

## The provision of education for minorities in South Africa

M.S. Mothata and E.M. Lemmer

Faculty of Education, University of South Africa, P.O. Box 392, Unisa, 0003 South Africa  
lemmeem@unisa.ac.za  
mothams@unisa.ac.za

In the light of a lack of a consensus on the definition of the concept minority and the continuing debates on minorities and their rights in education, policy makers need to consider the adequate provision of education suitable to different minorities. The issue of minority rights in education is particularly sensitive in South Africa where members of previously disadvantaged groups regard the demand for minority protection with suspicion. An overview of the literature on the concept minority, legal provisions in international law and the main provisions in South African law is given. An analysis of documents, especially primary documents, was carried out. Unstructured interviews with a small sample of informants selected by purposeful sampling were used to obtain additional data. Findings indicated that there is no international consensus on the definition of the concept minority; the South African constitution uses the concept communities rather than minorities but in this incidence, no definition is given. However, the South African constitution contains sufficient provisions for the right of communities to education. Subject to certain limitations minority groups may open their own schools and use their own language.

### Introduction

Recent socio-political developments around the world, including the demise of apartheid in South Africa, have highlighted the issue of minority rights. Ethnic, religious, linguistic and national minority groups are making more demands for the right 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 national constitutions and in international law. Moreover, the right to education is linked directly with the right of minorities to be provided their own schools wherein they will be able to practise their own culture. The United Nations (UN) and United Nations Educational, Scientific and Cultural Organisation (UNESCO) have co-operated closely on matters relating to the right to education. The enjoyment by every one of the right to education is ensured by among others the Universal Declaration of Human Rights (UDHR) (Universal Declaration on Human Rights 1948), the UNESCO Convention of Recommendation against Discrimination in Education (The Convention Against Discrimination in Education 1962) and the International Covenant on Economic, Social and Cultural Rights (The International Covenant on Economic and Social and Cultural Rights 1966). With regard to the relation between culture and education, Capotorti (1991:60) states 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 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 discriminatory manner in the field of education. Educational policy is therefore a key element in evaluating the situation of members of minority groups as regards their right to enjoy their own culture (Capotorti, 1991:60; Wallace, 1997:206).

Against this background, we examine the concept of minorities and the right to education by means of an analysis of legal provisions in international and South African context. The discussion is based on data collected from primary documents on the provision of education to minorities in South Africa, including the Constitution and other legal provisions relevant to education. Unstructured interviews with a small sample of key informants selected by purposeful sampling elicited additional data to the document analysis. Finally, findings are presented and brief recommendations for educational provision are made.

### Defining the concept: minority

The issue of minority rights is complicated by a lack of consensus concerning definition of minority at international level. Different countries define minority differently and in some countries, there is no

special constitutional provision for minorities (Blaustein & Flanz, 1990:45). The Webster New World Dictionary (1990:376) defines *minority* as a racial, religious, or political group that differs from the larger, controlling group. To this, McNergney and Herbert (1995:249) add that the term *minority* carries both a quantitative meaning and a political connotation. Those groups or subgroups in a society who are identifiably fewer than another group are said to be the minority. *Minority* is also used to describe perceptions of the relative political power or influence that a group exerts in society. 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, those who do not speak English are members of language minority groups. They are fewer in number than the majority of society and are perceived to exert less influence in society. 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.

### Legal provisions for minority rights in international law

Minority rights in international law form a category in the context of a broad universalist scheme of rights for all human beings (Thornberry in Harris & Joseph, 1995:597). UNESCO, along with other international organisations, has been concerned with the articulation and elaboration of human rights concepts and within UNESCO, the rights of minorities have been a subject of debate.

Consequently, several international instruments with implications for the education of minorities have been adopted by various organisations, particularly the UN. The Universal Declaration of Human Rights (UDHR) was adopted in 1948. 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 documents provisions are considered fundamental and are often quoted in domestic and international courts and by governments worldwide. The UDHR is widely regarded as forming part of international customary law (English & Stapleton, 1997:13). Article 26 of the UDHR deals with the right to education and paragraph 3, Article 26 provides for parents to have the prior right to choose the kind of education relevant to their children (Wallace, 1997:166). The 1960 UNESCO Convention against Discrimination in Education was the first instrument after World War II that provided for the special protection for the education of minorities. Article 1 of the Convention defines the term *discrimination* as any distinction, exclusion, limitation or preference which based on race, colour, sex, language, political and other opinion, national or social origin, economic conditions or birth, has the purpose or effect of

