

**AN INTERNATIONAL PERSPECTIVE ON
THE FUNDAMENTAL HUMAN RIGHTS OF
EDUCATORS**

ELIZE KÜNG

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SUPERVISOR: Dr Eida de Waal

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SUMMARY

This is an in-depth study of the fundamental human rights of educators with the emphasis on the rights having direct bearing on the educators, and their the effects on the employment conditions of the educators, as well as the statutes implicating the employment and role of the educators in four countries. In order to provide an international perspective on the fundamental rights, employment conditions and status of educators, South Africa and Ghana are used to provide an African perspective, Switzerland to provide a European perspective and China to provide an Asian perspective. To conclude the study, the Constitutions of the four countries, as well as factors contributing to the educators' experience of their employment situation are compared and contrasted to provide an image of the position of educators in the four countries.

OPSOMMING

Hierdie werk is 'n dieptestudie van die fundamentele regte van opvoeders met die klem op die regte direk verwant aan opvoeders, en die uitwerking daarvan op die indiensnemingsvoorwaardes van die opvoeders, asook die statute wat die werksomstandighede en rol van opvoeders in vier lande beïnvloed. Met die oog daarop om 'n internasionale perspektief op die fundamentele regte, die werksomstandighede en die status van opvoeders te bekom, is Suid-Afrika en Ghana gebruik om 'n Afrika-perspektief te verskaf, Switserland vir 'n Europese perspektief en China vir 'n Asiatiese perspektief. Ter afsluiting van die studie is die Grondwette van die vier lande, sowel as faktore wat bydra tot die opvoeders se ervaring van hul werksituasie vergelyk en gekontrasteer om 'n beeld te skep van die posisie van opvoeders in die vier lande.

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NOMENCLATURE

AG	Canton Aargau
CH	Switzerland
Ch	China
DoE	Department of Education (South Africa)
EDK	Schweizerische Konferenz der Kantonalen Erziehungsdirektoren
Fr.	Frank (Swiss Monetary Unit)
GAL	Gesetz über die Anstellung von Lehrpersonen
GH	Ghana
GES	Ghana Education Service
GNAT	Ghana National Association of Teachers
GoG	Government of Ghana
HOD	Head of Department
HRIC	Human Rights in China
HRW	Human Rights Watch
ILO	International Labour Organization
ISODEC	Integrated Social Development Centre
LCH	Dachverband Schweizer Lehrerinnen und Lehrer
MoE	Ministry of Education (China)
OECD	Organization for Economic Co-operation and Development
PISA	Programme for International Student Assessment
PRS	Presence Switzerland
SA	South Africa
SBC	Swiss Broadcasting Cooperation
UNESCO	United Nations Educational, Scientific and Cultural Organization
ZLV	Zürcher Lehrerinnen- und Lehrerverband

CHAPTER ONE

ORIENTATION

1.1 INTRODUCTION

According to the Preamble of the Universal Declaration of Human Rights (1948), all people are entitled to fundamental human rights such as human dignity, equality and freedom, and all nations should *strive by teaching and education to promote respect for these rights* (UN, 1948). In the last few decades the focus has largely been on the rights of the child. This has happened mostly as people have become aware of the plight of many children all over the world and the necessity to protect these vulnerable beings.

However, this focus on children and the protection of their rights has become a two-pronged sword. Adults are becoming aware of a disregard of their basic rights by the youth of the day. Rossouw (2003:413) mentions the development of an arrogance among the youth towards adults, including both parents and educators, as well as an overemphasis on human rights, especially children's rights, as possible reasons for a decline at school discipline, leading to the serious detriment of the educating and learning process. This does not seem to be a unique South African problem, but rather a worldwide one. As an educator's day consists primarily of contact with young people, this problem impacts on them.

According to Rossouw and De Waal (2004:284) educators are working under considerable stress in the new dispensation. This, however, does not seem to be unique to the South African education system. Van Wyk (in Olivier & Venter 2003:186) mentions that research done worldwide indicates that educators' stress is becoming endemic. Studies from different parts of the world indicate that factors such as negative attitude, work demands, learner misbehaviour and negative feedback lead to job dissatisfaction and job-related illnesses (Olivier & Venter, 2003:186).

STATEMENT OF THE PROBLEM

The problem will be addressed by focusing on the concept *fundamental human rights*, the status of educators in general and of educators in South Africa specifically.

1.1.1 Fundamental human rights

The Universal Declaration of Human Rights (1948), as adopted by the UN General Assembly, calls on all nations to recognize each person's right to certain fundamental human rights. These fundamental human rights include rights such as dignity, freedom, equality and the right to education. All nations should not only *promote respect for these rights*, but also protect these rights by *the rule of law* (Universal Declaration of Human Rights, 1948: Preamble).

The Constitution of the Republic of South Africa No. 108 of 1996 (SA, 1996a; hereafter referred to as Constitution), upholds the values of human dignity, equality and freedom, thus underlining the importance of social transformation in South Africa (Bray & Beckmann, 2001:109). These fundamental human rights, the *cornerstone* of South African democracy, are contained in chapter 2 of the Constitution (SA, 1996a; Bray, 1998:77; Roos & Wolhuter 2004:1). The Bill of Rights is of great importance to education, and human rights protection in the educator–learner relationship needs particular attention (De Waal, 2000:6).

According to Bray (1998:77), the Constitution (SA, 1996a) can be seen as an agreement by the State to recognize and safeguard the fundamental rights of all individuals in the country. Not only does the Constitution contain basic political rights such as the right to equality, life, human dignity and privacy but it also contains the individual's rights to education, health services and housing, among others. It also guarantees individuals the rights to legal procedure and just, reasonable and fair administrative action (SA, 1996a; various sections).

Bray (1998:77) mentions that although the Bill of Rights does not contain any *specific group rights*, it does allow individuals to act as a group in protecting

certain communal interests, for example the different rights protecting a person's freedom of association, the rights to belong to certain cultural-, religious- and language groups. It is important to realize that no right is absolute and that the exercising of the right should always be measured against the influence thereof on other individuals (SA, 1996a; section 36). According to Bray (1998:78), an individual's right will be tested against the educational interest of the public or aggrieved larger group in the educational context.

It is important to keep in mind that, although the Constitution guarantees certain fundamental rights which hold advantages and even protection for everyone alike, these rights are not absolute (Smit, 2004:1). Malherbe (2004:1) mentions that each person is not only entitled to these fundamental human rights, but also bound by these rights at the same time.

It is clear that the Constitution protects the rights of all South Africans (SA, 1996a) including both learners and educators. It is of necessary that the educator, however, never forgets that the learner's best interest is of *paramount importance in every matter concerning the child* (SA 1996a, section 28(2)). This important duty to protect the learner has lead to a greater degree of consciousness concerning the rights of the child, mostly because it has become necessary to protect children (learners) to a greater extent.

1.1.2 Status of educators

UNESCO (2004a) calls attention to the fact that the world is facing a severe and growing shortage of educators. According to UNESCO, it is a well-documented fact that the status of educators is declining worldwide and that there is a growing flight from the profession. According to the organization, there is a reluctance to enter the profession; educators across the world are exposed to lamentable working conditions, and stressful classroom situations leading to, among other things, educator burnout. In a press release regarding the World Teachers Day of 2004, Educational International *decries the lack of respect and appreciation for educators* (Education International, 2004).

As early as 1966 during the Special Intergovernmental Conference on the Status of Teachers (UNESCO, 1966), concern was raised regarding the status of educators, and recommendations were made to ensure that educators enjoy the status equal to the essential role they have in educational advancement and the importance of their contribution to the development of man in modern society.

According to Vongalis (2004:488), the period between 1920 and 1990 saw the emergence and rise of the “modern” educator, an educator whose responsibilities extend beyond the classroom, into the heart of any social and political changes. It is also during this modern era that educators’ struggle for recognition of their expertise in educational matters and a struggle for greater self-determination of their profession emerged (Vongalis, 2004:488).

1.1.3 Educators in South Africa

As pointed out by Bray and Beckmann (2001:112), the employment relationship is a legal relationship between two parties: the employer and the employee. In the South African education system, educators may be employed either by the government or by the School Governing Body (SA, 1998; section 3(1) (a); SA, 1996c; section 20(4)). Bray and Beckmann (2001:112) continue by stating that it is compulsory for all educators to register with the SACE, which makes all educators subject to the SACE’s Code of Professional Ethics.

Venter (2005:1) not only sees the advent of a culture of human rights as one of the most exciting new things in South Africa, but also notes that it has been accompanied by an abuse of human rights. This culture of human rights has led to many misconceptions. One sound example is given by Venter (2005:1), who mentions that parents and learners alike seem to hold the view that the right to equality does not imply equality of value, but rather implies that educators and learners are equal in status. Many newspaper articles and published letters further emphasize these misconceptions. In one letter the question is asked – *Who sees the marks left on the soul of educators after some children have finished with them* (Botha 2005:12)?

According to Olivier and Venter (2003:186), the South African educator has to deal with the lack of discipline at schools, unmotivated learners and the abolishment of corporal punishment, redeployment, retrenchments, large learner:educator ratios and a new curriculum approach. All of these aspects contribute to higher stress levels. Roos and Wolhuter (2004:2) mention research that indicates learner discipline as constituting a problem in South African schools.

1.1.4 Conclusion

It becomes apparent that educators are experiencing high levels of job-related stress (Olivier & Venter, 2003: 186). Venter (2005:1) ascribes the job-related stress experienced by educators to aspects such as the insecurity of their jobs, the demands made upon them by the new curriculum, ever increasing expectations placed upon them, as well as a feeling that the learning climate is being sabotaged by *rights gone mad* in their classrooms.

Against the foregoing background, it has become apparent that educators enjoy all the fundamental human rights, as encompassed in the Constitution (SA, 1996a). They should show a greater awareness of their rights and not only of their duties. However, this does not seem to happen.

Against this background, the following questions need to be addressed:

- What are the fundamental human rights of educators across the world?
- Does society respect the fundamental human rights of these educators?
- Are there factors that contribute towards educators' experiences worldwide concerning their employment situation?
- Can findings and recommendations be made to promote recognition and advancement of the fundamental human rights of educators across the world?

AIMS OF THE RESEARCH

The overall aim of this study was to gain insight and knowledge regarding the fundamental human rights of educators across the world: Africa, Europe and Asia.

This overall aim was operationalized as follows:

- by reviewing existing literature in order to gain information on the fundamental human rights of educators across the world;
- by exploring the respect society has for the fundamental human rights of these educators;
- by investigating factors that could contribute towards educators' experiences worldwide concerning their employment situation; and
- by making findings and recommendations that would promote recognition and advancement of the fundamental human rights of educators across the world, but specifically in South Africa.

RESEARCH METHODOLOGY

1.1.5 Review of the literature

A literature study was done on the fundamental human rights of educators in four countries: South Africa, Ghana, Switzerland and China. At the same time the focus fell on their employment conditions, policies and regulations regarding their employment and the status of educators, as perceived by society.

Internet searches using mainly GOOGLE, EBSCO-Host (ERIC) and SA e-Publications, as well as Government websites, were done using the following keywords: educator, teacher, fundamental human right, education, human right, legislation, regulation, guideline, structure of education, law of education, bill of rights, policy, government policy government regulation., education Acts.

1.1.6 Comparative school law perspective

According to Venter *et al.* (1990: 211), the comparative law method can be defined as a *unique, systematic, and jurisprudential strategy* applied, by virtue of similarities and differences between the diverse legal systems, to acquire new knowledge and understanding regarding the specific topic.

A comparative study allows one to gain insight and evaluate by comparing specific aspects. Van Zyl and Van der Vyver (1982:365) consider it of the utmost importance for law students and practitioners to take note of, not only the general drift, but also the particular content, of legal systems of other countries. The aim of this study will be to acquire knowledge regarding the school law of the respective countries, with particular focus on the educators' employment position. At the end of the process new insight and knowledge regarding the status of educators and perceptions regarding their fundamental human rights, would lead to an understanding of the negative perceptions educators have of their position, as well as possible solutions to the problem.

Such a comparative study was done, with reference to South Africa, Ghana, Switzerland and China. In the South African context one becomes aware of the fact that educators seem to experience their work situation negatively and perceive a lack of respect regarding their fundamental human rights. The decision to use these four countries in a comparative law study regarding the fundamental human rights of educators was made as it provided an African, a European and an Asian perspective.

In each of the countries chosen for the study, the right to basic education is acknowledged in the Constitution of the respective country. Only South Africa does not consider the right to basic education as indicating the provision of free basic education. Ghana, as a second African country, was included to provide an African perspective of a country where basic education is free and the culture seems to respect educators. Switzerland has an established education system, where basic education is free and a sound infrastructure exists to support educators. The choice of Switzerland as European country was made due to established contacts in the education system, which allowed

for access to information. Lastly, apart from providing an Asian perspective to the study, the current situation in China allows for free basic education, yet several issues call for urgent attention and many problems are experienced with regard to educators.

DIVISION OF CHAPTERS

CHAPTER 1: ORIENTATION

CHAPTER 2: FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS; AN AFRICAN PERSPECTIVE

CHAPTER 3: FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS IN SWITZERLAND: A EUROPEAN PERSPECTIVE

CHAPTER 4: AN ASIAN PERSPECTIVE ON THE FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS: CHINA AS CASE STUDY

CHAPTER 5: AN INTERNATIONAL PERSPECTIVE ON THE FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS

CHAPTER 6: SUMMARY, FINDINGS AND RECOMMENDATIONS

SUMMARY

This chapter gave a brief introduction and statement of the problem regarding the study. Thereafter the aims of the research, the research methodology and chapter division were indicated.

The next chapter will present an African perspective on the fundamental human rights of educators, by looking at the legal situation in South African and Ghana.

CHAPTER TWO

FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS: AN AFRICAN PERSPECTIVE

2.1 INTRODUCTION

Education in Africa is a problematic issue. Africa, a continent plagued by violence and poverty, has a history of illiteracy and discrimination. According to Novicki (1998), in the late 1990s only half of the children of African countries were going to primary school, adult literacy rates were below 40%, and over 50% of women were illiterate. According to the World Bank (2006), the Sub-Saharan countries are sending more children to school and are taking steps to improve education quality, but there is still a long way to go to reach goals of education for all.

Of the biggest problems faced by African countries with regard to education, other than the high illiteracy rates and low enrolment rates, as mentioned, are great disparities in gender due to the culture of the African people, high dropout rates and the disparities experienced between rural and urban people (Novicki, 1998; World Bank, 2006). According to Colclough (in Novicki, 1998), educators are often unqualified, educational aids are few and the provision of textbooks is desperately weak, all of which contribute to the problems mentioned above. According to the World Bank (2006), governments need to improve the quality of educator training, support and management, as well as the working conditions of educators.

In this chapter, a closer look will be taken at the problems experienced by South Africa and Ghana with regards to education and the extent to which educators are influenced by this. The focus will be on the fundamental human rights of the educators, as well as on the legislation governing their employment, their working conditions and their status.

South Africa has a history of discrimination and racial inequality, but many changes have been made since the 1994 elections. However, new problems

have arisen with regard to education. Educators experience high levels of work-related stress due to big educator-learner ratios, undisciplined behaviour of learners and many changes made to the school curricula and system.

In Ghana, great disparities exist between the urban and rural areas, so educators are reluctant to teach in the rural areas. Furthermore, gender inequality is a grave problem in Ghana, not only with regard to girl-child education, but also in the treatment of female educators by their colleagues and male scholars. Although basic education in Ghana is free, parents are responsible for other costs, often making education unaffordable to many.

2.2 SOUTH AFRICA

In the South African context, there are many different forms of legislation that can be considered as a determining factor of education in a contemporary South Africa. According to Oosthuizen and Roos (2003:20), the principal source of Education Law can be seen as the different forms of legislation. Although both common and case law have a determining influence on education, a specific look will be taken into the influence of legislation. According to Botha (2005:7), legislation comprises of all the different types of enacted legislation, namely Acts of parliament, provincial legislation, municipal by-laws, proclamations and regulations.

The most important and influential factor determining education is the Constitution of the Republic of S.A. No.108 of 1996, hereafter referred to as SA Constitution. In Section 2 of the SA Constitution, it becomes clear that the Constitution is the Supreme authority of the country and any legislation in contradiction with the Constitution will be considered invalid and unconstitutional (SA, 1996a).

2.2.1 Background

The South African education system has undergone radical changes since the 1994 elections. Before the 1994 elections, South Africa had 15 different ministries of education, ethnically based and the products of decades of Apartheid (Devenish, 1998:236). However, the social and political

environment of the new South Africa is radically different from South Africa pre-1994. According to Devenish (1998:236), the ANC developed a radical approach to education, reconstructing the very foundations of education in South Africa. In the new approach, two central themes and objectives can be identified: equality of opportunity in education and the training of all citizens irrespective of race, gender and class; and the integration of education and training (Devenish, 1998: 236).

According to section 29(1)(a) of the SA Constitution (SA, 1996a), everybody has the right to basic education, including adult basic education. It is important to notice that this does not entitle South African children to free basic education. However, according to section 3(1) of the South African Schools Act (SA 1996c; hereafter referred to as Schools Act), school attendance is compulsory from the first school day of the year in which the child reaches the age of seven until the last school day of the year in which the child reaches 15 or passes the ninth grade, whichever occurs first. However, section 5(4)(a)(ii) of said Act (SA, 1996c) states that the admission age of the learner to Grade 1 is five years turning six by 30 June in the year of admission. Section 5(3)(a) of the Schools Act (SA, 1996c) prohibits a school from refusing children admittance on the grounds of their parents' inability to pay school fees or because their parents have not paid school fees.

Section 29(1)(b) of the SA Constitution allows for the right of all South Africans to further education, and places an obligation on the State to make further education progressively available and accessible, through reasonable measures. In the historical context, further education was only available to a select few, and the State now has the obligation to rectify this situation and strive to create a culture of lifelong learning.

According to Malherbe (2004:1), an emphasis on the respect of rights, followed after the Apartheid era, led to a misconception that people only enjoy rights, while there are no obligations under the new SA Constitution (SA, 1996a). Venter (2005:1) supports the viewpoint, stating the advent of a culture of human rights as being one of the most exciting new things in South Africa, but also noting that it has been accompanied by an abuse of human rights.

Malherbe (2004:1) continues by stating that this misconception has an even greater effect in education where the perception is held that only learners have rights and that educators are more or less without rights. Learners' rights are flaunted, while educators' rights are flouted, as stated by Venter (2005:1). A general feeling exists among educators that the learning climate in their classroom is being sabotaged by rights going mad in the classroom (Venter, 2005:1).

In South Africa, the SA Constitution is the supreme law of the country and all other legislation must comply with it. There are many different forms of education legislation and general legislation which all comply with the SA Constitution, influencing and determining education. All these different statutes are there to protect both educator and learner in different educational circumstances.

2.2.2 Fundamental human rights of educators in South Africa

The SA Constitution protects the rights of all South Africans, including learners and educators. However, it is of necessity that the educator never forget that the learner's best interest is *of paramount importance in every matter concerning the child*, as specified in section 28(2) of the SA Constitution (SA, 1996a).

This duty to protect the learner has led to an increased awareness concerning the rights of the learner, mostly because of the necessity to protect learners to a greater extent. However, South African educators are working under considerable stress in the new dispensation (Rossouw & De Waal, 2004:284). There seems to be a lack of awareness regarding the fundamental rights of educators.

Although educators, like all South Africans, are entitled to the protection offered by all the fundamental human rights contained in the SA Constitution (SA, 1996a), there are specific rights that have a greater relevance for education as such. Specific fundamental human rights that have particular relevance for education are:

- Section 9 - Equality
- Section 10 – Human dignity
- Section 12 - Freedom and security of the person
- Section 14 - Privacy
- Section 15 – Freedom of religion, belief and opinion
- Section 16 – Freedom of expression
- Section 23 – Labour relations
- Section 28 – Rights of children
- Section 29 – Education
- Section 33 – Just administrative action
- Section 36 – Limitation of rights

These above-mentioned rights have a direct bearing on the relationship between educators, learners and their parents, as well as on the conditions of employment of educators in our current society. Thus, they will be discussed in the paragraphs below.

2.2.2.1 Section 29 – Education

According to section 29 of the SA Constitution (SA, 1996a) everyone has the right to a basic education in the official language of their choice in public educational institutions, where practically possible. Cameron (1989:6) sees education as a quintessential human right, without which few of the other human rights can have meaning. Rossouw (2003:418) sees the child as a developing human being, developing toward adulthood, in need of and dependent on others, such as his parents and educators, for a relatively long time. The child is dependent on education and would not be able to grow to the status of adulthood without it.

It is apparent that education is a basic right to which all children are entitled. This right is provided for by schools in South Africa. It is, however, possible to withhold the right to education of a learner, who has for example been suspended. The learner would have to be found guilty of misconduct, and can only be suspended after a fair hearing (Roos & Wolhuter, 2004:6). Thus, it can be said that a learner has to comply with the legal provisions of discipline and cannot flout school rules in the name of exercising the right to education (Roos & Wolhuter, 2004:6).

2.2.2.2 Section 9 – Equality

When section 9 of the SA Constitution (SA, 1996a) is read it becomes apparent that as a fundamental human right, it does not stand in isolation from other rights (Bray, 1998:77). According to Malherbe (2004:8), this right guarantees the full and equal enjoyment of all other rights and an infringement of a certain right often also amounts to the violation of section 9 (SA, 1996a). The impact of the equality principle on education is varied: not only does it guarantee equal opportunities in education, but it also ensures equality regarding language, culture, religion, and equal access to education (Bray, 1998:77; Bray & Beckmann, 2001:117; Davies, 1995:30; Malherbe, 2004:8; Roos & Wolhuter, 2004:10).

Regarding educators, section 9 of the SA Constitution (SA, 1996a) ensures the equal treatment of all educators. In *Larbi-Odam v Member of the Executive Council for Education (North-West Province) 1997 12 BCLR 1655 (CC), 1998 1 SA 745 (CC)*, eight foreign educators temporarily employed in the North-West Province, some of them with permanent residence status, applied for an order declaring Regulation 2(2) of the Regulations regarding the Terms and Conditions of Employment of Educators (GN R1743 of 13 November 1995) invalid. Regulation 2(2) provides that no person shall be appointed as an educator in a State school in a permanent capacity, unless he or she is a South African citizen. The applicants held that regulation 2(2) is invalid on the grounds that it constituted unfair discrimination in contravention of section 8(2) of the Interim Constitution of the Republic of South Africa, No 200 of 1993. The application was dismissed and the applicants appealed to

the Constitutional Court. In this case, the Constitutional Court held that the equality principle also protects foreign residents with permanent residence status (Malherbe, 2004:9).

The equality principle implies that, in the appointment of educators, one cannot unfairly discriminate on any of the grounds mentioned in section 9(3) of the SA Constitution (SA, 1996a). For example, having the appointment of an educator unduly influenced by the mother tongue spoken by an applicant, while other applicants are much better qualified for the position (Davies, 1995:30). It is not implied by the equality principle that all people should at all times be treated identically (Roos & Wolhuter, 2004:10), but rather that unfair discrimination should not take place. According to Currie and De Waal (2006:230), at its most basic and abstract, the formal idea of equality is that people who are similarly situated in relevant ways should be treated similarly, and therefore the SA Constitution guarantees that the law will protect and benefit people equally, prohibiting unfair discrimination (SA, 1996a; section 9).

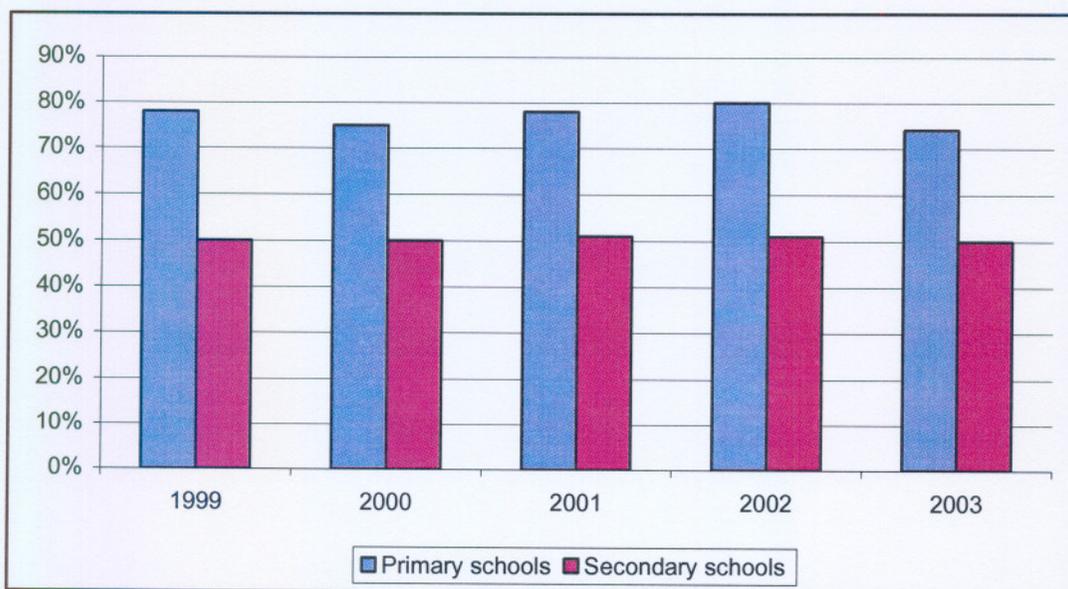
Section 9(2) of the SA Constitution (SA, 1996a) stipulates that all people should be able to enjoy all rights and freedoms fully and equally, but also refers to the fact that labour legislation should allow for affirmative action, seen as 'positive' discrimination, towards previously disadvantaged people to ensure the promotion of achievement of equality (Bray & Beckmann, 2001:117).

According to Malherbe (2004:10), affirmative action is relevant to the appointment of educators and extensively addressed in the Employment of Educators Act (SA, 1998a). The horizontal application of the equality right is guaranteed by section 9(4) which stipulates that no person may be unfairly discriminated against by anyone on the grounds listed in subsection 3 (SA, 1996a). This implies that private employers may not unfairly discriminate against anyone, thus protecting educators who are employed by an independent school (Bray & Beckmann, 2001:118). Another important aspect in regard to equality in employment is that all labour legislation should promote the right to equality, seeing that the Constitution is the supreme law

of the country, as stipulated in section (2), thus invalidating any legislation not upholding the principles of the SA Constitution (SA, 1996a).

In the South African education system, women dominate the profession, with over 70% of educators being female according to a report by the South African Department of Education (DoE) (DoE, 2005: 9). The data represented in Figure 2.1 gives an indication of the gender distribution of educators in the South African education system.

Figure 2.1: Percentage female educators in South African schools



(Source: UNESCO, 2006b)

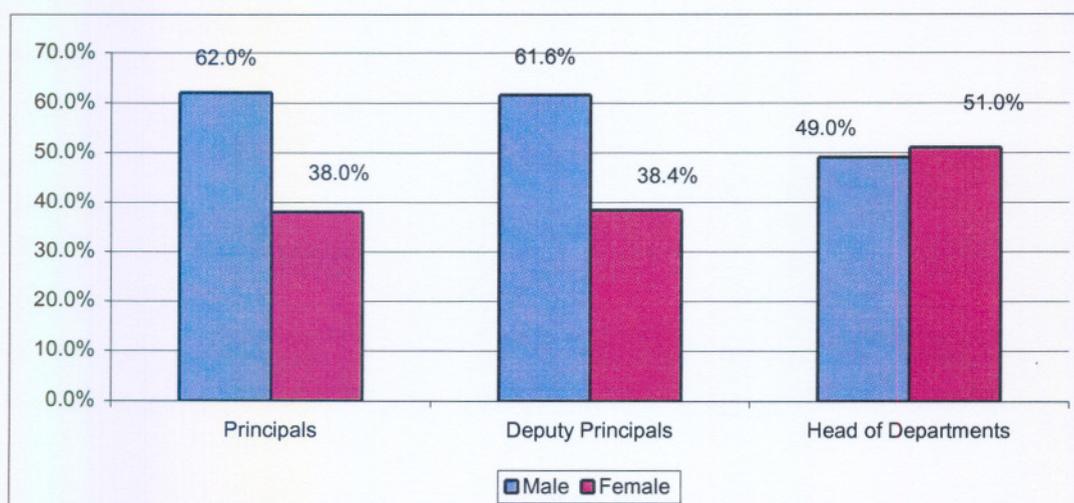
From Figure 2.1, it is clear that the education profession is characterized by a predominance of females. When one considers the data represented in Figure 2.1, there is no doubt that male representation at primary schools is very low, with the female representation at its lowest being 74% and at its highest 80%. At secondary schools, the distribution of male and female educators is much more balanced, with an equal 50% distribution. According to the DoE (2005:42), the overall gender imbalance in the profession reflects what many educators consider an inadequate presence of male role models in the field of education. Even though not the only effect, one of the effects of the increased ratio of female educators leading to a lack of male role models in education is

that it tends to undermine attempts to attract male candidates into the education profession (DoE, 2005:43).

The failure to attract male candidates impacts on supply, especially with regard to certain specialist subjects which conventionally attract more male than female learners (DoE, 2005:43) According to the DoE (2005:9), although the number of female educators has been rising overall, it has not been increasing in any significant degree in the secondary specialist areas such as Science and Mathematics.

However, despite the increasing feminization of the education profession women are still greatly unrepresented in management positions at schools, where only pre-primary and primary schools are largely under the managerial responsibility of women (DoE, 2005:43). The underrepresentation of females in managerial position is represented in Figure 2.2. From the representation of data, it is very clear that the female representation at management level does not correspond at all with the female representation on educator level.

Figure 2.2: Gender distribution at school managerial positions



(Source: Department of Education, 2005:44)

In Figure 2.2, it is clear that only 38% of females are principals, only 38.4% are deputy principals, and only at head of department level do female educators hold a slight majority of 51% (DoE, 2005:44). When one considers

that 70% of educators in South Africa are female, it becomes clear that gender discrimination is still evident in the consideration of managerial positions.

Educators have to keep in mind that the equality principle does not disallow one from making a distinction between groups or different people, as they may have different needs and interests (Roos & Wolhuter, 2004:10). The Constitutional Court held in the case *President of the Republic of South Africa v Hugo 1997 (4) SA 1 (CC)*, that a classification which is unfair in one context may not necessarily be unfair in a different context. Therefore, when learners need to be disciplined, different methods of discipline may be used, as long as care is taken to ensure equality in outcome (Roos & Wolhuter, 2004:10).

Currie and De Waal (2006: 232) refer to the requirement of the law to ensure equality of outcome as substantive equality. Substantive equality is prepared to tolerate disparity of treatment to achieve the goal of equality of outcome (Currie & De Waal, 2005: 232). Pienaar (in Roos & Wolhuter, 2004:10) states that it is more difficult to justify discrimination based on race and gender as fair. Thus, should it be necessary to treat people of different genders or races differently from one another, it has to be ensured that the differentiation can be justified and does not amount to discrimination.

One of the biggest challenges to educators today is maintaining discipline in the classrooms. According to Venter (2005:1), this can partly be ascribed to a misunderstanding of the context in which human rights operate within a school. Parents and learners seem to have forgotten that educators are in an authority relationship with learners and that equal rights do not imply equality of status, but rather equality of value (Venter, 2005:1).

With regard to special education, the current perspective in South Africa is an inclusive education perspective. The current South African curriculum is based on the principle of Outcomes-based Education and the methods and focus of Outcomes-based Education correspond very well with inclusive education (UNESCO, 2006c). According to Hay and Beyers (2000), there are four primary reasons for South African's embracement of inclusive education.

According to the authors, the first reason is the fact that South Africa was disentangling itself from the isolation of the Apartheid era, and thus an alignment with international trends was imperative, leading to a removal from the isolation with regard to educational developments, and introducing inclusive education as a forceful new thrust in special education. The second reason for embracing can be found in the number of ANC exiles returning from abroad, bringing with them the latest educational ideas. A third reason relates to the defragmented education system which was in place in South Africa before 1994 (DoE, Western Cape, 2002), and the fact that the concept of inclusive education fitted nicely into the new policy of a unitary education system, free from differentiated departments structured on racial and disability classification. Lastly, the democratically elected government was committed to transforming the South African society from its exclusive nature into an inclusive society on all levels. Inclusive education, together with Outcomes-based education, was the educational vehicles of transformation of the face of South African education (DoE, Western Cape, 2002).

Hay and Beyers (2000) state that it is important that caution be exercised that the ideological thrust is not so strong as to ignore practical realities of a developing country, such as teacher-learner ratio, scarcity of education support service, limited physical resources and the limited number of trained educators.

2.2.2.3 Section 10 – Human dignity

Human dignity refers to a dignity that is worthy of respect and honour not only by oneself, but also by others. It can be seen as intrinsic to every human being; part and parcel of being human (Bray 2004:37). It is a right that underlies many, if not all, other rights. Often when another right is violated, the violation also constitutes an infringement of section 10 (SA, 1996a). It is furthermore also one of the values considered whenever the legality of a limitation of the fundamental human rights is considered (Bray, 2004:37; Malherbe, 2004:11; Roos & Wolhuter, 2004:9).

According to Bray (2004:42), human dignity is not only a right, but also a responsibility of all human beings. Just as each person has a right to human dignity, there is the responsibility to treat every other person with respect and dignity. Thus it is clear that human dignity can be considered an extremely fragile component of the different relationships in the education environment (Malherbe, 2004:11).

Bray (2004:46) mentions one of the most important education cases judged by the Constitutional Court, *Christian Education SA v Minister of Education 2000 BCLR 1051 (CC)* in which it was ruled that the administering of corporal punishment is in breach of several fundamental human rights, of which human dignity is one. In the above-mentioned case, the applicants challenged the unconstitutionality of section 10 on the basis that the total ban on corporal punishment at schools violated the religious freedom of the applicants who administered such punishment in their independent schools as a biblical directive (Malherbe, 2004:12). The application was dismissed and the appeal failed as well. The court held that it cannot be shown that educators and schools administer corporal punishment from a sincere religious belief, and that allowing the limitation of section 10 would undermine the State's duty to protect people from violence.

According to Roos and Wolhuter (2004:10), when recognizing the learner's right to human dignity, an educator should always treat learners with respect and concern. According to Currie and De Waal (2005:273), the constitutional protection of dignity requires the acknowledgement of the value and worth of all individuals as members of society. Seeing that the relationship between educator and learner is inherently an unequal relationship (Malherbe, 2004:11), the possibility of breaching this fundamental human right may easily happen.

However, the other side of the coin has become a reality, more so over the last few years. Just as learners have the right to be treated with dignity and respect, they have a duty to treat others, including educators, in a similar way (Roos & Wolhuter, 2004:10). Inasmuch as every person possesses human dignity in equal measure, everyone must be treated as equally worthy of

respect (Currie & De Waal, 2005:273). When one studies the newspaper reports of the latter half of 2005, it becomes apparent that this is not the case at school. It is reported by Rademeyer (2005a:10), among others, that learners verbally abuse educators; learners are arrogant and ill-mannered and disrespectful.

Rademeyer (2005b:8) supports these reports of disrespect in another article based on time spent in a Grade 8 class. She reports on learners' blatant disregard of the educators. Several cases of educators who have collapsed due to the psychological strain are reported on in the article. Viljoen (2006:4) reports on a court appearance of a learner, after the learner threatened his educator with a knife and smacked her through the face, because she reprimanded him. According to an educator, the educators of the school are upset because the learner was not suspended, as the principal felt it was too near the examination. Although the actions of some of these educators cannot be condoned, they make one aware of the psychological pressure educators are placed under, as is remarked by Botha (2005: 12), in a letter in which he asks the question: *Who sees the marks left on the soul of the educator after some children have finished with him?*

According to Venter (2004:7), human dignity is a right which is abused by parents and learners, when learners take this right to mean that an educator may not raise his voice, may not reprimand the learners, not even when a learner has been blatantly rude and has offended the educator's dignity. In conjunction with the above-mentioned infringement of the educator's right, the situation is further exaggerated by the fact that parents and learners are allowed, even encouraged to lodge complaints against schools and educators without any real substance. In this case, what has been intended for the protection of individuals against abuse has become an incidence of abuse (Venter, 2004:7).

Educators need to realize that the unequal relationship that exists between educators and learners does not allow them the prerogative to humiliate learners. However, similarly learners need to realize that they do not only

possess specific rights, but also have the duty to respect their educators, both as adults and as educators.

2.2.2.4 Section 16 – Freedom of expression

Section 16(1) of the SA Constitution (SA, 1996a) allows for everyone's freedom of expression, including freedom of the press and other media, freedom to impart or receive information or ideas, freedom of artistic creativity, academic freedom and freedom of scientific research. It is notable that section 16 of the SA Constitution (SA, 1996a) exhorts free expression and not only freedom of speech. Expression includes within its scope symbolic acts such as the wearing of certain items of clothing and jewellery, as well as physical gestures (Currie & De Waal, 2006: 362). According to Roos and Wolhuter (2004:8), the learner's right to freedom of expression does not only include academic freedom; it also includes freedom of choice regarding such matters as clothing and hairstyles. Thus, freedom of expression can take different forms and includes aspects such as music, dress, symbols, gestures and other forms of conduct by which one's views are conveyed (Malherbe, 2004:17; Beckmann, *et. al.* 2002:129).

Since the education process is all about expression and the conveying and receiving of information and ideas, there is no doubt that it is closely involved with freedom of expression (Malherbe, 2004:17). Davies (1995:30) mentions that many constraints were previously placed on educators regarding their freedom of speech. Although much has changed with the implementation of the SA Constitution (SA, 1996a), the educators' right to freedom of speech does not necessarily give them the right to say just what they want (Davies, 1995:31). According to Venter (2005:3), the right to freedom of speech has to be exercised in terms of the educational mission of the school, as with all other rights. Malherbe (2004:17) states that people in the education community should not be prohibited from expressing their views and from receiving information, unless these views can disrupt or detrimentally affect the education process.

With regard to freedom of speech at schools, the US Court of Appeals for Circuit Eight stated in the *Tinker v Des Moines School District*, 393 U.S. 503 (1969) 393 U.S. 503 that although the constitutional rights of learners are not shed at the school gates, a school has greater authority in controlling speech. Thus freedom of speech does not imply that when an educator reprimands a learner, the learner is entitled to back chat the educator, or that learners have the right to interrupt the educator while instructing, on the presumption that they are demanding to voice their opinions (Venter, 2005:4).

Although everyone has the right to freedom of expression, and that includes learners, it has to be understood that any expression by a learner that disrupts school operations or activities, or infringes on the other rights of other learners and/or educators, can be limited (Roos & Wolhuter, 2004:8). According to Currie and De Waal (2006:363), the closer expression comes to action, and the further it drifts from conveying ideas and opinions, the less protection it will receive under section 16 of the SA Constitution.

Learners need to accept that their right to freedom of expression is exercised within an authority context, which allows educators to weigh their right to freedom of expression in terms of the rights of others (Venter, 2005:4). According to Venter (2005:4), the same principles regarding freedom of speech that prevail in courtrooms, should prevail in the classroom. Learners should be taught that there is a time and place for everything, for instance if they want to lodge a complaint concerning a disciplinary or other action, it would be more appropriate after the lesson, during a civil discussion. This does not mean the learner has been denied the right to freedom of expression, but rather that he or she has been taught how to exercise the right responsibly (Venter, 2005:5).

2.2.2.5 Sections 23 and 33 – Labour relations and just administrative actions

Malherbe (2004:19) states that there are various rights in the SA Constitution that relate to labour issues, which form the basis for the labour rights of education and other labour matters as they apply to education (SA, 1996a).

Section 23 of the SA Constitution (SA, 1996a) provides everyone with fair labour practices, in that it protects employees and employers in their respective individual and collective labour relations (Bray & Beckmann, 2001:118; Malherbe, 2004:20). According to section 23 of the SA Constitution (SA, 1996a), educators, like all other employees, have the right to form and join a trade union, to participate in the activities and programmes of a trade union and to strike. According to Beckmann, *et. al.* (2002:128), although educators have the right to strike, striking should be used as a last resort, when all dispute resolution measures are exhausted, as strikes in education do not inflict as much harm on the employer as on the learner.

Section 33 (1) of the SA Constitution (SA, 1996a) stipulates that every person is entitled to administrative action that is just, lawful and procedurally fair (SA, 1996a). This implies that an employer, being in an authoritative position, must act in a lawful, fair and reasonable manner in the employment relationship. According to section 33(2) (SA, 1996a), a person whose rights have been adversely affected by such administrative actions are entitled to be given written reasons (Bray & Beckmann, 2001: 118; Malherbe, 2004:22; Rossouw & Oosthuizen, 2005:22).

Malherbe (2004:22) states that the main features of the rules of administrative law relating to administrative actions are encompassed in section 33, forming the constitutional basis of our administrative law (SA, 1996a). First and foremost it implies that all administrative actions taken by any Head of Department, principal or School Governing Body should comply with the two basic aspects of administrative action, namely procedural fairness and substantive fairness (Davies, 1995:29).

Educators are entitled to just administrative action, but so are learners. The right to administrative action, as contained in section 33 of the SA Constitution (SA, 1996a), is also relevant to learners, and this is expanded upon in other laws, such as the Schools Act (SA, 1996c). Section 8(5) of the Schools Act (SA, 1996c) specifies that a Code of Conduct must contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings. Roos and Wolhuter (2004: 6) state that this serves

as protection to learners and regulates the process of a disciplinary hearing, but it does not prohibit the institution from carrying out the disciplinary process.

Davies (1998:29) mentions that the educator must always, even in class, remember that the learner is not only entitled to the right to administrative justice, but also to the right to information applicable to his or her situation, implying that the educator's handling of matters must be transparent. According to Currie and De Waal (2006:643), the SA Constitution requires of the administration, i.e. any administrative body, to act in accordance with fundamental principles of justice, fairness and reasonableness. Therefore it is necessary to emphasize the need for educators and other stakeholders to familiarize themselves with the legal requirements needed for a disciplinary process, and to ensure compliance with all procedural and substantive requirements, in order to ensure that legally sound decisions are taken with regard to the disciplinary procedure (Roos & Wolhuter, 2004:6). De Waal (2000:166) recommends that educators should receive training regarding exactly what is meant by legal, reasonable and procedurally fair administrative action.

According to Venter (2005:5), although it is admirable to insist on due process in society and at school, due process in its strictest form is intended for serious situations and formal hearings. Venter (2005:6) continues by stating that due process was never intended to be applied to the classroom and daily discipline matters as they arise in the classroom; it is rather the *spirit* of due process which should prevail, i.e. fairness, reasonableness and informing learners of prohibited behaviour. Roos and Wolhuter (2004:7) indicate an awareness of the fact that educators are sometimes loath to institute a formal disciplinary process, either due to expected red tape or due to sympathy towards the offender or parents. Venter (2005:6) maintains that it must be remembered that a classroom is not a courtroom, but mentions that some learners and their parents do insist on educators providing absolute proof that, for example, a child kept on talking in class and exactly how many times the child was reprimanded. Venter (2005:6) continues to state that another

problem that arises regarding due process in classrooms, is the fact that learners confuse substantive and procedural fairness, and then use it to their advantage – learners try to argue that if they think the educator is being unfair or rude, they do not have to obey.

There is no in-between as far as administrative justice is concerned: if all the requirements are complied with, the administrative action will be valid, whereas an individual decision will have no legal consequence and can thus not be enforced (Roos & Wolhuter, 2004:7). What is important in this regard is that educators should not refrain from instituting disciplinary proceedings, but at the same time must ensure that the learner's right to administrative justice is respected. However, in the classroom, the learner should be made aware that there is a right time, place and even way in which to approach the educator, but this does not afford the learner the right to demand formal proof or the need to produce evidence (Roos & Wolhuter, 2004:7; Venter, 2005:6).

2.2.2.6 Section 36 – Limitation of rights

Smit (2004:1) states that fundamental human rights are not absolute, but that their limits or boundaries are set by the rights of others and by the legitimate needs of society. Section 36 of the SA Constitution provides for the general limitation of rights (SA, 1996a).

There are various fundamental human rights which have the potential of being unconstitutionally limited. This also happens in education and therefore all role players in the education environment should be aware of this possibility (Smit, 2004:5). Malherbe (2004:9) mentions that all parties involved should protect their fundamental rights and take matters to review or appeal against matters where their rights are unconstitutionally limited.

The requirement of section 36, that a limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, implies that a balance must be found between the limitation and its purpose in order for the limitation to be reasonable and justifiable (Malherbe (2004:4). It is not only educators who may infringe or limit the rights of learners, but learners may actually infringe and limit the rights of educators

as well as their friends, with their conduct. Rights of learners, educators, parents and School Governing Bodies can also be infringed or limited by decisions and actions of officials acting on behalf of the state (Malherbe, 2004:9).

2.2.2.7 Other sections of the Constitution that affect the educator

In the paragraphs that follow, different sections of the SA Constitution influencing the fundamental human rights of educators will be discussed.

Section 12 of the SA Constitution (SA, 1996a) allows every person to have the right to freedom and security of the person, as well as the right not to be treated or punished in a cruel, inhuman or degrading way. This right not to be treated or punished in a cruel, inhuman or degrading way is of particular relevance to education, as the prohibition of cruel, inhuman and degrading behaviour directly affects corporal punishment and other forms of punishment at schools (Malherbe, 2004:11).

According to Roos and Wolhuter (2004:8), the explicit prohibition of corporal punishment by section 10(1) and 10(2) of the Schools Act (SA, 1996c) is held to be applicable to both public and independent schools, regardless of the ethos of the independent school, or the fact that corporal punishment is administered with the consent of the parents. *Christian Education SA v Minister of Education of the Government of the RSA 1999 9 BCLR 951 (SE)* can be seen as a landmark case in this regard, where the court held that even if section 10 of the Schools Act (SA, 1996c) violates the right to religious freedom (SA, 1996a; section 15), the infringement is not substantial enough to justify section 10 being declared unconstitutional. On appeal, the Constitutional Court applied section 36 to this limitation of the right to religious freedom (Malherbe, 2004:12).

