

Dignity and Safety in Education

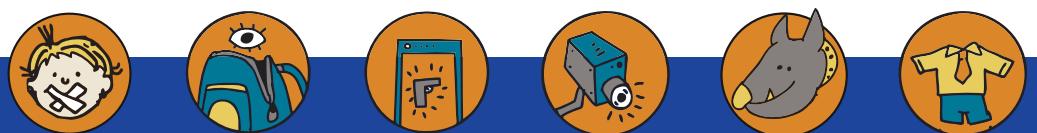
Gracielle Lauwers & Jan De Groot (Eds.)



*- Building Safe Schools for
Children with Rights -*

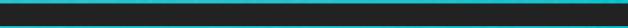


With the support of the Lifelong Learning Programme of the European Union



‘This project has been funded with support from the European Commission. This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.’

Intro



DIGNITY researchers, focusing on ‘Safety in a Rights based Education,’ conducted a European conference for researchers, inspectors, policymakers, judges, representatives from European networks of equality bodies, and stakeholders in education in Brussels on 8th-10th November 2012.

Over the past years, violence in schools has occurred with incidents ranging from minor discipline problems, to verbal and physical threats. While an understanding of the phenomenon of violence in schools has progressed in various disciplines, a significant gap on the legal framework and the enforcement of law in schools to guarantee a safe educational environment remains.

The papers intend to provide a better understanding of how law influences and might effectively be modified to reduce violence in schools in a given European context and create safe educational environments.

The papers address the legal challenges for creating a safe educational environment. Moreover, it considers the need of officials who supervise schools, of directors and teachers, of education providers to acquire understandings of international norms for safety plans in schools within the framework of respect for human rights.

The ultimate objective of the papers is to make violence in schools regarded as a preventable problem instead of being inevitable.

<http://www.ua.ac.be/main.aspx?c=.ELA&n=98474>



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Universitas and Humanitas: a Plea for Greater Awareness of Current Challenges

**Antônio Augusto Cançado
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***Universitas and Humanitas:* a Plea for Greater Awareness of Current Challenges**

Antônio Augusto Cançado Trindade¹

1. INTRODUCTION: TRAJECTORY OF UNIVERSITIES IN TIME

It is a great honour to me to represent the International Court of Justice in this Conference. May I start by briefly situating, in the passing of time, the evolutive conception of the *Universitas*, in order to appreciate it properly, in historical perspective. As it came to be known, the University, in its early beginnings (XIIIth-XIVth centuries), cultivated a knowledge regarded as revealed. The medieval, clerical, University was thus not predisposed to questionings. These latter were only to occur with the advent of the Renaissance (XVth century), which sought to transcend classic scholastic knowledge. The new humanist outlook (flourishing in Italy and then across Europe) lasted for some time (XVIth century). Later on, modern University, attentive to the industrial revolution, came, not surprisingly, to cultivate scientific (and technological) knowledge. In the early XVIII century, the areas of "sciences and letters" emerged, the latter concentrating on the "transcendental humanity" of human beings.

By the end of the XVIIth century and throughout the XIXth century, scientists, grouped together in the new departmental structures of the University, came to sustain that truth could only be reached by empirical investigation. Humanists, in their cultivation of general knowledge, continued to insist on the centrality of the values. Scientists, for their part, disclosed a certain indifference to personal self-development outside their specialization. With the emergence of new scientific knowledges, culture began to yield to techniques, and classic Universities began to find opposition in the wider social *milieux*. Modern University, as it spread from the European to other continents, came thus to host the large areas of the natural sciences, on the one hand, and of the humanities or arts, on the other.

In mid-XXth century, in the post-world war II period, Universities underwent a new reform, as from an outlook of the offer of education as a social service. The reorganization of the disciplines deepened the separation of knowledges, with the so-called "specializations". At the end of four decades, however, there was already an open questioning of the assumed infallible authority of scientific knowledge, and of the excesses of specializations, conducive to the commercialization of the Universities, aggravated in our days. The dissatisfactions of the new generations began to be expressed (as in the historic demonstrations of 1968, for example).

In this age of mass "globalization", or "globalized" massification, attention to cultural identity, in the framework of the universality of the human kind, is regarded as necessary, so that we can live in harmony in the cosmos, respecting the differences which conform that universality, and defend ourselves against the chaos and the irrationality that surround us. It will never be excessive to insist on the central role of humanities (originally, the *humanitas*, as in Cicero) - encompassing literature, philosophy, history, law, language and education - within the *Universitas*. This latter is engaged in absorbing the intellectual activity, the cultural legacy, which will never be replaced by the simple preparation for professional exercise.

2. EDUCATION AND SPECIALIZATIONS

University teaching is to be attentive to *education* so as to awaken in the youth of the new generations their *vocation* to an integral life, from the start not limited by the vicissitudes of the entry in careers of specialized knowledge. Such a scheme, standardized and pre-determined, tragically separates the strictly professional from the other aspects of the life of each person, and thus does not give a sense of accomplishment nor satisfies. The University spirit to be transmitted is to be first to understand the world, by means of the cultivation and the transmission of culture to respond to the challenges of one's time, - of the time of each one, by a personal option of life.

The search for knowledge and understanding cannot be limited by the self-sufficiency of "professionalization courses". The youth hopes to acquire knowledge so as to understand the surrounding world and one's own existence, and to live with lucidity in one's own time. We live nowadays, in any country of the world, amidst the imprevisability and the chaos, more or less institutionalized, and amidst violence, in distinct degrees. Interdisciplinary studies were pursued, given the preoccupation that emerged with premature "specializations", which became rather usual. One began to cultivate a scientific rigour in the ambit of each specialization, to what corresponded a much lesser concern, and even a certain indifference, in relation to principles and values which seemed to escape the parameters of specializations.

Such ambivalence has appeared as a considerable paradox of our age, wherein the enormous progress of scientific knowledge, accompanied by the culture received but not assimilated, produced a type of human being as the contemporary ones, with a potential of violence and self-destruction unparalleled in History. In effect, never, as throughout the XXth century, so much progress was achieved in science and technology tragically accompanied by so much destruction and cruelty, exemplified by successive acts of genocide, atrocities and massive and grave violations of human rights and international humanitarian law.

It so seems that the XXth century will rest marked by its tragic contradictions, by its oscillations between advances and steps backwards, by the divorce between wisdom and specialized knowledge, by the antinomy between the domain of sciences and the lack of control of human impulses. The great thinkers of the XXth century are unanimous in pointing out these contradictions. Never, like in our times, so much growth of material prosperity has been registered, accompanied in a likewise tragic way by some much increase in socio-economic disparities, in extreme and chronic poverty, and in social marginalization and exclusion.

3. SPECIALIZATIONS AND CULTURE

Professions, multiplied in modern times, have led to specializations, which respond and correspond to the needs of the social *milieu*. Even if it today prevails, in the majority of the Universities, an unsatisfactory search of "specialized" or "professionalizing" knowledge

(rationalized in function of “social needs” which do not take care of the personal needs of each human being), there are also those – perhaps a minority, today as in the recent past - which have not lost sight of the fact that the meaning of existence cannot be acquired by means of a simple search of satisfaction of material needs; the cultivation of culture is part of the search for spiritual development, so as to be able to interpret the past, to understand the present, and to give a meaning to one’s own life².

Specialized knowledge, when minimizing culture, has led to successive tragedies, revealing the contemporaneity of Aeschilus, Sophocles and Euripides. One cannot practice any specialization with a blurred awareness of the space and time wherein one acts³. There is need to provide a new outlook which helps to develop the capacity of the new generations of students to understand better their surrounding world, the world wherein we live, free from the constraints of the so-called “specializations”, and subordinated rather to the canons of ethical integrity, concerned with the improvement of the human condition. Attention needs to be turned to the realization of the *vocation* of each one for an integral life, not limited from the start by the vicissitudes of a prompt entry in professional careers of specialized knowledge.

4. AVOIDANCE OF UNDUE USES OF LANGUAGE AND VIOLENCE

Nowhere else can the intergenerational dialogue be cultivated in a more gratifying way as in the University. This is an attribute which belongs to it by an intrinsic requirement: that of the encounter between generations, living harmoniously each one within its own time, with the due understanding, and the difficult but necessary acceptance, of the ineluctable passing of time. Looking back in time, we detect, at each historical moment throughout the last decades, the undue uses of language, in order to confuse or to manipulate, and to cover up harmful purposes. We have to guard ourselves against that, and against deceit and subterfuges. The gravest abuses committed against human collectivities have always been accompanied by the undue use of language, either to devalue – or even dehumanize – the victimized, or to exorcise guilt, or both. All of us who seek, within our modest possibilities, to improve the human condition, are obliged to know, to understand the surrounding world, before acting. “Specialized knowledge” is ineluctably unsatisfactory. We endeavour to cultivate inner life, the intellectual life so lucidly propounded by A.-D. Sertillanges⁴, some decades ago.

Looking back at the previous decades, we witness a century of a panorama of unprecedented scientific and technological progress accompanied by undescribable human sufferings. One is to foster the awareness that there is a scientific rigour in the ambit of each specialization, but regrettably only a thin layer of “civilization” as to the principles and values which ought to orient the search for, and use of, specialized knowledge⁵. The extrinsic system of coercion, in the hands of the States, is set up outside the human conscience. It is easy to detect that present-day societies, in distinct parts of the world, tend to be rather repressive, and to ascribe far greater social value, e.g., to the professionals of security (public and private) than to those of education, por example. Most unfortunately, in these social *milieux*, education has ceased to be a *public good*, and has most regrettably been

reduced to a mere *commodity*, like any other. It is time to react to this state of affairs, and to restitute to education and educators the social value they should have (and have had in the past), and surely deserve.

5. EDUCATION UNDER THE IMPACT OF MASS SOCIETY

The advent of modern mass society has had its impact upon culture, and educational systems. This phenomenon was launched by industrialization and the consequent mechanization of daily life. This has had an impact in all domains, such as the arts, music, literature, liturgy, - to name a few, - as lucidly pointed out by Étienne Gilson⁶. To him, cultural, in its highest form, “is spiritual”, but it requires materials objects of all sorts to constitute itself, to develop and disseminate⁷. Yet, he wonders, not surprisingly, at the end of his illuminating essay, whether, to the extent that civilization progresses (materially), human beings experience regression⁸... The impact of mass society upon Universities has been conducted in a very worrisome way, dismantling the life of academics and leading students into the vicissitudes of the “market”.

In effect, the last three decades (from the early eighties onwards) have been witnessing a “privatization” of University studies, pursuant to a utilitarian, economicist and managerial outlook, giving birth to an “international market of superior studies”. Costs are increased and shared between the State, and private sources (such as collectives, families and the students themselves). Competition increases, pursuant to “strategies” guided by the political and administrative power, rather than the academic authority⁹. Pragmatism prevails, seeking insertion into professional life and avoiding unemployment, bearing in mind the “demands” of the “market”¹⁰. Some positive aspects also appear, such as the circulation of students (e.g., the *Erasmus* programme n Europe, and other schemes of the kind in other continents), the diversification of superior studies, and “affirmative action” (for access to higher education)¹¹.

But the over-all picture is very worrisome: libraries gradually abandoned with greater use of electronic resources, polytechnics becoming Universities, trivialization and commerce of diplomas, contradictions of neoliberal and managerial discourses, conservative attacks seeking further regression of the Universities¹², and the like. Universities can count only on critical reflection and the right reason, to fight back, and reassert their true vocation (cf. *supra*) as centres of universal learning, and formation of cultured persons, competent professionals who understand the world wherein they live and and well dispose to contribute to the improvement of the human condition.

6. INTEGRAL EDUCATION: THE REJOINING OF BRANCHES OF KNOWLEDGE

It is not surprising to find nowadays some wishful expressions of support for a rejoining, or a grouping together, of distinct branches of knowledge¹³, so as to promote a better understanding of the world wherein we live. This appears to reflect a growing awareness of the need to go beyond “specialized” knowledge, at least in the initial years of basic formation

at Universities. Some degree of transdisciplinary or multidisciplinary instruction serves the concern as to the need to convey to the new generations a necessarily humanist perspective, that may enable them to understand the world and to preserve basic values to be transmitted to their fellow human beings and their descendants.