*nullifying or impairing equality of treatment in education.* Articles 2(b) and 5(1)(c) of the Convention which relate specifically to minorities and their right to carry on their educational activities should be understood in the context of Article 1. These articles also provide for the right of minorities to receive education in their own language (English & Stapleton, 1997:64). The three International Covenants: Economic, Social and Cultural Rights (ICESCR); Civil and Political Rights (ICCPR); and The Optional Protocol to the ICCPR are significant. These three Covenants, adopted in 1966, came into force in 1976. Together with the UN Declaration on Human Rights the Covenants form the International Bill of Human Rights. All have 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 worldwide. The Convention on the Rights of the Child (1989) also has certain provisions dealing with the right of minorities, namely articles 28, 29 and 50. The latter among others guarantee the child's rights to receive, for example, free and compulsory primary education and the right to enjoy his or her own culture or to use his or her own language. Later, the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by the General Assembly of the UN. This was a non-binding international declaration and constituted the UN General Assembly Resolution 47/135 adopted in 1992. Article 2 stresses the rights of minorities to the development of culture, the provision of opportunities for minorities to learn their own language, encouraging knowledge of history, traditions and culture which can best be achieved if member states allow minorities to establish their own schools (De Varennes, 1996:279). Finally, the 1995 Framework Convention for the Protection of National Minorities applied principles already formulated in more general conventions to national minorities. Article 12(3) and Article 13 deal specifically with equal access to education for minorities and the right to learn in the mother tongue.

### Minority rights in education in South Africa

During the apartheid era in South Africa, the divisions between communities were based mainly on race, and different laws governed education: the Bantu Education Act No. 47 of 1953 promulgated for Africans, the Coloured Persons Education Act No. 47 of 1963 and the Indians Education Act No. 61 of 1965. The division into homelands was based not only on colour but common culture, language and other unique characteristics, which were used to define minority groups. The homelands governments had limited powers of control over educational provision. A separate department at national level catered for the education of Africans, particularly those living in townships, which were not in the homelands. In 1986 the tri-cameral parliament, which included other black communities but excluded Africans was formed. The Nationalist government justified this by indicating that Africans had their own homeland governments that catered for their different needs. These divisions were accomplished in the name of meeting the needs of different racial and ethnic or minority groups (Unterhalter, Wolpe, Botha, Badat, Dlamini & Khotseng, 1991:59).

### Minority rights after 1994

With the 1994 elections and the adoption of the Constitution of the Republic of South Africa (RSA) in 1996, the issue of minorities came to the fore. In South Africa, the concept *minority* does not appear in the Constitution. Instead the Constitution, particularly sections 185 and 186, refers to people of different cultures, religions and languages as *communities*. However, it can be concluded that these *communities* constitute smaller numbers and can rightfully be referred to as *minorities*.

Even before the adoption of the final Constitution, certain groups who regarded themselves as minorities insisted, during political constitutional debates, on some form of protection of minorities (Devenish, 1999:411). Many ordinary South Africans, especially those whose language, religion and culture were in the past marginalised, voiced

their views regarding their status as minorities. Examples of these marginalised languages are the Khoi, the Nama and the San. Even those whose languages were privileged in the past, for example the Afrikaners, feared that the governments new policy on language in schools put their language on the verge of extinction.

Moreover, the African National Congress (ANC) led government was 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). In the debate on the South African Schools Act (SASA) in 1996 and the need for Afrikaans cultural education, Viljoen expressed his party's call for single-medium schools for cultural minorities who wanted them. Such schools should be provided with teachers of the same cultural group and be run by parent bodies that consist of parents from such cultural groups (The Citizen, 16 January 1997:8).

Minority rights were also highlighted by racial incidents occurring in a small number of schools during the desegregation of schooling. In Potgietersrus, Northern Province, four African learners were refused admission to a public primary school. Parents of the learners, 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 basis of race was unfair and violated section 9(3) and (4) of the South African Constitution. Section 9(3). Other racial incidents in schools, notably racial tension between African and white learners in Vryburg High School, North-West Province, coincided with the report published by the South African Human Rights Commission (SAHRC) entitled *Racism, Racial Integration and Desegregation in South African Public Secondary Schools*, released in 1999 (City Press, 7 March 1999:6). Numerous examples of institutional racism were found (City Press, 7 March 1999:6). These examples of racial incidents in schools and communities stressed the issue of minority group rights and provision of education. 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 is viewed with suspicion especially among the black communities. In contrast to the position elsewhere where minority protection attempts 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.