Although it can be argued that any form of discipline contains, to some extent, elements of cruelty, humiliation or degradation, all disciplinary measures should not go so far that they cannot be justified in terms of section 36 of the SA Constitution (SA, 1996a). It is therefore important for educators to find disciplinary matters which can be justified under normal circumstances, such

as forms of community service. Moreover, educators need to be wary of any measures limiting the learner's right to education (Malherbe, 2004:12).

Roos and Wolhuter (2004:9) mention that once again this right not only acts as prohibition to educators and schools, but also requires certain obligations from learners. Just as educators are prohibited from treating them cruelly, or torturing and degrading them, or even humiliating them, they themselves are prohibited from treating other learners in such a way. Learners have to realize that any form of bullying constitutes a breach of this right and that they are also directed to resort to non-violent and non-degrading behaviour (Malherbe, 2004:13; Roos & Wolhuter, 2004:9).

Section 14 of the SA Constitution (SA, 1996a) provides that everyone has the right to privacy, which includes the right not to have their person, property or home searched, their possessions seized, or the privacy of their communication infringed. According to Malherbe (2004:13), there are many issues and situations in the education environment in which a person's right to privacy can be infringed, for example rules regarding school uniforms, dress codes for educators and other rules regarding appearance, which may all be seen as limitations to the right to privacy and, as such, need to be justified in terms of section 36 (SA, 1996a).

Although this right to privacy has many implications regarding personal searches for contraband such as drugs and weapons, it can be expected in the education environment that much more leeway will be tolerated, as long as reasonable pedagogical considerations can be advanced, for example the protection and safety of other learners (Malherbe, 2004:13). The Regulation for Safety Measures at Public Schools (SA, 2001) states in section 4(3) that a police official or, in his absence, the principal or delegate may, without warrant, search any public school premises or person, should a reasonable suspicion exist, and seize any dangerous objects or illegal drugs and search any person present on public school premises. Furthermore, according to regulation 5(2)(e), no person shall, without the permission of the principal or HOD, enter any public school premises of which a direction has been issued under sub regulation (1)(a), and for the purpose of the granting of that

permission, the principal or HOD may require of the person concerned to subject him/herself and anything he/she has in his or her possession or custody or under his/her control to a search by a person of the same gender, an examination by an electronic device, sniffer dogs or other apparatus in order to determine the presence of any dangerous object or illegal drug (SA; 2001).

The above-mentioned regulation strengthens the position of educators and the school and is further supported by the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (SA, 1998b), whereby section 3(8) (regarding the legal authority for the control and discipline of learners) states that a principal or educator, upon reasonable suspicion, has the legal authority to a search of any learner or property in possession of a learner. However, the same subsection reminds the person conducting the search that human dignity should be observed and that persons of their own gender should conduct such searches in private, preferably in the presence of at least one other person. Furthermore, records must be kept of search proceedings and the outcomes (SA, 1998b).

According to De Waal (2004) parents have the right to safe schools for their children and educators have the right to uphold authority, while section 36 of the SA Constitution (SA, 1996a) holds the guarantee that learners' rights are not to be taken as absolute. De Waal (2004) continues by stating that people taking care of learners have the responsibility of ensuring their well-being, while learners simultaneously carry the responsibility of adhering to specific standards that ensure, *inter alia*, their safety and health.

Upsetting reports in newspapers during 2006 lead one to question the safety at schools in South Africa. Liebenberg (2006:1) reports of a sixteen year old boy facing murder charges after a fight at a party which claimed the life of a friend; De Beer (2006:1) reports of a Grade 12 learner landing in hospital with three skull fractures and a badly damaged left eye after being assaulted at school by a fellow learner in the changing rooms; Mouton (2006:16) reports of a learner arrested at a school after holding a fellow learner at gun point with a

stolen gun. These reports are only the tip of an iceberg and it is clear that neither learners nor educators are safe at school.

Section 12(1) (c) of the SA Constitution (SA, 1996a) states that everyone has the right to freedom and security of person, which includes the right to be free from all forms of violence from either public or private sources. To the same extent, section 8(1) of the Occupational Health and Safety Act 85 of 1993 (SA, 1993) states that every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees. Therefore it must not be forgotten that educators are, just as learners, entitled to safe schools. In view of the above, it is understandable that the Minister of Education, Naledi Pandor, has indicated in parliament that she is considering random drug searches at schools as means of containing violence at schools (Joubert, 2006:2), thereby ensuring a safe workplace for educators and a safe school for learners. In this regard, section 5(2)(e) the Regulation for Safety Measures at Public Schools (SA, 2001) grants the latitude to extenuate the principle of random search and seizure as proposed by Minister Pandor.

The question arises concerning the constitutionality of such random searches in view of section 14 of the SA Constitution (SA, 1996a) with regard to the learners' right to privacy. In order to justify such random searches, one will have to consider section 36 of the SA Constitution regarding limitation of rights, as well as section 39(1)(c) of the SA Constitution which stipulates that, when interpreting the Bill of Rights, foreign law may be considered (SA, 1996a). To this effect, De Waal (2004) states that when examples are taken from USA jurisprudence¹, the following seems obvious with regard to such random drug searches, which will most probably include drug testing:

- the nature of the learner's right to privacy;

¹ *Ingraham v. Wright*. 430 U.S. 651 (1977); *Skinner v. Railway Labor Executives Ass'n* 489 U.S 602 (1989); *Vernonia School District 47J v. Acton* 115S. Ct. 2386 (1995)

- the importance of the purpose of drug-testing/search;
- the nature and extent of the drug-testing/search; and
- the relation between the drug-testing/search and its purpose leads to the fact that the purpose *cannot be achieved by any other means*.

One more right that has an implication for education is the right to freedom of religion, belief and opinion. This right, contained in section 15 of the SA Constitution (SA, 1996a), allows every person to practise his/her own religion, to have his/her own beliefs and opinions. It also allows religious observances to be conducted at state and state-aided institutions, but attendance has to be free and voluntary, and these observances have to be conducted on an equitable basis (SA, 1996a). This has a particular implication for schools, educators and learners as one party is not allowed to unduly influence the other in any of these regards. With regard to religious instruction, it is important to note that, should religious instruction impose any kind of limitation on the religious freedom of an individual, such limitation must comply with the limitation provisions in section 36 of the SA Constitution, as well as with section 15 (2) of the SA Constitution (Beckmann, *et. al.*, 2002:135). Furthermore, an educator may present a study of the various religions of South African from the point of view of a particular religion as part of the exercise of the right to religious freedom, with the only condition in the educational context being that this should be done equitably, freely and voluntarily (Beckmann, *et. al.*, 2002:135).

Lastly, it is important to mention section 28 of the SA Constitution, as it guarantees certain rights of children (SA, 1996a). Section 28(2) of the SA Constitution states that a child's best interest is of paramount importance in every matter concerning the child (SA, 1996a). Education is probably the single most prominent area in the life of a child. Here the child stands in a direct and intimate relation with the State and thus the rights in section 28 must be protected, respected, promoted and fulfilled in the educational context (Malherbe, 2004:20). Seeing that a learner spends a great portion of his day at school, this has a direct bearing on education and requires of all

educators to be aware of these rights. Educators can therefore never forget that they are working with children, molding and forming their lives, and every action should be in the best interest of those learners entrusted to them.

2.2.3 Education legislation concerning educator employment in South Africa

It is important to note that the SA Constitution is the supreme law of the country and all other legislations should be consistent with it (SA, 1996a; section 2). According to section 43 of the SA Constitution (SA, 1996a), parliament has the legislative authority to promulgate national legislation. National legislation is divided into two categories namely, education legislation and general legislation.

In the South African context there are certain Acts, which have direct bearing on society in general and are not only relevant to education specifically. Both general and education legislative Acts are considered to be original legislation. Subordinate legislation such as regulations, proclamations and school rules also has determining influence on education.

It is apparent that different forms of legislation influence and determine education, albeit in a major or minor way. Some forms of legislation concern the employment relationship of educators directly, while others provide guidelines regarding the management of the school or national education and its relevant policies. Others have a much more indirect bearing on education and only determine certain aspects of education in a minor way. It does not really matter if the influence on education is major or minor. Disregarding of such legislation may have grave implications to those involved.

2.2.3.1 Original legislation

According to Oosthuizen and Roos (2003:28), original legislation is *original* in the sense that it is promulgated by the original authority of a legislative body (e.g. parliament or a provincial legislature). Botha (2005:14) describes original legislation as derived directly from the Constitution or as assigned by another Act of parliament.

2.2.3.1.1 Education legislation

This form of legislation refers to parliamentary laws that are promulgated for the purpose of education, specifically (Oosthuizen & Roos, 2003:28).

The following Acts have a determining influence on education.

2.2.3.1.2 National Education Policy Act, 27 of 1996

According to the preamble of the National Education Policy Act 27 of 1996 (SA, 1996b; PREAMBLE, hereafter referred to as Education Act) it is necessary to adopt legislation to facilitate the democratic transformation of the national system of education into one which serves the needs and interest of all the people of South Africa and upholds their fundamental rights.

Section 2 of the Education Act (SA, 1996b) contains its objectives, which are:

- to determine the national education policy by the Minister of Education according to certain principles;
- to consult before the determination of the policy, certain bodies for consultation being established;
- to publish and implement national education policy; and
- to ensure that education in South Africa is evaluated and monitored.

Section 3(1) of the Education Act (SA, 1996b) states that national education policy shall be determined in accordance with the provisions of the SA Constitution and the Education Act, and in section 3(3) of the Education Act (SA, 1996b) it is stated that national policy shall prevail over the whole or a part of provincial policy on education, should any conflict arise. In terms of section 5 of the Education Act, there are several examples of bodies with which the Minister should consult before policy is determined in order to accomplish this. The Minister should provide an infrastructure which requires consultation with a wide variety of bodies (SA, 1996b). Examples of such bodies are the national council of college rectors, national council

representative of students, and national council representative of parents (Oosthuizen & Roos, 2003:28).

2.2.3.1.3 Employment of Educators Act, 76 of 1998

The purpose of the Employment of Educators Act (SA, 1998a; hereafter referred to as Educators Act) is to provide for the employment of educators by the State, for the regulation of the conditions of service, discipline, retirement, and discharge of educators and for matters connected therewith.

According to Bray and Beckmann (2001:120), the Educators Act is a statute dealing exclusively with employment of educators in public education. These relevant sections are regulations on the conditions of service for educators, Personnel Administration Measures (PAM) and collective agreements of the public education and training sector being of importance.

The Educators Act gives special attention to the following aspects concerning the service dispensation of educators:

- regulations regarding service conditions;
- regulations regarding appointments, promotion and transfers;
- regulations regarding termination of service of educators; and
- the statutory foundation and description of the South African Council for Educators (SACE), in which the provision for the functions, powers and other aspects of the Council's activities are specified (SA, 1998a).

Special attention is given to incapacity, serious misconduct and misconduct of educators. In the case of incapacity and misconduct, guidelines are provided by the Educators Act, whereas with serious misconduct it is specified that an educator has to be dismissed if found guilty. In terms of the Educators Act, educators employed in non-subsidized positions by public schools are not regarded as educators in terms of the Educators Act, which means they are not governed by this educators specific law, but by the individual private

employment contracts and the Basic Conditions of Employment Act no. 75 of 1997 (Bray & Beckmann, 2001:120).

2.2.3.1.4 South African Council of Educators, 31 of 2000

The objects of the South African Council of Educators Act 31 of 2000 (SA 2000b; hereafter referred to as SACE Act) is to provide registration for educators, promote the professional development of educators and maintain and protect ethical and professional standards for educators by means of the functioning of the council (SA, 2000b, section 2).

According to section 5 of the SACE Act (SA, 2000b) it is also required of the council to establish minimum criteria for professional or provisional registration, to keep a register of employees and all other persons who applied for such registration and complied with the minimum criteria for said registration.

Furthermore, it is the duty of the Council to establish a professional code of conduct for employees, as well as a fair and equitable disciplinary enquiry procedure and that these functions should be performed by a disciplinary committee appointed by the Council (SA, 2000b, section 5(c)).

In section 27 of the SACE Act (SA, 2000b) it is clearly indicated that the Council has the authority to strike an educator's name from the register should the offence warrant such an order. The Code of Conduct referred to above, provides educators with guidelines to expected conduct regarding their relationship with learners, parents, the community, their employers and the Council, as well as conduct regarding their profession.

2.2.3.1.5 General legislation

Oosthuizen and Roos (2003:28) indicate that general legislation is not specifically promulgated for education, but it can have an impact on education. In this regard, it is considered important to discuss the following Acts as they may have an influence on education and the educator.

2.2.3.1.5.1 Promotion of Administrative Justice Act, 3 of 2000

The Promotion of Administrative Justice Act 3 of 2000 deals specifically with administrative law and seeing that section 33 of the SA Constitution (SA, 1996a) requires that every person be treated lawfully, reasonably and procedurally fair in administrative actions, it is necessary for the educator to be aware of the requirements of the above-mentioned law.

2.2.3.1.5.2 Child Care Act 74 of 1983²

Section 28 of the SA Constitution (SA, 1996a) ensures the rights of children. The protection of children is further ensured by the Child Care Act 74 of 1983 (SA, 1983, hereafter referred to as the Child Care Act 1983) which concentrates, *inter alia*, on the protection of children (Oosthuizen & Roos, 2003:32). According to section 1 of the Child Care Act 1983 (SA, 1983), a child is defined as any person under the age of 18 years, correlating with section 28(3) of the South African Constitution (SA, 1996a).

For educators, section 42(1) of the Child Care Act 1983 (SA, 1983) is of particular relevance as it requires of educators, among others who deal with any child in circumstances giving rise to the suspicion that that child has been ill-treated or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease, to immediately notify the Director-General or any officer designated by the Director-General. Section 42(5) states that any person who contravenes the provisions of section 42 of the Child Care Act 1983 (SA, 1983) shall be guilty of an offence and to section 42(6) states that no legal proceedings shall lie against such an educator, among others, in respect of

² The whole of this Act has been repealed by section 313 of the Children's Act 38 of 2005, which will come into operation on a date to be fixed by the President by proclamation in the Gazette. The president has already assented to the Act and signed the English text on 8 June 2006.

any notification given in good faith in accordance with section 42 of said Act (SA, 1983).

The Child Care Act 1983 does not address a number of aspects necessary in the protection of the rights of children as prescribed by section 28 of the SA Constitution (SA, 1996a). Therefore the following discussion regarding the Children's Act 38 of 2005³ (SA, 2005, hereafter referred to as Children's Act 2005) is deemed necessary.

In the introductory paragraph of the Children's Act 2005, it is stated that the Act is to give effect to certain rights of children as contained in the Constitution, to set out principles relating to the care and protection of children and to create certain new offences relating to children and to provide for matters connected therewith (SA, 2005). These are by no means the only aspects mentioned in the introductory paragraph, but the ones most relevant to this discussion. In the preamble to said Act reference is made:

- to the SA Constitution, with specific reference to sections 9 and 28;
- the duty of the State to respect, protect, promote, and fulfil the rights encompassed by the SA Constitution; and
- international declarations and conventions on the rights of the child.

The Children's Act 2005 then states that, whereas it is necessary to effect changes to existing laws relating to children in order to afford them the necessary protection and assistance so that they can fully assume their responsibilities within the community, as well as that the child, for the full and harmonious development of his or her personality, should grow up in a family

³ This Act takes effect on a date fixed by the President by proclamation in the Gazette, but the president has already assented to the Act and signed the English text on the 8th of June 2006. Proclamation awaits changes to certain regulations and the Children Amendment Bill.

environment and in an atmosphere of happiness, love and understanding (SA, 2005, Preamble).

In section 1 of the Children's Act 2005 (SA, 2005), abuse in relation to a child means any form of harm or ill-treatment deliberately inflicted on a child, and includes assaulting a child or inflicting any other form of deliberate injury to a child, sexual abuse of a child or allowing sexual abuse of a child, bullying by another child, a labour practice that exploits a child, or exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally. Furthermore, the Children's Act defines a child as a person under the age of 18 years (SA, 2005; section 1) and section 17 states that a child, whether male or female, becomes a major upon reaching the age of 18 years (SA, 2005).

Section 2 of the Children's Act 2005 (SA, 2005) states the objects of the Act to be among others, to give effect to the certain constitutional rights of the child, of which one is the protection from maltreatment, neglect and abuse or degradation, and that the best interest of the child is of paramount importance in every matter concerning the child, ensuring a continuation of the best interest principle of section 28(2) of the SA Constitution (SA, 1996a). Section 6(2) of the Children's Act 2005 (SA, 2005) states that all proceedings, actions or decisions in a matter concerning a child must respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interest standard set out in section 7 and the rights and principles as set out in this Act, subject to any lawful limitations. Furthermore, section 6(2) of said Act (SA, 2005) states that, among others, the child's inherent dignity must be respected, children must be treated fairly and equally, and protected from unfair discrimination on the same grounds as the SA Constitution, but includes grounds of health status or disability of the child or a family member of the child.

Although educators need to affirm knowledge of the matters addressed above and matters pending with regard to the Children's Act 2005 (SA, 2005), special attention should be paid to section 6(4)(a) which states that, in any matter concerning a child, an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be

avoided. Educators also need to heed section 6(5) of said Act (SA, 2005) which states that a child, considering the age, maturity and stage of development of the child, and a person who has parental responsibilities and rights in respect of that child, where appropriate, must be informed of any action or decision taken in a matter concerning the child which significantly affects the child.

Section 7 of the Children's Act (SA, 2005) regards the best interest of the child as principle and contains a number of factors to be considered of which the child's need for protection against physical and psychological harm is of particular relevance to educators. The best interest of the child as principle is further supported by section 9 of said Act as it states that in all matters concerning the care, protection and well-being of a child the principle that the child's best interest is of paramount importance, must be applied. Educators in government employ need to be aware of section 8(2) of the Children's Act 2005 (SA, 2005) as it directly relates to their employment position, in that it states that all organs of state in any sphere of government and all officials, employees and representatives of an organ of state (which would therefore include educators appointed by School Governing Bodies) must respect, protect and promote the rights of children contained in the Act.

Section 10 of the Children's Act 2005 (SA, 2005) ensures participation of a child in matters concerning the child in an appropriate way and that the views expressed by the child must be given due consideration, taking into consideration the age, maturity and stage of development of the child. Section 12 of the Children's Act 2005 (SA, 2005) ensures the right of the child not to be subjected to social, cultural and religious practices which are detrimental to the well-being of the child. Section 129(10) states that no parent, guardian or care-giver of a child may refuse to assist a child in the consent to perform a surgical operation on him or herself, or his or her child, neither withhold consent for medical treatment by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned (SA, 2005).

Section 16 of the Children's Act 2005 (SA, 2005) refers to the responsibilities of children and states that every child has responsibilities appropriate to the child's age and ability towards his or her family, community and state.

Section 111 of the Children's Act 2005 (SA, 2005) states that the Director-General must keep and maintain a register to be called the National Child Register, which consists of a part A and B. Section 112 concerns the confidentiality of this register and ensures that the information in this register must be kept confidential and information may be accessed and disclosed only as provided for in the Act (SA, 2005).

According to section 113, the purpose of part A is to keep a Register or record of children abused or deliberately neglected, the circumstances surrounding the abuse or deliberate neglect (the information to be used to protect these children from further abuse or neglect), the monitoring of cases and services, to sharing of information, determining patterns and trends, and using the information for planning and budgetary purposes.

Section 118 of said Act (SA, 2005) states that the purpose of part B of the Register is to have a record of persons who are unsuitable to work with children and to use the information in the Register in order to protect children, in general, against abuse from those persons. Part B of the Act is of particular interest to educators, as well as school management, as it would be their duty to ensure that a person on the Register is not appointed in any position at a school.

2.2.3.1.5.3 Occupational Health and Safety Act 85 of 1993

The Occupational Health and Safety Act 85 of 1993 is particularly applicable to schools that are equipped with facilities such as workshops, laboratories, kitchens or gymnasiums which may pose a danger to the personal safety of educators, learners and other staff members (Oosthuizen & Roos, 2003:32), although it also concerns the general safety of employees in the workplace, as it states in the introductory paragraph that the Act is to provide in the protection of persons other than persons at work against hazards to health

and safety arising out of or in connection with the activities of persons at work (SA, 1993).

2.2.3.1.5.4 Drugs and Drug Trafficking Act 140 of 1992

Supply, possession of and dealing in drugs are prohibited by the Drugs and Drug Trafficking Act 140 of 1992. When it is considered that contravening the Drug and Drug Trafficking Act (SA, 1992) will lead to criminal prosecution, it becomes apparent why section 14 of the SA Constitution may be limited. It is a well known fact that drugs have become a problem at many levels of South African society (Oosthuizen & Roos, 2003:33). The Minister of Education, Naledi Pandor stated in parliament that research has indicated that drugs play a devastating role in the violence currently experienced at schools and has indicated that she is considering conducting random drug searches at schools (Joubert, 2006). Therefore there is no doubt that it is the duty of an educator to report any indications of possible drug-related activities. Furthermore, the provisions made in the *Regulations for Safety Measures at Public Schools* (cf. 2.2.2.7) allows for special circumstances regarding searches at school.

2.2.3.1.5.5 National Road Traffic Act 93 of 1996

As far as education is concerned, the National Road Traffic Act 93 of 1996 requires educators and school managers to be aware of aspects such as roadworthiness of buses, licensing of school vehicles, transportation of learners and learner patrols at pedestrian crossings (SA, 1996d).

2.2.3.1.5.6 Criminal Procedure Act 51 of 1977

It is necessary for a principal, the head of department of educational guidance and the school psychiatrist to be aware of the principles contained in the Criminal Procedure Act 51 of 1977 regarding the protection of a youthful offender.

2.2.3.1.5.7 Copyright Act 98 of 1978

The Copyright Act 98 of 1978 has implications for educators in search of study material, as it contains certain specifications regarding the copying of published documentation. For example:

- Only a reasonable number of pages may be copied for own use, which implies that approximately 10% of the content of a book may be copied.
- No actual disbursements may be recovered and no profit may be made from copies by an educator.
- A work may not be habitually copied in the above manner (SA, 1978; Oosthuizen & Roos, 2003:33).

2.2.3.1.5.8 General legislation regarding the employment of educators

According to Bray and Beckmann (2001:114), the SA Constitution is the most important legal document for labour relations in South Africa and has paved the way for several statutes regarding national labour legislation, which normally applies to most labour relations in South Africa, namely:

- The Labour Relations Act No. 66 of 1995
- The Basic Conditions of Labour Relations Act 75 of 1997
- The Employment Equity Act 55 of 1998
- The Skills Development Act 97 of 1998
- The Skills Development Levies Act 9 of 1999

Although there are three statutes referring to the employment of educators, which takes precedence over general legislation, it is necessary to determine whether general legislation applies in a specific education employment relationship and/or whether the specific legislation has supplemented or replaced the general labour legislation (Bray & Beckmann, 2001:115).

2.2.3.2 Subordinate legislation

Oosthuizen and Roos (2003:34) refer to subordinate legislation as subject to the parliamentary law that confers the competence for the promulgation of subordinate legislation. Botha (2005:16) refers to subordinate legislation as delegated legislation and describes it as legislation by the administration. Subordinate legislation includes provincial proclamations and regulations dating from 1968 – 1994, new provincial proclamations and regulations since 1994 and other proclamations and regulations. Seeing that this type of legislation does not have to follow the road of parliamentary procedure, it can be promulgated fast and effectively to provide for changing circumstances (Van Zyl & van der Vyver, 1982:236). Oosthuizen and Roos (2003:35) also include school rules as a form of subordinate legislation.

2.2.3.2.1.1 Proclamations

Claassen (2005) states that a proclamation is an act of the Government duly published and directing or allowing something to be done or prohibiting the doing of something. Oosthuizen and Roos (2003:35) state that proclamations are governmental Acts by a functionary of the government which must be published in the correct manner and usually set out how certain tasks should be done, confer authority for the exercise of a particular act or prohibit that act. For example, National Policy for designing school calendars for ordinary public schools in South Africa, G.N. 207 of 2000 published in the *Governments Gazette* No. 20945 dated 1 March 2000.

2.2.3.2.1.2 Regulations

Walker (1980:1003) states that regulations can be seen in the broad sense, as any prescription intended to govern conduct and, more specifically, the term is commonly used of subordinate legislation issued by Departments of State in pursuance of statutory powers. According to Oosthuizen and Roos (2003:34), regulations can be seen as rules issued by a senior functionary to regulate administrative affairs within the ambit of its authority which is derived from specific parliamentary and provincial legislation.

Educators need to be aware of the different statutes implicating their employment and role as educators. These statutes are there to protect both learners and educators in a number of situations which may happen in an educational situation.

Not only original legislation has an influence on education and educators, but also subordinate legislation. Subordinate legislation, such as proclamations and regulations, has a direct influence in determining education as it is subordinate to other legislation and can therefore be seen to be just as binding.

2.3 GHANA

The Constitution of the Republic of Ghana 282 of 1992 (GH, 1992; hereafter referred to as the Ghanaian Constitution) protects the rights of all Ghanaians. One of the rights enshrined in the Ghanaian Constitution is the right to free basic education. This, however, seems to be quite problematic. According to Gyimah-Boadi (2005:1), the Ghanaian education system has currently entered a period of profound crises, despite repeated attempts at reform, having its genesis in the prolonged economic downturn that struck the country, beginning in the late 1970s.

According to Sedgwick (2000), the education system of Ghana has undergone several stages of restructuring over the past 25 years. However, despite the restructuring there still seem to be significant disparities in educational availability and access (Gyimah-Boadi, 2005:14). The greatest problems seem to be those of gender equality and gender segregation. These problems concern academic discipline and equal access to education, where there are pronounced regional and geographical disparities. This directly influences educators and their employment conditions.

2.3.1 Background

Since 1987, the Government of Ghana has embarked on a New Educational Programme which is geared strategically to make education more accessible to all children of school-going age, improving equity and the quality of

education as a whole and making education more relevant to the socio-economic needs of the country UNESCO, 2001:5). Although this reform of the education programme solved a number of problems confronting the sector, such as the reduction of the duration of pre-tertiary education from 17 to 12 years and expanding access to education, a number of problems are still experienced (GoG, 2006).

The Education Act No 87 of 1961 (GH, 1961, hereafter referred to as Ghanaian Education Act) states that every child who has attained school-going age as determined by the Minister shall attend a course of instruction as laid down by the Minister in a school recognized for the purpose by the Minister, thus establishing the policy for free and compulsory primary and basic education for all children of school-going age UNESCO, 2001:5)

Ghana, as a country, returned to constitutional rule in 1992 and since then the government has established institutions for the promotion of democratic rule and socio-economic advancement. In character with this, the Ghanaian Constitution (GH, 1992) strengthened the provision of the Education Act of Ghana (GH, 1961) by means of section 25(1), whereby all persons have the right to equal educational opportunities and facilities. In order to ensure this, section 25(1) (a) of the Ghanaian Constitution allows for basic education to be free compulsory, and available to everyone.

According to section 25(1) (b) of the Ghanaian Constitution, secondary education in all its forms shall be made generally available and accessible to everyone, by the progressive introduction of free education. The provisions made by section 25 of the Ghanaian Constitution (GH, 1992) require of the State to provide facilities at all levels in all the regions of Ghana. Furthermore, the State is required, subject to the availability of resources, to provide equal and balanced access to secondary as well as other appropriate pre-university or equivalent education, a free adult literacy programme, free vocational training, rehabilitation and resettlement of disabled persons, and life-long education.

Thus, basic education in Ghana is free to all children. This implies that the first nine years of schooling are compulsory for children aged six to fourteen (Sedgwick, 2000). Basic education in Ghana consists of six years of Primary and three years of Junior Secondary School (UNESCO, 2004B:3). Thereafter, learners have a choice. Learners wishing not to advance to senior secondary school must take the Junior Secondary School Leaving Certificate in order to receive their terminal diplomas (Sedgwick, 2000).

The Ghanaian Constitution is the supreme law of the country, according to section (2) of the Ghanaian Constitution (GH, 1992). The section further states that any law found to be inconsistent with any Constitutional provisions shall to the extent of the inconsistency, be void. Boadu (2001:23) mentions that customary laws govern the vast majority of the population and does sometimes conflict with the legal system, thereby permitting some degree of ambiguity and manipulation.

The Ghanaian Constitution (GH, 1992) protects the fundamental rights of all its inhabitants. Although the Ghanaian Constitution protects educators and learners alike, one becomes aware of matters where the ideal set in the Constitution is not met, for example over 20% of children of school-going age are currently still out of school (GoG, 2006).

2.3.2 Fundamental human rights bearing directly on educators

Educators, as part of the inhabitants of Ghana, are entitled to the protection offered by all the fundamental human rights contained in the Ghanaian Constitution (GH, 1992). In section 12(2) of the Ghanaian Constitution (GH, 1992), the entitlement of every person to the fundamental human rights and freedoms of the individual contained in the chapter, (i.e. chapter 5: fundamental human rights and freedoms, irrespective of race, place of origin, political opinion, colour, religion, creed or gender) is ensured.

The same fundamental human rights discussed in relation to educators in South Africa will be used regarding educators in Ghana (*cf.* 2.2.2). These rights are:

- Equality
- Human dignity
- Freedom and security of the person
- Privacy
- Freedom of religion, belief and opinion
- Freedom of expression
- Labour relations
- Rights of children
- Education
- Just administrative action
- Limitation of rights

Once again these above-mentioned rights have a direct bearing on the relationship between educators, learners and their parents, as well as on the conditions of employment of educators in the current Ghanaian society.

2.3.2.1 Education

According to the National Report presented at the 46th session of the International Conference on education in Geneva in 2001 by the Ghana Education Service (hereafter known as GES), basic education is the birthright of every child irrespective of ethnicity, religion, gender and geographical location, as per the Ghanaian Constitution UNESCO, 2001:7). Thus, the aim is to establish free, compulsory, universal education for all children of school-going age in Ghana UNESCO, 2001:59).

This right to education is insured by section 25 of the Ghanaian Constitution. According to this section, all persons shall have the right to equal educational opportunities and facilities. The Ghanaian Constitution ensures free basic

education that is compulsory and available to everyone. Much is done in Ghana to improve access to and participation in basic education: one such a project was embarked upon by the Basic Education Division in which educator accommodation classroom blocks and toilets were built all over the country UNESCO, 2001:28).

Secondary education in its different forms should be made generally available and accessible to everyone by every appropriate means and particularly by the progressive introduction of free education, according to section 25(1)(b) of the Ghanaian Constitution. Section 25(1)(c) stipulates that higher education shall be made equally accessible to everyone, on the basis of capacity, by every appropriate means, and, in particular, by the progressive introduction of free education (GH, 1992). All of the above is further strengthened by section 38 in which certain directive principles to state policy regarding education are contained, and these principles concern, to a large extent, the establishment of free education, as well as equal and balanced access to education (GH, 1992).

Currently in Ghana, tuition on all educational levels should be free, but parents and learners are responsible for other costs, such as food and books. Despite everything done by the Government of Ghana, large numbers of children still have no access to affordable education (Banful, 2006). In order to fulfil the Constitutional mandate the Government instituted the Free Compulsory Universal Basic Education (FCUBE) programme, which was supposed to be attained by the year 2005 (GoG, 2006). According to the Integrated Social Development Centre (ISODEC), Ghana, the stark reality ten years after the launching of the FCUBE programme, is that the goal of universal coverage and free basic education remain unlikely, especially considering that 25% of children between the ages of 6 and 17 drop out of school because of the cost of education (ISODEC, 2005). Although tuition at the public basic level is free, it has come to light that user-fees are a major barrier to access for many poor families and communities (ISODEC, 2005).

Banful (2006) continues to state that the blame for poor public school outcomes is placed on educators, but that it is forgotten that public schools

have dilapidated buildings and there is a scarcity of books. The report further states that educators need more help in order to help children, they need more access to information about what works, as well as staff development opportunities and better conditions. To make matters worse, educators in some public schools are not paid on time or have salaries in arrears (Banful, 2006).

Section 25(2) of the Ghanaian Constitution allows any person to establish and maintain a private school at his own expense, in accordance with such conditions as may be provided by the law (GH, 1992), and it can be done only with the prior approval of the Minister (Ghana 1961, section 17). The provision made in the Education Act (GH, 1961) and the Ghanaian Constitution (GH, 1992) for the establishment of private schools is done to assist the Government efforts in the provision of enough schools to cater for the ever growing demands for education, especially on basic level UNESCO, 2001:5).

According to Banful (2006), basic education in Ghana is still neither free nor universal and most schools do not have adequate facilities, contrary to section 25 of the Constitution. Education cannot be considered free as user-fees for textbooks, stationery, sport kits and several other levies are imposed by schools and approved by District Assemblies (ISODEC, 2005). These user-fees are one of the reasons why it can also be said that basic education in Ghana is not yet universal either. Furthermore, pronounced regional and geographical disparities, as well as disparities between urban and rural areas, where there are limited access in rural areas, particularly in the northern sector of the country, prohibit universal access to basic education (Gyimah-Boadi, 2005:14).

2.3.2.2 Equality

In section 17, the Ghanaian Constitution ensures equality in Ghana. Section 17(1) states that all people will be equal before the law, while section 17(2) states that a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. In the

Ghanaian Constitution, discrimination is seen as different treatment of one person from another, attributable mainly or only on a specific attribute, and where such a person will experience certain restrictions or privileges (advantages) not applicable to other people without the specific attribute (GH, 1992).

One of the core strategic objectives of the 1987 Reform Programme implemented by the Minister of Education (MoE) is to ensure both fair geographical distribution of schools, as well as gender equity for all Ghanaian children of school-going age UNESCO, 2001:32). Section 17(4) of the Ghanaian Constitution allows government to enact laws that are reasonably necessary to provide for implementation of policies and programmes aimed at redressing social, economic and educational imbalances, among others in the Ghanaian society (GH, 1992).

One such an imbalance concerns the status of women in Ghana. Most African cultures assign the female personality inferior, stereotypical characters in their mythology and proverbs that portray females as simple-minded, lacking in basic knowledge, wisdom and logic (Gachukia, 1992).

Although education policies in Ghana do not discriminate and have never discriminated against any section of the community, there is an alarming disparity between male and female enrolment at schools, and the drop-out ratio of girls at schools as they progress from primary schools to tertiary institutions, is a matter of grave concern UNESCO, 2001:32; UNESCO, 2004B:12). Government statistics of 1989 – 1990 show that, in the first six grades of the educational system, only 45% of the students enrolled were females. This decreases to 33% at secondary school level and to 27% in polytechnical institutions and to as low as 19% at the universities (Berry, 1995).

The participation of girls and women in formal education has been hindered by cultural beliefs and practices, as well as inadequate provision of educational facilities (UNESCO, 2004B:12). According to Owusu-Ansah (2003), a majority of women and children in Ghana are voiceless,

disempowered in many areas and circumstances, and may not have significant roles in the area of policy formulation and decision-making. This includes the education field. The Ministry of Education and the GES have embarked on a vigorous proactive policy of sensitizing the entire population of Ghana to the need to send and retain the girl-child at school UNESCO, 2001:32). According to Ghana Review International (2004), a District Director of Education called on girl-child educational coordinators to embark on house-to-house counselling to enlighten parents on the need to send their daughters to school.

In many of the rural communities, the problem is even greater, where fewer girls enrol at primary schools and many more girls drop out of school UNESCO, 2001:33). To poor families the cost for attending school is much higher for girls than for boys, as girls perform more household chores than boys, and are also engaged in farming UNESCO, 2001:33). According to Gachukia (1992), most African countries have tried to provide equal opportunities in education, especially at primary school level, but in practice the education system discriminates against girls and women, resulting in an inability to compete equally for the various courses offered at the higher levels, thus few women reach positions from which they can influence policy. This seems to be true in the Ghanaian situation as well.

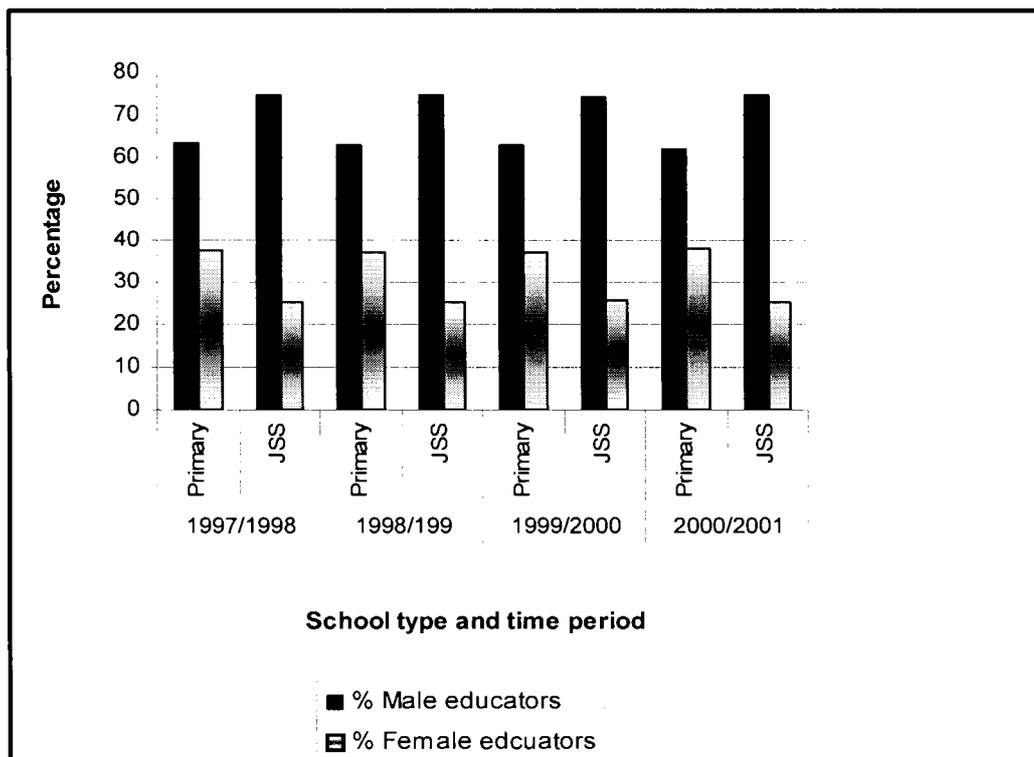
Considering how much is done to encourage the enrolment of girls at school and to eradicate the disparity in the enrolment of boys and girls, one wonders why the difference is still so great. The question becomes even more important when it is noted that the female population of Ghana constitutes 51% of the total population, but that women's representation in various positions in Ghana, including education, is nowhere near 50% (Boadu, 2001:3, Dunne & Leach, 2005:23). Two contributing factors are the cultural perception of women concerning their capabilities and needs, and the society's tacit belief in male superiority (Boadu, 2001:4). Another aspect which contradicts many of the statements made by the GES, as well as eradicate many results from the schemes implemented to encourage the enrolment of girls, is the fact that most secondary schools in Ghana are boarding

institutions and there are more such schools for males than for females and in co-educational schools, more dormitory facilities are reserved for boys (Boadu, 2001:4).

Currently, a highly gendered school environment is experienced in Ghana, leading to the provision of differentiated school experiences for females and males, with various impacts on retention and achievement, often in interaction with other factors such as quality of leadership, class size and socio-economic status of learners (Dunne & Leach, 2005: vii). Female educator proportions at schools in Ghana are low and clustered in urban schools, although female educators tend to stay longer in education (Dunne & Leach, 2005:41). When all of the above is taken into consideration, it comes as no surprise that the education system in Ghana in general is dominated by males, and that education remains a male dominated profession (UNESCO, 2000:18; Dunne & Leach, 2005:25).

When one considers the data presented in Figure 2.3, it is evident that at primary school level, female educators represent a relatively stable 37 % proportion of the educator corps, but this drops to around 25% at junior secondary school (Dunne & Leach, 2005:25).

Figure 2.3: Gender distribution of educators in Ghanaian schools (1997 – 2001)



(Source Dunne & Leach, 2005:25.)

Therefore, despite the provisions made in section 25 of the Ghanaian Constitution with regard to equal access to secondary and tertiary education, it would seem that there are still major discrepancies (GH, 1992). The educator training colleges consistently admit and train many more male than female educators: understandably, especially when it is taken into consideration that training college admission requires a pass in Mathematics (Dunne & Leach, 2005:25). Given the relatively poor performance of females in Mathematics, it is no wonder that this admission requirement will skew the intake in favour of males (Dunne & Leach, 2005:25).

Gender differentiation at Ghanaian schools is at the order of the day. Dunne and Leach (2005:69) found that at all schools male and female educators rarely mix, not only in the staffroom but to also in other settings. The researchers also found that educators usually allocate tasks to learners according to gender (Dunne & Leach, 2005:69). Furthermore, it appears that

female educators do not lead to higher female achievement, but rather the reverse (Dunne & Leach, 2005:40). Male students declared that they did not respect female educators and appeared to dislike female educators' more than male educators, even if the latter beat them more (Dunne & Leach, 2005:71).

Every effort is made by the GES to address issues of gender inequality in all aspects of education (UNESCO, 2004B:8). As the school curriculum has historically been skewed towards the empowerment of boys to the detriment of girls, the Curriculum Research and Development Division of the GES has embarked on a number of strategies to raise the level of awareness of both educators and learners to avoid situations which involve gender discrimination and content, and educating-learning activities have been carefully formulated so that no gender biases are introduced into the classroom (UNESCO, 2004B:8).

According to the GES educators, the key implementers of the curriculum have become sensitized through a number of in-service training sessions to implement gender-friendly curricula (UNESCO, 2004b:9). Through these sessions, most of the classroom educators have now been made aware that they need to be critical about classroom organization, selection of instructional materials, delivery of educating-learning activities and seating patterns in the classroom in order to promote gender equity at schools (UNESCO, 2004b:9). However, when the findings of Dunne and Leach are considered, this does not seem to happen, as they reported that boys at school largely determined how space was organized, seating themselves at the back and sides, with educators hardly ever intervening (Dunne & Leach, 2005:70).

Another aspect reported on was the fact that boys also dominated the verbal space, being the most vocal and trying to ridicule girls if they got an answer wrong (Dunne & Leach, 2005:70). None of the educators in the study saw the gendered use of space as problematic or did much to try to control the boys (Dunne & Leach, 2005:70). Furthermore, the authors report that male learners often openly contest female educators' authority, in some instances refusing to be disciplined by them. They also show a lack of respect in verbal

interchanges with female educators and downplay the importance of subjects taught by them (Dunne and Leach 2005:x).

Even though the enrolment figure of boys is still higher than that of girls, the clinic to sensitize girls to learning Science, Mathematics and technical subjects, as mentioned above, had over the years been the preserve of girls, 20 boys from each of the 110 districts were introduced to participate in the programme in 2003 (UNESCO, 2004B:8). This was done in order to address issues of gender inequality, but now a programme aimed at increasing the enrolment of girls is also available to boys, although only in the limited number of 20 boys from each of the 110 districts.

Figures recording violent incidents against women in the Central Region over a seven months' period in 2002, such as the fact that over 50% of reported cases of violence against women were wife-battering and 26% were incidents of defilement of girls under sixteen, provide further insight into the vulnerable position of women in Ghana (Dunne & Leach, 2005: 23). The authors continue by stating that issues of gender violence are relevant to schools, even though schools are subject to national policies on corporal punishment, sexual offences and pregnancy specified by the GES in its codes of practices (Dunne & Leach, 2005: 23).

As mentioned, another problem faced by the Government of Ghana is the low enrolment figure of learners in the rural areas, as well as the high dropout rates. As a rule, the Ministry of Education is obliged to make a primary school available in almost every community in Ghana, in order to ensure that no learner has to commute more than five kilometres from his/her village to and from school (UNESCO, 2001:32). The Equity Improvement Programme also provides free sets of core schoolbooks to learners in selected schools as well as basic stationery items (UNESCO, 2001:31). Furthermore, in order to try and increase the retention of learners and to reduce absenteeism of both educators and learners, an enrolment and retention competition among selected schools was organized, where schools were not only awarded a trophy, but cash awards as well (UNESCO, 2001:31).

To ensure equality in education, the Education Act 87 of 1961(GH, 1961,hereafter referred to as the Education Act) states in section 22 that no person may be refused admission or attendance as a learner on the grounds of religious persuasion, nationality, race or language, whether the learner him/herself or his/her parents. Furthermore, this section prohibits enquiries regarding religion, as well as ensuring that attendance is voluntary (GH, 1961, section 22).

Special provisions are made in the Ghanaian Constitution regarding the protection of women. Section 27(1) of the Ghanaian Constitution allows for the special care of mothers for a reasonable period before and after birth, as well as paid leave during such a period (GH, 1992). Furthermore, in section 27 (3) of the Ghanaian Constitution, it is stated that women shall be guaranteed equal rights to training and promotion without any impediments from any person (GH, 1992). However, when the findings of Dunne and Leach are considered, this does not seem to be the case. Firstly, the researchers found that there were only two female head educators out of a group of six head educators (Dunne & Leach, 2005:40); secondly gendered organizational practices and processes worsened by the gender asymmetry within domestic and family circumstances and reduced female educators' promotion prospects, as this often required transfers (Dunne & Leach, 2005: viii). Further confirmation was found in the fact that fewer long serving female educators were found in senior positions than their male counterparts (Dunne & Leach, 2005: viii).

With regard to gender equality, it must be mentioned that the Government of Ghana has addressed most of the equalities through legislation and policy. However, there is a wide gap between the legal status of women as it exists in theory and women's realization of their important rights (Boadu, 2001:23).

Section 29(4) of the Ghanaian Constitution (GH, 1992) provides that disabled persons shall be protected against all exploitation, all regulations and all treatment of discriminatory, abusive or degrading nature. However, according to the Ghana Federation of the Disabled, the reality cannot be further from the truth, as disabled people continue to face discrimination in virtually all facets

of life: employment, housing, transport, education and health facilities (ISODEC, 2006).