We are again faced with the need of an integral education, i.e., of the whole personal development of the individual, besides his occupational training. This remains a basic problem of modern society, which J. Ortega y Gasset detected with intuition some decades ago. Universities are to be also concerned with providing responses to the needs and aspirations of humankind, which calls for constant creativeness; humanities address that which pertains to the human spirit; culture, being the *vital* system of ideas of each historical period thereby providing the foundations of one's way of life, enables the individual to live a meaningful life¹⁴.

It is too risky to learn only specializations and to ignore all else (and modern history teaches that to us). The function of the Universities comprises the *transmission of culture*, the *transmission of sciences*, and the *teaching of professions*, *altogether*; Universities are to teach professionals to be cultured persons, as cultural disciplines and professional studies go together, cannot be isolated from each other. J. Ortega y Gasset further pondered that Universities have to be open-minded, and to apprehend the realities of their times, including spiritual reality; given the usual distortions by the press, Universities have to influence public affairs, they have also a spiritual dimension. There is a need to convey this humanist mentality also to scientists and specialists¹⁵.

7. THE LEGACY OF U.N. WORLD CONFERENCES

The remarkable transformations in the contemporary world scenario have disclosed the considerable density of our times, which are of profound reflection on the very bases of international society, and indeed of the gradual formation of the international agenda of the United Nations. The cycle of World Conferences convened by the United Nations, initiated in 1992, has disclosed a concern with the precarious living conditions dramatically affecting greater segments of the population in many parts of the world nowadays. There has been, ever since, a growing call for the pursuance of social justice *among* and *within* nations. These recent years are being marked by an over-all reassessment of many concepts in the light of the consideration of global issues (human rights, social justice, social development, environment, population, human settlements, human security and peace), affecting the whole of humankind¹⁶. This process has generated a universal dialogue and concertation, as clearly disclosed by their final documents (declarations and programmes of action).

The recent U.N. World Conferences have disclosed, as their common denominator, the recognition of the legitimacy of the concern of the international community as a whole with the conditions of living of all human beings. Those World Conferences have indeed been particularly attentive to the *conditions of life* and special needs of protection in particular of vulnerable groups and the poorer segments of the population. This is reflected in various passages of their lengthy final documents, which place human beings at the centre of their

concerns. In focusing on vulnerable groups (such as, among others, those formed by the poorest segments of society), the immediate concern has been with meeting basic human needs, and, from there, fostering people's empowerment¹⁷.

The effectiveness of the right to education is of fundamental importance herein, with due attention to the basic principle of equality and non-discrimination. The recent U.N. World Conferences have sought to elevate human rights related issues to a central place on the agenda of contemporary international relations, on the basis of the understanding that human rights do in fact permeate all areas of human activity. The recognition of this reality corresponds to a new *ethos* of our times. It is the privilege of contemporary international lawyers, faithful to the historical origins of our discipline, to contribute to recover and to reestablish the central position of human beings in the universe of the law of nations (*droit des gens*).

8. INTERNATIONAL ADJUDICATION AND THE RIGHT TO EDUCATION

In the international adjudication of human rights cases, it so happens that the right to education marks its presence in legal reasoning even when the rights at stake are other protected rights under human rights Conventions, - such as the fundamental rights to life and to personal integrity. This has been so, for example, in respect of the *reparations* due to those victimized. May I briefly refer to a couple of examples on the basis of my own experience. Thus, in my Separate Opinions in two cases adjudicated by the Inter-American Court of Human Rights (IACtHR), those of *Gómez Palomino*, concerning Peru (Judgment of 22.11.2005), and of *Blanco Romero and Others*, pertaining to Venezuela (Judgment of 28.11.2005), I recalled that educational measures had been ordered by the IACtHR as exemplary forms of reparation. For example, in the case of *Aloeboetoe et alii*, concerning Suriname (Judgment of 10.09.1993), the IACtHR ordered the reopening of a school and the creation of a foundation to assist the beneficiaries; in the case of the "Street Children" (*Villagrán Morales and Others*), concerning Guatemala (Judgment of 26.05.2001), the IACtHR determined the designation of an educational centres allusive to the victims in the *cas d'espèce*; likewise, in the case of *Trujillo Oroza*, pertaining to Bolivia (Judgment of 27.02.2002), the IACtHR again ordered the designation of an educational centre with the name of the victim¹⁸.

There have been cases in which reparations of the kind are meant to provide *satisfaction* to the victims. Thus, in the case of *Cantoral Benavides*, concerning Peru (Judgment of 03.12.2001), for example, the IACtHR ordered the State to provide a scholarship of University studies to the victim; and in the case of *Barrios Altos* (Sentencia del 30.11.2001), pertaining to the same respondent State, the IACtHR determined the provision of educational grants, in addition to health services¹⁹. I further singled out that, in the aforementioned case of *Gómez Palomino*, the IACtHR ordered, as one of the measures of reparation, as a form of *satisfaction*, the grant of "measures of educational reparation" (including scholarships) to the close relatives of the victim²⁰.

Furthermore, in both Separate Opinions I deemed it fit to point out that educational measures in human rights go beyond means of *reparations* (such as satisfaction), as they also pertain to the *prevention* of human rights violations²¹, disclosing the *temporal dimension*

of the safeguard of those rights. In my Separate Opinion in the aforementioned case of *Blanco Romero and Others*, in particular, I singled out that the IACtHR had ordered, as one of the measures of reparation, as a form of *satisfaction and guarantee of non-repetition* of the harmful acts, that the respondent State was to implement a programme of formation in human rights (for members of the forces)²². Hence the utmost importance of educational programmes in human rights education, to the benefit of distinct segments of society and different groups of professionals (including those entrusted with public security tasks), so as to secure the effectiveness of those rights, at national and international levels.

In my Separate Opinion in the aforementioned *Gómez Palomino* case, I then concluded that “Educational measures in human rights thus have a wider dimension than that of reparations, as they are also preventive measures, to combat violence and abuses against the human person. They assume a special relevance nowadays, all over Latin America: one cannot lose sight of the fact that education is a public good (in search of the common good), and not a simple commodity abandoned to the “logic” (or rather, the lack of logic) of the market (as it is sadly transforming itself all over Latin America), and that, in the mid- and long-run, many of the challenges of the protection of human rights can only be effectively faced as through education”²³.

9. CONCLUDING OBSERVATIONS

The perennial wisdom of Renaissance’s free thinking, centered on the human person, is to be recalled in our days. For example, Picco Della Mirandola, focusing on the dignity of the human person, pointed out that, as the human being is not born in a definitive form, he can strive towards perfection only through education. M. Montaigne, for his part, strongly supported the freedom of thinking. On his turn, Erasmus opened new horizons for education, in founding the worth of the human person on her existential structure, in conformity with humanism. Erasmus condemned war, and warned against the sordid features and the lies of the “market”, which is constantly deceiving people in many ways. In our days, students cannot simply keep on being instructed to fulfil the demands of the “market”. Professors cannot simply keep on being socially devalued, and reduced by their own Universities to numbered “human resources”.

On 23 March 2011, the U.N. Human Rights Council adopted the *United Nations Declaration on Human Rights Education and Training*, shortly afterwards adopted by the U.N. General Assembly itself, on 19 December 2011. In its preamble, the Declaration asserts that “everyone has the right to education”, and adds that education is aimed at “strengthening respect for human rights”; it expressly refers, in this connection, to one of the U.N. World Conferences, that on Human Rights in 1993 (in the Drafting Committee of which I had the privilege to work), as well as to the 2005 World Summit Outcome. In its operative part, the Declaration ponders that human rights education and training is a “lifelong process” that “concerns all ages”, and “all parts of society, at all levels” (Article 3). It stresses the need to raise awareness as to the pressing need of developing a “universal culture of human rights” (Article 4). It recalls the relevance of the fundamental principle of equality and non-discrimination (Article 5(1)).

The 2011 Declaration further observes that human rights education and training are to embrace “the diversity of civilizations, religions, cultures and traditions of different countries, as it is reflected in the universality of human rights” (Article 5(3)). It significantly asserts that States have “the primary responsibility to promote and ensure human rights education and training” (Article 7). And it cares to refer to the mandates of international and regional human rights mechanisms, that are to take into account human rights education and training in their work (Article 13). The 2011 Declaration is in line with the 1948 Universal Declaration of Human Rights, adopted in a rare moment of lucidity in the mid-XXth century.

The Universal Declaration, in asserting (in its holistic vision), in Article 26(1), that “[E]veryone has the right to education”, which is to be “free, at least in the elementary and fundamental stages”, adds that “[E]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms” (Article 26(2)). And the 1948 American Declaration on the Rights and Duties of Man (which preceded in six months the Universal Declaration), states in its preamble that the “spiritual development is the supreme end of human existence and the highest expression thereof”, and likewise asserts (also in its holistic vision) the right to education in order to prepare the human person to attain a decent life (Article XII).

In my own view, the new *jus gentium* of our times is centred on the human person²⁴. The International Law of Human Rights has much contributed to rescue the centrality of the human person in the present-day *corpus juris gentium*. The right to education, and the rights in education, are enshrined herein, to the benefit of the ultimate addressees of legal norms, the human beings. States ought to proceed accordingly, reassuming their responsibility as to the human right to education, and once again turning their to education as a public good, and not as a mere commodity. Education cannot be left at the mercy of the vicissitudes of the market. Bearing in mind the 2011 United Nations Declaration on Human Rights Education and Training, the present II World Conference on the Right to Education constitutes yet another step in the right direction, providing us a unique occasion to gather and foster greater awareness of the current challenges we are faced with.

Brussels, 08 November 2012.

A.A.C.T.

Endnotes

1. Judge of the International Court of Justice; Former President of the Inter-American Court of Human Rights; Emeritus Professor of International Law of the University of Brasilia; Honorary Professor of Utrecht University; Honorary Fellow of the University of Cambridge (Sidney Sussex College); Member of the *Curatorium* of the Hague Academy of International Law, and of the *Institut de Droit International*.
2. Cf., in this sense, Hermann Hesse, *Uma Biblioteca da Literatura Universal* [circa 1945], Lisbon, Edit. Cavalo de Ferro, 2010, pp. 9-10 and 105.
3. J. Ortega y Gasset, *Misión de la Universidad* [1930], 5th. ed., Madrid, Edit. Rev. de Occidente, 1968, pp. 134-137, 146-147, 168 and 179.
4. A.-D. Sertillanges, *A Vida Intelectual* [1920], São Paulo, Realizações Edit., 2010, pp. 9-198.
5. Cf. A.J. Toynbee, *Civilization on Trial*, Oxford/N.Y., Oxford University Press, 1948, pp. 3-263.