### Minority rights in education: a document analysis

The investigation into minority rights in education in South Africa reported in this article relied primarily on an analysis of the following primary documents related to the provision of education to minority groups.

#### The Constitution of the Republic of South Africa (RSA) (Act No.108 of 1996)

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 (Constitution Act No.108 of 1996:23). As mentioned there is no definition for the term *minority* in the Constitution. Instead the Constitution mentions the term *communities* but fails to define the term. Furthermore, the Constitution has no special provision for minorities in education. Certain sections are, however, relevant to the provision of education to minorities. 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); section 31 (Cultural, religious and

linguistic communities) and Section 36 (Limitations of rights). 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; and the right to use own language where it is practically possible. The Constitution grants minority groups freedom to practise their own culture, religion and use their own official language. However, such freedoms are subject to the limitation clause, that is, section 36 of the Constitution of the RSA.

Moreover, the relationship of the Constitution with international law with special reference to minority rights should be explained. International instruments mentioned such as the UDHR, the ICESCR, which guarantees the right to education under article 13 of the Covenant and the ICCPR Article 27, which guarantees minorities, for example, the right to education, the right to use their own language, the right to practise their own culture freely and to enjoy their religion as well as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities (1992), set out standards by which states ought to govern (English & Stapleton, 1997:11). In the Constitution of the RSA, sections 231, 232 and 233 deal 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 practise freely their own culture and to use their own language. To a large extent, the Constitution is in line with international instruments, particularly regarding minority issues.

The South African Schools Act (SASA) (Act No. 84 of 1996) and the National Education Policy Act (NEPA) (Act No. 27 of 1996) Sections of the Constitution dealing with educational rights must be understood in conjunction with other national laws such as the National Education Policy Act (NEPA) (Act No. 27 of 1996); the South African Schools Act (SASA) (Act No. 84 of 1996) and policy documents, such as the Language in Education Policy (LiEP) and the Norms and Standards on Language Policy published in 1997 by the National Department of Education. NEPA (Act No. 27 of 1996) gives the Minister of education the powers 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. 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. The SASA applies to all public schools in the Republic of South Africa.

**Admission:** Every public school has a governing body whose functions include the compilation of an admission policy which is consistent with an applicable provincial law, the SASA, and the Constitution. A schools 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 grounds as indicated under section 9 of the Constitution. 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. Discrimination based on, for example, race is strictly prohibited in public schools, especially where there is no legal provision for quotas.

**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 Language in Education Policy (LiEP) (10 August 1997) was subsequently published and its provisions are applied in all South African public schools. Language policy is also covered by 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 also in section 6(2) which states 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. 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 governing body.

**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. Moreover, attendance of such observances must be free and voluntary. Such principles ensure that no religion will dominate over others.

The national conferences on the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (1997 & 1998)

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 outlined by the former Deputy President, Thabo Mbeki on 4 August 1998. Two national conferences held in 1998 and 1999 on the establishment of the Commission were valuable guidelines in the drafting of the Draft Bill. Organisations representing cultural, religious and linguistic groups as well as political parties in South Africa participated: 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 groups made submissions. However, this section does not focus on the submissions made at the conference but on the Draft Bill presented during the second conference.

During the second conference (24 September 1999) a Draft Bill was presented to delegates. The Bill dealt with, among other things, the following: the status and primary object of the Commission and the composition of the Commission. Of relevance are some functions of the Commission as contained in the Draft Bill which impact on education. As outlined in the Constitution section 185 (1) and (2), the primary objectives 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 endeavour to instil 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. The aim of such efforts should be to inculcate the principle of equality of status and the value of cultures, religions and languages within the composite cultural, linguistic and religious diversity that characterises South African society.

To achieve the objectives articulated in the Constitution, part 5 of the Bill outlined important functions of the Commission. They include the Commissions 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.

The above provisions, particularly subsection 2 of the Constitution and the first function mentioned above regarding the Commissions powers, have far-reaching implications not only on cultural practices and religious tolerance but also on the provision of education for minorities groups.

It was mentioned earlier that some communities 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 did make recommendations in favour of such groups, it would mean that the Constitution must be amended to make provision for cultural or other forms of unfair discrimination in schools. At the time of writing 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.

