave three definitions of international law. International law is : (a) the standard of conduct, at a given time, for the states and other entities subject thereto. It comprises the rights, privileges, powers and immunity of states and entities invoking its provisions, as well as the correlative fundamental duties, absence of rights, liabilities and disabilities; (b) the body of legal rules which apply between sovereign states and other entities as having been granted international personality; and (c) that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore do commonly observe in their relation with each other.

³ Article 26(2) indicates that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the UN for the maintenance of peace. Article 26(3) maintains that parents have a prior right to choose the kind of education that shall be given to their children. Article 27 affirms the right to freely participate in the cultural life of a community, to enjoy the arts and to share in scientific advancement and its benefits.

⁴ It provides that in those states where ethnic, religious and linguistic minorities exist, persons belonging to those minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. This provision undoubtedly confers on minorities the right to protect a distinct identity and establishes same as an international obligation.

above international human rights documents. According to McQuoid-Mason in Togni (1994:138), human rights are universal moral rights. That is, they are evolved from the natural rights of man generally and accepted, in one form or another, by all human beings. They do not have to be earned, bought or inherited. These rights are ascribed and are the rights of any individual by virtue of birth and apply equally to all of mankind without regard to race, colour, creed, language or any other such criterion. Human rights are generally accepted by many people, even though the society in which they are resident may not have a bill of rights or may, for discriminatory reasons, not subscribe to the principles of justice.

In the Netherlands, for instance, immigrant groups and in particular those with an Islamic and Hindu religious background, have begun to utilise both their constitutional and human right freedom of education by founding their own schools on religious basis. The more than 20 million Kurds who live in Turkey and whose land was divided between Turkey and some other middle east countries like Iraq and Iran, where they are allegedly ill-treated, are demanding their own territory to practise their culture and tradition including having their own schools (Mail and Guardian: February 26-March 4 1999:15; South African Broadcasting Corporation (SABC) TV News: World Watch 21/02/1999: 20:30).

A most recent example of the realisation of minority rights is the following: On April 1 1999, the world atlases were redrawn when a new province controlled by the Inuit community (formerly called Eskimos) came into being in the Arctic, marking Canada's biggest experiment in self-government. The Inuit comprises 85% of the population in the far northern region of Canada which is said to have more polar bears, whales, and seals than humans. They named their new province Nunavut, which means *our land* in their language, Inuktitut. Their democratically elected legislature is made up of nineteen (19) members and operates by consensus (Mail and Guardian 26 Feb-4 March 1999:15).

1.2 MINORITY RIGHTS IN SOUTH AFRICA PRIOR TO 1994

During the apartheid era in South Africa, the divisions between communities were based mainly on race. The country was divided in different homelands⁵ based not only on colour but common culture, language and other unique characteristics that are used to define minority groups. The idea behind the establishment of homelands was to give the Africans some limited political rights to govern themselves or they would continue to demand such rights in a unitary South Africa. For example, the former Lebowa homeland was meant for the Sepedi speaking community, Bophuthatswana for the Tswana speaking, and the Ciskei and Transkei homelands for the Xhosa speaking community. The homelands governments were given some limited powers of control over the provision of education (Unterhalter, Wolpe, Botha, Badat, Dlamini, Khotseng 1991:59).

Laws limiting the movements of particularly African⁶ people in so-called white areas were promulgated. A migrant labour system was encouraged and male only hostels were built around the mines and other workplaces to accommodate African men, especially those from rural areas who came to work in the cities. Ethnicity characterised life in these hostels where different ethnic groups were allocated different sections away from each other. Some ethnic groups wanted to demonstrate their dominance over others and this created animosity and tension

⁵ They used to be referred to as *Bantustans* and were established by the apartheid government specifically for African people. They were Lebowa, Venda, Gazankulu, Ka-Ngwane, Qwaqwa, Kwazulu, Ciskei, Transkei and Bophuthatswana. Each homeland was headed by a Chief Minister who in turn appointed a cabinet. One of the cabinet ministers was in charge of the education portfolio specifically for Africans in his/her homeland.

⁶ Although there are disagreements about the concept *African* and who qualifies to be referred to as African, in this study, *Africans* refer to people of African descent and excludes other groups like Coloureds and Indians who are also identified as *Black*. The term *Black* will be used as a collective term encompassing all three groups.

among different groups. As a result, frequent ethnic confrontations were very common in these hostels. Regarding this kind of situation Ahmed (1995:8) wrote that:

Ethnic hatred has a mimetic quality. The opposed groups mirror the hatred, rhetoric and fears of each other. It makes everyone an outsider and it makes everyone a target. Everywhere - in the shopping arcade, at the bus stop, in the cinema, in your living room - you are vulnerable to sudden, random violence. Anger and hatred are easily created.

The same applied to hostel dwellers. Ethnic confrontations, fuelled by political rhetoric from ethnic and homeland based cultural organisations like Inkatha in Kwa-Zulu, and Mbokoto in Kwa-Ndebele deprived hundreds of African men the chance to live as many of them were killed.

Townships were established specifically for African people, some distances away from towns and cities. Like the hostels, most of these townships were divided into sections according to ethnicity. The township of Soshanguve which lies about 20 kilometres north-west of Pretoria, was established specifically for the Sotho, Shangaan or Tsonga, Nguni and the Venda communities. Africans could not own property. Moreover, it was an offence punishable by law, for Africans to be around a town or city after working hours without the written permission of their employers. The content of such permission had to justify their being there. White people lived in suburbs while the Indians and Coloureds lived in their designated areas (Samuel in Nasson & Samuel 1990:17-19; Christie 1989:219-249).

1.2.1 Education for minorities during the apartheid era

Even before the establishment of homelands, different laws that provided education specifically for the Black community were passed. For instance, the Bantu

Education Act no. 47 of 1953⁷ which was promulgated specifically for Africans, the Coloured Persons Education Act No. 47 of 1963⁸ and the Indians Education Act no. 61 of 1965.⁹ The Bantu Education Act No. 47 of 1953, in particular, was based on the recommendations and proposals of the Eiselen Commission. The Commission was appointed and requested by the state in 1949 to:

... formulate the principles and aims of education for Natives as an independent race, in which their past and present, their inherent racial qualities, their distinctive characteristics and aptitude, and their needs under the ever changing social conditions are taken into consideration (Report of Native Education Commission 1949-1951, Annexure A: 181 Samuels, in Nasson & Samuels (eds) 1990:17).

The basic assumption was that African children, because of their distinctive aptitude which was perceived by the state as being below normal, required a schooling different from that of white children.

As Samuel, in Nasson & Samuels (eds) (1990:18) wrote, the intention of the state as regards Bantu Education was made more explicit in the parliamentary debates around the reading of the Bantu Education Bill. Hendrik Verwoerd¹⁰ rejected the school structure as set up by the missionaries on the ground that it produced the *wrong type* of African. He added that racial relations cannot improve if the wrong

⁷ The Act provided for the transfer of the administration of and control of native education from the several provincial administrations to the government of the Union. Public schools which the natives attended were referred to as Government Bantu Schools.

⁸ The Act was promulgated to provide for the control of education for coloured persons by the Department of Internal Affairs.

⁹ The Act was meant to provide for the control of education for Indians by the Department of Indian Affairs.

¹⁰ Former Minister of Native Education who is regarded as the architect of apartheid.

type of education is given to Natives. Unfortunately the racial relations he referred to never improved. Instead the rift between races became wider and wider because of the introduction of inferior education policies for Africans.

Introducing the Bantu Education Act in Parliament, Verwoerd indicated that:

Until now he (the African) has been subjected to a school system which drew him from his own community and misled him by showing him the greener pastures of European society in which he was not allowed to graze. This attitude is not only uneconomic, because money is spent for an education which has no specific aim, but is also dishonest to continue (Verwoerd, in Unterhalter, *et al* 1991:57).

As Unterhalter, *et al* (1991:57) wrote, this denial of knowledge to the African majority was, in fact, believed to be a guarantee of white supremacy. Verwoerd's description of African students as cattle who should be prevented from entering the *forbidden pastures* of knowledge and authority was a powerful racist image. Possibly the racist logic ran, that maintaining African education at limited level, the fences around the forbidden pastures would remain secure. However, the 1976 students riots, and the student demonstrations of the 1980's in both townships and institutions of learning, proved that those forbidden pastures were never secured.

Mothata, in Pretorius & Lemmer (1998:94) indicated that as a result of the 1953 Bantu Education Act, most mission schools which offered education perceived by authorities to be of good standard were closed, primary school children had to learn both official languages (Afrikaans and English), nursery schools were closed down and employment qualifications for African teachers were lowered. Moreover, teacher participation in political activity could be regarded as misconduct and, as a result, justify the dismissal of a teacher. Despite political oppression, these educational policies were possibly the single most important factor accounting for the 1976 student revolt.

After the establishment of homelands, which, as indicated, were given some limited political and education powers, a separate department at national level that catered for the education of Africans, particularly those living in townships and were not part of the homelands, was established. As in mine hostels, schools in the townships were also ethnic based. For example, in large townships like Soweto, separate schools for Zulu, Sepedi or Xhosa speaking learners only, were common. This was the same in other townships where different ethnic groups were found. Provision of education for Blacks and White communities was not equal. Most of the Black schools, particularly those dominated by Africans, lacked resources like classrooms, laboratories and the like. Resources that were necessary for effective learning and teaching. Most of these schools were found in townships and villages (Christie 1989:161).

In 1986 the tri-cameral parliament which included other Black communities and excluded Africans was formed. The Nationalist government justified this by indicating that Africans had their own homeland governments that catered for their different needs. All these divisions and other practices were done in the name of catering for the needs of different racial and ethnic or minority groups.

1.2.2 Minority rights after 1994

The unbanning of political parties by the Nationalist government in 1990 ushered in a new era in both political and educational circles in South Africa. The period between 1990 and 1994 was characterised by negotiations at the highest levels of political ranking, the results of which had a dramatic impact in education circles. Black people became major role players on policy issues in all areas, particularly in education, and agreements on a future educational structure were reached at the negotiation tables in Kempton Park. These agreements, which were entrenched in the interim Constitution, included the abolition of the homeland system and other

racially structured departments of education. A single national education department of education was formed. In addition nine provincial departments were given the powers to manage and provide education in their respective provinces (Interim Constitution Act No 200 of 1993).¹¹

After the 1994 elections, the African National Congress (ANC) led government found itself faced with demands for a separate homeland, particularly from the Afrikaner minority, or what Constand Viljoen, the Freedom Front (FF) leader, described as *self autonomy within a federal state* (SABC News Hour 18/2/1999). When invited by the Minister of Education to discuss the practical application of the South African Schools Act in 1996 and ways on how the need for Afrikaans cultural education could be met, the FF leader expressed in a memorandum that his party called for single-medium schools for cultural minorities who wanted them. Furthermore, such schools should be provided with teachers who formed part of the cultural group and are run by parent bodies who consist of parents from such cultural groups (The Citizen 16/1/1997:8).

Racial incidents in a small number of schools, brought about by integration in the education system, occurred in the country. For example, the racial tension and confrontation in the town of Potgietersrus in the Northern Province, where the white parents of learners in the local public primary school vowed to keep the school for white learners only. Four of the African parents of the learners who were refused admission to that school, together with the Northern Province Education, Arts, Culture and Sports Department applied for a Supreme Court interdict on the grounds that the school governing body's refusal to admit their children on the

¹¹ This Act was repealed by the Constitution of the Republic of South Africa, Act no 108 of 1996, adopted on 8 May 1996.

basis of race was unfair and particularly violated section 9(3) and (4)¹² of the South African Constitution.¹³

After losing the battle for control of the school, some parents deregistered their children and enrolled them in the newly established and independent *volkskool*¹⁴ situated some 10 kilometres south of the town of Potgietersrus. Although the school, which is registered with the Northern Province Department of Education, claims that everybody is welcome to enrol, in practice it demonstrated the opposite. It caters for the needs of only the Afrikaner children.

¹² Section 9(3) states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. Subsection (4) indicates that no person may unfairly discriminate directly or indirectly on one or more grounds in terms of subsection (3). It further states that national legislation must be enacted to prohibit unfair discrimination.

¹³ Supreme Court of South Africa. *Matukane v. Laerskool Potgietersrus* 1996 (3) SA 223(T). The honourable Justice Spoelstra presided over the case. The Court ordered that the Potgietersrus Primary School may not, on the ground of race, ethnic or social origin refuse unfairly to admit any child or to permit any child admitted in the school to participate fully in the activities of the school. See Section 9(3) and (4) of the Constitution in appendix 1.

¹⁴ *Volk* is an Afrikaans word for *nation*. It is a term mostly used in political circles to refer to persons of Afrikaner descent. *Volkskool* is an independent school reserved for children of the *volk*. The *volkskool* concept should not be confused with the Danish *Folkeskole* system which is in fact the equivalent of our public school system. One of the aims of the *Folkeskole* in Denmark is to familiarise the learners with Danish culture and contribute to their understanding of other cultures. The school prepares the learners for active participation, joint responsibility, rights and duties in a society based on freedom and democracy. It would seem the South African *Volkskool* ideology is trying to embrace the Danish *Folkeskole* approach.

1.3 THE NATIONAL CONSULTATIVE CONFERENCE (24 SEPTEMBER 1998)

Six months before the publication of the South African Human Rights Commission report, discussed in section 1.4 below, a consultative conference on *Nation Building through the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*, organised by both the Departments of Arts and Culture and the Department of Constitutional Development, was held on 24 September 1998 in Midrand. This was done in terms of Sections 185¹⁵ and 186¹⁶ of the Constitution. Officially opened by Deputy President Thabo Mbeki, the conference was attended by a wide range of ethnic, linguistic, cultural, religious and other minority communities in South Africa. Minority groups such as the Griquas, the Khoe and the San, the Rastafarians, Hindus, Christians, the Afrikaners, and others, also expressed their desire to have the right to practise their own culture. The conference, as expressed by the Deputy President was organised to share ideas on four main issues. These are:

- (1) how the Commission will be constituted;
- (2) what its specific mandate may be;
- (3) how it will function; and lastly
- (4) how it will relate to the legislative and executive organs and other statutory structures provided for in the Constitution.

¹⁵ The section concerns, among others, the primary objectives of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. These include the promotion of respect for the rights of cultural, religious and linguistic minorities; the promotion and development of peace, friendship, humanity, tolerance and national unity among these communities on the basis of equality, non discrimination and free association.

¹⁶ Section 186 deals with, among others, the composition of the Commission in terms of number of members serving in the Commission and their terms of office. The Commission must be broadly representative of all these communities and also reflect the gender composition of South Africa.

The consultative conference was regarded as the first step taken by the South African government in establishing a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, which is viewed as a critical element of our Constitutional democracy. The step serves also to acknowledge the notion that South Africa is made up of diverse minority groups each with its own distinct culture and other unique characteristics (Department of Constitutional Development: Reports on Submissions at the Consultative Conference on Nation Building through the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Linguistic and Religious Communities 1997; Constitution of the RSA Act no. 108 of 1996:101-102).

1.4 THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT (4 MARCH 1999)

The other racial incidents in schools, notably the racial tension between African and White learners in Vryburg High School, coincided with the report published by the South African Human Rights Commission (SAHRC) published on the 4 March 1999 about racism, and racial integration in public schools. The report, entitled *Racism, Racial 'Integration and Desegregation' in South African Public Secondary Schools*, was released at the same time as the appearance in court of a Vryburg High School African learner who allegedly stabbed a white learner with a pair of scissors in a racial quarrel in what the African learner described as *self defence*. It was indicated in the SAHRC report, which was conducted over a period of time, that schooling was one area where apartheid still reared its head (City Press 7 March 1999:6). Numerous examples of institutional racism were found and in one instance a racially inspired murder was committed in one school. It was also found that certain people entrusted with the running of schools are instead using their positions to further political agendas and that in itself is an entrenchment of racism and segregation. (The Star 20 February 1996; City Press 7 March 1999:6).

The above examples of racial incidents in schools and communities throughout South Africa, have put the issue of minority group rights and the provision of education to minorities into the limelight. However, Potgieter (1996:170) cautioned that as a result of apartheid, where the small minority white population oppressed the majority of the nation's blacks, any mention of minority protection or group rights is viewed with suspicion and scepticism especially among the black communities. In contrast to the position elsewhere in the world where minority protection is an attempt to promote disadvantaged groups, in South Africa, the minority is the formerly privileged group and a plea for minority protection is regarded as an attempt to entrench white minority privilege. The above example signifies why some minority groups in South Africa are uncomfortable with the principle of integration in schools, the education system and the entire South African society.

1.5 DEFINITION OF TERMS

In order to ensure clarity of meaning, the following key terms that are used in this study are defined.

1.5.1 Minority¹⁷

The term minority has different meanings to different people to the extent that there is lack of consensus even at international level about its definition.¹⁸ Bearing in

¹⁷ Other related concepts are: Ethnic group, Race, Nation, Majority, Assimilation, Integration, Fusion, Pluralism and Segregation. The first three terms are seen by some authors like Yinger, J.M. (1994) in *Ethnicity: Source of Strength? Source of Conflict?*, as overlapping with the term minority. See the discussion in Chapter 2.

¹⁸ Sonia Nieto in *Affirming Diversity: The sociopolitical context of multicultural education* (1992) maintains that the term *minority* is a misnomer. In the United States of America, the term is never used to describe, for example, Swedish Americans, Albanian Americans, or Dutch Americans. Yet, strictly speaking, these groups being a numerical

mind the lack of consensus in the definition of minority, particularly at international level. Such differences in the lack of consensus are presented in chapter 2. For the purpose of this chapter the general definition of the term by a few authors, will suffice.

The Webster New World Dictionary (1990:376) has two definitions of the concept *minority*. Firstly, it defines it as *the lesser part or smaller number; less than half*. Secondly, it defines *minority* as *a racial, religious, or political group that differs from the larger, controlling group*. A definition which was in contrast with the South African situation before the 1994 elections where, for more than a decade, a political and cultural minority controlled a larger group of people.

McNergney and Herbert (1995 :249), and Yinger 1994:21) maintain that the term *minority* carries both a quantitative or statistical meaning and has a political connotation. Those groups or subgroups in a society who are identifiably fewer than another group are said to be the minority. This is, however, a relative term. Nationally, in South Africa, White people, whether of Afrikaner or English descent, are a minority compared to Black people.

Minority is also used to describe perceptions of the relative political power or influence that a group exerts in society. For example, because women do not hold public office in the same proportion as their number in the population, women are

minority in the American society, should also be referred to as such. The term has historically been used to refer to *racial minorities*, thus implying a status less than that accorded to other groups. In fact, even if such groups are no longer a minority, the language by which they are described becomes convoluted and almost comical in its efforts to retain this pejorative classification. Thus, schools in which African American students become the majority are called '*majority minority*' schools rather than '*primarily Black*' schools. There seems to be a tenacious insistence in maintaining the minority status of some groups even when they are no longer a minority in fact. The connection between name and low status in the use of this term is quite obvious. Given this connotation, the author maintains that the word *minority* is offensive.

said to be in the minority, that is, they are perceived to exert less formal influence on the operation of government than men do. The term *minority*, then, is defined comparatively. Some groups are minorities for more than one reason. For example, because the language of commerce, government, and education in the United States is English, and because most people speak English, those who do not speak English are members of the language minority groups. They are fewer in number than the majority of the English-speaking culture, and they are perceived to exert less influence in society.

However, the situation in the USA is different to that in South Africa, especially in terms of language where South Africa has 11 (eleven) official languages excluding the Khoe, the Nama and the San languages and other languages that deserve official status, for example, braille and sign language. Although the majority of South Africans prefer English, all these languages should be used on an equitable basis (Constitution of South Africa Act No 108 of 1996: 4 &15). If minority groups were defined in language terms it would be fair to say that South Africa is a country of minorities. Perhaps that is the reason why proponents of minority rights base their arguments on language as a principal determinant of minority groups rather than on any other characteristic.

Wirth in Yinger (1994:21) describes a *minority* as a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination. The existence of minority in a society implies the existence of a corresponding different group with higher social status and greater privileges. Minority status carries with it the exclusion from full participation in the life of the society.

On the other hand, Farley (1995:6) presents a sociological description between a *minority group* and a *majority group*. He maintains that when sociologists use the two terms, they are not speaking strictly in the numerical sense in which the terms majority and minority are ordinarily used. The sociological meaning of *majority group* is any group that is dominant in society, that is, any group that enjoys more than a proportionate share of wealth, power, and/or social status in that society. Typically, a majority group is in a position to dominate or exercise power over other groups in society. A *minority group* can be defined as any group that is assigned an inferior status in society, that is, any group that has less than its proportionate share of wealth, power, and/or social status. Frequently, minority group members are discriminated against by those in the majority.

The lack of international consensus on the definition of the concept minority has complicated the minority issue even further. As indicated in chapter 2 of this study, different countries define minority differently and in some countries there is no special Constitutional provision for minorities. In South Africa, the concept *minority* does not even appear in the Constitution. Instead, the Constitution, particularly sections 185 and 186, refer to people of different cultures, religions and languages as *communities* and not as minorities, as it may be the case in other parts of the world or in international instruments. One can therefore conclude that these *communities* constitute smaller numbers and can rightfully be referred to as *minorities* (see section 4.2.2).

1.5.2 Education provision

The term refers to the process of providing or making education available. In the context of the study the researcher will then refer to minority groups in the light of their being different from other groups either in terms of race, culture, language or any other determinant. *Provision* includes more than supplying resources like

books, buildings, and other but also creating an atmosphere that is conducive to learning in an environment that will allow the practice of a group's individual culture, including the use of its own language, and other practices in an educational setting.

1.6 CHOICE OF OTHER TERMS FOR THE STUDY

In an attempt to be both sensitive and appropriate in the use of language, the researcher preferred and used in this study particular words or terms above others. The purpose here is not to suggest that the terms are politically correct or that these are the only terms that should be used but rather to describe his own thinking on the language South Africans use. The choice of terms has generally been based on two major criteria:

- (1) What do the people in question want to be called?
- (2) What is the most precise term?

The researcher has answered these questions by talking with people from the groups in question, by doing relevant research, and by listening to debates regarding the use of the terms. In addition, the researcher was guided mainly by the South African Constitution in his choice of terms. For example, the Khoe and the San¹⁹ generally known as the Xumani San, instead of the Bushmen, the Afrikaners, the

¹⁹ Although the Constitution use the concept Khoi instead of Khoe, a number of publications in South Africa, especially those from the PANSALB, use the latter. In this regard, Nigel Crawhall, one of the informants who was interviewed in Cape Town, maintained that the terminology related to indigenous Southern Africans can be confusing, with different generations of acceptable terms. The term *San* has been adopted by most hunter-gatherer groups in Southern Africa. Khoe usually refers to Nama-speaking pastoralists or related groups. The term *Khoesan* is used only to refer collectively to the three major language families.

White people instead of Europeans, and the Africans. As language is tentative, so are the choices having been made. New terms may evolve at any time.

Therefore, in this study, the researcher has attempted, whenever possible, to identify people as they would want to be identified. The researcher has also used terms that call people what they are rather than what they are not. For instance, the researcher has not used the term non- White/European or non-English speaking. Some of the terms the researcher has chosen may seem inaccurate and imprecise. However they are the researcher's best estimate of what is most appropriate.

1.7 PROBLEM FORMULATION

Against this background this study will investigate the status of minorities and their educational rights and educational provision in the international context and in South Africa, by analysing the legal provisions in international instruments and practice in selected countries and in South Africa. A number of questions generated from the problem statement will be addressed. These are:

- how are minority groups defined? What characteristics do they display? What legal status do minorities have? What international and constitutional protection in selected countries, particularly in education, do minority groups enjoy? How is this realised in practice?
- how are minority groups currently defined in South Africa? What is their legal status in education? What constitutional protection do they have in education? How is this realised in practice?
- what recommendations can be made to ensure and preserve the educational rights of minorities in South Africa?

1.8 AIMS OF THE RESEARCH

The study aims to:

- supply a definition and a description as well as characteristics of a minority group and of related concepts such as ethnic, language, cultural, religious, and other minorities;
- discuss the international legal status of minorities in education. The discussion includes the protection of minorities in education in terms of international law. In addition the legal status and constitutional protection of minorities in education in selected countries will be discussed. The study also explores the educational practice in these countries to determine the extent to which the legal status is preserved; discuss the problem of defining minority groups in South Africa; to explain the legal status and constitutional protection of minority groups in education by analysing the stated provisions and perceptions about the provision of education to minorities in South Africa and to explore educational practice with reference to minority groups according to a small sample of key informants; and
- make recommendations regarding the provision of education to minorities.

1.9 LITERATURE REVIEW

A study of relevant literature concerning the definition of minorities and their constitutional protection particularly in education, will be undertaken. Attention will be drawn to the fact that the literature study is a preliminary step in a qualitative investigation. Literature reviews add much to the understanding of the problem and to help place the result of the study in a historical perspective. Without it, it would be difficult to build a body of accepted knowledge on any educational

topic (Schumacher & McMillan 1993:112). In the absence of a hypothesis, and having observed that the debate around minority issues is fairly new in South Africa and despite the historical background of oppression in this country, the researcher will be open to all opinions and approaches and will not be tempted to read only those articles and opinions which may agree with his own views. Primary documents will be used as far as possible.

Cates (1985:34) wrote that the review of literature is designed to expand one's horizons, and let it do so. The author advises that the researcher should read conflicting opinions, and examine opposing arguments objectively. Even if he or she does not change his or her position about the issue under investigation, he or she will be better equipped to discuss opposing positions. The researcher should not try to undermine the worth of those opinions and approaches until he or she is fully informed about bases and the rationales and practical concerns behind the approaches. The same applies to the minority debate in South Africa.

1.10 RESEARCH DESIGN AND METHOD

While a more detailed explanation of the methodology, the rationale for the choice of methodology and the research design are presented in chapter 3, a basic overview will be given in this chapter. Although the study does not reflect a complete qualitative research design, the researcher will rely on qualitative approaches of data gathering, such as document analysis and interviews, to provide an in-depth understanding of what is studied.

1.10.1 Document analysis

As the debate about the protection and the provision of education to minorities gains momentum, the study relies primarily on an analysis of documents related to

the provision of education to minority groups. In this study, as indicated in section 1.9, the researcher will endeavour to use *primary documents* as far as possible. These documents include the following:

- international instruments/documents relevant to the protection of minorities in education. These include the UDHR, the ICCPR, and the Convention on the Elimination of Discrimination in Education;
- the Constitution of the Republic of South Africa (RSA), (Act no.108 of 1996);
- applicable national education laws for, example, the South African Schools Act (SASA) (Act no. 84 of 1996) and the National Education Policy Act (NEPA) (Act no. 27 of 1996);
- other government education policy documents, for example, the Language in Education Policy (LiEP) published in August 1997 for all schools; the Norms and Standards regarding language policy published in terms of section 6(1) of the South African Schools Act (SASA) (Act no. 84 of 1996); and
- submissions relevant to the study, made by various cultural, religious and linguistic groups at the two conferences held in 1997 and 1998 about the proposed Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Also, the fact that minority rights is a human rights issue necessitated an analysis of human rights reports particularly the report from the SAHRC.²⁰ The media, published or unpublished articles at the researcher's exposal will also not be spared. However, the minority rights issue is so political and sensitive that he may feel strongly against some of the opinions and approaches expressed, given South Africa's past history of racial polarisation. The researcher has endeavoured to maintain a stance of disciplined subjectivity as outlined in section 3.3.2.1. An

²⁰ see section 1.4.

exposition, therefore, of major positions in the minority rights debate is crucial in this study.

1.10.2 Interviews

Although the research relied on document analysis for its data, additional data was solicited from a small group of key informants.²¹ The purpose was to strengthen and expand the analysis of the documents and the study. Semi-structured interviews will be conducted with sources identified as relevant to the study. These key informants were selected from different groups including political groups, and other officials involved in interpreting and implementing education policies. These, the researcher believes will suggest a range of political affiliations and viewpoints.

1.11 RATIONALE FOR THE STUDY

In the light of the importance of minority rights in education worldwide, the above discussion gave a brief indication of the problem South Africa is faced with regarding minority group rights, particularly in education. The concerns expressed in the consultative conference on nation building through the establishment of the Commission for the Promotion and Protection of Cultural, Linguistic and Religious Communities, explained earlier, by, among others, the Freedom Front, the Khoer and the San representatives and other minority groups cannot be left unnoticed, particularly demands for self-determination as interpreted from Chapter 14 section 235 of the Constitution.²² The section implies, amongst others, the establishment

²¹ An informant is described by Wiersma (1991:230) as an individual in whom a researcher invests a disproportionate amount of time because that individual appears to be particularly well informed, approachable, or available.

²² Section 235 maintains that the right of the South African people as a whole to self-determination, as manifested in the Constitution, does not preclude, within the framework of this right, recognition of the notion of the right to self-determination of any

of own schools and the use of own language. These demands may be in keeping with, for example, sections 29(3)²³ and 31²⁴ of the country's Constitution but cannot be left unattended. The racial incidents in public schools outlined earlier occurred as a result of political rhetoric. The tensions have the potential of escalating into a full race and/or ethnic conflict which will flout any attempt at nation building in South Africa. Turning a blind eye to the diverse cultures may also lead to secession or radical partition, an event that will undermine our democracy and add South Africa to the list of African countries that failed to acknowledge and address cultural diversity.²⁵

community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

²³ In terms of section 29(3), everyone has the right to establish and maintain at their own expense, independent educational institutions that do not discriminate on the basis of race; are registered with the state; and maintain standards that are not inferior to standards at comparable public educational institutions. Independent schools opened throughout the RSA must therefore conform or satisfy the criteria laid down firstly by the Constitution, the South African Schools Act (SASA) (Section 45-50) and secondly by the Education Acts from the different Provincial Departments of Education. In terms of section 46(1) of the SASA, no person may establish or maintain an independent school unless it is registered by the Head of Department (of a province).

²⁴ Section 31 is about cultural, religious and linguistic communities. Persons belonging to such communities may not be denied the right, with other members of that community, to enjoy their culture, practice their religion and use their language; and to form, join and maintain their cultural, religious and linguistic associations and other organs of civil society.

²⁵ Acknowledging the existence of different cultures in the RSA, President Thabo Mbeki, in his address to the delegates at the Consultative Conference on Nation Building through the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities on the 24 September 1998, urged delegates to, among other things, outgrow the negative connotation given to the concept of *group rights* by the architects of apartheid (see also footnote 1). He added that delegates must proceed from the fundamental question that the diversity in our society is not a liability but an asset. It is also not a national feature that we need to deny or suppress. Rather it is an important characteristic which enriches all our lives and helps to define our nationhood and identity as South Africans. He also indicated that South Africans must seek to reach across specific group identities, to adopt each culture and language as our own and thus not allow that our diversity should become a factor of division and conflict. See also the comments by Judge Albie Sachs in section 4.2.

Regarding these racial groupings and other practices, Claassen in Steyn and Vanderstraeten (1998:89) indicated that one of the major tendencies of the latter half of the 20th century is the idea of the global paradox. According to this tendency the idea of the global village is promoted as a result of the influence of international economical groups, technological and communication developments, but paradoxically people do not loose their identification but seem to find security in their own group. Hence, the idea of a separate homeland for Afrikaners gained momentum in the late 1990s. The tendency of the global paradox is one of the major reasons why the education right of minority groups is one of the important determinants in education provision on an international level.

However, in South Africa, whether the researcher looks at it from the academic point of view, the problem around the demand for self autonomy, homeland or volkstaat, and the demand for the establishment of own schools on religious, cultural or linguistic grounds, even if there is a constitutional provision for the establishment of such schools, remains an unavoidable political issue, an issue that warrants research.

1.12 LIMITATIONS OF THE STUDY

The debates about the rights of cultural, linguistic and religious minorities, particularly in education in South Africa, started during the Congress for a Democratic South Africa (CODESA) negotiations, held between 1991 and 1994 in Kempton Park, and subsequently during the writing of the interim Constitution no. 200 of 1993. Section 32(c) of the interim Constitution read: *everyone shall have the right to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the basis of race.* The section was meant to accommodate the

fears minority groups expressed regarding the protection of their constitutional rights.

Given the fact that minority rights is a new contested area in South Africa, the researcher relied on documentation which includes the Constitution and other relevant education laws like the South African Schools Act SASA (Act no. 84 of 1996), public debates in the media and conferences, and information from the identified key informants. In the process of the research the researcher kept up with debates and developments regarding minority rights in education from political, cultural and other groups interested in the subject. Therefore, except for the South African Constitution, not many articles, let alone theses and books have been written about the rights of cultural, linguistic and religious minorities in education and how they are or could be catered for. The focus of this study is limited to these minorities and not the disabled nor other kinds of minorities. In addition, the study is also limited to ordinary public schools, that is, those schools offering Grades 1 to 12, and not higher education.

1.13 CHAPTER DIVISION

This study consists of five chapters. Chapter 1 serves to introduce the research topic. It describes the structure of the proposed investigation, which consists of, among others: problem formulation, the aims of the study, rationale for the study, minority rights in South Africa prior to 1994, the national consultative conference, limitations and methods of the study.

The second chapter describes the concept *minority* particularly in terms of international law. It also explores the characteristics of a minority group. Attention is also given to the fact that there isn't any accepted definition of the concept *minority*. Sociological explanation of concepts such as ethnic, race, nation and

other concepts related with the concept minority like assimilation, integration, fusion, pluralism and segregation will also be defined. These concepts are not only related to minority but underpin the concept of cultural diversity and are related to this study, especially in South Africa. In addition, the chapter examines the protection of minority groups in international law with special reference to educational rights and educational practice. It also examines the constitutional protection of minority groups in selected countries. These are, Belgium, Germany, the United Kingdom (UK), the Netherlands and Italy.

In the third chapter, the methodology of the study is fully described. This includes the limitations experienced by the researcher, the rationale behind the choice of method, the design of the study and the procedures.

Data from document analysis and unstructured interviews are presented in chapter 4. The discussions in this chapter include data collected from primary and other documents on the provision of education to minorities and current debates on minority education and other realities on minority education in the Republic of South Africa (RSA). The focus in the chapter includes the definition of minority groups in South Africa and the legal status and protection of minorities in education. The latter is through the analyses of the Constitution and other legal provisions relevant to education and to this study. In the process the educational practice regarding such provisions will also be discussed. The chapter will end with a discussion of data from unstructured interviews. As indicated earlier, this data strengthen and expand on the data from document analysis.

Finally, chapter 5 summarises the most important content of this study and the key issues to emerge from the study. Recommendations for further research will be given.

1.14 SUMMARY AND CONCLUSION

In this chapter, a background and general overview of minority group rights globally and in South Africa in particular were given. Globally, cultural, language, religious and other minority groups are demanding their rights for self-determination acknowledged in international law. The same applies to minority groups in South Africa, especially to certain Afrikaners groups. Their demands are not only based on the constitutional provisions but also on provisions contained in international instruments. However, whether or not international law recognises self determination, in South Africa it remains a political issue that requires a serious paradigm shift, especially from the formerly oppressed communities who were disadvantaged by the apartheid system.

In the next chapter an overview of minorities in selected countries will be presented.

CHAPTER 2

AN OVERVIEW OF MINORITY RIGHTS AND EDUCATION PROVISION IN SELECTED COUNTRIES

2.1 INTRODUCTION

The previous chapter presented a general introductory international picture of minorities and their rights especially in education. In addition, it also presented some of the demands of minorities in South Africa which formed part of the submissions in the Consultative Conference on the establishment of a Commission on the Rights of Linguistic, Cultural and Religious Communities. These demands, as argued, were based on certain sections of the country's Constitution. These include specifically sections 29 and 235.

Against this background, chapter 2 will focus on the following: in the first part of the chapter a definition of minorities in international instruments which include presentations by the special rapporteur of the UN will be presented. In the second part of the chapter an overview of the protection of minority rights and education and educational practice in selected countries will be given.

2.2 DEFINITION OF MINORITIES IN INTERNATIONAL INSTRUMENTS

Despite the many references to minorities found in international legal instruments of all kinds, there isn't a generally accepted definition of the term *minority*. The identification of a definition capable of being universally accepted has always proved a task of such difficulty and complexity in the UN itself, that neither the

experts in this field nor the organs of international agencies have been able to accomplish it to date (Capotorti 1991:5).

A Minority Rights Group Report²⁶ (1991:6) stated that the lack of consensus on the definition of *minority* is a matter of no great surprise to international lawyers. Many concepts in the system remain *undefined*, though the practice of states, international organisations, or legal doctrine may remedy the lack of precision through time. In practice, the system operates with ambiguities, sometimes crucial, giving an uncertain quality to legal regulation.

International law has typically concerned itself with ethnic, religious and linguistic groups under the term *minority*, sometimes adding the term *national* or *racial*. Indigenous populations²⁷ are frequently bracketed with minorities and there is a

²⁶ An international research and information unit, registered in Britain as an educational charity under the Charities Act of 1960. Its principal aims include to secure justice for minority or majority groups suffering discrimination, by investigating their situation and publicising the facts as widely as possible, to educate and alert public opinion throughout the world.

²⁷ Defined by the UN Sub-Committee on the Prevention of Discrimination and Protection of Minorities in Wallace (1997:184), as those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territory, consider themselves distinct from the sectors of the societies now prevailing in those territories, or parts of them. At present they form non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity, as the base of their continued existence as peoples, in accordance with their own structural patterns, social institutions and legal systems. It is estimated that there are 300 million indigenous inhabitants worldwide. With regard to the concept indigenous, Nigel Crawhall, a sociolinguist working with the South African San Institute, indicated that the concept *indigenous peoples* is fairly new in African discourse. Definitions of indigeness have generally been seen in terms of African resistance and the overthrow of colonialism or settler regimes. The process of decolonisation has obscured Africa's own history and has obscured power relations between aboriginal or indigenous Africans and those who arrived later and became a dominant force. Through the UN and other channels the world recognises that there are unique cultures that are being threatened by the current world economic and other political trends. Crawhall argued that the concept of indigenous people is presently not recognised by any African state. The complex migration patterns and experience of colonialism are used as excuses to deny internal colonisation. To some degree

growing tendency to regard these groups such as the Nama and the San in South Africa, the Indians in South and Central America and the Aborigines in Australia as a separate group in international and constitutional law,²⁸ but insofar as they do not constitute a majority in most states, they partake of whatever protection is generally afforded to minorities.

Perhaps the reason for the impasse lies on the number of different aspects to be considered. For- instance, should the concept of minority be based on the numerical ratio of the *minority* group to the population as a whole or is this quantitative aspect secondary or even unimportant? Should the concept *minority* only be used for nationals only or does it also refer to foreigners? What about different tribes and ethnic groups, especially in Africa? These and many other aspects make it difficult for even experts in this field to agree on the universal definition of minorities.

Three most important international definitions of minorities are discussed in chronological order in this chapter. The first definition is by the Permanent Court of International Justice (section 2.2.1) followed by Capotorti's,²⁹ who was

the problem is semantic, with different groups using the term *indigenous* in different ways.

²⁸ For example, (1) the UN Draft Declaration on the Rights of Indigenous People:1994 (Resolution 1994/45, adopted on the 26 August 1994 by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. In 1982 the Working Group on Indigenous Populations (WGIP) was established under the auspices of the Sub-Commission on Prevention of Discrimination and Protection of Minorities with the mandate of examining annually the situation of indigenous people throughout the world and the development of new international standards for the realisation of indigenous rights; and (2) The International Labour Convention (No 169) concerning Indigenous and Tribal Persons in Independent Countries:1989. See also Rebecca Wallace in the International Human Rights Text & Materials (1997).

²⁹ Professor Francesco Capotorti was appointed by the Sub-Commission on the Protection of the Minorities to carry out a study on the rights of minorities. His study, published in 1991, entitled *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*, remains even today, an impressive document. The study went far beyond the wording of article 27 of the International Covenant on Civil and Political Rights (ICCPR). It examined the status and treatment of minorities throughout the world

appointed the Special Rapporteur of the United Nations, and Deschenes, one of the members of the Sub-Commission (see section 2.2.4).

2.2.1 Interpretation of the concept *minority* by the Permanent Court of International Justice

One of the earliest official definitions of *minorities* can be found in the advisory opinion of the Greco-Bulgarian Convention on emigration. On 31 July 1930 the Permanent Court of Justice gave its interpretation of the concept *minority* in an advisory opinion. Referring to the Convention of 27 November 1919 between Bulgaria and Greece, the Court defined *minorities* as:

A group of persons living in a given country or locality, having a race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of the children in accordance with the spirit and traditions of their race and mutually assisting one another (Capotorti 1991:5).

Note that the above definition indicates *race* as being part of a characteristic of a minority. As McNergney and Herbert (1995:248) wrote, race is most often defined by physical characteristics. People with the same or similar skin colour can be classified as members of the same race. Logically then, Black South Africans, to be more precise, Africans, will be classified as a race. This is because the concept *Black* in South Africa also refers to other previously disadvantaged communities like Coloureds and Indians. The latter groups may not necessarily be classified as being black in colour but because of their status in the apartheid era.

and in the process explored topics such as discrimination on the grounds of language and freedom of expression of minorities. The report also contains a widely accepted definition of minority. See also section 2.2.3

The above definition by Capotorti further indicates a view to *preserving their traditions....., securing their instruction and upbringing of the children....*In any average society, the instruction and upbringing of the child is done on two most important terrains: the first is the home, and the second terrain is the school. The definition, therefore, implies that minorities may establish their own schools with a view to *preserving their traditions and maintaining their form of worship....*

2.2.2 Definition proposed by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities

One of tasks of the UN Sub-commission on Prevention of Discrimination and Protection of Minorities led by Capotorti was to define the concept *minority*. Capotorti (1991:6) reported that two other definitions of *minority* from the sub-commission were not accepted by the UN Commission on Human Rights. The sub-commission recommended that the Commission adopt a draft resolution of the term *minority* according to which the definition would be based on the following elements:

- (1) that the term *minority* should include only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
- (2) that such minorities should properly include a number of persons sufficient by themselves to preserve such traditions and characteristics; and
- (3) that such minorities must be loyal to the state of which they are nationals (A Minority Rights Group Report 1991:6).