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6. É. Gilson, *La société de masse et sa culture*, Paris, Libr. Philosophique J. Vrin, 1967, pp. 16, 21, 31, 64-65, 73, 82-83, 91-93, 99, 108, 110, 116-117, 128, 144 and 146-147.
7. *Ibid.*, p. 17.
8. *Ibid.*, p. 148.
9. Chr. Charle and J. Verger, *Histoire des Universités – XIIe-XXIe siècle*, Paris, PUF, 2012, pp. 200, 210, 214 and 222.
10. *Ibid.*, pp. 227, 230-232, 235 and 238.
11. *Ibid.*, pp. 233, 240 and 242.
12. *Ibid.*, pp. 225, 279, 284-285 and 292.
13. Cf., *inter alia*, E. Morin (dir.) *et alii*, *A Religação dos Saberes - O Desafio do Século XXI*, Rio de Janeiro, Edit. Bertrand Brasil, 2010, pp. 13-567.
14. J. Ortega y Gasset, *Mission of the University* [1930], Princeton, Princeton University Press, 1944, pp. 35-72.
15. *Ibid.*, pp. 73-99.
16. A.A. Cançado Trindade, "Sustainable Human Development and Conditions of Living as a Matter of Legitimate International Concern: The Legacy of the U.N. World Conferences", in *Japan and International Law - Past, Present and Future* (ed. Nisuke Ando), The Hague, Kluwer, 1999, pp. 295 and 307-309.
17. A.A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, 2nd. ed., vol. I, Porto Alegre, S.A. Fabris Ed., 2003, pp. 77-338; A.A. Cançado Trindade, "Memória da Conferência Mundial de Direitos Humanos (Viena, 1993)", 87/90 *Boletim da Sociedade Brasileira de Direito Internacional* (1993-1994) pp. 9-57.
18. Paragraph 5 of my Separate Opinion in the *Gómez Palomino* case, and paragraph 10 of my Separate Opinion in the *Blanco Romero and Others* case.
19. Paragraph 6 of my Separate Opinion in the *Gómez Palomino* case, and paragraph 11 of my Separate Opinion in the *Blanco Romero and Others* case.
20. Paragraph 11 of my Separate Opinion.
21. Paragraph 13 of my Separate Opinion in the *Gómez Palomino* case, and paragraph 17 of my Separate Opinion in the *Blanco Romero and Others* case.
22. Paragraph 16 of my Separate Opinion.
23. Paragraph 13 of my Separate Opinion.
24. Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, Leiden/The Hague, Nijhoff/The Hague Academy of International Law, 2010, pp. 1-726; A.A. Cançado Trindade, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011, pp. 1-236; A.A. Cançado Trindade, *Le Droit international pour la personne humaine*, Paris, Pédone, 2012, pp. 45-368.

Providing a Safe Educational Environment; a Scan of the Legal Situation in the Netherlands

Pieter W.A Huisman

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Providing a Safe Educational Environment; a Scan of the Legal Situation in the Netherlands

Pieter W.A Huisman¹

Intimidation, bullying, cyber-bullying, repression, threats, discrimination, homophobia and all forms of violence, including corporal punishment and sexual violence, reflect the downsides to life in contemporary society. Manifestations of these phenomena can therefore also be found in schools and learning institutions. Every child nevertheless has a right to be protected from violence and to develop and realize his/her full potential in a safe, healthy, inclusive and non-discriminating learning environment.

Despite an increased focus on safety and security of pupils in schools, bullying, and psychological violence in general, is in many schools still an important problem. One of the reasons is that legislation concerning bullying is unclear. There are labour laws in the Netherlands, which include obligations to protect workers against intimidation and discrimination. These laws are also applicable to students and learners, but legally it is not yet clear in what way they are entitled to legal protection when it comes to a safe learning place. This contribution is a short introduction into the regulations in Dutch Education Law focused on legislative measures against bullying and will also refer to some court cases. In paragraph 2 the laws and regulations on safety, particularly on anti-bullying or psycho-social safety, are briefly explained. Many schools have a plan, a protocol and have a policy, but there is reason to doubt if schools and teachers are really focused on preventing bullying. Paragraph 3 deals with some court cases on bullying; what legal obligations do schools have? Can parents go to court, claiming negligence of the school and are those lawsuits awarded? Finally, paragraph 4 raises some more questions on creating a safe educational environment, and what steps could be taken to improve the position of parents, and of course, children who suffer from an unsafe educational environment.

1. INTRODUCTION: SAFETY AS A BASIC REQUIREMENT FOR EDUCATION

A safe learning environment is a basic requirement for children to be educated and hence a basic condition for the quality of education at a school. A safe learning environment includes protection from (imminent) danger by human activity, such as violence or bullying. Children who are bullied experience both mental as well as negative physical effects, such as low social self-esteem, social adjustment problems, psychological stress and physical hardship, even suicide².

An unsafe educational environment can have its influence on the participation in education and school career. Prevention and combatting social violence at school not only guarantees the right to education of children as defined under (international) law such as the International convention of the Rights of the Child, article 29, which states that education provided by the state shall be directed to 'the development of the child's personality, talents

and mental and physical abilities to their fullest potential'. It is also important for social economic reasons, and education policy in general (such as reducing drop-out rates).

The last years, the Dutch Ministry of Education has made quite an effort to put safety on the policy agenda. The Minister and State Secretary for Education stated in the past that school safety is a necessary condition 'for quality of education'³. This is confirmed by the Inspectorate: an effective safe environment in schools is one of the characteristics of excellent schools.⁴

Since 1994 the department of education structurally invests almost 90 million euros in additional safety measures in schools and has imposed a number of measures, such as the obligation of the school board to register incidents. The inspectorate has been involved since 2006 in monitoring the safety of schools. The last review showed that 94% of the parents/children consider their school 'a safe place'.⁵

Schools try to safeguard their learners every day, but still, a lot of work has to be done, despite the fact that most children have no problem on the issue of school safety. In contrast to the above mentioned outcome, the Inspectorate has also concluded that little practical improvements have been made⁶. Half of the primary and at least three quarters of the schools in other sectors (secondary education, vocational training) are dealing with situations in which learners experience unsafe circumstances at school. Moreover, there are still many schools that do not have preventive policies, have insufficient understanding in the anti-social behavior occurring at school or are missing instruments to evaluate policy.

One of the factors which may contribute to the lack of improvement is the absence of an explicit statutory duty of the school for a safe educational environment. Courts have held schools seldom accountable for damages to learners as a result of an unsafe school environment (see paragraph 3).

2. LAWS AND LEGISLATION AGAINST BULLYING AND PSYCHO-SOCIAL HARASSMENT

With respect to employees, there is a clear responsibility for a safe working environment. Article 7:611 of the Civil Code stipulates that the employer should behave as 'a good employer' and Article 7:658, paragraph 1, of the Civil Code specifies this requirement by providing that the employer is obliged to take such measures and instructions as reasonably is necessary to protect the employee in the performance of his duties.

Since the first of January 2007, the Working Conditions Act requires employers to implement and to indicate which measures have been taken, concerning a safe working environment. School boards are obliged, as an employer, to implement policy and to take specific measures to protect their staff.

An element is treating psychosocial workload (PSW), which includes sexual intimidation, aggression and violence, and this has been extended to harassment and pressure of work.

The PSW policy obligation in the Working Conditions Act requires the policy to be aimed at preventing PSW. Article 3, paragraph 2 stipulates: "The employer shall operate a policy aimed at preventing employment-related psychosocial pressure, or limiting it if prevention is not possible, as part of the general working conditions policy". This law also applies on students and learners. Besides these provisions in labour law, employers and employees in collective labour agreements agreed that each school since January, 2006 must have a school-safety plan. One element of this plan is an anti-bullying protocol. This protocol gives children, teachers and parents clarity about how to act in case of bullying at school.

From August 1998 schools for primary and secondary education are obliged to have a complaint committee. They can also be addressed in case of complaints about bullying, aggression or other forms of unsafe educational circumstances. Pupils, parents and staff have a right to complain to a national or local organized committee. They don't have the authority to impose a measure, only to give an advice to the school board.

Schools in the primary, special, secondary and vocational education are required to register (violent) incidents. When the 'Compulsory registration of incidents Bill has been passed in parliament, this will be a compulsory requirement. The effective date of the bill is not yet known and depends on the schedule of the House of Representatives and Senate⁷.

Also mentioned here is special law concerning equal treatment, in case a person (teacher or learners) feels discriminated/bullied on grounds of religion, sex, race, gender etc. The Equal Treatment Act - in line with European Community legislation on equal treatment on grounds of gender - also covers besides direct discrimination, indirect discrimination. Indirect discrimination occurs when certain requirements, although neutral on their face, have a disparate impact on a group of people in relation to one of the discrimination grounds. The concept of indirect discrimination is designed to address systemic forms of discrimination. Indirect discrimination is forbidden unless it can be justified on grounds unrelated to any form of discrimination. The specific measure must correspond to a genuine need of the institution responsible for the discrimination. If a teacher feels discriminated, they may file a complaint at the Equal Treatment Commission (ETC), vested with powers to investigate, mediate, and give a (non-binding) judgment⁸. The law does not oblige applicants to approach the ETC before filing a lawsuit with the court, nor do proceedings before the ETC prevent court action.

Finally, a teacher is obliged to report any case of sexual abuse of a minor to the school board immediately. The school board itself should then consult specialized inspectors (Article 4a Primary Education Act) and if there is a reasonable presumption that a felony has been committed, they should report it to the police.

3. POLICY AND CASES

Is bullying an offense in The Netherlands? No, bullying is not punishable. This can be derived from an answer that the former Ministers of Justice Donner and Van der Hoeven of Education on April 18th, 2006 gave to questions from the House⁹. Victims of bullying can file

a lawsuit in a civil court against the bullier or against the school with the intention that they be held liable for the material and non-material damage.

As mentioned above, schools should have a plan and protocol. The requirement of a safe school arises firstly from the Working Conditions Act and secondly from the educational relationship in which there is an (assumed) legal contract between parents and the school. Within the framework of the Working Conditions Act, it is compulsory that staff and learners are protected against aggression and violence.

A student or learner and his or her parents, can hold the school accountable for such compliance. The school has a duty to offer students a safe environment, where the risk of both mental and physical injury - as much as is reasonably possible - should be avoided. This obligation can be shaped by the monitoring. The supervisory task focuses both on preventing accidents and on protecting children against undesirable behavior of other learners/students (peer-to-peer harassment) or employees.

The supervisory task of a school is limited in area and in time. The supervision is limited to the school, the area of the school or school activities . In time, the monitoring itself is limited to just before class, during class, just after class, during breaks in between hours and during excursions. If a lack of supervision is careless and thus unlawful, depends on the circumstances of the particular case. Any judicial review will include attention to the size of the likelihood that the bullying occurs, the severity of the impact and the degree of harmfulness of measures to avoid them (see next paragraph).

There are nationwide (non-binding) standards, provided by centres of expertise,¹⁰ which are applied by most of the schools. According to these standards the school security policy shall include at least the following components:

- Vision of the approach towards aggression, violence, bullying, discrimination, sexual harassment and gay harassment.
- Specific objectives of the policy targets. For example: in 2011 there should be a reduction of the number of incidents in 2007 with 10%.
- Conduct (house rules / school standard for acceptable behavior) on the school premises for employees, students, parents and others.
- Enforcement, penalties and expulsion policy. The enforcement, penalties and expulsion policy describes with whom the duties, responsibilities and powers are vested and how the school maintains the conduct or compliance controls, for example, a refusal of access.
- Conduct for which the school imposes a penalty are clearly defined and with different penalties. Also described is who are competent to sanction and who is responsible for registration. Also, how and to whom a notification shall be send. It also describes how the enforcement, sanctions and reporting policies will be communicated to employees, students and parents.
- Distribution of tasks, responsibilities and powers in the event of an incident (also collaboration with partners such as police, child welfare, social work).

- The measures that the school is taking to prevent undesirable behavior and school safety promotion (describing what those duties, responsibilities and powers in this matter are).
- How and where complaints may be filed.
- Information, instructions and / or training.
- Support and aftercare in an incident. This includes the recovery of damages from the offender.

The legal requirements are not narrowly tailored and thus allow plenty space for specific measures, taking into account the specific nature of the school, specific situations or groups of children (for instance: in special education, different rules are likely to be applied).

Article 13, paragraph 1 under i, of the Primary Education act, requires that the prospectus for parents, carers and pupils provide information which contains 'policy regarding the security of pupils'. Teachers are obliged, according to article 2.5, paragraph 1, of the Competence Requirements for Teachers Act to acquire pedagogical knowledge and skills to, inter alia, "create a safe learning environment to which children can be developed into an independent and responsible persons."

Case law does not provide a clear answer on the question what specific legal obligations rests upon the school board. The court in 's-Hertogenbosch¹¹ went so far as to state that schools only have 'voluntary' task in providing safety and that a school is primarily for education. If a school would have an obligation relating to safety, for example under a special agreement or duty, then that obligation should be sufficiently determinable. There was, in legal terms, no cause of action. The court also stated that "Efforts made by the school and taking measures allowed by the school, should be measured against the basis of financial and organizational constraints, and the school cannot be required to continuously monitor the bullying of student [...]. The establishment of a permanent supervision intervenes too deeply into the private life [of the accused bullier]".