A further issue regarding the Commissions functions is its relationship with other organs of state, such as the South African Human Rights Commission (SAHRC) and the Pan South African Language Board (PANSALB). The educative function contained in section 185(1) of the Constitution discussed above, coincides with that of the SAHRC under section 184 of the Constitution. Cultural, linguistic and religious rights are human rights and the SAHRC is constitutionally given the powers to 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. Similarly, the Commissions powers to monitor, investigate, research and report on issues affecting linguistic communities are similar to those of the PANSALB. The Draft Bill does not directly address the issues of overlapping powers among different statutory bodies. However, the Draft Bill on the Commission, contains a clause to the effect 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.

### Findings of qualitative interviewing

Additional data were solicited from a small group of key informants by means of semi-structured interviews. Purposeful sampling, that is, the deliberate choice of informants by virtue of their status, was used. The small sample size, typical of the qualitative tradition, is the most obvious limitation of this part of the research. However, the primary goal of the interviews was to understand the informants perceptions about the provision of education to minorities and no attempts were made to establish trends or to generalise the findings. Informants were chosen because they were likely to be knowledgeable and informative about the phenomenon under investigation. Interviews were video recorded and transcriptions made for the purpose of data analysis. The informants are briefly described as follows: the chairperson of a language committee of a marginalised language, that is Nama; a sociolinguist working with a language institute of a marginalised language; members of parliament and senior office-bearers in two political par-

ties, respectively. All informants had participated on the 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. Findings are supported by rich data from the interviews.

### Defining minorities in South Africa

In the light of the absence of a definition of minority in international law and in the Constitution of South Africa, informants were asked to define minorities and to indicate whether South Africa was indeed a country of minorities. Although the informants who were interviewed frequently used the concept *minority*, in their discussions, they agreed that to present an acceptable definition of *minority* or even the term *community* which is used in the Constitution is a daunting task in the South African context. An informant stated that some communities, for example the Nama, refuse to be classified as minorities. Although they are numerically few and do not occupy a dominant position (as required in international law) in this country, they do not feel that this makes them a minority group. Instead the informant indicated, they see themselves as part of a big rainbow nation. The two politicians were of the opinion that minorities or communities should declare and define themselves. If such minorities refrain from this, it is impossible to classify and define them as minorities or communities. With reference to section 19 of the Constitution (Freedom of association), the official view of the political party represented by one informant was that communities should define themselves on the basis of freedom of association and shared culture or common interest.

### Constitutional provision

The provisions in the Constitution formed the basis of the discussions with informants on the rights of minorities in education. Informants agreed in general that the Constitution has done enough to address the minority issue, particularly in education. Section 29 of the Constitution allows individuals or groups to open their own schools subject to certain limitations. Such limitations are aimed at, amongst other things, addressing the legacy of apartheid and upholding the principles of democracy, human, dignity and freedom of association.

However, two informants raised the position of marginalised languages. One felt: 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. In this informants 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 South African languages. Another informant indicated that the Constitution has not done enough to address group rights. In his opinion, what the negotiators and drafters succeeded to do was to include what he referred to as enabling clauses in the Constitution particularly clauses dealing with communities or groups. The informant gave an example by making reference to section 31 of the Constitution. This section states that "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, practise their religion and use their language ..." particularly clauses dealing with minorities or groups. However, the informant argued that these clauses, "are characterised by the word *may* and only enable groups or communities to practise their rights as opposed to individual rights which are compulsory". 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.

### Own schools and own language

The issue of own schools where minorities can use their own language has been debated since the desegregation of schooling in South Africa. Some communities have expressed their intention of keeping their children out of the newly integrated public school system by establishing their own schools. An apt example is the *Volkskool* idea where

Afrikaner communities, which are mainly opposed to integration, opened their own schools, in terms of section 29(3) of the Constitution of the RSA. This section indicates among others, that everyone has the right to establish and maintain at their own expense independent educational institutions that do not discriminate on the basis of race and are registered with the state.

One informant, representative of a marginalised language, clearly indicated that in their committee, We do not want people to say there is the Nama school. He added that establishing such a school would be a step back to apartheid where South Africans used to have schools divided according to race and language. However, he was concerned that Nama was not used as a language in schools despite the fact that it has its own orthography and books and has more than 20 000 speakers. This was also confirmed by the socio-linguist, who indicated that Nama has a considerable orthography compared to other Khoisan languages and could be introduced in schools at any time.