According to section 37(2) of the Ghanaian Constitution (GH, 1992), the state shall enact appropriate laws to assure the protection and promotion of all other basic human rights and freedoms, including the rights of the disabled, the aged, the children and other vulnerable groups in the development process. However, it still took 13 years for a drafted disability Act to be signed into law (UN, 2006). Said Act provides for the protection of the disabled against discrimination, guarantees free medical care, free public transport and access to basic education.

In Ghana this Act is a giant step forward, as disability is often seen as a punishment for one's sins or the sins of the ancestors (UN, 2006) and currently disabled learners in Ghana are faced with segregated education, among the many other forms of discrimination (ISODEC, 2006). According to Annor (2002), access to education for the disabled in Ghana is practically an urban phenomenon, and even that is quite recent. According to the author, figures indicate that the number of disabled people in Ghana who have received a basic education is at least 10 percentage points behind the average figure. In Ghana at least one specialized schools for persons with disabilities are provided per region.

The implication of this for the disabled learner is that, unlike other learners, such learners cannot attend any school within their locality like other learners, meaning that these learners have to be separated from their families to attend boarding school, often in the Regional Capital, as only specialized schools are equipped with basic facilities to cater for the disabled learners (Annor, 2002). In research done by Walker (1983), among the primary problems facing education for the disabled in Ghana are the insufficient training programmes for educators and other personnel involved with the disabled, as well as the limited resources which necessitate priorities by examined as a means of developing appropriate services and facilities.

2.3.2.3 Human dignity

Section 15(1) of the Ghanaian Constitution states that the dignity of all persons shall be inviolable and then continues to state in section 15(2) that no person shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, as well as any other condition that detracts or is likely to detract from his/her dignity and worth as a human being (GH, 1992). This is further enhanced by section 28(3) of the Ghanaian Constitution in which it is stated that a child shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment (GH, 1992). Therefore it would seem that corporal punishment is prohibited at schools in Ghana, according to their Constitution. However, in the code of discipline for Basic Education Schools in the head educators' Handbook three points are emphasised:

- Illegal punishment, violence and brutal acts against pupils are criminal offences for which educators can be taken to a court of law.
- Corporal punishment should be administered by the head educator only, although this responsibility can be delegated, but the head educator must supervise its administration.
- Whipping or beating of children because they cannot read or do sums correctly is not allowed (Dunne & Leach, 2005:24).

Not only do educators or head educators of schools, use corporal punishment at Ghanaian schools, but it seems that learners are also exposed to other degrading treatment. One such an example is given by Dunne and Leach (2005:51) whereby boys are motivated through negative comparison of their work by educators to the expected low standard of girls' work – *even the girls can do it better than that*. This, however, does not seem to be relevant only to the treatment of female learners, but also to that of female educators.

Sakyi-Addo (2004), a BBC correspondent in Accra reports on the lack of discipline and respect found among the youth in Ghana, that when such behaviour is found in the streets of the city, one can be sure that this is also the case at the schools and that the educators are treated with disrespect as

well. Osafo-Maafa (2005), Minister of Education and Culture, also comments on the lack of discipline and the need to restore discipline at schools.

2.3.2.4 Freedom of expression

Section 21(1) of the Ghanaian Constitution (GH, 1992) states that all persons shall have the right to freedom of speech and expression, which shall include freedom of the press and other media. This section includes freedom of thought, conscience and belief, including academic freedom, as well as freedom to practise any religion and manifest such practice, as well as freedom of information, subject to such qualifications and laws as are necessary in a democratic society (GH, 1992). One such qualification deemed necessary can be found in the Education Act (GH, 1961). According to section 24(1), the Minister may, in writing, direct the prohibition of any material. Any educator who makes the content of such prohibited material known to learners shall, according to section 24(2) of said Act, be liable to on summary conviction, to imprisonment or a fine (GH, 1961).

2.3.2.5 Labour relations and just administrative actions

According to section 24 (1), every person has the right to work in safe, satisfactory and healthy conditions and should receive equal pay for equal work without distinction of any kind (GH, 1992). Reasonable limitation of working hours, periods of holiday, assurance of rest and leisure, as well as remuneration for public holidays as assured by section 24(2) of the Ghanaian Constitution (GH, 1992).

Section 23 of the Ghanaian Constitution, requires of administrative bodies and officials to act fairly and reasonably, as well as within the requirements of the law. Should a person be aggrieved by any such acts and decisions, they have the right to seek redress before a court or tribunal.

According to section 21(1) (c) and (d) of the Ghanaian Constitution all Ghanaians have the right to freedom of assembly, including freedom to take part in procession and demonstrations, as well as freedom of association (GH, 1992). The right to freedom of association includes freedom to form or join

trade unions or other associations, national and international, for the protection of their interest (GH, 1992). This is further supported by section 24(3) of the Ghanaian Constitution, which allows every worker to form or join a trade union of his/her choice for the promotion and protection of his/her economic and social interests (GH, 1992).

2.3.2.6 Limitation of rights

No specific limitation clause exists in the Ghanaian Constitution, but there are numerous examples where a right has a specific limitation attached to it. The first example can be found in section 12(2) of the Ghanaian Constitution where the entitlement to the fundamental human rights contained in the chapter is limited by subjecting it to respect for the rights and freedoms of others and for the public interest (GH, 1992).

In section 18(2) of the Ghanaian Constitution, a person's right to privacy may be limited as may be necessary in a free and democratic society for public safety, or the economic well-being of the country, or for the protection of the rights and freedoms of others (GH, 1992). Another example can be found in section 21(1) (f) of the Ghanaian Constitution whereby a person is entitled to freedom of information but subject to such qualifications and laws as are necessary in a democratic society (GH, 1992).

2.3.2.7 Other sections of the Constitution that affect the educator

Regarding the right to privacy, section 18(2) of the Ghanaian Constitution stipulates that no person will be interfered with in the privacy of his home, property, correspondence or communication. There is, however, a clause allowing for searches being done in accordance with the law, and as is deemed necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of the rights or freedoms of others (GH, 1992).

Section 26 (1) of the Ghanaian Constitution entitles every person to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of the Constitution (GH, 1992). However,

very importantly, the Ghanaian Constitution prohibits all customary practices which dehumanize or as injurious to the physical and mental well-being of a person (GH 1992, section 18(2)). According to section 28(4) of the Ghanaian Constitution, no child shall be deprived by any other person of, among others, education by reason only of religious or other beliefs (GH, 1992). When one studies these provisions of the Ghanaian Constitution, one can hardly believe that religious practices such as Trokosi are still accepted in certain communities in the Volta region of Ghana (Owusu-Ansah, 2003)⁴. These girls (fetish slaves) are denied access to education and health care, clearly against the Ghanaian Constitution (Owusu-Ansah, 2003). When one considers conditions such as these, in communities, one can only wonder at the role educators play in such matters.

The rights of the child are protected in section 28 of the Ghanaian Constitution and established as being of paramount importance (GH, 1992). Although the Ghanaian Constitution does not prohibit child labour, section 28(2) protects children from engaging in work that constitutes a threat to their health, education or development (GH, 1992). However, this is not the reality in Ghana. Banful (2006) reports on a statement made by the Director of Education on child labour in Ghana in which it is stated that 1.2 million children in Ghana are engaged in some form or other of child labour and over 200 000 of them are presently engaged in hazardous labour. Aspects such as the above must influence and complicate the educator's task at Ghanaian schools.

⁴ Trokosi is a form of ritual slavery practiced for several hundred of years, whereby a priest elevates his status within the community by impregnating as many fetish slaves as possible, as the number of children a man has determines his status (Ibid). According to the practices of the belief a family must offer a virgin, young girls between the ages of eight and fifteen, to atone for sins and crimes of a relative, ranging from murder to petty thefts and these girls must serve as slaves to the gods.

2.3.3 Ghanaian legislation governing education and the employment of educators

A number of laws regulate education in Ghana, of which the most important is the Ghanaian Constitution. Section 2 of the Ghanaian Constitution (GH, 1992) proclaims the supremacy of the Constitution and states that any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void. Section 24 of the Ghanaian Constitution (GH, 1992) includes the right to work under satisfactory, safe and healthy conditions, as well as to receive equal pay for equal work. Furthermore, every worker has the right to form or join a trade union of his own choice in order to protect his economic rights and social interests (GH, 1992; section 24(3)). However, subsection (4) allows for the restriction of the rights mentioned in subsection (3) in the interest of national security or public order, or for the protection of the rights and freedoms of others (GH, 1992; section 24(4); cf. 2.3.2.5). Section 27 of the Ghanaian Constitution (GH, 1992) promotes the rights of women, especially paid leave during maternity, and requires the provision of childcare facilities.

In chapter 6 of the Ghanaian Constitution, entitled *Directive principle of State policy*, further provisions are made regarding employment of Ghanaians, with particular emphasis on the required role of the State. In the above-mentioned chapter, section 35(6) of the Ghanaian Constitution (GH, 1992) requires of the State to take appropriate measures to achieve reasonable regional representation in recruitment and appointment to public office. In section 36(6) of the Ghanaian Constitution (GH, 1992), certain economic objectives are laid down, including requirements of the State to take all necessary steps to ensure full integration of women into the mainstream of Ghana's economic development. Lastly, section 36(10) of the Ghanaian Constitution (GH, 1992) safeguards the health, safety and welfare of all employees, whereas subsection (11) requires the State to *encourage the participation of workers in the decision-making process at the workplace* (GH, 1992:36(11)).

Ghanaian educators need to be aware of different provisions in the Ghanaian Constitution, as well as the fundamental human rights their learners are

entitled to. Apart from being aware of their Constitutional rights, educators in Ghana should be aware of a number of Acts relevant to education and the educator in Ghana. The Ghanaian Education Act (GH, 1961), regulates education in Ghana and also deals with the employment of educators. The Ghana Education Service Act 506 Of 1995, hereafter referred to as the Education Service Act (GH, 1995) regulates the registration of educators as well as disciplinary matters and the establishment of a representative council to advise and decide on education matters. The Labour Act 651 of 2003, hereafter referred to as Ghanaian Labour Act (GH, 2003), covers all employees and employers, except those in strategic positions and regulates all matters regarding employment. Educators in Ghana should also be aware of the Children's Act 506 of 1998, hereafter referred to as Children's Act (GH, 1998), and the requirements of this Act, which have direct bearing on the educator-learner relationship.

2.3.3.1 Education Legislation

Education in Ghana is legislated by two laws promulgated specifically for education.

2.3.3.1.1 Education Act, 87 of 1961

In the introductory paragraph of the Ghanaian Education Act (GH, 1961), it is stated that it is an Act for the development of education, for regulating the terms and conditions of service of educators, as well as for purposes connected therewith. Section (1) of said Act deals with general matters regarding education in Ghana such as the organization of the public education system and the duty of the local education authority to secure efficient education throughout primary and middle stages to meet the needs of the population of the area.

The Ghanaian Education Act states that the Minister shall determine the compulsory school-going age of learners and that schooling is compulsory (GH, 1961; section 2(1)). In section 2(2) of said Act, it is stated that parents who fail to comply with section 2(1) commit an offence and shall be liable, on summary conviction, to a fine (GH, 1961; *cf.* 2.3.2.1).

According to section 3(1) of the Ghanaian Education Act (GH, 1961), a terms-of-service committee shall be established. This committee shall advise the Minister on the remuneration and terms and conditions of service of educators, other than public officers, who are employed in public institutions and of all persons, who are employed in the service of public education other than public officers. According to section 3(2) of said Act (GH, 1961), the Service Committee shall be appointed by the Minister and shall consist of the following members:

- (a) A chairman to be appointed by the Minister
- (b) Three members representing Educational Units
- (c) Three members, nominated by the organization recognized by the Minister as representing the interests of teachers
- (d) Three members to represent the interest of local authorities, appointed by the Minister after consultation with the Minister responsible for local government
- (e) Two other members, one to represent the Minister responsible for Education and the other to represent the Minister or department responsible for establishment matter

Section 4 of the Ghanaian Education Act (GH, 1961) specifies aspects with regard to the above-mentioned committee regarding meetings, the role of the chairman, majority vote, casting vote of the chairman, as well as the number constituting a quorum. Furthermore, the Minister may set up committees to advise him on the educational system or specific aspects thereof, as deemed necessary (GH, 1961; section 5).

According to the Ghanaian Education Act, no fees shall be charged in respect of tuition at a public primary, middle or special school, but parents are required to pay for the provision of essential books and stationery or materials required by learners for use in practical work (GH, 1961, section 21(1)). Not only does section 21(2) of said Act (GH, 1961) state that no fees, apart from

the prescribed fees, may be charged in respect of tuition or residence of any learners at a public secondary school or a public training college, but according to section 21(4) of the Ghanaian Education Act (GH, 1961) any person contravening the provisions of section 21 of said Act commits an offence and shall be liable on summary conviction to pay a fine.

Section 22(1) of the Ghanaian Education Act (GH, 1961) ensures that the equality principle of the Ghanaian Constitution (GH, 1992; section 17) is upheld, in that section 22(1) of said Act states that no person shall be refused admission as a learner to, or refused attendance as a learner at, any school on account of the religious persuasion, nationality or language of him/herself or either of his/her parents. Furthermore, section 22 of said Act ensures that no learner is discriminate against on the ground of religion, in that it prohibits enquiries made concerning religious beliefs of learners prior to their admittance, as well as the enforcement of attendance of, or to abstain from, religious observances or worship or instruction, should the parents object. Section 22(4) of the Ghanaian Education Act (GH, 1961) states that any person contravening the provisions of section 22 of said Act commits an offence and shall be liable, on summary conviction to a fine.

Educators in Ghana need to be aware of section 24(1) of the Ghanaian Education Act (GH, 1961) as it states that the Minister may, in writing, direct that any book, newspaper, document or other printed or written matter or any film, picture or visual or aural aid or any record of speech or language of whatsoever kind shall not be treated in any manner, either by exhibition, reading, recitation, description, delivery or otherwise as to make known its contents to any learner in any institution. According to section 24(2) of the Ghanaian Education Act (GH, 1961), any person who fails to comply with the direction given by the Minister in accordance with the provision of subsection (1) of section 24, commits an offence and shall be liable, on summary conviction, to imprisonment or a fine.

According to section 28 of the Ghanaian Education Act (GH, 1961) subject to the provisions of said Act, the salaries, terms and conditions of service and discipline of all educators, other than public officers, employed in public

institutions shall be as prescribed by regulations. According to section 29 of the Ghanaian Education Act (GH, 1961), the Minister shall establish a Teachers' Council to advise on measures necessary to preserve high standards of conduct in the teaching profession. The Teachers' Council shall exist of no less than seven active service educators of whom at least one shall be a woman; the members of the Council shall be appointed by the Minister in consultation with educator organizations recognized by the Minister; the service period on the Council shall be for one year from the date of appointment, but members shall be eligible for reappointment at the expiration of the period; at the first meeting of the Council or thereafter, whenever the office falls vacant, members shall elect, upon approval of the Minister, a chairperson from among their number; the chairperson shall hold office from the date of election to the expiry of the one year period of his appointment, but if reappointed, as a committee member, be eligible for re-election as chairman for the extended period of appointment (GH, 1961, section 29).

2.3.3.1.2 Ghana Education Service Act 506 of 1995

Section 1 of the Education Service Act (GH, 1995) ensures the establishment of the Ghana Education Service (hereafter referred to as the Service), which according to section 2 will be made up of the following role players:

- the personnel of the Ghana Education Service existing immediately before the coming into force of this Act;
- educators and non-educating supporting personnel in pre-tertiary educational institutions in the public system;
- managers of educational units and supporting staff;
- persons holding posts created as Ghana Education Service posts by or under any enactment; and
- other persons that may be employed for the service.

Section 3(1) of said Act (GH, 1995) states that the Service shall be responsible for the implementation of approved national policies and

programmes relating to pre-tertiary education, and section 3(2) establishes the duty of the Service, without prejudice to subsection 1, to be:

- to provide and oversee basic education, senior secondary education, technical education and special education;
- to register, supervise and inspect private pre-tertiary educational institutions;
- to submit to the Minister recommendations for educational policies and programmes;
- to promote the efficiency and the full development of talents among its members;
- to register educators and keep an up-to-date register of all educators in the public system;
- to carry out such other functions as are incidental to the attainment of the functions specified above; and
- to maintain professional standards and the conduct of its personnel.

The Education Service Act (GH, 1995) ensures the establishment of a Ghana Education Service Council in section 4 with a clear indication of representation on the council. Two of the representatives have to be distinguished educationists, of which one must be a woman. Furthermore, one member of each of the two recognized and major educator associations ensure the representation of interests of educators. One of the duties of the council is the appointment of a District Education Oversight Committee, a committee representing a variety of education role players from the community, including parents, role-players from the education sector and religious groups and at least two of the representatives have to be women.

According to section 9(3) of said Act (GH,1995), the District Education Oversight Committee shall in the relevant district and subject to the directives of the Council be concerned with and oversee:

- conditions of school buildings and other infrastructural requirements of schools;
- the provision of educators and the regular and punctual attendance of educators and learners at the schools;
- the proper performance of duties by educators at schools;
- the moral behaviour of educators and learners and matters relating to general discipline;
- complaints relating to or from educators, non-teaching staff and learners;
- the environmental cleanliness of schools and facilities therein; and
- the supply of textbooks and other teaching and learning material.

According to section 16 of the Education Service Act (GH, 1995) both the Ghana National Association of Teachers and the Teachers and Educational Workers Union of the Trades Union Congress are recognized as organizations formed to seek and promote, in accordance with the law the interests and welfare of their members in the Service. These recognized organizations may make representations to the Council on matters concerning the terms and conditions of service of its members in the Service, subject to the Industrial Relations Act 299 of 1965. Section 16 of said Act (GH, 1995) further allows for the deduction of contributions to the recognized organizations, with the written consent of the employee.

Section 17 of the Education Service Act (GH, 1995) states that, subject to section 20 of this Act, no person shall be employed as an educator in a pre-tertiary educational institution in the public system unless he/she has been registered as an educator by the Council. Section 20 of said Act (GH, 1995) states that the appointing authority may, subject to such conditions as shall be determined, authorize the employment of persons not registered under this Act as educators in the pre-tertiary institutions. However, the provisions made in subsection 18 (3) and (4) for the qualifications and conditions relating to the

registration of educators shall apply to the employment of unregistered educators.

In accordance with section 18 of said Act (GH, 1995) the Council shall cause the Director-General to keep and maintain a register of educators, in which shall be recorded the particulars of any person registered as an educator under this Act. In section 18(3) it is stated that a person shall not qualify to be registered as an educator if he does not possess at least the initial prescribed educators' training certificate or equivalent qualification, if he has been disqualified from educating on the grounds of grave professional misconduct or within a period of six months, immediately preceding the date of his application, he has been refused registration as an educator or his registration as an educator has been cancelled. Section 18(4) also allows the Director-General to refuse registration of educators on a number of grounds, including mental disturbances, conviction of criminal offences or making false statements.

2.3.3.2 General legislation

Educators in Ghana need to be aware of the provisions of the Labour Act 651 of 2003 (GH, 2003), which regulates employment in Ghana, as well as the Children's Act 560 of 1998 (GH, 1998), containing provisions with regard to children, and therefore said Act is relevant to the learners in the care of the educators.

2.3.3.2.1 Labour Act, 651 of 2003

The introductory paragraph of the Ghanaian Labour Act (GH, 2003) states that it is an Act to amend and consolidate the laws relating to labour, employers, trade unions and industrial relations; to establish a National Labour Commission and to provide for matters related to these. Section 1 of the Ghanaian Labour Act (GH, 2003) states that this Act applies to all workers and to all employers except the Armed Forces, the Police Service, the Prison Service and the Security Service and Intelligence Agencies specified under the Security and Intelligence Agencies Act 526 of 1996.

According to the Ghanaian Labour Act, the rights of the employer, subject to the Act and any other enactment, include among others:

- the right to employ a worker, discipline, transfer, promote and terminate the employment of the worker;
- the right to formulate policies, execute plans and programmes to set targets; and
- the right to modify, extend or cease operations (GH, 2003; section 8).

According to section 9 of the Ghanaian Labour Act (GH, 2003), the duties of the employer include the duty to:

- provide work and the appropriate resources necessary;
- pay the agreed remuneration as agreed upon in the contract of employment or collective agreement or by custom, without any deduction except deduction permitted by law or agreed between the employer and the worker;
- take all measures to ensure the safety of the employee in creating an environment free of risk of personal injury or damage to the health of the employee, during the course of employment or while lawfully on the employer's premises;
- develop the human resources by way of training and retaining of the workers;
- provide and ensure the operation of an adequate procedure for discipline of the workers;
- furnish the workers with a copy of the worker's contract of employment;
- keep open the channels of communication with the workers; and
- protect the interests of the workers.

Educators at public schools of Ghana are in the employment of the State and the rights and duties mentioned in section (8) and (9) respectively are also applicable to the government of Ghana with regards to employment of educators. At the same time, the Ghanaian Labour Act in section (10) (GH, 2003) specifies that the rights of a worker include:

- working under satisfactory, safe and healthy conditions;
- receiving equal pay for equal work without distinction of any kind;
- having rest, leisure and reasonable limitation of working hours and a period of holidays with pay as well as remuneration for public holidays;
- forming or joining a trade union;
- being trained and retained for the development of his/her skills; and
- receiving information relevant to his/her work.

Section 11 of the Ghanaian Labour Act (GH, 2003) states that, without prejudice to the provisions of this Act, the duties of a worker in any contract of employment or collective agreement include the duty to:

- work conscientiously in the lawfully chosen occupation;
- report to work regularly and punctually;
- enhance productivity;
- exercise due care in the execution of assigned work;
- obey lawful instructions regarding the organization and execution of his/her work;
- take all reasonable care for the safety and health of fellow workers;
- protect the interest of the employer; and

- take proper care of the property of the employer entrusted to the worker or under immediate control of the worker.

According to the Ghanaian Labour Act, the employment of any person, for a period of six months or more, shall be secured by a written contract of employment and such contract shall express in clear terms the rights and obligations of the parties (GH, 2003; section 12). Section 13 of the Ghanaian Labour Act (GH, 2003) requires of the employer to furnish the employee with a written statement of the particulars of the contract of employment, as listed in schedule 1 of said Act, and must be signed by both parties. These particulars are the names of the parties, date of first appointment, job title, pay (including overtime rates), hours of work, holidays, sickness and work-related injury entitlements, social security or pension scheme, termination notice and disciplinary rules/ grievances (GH, 2003; schedule 1).

Section 14 of the Ghanaian Labour Act (GH, 2003) ensures that no employee shall be discriminated against unfairly, nor shall any employee's right to freedom of association be infringed, in that an employer may not require of an employee to form, join nor participate in activities of a trade union, neither prohibit the employee to join, or participate in the activities of a trade union. According to the said section, no person may be refused employment due to membership of a trade union, nor promise benefits or advantages for not participating in the activities of a particular trade union (GH, 2003; section 14).

The Ghanaian Labour Act (GH, 2003) also contains provisions regarding the grounds for termination of employment, types of contract of employment, notice of termination of employment and the remuneration on termination of employment. Section 19 of the Ghanaian Labour Act (GH, 2003) states that any of the provisions regarding the afore-mentioned are not applicable where, in a collective agreement, there are express provisions with respect to the terms and conditions of termination of the contract of employment which are more beneficial to the worker.

Sections 20 – 32 of the Ghanaian Labour Act (GH, 2003) cover aspects of paid leave and include leave entitlement which should not be less than 15

working days with full pay in any calendar year of continuous service. According to section 22 of the Ghanaian Labour Act (GH, 2003), public holidays and absence from duty due to sickness certified by a medical practitioner, and pregnancy and confinement, shall not affect the annual leave entitlement of a worker.

Sections 33 – 39 of the Ghanaian Labour Act (GH, 2003) cover hours of work. According to the provisions of the Act, a worker's hours of work should not exceed eight hours a day or forty hours a week, except in cases expressly provided for in said Act (GH, 2003; section 33). Provision is made for the payment of overtime (GH, 2003; section 35), as well as unpaid overtime which may be required of the worker in certain exceptional circumstances (GH, 2003; section 38). Sections 40 – 44 of the Ghanaian Labour Act (GH, 2003) deal with rest periods and include aspects such as break time during normal working hours, daily rest periods, weekly rest periods and the exclusion of public holidays from the specified rest periods.

The Ghanaian Constitution and the Ghanaian Labour Act prohibit discrimination on the basis of race, gender, ethnic origin, creed, colour, religion, social or economical status in sections 17(2) and 14 respectively (GH, 1992; GH, 2003). Furthermore the Ghanaian Labour Act (GH, 2003) provides specific protection to the rights of workers with disabilities in part V, while part VI of said Act ensures the protection of working women. According to section 46 of the Ghanaian Labour Act (GH, 2003) special incentives shall be provided to an employer who employs disabled persons, while disabled persons engaged in a business or enterprise shall also receive special incentives. Sections 55 – 57 of the Ghanaian Labour Act (GH, 2003) ensure the protection of pregnant women, as well as the right to maternity leave. The Ghanaian Labour Act specifies that every worker shall receive equal pay for equal work without distinction of any kind (GH, 2003; section 68).

According to the International Labour Organization (ILO) (2006), signs of gender discrimination can be found in Ghana, with the situation at its worst in the rural areas. In the trade union movement, there is not a single woman among the upper management of the different organizations, women have

lower average incomes and a lack of opportunity for career advancement, and signs of discrimination are also present in collective bargaining agreements, especially medical insurance and other benefits (ILO, 2006). The organization sites, as an example, the fact that until recently in most collective agreements between unions and firms, the wives of male employees could benefit from medical insurance, but husbands of female employees were not covered (ILO, 2006).

Neither the Ghanaian Constitution (GH, 1992) nor the Ghanaian Labour Act (GH, 2003) prohibits the employment of children, although both these Acts prohibit the engagement of a young person in any type of employment likely to expose the person to physical or moral hazard (GH, 1992; section 28(2), GH, 2003; section 58(1)). In the Ghanaian Labour Act, a young person is defined as a person of or above 18 years of age, but below 21 years (GH, 2003; section 175). Even though the definition of a young person does seem to exclude children, Banful (2006) reports on the immense problem of the use of child labour in Ghana (*cf.* 2.3.2.7).

The Ghanaian Labour Act (GH, 2003) covers fair and unfair termination of employment in sections 62 – 66. Grounds for fair termination of employment are incompetence or lack of qualification in relation to the work, the proven misconduct of a worker and redundancy (GH, 2003; section 62). Pay issues are covered by sections 67 – 72 of the Ghanaian Labour Act (GH, 2003). Section 70 of said Act contains specifications regarding permitted deductions, while section 69 of said Act covers prohibited deductions (GH, 2003).

Part XI of the Ghanaian Labour Act (GH, 2003) covers all aspects regarding trade unions and employers' organizations. Section 79 (2) of said Act (GH, 2003) prohibits certain types of workers from the right to form trade unions, but educators are not among these types. The Ghana National Association of Teachers (GNAT) is considered a strong labour organization in Ghana (ILO, 2006). Section 127 of the Ghanaian Labour Act (GH, 2003) deals with anti-union discrimination and intimidation and states that any person guilty of such intimidation or discrimination is guilty of unfair labour practice. Section 128 of the Ghanaian Labour Act (GH, 2003) prohibits the interference of an employer

in union affairs and such interference will be considered as unfair labour practice.

2.3.3.2.2 Children's Act 560 of 1998

In the introductory paragraph of the Children's Act (GH, 1998), the Act is seen as one to reform and consolidate the law relating to children, to provide for the rights of the child, his/her maintenance and adoption, to regulate child labour, apprenticeship and ancillary matters concerning children generally, and to provide for related matters.

According to section 1 of the Children's Act (GH, 1998), a child is defined for the purposes of the Act as a person below the age of eighteen years. Section 2 states that the best interest of the child shall be paramount in any matter concerning the child, and in section 2(2) it is further stated that the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child (GH, 1998). The above-mentioned section is relevant to the educator, as the latter as a person should at all times act with the best interest of the learner as primary consideration.

The Children's Act prohibits discrimination against children on the same grounds as the Ghanaian Constitution (GH, 1992), but adds the grounds of age, health status, age, custom, rural or urban background, birth or other status, or because the child is a refugee (GH, 1998; section 3). According to section 8 of the Children's Act (GH, 1998), no person shall deprive a child of access to education, immunization, adequate diet, clothing, shelter, medical attention or any other thing required for his/her development, whereas section 8(2) also prohibits the denial of medical treatment to a child by reason of religious or other beliefs. Section 10 of the Children's Act (GH, 1998) ensures the dignified treatment of disabled children, as well as the right to special care, education and training wherever possible to develop his/her maximum potential and self-reliance (*cf.* 2.3.2.2).

The Children's Act ensures the child's right to an opinion and states that no person shall deprive a child capable of forming views the right to express an

opinion, to be listened to and to participate in decisions which effect the well-being of the child (GH, 1998, section 11). However, it is also states that the opinion of the child should be given due weight according to the age and maturity of the child (GH, 1998, section 11).

Section 13 of the Children's Act protects the child from torture and degrading treatment in that it states that no person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment, including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child (GH, 1998). When one considers the aforementioned prohibition, together with section 28(3) of the Ghanaian Constitution (GH, 1992) which states that a child shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment, it is unclear why the code of discipline for Basic Education Schools in the head educators' handbook allows for the principal of a school to administer corporal punishment, or to supervise the administration of corporal punishment delegated by the principal.

In the Children's Act it is further stipulated that no correction of a child is justifiable if it is unreasonable in kind or in degree according to the age, physical and mental condition of the child, and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction (GH, 1998; section 13(2)). The prohibitions in section 13 are of particular importance for educators who in their dealings with their learners, have to keep the stipulations of the Act in mind in their choice of corrective actions.

According to section 17 of the Children's Act (GH, 1998), it is the duty of a person, including and especially educators, to report any information they have on child abuse or a child in need of care and protection.

Part V of the Children's Act (GH, 1998) covers employment of children. Child labour is not prohibited in Ghana. According to the Children's Act, a child may not be engaged in exploitative labour (GH, 1992; section 87), neither may a child be engaged in night work, which constitutes work between the hours of

eight o'clock in the evening and six o'clock in the morning (GH, 1998; section 88). According to section 89 of the Children's Act (GH, 1998), the minimum age of child employment shall be fifteen years, whereas section 90 of said Act stipulates that a child of thirteen years may be engaged in light work, which constitutes work which is not likely to be harmful to the health and development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work. According to section 98 of the Children's Act (GH, 1998), a child may commence an apprenticeship with a craftsman at the age of fifteen or after the completion of basic education.

2.4 SUMMARY

Education in Africa is a problematic issue. Due to Africa's history, the problems inherent to education are high illiteracy rates, low enrolment rates, disparities in gender due to the culture of the African people, high dropout rates and disparities with regard to available education between rural and urban communities. This chapter takes a closer look at the fundamental human rights of educators, as well as the legislation regulating the employment of educators in two African countries, namely South Africa and Ghana.

South Africa has a history of discrimination, leading to drastic changes experienced in general, but also specifically with regard to education, in the last decade. Currently, educators in South Africa experience high levels of work-related stress due to big educator-learner ratios, undisciplined behaviour of learners and many changes made to the school-curricula and system. Ghana, on the other hand, experiences problems due to great disparities that exist between urban and rural areas, gender inequality and additional costs, making education unaffordable to the poor.

It has become apparent that many different sections of the SA Constitution directly influence education and the different role players in the education environment. Section 28 of the Constitution guarantees certain rights of children and as a child spends a great portion of his/her day at school, this

has a direct bearing on education and requires of all educators to be aware of these rights. Section 29 entitles everyone to a basic education, placing a determining factor on education since this influences aspects such the provision of education to every citizen. It also requires the awareness of the educator who must be wary of using disciplinary measures, which withhold the learners' right to education. There are a number of other sections of the Constitution which determine education on different levels and which play a role in the provision of education on a daily basis.

It has also become apparent from the discussion that documentation exists regarding the perceptions of educators that learners seem to be overaware of their rights and less aware of their duties towards others.

In South Africa, the SA Constitution is the supreme law of the country and all other legislation must comply with it. There are many different forms of education legislation and general legislation, which all comply with the SA Constitution, influencing and determining education. Educators need to be aware of the different statutes implicating their employment and role as educators. These statutes are there to protect both learners and educators in a number of situations which may occur in an educational situation.

Not only original legislation has an influence on education and educators, but also subordinate legislation. Subordinate legislation such as proclamations and regulations has a direct influence in determining education as it is subordinate to other legislation and can therefore be seen as just as binding.

The Ghanaian Constitution protects the rights of all Ghanaians and is the supreme law of the country. Section 25 of the Ghanaian Constitution guarantees free, basic education to all Ghanaians. However, it has become apparent that additional costs make education too expensive for the poorer communities and therefore great gender disparities and high dropout rates are of the problems faced by educators in Ghana.

From the preceding discussion it has become apparent that although the Ghanaian Constitution prohibits gender discrimination, in reality female educators experience discrimination on the grounds of gender, not only from

male colleagues, but also from male learners. Furthermore girl-child education is problematic due to the African traditional viewpoints held by many of the inhabitants of Ghana.

In Ghana there are a number of forms of education and general legislation educators need to be aware of. These statutes influence and determine education and directly or indirectly influence the employment of educators, as well as their role in education.

From the preceding discussion it has become evident that not only do educators have the same fundamental human rights as learners, but they are also protected by a great many different statutes and other forms of subordinate legislation.

In the following chapter, the perception regarding the fundamental human rights of educators in Switzerland will be studied, in order to provide a European view on the recognition of educator's fundamental human rights.

CHAPTER THREE

THE FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS IN SWITZERLAND: A EUROPEAN PERSPECTIVE

3.1 INTRODUCTION

In the previous chapter, the education systems of two African countries, with specific reference to the fundamental human rights of educators, were discussed. Unlike Africa, Western Europe is not associated with poverty, illiteracy and discrimination, but rather with affluence, prosperity and high standards of living. When it comes to education, the focus of Africa is to ensure basic education for all, whereas in Europe, education and training are playing a role of steadily growing importance in the lives of individuals, where young people have realized that they are not *trained for life* (Brunschwig Graf, 1997:542) once they start working. The difference in focus on education between Africa and Europe really becomes clear when one considers that Europe has the highest enrolment rate for the upper secondary level of schools, while Africa has the lowest (UNESCO, 2005:8).

When one considers the fact that, according to 2004 statistics, Switzerland has a literacy rate of 97.7%, that 97% of all learners complete a full course of primary school, that 94 % of boys and 94% of girls are enrolled at primary school, whereas 80% of girls and 86% of boys are enrolled at secondary school (UNESCO, 2006a), it becomes clear that the problems faced, regarding education by the European communities, are very unlike the problems faced by the African communities (*cf.* 2.1). However, the question now arises – to what extent does this change the position of the educators at the European schools?

Switzerland is a country associated with neutrality, fair government and standing at the forefront of innovation. Switzerland is a federation consisting of 26 cantons, each self-governed to a certain extent. The political structure of Switzerland requires all changes made to legislation on federal or cantonal

level to be voted upon in a referendum. This system has, for example, led to the fact that women have only been allowed to vote at federal level since 1971 (PRS, 2006b).

Two of the biggest problems currently in the Swiss education system is the degree of self-governance of cantons and the differences between cantons with regard to education.

3.2 SWITZERLAND

The Swiss Federal Constitution⁵ 101 of 1999 (CH, 1999; hereafter referred to as the Swiss Constitution) lays down the right to education, as well as the obligation to attend, but the cantons in Switzerland are responsible for schooling, leading to 26 differing education systems in Switzerland (Whitburn, 2003:3). Currently, cantons are permitted to take independent decisions when it comes to the structure of their educational system, syllabi and the dates of their school holidays (Swiss Broadcasting Cooperation (SBC), 2006).

Switzerland has no natural resources. This has led to the fact that education and knowledge have become very important resources, leading to Switzerland's claiming to have one of the world's best education systems. However, in the PISA (Programme for International Student Assessment) 2000 report by the Organization for Economic Co-operation and Development (OECD), Switzerland has been overtaken by Sweden, Austria, Japan, Canada, Great Britain and Finland (Moser, 2001: 12). Moreover, the PISA 2003 report indicates improvement in the three main fields measured, namely Mathematics, Natural Science and reading comprehension (Weber, 2004:7).

Interestingly enough, the Swiss Constitution (CH, 1999) guarantees the classic rights of freedom and equality, but differs in the treatment of school matters. For instance, the Swiss Constitution (CH, 1999) requires non-denominational schools, with compulsory, free basic education. Switzerland

⁵ The Swiss Federal Constitution was accepted by the Swiss nation on 18 April 1999 and was enacted on 1 January 2000.

allows for a great degree of local self-administration in the school system (Richter, 1990:119). The Conference of Cantonal Directors of Public Education (EDK) ensures contact and harmony between the cantons. However, this is all about to change after a clear majority vote by the Swiss nation on 21 May 2006 for an amendment to the Swiss Constitution, changing the degree of self-administration and the role of the Federation in education decision-making (Schildknecht, 2006a:8; Weber, 2006a:4).

There are a number of problems currently experienced in the Swiss education system. Learner literacy has become a hot political topic in Switzerland after the publication of a study by the OECD in which it was reported that Swiss standards have fallen well behind those of other developed countries. Other issues regard language and educator proficiency of High German (in the German-speaking cantons), as well as the issue of when learners should be introduced to foreign languages. Other problematic issues are the difficulty to transfer between different cantonal systems and the fact that the school day is not always compatible with the working hours of working parents.

3.2.1 Background

Switzerland is a confederation comprised of 26 cantons. A confederation is a union of states with some political power belonging to a central authority (Soanes & Hawker, 2005:203). Thus Switzerland is a federal state, recognising local self-administration in the school system (Richter, 1990:119).

Section 3 of the Swiss Constitution (CH, 1999) states that the cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution. They exercise all rights which are not delegated to the Confederation. According to Richter (1990:119), the Federal Constitution controls the separation of powers between the federal and state governments with regard to legislation, the duties of administrative authorities and the courts, and the legal status of local communities.

The Swiss Constitution allows the different cantons to participate in decision-making at federal level, in particular in formulating federal legislation, but at the same time it is expected of the cantons to implement federal law in

conformity with the Swiss Constitution and with statutory law (CH, 1999; section 45 & 46). According to Richter (1990:120), the position of the federal government within the school system is weak in Switzerland, as the Swiss Constitution limits the federal government to legislating only vocational training and sport instruction. The co-ordination of school policies at state level is exclusively reserved for the cantons, and the federal government is deprived of any sort of influence over this (Richter, 1990:120).

Although local communities have the right to self-administration, constitutional law does not leave the administration of schools solely in the hands of the *communes* (local communities) (Richter, 1990:120). In most cantons, local influence is generally limited to the extraneous concerns of the primary schools, whereas the secondary school system is predominantly reserved for the cantons (Richter, 1990:123). With the acceptance of the amendment to the Swiss Constitution, the role of the federation in education has changed since May 2006 with specific reference to sections 61 and 62.

On 21 May 2006, the Swiss voted for an amendment to sections 61 and 62 of the Swiss Constitution pertaining to the education system with the aim to create a unified education system for the whole country across all levels of education, but with minimal federal intervention (Schildknecht, 2006a:9). The most important changes for the *Mittel*-(Upper secondary schools) and *Volksschule* (Elementary schools) are:

- The constitutional embodiment of quality and transparency as directional aims for the regulation of the Swiss educational system
- The explicit duty to ensure coordination and cooperation among the cantons, as well as between canton and federation as constitutional principle for the entire education sphere
- The constitutional duty to regulate certain aspects of the education system, such as the duration of compulsory schooling, the starting age of schooling, school duty, the aims of the education levels, the transition between levels, and the recognition of the different cantons school leaving certifications (Schildknecht, 2006a:8)

Thus the amendment firstly enables the Cantonal Ministers of Education to set common goals and to check whether they have been achieved. Secondly, it makes it easier for families to move from one canton to another, without their children having to adapt to a new system. Thirdly, it ensures improved cooperation between the cantons themselves and the cantons and the federal authorities in the whole field of education (Schildknecht, 2006a:9).

In Switzerland, attending the *Volkschule* is mandatory for all Swiss children attending either a public or a private school, starting at the age of seven years and lasting for at least eight years, but mostly for nine years (Ambühler, 2006). Interestingly enough, some schools offer an additional year for learners who have not yet found a job, have not yet decided what to do after school or have not yet reached the age to start what they would like to do (Ambühler, 2006). These learners may then start an apprenticeship lasting for one year.

The mandatory *Volkschule* can be divided into *Primarschule* and *Oberstufenschule* (Ambühler, 2006). As stated previously, the time spent in the different levels of education may differ between cantons. In the canton of Zurich, *Primarschule* lasts for six years and *Oberstufenschule* lasts for three years (Ambühler, 2006). While in *Primarschule*, learners usually only have one educator for all the subjects, in the *Oberstufenschule* there are at least two educators for one class sharing the subjects. However, there may be some educators who specialize in subjects like gymnastics (physical training), needlework and cooking (Ambühler, 2006). According to the Schulgesetz 401.000 vom 1891 (AG, 1981; hereafter referred to as Aargau Schulgesetz), learners in Aargau start *Volkschule* at the age of six (AG, 1981; section 7) and *Primarschule* lasts for five years while *Oberstufenschule* lasts for four years (AG, 1981; section 11). It is differences such as these that the different cantons will have to address to make the necessary changes in order to harmonize the Swiss education system.

Section 35 of the Swiss Constitution (CH, 1999) ensures that fundamental rights are implemented throughout the entire legal system. Moreover, anybody exercising a function for the state must respect other people's fundamental rights and contribute to their implementation. According to section 35(3) of the

Swiss Constitution (CH, 1999), authorities shall ensure, where applicable, that fundamental rights are also respected in relations among private parties.

3.2.2 Fundamental human rights bearing directly on educators

The same fundamental human rights discussed in relation to educators in the aforementioned countries (*cf.* 2.2.2 and 2.3.2) will be used regarding educators in Switzerland. These rights are:

- Equality
- Human dignity
- Freedom and security of the person
- Privacy
- Freedom of religion, belief and opinion
- Freedom of expression
- Labour relations
- Rights of children
- Education
- Just administrative action
- Limitation of rights

With regard to Switzerland, particular attention will also be paid to the right to freedom of language.

3.2.2.1 Education

Section 19 of the Swiss Constitution states that the right to a sufficient and free basic education is guaranteed, while section 20 guarantees the freedom of education and of scientific research (CH, 1999). Every child must at least attend elementary school, but various schools are provided at different levels

(Ambühler, 2006). As mentioned previously, the age at which learners start school in Switzerland differs from canton to canton, but learners mostly start at approximately six to seven years of age. Currently there are plans to change the traditional structure of the Swiss education system in the cantons of eastern Switzerland, where parents have an option of sending their children to kindergarten for a year or two before they start primary school at the age of seven, (Foulkes, 2002b). In the canton of Zurich, a parliamentary vote was passed in June 2002 in favour of abolishing the current kindergarten system which is voluntary, replacing it with a three year "reception" class in which learners will begin to learn to read and write (Foulkes, 2002b). One of the harmonizing concepts, which has become possible after acceptance by vote of the Constitutional amendment regarding education, is compulsory kindergarten schooling from the age of four (Weber, 2006a:4).

Section 41(1)(f) of the Swiss Constitution states that the Confederation and the cantons shall undertake to ensure that, in addition to personal responsibility and private initiatives, children and young people, together with people of working age, would be able to benefit from initial and continuing education according to their aptitudes (CH, 1999). The right to continuing education is guaranteed by the cantons and participation in such activities is generally considered a duty of educators. Thus some cantons make professional development activities mandatory for educators, for example 5 days a year in canton Schwyz and 4 days a year in canton Vaud (Wagner *et al.*, 2004:16). The content of the professional development activities is not defined at school laws. The choice of these activities is generally left to educators and choice of professional developmental activities is generally not made within a context of school development (Wagner *et al.*, 2004:16). According to Schlatter (2005:13) educators in Switzerland consider the right to continuing education an honour rather than a duty.

Professional development options for Swiss educators are numerous and varied and they benefit from a wide range of providers, the most important of these being the cantonal continuing education institutions, the Swiss Office for In-Service Training of Upper-Secondary Teachers and the Swiss Institute for

the Pedagogy of Vocational Training, as well as private providers, professional organizations and teacher unions (Wagner, *et al.*, 2004:15). Two cantons, namely Ticino and Berne offer very attractive conditions for training leave. Berne allows for 2-6 months of individual paid training leave, given that it is considered that a broadening of skills in a complementary professional context could well be beneficial to teaching (Müller Kucera, 2003b:51).

According to section 62 of the Swiss Constitution, education is a cantonal responsibility, and the cantons shall ensure that sufficient basic education is open to all children (CH, 1999), although the amendments to the Constitution ensure a more regulating and larger role of the federation on educational matters (CH, 2005). The cantons are responsible for the education system and therefore various significant differences between cantons exist, such as the names of schools, the subjects, the starting age of the learners and the duration a learner spends in the different levels of the system (Ambühler, 2006). One such an example with significant implication is the fact that some cantons start to educate the first foreign language in the fourth grade, while others start in the seventh grade (Ambühler, 2006). Such differences make moving between cantons a nightmare for both learners and educators.

The amendments to the Swiss Constitution, proposed in 2005 and voted upon in May 2006, greatly change this, as the harmonizing of the education system envisaged by the amendments will eradicate intercantion differences such as different school starting- ages, different policies regarding the introduction of foreign languages and coordination of subjects and school levels. According to the amendment, section 62 (4) of the Swiss Constitution (CH, 2005) states that should there be no harmonizing of the essence of the school system relating to school starting-age and school duty, the duration and aim of the educational levels, the transition between levels, as well as the recognition of completion of levels, the federation would decree the regulations.