A school board will not be held liable, even in cases in which measures were proposed by that board and have failed. Although other cases¹² state that the board has an (unwritten) special duty of care as regards to the health and safety of students, the mere absence of a plan a anti-bullying protocol or the failure of creating a safe educational environment not necessarily leads to liability of a school. Only if in a specific situation at a school, the situation requires specific measures and the school board has failed to take those actions, there might be a case of negligence. If there is a general policy preventing and addressing bullying in the school, and bullying is discussed in the classroom by the group supervisor and the parents of the children concerned are informed, the court will likely come to the conclusion that the school board has done enough, even though these measures might not have any result.¹³ In a case¹⁴ where a pupil in secondary education was bullied by racist and anti-Semitic remarks, the court considered that the school board had taken sufficient measures by sending a letter to all teachers and telephoning fellow students, including the instigator of the harassment.

Completely uncertain are the obligations of the school board when the bullying has taken place wholly or partially outside the school and the school's playground. The case law on this point is unclear. In the above mentioned judgment of the District Court of 's-Hertogenbosch, it was determined that a school cannot be blamed for bullying outside the school. In contrast, the court in the so called 'lover boy' case opened up the possibility that the school is responsible for situations that occur outside the school and the safety of the student at risk. In this particular case a girl sued a school for vocational training. She claimed she was recruited by a juvenile pimp at the age of 12 and in the four years that followed, she was forced to take part in criminal activities and prostitution. The mother complained that the school had failed to inform her about the truancy of her daughter. During three years this was not mentioned in the contacts between the mentor of the girl and the mother. During this absence the girl would have prostituted. The places where the alleged violence and drug trafficking should have occurred, were not covered by a surveillance camera. In a procedure before a school complaints committee her complaints were acknowledged. Whereupon the mother sued for 74,000 euros in damages. The court ruled in 2010 that the school was not liable¹⁵. Data from the school was such that in the first year, she claimed she was recruited by the 'loverboy' no records showed that she skipped school. The other years, the number of hours of absence not excessively high. The judge ruled that the care of a minor child primarily is a task of the parents and not from her school. This case shows that the parent will have to come with substantial evidence, if they sue the school, on basis of a tort lawsuit.

Since the introduction of the internet, and the huge influence of social media on interaction between children, bullying has entered a new dimension. Cyberbullying is not materially different from face-to-face bullying, according to government officials¹⁶. However, the question is what specific obligations the school boards have in this matter. It is not clearly defined in policy documents and there is, as far as known, no Dutch case law (yet) on cyber bullying. There are only some (non-binding) opinions from the National Complaints Committee (Landelijke Klachtencommissie)¹⁷, such as a case concerning bullying via social media. The committee stated the following principle: "It's not the responsibility of the school to actively explore the sites on which students are active, and to check if they meet the standard or internet-protocol of the school. It is true that if the school receives signals of bullying via the internet, the school is free to visit the site (which is generally - by nature of the Internet- public) to check the allegations. In the case of [x] there was reason for the school to visit his site on Hyves because, without the school itself being active on the Internet, it was found that, among other things, this side contained a poll titled "Who is the stupidest kid of the class." Precisely because in recent years there were problems in the classroom with bullying of children, it was understandable that the school had been committed to prevent bullying and subsequently contacted [x]. [The school] acted not improperly."

Probably a lot of cases concerning bullying on the internet are, when the school is involved, settled out of court. The aim will be to respect both the privacy of the learners, as well as to prevent media-attention (a possible 'viral' on twitter), which can be harmful to the reputation of the school.

4. CONCLUSIONS AND QUESTIONS

There are a lot of questions to be answered: f.i if schools in the Netherlands are really prepared to combat (cyber)bullying, if the law is sufficiently effective and if there is enough legal protection for those learners who are bullied.

According to Sperling¹⁸, there is a lack of clear responsibilities of the school board concerning a safe educational environment and the so called 'risk-based supervision' by the Dutch Inspectorate¹⁹ also resulted in minimal monitoring of compliance with the legal obligations. Most of the criteria the inspection uses to assess the safety of a school are paper criteria. Most schools consider it 'red tape'. The Inspectorate only checks if a school has a plan, and not whether it's effective. For the implementation and effectiveness, the Inspectorate is dependent on information from the school itself, any reports from parents and / or pupils or media reports.

Sperling also points to the fact that attention to school safety is usually limited to the purchase of a particular method or program, and often it is insufficient clear which methods and approaches are effective and are matched for a specific school. In short, the actual situation in Dutch schools is often like this: there is a policy, but very few people in school are aware of it, or know how to deal with a situation of severe bullying or harassment when it occurs. Teachers sometimes lack the expertise and skills, for instance, to deal with new types of harassment via social media. Incidents concerning bullying or sexual abuse may be 'covered up', because of fear of possible consequences for the reputation of the school.

Should a school take more preventive measures? And should there be a specific legal obligation for schools concerning (cyber)bullying? But can a school be held accountable for all hazardous situations in the social and psychological sphere of learners? Where does the responsibility of a school begins and where does it end?

Legal protection is another important issue in this matter. Parents and students have to proof in a civil court case that the school board was incompetent, but there is no specific legal obligation concerning a safe educational environment which individuals can invoke. Only in cases of gross negligence, the school will be held liable.

There is therefore only a narrow opportunity to claim damages from schools, which not have taken proper steps to ensure a safe and sound educational environment. In a legal dispute with the school board, parents and pupils have no access to the legal and financial resources the school boards or the employee, through his union, have to their disposal.

One could argue that a case of severe bullying has as an ultimate effect, the infringement of the international (practical and effective) right to education: children who are afraid to go to school and are kept at home by their parents²⁰. Regarding Dutch Law, one of the objections of education is the continuous development of learners.²¹ Children who are victims of social violence or bullying are hindered in that development, and it is the task of the board to create

a learning path, which enables them to continue their school career without any hindrance from other students.

Of course, new legislation and putting new obligations on school boards is not the final answer. It is also raising awareness of all those involved, which could lead the way forward; schools, teachers, parents, and learners themselves should be involved in the process. Legal risk management²² policies and practices are maybe also a way to ensure that the safest possible conditions for learners are realized.

Endnotes

1. Professor of Education Law, Erasmus School of Law, Rotterdam, senior lecturer The Hague University of Applied Sciences, The Hague, the Netherlands, E-Mail: p.huisman@law.eur.nl
2. A recent and tragic case was Amanda Todd who committed suicide, and announced this on YouTube, <http://www.dailymail.co.uk/news/article-2216543/Amanda-Todd-Canadian-teen-kills-desperate-video-plea-begging-bullies-stop.html>, retrieved November 6th 2012.
3. Kamerstukken II 2009-2010, 29240 en 30420, nr. 41, p. 1.
4. Inspectie van het Onderwijs, De sterke basisschool, Utrecht april 2009, p. 23
5. Kamerbrief Veiligheid in en rond het onderwijs, Ministerie van OCW, 28 februari 2011.
6. Inspectie van het Onderwijs, *De staat van het onderwijs, Onderwijsverslag 2007-2008*, Utrecht 2009, p. 290. Also Inspectie van het Onderwijs, *Weerbaar en divers. Een onderzoek naar seksuele diversiteit en seksuele weerbaarheid in het onderwijs*, Utrecht april 2009, p. 48.
7. See Kamerstukken II 2011-2012, 32 857.
8. Recently, this commission has merged with the Commission on Human Rights, www.mensenrechten.nl
9. Aanhangsel Handelingen II, 2005-2006, 1284.
10. See for instance www.veiligeschool.nl
11. Rb. Den Bosch, 30 augustus 2006, LJN: AY711
12. See f.i Rb. Utrecht 28 maart 2002, LJN: AE0771.
13. Rb. Haarlem 28 juli 2005, LJN: AU0184.
14. Rb. Utrecht 25 juni 2008, LJN: BD5252.
15. Rb. Zwolle 6 januari 2010, LJN: BK7412
16. Kamerstukken II 2008-2009, 29240, nr 30, p. 15. Kamerstukken II 2009-2010, 29240, nr 41, p. 7.
17. LKC 15 oktober 2009, 104243, via www.onderwijsgeschillen.nl
18. J. Sperling, Sociale veiligheid op school en op het werk: een ongerechtvaardigd verschil, School en Wet 2010, nr 4, p.10-15.
19. This system means that the Inspectorate will only start an investigation if there are actual signals of breaking the law.
20. In the Netherlands there are some cases of learners who are educated by their parents at home, because they feel an outcast at school. There could be an argument that these learners are deprived from the right to (access) to education, as mentioned in the first sentence of art.2 protocol 1 European Convention Human Rights.
21. Also mentioned here is the task of the school pursuant to Article 8, paragraph 3, in the Primary Education Act, relating to citizenship. This task could also imply an obligation to create a safe learning environment.
22. See: P.W.A. Huisman, The potential of legal risk management as an answer to juridification in education: a Dutch perspective, SAELA conference proceedings, Cape Town, September 2012.

Peace, Tolerance and Citizenship in the Emerging ‘European Dimension of Education’- Building Stones for a Plural and Inclusive European Identity

Andrea Chiarello



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1. INTRODUCTION

Political unity has always been the ultimate objective of the European integration process, even though it started, according to Jean Monnet’s neo-functional approach, from the economic sphere. Today the European Union is the main reference point for the Member States in most of policy fields: in fact a considerable percentage of national law is based on (or influenced by) EU regulations and directives.

The increasing authority of this supranational actor, however, has not been followed by a concrete awareness among European citizens to live in the same political community. The new democratic space taking shape in Europe needs an active participation of the citizens, in order to give legitimacy to the EU institutions¹ and to reach an agreement on a set of core values. To use Vaclav Havel’s words: “*Sooner or later the Europeans will have to perceive Europe as their homeland, though of a special kind. Or as a common homeland of their homelands*”.

In the framework of the cultural policy launched by the European Commission², education plays a fundamental role in preparing EU citizens for their civic and political responsibilities, in fostering social cohesion and in accepting social and cultural diversity. The current “Strategic Framework for Cooperation in the field of Education and Training” (ET2020) includes education to active citizenship among the main objectives of EU action³.

The first chapter of the paper gives a general overview of EU education policy and highlights the increasing importance gained by European institutions (the Commission in particular) in the managing of education programmes and initiatives. This approach is aimed at contextualising the whole discourse in a coherent historical and legal framework. For methodological reasons, the paper focuses on education more than on vocational training, for it would have opened space for a much broader analysis.

In the second chapter the issue of European identity and citizenship is briefly presented, underlining its dynamic and plural nature and the need for strengthening EU public sphere. Education policy must be aimed at giving European citizens the awareness of living in a plural society where people have multiple identities; it is important to appreciate social and cultural differences as enriching elements and instruments for dialogue rather than obstacles to integration.

In conclusion, reference will be made to the recent Eurydice Report “*Citizenship Education in Europe*”, published in May 2012, which provides interesting information on how education policies are implemented in EU Member States, on the progress made and the results obtained at local and national level. Other important documents come from the work and the activities carried on by the Council of Europe: the “*All-European Study on Education for Democratic Citizenship Policies*” (2004) and the recent “*Charter on Education for Democratic Citizenship and Human Rights Education*”, adopted in the framework of Recommendation CM/Rec(2010)7 of the Committee of Ministers.

2. THE PATH TOWARDS A EUROPEAN DIMENSION OF EDUCATION

2.1. The first steps: from the ‘70s to the Treaty on the European Union

In this first chapter a synthetic overview of the evolution of education policy in Europe is proposed, starting from the trans-national cooperation during the ‘70s until the more elaborated and multifaceted framework of the Europe 2020 Strategy. The aim is to put in evidence the increasing number of competences of European institutions, and in particular the Commission, in a field that is traditionally considered as a national exclusive domain. The important role gained by education within the European Communities (then EU) is due to the necessity of overcoming the conception of Europe merely seen as a common market⁴. One of the Founding Fathers of Europe, the French politician Jean Monnet, is credited to have affirmed: “*if I were to set the process of uniting Europe in motion once more, I would start with education*”⁵. His neo-functional approach postulated that political unity would have been the automatic consequence of economic integration. However, it did not manage to foster a collective identification with the Community⁶. Quoting Jacques Delors, “*on ne tombe pas amoureux du marché unique*”.