Another informant indicated that the diverse cultures in South African society were an asset and not a liability. He indicated further that to build a nation does not mean to make it think as one but South Africans need to strengthen own cultures. That means South Africans 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". His ideas reflect the policy of his party which embraces the principle of *localism*. This principle 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).

The informant who represented a small but active political group which has been in the forefront in the establishment of schools catering for the Afrikaner group only, 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."

In his opinion, "a school must be for a specific cultural group. It must allow for the ethos of a specific cultural character of such a group".

The latter viewpoints are more relevant for the independent than the public school system. Presently South African public schools are non-racial and even if they cater primarily for members of a particular language group, 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 this is reasonably practical. Such is also a Constitutional guarantee. In the case of the establishment of independent schools, for example *Volk-skole*, they also may not discriminate on the basis of language or race. Such a practice would be in conflict with the Equality clause which is section 9 of the Constitution.

#### The notion of a Volkstaat

A contentious issue closely related to the establishment of own schools, particularly for the Afrikaners, is the establishment of a *volkstaat* or a separate homeland. It is also referred to as *self-determination*, which is entrenched in section 235 of the Constitution of the RSA. Some section of the Afrikaner minority in South Africa, indi-

cated that they would like to have their own separate homeland where-in they would administer themselves, have their own schools, teach and learn in their own languages and generally promote their own culture. One informant problematised the establishment of a "separate statehood" as he felt that Afrikaners are not endangered nor is their language at risk. He added that regarding language rights, nobody is more successful in language rights than Afrikaans speakers. They have enormous resources. Sparks (1996:230) argues further that South Africa is a country of ethnic diversity and historical conflicts (as illustrated by recent racial incidents in schools), but there are important countervailing factors. First among these is that ethnic dismemberment is not a practical possibility. In this context, the view of Sparks (1996:230) is apt. He cautions: "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.

#### The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

Another issue raised in the interviews was the establishment and role of the above Commission, 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. One informant felt that the Commission should get off the ground as soon as possible but it should not be symbolic and must be resourced so that it is able to perform its functions. Similarly another informant welcomed the Commission and 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. The Commission, however, would have a long and daunting task ahead of it. He felt that it may take decades for it to give guidance on how to handle minorities. However, he cautioned that the African National Congress (ANC) government has no urgency on the issue of minorities, since they are in favour of assimilation and homogeneity. In contrast another informant believed that the establishment of the Commission was the governments 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 said further that it was unfortunate that the Commission in the process of setting up section 185 of the Constitution has 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.

#### Recommendations for provision for educational rights of minorities in South Africa

Against the above background, attention is drawn to recommendations for educational provision that have suggested themselves on the basis of this study of the provision of education for minorities in South Africa.

#### Constitutional provision and support measures

The findings of the document analysis revealed that in general, the Constitution makes sufficient provision for the protection of the rights of minorities in education. However, two of the informants, namely the chairperson of the language committee of a marginalised language and one of the politicians indicated that the Constitution has not done enough to accommodate minorities. The chairperson wanted the Constitution to recognise the Khoisan languages as official languages and the politician wanted minority rights to be entrenched in the Bill of Rights. With the above ideas in mind, it is proposed that there should therefore be a link between constitutional provision and educational practice. Such a link will impact on all facets of schooling: the curriculum, teacher training, governance, funding, support services and monitoring.

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 fulfilled its mandate as outlined in the Constitution and the PANSALB Act. 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. It could be suggested that the PANSALB be dissolved and should be absorbed into the Commission.

#### Marginalised languages and own schools

With regard to marginalised languages, the development of former, marginalised languages, for example the indigenous languages like the Nama and the San, should be given priority. The use of Afrikaans as a national official language and as language of learning and teaching in schools might diminish considerably in contrast to former marginalised African languages. The development of Afrikaans lent Afrikaners self-confidence and esteem. In the same way the development of former marginalised African languages is essential to give such communities a sense of pride and self esteem.

The establishment of own schools is sufficiently provided for in the Constitution (section 29 (3)). However, finance is a limitation (Oosthuizen & Steyn, 1999:386). 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 insurmountable. 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 languages whose development should be promoted by the PANSALB. Added to this, the country has a multiplicity of religious communities. Therefore, it does appear that the state would be able to provide each language and religious group with its own school funded by public funds. However, if a value is placed 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. 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.