The third element refers to *loyalty to the state*. This means that minorities, opting for a secession, for instance in South Africa, if the establishment of a separate Afrikaner homeland or volkstaat is realised as a result of secession, may not qualify to be referred to as a minority.³⁰ Secession in itself implies disloyalty to the state and there is no international protection for an act of secession.

During the debates in the Commission on the question, several members criticised the definition contained in resolution F of the Sub-Commission. Some members felt that it contained provisions that might result in eliminating from the definition certain national groups which should be given special protection. They stated that the inclusion of such groups as might wish to *preserve ethnic, religious or linguistic traditions or characteristics* was subjective, since dominant groups which did not wish to extend equal rights to minorities could justify their action by claiming that those minorities did not wish to maintain their individual character. Others objected that the definition of minorities did not include foreigners residing in the territory of the state or groups which had come into existence as the result of immigration. It was also pointed out that it was hard to see how such a study, dealing with every minority in need of special measures of protection, could be made, particularly in the absence of any criterion by which to judge which minorities needed special protection and which did not need it (Capotorti 1991:9).

2.2.3 Provisional interpretation of the term *minority* by the Special Rapporteur

In the plan for the collection of information relating to minorities, Capotorti (1991:7), the Special Rapporteur of the United Nations, in his study on the Rights

³⁰ A Minority Rights Group Report (1991:8) maintains that international law signals clearly on secession. Minorities are not entitled to self-determination if it (self-determination) implies secession.

of Persons belonging to Ethnic, Religious and Linguistic Minorities, stated that he envisaged the following interpretation of the term *minority*:

An ethnic, religious or religious or linguistic minority is a group numerically smaller than the rest of the population of the state to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population, and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

There were disagreement, among member states, regarding the provisional definition of the Special Rapporteur. Whereas some governments agreed with the provisional definition, some expressed the view that the proposed definition was incomplete and vague. The Greek government, for instance, remarked that an ethnic, religious or linguistic minority group should be clearly recognisable as such. They added that for a group of persons to qualify as a minority its characteristic feature should be sufficiently distinctive for the group concerned to be clearly distinguishable as separate from the majority (Capotorti 1991:7&8).

The Netherlands had similar views as the Greek government. They observed that the definition of *minority* was rather too wide. They also maintained that to be regarded as an ethnic, religious or linguistic minority, a group should be clearly recognisable as such. The Bulgarian government indicated that when conducting a study on this issue on a world scale it should be taken into account that no generally accepted definition of minority exists. The Bulgarians added that the use of the definition proposed by the Special Rapporteur on a world-wide basis might create a vague or misleading interpretation, because of specific conditions in individual countries (Capotorti 1991:7-8).

Some governments even challenged the use of the term *minority* and emphasised that it has been replaced by other terms in legal systems of their respective countries. According to the government of the Phillipines, the official concept of the term minority has a legalistic base and recently, to obliterate the presence of a numerical division, the term *Cultural Communities* has been used when referring to *National Minorities*. Therefore the term *National Cultural Communities* appeared in the Constitution of the Phillipines. Hence, in referring to *minority* in the Phillipines the term must be taken in the context of the existence of several cultural groups in a cultural plural national society where there is a distinct culture which is predominantly in the majority, *vis-a-vis* all others taken together (Thornberry 1991:6-9).

The Romanian government commented that the term minority is no longer used to describe differences in race, sex, religion or nationality among citizens. The term used is *co-inhabiting nationality*, a term enshrined in the Constitution. Romania has adopted the term to describe a separate social and ethnic group, numerically smaller than the group represented by the Romanian nation, having its own cultural, linguistic, historical and religious characteristics (Capotorti 1991:8).

The Yugoslav government (before the break-up of Yugoslavia) stated that in Yugoslavia, the term *nationalities* is used to designate minority groups. The Greek government held the view that for a group to qualify as a minority, it should be sizable and form a substantially compact element in the community. The Greeks argued that they doubted whether the words *a group numerically smaller than the rest of the population* as stated in the definition of the Special Rapporteur constituted a sufficiently adequate criterion for an interpretation of the term minority. They maintained that the number of persons belonging to a particular group and the relation between that number and the size of the geographical area in which the group lives should be taken into account (Capotorti 1991:9).

Several governments commented on the relationship between the concept of an ethnic, religious or linguistic group in a multinational society. The Italian government, for instance, observed that in a multinational society, one should not, in a strict sense, speak of minorities in that the various groups of which they are composed, with their own ethnic, religious and linguistic characteristics should find themselves on a level of equal representation. Moreover, it could occur that one of the groups, even if not numerically superior, could achieve a predominant position, with tendencies to oppress others and to make them conform to itself (Capotorti 1991:9).

2.2.4 Observations from other members of the Sub-Commission

During the discussions on the various interim reports submitted to the Sub-Commission by the Special Rapporteur, many members of the Sub-Commission made suggestions concerning the provisional interpretation of the term *minority* by the Special Rapporteur. It was generally recognised that it was extremely difficult to state precisely what aspects the term covered and, in the view of some members, it would be an impossible task to try and define a concept that embraced a very dynamic reality varying considerably from one country to another. Consequently, an attempt should not be made. It was also maintained, however, that the absence of a generally accepted definition of the concept *minority* should not constitute an obstacle to the application of article 27 of the International Covenant on Civil and Political Rights, the first internationally accepted rule for the protection of minorities (Capotorti 1991:1&10).

Members acknowledged the fact that the numerical factor was of particular importance in any definition of the term *minority*. Not only the number of persons belonging to the group but also the relationship between the number and size of the geographical area in which the group lived should be taken into account. Referring

to the complex problem of the existence of many dialects in some countries, several members maintained that it was essential to establish numerical criteria according to which a group could claim to have its language or dialect protected. Emphasis was also placed on the need to include in the definition the *subjective* element, i.e. the desire of the groups to preserve their traditions and characteristics. In addition, each minority should constitute a social and cultural entity which was the minimum precondition for recognition as a minority. The comment was also made that the definition should refer to another important element, namely, a sense of community among the members of the minority group indicating the existence of permanent bonds between them (Capotorti 1991:10).

In the opinion of some members, the interpretation envisaged by the Special Rapporteur was too wide and could not be applied to certain countries, notably countries of Africa. A definition should take the sociological factors into account. Tribes in developing countries, especially countries in Africa, for instance, should not be confused with minorities in industrialised countries. Other members maintained that groups consisting of immigrants or their descendants should not be included in the definition because of their voluntary assimilation (Capotorti 1991:10).

Mr Jules Deschenes, a Canadian member of the Sub-Commission, was asked by the Sub-Commission to submit a proposal of the definition of the term *minority*. He suggested the following definition:

A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated if only implicitly by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law (Henrad in De Groof & Fiers 1996:47; Thornberry 1991:7).

Thornberry (1991:7) called Deschenes' definition a refinement of Capotorti's definition. He maintained that Deschenes' definition differs in minor respects from Capotorti's definition. One improvement is the replacement of *numerically inferior to the rest of the population of a State* as proposed in Capotorti's definition by *constituting a numerical minority* in Deschenes'. In the latter's definition the term *inferior* is avoided even though in Capotorti's definition it refers to a number and not a cultural value-judgement. Deschenes prefers *citizens* to *nationals* (of a State), dispelling potential criticism on the vagueness of the Capotorti term. Note that *equality in fact and in law* is explicit in Deschenes' definition, but implicit in Capotorti's (Thornberry 1991:7).

Capotorti refers to *nationals of a State*. This seem to exclude foreigners residing in a country. Although the case of foreigners who may be refugees, may be different from that of persons who possess the nationality of the country in which they live, they have the right to benefit from the protection granted by customary international law as well as any other special rights which may be conferred upon them by treaties or other special arrangements as long as they retain their status as foreigners. Perhaps Capotorti did not recognise the *refugee* problems created by phenomenons such as migration, civil wars in Europe and other parts of the world which result in the influx of refugees from some countries into others, most countries have, including South Africa, or he underestimated the problem.

According to A Human Rights Group Report (1991:7) both Capotorti's and Deschenes' definitions implicitly referred to the existence of a different kind of minority i.e a group which does not wish to maintain itself as a distinct entity but prefers to merge into the wider society. The report continues to indicate that the problem with international law has been that the merging group is amply catered for in the texts, since what is required there is a guarantee of non-discrimination rather than a positive evaluation of its status. A pretence of lawmakers has been to

treat most groups as the latter rather than the former type and this fits very well in the philosophy of assimilation.

Neither of the two definitions i.e from both the Special Rapporteur and Deschenes, was accepted by the United Nations Commission for Human Rights. Since Deschenes there has been no attempt to define *minority* in a universally acceptable way. There is not much to choose between the two definitions, although Capotorti's definition is the longer established of the two. It is also doubtful if any international instrument of the future attempting a definition will depart greatly from this line of approach (Henrad in De Groof & Fiers 1996:47; Thornberry 1991:7).

Regarding the lack of international consensus on the definition of the concept minority, A Minority Rights Group Report (1991:7) mentioned:

The failure to formalise a definition, to give it legal status by inscription in a text, is a failure of will, born not of a failure to understand the world, but a refusal to do so.

The above discussion shows marked differences regarding the definition of the term minority and leads us back to the initial remark about the lack of an acceptable definition. There may be several reasons why this attempt to define *minority* was not successful, one of which is the diversity of situations that are supposed to be covered by the definition. Eide in Tomuschat (1993:158) observed that the lack of success in defining the term is partly due to a wide-spread reluctance by governments to establish a general system of minority protection.

However, the lack of a binding general definition of *minority* is not a fatal obstacle to progress. In any case, all definitions, normally introduce new terms which in turn attract further explanations, including claims by the states, as seen in the disagreements above, that they do not apply. A support attitude by states towards

international instruments on minority rights is qualitatively more important than a definition. The terms *national, ethnic, religious, linguistic, cultural, communities, peoples* and other terms used in various states to imply minorities constitute sufficient definitions in themselves. The groups likely to be omitted from the purview of instruments on the rights of minorities are aliens, refugees, migrant workers. However, they are catered for by other institutions of international law.³¹

Although the South African minority situation is discussed later in this chapter, attention is drawn to the fact that there is no legal definition of the term *minority* in South Africa. The South African constitution guarantees and protects the rights of every citizen in the country it does not mention or attempts to define the term *minority*. Instead, the Constitution of the RSA refers to *communities* discussed in sections 1.4.1 and 4.2.2.

2.3 MINORITY- RELATED TERMS

A number of terms related to the concept *minority* were used in the above explanations and disagreements about the concept. These terms are directly related to the minority and are sometimes used as determinants of a minority group, as observed from the above definitions and differences. They are numbers, language/linguistic characteristics, religion, race, ethnicity and culture. Some of these determinants underlie the concept of culture and cultural diversity, especially in South Africa. These concepts underpinning cultural diversity need to be defined and outlined as they are directly related to the minority debate.

³¹ See the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families adopted by the UN General Assembly in December 1990.

2.3.1 Culture and cultural diversity

Clarke, Hall, Jefferson and Roberts in Cross, Mkhwanazi-Twala and Klein (1998:10) maintain that the concept of culture remains complex, a site of convergent interests rather than a logically or conceptually clarified idea. The authors view culture as the vehicle through which social groups develop distinct patterns of life and express their social and material life experience. It is the way social relations within a group are structured and shaped as well as the way this is experienced, understood and interpreted. Groups that exist within the same society and share the same historical conditions share the same culture. In this sense the authors define culture as the peculiar and distinctive way of life of the group or class, the meanings, values and ideas embodied in the institutions, in social relations, in systems and beliefs, in mores and customs, in the uses of objects and material life. To put it differently, culture is the distinctive shapes in which the material and social organisation of life expresses itself.

One assumption that has dominated cultural and anthropological studies in colonial Africa is that African cultures are essentially backward or inferior when compared to Western cultures. African cultures are thus decoded with Western patterns and graded according to a scale of values and classificatory categories such as backwardness, technological inferiority or superiority, traditionality, modernity, literary practice, competitiveness and free enterprise spirit among individuals, ownership of private property and a preference for achieved rather than ascribed roles in society. The starting point is a particular context or geographical environment, particularly family and social settings, traditions and cultural legacy, feelings and sentiments, assumed as typically European or white (Cross, *et al* (1998:12).

This tendency constitutes what Ndlovu in Cross, *et al* (1998:112) referred to as **ethnocentrism**. The authors maintained that:

Ethnocentrism occurs when people, being steeped up and centred in their own heritage and cultural system, judge others who belong to different ethnic groups and cultures by the standards (i.e. norms, values, and social) which are established... in their own particular culture. This stems from the fact that we normally derive our own self image, our own outlook, our notions of what is right or wrong, natural and unnatural, scientific (rational) or unscientific (irrational), beautiful or ugly, enjoyable or dull, moral or immoral, from our culture.

According to Cross, *et al* (1998:12) there is another important hypothesis of culture which regards culture as expressing the totality of what has been learnt, conceptually and experientially, and how this is reproduced in society, as a result of person-to-person and human-to-nature relationships. This totality embraces a way of life, a world-view, and the forms of social practice and sentiments. It includes the totality of the behaviour acquired by society: its language, values, customs, the food it prepares and how, the institutions it creates and how, the way of life and its meaning. In this perspective, the belief that there is a culture which is superior or inferior to another *per se*, is a myth. Only particular aspects of culture can be said to be superior or inferior, better or worse, for example technology or military knowlrdge. Ndlovu illustrates this argument as follows:

If anyone should still be unconvinced that no culture is superior or, conversely, inferior to another *per se*, I challenge them to experiment with the San people (Bushmen) on the one hand, and the most civilised among Westerners - take George Bush (then President of the USA) and Margaret Thatcher (then British Prime Minister) for arguments' sake - on the other. Let the two sides go on an exchange visits, while leaving behind whatever constitutes their normal equipment for living. Let each utilise the means available in their host land. My guess is that as much as the Bushman will be stranded, regardless of money, means of transport, etc, made

available, the Westerners are likely to be more stranded, given bows and arrows, ostrich egg shells, fire making sticks, etc. What is more remarkable is that the Westerners' civilisation, sophistication, literacy and modernism is all rendered dysfunctional in Bushman land, where the latter has survived centuries to end (Ndlovu (1990) quoted in Cross, *et al* 1998:12-13).

The fact that Westerners may have in their cultures the necessary technological resources to change the Bushmen's land into a habitat appropriate to their *modus vivendi* does not necessarily imply the superiority of their cultures. Their cultures are essentially different.

Given the above argument, South Africa is a nation with many cultures. Like a rainbow the country has different colours, religions, languages, races, ethnic groups, cultures, etc. The country has a culturally diverse society. Van Heerden in Lemmer and Badenhorst (1997:189) stated that diversity in South Africa was largely regulated by law during the era of apartheid. This is no longer the case because South Africa is a new, open and free society. The *rainbow* nation concept which seems to have been adopted by most South Africans explicitly and implicitly acknowledges racial, cultural and other differences among South Africans. Given Ndlovu's argument on ethnocentrism some cultures in South Africa, especially the African cultures, were considered to be backward and inferior because they were judged according to and compared against other cultures' standards. So much so that some homelands were created for these *inferior* cultures, wherein they were expected to govern themselves. In these homelands educational facilities were inadequate, there was overcrowding in classrooms and the provision of education was generally inadequate. All these measures were taken under the pretext to promote the practice of different cultures independently from each other, but particularly from the dominant white western culture. This created tension and animosity in that the dominant culture thought it was superior as compared to the others. A notion that Ndlovu rejects.

According to Cross, *et al* (1998:13) the concept of culture should take into consideration the following theoretical bases:

- (1) though culture can be conceived of as a uniting force binding social groups or classes together, it is also a *divisive* element, which reflects the complexity of societies generally constituted by various subgroups and subcultures in a struggle for legitimacy of their behaviour, values, ideals and lifestyles against the culture of the dominant society, that is, the hegemonic society;
- (2) the process of race polarisation and its concomitant cultural implications must not be ignored in analysing culture in South Africa. For example, race defines Black people. It is race which acts against them and which unites them. Their class position subscribes their economic position, but race is the subjectivity in which their class position is lived, and it shapes their relation to the world; and
- (3) culture is not a neutral concept. It is historical, specific and ideological. The dominant class uses culture to legitimise hegemony over or control of subordinate classes.

Given the above expressions and arguments, South Africans may be one nation but with different cultures. Hence the demands by other racial and/or language groups like the Afrikaner for their rights of self-determination. The concepts of nation, race, minority and ethnicity which are heavily laden with social and cultural meanings are thus essential in a discussion on minorities. According to Yinger (1994:10) the four terms do overlap and it is sometimes difficult to draw a line between them. For the purpose of this study an attempt will be made to draw the

line between them and to indicate how different races or even ethnic groups can constitute minorities.

2.3.1.1 Nation

The Webster New World Dictionary (1990:319) provides two definitions of the term *nation*. Firstly, it defines a nation as *a stable community of people with a territory, history, culture, and language in common*. That could stand as a good definition of ethnic group than a nation. Secondly, it defines a nation as *people united under a single government; a state*. The second definition is more appropriate for the term *nation*. That is probably the best understood meaning in most countries of the world, including in South Africa.

To complicate matters further there are many references to *nation-state*. There is a redundancy if one uses the second definition above and there is a contradiction if one uses the first definition which implies a distinction between nation and state. Perhaps *nation-state* is used in an attempt to distinguish that kind of state from an American state or it may be an effort to emphasize a desired exaggerated cultural unity in a given state. Quite often, nation refers to an ethnic group with a history of and a strong desire for sovereignty over a territory. Such groups can be called what Yinger (1994:10-11) refers to as *non-state nations*. For instance, in South Africa, part of the Afrikaners group who demand a separate volkstaat for the Afrikaners, falls under this category.

The *nation-state* concept is best described by Claassen in Lemmer and Pretorius (1998:124-125). He maintains that nation-state is a geopolitical term for a country that plays an important role in the life of all people in the world. You are a citizen of a country and your nationality becomes your primary identification. If an outsider asks you who you are, you reply: *I am a South African*. Allegiance to the

nation-state gives rise to nationalism and patriotism. National symbols such as the flag and the anthem serve to strengthen a feeling of nationhood.

However, Degenaar in Cross, *et al* (1998:58) argues that the term *nation* is historically obsolete. The author prefers the term *civic state*, and advocates that South Africans should try to build a democratic culture, instead of doing *nation building*. Developing a democratic culture can be pursued by developing common projects in which members of various parties are involved in concentrating on practical problems on which they all agree; the urgent need to address economic matters, housing, education, health services and other issues for all South Africans. Degenaar's argument may be in line with the thinking of liberal South Africans who would love to see a development of common values in the country. On the other hand, there are signs that the importance of nation-state is declining. People are becoming less attached to their fatherland. The non-allegiance to the fatherland, can be true of the Afrikaners in South Africa. Perhaps the degree of allegiance to what they termed *ons vaderland* (our fatherland) is no longer the same in the new South Africa as it was prior to the 1994 elections, hence the demand for a separate state or homeland.

2.3.1.2 *Race³² and racial group*

One of the best definitions of *race* is by Farley (1995:5). The author maintains that a race can be defined as a group of people who are

³² According to Nieto (1992:17), the concept race has come under a great deal of criticism because, in scientific terms, *race* does not exist and is often simply used to oppress the entire groups of people for their supposed racial differences. In the author's opinion, there is only one race, and that is the *human* race. There is no scientific evidence that racial groups differ in any biologically or genetically significant way. Differences that exist are primarily social. That is, they are based on one's experiences within a particular group.

- (1) generally considered to be physically distinct in some way, such as skin colour, hair texture, facial features, from other groups; and
- (2) generally considered by themselves and/or others to be a distinct group.

Thus, the concept of race has two components: *physical* and *social*. The physical component involves the fact that every race is generally regarded as being somehow different in appearance from other races. The social component involves group identity. The group must in some way be recognised by its own members or by others as a distinct group, or at least as having some characteristics (physical or otherwise) in common. Without such a social recognition, a group of people will not be identified as a race.

Farley (1995:5) also maintains that some social scientists make a distinction between race and *racial group*. An illustration by Spencer in Farley (1995:5) presents the example of an Eskimo girl raised in a white American family in the South, never exposed to Eskimo culture or society. This girl's race might be considered Eskimo (she has the physical features and parentage that would define her as Eskimo), but she is not part of the Eskimo society or culture and would not, on first contact with Eskimo society, understand it any more than anyone else in the South would. Thus, a racial group can be defined as a group of people of the same race who interact with one another and who develop some common cultural characteristics.³³

Race, therefore, is usually taken to refer to inherited physical traits such as skin colour, stature, hair texture, etc. As regards categories in South Africa specifically

³³ Farley further reports that in practice, many sociologists question the distinction between a race and a racial group. Pointing out that race is a socially constructed concept, they maintain that races, as well as racial groups, are social groups, not biological ones.

based on skin colour, the term *Black*³⁴ refers to persons of African origin, *white* to persons of European origin, *Coloured* to persons of mixed race, and Asian to persons of Asian origin. Although the latter (Asian) does not refer to skin colour as such, it nevertheless has a racial connotation (Van Heerden, in Lemmer and Badenhorst 1997:190).

Classification based on race is problematic because the boundaries of racial groups are obscure. Although people are identified as belonging to a particular race on the basis of shared physical features, they may, and indeed often, differ in physical appearance from other members of the same race. Hence, as indicated in chapter 1, the researcher was comfortable in calling people what they want to be called, rather than using overarching terms like Black and White.

2.3.1.3 *Ethnicity*

Races are furthermore divided into ethnic groups. Farley (1995:6) describes an ethnic group as a group of people who are generally recognised by themselves and/or others as a distinct group, with such recognition based on social or cultural characteristics. The most common of these characteristics are nationality, language and religion. The author avers that ethnic group tends to be, at least to some degree, biologically self-perpetuating, so that ethnicity, like race, is a social characteristic that passes from generation to generation.

Many African states would figure highly on any register of ethnic and religious complexity. For instance, there are more than 250 distinct ethnic groups in Nigeria's population of 100 million. Uganda has more than 40 ethnic groups which

³⁴ In South Africa Black is used as an umbrella term and includes Coloureds and Indians. Although *people of color* (with reference to Blacks) is accepted, it is no longer used as it was in the apartheid days. People of color itself is also problematic because, for example, it implies that whites are somehow colorless.

are said to have little in common and which, to a very large extent, do not understand one another's language. Such patterns of complexity are normal in Africa (A Minority Rights Group Report 1991:21).

South Africa, like other African countries, is no exception regarding this ethnic complexity. One cultural group, for instance the Ndebele, may have many ethnic groups. The same applies to, for example, Bapedi and Batswana. In addition, given this definition and the above definition of a *race*, an Afrikaner, for instance, may belong to a *white race* which includes all persons of European descent but the fact that he has a unique custom and language which distinguishes him from other groups in the *white race* makes him a smaller entity, an ethnic group.³⁵ An ethnic group therefore refers to a group of people who distinguishes itself, and is also distinguished by others not only on the basis of mainly socio-cultural features but also on race.

Santhiram (1995: 385) defines an ethnic group as:

A collectivity within a larger group having a common ancestry, memories of a shared historical past, and a cultural focus on one or more symbolic elements defined as an epitome of their peoplehood. Examples of such symbolic elements are: kinship patterns, physical contiguity (as in localism or regionalism), religious affiliation, language or dialect forms, tribal affiliation, nationality, phenotypical features or any combination of these. A necessary accompaniment is some consciousness of kind among members of the group.

Arising from this definition of ethnicity is the fact that ethnic groups tend to identify themselves separately in terms of their racial origin and cultural affiliations

³⁵ White people in South Africa do not often think of themselves as ethnic, which is a term they reserve for others, particularly Africans who are more easily identifiable. Nevertheless, the fact that they are ethnic, whether they choose to manifest it or not, is undeniable.

to preserve their primordial characteristics. In some societies, the ethnic classification has been fluid because of the absorption of these groups into the host societies through marriages and assimilation (Santhiram 1995:385).

In the British *Mandla v. Dowell Lee*³⁶ case the House of Lords explored at considerable length the attributes of an *ethnic* group. Lord Fraser concluded that:

For a group to constitute an ethnic group in the sense of the Act of 1976, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics ... The conditions which appear to me to be essential are these :

- (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive;
- (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

In addition to these two essential characteristics the following characteristics are, in my opinion, relevant; either:

- (a) a geographical origin, or descent from a small number of common ancestors;
- (b) a common language, not necessarily peculiar to the group;
- (c) a common literature peculiar to the group;

³⁶ ([1983] 1 All. E.R. 1062) the right of a Sikh boy attending an independent school to wear a turbaban was upheld by the House of Lords on the basis of its interpretation of the Race Relations Act of 1976 (section 3) which prohibits discrimination on racial grounds namely color, race nationality or national origins. The Act does not prohibit discrimination on the grounds of religion. The crucial legal issue is therefore whether in wearing a particular item of clothing at school the child could be said to be doing so as a member of a recognised ethnic group rather than merely as a member of a religious group. Only if a child wears the clothing as a member of a recognised ethnic group will he or she be protected under the Race Relations Act of 1976.

- (d) a common religion different from that of neighbouring groups or from the general community surrounding it; and
- (c) being a minority or being an oppressed or a dominant group within a larger community, for example conquered people ... and their conquerors might both be ethnic groups (Meredith in De Groof & Fiers 1996:346).

Members of an ethnic group therefore have, for example, their own language or dialect, values and customs. Ethnic groups coexist and interact with other groups in a society. The three terms *nation*, *race*, and *ethnic* have a direct influence on the debate about minorities. The term *nation* is therefore inclusive of race and ethnic group.

However, sociologists disagree on whether ethnicity is a broad concept that includes racial groups or whether racial and ethnic groups are two different entities. Farley (1995:6) maintains that some sociologists, like Gordon (1964) and Glazer (1971), argue that races are a particular type of ethnic group. By this definition, some ethnic groups are not racial groups but all races are ethnic groups. Other social scientists make a distinction, arguing that if physical characteristics are involved, the group is a race, for example black and whites, but if the group is based solely on social or cultural characteristics, the group is an ethnic group, for example French Canadians or German Americans.

2.4 OTHER MINORITY- RELATED CONCEPTS³⁷

2.4.1 Assimilation

Defined as being based on the idea of the superiority of the dominant culture, assimilation aims at the achievement of homogeneity within the state by ensuring that groups discard their cultures in favour of the dominant culture. This also implies the willingness on part of the dominant group to accept the new members. This concept has been dealt a heavy blow in most countries where minorities are found. In reality there are only a few countries (if any) without minorities no matter how numerically small these minorities may be. People of different races and ethnic groups no longer allow themselves to be assimilated into a dominant culture.³⁸ According to the South African Human Rights Commission (SAHRC) report, the learners of dominant racial groupings (Blacks) in South African public secondary schools, particularly those attending former white Model C schools, are expected to change and adapt to the new culture and ethos of the school (mostly white culture) to be able to *fit in*. Such former model C institutions do not acknowledge cultural diversity and are potential areas for racial conflicts with minorities in such institutions refusing to abandon their culture and to *fit in* or to be assimilated into. The voluntary or involuntary rejection of assimilation therefore leads to the desire by minority groups to maintain their cultures, traditions and other practices and this has a direct link with education and educational provision.³⁹

³⁷ These concepts are defined in A Minority Group Rights Report entitled *Minorities Rights Group Report*. (1991:8).

³⁸ Good examples are South Africa and the USA. Different cultures want to remain as distinct as they are without being melted into a dominant culture. Africans in the USA wants to retain their identity, hence the term African-American. In South Africa, and elsewhere in Africa different groups, as outlined in the Introduction, also wants to retain their identity.

³⁹ The SAHRC report maintains that the predominant trend in school disintegration is the assimilationist approach. For example, one of the students in a predominantly white

2.4.2 Integration

Integration is a process by which diverse elements are combined into a unity while retaining their basic identity. School integration acknowledges and encourage the appreciation of other cultures. There is, no insistence upon uniformity or elimination of differences other than the differences in each component group. However, integration can easily shade into assimilation.

2.4.3 Fusion

Unlike assimilation where one culture is absorbed into the dominant culture, fusion is a process whereby two or more cultures combine to produce another that is significantly different from the parent cultures. It is more *a result* than *a policy*. It suggests less hierarchy and more equality between fusing cultures than assimilation does.

2.4.4 Pluralism

Pluralism is a policy which aims at uniting different ethnic groups into a relationship of mutual inter-dependence, respect and equality, while permitting them to maintain and cultivate their distinctive ways. In complex multi-ethnic societies such a policy symbolises both diversity and unity, or diversity within unity. Pluralism may require, depending upon circumstances, some element of separation between ethnic groups. This may be the only means of avoiding disequilibrium between groups to the consequential disadvantage of weaker groups. Because of its diverse cultures,

school who was interviewed, emphasised '*I feel that if pupils of other races want to come to our school then they must adjust to the culture of the school*', the white culture.

South Africa is a pluralistic society and this plurality is acknowledged in its Constitution Act, no 108 of 1996.⁴⁰

2.4.5 Segregation⁴¹

A policy based on the belief in the superiority of the dominant culture which aims at keeping certain ethnic groups separate, unmixed and ranked in a hierarchical position. Segregation was one of the cornerstones of the all white Afrikaner Nationalist government in South Africa before the 1994 elections. Public schools were separated along racial and ethnic lines and the Zulu group, because of their numbers, were regarded as the most dominant among all black ethnic groups⁴² (Samuel in Nasson & Samuel 1990:17-18).

The above concepts, coupled with the rights of minorities in international law, have a direct influence on the provision of education for minorities, particularly in South Africa. These concepts underpin the description and definition of minorities. Because of the role these concepts play in such definitions, it was therefore important to describe them. These concepts feature frequently in this study. Despite Naisbitt's idea of global village, most minority cultures, as indicated, are not willing to be assimilated into dominant culture(s) nor will they willingly allow fusion to take place (Naisbitt 1994:10). The examples cited in Rwanda and Burundi and Bosnia-Herzegovina is testimony to this. Perhaps the solution is to acknowledge their existence and protect their rights within the constitutional framework and in the context of international law. Such an acknowledgement and

⁴⁰ See sections 6; 9(3); and 185 of the Constitution of the RSA.

⁴¹ A doctrine of apartheid in South Africa exemplified a particular vicious form of segregation which was described by the international community as crime against humanity. The apartheid policy stood as a valid symbol of all that was condemnable in relations between races.

⁴² See also table 1 in section 4.2.1.

protection implies the possible provision of own schools, use of own language and the promotion of own culture.

2.5 MINORITY RIGHTS IN EDUCATION: INTERNATIONAL LAW⁴³

Minority rights in international law have re-emerged as a category in the context of a broad universalist scheme of rights for all human beings⁴⁴ (Thornberry in Harris and Joseph (eds) (1995:597). UNESCO, along with other international organisations, universal or regional, has been much concerned with the articulation of and elaboration of human rights concepts and within UNESCO a particular subject of debate has been the rights of minorities or what Brownlie in Crawford (ed) (1992:1) refers to the *rights of peoples*.⁴⁵

⁴³ International law is made up of custom and treaty law. A Treaty is the same as a Convention or Covenant. It is a promise or agreement negotiated by countries amongst themselves or via a body like the United Nations and then adopted. When a state wishes to become a *party* to a treaty it *signs* the document. A state is not bound by the Treaty until it has ratified it. The act of ratification legally binds the state under the terms of the Covenant, Convention or Treaty: it becomes a *state party* to the document. In the old days, ambassadors negotiated treaties far from home. They signed a treaty on behalf of their ruler and then returned with the text. The ruler would agree or disagree with it. This agreement will be communicated with the other party and the treaty would then be ratified. See also English, K, and Stapleton, A, (1997).

⁴⁴ There is a growing literature on minority rights in international law. For some evolutionary perspectives in recent writings consult Lerner, N., 'The Evolution of Minority Rights in International Law', and Nowak, M., 'The Evolution of Minority Rights in International law, Comments in Brolmann. See also the Human Rights Watch World Report and Thornberry, P., International Law and Rights of Minorities (1991).

⁴⁵ As Henrad in De Groof and Fiers (eds)(1996:50) wrote, there is no consensus regarding the definition of the concept *people* since international law as it stands accords the rights of *peoples*, the question is whether minorities can and do qualify as *people* or not. The UNESCO experts furthermore gave a definition of people, using a list of characteristics for a group of human beings which resembled strongly those proposed for definition of minority and included factors such as racial and ethnic identity, cultural homogeneity and linguistic unity. In addition, Rebecca Wallace in her publication International Human Rights Texts and Materials (1997:197) maintains that the Vienna Declaration of 1993 on the rights of indigenous people dropped the "s" from peoples because some countries like Canada lobbied for its removal on the grounds that self-

2.5.1 The League of Nations and the protection of minorities

The minority treaties of the League of Nations all contain rights specifically aimed at the protection of (members of) minorities. However these minorities were specifically mentioned in the respective treaties. In general, several provisions on educational rights of minorities were included in the treaties. Nationals belonging to racial, religious or linguistic minorities have equal rights of establishing schools at their own expense. But in towns and districts with a considerable proportion of nationals whose mother tongue was not the official language, adequate facilities were to be provided to ensure that in the primary schools, instruction would be given to the children through their own language, though the official language could still be made part of the curriculum. The treaties furthermore provided that in towns and districts under member states, the minorities would be assured of an equitable share in the enjoyment of the application of money provided from public funds under state, municipal or other budgets for educational, religious or charitable purposes (Thornberry 1991:42-43).

After World War II, the UN started off with a radically different approach, namely, the universal protection of human rights in combination with non-discriminatory principles instead of providing rights specifically attuned to minorities. This shift can be explained partly by the problem of the applicability of the minority provisions and partly by the abuse of the system by the Nazi's who invoked the presence and treatment of German minorities in other European countries to justify their expansionism. It became clear from that point that the protection of minorities was and is a complex and delicate question that required special attention. The UN General Assembly Resolution 217c (III), entitled *Fate of Minorities* stated that the Organisation could not remain indifferent to the fate of minorities, but it was difficult to adopt a uniform solution to the complex and delicate questions about

determination could be interpreted to include secession and separatism.

minorities and their rights.⁴⁶ The establishment of the UN Commission on Human Rights whose mandate includes the protection of minorities, and also the Sub-commission on Prevention of Discrimination and Protection of Minorities are good examples of the UN's commitment to the protection of minorities (Thornberry in Harris and Joseph 1995:595; Henrad in De Groof and Fiers 1996:56).

2.5.2 International instruments

Several international instruments with implications for the education of minorities were adopted by various organisations, particularly the UN. The instruments include the following:

- (1) the UDHR completed in 1948 by the members of the newly formed UN following on the end of World War II;
- (2) the 1960 UNESCO Convention against Discrimination in Education;
- (3) the three 1966 International Covenants on
 - (i) Economic, Social and Cultural Rights (ICESCR);
 - (ii) Civil and Political Rights (ICCPR); and
 - (iii) The Optional Protocol to the ICCPR;
- (4) the Convention on the Rights of the Child (1989);
- (5) the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. The declaration was adopted by the General Assembly of the UN in 1992.
- (6) the 1995 Framework Convention for the Protection of National Minorities.

The three international Covenants (under 3 above) were adopted in 1966 but came into force in 1976. Together with the UN Declaration on Human Rights they form

⁴⁶ See also section 2.2 on the lack of consensus about the definition of minorities.

the International Bill of Human Rights. All these had an impact on the education of minorities and form a basis of the minorities' demands for self-determination which implies the right to form own schools world-wide, including in South Africa.

2.5.2.1 Universal Declaration of Human Rights (UDHR)

The UDHR was completed in 1948 by the members of the newly formed United Nations following the end of World War II. The aim of the UN was to set the basic minimum international standards for the protection of the rights and freedom of the individual. The provisions contained in the document are considered to be so fundamental and have so often been quoted in domestic and international courts and by governments all around the world. The UDHR is widely regarded as forming part of international customary law (English & Stapleton 1997:13).

Article 26 of the UDHR provides that:

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.
- (2) Education shall be directed to the full potential of the human personality and to the strengthening and respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the UN for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children (UDHR in Wallace (1997:166).

Note that paragraph 3 provides for parents to have the prior right to choose the kind of education relevant to their children. This would obviously be in line with the group culture and other practices.

2.5.2.2 *Convention against Discrimination in Education*

The Convention was adopted by UNESCO in December 1960 and entered into being in May 1962. It is the first instrument after World War II that provides for the special protection for the education of minorities. The Study of Discrimination in Education was the first of a series of studies of discrimination in various fields, including in education, prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities under the authorisation of the Commission on Human Rights and the Economic and Social Council. Articles 2(b) and 5(1)(c) of the Convention, the articles of specific relevance to minorities, are formulated as follows:

Article 1 of the Convention maintained that the term *discrimination* includes

any distinction, exclusion, limitation or preference which based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education...

Therefore Article 2(b) which relates specifically to minorities must be read in conjunction with article 1 of the Convention

Article 2 reads:

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of the Convention:

Article 2(b):

The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupils' parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education at the same level.

Article 5(1) contains relevant rules in two of its subdivisions. First of all, the state parties to the Convention agree that:

Article 5(1)(b)

It is essential to respect the liberty of parents and where applicable of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the state for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or her conviction.

Finally there is a specific clause dealing with the situation of national minorities as subdivision (c) states:

It is essential to recognise the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and depending on the educational policy of each state, the use or the teaching of their own language provided however:

- (1) that this right is not exercised in a manner which prevents the members of the minorities from understanding the culture and language of the community as a whole and from participating in its activities;
- (2) that the standard of education is not lower than the general standard laid down or approved by the competent authorities; and
- (3) that attendance in such schools are optional (Lillich 1983:330).

This provision ostensibly deals with the right of members of minorities to provide for distinctive educational activities. The Convention provides, among other things, for the right of minorities to receive education in their own language. For example, a state cannot argue that a child receiving education in a language that is not his or her mother tongue is being treated like every other child in a state. In fact, the child's rights are being violated. Equal treatment of minority groups involves the state taking positive measures to safeguard them against discrimination. Therefore, the state parties not only undertake to abolish and prevent any form of discrimination but they must also explicitly confer certain educational rights to members of national minorities (English & Stapleton 1997:64; Henrad in De Groof and Fiers (eds)1996:58).

2.5.2.3 The International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The ICESCR was adopted and opened for signature, ratification and accession by the United Nations General Assembly resolution 2200A (XXI) on December 16, 1966. It was entered into being on January 3, 1976. Although members of minorities were not specifically focussed upon in the convention, it contains two articles that can be relevant for minorities. Articles 1 and 13 have several provisions that are worth mentioning, such as:

Article 1:⁴⁷

All peoples⁴⁸ have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The right to education is guaranteed under article 13 of the Covenant.

Article 13(1) reads:

The state parties to the present Covenant recognise the right of everyone to education.

The article also refers, among others, to the full development of the human personality and the sense of dignity, the strengthening of respect for human rights, the promotion of understanding, and the tolerance and friendship among all nations, as being goals of education.

The article goes on to emphasize, in the second paragraph, the need to equal access to secondary and higher education, and the third paragraph is formulated as follows:

(3) The state parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and

⁴⁷ Both the ICESCR and ICCPR have a similar article 1. Refer to the discussion under ICCPR in section 2.5.2.4.

⁴⁸ A Minority Rights Group Report (1991:9) indicates that neither the Charter nor the Covenants proposed a definition of *peoples*. But unlike *minority* this has not yet inhibited international action.

accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

With respect to higher education paragraph (c) of article 13 reads:

- (c) State parties undertake to have respect for the liberty of parents and when applicable legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious or moral education of their children in conformity with their own convictions.

2.5.2.4 *The International Covenant on Civil and Political Rights (ICCPR)*

The ICCPR was adopted by the UN General Assembly on December 16, 1966 and entered into being on March 23, 1976. There are two provisions of the ICCPR that are relevant to minority education. The first is Article 1(1) and the second is Article 27. Article 1(1) states that:

All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic , social and cultural development (ICCPR 1966:170.1).

The purpose of the right was to speed up an end to colonialism and to promote the democratic process by having regard to the freely expressed will of the people concerned (English & Stapleton 1997:17). The authors maintain that the word *people* is yet to find a legal definition. In the author's view, *people* in this case refers to the majority rather than an ethnic group or minority. Self-determination means self government and not independence. According to Thornberry in Harris and Joseph (eds)(1995:603), none of the Covenants on human rights contain definitions of *peoples* or *minority* though many definitions have been offered. In

1989 a group of UNESCO experts made the following efforts to define the *peoples*: characteristics inherent in a description (but not a definition) of a *people* were set out:

A group of individual human beings who enjoy some or all of the following common features:

- (1) a common historical tradition;
- (2) racial or ethnic identity;
- (3) cultural homogeneity;
- (4) linguistic unity;
- (5) religious or ideological affinity;
- (6) territorial connection; and
- (7) common economic life.

(Thornberry in Harris and Joseph (eds)(1995:604).

In South Africa, proponents of a *volkstaat* often use the word *people* as in the *Afrikaner people* denoting their right of existence as a *people* separate from other white non-Afrikaner people. In fact their use of the term *people* is equal to saying the Afrikaner *ethnic group*. That means they are a component (ethnic) within the *people* (entire white South Africans). Self-determination, as indicated, means self government and that implies, for example, the right of people to open and maintain their own schools and use their mother tongue as a medium of instruction.

On the other hand, **Article 27** of the ICCPR reads thus:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own religion, or to use their own language (ICCPR 1966:170.8).

This means minority groups have a right to their own language and religion as their form of identity. All persons designated to be protected by Article 27 are therefore those who belong to a group and who share a common culture, a religion and/or a language (English & Stapleton 1997:63). The authors further explain that those persons need not be citizens of the state party nor permanent residents. Migrant workers and even visitors are therefore entitled to protection under Article 27 of the ICCPR. The state party is obliged to take positive measures to protect minorities not only against acts committed by the state but also against acts by others within the state. It may also need to take positive measures to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion. The General Comment no 23(50) of the UN regarding Article 27 was that the protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching society as a whole (Wallace 1997:145-148).