Education, provided by the cantons, shall be compulsory, subject to state management or supervision, and free at state schools (CH, 1999). Compulsory schooling (primary and lower-secondary level) is completely free of charge for all learners, and at upper-secondary level a nominal tuition fee is

charged in some cases, for example in canton Aargau the learners who do not live within the canton have to pay a school fee of Fr. 1000 per semester and school materials have to be paid for, according to the Aargau Schulgesetz (AG, 1997; section 2; AG, 1981; section 3; Staufer, 2003:13), although charges may only cover costs (AG, 1981; section 6). Section 2 of the Aargau Schulgesetz (AG, 1997) further stipulates that consideration is given in a case of serious concern, especially pertaining to social difficulties, where the Department of Education, Culture and Sport can exempt or partially exempt individual learners from paying school fees. According to section 16 of the Aargau Schulgesetz (AG, 1997), the *Gemeinde* (district) provides learners with the necessary stationery and learning material as prescribed by the *Regierungsrat* (Administrative council) of the canton.

In Switzerland most learners attend public schools. There is no free choice of school in Switzerland, parents are obliged to send their children to schools within the school district (Wagner *et al.*, 2004:10). Should parents decide to send a learner to a school in another *Gemeinde* or canton without significant reasons, they would be required to pay the school fees, although only costs may be recovered (AG, 1981; section 6). Private schools are expensive and people tend to think that learners at private schools did not succeed at the public school (Ambühler, 2006).

To date, there has been very little co-ordination between cantons, to such an extent that even the beginning of the school year and the setting of school holidays are not regulated in common (Richter, 1990:121). Yet the Swiss Constitution specifies in section 62(2) that the school year shall begin between mid-August and mid-September (CH, 1999). The amendments to the Swiss Constitution now amends section 62 to include subsection 5 which states that the federation regulates the beginning of the school year. According to section 63, the Confederation legislates professional education, thus it operates technical universities, and may create operate, or support other universities and institutions of higher learning (CH, 1999).

According to section 66 of the Swiss Constitution (CH, 1999), the Confederation may grant subsidies to the Cantons to cover the expenses they

may incur in awarding scholarships and other educational grants. Also, while respecting cantonal autonomy in educational matters, the Confederation may complement cantonal measures and take its own measures to encourage education.

Lastly, according to section 68 of the Swiss Constitution, it is the duty of the Confederation to promote sport, particularly sport education, operate a sport school and legislate youth sport, as well as make sport education at schools compulsory (CH, 1999).

3.2.2.2 Equality

Section 8(1) of the Swiss Constitution proclaims that everyone is equal before the law. Furthermore, section 8(2) states that no one should be discriminated against simply because of their origin, race, gender, age, language, social position, way of life, religious, philosophical or political convictions, or because of a physical, mental or psychological disorder (CH, 1999).

However, Switzerland has a differentiated secondary school system, with branches that have different curricula, varying lengths of study and assorted certification (Richter, 1990:124). Greber (2002) reports that during a two-day conference held in Aargau, educators, education experts and education bureaucrats indicated that Switzerland should abandon its policy of separating children according to their academic ability. Currently, learners in Switzerland are divided between different school types at a very early age according to ability, and educators feel that it is very difficult to correct those decisions later on (Greber, 2002). According to Imdorf (2003), learners are allocated to tracks according to achievement after six years of primary school, and the most appropriate type of school/stream for each learner is agreed between the primary class educator and the parents and the allocation is by no means set, as learners are able to move between tracks according to their performance (Whitburn, 2003: 7).

Foulkes (2002a) reports that, according to the OECD report, huge gaps were revealed in the education standards between Swiss learners from higher and lower social backgrounds, as well as between learners who spoke a Swiss

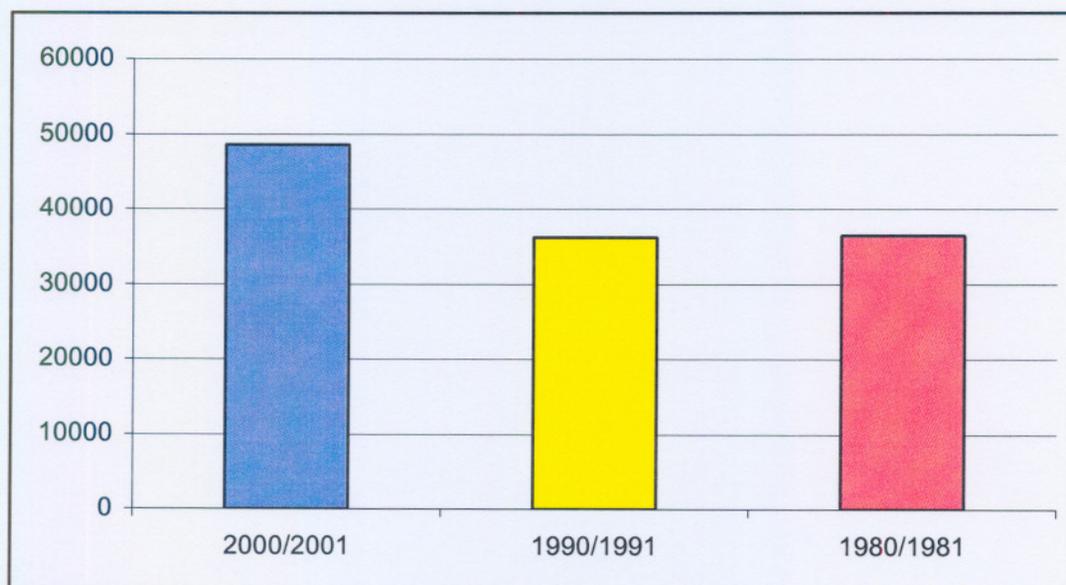
national language as their mother tongue and those who did not. Imdorf (2003) supports these findings and indicates that an analysis of data of the Swiss Federal Statistics Office shows that depending on gender and ethnicity, learners profit differently and to an increasing degree from the institutionalized dispersion of school success. According to statistics in 2000, 35 % of the boys compared to 28% of the girls attended classes with basic demands in the ninth grade, and 27% of Swiss learners compared to 55% of non-Swiss learners attend classes with basic demands in the ninth grade (Imdorf, 2003). The PISA 2003 results clearly indicate that results of female learners in reading ability as well as reading comprehension, is significantly better than that of the male learners, although the male learners performed better in Mathematics (Fischer, 2004b: 10). This result, indicating the difference in reading skills, can be an indication of why a bigger proportion of boys than girls are in basic demand classes, if one considers the important role of reading proficiency in all learning.

The PISA 2003 test results showed that the socio-economic, as well as the cultural situation of parents, has a great influence on the scholastic performance of learners, and therefore the learners who spoke the test language at home, were born in Switzerland and/or whose parents were well educated, performed much better, especially with regard to reading comprehension (Fischer, 2004b:10). The aforementioned can be seen as indicative of the higher proportion of non-Swiss learners in the basic demand classes. According to educators the problem lies with a lack of support. Educators need more support to deal with these foreign learners, as language is not the only issue, but also their emotional state, as many of them originate from countries at war (Foulkes, 2002a) and these learners have been exposed to horrific events.

The school system of Switzerland furthermore calls for handicapped learners to be separated from "normal" children and to be instructed in special schools or classes, although it is currently considered progressive to keep handicapped learners at the ordinary schools (Richter, 1990:125). However, this does not seem to happen in practice.

Staufer (2003:10) reports that more and more special-purpose classes are being set up for children and adolescents with behavioural problems and for those with learning impediments. According to Wagner *et al.* (2004:10) in 2000/01, approximately 6% of learners in compulsory education attended special-purpose classes. Learners in these classes were learners with learning, performance or behavioural difficulties, but efforts exist to integrate these learners in the regular classes, using additional forms of care (Wagner *et al.*, 2004:10). Figure 3.1 provides an indication of the number of special-purpose classes in three school years, spaced ten years apart, namely 1980/1981, 1990/91 and 2000/01.

Figure 3.1: Historical perspective: Special-purpose classes



(Source: Staufer, 2003:10)

When the figures in Figure 2.3 are studied, it becomes apparent that although there was a very slight decline in the number of special-purpose classes from 1980/1981 to 1990/91, there has been a rise of more than 12000 special-purpose classes from 1990/1991 to 2000/2001. Thus, integration of learners with difficulties is still not taking place. Despite this fact, Whitburn (2003) maintains that an atmosphere of *real inclusion* exists in the Swiss school system due to a number of aspects among which are:

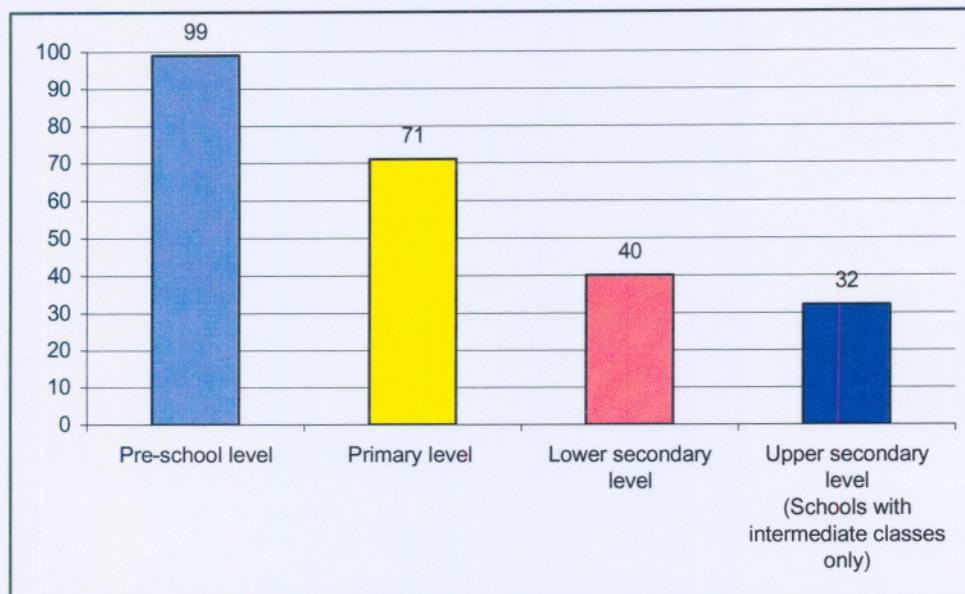
- Flexibility in the system allows learners to change schools, age groups or to repeat a year according to their needs.
- Educators, parents and learners work closely together to maximize a learner's chance of success.
- Less importance is attached to academic forms of schooling.
- Generalist educators are used for less academic secondary learners.

Section 8(3) of the Swiss Constitution states that men and women have equal rights in law and that the law shall provide for legal and material equality, particularly in the family, during education and in the workplace, as well as the fact that men and women have the right to equal pay for work of equal value (CH, 1999). According to the SBC (2003b), Switzerland lags behind other countries when it comes to offering equal education to men and women. The latest OECD "Education Study at a Glance" report indicated that Swiss men enjoy a better school education than women do. The OECD found that twice as many men remain at school longer than the compulsory nine years, and the discrepancy between male and female students is not as big in any of the other OECD countries. In Switzerland, 20% more men have a university degree than women (SBC, 2003b). In 2004, 80% of the women with a university degree were employed, while 94% of the men with a degree were employed, according to the OECD (SBC, 2003b).

Even though there has been an increase in the proportion of females employed as educators, the distribution of female educators differs greatly between the different school levels. It is clear that the higher the school level, the lower the percentage of female educators, but that the educating workforce is considerably feminized in primary education.

Figure 3.2 gives a clear indication of the difference in the distribution of female educators between the different school levels. At the pre-school level, 99% of all educators are female; at primary school level this drops to 71%, at lower-secondary level and upper-secondary level the female proportion of the educators drop to 40% and 32% respectively.

Figure 3.2: Educators in 1998/99: Percentage female educators per school level



(Source: Stauffer, 2003:20)

A possible explanation for the low number of female educators at the higher school levels is the fact that more Swiss men have university degrees, as mentioned above. Educators teaching at the lower-secondary level and upper-secondary level go through a form of combined subject-matter training. Part of the training takes place at a conventional university or a university of applied sciences, while the pedagogical and didactic training takes place at one of the educator-training institutions. The educators at the lower school levels are only trained at the educator-training institutions (Müller Kucera, 2003a:27). Another possible reason for the difference in distribution is the possibility of having teams of two educating primary classes allowing female educators to work shorter hours (Müller Kucera, 2003a:27). Regarding the characteristics of student educators in initial educator education programmes, there has been a decrease in the share of male student educators, from 1992/93 to 2000/01, namely from 29% to 22% in primary education and from 57% to 44% in lower secondary education (Wagner, *et al.*, 2004:18).

According to Wolter and Denzler (2003:23), numbers of aspirant educators have steadily increased since the 1980s and since 2000 the distribution of male and female enrolment in education programmes is equal. As educators

in the higher grades require better education, it was the lower grades that first came into contact with the phenomena of feminization of the profession. However, according to Fischer (2003:16), male educators' quotas in the *Volkschule* are gradually decreasing and in many cantons lie beneath 10% already.

The feminization of the education profession has become problematic, to such an extent that the LCH (Dachverband Schweizer Lehrerinnen und Lehrer) with the support of the EDK are considering a project with the goal of gender equalization of the education profession (Fischer, 2003:16). Moser, the vice president of the Bern union LEBE, Müller, the president of the *Primarlehrerkonferenz*, and Strittmatter, LCH leader, indicate that although the phenomenon of the unequal gender distribution of the education profession is troublesome, a differentiation in admission requirements for entry into education training programmes may lead to loss of image for the profession (Fischer, 2003:16).

According to Wolter and Denzler (2003: 23), it is important to analyse the economic consequences of a certain career or training in terms of gender. In an analysis of the economic consequences of a career as educator, Wolter and Denzler (2003:23) found that a career in education provides better financial prospects to females than to males, when compared with other careers with similar prerequisites regarding training. Female educators can be assured that training as an educator ensures between 17% and 26% higher income (Denzler, 2003:23). At the same time, male educators find themselves entering a career in education at a relatively high entry salary, but as time passes, they find themselves in a financially weaker position than men in other careers (Wolter & Denzler, 2003:24).

The above-mentioned difference can be ascribed to the fact that in other careers there are major differences in salary between males and females (Wolter & Denzler, 2003:24). Presence Switzerland (PRS) (2006c) confirms the above by stating that there are still differences between men and women in the workplace. Since 1998, the salary gap between men and women in similar work has remained constant and is about 10% in the public sector

(PRS, 2006c). Wolter and Denzler (2003:24) mention three causes for this discrepancy in earnings between the genders in the private sector:

- In Switzerland there is still discrimination against women with regard to salaries, where equal work performance does not mean equal salaries
- In the discrimination against women with regard to career possibilities, higher salaries are still offered to men
- There is still discrimination against women who have to work on a more part-time basis as they have to combine career and family responsibilities.

Rossello (2006) reports on a new manual for German schools giving practical guidance on how to teach Muslim pupils and foster religious tolerance in the classroom. One of the problems experienced by educators is that some of the children of immigrant Muslim families originating from rural areas come from family structures that are usually male-dominated, and are then not accustomed to taking instructions from women, particularly young female educators who may lack confidence. It would seem that it is important for female primary school educators to establish their authority from the outset, as failure to do so, or trying to be nice, may lead to misunderstandings and the loss of the learners' respect, without the educator understanding why this is so (Rossello, 2006).

3.2.2.3 Human dignity

Section 7 of the Swiss Constitution states that human dignity ought to be respected and protected (Ch, 1999). Section 10(3) states that torture and all other forms of cruel, inhuman or degrading treatment or punishment are prohibited (CH, 1999). Corporal punishment is therefore forbidden at schools in Switzerland (Richter, 1990:133).

Educators in Switzerland seem to be increasingly suffering from burnout, reporting not only disruptive learners in the classes, but also increasing signs of aggressiveness, depression and behavioural problems among learners (Beaumont, 2002). However, a survey done in 1997 by the Swiss educators'

nationwide umbrella association showed that educators themselves are rarely the targets of severe misconduct such as harassment, verbal abuse and physical attacks (Müller Kucera, 2003c:84). It would also seem that educators having to face up to disciplinary problems are supported by their colleagues and principals, whereas the inspectors, school committees and psychological services are perceived as rarer sources of support to the educators, in difficult disciplinary situations (Müller Kucera, 2003c:84).

3.2.2.4 Freedom of expression

Freedom of opinion and of information is guaranteed, including the right to freely form, express and disseminate opinions (CH, 1999 section 16). Section 20 of the Swiss Constitution (CH, 1999) allows for the freedom of scientific research and teaching. Therefore, the Swiss Constitution guarantees university lecturers the freedom to teach according to their own conscience, but school educators do not benefit from this constitutional guarantee (Richter, 1990:134).

School laws ensure *pedagogical freedom*, but no one is entirely sure of the meaning of the term as neither the law nor the courts have defined the term yet (Richter, 1990:134). It is taken to indicate that educators are provided an amount of discretion concerning selecting models and methods of instruction within the scope of the curricula, but they are not free to ignore the directives of their superiors, as university educators may (Richter, 1990:134). This obligation is justified in terms of their responsibility for learners, attending compulsory school and the equal treatment of all learners (Richter, 1990:134).

Beaumont (2002) reports that, according to Guggenbühl, a psychologist and conflict manager at schools, part of the blame for the current increase in disruptive behaviour in classrooms can be attributed to changes in the education methods over recent years. Guggenbühl considers part of the problem the fact that the education system tries to let children express themselves increasingly and the result is that they also express the negative aspects of their personality, including aggressiveness and destructiveness (Beaumont, 2002).

3.2.2.5 Labour relations and just administrative actions

According to section 22 of the Swiss Constitution, freedom of assembly is guaranteed, and everyone has the right to organize meetings and choose whether to participate in them or not (CH, 1999).

Section 23 of the Swiss Constitution guarantees freedom of association. Furthermore everyone has the right to form associations, join them, belong to them and participate in their collective activities, but nobody shall be forced to join or belong to an association. (CH, 1999; section 23(3)). However, Switzerland requires of all civil servants, including educators, to show special political loyalty, which precludes them, among other things, from exercising functions in communist or fascist parties (Richter, 1990:134). Trade unions represent educators in Switzerland and professional organizations and the representatives of the educators' unions are systematically included in all reform initiatives (Wagner *et al.*, 2004:11). In Switzerland, approximately 100 000 educators are employed from pre-school to upper-secondary level and around two thirds of these educators are organized in trade unions.

According to section 28(1) of the Swiss Constitution, workers, employers and their organizations have the right to collective organization for the protection of their interests, to form unions and to decide whether to join them or not (CH, 1999).

Section 28(2) states that conflicts shall, as far as possible, be resolved through negotiation and mediation (CH, 1999). Switzerland is not a country known for its strikes, indicative of few labour disputes (Emch, 2003). Section 28(3) of the Swiss Constitution states that strikes and lockouts are permissible when they relate to labour relations, and when they conform with obligations to keep the 'labour peace' or to resort to conciliation (CH, 1999). In section 28(4) the Swiss Constitution (CH, 1999) allows for legislation that may prohibit certain categories of persons from striking. Educators in Switzerland are considered civil servants, and are allowed to be members of political parties and trade unions and the right to strike is, as civil servants, not available to them (Richter, 1990:134).

However, this restriction does not seem to be enforced. Emch (2003) reports on educators striking in Zurich, Bern, Aargau, Basel, as well as in French-speaking areas, to express their growing dissatisfaction with falling educational standards, while Weber (2003) reports on an educators' strike in Zürich, due to the dictatorial rule of the educational authorities of the canton. Dissatisfaction of the educators relate to such matters as the earlier introduction of English at school, as well as the proposed saving mechanisms, placing 750 education positions in danger. Educators are dissatisfied with their working conditions, claiming they are overworked and frustrated. Emch (2003) further reports that, according to a survey done in 2002, Swiss educators felt society placed too big a burden on them, requiring them to act as social workers, not as educators (*cf.* 5.2.3).

According to section 110 of the Swiss Constitution, the Confederation may legislate on the protection of workers (CH, 1999). Furthermore, the above-mentioned section states that the Confederation legislates the relationship between employers and workers, particularly the common regulation of matters concerning business or professional activity, recruitment services and extending the application of collective contracts (CH, 1999; section 110). Educator's rights of service and their remuneration are controlled not by wage contracts, but by law (Richter, 1990:134). In all the Swiss cantons educators have a statutory and practical right to co-determination, particularly in the German-speaking regions; this right includes direct participation (Staufer, 2003:13). According to Wagner *et al.* (2004:11), this right is not limited to discussion only, but also encompasses the right to participating directly as members of educational councils or other school authorities. According to Staufer (2003:13), this means that educators must be represented in the local school authorities and in cantonal education committees, as well as play a part in all educational reforms. Thus educators can present their viewpoints in the course of official consultation procedures.

According to Richter (1990:135), educators violating their employment commitments are subject to the sanctions provided under general civil-service law. Educators may be punished after a disciplinary proceeding. According to

Staufer (2003:15), the cantonal authorities have committees that decide on removing an educator from a school, and such a step may be taken for disciplinary or administrative reasons, such as underperformance. Cases are judged on their own individual merits and even if educators have been found guilty of an especially severe offence, they will not be removed from their school automatically (Staufer, 2003:15). In cases of disciplinary actions, educators themselves have the right to be heard before they are removed from their posts (Staufer, 2003:15).

3.2.2.6 Limitation of rights

Section 36 of the Swiss Constitution (CH, 1999) provides for the limitation of fundamental rights. According to section 36(1), a limitation of a fundamental right requires a legal base and major limitations must be prescribed by a law (CH, 1999). Furthermore, in section 36(2) it is stated that limitation of a fundamental right must be justified by public interest or the need to protect the fundamental rights of others. Section 36(3) also states that the limitations of fundamental rights must be proportionate to the aims envisaged, while section 36(4) establishes that the core elements of fundamental rights shall be inviolable (CH, 1999). As mentioned above, in Switzerland, civil servants, including educators, are prohibited from exercising functions in communist and fascist parties, thus restricting their political rights (Richter, 1990:134)

3.2.2.7 Freedom of language

Freedom of language is guaranteed (CH, 1999 section 18). According to section 70, the official languages of the Confederation are German, French and Italian, and Romansh shall be an official language for Confederal relations with Romansh speakers (CH, 1999). Section 70 of the Swiss Constitution (CH, 1999) further states that cantons shall decide on their official languages, but in order to preserve harmony between linguistic communities, cantons shall respect the traditional territorial distribution of languages and shall take indigenous linguistic minorities into account.

The Swiss Constitution does not refer to the right to be educated in a language of preference. The first language of the schools in the cantons will

be the same language as the official language of the canton. Since 2004, the language issue, particularly in the German-speaking cantons, has been debated heavily. Most Swiss-German people speak a dialect in their homes, but are taught in High German. One of the major points of debate is the use of the dialects at school and doubt about educators' ability to use proper High German, and the influence thereof on the literacy of the learners (Geiser, 2004, Bucher, 2005:8). Foulkes (2002a) reports on another aspect regarding the use of the Swiss German dialect used in most homes, concerning educators. According to Foulkes (2002a) educators feel that High German is in fact a foreign language to these learners, who speak one language at home and another at school. However, Swiss educators are being urged to use High German rather than dialect in all teaching, not only in certain subjects such as German and Mathematics (Bucher, 2005:8).

According to the SBC (2003a), learners in the German-speaking part of Switzerland typically use dialect in everyday conversation and when writing emails and SMS messages, but at school High German is the language of reading and writing, and it is recommended for use at schools. The SBC further reports that the dialect has gained ground since the 1980s and in the canton of Zurich, a study conducted at the end of 2002 revealed that at primary and secondary school 30-50 per cent of all teaching was conducted in dialect (SBC, 2003a). It is believed that the use of dialect is one of the reasons for the poor literacy levels reported by the OECD. The problem is considered to lie with the educators, rather than the learners, although it appears as if High German is abandoned by learners, in group activities and personal discussions (SBC, 2003a).

Another language issue is the fact that there is pressure from the cantonal authorities committee to introduce the teaching and learning of at least two foreign languages at primary school level, despite fears among some educators that learners may struggle (Helmie, 2004). The strategy of the EDK (2004) with regard to foreign language learning is that a first foreign language, being a second official language, should be introduced to learners in their third year at school, while a second foreign language, mostly English, should

be introduced in the fifth year of school. During February to May of 2006 three cantons, namely Schaffhausen, Zug and Thurgau, voted on the acceptance of the above-mentioned strategy, and in all three cantons, the strategy was accepted by the voting public (Schildknecht & Strittmatter, 2006:1; Schildknecht, 2006b:27) .

Educators are opposing the idea, especially in light of problems they have observed in the German-speaking parts, with regards to the learning of German experienced by both German-speaking learners as well as foreign language speakers (LCH, 2001; Fischer, 2004a:6; Zemp, *et al.*, 2004:9; Schildknecht & Strittmatter, 2006:1; Schildknecht, 2006b:27). Another concern stemming from the above decision is the pressure it places on the educators in the *Primarschule* with regard to preparation, as they already have an average of between four and ten subjects to teach, as well as having one third of their duties allocated to school management (Zemp, *et al.* 2004:9). In the German, parts two thirds of learners do not speak High German as a mother tongue, so they are already learning a foreign language when they start school, thus many of them would not be able to cope with another two languages (Allen, 2006).

Another point of contention is the fact that education policy for foreign language has traditionally established that the first foreign language taught at primary school be a national language. For example French in the German speaking parts, but this is currently being challenged as some cantons are giving preference to English instead of a national language (Wagner *et al.*, 2004:8). In a press release of the EDK on 26 of February 2006 this change in strategy becomes evident. Whereas a previous strategy clearly indicated the introduction of a second language in the third year, and that this should be one of the official languages of the country, the aforementioned press release only indicates the introduction of a first foreign language at the latest in the third year and a second foreign language in the fifth year and that one of these has to be a second official language (EDK, 2006). Since the 2000/2001 school year, all learners from the third year up, in canton Appenzell

Innerrhoden, have been receiving English classes as part of an official EDK project (Edthofer, 2004: 11).

3.2.2.8 Other sections of the Constitution that affect the educator

The Swiss Constitution states that children and young people have the right to special protection of their personal integrity and also to encouragement of their development (CH, 1999; section 8(1)).

Section 8(2) of the Swiss Constitution states that children and young people exercise their rights themselves to the extent that their intellectual capacities allow (CH, 1999). In section 67(1) it is required of the Confederation and the cantons to take into account children and young people's special needs for development and protection, when fulfilling their tasks. Section 67(2) of the Swiss Constitution allows that the Confederation may complement cantonal measures and support both extra-curricular activities for children and young people, and the training of adults (CH, 1999).

Section 13 of the Swiss Constitution states that everyone has the right to expect that their private and family life, their *domicile*, their correspondence and their telecommunications will be respected (CH, 1999). Should any decisions affecting the basic rights of learners be made by educators and school administrators, they require a legal rule. For example, students' personal data is subject to protection especially with respect to parents, and only under certain conditions spelled out by law may the school provide this information (Richter, 1990:132). Thus educators have to tread a very fine line, between respecting the privacy of the learner and providing learners with the special protection called for in the Constitution.

In section 15 of the Swiss Constitution, everyone's right to freedom of religion and conscience is guaranteed. This includes the right to choose their religion freely, the right to join or belong to a religious community and choose a religious education. However, no one may be forced to join or belong to a religious community, to carry out religious acts or to undergo a religious education (CH, 1999). Section 49(2) of the Swiss Constitution forbids

obligatory religious instruction, but does allow religious instruction on a voluntary basis (CH, 1999).

This has led to various organizational forms in the cantons (Richter, 1990:127). According to the US Department of State (2004), religious education is taught in most public cantonal schools, with the exception of Geneva and Neuchatel, and the doctrine generally depends on which religion predominates in the particular canton. Cantons are predominantly Christian-based, but some schools cover other religious groups living in the country. Learners belonging to different faiths than those presented in class are free to attend classes for their own creed during the religious class period, while atheists are not required to attend the classes (US, 2004).

Another example of differing organizational form of religious instruction is seen in the decision of the Zürich *Bildungsrat* (Education Council) to remove the subject Religion and Culture, and replace it by the subject Biblical History, a neutral viewpoint of religious studies, as the position held is that religious instruction falls within the domain of the Church (Zürcher Lehrerinnen – und Lehrerverband (ZLV), 2006). Religious education is currently another challenge faced by the Swiss educational system. According to PRS (2006a), in some cantons religious education is not a compulsory subject anymore as was the practice, due to financial reasons. In others the debate has centred on whether only Christianity should be included, or whether it should be broadened to reflect the changing religious distribution of Switzerland. In the canton of Wallis a new religious tutorial printed in canton Lausanne created controversy among the predominantly Roman Catholic population as it presented Christianity and Islam on an equal footing and did not mention radical Muslim practices, leading to a petition for the withdrawal of the book (US, 2004, Kaufmann-Eggler, 2004:35). None of the other cantons using the book have had similar complaints (US, 2004, Kaufmann-Eggler, 2004:35).

The US State Department (2004) reports certain instances of restriction on religious freedom, among which the following refer to education and educators:

- In April 2003, the Federal Tribunal ruled that it was constitutional to refuse a license to run a private school to a body affiliated with the Church of Scientology because of the latter's controversial nature, and the Federal Tribunal upheld an earlier decision of the Lucerne cantonal government to close a private primary school run by a woman formally associated with the Church of Scientology.
- The Geneva Cantonal Government confirmed its decision to fire public school educator Hani Ramadan, a Muslim cleric, despite a contradictory court ruling. Ramadan had been suspended from educating since October 2002, following the publication of a section in a French Newspaper in which he favoured the stoning of adulterers as set out in Islamic law. Nevertheless, Ramadan will be entitled to financial damages.
- The European Court of Human Rights has upheld the canton of Geneva's decision to prohibit a Muslim primary school educator from wearing a headscarf in the classroom, as the court found that the legal provisions did not discriminate against the religious convictions of the complainant, but were meant to protect the rights of the other subjects as well as the public order.

3.2.3 Education legislation of Canton Aargau

Education in Switzerland is legislated on different levels. The Swiss Constitution (CH, 1999) provides the direction on federal level, according to which cantonal authorities have to legislate education in each of the cantons. Thus educators in Switzerland need to be aware not only of the provision regarding education in the Swiss Constitution, but also about the legislation influencing their employment as educators, as well as their role as educators in the canton they are employed in.

The Swiss Constitution (CH, 1999) guarantees the right to sufficient, free basic education (CH, 1999; section 19), as well as freedom of education and scientific research (CH, 1999; section 20). Section 41 of the Swiss Constitution (CH, 1999) states that the confederation and cantons shall among others undertake to ensure that, in addition to personal responsibility

and private initiatives, children and young people, together with people of working age, would be able to benefit from initial and continuing education according to their aptitudes.

Apart from the constitutional provisions relevant to education, educators in Switzerland always have to be aware of the fundamental human rights learners are entitled to, and ensure their respect of these rights. At the same time educators are entitled to the same rights and learners have to respect their rights. Section 7 of the Swiss Constitution (CH, 1999) states that human dignity ought to be respected and protected; while section 8 states that all people are equal before the law. Of particular importance to educators is section 11(1) of the Swiss Constitution (CH, 1999) as it states that children and youth are entitled to particular protection of their personal integrity and also to encouragement of their development. Children exercise their rights themselves to the extent that their intellectual capacities allow (CH, 1999; section 11(2)).

According to the Swiss Constitution, freedom of association is guaranteed, and everyone has the right to form associations, join or belong to them and participate in their collective activities, but no one may be forced to join or belong to an association (CH, 1999; section 23). Section 28 of the Swiss Constitution (CH, 1999) allows for the freedom to organize and join labour organizations, but allowing for the possibility of prohibition, through legislation of certain categories of people, from striking. Theoretically educators as civil servants are among those categories of people not allowed to strike, although educators in different cantons have participated in strikes (*cf.* chapter 3.2.2.5). Section 110 (CH, 1999) states that the Confederation may legislate, among others, the protection of workers.

Section 62(1) of the Swiss Constitution (CH, 1999) states that education is a cantonal responsibility. The canton has to ensure sufficient compulsory basic education, free at state schools, subject to state management or supervision (CH, 1999; section 62(2)). As the current Swiss system allows for 26 different forms of education legislation, as each canton is expected to formulate their

own education legislation, it has been decided to focus on the canton of Aargau and the legislative position of the educators in this specific canton.

3.2.3.1 Verfassung des Kantons Aargau 110.000 von 25 Juni 1980⁶ (Constitution of the canton Aargau 110.000 of 1980)

Section 7 of the Constitution of Aargau 110.000 of 1980 (AG, 1980, hereafter referred to as the Aargau Constitution) states that the constitutional rights are binding to all public authorities, as well as private persons among one another, appropriate to the essence of the right. In both these cases an educator is bound by fundamental human rights encompassed in the Aargau Constitution (AG, 1980) as the educator is in the employ of a public authority and a private person dealing with other private persons on a daily basis.

Section 8 states that the constitutional rights may only be limited to the extent allowed by federal law or this constitution (AG, 1980). Furthermore, the constitutional rights of persons in a particular dependence relationship with the State may only be limited to the extent that it improves the interest underlying the relationship (AG, 1980; section 8(2)). Educators thus need to realise that a child would be considered a person to whom the canton has a particular responsibility and therefore limitation of any constitutional rights must be carefully considered. Section 9 of Aargau Constitution (AG, 1980) states that inhabitants of the canton and authorities have to value and protect human dignity, while all people are considered equal before the law and no discrimination on the same grounds as encompassed in the Swiss Constitution (CH, 1999; section 10) may take place, either to benefit or damage human dignity (AG, 1980; section 10)). In their dealings with learners, educators need to keep the section mentioned above in mind. Although all forms of discipline in some way or another humiliates disciplinary measures may not dehumanise learners. Furthermore, educators may not discriminate against learners on any grounds.

⁶ Enacted on 1 January 1982

Educators in Aargau need to be aware of section 12 of the Aargau Constitution (CH, 1980) in that even though religious freedom is guaranteed, respect for the religion of others is also called for. Thus educators especially being in an unequal relationship, have to respect the religious convictions of their learners and not infringe upon their religious rights. Section 13 of the Aargau Constitution (AG, 1980) ensures the right to express one's ideas, as well as to use information available to all, subject to the protection of the youth, among others (AG, 1980; section 13(3)). Thus educators have to ensure that information provided or the ideas expressed by them cannot be considered harmful to their learners. Educators also need to be aware of the right to personal freedom, as well as the right to the privacy individuals are entitled to, according to section 15 of the Aargau Constitution (AG, 1980).

According to section 25(1) of the Aargau Constitution (AG, 1980), the state promotes general well-being and social security. In so doing, the state, within its legislative authority and the federal law, ensures the regard of individuality by allowing among other that every person can be educated and further develop him/herself according to his/her ability and preference (AG, 1980; section 25(8)(a)). According to section 28(1) of the Aargau Constitution (AG, 1980), every child has the right to be educated according to his/her ability and it is the duty of the canton to support the parents in the education and forming of their children (AG, 1980; section 28(2)). Lastly, section 28(3) states that the educational system is organized through legislation.

Sections 29 to 32 of the Aargau Constitution (AG, 1980) concern the responsibility of the different types of schools at different levels. According to section 29 of the Aargau Constitution (AG, 1980), the *Gemeinde* is responsible for the compulsory *Volkschule* and Kindergarten, with the support of the canton in as much as the canton pays the educators and school management members. Section 29(3) of the Aargau Constitution (AG, 1980) states that the *Gemeinde* is responsible for other expenses regarding personnel, and the structure of cost sharing between canton and *Gemeinde* is stipulated by legislation. It is the responsibility of the canton to support and manage special schools and children's homes (AG, 1980; section 29(4)), as

well as to supervise *Volkschule*, Kindergarten, special schools and homes (AG, 1980; section 29(5)). Section 30 of the Aargau Constitution (AG, 1980) states that the canton supervises and carries the responsibility of:

- the provision of *Mittelschulen* (non-compulsory education);
- the provision of educator training;
- development and further education;
- supervision of the tertiary education system, allow the establishment of institutions for career development;
- the general education of the youth, including those learners not in the formal education system; and
- adult education.

Section 31 of the Aargau Constitution (AG, 1980) states that the discretionary powers of the Education council, as well as the jurisdiction as advisory organ of the cantonal parliament, are regulated by legislation. Legislation also regulates the jurisdiction of the district school bodies and the school governing bodies. Section 32 of the Aargau Constitution (AG, 1980) focuses on the cantons' involvement in tertiary education.

With regard to private schools, section 33 states that the canton may support recognized private schools and private schools at *Volkschule* level are under the supervision of the canton. Section 34 of the Aargau Constitution (AG, 1980) states that education at public schools is free to all canton citizens, while exclusions are stipulated in legislation. According to section 34 (2), each child should be given the opportunity to attend free Kindergarten for at least one year. For learners, disadvantaged due to the position of their place of residence, or due to social grounds or disability, it is the responsibility of the response-bearing institution, either the *Gemeinde* or canton depending on the level of schooling, to ensure an equal alternative (AG, 1980; section 34(3)). The canton can grant educational contributions towards the *Gemeinde* (AG, 1980; section 34(5)).

A last section with regard to education and of interest to educators is section 35 of the Aargau Constitution (AG, 1980) which states that in education at public schools, the right of parents to the education and development of their children has to be regarded. Section 35(2) of the Aargau Constitution (AG, 1980) states that educators at public schools are bound by constitutional rights, as well as the official learning aims, regarding the provision of education to the learners.

From the preceding, it is clear that educators in canton Aargau have to ensure their knowledge, not only of the Swiss Constitution and the relevant provisions, but also of the Aargau Constitution. Educators need to ensure, on the one hand, that they do not infringe on the rights of learners and their parents, but, on the other hand, they also need to be aware of their entitlement to specific rights. Apart from the respective Constitutions, the employment of educators in Aargau is also regulated by original and subordinate legislation.

3.2.3.2 Original Legislation

Educators in Aargau need to be aware of a number of Acts, enacted by the cantonal authorities, influencing their role as educators as well as their employment relationship.

3.2.3.2.1 Schulgesetz 401.000 vom 17 März 1981⁷ (Schools Act 401.000 of 1981)

The introductory paragraph of the Aargau Schulgesetz (AG, 1981) states that the Act is founded on sections 28 to 35 of the Aargau Constitution (AG, 1980). The Aargau Schulgesetz regulates educational and cultural matters at public schools, as well as the supervision of private schools and the private schooling of learners, in as far as education of school age children are concerned (AG, 1981; section 1). Section 2 of the Aargau Schulgesetz (AG, 1981) states that public schools according to this Act mean:

⁷ Enacted 1 April 1982; sections 42 and 43 enacted 1 August 1984

- Kindergarten
- *Volkschule* (Primary and secondary level)
- *Mittelschule* (Upper secondary level)
- Educator training institutions

The public school system is comprised of dependent institutions governed by laws applying to public bodies and politically and denominationally neutral (AG, 1981; section 2(2)).

Section 3 of the Aargau Schulgesetz (AG, 1980) focuses on the right to attend school, and states that all children and youth living in the canton have the right to attend public schools, that correspond with their capabilities and fulfil their requirements. Section 3(2) of said Act (AG, 1981) ensures equal educational opportunities for both genders. Learners living within the canton are entitled to free education at the public *Volkschule*, as well as public upper secondary schools, but learners not residing in the canton or attending the Aargau *Maturitätsschule* for adults are ordinarily charged a fee (AG, 1981; section 3(4)). Compulsory school attendance normally takes place in the *Wohngemeinde* (residential area) or school district of the *Gemeinde* (AG, 1981; section 6(1)). However, should a learner attend a school in another *Gemeinde* or school district without significant reason, the provisions made in section 3(3) regarding free tuition is lost, although the school fees required by the *Gemeinde* in which the learner attends may, at most, only cover the cost of tuition (AG, 1981; section 6 (2)).

Schooling is compulsory for all children living in the canton Aargau, and compulsory schooling lasts for 9 years or the successful earlier completion of a basic training, but not longer than the completion of the year in which the learner has turned 16 (AG, 1981; section 4(1)). According to section 4(2) of the Aargau Schulgesetz (AG, 1981) children who have turned seven by 30 April start compulsory school attendance at the beginning of the next school year.

Section 7 of the Aargau Schulgesetz (AG, 1981) concerns the beginning and end of the school year, as well as the different requirements regarding school holidays. Section 7(5) of the Aargau Schulgesetz (AG, 1981) states that the *Regierungsrat* stipulates the hours of learning after consultation with the education council, also taking into consideration the needs of the children and the family.

According to section 8 of the Aargau Schulgesetz (AG, 1981), it is the responsibility of the body responsible for the school type, i.e. the *Gemeinde* or canton, to acquire insurance against any claim resulting from any accidents associated with the operation of the school and to carry the responsibility for the premiums. Furthermore, it is the responsible school body's responsibility to ensure suitable preventative measures against accidents, while the *Regierungsrat* enacts the requirements.

Sections 9 to 33 of the Aargau Schulgesetz (AG, 1981) concern matters regarding the different school levels, including stipulating:

- the goals of each school level;
- the requirements and expectations of each school level:
- the duration of the different school levels:
- the responsibilities of the different role players;
- the insurance of gender equality in choice and expectation;
- curricula and subjects offered;
- stipulations of learning and school materials provided by the *Gemeinde* or canton;
- responsibilities of the school governing body, with regard to appointments; and
- provisions regarding special education.

According to section 14 of the Aargau Schulgesetz (AG, 1981), the number of learners per class should enable educators to ensure the specific development of each individual child. Class sizes are determined by the *Regierungsrat* after consultation with the education council, but may not be more than 28 learners per educator at the primary school (*Primarschule*) and 25 learners per educator at lower secondary school (*Oberstufe*) respectively, while in upper secondary level (*Realschule*) the class size may not exceed 22 (AG, 1981). The education department can give permission for smaller classes, should there be several learners in need of special care (AG, 1981; section 14(2)). Section 15 of the Aargau Schulgesetz (AG, 1981) allows for the establishment of *Kleinklassen* (Small classes) or remedial support for learners who are experiencing difficulties, but are not suited for special schools. However, learners who experience difficulty to follow in the class because they are foreign language speakers, and who have not been reported for any other special needs, have to receive individual support from the educator in order to meet the demands of the normal class (AG, 1981; section 15(2)). Lastly, section 15(3) of the Aargau Schulgesetz (AG, 1981) requires of the educator to provide special support to the gifted learner. Normally educators are responsible for one class, although in justifiable cases, the Department of Education, Culture and Sport can grant exceptions (AG, 1981; section 20).

Sections 35 to 38 of the Aargau Schulgesetz (AG, 1981) specifically refer to the duties of parents, learners and educators, especially regarding disciplinary measures. Section 35 states that public schools fulfil their commission to education by means of cooperation and shared responsibility with parents. With regard to parental rights section 36(1) of the Aargau Schulgesetz (AG, 1981) states that parents and learners have the right to be informed of the progress of the learner, parents have the right to visit the school, and classroom, educators and authorities stay in contact with learners and inform learners regarding school matters (AG, 1981; section 36(2)) and lastly parents have the right to parent meetings and their representative must be heard by the school management and authorities (AG, 1981; section 36(3)).

Section 36(a) of the Aargau Schulgesetz (AG, 1981) stipulates the responsibilities of parents with regard to providing information to schools and attending school meetings as well as parent-educator conferences. Firstly, parents have to inform the educator or school management on behavioural changes of their children or any happenings/incidents in this field, in so far as it is significant to the education of the learner and the school (AG, 1981; section 36(a)(1)). Secondly, parents have the duty to take part in parent meetings or discussions that have been called by the school governing body, the school management or an educator (AG, 1981; section 36(a)(2)). Furthermore, should parents not attend such a meeting or discussion as mentioned in section 36(a)(2) without providing an excuse, such a parent can be summonsed by the school governing body to attend a meeting under penalty of punishment. Should the parent not react to the letter, the school governing body fines the parent. If the parent does not pay the fine, the school governing body applies to the district office which charges the parents. Fines can range between Fr. 600 and Fr. 1 000 (AG, 1981; section 36(a)(3)).

Section 37(1) of said Act states that it is the responsibility of the parents to ensure that their child attend school on a regular basis. With intentional, unexcused absences up to three days at the most, the parents are warned by the school governing body, and should it occur again, parents are fined (Ag, 1981; section 37(2)). According to section 37(3) of said Act (AG, 1981), should a learner be absent without excuse for longer than three school days, the school governing body reports the case to the district office in order for the parents to be charged and, if need be, social services have to be notified in accordance with section 307(ff) of the *Schweizerischen Zivilgesetzbuchs* (Swiss Civil Law Act). Parents can be fined between Fr 600 and Fr. 1000 and, in case of reoccurrence, a fine of between Fr. 1000 and Fr. 2000 can be given. Section 37(a) of the Aargau Schulgesetz (AG, 1981) regards the appeal processes against charges mentioned above. It is imperative for educators in Aargau to be aware of the abovementioned stipulations as it requires a duty from their side to inform the relevant authorities of such cases.

In section 38 of the Aargau Schulgesetz (AG, 1981) the guidelines are given for allowed absence from school with significant reasons. Sections 38(a) to (f) concern disciplinary measures that may be taken by the different role-players. In section 38(a) of said Act (AG, 1981) it is stated that disciplinary measures must be educative and significantly formative; corporal punishment, locking up a learner or collective punishment is not allowed. Section 38(b) of the Aargau Schulgesetz (AG, 1981) is of particular importance to educators as it stipulates the different disciplinary measures educators at *Volkschule* may use. According to said section, an educator may use the following disciplinary measures:

- Admonishment
- Written work which has to be checked by the relevant educator
- Additional work for up to four hours a week under supervision
- Exclusion from instruction for, at most, the rest of a particular school day.
- Exclusion from special school meetings or events particularly school camps/trips or project weeks

In the case of exclusion, the duty for care lies with the parents and should they not be able to ensure care during school times, it is the duty of the school to organize care for the learner. However, costs are carried by the parents and the cost disposition is issued by the residential municipality. Parents may appeal within 20 days.