The first steps towards a “European dimension of education” date back to the ‘70s: in 1974 the Council of Ministers of the European Communities made a public declaration “*on the mutual recognition of diplomas, certificates and other evidence of formal qualifications*”⁷, a measure to implement the principle of free circulation of workers within the Communities expressed in the Treaty of Rome (1957). The field of education was not included among the EEC policies in the founding treaties and the first activities were focused on vocational training and on ensuring the appropriate functioning of the Internal Market⁸. The Council resolution of 1976 was the first to establish an “*action programme in the field of education*”⁹ fostering cooperation between national schools at different levels through study visits, exchange opportunities for pupils and teachers and promoting educational activities with a European content.

During the ‘80s, the role of education for European identity was boosted first with the Stuttgart Declaration (1983) and then by the Council of Fontainebleau of 25-26 June 1984: both of them contributed to the emerging of the European citizenship issue. Innovative suggestions were put forward by the Committee of European Nations headed by EP Pietro Adonnino, whose report “*A People’s Europe*”¹⁰ (March 1985) underlined the importance of common actions in the educational field as a “*substantial contribution to the realisation of an ever closer union among the peoples of Europe*”. The report considered linguistic diversity as an enriching element of European identity and encouraged language learning for young generations from early age. Beside the mere theoretical and academic experience, accent was put on exchanges between schools and periods of study abroad in order to “*promote human and cultural links across frontiers*”. It was Adonnino’s report which first suggested European institutions the introduction of a “*European Academic Credit Transfer System*”, to be implemented by bilateral agreements by universities and higher education establishments.

A key role in this phase was played by the European Court of Justice (ECJ), which through its extensive interpretation of art. 128 TEC gave the EC institutions the right to assume

competences in the field of higher education and to adopt binding legislations for the Member States¹¹. It is in this very context that a new series of programmes was launched covering a wide spectrum of sectors, exception made for compulsory schooling¹². Given the limited dimension of this paper, the discourse will maintain a general outlook without going into details in the description of each programme. Focusing on higher education, ERASMUS (European Community Action Scheme for the Mobility of University Students) is of particular relevance for both the higher level of participants and the entity of the funds made available by the Commission.

With the adoption of the Single European Act in 1986, a common framework in the field of education became a necessity for Europe: the Single Market was by then a concrete achievement and the European peoples were called to new responsibilities. The Council of Ministers resolution of 24th May 1988¹³ is crucial as it redefines the objectives of the Communities in this changing context:

"strengthen in young people a sense of European identity and make clear to them the value of European civilization and of the foundations on which the European peoples intend to base their development today, that is in particular the safeguarding of the principles of democracy, social justice and respect for human rights (Copenhagen declaration, April 1978),

prepare young people to take part in the economic and social development of the Community and in making concrete progress towards European union, as stipulated in the European Single Act,

make them aware of the advantages which the Community represents, but also of the challenges it involves, in opening up an enlarged economic and social area to them, improve their knowledge of the Community and its Member States in their historical, cultural, economic and social aspects and bring home to them the significance of the cooperation of the Member States of the European Community with other countries of Europe and the world."

2.2. A new legal framework: the Treaty on EU

The year 1992 represents a milestone in the history of the European integration process: the Treaty on European Union introduced considerable innovations in the institutional framework and established the Citizenship of the Union.

As far as the paper is concerned, the reference point for education policy at European level is art. 126: for the first time there was a legal framework allowing the Commission to propose coordinative actions in this area, even if the contents and the organisation of teaching still remained an exclusive prerogative of the Member States¹⁴. The "*Green Paper on the European dimension of education*" aimed at encouraging the adoption of appropriate measures in order to prepare European citizens to "*exercise their responsibilities in a wider social and economic area*". The improving of linguistic competence and the ability to study, live and work in a multicultural context were seen as fundamental skills for young people. Article 126 of Chapter 3 of the Treaty on EU reads as follows:

1. The Community shall contribute to the development of quality education by encouraging co-operation between Member States and, if necessary, by supporting and supplementing

their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity.

2. Community action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
- encouraging mobility of students and teachers, *inter alia* by encouraging the academic recognition of diplomas and periods of study;
- promoting co-operation between educational establishments;
- developing exchanges of information and experience on issues common to the education systems of the Member States;
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors;
- encouraging the development of distance education. (...)

With the Treaty of Maastricht education officially becomes an area of competence of the European Union: however, art. 126 specifies that the Commission's activity can only be a means to "supplement" and "support" national voluntary cooperation. There is no reference to the "harmonisation" of education policies between the Member States, and this is an obstacle to the development of a genuine post-national identity and awareness of sharing a European citizenship. On the one hand, "harmonisation" does not mean "uniformisation": the specificities of national education systems and of the academia shall be maintained though providing them with a wider focus on European affairs and values. On the other hand, it is indeed quite interesting to notice that the today called "Treaty on the Functioning of the EU" itself contains a contradiction between two articles: in fact art. 6, in including education among the areas of competence of the EU, adds the term "coordinate" which meaning is stronger than the simple "support" or "supplement".

It is fundamental for the European institutions to be more effective in their relationship with the nation-states, for example in fostering the culture of mobility through the elimination of the obstacles hindering information exchanges and free movement of people (e.g. visas, recognition of diplomas, etc.)¹⁵. As education remains a prerogative of the Member States, the flourishing of a "European dimension of education" must become an objective also of national policy¹⁶.

In conclusion, in this attempt to build a real political union in Europe education systems cannot be seen merely as a perpetuation of national cultures: they must instead give utmost relevance to the principles of peace, tolerance, respect for human rights, democracy and inclusion on which the EU is founded. Bringing to the fore the European cultural heritage while respecting diversity is one of the core assumptions of the European project, as the motto "United in diversity" demonstrates. Banks punctually points out that "*citizens who understand this unity-diversity tension and act accordingly do not materialize from thin air; they are educated for it*"¹⁷.

2.3. Education as a key-factor for broader socio-economic challenges: the role of the European Commission

The education sphere in Europe is still today a national prerogative, nonetheless the European Commission has gained a more and more relevant role thanks to the widening of its juridical basis for action.

While during the first decades European programmes were launched under the banner of vocational training and mutual recognition of diplomas for workers, after the European Education Council in 2001 the first European-level “*Work programme for Education and Training 2010*” was endorsed. The national Ministers for Education had previously agreed on three benchmarks: improving quality and effectiveness; facilitating access; opening up national education and training systems to the world. The Commission’s action and its expanding range of competences were thus justified as the implementation of these objectives¹⁸, even if the EU Member States continued to exercise their decisional power in this field.

The opportunities for the Commission to increase its effectiveness in the educational sphere came with two broad policy processes: on the one hand, the Bologna declaration (1999) paved the way for the establishment of a more and more harmonised European Credit Transfer System (ECTS) in higher education; however, it was an intergovernmental agreement involving also non-EU countries so outside of the formal EU policy-making process. The result obtained is considerable, as today in most European countries academic degrees are comparable. It is worth mentioning the Bologna process, even without going into details, for its catalytic function for the affirmation of a culture of mobility in Europe and, in a broader sense, to access the benefits of European citizenship.

On the other hand, the “*Lisbon Strategy for growth and jobs*” launched in 2000 by the European Council contained a specific section dedicated to education and research policy, which aimed at making the EU the most “*dynamic knowledge-based economy in the world*”¹⁹ by 2010. The Lisbon Strategy was followed in 2010 by a new programme called “*Europe 2020 Strategy*” whose goals deal with socio-economic issues like employment, sustainable growth, renewable energy etc. The Commission acknowledges that education, training and lifelong learning are fundamental elements to be strengthened in order to reach the above-mentioned objectives²⁰: it therefore encourages the EU Member States to include its programmes as part of national education policy. Among the various programmes launched it is worth mentioning “*Youth on the Move*” (promoting international mobility of students and trainees) and “*An agenda for new skills and jobs*”.

This first chapter proposed an excursus on the main steps the European dimension of education has made, from the first pilot programmes in the ‘70s up to the complex and multifaceted framework of the Europe 2020 Strategy. It is important to notice the increasing importance assumed by the European Commission as the main reference point for the creation, promotion, implementation and monitoring of the education programmes and activities: even if EU Member States continue to consider the field of education as one of the most significant expressions of their national sovereignty, the European treaties (and the Treaty of Maastricht in particular) contributed to build a legal framework legitimising EU action. Thanks to the inclusion of education as a key-sector for the implementation of broader socio-economic policies, concrete progress has been made as far as national legislations are concerned.

3. PEACE, TOLERANCE AND CITIZENSHIP EDUCATION: A POLICY-ORIENTED ANALYSIS

In this second chapter, the analysis focuses on the importance of education for the promotion of EU founding values and the strengthening of a sense of belonging among EU citizens. The paper cannot be exhaustive, given the limited space and the huge amount of issues at stake: it aims at highlighting the most relevant matters of discussions, formulating then some policy assessments.

Presenting first the approach from which the European identity discussion will be handled, the chapter considers then the different dimensions of educational practice especially as far as active citizenship is concerned: transmission of knowledge, values and opportunity for experiencing Europe through cultural and study exchanges.

3.1. European identity as a dynamic and open-ended process

In this first paragraph, the approach chosen for the interpretation of European identity formation is briefly presented. The analysis is not merely descriptive but considers the plurality of identities and the value of diversity as starting points for policy assessments.

The basic assumption made is that “*a person can hold different civic identities and feel subject to multiple loyalties without becoming incompatible*”²¹. It is fundamental for the individual to freely choose the relative importance to give to his various affiliations, depending on the circumstances²². Reductive approaches, as the one expressed in Samuel Huntington’s theory of the “clash of civilisations”²³, tend to see humanity as divided in organic packs according to, for example, religious beliefs or ethnic origin. They neglect the complexity and the multiplicity of individual identity, giving instead utmost importance to one single overarching dimension.

As far as the European space is concerned, the EU has become a reality in the life of its citizens, with a considerable influence in both international and local issues. As I argued elsewhere²⁴, the process of European identity-building must be aimed at underlining the value of cultural diversity and inclusion instead of trying to build new frontiers (a “fortress Europe”) and a European “*demos*” which has never existed. Any form of “methodological nationalism” considering Europe as characterised by ethno-cultural homogeneity must be rejected: as art. 167.1 TFEU reads,

“The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”.

The basis for this new political community to flourish is the recognition of a set of core values²⁵, expressed in art. 2 of the Treaty on EU:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

Education plays a crucial role in the success of European political integration: for this inclusive and democratic space to develop, there is need for educational strategies to

“recognise heritage diversity as well as to protect shared ideals, and to accept the differences as well as aiming at a mutual understanding”²⁶.

In the next paragraph some educational challenges in the process of European identity-building are described: they are fundamental steps in order to promote democratic participation and active citizenship, especially among the young generations.

3.2. An approach to education policy

Education is more than giving information. For Bartolomé²⁷ education policy must be based on a series of key-elements:

1. Knowledge as foundation.
2. Acceptance as a condition.
3. Value as an impulse.
4. Social cohesion and people’s development as a horizon.
5. Intellectual citizenship as a process.

In order to promote the development of European identity, it is important first of all to include in learning programmes the main notions regarding European past, present and future: the history of European integration in its multiple dimensions (economic, political, social, cultural) would provide European citizens with a broader viewpoint as far as national and international affairs are concerned and it will enable them to understand the growing interdependence and interconnection characterising today’s reality. According to the Council of Europe, *“history teaching in a democratic Europe should occupy a vital place in the training of responsible and active citizens and in the developing of respect for all kinds of differences, based on an understanding of national identity and on principles of tolerance”²⁸*. Attention should be paid to the main structure and functioning of European and international organisations, in order to acknowledge that the nation-state is included in a wider net of relationships, in a system of multilevel governance implying the participation of different policy actors.

It is important then to underscore that European contents in learning programmes should not aim at distorting history nor at creating a blind “Europeanism” as an object of worship: to use Janik’s words, *“teachers should not replace national thinking by supranational ideas but broaden it to the supranational perspective”²⁹*.