Capotorti (1991:60), in his interpretation of Article 27 of the ICCPR, maintains that to enable the objectives of the article to be achieved, it is essential that states should adopt legislative and administrative measures. He added that it is hard to imagine how the culture and language of a group can be conserved without, for example, a special adaptation of the educational system of the country. This brings us back to the initial argument that there are only two terrains where culture can be transmitted: the first is the home and the second is the school.

The right to identity said to be incorporated in Article 27, implies the right to maintain and preserve that identity and that leads to the obvious link with education. Education, therefore, is the most important general means of preserving the distinct identity of a group whether it is a national, ethnic, linguistic or religious identity. Education not only has a qualification function but also a socialisation function referring to the transfer of values and culture to a new generation. A related issue

is whether and if so, to what extent members of the minorities are allowed to express their culture and religion in their school.

The right to preserve one's own religious identity implies either the right to establish separate institutions, or the obligation of the state to provide for the different religious courses to be taught at a public school or at least the opportunity to be excused from religious education not in conformity with own beliefs. The latter, in South Africa, is contained in section 15 of the Constitution.

Section 15 (1) reads:

everyone has the right to freedom of conscience, religion, thought, belief and opinion.

Subsection 2(c) states that:

religious observances may be conducted at state or state-aided institutions, provided that attendance at them is free and voluntary.

Also, section 7 of the South African Schools Act (SASA) (No 84 of 1996) indicates that *attendance of religious observances in public schools is free and voluntary.*

2.5.2.5 The Convention on the Rights of the Child

This Convention was adopted by the UN in 1989. The Convention also has certain provisions dealing with the right of minorities, namely articles 28, 29 and 30. However, it is necessary to start with the definition of a child, in terms of article 1 of the Convention.

Article 1 of the Convention describes a child as *every human being below the age of eighteen years*. The Constitution of the Republic of South Africa, section 28(3) conforms with the above article. The Constitution describes the child as *a person under the age of 18 years*.

Article 28 of the Convention, provides in its first paragraph that:

State parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular:

- (1) make primary education compulsory and available free for all;
- (2) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering assistance in case of need;
- (3) make higher education accessible to all on the basis of capacity by every appropriate means;
- (4) make educational and vocational information and guidance available and accessible to all children; and
- (5) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29 also mentions important issues that have relevance on minority education in its first and second paragraphs:

Article 29

- (1) the state parties agree that the education of the child shall be directed to:
 - (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national

values of the country in which the child is living, the country from which he or she may originate, and for the civilizations different from his or her own.

- (2) No part of the present article or articles 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institution shall conform to such minimum standards as may be laid down by the state.

Article 30 indicates that:

In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

2.5.2.6 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities

This non-binding international declaration constituted the UN General Assembly Resolution 47/135 adopted on the 18 December 1992. Article 2 of the declaration stresses the rights of minorities to:

- (1) enjoy their own culture;
 - (2) profess and practice their own religion;
 - (3) use their own language in private and in public freely and without interference or any form of discrimination;
 - (4) participate effectively in cultural, religious, social, economic and public life;
- and

- (5) participate in decisions on the national and regional level concerning their minority.

States are obliged to:

- (1) ensure that minorities may exercise their rights without discrimination and in full equality before the law;
- (2) enable minorities to develop their culture except where these practices violate national law and international standards;
- (3) take measures to provide opportunities for minorities to learn their mother tongue;
- (4) encourage knowledge of history, traditions language and culture of the minorities within a country; and
- (5) consider measures to enable minorities to participate in their economic progress and development of their country (de Varennes 1996:279).

The above obligations by state members, particularly the development of culture, the provision of opportunities for minorities to learn their own language (mother tongue), encouraging knowledge of history, traditions and culture can best be achieved if member states allow minorities to establish their own schools. However, it must be noted that the rights granted to minorities to open their own schools would lose much of its meaning if no assistance from the government concerned was forthcoming. Some minorities may be so impoverished that their rights and protection in terms of international and national laws may be useless if governments do not support all these agreements and provisions, particularly those provisions contained in international law.

2.5.2.7 The Framework Convention for the Protection of National Minorities

Adopted in 1995 by the UN, the Convention applied certain principles already formulated in more general conventions to national minorities, taking into account their specific needs. The relevant articles are as follows:

Article 12(3)

The parties undertake to promote equal opportunities for access to education at all levels for persons belonging to minorities.

Article 13

- (1) within the framework of their educational systems, the parties shall recognise that persons belonging to a national minority has the right to learn his or her minority language;
- (2) in areas inhabited by persons belonging to national minorities traditionally or in substantiated numbers, if there is sufficient demand, the parties shall endeavour, as far as possible, within the framework of their educational systems, that persons belonging to those minorities have adequate opportunity to be taught in the minority language or of receiving instruction in this language;
- (3) paragraph 3 of this article shall be implemented without prejudice to the learning of the official language or the teaching of this language.

2.6 THE RIGHT TO EDUCATION IN INTERNATIONAL LAW

The right to education, as indicated earlier, is guaranteed in international instruments⁴⁹ and is linked directly with the right of minorities to be provided their own schools wherein they will be able to practice their own culture. In this regard, Capotorti (1991:60), discussing the relationship between culture and education, wrote that the mere existence of cultural rights supposes that the right to education, for example, as set forth in article 26 of the UDHR, has first found a practical application. There is no right to culture without at least a minimum of education. In addition, there can be no possible development of the culture of any group if members of that group are denied the right to education or are treated in a

⁴⁹ See the UDHR (article 26) in section 2.5.2.1 and the ICESCR (articles 13) in section 2.5.2.3..

discriminatory manner in the field of education. Educational policy is therefore a key element in evaluating the situation of persons belonging to minority groups as regards their right to enjoy their own culture.

This implies, therefore, a direct link between the provision of culture and education. Which means that it is only through relevant education that minority groups can enhance and transfer their own culture to coming generations. The provision of relevant education provision will include the right for the people to open their own schools in which their culture will be maintained and promoted, recognition, by state authorities, of qualifications awarded by these institutions, financial assistance, for example, for the training of staff and the maintenance of buildings. Educational programmes and services for these groups should be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, knowledge, and value systems and should further their social, economic and cultural aspirations. In Denmark for example, members of the German minority group are granted the right to establish their own schools, and diplomas awarded by these schools, when the establishment of such schools have been authorised, their qualifications have the same validity as those awarded by public schools (Capotorti 1991:60;Wallace 1997:206)⁵⁰.

The UN and UNESCO have co-operated closely on matters relating to the right to education. The enjoyment by everyone of the right to education is ensured by among others the UDHR, the Convention of Recommendation against Discrimination in Education and the International Covenant on Economic, Social and Cultural Rights. These documents have been discussed in sections 2.5.2.1, 2.5.2.2 and 2.5.2.3 respectively.

⁵⁰ See also appendix 1 section 29(1) on the right to education which is guaranteed in the South African Constitution.

2.7 EDUCATION FOR MINORITIES IN SELECTED COUNTRIES

In this section a few countries in which a significant progress was made in addressing the minority question are presented. Most of the countries are in Europe and they may either be under the doctrine constitutional or parliamentary supremacy.

2.7.1 EDUCATION OF MINORITIES IN BELGIUM

In order to understand Belgian educational policy, it is necessary to keep in mind two important characteristics: the first is that Belgium has changed from a centralised to a federal state; secondly, Belgium is a polarised society. It has a national parliament and a national government which has responsibilities that differ from Communities and Regions. Belgium has three Communities and Regions which can be distinguished from each other by language. The Communities are the almost 6 million Dutch-speaking (Flemish) people who live mainly in the north; the 4 million French-speaking Walloons in the south; and a small German-speaking minority of around 250 000 people inhabiting a small area in the east commonly known as the 'East Cantons' (Coordinated Constitution of Belgium (Articles 1-4)⁵¹ 1994; Fiers in De Groof and Friers 1996:409).

There are also three Regions namely, the bilingual (Dutch and French) Brussels Region, the Flemish Region, and the bilingual (French and German) Walloon Region. The Communities and Regions have parliaments and executive bodies and are funded by the national government. Although some matters in education fall under the responsibility of the national government, the major part of the

⁵¹ Articles 1- 4 of The Coordinated Constitution of Belgium of 17 February 1994 mentions the following: Belgium is a federal state (article 1); divided into three communities (article 2); encompassing three regions (article 3); and comprising three linguistic communities (article 4).

educational policy is the responsibility of the Communities (Verhoeven 1992:99; Steyn & Vanderstraeten 1998:90).

Raemdonck & Verheyde in De Groof & Malherbe (1997:277) maintain that in general Belgium is characterised by linguistic homogeneity. The three official languages, namely Dutch, French and German are spoken in unilingual linguistic regions. The educational institutions are unilingual in each linguistic region. All pupils receive education in the language of the region in which the educational institutions are located. However, there are some exceptions to the principle of linguistic homogeneity, particularly in Brussels and in some municipalities which are located at the language border.

2.7.1.1 Definition of minority

Although the above mentioned *linguistic communities* (the French, Flemish and the German communities) can be regarded as minorities (in the context of international law), it is interesting to note that the concept of *minority* does not appear nor is it defined in the Belgian Constitution. However most of the rights which appear in the important treaties on human rights, especially the European union treaties are also guaranteed in the Belgian constitution as in most European countries.

2.7.1.2 Types of minorities

(a) Ideological and philosophical minorities

Despite the recognised existence of linguistic communities mentioned above, Belgium has a number of ideological and religious minorities spread across the three regions. The Flanders region of Belgium is mainly Catholic and has a large number of *free* schools, whilst the Walloon region tends to be free thinking and socialist.

Free schools are not set up by the state. They are almost exclusively Catholic and subsidised by the state. The establishment of other schools is the responsibility of the Communities, regions, cities and local authorities. Anyone is free to establish a school which will be funded, provided it meets the criteria laid down by the Community. Schools set up by the Communities have a duty to offer all recognised faiths and philosophies of life, especially those who are recognised, for example, Judaism, Islam, the Orthodox Church, and others (Fiers in De Groof & Fiers 1996:412).

2.7.1.3 Constitutional protection of minorities

A particularly relevant article in the Belgian Constitution is Article 24(1) and (3).

Article 24(1) reads:

Education is free; any preventative measure shall be forbidden;... the community shall guarantee the freedom of choice of parents. The community provides neutral instruction. Neutrality implies, in particular, respect for the philosophical, ideological, or religious conceptions of parents and pupils. The schools provided by the public authorities shall offer, up through the end of obligatory schooling, a choice between instruction in one of the recognised religions and instruction in nonreligious morality.

Note that the Belgian Constitution acknowledges the existence of linguistic, religious and other minorities and compels the Communities to provide *neutral education*⁵². This implies that no specific ideology, religion and philosophy shall be emphasised at the expense of the other or shall be criticised. Furthermore, the

⁵² The issues of neutrality in education is debatable. Critics argue that education is a reflection of politics and ideological conflict outside the school system. These conflicts manifest themselves in the school system and thus render the neutrality of an education system questionable.

Constitution *guarantees the freedom of choice to parents* (although little is said about the choice except for *a choice between instruction in one of the recognised religions and instruction in nonreligious morality*. Section 24(1) therefore indicates that there is some provision for minority languages and religion in the Belgian Constitution.

The right to education is explicit in **section 24(3)** of the Constitution:

Every person has a right to instruction which respects fundamental rights and liberties. Access to instruction shall be without charge through the end of compulsory schooling. All pupils of obligatory schooling age have the right, at community expense, to moral and religious education (The Coordinated Constitution of Belgium 1994:2).

Until then, the right to education fell within the ambit of the freedom of education. The freedom of education was already entrenched in the first Constitution of Belgium in 1931. This right to education is made effective by the principle of compulsory education. This principle obliges every child irrespective of whether or not he or she is a minority, to study at least twelve years, beginning at the age of 6 and ending on the day the child becomes 18 years. Article 191 of the Belgian Constitution provides that *every foreigner who is in Belgian territory enjoys the same protection granted to persons and property... except for the exceptions provided for by the statute*. As regards the *right to education* there are no exceptions provided and therefore it can be deduced that everyone who stays in Belgium legally is the holder of the right to education without any distinction on the ground of nationality (Raemdonck & Verheyde in De Groof & Malherbe (eds)1997:266).

2.7.1.4 *Forgotten minorities*

The Gypsies and those who live in mobile homes are some examples of the forgotten minorities in Belgium. According to Fiers in De Groof & Fiers (1996:416) they are in reality at the bottom of everyone's attention, particularly in Belgium. Their children have received little or no education. They belong to no country at all, and quite often they are sent away as swiftly and smoothly as possible (Fiers and De Groof & Fiers 1996:416). This is one of the setbacks of such a respectable democracy which (although the concept minority does not appear in their Constitution) recognises and guarantees most of the rights which appears in the important treaties and conventions on human rights. The rights mentioned in these conventions and treaties are meant to protect every human being, regardless of nationality, language, race or any other description, including the Gypsies.

2.7.2 **EDUCATION FOR MINORITIES IN GERMANY**

Germany has a federal government made up of the Federal Chancellor and the Federal Ministers. The Chancellor is elected by the Bundestag whose members are elected in general, direct, free, equal and secret elections (Basic Law of the Federal Republic of Germany 1949:26).

2.7.2.1 *Definition of minority*

Minority legislation is not part of the legal system in Germany. Therefore there is no legal definition of the term minorities in Germany. Nevertheless some *minorities* in Germany are recognised by the law. They are:

(1) *regional* minorities, for example the Serbs, the Danish, the Frisian and the Romanies because of their language. In describing these groups as regional minorities inside Germany the following criteria are used:

- ethnic differences from the majority, especially on the field of language and culture (including an own cultural identity);
- traditionally home in Germany;
- of German nationality;
- living by tradition in some areas of Germany; and
- intention to save identity

Following these criteria, Germany signed the Convention of the Council of Europe on National Minorities and mentioned these groups explicitly.

(2) *new* minorities, for example persons with a foreign cultural background who came to Germany as refugees, political asylum seeking persons or immigrants. Some special legal regulations for integration and social security of these persons became part of the German Law. In the school system, different steps towards a social integration are made with special courses or classes, also sometimes with the acknowledgement of a foreign language in the school-examination.

(3) the *re-settlers* of German ethnic origin (Germans who are moving to Germany from countries in central and eastern Europe. They have by

law⁵³ special rights of integration in the German society (Dekker in Dekker & Van Schalkwyk 1995:2).

2.7.2.2 *Types of minorities*

(a) *Minorities based on religious or philosophical conviction*

There is no special legislation in Germany for the protection of minorities based on religious or philosophical conviction. However, they can like everybody, refer to Human Rights clauses as they are guaranteed by the German Constitution. The freedom of undisturbed practice of religion is guaranteed by the Federal Constitution, article 4 of the Basic Law.

Article 4 reads:

- (1) Freedom of faith and conscience as well as creed, religious or ideological, are inviolable.
- (2) The undisturbed practice of religion shall be guaranteed.

This constitutional rule also has implications for the school, for example, a single pupil can demand for a leave of absence from the school because of a religious holiday (like Sabbath or Sukkoth for a Jewish pupil). The relation between minorities based on religious or philosophical convictions within the pupils and the

⁵³ Article 116 (1) of the Basic Law defines a German as anybody who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German origin or as their spouse or descendant. Article 116(2) indicates that former German citizens and their descendants, who were deprived of their citizenship on political, racial or religious grounds between 30 January 1933 and May 1945, shall have that citizenship restored on application. They shall be considered not to have been deprived of their citizenship if they have established residence in Germany after 8 May 1945 and have not expressed a different intention.

other pupils - and their parents - in the schools in Germany should be determined by the already mentioned principles of tolerance and the principle of pluralism; this includes the obligation for the school and the teachers to act in a non-indoctrinating way. Religion is in most of the States within Germany, part of the ordinary curriculum of the schools; religious instruction in schools has to be given in accordance with doctrines of a religious community concerned (Hill 1987:275; Fussel & Puttner in De Groof & Fiers 1996:287).

(b) *Minorities based on pedagogical concept*

Persons following a special pedagogical concept which is not or not yet part of the concept of state-run schools are in Germany normally not described as minorities. But the idea of a pedagogical concept away from the concept in the state-run schools has found acceptance in this way that by constitutional reasons (Art. 7, Paragraph 5 of the Basic Law): *a private elementary school shall be approved only where the education authority finds that it meets a special education need.*

For other schools, for example secondary, vocational, etc the conditions for founding and approval of the state are much easier, as long as private schools *are not inferior to state schools in terms of their educational aims, their facilities and the training of their teaching staff and where it does not segregate pupils according to the means of their parents* (Fussel & Puttner in De Groof & Fiers 1996:287). If a private school fulfils these conditions the school has a right to get subsidies from the state. Diplomas of a private school will be accepted if this school fulfils the special conditions set by the state.

(c) *Minorities based on ethnic identity, language or culture*

Some ethnic minorities in Germany have special rights in some States including education in their language or in a bilingual way. Also children of migrant workers from countries of the European Union have a right of instruction according to their cultural background. In a way these efforts take place also for pupils from other nationalities.

2.7.2.3 Constitutional protection of minorities in education

The German constitution states that all minorities should not be treated differently. **Article 3 (3)** of the Basic Law states that:

Nobody shall be prejudiced or favoured because of their sex, birth, race, language, national or social origin, faith, religion or political opinions
(Basic Law of the Federal Republic of Germany 1949:2).

In addition, article 7 (with 6 sub-sections) of the Basic Law of the Federal Republic of Germany relates specifically to school education. Although there is no explicit mentioning of minorities in article 7, provision of education to minorities can be said to have been accommodated, especially under sub-section 4 of the article .

Subsections 1 - 3 read:

- (1) The entire school system is the responsibility of the state.
- (2) Parents and guardians have the right to decide whether children receive religious instruction
- (3) Religious instruction shall form part of the curriculum in state schools except non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the doctrine of the religious community concerned.

Teachers may not be obliged to give religious instruction against their will.

Subsection 2 above guarantees the parents or guardians the decision to allow or not allow their children to attend religious instruction classes. Attendance of such classes is therefore not compulsory even if in terms of subsection 3, religious instruction forms part of the curriculum in state schools.

Sub-section 4 reads:

The right to establish private schools is guaranteed. Private schools as alternatives to state schools shall require approval of the state and be subject to Land legislation. Such approval shall be given where private schools are not inferior to state schools in terms of educational aims, their facilities and the training of their staff and where it does not encourage segregation of pupils according to the means of their parents (Basic Law of the Federal Republic of Germany 1949:4).

The freedom of *founding private schools* as guaranteed by the Federal Constitution, Article 7 Paragraph 4 of the 'Basic Law' above, cannot be used as a right to separate. Minorities can utilise this constitutional provision to establish their own schools. However, such private schools are bound by the fundamental legal principles of schooling in Germany, including the rights of non-discrimination, of tolerance and social integration. Article 7(4) also means that states will have to register private schools as mandated by the article, provided the school satisfies the set criteria.

In terms of state provisions of education to minorities, Fussel & Puttner in De Groof & Fiers (eds) 1996:286) wrote that the regional minorities of the Danish and Friesian people and of the Serbs are especially protected by the Constitutions

of Schleswig-Holstein (Art. 5) and of Brandenburg (Art. 25) and Saxony (Art. 2, 6); in some of these constitutional regulations a right of preservation of the cultural identity within the school is explicitly mentioned. A constitutional right on education which can be found in many of the Constitutions of the states includes also a right to education for minorities in a personalized way, because the right of self-fulfilment of a pupil in the school and also of equal treatment is orientated on the individuality of a person and includes therefore also particular personal shapes and interests of a person.

By the jurisdiction of the Federal Constitutional Court the principle of *tolerance* has been declared as a *basic principle* for schooling; some of the Constitutions of the States also mention this principle explicitly for their schools. These regulations have a special effect on the protection of minorities within the German schools. Like in many European countries, International and European Conventions became part of the national law in Germany. These regulations are part of the legal system of the protection of minorities in Germany (Fussel & Puttner in De Groof & Fiers 1996:286).

2.7.2.4 *Education law*

The situation in the field of Education Law is similar to the general situation. In the School Acts of the different States, the principle of integration of all pupils and equal treatment and equal opportunity is often mentioned explicitly and these regulations protect minorities. In these States in which minorities are recognised by the Constitution, special regulations in the school-acts react on the cultural background of these minorities and protect their cultural identity also in the schools eg, in the states of Brandenburg, Saxony or Schleswig-Holsteins). In these States bilingualism in the schools is also guaranteed (Dekker in Dekker & Van Schalkwyk 1995:73).

For example, for the Serbs one can find elementary schools especially for the Sorbian pupils where the Sorbian language is the main language. In the secondary schools for these pupils the Sorbian and the German language will be used in the school depending on the different subjects. A vocational school for social workers and university studies for teachers of the Sorbian language are also provided in this part of Germany. A similar practice in the daily school-life is organised for the Danish minorities in the northern part of Schleswig-Holstein (Fussel & Puttner in De Groof & Fiers 1996:287).

Following the constitutional principle of tolerance, one can find in some school-acts of the States educational aims like the learning of *respect for the convictions of the others* (Paragraph 1 of the school-act of Baden-Wurttemberg or *the understanding of other cultural backgrounds* which is found in paragraph 2 of the school act of Hesse or *openness to other ideas* found in paragraph 4 of the school-act of Schleswig-Holstein. These legal regulations are part of a concept of integration of minorities and an understanding of their cultural background (Fussel & Puttner in De Groof & Fiers 1996:287).

2.7.3 EDUCATION FOR MINORITIES IN ITALY

Italy is a republic with a president who is elected by parliament. Parliament consists of the elected Chamber of Deputies and the Senate. Senate is elected on a regional basis. During the election of the President, three delegates from each region, elected by the Regional Council in such a manner as to ensure the representation of minorities, take part in the election (Constitution of the Republic of Italy 1947: Articles 58-60).

2.7.3.1 *Definition of minority*

In the Italian democratic system, minority referred to as *minoranza* in Italian, means those who, within a certain social system represent a social group which is distinct from and in opposition to the dominant group. The distinction consists of one or more discriminative characteristics, which are common to the minority members, such as ethnical origin, the language or religion. Thus, minority here stands for those groups which show stable common ethnic, linguistic, cultural or religious characteristics and for that very reason set themselves against the majority, mainly on a permanent basis. Precisely because of these different characteristics, minorities can legitimately ask for recognition and for the protection of their interests within the state legislative system, according to their different needs. For example, article 83 of the Constitution of Italy states when the President of the Republic is elected during a joint sitting of both chambers, *three delegates from every Region, elected by the Regional Council in such a manner to ensure representation of minorities, take part in the election.* That in itself, guarantees the right of minorities to take part in the Italian political system. Such participation in the highest level of government ensures that demands from minority groups are given a fair hearing.

2.7.3.2 *Types of minorities*

In the Italian framework it is necessary to make a distinction between the minorities which are defined *historically* by the doctrine and those called *new*, which are the result evolving from recent economic developments. Within the first definition come ethnic, linguistic and religious minorities; in other words, they are those groups of people who have been living in a country for a long time but who belong to another ethnic origin, speak a different language or profess a different religion. Historical minorities are also a consequence of the peace

treaties following the two World Wars, or of migration movements which occurred in the past centuries (Gori in De Groof & Fiers 1996:293-294).

(a) *New minorities*

New minorities are those resulting mainly from the economic development and include three different groups:

- (1) European Union (EU) immigrants within EU Member States according to the fundamental freedoms provided by the EU Treaty;
- (2) non-EU immigrants, coming from both Europe and other continents; and
- (3) gypsies, the number of whom has greatly increased in all the European countries since the beginning of the civil war in the Balkans (Gori in De Groof & Fiers 1996:293-294).

(b) *Historical minorities*

Historical minorities in Italy fall under two categories, namely, ethnic-linguistic and religious minorities.

- *Ethnic-linguistic minorities*

The two defining patterns ethnic-linguistic have been considered together given the contemporary presence of both characteristics in most of the Italian minority cases, for example, the German speaking population in the province of Bolzano, etc. The ethnic-linguistic minorities are further divided into recognised and unrecognised minorities.

- *Recognised minorities*

Recognised minorities include the German speaking population of the province of Bolzano, the Ladin of the Bolzano and Trento provinces, the French speaking population of the Valle d'Aosta region, and the Slovenian population of the province of Trieste, Udine e Gorizia in the Friuli-Venezia Giulia region.

- *The non-recognised minorities*

The number of non-recognised minorities which are scattered all around the territory is quite high and represents a historical pattern which has contributed both and economically to the enrichment and development of the Italian society. These minorities include Albanians, Germans, Greeks, Gypsies, etc. They are often grouped in particular areas within a region thus creating what Gori (in De Groof and Fries 1996:305) calls *linguistic islands*. Sometimes the same minority is recognised and protected in other parts of the country, because of its vicinity with the state where such language is spoken and not in other parts. These minorities are well integrated economically within the area where they are established and have contributed to the cultural and economic richness of such areas.

Several years ago a comprehensive legal text was brought before the Parliament. Although with no concrete results it, however, contained a general framework for the recognition of minorities in national territory. The Bill provided for the use of minority language in nursery and primary schools. In primary schools the basic knowledge of the minority language as well as Italian and the teaching of culture, traditions, and uses of the minority group should be assured. In lower secondary schools the teaching of minority language can be offered upon the request of participants.

Programmes and timetables have to be defined by Ministry decree, upon advice from the National Education Council, the region, school institutional bodies and cultural associations engaged in promoting the minority language. Teachers can also be appointed locally, in exception to general rules of appointment, while students who are not interested can be exempted from attendance such minority language classes. Furthermore, the Ministry can by decree adopt measures to develop and innovate the study of the minority culture, language and traditions upon advice of the Parliament commissions. In institutional school bodies, the minority language can be used during administrative activities (Gori in De Groof & Fiers 1996:305-306).

(c) *Religious minorities*

Religious minorities represent the second big group which is protected to some extent by both the Constitution and state legislation. Agreements have been concluded between the Italian state and all the different faiths established in the territory in order to regulate co-existence. The general approach is characterized by the recognition of the State as the guarantor of religious freedom and pluralism. Thus, the different agreements shall be considered in this framework of super-parties role of the state towards all faiths.

However, the Pacts signed in 1984 between the Church and the state, confer on the Catholic church *the complete freedom to run its pastoral, educational and charitable mission*. The Pacts assure the teaching of Catholic religion in all levels of schooling, in line with the traditional role Catholic religion has always had within Italian society. However, the right to choose to follow or not such teaching is also conferred, and this is decided when parents enrol their children. Thus, the principle of the freedom of choice in receiving religious teaching, as set down in the Constitution, is affirmed and, in the meanwhile, the negative connotation such

choice had before has been overcome. There has been much discussion concerning the alternatives offered to those who choose not to follow the teaching of Catholicism, a discussion which has involved the Constitutional Court several times. However, the substance of such freedom means that religion is still considered as part of the school curricular programme so that school authorities must offer replacement activities to those who opt not to follow religion. Indeed, to not offer such a possibility to students means to discriminate against them by not assuring the same number of teaching hours at each school level set by law.

Art. 9.1 of the Pacts regulates the structure for Catholic educational establishments, from nursery to university level, the number of which is important all around the country. The state assures the establishment of new educational institutions and guarantees their students the same conditions of teaching and qualifications as those of public institutions (Gori in De Groof & Fiers 1996:307-308).

Article 10 of the Pacts draws a distinction between university institutions according to their goals. Thus, there are ecclesiastic universities, which aim to directly support the religion, and Catholic universities, which include a religious ethos in their activities. However, Catholic universities are subject to the same legislative body as state universities. This is the only way to enable them to have their qualifications recognised as legally equal to those of universities. Teachers also enjoy the same legal status of the state's colleagues as far as competitions, appointments, and economic treatment are concerned (Gori in De Groof & Fiers 1996:307-308).

2.7.3.3 Constitutional protection of minorities in education

A number of articles in the Italian Constitution can be interpreted to give some form of protection to the provision of education to minorities. The main

provision concerning the protection of minorities is contained in article 6 of the Italian Constitution.

Article 6 reads:

The Republic safeguards linguistic minorities by means of special provisions.

While no direct reference is made about what the words *special provisions* entail, it may embrace provision of own schools, its own language, religion and other unique minority practices which shall be provided by the states as safeguarded by the Republic in terms of article 6 of the Constitution.

Article 33 indicates that:

The Republic lays down general rules for education and establishes public schools of all kinds and grades. Organisations and private citizens are entitled to found schools and educational institutions which do not involve charges on the State.

Both articles indicate clearly that education provision for minorities is left in the hands of the Republic. Minority groups, or any other person, has the constitutional freedom of establishing private schools which apply for recognition with the Republic. In addition the law, on laying down the rights and obligations of private schools, must ensure for them full liberty and for pupils conditions equivalent to those of the public schools (Constitution of the Republic of Italy 1947:54)

Besides the Constitution, Italy has ratified some of the several international acts which contain provision for the protection of ethnic, linguistic and religious

minorities, for example, the UN Charter and the Human Rights Declaration of 1948. These international acts have been enforced in the Italian legislation.

2.7.3.4 Protection of minorities within the education system

The education system was one of the first fields to be covered by protective legislation for minorities. The right to receive education in minorities mother tongues has been recognised as the first right for all linguistic groups.

Bilingualism is protected within the school system, especially during the period of compulsory schooling. Universities, on the contrary, do not provide any kind of minority protection (Gori in De Groof & Fiers 1996:295-300)

Two different approaches are followed in organizing the education system of a minority group: a complete separation of the two languages by means of two different school systems, one for each language, or bilingualism, which means the parallel teaching of both languages within the same school. The choice of the one or the other system produces different results. However, besides the actual teaching of the minority language, some features are common to all four cases, such as teaching other subjects through it and the employment of mother-tongue teachers for both languages (Gori in De Groof & Fiers 1996:295-300).

2.7.4 EDUCATION FOR MINORITIES IN THE UNITED KINGDOM (UK)

The United Kingdom, (also called Great Britain) consists of England, Wales, Scotland, Northern Ireland and a number of small islands such as the Isle of Man and the Channel Islands. The dominant role played by England in the

development of Britain is generally acknowledged.⁵⁴ Unlike most countries of the world, the UK does not have a Constitution. It is not under the doctrine of constitutional supremacy as it is the case in many democracies for example the Netherlands or Italy.

Curtis (1992:63) maintains that Britain has an *unwritten* Constitution in the sense that major forms of political behaviour are not enshrined in acts of parliament nor are they binding in a legal manner. In addition, there are no basic laws or codes that can be altered only by a special amendment procedure. All laws in Britain, no matter how important they are from a constitutional point of view, can be changed in the same way, that is by a single majority vote in the British Parliament.

The constitution really results from the following three sources:

- *Acts of Parliament*

Throughout the centuries there have been major statutes which are significant for the basic framework and rules of the political system, education and other fields in Britain. For example, the Education Act of 1944, the European Communities Act of 1972 and the Race Relations Act of 1976.

- *Common Law*⁵⁵

⁵⁴ This is evident in the way England had a significant influence, particularly in the field of education and in particular to the development of national education systems in its various colonies. This influence is still reflected in the education systems of countries such as Zimbabwe, Zambia, Australia, Nigeria and even South Africa.

⁵⁵ The law of precedent. It is the law of the country that does not originate from legislation. It can be loosely defined as the mores and tradition that have been legally accepted as being correct and by which citizens are, in the absence of legislation, bound. To determine the law, a lawyer or judge looks first for any legislation that relates to the

The decisions of the courts of law in particular important cases which become precedents for future decisions or actions, and the interpretation by the courts of statutes and other regulations.

- *Conventions of the Constitution*

These are the rules of political behaviour which are followed by all involved in the political process. They are not statutes nor legal regulations of any kind but customs which are usually adhered to as fully as are statutes and legal rules.

Examples of conventions are: the monarch (Queen Elizabeth II) must agree to all bills passed by Parliament; and the monarch must accept and act upon the advice of ministers (Goodey in Dekker & Van Schalkwyk 1995:179).

From the above discussion, it can be concluded that Britain is under the doctrine of parliamentary supremacy as opposed to constitutional supremacy. The Parliament is therefore the legal sovereign body in that it makes and unmakes law as it decides. An existing Parliament is not bound by its predecessors and can change any previous statute. Moreover, there is no authority or court such as the United States Supreme Court or the South African Constitutional Court which can rule on the constitutionality of the statutes of Parliament (Curtis 1992:63-64).

2.7.4.1 Definition of minority

Under UK law there is no official legal (let alone constitutional) definition of minorities, and many different definitions would be possible. Perhaps the most obvious would be minority racial groups which are afforded a degree of legal

problem, since a rule laid down in legislation enjoys precedence over a rule laid down by common law. If there is no legislation in point, the lawyer or judge will turn to common law.

protection from discrimination in defined contexts under the Race Relations Act of 1976. An obvious problem then arises as to what is meant by a *racial group*: this is defined in the Act (section 3 (1)) as:

a group defined by reference to colour, race, nationality or ethnic or national origins...

According to Meredith (in De Groof & Fiers 1996:34) English law has not attempted to draw up a coherent definition of *minorities* in the sphere of education or in any other context. All that the UK Parliament has done is to legislate sporadically where a perceived need has arisen to provide an element of protection against discrimination on certain grounds to persons falling within a number of rather ill-defined groups. It could not be said that the UK Parliament has ever considered the legal position of minorities in a coherent, rational or principled fashion.

2.7.4.2 *Types of minorities*

Rassool (1995:290) maintains that the UK has ethnic minority groups from former British colonies who settled in Britain in the 1950s. It therefore comprises of diverse cultural, linguistic, and religious groups. The author also indicated that the groups exist at the periphery of mainstream society and lack the political means to define themselves. This disempowered social position has influenced, to a large extent, the degree to which their cultural needs have been acknowledged.

(a) *Minorities based on religious or philosophical conviction*

Three crucial issues for debate have arisen in the UK over religious minorities:

- the provision of religious education and collective worship in maintained schools, and the rights of parents to withdraw their children;
 - the rights of religious minorities to establish schools of their own within the maintained sector; and
 - the rights of members of religious minorities to wear clothing which is distinctive of their particular faith. This question has arisen in the context of Sikh boys wearing turbans and Muslim girls wearing headscarves (Meredith in De Groof & Fiers 1996:344).
- *Religious education and collective worship*

Goodey in Dekker & Van Schalkwyk (1995:207) maintained that one of the salient features of the development of education especially in England has been the important and influential role played by religion. During a period which lasted from the sixth century, when Christianity was established, to the nineteenth century, education was monopolised by the church. The church used to play important and frequent decisive roles in the development of English education. By the fourteenth century, there were about three to four hundred grammar schools, and in 1698 the Anglican Society for Promoting Christian Knowledge (SPCK) followed the example of the Scottish parliament by deciding that a school should be provided for every parish in and near London. The church therefore took the first steps towards making education generally available (Mann 1979:54). Religious education and a daily collective act of worship are a statutory requirement for all registered pupils in maintained schools in the UK, unless subject to a parental right of withdrawal.

The current legal requirements in the Education Reform Act 1988, sections 6 to 13, amended the previous provisions in the Education Act of 1944. The most important change was introduced by the then Bishop of London and sought for

the first time to give Christianity an element of centrality within the statutory framework - something which the 1944 Act had notably omitted. The aim of the 1988 Act was to give a significant measure of emphasis to Christianity, coupled with sufficient flexibility to meet the legitimate interests of other religious groups, particularly in schools where a large number of pupils come from ethnic minorities (Goodey in Dekker and Van Schalkwyk 1995: 213-215).

All registered pupils, unless exempted by virtue of parental request, are required to participate each school day in a collective act of worship which in non-denominational schools is required to be wholly or mainly of a broadly Christian character. This requirement is met if the act of worship reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination. In making the arrangements for collective worship, head-teachers and school governors are required, furthermore, to regard to pupils' family backgrounds, which would include their ethnic or religious backgrounds. Every local education authority is required, under the 1988 Act, to set up a Standing Advisory Council whose function it is to advise the authority generally on religious worship and religious education in accordance with agreed syllabuses in county and voluntary controlled schools. The membership of the Council must include groups representative of both Christian and other faiths in the relevant area (Meredith in De Groof & Fiers 1996:344-345).

(b) *Linguistic minorities*

As in many countries in Europe and elsewhere, the UK is a country of many linguistic minorities. However, the UK does accommodate other languages in their national curriculum. For example, a foreign language specified by order of the Secretary of State must be taught to all pupils as a foundation subject under the national curriculum. A number of Asian languages have also been designated

as foundation subjects and may be offered by maintained schools serving appropriate communities. These languages include Arabic, Chinese, Hindi, Japanese and Gujarati. However, English remains one of the core subjects (the others being mathematics and science) and must be studied by all pupils in accordance with designated programmes of study. The only exception relates to schools in Wales which are designated as Welsh-speaking, where the Welsh language is added to English as one of the core subjects.

2.7.4.3 Constitutional protection of minorities in education

Unlike South Africa and other countries, the UK does not have a written constitution in the sense of entrenched fundamental law which is hierarchically superior to statutes enacted by Parliament and with which those statutes must conform; nor can any UK court challenge the constitutional propriety of a duly enacted statute of the UK Parliament. The fundamental rule of the UK constitution is, on the contrary, that Parliament is sovereign or supreme (parliamentary supremacy as opposed to constitutional supremacy), and that the most recent enactment by Parliament on any given topic must be enforced by the courts and overrides any inconsistent prior enactments (Meredith in De Groof & Fiers 1996:342).

This elementary statement of constitutional principle in the UK must, of course, be qualified by (a) the fact that there are many practical and political limitations on the reality of Parliament's freedom to enact legislation; and (b) the UK Parliament's obligation to ensure that UK statutes (and delegated legislation) are consistent with the European Community law (Evans 1985:157). It follows from the absence of entrenched fundamental law in the UK that minorities enjoy no constitutional protection in the sense of having entrenched constitutional rights. The source of any legal protection afforded to minorities in the UK must,

therefore, be ordinary statutes of the UK Parliament, or common law as developed on a case by case basis by the courts.

- *Domestic legislation*

Some protection is afforded to certain categories of minorities under the Race Relations Act of 1976. This prohibits discrimination in certain contexts (for example, in education; employment; the provision of goods, facilities or services; housing) on racial grounds. Discrimination may be *direct* (i.e. treating a person less favourably than others), or *indirect* (that is, without justification applying a requirement or condition equally as between members of different racial groups, but in circumstances where the proportion of members of one or more particular racial groups who find that they can comply with the requirement or condition concerned is considerably smaller than the proportion of members of other racial groups who can comply with it) (Meredith in De Groof & Fiers 1996:345).

Indirect discrimination is intended to cover the situation where a given requirement or condition has a disproportionately adverse impact on a particular racial group, even though the requirement or condition is not specifically directed towards that group but is of general application. The 1976 Act thus prohibits direct or indirect discrimination based on *racial grounds*, that *racial grounds* being defined as being colour, race, nationality or ethnic or national origins (Meredith in De Groof & Fiers 1996:345).

Education is one of the areas of activity specifically covered by the Act. Section 17 of the Race Relations Act of 1976 indicates that:

it is unlawful for an educational establishment to discriminate on racial grounds against a person in the terms on which it offers to admit him or her; or, where a person is already a member of an educational

establishment, to discriminate on racial grounds in the way it affords him or her access to any benefits, facilities or services provided, or to exclude him or her from the establishment or subject him or her to any detriment...

The 1976 Act may thus enable members of racial minorities to challenge practices by local education authorities, educational establishments and school governors, which they consider to be discriminatory in any way particularly if it is a maintained school. The establishment of independent schools is allowed under section 17 of the Race Relations Act. However, the Act does not specify as opposed to schools maintained by the local education authorities, whether the independent schools have the right to discriminate. The fact that these schools do not fall under the category of schools not allowed to discriminate means that such independent schools may discriminate against other races.

Mention should also be made of section 76 of the Education Act 1944 which requires the Secretary of State and local education authorities to give regard to the general principle *that children should be educated in accordance with their parents' wishes, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.* At first sight, this provision might be thought to provide a powerful weapon for minority groups to employ against public authorities in order to ensure educational provision attuned to their particular needs and requirements.

2.7.4.4 The right of religious minorities to establish schools of their own within the maintained sector

The maintained sector of schooling in England and Wales comprises several categories of schools. They are:

- (1) *County* schools - established and wholly funded by a local education authority;
- (2) *Voluntary* schools - established normally by a Church authority, but with substantial funding from the state through a local education authority. The governors of voluntary aided schools have rather more independence than voluntary controlled schools. Voluntary status is held by many schools established by the Anglican and Roman Catholic Churches; in addition there are Methodist and Jewish schools with voluntary status; and
- (3) *Grant-maintained* schools established under the Education Act 1993: these are independent of the local education authority in which they are located and receive their funding from the central department through the intermediary of the Funding Agency for Schools, a non-departmental public body appointed by the Secretary of State (Mothata 1992:35; Meredith in De Groof & Fiers 1996:345).

Minority religious groups have sought to establish schools with voluntary aided status: this requires the permission of the Secretary of State under the Education Act 1980, section 13. At present Muslim schools thus operate only in the independent sector as fee-paying schools, while aided status is widely available to Anglican and Roman Catholic schools.

2.7.4.5 *The right of members of religious minorities to wear clothing distinctive of their particular faith*

It may at first sight be thought that the Race Relations Act of 1976 (section 17) rendering *discrimination on racial grounds in the provision of education* would provide a sure foundation for this right. In the case of *Mandla v Dowell Lee*⁵⁶

⁵⁶ See section 2.3.1.3.

([1983] 1 All E.R. 1062) the right of a Sikh boy attending an independent school to wear a turban was upheld by the House of Lords on the basis of its interpretation of the Race Relations Act of 1976. Section 3 prohibits discrimination on racial grounds namely race, nationality or ethnic or national origins. The Act does not prohibit discrimination on grounds of religion. The crucial legal issue is therefore whether in wearing a particular item of clothing at school the child could be said to be doing so as a member of a recognised ethnic group rather than merely as a member of a religious group. Only if the child is wearing the clothing as a member of a recognised group will he or she be protected under the Race Relations Act.