Sections 38(c) stipulate the disciplinary measures that may be taken by the school governing body and include the following:

- Written referrals
- Community service of a maximum of six non-instruction half-days
- Preventative exclusion from special school meetings or events, particularly school camps/trips or project weeks

- Transference to another section of the same grade at the same school, another school in the municipal area or at a school in another municipal area.
- Temporary or permanent expulsion from optional subjects in which the learner displays fallible behaviour
- Temporary total or partial expulsion of maximum six school weeks per year
- Refusal of admittance after the completion of compulsory school attendance

According to section 38(d)(1) of the Aargau Schulgesetz (AG, 1981), the Department of Education, Sport and Culture may extend temporary partial or complete expulsion for up to 12 weeks upon request of the school governing body.

Sections 40 to 51 concern the employment of educators directly, as it regards the educators' position, different aspects of employment and dismissal. Section 47 requires of educators to hold school meetings and states that, as representative of the educators, the school principal takes part in the school governing body or supervisory commission, with an advisory voting share. Section 48 of said Act (AG, 1981) requires of educators to form and take part in a cantonal conference, where educators organize and formulate their own regulations, although still requiring approval from the education department. Furthermore, the cantonal conference concerns themselves with general, significant educational problems, and evaluates educational matters for the attention of the educational council or education department. The cantonal conference also has the right to make proposals to the educational council or the education department (AG, 1981; section 48(2)). Lastly, the conference has the right to nominate four members of the education council (AG, 1981; section 48(3)).

According to section 50(a) of the Aargau Schulgesetz (AG, 1981) the *Regierungsrat* regulates matters such as remuneration requirements, consideration of the mandate of education, determines the jurisdiction of

education as well as the requirements for admission as educator and dismissals. Section 50(a)(2) of said Act (AG, 1981) states that the sanction to educate is removed when the professional competence of an educator with regard to personal or subject suitability cannot be guaranteed, particularly when:

- He/she has lost their competency (Handlungsfähigkeit).
- He/she has been convicted of a crime and the nature of the crime and the guilt makes the educator appear untrustworthy.
- He/she has threatened the orderly school operation repetitively due to his/her behaviour.
- He/she has obviously become incapable of practicing his/her profession.

Should no trained educator apply for a position, section 50(b) allows for the appointment of a person without education training. The *Regierungsrat* regulates such appointments. Section 51 states that inspectors supervise education at public and private schools and provide advice to educators. Inspectors also advise the school authorities. Lastly, educators at private schools have to be aware of section 58(c) of the Aargau Schulgesetz (AG, 1981) which stipulates that educators at private schools educating learners have the duty to educate themselves further suitably. Any courses presented by the canton Aargau are available to educators at private schools on the same ground as educators at public schools, with the exception of courses leading to the acquisition of a higher qualification (AG, 1981; section 58(c)(2)).

Although the Aargau Schulgesetz does not particularly focus on the employment of educators, it contains a number of aspects educators in Aargau have to be aware of in the fulfilment of their daily tasks. There are clear indications of the responsibilities and duties of parents which educators must be aware of, as educators have the duty to provide the needed information regarding learners to the authorities. Furthermore, educators have to be aware of the disciplinary measures allowed them, as well as the possible further measures available to the school governing body.

3.2.3.2.2 Gesetz über die Anstellung von Lehrpersonen (GAL) 411.200 vom 17 Dezember 2002⁸ (Act on the appointment of educators)

According to section 1 of the Gesetz über die Anstellung von Lehrpersonen 411.200 of 2002 (AG, 2002: hereafter referred to as GAL), this Act regulates (with reference to labour law) the characteristics of the legal relationship between the canton, the *Gemeinde*, the *Gemeinde*-relationships and the educators at Kindergarten-, *Volkschule* and cantonal school level in accordance with the Aargau Schulgesetz (AG, 1981), among others. Section 2 of the GAL (AG, 2002) states that the *Regierungsrat* issues an example of an employment policy for educators which contains, among others, principles regarding:

- the aims of the employment policy for educators in relation to other aims of the canton;
- personal management and development;
- the transformation of the principles for equality and equal opportunities for educators;
- the realisation of the partnership between canton and/or *Gemeinde* and educators;
- the educational training, further education and further development; and
- the employment and incorporation of educators with handicaps.

The GAL (AG, 2002) contains stipulations regarding the appointment of educators, concerning aspects such as period of appointment, task agreements and remuneration, in sections 3 and 4. Section 5 regulates the educator's position with regard to employer and employee associations, collective agreements and the position of non-members of such associations

⁸ Enacted 1 January 2005

and/or unions, as well as provisions for collective agreements to fall within the framework of the law (AG, 2002).

Said Act also contains provisions regarding the appointment and termination of the employment of an educator, where section 7 provides for protection of parties with regard to notification and section 8 states that prerequisites for appointment as educator are a personal suitability to educate, the necessary qualifications, as well as registration as educator (AG, 2002). Section 9 of GAL (AG, 2002) states that, in undersigning the employment contract, the educator binds him/herself to the Aargau Constitution and relevant Acts. Furthermore, GAL (AG, 2002) clearly stipulates reasons for dismissal, period of notification, procedures to ensure administrative justice and fair procedure, as well as possible compensation in cases of unfair dismissal.

Of particular importance to educators are the sections pertaining to their rights and duties. Section 15 of GAL (AG, 2002) states that the freedom to educate is guaranteed in the educator's freedom to select material as well as preferred teaching methods used within the framework of the curriculum and the obligation to educate. According to section 16(1), the employer has to respect and protect the person of the educator. Furthermore, the employer has to take the necessary preventative measures to protect the life, health and personal integrity of the educator (AG, 2002; section 16(2)) while educators are entitled to information, insight and amendment regarding personal information within the framework of the Protection of Information Act (AG, 2002; section 16(3)). The information may not be provided to a third party or other authorities except for payment or statistical purposes and then only to the relevant authorities (AG, 2002; section 16(3)).

Section 17 of GAL requires of the employer to protect the educator from unfair assault and claims that result from the fulfilment of their duties (AG, 2002; section 17(1)), while the *Regierungsrat* regulates the undertaking of the costs of legal representation if necessary to take legal recourse to protect the rights of the educator (AG, 2002; section 17(2)). Section 18 of said Act (AG, 2002) concerns the entitlement to payment for services, while section 19 states that an educator is entitled to a reference providing information regarding the

nature and duration of employment, as well as performance and conduct of the educator. However, upon the request of the educator, the reference can only contain information about duration and nature of employment (AG, 2002; section 19(2)).

According to section 20 of GAL (AG, 2002), an educator has the right to periodical reviews, but only the educator's performance and fulfilment of contractual requirements may be discussed, while a subject specialist may be included in the review panel. The purpose of the review should be to establish the current employment position of the educator, to judge the developmental possibilities, as well as the assessment for requirements of training and further development. The substantial content of the review is contained in a confidential signed agreement (AG, 2002; section 20(3)). The canton makes provision for continued employee development, where the *Regierungsrat* regulates the corresponding training, further education and further development of educators, as well as the financing thereof (AG, 2002; section 21). According to section 21(2) of GAL (AG, 2002) the employee development should not only promote development of work-related capabilities of the educator or the long term flexible in-service development, but also the general subject, personal and social competencies of the educator.

Section 22 of GAL (AG, 2002) states that as far as it is necessary to maintain public order, the *Regierungsrat* may limit the educator's right to strike. Lastly, regarding the liability of the employee, section 23 states that the employer holds the educator responsible for damage resulting or relating to the educator's fulfilment of duty (AG, 2002). The section does not relate whether the damage refers to pecuniary and/or non-pecuniary loss.

The duties of educators are stipulated in sections 24 to 34 of the GAL (AG, 2002). According to section 24 of the GAL (AG, 2002) the professional mandate of the educator is based on educational goals, the curriculum and further requirements of the respective school levels or types, and include particularly:

- instruction in accordance with the curriculum including planning, preparation and evaluation;
- guidance, progress and assessment of learners;
- the education within the framework of the principles of the Constitution and legislation and the support of the parents in their general upbringing of their children;
- the further education, individually and collectively;
- partnership at the school, as well as with the parents and the authorities;
- fulfilling organizational and administrative tasks during the school day;
- collaboration on the organization and development of the school; and
- evaluation of the work done at the school.

The *Regierungsrat* may change the job description of educators at the different school types, either by increasing or decreasing duties. Such changes may be done individually, generally or in areas considered of special importance (AG, 2002; section 24(2)).

Educators have the duty to respect the rights of the learners and their parents, by completing their tasks diligently, conscientiously and efficiently. Furthermore, the educator has the duty to protect the interest of his/her employer in good faith (AG, 2002; section 25(1)) and educators have to concern themselves personally with their own further development (AG, 2002; section 25(2)). Educators are bound by a duty not to divulge any official or personal information disclosed or observed during the course of their employment to a third party (AG, 2002; section 26). Section 27 of the GAL (AG, 2002) states that educators may not accept or demand any gifts or favours or promises of gifts or favours, that relate or may relate to their position, for themselves or others, although this excludes the acceptance of courtesy gifts of little value (AG, 2002; section 27(2)).

Other aspects mentioned in said Act concern:

- The school terms and holidays (AG, 2002; section 28).
- Allocation of additional and different work, as well as the possibility of reallocation within the canton (AG, 2002; section 29).
- Educators need written permission from the employer in order to partake in any other part-time employment and should the educator be employed in a part-time capacity, it may not impede upon his duties and/or time as educator. Furthermore, such part-time work should be non-remunerated (AG, 2002; section 30).
- To stand for public office, an educator obtains permission from his/her employer and such permission will contain conditions regarding work hours, payment and the utilization of payment received. Permission may be denied or conditionally granted (AG, 2002; section 31).
- Educators may be requested to go for medical examinations, individually or collectively, while a choice of doctors should be provided (AG, 2002; section 32).
- All intellectual property developed by educators becomes the property of the state and falls within the copy right protection of the state, but can be used, changed, sold or ignored by the educator.
- Educators are held responsible for intentional or irresponsible damage. Damages can be waived if they cause unnecessary hardship for the educator/s or after the statute of limitations of 5 years. If the damages occur due to a criminal offence, the statute of limitations of this particular offence will be enforced (AG, 2002; section 34).

Sections 35 to 38 of the GAL (AG, 2002) focuses on the different measures educators are entitled to pertaining to just administrative action, settlement of remuneration, employment and contractual disputes. Any such actions are free of charge and have to be resolved within 20 days. Sections 39 and 40 state that if any changes are made to their conditions of employment, the

educators must be offered the chance to present their point of view (AG, 2002; section 39(1)). The employer has to inform the educators, where possible and timely, of any changes, developments and/or intentions regarding the educator's activities (AG, 2002; section 39(2)). Furthermore, section 39(3) states that the *Regierungsrat* regulates the right of information regarding the educator concerning health protection and job security.

Section 40(1) of the GAL (AG, 2002) states that the *Regierungsrat* recognises employee associations, as well as professional associations representing a significant proportion of the educators, and negotiate with these bodies. It is required of the *Regierungsrat* to notify the employee associations timely of any significant administrative changes as well as changes involving large movement of personnel (Ag, 2002; section 40(2)). The employee associations are entitled to represent their members in legal proceedings (AG, 2002; section 40(3)).

Educators are considered as employees of the respective *Gemeinde* (AG, 2002; section 41), while section 42(1) states that the school governing body acts as the employer regarding recruitment, employment and termination of employment. The school governing body is responsible for:

- protection of the personage of educators;
- protection against unfair attacks;
- provisions regarding sustainable personal development;
- informing educators regarding all facts and intentions relating to their functions; and
- issuing permits to grant permission for part-time work or participation in public office.

School governing bodies are allowed to employ educators in temporary positions and the school management must be consulted in all decisions regarding staffing (AG, 2002; section 42(3)). The *Gemeinde* insures the educators against liability and are responsible for payment of premiums (AG,

2002; section 43). The *Gemeinde* is obliged to follow rules and regulations of cantonal personnel policies when employing educators (AG, 2002; section 44(1)). The *Regierungsrat* regulates, within the framework of the number of learners as well as all other related factors, the number of educators that can be financed by the canton (AG, 2002; section 44(2)) and can also grant permission to employ additional educators for the cost of the *Gemeinde* as long as all cantonal quality and salary conditions are adhered to (AG, 2002; section 44(3)). Section 45 of the GAL (AG, 2002) governs the allocation of all costs between the canton and the *Gemeinde*.

3.2.3.2.3 Schweizerisches Zivilgesetzbuch 210 vom 10 December 1907⁹ (Civil Law)

In the case of Switzerland, no indication of an Act particularly legislating matters concerning children or child care could be found. However, educators do need to be aware of the Schweizerisches Zivilgesetzbuch 210 of 1907 (CH, 1907, hereafter referred to as Swiss Civil Law) as it contains certain provisions regarding the child and the child's position within the family. Section 14 of said Act states that a person reaches maturity upon the completion of the eighteenth life year, i.e. upon turning nineteen (CH, 1907).

Section 133(2) states that, in the allocation of parental care and the *regulation of personal matters*, the consideration of the well-being of the child is essential and decisive, and upon request from both parents, if possible, the child's opinion should be considered (CH, 1907).

It is also important for educators in Aargau, as well as in Switzerland, to be aware of the fact that Switzerland ratified the United Nations Convention on the Rights of the Child.

⁹ Status as on 27 December 2005

3.2.3.3 Subordinate Legislation

3.2.3.3.1 Verordnung über die Anstellung und Löhne der Lehrpersonen 411.211 vom 13 Oktober 2004¹⁰ (Decree on the appointment and remuneration of educators)

The Verordnung über die Anstellung und Löhne der Lehrpersonen 411.211 of 2004 (AG, 2004, hereafter referred to as VALL) particularly contains details regarding the competence and task of the employees and school managers, the establishment and termination of employment relationships, as well as the rights and duties of educators (Departement Bildung, Kultur und Sport, 2004:6).

Chapters 1 to 4 of the VALL (AG, 2004) refer to specifications regarding the tasks and competencies of the educator, the responsibilities of the school management, appointment of educators, including where the responsibility lies regarding the appointment of educators at the different school types, as well as the role of the school governing body with regard to appointment of educators. Aspects such as probationary periods, as well as termination of the employment relationship, are also addressed.

Educators need to be particularly aware of chapter 5 of the VALL (AG, 2004) as it concerns the rights and duties of educators. In this respect, many of the provisions made in the GAL (*cf.* 3.2.3.2.3) are enlarged upon, with more details provided. This includes specification regarding the waiting period for references (AG, 2004; section 29), part-time work and/or standing for public office (AG, 2004; section 28), stipulations regarding periodic reviews (AG, 2004; section 23), as well as stipulations regarding the possible liberation from the duty not to disclose official or personal information (AG, 2004; section 27). Furthermore, educators are entitled to the right to negotiate.

In this regard, section 20 states that the canton, *Gemeinde* and *Gemeinde-*associations institute essential and suitable preventative measures for the

¹⁰ Enacted on 1 January 2005

prevention of sexual molestation and harassment and inform educators on the protection of their rights. The Department of Education, Culture and Sport provides a place of safety for educators who have been sexually molested or harassed (AG, 2004; section 20(2)).

Section 21 of the VALL (AG, 2004) states that should educators have to take legal steps in the case of unfair attacks or claims relating to their duties, the employer upon application investigates taking over the cost of legal protection. Excluded from the afore-mentioned are labour law settlements (AG, 2004; section 21). Legal expenses, as well as the cost of representation, is covered by the employer when representation and/or legal proceedings become necessary in order to protect the rights of the educator or to prevent or waiver pecuniary loss (AG, 2004; section 21(2)).

3.2.3.3.2 Verordnung über die Weiterbildung des Personals 160.621 vom 22 September 2004¹¹ (Decree on the further education of personnel)

Educators as employees of the canton have to be aware of the stipulations of the Verordnung über die Weiterbildung des Personals 160.621 of 2004 as it contains stipulations regarding such matters as:

- the requirements to further educate themselves;
- what falls within the scope of further education;
- responsibilities regarding further education;
- control and administration of further education; and
- responsibilities regarding costs of further education.

3.3 SUMMARY

In this chapter it has become clear that Europe, unlike Africa, does not face education problems such as illiteracy and poverty. As education and

¹¹ Enacted 1 January 2005.

knowledge are considered resources in a country with very few natural resources, the Swiss literacy figures are very high and a high percentage of learners do not only complete primary school, but also secondary school. Switzerland is a country that has always been associated with neutrality, fair government and innovation. Educators in Switzerland have to ensure their abilities to deal with learners used to a high standard of living and a fast moving technologically advanced society.

Switzerland is a confederation consisting of 26 cantons, each with a great degree of self-determination within the field of education. Harmonization of the different education systems is one of the greatest problems faced by Switzerland with regard to education. However, an amendment to the Swiss Constitution, accepted by vote in 2006, specifically brings about changes to create greater unity in the Swiss education system. The right to compulsory, free basic education is proclaimed in the Swiss Constitution among the other fundamental human rights enshrined in it. Free education includes education on primary, lower secondary and upper secondary level, although only primary and lower secondary level are considered compulsory education.

Learners and educators alike are entitled to the fundamental human rights enshrined in the Swiss Constitution. Although the Swiss Constitution disallows discrimination, the Swiss education system allows for learners to be allocated to different bands according to performance, as well as handicapped learners to be educated in special classes.

Gender inequality is still apparent in Switzerland, especially in the employment market, contributing greatly to the feminization of the education system. This is due to the fact that employment as educators is one of the few careers in which females do not experience discrimination with regard to remuneration. The feminization of the education system causes concern as it is perceived to lower the status of the profession.

Swiss educators need to be aware of their right as well as the rights of their learners. However, they also need to ensure awareness of the different forms of legislation regulating their employment. Due to the differences in the

education systems of the different cantons it has been decided to focus the discussion in this chapter on the legislation regulating the employment of educators in the canton of Aargau. Apart from being aware of the provisions contained in the Swiss Constitution, educators of Aargau need to be aware of the provisions contained in the Aargau Constitution as well.

Education legislation in Aargau is very comprehensive and ensures that very little doubt exists regarding the rights and duties of educators. Parental involvement is considered of great importance and educators and schools strive towards a partnership with parents in the education of the learner. Very specific consequences are contained in the legislation regarding the non-cooperation of parents. Legislation also clearly stipulates disciplinary measures open for use by educators, as well as by school governing bodies.

In the next chapter, the perceptions regarding the fundamental human rights of educators in Asia will be discussed, with specific reference to China.

CHAPTER FOUR

AN ASIAN PERSPECTIVE ON THE FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS: CHINA AS CASE STUDY

4.1 INTRODUCTION

In the preceding chapter, a Swiss view on the fundamental human rights of educators was discussed. In this chapter, an Asian perspective, with specific reference to China will be discussed. Whereas Switzerland is considered a developed country, China, like both the Africa countries discussed in chapter 2, are considered developing countries.

Asian education as such has always been applauded by the West, with high success rates, especially in maths. According to Beech (2006), surveys have shown that although East Asian learners top worldwide academic tests, they retain the information for the least amount of time, indicating their belief that what they learn in class is of little use. For centuries, education in Asia, even in the time of Imperial China, was based on the principle that educators instruct, learners cram, and success or failure is the difference between a life at court or a life in the fields (Beech, 2006).

Although China has an ancient history dating back many more years than any of the other countries discussed, its history with regard to education can be considered chequered. Universal education is definitely a new term in Chinese history, only emerging as a concept in the 1970s. Education in the People's Republic of China (hereafter referred to as the PRC), must serve the socialist modernization drive, be integrated with production and labour, and foster builders and successors with all-round development in moral, intellectual and physical education (UNESCO, 2003). According to Gordon and Qiang (2000:3), today formal education in China is examination-orientated, and learners compete for higher education opportunities with some learners, even starting to compete at primary schools.

The PRC is an authoritarian state in which, as specified in its Constitution, the Chinese Communist Party is the paramount source of power (US, 2005) and has always been so in the eyes of the world. While officials of the Chinese government profess to freedom and a regard for human rights, severe abuses of fundamental human rights are daily occurrences in China (Amnesty International 2004; US, 2005).

China was part of the World Conference on Education for All which adopted the World Declaration on Education for All and the Framework for Action to Meet Basic Learning Needs in the early 1990s (Minster of Education (MoE), 2001:1). During the same period, the Chinese government also signed two documents adopted at the World Summit for Children, namely the World Declaration on the Survival, Protection and Development of Children and the Plan of Action for the Implementing the World Declaration on the Survival, Protection and Development of Children (Minster of Education (MoE), 2001:1).

To provide for its varying population, China has a vast and varied school system (Worden, *et al.*, 1988). China has the world's largest education system, educating roughly 367 million learners of 18 years and younger (Cavanagh, 2006). According to the Ministry of Education (MoE, 2001:1), to promote education for all, the Chinese government and the people have made great efforts, but due to its vast territories, huge population and the low-level of economic development, the goal of education for all is still confronted by many difficulties. Eradication of adult literacy is one of the major challenges faced by China (MoE, 2001:4). Other problems faced by the Chinese education system are:

- a grossly inadequate education input;
- inadequate funds for education in the poverty-stricken regions leading to low levels of education, low enrolment rates and high dropout rates;
- regional disparity in quality of education;
- heavy academic burden of learners;

- uneven regional distribution of educators; and
- education resources that are not fully utilized (MoE, 2001:15).

According to Hong and Yue (2006), problems that are to be found in the Chinese education system are aspects such as unequal opportunities, expensive tuition and difficult standards of admission and then there are also issues regarding the course content and education methods (*cf.*4.2).

4.2 CHINA

China is a vast country with a large population; needing to turn its heavy population burden into enormous human resources and therefore education is given top priority in China (MoE, 2001:4). The PRC is a socialistic country ruled by the Communist Party. According to the preamble of the Constitution of the PRC¹² (Ch, 1982, hereafter referred to as the Chinese Constitution) the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, which is in essence the dictatorship of the proletariat, has been consolidated and developed after the founding of the People's Republic (Ch, 1982).

In the Teacher's Law of the PRC 15 of 1993 (Ch, 1993, hereafter referred to as Teacher's Law, China), educators in China are obliged to give learners education in the basic principles determined by the constitution, education in patriotism and national solidarity, education in legality, as well as education in ideology and morality, culture, science and technology, and organize and lead learners in developing beneficial social activities (Ch, 1993; section 8(3)).

Furthermore, the Education Law of the People's Republic of China 45 of 1995 (Ch, 1995, hereafter referred to as Education Law) states that the law is formulated in accordance with the constitution with a view to developing

¹² The Constitution of the People's Republic of China does not seem to be treated as an Act, and therefore, it is only referred to by its title.

educational undertakings, enhancing the quality of the whole nation, promoting socialists' material development, and building an advanced socialist culture and ideology (Ch, 1995; section 1). In developing socialist educational undertakings, the state shall adhere to Marxism, Leninism, Mao Zedong Thought, and the theory of building socialism with Chinese characteristics as its guidelines, and follow the basic principles laid down in the constitution (Ch, 1995: article 3), while education is the basis of socialist modernization, and the state shall ensure priority to the development of educational undertakings (Ch, 1995: article 4), and education must serve the socialist modernization drive and must be combined with productive labour in order to foster builders and successors for the socialist cause with all-round development – orally, intellectually and physically (Ch, 1995; section 5).

Due to the fact that China is a vast country, noted for its drastically uneven economic and cultural development, it gives rise to the fact that the level of compulsory education also varies greatly from one region to the other (MoE, 2001:4). According to the Chinese Ministry of Education, the aforementioned state of affairs dictates that the contents and requirements of compulsory education must be practical, realistic and reckon with the local conditions, and therefore compulsory education must be planned for the different regions, guided according to different categories and implemented in an active step-by-step manner (MoE, 2001:4). Basic Education in China is mainly the responsibility of local governments (Ch, 1996). The PRC follows a system of centralized leadership, local responsibility and level-by-level management, thus the responsibility to popularize compulsory education and the development of basic education lies with the local government (Xie, 2002:2).

According to the Ministry of Education, China formulated a series of laws and regulations to make compulsory education universal (MoE, 2001:4) The promulgation and implementation of the Law of the People's Republic of China on Compulsory Education 38 of 1986 (Ch, 1986, hereafter referred to as Compulsory Education Act, China) further promoted China's compulsory education and the legal construction of education (MoE, 2001:4). According to

Wang (2003:2), the establishment and development of compulsory education have fundamentally changed the underdeveloped status of rural education.

Apart from the aforementioned Act as well as a number of other Acts directly bearing on education, promulgated by national government (*cf.* 4.2.3), government at all levels also formulated their own laws and regulations enabling China to have a complete legal system of compulsory education that conforms to its own national conditions and plays a tremendous role in promoting and guaranteeing the realization of compulsory education, as well as the development of the entire cause of education (MoE, 2001:4). The laws concerned stipulate that parents and communities should create sound educational contexts and support the education of learners (Gordon & Qiang, 2000:6), but about 50 million people are still living under the poverty line and in the poor areas education is characterized by low enrolment and high dropout rates, large gender differences, a low percentage of qualified educators and limited resources (Gordon & Qiang, 2000:4).

Due to the fact that education receives top priority in China it receives all necessary attention such as funding, educator training, school buildings and education equipment (MoE, 2001:4).

4.2.1 Background

Worden *et al.* (1988) state that, although the government has authority over the education system, the Chinese Communist Party has played a role in the management of education since 1949. According to the China Education and Research Network (2004b), China has set up an education system with government as the major investor and social partners as co-investors. The Minister of Education of the PRC is the supreme education administration body in China, which is responsible for:

- carrying out the education-related laws, regulations, guidelines and policies;
- planning the development of the education sector;

- integrating and coordinating educational initiatives and programmes nationwide; and
- managing and guiding education reform countrywide.

According to Irwin (2000:14), when the PRC was proclaimed in 1949, a mere 20 percent of the country's primary school-aged learners were enrolled at schools while 80 percent of the population was illiterate, therefore education has been an unwavering priority of this country and its 1.2 billion people. Worden *et al.* (1988) state that although there were dramatic advances in ordinary education after 1949, achievements in secondary and higher education were not so great.

In their efforts at establishing universal primary education, the country passed the Compulsory Education Act, China (Ch, 1986) extending compulsory education to nine years. In 1990 the Chinese government decided to popularize basic 9-year compulsory education nationwide and due to the unremitting efforts by the government and the people, the primary school enrolment rate for school-aged learners reached 99.1%, while the junior middle school gross enrolment rate reached 88.6% (MoE, 2001:2). However, in terms of access to education, the Chinese education system represents a pyramid where learner numbers decrease sharply at the higher levels, attributed to the scarcity of resources allocated to higher education (Worden, *et al.*, 1988).

In a report prepared for the World Education Forum in Dakar in 2000 (Irwin 2000:14), it is stressed that efforts of the Chinese government are now focussed on improved access to education in the poor regions and those with minority populations, facilitating fundraising for educational purposes and raising the overall quality of educators. Furthermore, the Chinese government has attached great importance to the work of illiteracy eradication (MoE, 2001:5) and the current illiteracy rate among adults is 8.72%, while the rate among the youth is 4.8% (MoE, 2001:6).

In order to achieve the goal of universal basic education in all of China, the Chinese government has provided assistance to the poverty-stricken areas

and ethnic regions. Financial assistance was provided through the allocation of a special fund to develop compulsory education in the poverty-stricken regions (MoE, 2001:5). China does not have the capacity to grant free compulsory education nationwide and therefore the government is now giving priority to rural regions, with the aim of all rural learners receiving state schooling through paying fees by 2010 (Li: 2006). Furthermore, boarding primary and middle schools were provided in ethnic pasture regions and the poor regions with no convenient transportation, as well as establishing the stipend system, which contributed considerably to the higher enrolment rate of school-aged ethnic children (MoE, 2001:5).

However, Surowski (2000) states that after 1976, due to regularization at schools, through which academic standards were introduced at all academic levels placing emphasis on quality as opposed to quantity, which led to a number of closings and merging of schools, especially primary schools, leading to the fact that enrolment figures in 1978 were higher than in either 1985 or 1992. A further decline in enrolment rates can be traced to the decollectivization, beginning in 1978. This process provided for a remuneration system based on output, creating a situation where education of their children, as opposed to working at home, was not always the best option (Surowski, 2000).

According to Hong and Yue (2006), one of the existing problems in China's education system is the high tuition fee, as the amount of money a family spends on education is relatively large. According to Divjak (2001), the Chinese education system is in chaos and decay due to a lack of funding, leading not only to the compromising of education of millions of learners, but also to the compromise of their health and even risking their lives due to crumbling infrastructure of school buildings, overcrowding and inadequate staff levels.

Financial allocation is still the major source from the government as major source of income for the education budget, while multiple fund channels have been opened (CERNET, 2004b). At present schools in need of funds directly controlled by the central government obtain their funds from the central

financial pool; schools controlled by local government are supported by local finance; schools sponsored by townships and village governments and by public institutions are mainly financed by the sponsor institution and subsidized by the local government; lastly, funds needed by schools operated by charity organizations and celebrities are raised by the sponsors themselves (CERNET, 2004b).

However, there are still problems that need to be addressed. Wang (2003:2) states that some of the most severe problems challenging the availability and affordability of rural compulsory education are the learner's schooling difficulties in poverty-stricken areas, high dropout rates, widened education disparity between urban and rural areas and insufficient investment. This hinders the healthy development of compulsory education in these areas (Wang, 2003:2).

Irwin (2000:13) states that during 1979, migration from the countryside to the large cities started to happen when the commune system was dismantled. In the 1980s this trickle turned into a flood due to rural incomes steadily falling, prompting municipal authorities to tighten migration rules. Migrants had to obtain temporary residence permits and letters of employment before coming to the cities, leading to tens of millions never obtaining such permits. This led to their not being registered in the place where they were living and their temporary status exposing them to widespread discrimination, such as the fact that when it comes to education their only option until recently was to enrol their children at unlicensed schools (Irwin, 2000:13; HRIC, 2004:49).

Irwin (2000:14) continues by stating that the Ford Foundation estimates that there are between 200 and 300 unlicensed schools operating in Beijing, which struggle to provide schooling for an estimated 100 000 migrant children, many of whom receive no education at all.

According to Zhu and Han (2006:71), some educator education programmes have difficulty in enrolling enough aspirant educators or recruiting top students, because public education colleges and universities charge tuition and no longer provide stipends (fixed money allowance at regular intervals)

and fellowships for students, thus attending such colleges and universities is no longer attractive to those from economically disadvantaged families. Such learners from disadvantaged backgrounds used to constitute the majority of prospective educators in educator education institutions (Zhu & Han, 2006:72).

4.2.2 Fundamental human rights bearing directly on educators

Once again the same fundamental human rights discussed in relation to educators in the aforementioned countries (*cf.* 2.2.1, 2.3.1 and 3.2.1) will be discussed regarding educators in China. These rights are:

- Equality
- Human Dignity
- Freedom and security of the person
- Privacy
- Freedom of religion, belief and opinion
- Freedom of expression
- Labour Relations
- Rights of children
- Education
- Just administrative action
- Limitation of rights

4.2.2.1 Education

Article 9 of the Education Law, China (Ch, 1995) states that all citizens of the PRC shall have the right and obligation to receive an education. According to section 19 of the Chinese Constitution, the state develops socialist

educational undertakings and works to raise the scientific and cultural level of the whole nation (Ch, 1982). Furthermore, the state runs schools of various types, makes primary education compulsory and universal, develops secondary, vocational and higher education and promotes pre-school education (Ch, 1982 section 19). According to the Compulsory Education Law, China (Ch, 1986), compulsory education comprises education in two phases, six years at a primary school and three years at a junior secondary school. Not sending a learner to school once the learner has reached the compulsory school age is a punishable offence (Gordon & Qiang, 2000:6).

Primary school education typically starts when a learner is over the age of six years. After the completion of six years of primary school, a learner then typically enters elementary school (CERNET, 2004a). Tibetan learners may, according to a stipulation in the law, postpone their education up until nine years of age (TCHRD, 2003). This delay is legal due to the remoteness and vastness of the area, leading to underdevelopment, making meeting the requirements of the law impossible (TCHRD, 2003). Secondary education in China is divided into academic secondary education and specialized/vocational/ technical secondary education (TCHRD, 2003).

In a report of the Kyodo News International (2005), it is stated that China's spending on rural education shot up 72 % during the last year in a bid to improve school conditions according to Education Minister Zhou Ji, where the money is spent on building safe schools, student housing and distance-learning programmes (Kyodo News International, 2005). Rural education plays an important role in the basic education of China, seeing that, due to the low urbanization rate 60% of the Chinese population still live in rural areas (Wang, 2003:8).

However, educators are still concerned about rural education and consider it as the biggest bottleneck constraining the development of China's education (Zhu, 2006:59). According to Ji and Tang (2006:49), grave understaffing of rural education facilities adversely affects the quality of education, as education in many rural areas remain stalled at the stage of providing a

modicum of education and in many rural areas education lags behind the times.

According to the Compulsory Education Law, China (Ch, 1986), public school learners are supposed to be exempted from all tuition charges though they must pay certain miscellaneous fees. Schools on each level have kept raising tuition and other fees, even *free* elementary schools charge learners several hundred Yuan (Hong & Yue, 2006).

According to Li (2006), large numbers of Chinese schools engage in unfair fee charging, for example some parents have started to pay fees in order that their children be selected to move to a more desirable school, due to the uneven distribution of resources among state-run schools, thus encouraging the charging of illegal fees. Hong and Yue (2006) report that there are various charges billed by schools, some common and legal ones are *school selection fees* and *sponsor fees* billed by high quality elementary and middle schools; some schools even bring the admission test score standards to a very high level and then make learners pay an *insufficient score fee*.

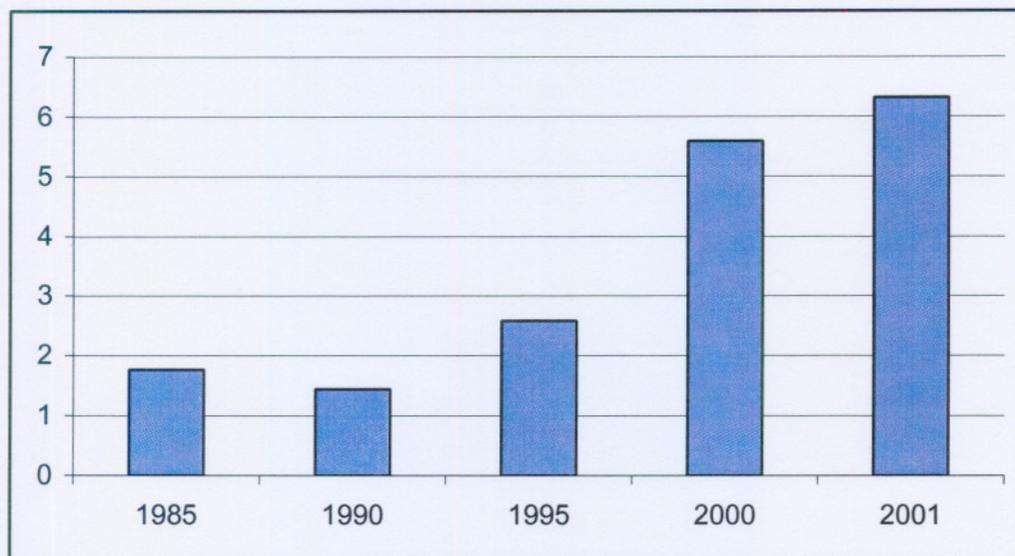
In contrast to the aforementioned, many learners in poor rural areas are missing out on compulsory education due to the wide income gap between urban and rural areas and local governments that are unable to pool funds to support public schooling (Hong & Yue, 2006). Education is regarded as a profit-making enterprise, while the government is not treating it as a right of the citizens, but rather as the privilege of a few (Hong & Yue, 2006).

Educators have been issuing forceful calls to stop making rural education bear the reputation of *charging indiscriminate fees* (Ji & Tang, 2006:47), stop turning rural educators into outsiders in terms of the educators' contingent, stop rural schools from once more becoming *beleaguered cities* bereft of all support and to stop forcing peasant learners to travel great distances for a decent education (Zhu, 2006:60). Divjak (2001) states that the funding gap between urban and rural areas is huge, where in some rural areas, the average annual spending per learner is less than a dollar.

According to Wang (2003:6), with the increase in tuition and miscellaneous expenses many rural families cannot afford to send their children to primary or junior secondary school, indicating that China's rural compulsory education is not really free. Though compulsory education should be free, parents report that they are expected to pay for everything from learners' paper and report cards through to the electricity account (Divjak, 2001). The US State Department (2005), on the other hand reports that a special rapporteur expressed serious concerns about privatization of the costs of public education, reporting that the government compels parents to pay nearly half the costs of public education, making education inaccessible for many learners. Furthermore, the special rapporteur recommends that government immediately ban the practice of learners performing manual labour at their schools to raise funds (Ch, 2005c). The average education-related fees a Chinese family has to pay, accounts for between 30 to 60% of the families' income. Low and medium-low income families make up approximately 80% of China's population and to these families; education fees are secondary only to food expenses (Hong & Yue, 2006).

When studying Figure 4.1 it is evident that the expenditure of rural inhabitants with regard to education has increased continuously, becoming one of the main burdens of rural people, a fact not contributing to the healthy development of rural compulsory education (Wang, 2003:13).

Figure 4.1: Increase in expenditure on education, recreation and cultural services of rural inhabitants



(Source: Wang, 2003:13)

When one studies the information contained in Figure 4.1, it is clear that since 1990 there has been an increase in the amount rural inhabitants have to spend on education, recreation and cultural services, with a sharp increase from 1995 to 2001 and once again a significant increase in 2001.

From the evidence provided above, it is quite clear that basic education in China is not free. TCHRD (2003) reports that many Tibetan parents are reluctant to send their children to boarding school for various reasons, including their inability to pay the fees charged by the Chinese government, which are used to fill a gaping deficit in the education budget.

Zhu (2006:60) states that many educators have reported that rural education is extremely short of funds, many localities find it difficult to issue salaries and the local finances are completely incapable of resolving the financial problems experienced (Wang, 2003:6). The proportion of education funds used for aspects such as the improvement of education facilities and the maintenance of dangerously dilapidated school buildings is very low (Wang, 2003:12).

In order to ease the burden of education inputs on local finances, many rural areas cut back on the number of educators by merging the village primary school with township junior secondary schools, leading to a reduction in infrastructure costs such as school buildings and the payment of educator salaries (Wang, 2003:12). According to Divjak (2001) education in poor counties can comprise half the annual budget, most of it going to pay the salaries of educators, leading to authorities responding by neglecting maintenance, employing unqualified educators at lower rates, increasing class sizes and levying an array of fees. In some instances, where parents who could not pay the fees in Yuan, they were exacted in meat and milk (TCHRD, 2003).

This has, however, led to some extent to schools being even further away from rural learners and in the mountainous area this could be one of the reasons for the dropout of learners (Divjak, 2001). Ji and Tang (2006: 48) state that due to a lack of educators in the rural areas, some rural primary schools have taken to contracting classes, i.e. one educator takes charge of one class, undertaking to teach all of its courses, as a measure for maintaining low-cost educating at the cost of sacrificing the quality of education.

According to Wang (2003:6), in 2001 the national average dropout rate for primary school students was 0.27%, with western provinces having higher dropout rates than the national average. In Tibet, the dropout rate of primary school learners was almost 3%, and in the provinces of Qinghai, Guizhou and Gansu higher than 1% (Wang, 2003:6). In 2001, the primary school learners accounted for 68.6% of the total number of primary school learners in the nation, whereas the number of rural junior secondary learners make up above 49% of the total number of junior secondary school learners in the nation (Wang, 2003:9).

According to Human Rights in China (HRIC) more than 2 million Chinese learners drop out of school each year, among whom 70%, i.e. 1.4 million, are girls (HRIC, 2004:47). The drop in the nationwide representation of rural area learners at primary and junior secondary school learners is indicative of the

dropout rate of rural learners in these areas. The dropout rate of junior secondary school learners is even higher (Wang, 2003:7). According to Cavanagh (2006), learners in urban areas of China spend an average of three more years at school than learners from the rural parts of China. This disparity has stayed relatively unchanged over time (Wang, 2003:7).

One reason contributing to the dropout of rural primary and junior secondary school learners is the low quality of rural compulsory education, as there is a wide gap in the educator quality between rural and urban areas. Educators in the major metropolitan areas of China generally receive strong academic content training as well as considerable mentoring, whereas the educators in rural communities lack considerable content knowledge and training in maths and science (Cavanagh, 2006).

Table 4.1 below compares the qualifications of full-time educators responsible for compulsory education in rural and urban areas.

Table 4.1: Comparison of full-time educators' qualification between urban and rural areas 2001

	National Average	East Region	Central Region	West Region
Proportion of Qualified Primary School Educators (%)	96.81	98.25	97.32	94.40
Urban Areas	98.26	98.74	98.27	97.41
Rural Areas	96.04	97.91	96.87	93.10
Proportions of Primary School Educators with Junior College Degrees and above (%)	27.40	32.47	27.31	21.18
Urban Areas	40.94	44.38	41.36	34.20
Rural Areas	20.25	24.20	20.67	15.58
Proportion of Qualified Junior Secondary School Educators (%)	88.81	90.96	88.45	86.03
Urban Areas	92.32	93.34	92.36	90.47
Rural Areas	84.74	87.44	84.71	81.40
Proportions of Junior Secondary School Educators with University Degrees and above (%)	16.95	19.85	15.56	13.04
Urban Areas	23.51	26.15	23.39	18.95
Rural Areas	9.35	10.50	10.07	6.88

(Source: Wang, 2003:8)

From the data contained in Table 4.1, it is clear that nearly 97% of the full-time educators in China are qualified, with a mere 3% difference between rural and

urban areas, but the proportion of primary school educators with a junior college degree or higher is much lower at only 88.8%, with a difference between rural and urban areas of 20%.

With regard to junior secondary schools, the differences are bigger. In urban areas 92% of full-time educators are qualified, while this figure falls to only 83% in rural areas. The difference becomes even greater when the percentage of full-time educators at Junior Secondary School with university degrees are compared, where urban areas have 23.5% highly qualified educators against the 9.35% of the rural areas. The data contained in Table 4.1 also shows that the quality of rural educators differs greatly from region to region, especially when the eastern region and the western regions are compared.

According to Wang (2003:8), many schools in the central and western regions are forced to hire substitute educators to address the shortage of full-time educators required, as low salaries and poor education facilities in these regions do not attract full-time educators.

Tooley (2005:28) reports on unofficial private schools in China, where in the province of Gansu the researchers involved in the reported project found 696 private schools high in the arid mountains, 593 of them serving some 61 000 children in the most remote villages. The vast majority of these private schools were set up by individuals or the villages themselves, as the government schools were simply too far away or too difficult to get to. Kyodo News International (2005) states the poorer rural Chinese families cannot afford tuition, while some need their older children to help with farm labour or housework.

The majority of the aforementioned private schools were found in the poorest three regions of Gansu, thus serving some of the poorest people on the planet, and still these schools dependent on tuition were cheaper than the public schools and maintained more or less the same educator learner ratio of approximately 1:25 (Tooley, 2005:31). Kyodo News International (2005) further reports that Zhou, the Education Minister said that compulsory nine-

year education had not spread to eight percent of the central and western areas of China, which include most of the poorer rural areas.

According to Irwin (2000:14) in Beijing alone it is estimated that 40% of all migrant learners between five and twelve attend school, compared with 100% of the native learners. A situation mirrored in other cities like Shenzhen and Shanghai, where it is estimated that only 20 to 30% of migrant learners attend school. Official statistics in this regard differ. According to a 1996 study conducted by the Department of Basic Education, the average enrolment of migrant learners is 96.2% and non-attendance is attributed to overcrowding, high fees and an unfavourable home environment (Irwin, 2000:14). According to Zhu (2006:61), many educators are highly concerned about the education of the learners of the *floating communities*, maintaining that the outlook for the education of these learners is not optimistic and it is felt by these educators that the state has a duty to make appropriate arrangements for the schooling of such learners as it is the state's responsibility to provide compulsory education.

Changes were brought about in the law in 1998, in which the central government decreed that unlicensed schools could exist and that it is unlawful for large municipalities to deny entrance to schools for migrant learners between 6 and 14, who have lived in the city for longer than 6 months (Irwin, 2000:14). The response of the municipalities to this was to charge tuition fees that were impossibly high for migrants to pay, up to \$440 annually, when the average yearly income of a migrant in Beijing is an estimated \$600 (Irwin, 2000:14). However, there are indications that things are improving slightly in some respects for the migrants in the big cities. Municipal governments in some cities are more permissive in letting parents set up schools of their own, and more migrants are able to afford the extra fee required for their children to attend city schools (Irwin, 2000:14)

Article 46 of the Chinese Constitution states that citizens of the PRC have the duty as well as the right to receive education. Furthermore, the state promotes the all-round moral, intellectual and physical development of children and young people (Ch, 1982). The Teacher's Law, China (Ch, 1993) states in

section 3 that educators are specialized personnel who fulfil the functions of education and educating; they shoulder the mission of imparting knowledge and educating people, of cultivating builders of and successors to the socialist cause, and/or improving the attributes of the nation. Educators should be true to the people's cause of education. In the Guidelines for Reform and Development of Education in 1993, one of the mission statements states that all primary and lower secondary educators should be able to fulfil their functions as required. Furthermore, the percentage of qualified educators at primary schools should meet the academic qualifications set by the State (Gordon & Qiang, 2000:8).

According to section 49, parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents (Ch, 1982).