For a European sense of belonging to emerge, information is not enough as the concept of citizenship is endowed also with a value-based dimension: drawing inspiration from art. 2 of the Lisbon Treaty, education programmes should promote the principles of human dignity, tolerance, respect for human rights, democracy, rule of law and social equity on which the EU is founded. In a multicultural society, schools have the responsibility and the task to help pupils to build their identity in a dynamic and inclusive way: according to Gómez-Chacón, *“The discovery of alterity constitutes a challenge for education: the “Other” should not be absent from socialisation and education”³⁰*.

3.3. Inclusion and dialogue as vehicles for active participation

The instrument of intercultural dialogue must be used in order to understand and overcome difficulties in the relationship with the Other³¹. Reference point in this sense is the *“White*

Paper on Intercultural Dialogue”, published by the Council of Europe in 2008 and defining the concept as follows:

“Intercultural dialogue is understood as an open and respectful exchange of views between individuals, groups with different ethnic, cultural, religious and linguistic backgrounds and heritage on the basis of mutual understanding and respect. It operates at all levels – within societies, between the societies of Europe and between Europe and the wider world”.

In the last decades, Europe has witnessed an increasing cultural pluralism due to the considerable flows of immigrants and the EU enlargements. In order to foster social cohesion and peaceful living, an innovative form of democracy should be enhanced focusing on dialogue and consensus between the different groups composing society. As Bekemans argues, the instrument of intercultural dialogue is crucial to citizens’ empowerment and active participation in the public sphere, and it contributes to strengthening democracy giving greater legitimacy to political action³².

Dealing with active citizenship and inclusion in Europe, decisive factors for the development of a sense of belonging, it is worth reminding that European citizenship is still linked to the national one³³. In order to achieve social cohesion and increase the level of participation of all the members of the European society, including minorities, the status of “EU citizen” should take into account also long-term third country nationals, who do not have the possibility today of exercising the same rights as the citizens of EU Member States³⁴. Only through involvement in the process of public policy will EU citizens identify with the European political community, a project in which they represent both beneficiaries and main protagonists³⁵.

The competences and attitudes intercultural dialogue requires are not the product of a spontaneous process, they must be learned and maintained throughout life. However, different actors are involved in this lifelong learning process other than the sector of formal education (schools, universities, research centers): this practice implies also the involvement of civil society organisations (NGOs, economic interest groups etc.) and of local authorities.

3.4. Recent developments in EU citizenship action programmes

In order to encourage and support Member States to give importance to citizenship education within their national policy framework, the European Commission has been very active in promoting a series of initiatives in the field: groups of experts have been created for the establishment of common indicators regarding civic competences of young Europeans, curriculum reforms and assessment methods for measuring progress in key-areas.

Furthermore, it is worth mentioning the current *“Europe for Citizens”* programme (2007-2013), which aim is to bring together people from different countries and with different cultures and to foster dialogue and interaction among them through meetings, exchanges and debates. Sharing values and opinions in a democratic context is a means for enhancing the sense of belonging to Europe and to strengthen solidarity and tolerance among people. Applicants must focus their projects on a series of themes of particular relevance for the EU, such as intercultural dialogue, sustainable development, employment, democracy etc., appositely chosen by the EACEA (Education, Audiovisual and Culture Executive Agency of the EC) which will then allocate special funds for the implementation of the best initiatives.

The programme is aimed firstly at raising awareness on the importance of EU in the daily life of its citizens, on the rights and opportunities European citizenship brings, on the values on which the European common living is founded. On the other hand, it is an attempt to bring the EU closer to the people reducing the “democratic deficit” through promoting active participation and involvement in cross-territorial project and initiatives. These objectives will be perceived also in the framework of the European Year of Active Citizenship 2013.

In conclusion, it is important to underline that the European Commission collaborates with the Council of Europe for the implementation of the *“Charter on Education for Democratic Citizenship and Human Rights Education”*, signed in 2010 by all EU Member States.

3.5. Concrete achievements in schools: Eurydice Report 2012 and the Council of Europe’s EDC-HRE programme

Education is nowadays one of the most important EU policies. The recent *“Strategic Framework for European Cooperation in Education and Training”* (ET 2020) considers school education as a crucial means to promote social cohesion and active participation to the public sphere.

The recent Eurydice Report 2012 is an instrument of the Commission for the collection and the monitoring of the influence EU policy has on national education systems, the recent developments and achievements in primary, lower and upper secondary education. The reference year is 2010-2011 and the study has involved 31 States (27 EU Member States, Iceland, Turkey, Norway and Croatia).

The status of citizenship is here interpreted in a broad sense: it is not only a set of right and duties towards the political community, but it also implies an awareness of belonging and active participation to the democratic process. The analysis takes into consideration contents, methods of teaching and the recommended taught time dedicated to citizenship education. However, theoretical knowledge is not enough: the report focuses also on the opportunities given to students for experiencing active citizenship, for example in participating to the school governance or in the local community. The Council of Europe declared that *“One of the fundamental goals of all education for democratic citizenship and human rights education is not just equipping learners with knowledge, understanding and skills, but also empowering them with the readiness to take action in society in the defence and promotion of human rights, democracy and the rule of law”*³⁶. Other important aspects are the methodology and criteria for students’ assessment, but also the skills and the qualification of teachers and school heads, crucial elements for the implementation of citizenship education’s objectives³⁷.

According to the report, the approaches adopted in European countries regarding citizenship education are different: in some cases it is treated as a stand-alone subject, often it is instead included as part of another learning area and others consider it a cross-curricular dimension.

Practical experience is strongly promoted beside theoretical learning and the non-formal and informal learning are taken into consideration as they provide the students with opportunities for *“experiencing the values and principles of the democratic process in action”*³⁸. The 2009 International Civic and Citizenship education Study (ICCS) reveals that nationwide publicly-financed programmes and initiatives are involving students in working projects within their local community and discussion forums dealing with themes related to school life or young

people’s reality. However, they have not had the same success in every country analysed: there is need for increasing funds and supporting local initiatives outside of the formal school context.

The European Union works in close cooperation with the Council of Europe in the field of education. The *“All-European Study on Education for Democratic Citizenship Policies”*, published by the CoE in 2004, is another important instrument for assessing and monitoring the process of implementation of European initiatives at national and local level. It is based on official documents by European and national institutions and it takes into consideration mainly the formal curriculum. This study was needed as the EDC policies started in the late 1990s didn’t have significant influence in national education systems: there was a gap between political declarations of intent (“intended policy”) and the effective measures put in place according to them (“policy in use”).

Some of the difficulties regarding this study are related to the plurality of actors involved in the education process and the different levels of governance responsible for the implementation of EDC programmes, especially as far as federal states are concerned. European countries adopt different approaches regarding education for democratic citizenship and the gap between policy declarations and concrete measures is, in some cases, persistent.

These negative aspects, however, do not invalidate the results of the mentioned studies, which remain precious means for both the Council of Europe and the European Union in order to orient their future policies towards effectiveness and concrete achievements.

4. CONCLUSION

The paper proposed an overview of the main aspects regarding education policy within the EU, with a particular focus on peace, tolerance and citizenship education as fundamental building stones for the shaping of a plural and inclusive European identity.

The first chapter tried to put in evidence the increasing importance gained by the European Commission in the field of education: starting with the first “pilot programmes” during the ‘70s, a legal framework for EU action was then introduced with the Treaty of Maastricht. The main aim of European education policy is on the one hand to strengthen the European dimension within national curricula, on the other to give EU citizens adequate knowledge, skills and attitudes in order to face today’s changing reality and in particular to guarantee peace and social cohesion in the European society, characterised by increasing cultural pluralism. In order to achieve these goals, respect for diversity, language learning, mobility and dialogue are assumed as core principles in educating young generations (the ERASMUS programme is the most successful initiative as far as higher education is concerned).

The second chapter deals with the specific issue of citizenship education in Europe. It first highlights the importance of conceiving European identity as intrinsically plural, based on inclusion and acceptance of diversity. Education plays a key-role for the shaping of this shared sense of belonging, and it is aimed at fostering the values on which the EU is founded (art. 2 TEU). The theoretical transmission of knowledge, however, is not enough if it is not accompanied by possibilities to experience democratic citizenship: the Europe for Citizens’ Programme 2007-2013 is one of the current actions launched by the Commission in

order to foster active democratic participation, thus reducing the “democratic deficit” affecting EU institutions.

In conclusion of the paper, a paragraph is dedicated to the EU-CoE efforts to build a coherent framework for assessing the impact of European policies in Education for democratic citizenship on the national dimension and for monitoring the progress made, referring to the common benchmarks agreed at European level.

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Endnotes

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The Legal Frame for Peace Education at Schools After World War II in Germany

Kurt Graulich



The Legal Frame for Peace Education at Schools After World War II in Germany

Kurt Graulich

• Draft paper •

Why dealing with peace education after World War II? The 8th of May 1945 would not have been much more than the beginning of a cease fire, if the European Nations had not started from that time on a learning process how to practice peace. The European Union was rewarded with the Nobel Peace Prize in 2012, since it is the core of an utmost constructive, productive and vital anti-war-coalition. The spirit of war which had for hundreds of years devastated this continent was banned because of a change in mind. And one cause for this result is a fundamental change in school education after the war; not in each country at the same time, but slowly increasing.

Wars and crimes do not begin with the use of weapons but with aggressive thinking. Especially the European history is full of examples for dreadful action and reaction, deed and revenge. It was the immeasurable merit of important personalities after World War II to end these chain-reactions and put peaceful cooperation instead. This development demanded to abstain from usual patterns of prejudice, jealousy and fears. One can say that the atomic bomb and the cold war – until 1989 - made it easier to calm down the ideas for hostilities since the next round could have been the very last. But a more optimistic interpretation also allows comprehending the European history during the last 65 years as the result of a mental change. And maybe that both aspects were relevant: a mental change in the shadow of the iron curtain and the threat of nuclear destruction. Important for that change in mind was – step by step - a fundamental change in the historical self-understanding of the European nations, away from the superiority of military thinking to the priority of the civil sector.

In his recently published autobiography "Joseph Anton" Salman Rushdie is quoting Günter Grass with the words: loosing contains more important lessons than winning. The winner takes his position as justified and is not ready to learn, while the looser seriously must find out what has been true and what was worth to fight for (p. 325). Unlike the end of World War I after World War II Germany was not obsessed by the idea of taking revenge, although the expulsion of more than 12 million people of German nationality from east and middle-east Europe to the territory of West-Germany provided a big heap of potential: Imagine what would have happened if those people had not immediately been integrated but been put to refugee camps as we know them from Palestine merely since the same time.

Part of the mental change that turned hostility into peaceful cooperation was school education. And how the turn over from war to peace happened in this field is worth to be regarded. School education in Germany does not belong to the items of the federal constitution but is one of the main competences of the sixteen member-states. The member-states were founded earlier after World War II than the Federal Republic which was

proclaimed in 1949. The member-states constitutions, including rules for school education, were mostly written in 1946. That is why they are more inspired by the horror of the recent war than the federal constitution which is closer to the beginning of the deep-cutting period of the cold war. The exemplification shall be shown by help of the constitution of Hessen (Hessische Verfassung –HV), a member-state of the Federal Republic, which proclaimed his after war constitution in 1946.

Art. 56 Abs. 5 HV says that historical lessons at school "must be orientated to the pure and unadulterated depiction of what has happened in the past. Into the foreground have to be put the great benefactors of mankind, the development of the state, economy, civilisation and culture, but not military commanders, warfare and battles. Not to be tolerated are opinions which fit against the fundaments of the democratic state." One can call that a peace education programme by constitution.

But what do these new aims mean? Foremost the constitution erected a barrier against the militaristic spirit, the homage of military leaders, war and battles. Also chauvinistic tendencies were discriminated. One can say that any ideological purpose of historical interpretation was to be discriminated. Most of the European countries in successful periods of their history were of the opinion to be "chosen" or "designated" by fate and therefore had a higher meaning or value than their neighbours. Often they derived from that position the legitimization to suppress or exploit other nations. History lessons at school can help to overcome such evil causing convictions. The anti-militaristic evidence of Art. 56 Abs. 5 HV countervails another paradigm of former politics, and that is Carl von Clausewitz' theses, that war was the continuation of politics by help of other means. In opposite to this 19th century conviction the after war constitution recognizes a war not to be the continuation, but the bankrupt of politics. And in no way the war could any longer be understood as the coronation of politics as still glorifying war memorials in many European towns do.