The Sikhs were founded as a religious community in the Punjab towards the 15th century by Guru Nanak, though they are not nowadays a purely religious community. They form a distinctive and self-conscious community, and have a written language which a small proportion of Sikhs can read. The House of Lords was unanimously of the view that the Sikhs formed a distinctive ethnic group and that the head-teacher of the school concerned had acted unlawfully in the contravention of the Race Relations Act in forbidding a Sikh pupil to wear a turban at school. The head-teacher's ban on wearing headgear constituted indirect discrimination in that the proportion of Sikh boys who could in conscience comply with the school's dress regulation was considerably smaller than those of other ethnic groups, and it was held also that the head-teacher had failed to adduce any genuine justification for the regulation.

It does not by any means follow that the same view would be taken of a female Muslim pupil seeking to wear a head-scarf in school. Muslims are far more geographically widespread and disparate in their origins and may well have difficulty in persuading a UK court that they satisfy the criteria for recognition as an ethnic group set out in Lord Fraser's speech in *Mandla v Dowell Lee*. In the event of a UK court taking the view that Muslims are a religious rather than an ethnic

group - which seems probable - an alternative possibility in an appropriate case would be for the pupil to rely not on the fact of being a Muslim, but rather on her national origins, which fall clearly within the Race Relations Act, and to claim that the relevant practice in the school (forbidding the wearing of a headscarf) constituted unjustified indirect discrimination. A female Muslim pupil of Pakistani origin, for instance, might be able to successfully argue that the proportion of pupils from Pakistan who could in all conscience comply with the requirement (not wearing a covering over the head) was considerably smaller than those of other national origins who could in all conscience comply with the condition. This would, however, be a somewhat strained and tortuous legal argument and is as yet untested (Meredith in De Groof & Fiers 1996:347).

2.7.5 EDUCATION FOR MINORITIES IN THE NETHERLANDS

The Netherlands is a Kingdom with a Constitution, and whose government comprises of the King/Queen, and the Ministers. The Ministers, and not the King/Queen are responsible for acts of government. The Prime Minister and the other Ministers are appointed and dismissed by Royal Decree. All acts of Parliament (including education) must be signed by the King and by one or more Ministers or State Secretaries (Constitution of the Kingdom of the Netherlands 1983:10).

2.7.5.1 Definition of *minority*

The Netherlands may be described as a pluralistic society. Although the Constitution of the Netherlands provides for, for example, freedom of religion or belief contained in article 6, freedom of association in article 8, and freedom of education in article 23, it does not include a separate provision on minorities nor does the Constitution attempt to define minorities. Article 1 of the Constitution indicates that:

All persons in the Netherlands shall be treated in equally circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or any other grounds whatsoever shall not be permitted.

As there is no mention of the term *minority* in the Constitution of the Netherlands, it can be concluded that the concept *all persons* refers even to minorities and that they have a constitutional right of equal treatment.

2.7.5.2 Types of minorities in education

(a) Minorities based on language

The main rule in elementary education is that Dutch is the language of instruction. In addition, in elementary education there is a statutory regulation that in places where Frisian or a regional language is spoken alongside Dutch, this language may be used as one of the languages of instruction in education. Furthermore, Frisian is a compulsory subject at schools in the province of Friesland, although exceptions may be made. In admitting pupils with a non-Dutch cultural background and furthering their adjustment to Dutch education, the language of the country of origin may be used as one of the languages of instruction in education (section 9, subsection 8 of the Primary Education Act and section 17 of the Special Education Interim Act (Groenendijk, Kruithof & Sturm 1995:240).

The general principle adhered to in secondary and higher education is that Dutch is the language of instruction. However, the following exceptions apply: courses in another language, courses including contributions by visiting lecturers who do not speak Dutch, and - in certain cases - where the specific nature, organisation, or quality of a course or the origin of its students necessitate it.

In addition, specific regulations provide for education in the language of the country of origin for pupils with a non-Dutch cultural background. As far as elementary education is concerned, the statutory basis for pupils' education in their own language and culture is enshrined in section 10 of the Primary Education Act and section 18 of the Special Education Interim Act. In the case of secondary education, this basis is laid down in section 12(a) of the Secondary Education Act. These provisions offer optional arrangements for a specified group of pupils.

In all these cases, a school board may add education of the of origin to the curriculum, either within normal school hours (up to a maximum of 100 hours a year) or at other times. Participation in such classes is optional for pupils. Not only in the adult basic education (for ethnic minorities and semi-literate-persons) and general adult education sector, but also in the primary and secondary education sector, the policy on language is geared towards teaching Dutch to non-native speakers (the group labelled 'NT2') as part of a more comprehensive approach targeting persons belonging to ethnic minorities who are newcomers to the Netherlands. The purpose of this approach is to promote self-sufficiency of this group in the Dutch society (van Ham in De Groof & Fiers 1996:361).

(b) Religion and belief

Section 8, subsection 3 of the Primary Education Act and section 11, subsection 3 of the Special Education Interim Act are based on the assumption that all pupils in the elementary schools are growing up within a multicultural society. Secondary education too has a provision of this kind, in section 24, subsection 3. This means the curriculum must take sufficient account of this diversity, for instance in attention paid to different religions. Religious or ideological education may be included in the curriculum of private schools (for up to 120 hours a year) and falls within the normally funded school (see e.g. section 37 of the Primary Education Act). In

public-authority schools, pupils are given an opportunity to attend classes of this kind within school hours. In such cases, the lessons concerned are taught under the auspices of a religious association, local churches, legal persons whose objective is to provide religious education, or organisations established on religious principles. They are not subsidised by central government but may apply for funding from the local authority (Walford 1995:248; Van Ham in De Groof & Fiers 1996:362).

(c) *Illegal aliens in education*

Article 2(2) of the Constitution maintains that *the admission and expulsion of aliens shall be regulated by an act of parliament*. The Netherlands Government favours a policy that is geared towards achieving two objectives:

- preventing illegal aliens from being enabled to prolong their unlawful stay in the Netherlands by having access to grants and benefits without any examination of their residential status; and
- preventing illegal aliens and those who have not yet been admitted to acquire the semblance of complete legality (Van Ham in De Groof & Fiers 1996:364).

2.7.5.3 *Constitutional protection of minorities in education*

(a) *Equality*

A number of articles in the Constitution of the Netherlands can be interpreted as providing protection to minority groups in education. Although article 23 is the most relevant regarding education, it is also grounded in other articles which guarantees minority group rights. The latter includes article 1 of the Constitution

(quoted above). The article guarantees the principle of equality in that all persons *shall be treated equally in equal circumstances*.

Van Ham in De Groof & Fiers (1996:358) maintains that the government of the Netherlands sees it as its responsibility to eradicate inequitable treatment and to guarantee every person's right to equal treatment. It performs this task in a variety of ways. One of the clearest statutory elaborations of the principle of equality as enshrined in the Constitution is contained in the Equal Treatment Act. The Act, is designed to promote participation in public life on an equal basis by providing protection against discrimination on the grounds of religion, belief, political persuasion, race, sex, nationality, heterosexual or homosexual preference or marital status. The Act forbids the making of distinctions between persons on these grounds.

(b) The right to education

On the other hand, the right to education is enshrined in article 23 of the Constitution, paragraph 2 of which lays down the fundamental principle:

Paragraph 2:

All persons shall be free to provide education, without prejudice to the authorities' right of supervision and, with regard to forms of education designated by law, its right to examine the competence and moral integrity of teachers, to be regulated by Act of Parliament.

Paragraph 3:

Education provided by public authorities shall be regulated by an Act of Parliament, paying due respect to everyone's religion or belief.

Paragraph 4 makes the following provision:

The authorities shall ensure that primary education is provided in a sufficient number of public-authority schools in every municipality. Deviation from this provision may be permitted under rules to be established by an Act of Parliament on condition that there is opportunity to receive the said form of education.

On the basis of article 23 of the Constitution, a distinction may be made in the Netherlands between public-authority and private education. Public-authority schools provide education on the government's behalf. Under the Constitution, the municipalities are responsible for maintaining a sufficient number of public-authority schools for primary education. In many cases the municipality is also the competent authority. Private schools provide education on the basis of private initiative.⁵⁷ Such a right to establish schools is guaranteed under paragraph 2 of the Constitution quoted above. Groenendijk, Kruithof and Sturm (1995) refer to these public schools as *openbare* (in Dutch) schools and private schools as *bijzonder* (literally meaning *particular* or *extraordinary*).

All of these schools (private and public), follow a range of subjects specified by law. Attainment targets and the number of hours spent on each subject are set. While schools are able to choose their own teaching methods, the maximum and minimum number of hours per day is prescribed by central government. Central government even lays down the dates and length of the holidays (Walford 1995:251). Therefore, if the private schools satisfy the conditions laid down by Act of Parliament, they are financed by public funds according to the same standards as

⁵⁷ Berkhout in Dekker and Lemmer (1995:146) indicated that private established education in the Netherlands originated in the nineteenth century as a result of religious differences and still protects the rights of groups holding different life and world views.

public-authority schools.⁵⁸ Article 23, paragraph 6 and 7 are the most relevant in this regard.

Paragraph 5 reads:

The standards required of schools financed either in part or in full from public funds shall be regulated by an act of parliament, with due regard, in the case of private schools, to the freedom to provide education according to religious or other belief.

Paragraph 6:

The requirements for primary education shall be such that the standards both of private schools fully financed from public funds and of public-authority schools are fully guaranteed. The relevant provision shall respect in particular the freedom of private schools to choose their teaching aids and to appoint their teachers as they see fit.

The above two paragraphs guarantee two rights. The first is the right of minority groups to open own schools and secondly the right to receive finance from the state. However, the latter depends on whether such a private school satisfies the criteria laid down by the government. Such a requirement is articulated in paragraph 7 of section 23.

Paragraph 7 reads:

⁵⁸ Geoffrey Walford (1995:25) in his discussion about faith-based grant maintained schools in the Netherlands, indicated that within the Netherlands, there are about 4 000 independent governing bodies that oversee just over 8 000 primary schools and 2 000 secondary schools. About 69 percent of primary school pupils and 73 percent of secondary school pupils attend privately controlled schools that are funded by the state. The vast majority of these schools are of religious foundation.

Private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards of public authority schools. The conditions under which private secondary education and pre-university education shall receive contributions from public funds shall be laid down by an Act of Parliament.

2.8 SUMMARY AND CONCLUSION

The above discussion attempted to explore the differences regarding the definition of *minority*. Despite the many references found in international instruments about the definition of minorities, there is still no agreement as to what constitutes a minority nor an internationally acceptable definition thereof. Not even the definition of Capotorti, the Special Rapporteur of the United Nations, was agreed upon by some governments in the United Nations. Even members of the Sub-commission that Capotorti led disagreed with some of the provisions in Capotorti's definition. Some maintained that the definition was too wide and could not be applied to certain countries notably countries in Africa because Capotorti's definition did not take sociological factors into account. Tribes and other ethnic groupings, particularly in Africa were not really covered in the definition. Other members felt that immigrants should not be included because of their voluntary assimilation. In view of these differences members of the Sub-Commission agreed that it was difficult to state precisely what the term *minority* covered and it would be an impossible task to try and define a concept that embraced a dynamic reality varying considerably from one country to another. The absence of such a definition should however, not constitute an obstacle to the application of article 27 of the ICCPR.

Some international instruments that are used to protect the rights of minorities, particularly in education, were also discussed in this chapter. These instruments include the the ICESCR (particularly section 1), the ICCPR (particularly section

27). The ICCPR is the first internationally accepted rule for the protection of minorities. Other instruments are the UDHR, the Convention against Discrimination in Education and Declaration of the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities. Lastly, the chapter presented the constitutional rights of minorities in education in four countries. From the above discussion it is clear that education cannot be separated from culture and cultural rights are also educational rights. International instruments protect cultural, religious, language and other rights, and encourage the practice of such. There are only two institutions where these rights can be practiced and these are the home and the school. All these rights are human rights entrenched in international human rights instruments.

CHAPTER 3

RESEARCH DESIGN

3.1 INTRODUCTION

As the nature of data gathering was qualitative, the chapter begins with a description of the methodology and design which were employed to explore the educational rights of minorities in education in South Africa. The chapter begins with a discussion of a theoretical basis of qualitative methodology including the rationale for the choice of methodology. This is followed by the description of the design of the study which includes the procedures used in locating and interviewing the informants, data collection and analysis, and issues on validity and reliability.

3.2 RESEARCH QUESTIONS

The aim of this research was to investigate, amongst others, the South African definition of *minority* given the fact that there is no international consensus on the definition of the concept *minority* and to explore the legal provision as well as perspectives of different groups on minority rights in education in South Africa. This was done against the background of the rights of minorities in education in selected countries from their respective constitutions and in educational practice. A number of research questions generated from the above statement and from the problem statement in chapter 1 were formulated (see also section 1.5).

3.3 RESEARCH APPROACH

“All research methodology rests upon a bedrock axiom: *The nature of the data and the problem for research dictate the research methodology*” (Leedy 1989:138). The terms *quantitative* and *qualitative* are used frequently to identify different approaches to research. Educational research therefore involves both approaches. The most obvious distinction between quantitative and qualitative methods is the form of presentation of data. The nature of data dictates the methodology. If the data is verbal, the methodology is qualitative; on the other hand if the data is numerical, the methodology is quantitative. Quantitative research therefore presents statistical results represented with numbers and qualitative research presents facts in narration of words (Schumacher and McMillan 1993:14). The authors also maintain that experienced researchers may combine both qualitative and quantitative methods in a single study in order to investigate a particular research problem. Data gathered by means of qualitative techniques will be presented in the form of words rather than numbers.

3.3.1 Qualitative methodology - A theoretical basis

According to Wiersma (1991:14) there has been much discussion and a considerable body of literature about the distinction, merits and limitations in qualitative and quantitative research. The author further maintains that the distinction is not a dichotomy but a qualitative-quantitative continuum. For example, ethnographic research, which is certainly placed towards qualitative end, may involve some quantitative measures. The methods of research should be directed to meeting the requirements of the research study, and the qualitative and quantitative procedures should be decided on that criterion.

Quantitative research is content-specific with the researcher's role being one of inclusion in the situation. Qualitative research is based on the notion of context sensitivity, the belief that the particular physical and social environment has great bearing on human behaviour. Qualitative researchers emphasise a holistic interpretation. They perceive facts and values as inextricably mixed. Quantitative researchers on the other hand look for more context-free generalisations. They are much more willing to focus on individual variables and factors, rather than to concentrate on a holistic interpretation. Typically, quantitative researchers separate facts and values (Wiersma 1991:14).

Le Compte, Milroy and Preissle (1992:7-18) described qualitative research as an idea-driven research. The authors maintain that to conduct an inquiry of any sort, somebody must have an idea. As inquiry proceeds, the idea that prompted it should become both better formed and better informed. They further state that the one critical attribute that qualitative and quantitative approaches share is that each begins with an idea that reflects human judgement. The severest critics of qualitative research sometimes appear oblivious to the fact that all research begins with a totally subjective, hopeless human decision about what to study. The authors believe that problem setting is the pivotal act of all science, social as well as not-so-social.

On the other hand, Schumacher and McMillan (1993:372) describe qualitative research as a naturalistic inquiry, the use of non-interfering data collection strategies to discover the natural flow of events and processes and how participants interpret them. Most qualitative research describes and analyses people, individual and collective social actions, beliefs, thoughts, and perceptions. ✓ Qualitative researchers collect data by interacting with selected persons in their settings and by obtaining relevant documentation. This is precisely how the data in this investigation was collected. Relevant documentation from government policy

documents, including the Constitution and submissions made by different organisations in the two conferences were not spared in this investigation. The conferences are discussed in section 4.5.4. Qualitative research is also concerned with understanding the social phenomenon from the participant's perspective. Understanding is acquired by analysing the many contexts of the participants and by narrating participants' meanings to these situations and events. Participants' meanings include their feelings, beliefs, ideals, thoughts, and actions.

Eisner (1991:32-40) outlined the *six features of a qualitative study*. They are briefly outline here:

- (1) Qualitative studies tend to be field focussed. In education, those conducting qualitative research go out to schools, visit classrooms, and observe teachers.
- (2) Qualitative research considers the *self* as an instrument. The self is an instrument that engages the situation and makes sense of it. This is done most often without the aid of an observation schedule; it is not a matter of checking behaviours, but rather of perceiving their presence and interpreting their significance.
- (3) A third feature that makes the study qualitative is its interpretive character. Interpretive here has two meanings:
 - (i) Inquirers try to account for what they have given an account of.
 - (ii) Qualitative inquirers aim beneath manifest behaviour to the meaning events have for those who experience them.
- (4) Qualitative studies display the use of expressive language and the presence of voice in the text.
- (5) A fifth feature of qualitative studies is their attention to particulars.

- (6) A sixth feature of qualitative studies pertains to the criteria for judging their success. Qualitative research becomes believable because of its coherence, insight, and instrumental utility.

The above discussion indicates that underlying the distinction between quantitative and qualitative research is a difference in purpose. Qualitative research is done for the purpose of understanding social phenomena. Quantitative research is done to determine relationships, effects and causes. When considering educational research, both of these purposes have relevance for the improvement of education. According to Wiersma (1991:14) both types of research are and, in fact, can be supportive of each other in understanding the many factors that impact on education.

3.3.2 The researcher's stance

In the above discussion it was indicated that the qualitative researcher collects data by interacting with selected persons in their settings and by obtaining relevant documentation. Although document analysis and interviews were the methods used to collect data, data was also collected by interacting with identified informants. This helped the researcher to gain understanding about the subjects and their understanding of the topic under investigation, from their own perspective. I was also a delegate at the two national conferences on the establishment of the Commission for the Promotion of Protection of the rights of Cultural, Religious and Linguistic Communities in South Africa and observed the debates and interacted with the delegates regarding the issues under investigation.

In addition, the researcher was invited to attend one of the public hearings, held in Johannesburg on 8 May 2000, about the proposed Bill on the establishment of the above commission. The hearings were organised by the Department of Provincial and Local Government and were held throughout the country during the year 2000

to allow communities to make comments on the Bill before it was submitted to parliament. So, as a key instrument in data gathering, the researcher's stance requires explanation.

3.3.2.1 *Disciplined subjectivity*

Minority rights is a contested political terrain in South Africa and the researcher might not personally agree with some of the views expressed given South Africa's history of polarisation. Whether or not the researcher was disadvantaged by racist apartheid policies, it is important for him to assume a stance of disciplined subjectivity and to put myself in the informants' shoes in order to understand the matter under investigation from their point of view. Schumacher and McMillan (1993:373) support this view when they indicate that the qualitative researcher is concerned with understanding the phenomenon from the participants' perspective. Understanding is acquired by analysing the many contexts of the participants and by narrating participant's meanings for these situations and events. Participants' meanings include their feelings, beliefs, ideals, thoughts and actions. The authors added that qualitative researchers become *immersed* in the situation and the phenomenon studied.

The researcher's participation in the two conferences (mentioned earlier) agrees with one of Eisner's six features of qualitative study discussed in section 3.2.1 i.e qualitative research considers the *self* as an instrument that engages the situation and makes sense out of it. In addition, the researcher reviewed relevant documentation, for instance presentations made during the two conferences. Also, the researcher's task in this study was one of analysis and synthesis. This includes a non-judgemental stance, particularly about the topic under investigation.

3.4 DATA COLLECTION

There are two data collection techniques that were appropriate to this investigation. They are document analysis and the interview technique. This study is based mainly on document analysis. The data collected during the semi-structured interviews provided additional information on the topic under investigation.

3.4.1 Document or content analysis

Birley and Moreland (1998:53) describe document analysis, also referred to as content analysis, as a common term for different types of textual analysis whose approaches emphasise either qualitative and/or quantitative descriptions and analysis of documents of various types. These documents may be official, semi-official or unofficial. The authors further maintain that content analyses are a very useful approach particularly for a researcher who is looking at a historical or a political issue. The procedure for systematically analysing written material is therefore called documentary or content analysis. Schumacher and McMillan (1993:433) refer to these documents as another form of artifacts. These include both personal and official documents. The former (personal) include diaries, personal letters and anecdotal records while the latter (official) documents include minutes of meetings, working papers and drafts of proposals. The official documents suggest the official perspective on a topic, issue or process and such sources may either be historic or contemporary. Ary, Jacobs and Razavieh (1990:385) also maintain that although the discipline of education is primarily concerned with people, many interesting and useful research projects in the field have been concerned with information obtained by examining records and documents.

Berg (1995: 145) wrote that documentary records may offer particularly interesting sources of data. In this study, documents formed a crucial part of this investigation

and were analysed as they shed light on the study. On the other hand Delmont (1992:104) cautioned that whatever type of document the qualitative researcher uses, the golden rule to remember is that all written records are socially produced. All documents are written in a social context, with some audience in mind, even if the audience is only the author. Just as the good researcher is sceptical about what is said to him or her, so too documents must be sceptically read and examined in their social context. Therefore, all documents presented in the study are examined in their social contexts, especially because the debate on minorities and their rights, specifically in South Africa, is done within a particular paradigm with different racial groups having their different ideas on the subject.

Birley and Moreland (1998:53) present three types of documents:

1. *Primary sources:* These are documents written at the time of the event. They may be official communications, journals, newspaper articles, minutes of meetings, reports, letter, and commentaries.
2. *Secondary sources:* They are written some time after the event. They involve commentaries on situations and events like newspapers editorials.
3. *Statistical sources:* Include, for example, consensus and contemporary surveys.

In this study the researcher used primary documents as far as possible. The first step when conducting content research is to access these primary documents. Fortunately the researcher was one of the officially invited delegates representing the University of South Africa's Education Policy Unit at both conference and was in possession of these documents, particularly the submissions from different organisations, including political, religious, linguistic and cultural organisations.

3.4.1.1 *Primary documents used in the study*

A number of primary documents relevant to the study were identified. The findings of the analysis are presented in chapter 4.

(1) *The Constitution Act no. 108 of 1996*

The first of those primary documents is the Constitution of South Africa, Act no.108 of 1996. Adopted by the National Assembly on 8 May 1996, the Constitution is the supreme law of the country. The Act provides a framework of the topic under investigation. Relevant sections with implications to the education of minorities were identified. These include sections 15, 29, 31 and 36 (see section 4.3 and appendix 1).

(2) *Acts of Education (Legislation) and policy documents*

In addition to the Constitution, various Acts and other policy documents in education with implications on minority rights in education were also identified. These include the White Paper on Education and Training; the National Education Policy Act (NEPA) (Act no. 27 of 1996); and South African Schools Act (SASA) Act no.84 of 1996. Drafted within the framework of the Constitution, the SASA is the most relevant legislation regarding school practice. Relevant sections of the SASA include sections 5, 6 and 7.

Additional official documents with relevance to this study include the following: Language in Education Policy (LiEP), Norms and standards regarding Language Policy; and a published report by the Ministerial Committee on Religious Education in schools. Such documents are discussed in section 4.2.3.

(3) *The conferences*

The submissions made by various cultural, religious, political and linguistic groups at the two conferences on the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, formed part of the primary documents. The theme of the first conference was *A National Consultative Conference on Nation Building through the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*. This first conference was held on Heritage Day 24 September 1998 at Gallagher Estate, Midrand and was organised by the Department of Constitutional Development in conjunction with the Department of Arts, Culture, Science and Technology. These departments were then under the Ministers Valli Moosa and Lionel Mtshali respectively.

By arranging these conferences the government was aiming to consult as widely as possible on the establishment of the Commission for the Protection of the Rights of Cultural, Religious and Linguistic Communities. The second conference, organised by the Ministry for Provincial and Local Government under Mr Sydney Mufamadi, was held exactly a year later, also on heritage day, 24 September 1999 at the Volkswagen Marketing Centre, Midrand.

Both conferences were arranged in accordance with sections 185 and 186 of the South African Constitution Act no.108 of 1996 (see appendix 1). The debates about the establishment of this Commission have direct implications on education and educational provision and practice. As indicated earlier, the researcher argued from the premise that there are only two main terrains where culture can be transferred from one generation to the other: the first is the *home*, and the second is the *school*. Hence the argument that the Commission would directly or indirectly have a influence on education.

As already indicated, these conferences were held in 1998 and 1999. Some of the submissions were not relevant to education. A synopsis of only those submissions that were considered to have implications for education provision are presented in chapter 4 of this study.

Among the documents at the conference, was the draft legislation from the Department of Constitutional Affairs of the South African government regarding the establishment of the Commission on the Promotion and Protection of Cultural, Religious and Linguistic Communities. This draft legislation is also relevant as it forms part of the submissions from the Government.

(4) *The media*

(a) *Television debates*

The statements made in the media were very crucial in this research. There were debates on minorities and their rights in education in the newspapers and on national television. For example, the television debate about minorities and their rights, especially in education, which took place on 17 September 1998 in a television program called *Two Way* provided data for this research (see section 4.2).

(b) *News reports*

Racial incidents in a number of schools brought about by school integration, notably the Potgietersrus Primary School affair in the Northern Province where white parents vowed to keep the public primary school white were also in the news. In addition, the Vryburg High School racial incidents in the North West Province were also widely covered in the media. These incidents are good examples on the rights to open own schools by minority groups in South Africa. A collection of

newspaper articles was done as they are a rich source of data about minorities and their rights in education. They all form part of the primary documents which the researcher mostly relied on in this study.

3.4.1.2 Cross checking data

In addition, cross checking, especially with regard to international instruments on minorities and the South African Constitution, discussed in chapters 2 and 4, was done with constitutional experts in the Faculty of Law at the University of South Africa. In this regard Professor Elmene Bray, a professor in Constitutional Law and Advocate A. Ramolotja, from the Faculty of Law, UNISA were consulted. In addition, the editor of this thesis, Professor Keren Le Roux, is an expert in education law. Besides the language editing, Professor Le Roux also cross checked the legal component of this thesis.

3.4.2 Interviews

In addition to document analysis, semi-structured interviews were conducted during February/March 2000 at the offices of key informants. Each interview was recorded on video tape throughout. In addition, brief notes were also made during the interview. Before the interview was conducted, each key informant filled in a brief questionnaire on which basic biographical information was recorded as well as a declaration of consent.⁵⁹

All the interviews began with a brief explanation of the purpose of the project, assurances about confidentiality of the information and in terms of using the information specifically for this study and some general guidelines for the interview process. The researcher then conducted the semi-structured interviews with the

⁵⁹ cf appendix 2

help of the interview guide, focussing around some core questions. These include, amongst others, the definition of *minority* (both internationally and nationally), the rights of minorities in international instruments, what rights should be granted to minorities in South Africa and the significance of the Commission of the Rights of Cultural, Linguistic and Religious Communities to minorities and their education.

Although the researcher had an interview guide,⁶⁰ the interview was conducted as a general conversation during which the researcher listened carefully and occasionally asked further questions. There was no rigid control of the interviews. In this regard, Bogdan and Biklen (1992:97) wrote that when the interviewer controls the content too rigidly, when the subjects cannot tell their sides of the stories, the interview falls out of the qualitative range. In this study, the interview was conducted flexibly to enable the informants to tell their stories personally in their own words. Good interviews are those in which the subjects are at ease and talk freely about their points of view. In any research interview, particularly in this study, the purpose was to listen, understand and learn other people's perspectives on the topic under discussion and not to instruct them.

Although the researcher has his own views on the opinions given, given South Africa's history of racial polarisation, the researcher did, however, encourage the informants to speak about the rights of minorities in education. The researcher constantly reminded himself that he was not there to change views, but to learn what the informant's views are and why they are that way.

⁶⁰ cf appendix 3

3.5 SAMPLING

There are different forms of sampling that can be applied in any research or investigation of this nature. In the case of this study, the following sampling procedure and techniques were applied.

3.5.1 Selection of informants

Purposeful sampling was used. This sampling technique requires that informants are chosen deliberately by virtue of their status. According to Schumacher and McMillan (1993:378) purposeful sampling means that the researcher searches for information rich key informants, groups, places and events to study. In other words these samples are chosen because they are likely to be knowledgeable and informative about the phenomenon the researcher is investigating.

Bogdan and Biklen (1992:71) maintain that in purposeful sampling the researcher chooses particular subjects because they are believed to facilitate the expansion of the developing theory. In the case of this study the key informants were chosen because of their status in their respective organisations. Some of them are leaders in political circles and have always been listened to in public about the issue of minorities and their rights. All the key informants had participated on behalf of their respective organisations in the two national conferences held in 1998 and 1999 on the Commission for the Protection and Promotion of Cultural, Religious and Linguistic Communities.

3.5.1.1 *Locating the key informants*

The researcher considered delegates to the first and second conference on the establishment of the Commission for the Promotion and Protection of the Rights of

Cultural, Religious and Linguistic Communities held in Midrand in 1998 and 1999 to be rich with information about the topic under discussion. The informants were approached at the 1999 conference held at the Midrand Volkswagen Centre and invited them to share their views on the topic under discussion with me at times convenient to them.

One of the informants, Mr Willem Damara, who was also chairperson of the Nama and the San national language committee was located through the help of the PANSALB. Mr Damara in turn also recommended that the researcher should also talk to Nigel Crawhall, a sociologist working with the South African San Institute in Cape Town.⁶¹ Formal letters were sent to the subjects and their respective organisations, thanking them for their willingness to be interviewed, and explaining the purpose of the interviews and issues of confidentiality.

3.5.1.2 *Size of sample*

A small sample of four key informants were chosen. As Patton (1990:14) indicates, the power and logic of purposeful sampling, which was used in this investigation, is that a few cases studied in depth yield many insights about the topic. In this study and in addition to content analysis, a few information-rich informants were interviewed and they contributed significantly to the topic under investigation, namely the educational rights of minorities in South Africa.

3.6 **FIELD NOTES**

Bogdan and Biklen (1982:74) describe *fieldnotes* as *the written account of what the researcher hears, sees, experiences, and thinks in the course of collecting and*

⁶¹ cf section 4.7.2.1

reflecting on the data in a qualitative study. The authors maintain that *fieldnotes* can be an important supplement to other data-collecting methods. For example, in conducting taped interviews the meaning and context of the interview can be captured more completely if, as a supplement to each interview, the researcher writes out *fieldnotes*. The tape-recorder misses the sight, the smells, the impressions and the extra remarks said before and after the interview.

In this investigation, after returning from the interviews, and despite the fact that most of the data was on video, the researcher wrote out what had happened in the *field* especially remarks made before and after the formal interview session. In addition, the researcher had access to a television tape⁶² wherein the issue of minority rights was discussed publicly on national television.

3.7 DATA ANALYSIS

Bogdan and Biklen (1992:153) describe data analysis as the process of systematically searching and arranging the interview transcripts, fieldnotes and other materials that one accumulates to increase one's understanding of them and to enable one to present what one has discovered to others. Given the above description, analysis involves working with data, organising it, breaking it into manageable units, synthesizing it, searching for patterns, discovering what is important and what is to be learned and deciding what to tell others. In this study, analysis of the data began during document analysis through to the different interviews with identified informants. Data was organised around key themes (see chapters 4 and 5).

⁶² cf section 4.2

3.8 VALIDITY AND RELIABILITY

3.8.1 Validity

Validity, generally defined as the trustworthiness of inferences drawn from data has always been a concern in educational research (Le Compte, Millroy and Preissle (1992:644). Validity is a term which also refers to how well an instrument measures what it is supposed to measure. In qualitative research various authors, for example Schumacher and McMillan (1993:391) and Huysamen (1994:112-116), distinguish between two types of validity, namely, internal and external validity. Internal validity refers to the degree to which the explanations of the phenomenon match the realities of the world. It addresses the questions: Do researchers actually observe what they think they are observing? Do researchers actually hear the meanings that they think they hear? In other words internal validity of qualitative designs is the degree to which the interpretations and concepts have mutual meanings between the participants and researcher. In the authors' views, the claim of high internal validity rests on the data collection and analysis techniques. They therefore recommend the following strategies that they believe will increase internal validity. These strategies were applied in this investigation.

- (1) *Lengthy data collection period:* The lengthy data collection period provides opportunities for continual data analysis, comparison, and corroboration to refine ideas and to ensure the match between research-based categories and participant reality. In this investigation, data was collected over a two to three year period, during which conferences were attended and the debates about the minority issue in the media were followed.

- (2) *Participants' language*: In this case the informants were encouraged to express their views in their own words. In some cases, for instance in an interview with Willem Damara, Afrikaans was used. Translations are provided.
- (3) *Field research*: The semi-structured interviews with informants were conducted in natural settings, all taking place in their offices where there were no restrictions, controlled situations and disturbances.

On the other hand, external validity refers to the degree to which findings can be generalised to the population from which the participants were drawn. Generally, validity in qualitative research is largely determined by the extent to which the data represent the actual subjective experience of the participants (Le Compte, *et al* 1992:644-655).

The validity of information is primarily determined by the participant's willingness to freely communicate his/her experiences to the researcher in an atmosphere of trust and comprehension (Benny and Hughes in Lemmer 1989:156). In the case of this study and in terms of the criterion for validity, all informants voluntarily shared information and their views regarding the educational rights of minorities in education. All informants were under no pressure to share their views about the topic under discussion. In fact, the informants supported and endorsed the study with the hope that it would help in making the public aware of their side of the story regarding minorities.

3.8.2 Reliability

Reliability in qualitative research refers to the consistency of the researcher's interactive style, data recording, data analysis and interpretation of participant

meanings from the data (Schumacher and McMillan 1993:385). According to Bogdan and Biklen (1982:44) reliability in qualitative research is viewed as the *fit* between what is recorded as data and what has actually occurred during the setting under study, rather than literal consistency across different observations. In other words, two researchers studying a single setting may come up with different data and produce different results. Since there was only one researcher in this case, all data was collected, analysed and interpreted in a uniform manner during this investigation and the researcher strove to avoid the natural flow of information from informants as little as possible.

Mentioned below are strategies that were used to minimise threats to reliability.

3.8.2.1 Reliability of design

Schumacher and McMillan (1993:386-388) presents six factors that can enhance reliability in design. These factors are applicable to this investigation.

(1) The researcher's role

The importance of the researcher's social relationship with the participants requires that research studies identify the researcher's role and status within the group. The researcher's role is clarified in section 3.2.1.

(2) Informant selection

Informant selection, as a threat to reliability, is usually handled by careful description of the informants and the decision process used in their selection (see section 3.4.1).

(3) *Social context*

Social contexts influence data content and a description should be included of the people, time and place where events and interviews took place (see section 3.3.1).

(4) *Data collection strategies*

The methods employed, in this case document analysis and semi-structured interviews, as well as the way in which data was recorded and under what circumstances must be explained (see sections 3.3.1 & 3.3.2).

(5) *Data analysis strategies*

Through retrospection accounts must be provided of how data was synthesised, analysed and interpreted (see sections 3.3.1 & 3.6).

(6) *Analytical premises*

The primary safeguard against unreliability is making explicit, the conceptual framework, which informs the study and from which the findings from prior research can be integrated or constructed. This was done in chapter 1 of this study.

3.8.2.2 *Reliability in data collection*

Qualitative researchers commonly use a combination of possible strategies to reduce threats to reliability. The following were adopted in this investigation:

(1) *Verbatim accounts*

Verbatim accounts of conversations, transcripts and direct quotes from documents are highly valued as data. Researchers present in their studies extensive direct quotations from the data to illustrate participant meaning. Throughout this investigation direct quotes were used.

(2) *Low-inference descriptors*

Concrete, precise descriptions from field notes and interview elaborations was made when the data were analysed.

(3) *Mechanical recorded data*

For accuracy and security, both audio and tapes were used to record the semi-structured interviews.

3.9 LIMITATIONS OF THE STUDY

Following the abolition of apartheid and the introduction of integrated schooling, the issue of minority rights in education especially language minorities, came under scrutiny. Some communities felt that their languages, religions and generally their cultures were marginalised. The debates, accusations and counter accusations were so many and so intense that it was impossible for the researcher to note all of these events (see also section 1.12).

As indicated, the researcher made use of two data collection techniques. The first was to analyse documents at his disposal at the time of writing this study and the second was a small sample approach where a few key informants were interviewed. Where possible, the scope of analysis, particularly analysis of documents, was limited to provisions relating to the educational rights of minorities.

While the researcher endeavoured to identify the real issues of minorities and their rights in education the study may not claim to have identified and exhausted all issues pertaining to minorities and their rights in education nor unravel the complexity of the problem. However, it is hoped that the findings in this study will help policy makers and ordinary citizens to understand their rights as members of minorities from both international and national instruments.

3.10 SUMMARY AND CONCLUSION

This chapter dealt with the topic research design. Several issues were outlined under the aforementioned topic. They include the approach used in this investigation namely the qualitative approach, the theoretical basis of a qualitative research and the researcher's stance. Data collection techniques were also analysed. Basically this investigation will engage two data collecting techniques namely document analysis and unstructured interviews. Document analysis is the first and very important for this study because the study is mainly based on document analysis. As indicated in chapter 1, the interviews provide additional information about the topic under investigation.

Under document analysis the focus will be on primary documents and fortunately the researcher had easy access to the relevant documents which are a source of data in this investigation. The chapter also touched on data analysis, reliability and validity and sampling. In the next chapter the data is going to be presented.

CHAPTER 4

DISCUSSIONS OF FINDINGS: MINORITY RIGHTS IN EDUCATION IN SOUTH AFRICA

4.1 INTRODUCTION

The previous three chapters focussed on how international instruments like the ICCPR, the UDHR, and the Convention Against Discrimination in Education make provision for minorities, particularly in education (chapter 2). Also included in chapter 2 were, amongst others, the definition of *minorities* and the lack of international consensus regarding such a definition. In addition, an overview of minority rights and education provision in selected countries was discussed in chapter 2.

The previous chapter (chapter 3), presented a description of the methodology employed in this study. In this chapter the findings by means of the analysis of primary documents addressing the education rights of minorities will be discussed. The chapter also addresses, amongst others, the national media debates on issues of minorities and the South African definition of the concept *minority* in terms of the Constitution and other relevant legislation; the relationship between the South African Constitution and International law, especially with regard to the provision of education to minorities; and how the South African Constitution makes provision for the protection of minorities in education.

As indicated in chapter 3, relevant laws and other policy documents in South African education which actually put the constitutional provisions in practice are also addressed. Such laws include the NEPA (Act no. 27 of 1996) and the SASA

(Act no. 84 of 1996). Additionally, other published official government policy documents include the White Paper on Education and Training, published in 1995, and the LiEP.

This chapter also outlines the functions of the proposed Commission on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, herein referred to only as the Commission, and how such a commission will have an impact on the education of minorities. Such functions are contained in the Draft Bill⁶³ presented to the government on the 24 September 1999 during the second conference on the establishment of the Commission.

During these two conferences, inputs and submissions were received from different organisations representing minority groups. Some of the inputs made had relevance to the education of minorities, and therefore to this study. Organisations which made submissions include the African Crusade, the Afrikanerbond, the Griqua National Conference of South Africa, and the Northern Amandebele National Organisation. Such inputs formed the basis of the Draft Bill which, among others, outlined the composition and functions of the Commission.

4.2 AN OVERVIEW OF THE DEBATE: MINORITY GROUPS IN SOUTH AFRICA

Firstly an overview is given of the issue of minorities in South Africa. After the adoption of the Constitution, starting from the interim Constitution of 1993 to the final Constitution of 1996, the issue of minorities came into the limelight in South Africa. Even before the adoption of the final Constitution, certain groups who regarded themselves as minorities insisted, during political constitutional debates

⁶³ These functions are within the framework of the constitutional function of the Commission as contained in section 185(1) of the Constitution of the RSA.

about the provision in the Constitution, on some form of protection of minorities (Devenish 1999:411).

However, the debate did not end in the National Assembly. Ordinary South Africans, especially those whose languages, religions and cultures were in the past marginalised, voiced their views regarding their status as minorities. Examples of these marginalised languages are the Khoe, the Nama and the San. Even those whose languages were privileged in the past, for example the Afrikaners, feared that the government's new policy on language in schools put their language on the verge of extinction. The Afrikaner community, in particular, even went to the extent of opening their own schools where their children are taught in their mother tongue.⁶⁴ Generally, such schools would practise and promote the culture and use the language of that particular group of people as a medium of instruction.

On the 17 September 1998, a minority debate was held on national television. Different cultural groups, for instance the Venda, Griquas, Indians, Coloureds, Ndebele, and Afrikaners were represented. Religious groups represented in the debate included the Christian Coalition, the South African Council of Churches. Representatives also included the Council for Marginalised Languages of South Africa (for example Venda, Tsonga, Swati and Ndebele), Pan South African Language Board (PANSALB),⁶⁵ learners from different schools for example Crawford, Reasoma in Soweto, St Enda and Barnato High Schools were also

⁶⁴ An examples of such a school is *Die Volkskool* in the town of Potgietersrus in the Northern Province.

⁶⁵ A body established in terms of section 6(5) of the Constitution of the RSA Act No. 106 of 1996. The section makes provision for the establishment, by national legislation, of the PANSALB. The first Board with 13 members was inaugurated on 24 April 1996. In terms of the Constitution, the PANSALB must promote and create, among others, conditions for the development and use of all official languages. In addition, it must also promote and create conditions for the development of the Khoe, Nama, San and sign languages.

represented. The government was also represented by the Honourable former Minister of Constitutional Affairs, Mr Valli Moosa. Fortunately most of the stakeholders honoured the occasion.

The television debate centred around the following two questions:

- (1) The first was whether the country could afford to provide such an education system where minority groups could be provided with their own schools and curriculum relevant to their culture. Would it not be better if the provision of such specialised and elitist education be put on hold until the country could at least provide basic services like housing, education, running water, health care and other basic needs?
- (2) The second question was on the minority expectations. What are their needs as a minority group?

Introducing the topic under discussion, the presenter Ceasar Molebatsi, indicated that there were a lot of talk in South Africa about the protection of minorities in a multicultural society and that some minority groups, for instance, are adamant that their children should be taught in their mother tongue.

Different groups offered different replies to the two basic questions. The *Afrikaanse Kultuur*, for instance, indicated that they were glad the Constitution made provision for eleven official languages and that provision was made for the establishment of the Commission in terms of section 185 of the Constitution. In their view, the Commission would have to make sure that their language (Afrikaans) is treated like the other ten South African official languages. The Muslims, on the other hand, needed protection because of what its representative called

misunderstanding that they (the Muslims) were a *militant* and a *gun crazy* community.⁶⁶

The Griqua National Forum and Conference also believed that minority rights must be protected and that their rights in a community must be acknowledged. In fact, the Griquas not only regarded themselves as simple minorities but as an *indigenous first nation minority*.