According to section 45 of the Chinese Constitution, the state and society help make arrangements for the work, livelihood and education of the blind, deaf-mute and other handicapped citizens (Ch, 1982). Great attention has been paid to the offering of compulsory education to girls, disabled learners and *floating learners* (MoE, 2001:5). According to Chinese law, as well as the Chinese Constitution (Ch, 1982) girls, disabled learners and "floating learners" enjoy equal rights to receive compulsory education (MoE, 2001:5).

Floating learners and/or floating population is a label used to describe people who are not permanently registered in their current place of residence, mostly referring to children of peasants who have left the poverty-stricken countryside in search of work in the big cities (Irwin, 2000: 13). Despite China's educational achievement migrant children in the big cities are struggling to find a place at school, and for many, the only and best option is the unlicensed route (Irwin, 2000:13; HRIC, 2004:49).

According to educators in China, learners carry too heavy a burden and legal forms should be employed to stipulate that the in-school time of elementary school learners do not exceed eight hours, homework time not exceed one hour and remedial classes are not instituted during holidays (Zhu, 2006:54). It

is reported that for the sake of competing for grades ,some schools, in addition to working normal class hours, do not give time off even during two-day weekends, leading to learners becoming sacrificial offerings to examination-oriented education (Zhu, 2006:54).

Ji and Tang (2006:45) state that many educators continue to use outdated methods of education and teaching, leading to poor quality of education, and this is seen as one of the reasons why learners are losing interest in their studies.

According to HRIC (2004:49), one of the most serious problems with the rural education system is that educators are routinely paid late, usually half or even a full year after the due date and then rarely the full amount owed to them. Farmers cannot generate enough taxes to support both educator salaries and local government (HRIC, 2004:49).

4.2.2.2 Equality

According to section 4 of the Chinese Constitution, all nationalities in the PRC are equal (CH, 1982). It continues to state that lawful rights and interests of minorities are upheld and protected and that the state develops the relationship of equality, unity and mutual assistance among all of China's nationalities (Ch, 1982 section 4). The afore-mentioned is further supported by section 9 of the Education Law, China (Ch, 1995), stating that all citizens regardless of ethnic group, race, sex, age, occupation, property status or religious belief, shall enjoy equal educational opportunities.

According to the Education Law, China (Ch, 1995), the state, in accordance with the characteristics and needs of respective national minorities, provides assistance to the development of educational undertakings for each national minority; the state shall support and assist the development of educational undertakings in remote and poverty-stricken areas; the state shall support and develop educational undertakings for the disabled (Ch, 1995; section 10). In chapter v of the White paper on China's progress in Human rights in 2004 (Ch, 2005c: 14), it is stated that education in ethnic-minority areas has advanced with great strides, while special educational funds allocated by the

state and key educational projects undertaken by the state are steered to ethnic-minority areas.

According to Cavanagh (2006), China suffers from a large disparity between the quality of education in relatively advanced urban areas and that in poorer, rural communities, as well as from a system that encourages relatively rigid education methods. When the data in table 4.1 (*cf.* 4.2.2.1) is studied in conjunction with the discussion concerning education provision in the rural areas (*cf.* 4.2.2.1), it becomes clear that equal education is not provided in China. The quality of education in rural areas is lower than that in urban areas. Educators in rural areas are less well qualified and facilities are in a poor condition (Wang, 2003:8). Furthermore, according to Wang (2003:8), learner:educator ratios also differ between rural and urban areas. Where, in 2001, an educator at a primary school in rural areas taught three more students than his urban counterpart, at a junior secondary school, a rural educator taught two more learners than his urban counterpart. Schools in rural areas also have fewer facilities, libraries and other resources than urban schools (Gordon & Qiang, 2000:15).

Another aspect of the education system indicative of inequality in the provision of education between rural and urban areas is the per capita learner expenditure, where the per capita expenditures of urban primary school learners in 2001 was 1.7 times that of a rural primary school learner, and in the case of a junior secondary school the difference rose to 1.93 times. (Wang, 2003:10). Wang (2003:10) further reports that the per capita learner expenditure differs even more drastically in rural areas. In Shanghai the per capita learner expenditure is the highest in the country, 8.9 times more than that of the Henan province which has the lowest per capita learner expenditure in the case of primary schools and 6.7 times higher than the lowest per capita learner expenditure at the junior secondary school (Wang, 2003:10).

The abovementioned is indicative of the insufficient education investments and debts which accumulated in the course of meeting education goals. Many regions have encountered problems in the construction of rural school

buildings and payment of educator salaries (Wang, 2003:10). Educators are extremely concerned about the inequality existing in the payment received by educators in rural areas, who have fewer benefits than their counterparts in the cities (Zhu, 2006:61; Ji & Tang, 2006:49).

In the rural areas of China, full-time educators are composed of government paid educators and community paid educators, who are mostly senior secondary graduates without any formal training as educators (Gordon & Qiang, 2000:11). The salaries of the community-paid educators are carried and paid by the community and are generally very low (Gordon & Qiang, 2000:11).

Educators in some rural areas do not have the same medical aid benefits, nor do they receive the same salaries as educators in the cities for the same work done, due to a lack of funds in the rural areas (Gordon & Qiang, 2000:11). When one considers that payment of rural educators' salaries comprises the majority of rural education expenditure and that with the expansion of rural compulsory education the responsibilities fall more and more on governments at township and village levels, as well as the financial difficulties experienced by the counties and townships, it is clear why many counties cannot pay salaries to educators on time or have to borrow money in order to pay educator salaries (Wang, 2003:12).

The aspect of non-payment of educator salaries has become problematic, to such an extent that the Minister of Education with the concurrence of the State Council has issued a circular, regarding the matter (MoE, 1997:1). In the introductory paragraph of the circular it is stated that in recent years and especially since last year (1996), arrears in the salaries of locally hired (trainban) educators have grown steadily worse in many localities, and widespread arrears have also emerged in the salaries of state-salaried (gongban) educators. The introduction to the circular continues by stating that arrears in educators' salaries seriously affect their livelihood, dampen enthusiasm for work among the broad masses of educators, and affect the stability of the educators' contingent. The broad masses of educators have

reacted strongly, and all quarters of society are extremely concerned about the matter (MoE, 1997:1). In the circular, the following is stated, among others:

- receiving prompt and full payment for their work is the educators' most basic legal right;
- all educators, no matter in what way they are employed, must be paid on time;
- their full salaries must be issued;
- no arrears are permitted;
- the salary arrears must be delivered in full into the educators' hands before the end of said year; and
- the solution to the problem must be provided to the State Council (MoE, 1997:1).

In the aforementioned circular (MoE, 1997: 2), it is further stated that localities with serious arrears in educators' salaries must not build office buildings, large halls or guest houses nor may they buy sedan cars. Should violations occur, severe action must be taken against the responsible leaders. Lastly, it is stated that instances of extortion, misappropriation, blocking and withholding educational funds must be investigated and firmly dealt with (MoE, 1997:2).

Equality of all citizens of the Republic of China is further upheld by section 33 of the Chinese Constitution, which states that all citizens of the Republic of China are equal before the law, every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law, and lastly that the State respects and preserves human rights (Ch, 1982). In chapter vii of the White Paper on Gender equality and women's development in China (Ch, 2005b: 6), protecting girls' and baby girls' rights to subsistence and development and cutting down the disparity in numbers between baby boys and girls, the Law on population and family planning forbids foetus gender identification by means of ultrasonic and other technical methods for

non-medical purposes, and forbids termination of pregnancy out of consideration for a foetus gender for non-medical reasons.

Article 4 of the Chinese Constitution also prohibits discrimination against and oppression of any nationality, as well as any acts that undermine the unity of the nationalities or instigate their secession (Ch, 1982). TCHRD (2003) states that Beijing's 2001-2005 Five Year Plan requires more Chinese nationals to be recruited to fill education posts in Tibet, apparently to develop education in the region and keep peace with the loose, expanding policy of using Chinese in the classroom. This may lead to existing Tibetan educators becoming obsolete and liable to lose their jobs to Chinese migrants recruited deliberately for Tibet (TCHRD, 2003).

The organization further reports that the Chinese central government has set up Tibetan middle schools in mainland China. Learners are selected after a medical examination and on the basis of their school results, and then sent to schools far from Tibet, where they have to stay continuously for at least three years. According to TCHRD (2003), this "minorities" education policy of taking the brightest Tibetan learners to special schools in China, indoctrinating them in communist ideology and political worldview, is part of a series of mechanisms to assimilate Tibetans into the Chinese mainstream and blur the distinctiveness of the Tibetan language, culture and history.

Furthermore, in section 4 of the Chinese Constitution, it is stated that the state helps the areas inhabited by minority nationalities to speed up their economic and cultural development in accordance with the peculiarities and needs of the different minority nationalities (Ch, 1982). Articles 21 and 27 of the Teacher's Law, China (Ch, 1993) concern ethnic minority education and state respectively that People's governments at all levels should adopt measures to cultivate and train educators for ethnic minority areas and for remote and poverty-stricken areas (Ch, 1993; section 23) and that local people's governments at all levels should grant allowances to educators and graduates with academic backgrounds at or above the level of technical secondary school who engage in education and educating work in ethnic minority areas and in remote and poverty-stricken areas (Ch, 1993; section 27).

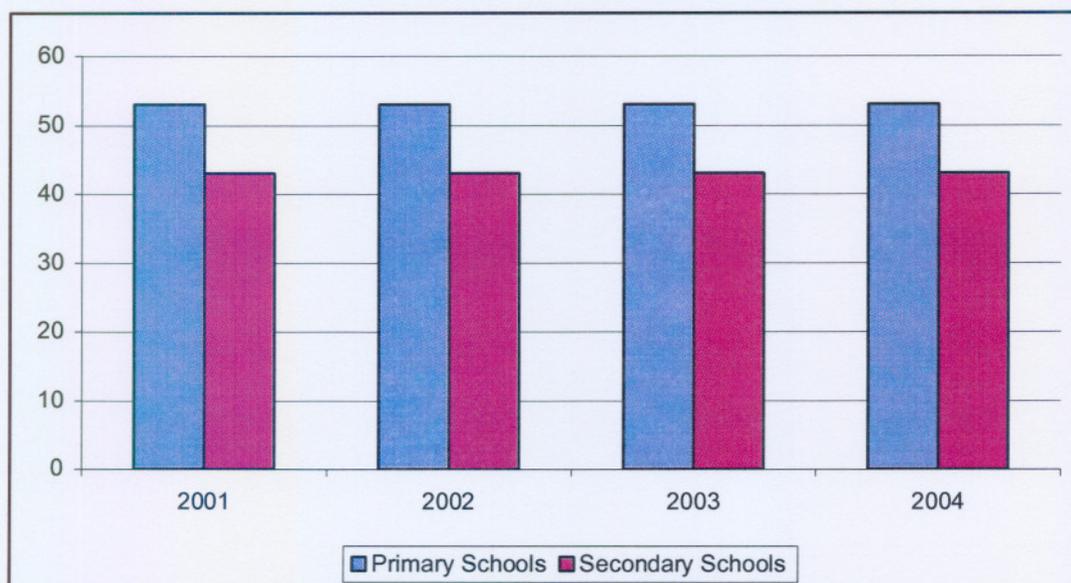
Article 48 of the Chinese Constitution states that women in the PRC enjoy equal rights with men in all spheres of life, political, economic, cultural, social and family life, and that the state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women (Ch, 1982). According to the White Paper on gender equality and women's development in China (Ch, 2005b: 2), a complete legal system has been designed by the Chinese government concerning the protection of women's rights and interests, and promotion of gender equality, based on the Chinese Constitution.

However, the China Labour Union (2005) reports that Asian women still face lower social and economic status, with abuses such as human trafficking, sex slavery female infanticide and gender-motivated abortions on the rise in parts of region. The US State Department (2005) states that the female suicide rate in China continues to be a serious problem, with an approximate five hundred female suicides per day, with women in rural areas being especially vulnerable. Observers believe that aspects such as violence against women and girls, discrimination in education and employment, the traditional preference for male children, the country's birth limitation policies and other societal factors contribute to this high female suicide rate (US State Department, 2005).

In China women and men enjoy the same rights and opportunities to receive education (Ch, 2005:4). According to UNESCO (2004c:14), the Chinese government has made tremendous efforts in the elevation of women's status and, through various means, the Law on Compulsory Education (Ch, 1986) promotes the enrolment of girls into schools and reduces instances in which girls discontinue their education. Furthermore, the government facilitates to help women to elevate their qualities and abilities to take part in the social development in an all-round way (CH, 2005:4; UNESCO, 2004c:14).

In Figure 4.2 the percentage of female educators at primary and secondary level schools is portrayed, in order to provide a picture of the gender disparities at schools in China.

Figure 4.2: Percentage female educators at primary and secondary school level (2001 – 2004)



(Source: UNESCO, 2006b)

From the data portrayed in Figure 4.2, it is clear that, as in the case of the other countries discussed, the gender disparity increases at the secondary school. Whereas the distribution of male and female educators is greatly equal, in fact slightly favourable to female educators at the primary schools, at secondary schools male educators once more comprise the bigger proportion, albeit rather less significant than in South Africa and Ghana. According to Liang (2001), educator training schools are the only secondary schools where female enrolment is higher than male enrolment, where females comprise 65% of the enrolled learners. In general, in secondary enrolment enrolled female learners comprise 46% and only 48% of the enrolled at vocational schools are female (Liang, 2001).

According to the Chinese Ministry of Education (MoE (Ch), 2001:2), in 2000 the gender disparity of enrolled learners was basically even, while marked progress was also made in offering compulsory education to disabled learners. The Chinese government attaches significant importance to girl-child education and girls' education places particular emphasis on educating girls who have not enjoyed the right to basic education because of social, cultural

or other factors (UNESCO, 2004c:14). The US State Department (2005) states that it is widely believed that the proportion of girls attending schools in rural and minority areas is far smaller than in cities. Liang (2001) states that among 16-year olds in 1990 almost 1 in 10 rural females had not attained a primary level education compared to less than 2 in a hundred 16-year olds in urban areas.

Through subsidizing learners from families with financial difficulties, supporting education in the western regions, as well as education of minority ethnic groups, constantly expanding high quality education resources and quickening the steps of the even development of basic education, the Chinese government's efforts have resulted in clear improvement in the gender, national and regional differences in education (UNESCO, 2004c: 8). According to the White paper on China's progress in human rights in 2004 (Ch, 2005c: 16), education for disabled learners has been included in the state compulsory education system and their rate of enrolment has risen continuously.

Equal rights of the disabled are not mentioned in the Chinese Constitution, but the right to education of disabled learners has been guaranteed in China through legislation, such as Regulations on the Education of Disabled Persons and Interim Orders for Special Education Schools (UNESCO, 2004c: 9). It is stipulated in the Regulation on Education of the Disabled that education of the disabled is an obligation of the State, and establishes that people's governments at all levels should strengthen leadership, planning and development of education of the disabled (International Bureau of Education, UNESCO, 2003).

In China the special education system features special education schools, as well as special education classes for disabled learners at regular schools and disabled learners being educated in regular classes (UNESCO, 2004c:7). Apart from special education schools, classes for the blind, deaf and for mentally retarded learners are attached to primary schools, while learners with mild problems in sight, hearing, speaking and mental growth are enrolled with ordinary learners (International Bureau of Education, UNESCO, 2003).

According to the US State Department (2005), parents with disabled children were often advised by doctors to place such children in homes, but should they decide to keep the child at home, they generally faced problems in getting adequate medical care, day care and education for their children.

4.2.2.3 Human dignity

The Chinese Constitution states that the personal dignity of citizens of the PRC is inviolable and that insult, libel, false charge or frame-up directed against citizens by any means is prohibited (Ch, 1982 section 38). According to section 4 of the Teacher's Law, China (Ch, 1993) people's governments at all levels should adopt measures to strengthen the ideological-political education and professional training of educators, to improve the working and living conditions of educators, to ensure the legitimate rights and interests of educators, and to raise the social status of educators. All society should respect educators. Section 4 of the Education Law, China (Ch, 1995) states that every member of society should respect educators.

According to Zhu (2006: 53), educators feel that their legitimate rights and interests should be protected by law. Educators feel that regulations on appeals in the Teachers' Law are unfair and they advocate revising of the Act. Aspects that need to be changed are matters such as the fact that it should be made clear that educator' salaries are not to be indiscriminately withheld, that salaries should be directly disbursed by the state and that reasonable job changes should be guaranteed by regulations (Zhu, 2006: 53; Ji & Tang, 2006:43). Article 38 of the Teacher's Law, China (Ch, 1993) states that those who default on the payment of educators' wages and otherwise infringe on the legal rights and interests of educators, in violation of the stipulations in the present law, shall be ordered by the local people's governments to correct their conduct within a set time.

According to some educators there are ever more cases of insulting and beating of educators which end up being shelved without being resolved, leading to serious damage of the educators' dignity and authority (Zhu, 2006: 53; Ji & Tang, 2006:43). With regard to the abovementioned, the Teacher's

Law, China (Ch, 1993) states that those who insult or physically assault educators shall, in light of the circumstances, be given administrative punishments or penalties; those who create damage or losses shall be ordered to pay compensation; criminal responsibility shall be pursued according to law where circumstances are grave and constitute crimes (Ch, 1993; section 35).

4.2.2.4 Freedom of expression and religion

According to section 35 of the Chinese Constitution, citizens of the PRC enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration (Ch, 1982). In section 7(2) of the Teacher's Law, China (Ch, 1993) it is stated that educators have the right, among others, to air their opinions fully in the course of academic activities. Comments and critiques that seem to challenge the legitimacy of communist rule may still be censored and denounced; however, most discussions of non-political subjects are no longer suppressed for political reasons (Lui & Ching, 1999:25). According to the US State Department (2005), the only organizations legally permitted to print books are government-approved publishing houses and the State Press. The Publications Administration and the relevant provincial publishing must grant authority for the printing and distribution of any book, newspaper, periodical, audio, video or electronic publication, while individuals who attempt to publish without government approval are faced with imprisonment, fines, confiscation of their books, and other sanctions. Furthermore, the Chinese Communist Party exerts control over the publishing industry by pre-emptively classifying certain topic as off-limits (US State Department, 2005).

The Chinese Constitution of the PRC ensures religious freedom of its citizens in section 36, which proclaims the enjoyment of this right and further states that no state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion (Ch, 1982). Lastly, section 36 states that the state protects normal religious activities and that no one may make use of religion to engage in activities that disrupt public order,

impair the health of citizens or interfere with the educational system of the state (Ch, 1982).

According to Amnesty International (2004), thousands of people are detained and sentenced each year for peacefully exercising their fundamental rights to freedom of expression and freedom of religious belief.

In section 8 of the Education Law, China (Ch, 1995) it is stated among others that the state shall practise separation of education from religion and that no organization or individual may make use of religions to conduct activities that interfere with the functioning of the educational system of the state. University students and public school learners have told Human Rights Watch that they have been barred from observing rituals and holidays, and even in some cases been threatened with expulsion (Spiegel, 2005). According to the US State Department (2005), apart from national restrictions on party members and government officials' religious practice in Xinjiang, educators, professors and university students are not allowed to practise religion openly.

According to the White Paper on China's progress in Human rights in 2004, citizens enjoy the freedom of religious belief in accordance with the law, where religious groups, venues for religious activities, the legitimate rights and interests of religious adherents and their normal religious activities are protected by law (Ch, 2005c:5). Spiegel (2005) reports that although section 36 of the Chinese Constitution asserts that all Chinese citizens enjoy freedom of religion, the section only applies to the 5 religions officially recognized in China and does not include other belief systems, nor does it include people who identify themselves as belonging to one of the recognized religions, but organise outside state control and are thus outlaws.

Gaining official approval in areas such as Tibet and Xinjian is limited as official control of religion is tighter than in predominantly ethnic Chinese areas (Spiegel, 2005). According to Human Rights Watch (HRW), when China's Regulations on Religious Affairs (CH, 2005a) came into force in 2005, the Chinese government asserted that it was the first comprehensive set of

regulations on religion in China that constituted *a significant step forward in the protection of Chinese citizens' religious freedom* (HRW, 2006).

Through a series of policies and government regulations, including Regulations on Religious Affairs (CH, 2005a), the Chinese government sharply curtails both religious freedom, as well as the freedom to express one's belief. Banned religious activities include activities such as:

- publishing and distributing texts;
- selecting leaders;
- fund-raising and managing finances;
- organizing training;
- inviting guests;
- independently scheduling meetings and choosing venues; and
- communicating freely with other organizations (Spiegel, 2005).

According to Spiegel (2005), all such activities are subject to regulatory state interference and even imprisonment and severe mistreatment of offending believers and practitioners. HRW (2006) states that one year after the Regulations on Religious Affairs (Ch, 2005a) came into force, Chinese citizens' ability to exercise their right to freedom of religion remains as subject to arbitrary restrictions as ever. According to the regulation, *normal* religious activities are allowed (Ch, 2005a; section 3), but it fails to define what the term *normal* means, leaving practitioners unclear about what is allowed and what is banned (HRW, 2006). This is not the only undefined term in the regulations. Key terms such as *disrupting public order* (Ch, 2005a; section 3), *religious extremism* (Ch, 2005a; section 7(4)), and *impairs social stability* (Ch, 2005a; section 23) remain undefined, which only adds to the ambiguities and the potential arbitrariness of the application of the regulations (HRW, 2006).

In Xinjiang and Tibet, religious education of minors remains a contentious issue, where the foreign ministry spokesperson stated that there is no law that prohibits minors from holding a religious belief, although he pointed out that religion should not interfere *at school and social public education*, but that religious education from parent to child was allowed. Five months later, officials in Xinjiang declared that this understanding was erroneous and that religious education could not begin until a minor had completed nine years' compulsory education (HRW, 2006). In some areas, authorities prohibit the teaching of Islam to primary and secondary school learners, while in many others; the learners study the Koran and Arabic without restriction (US, 2005).

In Xinjiang, local officials stated that school-aged learners may not study religion or enter mosques (US, 2005). Furthermore, in Xinjiang educators and learners were detained and parents of attendees had to pay exorbitant fines after an educator was caught reading the Koran to 37 learners, although Chinese government authorities continue to insist that children could receive religious instruction. It is reported, that in August 2005, an educator and over 30 learners were reportedly detained for holding Koran study lessons during the school vacation, while their Koran and Muslim textbooks were confiscated and the government has declined to clarify the current status of the educator (US, 2005). In Tibet *patriotic re-education* at schools has become part of the curriculum for learners and educators, where educators have to instruct learners to embrace atheism and oppose the Dalai Lama (TCHRD, 1999).

4.2.2.5 Labour relations and just administrative actions

Article 42 of the Chinese Constitution states that citizens of the PRC have the rights as well as the duty to work (Ch, 1982). It continues to state that the state creates conditions of employment, strengthens labour protection, improves working conditions and, on the basis of expanded production, increases remuneration for work and social benefits (Ch, 1982; section 42). Apart from stipulating educator rights and obligations, the Teacher's Law, China (Ch, 1993) contains stipulations regarding the employment of educators regarding educator eligibility, assessments, wages and benefits, awards and encouragements and legal responsibilities

Article 42 was amended by section 10 of the second Constitutional Amendment Law of March, 29, 1993, adopted by the First Session of the Eight National People's Congress to state that work is the glorious duty of every able-bodied citizen and that tasks should be preformed with an attitude consonant with their status as masters of the country (Ch, 1993). Furthermore, the amendment states that the State promotes socialist labour emulation and comments, and awards model and advanced workers, as well as encourages citizens to take part in voluntary labour (Ch, 1993).

In this regard, educators indicate their concerns about the fact that in their job title assessment the only subjects assessed are foreign languages and computer science (Ji & Tang, 2006:46). According to Zhu (2006:53), many educators complain that the mandatory requirements with regard to theses, foreign languages and computer knowledge block further advances by good educators, calling for a fair and equitable educator assessment mechanism, putting less emphasis on academic history and job titles, eliminating foreign language examinations and placing emphasis on educators' actual standards. Furthermore, educators hope that in the assessment of exemplary educators, the assessment and selection procedures are transparent, open and equitable (Ji & Tang, 2006:46).

According to section 432 of the Chinese Constitution, working people of the PRC have the right to rest, and the state expands facilities for rest and recuperation of working people, prescribing working hours and vacations for workers and staff (Ch, 1982). Many educators report that their work burden and mental burden is extremely heavy, and that there are no guarantees for their legitimate rest hours, or can they get any genuine rest during holidays and vacations (Zhu, 2006:52; Ji & Tang, 2006:43).

During two-day weekends, holidays, days of rest, and summer and winter vacations, the educators' time is taken either by giving remedial courses to learners and taking continuation courses themselves, or with all kinds of activities, and they cannot get any real rest themselves (Zhu, 2006:52; Ji & Tang, 2006:43). Ji and Tang (2006:43) further report on educators suffering deteriorating physical health due to the fact that they do not have sufficient

time to exercise, while some educators suffer from mental ailments due to multiple pressures leading to mental breakdowns. The aforementioned is contributed to a great extent to the heavy competitive pressure at schools (Ji & Tang, 2006:46).

As mentioned above, the Chinese Constitution (Ch, 1982) states that working people of the PRC have the right to rest, according to section 432, but Zhu (2006: 54) states that educators find the burdens placed on learners worrisome, stating that some schools have learners getting up at four or five in the morning and going to sleep after ten thirty in the evenings. One educator wondered whether the law has truly determined the learner's right to rest (Zhu, 2006:54). When one considers that primary school learners start their school day at 8 o'clock in the morning and their classes then go on into the evening (Anon, 2006), it does seem a matter of concern.

Article 44 states that the state prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of state. Furthermore, the livelihood of retired personnel is ensured by the state and society (Ch, 1982).

According to section 45, citizens of the PRC have the right to material assistance from the state and society when they are old, ill or disabled and the state develops the social insurance, social relief and medical and health services that are required to enable citizens to enjoy this right (Ch, 1982).

Section 35 of the Chinese Constitution (Ch, 1982) does not only ensure freedom of speech, but also, among others, freedom of assembly and of association. According to the US State Department (2005), the law provides for this right, but it is restricted by the government, as Chinese Communist Party policy and government regulations require that all professional, social, and economic organizations register with, and be approved by, the government. The US State Department (2005) continues that in practice these regulations prevent the formation of truly autonomous political, labour, human rights, religious, spiritual, and other organizations that might challenge government authority.

Thus, although the Chinese Constitution (CH, 1982; section 35) provides for freedom of association, workers are not free to organise or join unions of their own choice (US, 2005). The sole legal worker's organization is the All-China Federation of Trade Unions, which is controlled by the Chinese Communist Party and headed by a high level party official (US, 2005). In China, workers do not have the right to strike.

4.2.2.6 Limitation of rights

According to section 51 of the Chinese Constitution, the exercise by citizens of the PRC of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedom and rights of other citizens (Ch, 1982).

4.2.2.7 Freedom of Language

According to section 4, people of all nationalities have the freedom to use and develop their own spoken and written language and to preserve and reform their own ways and customs. The Education Law, China (Ch, 1995) states that the spoken and written Chinese (Han) language shall be the basic language of education at schools and other types of educational institutions. At schools and other types of educational institutions where learners of minority ethnic groups constitute the majority, the spoken and written language of the majority ethnic group or the language in common use by the local ethnic groups may be used for instruction (Ch, 1995; section 12).

Ji and Tang (2006:44) state that educators are concerned about the lack of mother tongue education taking place, seeing mother-tongue education as being shunted aside with the focus mainly on foreign languages. However, according to the Chinese Commission for UNESCO (2004c:9), 29 languages of 21 minority ethnic groups are being used in China to compile and publish textbooks and languages of 11 ethnic groups used for instruction that have officially been listed in the course plans or primary and secondary schools.

According to section 19 of the Chinese Constitution, the state promotes the nationwide use of *Putonghua* (common speech based on Beijing

pronunciation) (Ch, 1982). Section 12 of the Education Law, China (Ch, 1995) further states that *Putonghua* and the standardized characters that are in common use in the whole country shall be popularized and used for instruction at schools and other types of educational institutions.

Tibetans regard their language as the root of their ancient culture, whereas the Chinese authorities view it as a symptom of national sentiment (TCHRD, 2003). This has led to the Communist Party leaders in Tibet circulating a document arguing that separatism was partly caused by schools teaching too much religion and using the Tibetan language. Educating learners in the Tibetan language has been allowed at some village schools, but the best equipped and staffed schools continue to educate in Chinese, while in 1997, despite the provisions of the Education Law, China (Ch, 1995), a drastic change in policy was declared stating that Chinese language instruction would be introduced from the first year of schooling for Tibetan learners (TCHRD, 2003).

4.2.2.8 The rights of the child in the Chinese Constitution

In the Chinese Constitution (Ch, 1982) there is no specific section regarding the rights of children. However, there are sections in which certain rights are mentioned regarding children. Firstly, according to section 46 of the Chinese Constitution, citizens of the People's Republic of China have the right, as well as the duty, to receive education. The state promotes the all-round development of children and young people, morally, intellectually and physically. Furthermore, section 49, grants state protection to marriage, the family and mother and child. Both husband and wife have the duty to practise family planning. Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.

It is evident that children in China do not receive special protection and there are no constitutional prohibitions on child labour. Manual labour is permitted and there is no formal prohibition of primary school learners being made to

work at school (HRIC, 2004:53) to raise operating funds (International Bureau for Children's Rights, 2006:5).

Divjak and Conachy (2001) report on an explosion at a school in Fanglin, in the Jianxi province, where 9 -11 year old learners were busy assembling fireworks for a business operated by an educator of the school, according to an arrangement between the educator and the school principal. The explosion killed 50 learners and 4 adults, while at least another 27 were left with severe burns and injuries. Even more upsetting is the report of one of the victims, stating that learners, who meet assembly targets, were awarded with pencils and notebooks by educators. However, should targets not be reached, they were not allowed to go home.

4.2.3 Education legislation

The PRC is an authoritarian state in which, as stated in the preamble to the Chinese Constitution (CH, 1982), the Chinese Communist Party is the paramount source of power (*cf.* 4.1). Educators in China have to be aware of the constitutional provisions regarding education and the treatment of learners, while also taking note of a number of Acts pertaining to education and their employment relationships. Educators in China are all in the employment of the State, but the levels of the state department responsible for their salaries vary (*cf.* 4.2.1, 4.2.2.1 & 4.2.2.2). Lastly it is important for Chinese educators never to lose sight of the fact that, as they have the responsibility of moulding the young, the State has very specific expectations of them.

Section 19 of the Chinese Constitution (CH, 1982) stipulates the State's responsibility with regard to education, while section 46 stipulates that everyone not only has the right to receive education, but also the duty. Educators should keep in mind that parents in China have the duty to care for and educate their children, while children who have reached their majority have the duty to support and assist their parents (Ch, 1982; section 49).

Sections 23 and 24 are of particular importance to educators as they clearly set out the position of the State with regard to education, as well as to

expectations of employees. Section 24 of the Chinese Constitution (Ch, 1982) states that the State strengthens the building of a socialist, spiritual civilisation through spreading education in high ideals and morality, general education, education in discipline and the legal system, and through promoting the formulation and observances of rules of conduct and common pledges by different sections of the people in urban and rural areas.

Section 24 then continue by stating that the State advocates the civic virtues of love for the motherland, for the people, for labour, for science and for socialism. It also educates the people in patriotism, collectivism, internationalism, communism and in dialectical and historical materialism; it combats the decadent ideas of capitalism and feudalism and other decadent ideas.

Educators in China must also keep the constitutional rights of the learner, as well as their own rights in mind. Both learners and educators in China have fundamental human rights such as the right to equality (Ch, 1982; section 4 and 33), freedom of speech, of assembly and of association (Ch, 1982; section 35), freedom of religion (Ch, 1982; section 36), right to privacy (Ch, 1982; section 40) and the right to human dignity (Ch, 1982; section 38).

In order for Chinese educators to ensure compliance with the law, they need to be aware of a number of Acts directly pertaining to education.

4.2.3.1 Original Legislation

4.2.3.1.1 Education Law of the People's Republic of China 45 of 1995

Section 1 of the Education Law, China (Ch, 1995) states that the law is formulated in accordance with the Constitution, with a view to developing educational undertakings, enhancing the quality of the whole nation, promoting socialist material development, and building an advanced socialist culture and ideology. The Education Law, China (Ch, 1995) stipulates that education of all types and levels within the territory of the PRC must abide by this law (Ch, 1995; section 2), whereas section 3 specifies that in the developing of socialist educational undertakings, the state shall adhere to

Marxism, Leninism, Mao Zedong Thought, and the theory of building socialism with Chinese characteristics as its guidelines, while following the basic principles laid down in the Constitution (Ch, 1995).

In section 4 of the Education Law, China (Ch, 1995), it is stipulated that every member of society should respect educators, as education is the basis of socialist modernization, and the State shall ensure priority to the development of educational undertakings. In sections 5 to 7 of the Education Law, China (Ch, 1995), the role of the State in education and the furtherance of the socialist ideology is further stipulated.

Educators in China should take cognisance of section 8 of the Education Law, China (Ch, 1995) in that it stipulates that education must conform with the public interests of the State and society, and then continues to stipulate that the State shall practise separation of education and religion. No organization or individual may make use of religions to conduct activities that interfere with the functioning of the educational system of the State (Ch, 1995; section 8). Section 9 of the Education Law, China conforms to section 46 of the Chinese Constitution (Ch, 1982) in that it not only provides for the right of all citizens of the PRC to receive education, but also the obligation citizens have to receive education. Said section also ensures equality in education.

Section 10 of the Education Law, China (Ch, 1995) protects the rights of minorities, stipulating that the State shall, in accordance with the characteristics and needs of respective national minorities, provide assistance in the development of educational undertakings for each national minority. It also stipulates in section 10 (Ch, 1995) that the State shall support and assist the development of educational undertakings in remote and poverty-stricken areas, as well as for the disabled.

The Education Law, China (Ch, 1995; section 12) stipulates that the spoken and written Chinese language (Han) shall be the basic teaching language at schools and other types of educational institutions, but at schools and other types of educational institutions where learners of minority ethnic groups constitute the majority, the spoken and written language of the majority ethnic

group or the language in common use by the local ethnic groups may be used for instruction. Furthermore, section 12 of said Act (Ch, 1995) states that *Putonghua* and the standardized characters that are in common use in the whole country shall be popularized and used for instruction at schools and other educational institutions.

Section 13 of the Education Law, China (Ch, 1995) stipulates that the State shall reward units or individuals who have made outstanding contributions to the development of educational undertakings. Section 14 – 16 of said Act (Ch, 1995) focuses on the authority and responsibilities of the different levels of education.

Chapter 2 of the Education Law, China (Ch, 1995) concerns the basic system of education and in section 18 of said Act (Ch, 1995) it is stipulated that the state shall institute nine-year compulsory education and the people's government at all levels shall take various measures to ensure that education is accessible to all school-age learners. Furthermore, section 18 of the Education Law, China (Ch, 1995) stipulates that parents and guardians of school-age learners, as well as relevant social organizations and individuals, shall have obligations to ensure that all school-age learners receive compulsory education for the prescribed number of years.

Chapter 3 of the Education Law, China (Ch, 1995) addresses the schools and other types of educational institutions. Stipulation regarding the types of schools, basic conditions to be met, the rights of the school or educational institution, as well as the obligations and ownership are dealt with in this chapter. It is important to note that section 25 of said Act (Ch, 1995) states among others things that no organization or individual may operate a school or any other type of educational institution for profit.

The rights of schools or other educational institutions encompass aspects such as management, enrolment of learners, rewards and punishment of learners, recruitment, certification and financial management, while it is stated that the state shall protect the lawful rights and interests of schools and other types of educational institutions from infringement (Ch, 1995; section 28). With

regard to the obligations of schools and other educational institutions, matters such as observation of rules and regulations, implementation of state policies, safeguarding of lawful rights of learners, educators and other staff members, the collection of fees, the provision of records and results to parents and learners, and lastly the obligation to supervision according to law (Ch, 1995; section 29).

Section 32 to 35 of the Education Law, China (Ch, 1995) pertain to educators. According to section 32 of said Act (Ch, 1995) educators shall enjoy the rights prescribed by law, fulfil the obligations prescribed by law and devote themselves to the educational cause of the people. Section 33 of the Education Law, China (Ch, 1995) stipulates that the state shall protect the lawful rights and interests of educators, improve their working and living conditions, and elevate their social status. Furthermore, salaries and welfare benefits shall be handled according to the provisions of the laws and regulations. Section 34 and 35 of the Education Law, China (Ch, 1995) focuses on the qualifying, posting, recruiting and appointment of educators.

Chapter 5 focuses on the rights of learners. Educators need to be aware of the provisions made in this regard. Aspects of particular importance are:

- equality;
- financial aid for learners in need;
- acknowledgement of the needs of the disabled;
- the enjoyment of rights as stipulated by law or regulations.

According to section 43 of the Education Law, China (Ch, 1995), learners are obliged to observe laws and regulations, observe the norms of behaviour established for learners, respect educators, develop sound ideology, moral character and behaviour habits, study hard and complete assigned learning tasks, comply with school or other type of educational institution, rules and regulations.

Chapter 6 deals with education and society, pertaining to matters regarding the role of society in education and vice versa. Of interest, is section 45 of the Education Law, China (Ch, 1995) which requires of different bodies in society to provide a proper social environment for learners, so that they may grow up healthy, both physically and mentally. Section 49 of said Act (Ch, 1995) concerns the duty of the parent to provide the learner with the necessary conditions to receive an education, as well as their duty to cooperate with schools or other educational institutions.

Lastly, chapter 9 pertains to legal liability in a number of cases. Of particular interest are sections 72 – 74. Section 72 of the Education Law, China (Ch, 1995) states that those who engage in gang fights, provoke quarrels and stir up trouble, interfere with educational order or destroy buildings, grounds or other properties of schools or other educational institutions shall be punished by the public security organ as a case of disturbing public order in accordance with public security regulations. If the case constitutes a crime, the offender shall be prosecuted for criminal responsibility according to law.

Section 73 of the Education Law, China (Ch, 1995) states that administrators and other persons directly responsible, who are clearly aware that school buildings or other educational/teaching facilities are in a dangerous state, but fail to adopt measures to prevent human casualties or heavy losses of property, shall be prosecuted for their criminal responsibility according to law. According to section 74 of said Act (Ch, 1995) those who, in violation of the relevant state regulations, collect fees from schools or other types of educational institutions, shall be ordered by the government to return the fees thus collected. Persons directly in charge and other persons held directly responsible shall be given administrative sanctions according to law.

4.2.3.1.2 Compulsory Education Law of the People's Republic of China 38 of 1986.

Section 1 of the Compulsory Education Law (Ch, 1986) states that the law is formulated, in accordance with the Constitution and the actual conditions in China, for the purpose of promoting elementary education and the building of

a socialist society that is advanced culturally and ideologically, as well as materially.

According to section 2 of the Compulsory Education Law (Ch, 1986), the state shall institute a system of nine-year compulsory education, while the authorities of provinces, autonomous regions and municipalities directly under the Central Government shall decide on measures to promote compulsory education, in accordance with the degree of economic and cultural development in their own localities.

Section 3 of said Act (Ch, 1986) states that the state policy on education must be implemented to improve the quality of instruction and enable learners to achieve all-round development – morally, intellectually and physically – so as to lay the foundation for improving the quality of the entire nation and for cultivating well-educated and self-disciplined builders of socialism with high ideals and moral integrity.

In the Compulsory Education Law (Ch, 1986), the following is stipulated:

- the school-aged learners' right to compulsory education shall be safeguarded by the State, the community, schools and families;
- a learner who has reached the age of six shall enrol at school;
- in an areas where the above is not possible, the beginning of schooling may be postponed to the age of seven;
- learners should have equal access to compulsory education;
- the promotion of *potonghua*;
- at schools a majority of learners forming part of a minority group may use the spoken or written language of their nationality; and
- compulsory education shall be divided into primary and lower secondary levels.

Furthermore, there are stipulations regarding the responsibilities of local authorities to establish primary and lower secondary schools, as well as the establishment of special schools or classes for learners who are blind, death-mute and retarded (Ch, 1986; section 9). According to section 10 of the Compulsory Education Law (Ch, 1986), the state shall not charge tuition fees for learners receiving compulsory education, but establish a system of grants-in-aid to support the school attendance of the poor.

According to section 13 of the Compulsory Education Law (Ch, 1986), the state shall take measures to strengthen and develop normal schools and colleges in order to accelerate the training of educators, so as to ensure, in a planned way, that all primary school educators have received at least a ordinary secondary school education and that all lower secondary school educators have received at least a ordinary higher secondary school education. Furthermore, all graduates from ordinary schools and colleges must engage in educational work, as required by the relevant regulations and the state shall encourage educators to make education their long-term career.

Section 14 of the Compulsory Education Law (Ch, 1986) states that educators should be respected by the public. The state shall safeguard the educators' lawful rights and interests, and take measures to raise their social status and improve their material benefits. Lastly, it shall reward outstanding educational workers. Section 14 of said Act (Ch, 1986) then continue to state that educators should be committed to the cause of socialist education, endeavour to raise their own ideological and cultural levels, as well as their professional competence, show concern for their learners and be devoted to their duties.

The Compulsory Education Law (Ch, 1986; section 15)) stipulates that local governments shall admonish and censure parents who do not send their children of school-going age to school, as well as adopt effective measures to order parents to send their children to school. Section 15 further stipulates that in cases where organizations or individuals employ school-aged learners for work, the local people's government shall admonish and censure them and shall order them to stop such employment. In serious cases, the offenders

may be fined, ordered to suspend their business operations or have their business licences revoked (Ch, 1986).

According to section 16 of the Compulsory Education Law (Ch, 1986), no organization or individual may appropriate, withhold or misuse funds earmarked for compulsory education, disrupt order in education or occupy or damage school buildings, grounds or facilities. Section 16 of said Act (Ch, 1986) further states that it shall be forbidden to insult or assault educators, to the same extent that shall be forbidden to inflict physical punishment on a learner. This section also forbids the use of religion to engage in activities which interfere with the implementation of compulsory education.

4.2.3.1.3 Teacher's Law of the People's Republic of China 15 of 1993

Section 1 of the Teacher's Law, China (Ch, 1993) states that the purpose of this law is to guarantee the legitimate rights of educators, build up an educator contingent with good ideological and moral qualities, and professional attributes, and promote the development of socialist education. According to section 2 of said Act (Ch, 1993), the law applies to educators who specialize in education at schools of all grades and types, as well as at other educational institutions.

In section 3 of the Teacher's Law, China (Ch, 1993) the Chinese views on educators become clear, as it is stated that educators are specialized personnel who fulfil the functions of education; they shoulder the mission of imparting knowledge and educating people, of cultivating builders of and successors to the socialist cause, and of improving the attributes of the nation. Educators should be true to the people's cause of education. Once again, as in the previous two Acts discussed, society is called upon to respect educators.

According to the Teacher's Law, China (Ch, 1993), educators have the following rights:

- the right to engage in education and educational activities and carry out reform and experiments in education;

- the right to engage in scientific research and academic exchanges, participate in academic groups within their profession, and fully air their opinions in the course of academic activities;
- the right to guide the studies and development of learners and evaluate the conduct and performance of learners;
- the right to obtain , in due time, salaries and remuneration, and enjoy the welfare benefits decreed by the state, as well as paid leave during summer and winter vacations;
- the right to put forward opinions and suggestions regarding school education and management work and regarding the work of educational administrators, and participate in the democratic management of schools through faculty and trade union congresses or through other forms; and
- the right to participate in advanced studies or other modes of training (Ch, 1993; section 7).

Section 8 of the Teacher's Law, China (Ch, 1993) stipulates the obligations of educators. Among these obligations is the duty to abide by the Constitution, the law and professional ethics, and serve as model to others. Furthermore, the obligations mentioned in section 8 mostly focus on the educating duty of the educator, the regard and concern to be shown to the learners, protection of learners against harmful conduct, as well as raising their political awareness constantly.

According to section 10 of the Teacher's Law, China (Ch, 1993), the state shall implement a system of educators' eligibility. According to article 10 of said Act (Ch, 1993) any Chinese who abides by the Constitution and the law, who is dedicated to the cause of education, who possesses sound ideological and moral qualities, who possesses the educational background stipulated by the present law or who passes state examinations for educator eligibility and who has the capacity to engage in education and teaching, may, when recognized and determined to be eligible, obtain educators' eligibility. Section 11 of the Teacher's Law, China (Ch 1993) contains the minimum educational

requirements for educators at the respective levels. Section 11 of said Act states that citizens who do not possess the educators' eligibility stipulated by the present law and who apply for educators' eligibility must pass a state examination for educators' eligibility, while the system for state examinations for educators' eligibility shall be stipulated by the State Council.

According to section 25 of the Teacher's Law, China (Ch, 1993), the average wages of educators shall be no less than the average wage standards of state functionaries and shall be gradually increased. A normal regime for promotions and wage increases shall be set up, the specific regulations for which shall be stipulated by the State Council. Furthermore, in section 26 of the Teacher's Law, China (Ch, 1993), it is stipulated that educators of secondary, primary and vocational schools shall enjoy allowances for the length of their education service, and so on; the specific regulations shall be stipulated by the educational administrative departments of the State Council in conjunction with the relevant departments.

Section 27 and 28 of the Teacher's Law, China (Ch, 1993) concern the responsibilities of local governments with regard to the payment of educator allowances, as well as housing for urban educators. According to section 29 of said Act (Ch, 1993), educators shall enjoy equal treatment with local state functionaries; educators shall be given physical health examinations at regular intervals, and arrangements shall be made in light of local conditions to provide rest and recuperation for educators. Sections 30 and 31 of the Teacher's Law, China (Ch, 1993) concern the responsibility for the pension of educators. Section 32 of the Teacher's Law, China (Ch, 1993) states that the wages and benefits of educators at schools operated by societal forces shall be defined and guaranteed by the operators of the schools.