Instead of Clausewitz' thought of war and politics as mutual elements Art. 56 Abs. 5 HV was closer to the idea of another European philosopher who lived in tremendous times. His name is Baruch Spinoza and has been living in the 17th century in the Netherlands and he downgraded the ranking of war by his formula: Peace is not the absence of war but a virtue, which arises from the strength of character. Spinoza civilized the thinking of peace by giving him an own meaning, independent from thinking the war. And he goes one step further: loosening war from its image as a natural law and calling peace "a virtue, which arises from the strength of character" he recognizes peace as man-made. Thus following peace can be learned. And therefore a place to implement peace is school teaching. The above mentioned constitutional rules do not only address the administration but also and directly the teachers. Therefore school authorities must interfere if a teacher fits against the spirit of the free and democratic law, and especially against the national, social, racial, religious tolerance and international understanding.

The benefactors of mankind are contributed to the well-being of populations not by force but by conviction, by invention or by compassion. Mahatma Gandhi is not an example for a benefactor since he was successful but since he was peaceful. Florence Nightingale and Henry Dunant did not win wars but organized compassion. Nelson Mandela was politically

successful, but overpowering in his forgiveness. Romain Rolland gained the Nobel-Prize for literature in 1915 "Appreciating his high idealism of his poetic work and recognizing how warm and truthfulness he depicted man in their diversity", what certainly was a precise description of his mission. But out of his huge oeuvre on India there is one short episode he tells from Ramakrishna, the great renovator of Hinduism in the 19th century: After some opponents had attacked a Shiva temple, and some of his followers started to take revenge, he held them back explaining: It is not you who protects God Shiva, but God Shiva protects you. So – transmitted by Romain Rolland – Ramakrishna is showing a very useful attitude to underline religious importance by restraining it from political actions. His attitude therefore is also worth to be remembered and to be taught at school.

Government and school authorities at that time of the late forties in the 20th century in Hessen took the constitution as a blue print to be realized. They broke the legal principles down to detailed advices for a school practice. A recommendation for teachers, which historical, political and philosophical literature they should use to prepare their lessons contains lots of common European tradition such as Thomas Morus, Luther, Calvin, Grotius, Locke, Montesquieu, Kant, Marx, Lenin, Jellinek, Kogon, Thomas Mann, Schumpeter and Max Weber etc. But they also derived from the new constitution that education needs to have a democratic conviction and practice at school. There should not remain any chance for traditional old-fashioned authoritarian manners between teachers and pupils and discipline reminding of military drill. Life at school should be accommodated to the customs at work or in the family not to the organisation of a cadet school. In this context it is interesting to read - again in Salman Rushdie's Autobiography -, that in the early sixties of the last century in the boarding school he visited in England it was usual, that the boys on Wednesday afternoon had to exercise in a cadet group in khaki-uniforms playing war in the mud of the school (p. 41). This example shows how much time it even took in west Europe to give up the linkage between school education and military training of body and mind. The necessity of countervailing measures is underlined by the fact that from 1981 on the UNESCO is awarding a Prize for Peace Education "to promote all forms of action designed to construct the defences of peace in the minds of men by rewarding a particularly outstanding example of activity designed to alert public opinion and mobilize the conscience of humankind in the cause of peace, in accordance with the spirit of the Constitution of the United Nations Educational, Scientific and Cultural Organization and the United Nations Charter (Rule 1 of the General Rules)."

We know that real life is not a rose garden. Engagement for peace after World War II in Germany was not easy while an immeasurable concentration of weapons for mass destruction were stored on the territory by eastern and western military powers. And despite the school reforms in Hessen the University of Frankfurt was one of the centres of the protest movement in the late sixties and many of the participating students dreamed of Alexander Neill's Summerhill school project as a presumed paradise for scholars. But there is no contradiction. A more liberal and democratic spirit can go on and reach higher standards of a civil society than the educational products of a cadet school. The so called students' rebellion in Germany in the sixties cannot be thought without the school reforms which began in the late forties. The greatest success of peace education was that the glorification of war as top of manhood or purpose of nation-being was overcome by non-

bellicose aims. Under young people one of the utmost popular phrases became the excerpt from one of Carl Sandburg's poems „Sometime they'll give a war and nobody will come“. In the consequence the fall of the Berlin Wall and the German Unification were not the result of a war but of a non-war, which had been growing in the shadow of tanks and missiles. Peace education instead of glorifying fight and military victory were indispensable conditions for this development in Europe during the last 25 years.

But before I come to the end let me think of another side of the school medal that surely nowadays is even more important than the context with history and big policies: How to guarantee peace in schools today? Michael Moore has been making his film "Bowling for Columbine", which referred to a school shooting in the USA in 1999, and we in Germany thought he was only pointing out a US-American problem of handling with weapons in the society. Meanwhile we had to learn that school massacres also can happen in our country which thought to be much more restrictive with the private use of weapons as the USA. Only in 2002 a pupil killed 15 people, among them 12 teachers, and in 2009 another pupil killed 15 people and himself in his school and outside. More cases of school shooting happened meanwhile, causing less victims, but were also committed by pupils at school. It is very difficult to enumerate the reasons for school shootings. Maybe we disregarded a lack of emotional relatedness between parents and children as well as between teachers and children. Certainly the influence of media is overwhelming. But as we slowly outlawed bellicose manners it is our task to find a strict position towards violence being performed in movies, video games and leisure time facilities. The Federal Administrative Court in Germany found it was against the constitutional rule of human dignity to play laser-based death games – similar to paint ball games - in a public sports hall. The European Court of Justice in Luxemburg said that this judgement was in accordance with the right of the European Union. This jurisdiction is an important hint for the prevention of violence because the perpetrator of one of the biggest school shootings in Germany had been in contact with the paint ball scene.

Of course peace education to prevent a war is facing another dimension than facing the own security of teachers and pupils. And we should not think of the conception for peace education in Art. 56 Abs. 5 HV as a romantic idea in ancient times. Historical and social development does not happen simultaneously in different countries. The aims for peace education in American, German or French suburb-schools may be far from those in Ruanda, Kosovo or Afghanistan. But in any case school is the place where at all times thinking can be influenced to target peace and not war and to follow the rule of law and not the power of weapons.

The Protection of Children from Violence in Schools in Ireland

Oliver Mahon B.L



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Children may encounter violence at school from a number of quarters: teachers, other adults and other pupils/students. I will consider each of these separately.

1. VIOLENCE FROM TEACHERS: CORPORAL PUNISHMENT

1.1 The usual form that this took was corporal punishment which at one time was very common as a means of enforcing rules and maintaining discipline in both primary and post-primary schools in Ireland. This was accepted as being quite normal and indeed appropriate by the population as a whole. "Spare the rod and spoil the child" is the modern version of a line from a poem of 1662² which has attained proverbial status through repetition, and probably derives from *Proverbs* 13:24: "he that spareth the rod hateth his son; but he that loveth him chastiseth him betimes." Physical punishment of children both at home and at school was thus considered an entirely proper response to misbehaviour and indiscipline, particularly for boys³. (Indeed this was so not just in Ireland but throughout the western world generally; see note 12 below.) Furthermore, the fact that flagellation, either self-inflicted or administered by another, was a common form of self-discipline in the medieval monastic system, and that both in England and Ireland many schools originated as foundations associated with and/or established by church bodies, must also have been a contributing factor to the use of physical punishment in these schools. In Law the normal rules relating to trespass to the person were suspended when it came to the chastisement of children at home and of pupils at school, so that what would otherwise have been an actionable wrong (a battery in the common-law system) was exempt from legal sanction when properly used as a method of chastisement by an authority figure at home or at school.

1.2 In order to understand why this was so it must be kept in mind at all times that Ireland was and is a common-law jurisdiction. As a side-effect of the gradual English conquest of Ireland, English common law gradually supplanted the native legal system, known as the Brehon Laws, which had evolved among the native Irish and survived into the 17th century and perhaps longer in places. The Norman conquest of Ireland which began in 1169⁴ took several centuries to complete⁵, but eventually English common law had replaced the Brehon Law system completely.

1.3 It is a feature of the common law that the relationships between teacher and pupil are founded on the notion that the teacher stands *in loco parentis*, in the place of the parent, in relation to the pupil as long as the pupil-teacher relationship is in existence. This construct is of such antiquity and so well established that over time it became elevated to the status of a legal doctrine and it came to determine all aspects of the teacher-pupil relationship. The doctrine gave rise to a number of duties and entitlements on the part of both teacher and pupils. The teacher was not only required to instruct his or her pupils in the subjects of the curriculum but was also required to exercise a parental standard of care over them and to

protect them against foreseeable risks; this responsibility became known as the Teacher's Duty of Care and it came into existence once the pupil-teacher relationship was formed in the morning, endured throughout the school day and only terminated whenever the pupil-teacher relationship terminated, normally (but not invariably) some time in the afternoon. The Law held that the duty to take care of the child passed from the natural parents (who had this responsibility as an incident of parenthood) to the teacher when the child was taken into the teacher's charge. (Ideally, as the law saw it, a child of tender years should never be left in a situation where no responsible adult owed it a duty of care.) The teacher's duty of care was never as extensive as that of the parent; for example a parent has a legal obligation to feed and clothe his/her children but this duty did not normally devolve to the teacher, but the teacher did have a duty to guard the child against foreseeable harm. In order to provide the teacher with the authority to discharge this duty, the Law also held that the powers of control and discipline that parents held as parents were also devolved to the teacher. As part of the natural parental authority was the control and management of the household, it was seen as natural and proper that the control and management of the school was within the authority of the teacher.⁶

1.4 The common law empowered the father as head of the family to assert his authority over the other members of the household, and by force if necessary where any other remedy was inadequate; originally this authority extended even over his wife⁷, and the father was entitled to employ corporal punishment to achieve discipline within the home; as the law became more enlightened, this authority became the shared responsibility of both parents. Since the teacher became in effect a surrogate parent for as long as the child was within his/her care, it followed logically that as part of being *in loco parentis* the teacher also acquired the authority to employ corporal punishment in order to maintain control and discipline within the school and the classroom.

1.5 However it was never the case that any authority figure, parent or teacher, had unrestricted freedom to inflict physical chastisement, either at home or at school; the law always required that the degree of physical punishment should be reasonable, proportionate and appropriate to the particular child. Thus for example, even in the most benighted era in the earliest days of the evolution of the Law, the paterfamilias was forbidden to chastise his family with a stick any thicker than his thumb, so that even then society exercised some measure of control over behaviour within the family through the law. In schools, this control was more formalised, and for Ireland a good example can be found in the *Rules for National Schools*⁸ which in Rule 130 on School Discipline tries to balance severity against moderation and enlightenment:

"130. (1) Teachers should have a lively regard for the improvement and general welfare of their pupils, treat them with kindness combined with firmness and should aim at governing them through their affections and reason and not by harshness and severity. Ridicule, sarcasm or remarks likely to undermine a pupil's self-confidence should be avoided.

(2) Corporal punishment should be administered only in cases of serious misbehaviour and should not be administered for mere failure at lessons.

(3) Corporal punishment should be administered only by the principal teacher or other member of the school staff authorised by the manager for the purpose.⁹

(4) Any teacher who inflicts improper or excessive punishment will be regarded as guilty of conduct unbefitting a teacher and will be subject to severe disciplinary action."