One of the groups present in the debate were student representatives from Barnato High School in Johannesburg. They complained that in their school they have to study the English language which is compulsory and in addition an additional language, either Zulu or Afrikaans. This resulted in fewer learners opting for the Zulu language and it became a minority language in the school. As a result the government made no provision for Zulu teachers. That, the students said, was a violation of their human rights. It does not matter how many learners have registered for Zulu as a subject, the government was under constitutional obligation to provide a Zulu teacher.

African parents who registered their children in English medium schools, which are mostly in well to do suburbs, also came under attack in the debate. The feeling was that those parents taking their children out of the townships, transporting them on daily basis to town and city schools, are actually doing their African culture a disservice. The parents were supposed to keep their children in the villages and the townships so that the children can learn their African culture and help develop it. One of the delegates actually indicated that *they* were not impressed by African parents speaking in English to their children.

⁶⁶ Although there was no direct mention about the Muslim dominated vigilante group called People Against Gansterism and Drugs (PAGAD), it can be inferred from the remark that a *militant* and *gun-crazy* community referred also to PAGAD, given its militant activities.

In the debate, the leader of the Freedom Front political party mentioned that *caring for different cultures is as important as providing running water*. The problem is how to manage it. He added that a minority group claims to be a minority group; it cannot be classified by government as such. It has to declare itself as a minority group.

Generally, in view of the expressions from different groups, there was consensus that minorities and their rights must be recognised and protected by government. In addition, government should make provision for minority languages to be used as media of instruction in schools opting to use such languages. The debates bring us back to the initial premise that was highlighted previously about education taking place in two terrains, namely, at home and school. Given the fact that children spend more time at both home and at school than in the church and other institutions where culture can be transmitted, the former (home and school) are the two basic terrains where culture can be transmitted. However, the concerns expressed by different groups are not really centred in the practice of one's culture at home only but that public schools have to accommodate and recognise diversity and provide for different cultural groups.

In the dispute concerning the constitutionality of certain provisions of the School Education Bill, Case No. CCT 39/95, Judge A L Sachs, concurring with the judgment of Judge DP Mohamed had this to say about the minority issue:⁶⁷

...there is no clear majority population in South Africa against which minorities need to be protected. Linguistically and culturally speaking, there are only minorities in our country. The problem is how to balance their interests, rather than to protect any one group against the other.

⁶⁷ See also section 4.9.3: the speech made by Thabo Mbeki on 24 September 1998 at the Consultative Conference.

There are two important issues that Judge Sachs brought to light. One is that South Africa is a country of minorities and secondly, there is no clear majority population in South Africa that minorities can be protected against.

However, the argument regarding Judge Sachs' views is not new to most South Africans, especially to Africans. His views depend on two issues: the first is on WHO defines minority groups and the second, WHAT the person's intentions are. For instance, during the apartheid era, architects of apartheid defended the apartheid philosophy mainly on the grounds of Judge Sachs' statement. Apartheid itself was regarded as minority protection. But, because it was characterised by inequalities and many forms of oppression, it went horribly wrong.

4.2.1 Population composition

There is no clear majority culture in South Africa against whom other minorities should be protected. The following table indicates the percentages of population groups in South Africa:

TABLE 1: Percentages of the population in South Africa by population group

POPULATION GROUP	PERCENTAGE
Africans	76,7
White	10,9
Coloured	8,9
Indian	2,6

(Statistics South Africa: 1999:9)

Converting the above percentages in numerical terms, Africans comprise 31,09 million out of South Africa's population of 40,6 million. They are followed by Whites, about 4.42 million. The Coloureds are in the third position, 3,61 million and the last are the Indians, 1, 05 million. This means that more than three quarters (77%) of the population of South Africa are African. Statistics South Africa did not supply figures in terms of ethnic groups. However, it can be inferred from table 3 (section 4.3.4), about the number of people speaking different home languages, that if Africans can be broken down into ethnic groups, the Afrikaners may not necessarily be a minority anymore. In fact, in terms of table 3, in section 4.2.3.3, the Afrikaners are in the third position.⁶⁸ The question is, what protection do Afrikaners therefore need?

4.2.2 Defining minorities in South Africa

In chapter 2, section 2.2, the researcher indicated that there is no international consensus on the definition of the concept minority. Some of the countries that the researcher reviewed, for example the UK, Germany and Belgium, have no official definition of the concept *minority*. The latter two are, like South Africa, constitutional states and the concept *minority* does not appear in their constitutions.

The same applies to South Africa. The concept *minority* does not appear in the South African Constitution (Act no. 108 of 1996), let alone a definition of the concept *minority* as used and defined in international law particularly in article 27 of the ICCPR. However the Constitution sections 31, 181, 185, and 186 make reference to *cultural, religious and linguistic communities* and not *minorities*. According to De Waal, Currie and Erasmus (2000:422) defining the term

⁶⁸ Even if the figure may be boasted by the number of Coloureds whose home language is Afrikaans, it is possible that the Afrikaners are still in a high position in terms of numbers.

community is rather difficult. Generally speaking, the term can simply mean an aggregation of people (similar to state or society). More precisely the modern usage of the term denotes an aggregation of people with a particular quality of relationship, held together by “something in common”. It is the quality of relationship that is crucial. To show the complexity of the term *community*, the authors gave these two examples: one would not think of left-handed people as forming a community although they undoubtedly share something in common; nor would one think of the shareholders of a large company as a community although, unlike left-handed people, they have something in common that is a matter of their own choosing and not simply an arbitrary characteristic.

Given the above examples, what of the speakers of, for example, the Afrikaans language? They share an important characteristic, but whether the nature of their relationship with each other is sufficient to constitute a community, is not clear. Afrikaans speakers do not know each other personally, do not really interact with each other and are divided in any number of significant ways such as race, class and political affiliation. Yet it is possible that most speakers of the language would feel aggrieved if a legal measure impacted negatively on the use of the Afrikaans language even if the measure had little or no effect on them personally.

The purpose of section 31 is to protect the same values of cultural pluralism and tolerance that article 27 of the ICCPR seeks to protect. Perhaps the reason for using the term *community*, particularly in South Africa, has more to do with the attitudes conveyed by the term. In contemporary South African discourse, positive associations are attached to the words *culture* and *community* while *ethnic* and *minority* are tainted by their association with the apartheid ideology. There is therefore enough congruence between the two terms that definitions of ‘minority’ can assist in the definition of *community* (De Waal, *et al* 2000:422-423).

In international law, as already described in section 2.2, a minority is a separate group, distinguished on the basis of race, religion or language from other groups. To be a minority the group must manifest a sense of community and a desire to preserve identity. In addition, a group must be in a non-dominant position. It requires rights to protect it because it cannot use political power to do so. By analogy, a *community* for the purpose of section 31 should be an identifiable group, united by a common religion, language or culture, that is self-consciously a community. Self-consciousness requires that the members of the group should identify themselves as part of the group, and that they should be identifiable by other members as such. Non-dominance simply means that the community should find itself at odds from time to time with the rest of society; that its culture is not a dominant culture; its language is not the majority language; and its religion is not the official religion of the state. Therefore the purpose of the grant of the section 31 right is to enable such a community to preserve its distinct existence against the forces of discrimination or assimilation to which it would otherwise be vulnerable.

To claim the protection of the section 31 right, a claimant must be a person '*belonging to a cultural, religious or linguistic community*'. This is the equivalent of article 27's phrase '*persons belonging to ...(ethnic, religious or linguistic) minorities*'. The right is therefore limited to those who belong to '*cultural, religious and linguistic*' communities and not to everyone. Of course the assumption is that all individuals belong to either a cultural, religious and/or linguistic community.

In the context of the above discussion and constitutional provision, the general argument forwarded by some key informants, particularly General Constand Viljoen of the Freedom Front and Darryl Swanepoel of the New National Party, discussed in 4.8.1.1, that South Africa is a country of communities or minorities is acceptable. However, there is no dominant group in South Africa that makes others to seek protection under article 27 of the ICCPR and section 31 of the Constitution.

At the time of the study, the only official government document wherein the concept *minority* was used frequently was a report on debates and submissions⁶⁹ made at the 1997 consultative conference in Midrand. Perhaps the concept was used simply because most of the submissions made kept referring to minorities and not communities as used in the Constitution. The Draft Bill⁷⁰ published in 1999 for comments did not use the concept *minority* as used in international instruments. Reference was made to the concept *communities*. Still, the Bill did not attempt to define the concept *communities*.

Notable in the Draft Bill is the use of the concept *main* when making reference to cultural, linguistic and religious communities. Reference is made to:

- (1) main cultural community;
- (2) main linguistic community; and
- (3) main religious community.

The above communities are said to be recognised under section 3 of the Draft Bill which is about identification of the main cultural, religious and linguistic communities. Section 3(1) indicates that:

The President, by notice in the Government Gazette, must identify the main cultural, religious and linguistic communities in South Africa (Draft Bill: 1999:3)

⁶⁹ The report was prepared by Group Democracy and Governance of the Human Science Research Council (HSRC) for the Department of Constitutional Development.

⁷⁰ The draft Bill was prepared by government to give effect to the establishment in terms of section 181 of the South African Constitution, of the Commission for the Protection of the Rights of Cultural, Religious and Linguistic Communities; to regulate the functioning of the Commission; and to provide for an annual national consultative conference.

There is also no description of *main* and who has the discretion to declare a culture, a *main* culture. Perhaps the identification of main groups by the President is done to avoid possible conflicts that may arise from within one cultural group where one may find different groups even in one culture claiming to represent the interest of that particular culture. For instance, there are a number of organisations within, for instance, one cultural group, say the Afrikaner culture, claiming to represent the interests of the Afrikaners. Examples are the Federasie van Afrikaanse Kultuurverenigings (Federation of Cultural Organisations) and the Afrikanerbond.

Section 3(2) of the Bill indicates that:

Before the President publishes the notice referred to in sub-section (1), the Minister, through advertisement in the media circulating nationally and each of the provinces, must invite organisations furthering the promotion or protection of the cultural, religious and linguistic aspirations of particular communities in South Africa, to make submissions, in writing, to the Minister for the recognition of its community as one of the main cultural, religious or linguistic communities in South Africa within the meaning of section 186 of the Constitution (Draft Bill on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Minorities 1999:3).

The above subsection agrees with what the Freedom Front leader, during the television debate,⁷¹ said about identification and classification of minorities. He indicated that minority groups should not be classified by government as a minority, but those groups must claim to be a minority group and declare themselves as such. Generally the process of recognition of the main groups may be a bit difficult given the fact that there is no national definition of the concepts *minority* and/or *community*.

⁷¹ cf section 4.2

It is possible that any attempt to define communities, especially at government level, will be met with resistance and political suspicions. However, at least a working definition of community is required at some stage, preferably before the establishment of the Commission for Promotion and Protection of the rights of Cultural Religious and Linguistic Minorities. In addition the situation is complicated by the fact that there are ethnic groups even among people of the same culture⁷² or what the Bill terms the *main cultural* group. Failure to recognise ethnicity in terms of section 3 of the draft Bill may be disastrous for the country. It will not only undermine the notion of nation building but will turn our diversity into a liability instead of it being a national asset. Hence a need for a working definition of the concept *community* or at least the *main cultural* group as contained in the Draft Bill.

4.2.3 Types of minorities

The South African Constitution, section 31 mentions and recognises three types of communities. These are the *cultural, religious* and *linguistic* communities. Section 31 further indicates that such persons ‘belonging’ to a cultural, religious and linguistic communities:

may not be denied the right, with other members of the community -

- (a) to enjoy their culture, practise their religion and use their language; and
- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society (Constitution, Act no 108 of 1996:15).

⁷² For instance the Bapedi culture, mostly found in the Northern Province: The language Sepedi, has different ethnic groups, for example, Bapedi ba Sekhukhune, Batlokwa and Bapedi ba Moletji.

Section 31 as already indicated has its own limitation apart from the general limitations clause (section 36). The word 'belonging' denotes that no individual can claim recognition under section 31 if he/she does not belong to any or all of the three categories of communities. 'Belonging' also indicates that one is bound by some or other tie to something. It is clear then that section 31 requires claimants to prove that some tie exists between them and their group. What is unclear is what sort of tie would be sufficient.

4.2.3.1 *Cultural minorities*

At a glance, the number of cultural groups in South Africa corresponds with the number of official languages recognised in terms of section 6 of the Constitution⁷³ (see also table 3 in section 4.3.4). The only exception is between the Coloured and the Afrikaner groups. Although the two groups speak the same language (Afrikaans), culturally they belong to two distinguishable groups. In terms of table 3, there are some indigenous cultures whose languages were marginalised in the past, for-instance, the Nama, the San and the Khoe. Such cultures and languages were also not included in the 1996 national census as per Table 3, as distinct groups, but will most probably fall under the category 'Other'.

African communities often have ethnic groups. Within one culture, for instance the Sotho culture, the Zulu, and the Xhosa there are ethnic groups which may also claim to be communities on their own especially given the fact that there is no national definition of the concept *community*. This brings us back to the point made previously that the process of recognition of communities and main cultural group in terms of the Draft Bill must be considered carefully so that it encompasses all ethnic groups.

⁷³ The official languages are Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

4.2.3.2 Religious minorities

As mentioned earlier, section 31 of the Constitution recognises the existence of religious communities in South Africa. These communities include the Christians, Muslim, and the Hindus. The following table from Statistics South Africa (1999:44-45), illustrates the different religious communities that exist in South Africa. Only four major religions were selected for the purpose of this study.

TABLE 2: Membership of religions in South Africa

RELIGION/FAITH	NUMBERS	PERCENTAGES
Christians	30, 051, 008	75,5
Islam	553,585	1,4
Hinduism	537,428	1,4
Judaism	68,058	0,2
African traditional Beliefs	17,085	0.0

(Statistics South Africa:1999: 44 - 45)

Despite the fact that the above table does not include categories of people who, for instance, indicated that they had no religion, or had other faiths, and those who refused to state their religion, it can be concluded as per table 2 that about 76 percent of South Africans (about 30 million), are Christians. The second largest is Islam which is followed by the Hindu religion. Seeing that the Christians are an outright majority, perhaps the other religions may be justified in seeking constitutional recognition and protection. Such protection will ensure that their faiths are passed from one generation to the next.

Christians do not appear to be a minority. This very broad category is made up of diverse groups ranging in membership. However, in the television debate presented

in section 4.2, Christians indicated that they too need some form of constitutional protection. Religious groups often argue that any process of recognition, preservation and protection of their religion can only take place when such religious groups are given the right to open own schools as contained in the Bill of Rights section 29 of the Constitution, where they are free to practise their own religion.

4.2.3.3 Linguistic minorities

South Africa is a country of many languages. Large numbers of South Africans of all races understand and use other languages in addition to their own. In fact, multilingual communication is probably the normal practice of everyday life for most South Africans. The following table presents the number of linguistic communities in South Africa. The figures were published by Statistics South Africa in 1999, and they are based on the 1996 population census.

TABLE 3: Home languages in numbers and percentages

HOME LANGUAGE	NUMBERS	PERCENTAGES
Afrikaans	5, 811, 547	14,4
English	3, 457, 467	8,6
isiNdebele	586, 961	1,5
isiXhosa	7, 196, 118	17,9
isiZulu	9, 200, 144	22,9
Sepedi	3, 695, 846	9,2
Sesotho	3, 104, 197	7,7
SiSwati	1, 013, 193	2,5
Setswana	3, 30,1 774	8,2
Tshivhenda	876, 409	2,2
Xitsonga	1, 756, 105	4,4

Other	228, 257	0,6
Unspecified	355, 538	
Total	40, 583, 573	100 (excluding unspecified)

(Statistics South Africa: 1999:8-11)

In the above table, the first 11 languages are the official languages of South Africa. The table does not include different dialects that may be found, particularly in African languages. Note that 22 percent of the South African population had isiZulu as their home language followed by isiXhosa with 17 percent and Afrikaans with 14 percent. The Indian languages, the San and the Khoe languages are probably part of the Other (0.6 percent), which is at the bottom of the table.

The high percentage of the Afrikaans speaking group is probably as a result of the Khoe and Coloured people. The former are situated mostly in the Cape Province whereas the latter are found in large numbers in both the Cape and Gauteng. In terms of provinces, the majority of Afrikaans speaking people are found in the Gauteng and the Western Cape provinces. In the Gauteng province (which is also the second largest in terms of population),⁷⁴ it was found that 1 213 352 people indicated that Afrikaans is their home language. The Western Cape province is the largest with 2 315 067 people who also indicated that Afrikaans is their home language.⁷⁵

⁷⁴ Statistics South Africa reported that the province with the highest population was KwaZulu-Natal with 8,4 million followed by Gauteng with 7,3 million. The rest of the provinces were: Eastern Cape (6,3 m); Northern Province (4,9 m); Western Cape (4,0 m); North West (3,4 m); Mpumalanga (2,8 m); Free State (2,6 m); and the Northern Cape (0,8 m).

⁷⁵ In the Western Cape, the Coloureds are more than twice the number of White people. The Coloureds, in the 1996 statistics, were said to be 2 146 109 compared to 826 691 White people. Most of the Coloured people are speaking Afrikaans.

Table 3 shows that there is no clear majority group in terms of language that can make the others groups fear that their languages are in danger of extinction. There is nothing in the statistics presented in table 3, that can be used as a tool or defence to demand protection of minority languages, particularly from the Afrikaans-speaking group because in this case, they are not a minority. On the other hand, if different dialects were considered in the statistics, South Africa would probably have three or four times the number of linguistic communities than it does presently. Regarding the marginalised languages, the government established the PANSALB, specifically to address the development of such languages.

4.2.4 SUMMARY

The above discussion presented the three major groupings of communities in South Africa. These are linguistic, religious and cultural communities. However, it must be mentioned that it is impossible to distinguish language and culture because language is located within a culture of a group. In fact, language is an integral part of culture. That means, minority groups who were mentioned earlier who want their children to be taught in their own mother tongue are actually practising and transmitting their culture. In this regard, Steyn (1998:11), argues that effective education is dependent on language. He further argued that the level of identification with a particular institution will be increased, if there is harmony between the medium of instruction, the languages used and taught and the symbols used in the particular education institution and the mother tongue of the minority group, the language needs of a minority group and the symbols of a minority group.

4.3 FINDINGS OF DOCUMENT ANALYSIS: THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA (RSA)

4.3.1 The Constitution of the RSA (Act no. 108 of 1996)

The Constitution of South Africa consists of 14 chapters and 243 sections. A number of sections in the Constitution, for example, sections 15, 29 and 31, are relevant to the provision of education to minorities. This part of the study will concentrate on those sections that are relevant to the education of minorities.

However, to be able to understand these provisions, it is important to present a background regarding the status of the Constitution and its relationship with international law. This clarification is essential as most of the provisions in the Constitutions are contained in international instruments like the UDHR.

South Africa is a constitutional state. The Constitution of the RSA is the supreme law of the country, founded, amongst others, on the following values: human dignity, the achievement of equality and the advancement of human rights and freedoms, supremacy of the Constitution and the rule of law. These values, particularly the achievement of equality and the advancement of human rights and freedoms, underpin the right of recognition and protection of both individuals and communities or minority groups. Also, these values must be considered when any court, tribunal or forum interprets the Bill of Rights (Constitution Act no. 108 of 1996:23).

4.3.2 The South African Constitution and International Law

In this paragraph the relationship of the Constitution to international law with special reference to minority rights will be discussed. International law, as indicated

earlier, is made up of custom⁷⁶ and treaty law. A treaty is the same as a Convention or Covenant, for example, the International Covenant on Civil and Political Rights (ICCPR). A covenant, treaty or convention is an agreement negotiated by states among themselves or via a body, for instance, the UN, and adopted. When a state wishes to become a party to a treaty, convention or covenant, it signs the document. A state is not bound by the treaty until it has ratified it. The act of ratification legally binds the state under the terms of the covenant, convention or treaty. It then becomes a *state party* to the document (English & Stapleton 1997:10).

Some states are required by their own constitutions to go through a certain process if an international treaty is to become domestic, or national law. It has to be approved by, for example, parliament or congress and the process may take time. Other states need to make adjustments to their own laws to meet their obligations under the new treaty and, again, this may take a long time. A treaty does not become law until it has been ratified. Some states do not wish to be bound by the terms of a treaty although they support its general aims, so they do not proceed to ratification.

A human rights convention or covenant therefore, takes a lot of time and effort before it comes into effect. A simpler approach, called a Declaration, may be used, sometimes as a prelude to the drafting of the convention. A good example is the Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities adopted in 1992 by the UN General Assembly. Such a declaration or any other declaration is in theory not binding in international law. It is a statement of principles. It sets out standards by which states ought to govern.

⁷⁶ Customary law is law that has grown out of customs or practice. It is not written down. It is general practice that, through common use, it has become accepted as law. International customary law has developed in much the same way.

(English & Stapleton 1997:11). However, the UDHR has been cited in so many countries' constitutions that it is now widely agreed to be part of international customary law and so is probably binding on all the states.

In South Africa, **section 231(1)** of the Constitution states that

the negotiating and signing of all international agreements is the responsibility of the national executive.

Section 231(2) states:

an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces unless it is an agreement referred to in subsection 3.

Examples of international agreements include the Convention on Discrimination in Education and the the ICCPR. However, not all agreements require ratification. In terms of **section 231(3)**:

an international agreement of a technical, administrative, or executive nature or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without the approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly or Council within a reasonable time.

In terms of the application of international law, **section 233** of the Constitution has this to say:

when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law.

In addition to the above section, **section 39** of the Constitution is one of the most relevant regarding the interpretation of the Bill of Rights. This section has implications for the rights of individuals and minorities in the sense that whenever a right in terms of chapter 2 of the Constitution has been violated, a court, tribunal or forum, when interpreting the Bill of Rights must

- (1) (a) promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- (b) consider international law; and
- (c) may consider foreign law (Constitution Act no.106: 1996:23).

Both sections 39 and 233 effectively make it compulsory for the South African legal system to consider international law when interpreting the Bill of Rights. Some of those laws contained in international instruments, were dealt with in chapter 2. Most of these laws, for example the ICESCR, guarantees the right to education under article 13 of the Covenant and the ICCPR article 27 guarantees minorities, for example, the right to education, the right to use their own language, the right to practice their own culture freely and to enjoy their religion. South African minorities are not immune from international law and from such rights. This means, therefore, that minorities in South Africa are also guaranteed protection under international law. South Africa is also bound by agreements which were binding on the Republic when the Constitution took effect.

In summary, the Constitution of the RSA sections 231, 232 and 233 deals with International agreements, Customary international law and the Application of international law respectively. South Africa is therefore bound to consider international law when interpreting the Bill of Rights. Such international laws guarantee minorities, amongst others, the right to education and the right to practice freely their own culture and to use their own language.

4.3.3 Sections of the Constitution with implications for minority rights in education

The Constitution of the RSA, as indicated, has no special provision for minorities in education. However, there are certain sections in the Constitution that make it possible for minority groups to open their own schools, use their own language and continue to be subsidised by the provincial departments of education. Relevant sections on the educational rights of minorities include section 9 (Equality); section 15 (Freedom of religion, belief and opinion); section 29 (Education); section 30 (Language and Culture); and section 31 (Cultural, religious and linguistic communities). These and other relevant sections are discussed below.

It is important to note that the Constitution cannot be read in a fragmented fashion. From a distance, section 29 may seem to be the only one relevant to the educational rights of minorities. However, section 29 does not exist in a vacuum but is grounded in other constitutional provisions like sections, 15, 31, 36, 231 and 235. Therefore, the researcher analysed the provision of education for minorities, for instance, under section 29, in relation to other provisions that may be relevant to the study.

In addition, interpretation of these sections was also combined, in some cases, with other applicable national laws like the National Education Policy Act (NEPA) (Act no. 27 of 1996) and the South African Schools Act (SASA) (Act no. 84 of 1996). Other policy documents, for example the Language in Education Policy (LiEP) and the Norms and Standards on Language Policy were also used in this study. These documents were published in 1997 by the National Department of Education.

4.3.3.1 Section 9 (Equality)

The principle of equality is one of the major principles of the South African Constitution. Section 9 of the Constitution affirms that all citizens⁷⁷ have the same dignity and should be treated equally before the law. The Constitution, **section 9(1) and (3)** states that:

- 9(1) Everyone is equal before the law and has the right to equal protection of the law.

- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

As indicated earlier, there are no express references to minorities or minority rights in education in the Constitution and in section 9. It can be derived from the section that equality before the law is for everyone, including minority groups. Section 9(2), forbids *unfair* discrimination by the state. That means schools also may not discriminate, for example, during the admission of learners, on the grounds listed in section 9(3). However, the Constitution is not necessarily against discrimination but against *unfair* discrimination. Fair discrimination is implied in **section 9(5)**. The section indicates that:

- 9(5) Discrimination on one or more grounds listed in subsection (3) is unfair unless it is established that it is fair.

⁷⁷ Although the preamble of the Constitution of South Africa refers to *citizens*, section 9 refers to *everyone*.

The above subsection (5) applies to all state institutions including public schools for instance during the admission of learners.⁷⁸ The equality clause therefore protects everyone in South Africa, irrespective of race or colour.

4.3.3.2 Section 15 (Freedom of religion, belief and opinion)

Religion and religious education has always been a bone of contention ever since the adoption of the new Constitution. In the past public schools were expected to have morning assemblies that were conducted along Christian principles. Educators and learners in public schools were expected to attend those religious observances. In addition, Religious education was also offered in schools as a non-examination subject. The situation regarding such religious practices in South African public schools has changed drastically after the adoption of the Constitution. The following are some of the provisions from the South African Constitution regarding religion and religious education:

Section 15 of the Constitution states:

- 15(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- 15(2) Religious observances may be conducted at state or state-aided institutions, provided that -
 - (a) those observances follow rules made by public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary

The right to freedom of religion entrenched in section 15(1) above is circumscribed in section 15(2), by a provision allowing, on certain conditions, the conduct of religious observances at state or state-aided institutions. On a mere grammatical

⁷⁸ See also under section 4.7.2.1

reading of section 15(1) it is clear that it entrenches much more than religious rights and most probably also guarantees the rights not to observe any religion and not to believe.

The right to religious freedom means that every learner or educator has the right to freedom of religion and to practice such religion. The practice of having religious observances in our schools dates back to the apartheid Christian National Education (CNE)⁷⁹ era where, as indicated earlier, it was compulsory for a school to begin each day with a prayer. The ideology of the CNE was used as an instrument of cultural and political control. Even before the inclusion of section 15 in the final Constitution, the interim Constitution had already signalled a decisive break with the past ideology of CNE. It recognised the fundamental rights of all South Africans to freedom of conscience, religion, thought belief and opinion.

Section 15(2) restricts the right to the freedom of religion in state and state aided institutions. In practice, the South African Schools Act no. 84 of 1996 section 7 has the following provision for religious observances in public schools:

Section 7: Freedom of conscience and religion at public schools

⁷⁹After the Anglo-Boer War (presently called the South African War), groups of Afrikaners were opposed to the school system introduced by the British and opened their own alternative schools based on Christian National principles. There was a strong emphasis on Christian teaching based on the Calvinist doctrines as previously alluded to. This philosophy permeated the South African education milieu especially under the Nationalist rule from 1948. For instance, the Christian Education Policy Act of 1967 stated that Education in schools should have a Christian character, founded on the Bible, enhanced by religious instruction as a compulsory non-examinable subject. CNE (in respect of religious education) was perceived by Christian denominations other than those of the reformed tradition and minority religions of South Africa as imposing the Christian faith and the interpretation in the public school system. It was not only discriminating to the minority religions but also to other Christian denominations as well. CNE was based on a particular Reformed interpretation of the Christian faith and the Bible.

Subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under the rules issued by the governing body if such observances are conducted on an **equitable basis** and attendance at them by learners and members of staff is **voluntary and free**.

In terms of the above provision, the determination of religion to be used in a particular school, is the responsibility of the school governing body. In practice therefore, most South African schools do not practice the principle of equity as required by the Constitution and the SASA. Learners who come from minority religions are quite often absorbed into the majority religion practised in a particular school. These learners are indirectly coerced into attending religious observances based on a religion that is not their own. They have no choice on whether or not to attend religious observances, which can be interpreted as violation of their constitutional rights of *free and voluntary attendance* as articulated in section 15(2)(c) of the Constitution.

Du Plessis and Corder (1994:155) maintain that during the negotiations of the interim Constitution (Act no. 200 of 1993), it became clear that the negotiators had no intention whatsoever of using the Constitution and the Bill of Rights to erect a wall to separate church and state.⁸⁰ Some libertarians in those

⁸⁰ For example in the USA, the First Amendment of the Constitution reads: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.* Two clauses in the amendment are very important for American public schools. First is *the establishment* clause and second the *free exercise* clause. These two combined prevents the use of public schools to proselytize and, correspondingly, forbid the expenditure of public tax funds to support religion. An extract from the opinion of the Supreme Court of Iowa forcefully illuminates this: *If there is one thing which is well settled in the policies and purposes of the American people as a whole, it is the fixed and unalterable determination that there shall be an absolute and unequivocal separation of church and state, and that our public school system, supported by the taxation of the property of all alike - Catholic, Protestant, Jew, Gentile believer and infidel - shall not be used directly or indirectly for religious instruction, and above all that it shall not be made an instrumentality of*

negotiations voiced their concern at the inclusion of such a provision (section 15), and not even the requirements that the observances must be conducted on an *equitable basis* and attendance must be *free and voluntary* could set their minds at ease. They argued that in practice the actual equity and voluntary attendance of religious observances have proved to be difficult if not impossible to achieve.⁸¹ Their argument was that their schools, whether public or independent, must be based on Christian principles which will be in harmony with their culture.

(1) *The teaching of religious education in schools*

Given the above constitutional provision and provisions contained in the SASA, particularly free and voluntary attendance of religious observances in public schools, the teaching of religious education in these schools, becomes one of the most burning issues facing policy makers in South African education. In the past, the teaching of religious education was compulsory in all South African public schools. Most of those practices, particularly in public African schools were based on one religion, Christianity.

Arising from the free and voluntary attendance of religious observances clause, as contained in the SASA and the Constitution, is the question of *free* and *voluntary* teaching of Religious education in public schools. Given the above provision and the fact that section 15(1) of the Constitution guarantees everyone the right to freedom of conscience, religion, thought and belief, can an educator, on religious grounds, refuse to teach a certain section of the approved

proselyting influence, in favour of any religious organisation, sect, creed, or belief.

⁸¹ Regarding a wall of separation, in *Wallace v. Jaffree* in the USA, Chief Justice Rehnquist in dissent, condemned the idea and desirability of “a wall of separation” saying that “it is a metaphor based on bad history, a metaphor which has proved useless as a guide to judging and that it should be frankly and explicitly abandoned”. In Alexander and Alexander (1992).

curriculum? For example, in *Palmer v. Board of Education of the City of Chicago* in the USA, a teacher refused to execute certain aspects of the approved curriculum because of religious beliefs. The teacher's argument was based on the guarantees on religious freedom as contained in the First Amendment.⁸²

The court acknowledged the teacher's right to freedom of belief, but also recognised a compelling state interest in the proper education of all children. The court further stated that education *cannot be left in the hands of individuals to teach the way they please* and that teachers have no constitutional right to require others to submit to (their) views and to forego a portion of their education they would otherwise be entitled to enjoy. Religious freedom is sustained by the courts as long as the exercise of the freedom does not encroach on the rights of students or is not deleterious to the good conduct of the school (Alexander and Alexander 1992:627).

The above case can serve as an eye-opener to South African policy makers. The court's ruling indicates that religion, as with many other freedoms, is not without certain limits. Therefore, the South African version of the right to freedom of conscience, religion, thought, belief and opinion must be balanced with the rights of learners to receive education.

The decision of the School Governing Body (SGB) in determining whether religious observances will be carried out in a school and the type of religion(s) to be practised and how that will be done remains one of the most crucial issues in the South African education system. It remains one of the controversial areas between school authorities and religious minority groups who feel that their particular religion is not considered or is marginalised. Most of the controversy regarding this arose out of different understandings of the term *religious*

⁸² See footnote 80

education. Broadly speaking, there are two ways of understanding it, although it is important to acknowledge that within the two categories there are variations and nuances. The categories are:

- educating learners to be religious; and
- educating learners about religion and religions.

These minorities and other concerned groups brought the issue to the attention of Professor Bengu, who served as Minister of Education from 1994 to 1999. The Minister, after receiving many letters and petitions regarding religious education in schools, called for nominations for members to serve on a committee to develop a draft policy document on religious education in South African schools. The Ministerial Committee on Religious Education completed its work on 23 September 1998. The committee's report dated 23 February 1999 was published by the National Department of Education.

(2) *The Ministerial Committee's Report on Religious Education*

The report, amongst other, presented five models which could be adopted in the future teaching of Religious Education. These models are briefly outlined below.

- *The secular model*

Also referred to as the neutral model. This approach is typical of what is followed in the United States of America (USA). In the name of neutrality and religious freedom, the option of freedom FROM religion can be chosen. No formal activities, not even the saying of prayers or devotional scripture reading are permitted on the campus, lest they infringe on the rights of others. The rights

of individuals and minorities are paramount to the extent that the majority must refrain from using state property for religious purposes. In this way, a religious friction (within the school system) in South Africa can be avoided.

- *The integrated pluralistic (multi-religious) model*

In simple terms this model means teaching about religions. Great Britain is one of the countries that has taken the lead in developing multi-religious educational programmes for public schools. The British model for teaching about religion was developed in Birmingham and was implemented in 1975. These programmes have encouraged countries such as Canada, Australia, Kenya, Uganda, New Zealand, and others to do the same. Even in Japan the teaching of any specific religion in public schools is prohibited by law, but programmes designed to teach students about various religions, which are also linked to programmes in moral education, are regarded as an important contribution towards a complete education.

The multi-religious programmes are based on the premise that learners need to learn about religions in their own country and the larger world, in order to receive a complete education. But these programmes are also a response to the social reality of religious pluralism within a single nation like South Africa. They are designed to serve certain desirable social goals such as the transmission of common moral values, an increase in tolerance, a reduction in prejudice and a sense of national unity.

- *Mono-religious model*

In this model only one religion is adopted as the official or unofficial state religion and that is reflected in the education system. Arguments in South Africa

are that religious education in schools remains Christian, Bible-based instruction and that the Christian character of the entire school system should be retained as it was in the Christian National Education (CNE) since 1952, because the majority of the population adheres to some form of Christianity.

In a multi-religious country like South Africa, the mono-religious approach is unacceptable because:

- (1) it is undemocratic - it fails to cater for members of other religious groups;
- (2) it is also against the Constitution which guarantees religious freedom, and South Africa sees religious freedom FOR religion and not as freedom FROM religion; and
- (3) it denies people of other religions the right that their children should be educated in the religious principles and value systems of their parents.

- *The particularistic (parallel single faith) model*

The model implies that learners would have access to the study of one (their own) religion only. A plurality of religions would be accommodated in the school system as a whole, but any individual learner would study only one of them. Nigeria and Israel are examples of this approach. In Nigerian state schools two single tradition programmes for religious education - one for Muslims, the other for Christians operate with explicitly religious aims. In the state of Israel, the Jewish schools are responsible for Judaism and the Arabic schools are responsible for Muslim and Christian Education. In South Africa this will imply six or more single tradition programmes for religious education alone for example a Christian programme, a contextualised Christian programme with

Traditional African religious background, as well as Hindu, Muslim, Jewish, Buddhist and African Traditional religious programmes.

Advocates of the model argue that such an arrangement would allow faith communities to provide religious instruction for their own children and that this model would address the discriminatory privilege given to Christians, Bible based religious education in CNE times, thus addressing past grievances. They also argue that it is not a threat to anyone's belief, and it would not undermine the work of any religious body running a school. Objectors to the model argue that in a religiously divided society like South Africa, these exclusive, separate religious programmes in state schools might contribute to a further polarisation of society along racial lines. The model could also be seen as a form of religious apartheid. Also, if a unified system is supposed to build a basis for national unity, a parallel approach to religious education reintroduces divisions into the school system (Ministerial Report on Religious Education 1999:45).

The above discussion indicates the extent of the problem of addressing the rights of minorities as contained in the Constitution of the RSA. In the past the state aligned itself with Christianity, and in the process other religions were marginalised. The new state adopted a position of non-alignment with any particular religion. This paradigm shift has profound implications for religion in education, as the past system was seen by many as an instrument of discrimination in the provision of education. No single model is without criticism and the diverse cultural and religious reality calls for a range of appropriate and relevant models. The choice of any model in South Africa should accommodate all people who, given the constitutional provision, operate from the premise that religious education cannot be divorced from the education process.

4.3.3.3 Section 29 (Education)

The relevant international treaties discussed in chapter 2, for example, the UDHR, ICCPR recognise the right to education, as a right and not privilege, which human beings must not be denied. The right to education also implies access to education institutions and participation in educational activities. The right to education in South Africa is contained in Section 29 of the Constitution.

Section 29 reads as follows:

- (1) Everyone has the right -
 - (a) to basic education, and
 - (b) to further education, which the state, through reasonable measures must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
 - (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that
 - (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.

The above section is consistent with international law and can be described as one of the most relevant for the education of minorities. It does not, however, spell out categorically that minorities or communities can open their own schools. It can be derived, especially from subsections (2) and (3), that to some extent issues on minority rights in education are addressed.

Modified from the interim Constitution (section 32), the above section entrenches, what Du Plessis and Corder (1994:187), when referring to section 32 of the interim Constitution, described as a *preponderantly second-generation entitlement in a predominantly first-generation environment*. The enforcement of at least some of its provisions is also uncertain. Can someone, for instance sue the state for a basic education? And what is basic education? In spite of these difficulties, the section was adopted by the negotiators of the Constitution towards the promotion of equal opportunity in education.

(1) *Subsection 1*

Subsection 1 of section 29 above, refers to two important types of education that are relevant to everyone, including minorities. The first is basic education entrenched in section 29(1)(a), followed by further education in 29(1)(b).

(i) *What is basic education?*

The Constitution does not define the term basic education. It is defined in other educational policies in such a way that the intention of the Constitution is affirmed. An important question is whether basic education should be defined in terms of learning needs and outcomes, or qualification levels, or school grades,

and whether the content of basic education needs to be the same for children, youth and adults.

In 1990, the World Conference on Education for All sponsored by the UN, addressed such questions in the World Declaration on Education for All. Article 1 of the Declaration makes the following statement on *basic learning needs*:

Every person - child, youth and adult - shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy and problem solving) and the basic learning content (such as knowledge, content, 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 continue to be met varies with individual countries and cultures, and inevitably, changes with the passage of time (White Paper on Education and Training 1995:40).

The Ministry of Education associated itself with the above statement. In the light of this, the Ministry adopted a generous definition in relation to this obligation under section 29(1). It explained that a basic education is a flexible concept that must be so defined as to meet the *learning needs appropriate to the age and experience of the learner, whether child, youth or adult* and should also provide access to nationally recognised qualifications. The Ministry's position is that *appropriately designed education programmes to the level of the proposed General Education Certificate (GEC)⁸³, whether offered in school to children, or*

⁸³ The GEC or the GETC (General Education and Training Certificate) is a qualification offered when a learner has successfully completed the General and Training Band. It is the first band on the National Qualifications Framework and consists of Grades 1-9. Grade 9 is regarded as an exit point. The completion of Grade 9 means that the learner

through other forms of delivery to young people or adults, would adequately define basic education for purposes of constitutional requirements (White Paper on Education and Training 1995:40)

In practice basic education in South Africa refers to the education received at the General Education and Training (GET) Band. This band is the lowest on the National Qualifications Framework and consists of Reception year to Grade 9. The band is made up of three phases namely, the Foundation phase, the Intermediate phase and the Senior phase. It also includes four levels of Adult Basic Education and Training (ABET). The GET band is compulsory, although this is not enforced by national or provincial governments. Grade 9 of the band is regarded as an exit point where learners are able to receive their certificates and exit the system to, for instance, the workplace or to the further education and training band (Mothata in Pretorius 1998:18-22).

- *The right to education*

The international instruments discussed in chapter 2 for example the UDHR guarantees everyone the right to education. Thus article 26 of the UDHR states that:

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit.

- *Who holds the right to education?*

is awarded a GETC.

An important question which arises in connection with the right to education concerns who holds that basic right. In other words, is this (international and/or constitutional) right to education a universal right or is it reserved for national subjects? From the interpretation of the UDHR, there is no dispute that each individual, regardless of national status, is acknowledged to have an equal right to education, as an essential element of the broader concept of culture and consequently, that this right is also acknowledged for members of minority groups. Everyone in the RSA, whether or not one is a member of a minority group, is entitled to basic education which the state must make *progressively available and accessible*.

The right to education as indicated earlier, entails equal access to educational institutions, particularly those offering basic education, with the concomitant prohibition of discrimination and also the possibility of affirmative action. Accessibility does not mean that schools must admit every child who applies for admission. It has to be shown that all public schools entertain applications on an equal footing and are prepared to admit all prospective learners who satisfy the requirements for admission. Such a process of admission is determined by the SGB. Admission must not unfairly discriminate against any learner on the basis of, for example, race, religion, ethnic, conscience, belief, culture and language.⁸⁴ The *equality clause* under section 9 of the Constitution makes it possible for minorities to access educational institutions without being unfairly discriminated against.

⁸⁴ See also section 9 (Equality clause) of the Constitution in appendix 1.

The right to education⁸⁵ can therefore be seen as a fundamental right. Because every individual should be able to enjoy this right the government has to guarantee that they are able to exercise it effectively. So, the right to education, is an objective which the government is required to take active steps to realise. Finally, it is to be noted that the right to education is an absolute right, in the sense that the state may not restrict people's enjoyment or exercise of this right by unlawful influence or pressure.

(ii) *Further education*

Section 29 subsection 1(b) paragraph (c) refers to the right of everyone *to further education, which the state must make progressively available and accessible*. In the South African education and training system, Further Education and Training (FET) is the second middle band on the NQF. It is the largest and most complex phase of learning with about 3 million learners, 8 thousand providers and R10 billion rands in expenditure. The providers can be categorised into four main sectors:

- secondary schools which contain the majority of learners;
- publicly funded colleges;
- private education and training providers; and
- enterprise based education system (Mothata 2000:68).