With regard to legal responsibilities section 35 of the Teacher's Law, China (Ch, 1993) stipulates that those who insult or physically assault educators, shall in light of the circumstances, be given administrative punishment or penalties; those who create damage and losses shall be ordered to pay compensation; criminal responsibility shall be pursued according to law where circumstances are grave and constitute crime. Furthermore, section 36 of said

Act (Ch, 1993) stipulates that those who resort to persecution and retaliation against educators who raise complaint, refer charges or bring forward accusations in accordance with the law shall be ordered to mend their ways by the units in which the perpetrators are located or by higher-level organizations; where the circumstances are serious, administrative penalties may be meted out in light of the specific circumstances.

Educators may, according to section 37 of the Teacher's Law, China (Ch, 1993), be given administrative penalties or discharged by schools or other educational institutions, or educational administrative departments, if they:

- intentionally fail to fulfil educational tasks and thereby cause damages to the education profession;
- administer corporal punishment to learners and do not mend their ways after being reprimanded; and
- resort to abusive behaviour with harmful effects.

Section 38 of the Teacher's Law, China (Ch, 1993) stipulates measures in case of educators' salaries being held back, as well as the embezzlement of education funds, while section 39 provides stipulations regarding administrative procedure.

Regarding ethnic minority education, sections 21 and 27 are pertinent to the aspect. According to section 21 of the Teacher's Law, China (Ch, 1993) the people's government at all levels should adopt measures to cultivate and train educators for ethnic minority areas, as well as for remote and poverty-stricken areas. Section 27 of said Act (Ch, 1993) stipulates that local People's Governments should grant allowances to educators and graduates with academic backgrounds at or above the level of technical secondary school who engage in education and work in ethnic minority and remote and poverty stricken areas.

4.2.3.1.4 Labour Law of the People's Republic of China 28 of 1994¹³

The Labour Law of the People's Republic of China 28 of 1995 (Ch, 1994, hereafter referred to as the Chinese Labour Law) encompasses all the stipulations required to ensure and protect the right of the employee and the employer. According to the Chinese Labour Law, employees are entitled to a contract of employment (Ch, 1994; section 19), working hours not exceeding 44 hours a week on average (Ch, 1994; section 36) ensured occupational safety and health (Ch, 1995; chapter viii) and social insurance and welfare (Ch, 1994; chapter ix).

However, Chinese educators need to be aware of a number of sections, specifically pertaining to their employment relationship. According to sections 13 and 14 of the Chinese Labour Law (Ch, 1994), female employees are ensured equality in their employment relationship. Educators also need to be well informed regarding the sections in the Chinese Labour Law (Ch, 1994) regarding the employment of juveniles. Section 15 of the Chinese Labour Law (Ch, 1994) prohibits the recruitment of juveniles under the age of 16, and should anyone need to employ such a juvenile, approval needs to be obtained. Section 58 of the Chinese Labour Law (Ch, 1994) stipulates that the state shall provide special protection to female employees as well as to juveniles. In section 64 of said Act (Ch, 1994), certain types of work are prohibited for juvenile employment, whereas section 65 requires of an employer employing a juvenile to ensure regular physical examinations.

4.2.3.1.5 Law on the Protection of Minors 50 of 1991

Section 1 of the Law on the Protection of Minors 50 of 1991 (Ch, 1991, hereafter referred to the Minor Protection Law, China) states as the purpose of the Act the protection of the physical and mental health of minors, safeguarding their lawful rights and interests, promoting their all-round development – mentally, intellectually and physically- and training them into

¹³ Enacted 1 January 1995.

successors to the socialist cause with lofty ideals, sound morality, better education and a good sense of discipline.

According to the Minor Protection Law, China (Ch, 1991; section 2), a minor refers to citizens under the age of 18 and the protection of minors shall follow the following principles:

- safeguarding the lawful rights and interests of minors;
- respecting the personal dignity of minors;
- fitting in with the characteristics of minors' physical and mental development; and
- combining education with protection.

While it is important for the educator to be aware of the provisions in the Minor Protection Law, China (Ch, 1991) regarding the protection minors are entitled to within their family, as well as from the society, it is imperative for educators to be aware of the protections schools should offer minors. With regard to the protection minors educators should know that minors are entitled not to be mistreated or forsaken. Neither is discrimination against female or disabled minors by their parents allowed. Furthermore, parents or guardians have to respect the minors' right to education and must ensure that minors attend and complete their compulsory education, while parents also have the duty to guide minors towards a good and sound life and prohibit bad habits, such as smoking and excessive drinking.

Chapter 3 of the Minor Protection Law, China (Ch, 1991) concerns the protection of minors by the school. Section 13 of said Act (Ch, 1991) requires of schools to comprehensively implement the State policy for education and moral conduct, as well as intellectual, physical, aesthetic and labour education, and give the minors guidance in social life, as well as sex education. Furthermore, the school shall show concern for and take good care of the minor learner; with respect for those who have shortcomings in conduct

or difficulties in studying. Educators shall remain patient and help, and may not discriminate against learners experiencing difficulties.

According to section 14 of the Minor Protection Law, China (Ch, 1991), a school shall respect the minor learner's right to education and may not arbitrarily expel a learner from school. It is also expected that educators, as well as administrative staff, shall respect the human dignity of minors and not inflict corporal punishment, even in disguised forms, or any other act that humiliates the dignity of the learners (Ch, 1991; section 15). It is expected of schools not to let minor learners engage in any activity at school buildings or in any other educational facilities that are dangerous to their personal health and safety. Neither may any organization or individual disrupt the order of education at school, nor occupy or damage school grounds, housing or installations (Ch, 1991; section 16).

According to section 17 of the Minor Protection Law, China (Ch, 1991), collective activities organized by schools and kindergartens for minor learners, such as taking part in competitions, recreational activities and social practices, shall be conducive to the sound growth of minors; accidents endangering personal safety should be prevented.

Although educators need to be aware of the legal responsibilities regarding minors, it is imperative for them to realise that section 48 of the Minor Protection Law, China (Ch, 1991) directly relates to their legal responsibility towards learners. Section 48 of said Act (Ch, 1991) states that where educating or administrative staff at schools, nurseries or kindergartens subject minor learners to corporal punishment, or corporal punishment in disguised forms, and if the circumstances are serious, disciplinary sanctions shall be applied by their units or the authorities at higher levels.

4.3 SUMMARY

Although Asia, especially China, has always been associated with great successes on the education playing fields, it has become apparent that the Chinese education system is indeed experiencing grave problems. China is a

country under Communist rule, thus an authoritarian state, with the Chinese Communist Party as the paramount source of power.

In the Chinese Constitution, one finds all the fundamental human rights. There is no doubt that all Chinese citizens are entitled to these rights, but in the Chinese Constitution one also finds the provisions that make you aware of the state control exerted upon the Chinese people. Educators in China also have all the fundamental human rights as enshrined in their Constitution, but at the same time one becomes aware of a lack of freedom for educators. In the Constitution, as well as the legislation directly related to education, one is constantly reminded of the special role required of educators.

Even though all Chinese citizens are entitled to the fundamental human rights, and according to the Chinese Constitution all Chinese are equal before the law, there is a definite inequality in the education received by the rural and poor communities versus the urban more affluent communities. It has also become quite clear in the chapter that freedom of religion, freedom of association and freedom of speech in China do not mean the same thing as in any of the other countries discussed. Discrimination against certain ethnic groups in China is evident.

Although the education legislation is comprehensive, most of the laws regulate the same matters, and when the evidence concerning the different organizations used in the discussion is considered, one wonders about the effectiveness or even usefulness of such legislation. When the authorities do not comply, how can one expect the citizens to comply?

In the next chapter, a comparative discussion on the status and position of educators, in the countries used in this study will be done.

CHAPTER FIVE

AN INTERNATIONAL PERSPECTIVE ON THE FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS

5.1 INTRODUCTION

In the preceding chapters, the fundamental human rights of educators in South Africa, Ghana, Switzerland and China have been discussed. In the case of each country those rights relating specifically to education and educators were highlighted.

Human rights can be described as those rights and duties that belong essentially to what it means to be human and are fundamental to human existence and dignity (Cameron, 1989:6). The Universal Declaration of Human Rights (UN, 1948) calls on all nations to recognize each person's right to certain fundamental human rights and to protect these rights by *rule of law*. These fundamental human rights include rights such as dignity, freedom, equality and freedom of speech.

When one studies current reports regarding education in South Africa, it is nearly impossible not to become aware of problems experienced by educators. These problems relate greatly to discipline, disregard of learners for educators and high levels of work-related stress. However, this does not seem to be a local problem. Reports from across the world are indicative of similar problems experienced at schools (*cf.* 1.2.2; 2.3.2.2; 2.3.2.3; 3.2.2.3 & 4.2.2.3).

For instance, in 2005 the BBC reported that in England educators were getting discipline rights, indicating that educators in England are to be given stronger legal rights in order to restrain learners and to punish badly behaved learners. In the report it is stated that changes that are recommended strengthen the authority of schools, giving them confidence to take action, as well as sending a message to the parents and learners that they also have a responsibility in dealing with the problem. The proposed changes will aid

educators in tackling persistent low level disruption which is too often met with *you can't do anything to me, Miss* and put a stop to such behaviour (BBC, 2005).

According to UNESCO (2004a), problems faced by education worldwide include a reluctance to enter the profession (*cf.* 5.2.1; 5.2.2; 5.2.3 & 5.2.4). Moreover, lamentable working conditions, brain drain and stressful classroom situations leading to educator burnout, among others (*cf.* 5.2.1; 5.2.2; 5.2.3 & 5.2.4), exist.

Not only do learners appear to be unaware of the human rights of educators, but the rights of educators are also disregarded by parents. To make matters worse, educators seem to be less aware of their own rights, than they are of the rights of their learners. In April 2006 it was reported on the BBC News that newly-qualified educators in England are often left to *sink or swim* with the most poorly-behaved classes and do not receive the training they need to manage disruptive pupils (Smith, 2006). According to Smith (2006), a young educator in her second year of teaching informed the correspondent that learners in one of the *year nine* classes admitted coming to school drunk or high on drugs and that she had been physically assaulted when she asked two learners to move seats.

According to Hatwood-Futrell (2004), there are concerns all over the world about educator shortages, not because of a lack of interest, but due to the problem of retaining educators. UNESCO (2004a) estimates that, by the year 2015, at least 15 million additional educators will be needed, in view of the declining status of educators worldwide (*cf.* 1.2.2; 5.2.1; 5.2.2 & 5.2.4), as well as the growing flight from the profession (*cf.* 1.2.2). Hatwood-Futrell (2004) states that governments must recognise that just as learners have the right to learn, educators must also have the right to educate with dignity and security.

It is necessary to uplift the status of educators so that they are revered and respected, making it a more attractive profession (Hatwood-Futrell, 2004). As early as 1966 concerns regarding the status of educators came to the fore in a UN Resolution (*cf.* 1.2.2). In UNESCO's *Recommendations concerning the*

status of teachers, UNESCO recognises the essential role educators play in educational advancement and the importance of their contribution to the development of man and modern society, and state their concern to ensure that educators enjoy the status commensurate with this role (UNESCO, 1966). In order to attract and retain well-qualified educators, it would be necessary for educators to be paid salaries reflecting the professionals they are and the importance of the work they are doing (*cf.* 5.2.3). However, this will not happen if educator salaries are barely minimal or delayed (UNESCO, 1966; *cf.* 2.3.2.2; 5.2.1; 5.2.2 & 5.2.4).

When the situations in the different countries, as discussed in chapters 2 to 4, are considered it becomes clear that where the status of educators and the importance of their role are recognized the morale of the profession is sustained, enhancing the ability of individual educators to educate learners to situate themselves in an increasingly complex world (ILO, 1990: 1).

In this chapter the factors contributing to educators' experience of their employment situation will be discussed, followed by a comparison of the Constitutions of the relevant countries, contrasting and comparing the fundamental human rights having direct bearing on the educator and the position of the educator.

5.2 FACTORS CONTRIBUTING TO EDUCATORS' EXPERIENCE OF THEIR EMPLOYMENT SITUATION IN FOUR COUNTRIES

In the preceding chapters, it has become apparent that many different sections of the Constitutions of all four countries directly influence education and the different role players in the education environment. In all four countries, the Constitution of that country guarantees certain rights of children (*cf.* 2.2.2.7; 2.3.2.7; 3.2.2.7 & 4.2.2.8) and as a child spends a great portion of his/her day at school, this has a direct bearing on education and requires of all educators to be aware of such rights. To the same extent, the Constitution of each country entitles everyone to a basic education (*cf.* 2.2.2.1; 2.3.2.1; 3.2.2.1 & 4.2.2.1), which also places a determining factor on education as this influences aspects such as provision of education. It also requires awareness

from the educator who must be wary of using disciplinary measures which withhold the right to education from learners. There are a number of other sections of the respective Constitutions, which determine education on different levels and which play a role in the provision of education on a daily basis.

According to Malherbe (2004:1), every person is entitled to the fundamental human rights encompassed in the SA Constitution, yet to the same extent everyone is bound by these fundamental human rights (*cf.* 1.2.1). This implies that, just as people are entitled to a right, they are equally bound by duties to ensure respect of the rights of others. The implication of the above for education is that in the school environment both educators and learners are entitled to the protection and advantages offered by these rights (Smit, 2004:1) (*cf.* 1.2.1). This is, however, not only relevant to South Africa, but also to educators in Ghana, Switzerland and China (*cf.* 2.3.2; 3.2.2.2 & 4.2.2.2).

Roos and Wolhuter (2004:3) also mention that South Africans enjoy equal protection and benefit from the law. However, it always has to be kept in mind that these rights are not absolute, as stated in both the South African and Swiss Constitutions (SA, 1996a; section 36, CH, 1999; section 36). According to Roos and Wolhuter (2004:3), the first aspect to acknowledge regarding one's rights is the existence of other bearers of rights and their right to enforce their claim on fundamental rights.

Once again, this points to the fact that responsibilities regarding rights also imply certain obligations regarding the same rights. Just as educators do not have the right to use freedom of speech to abuse learners verbally or influence them unduly regarding personal views, learners have certain obligations regarding their freedom of speech. In each of the countries, educators experience certain aspects directly related to an infringement of their rights, some of these aspects are relevant to a specific country, while others relate to the educators of two or more of the countries (*cf.* 2.2.2; 2.3.2; 3.2.2 & 4.2.2).

According to the DoE (2005:60), educator workload has become a highly contentious issue worldwide, where research focused on educator workload is connected with educator stress and burnout. Greater demands are being made on educators and the changing roles of educators in the context of educational restructuring are factors linked to educator stress (DoE, 2005:60).

5.2.1 South Africa

Currently, educators in South Africa are working under difficult conditions. Class sizes are large, leading to an increased workload, very often schools are not equipped (in some cases even run down) while in some districts educators receive very little support. Added to the abovementioned are the increasing deteriorating undisciplined behaviour of learners and constant changes made to the school curricula and system. Educators find themselves having to make changes to planning and assessment methods on an annual basis, leading to frustration and feelings of futility (*cf.* 2.2.2.2; 2.2.2.3 & 2.4).

According to a recent study of the DoE (2005:11), 54% of educators indicated that they had considered leaving the education profession. The following factors were indicated as contributing to their decisions:

- disintegration of discipline, thus causing unfavourable working conditions;
- lack of facilities for educating - especially in subjects like Science and Technology;
- severe overcrowding at schools and classrooms;
- lack of adequate incentives;
- poor parental participation at all levels: school governance and the disciplining of children;
- policy overload, leading to dissatisfaction with time allocation, and making working conditions unbearable through the increase of administrative work;

- role conflict – educators claim they have to adapt and adopt a multitude of roles, depending on circumstances presented at school, where roles include attention to counselling, teaching, acting *in locus parentis*, doubling as security personnel and sometimes even performing as midwives;
- blatant favouritism and nepotism at school governance levels;
- lack of safety at schools;
- low educator job satisfaction and morale; and
- inadequate remuneration and other material incentives.

South Africa is currently faced with a dilemma of increasing school disciplinary problems, with serious issues regarding school discipline raised lately (De Waal, 2004). After 1994, many changes have been experienced by South African educators, among which is the banning of corporal punishment, a type of punishment frequently used in South African schools. Section 10 of the South African Constitution (SA, 1996a) ensures the right to human dignity (*cf.* 2.2.2.3), while section 12 ensures the freedom and security of a person, which includes the right not to be treated or punished in a cruel, inhumane or degrading way (*cf.* 2.2.2.7). This has led to one of the greatest problems in South African education, as a number of educators are not equipped to handle disciplinary matters in any other way, having received no training regarding this, and receiving very little support regarding disciplinary matters (*cf.* 2.2.2.7).

Another contributory factor to the current discipline problem in South African schools is the fact that after 1994, in line with a worldwide awareness of the necessity to protect children, children's right became a focal point in the new South Africa. Children' rights have been, and are still, emphasized greatly (Mawdsley, Cummings & De Waal, 2006). Unluckily, the same emphasis is not placed on the norms and responsibilities that accompany the rights, leading to a society of young people, and even their parents, who are very quick to point out a possible infringement of a right, very often based on a skewed idea of what the right really entails, but with very little or no regard for

the rights of others. According to De Waal (2004), learners' fundamental human rights have to be protected. On the other hand, it is of little value to have school rules if they are not enforced consistently, as if educators do not have the right to run educational institutions.

Section 9 of the Schools Act (SA, 1996c) contains the stipulations regarding suspension and expulsion from a public school. However, suspension and expulsion are the last disciplinary resorts available to schools and then not always successful. According to Rademeyer (2006b:1), Dave Balt, president of the education labour unit, Naptosa, has said that too many times in the past, districts have rushed to defend learners instead of supporting the educators. It has often happened that an expelled learner has been allowed back at school, exacerbating the situation, as disciplining such as learner is nearly impossible.

According to Malan (2006:9), schools in South Africa are long since not the safe havens of old, but rather breeding grounds of violence. The Minister of Education, Naledi Pandor has acknowledged that educators in disadvantaged schools and communities do not have sufficient support in confronting the problems of violence and ill-discipline, an aspect the DoE will address by intensifying support (Malan, 2006:9). This, however, is not a problem faced by educators at disadvantaged schools and communities only, but also by educators at schools in more affluent communities. The greatest problem educators are faced with is the one of what to do, as they experience very little support from authorities with regard to discipline, while the avenues open to them becomes useful only in severe cases and provide slow progress. Rademeyer (2006b:1) reports that Minister Pandor has stated that learners who refuse to portray positive behaviour must be removed from schools and consider alternative education forms, while districts should support schools by providing places of learning for such learners removed from schools.

Nthite (2006: 2) reports that Minister Pandor remarked that the government was determined to maintain safe and caring schools in the country, stating the need to act in order to care for and protect learners and educators. De Waal (2004) states that parents have the right to *safe* schools for their children,

educators have the right to uphold authority and the limitation clause holds the guarantee that learners' rights are not to be taken as absolute. Rademeyer (2006a:6) reports that Minister Pandor, called upon district offices in South Africa to provide better support to schools, focusing on education at all levels, not only on matric results. According to Nthite (2006: 2), Minister Pandor remarked that provinces must attend to the expansion of educational support services so that counsellors and other professionals were available to provide sustained support to pupils who needed this.

The reluctance of learners to adopt a career in education is indicative of the societal view on the profession. According to the DoE (2005:49), a recent study showed that only 1.5 % of the sample surveyed indicated an interest in a career in education, training and development. However, if these rates are compared to the rates of the actual first year headcount enrolment, then nearly twice the percentage of those originally indicating an interest in Education, actually enrolled in this field (DoE, 2005:50). This difference could indicate that there is a broader interest in a field for conceptual or social studies than there is for Education *per se*, or it may also indicate that Education may be a preferred second choice, should a learner not obtain entry into the preferred field of study, while the learner may not have any real calling for the profession (DoE, 2005:50). According to Hall *et al.* (2005:30), the lack of interest in the profession will not improve unless the working conditions of educators improve. According to the DoE, limited opportunities are perceived to be available within a career in education, consequently becoming an educator is not seen as an attractive career choice (DoE, 2005:58).

Currently educator-learner ratios at South African schools do not seem to be unacceptably high. According to the DoE (2005:59), the average educator:learner ratio in 2003 was 1:33. However, it is important not to confuse educator:learner ratios with class size. Where educator:learner ratios are only a function of how many learners and educators there are at a school, class sizes are dependent on the available physical infrastructure, the number of educators and the subject combinations the educators are able to offer.

Educator:learner ratios are unequal between schools where the ratio is often higher than the official figures suggests (DoE, 2005:59). Class sizes are generally in the region of 46 to 50 at secondary schools, while primary school classes tend to have an average of 40 learners per class. O'Donnell (2004), vice-principal of a school in Derry, Ireland, reports on visiting classes in South African with 91 learners in an infant class, and primary schools where classes varied in size from 85 to 115 (*cf.* 5.2.2; 5.2.3 & 5.2.4).

In the South African context, disenchantment exists among educators concerning the perception of increased workloads, occasioned by policy changes, new expectations and accountability requirements (DoE, 2005:61). All of the above contribute to low educator morale and low job-satisfaction, while the situation is exacerbated by dissatisfaction regarding remuneration packages (*cf.* 5.2.2; 5.2.3 & 5.2.4). Hall *et al.* (2005:17) found that 52% of the respondents in their study indicated that they would consider any job opportunity if it involved a higher pay package. Low remuneration leads to many educators leaving the profession in search of better packages in the private sector, or in countries like England, Australia, New Zealand and even the Middle East.

Educators in South Africa are expected to work 1720 hours per week. This translates to an 8.6 hour working day, with an expected 8 hours a week in activities outside the formal school hours (DoE, 2005:61; *cf.* 5.2.2). Hall *et al.* (2005: 14) state that 60% of their respondents indicated that their workloads are too high, thus experiencing work *overload*, indicating factors such as:

- increased numbers of learners in their classes;
- lack of parental involvement in aspects of their children's education;
- learners' limited understanding of the language used to teach;
- educator shortages; and
- weak discipline (Hall *et al.* , 2005: 15; *cf.* 5.2.2; 5.2.3& 5.2.4).

It has become clear that educators in South Africa generally experience education as an unrewarding career. Apparently, a great number of educators are considering leaving the profession as soon as another opportunity becomes available (Hall *et al.*, 2005:7). South Africa is also losing many young educators to other countries where the prospects for educators are better (Peltzer *et al.*, 2005:8) The decreasing safety at schools, due to ill disciplined behaviour aggravates the matter further.

5.2.2 Ghana

The education system in Ghana is faced with a number of serious problems. According to Osei (2006:41), input costs in Ghana have been kept artificially low through the maintenance of educator salaries at minimal levels, through large class sizes and through educators working long hours.

There are concerns in Ghana about the quality of education. Sarpong (2002) states that the days when being an educator was a respected profession belong to the past, and these days an educator's working conditions have deteriorated, leading to poor quality education and ill-prepared learners. According to Osei (2006:40), possible reasons for the low quality of Ghanaian education are:

- the stagnant expenditure per pupil;
- a largely under-qualified educating force;
- rivalry between local and central bureaucracies;
- insufficient monitoring of the system or feedback; and
- the lack of incentives for improvement.

UNESCO (2001:45) adds the following to the list above as reasons for low quality education:

- inadequate pre-service preparation of trainee educators due to a lack of resources and funding;

- ineffective in-service educator training;
- inadequate teaching and learning materials;
- inadequate classroom furniture and equipment;
- ineffective supervision; and
- poor health status of some learners.

According to Osei (2006:38), secondary educators in Ghana are seriously underpaid, but not necessarily undervalued in the community. Osei (2006:45) states that both male and female educators in Ghana are normally respected members of the local community and church groups. According to Sarpong (2002), educators have been pushed from their former positions of glory; as their conditions of service keep deteriorating, poor quality teaching develops, which in turn produces learners who are barely able to read or write.

Educators in Ghana take on other jobs to support themselves and their families, yet they do not lack commitment to the professional task of educating (Osei, 2006:38). These educators prefer to keep their guaranteed-for-life educator jobs and pensions as public servants while earning as much as possible on the side (Osei, 2006:47). Educators very often operate a welfare system among themselves, pooling their resources in order to help each other in times of need (Sarpong, 2002). The commitment of Ghanaian educators is evident in the fact that, due to lack of resources, educators have to locate and then purchase with their own money books, charts and art and crafts materials (Osei, 2006:45). However, not all educators are this dedicated to their vocation, as many learners at public schools have better attendance records than their educators, but these learners have not managed to read and write by the time they complete their basic education (Banful, 2006). According to Dunne and Leach (2005:viii), low levels of professionalism are found at many schools, especially the low achieving ones, characterized by lateness, absenteeism and even, at times, a refusal to teach (*cf.* 2.3.2.2).

According to Osei (2006:43), surveys and interviews reveal predominantly negative opinions and aspirations among practising and trainee educators, and even lecturers. Kufuor (2002) states that there is a general sense of dissatisfaction with the state of education in Ghana. According to Banful (2006), low quality of education is ascribed to low standards, bad educators, a negative environment and poor buildings (*cf.* 2.3.2.2).

Negativity regarding education has evolved to such an extent that some parents of trainee educators expressed the hope that their soon-to-be-graduating children would find jobs other than educating. Low salaries are one of the main reasons why the education field does not attract or keep the best candidates, while many of the most experienced and qualified educators leave to find better employment elsewhere (Osei, 2006:46) (*cf.* 5.2.1). According to Sarpong (2002), most Ghanaians hate the education profession because of the low pay and deplorable conditions of service. As in the case of South Africa, a vast number of learners choose education as a career only when they fail to meet their cherished dreams of pursuing other professions (Sarpong, 2002).

It is claimed that quality of schools is distinctly lower in isolated rural areas, as well as in the slum areas of cities, leading to most educators trying to avoid such placing (Osei, 2006:43). Qualified educators prefer postings to well-endowed schools or geographical areas, resulting in the employment of some unqualified educators to fill vacancies in the less favourite areas (UNESCO, 2001:33).

The alarming and ever-increasing gap that exists between the standard of education in rural and urban areas is another problematic point, according to Kufuor (2002), providing an example of a fourteen year old boy from a rural area: In Primary 6 he was brought to a school in an urban area, and after conducting some tests, educators in the urban area found the boy's real standard to be Primary 3. Kufuor (2002) further states that educators in rural areas are untrained, while many are dispirited because of ill-equipped schools and poor conditions of schools, creating a feeling that being an educator in a rural area is a punishment and the end of their ambitions. According to

UNESCO (2001:45), lack of incentives to attract qualified educators to the remote and difficult areas has cost those areas the service of some of the best educators. Yet incentive packages are now in place with the hope that some positive financial measures would be taken to raise the low morale of educators in order for them to go the extra mile to show dedication to their work.

Osei (2006:40) indicates that Ghanaian classrooms and timetables are overcrowded, resources and educators receive little budgetary support and the curriculum is in need of major reform. Akyeampong *et al.* (2006:155) state that a discourse analysis of classroom teaching and learning generally shows the African educator as an authoritarian classroom figurehead who expects learners to listen and memorise correct answers or procedures, rather than construct knowledge themselves. True to form, Ghanaian educators still encourage learners to learn by rote and produce lists of facts in compulsory examinations (Osei, 2006:40). Whole class teaching is intensified by the lack of instructional resources, restrictive examination practices, overloaded curricula and a system of educator training lacking in opportunities for continuous professional development (Akyeampong *et al.*, 2006:156). Banful (2006) states that, in the poor areas, there is a tendency to teach down and a temptation for instructional standards to concentrate on low level materials.

Osei (2006:39) states that the overall educator-learner ratio is 1: 20 and the qualified educator:learner ratio is 1: 23. However, as is the case in South Africa, this does not provide a realistic picture of the class sizes in Ghana (*cf.* 5.2.1). Class sizes in Ghana, like in South Africa, are very large. Asamani (2000) states that some of the respondents in her study indicated class sizes of 60 to 90 learners and even one school where the ratio was 97:1. Osei (2006:45) indicates that, regardless of the schools status, classes in junior secondary school have between 35 and 40 learners per class, making effective teaching a challenge. This is slightly better than the South African situation, where educators in South Africa teach about 10 learners more per class (*cf.* 5.2.1).

As in South Africa (*cf.* 2.2.2.3 & 5.2.1), these large classes are often characterized by ill discipline and disruptive behaviour (Osei, 2006:45). Educators in rural areas often also have to content with learners who are disinterested in education, and who stay that way no matter how hard one tries to motivate them (Sarpong, 2002). Osei (2006: 46) also states that growing social problems among the youth imply the extension of the pastoral role of educators (*cf.* 5.2.3; & 5.4), but this seems unlikely, given educators' limited opportunities for personal contact with learners, due to the large class sizes. According to Sarpong (2002), that educators are too scared to punish a learner now, fearing that the learner's parents will come and assault them on the school premises or ambush them in town. It is also reported that even educated parents who ought to appreciate the need to correct their children often tend to castigate, threaten and discourage educators, when their children are addressed concerning their behaviour at school (Sarpong, 2002).

At most primary and junior secondary schools educators have to work two shifts a day, the first from 7h00 to 12h00 and the second from 12h00 to 17h00 (Osei, 2006:41). Whereas educators in South Africa work an average of 1720 hours a week, with 8 hours per week allocated outside formal school hours for other activities (DoE, 2005:61; *cf.* 5.2.1), educators in Ghana average 1260 working hours a week, which is considered high compared to other countries (Osei, 2006: 46). According to Osei (2006:45), Ghanaian educators work long hours in unpaid positions related to the school and to learner interests, especially organizing extracurricular activities and administrative tasks, normally secretarial and clerical. At many public schools, educators have salaries are in arrears or are not paid on time (Banful, 2006; *cf.* 2.3.2.2).

According to Osei (2006: 41), educators in Ghana are handicapped by very large class sizes, a dearth of teaching support resources, long working hours and low pay. According to Sarpong (2002), coping with stress continues to be a major issue confronting Ghanaian educators. Banful (2006) states that educators need help in order to help the learners, as most of the public schools have dilapidated buildings and there is a shortage of books. Educators need more access to information about what works and they need

staff development opportunities and better working conditions (Banful, 2006; *cf.* 2.3.2.2). The Ghanaian Government has currently instituted an annual award scheme for performing educators across the country, with the goals of the award being to:

- boost the morale of the educators;
- raise the status of educators;
- encourage excellence in professional performance among educators; and
- restore the traditional respect of the educating profession (UNESCO, 2004b:23).

5.2.3 Switzerland

According to the Swiss Broadcasting Cooperation (2004), Switzerland spends more money on education than many other countries, with most of the money going to educator salaries, where educators earn 4 to 10% higher salaries than in other OECD countries. Other reasons given for the high spending are infrastructure costs, small class sizes and the existence of four language regions. However, between 1995 and 2001, government spending on primary and secondary schools remained stable in Switzerland, whereas it rose in most of the other OECD countries (SBC, 2004).

One of the greatest problems currently faced by the education systems of the different cantons in Switzerland is a widening public debate regarding the quality of the Swiss education system. As a country without any resources, Switzerland has always prided itself on the quality of the education and now results from the PISA 2000 show that the Swiss learners were overtaken by a number of countries (*cf.* 3.2).

The use of the Swiss dialect by educators and learners is a matter of concern to education authorities. Poor literacy standards were revealed among Swiss learners as one of the points of concern (*cf.* 3.2.2.7). While Swiss educational authorities blame Swiss educators for the use of inferior German at school, and have made suggestions to employ German educators in Switzerland in

order to improve the German language ability of the Swiss German learner, who mostly speaks a dialect at home, the Swiss learners are using the dialect increasingly in everyday conversation, SMS messages and emails (*cf.* 3.2.2.7). These aspects have caused serious outcries from Swiss educators who feel insulted by the remarks, especially as German learners fared even worse than Swiss learners in the PISA tests (Geiser, 2004).

Big differences exist in the educational standards of Swiss learners of high and lower social backgrounds, as well as between those who use a Swiss national language as their mother-tongue and those who speak the foreign language as their mother tongue. In this regard educators feel that the problem lies in a lack of support given to them, as most of these learners originate from countries of war, and therefore the problem does not only lie in their inability to speak the language of instruction, but also in the emotional state of these learners (*cf.* 3.2.2.2).

Another point of contention among Swiss educators is cantonal planned budget cuts in education. Swiss educators are concerned about the possible lowering of standards in basic compulsory education (Emch, 2003). In the canton of Zurich one of the changes to the budget will see the loss of 750 jobs in education, although these are not necessarily educator positions, and an increase in class sizes from 25 to 28, while a quarter of the handiwork and craft classes will be cut. Swiss educators fear that these changes would lead to a two-tier society, with rich cantons and schools being able to afford a good range of subjects, while the poorer ones will have to make do with much lower schooling standards (Emch, 2003; *cf.* 3.2.2.5).

On the other side of the coin, Tognina (2002) reports shortages of educators experienced in some cantons. In the canton of Aargau, 50 educators from abroad had to be appointed, while cantons such as Basel-City, Basel-Country, Bern, Aargau, Fribourg and Vaud have also started employing student educators and other private individuals who are not fully trained.

Despite the fact that the education sector in Switzerland earns of the highest salaries and their salaries are approximately Fr. 1300 above the mean salary

earned in Switzerland (Müller-Kucera, 2003a:32), Tognina (2002) indicates that in recent years the education profession has lost much of its social appeal, as many potential educators are put off by cost-cutting measures in the education sector which have led to longer working hours, bigger class sizes, more subjects to teach, and unattractive pay and working conditions.

Considering that educator salaries have not been increased since 1992 (Staufer, 2003:4), a decline in the interest of aspirant educators can be understood. Furthermore, especially in urban areas, educators are often expected to take on the task of integrating foreign learners and providing social assistance for which they are not properly trained (Tognina, 2002). Educators in Switzerland feel that society is placing a too big burden on them, requiring of them to act as social workers, not as educators (*cf.* 3.2.2.2; 5.2.2 & 5.4).

Educator:learner ratios in Switzerland are much lower than the ratios of South Africa and Ghana (*cf.* 5.2.1 & 5.2.2). The educator:learner ratio at Swiss primary schools is 1:15.8, while at lower secondary level it is 1:12.3 (Staufer, 2003:20). Class sizes in Switzerland are regulated by legislation and in the Aargau Schulgesetz (AG, 1981), primary school classes may not exceed 28 learners per educator, junior secondary classes may not exceed 25 learners per educators and should there be a number of learners in need of special attention, the education department can give permission for smaller classes (*cf.* 3.2.3.2.1).

There is a general decline in the job-satisfaction experienced by Swiss educators in Switzerland (Weber, 2006b:4). Educators indicate stress in classes and problems with undisciplined learners, as well as an increase in extra-curricular and administrative duties reaching critical levels, as contributory factors (Beaumont, 2002; *cf.* 5.2.1; 5.2.2; 5.2.4).

According to Müller-Kucera (2003c:72), in a survey carried out by the LCH in 2001, the following were cited as factors causing dissatisfaction most frequently:

- the erosion of the public image of the education profession;

- the frequent rate of educational reform (including pedagogical and organizational changes);
- the excessive burden of administrative activities compared with teaching ones;
- salary levels;
- class sizes;
- unsatisfactory mentoring and support from the supervisory bodies, such as school inspectors; and
- the limited involvement of educators in the decisions taken by schools.

In the same survey, educators cited the following factors as giving the greatest job-satisfaction (Müller-Kucera 2003c:72):

- the possibility of educators being allowed to try out innovative new ideas themselves;
- the amount of individual latitude within pedagogical measures;
- subject and pedagogical confidence;
- recognition from learners;
- success in teaching; and
- recognition from fellow educators.

Educators in Switzerland, like the educators in South Africa and Ghana (*cf.* 5.2.1 & 5.2.2), claim they are overworked and frustrated, suffer increasingly from burnout and report not only disruptive learners in classes, but also increasing signs of aggressiveness, depression and behavioural problems among learners (*cf.* 3.2.2.3).

Beaumont (2002) reports that one of the main problems is that of the behaviour of problem learners who cause constant disruptions during lessons

or learners who do not incorporate themselves into the class. Other stress triggers include having to cope with more learners of different abilities, a higher proportion of foreign learners and increased administrative demands. The feeling is that educators can no longer build up sound personal relationships with learners (*cf.* 3.2.2.2 & 5.2.2).

However, unlike educators in South Africa and Ghana (*cf.* 5.2.1 & 5.2.2), educators in Switzerland are themselves rarely the targets of severe misconduct such as harassment, verbal abuse and physical attacks, although levels of violence in Swiss schools are escalating (Beaumont, 2002; Müller-Kucera, 2003c:85; *cf.* 3.2.2.3). A possible reason for smaller incidences of misconduct could be the clearly spelled out indication stipulations available to educators and schools regarding disciplinary measures in Acts such as the Aargau Schulgesetz (*cf.* 3.2.3.2.1).

Müller-Kucera (2003c:84) indicates that educators experience discipline problems as partly social and partly structural, for instance:

- inconsistent upbringing;
- lack of pedagogical certainty on the part of parents;
- the general family and social environment;
- the influence of other learners;
- excessively large classes; and
- difficult relations between educators and learners.

Educators in Switzerland are particularly concerned about the early implementation of a foreign language, in the third school year, with a second foreign language in the fifth year, fearing that it is too much for learners to cope with. This is especially a point of concern for the educators in the German-speaking regions of Switzerland, as most of their learners speak the Swiss dialect at home, but have to be taught in High German, practically a foreign language to them (*cf.* 3.2.2.7).

Unlike educators in South Africa and Ghana (*cf.* 5.2.1 and 5.2.2), society in Switzerland seems to be positive about educators. In a national survey, the majority of people believe that educators are respected, the majority of parents believe their children's educators are competent, that their children enjoy going to school, that the relationship between their children and the class educator is predominantly good and that their children are encouraged at school in an appropriate manner (Staufer, 2003:6). According to Staufer (2003:6), educators are seen as enjoying a sound reputation and as well qualified.

5.2.4 China

The Chinese education system is faced with a number of problems causing concern with educators. According to the Minister of Education, problems identified as problematic include aspects such as inadequate funds for education in the poverty-stricken areas, regional disparity in quality of education and heavy academic burdens of learners (MoE, 2001:4; *cf.* 4.2).

According to Ji and Tang (2006:41), society should develop its degree of understanding of educators and educators should not denigrate themselves because they earn so little. The government of China wants to promote a social custom of respecting educators and education. Thus, in order to raise the social status of educators further, to gradually turn education into a respected and admirable profession and to promote a social custom of respecting educators and education, the government declared 10 September as the Teacher's Day (MoE, 2001:13). Other attempts by government to reach their goal are, among others, the rewarding of outstanding educators, the selection of special-class educators and training *backbone* educators, and establishing a new wage system to increase the remuneration of educators (MoE, 2001:13; *cf.* 4.2.3.1.3).

The state of rural education worries educators in China, especially due to the great disparities in earning and benefits available to rural and urban educators, as well as the fact that many rural educators are routinely paid late and seldom receive their full salary. According to Zhu (2006:52), many

educators report that there is too big a difference between the remuneration of educators in rural and urban areas, while others maintain that there is a lack of transparency regarding educators' remuneration and that this should be increased by means of legislation.

In 2002, the People's Daily reported that educators are increasingly admired in China. In the report it is stated that educator salaries have increased 17-fold between 1978 and 2001, housing of educators is becoming more and more spacious and cosy and problems with medical treatment have been solved in most cities. These claims made in the report are completely in contrast with the views of educators in this regard (China Internet Information Centre, 2002).

According to Ji and Tang (2006:42) many educators are concerned about their salaries and feel that they will only be able to work with a sense of purpose if they receive more money, their source of revenue is guaranteed and their social status improves. Other aspects regarding the benefits of educators which are creating concern are the lack of benefits they are entitled to, but which are not set up properly, such as medical insurance, no welfare benefits and no cards for subsidized medical treatment. In some places, the housing of educators is very poor and cannot compare with those of the ordinary residents (Zhu, 2006:52; Ji & Tang, 2006:43; *cf.* 4.2.2.2. & 4.2.2.3).

It would appear as if educators in China have reason to complain about their salaries. According to Liang (2001:12), primary school educators earn the third lowest salaries in China, while secondary school educators are only one step up from them, being the fourth lowest, earning less than other government employees. This is despite the fact that the Teachers' Law, China (Ch, 1993; section 25) stipulates that the average wage of educators shall not be less than the average wage standards of state functionaries (*cf.* 4.2.3.1.3). Due to hard and fast regulation regarding the promotion of educators, many educators find their enthusiasm dampened and are thus calling for the establishment of fair and equitable mechanisms which would de-emphasize academic credits and put more emphasis on actual education standards (Ji & Tang, 2006:42).

Another point of concern is the high dropout rates of rural learners, especially girls. Another group of learners not receiving the education they are entitled to are the children belonging to the *floating population* of China, living in cities, but not allowed at the schools as their parents are not registered to reside in the particular city. Most of these learners attend unlicensed schools, while a large proportion does not attend school at all (*cf.* 4.2.2.1 & 4.2.2.2).

In rural areas, the educator:learner ratios are much higher than in the urban areas (*cf.* 4.2.2.2). In China, primary school class sizes range between 48 and 54, while lower secondary school classes have 48 or more learners. But, unlike educators in any of the other countries used in the study, educators in China seem to accept the sizes of classes as normal and do not experience it as problematic. This could be because of the methods of teaching used in China, where learners are expected to rote-learn (*cf.* 5.2.1; 5.2.2 & 5.2.3).

Educators in China are concerned about the heavy burden carried by learners, even at primary school, wondering if the law truly determined the learners' right to rest, and have indicated that legislation should be implemented to ensure that the time elementary school learners spend on instruction does not exceed 8 hours (*cf.* 4.2.2.1 & 4.2.2.5).

As in the case of the other three countries (*cf.* 5.2.1; 5.2.2 & 5.2.3), educators in China also experience a deterioration of discipline at schools, reporting that there is an increase in cases where educators are insulted and even beaten, and that such cases are often not resolved. This leads to serious damage to the educators' dignity and authority (Zhu, 2006:53; Ji & Tang, 2006:43; *cf.* 4.2.2.3).

Ji and Tang (2006:43) also mention that educators in China, as is the case of the other countries (*cf.* 5.2.1; 5.2.2 & 5.2.3), are experiencing suffering from deteriorating health and mental breakdowns due to the pressures placed upon them by the expectations of their jobs. Educators complain about their workload, the long hours they spend at school, where one educator claims to have to be at school at 6h00 and only leave at 22h00, having to use rest days

during weekends and school holidays to give remedial classes to learners, attending courses or other kinds of school-related activities.

Educators also feel that their workload is further increased with trivial duties. According to Wang (2006), there are four factors that greatly increase the work pressure experienced by Chinese educators in the Hubei province. These are:

- The heavy teaching tasks and great work pressure – in one school in the Hubei province there are 16 classes with 707 learners. This means that each educator has to attend to 18 classes a week, while also required to carry out a lot of education research and attend teaching reform training.
- Worrying health conditions – great work pressure has negatively influenced the physical and psychological health of educators.
- Poor medical treatment and a low income – which leads to reluctance to consult doctors when they are ill.
- Social and parental criticism – parents have great expectations of their children, often leading to expectations of learners to perform beyond their abilities, resulting in more criticism of the education system and the educators.

In a study done by the Education Bureau in the Henan province, 54% of the educators in the sample have psychological problems, 70% suffer from headaches, 48% suffer from anxiety and insomnia, and 36% have difficulty in controlling their emotions sometimes (Wang, 2006). The examination-orientated education, forced on learners due to the *one examination decides the future* trend, reducing many educators to *teaching machines*, actually harms learners and educators alike. Educators in China are faced with a dilemma: where parental expectations of their children entering a good school and the fact that some education departments take learners' scores as a hard index during performance evaluations while, on the other hand, the public is appealing for overall quality education instead of examination-orientated education (Wang, 2006)

According to Ji and Tang (2006:42), male educators find it difficult to find marriage partners. While education is seen as quite a respectable career for a woman and women educators are regarded by many men as prime subjects for courtship. However, male educators, especially those at elementary schools, have difficulty engaging in courtship and finding spouses, leading to many male educators *absconding* from primary schools.

Schools are seriously competitive and the interschool competition is slowly but surely demoralizing the educators and placing considerable physical and mental pressure on educators (Ji & Tang, 2006:44, *cf.* 4.2.2.1). Some educators report that cheating is found among learners, educators and invigilators at examinations; there are even people hired to take exams in the place of another and professional cheaters from intermediate companies (Ji & Tang, 2006:44). This is obviously a result due to the pressures experienced by learners to perform and educators to provide learners who perform in exams, in order to enhance a school (*cf.* 4.2.2.1).

Educators are calling for the protection of their legitimate rights and interest by law, proposing that legislation be implemented to guarantee the legitimate rights of educators, while they maintain that the regulations on appeal in the Teacher's Law, China are unfair and that the law should be revised (Ji & Tang, 2006:53; *cf.* 4.2.2.3 & 4.2.2.5).

5.3 COMPARING AND CONTRASTING FUNDAMENTAL HUMAN RIGHTS OF EDUCATORS IN SOUTH AFRICA, GHANA, SWITZERLAND AND CHINA

As stated in chapter 1, the preamble of the Universal Declaration of Human Rights (1948:1) declares that all people are entitled to fundamental human rights and all nations should strive to promote respect for these rights by educating and education. One of the fundamental human rights focused on greatly in the last decades is the rights of children. This focus originated due to a global awareness of the plight of children all over the world. However, the focus on the rights of children, without a counterbalancing focus on the norms and obligations attached to rights, has led to the rights of children becoming a

two-pronged sword, where adults are increasingly becoming aware of a disregard for adult rights by the youth of today (Malan, 2006:20).

In each of the four countries compared, the Constitution of the country protects the fundamental human rights of each country's citizens (*cf.* 2.2.2; 2.2.2.2; 2.3; 2.3.2; 3.2.1; 4.2.2 & 4.2.2.2). In the Constitutions of South Africa (*cf.* 2.2.2. & 2.2.2.7) and Ghana (*cf.* 2.3.2.7) the best interest of the child is considered to be of paramount importance, while Switzerland's Constitution (*cf.* 3.2.2.8) awards special protection to children and young people, and the Chinese Constitution contains provisions regarding the duty of care for children (*cf.* 4.2.2.8).