#### The notion of volkstaat and 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 *Volkstater*s 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. The advocates of a *Volkstaat* should, however, be given a time

frame 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 them to persuade as many people as possible to settle in the *Volkstaat*.

#### 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.

#### Conclusion

Globally, cultural, linguistic, religious and other minority groups are demanding their rights for self-determination acknowledged in international law. In South Africa, the move to a democratic society and unitary non-racial education system has been accompanied by concerns about the rights of certain groups, also with regard to the educational rights of minorities. The document analysis shows that protection of these rights are provided for by the Constitution and endorsed by provisions contained in international instruments. Qualitative data emerging from interviews suggest that minority rights in South Africa remains a sensitive political issue that requires a paradigm shift, especially by the formerly oppressed communities who were disadvantaged by the apartheid system.

#### References

- Blaustein AP & Flanz GH 1990. *Constitutions of the countries of the world*. New York: Oceana.
- Brownlie I 1992. The rights of people in modern international law. In: Crawford J (ed.). *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. City Press, 7 March 1999.
- 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.
- De Varennes F 1996. *Language, minorities and human rights*. The Hague: Martinus Nijhoff.
- English K & Stapleton A 1997. *The Human Rights handbook*. Cape Town: Juta.
- 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). *The legal status of minorities in education*. Leuven: ACCO.
- Human Rights Commission 1999. *Racism, racial integration and desegregation in South African public secondary schools*. Johannesburg: Human Rights Commission.
- McNergney R F & Herbert J M 1995. *Foundations of Education*. Boston: Allyn and Bacon.
- New National Party 1999. *New National Party Election Manifesto 1999*. Cape Town: New National Party.
- Oosthuizen IJ & Steyn HJ 1999. The protection of minority rights in South African education. *South African Journal of Education*, 19:381-387.
- Pan South African Language Board News, September 1999. *Khoe and San reclaim their linguistic dignity*. Pretoria: PANSALB.
- Pan South African Language Board 1999. *Annual Report*. Pretoria: PANSALB.
- Potgieter JM 1996. The right to education and the protection of minorities in South Africa: A preliminary perspective. In: De Groof J & Bray E (eds). *Education under the new Constitution in South Africa*. Leuven: ACCO.
- South African Broadcasting Corporation (SABC), 18/2/1999.
- Sparks A 1996. *Tomorrow is another country*. Johannesburg: Struik.
- The Citizen*, 16 January 1997.
- Thornberry P 1995. The rights of minorities. In: Harris D & Joseph S (eds). *The international covenant on civil and political rights and the United Kingdom law*. Oxford: Clarendon Press.
- Unterhalter E, Wolpe H, Botha T, Badat S, Dlamini T & Khotseng B 1991. *Apartheid education and popular struggles*. Johannesburg: Ravan.
- Wallace R 1997. *International human rights text and materials*. London: Sweet & Maxwell.
- Webster New World Dictionary 1990. New York: Warner Books.
- Yinger JM 1994. *Ethnicity: Source of strength? Source of conflict?* Albany: State University of New York Press.

### Government Acts and Policy documents

- Constitution of the Republic of South Africa*, Act No. 108 of 1996. Pretoria: Government Printer.
- Republic of South Africa. *Bantu Education Act*, Act No. 47 of 1953. Pretoria: Government Printer.
- Republic of South Africa. *Coloured Education Act*, Act No. 47 of 1963. Pretoria: Government Printer.
- Republic of South Africa. *Indians Education Act*, Act No. 61 of 1965. Pretoria: Government Printer.
- Republic of South Africa. *National Education Policy Act*, Act No. 27 of 1996. Pretoria: Government Printer.
- Republic of South Africa. *South African Schools Act*, Act No. 84 of 1996. Pretoria: Government Printer.
- Republic of South Africa. *Pan South African Language Act*, Act No. 59 of 1995. Pretoria: Government Printer.
- Republic of South Africa 1999. *Draft Bill on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Minorities*. Department of Provincial and Local Government. Pretoria: Government Printer.
- Republic of South Africa 1999. *Ministerial Report on Religious Education*.

- Department of Education. Pretoria: Government Printer.
- Republic of South Africa 1997. *Language in Education Policy*. Department of Education. Pretoria: Government Printer.
- Republic of South Africa, Department of Constitutional Development 1998. *Proceedings of the Consultative Conference on Nation Building through the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*, 24 September 1998. Midrand, South Africa.
- Republic of South Africa, 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, 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.