The FET band consists of grades 10, 11 and 12 (previous Standards 8, 9 and 10). The successful completion of grade 12 means that a learner receives a Further Education and Training Certificate (FETC). Grade 12 is also regarded as an exit

⁸⁵ However section 29(1) qualifies this right in the form of basic education, including Adult Basic Education and Training and to Further education and training which the state will make progressively available.

point. Learners who do not want to or who do not qualify to go into the Higher Education and Training Band can exit the system to go into the labour market. The FET band is by definition not compulsory. It is also not part of basic education (Mothata (ed) 2000:68).

In the South African further education provision,⁸⁶ the equality principle seems to allow for policies aimed at giving preference to previously disadvantaged groups, like Blacks and the disabled, as in the clause *progressively making available and accessible*. Subsection 5 of the equality clause does make provision for fair discrimination. The state has a constitutional obligation to provide for both basic and further education. The Constitution is also consistent with international instruments regarding the right to education, for example the UDHR article 26.

(2) *Subsection (2)*

The above subsection concentrates on one issue, and that is language. It confers the right on persons to be *educated in the official language of their choice*, where that education is *reasonably practicable*. The reasonable practicability test has been implemented by looking at the number of learners involved as well as the resources of the state. In practice, it is neither financially nor administratively possible to provide instruction in all 11 official languages in each and every town and village in this country. The financial and practical constraints may be such that in effect education may in most cases take place essentially through the medium of English and to a lesser extent, Afrikaans.

Regarding the other official languages, it is submitted that it will not, in the foreseeable future, be reasonably practical for these languages to be used as exclusive mediums of instruction beyond early primary education. The

⁸⁶ The same applies to basic education.

indigenous languages do not have the vocabulary to be used as medium of instruction for subjects such as mathematics and science. On the other hand, one could also infer from the reading of the section 9 (equality clause) and section 6(2) on languages that there is a duty on the state to advance and develop at least the other nine official languages, the Khoe, Nama and San languages. Section 6(2) reads:

Recognising the historically diminished use and status of indigenous languages, the state must take practical and positive measures to elevate the status and advance the use of these languages.

In this regard the government established the PANSALB, which is discussed below, basically to function as required in section 6 of the Constitution.

(i) *The PANSALB*

The PANSALB is a body established in terms of section 6(5) of the final Constitution and section 2 of the Interim Constitution of the RSA. The sections make provision for the establishment, by national legislation, of the PANSALB. As a result, the government established PANSALB by national legislation entitled the Pan South African Language Board Act (Act no. 59 of 1995). This Act was promulgated in terms of section 2 of the Interim Constitution Act (Act no. 200 of 1993).

(ii) *Objectives of the PANSALB*

The objectives of the Board include:

(i) to promote and respect for, and to ensure the implementation of the following principles referred to in section 5 of the Constitution: the PANSALB must -

- (a) promote, and create conditions for the development and use of:
 - (i) all official languages;
 - (ii) the Khoi, Nama and San languages; and
 - (iii) sign language; and

- (b) promote and ensure respect for-
 - (i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and
 - (ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

According to the PANSALB's annual report dated June 1999, South Africa is in a particularly unusual position, in terms of the number of languages, as compared to other countries. It has more official languages (eleven in number) than any country in the world. The Constitution obliges government to give these languages official status and to use the PANSALB to promote multilingualism and the development of languages in general (PANSALB Annual report (addendum B) 1999: 6). This obligation places South Africa at the cutting edge of international language policy development, which presents an exciting opportunity for breaking new grounds internationally.

Regarding such promotion, the PANSALB has initiated, for example, the establishment of the Khoe and San Language Body. The establishment of such a body was done in terms of section 8(8)(b) of the Pan South African Language Act no. 59 of 1995.⁸⁷ The section empowers the PANSALB to establish National Language Bodies for all official languages in South Africa, including the Khoe and the San languages, the African Sign languages, as well as indigenous

⁸⁷ Section 8(8)(a) empowers the PANSALB to establish a provincial language committee in each province to advise it on any language matter affecting a language or languages spoken in that province.

languages. It is also the role of the PANSALB to promote and create conditions for the development of these languages (PANSALB Act No. 59 of 1995: 383).

Established in 1999, the Khoe and San language Body is tasked with promoting, developing and extending the use of the Khoe and the San languages in the RSA. In addition, the Body shall, among others:

- (1) advise the PANSALB on the languages it represents;
- (2) actively assist the PANSALB in its endeavours to promote multilingualism as a national resource;
- (3) conduct surveys in communities where the Khoe and San language are spoken so as to record and standardize new terminology and words;
- (4) liaise closely with other professional bodies that can help to enrich and expand the Khoe and San languages;
- (5) give special emphasis to language in general and to the Khoe and San in particular; stabilize and popularize new terminology; and
- (6) perform other tasks and functions as may be assigned by the PANSALB (PANSALB News September 1999:1).

The establishment of the Body is a significant and remarkable step taken by the PANSALB. Its establishment paves the way for the development of the Khoe and San languages and for such languages to be used as languages of learning and teaching in future. However, such developments may not happen overnight. It is going to be a challenging task to the Body to develop their languages to the level of, for instance, English or Afrikaans.

On the other hand, the establishment of the PANSALB, ushered in a new era in the recognition of the formerly marginalised languages, particularly the African languages in South Africa. In this way the government is committed to fulfilling

its constitutional obligations, by creating conditions where minority languages can be given the opportunity to develop, and perhaps to a level where they could be used as media of instruction in schools. That in itself is a positive sign of government's commitment to address all issues pertaining to different communities.

(ii) *Language in Education Policy (LiEP)*

The Department of Education published a document on a new language policy. The first is entitled Language in Education Policy in terms of Section 3(4)(m) of the National Education Policy Act No. 27 of 1996⁸⁸ and the Norms and Standards Regarding Language Policy published in terms of Section 6(1) of the South African Schools Act No. 84 of 1996.⁸⁹

Section 3(4)(m) of the National Education Policy Act, no 27 of 1996, indicates that the Minister of Education shall determine national education policy for, among others, language in education. Section 4 of the Policy Act also specifies particular directive principles of national education policy regarding language, as guaranteed in terms of chapter 2 of the Constitution. The LiEP was formally announced by the Minister of Education on 14 July 1997.

⁸⁸ Section 3(4) reads: The Minister shall determine national policy for the planning, provision, financing, staffing, co-ordination, management, governance, programmes, monitoring, evaluation and well being of the education system, and without derogating from the generality of this section, may determine national policy for: paragraph (m) language in education. Therefore, language in education is among the 18 other policy issues that the Minister of Education can determine for schools nationally, including the provinces.

⁸⁹ Section 6(1) of the SASA reads: Subject to the Constitution and this Act, the Minister may, in the Government Gazette, after consultation with the Council of Education Minister, determine norms and standards for language policy in public schools.

(a) *Aims of the LiEP*

The main aims of the LiEP are:

- (1) to promote full participation in society and the economy through equitable and meaningful access to education;
- (2) to pursue the language policy most supportive of general conceptual growth amongst learners, and hence to establish additive multilingualism as an approach to language in education;
- (3) to promote and develop all the official languages;
- (4) to support the teaching and learning of all other languages required by learners or used by communities in South Africa, including languages used for religious purposes, languages which are important for international trade and communication, and South African Sign language, as well as Alternative and Augmentative Communication;
- (5) to counter disadvantages resulting from different kinds of mismatches between home languages and languages of learning and teaching; and
- (6) to develop programmes for the redress of previously disadvantaged languages.

The LiEP is part of a continuous process whereby the national language plan encompassing all sectors of society is being developed. The LiEP addresses the following issues on language:

- languages as subjects;
- language of learning and teaching;

The policy on language as subject includes the following:

- All learners shall offer at least one approved language as a subject in grade 1 and grade 2.
- From grade 3 onwards, all learners shall offer their language of learning and teaching and at least one additional approved language as subjects.
- All language subjects shall receive equitable time and resource allocation.
- The following promotion requirements apply to language as subjects:
 - (1) In grade 1 to grade 4 promotion is based on performance in one language and mathematics.
 - (2) From grade 5 onwards, one language must be passed.
 - (3) From grade 10 to grade 12 two languages must be passed, one on first language level, and the other one at least second language level. At least one of these languages must be an official language.

In addition, the policy on language of learning and teaching, indicated that the language(s) of learning and teaching in a public school must be an official language(s). This means, therefore, that the San, the Khoe, Nama, the Indian and other languages like Arabic, Hebrew and others, may not be used in schools because they are not regarded as official languages in terms of section 6(1) of the Constitution. Moreover, as indicated earlier, some of the formerly disadvantaged languages, particularly African languages, may not be preferred because they are still to be developed to the levels of both Afrikaans and English. In practice, most learners in South Africa prefer English as the language of learning and teaching.

(iii) *Norms and Standards regarding language policy*

The norms and standards regarding language policy were published in terms of section 6(1) of the SASA of 1996. The aims of these norms and standards include:

- (1) the protection, promotion, fulfilment and extension of the individual's language rights and means of communication in education; and
- (2) the facilitation of national and international communication through promotion of bi- or multilingualism through cost efficient and effective mechanisms, to redress the neglect of the historically disadvantaged languages in school education.

In terms of the policy and in accordance with the first aim, the parent exercises the minor learner's language rights on behalf of the minor learner. In addition, each school could decide on its medium of instruction. Learners applying for admission have to indicate their language preference. A school would be obliged to accept a learner if it offered his or her preferred language and if it had space.

Where no school offered the desired language or where there were fewer than 40 requests in grades 1 to 6, or fewer than 35 requests in grades 7 to 12 for instruction in a language already offered by the school, the head of the provincial education department has to determine how to meet the needs of such learners. The policy does not compel schools to offer more than one medium of instruction, but it recommended that governing bodies stipulate how multilingualism could be promoted by offering additional languages as subjects or by other means.

Thus, language policy should advance and protect every learner's right to be instructed in the language of his or her choice, where it is *reasonably practicable*, and also *protect every person's right to use the language and*

participate in the cultural life of his or her choice within an education institution. In this way the Department addressed concerns of minority groups in South Africa who feared that their language(s) in schools would be marginalised.

As far as mother tongue is concerned, it is generally accepted that there is no unqualified right to such instruction in state schools. It was mentioned in *Matukane v Laerskool Potgietersrus* that the use of mother tongue in both teaching and learning was one of the contentious issues that white parents of learners in the Laerskool Potgietersrus were fighting for. That even led to the establishment of the *Volksskool* which is situated about 10 kilometres outside the town of Potgietersrus. Recognition of such a right (the use of mother tongue in public schools) would be singularly impractical in a multilingual country like South Africa (Devenish 1999:402). Instead the Constitution recognises a right to publicly funded mother-tongue education (as one of the official languages) where it is *reasonably practicable*. Bearing in mind that there are 11 official languages, such a limitation is essential. The criterion of what is reasonably practical is what is objectively justifiable.⁹⁰

De Waal *et al* in Devenish (1999:402) indicated that international practice suggests that curtailment of the right can be justified with reference to a sliding-scale formula. A relationship of direct proportionality prevails, which means that

⁹⁰ For example the court's ruling in the *Belgian Linguistic* case, which concerned parental rights in relation to education heard under the European Convention, suggests a disinclination on the part of the court to compel states to establish or maintain schools based on a particular language or religion, though the court did emphasise the importance of pluralism of education and parental choice. The first protocol to the European Convention provides in part: *No person shall be denied the right to education*. The court said that the Convention does not guarantee children the right to be educated in the language of their parents by the public authorities or with their aid. "The negative formulation indicates ... that the Contracting Parties do not recognize such a right to education as would require them to establish at their own expense, or to subsidise education of any particular type or at any particular level".

the larger the number of speakers of a language in a particular area, the greater the obligation to provide mother-tongue education in that language in the school concerned. Furthermore, the higher the level of education, the less demanding the obligation to provide mother-tongue education in all the languages of the region. This illustrates how these rights are limited under certain circumstances.

The second sentence in Section 29(2) reads:

In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account (a) equity; (b) practicability; and the need to redress the results of past discriminatory laws and practices.

According to Henrard in De Groof and Bray (1996:167), the above sentence was the source of a major deadlock in the constitutional process. The National Party (NP) wanted single medium institutions as a matter of right whereas that principle was completely unacceptable with the African National Congress (ANC). The latter argued that such a right a return will be a return to the Verwoerdian practices. In the end the NP agreed to this clause merely making single medium institutions an alternative. However, if one looks at the third factor (c) *the need to redress the results of past racially discriminatory laws and practices*, that does not seem very conducive for the establishment of single medium Afrikaans institutions. But *equity* as a factor might balance that out in certain circumstances like, for example, in areas where the majority of people speak Afrikaans. Furthermore, section 31 of the Constitution on the rights of persons belonging to cultural, religious and linguistic communities can also be used to canvas claims of single medium institutions for such linguistic communities.

In a multi-ethnic country like South Africa, additive bilingual education is the most appropriate. It refers to a model whereby learners from a minority language group are taught their first language as a subject, and other subjects also, through the first language, while they learn the second language, which is usually a dominant language, as subject. This second language, the dominant language, is necessary to learn the dominant language of instruction in the education institution, and also politically, economically and socially. It is, therefore, the language of access to opportunities. South Africa supports this approach of additive multilingualism as opposed to subtractive bilingualism (Mothata 2000:18-19).

In the subtractive bilingualism model, the learners from minority language groups are taught through the dominant language of the school and of that society so that they can be assimilated quickly. The first language of learners from the minority language groups gradually disappears from these learners' schooling. While the LiEP supports additive bilingualism and multilingualism, schools mostly practice subtractive bilingualism. The parents of the learners choose this model because they see the dominant language, English in the case of South Africa, as the passport to economic benefits.

In general, subsection (2) expressed a very important sentiment, namely respect for cultural diversity and a commitment to treat all languages and cultures equally, particularly in the area of education, where such treatment is regarded as of crucial importance by many language and cultural groups.

(3) *Subsection (3)*

This provision makes it possible for religious, language and cultural minorities to *establish their own schools* at all levels, for example, primary, secondary and

tertiary. However, there are limitations to the provision in that the school cannot discriminate on the basis of race. This limitation makes it difficult for any minority group which defines itself as a unique racial and at the same time cultural group, to discriminate on the grounds of race. A good example is the *Volkskool* established outside the town of Potgietersrus. In practice, the school caters for only one race group namely the Afrikaner. In terms of the equality clause (section 9), the school cannot refuse admission on the basis of race, that is, a coloured learner who may not belong to an Afrikaner race or culture, may not be refused admission even if the *Volkskool* is an independent entity. Equally so, a non-Afrikaans speaking learner cannot be refused admission on the basis of language. As stated, it is unfair to discriminate on the grounds of, for instance, race and language. Such discrimination would violate section 9(3) (the equality clause).

Subsection (3) of section 29 above, does not mean that every person can demand from the state the right to establish schools based on common culture, language or religion. Nor does it say that the state is under obligation to establish such schools. What it provides is that every person shall have the right to establish such institutions. Linguistically and grammatically, it provides a defensive right to a person who seeks to establish such educational institutions and it protects that right from invasion by the state, without conferring on the state an obligation to establish such educational institutions. The section acknowledges that constitutionally guaranteed space should be made available for private individuals to establish and maintain their own schools, if they choose to and can afford to maintain them, or, if they feel that their cultural, language or religious needs are not being sufficiently catered for in the public system. For example, in a case involving *Danish* parents, heard under the European Convention, who objected to compulsory sex-education in the public schools, the court ruled that the state met its obligation to respect the right of parents to

ensure that education is in conformity with their own religious and philosophical convictions because the parents were free to send their children to a private school (Fledilius in De Groof & Fiers 1996:373-375).

In South Africa, the *Volkskool* idea is a good example of the exercise of subsection (3) of the Constitution. Afrikaner parents, as a unique community, exercised their rights to establish an independent school that would cater for the children's needs socially, morally, culturally, religiously and linguistically. As indicated earlier, such a school was established outside of Potgietersrus. However, the school cannot discriminate on the grounds of race.

In terms of chapter 5 of the SASA, independent schools in South Africa must be registered with the Head of the Education Department of a province. Independent schools offering grades 1 to 12, therefore, must register with the relevant provincial education department. In addition, they have to maintain standards that are not inferior to standards at comparable public educational institutions.

Regarding subsidies, subsection 4 of section 29 of the Constitution indicates that *subsection (3) does not preclude state subsidies for independent schools.*⁹¹

⁹¹ The Department of Education published a document entitled National Norms and Standards for School Funding, dated October 1998. In the document the Department re-affirmed their commitment to subsidise independent schools. However such subsidy allocations must show preference for independent schools that are well managed, provide good education, serve poor communities and individuals, and are not operated on profit. However, South Africa would not be out of step with international human rights standards should the government decide to withhold subsidies for independent schools for example religiously oriented educational institutions. Article 13(3) of the ICESCR guarantees the right of parents to *ensure the religious and moral education of their children in conformity with their convictions* and states, at the same time, should ensure that this right can be exercised by parents choosing schools other than those established by the public authorities. From this it follows that the state is not obliged to finance such education but only to tolerate it if parents wish to provide for it or pay for it.

4.3.3.4 Section 30 (*Language and Culture*)

According to **section 30**:

Everyone has the right to the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

The above section addresses the rights of minorities in general, and focuses on language and culture. The two have been addressed in previous sections. However, as culture is linked directly to education, it is important to make reference to a few international instruments regarding this link. Contemporary indications from legal instruments as to what cultural rights entail are found in articles 13 to 15 of the ICESCR.

In **article 13**, the state parties

recognise the right of everyone to education which shall be directed to the full development of the human personality and the sense of dignity, and shall strengthen the respect for human rights and fundamental freedoms as well as, amongst others, promoting tolerance and friendship among all nations and all racial, ethnic and religious groups.

Article 3(4) states that the state parties also

agree to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their convictions. Article 15 provides for the right of everyone to take part in cultural life, and, to enjoy the benefits of scientific progress and its applications.

According to Devenish (1999:420), section 30 of the Constitution of South Africa is a general right, in terms of both language and culture. The section also addresses the right to use language. It is an individual right and not a collective right. It is also important to note that in education, the provision of section 30, as a general right, must be analysed in the context of other education related sections with similar provisions, as section 30. To apply, therefore, section 30, *per se*, in public education, may be unconstitutional. For example, the right to practice one's culture and to use one's language, as contained in section 30, cannot be used to discriminate against people of other cultures in a school setting. In education, section 30 must be construed with section 29 which confers the right upon every person to receive education in the official language of the person's choice where it is *reasonably practicable*.

The above international instrument illustrates the relationship between culture and education. The promotion and preservation of minority culture can be done through the provision of separate education institutions for minority groups wherein such groups can provide their children with an education that conform with *their own moral and religious convictions*. However, establishment of such institutions is subject to state requirements and legislation.

4.3.3.5 Section 31 (Cultural, Religious and Linguistic Communities)

Section 31 is distinguishable from section 30 because it introduces a collective dimension. The section avoids to use the term *minority* used in other international instruments like the ICCPR (section 27), and instead employs the term *community*. The negative phraseology used in section 31 (*may not be denied the right*) contrasts with the positive wording of most of the rights in chapter 2 of the Constitution. This means that, at minimum, this right embraces a negative liberty and therefore members of the community may freely engage in

the practice of their culture, language and religion without interference from the state or any other source by virtue of the fact that according to section 8 of the Constitution, such rights apply horizontally (Devenish 1999:421; Constitution of the RSA 1996:15)).

However, in education, such rights may not be used as grounds of discrimination in public schools. For example, in *Matukane v. Laerskool Potgietersrus* (Case no. 2436/96) Advocate Bisschoff, on behalf of the respondents (school), contended that discrimination on the basis of, amongst others, culture or language is not, *per se*, unfair. In this regard he relied on, amongst others, section 31 of the interim Constitution.⁹² According to Bisschoff these provisions must be read in the light of what the international law provides with regard to minority by groups in a country. The Afrikaner people are such a minority. However the court dismissed such argument on the ground that discrimination on the basis of, for example, culture and language is unfair (De Groof and Bray 1996:370).

Both sections 30 and 31 have a similar limitation clause indicating that no right can be practised in a manner inconsistent with any provision of the Bill of Rights. This brings us back to the initial point that in education, both sections 30 and 31, must be construed together with section 29 of the Constitution. These rights, as indicated, are also subject to the limitation clause section 36 of the Constitution.

4.3.3.6 Section 36 (Limitation of Rights)

Fundamental rights and freedoms are not absolute or illimitable. Their boundaries are set by the rights of others and by the legitimate needs of society.

⁹² It states that every person has the right to use the language and to participate in the cultural life of his or her choice.

For example, the inclusion in sections 30 and 31(2) of the requirement that the exercise of minority rights may not be inconsistent with other fundamental rights is a reminder that constitutional protection of community identity is not a licence to that community to violate the rights of others. Generally, it is recognised that public order, safety, health and democratic values justify the imposition of restrictions on the exercise of fundamental rights. In the South African Constitution, a general limitation clause, namely section 36, sets out specific criteria for the restriction of fundamental rights in the Bill of Rights (De Waal, *et al* 2000:132-133; Devenish 1999:426).

Section 36 (Limitation of Rights) states:

36(1) The rights in the Bill of Rights may be limited only in terms of the 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.

According to De Waal, *et al* (2000:133) the word 'limitation' is a synonym for 'infringement' or, perhaps, 'justifiable infringement'. That is, a law which limits a right infringes that right. However, the infringement will not be unconstitutional if it takes place for a reason that is recognised as a justification for infringing rights in an open and democratic society based upon human dignity, equality and freedom. In other words, not all infringements of

fundamental rights are unconstitutional. Where an infringement can be justified in accordance with section 36 it will be constitutionally valid.

As De Waal, et al (2000:133) wrote, the existence of a general limitation clause does not mean that rights can be limited for any reason. It is not simply a question of determining whether the benefits to others of a limiting measure will outweigh the cost to the right-holder. If the rights can be overridden simply on the basis that the general welfare will be served by the restriction then there is little purpose in the constitutional entrenchment of rights. The reasons for limiting a right need to be exceptionally strong. The limitation must serve a purpose that most people would regard as particularly important. But, however important the purpose of the limitation, restrictions on rights will not be justifiable unless there is good reason for thinking that the restriction will achieve the purpose it is designed to achieve, and that there is no way in which the purpose can be achieved without restricting rights.

4.3.4 SUMMARY

In summary, the Constitution and the SASA make provision for the practice of even minority religions or faiths in public schools. However, in case schools do coerce, directly and indirectly, learners and/or educators to observe and participate in religious service, especially morning assemblies, it will be tantamount to the violation of both the learners and educators' constitutional rights. It will also be a violation of people's rights to religious freedom and the practise of such religion as contained in international law. Such practices in schools, in terms of attendance of such observances, must be free and voluntary.

In addition, the Constitution makes provision for the establishment of own schools under section 29. However, the freedom of such schools is limited in that they cannot discriminate on the basis of for example race, culture and religion.

The above provisions indicate that the South African Constitution, to a large extent, complies with international standards in the provision for minorities in education. Of particular importance are the following; the right to education; to open own educational institutions; to equality and the right to use its own official language where it is practically possible. The Constitution grants minority groups to practise their own culture, religion and use their own official language. However, such freedoms are subject to the limitation clause.

4.4 FINDINGS OF DOCUMENT ANALYSIS: EDUCATION LAW

The different sections in the Constitution of South Africa that have an impact on minority groups and their education were discussed above. However, the Constitution cannot spell out in detail how the provision of education for minorities can be catered for. Of the different acts and other policy documents at national level that were promulgated, two are the most relevant when coming to educational practice and how provision is made for minority groups. They are the National Policy Act No 27 of 1996 and the South African Schools Act (SASA) No 84 of 1996. The latter is the most important regarding educational practice.

These Acts and many other national policies like the LiEP, including the provincial Acts, must be consistent with the Constitution. However, only a few provisions in these laws are relevant to the study. Some of them have been discussed already. Cross references are therefore made, to avoid unnecessary repetition.

4.4.1 The National Education Policy Act (NEPA) (Act no 27 of 1996)

The NEPA gives the Minister the power to determine national policy with the aim of transforming the education system into one which serves the needs and interests of all the people of South Africa and to uphold their fundamental rights. These fundamental rights are the ones contained in chapter 2 of the Constitution. The rights include equality (section 9), freedom of religion and opinion (section 15), education (section 29), and the right to use the language and to participate in the cultural life of his or her choice (section 30). The above constitutional provisions have been discussed. These provisions as shown, have implications for the provision of education to minorities.

The Act contains 15 sections. However, not all the sections are relevant to the provision of education for minority groups. Therefore, only those sections that are perceived to be relevant for the education of minorities will be outlined.

- *Objectives of the Act*

The Act provides for:

- the determination of national policy by the Minister in accordance with certain principles;
- the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purpose of consultation;
- the publication and implementation of national education policy; and
- the monitoring and evaluation of education.

Determination of national policy as indicated above, is a function of the Minister of Education. Section 3 of the NEPA empowers the Minister, whenever he or she

wishes a particular national policy to prevail over the whole or part of any provincial law on education, to inform the provincial political heads of education accordingly, and to make specific declarations in the policy instrument to that effect. A number of education areas in which the Minister may determine national policy are mentioned under section 3(4) of the NEPA. However, not all areas are relevant to the provision of education to minority groups. The determination of a national language policy, contained under paragraph (m) of the NEPA is the most relevant for minority education. The LiEP was determined by the Minister and published in 1997.

The policies determined under section 3 of the NEPA, must be directed toward the advancement and protection of the fundamental rights of every person as guaranteed in chapter 2 of the Constitution. These include the following:

- the right of every person to be protected against unfair discrimination. That means language, religious and cultural minority groups in South Africa are protected from unfair discrimination within or by an education department. Such persons have the constitutional right to approach a competent court of law in case they feel unfairly discriminated against;
- the policies must also guarantee the right to basic education and equal access to educational institutions irrespective of race, religion and culture;
- respect the rights of a parent or guardian in respect to the education of his or her child. This also has implications for minorities because such parents may demand that their children be taught in their language and in an environment that will promote and advance their culture;
- the right of every learner to be instructed in the language of his or her choice;

- the right of every person to establish, where practicable, education institutions based on a common language, culture or religion, as long as there is no discrimination on the ground of race; and
- the right of every person to use the language and participate in the cultural life of his or her choice within an education institution.

The above policies basically centre around three issues namely language, culture and religion which are not only protected by the Constitution but also by international law. These laws were discussed in the previous chapter and sections. Some of the above policies were put in practice under the SASA.

4.4.2 The South African Schools Act (SASA) (Act no. 84 of 1996)

The SASA consists of 64 sections and applies to all public schools in the Republic of South Africa. It is an important piece of legislation that puts the South African education and training system in practice. Not all sections contained in the SASA are relevant for the education of minorities and only those that are perceived to be relevant to the education of minorities will be discussed. Some sections were discussed already in the above presentation.

4.4.2.1 Admission

Every public school has a governing body whose functions include the drawing of an admission policy which must be consistent with an applicable provincial law, the SASA, and the Constitution. A school's admission policy, therefore, may not discriminate on the grounds mentioned under section 9(3) of the Constitution. **Section 5(1)** of the SASA indicates that:

A public school must admit learners and serve their educational needs without unfairly discriminating in any way.

The above section is consistent with the Constitution section 9 (Equality). No school, therefore, can discriminate against a learner on the grounds of, for example, race, gender, sex, pregnancy, religion, belief, culture, language, birth or any other ground as indicated under section 9 of the Constitution.

However, it must be remembered that the Constitution is not against discrimination, but only against unfair discrimination. Discrimination based on the grounds listed under section 9(3) of the Constitution is unfair unless it was proved that such discrimination was fair. For example, in *Matukane v Laerskool Potgietersrus* (Case No 2436/96), Mr Justice Kriegler indicated that under section 32(c) of the interim Constitution, which, like section 29(3)(a) of the final Constitution, prohibited discrimination on racial grounds, the decision of unfairly denying a child admission to a school on the grounds of race is impermissible and unconstitutional (De Groof and Bray 1996:354).

However, public schools may establish gender specific schools. Such a provision is contained under section 12(6) of the SASA and reads:

Nothing in this Act prohibits the provision of gender specific schools.

For example, a boys only school, obviously discriminates against girls. But such discrimination may be considered to be fair before a court of law. On the other, hand discrimination based, on for example, race is strictly prohibited in public schools, especially where there is no legal provision for quotas. In this case, minority groups are given the assurance that they will not be discriminated against in any public school. A good example is *Matukane v Laerskool Potgietersrus*, discussed in section 4.4.2.1.

4.4.2.2 Language

The SASA, section 6 (1), indicates that the *Minister may, by notice in the Government Gazette and after consultation with the CEM, determine norms and standards for language policy in public schools*. The LiEP was subsequently published and its provisions are practised in all South African public schools.

The SASA also states under section 6(2), that the *governing body of a public school may determine the language policy of the school*. However this policy must be in accordance with stipulations of the Constitution, the SASA and any applicable provincial law.⁹³ In this regard, section 29(2) of the Constitution is very important in that the language policy must take into account equity, practicability and the need to redress the results of past discriminatory laws and practices. The SASA further mentioned that *no form of racial discrimination may be practised in implementing language policy determined by the body*. The SASA also makes provision for a recognised Sign language to have the status of an official language for purposes of learning at a public school.

In practise, most South African public schools have adopted either a parallel or dual medium/language model in order to accommodate learners from different linguistic groups.

(i) *The parallel medium/language schools*

This model refers to a situation where more than one language is used as a language of learning and teaching, but with the learners of each language taught

⁹³ In this regard the former Minister of Education Prof. Bengu indicated that racial or language exclusivity would not be tolerated. Every child has the right to be admitted to any school of his or her choice, and racism, disguised as the protection of culture or language, would be ended immediately. See also South Africa Survey (1996/97: 266).

separately. For example, the school might have a grade 9 Biology class taught through the English language and another class taught separately, say, in the Afrikaans language. The model became a necessity for especially the former Model C schools where learners were predominantly Afrikaans speaking. Since the Constitution prohibits discrimination on the grounds of language, such schools had no choice but to admit learners from other linguistic groups. In his description of the parallel medium model, Mothata (2000:122) indicated that there are actually two systems in one school, one Black and English and one White and predominantly Afrikaans.⁹⁴ He added that there may as well be two separate time tables.

(ii) *The dual medium/language schools*

About this model, Mothata (2000:52) indicated that there are a wide variety of models of these all over the world. Some of these are:

- the first language is used predominantly as a language of learning and of teaching, while the second language is taught as a subject only;
- learners from the dominant language group are immersed in a class where the second language, that is less powerful, but spoken by a significant number of society members, is the language of learning and of teaching;

⁹⁴ Mothata (2000:52-53) argues that the problem with the model lies with the equality of the two systems, particularly where one teacher is responsible for teaching in both languages, and is not competent in one of the languages. In most former Model C schools such teachers were Afrikaans speaking and may not be competent to teach in English. Not that they do not know the subject matter but they do not know how to impart the matter to learners. In such a situation, learners who prefer English may have a feeling that they are not treated equally as their Afrikaans speaking counterparts.

- part of the lesson is taught in one language and the other part in another/the other language;
- teaching done in one language one day and in another/the other the next day;
- one language used for some subjects and another/the other for other subjects;
- learners begin learning in linguistically homogenous classrooms, but with parts of the day set aside for integrated learning and teaching, with the goal of teaching some subjects in the home language and others in the second language from the fifth or sixth year of schooling.

The South African dual language model that was proposed and supported by the Department of Education, leads to learners being multilingual. In this model students predominantly come from two major language groups, for example Afrikaans and an African language, but their parents want their children to acquire a good proficiency in English. At the foundation phase 60% of learning is through each group's first language (taught separately), 10% of the day in the other major language (third language), and 30% of the day devoted to integrated activities in the second language (English). For the integrated activities in the second language the groups are mixed. The percentage of learning in the first language decreases gradually each year, while the percentage of the activities in the other major language increases, and integrated activities and curriculum in the second language (English) increase.

4.4.2.3 Freedom of conscience and religion at public schools

Section 7 of the SASA is consistent with particularly section 15 of the Constitution. Religious observances may be conducted in public schools, however, schools must take into account basic principles, for example equity.

Also, attendance of such observances must be free and voluntary. Such principles ensure that no religion will dominate over the others.

4.4.3 SUMMARY

The Education Acts and other policy documents explained above have implications for the provision of education to minorities. For instance, the NEPA no. 27 of 1996 gives the Minister the powers to determine national policy with the aim of transforming the education system into one which serves the needs and interest of all the people of South Africa. Such policies must be directed towards the advancement and protection of the fundamental rights of every person which are guaranteed in chapter 2 of the Constitution. Such needs and interests are diverse, given the country's different cultures. Therefore, from what the researcher observed from the literature review, the needs and interests of minorities in South Africa have been fairly accommodated in the education system. Minorities can open their schools, and teach in their own language. Religious institutions can also do the same.

4.5 FINDINGS OF OBSERVATION AT AND ANALYSIS OF DOCUMENTS PRODUCED BY THE NATIONAL CONFERENCE ON THE ESTABLISHMENT OF THE COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS, AND LINGUISTIC COMMUNITIES

The process of implementing section 185 of the Constitution, that is, the formation of a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, (hereafter referred to as the Commission), was initially outlined by the former Deputy President, Thabo

Mbeki ⁹⁵ in parliament on 4 August 1998 and largely endorsed by the majority of parliamentarians.⁹⁶ This process consisted of several phases:

- (1) The first phase involved debates in the national and provincial legislatures.
- (2) The second phase involved public participation in the policy process initiated through a call for submissions and public hearings on the functions of the Commission.
- (3) The third phase comprised a national consultative conference where representatives from cultural, religious and linguistic communities gathered to map out key areas of consensus and differences, which would inform the establishment of the Commission.
- (4) The fourth phase also comprised a conference on the establishment of the Commission. During that conference, a Draft Bill about the Commission's establishment was presented to delegates for inputs and discussions.

⁹⁵ During the time of writing this thesis, Thabo Mbeki was President of the Republic of South Africa.

⁹⁶ The Group Democracy and Governance of the Human Sciences Research Council (HSRC) reported that in the National Assembly, on 4 August 1998, President Mbeki viewed the debate on section 185 as 'one of the most important in the life of Parliament since the birth of democracy in South Africa'. Constitutional Affairs Minister Valli Moosa, added that the process of setting up a Commission 'is an opportunity to lay the foundation for nation building'. In the words of one parliamentarian, this clause has forced South Africans to engage in the great national debate on what it means to be a South African and what it means to assert 'one nation, many cultures'. With one exception, the Democratic Party, all those who spoke in the National Assembly accepted section 185 and 186 of the Constitution and argued for a speedy implementation of this Constitutional provision. The majority of those who addressed the Assembly conceived the Commission as playing several roles. These roles include nation building, the instilling of patriotism, and reconciliation. Other members went so far as to suggest that the Commission could 'create common patriotism' and play a 'unifying factor in national life', and would 'weld a deeper sense of South African nationhood'. An exception to this general agreement was the party which rejected the Commission as 'meddlesome bureaucracy, police monitoring', and indicated that the party 'loathes the creation of such a body'.

It is not the intention to concentrate on the first two phases in this study . They are, of course, important in the sense that they were the initial indications of how serious the African National Congress-led government is in addressing minority group rights. This was the beginning of the practical implementation of the South African adopted principle of *unity in diversity*, a principle that defines the rainbow nation that South Africa is considered to be. In addition, the debates should be understood in the context of the priority given by negotiating parties to the creation of a stable and sustainable democracy in South Africa.

The focus in this study is on the proposed Commission and its functions and how such functions would influence the provision of education to minorities. It was indicated that the inputs made at the two national conferences on the establishment of the Commission were valuable guidelines in the drafting of the Draft Bill which contained such functions as proposed by delegates. The conferences were all held on Heritage Day (24 September) in 1998 and 1999 respectively.

As indicated earlier, different organisations representing different cultural, religious and linguistic groups as well as political parties in South Africa were invited for the conferences. They included the Freedom Front, Baphuti Language and Cultural Development, the Dutch Reformed Church, Hindu Association of the Western Cape, Eastern Cape Council for Aborigines, Eastern Cape Khoi Peoples Resource Centre, and the South African Human Rights Commission.

Most of the groups invited made submissions. However, not all of those submissions made during conferences, especially the first one, were relevant to the education of minorities, and thus to this study. Most of the submissions were concerned with the form and function of the proposed commission.

This section of the study focuses not on the submissions made at the conference, but on the Draft Bill presented during the second conference about the proposed Commission and how the proposed functions of the Commission, as articulated in the submissions, might impact on the provision of education for minorities. However, a synopsis of the proceedings and some submissions will be given.

4.5.1 Origins of the Commission⁹⁷

During the constitutional negotiations, fears were raised by some political parties that majoritarian democracy would undermine the rights and interests of minority groups. When the Constitution was drafted, major political parties accepted sections 185 and 186 of the Constitution to accommodate concerns that the rights of cultural, religious and linguistic communities should be addressed. These sections provided for the establishment of a Commission for the Protection and the Promotion of the Rights of Cultural, Religious and Linguistic Communities as one of the key institutions supporting democracy. Section 185 was agreed to in the Constitution for several reasons. These include its inclusion as a pillar for nation-building, as a catalyst for African Renaissance, and as a way to promote and protect the rights of cultural, religious and linguistic communities as enshrined in the Constitution (Department of Constitutional Development 1997:6).

4.5.2 The first conference (1998)

The first conference, held on 24 September 1998 at Gallagher Estate, Midrand, Gauteng Province, was referred to as a National Consultative Conference on Nation Building through the Promotion and Protection of the Rights of Cultural,

⁹⁷ It is also known as a chapter 9 commission. It is one of the state institutions supporting constitutional democracy in South Africa.

Religious and Linguistic Communities, the first conference of its kind in the history of South Africa wherein minority groups were given a chance to make inputs in issues that affect them.

The conference was opened by the then Deputy President Thabo Mbeki. Also in attendance were Home Affairs Minister Mangosuthu Bethelzi, the Speaker of the National Assembly, Frene Ginwala, and other Cabinet Ministers.

The conference was divided into four sessions. The first session addressed the issue of nation-building and the keynote speech was delivered by Thabo Mbeki. The second session addressed issues of concern to cultural, religious and linguistic communities. The third session addressed the objects and function of the Commission. The fourth and final session addressed the composition of the Commission as dealt with in section 186 of the Constitution. During the second, third and fourth sessions, delegates were afforded the opportunity to make submissions from the floor during open discussion. Each speaker was allowed three minutes, in order to grant the largest possible number of delegates the opportunity to contribute.

In his nine paged keynote address, Thabo Mbeki (1998), highlighted a number of issues with regards to minorities that are worth mentioning. Amongst others, he indicated that when South Africans negotiated the Constitution, they took, what he referred to as a deliberate decision that provision should be made for the country to deal with the reality that South Africa is *a multi-lingual, multi-cultural and multi-faith society*. Hence the entrenchment in the Constitution, of the provisions that would ensure respect and protection for the cultural, linguistic and religious rights of each and every citizen.⁹⁸ This statement served as

⁹⁸ Mbeki did not specify the constitutional provisions. They include sections 15, 30, and 31.

Mbeki's acknowledgement that South Africa, like most countries in the world, is made up of communities with cultural, religious and linguistic differences. This implies, therefore, the existence of minorities in South Africa.

Mbeki also indicated that the Constitution recognised the rights of individuals. It was also mindful of the fact that these rights can also be exercised collectively. Ways had therefore to be found whereby such rights are not only acknowledged but conditions have to be created for their exercise. The provision in the Constitution requiring the creation of the Commission sought to address precisely the question of creating such conditions. Lastly, he mentioned that the Commission should be established by the people and not by experts.⁹⁹ Such is a safe exercise, where people decide about their destiny instead of somebody deciding such destiny of their behalf.

4.5.3 Synopsis on conference submissions

A number of organisations and individuals present at the Conference made both verbal and written submissions. The concentration in this study is on the latter. However, not all submissions were relevant to the provision of education to minorities nor were they made on educational basis. The researcher did not perceive submissions as having direct implications on education provisions.¹⁰⁰ In fact, some of the submissions made no recommendations in terms of the form

⁹⁹ The Freedom Front indicated that due to a lack of knowledge on emerging problems of minorities the Constitution should be amended to allow a small commission of experts, preferably from minority groups to study the options for groups, in South Africa, advise those who seek to activate the enabling clauses of the Constitution for their purposes and liaise with the government and other parties on national plans and legislation, something Mbeki rejects.

¹⁰⁰ Most submissions were too general, with no specific mention of how the proposed Commission would address issues on promotion of culture and others nor on how schools could play a role in the promotion thereof.

and functions of the Commission, except that they support those functions contained in section 185 and 186 of the Constitution. Such organisations include the Principled Executives Association; the Baphuti Language and Cultural Development which only wanted recognition of their existence and the development of their language and culture; the Griqua National Conference of South Africa who submitted only the proposition that they needed to reclaim their identity as group and the Natal Tamil language who wanted the protection of their language. Only those recommendations, from few organisations and individuals, with relevance to this study, are outlined.

Regarding the provision of education, the Independent Forum for Religious Broadcasting (IFRB) only mentioned that one of the functions of the Commission should be to protect children and education. There is no mention of how that should be done. On the other hand, the Northern Amandebele National Organisation, on the basis of cultural, political and constitutional grounds submitted, amongst others, that the Commission should (1) devote attention and resources to previously marginalised languages;¹⁰¹ (2) develop soundly based approaches for the teaching of indigenous languages at schools, write books, newspapers, and develop radio and television programmes in these languages; and (3) inform people about their languages, their history and use for religious and other purposes. The Hindu Association of the Western Cape wanted the Commission to be a custodian of language, religion and cultural rights and be motivated in examining, amongst others, school texts. Such suggestions obviously urge a link between the Commission and the educational arena.