In each of the Constitutions it becomes quite clear that educators like all other citizens are entitled to all constitutional rights, despite what the learners of today think (*cf.* 2.2.2; 2.3.2; 3.2.2 & 4.2.2).

In the case of both South Africa (*cf.* 2.2) and Ghana (*cf.* 2.3.1), the Constitution is the supreme law of the country and all other forms of legislation have to be consistent with the Constitutional provisions. Although the Swiss Constitution contains no particular section proclaiming its supremacy, it is stated in section 3 that the cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution, and sections 45 and 46 state that cantons are expected to implement federal law in conformity with the Swiss Constitution and with statutory law (*cf.* 3.2.1). Educators in Switzerland are not only bound by the Federal Constitution, but also by the constitution of the canton in which they reside and/or work. The Chinese Constitution contains no reference to the supremacy of the Constitution, but a number of sections imply's the supremacy of the State and the need to abide by State rule (*cf.* 4.2).

In the paragraphs below a comparison, comparing and contrasting the positions of the different countries regarding the fundamental human rights pertaining to educators will be discussed.

5.3.1 Education

Section 29 of the SA Constitution states that everyone has the right to basic education in the official language of their choice in public institutions, where practically possible (SA, 1996a). It is important in this case to note that basic education in South Africa is not free (*cf.* 2.2.2.1). According to the Ghanaian Constitution (GH, 1992), basic education is the birthright of every child. The right to education is ensured by section 25 of the Ghanaian Constitution, ensuring free basic education that is compulsory and available to everyone, supported by the Ghanaian Education Act (GH, 1961; section 21(1)). However, basic education in Ghana is not free, as parents and learners are responsible for costs, i.e. user-fees, making education unaffordable for a large number of learners and leading to high dropout rates (*cf.* 2.3.2.1 & 2.3.3.1.1).

The Swiss Constitution (CH, 1999; section 19) guarantees sufficient and free basic education. In Switzerland, compulsory schooling, i.e. primary and lower secondary level, is completely free of charge for all learners, while at upper secondary level a nominal fee is charged in certain cases (*cf.* 3.2.2.1). Free compulsory education is further ensured by cantonal legislation, as well as the Constitutions of the different cantons. In the case of the Aargau, the Constitution of Aargau (AG, 1980; section 28) ensures the right of every child to be educated to the best of his/her abilities, as well as the duty of the canton to support parents in the education and forming of their children, while the Aargau Schulgesetz (AG, 1981; section 16) stipulates that the necessary school and learning materials are to be provided to learners (*cf.* 3.2.2.1; 3.2.3.1 & 3.2.3.2.1).

Unlike the Constitutions of the other three countries, where the right to education is ensured (*cf.* 2.2.1; 2.2.2.1; 2.3; 2.3.2.1; 3.2; 3.2.2.1) the Chinese Constitution states that every citizen of the PRC has the duty as well as the right to receive education (Ch, 1982; section 46), which is then supported in the Education Law, China (1995; section 9; *cf.* 4.2.2.1). The Compulsory Education Law, China stipulates that public school learners should be exempted from all tuition charges, although they have to pay certain miscellaneous fees. This, however, contributes to one of the biggest problems

faced by China's education system. Expensive tuition and difficult standards of admission contribute to low enrolment rates and high dropout rates. Schools in China charge unfair and illegal fees, using the desperation of the parents to ensure quality education for their children in order to ensure their future (*cf.* 4.2.2.1).

Rural education in China is most probably the biggest problem. Rural learners and educators are faced with unequal opportunities, while low enrolment and high dropout rates are endemic to rural education. Furthermore, rural education has to make do with low percentages of qualified educators, with very limited resources available to them. According to Hong and Yue (2006), education is regarded a profit-making enterprise, with government treating it not as a right of the citizens, but rather as a privilege of a few. In the average Chinese family, the average education-related fees payable constitute between 30 and 60% of a family's income (*cf.* 4.2.2.1).

One of the greatest problems currently faced by South African education is the low morale of educators, experiencing low job-satisfaction and wanting to leave the profession for anything better coming along (*cf.* 5.2.1), one of the contributory factors being the big class sizes, and a second factor the ill-behaved learners, with parents who are uninvolved, to whom educators feel nothing can be done (*cf.* 5.2.1). Educators in Ghana seem to have similar problems (*cf.* 5.2.2).

Educator morale is also described as low. In Ghana, the most serious problems leading to the low educator morale are low salaries, forcing educators to take a second job, worsened by long working hours, working with very few resources and receiving very little support from authorities (*cf.* 5.2.2). As in South Africa (*cf.* 2.2.2.3 & 5.2.1) learner behaviour is also a contributory factor to the negativity of the educators, but in Ghana educators have to deal with abusive parents as well (*cf.* 2.2.2.3 & 5.2.2).

Although educators in Switzerland (*cf.* 5.2.3) appear to be in a much better position than their colleagues in South Africa and Ghana (*cf.* 5.2.1 & 5.2.2), a decline in job-satisfaction is also evident. As in the case of the previous two

countries, the reasons provided are very similar (*cf.* 5.2.3). In China educator morale is also very low (*cf.* 5.2.4). Reasons of low morale correlate mostly with the reasons provided for South Africa (*cf.* 5.2.1), Ghana (*cf.* 5.2.2) and Switzerland (*cf.* 5.2.3), with one exception, namely the big class sizes which are totally acceptable to Chinese educators (*cf.* 5.2.4)

In some public schools in Ghana, educators are either not paid on time or have salaries in arrears (*cf.* 5.2.2). Neither in the South African nor the Swiss context was any evidence found of educators not being paid or having salaries in arrears. In China the problem is even greater than in Ghana, where rural educators are not only paid smaller salaries, but often either have salaries in arrears or are not paid the full amount owing to them (*cf.* 4.2.2.1; 4.2.2.2 & 5.2.4).

It is important for schools and educators to realize that they are entitled to limit the learner's right to education, should the conduct of the learner infringe upon the right to education of other learners and the correct disciplinary measures have been followed. Thus a learner cannot continually disregard school rules and disrupt instruction and then lay claim to the right to education. However, educators need to be wary of the pitfalls when removing disruptive learners from class habitually, for short periods, i.e. sending a naughty learner out of a particular period on a daily basis, as this might be considered an infringement of such a learner's right to education.

5.3.2 Equality

In all the Constitutions of the respective countries, the equality of the citizens is ensured and unfair discrimination against anybody is prohibited. Equality is ensured in section 9 of the South African Constitution (*cf.* 2.2.2.2), in section 17 of the Ghanaian Constitution (*cf.* 2.3.2.2), in section 8 of the Swiss Constitution (*cf.* 3.2.2.2) and in section 4 and section 36 of the Chinese Constitution (*cf.* 4.2.2.2).

In the case of South Africa, the equality principle applies to all aspects of education, from appointments of educators to the enrolment of learners into schools. The *Larbi-Odam* case (*cf.* 2.2.2.2) even ensures that the equality

principle protects foreign residents with permanent resident status. 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.

With regard to the SA Constitution (SA, 1996a), it is necessary to take note of section 9(2) stating that equality includes the full and equal enjoyment of all rights and freedoms. This specific section ensures the empowerment of the previously disadvantaged people (*cf.* 2.2.2.2). A similar provision can be found in the Ghanaian Constitution (GH, 1992: section 17(4); *cf.* 2.3.2.2) which allows Government to enact laws that are reasonably necessary to provide for implementation of policies and programmes aimed at redressing social, economic and educational imbalances, among others, in the Ghanaian society. In the Swiss Constitution there is no specification that allows for positive discrimination.

In the Chinese Constitution, no stipulation regarding positive discrimination is made, but it is stipulated that the lawful rights and interests of minorities are upheld and protected and that the State develops the relationship of equality, unity and mutual assistance among all of China's nationalities (Ch, 1982; section 4; *cf.* 4.2.2.2). This, however, does not seem to be upheld by the Chinese government when reports on human rights regarding action in minority areas such as Tibet are studied (*cf.* 4.2.2.2).

One of the gravest problems faced by the Ghanaian education system is the disparity between male and female enrolment, despite there being no discriminatory policies regarding education (*cf.* 2.3.2.2). While fewer girls enrol at school, the dropout rate of girls is much higher than that of boys. Owusu-Ansah (2003) states that a majority of women and children in Ghana are voiceless and disempowered in many areas and circumstances. There are a number of factors that contribute to this problem (*cf.* 2.3.2.2). When all the aspects are considered, it is no wonder that the disparity between the enrolment of girls and boys is so great or that the dropout rate of girls is so much higher.

Although the Chinese government claims that gender distribution in enrolment is basically even, the US State department (US, 2005) states that a much smaller proportion of girls attend school in rural areas , than in urban areas (*cf.* 4.2.2.2).

In all four countries, there are disparities in the gender distribution of educators. In the case of South Africa, female educators dominate the profession, with over 70 and 80% of educators at primary school level being female, while at secondary schools the distribution is more equal with a 50% distribution. However, when one considers the preceding evidence compared to the percentage of female educators in managerial positions where only 38% of female educators are school principals and 38.4% are deputy principals, it is clear that equality at education management level has not yet happened (*cf.* 2.2.2.2).

The position of female educators in Ghana seems to be equal to that of South African female educators (*cf.* 2.2.2.2) with regard to the prospect of promotion and the feat of obtaining managerial positions, if not worse. In the study done by Dunne and Leach (2005:40), in Ghana, there were only two female head educators in a group of six. The researchers further found that because promotion often requires transfer, the options for female educators to be promoted were very slim, due to their domestic and family responsibilities. Lastly, the researchers found further conformation in the fact that there were fewer long-serving female educators found in senior positions than their male counterparts (Dunne & Leach, 2005:40; *cf.* 2.3.2.2).

In Ghana, the disparity between male and female educators is the greatest of all the countries. Currently only 37% of educators at primary school level are female, while it drops to 25% at junior secondary school level. Even though the Ghanaian Constitution (GH, 1992; section 25) allows for equal access to secondary and tertiary education, it is evident that there are still major discrepancies. Ghanaian girls perform relatively poor in mathematics and when it is considered that admission requirements into educator training colleges call for a pass in Mathematics, it is no wonder that more male than

female educators are admitted and trained at educator training colleges (*cf.* 2.3.2.2).

Even in Ghanaian schools male-female roles are clearly differentiated, where male and female educators rarely mix, task allocation of both learners and educators is done according to gender and even subjects are differentiated into male and female subjects (*cf.* 2.3.2.2).

In Ghana it would seem that it does not even benefit female learners to be educated by female educators as girls do not perform better in the classes taught by female educators than those taught by male educators (*cf.* 2.3.2.2). It would seem that neither female educators nor female learners in Ghana experience the gender equality as promised in the Ghanaian Constitution. Even more upsetting is the fact that the female educators seem to do as little as their male counterparts to curb the male-dominant attitudes of the boys at the school (*cf.* 2.3.2.2). When the disrespect the boys have professed to feel towards female educators is taken into consideration, one becomes aware of the daunting task lying ahead to establish gender equality in Ghana.

When one considers the attitude of and behaviour towards female educators by male learners and the lack of action of male educators, it is clear that in Ghana the female educators and learners' human dignity is violated and that they are degraded by the males (*cf.* 5.3.5).

In Switzerland, as in South Africa (*cf.* 2.2.2.2), the education profession is becoming increasingly feminized. At primary school level in Switzerland, 71% of the educators are female, falling drastically to only 40% at lower secondary level. A possible explanation for the low representation of female educators at lower secondary level is the fact that lower secondary education requires a university degree and more men than women in Switzerland have university degrees. Furthermore, primary schools allow educators to work in teams of two, sharing the work load and allowing educators to work shorter hours. However, male-female enrolment distribution in education programmes has been equal since 2000. As the education sector ensures females a significantly higher income than other sectors due to the absence of

discrimination between salaries paid to men and women, it is understandable that the profession will hold a specific appeal for women (*cf.* 3.2.2.2).

One of the biggest problems attributed to the unequal representation of gender in the education sector of South Africa and Switzerland where a clear feminization of the profession is evident, is the lack of male role models available to learners at school (*cf.* 2.2.2.2 & 3.2.2.2)

In China, the gender distribution at primary schools is relatively equal, in fact slightly more favourable for female educators. Yet as in the other countries (*cf.* 2.2.2.2; 2.3.2.2 & 3.2.2.2), at secondary school level male educators comprise the larger proportion (*cf.* 4.2.2.2).

In South Africa, Ghana and China there are great disparities in education provision between rural and urban areas (*cf.* 2.3.2.2; 4.2.2.2). According to the DoE (2005:10), the geographic distribution of educators is uneven and rural areas experience both qualitative and quantitative shortages. In Ghana rural areas also experience both qualitative and quantitative shortages (*cf.* 5.2.2). No differences exist in Switzerland between rural and urban education exists.

One of China's greatest problems is its rural education system. China has huge disparities between rural and urban education. The quality of education in rural areas is much poorer than the education received by urban learners. Per capita expenditure is much lower in rural areas than in urban areas. Educators in rural areas are paid less than their urban counterparts; they have fewer benefits and a complete lack of resources (*cf.* 4.2.2.1; 4.2.2.2 & 5.2.4). Furthermore they have difficulty in receiving their pay. Learners in rural areas often have to leave home to attend school, while the fees charged make it impossible for many rural parents to send their children to school. Dropout rates are very high (*cf.* 4.2.2.2).

Another aspect of concern regarding the equality principle concerns the matter of discipline. As the same disciplinary methods are not equally successful with all learners, it is important for educators to keep in mind that they may use different disciplinary measures, but should ensure equality in

outcome (Roos & Wolhuter, 2004:10). This is not only relevant to the South African situation, but to any educational situation across the world.

Disciplinary problems at schools have become an international phenomenon. It is important for educators to remind themselves and parents that the equality principle does not imply equality of status, but rather equality of value (Venter, 2005:10). Thus educators do still stand in an authoritative position with regard to learners and learners should show the necessary respect (*cf.* 2.2.2.2).

Another problem coming to the fore in South Africa and Ghana is the disregard parents have for the authoritarian position of educators, often negating the disciplinary measures of the educators and in some cases even abusing educators for disciplining their children (*cf.* 2.2.2.2 & 5.2.3). Although educators in Switzerland are also experiencing an increase in disciplinary problems at schools, no reports were found of parents disregarding their authoritarian position; in fact, in Switzerland educators are respected by society (*cf.* 5.2.3). Chinese educators are experiencing disciplinary problems, with reports of ill-respect and assault. As in the case of South Africa (*cf.* 2.2.2.2 & 5.2.1) and Ghana (*cf.* 5.2.2), Chinese parents also seem to disregard the authority of educators and educators are criticized by parents, although the Teachers Law, China (CH, 1993) prohibits such behaviour by parents (*cf.* 4.2.2.3 & 5.2.4).

In the respective Constitutions of the four countries discussed, discrimination against disabled people is prohibited (*cf.* 2.2.2.2; 2.3.2.2; 3.2.2.2 & 4.2.2.2). In this regard, the different countries have different views on the way in which learners with problems are to be educated. The current South African perspective is that of inclusive education. Although the principle of inclusive education is a noble one, there are many aspects that influence the implementation thereof, such as educator:learner ratios, scarcity of educational support systems, limited physical resources and the limited number of trained educators (*cf.* 2.2.2.2). All these factors increase the feeling among educators that their workload is being increased (*cf.* 5.2.2).

Equality has not been something disabled persons in Ghana have been experiencing. Only in 2006 did the Ghanaian Government sign a disability Act providing for the protection of the disabled against discrimination, ensuring, among other things access to free basic education. Currently disabled learners in Ghana are faced with segregated education which is an urban phenomenon, while rural disabled learners are being left behind (*cf.* 2.3.2.2).

In Switzerland, the school system allows for differentiation where learners are separated according to their academic abilities, although learners are allowed to move between tracks and are not bound to stay in a specific track (*cf.* 3.2.2.2). The Swiss system also calls for the separation of disabled learners from *normal* learners to be instructed in special schools or classes. There is, however, a movement towards including disabled learners at ordinary schools. Special-purpose classes are also established for learners with behavioural problems and learning disabilities. Despite the movement towards inclusion, special-purpose classes in Switzerland have been increasing. Indications are that more boys than girls and more non-Swiss learners than Swiss learners attend special-purpose classes (*cf.* 3.2.2.2).

According to Whitburn (2003) an atmosphere of *real inclusion* exists in the Swiss education system as the system allows for flexibility for learners to change tracks (schools), age groups, or repeat years if needed. There is close cooperation between parents, learners and educators in order to maximise the learners' success, less importance attached to academic learning and the use of generalist educators for less academic secondary learners (*cf.* 3.2.2.2).

In China, a number of different educational avenues are open to disabled learners. There are special schools for the education of disabled learners, while there are also special classes for disabled learners at regular schools, while learners with mild problems in sight, hearing, speaking and mental growth are enrolled with ordinary learners, although the US State Department (US, 2005) states that parents with disabled children are often advised by doctors to place such children in homes. Should they decide to keep such children at home, parents often face problems in getting adequate medical care, day-care and education for these children (*cf.* 4.2.2.2).

5.3.3 Human Dignity

Human dignity is a right that can be seen as intrinsic to every human being. It is a right that underlies many, if not all other rights. Therefore often when another right is violated, the violation also constitutes a violation of the right to human dignity, and it is also one of the values considered whenever the legality of a limitation of the fundamental human rights is considered (Bray, 2004: 37; Malherbe, 2004:11; Roos & Wolhuter, 2004:9). Human dignity is entrenched in all four the Constitutions of the countries studied (*cf.* 2.2.2.3; 2.3.2.3; 3.2.2.3 & 4.2.2.3).

One aspect closely related to the educator is the use of corporal punishment. Corporal punishment is prohibited by South Africa (*cf.* 2.2.2.3), Ghana (*cf.* 2.3.2.3) and Switzerland (*cf.* 3.2.2.3). In China corporal punishment is not prohibited by the Constitution, but the Teachers' Law, China (Ch, 1993; section 37) stipulates that educators using corporal punishment may be dismissed (*cf.* 4.2.3.1.3)

Section 28(3) of the Ghanaian Constitution (GH, 1992) strengthens the prohibition against corporal punishment found in section 15(2), by stating that a child shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment (*cf.* 2.3.2.3). Therefore it is quite incomprehensible to find that the code of discipline for basic education schools states that corporal punishment should be administered by the head educator, although this duty can be delegated, but administration thereof should still be supervised, and that whipping or beating of children because of an inability to read or do sums is not allowed (Dunne & Leach, 2005:24; *cf.* 2.3.2.3).

However, corporal punishment is not the only degrading behaviour found in Ghanaian schools, limiting the right to human dignity. Educators further also expose learners to degrading comments especially regarding female learners, where the abilities of female learners are portrayed as inferior to those of boys. To the same extent female educators are negated by both male educators and learners (*cf.* 2.3.2.3).

Just as implied in section 10 of the SA Constitution (SA, 1996a), educators should in their dealing with learners treat them with respect and concern, to the same extent learners have the duty to treat educators with the same respect and concern. This is currently not something experienced by educators in South Africa. More and more newspaper reports indicate a lack of respect towards educators by learners, and in some cases even their parents, leading to educators experiencing low morale and low job-satisfaction, as well as educators collapsing due to physiological strain (*cf.* 2.3.2.3 & 5.2.2).

As is the case in South Africa, Ghanaian educators, like the rest of the world, are experiencing a lack of discipline and respect from the youth. Ghanaian educators are often also assaulted by parents of learners who were disciplined by them leading to feelings of fear and an unwillingness to assert their authority (*cf.* 5.2.3). In the case of Swiss educators, indications of disciplinary problems are evident and educators are reporting an increase of signs of aggressiveness, depression and behavioural problems. However, there is little evidence of a disregard for their human dignity by learners and parents, as is the case in South Africa and Ghana (*cf.* 3.2.2.3; 5.2.2; 5.2.3 & 5.2.4).

Although educators in China report an increase in cases of insult and assault of educators, it is the only country that has legislative stipulations prohibiting insulting and/or assaulting educators, with the threat of punishment (*cf.* 4.2.2.3).

5.3.4 Freedom of expression

Freedom of expression is another fundamental human right enshrined in the different Constitutions (*cf.* 2.2.2.4; 2.3.2.4; 3.2.2.4 & 4.2.2.4). It is important for educators to note that freedom of expression, as it is stipulated in the South African Constitution (*cf.* 2.2.2.4), Ghanaian Constitution (*cf.* 2.3.2.4), and Swiss Constitution (*cf.* 3.2.2.4) does not only entail freedom of speech, but includes aspects such as symbolic acts and physical gestures. However,

section 35 of the Chinese Constitution refers particularly to freedom of speech (*cf.* 4.2.2.4).

Nevertheless, the right to freedom of expression allows educators neither nor learners to say just what they want to. Both learners and educators need to be aware that although they have the right to express their views and receive information, these views cannot disrupt or detrimentally affect the education process (Malherbe, 2004:17). Furthermore, learners need of be aware of the fact that freedom of speech does not allow them to interrupt the educator during instruction, or to back chat when reprimanded on the presumption that they are demanding their right to freedom of speech (Venter, 2005:4). Although the abovementioned are currently particularly relevant to the South African situation at school (*cf.* 2.2.2.4), pertaining to the disciplinary problems experienced by educators, it is also relevant to learners and educators in other countries.

Learners who continually disrupt school activities and instruction, are infringing on the right to education of other learners. Therefore their right to freedom of expression may be limited, as the educator, as the higher authority, has the obligation to protect the rights of the other learners in the class.

In the Ghanaian Constitution (GH, 1992 section 21(1)) the stipulations regarding freedom of expression limit the right by subjecting the stipulations to such qualifications and laws as are necessary in a democratic society. One such a limitation can be found in the Education Act (GH, 1961; section 24(1)) allowing the Minister of Education to prohibit certain material and educators making known such prohibited material to learners shall be liable on summary conviction to imprisonment or a fine (*cf.* 2.3.2.4 & 2.3.3.1.1). None of the other countries studied had any such provisions in their Constitution. Although in the case of China, the US State Department (2005) states that State control of printed materials is evident and the only organizations legally permitted to print books are government approved publishing houses (*cf.* 4.2.2.4).

5.3.5 Labour relations and just administrative action

In the SA Constitution there are various rights relating to labour issues, forming the basis for the labour rights of educators and other labour matters. It is important for educators in South Africa to realize that they are entitled to just administrative action that is procedurally fair and reasonable (*cf.* 2.2.2.5). Whereas the provisions made regarding labour relations in the SA Constitution mainly focus on fair labour practices and the protection of employees in their different individual and collective labour relations (*cf.* 2.2.2.5), the Ghanaian Constitution stipulates safe working conditions, equality of pay for equal work, working hours and rest periods (*cf.* 2.3.2.5).

The Swiss Constitution (CH, 1999) stipulates that the Confederation may legislate the protection of workers, but is quiet regarding matters of employment, apart from stipulations regarding the freedom of association and assembly (*cf.* 3.2.2.5). In the Chinese Constitution (Ch, 1982; section 42), it is stipulated that the State creates, among others, conditions of employment, strengthens labour protection and improves working conditions.

In both the South African and Ghanaian Constitutions there are stipulations regarding administrative action. The SA Constitution (SA, 1996a; section 33(1)) ensures the entitlement of everyone to just, lawful and procedurally fair administrative action (*cf.* 2.2.2.5). Section 23 of the Ghanaian Constitution (GH, 1992) requires of administrative bodies and officials to act fairly and reasonably, as well as within the requirement of the law (*cf.* 2.3.2.5). The Swiss and Chinese Constitutions are quiet regarding administrative action (*cf.* 3.2.2.5 & 4.2.2.5).

In this regard, South African educators are often experience problems when disciplining learners, where both learners and parents confuse aspects such as substantive and procedural fairness, and then insist that educators prove beyond a doubt exactly how many times the learners had disrupted the class before being disciplined.

Even though educators have to ensure at all times that they are reasonable, fair and have informed learners of prohibited behaviour, they must also realize

that it is rather the *spirit* of due process that should prevail in class and not due process as understood in legal terms (*cf.* 2.2.2.5). Educators should therefore not be hesitant to institute disciplinary matters, and should not shy away because they are afraid that they cannot prove that their actions were fair, just and reasonable, just because parents and learners do not have a clear understanding of the concept of due process.

Freedom of assembly and association is ensured in the different Constitutions of the four countries studied (*cf.* 2.2.2.5; 2.3.2.5; 3.2.2.5 & 4.2.2.5). In all cases this includes joining trade unions and taking part in the activities of such trade unions. Educators in South Africa have the right to strike, but this must be seen as a last resort (*cf.* 2.2.2.5). The Ghanaian Constitution does not provide any stipulations regarding the right to strike, neither does the Ghanaian Labour Act. Although the Swiss Constitution (CH, 1999; section 28; *cf.* 3.2.2.5) permits strikes and lockouts, it states that it must relate to labour relations, and also conform to obligations to keep the *labour peace* or to resort to conciliation. Furthermore, the Swiss Constitution allows for legislation prohibiting certain categories of persons, including civil servants, from striking. Educators in Switzerland are considered civil servants, thus the right to strike is not available to them. However, this restriction does not seem to be enforced (*cf.* 3.2.2.5). According to section 35 of the Chinese Constitution PRC citizens have the right to freedom of association and assembly. However, due to restrictions and regulations regarding registration and governmental approval of organizations, as well as the fact that only one trade union is permitted to operate in China, this right does not, in fact, carry any legitimacy (*cf.* 4.2.2.5)

Although the Constitutions of the four different countries studied ensure labour rights, the Chinese Constitution (CH, 1982; section 42) ensures the rights of all PRC, citizens to work, but also stipulates that citizens have the *duty* to work (*cf.* 4.2.2.5). None of the other Constitutions ensures the right to work, neither the duty of citizens to work. Another right ensured by the Ghanaian Constitution (*cf.* 2.3.2.5) and the Chinese Constitution (*cf.* 4.2.2.5) is the right to rest, although when working hours and conditions of educators are

considered, it is evident that this right is not always ensured (*cf.* 2.3.2.5; 4.2.2.5; 5.2.2 & 5.2.4).

5.3.6 Limitation of rights

As it is inevitable that a conflict of rights could arise, section 36 of the SA Constitution, as well as section 36 of the Swiss Constitution, provides for such a limitation of rights. In the case of Ghana there are a number of sections in the Constitution limiting the right pertaining to that particular section (*cf.* 2.2.2.6; 2.3.2.6 & 3.2.2.6). For instance, in section 12(2) of the Ghanaian Constitution (GH, 1992), the entitlement to the fundamental rights is limited by subjecting it to respect for the rights and freedoms of others and for the public interest (*cf.* 2.3.2.6). In the case of the Chinese Constitution, section 51 (Ch, 1982) can be considered not only as a limitation clause, but also as a clause indicating the supremacy of the State. In section 51 it is stated that the exercise by the PRC Citizens, of their freedoms and rights may not infringe upon the interests of the State, of society or of the collective, or upon the lawful freedom and rights of other citizens (*cf.* 4.2.2.6).

In each of the cases, rights may only be limited should there be an infringement on the rights of others, thus it is a protective measure against the infringement of a minority on the rights of the majority.

5.3.7 Other sections of the Constitutions that affect the educator

Section 12 of the SA Constitution (1996a) allows every person the right to freedom and security of person, as well as the right not to be treated or punished in a cruel, inhuman or degrading way. It is especially the latter half of the section that is of particular significance to educators, as it specifically pertains to punishment, not only corporal punishment, but also other forms of punishment (*cf.* 2.2.2.7). In the Ghanaian Constitution the prohibition of cruel, inhumane and degrading punishment is found in sections 15 and 28 (*cf.* 5.3.3). The Swiss Constitution (Ch, 1999) states in section 10(3) that torture and all other forms of cruel, inhuman, or degrading treatment or punishment are prohibited (*cf.* 3.2.2.3). The Chinese Constitution has no sections pertaining to this fundamental human right.

It is of the utmost importance that educators do not punish learners in ways that can be considered cruel, inhuman and/or degrading, to such an extent that they cannot be justified under normal circumstances. Neither may educators unduly limit a learner's right to education (Malherbe, 2004:12). To the same extent it is necessary for learners to realize that bullying and victimization constitute cruel, inhuman and/or degrading behaviour, whether the victim is a fellow learner or an educator (*cf.* 2.2.2.7).

Another aspect of particular importance to educators in South Africa is the provision in section 14 for the right to privacy, which includes the right not to have their person, property or home searched (SA, 1996a). In the South African context, the educational environment has been awarded some leeway in this regard supported by provisions in the Regulation for Safety Measures at Public Schools (SA, 2001) and the regulation is supported by the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners (SA, 1998b; *cf.* 2.2.2.7).

In the case of Ghana, the Ghanaian Constitution (GH, 1992; section 18(2)) allows for the right to privacy, but the right may be limited as the section allows for searches being done in accordance with the law and, as is deemed necessary, in a free and democratic society for public safety or the economic well-being of the country or for the protection of the rights or freedoms of others (*cf.* 2.3.2.7).

The Swiss Constitution (CH, 1999; section 13) ensures the right to privacy and should educators or schools make any decision affecting the basic rights of learners, a legal rule is required (*cf.* 3.2.2.8). This requires of educators to tread a very fine line between respecting the privacy of the learner and providing the learner with the special protection called for in the Swiss Constitution. The Chinese Constitution (Ch, 1982; section 40) only stipulates freedom and privacy of correspondence, limiting the right in cases where it meets the needs of state security or of investigations into criminal offences.

The Constitutions of the four different countries studied ensure the right to freedom of religion, belief and opinion, but the execution and interpretation of

the right differ from country to country (*cf.* 2.2.2.7; 2.3.2.7; 3.2.2.8; 4.2.2.4). In South Africa religious freedom is ensured. Schools are allowed to observe religious practices and the schools decide on the religious view, but attendance has to be free and voluntary, and the observances have to be practised on an equitable basis. Educators are not allowed to influence learners unduly and religious instruction may not impose any kind of limitation upon the religious freedom of the person (Beckmann *et al.*, 2002:135; *cf.* 2.2.2.7).

In Ghana, the right to freedom of religion is ensured. However, very importantly, the Ghanaian Constitution prohibits all customary practices which dehumanise or are injurious to the physical and mental well-being of a person (GH, 1992; section 18(2)). Special provision is also made in section 18(2) to protect children from being deprived, of among other education by reason only of religious or other beliefs. Despite this fact, religious practices such as Trokosi are still accepted in certain Ghanaian communities (*cf.* 2.3.2.7).

Religious freedom in Switzerland is guaranteed. However, no one may be forced to join or belong to a religious community, to carry out religious acts or to undergo religious education (CH, 1999; section 15). The Swiss Constitution forbids obligatory religious instruction, but does allow religious instruction on a voluntary basis (Ch, 1999; section 49; *cf.* 3.2.2.8).

Although the PRC ensures the religious freedom of its citizens in the Chinese Constitution (Ch, 1982; section 36), this right is not ensured in reality. A number of human rights violations regarding education have been reported, there is a clear divide between education and religion. Some provinces even prohibit parents from teaching *religious education* to minors who have not completed the nine years of their compulsory education, (*cf.* 4.2.2.4).

In the case of South Africa and Ghana, certain rights of children are guaranteed and it is stated that the best interest of the child is of paramount importance (SA, 1996a, section 28; *cf.* 2.2.2.7; GH, 1992; section 28; *cf.* 2.3.2.7). Educators can never forget that they are dealing with children and that the best interest of those children is entrusted to them, due to their role in

society. An educator can never lose sight of the influences he/she has on the lives of those children placed in his/her care for a large portion of the day. Unlike South Africa, child labour is not prohibited by the Ghanaian Constitution, although children are protected from engaging in work that constitutes a threat to their health, education or development. However, evidence does not support the fact that this protection of children occurs (*cf.* 2.3.2.7).

According to the Swiss Constitution (Ch, 1999; section 8), children and young people are entitled to special protection of their personal integrity, as well as to encouragement of their development, but children and young people exercise their own rights themselves to the extent that their intellectual capacities allow (*cf.* 3.2.2.8). Thus, although children and young people are protected by the Constitution, the same Constitution places a certain amount of responsibility upon the child and the young person, according to his/her ability. In this way, children are being made aware that rights are counterbalanced by norms and obligations. Section 67 of the Swiss Constitution (CH, 1999) further ensures attention being paid to the special needs of children and young people regarding their development and protection (*cf.* 3.2.2.8.)

In the Chinese Constitution (Ch, 1982) there are no specific sections protecting the rights of children, although there are certain sections pertaining to duty of care. Thus it is evident that children in China are not awarded any particular protection and there is no Constitutional prohibition of child labour. In this regard, however, there are Chinese schools that use the learners at school to work in order to obtain funds for the school. The work done by these learners is not necessarily safe, as the incidence in Fanglin proves (*cf.* 4.2.2.8).

The South African Constitution (SA, 1996a; section 30) ensures the right of everyone to use the language and to participate in the cultural life of his/her choice, and section 29 (2) allows for the right of everyone to be educated in the language of his/her choice where practically possible (*cf.* 2.2.2.1). The Ghanaian Constitution has no provisions regarding language. In the Swiss

Constitution (Ch, 1999; section 18), freedom of language is ensured, while section 70 provides for 4 official languages and the right of cantons to decide on the official language for the canton, calling on cantons to respect the traditional territorial distribution of languages and to take into account the indigenous linguistic minorities (*cf.* 3.2.2.7).

Unlike the South African Constitution, the Swiss Constitution does not refer to being educated in a language of preference and in Switzerland the first language at school is the official language of the canton. There are currently a number of language issues causing feelings of discontent in the Swiss education system. Issues are aspects such as the poor performance of non-Swiss language speakers in the PISA tests, the introduction of two foreign languages at primary school, as well as breaking away from the traditional habit of the first foreign language introduced being another official language, to the introduction of English as first foreign language and the use of dialect in the classrooms of German-speaking cantons (*cf.* 3.2.2.7).

The Chinese Constitution (Ch, 1982; section 4) stipulates that people of all nationalities have the freedom to use and develop their own spoken and written language and to preserve and reform their own ways and customs. The Education Act (Ch, 1995; section 12), however, states that the spoken and written Chinese language shall be the basic language of education at school, but does allow for instances where the majority of learners at a school belong to a minority group. In such cases, the spoken and written language of the majority ethnic groups or the language in common use by the local ethnic group may be used for instruction. However, the actions of government, reported by human rights groups in Tibet in this regard, contradict these stipulations (*cf.* 4.2.2.7).

In each of the countries there is legislation regulating education and the employment of educators. Some of the Acts have a direct bearing on education and educators, while others are more general in nature. However, it is of grave importance for educators to be aware of these Acts, as lack of knowledge of such Acts can lead to negative consequences for the educator.

5.4 SUMMARY

In this chapter it has become evident that educators across the world are facing similar problems, especially a deterioration in the behaviour of learners and resulting disciplinary problems. In all the countries, an indication of low morale, increasing job-related stress and feelings of discontent have become evident.

It would appear as if the disciplinary problems greatly contribute in this regard. Disciplinary problems are, however, not only apparent in the countries used in the study, but seem to be an international phenomenon (*cf.* 5.1).

When the situations of educators in the different countries are compared, it becomes evident that the problems and concerns of educators are practically the same. Conditions of Swiss educators are apparently the best, although they also have their problems. The difficulties faced by the educators in South Africa and Ghana, even in China, are very similar, where the lack of societal status seems to contribute greatly to the low morale of educators. Swiss educators are the only educators who seem to be respected by the society they live in, an aspect that is reflected in their ranking on the hierarchy of earnings.

In the comparison and contrasting of the Constitutions of the relevant countries, it has become evident that educators are all protected by the same fundamental human rights. Despite small differences, the Constitutions of the countries tend to protect the same rights. What is perhaps needed is a greater awareness of their rights by educators and not allowing parents or learners to infringe on those rights.

According to De Waal (2004), educator's rights have not been eroded. If it is justified by a legitimate educational interest, reasonable disciplinary regulations, even those impairing learners' protected rights, are upheld. Educators just need to keep in mind that they are also entitled to rights that ensure the legitimate educational interest and reasonableness of their conduct. The precise stipulations provided to Swiss educators in legislation, such as the Aargau Schulgesetz, as well as the knowledge that they are

supported by the authorities might be the reason for the disciplinary problems in Switzerland being less severe than those reported in the other countries, specifically South Africa and Ghana.

Another aspect that contributes to the educator's experience of too heavy a workload is the changing role of the educator and new demands made on educators, especially concerning the pastoral role of educators. Current global trends have caused a disintegration of familial support, leading to learners needing an even increasing amount of support from educators, drastically increasing the pastoral role of educators. However, educators are not sufficiently trained for this role, while too little support is given to them in this regard.

In the next chapter, a summary of all the chapters will be given, the findings of the study will be discussed and recommendations made.

CHAPTER SIX

SUMMARY, FINDINGS AND RECOMMENDATIONS

6.1 INTRODUCTION

In this chapter a summary of the preceding chapters will be given. Secondly, the findings that have become evident in the comparison of the Constitutions and relevant legislature of the countries studied namely South Africa, Ghana, Switzerland and China, will be discussed. Finally, recommendations are made, aimed at ensuring respect for the fundamental human rights of the educator, as well as for the status of the educator.

6.2 SUMMARY

In chapter 1, the problem leading to the research was expounded (*cf.* 1.2). The aims of the research were determined (*cf.* 1.3), the research method was determined (*cf.* 1.4) and the division of chapters was finalized (*cf.* 1.5). The research method consisted of:

- a literature study of primary and secondary educational and legal sources;
- a comparative school law perspective of the Constitution on and legislation relevant to education and the educator in South Africa, Ghana, Switzerland and China, with the aim of coming to new insights by comparing and contrasting.

Chapter 2 provided an African perspective on the problem. The focus was firstly on the Constitution of South Africa (*cf.* 2.2). Emphasis was on the fundamental human rights with direct bearing on the educator, as well as on the effect thereof on the employment conditions of educators in South Africa (*cf.* 2.2.1 & 2.2.2)

Secondly, the different statutes implicating the employment and role of educators in South Africa were reviewed (*cf.* 2.2.3).

Thirdly, the Constitution of Ghana was then focused on, once again emphasizing the fundamental human rights with direct bearing on the educator (*cf.* 2.3), while also considering the effect of these fundamental rights on the employment conditions of educators in Ghana (*cf.* 2.3.1 & 2.3.2).

Finally, the different statutes implicating the employment and role of educators in Ghana were reviewed (*cf.* 2.3.3).

Chapter 3 provided a European perspective on the fundamental human rights of educators, with specific reference to Switzerland. Once again those rights directly relating to the educator and the position of the educator were emphasized (*cf.* 3.2.1 & 3.2.2). As Switzerland has a decentralized education system, the statutes pertaining to the employment and role of educators in one canton, i.e. Aargau, were reviewed (*cf.* 3.2.3).

In chapter 4, the Constitution of China was used to provide an Asian perspective on fundamental human rights with specific emphasis on the fundamental human rights relating to the educator and the position of the educator (*cf.* 4.2 & 4.2.2). The different Chinese statutes relating to the employment and role of the educator were then reviewed (*cf.* 4.2.3).

In chapter 5, an international perspective on the status of the educator, as well as the problems faced by educators was given. Thereafter, an in-depth look has been taken at factors contributing to the educator's experience of his/her employment situation in the respective countries (*cf.* 5.2.1; 5.2.2; 5.2.3 & 5.2.4). Lastly, a comparative school law perspective of the fundamental human rights relating to the educator and the position of the educator in the Constitutions of South Africa, Ghana, Switzerland and China was presented (*cf.* 5.3). An attempt was made to come to a new understanding of the position of the educator in the respective countries, by comparing differences and similarities.

6.3 FINDINGS

From the research, specific findings came to the fore. These findings will be presented in terms of the original research aims:

6.3.1 Findings based on research objective 1: To review existing literature in order to gain information on the fundamental human rights of educators across the world

- Educators are entitled to all the fundamental human rights learners are entitled to, but do not lay claim to their rights when these rights are infringed (*cf.* 2.2; 2.3; 3.2; 4.2 & 5.2).
- Although education is a basic right learners are entitled to, educators may withhold the right to education from a learner, should the conduct of the learner infringe upon the right to education of other learners (*cf.* 2.2.2.1; 2.2.2.6; 2.3.2.1; 3.2.2.1; 3.2.2.6 & 5.3).
- Equality is ensured by all four the Constitutions, but seems not to be a reality. In all four countries, gender disparities regarding educators are evident, while Ghana and China also display great disparities in the enrolment of female learners, as well as high dropout rates. In Ghana and China, there are also great disparities in education provision to rural and urban areas (*cf.* 2.2.2.2; 2.3.2.2; 3.2.2.2; 4.2.2.2 & 5.3)
- When the upsetting newspaper reports during 2006 are taken into consideration, as well as the right of parents to send their children to *safe* schools, the right of innocent, well-behaved learners to attend *safe* schools and receive quality education and the right of educators to work in a safe working environment, it is the duty of the authorities to ensure the use of the means at their disposal to curb the undisciplined behaviour of those learners disrupting the schools. It has become quite clear that it can no longer be expected of South African educators to deal with the disciplinary problems experienced at schools on their own, but that support to educators needs to be provided (*cf.* 2.2.2.7 & 5.2.1).

6.3.2 Findings based on research objective 2: To explore the respect society has for the fundamental human rights of these educators.

- Learners, and even parents, often disregard the fundamental human rights of educators (*cf.* 2.2.2.3; 3.2.2.3; 3.2.2.3; 4.2.2.3; 5.2.1; 5.2.2; 5.2.3 & 5.2.4).
- Parents lack respect for educators and disregard the authority of the educator. Only the Swiss society seemingly shows respect for educators and the education profession (*cf.* 2.2.2.2; 2.3.2.3; 2.3.2.2; 3.2.2.2; 4.2.2.2; 5.2.1; 5.2.2; 5.2.3; 5.2.4 & 5.3.2).

6.3.3 Findings based on research objective 3: To investigate factors that could contribute towards educators' experiences worldwide concerning their employment situation.

- Educators in all four countries are experiencing low morale regarding their work conditions, due to large classes, ill-behaved and undisciplined learners, parents who are uninvolved and greater requirements regarding the pastoral role of educators (*cf.* 5.2.1; 5.2.2 & 5.2.3).
- Educators need to ensure equality of outcome in the use of different disciplinary methods for learners who differ (*cf.* 2.2.2.2).

6.3.4 Findings based on research objective 4: To make findings and recommendations that would promote recognition and advancement of the fundamental human rights of educators across the world, but specifically in South Africa.

- There are disparities in education provision between rural and urban areas in South Africa, Ghana and China (*cf.* 2.2.2.2; 2.3.2.2; 4.2.2.2 & 5.3).
- The equality principle does not imply equality in status, but rather equality of value (Venter, 2005:10). Learners and their parents may thus not disregard the position of authority of the educator (*cf.* 2.2.2.2).

- Educators in South Africa are not assured of the support of education authorities regarding disciplinary measures taken by them, even though they have followed procedure (*cf.* 2.2.2.3 & 5.2.1).
- Swiss educators seem more assured of support regarding disciplinary measures, due to the statutory support (*cf.* 3.2.3.2.1). This is possibly why the disciplinary problems experienced by Swiss educators are less severe and they are seldom the targets (*cf.* 3.2.2.3 & 5.2.3).
- Swiss educators are further ensured of parental cooperation and support as stipulated in legislation. This could be indicative of why fewer disciplinary problems occur at schools (*cf.* 3.2.2.3 & 5.2.3).

6.4 RECOMMENDATIONS

The following recommendations can be made in order to assist educators in the acknowledgement of their fundamental human rights, as well as a heightened increase in respect from their societies.

- From the findings it has become evident that educator morale is generally very low, whatever their salaries. The negative perception of their work conditions pertains much more to workload. Therefore it is necessary for educational authorities to ensure the necessary support to educators, as well as better training in areas where educators feel they are not empowered. Here specific reference can be made to the increased demands made on educators regarding their pastoral duty.
- Educators need to lay claim to the fundamental human rights they are entitled to and not hide behind the *best interest of the child* phenomenon, which strengthens the misconception of learners and their parents.
- Society as a whole, but particularly the learners of today, need to be re-orientated regarding rights, with the emphasis not on the rights of the individual, but rather on the norms and obligations accompanying any right. Drastic measures need to be taken, as society seems bound of individuals laying claim to rights only.

- Educator status in society can be uplifted in countries like South Africa, Ghana and China by giving credit where it is due and openly acknowledging the value and importance of educators.

With regard to South Africa as such, apart from the recommendations mentioned above, the following can be added:

- Educational authorities in South Africa must support educators and schools openly in their attempts to reinstate discipline and must assure themselves of the facts of both sides of a case, from before overruling disciplinary decisions.
- Clearly stipulated disciplinary measures, along the lines of those found in the Swiss statutes, with the necessary support from the authorities and clear implications for non-cooperative parents, as in Switzerland, might just be the saving grace of the South African youth and the education profession.
- As there are very few support services available to schools and educators, especially in the disadvantaged communities where parents cannot afford to pay for as counselling and other professional services, it is imperative that the DoE devote serious attention to the matter.

6.5 FINAL REMARKS

This study set out to gain insight into the fundamental human rights of education in Africa, Europe and Asia, in order to promote recognition of their status and advancement of their employment situation.

Bearing in mind that Abraham Lincoln reminded us that we *cannot strengthen the weak by weakening the strong*, South Africa should indeed support her educators by upholding their fundamental human rights so that they can strengthen their learners by ridding them of their misconceptions concerning fundamental human rights in the classroom. After all, Aristotle (Fuller, 1945:311) maintained:

“The fate of empires depends on the education of the youth.”

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