One of the individuals who made a submission that may have implications for education, is a Mr P Lishivha. He maintained that one of the functions of the Commission must be to define and implement a policy on language in

¹⁰¹ A function mandated to the PANSALB.

broadcasting, education and telecommunication. Although there was no indication on how that would be done, it is submitted that such a policy will have implications on the LiEP. In the researcher's judgement, such a policy should include the former marginalised languages and the other underdeveloped African languages.

4.5.4 The second conference (1999)

The second conference was held on 24 September 1999, exactly a year after the first one. The conference was held at the Volkswagen Centre in Midrand and was opened by the Deputy President, Mr Jacob Zuma. During this conference a Draft Bill was presented to delegates. The Bill dealt with, amongst others, the following:

- the status and primary object of the Commission; and
- the composition of the Commission including qualifications for membership, removal of commissioners from office, filling of vacancies, conduct of members and appointment procedure and other conditions of employment.

Of particular relevance to this study are some of the functions of the Commission as contained in the Draft Bill. However, it must be mentioned that most of those functions contained in the Bill made no relevance to the provision of education to minorities.

4.5.5 Functions of the Commission

As outlined in the Constitution **section 185 (1)**, the primary objects of the Commission are:

- (1) to promote respect for the rights of cultural, religious and linguistic communities;
- (2) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and to recommend the establishment or recognition of a cultural or other council or councils for a community or communities in South Africa.

Subsection 2 indicates that the Commission has the power as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

In terms of the first function, the Commission's role would be an educative one. It calls for the Commission to undertake efforts to instill in South Africans an awareness of cultural, linguistic and religious rights of communities, what these rights entail, who can be said to be bearers of these rights and how such rights fit into the pattern of rights that distinguish our constitutional order.

Whilst the Commission has good intentions of not dividing South Africans, this function, if not managed carefully, can divide South Africans into cultural, religious and linguistic entities, being hostile towards one another simply because they were they are constantly reminded of their differences. Some South Africans are still battling to get rid of apartheid policies which impacted negatively on them. The creation of such a structure may even create more tensions among groups. However, the aim of such efforts had to be to inculcate the principle of equality of status and the value of cultures, religions and

languages and, as it follows, for the composite cultural, linguistic and religious diversity that characterises the South African society.¹⁰²

To achieve the objects articulated in the Constitution, part 5 of the Bill outlined important functions of the Commission. They include, the Commission's powers to:

- monitor, investigate, research, educate, lobby, advise and report on any issue concerning linguistic and cultural communities;
- facilitate the resolution of conflicts or friction between cultural, religious and linguistic communities or between any such community and an organ of state; and
- receive and deal with complaints by a cultural, religious or linguistic community.

From a glance, the above provisions, particularly subsection 2 of the Constitution and function 1 above, regarding the Commission's powers, seem to be easily achievable on paper. They have far-reaching implications not only on cultural practices and religious tolerance but also on the provision of education for minorities groups.

In section 4.2 about the national debate it was reported that some minorities are utilising constitutional provisions, including section 185, to found their own schools based on language, culture and religion. There is no doubt that such groups will still continue with those demands. However, even if the Commission may make recommendations in favour of such groups, it will mean that the

¹⁰² Such richness is captured in the preamble of the final Constitution by the phrase 'united in diversity'. See sentence 5 of the Preamble of the Constitution of South Africa (Act no. 8 of 1996).

Constitution of South Africa must be amended to make provision for cultural or other forms of unfair discrimination in schools. Something that that the researcher doubts the National Assembly and the National Council of Provinces will agree to. At the time of this study there is still no agreement on the final functions of the Commission which, in terms of subsection 4 of section 185 must be prescribed by legislation. However, it must be submitted that one of the contentious issues facing the Commission remains education.

Another contentious issue regarding the Commission, particularly in executing its functions, is its relationship with other organs of state, for instance, the SAHRC and the PANSALB, for example, the educative function contained in section 185(1) of the Constitution, which has been discussed above, coincides with that of the SAHRC under section 184 of the Constitution.¹⁰³ Cultural, linguistic and religious rights are human rights and the SAHRC is constitutionally given the powers to, amongst others, investigate and monitor human rights abuses and violations. There is, therefore, an overlap which not only requires a jurisdictional demarcation but even co-operation between these institutions.¹⁰⁴

On the other hand, the Commission's powers, which include to monitor, investigate, research and report, for example on issues affecting linguistic communities are similar to those of the PANSALB.¹⁰⁵ As it is the case with the SAHRC, such overlaps will have to be addressed. In the Draft Bill the issues of

¹⁰³ The section provides that the SAHRC must: (a) promote respect for human rights and a culture of human rights; (b) promote the protection, development and attainment of human rights; and (c) monitor and assess the observance of human rights in the Republic.

¹⁰⁴ Perhaps the argument from the DP holds water in terms of the Commission being nothing but a duplication of services. See section 4.2.

¹⁰⁵ The PANSALB Act No. 59 of 1995 section 8 (1)(h) for example, indicated, amongst others, that the PANSALB investigates, on its own initiative or on receipt of a written complaint, any alleged violation of a language right, language policy or language practice.

overlapping powers between different statutory bodies were not directly addressed, although the above discussion shows that certain tasks are going to be duplicated. However, the Draft Bill on the Commission, contains a clause that *the Commission must seek to conclude such an agreement where the functions of the Commission overlap with those of another constitutional institution or an organ of state.*

4.5.6 SUMMARY

In summary, the above discussion analysed the Constitution and some of the important policy documents with relevance to minorities and their education. Although the Constitution does not make a special provision for the education of minorities, there are, however, different sections that are seen to be providing education for these minorities. The Constitution does not provide a definition of *minorities*. Other policy documents such as the LiEP and the SASA does ensure that in practice, minority languages, religion and culture are accommodated in public schools.

In the next part of this chapter, additional data for the study, gathered from unstructured interviews with key informants will be presented.

4.6 CONCLUSION

This chapter focussed on, amongst others, the South African definition of the term *minority* and minority rights in education. It emerged from the literature findings that there is no definition for the term *minority* in the Constitution of the RSA. Instead, the Constitution mentions the term *communities* and fails to define the term. In addition no other policy document defines both *communities* and *minorities*. However, given the figures presented in section 4.2.3.2 and

section 4.2.3.3 on different religious and linguistic communities respectively, one can conclude that South Africa is a country of minorities.

On the other hand, the Constitution of South Africa guarantees all citizens fundamental rights and freedoms subject, of course, to the limitation clause. Minorities have the right to open their own schools, for example the *Volksskool* in Potgietersrus. They also have the right to use their own language, practice their own culture, the right to associate and the right to equality.

In accordance with the Constitution, various education laws for example the SASA and the NEPA, also make provision for diverse cultures in education. For instance, the SASA makes provision for the practice of religion in public schools provided the principle of equity is adhered to. To a great extent the South African Constitution and relevant policy documents in education are in line with international instruments as the UDHR and the ICCPR, particularly regarding minority issues. On the other hand, it is hoped that the proposed Commission on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities will still address and advance the needs and interests of minorities in South Africa, particularly in education.

4.7 DISCUSSION OF FINDINGS: INTERVIEWS

4.7.1 Introduction

The previous section of this chapter presented the findings of document analysis particularly primary documents addressing the education rights of minorities. The documents include the Constitution of the RSA and the relevant national laws and other policies in the South African education and training system. Such include the LiEP, the NEPA, and the SASA (see sections 4.3.3.3 par. (iii), 4.4.1,

and 4.4.2). In addition the chapter presented the analysis of documents produced by the National Conference on the establishment of the Commission for the Promotion and Protection of Cultural, Religious, and Linguistic Communities (section 4.5).

Against this background the focus is now on the findings of the interviews held during the beginning of the year 2000 with identified key informants. This part of the chapter serves as additional data to the document analysis to expand and strengthen the data from the document. The first part of this section contains information about the four informants, for instance the setting, the characteristics of the informants which include their role in the community, the interview guide and other background data. In the second part each of the informants' responses to the questions on the rights of minorities in education will be discussed. However the researcher has to say, as it was done in chapter 1, that the debates regarding minorities and their rights are political. At times it was difficult to separate the minority rights from other political issues. The researcher has, however, attempted to separate the two where possible.

4.7.2 Background data and characteristics of informants

The interviews were held in the beginning of the year 2000 in different places in South Africa. Four informants were interviewed. Three of the informants represent major minority groups. The fourth informant is closely related to one minority group namely the Xumani San. All the informants agreed that the interviews could be recorded on video on condition that the video would only be used for this research. The video is available in the researcher's archives. The sample used in this study is small and does not cover all different minorities in South Africa. For instance there are cultural, religious, the handicapped, women and other minorities (see also section 4.2.2).

4.7.2.1 Setting and characteristics of informants

Four informants were interviewed. The first informant is a Nama, Mr Willem Damara whom the researcher located through the PANSALB's head-office in Pretoria. He lives in Riemvasmaak, a small settlement of about 1600 people in the Northern Cape Province which lies about 50 kilometres north of Kakamas and also not far from the Namibian border. Although there are a few people of Xhosa origin in Riemvasmaak, the majority are the Nama. It is therefore a home for the Nama people who, according to Willem, were removed from Riemvasmaak by the former South African government in 1974 and were relocated to Namibia (then called South West Africa). The camp was converted into a military base for the former South African Defence Force. After some 25 years, the newly democratically elected government of the RSA relocated the Nama back to their land, Riemvasmaak. It is an isolated settlement. It has no electricity, no running water, no clinic, no factories, let alone job opportunities. The nearest high school is in Kakamas, which, as indicated earlier, is a small town some 50 km away from Riemvasmaak. Generally, the community lacks almost all basic human needs.

The informant is a principal of a primary school in Riemvasmaak. During the time of the interview the school had approximately 146 learners and 5 educators and offered Grades 1 - 7. Willem was educated in Namibia where he spent some 25 years of his life. He is not only the principal of a school but also the chairperson of the Khoe and San Language Body.¹⁰⁶ The Body was established by the PANSALB in terms of section 8(8)(b) of the PANSALB Act no. 59 of 1995. He was therefore interviewed in his capacity as chairperson of the

¹⁰⁶ Other members of the Body are Mr David Kryper, Ms Avelina Chiftako, Ms Tumba Afrino, Mr Tosen Juts, Mr Rennie Mishe, Mr Petrus Swartbooi, Mr Jacobus Links and Mrs Maria Farmer.

language committee and as a member from one of the marginalised communities, the Nama. Like many Nama persons in his community he speaks fluent Afrikaans and his responses were in Afrikaans.

Willem made a recommendation that the researcher should also interview Mr Nigel Crawhall, a socio-linguist from Canada working with the South African San Institute.¹⁰⁷ Although Nigel is not a member of the National Language Body, he (Nigel) worked closely with Willem on the Language Body. The researcher located, visited and interviewed Nigel in his office in Mowbray, Cape Town. He (Nigel) indicated that his main task in the Institute is to help the Xumani¹⁰⁸ community in developing their language. That includes working with old people to collect and record their traditional language including folktales and their history. Such inputs and records are documented and are put into manageable materials to be used in schools so as to teach the young people and to promote the culture of the Xumani community. He also indicated that this was the only way the Xumani community languages, which are at risk, could be preserved (South African San Institute (SASI) Annual Review April 1998-March 1999:4)

¹⁰⁷ The South African San Institute (SASI) was established in July 1996 in response to a need for support and access to resources expressed by the Working Group of Indigenous Minorities in Southern Africa (WIMSA) and some interested individuals who have been working for the San. The WIMSA is a San based networking organisation operating in Angola, Botswana, Namibia, South Africa, Zambia and Zimbabwe and was established in 1996 at the request of the San. The WIMSA provides a platform for their communities throughout the region to express their problems, needs and concerns.

¹⁰⁸ Sometimes spelled as Khomani. Willem Damara who is a Nama indicated that the term Khoi-San embraces everyone of their origin, for example the Nama and the San whereas Khoi-Khoi refers only to the Nama. The San who are found in the Kalahari are called the Xumani San. The !Xu and the Khoe/Khwe are found in Schmidtsdrift. In 1990 approximately 3000 !Xu and 1200 Khwe ex South African Defence Force soldiers and their dependents were evacuated from Caprivi in Namibia and relocated to a military camp in Schmidtsdrift, about 80 km west of Kimberley. For almost ten years the two communities have been living in tents under conditions of extreme heat and cold. In 1996 they were awarded the rights to collectively own and settle on the farm Platfontein near Kimberley.

Apart from serving in the San Institute, Nigel also served as a coordinator of the Indigenous Peoples of Africa Co-ordinating Committee and for 6 years he was a director of the National Language Project. The aim of the Language Project was to investigate the possibilities of integrating African languages into public institutions. Nigel also contributed towards research reports to the National Education Policy Investigation (NEPI) and the Heritage Language Subcommittee of the Language Plan Task Group (LANGTAG). Both the NEPI and the LANGTAG resulted in the publication of the NEPA and the LiEP respectively. Both the latter policy documents were discussed in the previous chapter of this study.

The third informant is Daryl Swanepoel, Deputy Executive Director of the New National Party (NNP). Daryl works in the Office of the national leader of the NNP and liaises with the media and the general public on policy issues. The researcher located Daryl and interviewed him and his co-worker Rabs Paul in the NNP's offices in Cape Town.

The last informant is General Constand Viljoen, leader of the Freedom Front (FF). The FF is a party that was formed to protect the interests of the Afrikaner hence most if not all of its membership is made up of people from an Afrikaner people. It has a membership of about 300 000 from about 4.2 million Afrikaners (see tables 1 and 2 sections 4.2.1 and 4.2.3.2). The FF therefore does not represent the interest of all Afrikaners in South Africa. For example, in the 1999 elections approximately 127 217 people, as compared to 424 555 in the 1994 elections, voted for the FF. The number of votes cast for the FF therefore, declined by 297 338. As a result of the decline of voters, the FF lost 6 of the 9 seats that the party had gained in the 1994 elections, in the National Assembly. At the time of writing this thesis the FF only had 3 seats in the National Assembly (South Africa Survey 1999-2000: 2000:326-327). Despite the decline,

the FF still advocates the formation of a *Volkstaat* or a separate Afrikaner homeland and it was very influential in the formation of the *Volkskole*. General Viljoen has led the party since 1994 and was re-elected for the second term as leader of the party in 1999. The researcher interviewed him in the offices of the FF in Parliament building in Cape Town. At the time of writing this study, General Viljoen was a member of parliament of the RSA.

4.7.2.2 Observations and discussion of the interview process

Attention is given to observations made during the interviews process. Such observations constitute an integral part of qualitative research and provide a rich source of additional data. The reception in all locations of the interview was warm. All interviews were experienced as warm and informal, generally resembling a personal conversation. In all cases, prior arrangements were made through the informant's secretaries. Therefore, all informants were prepared for this interviews. For example, the NNP and FF even prepared materials regarding their press releases and other documentation relevant to the study. The NNP's Daryl even asked Rabs Paul, the NNP leader's aide, to join in the discussion. All informants showed a lively interest in the study and asked for copies of the completed thesis.

4.8 PRESENTATIONS AND DISCUSSIONS OF KEY THEMES

As indicated earlier, the interviews were conducted during February 2000 in different places in South Africa. Although the interviews were informal, the researcher had prepared an interview guide and all had to answer some core questions (see also appendix 3). This section, therefore, discusses the responses of the key informants on key issues on minorities in education as identified by them. For greater clarity material is organised as follows: First the different

responses on the main themes, namely provisions of minority rights in the Constitution and provision in various education laws and in education practice. The main themes led to a number of responses that can be regarded as sub-themes, for example, the establishment of the *Volkstaat* and the role of the proposed Commission on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. Data was grouped around key themes and suitable quotations were used to highlight themes.

4.8.1 The Constitution

A considerable portion of the interview was devoted to the provisions in the Constitution of the RSA. Informants were asked to comment on, for example, the definition of minorities, whether the Constitution has enough provisions on the rights of minorities in education and if not, what could be changed in the Constitution to accommodate minorities; the establishment of a *Volkstaat* or independent homeland and its implications in education; the establishment of own schools and the use of mother tongue in public schools.

4.8.1.1 Defining minorities in South Africa

The literature presented in chapter 2 section 2.2 indicated that despite the many references to minorities found in international instruments of all kinds, there is no international consensus on the definition of the term *minority*. Not even the UN, through its Special Rapporteur, who headed the Sub-Commission on Prevention of Discrimination and Protection of Minorities, has come up with a definition of the concept. It was mentioned in section 4.2.2 that South Africa, like all the countries discussed in chapter 2, has no definition of the concept. Section 31 of the South African Constitution uses the word *community* rather than *minority*. Against this background, the informants were asked to define

minorities and to indicate whether South Africa was indeed a country of minorities as it is generally perceived to be.

Regarding this issue Willem indicated that they (the Nama) do not regard themselves as a minority. He indicated that before 1994, because of apartheid policies, they were regarded as a minority. However, after the 1994 elections the Nama people do not regard themselves as a minority. In his words, Willem said

Ons sien nie onself as 'n minderheid groep nie. Ons is deel van groot *rainbow* nasie, nie 'n minderheid groep nie. (We do not see ourselves as a minority group but we are part of a big rainbow nation not a minority group).

Acknowledging the existence of minorities in South Africa, Daryl of the NNP indicated that minorities should in turn define themselves. However, such a definition should take cognisance of certain relevant sections in the Constitution of the RSA, for example section 18 (Freedom of association) (see also appendix 1). According to Daryl and the NNP

Communities define themselves on the basis of freedom of association and shared culture or common interest (NNP Election Manifesto 1999:15)

This means that the definition should not infringe on the right of association between and among individuals as entrenched in the Constitution. He cautioned that care should be taken that one minority should not enjoy the rights at the expense of other minorities. He added that the NNP believed in what he referred to as 'constructive engagement' as opposed to 'impressive engagement'. The former is a principle that minorities apply in constructively engaging the majority whereas the latter is more counter-productive, especially when coming to recognition. In the impressive engagement approach minorities assume a

rather negative position of always being against policies without providing alternative solutions.

Daryl's sentiments were shared by General Constand Viljoen, leader of the FF. He reiterated the statement he made in 1999 in a television interview discussed in 4.2, that minorities should define themselves. He indicated that the problem is

How do we arrange the country's management in a way that we will have a bigger whole and loyalty towards a bigger whole without crashing minorities or creating a perception within minorities that their specific customs or identities are being threatened? How do we allow minorities the maximum amount of freedom for them as minorities to feel at home even in a bigger country and how much can we divolve from governmental powers towards communities in order to allow them maximum self determination as peoples.

He added that the truth in the modern world is that you have a divided country, no longer a nation state. He said:

The trick is, how to allow the maximum freedom for the people to live the way they want to live so that they will voluntarily buy into the loyalty of the bigger whole.

Nigel, on the other hand, believes, that although South Africa may have minorities, the concept minority is not used because there is no clear majority. Nigel's comment brings back the argument the researcher made in section 4.2.3.3 based on the population groups statistics in the RSA. It was deduced from those figures that there is no clear majority in the RSA that the self declared minorities can be protected from. In fact, South Africa is a country of minorities. Such sentiments were also echoed by Judge A Sachs in the dispute concerning the constitutionality of certain provisions of the School Education Bill which became known as the South African Schools Act (see also section 4.2).

It was clear from the discussions that neither the NNP nor the FF wanted to commit themselves on the definition of the concept *minority*. Both the NNP and FF maintained that the onus is on communities to define themselves. The issue is also complicated by the fact that the Constitution of the RSA does not define, nor use, the concept *minority*.

4.8.1.2 *Constitutional provisions*

The provisions in the Constitution of the RSA formed the basis of the discussions with informants on the rights of minorities in education. The four informants had their own views on whether the provisions in the Constitution have addressed issues on minorities, for example the definition of minorities, language and the establishment of own schools, to their satisfaction.

Willem indicated that to him and his community, the Constitution is a problem.

He had this to say:

Onse taal is nie 'n amptelike taal nie en hy het nie 'n hoer funksie en nie eers 'n laer funksie nie. Jy kan hom nie in die media gebruik nie. In die Konstitusie die Nama is net erken en het nie daardie *status* as 'n amptelike taal nie. (Our language is not an official language and it does not have a high function and not even a low function. It cannot be used in the media. In the Constitution the Nama is only acknowledged and does not have the status of an official language).

He went further to say that

solank as hy nie 'n amptelik taal is nie, sal hy maar agter in die ry staan. (As long as it is not an official language, it will always be last in the queue).

In his view the Constitution should be amended to provide a clause that will give the Khoi and San languages the same official status as the other 11 African

languages. Such an amendment would enable other communities to know about the existence of their language. Willem gave an example of a recognised South African university that rejected his application to study for a higher degree because he indicated that Nama was his first language. However, the university wrote back and rejected his application because Nama was not a South African language. Therefore it was going to be impossible for that university to communicate with him in his first language. At the time of the interview, Willem was still surprised by such an attitude, especially after the adoption of the Constitution, and could not understand why his application was rejected because he gave the university an option to communicate with him in Afrikaans, which he is fluent in and used, like all the Nama people, as a medium of communication. They also use Afrikaans as medium of instruction in their schools. In his words:

Nama is ons moedertaal en onse eerste taal is Afrikaans. (Nama is our mother tongue and Afrikaans is our first language).

Willem also gave an example of a radio broadcast that he and other Khoisan people were supposed to have some few years ago. With the help of Nigel Crawhall, the Khoisan community asked one of the radio stations in Upington to give them a short slot every week so that they could address their people on matters that affect them. Willem was part of the panel. They decided to broadcast in their languages (Nama and San) to be able to communicate with their people and not use Afrikaans. The station manager did not know that they were going to use their own languages. Whilst they were live on air addressing their people the manager interrupted them, stopped the broadcast and ordered them out of the station. She maintained that they were using a foreign language (not South African) which she said is contrary to SABC policy. On top of it, she did not want to lose her job.

Such an attitude, as Willem indicated, may be an attitude of millions of South Africans who never heard of the Nama and San languages. It is therefore very important that the Constitution has to be amended, so that South Africans should be sensitized about the Nama and San languages.

However, after the interview with Willem, President Thabo Mbeki unveiled a new code of arms for the RSA. The motto on the new code is written in the Khoisan language of the /Xam¹⁰⁹ people. It reads *!KE E: /XARRA/ /KE* meaning “Diverse people unite”, or “People who are different join together”. I believe that such a recognition of the Khoisan language by a country’s highest office demonstrates the government’s commitment to respect not only official languages but also indigenous languages like the /XAM and the Nama. In the researcher’s opinion such a gesture by government would help to speed up the development of the other Khoisan languages as some of them are on the verge of extinction. Although such a recognition of the Khoisan languages is only a gesture, it addresses Willem’s concern that none of the Khoisan languages had a high and not even a low function. However, the use of the /XAM in the coat of arms does not elevate the language or any of the Khoisan languages to the status of being official. Only a Constitutional amendment and after a thorough development exercise of the language to usable levels, can such a language be elevated to the status of being official. It is therefore one of the tasks of the National Language Body to develop Khoisan languages to usable levels.

Unlike Willem, Nigel Crawhall felt that the South African Constitution has done enough to cater for all cultures. However, he mentioned that the Constitution is still in the apartheid framework, particularly in the choice of official languages. For instance, there are many languages that have been left out in the final

2 The /XAM language is also one of the Khoisan language like the Nama. However the /XAM is extinct as no living person who speaks it as his or her mother tongue.

Constitution like, for example, the Indian languages and the Isiphuti. Only 11 languages that were used for administration in the apartheid structures are regarded as official. However, Nigel's concern about the provisions in the Constitution was that the Nama and other Khoisan communities knew nothing about the Constitution. He said:

Communities such as the Nama have only heard about the existence of the Constitution, none of the members of those communities know the details of it, nor do they know the status of their languages. I had to go there and show them.

He also indicated that some of those communities, for instance the San community, are so badly organised, with zero literacy, being very poor and with no civil society, that it is difficult for them to challenge the government to implement their rights as entrenched in the Constitution. Only the Nama community of Riemvasmaak had a number of qualified teachers who could read or write, of which Willem is a good example.

On the other hand, General Constand Viljoen indicated that the Constitution has not done enough to address minority issues around the protection of minorities. What the negotiators and drafters succeeded to do was to include what he referred to as 'enabling clauses'¹¹⁰ particularly clauses dealing with minorities or groups. These clauses, he said,

are characterised by the word 'may' and only enable groups or communities to practice their rights as opposed to individual rights which are compulsory.

¹¹⁰ For example, section 31 of the Constitution states "Persons belonging to a cultural, religious or linguistic community *may* not be denied the right, with other members of the community (a) to enjoy their culture, practice their religion and use their language...."

He added that there should be negotiations with other political parties to amend the Constitution so that minority or group rights could be included in the Bill of Rights.

4.8.2 Own schools and own language

The problem of own schools where minorities can use their own language has been an issue ever since the introduction of integrated schooling in South Africa. As indicated in chapters 1 and 4, some minorities have vowed to keep their children out of the new integrated public school system by establishing their own schools. A good example in this regard is the *Volkskool* idea where the Afrikaners who are mainly opposed to integration, opened their own schools, in terms of section 29(3) of the Constitution of the RSA.

Against this background the informants were asked about the provision of own schools and whether they would like to have their own schools where they could use their own language and practice their own culture.

Willem's answer was very straightforward in this regard. As chairperson of the National Language Body he indicated that the sentiment of the Body is that they do not want to have their own schools. He said:

Ons wil nie he mense moet se, daar is die Nama skool.

(We do not want people to say there is the Nama school)

He added that establishing such a school is like going back to apartheid where we used to have schools divided according to race and language.

With regard to the use of mother tongue in schools, Willem indicated that it is disturbing that the Nama as a language is not used in schools despite the fact that it has its own orthography and books and has more than 20 000 speakers as opposed to other Khoi-San languages. This was also confirmed by Nigel, who indicated that the Nama has such enormous orthography, as compared to other Khoisan languages, that it could be introduced in schools at any time. This, as Willem indicated, was unfair to the Nama people. For example, Willem indicated that

Die Grikwas het nie hulle eie taal nie, die Khoi het min dokumentasie van hulle taal, en die San het net vyftien mense wat lewe wat die San kon praat. (The Griquas don't have their own language of their own, the Khoi have very little documentation on their language and the San have only about 15 people living who could talk the San language).

He added that all these fifteen people still alive are above the age of 70 years. Should they die, the San language also dies. Basically, what Willem asked for was that their languages, particularly the Nama, be introduced in the public school system. He maintained that

Die Nama sal nie sterf nie (The Nama will not die)

Nigel, on the other hand, accepted the idea of the establishment of own schools. His only concern is that:

In South Africa, the school will be targeted and victimised.

He however did not indicate as to who will target those schools.

Daryl of the NNP, was rather diplomatic on this question. He indicated that the diverse cultures in our society was an asset and not a liability.¹¹¹ He further indicated that to built a nation does not mean to ‘make it think as one’ but we need to strengthen own cultures. That means we need to create an environment in which minorities can live their own cultures, languages and rituals to the fullest. Relating this idea to education and in particular to the establishment of own schools, he said:

We should create an environment that people can also learn in their mother tongue and that such opportunities be created. It must, however, be done in the context of what is economically possible.

Daryl gave an example of the higher education sector, like universities. He indicated that we should come up with different models in the higher education sector where different languages and cultures can be accommodated. For example we may have an Afrikaans state school model and university, a Zulu model, and so on. However, such models are subject to “what is economically possible”. He also indicated that the same model could be used to accommodate different cultures in public schools in the sense that separate classes could be held at different times for different cultural and language groups and for effective use of the mother tongue for teaching and learning. For example, the Zulu learners could attend in the morning and Afrikaans speaking learners in the afternoon, with provision for core subjects where all learners will attend.

Although Daryl did not indicate clearly whether he is in favour of the establishment of own schools, his response indicated that he advocated the idea of separation of schools according to culture and language subject to ‘what is

¹¹¹ The same sentiments were echoed by President Thabo Mbeki in his key-note address to the National Consultative Conference on the Promotion and Protection of Cultural, Religious and Linguistic Communities in Midrand in 1998.

economically possible'. His ideas are in line with the NNP's 1999 Manifesto. In the manifesto, the NNP believes in the principle of *localism*. This principle, according to the NNP, means that "individuals, families and communities know their needs best" and therefore:

meaningful power and funds must be radically devolved to communities; local communities want to be accountable, and to do so, must exercise control over their **own schools**, policing, welfare and health centres; parent communities should be responsible for the **management of local schools**, including issues such as language policy (NNP Manifesto 1999:15).

While the NNP provided no clear definition of a community or communities, it stated in its manifesto that such communities share the same culture and common interest. In the context of the above quote it simply means that it advocates own schools, based on common culture or common interests which will lead to the use of own language in schools and the racial division similar to those applied by the apartheid government.

The position of General Constand Viljoen on this question was not surprising. The FF, led by General Viljoen, has been in the forefront in the establishment of schools catering for the Afrikaner group only. He admitted that he is in favour of the idea of own schools. In his response he defended this idea of the establishment of own schools by making reference to the relationship between schools and society. He indicated that:

Society consists of individuals, families and groups of families. Such individuals and groups have different cultures which must be accommodated in the public school system.

Therefore his idea about schools is that:

We have certain cultures and certain approaches to life and approaches to family life and those come from our history and our cultural development. I feel that the education of our people is not only to teach them Arithmetic and Science alone. It is not to carry over knowledge alone but also to carry over their basic approach to life which is in their culture. Cultural transition must be done.

The General made reference to parents who send their children to creches and pre-schools on a daily basis. Like schools, such institutions have carried forward the idea of transmitting the culture of different groups and the moral obligations of parents who are more involved in economic activities. In his opinion:

a school must be for a specific cultural group. It must allow the ethos of a specific cultural character of such a group.

He gave an example of the abolishment of corporal punishment in schools and indicated that as part of their culture as Boere (Afrikaners), they believe in a good hiding for the child, something that is said to be a violation of human rights. This means, therefore, that in their own schools corporal punishment will be re-introduced.

Regarding the use of mother tongue in their schools, in this case Afrikaans, General Viljoen presented the researcher with a document containing a list of FF proposals to government. The document, entitled *Education in Afrikaans as a Right to Self Determination* (1997:1-2) contains a number of proposals ranging from the use of mother tongue in schools to the funding of culturally owned schools. The document proposes the following:

- (i) The right to mother tongue education, is according to the requirements of the cultural heritage of the Afrikaner people. This right should be

guaranteed through the availability of an appropriate number of State schools and tertiary educational institutions in which the language Afrikaans is the medium of instruction;

- (ii) It is accepted that schools will be accessible to all South Africans who wish to be served in the medium of Afrikaans;
- (iii) The funding from the state towards the running of costs of the school shall be on pro-rata basis per child equal to the prevailing national per capita expenditure in this respect. Parents will contribute what is needed in excess of the amount;
- (iv) The right to own cultural schools should also apply to school institutions outside of compulsory school system such as kindergartens, preschool education, vocational continuing education, and university and adult education and the funding will also be on a pro-rata basis where there are these institutions;
- (v) The right to establish and provide private schools and institutions for the Afrikaner communities within the existing framework of the legal or official education system is guaranteed;
- (vi) Because of the link between cultural self-determination and education, the control and management of Afrikaans cultural schools and institutions should be through the institutions created for cultural self-determination. The professional link with the national education system for purposes such as policy, examinations, and curricula will be a function of the envisaged Volksraad at National level. At local level,

control will be a function of the Afrikaans Community Councils where established;

- (vii) Education of, and in the mother tongue of Afrikaans in such cultural oriented schools shall in principle be provided by teachers for whom Afrikaans is also their mother tongue; and
- (viii) State subsidies or grants may not be withheld from any Afrikaans educational institutions because of the specific character of the school or institution (Freedom Front 1997:1-2).

The FF concedes, therefore, (as indicated in proposal (ii)), that even people regarded to be non-Afrikaners may have Afrikaans as their mother tongue.

The above proposals from the FF agrees with the cultural and language public school model proposed by the NNP. Such was discussed earlier in this section. The NNP had proposed, in their manifesto as confirmed in the interview, that ways must be found wherein the country has different school models catering for different cultures. However, that depends on what is economically possible.

The FF proposals are more relevant for the independent than the public school system. Presently South African public schools are non-racial and even if they may be for example, predominantly Afrikaans, they may not discriminate on the basis of language. This implies that schools will have to adhere to the principles of the LiEP and teach learners in the language(s) of their choice, where is reasonably practical. Such is also a Constitutional guarantee. In the case of Afrikaners establishing independent schools, for example *Volkskole* they also may not discriminate on the basis of language or race. Such a practise would be in conflict with the Equality clause which is section 9 of the Constitution.

Therefore, until such time that the Constitution is amended to allow schools to discriminate on the basis of language and culture, it will be difficult for the FF to establish schools to cater only for their culture and for no other culture, let alone persuade parliament to amend the Constitution.

4.8.3 *The Volkstaat*

One of the contentious issues closely related to the establishment of own schools, particularly for the Afrikaners, is the establishment of a *volsktaat* or a separate homeland. It is also referred to as *self-determination*, which is entrenched in section 235¹¹² of the Constitution of the RSA. As indicated in chapter 4 of this study, some section of minorities, as the Afrikaners, indicated that they would like to have their own separate homeland wherein they would administer themselves, have their own schools, teach and learn in their own languages and generally promote their own culture.

When probing questions were asked, General Viljoen's responses were in this case, not surprising. He admitted that he is an advocate of a separate homeland for Afrikaner people. Even after the second democratic elections in 1999, in which the FF fared badly at the polls, with approximately 127 217 people, as compared to the 424 555 in the 1994 elections, voting for the FF. The FF experienced a decline in support by 297 338 (South Africa Survey 1999:326). However, General Viljoen still cherished the idea that there is a need for a separate homeland for the Afrikaner people. He defended his idea by indicating that his main fear is that:

¹¹² Section 235 reads: The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

The numbers against the Afrikaner people in South Africa, if we accept the idea of full and open out democracy, will eventually flush the Afrikaner in virtually every way.

In this regard he made reference to the Afrikaans language which he said is being systematically faded out in all spheres of government and in schools. He, however, reiterated the fact that Afrikaners are part of South Africa and will participate in the economy of South Africa. He indicated:

I do see an Afrikaner Venda. A small area of the country with the majority of the country with their own schools and university.

He added that such an area will play a role in generating and protecting the Afrikaner culture. Such a generated culture will then be transmitted to all other areas in SA where Afrikaners are found.

However, the General's idea about the Volkstaat is not supported by the organised Afrikaner business grouping, the Afrikaanse Handelsinstituut (AHI)¹¹³ or many other organisations. The AHI, in its submission to the Truth and Reconciliation Commission (TRC) in 1997 indicated that the business group will find it difficult to support the establishment of an Afrikaner homeland unless there were convincing arguments to indicate that the country would benefit more from a *Volkstaat* than it is currently doing. The AHI further indicated that South Africa needs to build social bridges and break artificial barriers. In addition the country will have to move away from a position held by 10 percent of the population against the view of the majority. Such a stance by the AHI was a

¹¹³ The AHI represents about 150 local chambers with approximately 5 000 members in the rural and urban areas, about 250 direct business members, some of whom hold cooperative membership, and close to 30 affiliated organisations representing a further 35 000 members.

blow to the FF and like-minded parties who had hoped that the AHI would rally behind them in creating a *Volkstaat* (City Press 1997: 4).

On the notion of a *Volkstaat* Willem indicated that the Khoisan have no idea of the establishing of a *Volkstaat* or a separate homeland. These, he said, were the sentiments of the committee and the Nama people. He indicated that South Africa is a country which belongs to all its people and that there is no need for a Nama homeland. The Nama people will never even think about such a concept.

Given the status of the Khoisan people in terms of economic muscle, the high rate of illiteracy and their small numbers, it is not surprising that Willem indicated they will never even consider such a notion. As Nigel indicated, most of the Khoisan people know nothing about the Constitution, let alone their rights. Except for the Nama, most of their languages are still underdeveloped and some are almost at the brink of extinction. The almost zero rate of literacy with virtually no civil society, also contributes to the lack of interest on the establishment of a separate homeland for the Khoisan. Some of them are not even sure whether they are really South African citizens. They occupy a very low status in the South African society and chances are that they will never be influential nor be a threat to any government. Given all these factors, it is therefore unthinkable, at this point, for the Khoisan to demand their own *Volkstaat*.

Nigel also maintained that in South Africa:

Nobody is interested in a separate statehood. The only group interested is the white Afrikaner nationalists. The logic of which is very hard to follow. They are not endangered. For instance in language rights, nobody is more successful in language rights than Afrikaans speakers. They have enormous resources.

According to Daryl of NNP, a separate homeland for the Afrikaners is not realisable. He indicated that

There were no strong geographic areas where you have only one particular community. Generally speaking you have communities within communities or minorities within a larger community. To actually get a piece of ground in which you govern yourself, I do not think is realisable. What about the non-Afrikaners?

In his view, minorities should be allowed to live their life from the provincial level. Defending his stance on recognition of minorities at the conclusion of the interview, Daryl cautioned that:

If a community feels isolated it leads to friction and friction leads to instability and that leads to the unstableness of our society. If, however, the community feels that they are part of the greater whole and that they are needed and wanted, that leads to stability and when you have stability you can have economic growth and the reduction of crime.

It is clear from the above that there is a difference in ideology particularly between the FF and the NNP regarding the notion of a Volkstaat. The FF as indicated needs what Viljoen called an 'Afrikaner Venda' which implies identification of land specifically for Afrikaners. On the other hand, the NNP which also represent mainstream Afrikaners, indicated that there is no area where there is only one particular community. Clearly Viljoen represents a splinter group which advocates separatism/secession, an extreme form of self determination, which may not be in the interest of South Africa. It is also not viable to the NNP, the AHI and to Afrikaners at large.

4.8.4 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

One of the issues that the informants were asked about concerns the proposed Commission which was discussed in the previous chapter. The Commission, in the researcher's view, will have a have an important role to play regarding the protection and promotion of the rights of communities in South Africa. Such a role may have an impact on the provision of education to minorities in South Africa.

Willem Damara indicated that he knew nothing about the Commission and has never heard of it. This was surprising because the Commission would seek to promote and protect languages and cultures which is the same function performed by the Khoe and San Language Body. The only difference is that the Commission would operate at national level but would, however, probably engage the Provincial structures like the Khoe and San Language Body. In executing its duties, the Commission will not replace the existing structures including the Khoe and San Language Body, chaired by Willem. It therefore came as a surprise to hear that Willem has never heard of such a proposed Commission.

On the other hand, the NNP's Daryl Swanepoel indicated that the Commission should get off the ground as soon as possible. He continued to say that while the NNP as a party welcome the establishment of the Commission, it should not be symbolic and must be resourced so that it is be able to perform its functions.

However, Nigel believed that the establishment of the Commission was 'the government's way of satisfying the Afrikaner nationalists'. He, however, indicated that the Commission would, in his opinion, be the only instrument of

government that would deal with identity and constitutional issues. He further said that the bad news about the Commission is that

in the process of setting up section 185 they have stripped the PANSALB of a lot of rights. The technical powers could remain with PANSALB and it could also be a watchdog to the Commission.

Welcoming the establishment of the Commission, the FF leader General Viljoen, likened it to the Organisation for Security Councils of Europe (OSCE). He indicated that the Commission would help address the concerns of all minorities in South Africa. However, he cautioned that unlike the OSCE which is for European democracies, one of the biggest problems in Africa is that we have just emerged from both colonial and apartheid eras and is suddenly imitating the western world democracy. He added:

We came to the conclusion that we are now free and we have democracy that suits the requirements of Africa especially from the communal way of living that the peoples of Africa have been used to in the past. So we still have to find a development in the African approach, in democracy, not to deviate from the idea of the principles of democracy but to adjust it to the democracy of Africa so that we have a typical oriented democracy. This is what I see from the Commission.

The Commission, in the General's view, has a long and daunting task ahead of it. He said it may take 10-20 years for it to give guidance on how to handle minorities. However, he cautioned that the African National Congress led government has no urgency on the issue of minorities, no wonder the Commission has not taken off after so many years because they (the ANC) are in favour of assimilation and homogeneity. He added that the proposed Commission must therefore not be ANC dominated and must not be a talk shop.

While the researcher believes that sections 185 and 186 of the Constitution provide an institutional framework for protecting the rights of minorities of community identity through culture, language and religion, the objects of the Commission established by these sections may overlap with those of other Commissions especially the SAHRC and the PANSALB. For instance section, 185(1) sets out three primary objects of the Commission. One of these is “to promote respect for the rights of cultural, religious and linguistic communities”. This role is primarily an educative one. It calls for the Commission to make efforts to instill in South Africans an awareness of the cultural, religious and linguistic rights of communities, what these rights entail and who can be said to be bearers and how such rights fit into the pattern of rights that distinguish our constitutional order.

This educative function, *‘the promotion of and respect for...’* coincides with the SAHRC under section 184,¹¹⁴ whose promotion of and respect brief encompasses human rights more generally. Regarding the PANSALB, sections 185(2)-(4) deal with the powers of the Commission. Subsection (2) offers a list of powers but emphasises that the scope of such powers is a matter of Parliament. The powers listed are similar in nature to those of the PANSALB. They include any power necessary to achieve its primary objectives, including the power to monitor, investigate, research, educate, lobby, advise and report on issues pertaining to human rights of cultural, religious and linguistic communities. The SAHRC also happens to have all these functions. Although subsection (3) of section 185 brings home the interconnectedness of the operation of several of the Chapter 9

¹¹⁴ For instance Section 184(1) of the Constitution of the RSA, indicates that the Human Rights Commission must (a) promote respect for human rights and a culture of human rights; (b) promote the protection, development and attainment of human rights; and (c) monitor and assess the observance of human rights in the Republic.

institutions,¹¹⁵ by allowing the Commission to report any matter within its powers to the SAHRC for investigation, such overlapping of functions are a great source of concern because they may be seen to be a duplication of services.

Nevertheless, the overlap will require a measure of jurisdictional demarcation, or indeed, co-operation between these institutions.

4.9 SUMMARY AND CONCLUSION

The above data from the unstructured interviews with key informants was meant to strengthen and expand on the data gathered from the documents analysis. As indicated in chapter 3, the interviews took place in an informal manner and generally resembled a personal conversation. However the researcher had an interview guide which is provided in appendix 3. The interviews were limited to a small sample of 4 informants, three of them representing groups based mainly on race and language.

From the above data it is clear that there were different responses on the different themes addressed. Starting from the definition of minority, there was no consensus on what minorities are or an attempt by any informant to define the concept minority. What the informants acknowledged (with a reservation from Nigel Crawhall) was that South Africa is a country of minorities. It is up to those to identify and define themselves as minorities. Nigel, on the other hand, believed that there is no clear majority in South Africa that will make other groups to claim that they are minorities (see section 4.8.1.1).

¹¹⁵ Chapter of the Constitution. These institutions are the Public Protector, The Human Rights Commission, Commission for Gender Equality, the Auditor-General and the Electoral Commission.

Regarding the Constitution, two informants namely, Willem Damara and General Constand Viljoen, indicated their dissatisfaction on the little provisions in the Constitution, about the rights of minorities in education. For Willem, in particular, the problem is the recognition of their languages, which he felt was not enough. Their languages should be given official status like the other eleven languages recognised in section 6 of the Constitution. To General Viljoen the Constitution should go beyond what he called 'enabling clauses' particularly regarding group rights. Such group rights, he said, have to be included in the Bill of Rights (see section 4.8.1.2).

The issue of own schools and the use of own language in those schools as indicated in chapter 1, has been one of the demands of especially the Afrikaner group in South Africa. Daryl, although he was very diplomatic about it, was in favour the idea of separate schools according to culture and language subject to 'what is economically possible'. For General Viljoen the issue of own schools is non-negotiable. He wants to see separate schools for Afrikaners what he called 'an Afrikaner Venda'. Unlike Constand, Willem indicated that they do not want separate schools because they feel that they are part of a rainbow nation. They would like Nama to be introduced in schools because it has its own orthography and has many speakers as compared to other Khoe-San languages.

The idea of a *Volkstaat* or separate homeland for groups was only accepted by General Viljoen. The other three rejected it, with Daryl indicating that there is no clear geographic area in South Africa that could be set aside for one particular group of people. For General Viljoen the establishment of 'an Afrikaner Venda' is his priority.

4.10 CHAPTER SUMMARY AND CONCLUSION

This chapter dealt with the discussions of findings about minority rights in education. Firstly an overview of the debate about the rights of minorities in education was presented (see section 4.2). A public debate was held on 17 September 1998 on national television in South Africa. Different minority groups from religious, linguistic and cultural groups were represented in the debate. The opinions expressed by these different groups indicated that there was consensus that minorities and their rights should be recognised and protected.

This chapter also focussed on the definition of the concept *minority* in South Africa. Regarding the definition, it was found that the Constitution of the RSA does not contain the concept *minority*, let alone its definition. The Constitution instead uses the concept *communities* (see section 4.2.2).

Chapter 4 also presented the findings of the document analyses. Such documents included the Constitution of the RSA (see section 4.3), the relevant laws in education like the SASA (section 4.4.2), the LiEP (section 4.3.3), and the proposed Bill on the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (see section 4.5). Lastly, the chapter presented and analysed data from interviews held with key informants (see section 4.7). These interviews centred around specific themes which include the Constitution, the establishment of the *Volkstaat* and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Minorities (see section 4.8).

CHAPTER 5

SYNTHESIS OF FINDINGS, RECOMMENDATIONS FOR EDUCATIONAL PROVISION AND CONCLUSIONS

5.1 INTRODUCTION

The problem of minority recognition has frequently formed part of political debates in most states, as indicated in the study. Most of countries in the world, particularly those discussed in the study (see chapter 2), including South Africa, are made up of nationals who belong to different cultures and religions and who speak different languages. These nationals often want to remain distinct communities and want to be recognised as such. The United Nations have tried its best to issue guidelines regarding the rights of minorities in countries of the world. Such guidelines were discussed in sections 2.2 and 2.5. However, in some countries, especially those selected for this study, the concept *minority* does not even appear in their constitutions (see Germany in section 2.7.2, Italy in 2.7.3, the UK in 2.7.4 and the Netherlands in 2.7.5).

This study was aimed at investigating the issue of providing education to minorities, reviewing educational practice in selected countries, with a view to providing guidelines on the education of minorities in South Africa. The researcher looked at, amongst others, the definition of minorities in international law and in selected countries, the constitutional provisions and educational practice (see sections 2.2 and 2.7). In addition, the researcher presented data from key informants about their views on minorities and their rights in education in South Africa (see section 4.7). As indicated, such data from the informants

was meant to strengthen and expand on the data gathered from the analysis of documents.

5.2 OVERVIEW OF THE INVESTIGATION

Despite the interest in the minorities and their education rights in South Africa, little research has been conducted in this area, particularly in South Africa. The few studies conducted are mostly from political groups who, for political reasons, base their arguments on foreign practices to score political points. There has not, as yet, been a proper investigation on the rights of minorities, particularly in education, since 1994 in particular. In order to make a contribution to the mostly verbal debates about the provision of education to minorities, this study focussed on the legal status of minorities in education and educational practice.

Chapter 1 described the research problem, aims and methodology of the study. It also gave a historical background with respect to minorities and their rights in education.

Chapter 2 addressed, amongst others, the definition of *minorities* in international instruments like the UDHR and the ICCPR and the lack of international consensus on such a definition (see section 2.2.2). Such a discussion included the interpretation of the concept *minority* by the Permanent Court of International Justice (see section 2.2.1). The discussion about such a definition indicated that not even the UN special commission led by Capotorti could supply a definition that satisfied all member states (see section 2.2.3). The chapter also discussed some of the minority-related terms like culture, ethnic group and race. It ended by giving an overview of the protection of minority rights in education in selected countries. Factors such as a definition of minorities and constitutional provisions of education to minorities in those selected countries were analysed.

It was found that some of the countries that were selected for this study, such as Germany and the UK, do not define the concept *minority* nor do they provide constitutional protection to minorities, particularly in education. Chapter 2 therefore provided a broad overview on issues related to minorities in education at international level.

Chapter 3 provided the research design. It included, amongst others, aspects such as research questions, the qualitative nature of the research, the research approach, the researchers' stance, and sampling and data collection techniques. In this study data was collected primarily through the analysis of documents complemented by semi-structured interviews.

Chapter 4 presented the findings of the study from both primary documents and the interviews. The documents include the Constitution of the RSA, the relevant national laws and other policies in education, for example the LiEP, and the SASA. Also, the chapter outlined the documents presented at the conference on the establishment of the Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities (see section 4.5). The second part of the chapter presented data from the semi-structured interviews. For greater clarity, the different responses on the main themes, namely provisions of minority rights in education in the Constitution and other education policies like the LiEP, led to a number of responses that were regarded as sub-themes (see section 4.8).

5.3 SUMMARY OF KEY ISSUES

This section summarises key issues regarding the education rights of minorities which emerged as dominant themes throughout the study.

5.3.1 Definition of the concept *minority*

One of the important issues to emerge from the thesis is the lack of international consensus on the definition of the concept *minority*. Whereas the UN has attempted to give a proposal of such a definition to member-states, generally there is still disagreement about the definition of the concept (see sections 2.2.2 and 2.2.3). This is evident in the submission made by various member states in reaction to the proposal of such a definition made by the special rapporteur of the UN (see section 2.2.3). For example, the Netherlands and the Greek government felt that the definition of the special rapporteur was too wide. Some governments, like the Phillipines, challenged the use of the concept *minority* and instead preferred to use the phrase *National Cultural Communities* (see section 2.2.2).

In South Africa, the concept *minority* does not appear in the Constitution nor does it appear in any official policy from the government. Like the Phillipines, South Africa also prefers the concept *communities* perhaps because of negative attitudes attached to the concept *minority*. This was discussed in section 4.2.2. The key informants who were interviewed, frequently used the concept *minority*, not because of its official terminology, but because it is often used in their discussions and moreover it is also used in international law. It appears that to present a clear and acceptable definition of *minority* or *community* in South Africa is going to be a daunting task. Some communities, for example the Nama, even refuse to be classified as minorities. For the Nama, the fact that they are few in numbers and do not occupy a dominant position (as required in international law) in this country, does not necessarily make them a minority group. As Willem indicated, they see themselves as “part of a big rainbow nation” (see section 4.8.1.1).

The question is if the country expects minorities or communities to declare and define themselves as suggested by both General Viljoen and Daryl Swanepoel (see section 4.8.1.1). If such minorities refuse to do so, it is impossible to classify and define them as minorities or communities. The proposed legislation on the establishment of the a section 185 commission also proposed that the President of the RSA “...must identify the main cultural, religious and linguistic communities in South Africa”. However before this can be done, communities must make written submissions for the recognition of its community as one of the main cultural, religious and linguistic communities in the RSA. Such identification may be perceived to be subjective and prescriptive and may be problematic, particularly if someone is going to be entrusted with the process of identifying minority groups as proposed in section 3(1) of the Draft Bill (see section 4.2.2).

5.3.2 Are there minorities in the RSA?

Irrespective of the absence of the definition of the concept minority and the fact that there is no dominant group in South Africa, data indicated that South Africa is a country of minorities or communities (see section 4.2.3). The point is, some minorities, for example the Nama, as indicated earlier, do not want to be associated with the concept *minority*, nor do they need their own schools, particularly because of the attitude to the concept, given South Africa’s history of polarisation the unequal treatment different cultural groups received (see section 4.2.2). De Waal, Currie and Erasmus (2000:419) wrote that to the majority of South Africans, particularly the formerly oppressed communities, the mere mention of minority rights is viewed with suspicion. Given its long-standing commitment to the establishment of a non-racial constitutional order, the ANC government at the outset rejected as non-negotiable any attempt to

entrench what it termed 'racial group rights' (De Waal, Currie and Erasmus 2000:419).

The absence of a dominant group opens a new debate, possibly for future research on the issue of minorities. Figures 1, 2 and 3 in chapter 2 show that there is no dominant group in South Africa and one of the requirements of article 27 of the ICCPR is that for a group to be regarded as a minority, it must occupy 'a non-dominant position' (see sections 2.2; 4.2.1, 4.2.3.2 and 4.2.3.3). In this case there is no need for any group to seek protection under any international convention, including the ICCPR, because no group occupies a dominant position.

5.3.3 Constitutional provision

Generally speaking, data indicated that the Constitution has done enough to address the minority issue, particularly in education (see section 4.3). Section 29 of the Constitution allows individuals or groups to open their own schools subject to certain limitations (see also the limitation clause in appendix 1). Such limitations are aimed at, amongst others, addressing the legacy of apartheid and upholding, for instance, the principles of democracy, human dignity and freedom of association. The Constitution may not have addressed the issue of group rights, a fact which was mentioned by General Viljoen and which he is fighting for, possibly with the hope that the entrenchment of such group rights in the Constitution will be used to exclude other groups in Afrikaner schools (see section 4.8.1.2 and 5.3.2).

5.3.4 Own schools and own language

As the data in sections 1.1, 1.2 and 4.8.7 indicated, the issue of own schools and the use of own language has dominated the South African education debates ever since the abolishment of separate schooling for different groups, particularly in the public school sector. As a result of school desegregation a number of racial incidents notably the *Laerskool Potgietersrus* incident, took place. These were discussed in section 1.2.2. Because of their dissatisfaction with the process of school integration and their fear of the Afrikaans being wiped out of the public school system, a certain Afrikaner group, not representative of all Afrikaners and Afrikaans speakers, established their *Volkskole* (see section 4.8.3). Such independent schools are registered with the relevant provincial department. However, such schools may not discriminate on the basis of, for example, colour, race, language and religion.

5.3.5 The *Volkstaat*

One of the issues related to the provision of education to minorities is the establishment of what a certain rightwing group of Afrikaners calls a *Volkstaat* or a separate homeland. General Viljoen referred to it as “an Afrikaner Venda” where the Afrikaners can have their own schools and practise their own culture (see section 4.8.3). As indicated earlier in chapter 4 the whole idea of a separate homeland was never even supported by the Afrikaanse Handelsinstituut, a business group dominated by a majority of urban Afrikaners.

As Nigel indicated in section 4.8.3 of this study, the logic behind the establishment of a “separate statehood” is hard to follow. Afrikaners are not endangered nor is their language at risk. Nigel added that “...in language rights,

nobody is more successful in language rights than Afrikaans speakers. They have enormous resources”.

Supporters of the Volkstaat, such as General Viljoen, should seriously consider what Sparks (1996:230) indicated. He agreed with the notion that South Africa is a country of ethnic diversity and historical conflicts (as shown for example in the *Potgietersrus* case), but there are important countervailing factors. First among these is that ethnic dismemberment is not a practical possibility. Sparks (1996:230) added that:

We have just emerged from history's most determined effort to enforce ethnic partition: if it had been even remotely possible, half a century of apartheid would have achieved it. But it failed - totally. The country is economically integrated; its races are too mutually interdependent, for ethnic separation ever to take place.

Another factor weighing against ethnically driven politics in the new South Africa is that none of the political parties (except for the Freedom Front) is ethnically based. Even the Inkatha Freedom Party (IFP) has finally opened its doors to other races and cultural groups (Sparks 1996:230). Anybody, irrespective of colour, language and culture may join the IFP. Therefore, whether or not what Sparks wrote is to be believed, the *Volkstaat* idea may remain a dream to most Afrikaners.

5.3.6 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

All the informants, except Willem who did not know anything about the Commission, welcomed the establishment of such a commission. However, data indicated that the functions of the commission as outlined in the Draft Bill, are

similar to at least one of the chapter 9 commissions, namely the SAHRC (see section 4.8.4). In addition, in the process of establishing the commission, government has stripped the PANSALB of its functions. Such overlapping functions will have to be addressed.

5.4 RECOMMENDATIONS FOR EDUCATIONAL PROVISION

In this section and against the above background, attention is drawn to the range of implications for educational provision that have suggested themselves on the basis of this study of the provision of education for minorities. It is proposed that the following recommendations will contribute towards the improvement of the provision of education for minorities in South Africa.

These recommendations are discussed under the following sub-headings:

5.4.1 The constitutional provision

The findings of the document analysis revealed that in general, the Constitution makes sufficient provisions for the protection of the rights of minorities in education (see section 4.3). However, two of the informants, namely Willem and Constand (see section 4.8.1.2) indicated that the Constitution has not done enough to accommodate minorities. For example, Willem wanted the Constitution to recognise the Khoisan languages as official languages. On the other hand, Constand wanted minority rights to be entrenched in the Bill of Rights. With the above ideas in mind, the researcher proposes that there should therefore be a link between constitutional provision and educational practice. Such a link will impact on all facets of schooling, for example, it will impact on the curriculum, teacher training, governance, funding, support services, and monitoring. All these are outlined below.

5.4.2 School curriculum

The diversity of the South African society, which is acknowledged in the Constitution, should be reflected in all areas of curriculum development and implementation. Curriculum developers, including the developers of instruction materials, should reflect our diverse cultures. Such instruction materials, for instance prescribed materials, should reflect the diverse cultures in the South African society. Educating learners about our diverse cultures, about citizenry, tolerance, respect for human dignity, and civic responsibilities in a democratic society should be part of the school curriculum.

5.4.3 Teacher training

Closely linked to the school curriculum is teacher training for both initial and in-service training. For example initial teacher training programmes should incorporate constitutional rights, particularly minority rights in education and related principles and provisions articulated in the Constitution. Such training programmes should therefore include subjects or short term programmes in for instance, understanding diversity, multiculturalism, the rule of law, and respect for human dignity, in order to enable teachers to cope with diverse classrooms and to teach learners about diverse cultures and tolerance in the South African society. The above programmes could also be presented to practicing teachers in the form of in-service training programmes.

5.4.4 Marginalised languages in education

In the interest of nation building and the self esteem of the African people, the development of former, marginalised languages, for example the indigenous languages like the Nama and the San, should be given priority. The fact is the

use of Afrikaans as a national official language and as medium of instruction in schools is likely to diminish considerably in contrast to former marginalised African languages. The development of Afrikaans gave Afrikaners self confidence and esteem. In the same way the development of former marginalised African languages is essential to give such communities, as discussed in chapter 4, a sense of pride and self esteem.

5.4.5 Support measures and structures

Support measures are the means provided either by and through government, or any other non-governmental structure to effect the provisions outlined in the Constitution. Such support measures include the provision of legislation for the establishment and function of such structures. These structures include the PANSALB, the SAHRC, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities. Such structures, most of them established through the Constitution, should play their role as outlined in the Constitution and applicable laws.

For instance, the PANSALB in particular, has come under criticism in that it failed to play its role as outlined in the Constitution and the PANSALB Act. For example, in July 2000, the National Council of Provinces (NCOP) in particular criticised the PANSALB for having done nothing to promote multilingualism. The PANSALB was also criticised for not having its mandate as outlined in the Constitution and the PANSALB Act (see section 4.3.3.3 (i)). The general feeling from the Members of the NCOP was that the PANSALB be dissolved as an independent body and instead the Commission for the Promotion and Protection of Religious, Linguistic and Cultural Communities should take over the functions of the PANSALB. It was also outlined in the findings that the role of the PANSALB overlaps with that of the Commission for the Promotion and

Protection of Religious, Cultural and Linguistic Communities (see section 4.8.4). It is therefore recommended that the PANSALB be dissolved and should be absorbed into the Commission.

5.4.6 Governance

The composition of public school structures of governance, particularly at school level, for instance the composition of School Governing Bodies, should be given priority. Because of the past separate education and training systems for different race groups coupled with the Group Areas Act which prohibited Blacks from buying immovable property in the formerly called *white areas*, school governing bodies, even in nonracial schools are still dominated by one racial group. Such a racial group may have little or no understanding of other cultural group. Therefore, the implementation of quotas in the composition of these school governing bodies is essential in order to redress the imbalances of the past and to limit the dominance of one race or culture over the other. Perhaps such measures could lessen the tensions and conflicts in some public schools. SGBs should therefore reflect the demographics of the South African society.

The training of the SGBs, particularly the parent component, in multiculturalism and other diversity related issues is also recommended. Such training should also be extended to the general communities. The SAHRC and the Commission for the Promotion and Protection of the Rights of Religious, Cultural and Linguistic Communities should initiate such programmes.

5.4.7 Finance

The establishment of own schools is sufficiently provided for in the Constitution (see section 29 (3)). However, finance is always a limitation, particularly in

Protection of Religious, Cultural and Linguistic Communities (see section 4.8.4). It is therefore recommended that the PANSALB be dissolved and should be absorbed into the Commission.

5.4.6 Governance

The composition of public school structures of governance, particularly at school level, for instance the composition of School Governing Bodies, should be given priority. Because of the past separate education and training systems for different race groups coupled with the Group Areas Act which prohibited Blacks from buying immovable property in the formely called *white areas*, school governing bodies, even in nonracial schools are still dominated by one racial group. Such a racial group may have little or no understanding of other cultural group. Therefore, the implementation of quotas in the composition of these school governing bodies is essential in order to redress the imbalances of the past and to limit the dominance of one race or culture over the other. Perhaps such measures could lessen the tensions and conflicts in some public schools. SGBs should therefore reflect the demographics of the South African society.

The training of the SGBs, particularly the parent component, in multiculturalism and other diversity related issues is also recommended. Such training should also be extended to the general communities. The SAHRC and the Commission for the Promotion and Protection of the Rights of Religious, Cultural and Linguistic Communities should initiate such programmes.

5.4.7 Finance

The establishment of own schools is sufficiently provided for in the Constitution (see section 29 (3)). However, finance is always a limitation, particularly in

South Africa. From a purely practical point of view, the financial and administrative implications of granting to each language or cultural group a claim, as a right, on the state to establish schools exclusive to themselves, not to speak of the educational fragmentation involved, seem to be impractical. Eleven official languages are recognised in terms of section 6 of the Constitution. In addition, about a dozen others are specified in section 5 of the Constitution as being languages whose development must be promoted by the PANSALB. Added to this, data in this thesis has shown that the country is blessed with a multiplicity of religious communities (see section 4.3.3.5). Therefore, the researcher does not believe that the framers of the Constitution intended to provide each language and religious group with its own school funded by public funds.

However, if South Africa places a value on equality, then the provision of education to minorities should be as important as, for instance, the provision of housing, running water and other basic needs (see also under 4.2). Money must be provided for, for example, the training of teachers in dealing with multicultural classes, support systems and the creation of conditions conducive to teaching and learning in a diverse society.

5.4.8 Monitoring

To ensure that constitutional and other legal provisions regarding the provision of education for minorities are carried out, monitoring becomes essential. Such monitoring functions should be under the Commission for the Promotion and Protection of the Rights of Religious, Linguistic and Cultural Communities, with the SAHRC as a watchdog. Monitors should look into all issues pertaining to minority education, including teacher training, the composition and training of SGBs, the design and implementation of instruction material, representative

governance structures at all levels of education and the protection of linguistic, religious and cultural rights in education.

5.4.9 Group rights

Group rights, like individual rights, should be provided in the country's Constitution, particularly the provision of a *Volkstaat* although there is no piece of ground where the *Volkstaters* constitute a majority. The point is, the cultural nationalism of a group like the Afrikaners can exist harmoniously in a multicultural South Africa, provided it is not put under pressure and made to feel threatened and unable to express itself through its own self-determination. As Sparks (1996:232) indicates, the denial of a *Volkstaat* could "bend the twig of bitterness and inflame the ethnonationalism in a dangerous way". Such actions could inflame racial tensions and undermine our Constitution and our democracy. General Viljoen and the other *Volkstaters* should, however, be given a time frame, say twenty years, in which they will be obliged to persuade a certain agreed number of people to reside in such an area. The onus will be on the *Volkstaters* to persuade as many people as possible to settle in the *Volkstaat*. In case they fail, they only have themselves to blame and no one else. But they would have been given the chance to achieve their ideal and they would have no cause to feel aggrieved if their own efforts failed them. The twig of their ethnonationalism would not have been bent (Sparks 1996:232).

5.5 FURTHER RESEARCH

Minority education in South Africa is a complex issue that is relatively under-researched. In this study a number of aspects on minority education emerged which warrant further research:

- the establishment of a Volkstaat, its advantages and disadvantages relating to schooling and nation building;
- reasons why group rights were not entrenched in the Constitution and the implications of entrenchment and/or non-entrenchment; and
- investigating the development of the indigenous languages and how they could be introduced in schools.

5.6 LIMITATIONS OF THE STUDY

As a research project based on qualitative methodology, this study about the provision of education to minorities, with special emphasis on South Africa demonstrated both its strengths and limitations intrinsic to such an investigation. The small sample size, typical of the qualitative tradition, is the most obvious limitation (see section 3.5.1.2). However, this study was designed to be exploratory and descriptive in nature (see section 3.3 and 3.4) and the analysis of documents provided a rich source of data. The semi-structured interviews were used to elicit data from the informants as additional information and to strengthen the analysis of documents (see section 3.4). The primary goal of the study was to understand the informants' perceptions about the provision of education to minorities (see section 1.8) and no attempts were made to establish trends or to generalise the findings. In both document analysis and interviews, no hypotheses were formed and no attempt was made to prove or disprove theory. Data was formulated according to certain themes which emerged from documents and the interviews (see sections 3.4.1 and 4.8).

Informants were not selected by random sampling techniques, rather purposeful sampling was used (see section 3.5.1). This technique requires that informants are chosen deliberately by virtue of their status. This means that the researcher searches for informants rich with information. In other words, the informants

are chosen because they are likely to be knowledgeable and informative about the phenomenon under investigation. Although the informants provided additional information to the study, the lack of variation, in terms of religious, linguistic and cultural communities narrows the study a little (see section 3.5.1). As indicated in 4.7.2, the sample used is rather small and does not cover all minorities in South Africa as for example, religious and cultural minorities. Although religious minorities are mentioned in the study, the study was basically limited to linguistic minorities.

However, despite the limitations, the study indicated several key issues that needed attention regarding the provision of education for minorities in a democratic South Africa (see section 5.4).

5.7 IN CONCLUSION

Linguistically, culturally and religiously speaking there are only minorities in South Africa. In South Africa, such an acknowledgement of the existence of minorities may take time, particularly by the former disadvantaged groups. To the former disadvantaged communities, any mention of minorities and their rights is viewed with suspicion. However, it is necessary therefore, to accept that South Africa is a country of minorities. What South Africans should focus on is to create conditions, within what is economically possible, for these minorities to live their lives, receive education in the language of their choice and to promote and protect their culture. Such an acknowledgement of minorities and provision of resources is one of the greatest challenges facing all South Africans. As Sparks (1996:239) indicates “a new South Africa has emerged at the dawn of a new millenium, a new country with new horizons - and new divisions. There will be enormous new challenges too”. Sparks goes on to say “...building a new

nation, a great nation which this may yet become, is a continuous process. The construction never ends”.

BIBLIOGRAPHY

A Minority Rights Group Report. (1991). *Minorities and Human Rights Law*. London: Minority Group Rights publishers.

Ary, D., Jacobs, L. C., & Razavieh A. (1990). *Introduction to research in education*. (4th ed). Orlando, Florida: Holt, Rinehart and Winston Inc.

Ahmed, A. S. (1995). Ethnic cleansing: a metaphor for our time? *Ethnic and Racial Studies*. Vol. 18(1).

Alexander, K., & Alexander M.D. (1992). *American public school law*. (3rd ed). New York: West Publishing Company.

Berg, B. L. (1995). *Qualitative research methods for the social sciences*. (2nd ed). Needham Heights: Allyn and Bacon.

Birley, G., & Moreland, N. (1998). *A practical guide to academic research*. London: Kogan Page.

Blaustein, A. P., & Flanz, G. H. (1990). *Constitutions of the countries of the world*. New York: Oceana.

Bogdan, R.C., & Biklen, S. K. (1982). *Qualitative research for education: An introduction to theory and methods*. Boston: Allyn and Bacon.

Bogdan, R. C., & Biklen, S. K. (1992). *Qualitative research for education: An introduction to theory and methods*. (2nd edition). Boston: Allyn and Bacon.

Brownlie, I. (1992). The rights of people in modern international law. In Crawford, J. (ed). (1992). *The rights of peoples*. Oxford: Clarendon Press.

Capotorti, F. (1991). *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*. New York: United Nations.

Cates, W. M. (1985). *A practical guide to educational research*. New Jersey: Prentice Hall.

Christie, P. (1989). *The right to learn*. Johannesburg: Ravan.

City Press. (7 March 1999).

City Press . (19 October 1997).

Cross, M., Khwanazi-Twala, Z., & Klein, G. (eds). (1998). *Dealing with diversity in South African education: A debate on the politics of national curriculum*. Cape Town: Juta.

Curtis, M. (1992). *The Constitution of the United Kingdom*. New York: Oceana.

Daes, E. I. (1992). *Status of the individual and contemporary international law: Promotion, protection and restoration of human rights at national, regional and international levels*. New York: United Nations.

Devenish, GE. (1999). *A commentary on the South African Bill of Rights*. Johannesburg: Butterworths.

De Groof, J., & Bray, E. (eds). (1996). *Education under the new Constitution in South Africa*. Belgium: ACCO.

Dekker, E. (1995). The education system of the Federal Republic of Germany. In Dekker, E., & Van Schalkwyk, O.J. (eds). *Modern education systems*. (2nd edition). Durban: Butterworths.

Dekker, E., & Lemmer, E.M. (eds). (1993). *Critical issues in modern education*. Durban: Butterworths.

Delmont, S. (1992). *Fieldwork in educational settings: Methods, pitfalls and perspectives*. Washington DC: The Falmer press.

De Varennes, F. (1996). *Language, minorities and human rights*. The Hague: Martinus Nijhoff.

De Waal, J., Currie, I., & Erasmus, G. (2000). *The Bill of rights handbook*. Johannesburg: Juta.

Du Plessis, L., & Corder, H. (1994). *Understanding South Africa's Bill of rights*. Cape Town: Juta.

Eide, A.(1993). In search of constructive alternatives to secession. In Tomuschat, C. (ed). (1993). *The modern law of self determination*. Dordrecht: Martinus Nijhoff.

Eisner, E. (1991). *The enlightened eye: Qualitative inquiry and the enhancement of educational practices*. New York: Macmillan.

English, K., & Stapleton, A. (1997). *The Human rights handbook*. Cape Town: Juta.

Evans, K. (1985). *The development and structure of the English school system*. London: Hodder and Stoughton.

Farley, J E (1995). *Majority-Minority relations*. (3rd Edition). New Jersey: Prentice Hall.

Fiers, J. (1996). Minority groups in education: A synthesis of the efforts of European governments to offer legal protection. In De Groof, J., & Fiers, J. (eds). (1996). *The legal status of minorities in education*. Leuven: ACCO.

Fledelius, H. (1996). The position of minorities in the Danish educational system. In De Groof, J., & Fiers, J. (eds) (1996). *The legal status of minorities*. Leuven: ACCO.

Freedom Front. (1997). *Education in Afrikaans as a right to self determination*. Proposals to the Department of Education. Cape Town: Freedom Front.

Fussell, H.P., & Puttner, G. (1996). The position of minorities in education in Germany. In De Groof, J., & Fiers, J. (eds). (1996). *The legal status of minorities in education*. Leuven: ACCO.

Goodey, J.S. (1995). The education system of England. In Dekker, E., & Van Schalkwyk, O.J.(eds). (1995). *Modern education systems*. Durban: Butterworths.

Gori, G. (1996). The position of minorities in education in Germany. In De Groof, J., & Fiers, J. (eds). (1996). *The legal status of minorities in education*. (1996). Leuven: ACCO.

Groenendijk, L., Kruithof, B., & Sturm, J. (1995). *Education, religion and the State in the Netherlands: A complicated case of private and public school systems. Paper presented at an international conference on education and change*. (September 1995). Pretoria: Unisa.

Henrad, K. (1996). The definition of minorities and the rights of minorities regarding education in international law. In De Groof, J., & Fiers, J. (eds). (1996). *The Legal Status of Minorities*. Leuven: ACCO.

Hill, AC (1987). Democratic education in West Germany: The effects of the new minorities. *Comparative Education Review*, Vol. 31(2), 273-287.

Huysamen, G. K. (1994). *Methodology for the social and behavioural sciences*. Johannesburg: Southern Book Publishers.

Human Rights Commission. (February 1999). Report entitled *Racism, racial integration and desegregation in South African public secondary schools*. Johannesburg: Human Rights Commission.

Le Compte, M.D., Millroy, W.L. and Preissle, J. (eds). (1992). *The handbook of qualitative research in education*. New York: Academic Press.

Leedy, P. D. (1989). *Practical research planning and design*. New York: MacMillan.

Lemmer, E. M. (1989). The re-entry of women into the labour market and the implications for educational provision. Unpublished doctoral thesis. UNISA: Pretoria.

Lillich, B. R. (1983). *International human rights instruments: A compilation of treaties, agreements and declarations of special interest to the USA*. New York: William S. Hein Company.

Mail and Guardian. (26 February - 4 March 1999).

Mann, J. F. (1979). *Education*. London: Pitman.

Mbeki, T. (1998). Statement of the Deputy President Thabo Mbeki, at the Conference on Nation Building Through the Promotion and Protection of the Rights of Cultural, Linguistic and Religious Minorities. Gallagher Estates, Midrand: September 24, 1998.

McNergney, R. F., & Herbert, J. M. (1995). *Foundations of Education*. Boston: Allyn and Bacon.

Meredith, P. (1996). The position of minorities in the UK. In De Groof, J. & Fiers, J. (eds). *The legal status of minorities in education*. Leuven: ACCO.

Mothata, M. S. (ed). (2000). *A dictionary of South African education and training*. Johannesburg: Hodder and Stoughton.

Mothata, M.S. (1998). The National Qualifications Framework. In Pretorius, S.G. (ed). (1998). *Outcomes based education in South Africa: policy and*

concepts, implementation, management and quality assurance. Johannesburg: Hodder and Stoughton.

Mothata, M.S. (1998). Teachers and teacher organisations. In Pretorius, S. G. & Lemmer, E. M. (eds). (1998). *South African education and training: Transition in a democracy*. Johannesburg: Hodder and Stoughton.

Mothata, M. S. (1992). A comparative analysis of special education provision between Great Britain, the United States of America and South Africa. Unpublished masters dissertation. Pittsburg (USA): Pittsburg State University.

Naisbitt, J. (1994). *Global paradox*. New York: Morrow.

New National Party Election Manifesto (1999). Cape Town: New National Party.

Nieto, S. (1992). *Affirming diversity: The socio-political context of multicultural education*. New York: Longman.

Pan South African Language Board News. (1999, September). *Khoe and San reclaim their linguistic dignity*. Pretoria: PANSALB.

Pan South African Language Board. (1999). *Annual report*. Pretoria: PANSALB.

Patton, Q.M. (1990). *Qualitative research methods*. (2nd Edition). California: Sage.

Potgieter, J. M.(1996). The right to education and the protection of minorities in South Africa: A preliminary perspective. In De Groof, J., and Bray, E. (eds). *Education under the new Constitution in South Africa*. Leuven: ACCO.

Report of the Native Education Commission (1949 - 1951). In Samuels, J., & Nasson, B. (Eds). *Education: From poverty to liberty*. Claremont: David Phillip.

Rassool, N. (1995). Language, cultural pluralism and the silencing of minority discourse in England and Wales. *Journal of Education Policy*. Vol.10(3), 287-302.

Samuel, J. (1990). The state of education in South Africa. In Nasson, B., & Samuel, J. (eds). (1990). *Education: From poverty to liberty*. Claremont: David Phillip.

Santhiram, R. (1995 September). The education of minorities: Typologies, issues and effects. Paper presented at the international conference on Education and Change. Pretoria: Unisa.

Schumacher, S., & McMillan, J. H. (1993). *Research in education: A conceptual introduction*. (3rd Edition). New York: Harper Collins.

South African Broadcasting Corporation (SABC). (18/2/1999).

South African Broadcasting Corporation (SABC). (21/2/1999).

South African San Institute (SASI). Annual Review. (April 1998 - March 1999). SASI: Cape Town.

South Africa Survey 1996-1997. (1996). Johannesburg: South African Institute of Race Relations.

South Africa Survey 1997-1998. (1997). Johannesburg: South African Institute of Race Relations.

South Africa Survey 1999-2000. (1999). Johannesburg: South African Institute of Race Relations.

Sparks, A. (1996). *Tomorrow is another country*. Johannesburg: Struik.

Statistics South Africa. (1999). *The people of South Africa population census, 1996: Census in brief*. Pretoria: Statistics South Africa.

Steyn, H. J. (1998, July). Why do minority groups prefer own education institutions? Paper presented at the 10th World Congress of the World Council of Comparative Education Societies (WCCES), Cape Town.

Steyn, H. J., & Vanderstraeten, V. (1998). Minority group education in South Africa: A comparative perspective. *South African Journal of Education*, Vol.18 (2):89-96.

The Citizen. (16/1/1997).

The Star. (20/2/1996).

The Star. (23/2/1999).

The Sunday Times. (21/2/1999).

Thornberry, P. (1991). *International law and the rights of minorities*. Oxford: Clarendon Press.

Thornberry, P. (1995). The rights of minorities. In Harris, D., & Joseph, S. (eds). (1995). *The international covenant on civil and political rights and the United Kingdom law*. Oxford: Clarendon Press.

Togni, L. S. (1994). *The struggle for human rights: An international and South African perspective*. Cape Town: Juta.

UNESCO. (November 1978). *Declaration on race and racial prejudice*. New York: United Nations.

United Nations.(1988). *United nations action in the field of human rights*. New York: United Nations.

Unterhalter, E., Wolpe, H., Botha, T., Badat, S., Dlamini, T., & Khotseng B. (1991). *Apartheid education and popular struggles*. Johannesburg: Ravan.

Van Ham, J. (1996). The position of minorities in education: The Netherlands. In De Groof, J., & Fiers, J. (1996). *The legal status of minorities in education*. Leuven: ACCO.

Van Heerden, E. (1997). Cultural diversity and schooling. In Lemmer, E.M., & Badenhorst, D.C. (eds). (1997). *Introduction to education for South African teachers: An orientation to teaching practice*. Cape Town: Juta.

Van Raemdonck, K., & Verheyde, M. (1997). The right to education in South Africa and Belgium: A comparative perspective. In De Groof, J., & Malherbe,

E.F.J. (eds). (1997). *Human rights in South African education: From the constitutional drawing board to the chalkboard*. Belgium: ACCO.

Veny, L. (1997). Minorities and the right to education. Affirmative action in educational matters: General legal considerations. In De Groof, J., & Malherbe E. F. J. (eds). (1997). *Human rights in South African education: From the constitutional drawing board to the chalkboard*. Leuven, Belgium: ACCO.

Verhoeven, J. C. (1992). Educational policy in federated Belgium. *Journal of Education Policy*. January - March 1995. Vol. 7(1), 99-107.

Walford, G. (1995). Faith-based grant maintained schools: selective international policy borrowing from the Netherlands. *Journal of Education Policy*. May-June 1995. Vol. 10(3) 245-257.

Wallace, R. (1997). *International human rights text and materials*. London: Sweet & Maxwell.

Webster New World Dictionary. (1990). New York: Warner Books.

Wiersma, W. (1991). *Research methods in education*. (5th ed). Boston: Allan and Bacon.

Yinger, J. M. (1994). *Ethnicity: Source of strength? Source of conflict?* Albany: State University of New York Press.

GOVERNMENT ACTS

RSA. *Bantu Education Act* (Act no. 47 of 1953). Pretoria: Government printers.

RSA. *Coloured Education Act* (Act no. 47 of 1963). Pretoria: Government printers.

RSA. *Indians Education Act* (Act no. 61 of 1965). Pretoria: Government printers.

RSA. *National Education Policy Act* (Act no. 27 of 1996). Pretoria: Government printers.

RSA. *South African Schools Act* (Act no. 84 of 1996). Pretoria: Government printers.

RSA. *Pan South African Language Act* (Act no. 59 of 1995). Pretoria: Government printers.

OTHER GOVERNMENT POLICY DOCUMENTS

RSA. *Draft Bill on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Minorities.*(1999). Department of Provincial and Local Government. Pretoria: Government Printers.

RSA. *Ministerial Report on Religious Education.* (1999). Department of Education. Pretoria: Government Printers.

RSA. *White Paper on Education and Training.* (1995). Department of Education. Pretoria: Government Printers.

RSA. *Language in Education Policy*. (1997). Department of Education.
Pretoria: Government Printers.

RSA. *National Norms and Standards for School Funding*. Notice 2362 of 1998,
Volume 400, no. 19347. Pretoria: Government Printers.

RSA. Department of Constitutional Development. *Proceedings of the 24
September 1998 consultative conference on Nation Building through the
Promotion and Protection of the Rights of Cultural, Religious and Linguistic
Communities*. Midrand. Gauteng Province, South Africa.

RSA. Department of Constitutional Development.(1997). *Reports on
Submissions at the Consultative Conference on Nation Building through the
establishment of a Commission for the Protection and Promotion of Cultural,
Linguistic and Religious Communities*. Midrand. Gauteng Province, South
Africa.

INTERNATIONAL INSTRUMENTS

Universal Declaration on Human Rights. (1948). New York: United Nations.

The International Covenant on Civil and Political Rights (ICCPR). (1966). New
York: United Nations.

The Convention Against Discrimination in Education. New York: United
Nations.

*The International Covenant on Economic and Social and Cultural Rights
(ICESCR)*. New York: United Nations.

COURT CASES

Matukane v. Laerskool Potgietersrus.

Palmer v. Board of Education of the city of Chicago.

Belgian Linguistic Case.

Mandla v. Dowell Lee.

CONSTITUTIONS

Coordinated Constitution of Belgium, February 17, 1994.

Constitution of the Kingdom of the Netherlands, February 17, 1983, as amended.

Constitution of the Republic of Italy, December 22, 1947.

Basic Law of the Federal Republic of Germany, May 23, 1949.

Constitution of the Republic of South Africa, Act no 108 of 1996.

Interim Constitution of South Africa, Act No 200 of 1993.

ANNEXURE 1:

Sections of the Constitution (Act no. 108 of 1996)

BILL OF RIGHTS

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

Equality

- (9) (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, 'disadvantaged by unfair discrimination' may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more ground, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).
National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Freedom of religion, belief and opinion

- 15. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that -
 - (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising -
 - (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

Freedom of association

18. Everyone has the right to freedom of association.

Education

29. (1) Everyone has the right -
- (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account -
- (a) equity;
 - (b) practicability and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -
- (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

Language and culture

30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Cultural, religious and. linguistic communities

31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community -
- (a) to enjoy their culture, practise their religion and use their language; and
 - (b) to form, join and maintain cultural, religious and linguistic associations. and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Limitation of rights

36. (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.

Other sections of the Constitution

Human Rights Commission

Functions of the Human Rights commission

184. (1) The Human Rights Commission must-
- (a) promote respect for human rights and a culture of human rights;
 - (b) promote the protection, attainment and development of human rights; and
 - (c) monitor and assess the observance of human rights in the Republic.
- (2) The Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power -
- (a) to investigate and report on the observance of human rights;
 - (b) to take steps to secure appropriate redress where human rights have been violated;
 - (c) to carry out research; and
 - (d) to educate.

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Functions of the Commission

185. (1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are -
- (a) to promote respect for the rights of cultural, religious and linguistic communities;
 - (b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
 - (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.
- (2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

Composition of the Commission

- 186 (1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by legislation.
- (2) The composition of the commission must -

- (a) be broadly representative of the main cultural, religious and linguistic communities in South Africa; and
- (b) broadly reflect the gender composition of South Africa.

Self-determination

235 The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any way, determined by national legislation.

ANNEXURE 2

Declaration of Confidentiality

I hereby declare that the information given to me will be treated confidentially and will only be used for the purpose of this particular research.

Thanks

Signed

.....

Date

.....

ANNEXURE 3

Interview Guide

(Core questions)

- Definition of Minorities (Internationally and in South Africa).
- Is South Africa a land of minorities?
- Why do you think minorities want your own schools?
- Does the Constitution address issues about minorities, particularly in education?
- Should there be an amendment of the Constitution to accommodate minorities.
- What rights should be given to minorities in South Africa?
- *A Volkstaat*. Will it solve anything particularly in education?
- What should happen in education? (Own public schools funded by government?)
- What should the functions of the proposed Commission be, particularly around issues on education?