1.6 While the intention was to achieve moderation and restraint without compromising the legal principle under which corporal punishment was allowed to be administered, the problem was policing and enforcement. Too much depended on self-policing and self-restraint by the individual teacher, and while many teachers were (relatively) restrained in their use of the cane, there were others who were not, and regular "slaps" were a feature of almost everyone's childhood to some extent. At least pupils in most primary schools returned home in the evenings and attended only on five days each week; the real atrocities were perpetrated in institutions such as the "industrial schools"¹⁰ where children resided, often far from home, on orders of a Court on often flimsy pretexts, and so were subject to often harsh and cruel disciplinary regimes, and even outright abuse, for years at a time. The fact that such institutions were usually administered and operated by religious organisations on behalf of the State gave them a *de facto* immunity from scrutiny that ultimately led to the series of exposés and scandals that horrified the country as the details were uncovered by the media in the nineties.¹¹

1.7 The fact that it was legal did not mean that there was no opposition to the use of corporal punishment, and individuals and groups had been campaigning for its abolition for many years in various countries¹². This was far from easily achieved; there was a long and venerable history of the use of physical punishment to enforce discipline and correct unruly behaviour in schools going back to classical times¹³, and it was generally resorted to for disciplinary and corrective purposes as states set up public or quasi-public school systems. Despite this historic legitimization of the practice, a small number of persons campaigned persistently for its prohibition. In Ireland, Dr Cyril Daly started his campaign of public opposition in the 1960s¹⁴ and in the United Kingdom organisations such as STOPP¹⁵ did likewise.

1.8 It must not be imagined that society through the legal system gave a blanket immunity to the abuse of physical punishment in schools; the problem was that not enough cases of excessive or inappropriate punishment came before the Courts to create a public awareness of the rights of pupils to be punished within the parameters of Rule 130¹⁶, or the right of a parent to seek and get redress on behalf of the child through the legal system. While the cases taken were few, nevertheless *McCann v. Mannion*¹⁷ and *McGee v. Cunnane*¹⁸, to name but two, are examples of cases where parents were, even in more repressive times, prepared to assert the rights of their children through the Courts. In an extreme case the criminal law was always ready to step in if the circumstances required it, although the threshold of intervention was high, and generally the sympathies of society as expressed through the Courts, rested with the school; the truth of each of these statements can be seen in two English cases, *R. v. Hopley*¹⁹ and *R v. Newport Justices ex parte Wright*.²⁰ In *Hopley*, a housemaster at a public school had the father's written permission to inflict corporal punishment on a boarder, but did so far in excess of what was reasonable; the boy died as a result of a severe beating and the teacher was convicted of manslaughter and sentenced to six months. This of course was an extreme case requiring an extreme response; in *Wright* the Court came back with a decision more in line with the general principle that school

discipline was generally a matter for the school. Two senior boys were caned for smoking in the street after school while in school uniform in breach of a school rule of which they were well aware; the Courts declined to intervene, even though one of the boys refused the punishment and was held down and caned across the buttocks. This was a 1929 case; in another seventy-odd years the mood of society had changed and corporal punishment was finally abolished incrementally in all schools in Britain between 1987 (initially in state-funded schools) and 2003 in Northern Ireland, the last part of the United Kingdom to do so.

1.9 In Ireland the position was much the same in relation to corporal punishment in schools from the foundation of the State²¹ until the enactment of the *Non-fatal Offences against the Person Act 1997*, which ended all arguments by removing the immunity from prosecution possessed by teachers when administering corporal punishment in the following section:

24. – The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished."

25.

1.10 This enactment removed the traditional legal immunity from criminal prosecution; as we have seen above there had always been the possibility of civil action in cases where the corporal punishment was excessive or administered in a way that was not proper. The final step in the process of abolition was the ratification and adoption of the United Nations Convention on the Rights of the Child 1989, which Ireland ratified in 1992 without any derogation. Among other things Article 28 obliges the State to ensure that school discipline is administered in a way that is consistent with the human dignity of the child: a requirement clearly incompatible with the use of corporal punishment as a method of discipline and control.

2. VIOLENCE FROM TEACHERS AND OTHER ADULTS: ABUSE OF CHILDREN

2.1 There has been a history of child abuse in Irish schools, mainly by teachers, but also by adults other than teachers, such as school caretakers, who have occasionally been a source of violence towards children, although happily such cases are rare. The most common form that such violence has taken has tended to be sexual abuse, but by and large the opportunities to inflict such abuse tend to be relatively rare in a normal school setting, and it can safely be said that children are far more likely to encounter such abuse outside school than in it. In day schools it can be said that this problem has been relatively small in comparison with the numbers of pupils in attendance, but this was not the case in the past in residential institutions such as the industrial schools mentioned in paragraph 1.6 above, and residential schools, by no means all of them industrial schools, have featured in a number of cases of abuse. As boarding schools for second-level students have become rare for a variety of social and economic reasons, and most school-goers now reside in their homes, the opportunities for systematic abuse have greatly diminished. For many years this aspect of Irish life was concealed from public scrutiny for the reasons mentioned above; see par.

1.6. It took a long time for Irish society to become prepared to confront this situation, but the mass media, particularly television, played a notable part in forcing society to address this issue²². This issue is still not fully resolved; even at a late stage during the preparation of this paper a report on four dioceses and three religious congregations²³ was published by the

National Board for Safeguarding Children²⁴ and disclosed a sorry history of mismanagement, denial, concealment and a closing of ranks around known abusers.²⁵ The author of the report remarked that there is still some way to go before all the necessary safeguards have been adopted by all the parties.

2.2 After an initial period of denial, society's response took a number of forms. One was to put in place a set of child protection policies and guidelines, issued through the Department of Education and the Department of Health²⁶. These policies were tentative at first and were not taken with total seriousness by all the relevant authorities, but as time has gone on newer versions²⁷ have been "beefed up" both as regards content and procedures. A second was to put in place a system of vetting²⁸ all new candidates who come to work in unsupervised settings with children and vulnerable adults, although lack of resources in the State vetting unit has led to unsatisfactorily long delays in the processing of referrals. Another enormously significant step was the enactment of the *Protection of Persons Reporting Child Abuse Act 1998*²⁹. This is a short statute whose aim is to confer a statutory immunity from suit in civil actions on persons who make a report of a suspicion of child abuse to an appropriate authority: certain health authority personnel and the *Garda*³⁰ in emergency or out-of-hours cases. The fact that the report may be mistaken is immaterial provided that there was at the time a *bona fide* belief in its truth³¹. This Act was intended to allay fears of possible legal consequences for those who had suspicions to report and by so doing to create a climate in which reporting of such suspicions might flourish. However it has not been as effective as was hoped, and there have been various initiatives since its enactment to encourage such reporting. The present Ministers for Education, (Mr Ruairí Quinn TD) and Children (Ms Frances Fitzgerald TD) have been particularly pro-active in this area since coming into office, and the most recent initiative³² has been to make such reporting, hitherto optional, a legal requirement³³. Certain occupational groups, of which teachers are one³⁴, are likely to be particularly targeted in this regard as they are deemed to have a particular opportunity to observe children at close quarters in situations of confidence where the child may disclose either explicitly or by behaviour indications that abuse may be a feature in its life. An announcement made on 25 April 2012³⁵ is another significant step towards this outcome. It will be mandatory for every sports club, school and organisation that children attend without their parents to have a named Officer with responsibility for ensuring the implementation of the Children First Guidelines; there are severe penalties for failure to comply with the law.

2.3 However more than making the reporting compulsory will be required if Ireland is to make serious progress on this front. It has been suggested that what is more urgently needed is not just to increase the amount of reporting but to strengthen the response of the authorities when a report is submitted. One of the most disturbing features of the official report into what has become known as the Roscommon Child Abuse Case³⁶ was that the family had come to the attention of the local health authority several years before action was finally taken, and the Report details various failures to act, to pursue complaints and to follow leads, as a result allowing the children to suffer protracted abuse for far longer than should have been the case. It appears that there is little point in making reporting mandatory if the machinery to act on what reports are made continues to be so inadequate.

2.4 The conclusion at the time of preparing this paper must be that while huge progress has been made after decades of denial that any problem existed, and while several initiatives have been taken (preparing guidelines, spreading information and establishing procedures and mechanisms for reporting as well as those other initiatives listed above in par. 1.12) that will be an essential foundation for action, a great deal still remains to be done, and it is questionable if merely making reporting of suspicions mandatory, with consequent implications in criminal and civil law for those accused of failing or neglecting to report, will achieve very much without a very significant investment in resources on the receiving side. The Roscommon case was not the only one where the authorities were made aware of concerns but very little action was taken, or taken in time. In these cases the usual formulation has been the "lessons have been learned", but if so they do not appear to have been acted upon. However there will be unlikely to be much improvement without committing additional resources to the area, and the present state of the Irish economy makes such a commitment somewhat unlikely, at least in the short to medium term.

2.5 The most recent initiative, at present in the course of preparation, is to amend the Irish Constitution by inserting a specific provision to affirm the rights of children. This will require a significant modification of the rights of the Family, which are guaranteed explicitly in Article 41 which is devoted to that topic, and again in Article 42 which ostensibly focuses on Education. The effect of these two articles is to affirm the position of the Family (not defined) as "the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law" (Art. 41.1.1°). This effectively insulates the Family from interference by the agents of the State, particularly as the next paragraph goes on to say that the State "guarantees to protect the Family in its constitution and authority" (Art. 41.1.2°). This guarantee is reinforced and affirmed in Article 42 (Education) which opens by saying that "the State acknowledges that the primary and natural educator of the child is the Family....." (Art.42.1). The effect of these and other similar provisions is to make it extremely difficult for the State or its agents to dislodge the primacy of the Family in relation to the management of their children or their education. (An entirely unintended but nevertheless very significant consequence of these provisions was that in the Roscommon abuse case, referred to above, the abusive parents were able to avail of the Courts to use the provisions of the Constitution to prevent the health authority from taking their children into State care.) A very significant gap in the present Constitution is a complete absence of any provision affirming the rights of children *per se*, and this want will have to be repaired if any progress is to be made on the Constitutional front. In February 2010 a joint parliamentary committee³⁷ on the Constitutional Amendment on Children issued its third and final report and proposed a new Article 42 (to be entitled "Children" rather than "Education") which would contain a clear statement of the primacy of the rights of children, but there has been no further move on this in the meantime and at the time of writing this paper it is not known what form the statement of children's rights will take or how far it will go.

2.6 It can be safely stated that amendments to the constitution and the publication of policies alone, no matter how worthy and well-intentioned. Will have little effect without building up of an adequate response mechanism, a point which is still some way off.

3. VIOLENCE FROM OTHER STUDENTS: BULLYING

3.1 It is only in recent years that there has been a widespread acceptance in society generally and among teachers and school managements in particular that bullying at school is a serious issue for many children, and that steps are required to address it.³⁸ The approved response is by way of a policy formation and implementation at school level, supported by appropriate disciplinary action if necessary. The Department of Education and Skills has made it mandatory for all recognised schools to have in place and implement a policy on dealing with bullying in schools, and has published³⁹ a template for such a policy to which all recognised schools are required to adhere. However bullying in schools is a particularly intractable problem and difficult to detect and eradicate, particularly as modern methods of communication have enabled bullies to explore avenues that did not exist in the past, so much so that “e-bullying” or “cyber-bullying” is now one of the most common and insidious forms, and that is largely beyond the competence of schools to deal with on their own.

3.2 Some schools treat the issue with appropriate seriousness, and have on-going publicity and awareness campaigns running throughout the year, with the aim of raising awareness among students and staff of bullying and encouraging the creation of a climate of openness around the issue, but it seems that the results are mixed. However these schools are to be commended for trying; some other schools have in the past tended to try to brush the issue under the carpet, perhaps afraid that the necessary publicity campaigns will damage the reputation of the school.

3.3 A small number of school bullying cases have reached the Courts⁴⁰, and the usual outcome seems to be that where the school can demonstrate to the satisfaction of the Court that on being made aware of the problem it did not delay in taking whatever steps lay within its power to deal with the issue, it will be held to have done enough to discharge its duty of care.

3.4 One case that did reach the High Court was *Mulvey v. McDonagh*⁴¹, in which the mother of a four-year girl alleged that her daughter was beaten regularly and bullied consistently throughout the school year, and that the school authorities had done little or nothing to address the matter despite its being reported to the principal and teachers on a number of occasions. Not only did medical evidence from a leading children’s hospital completely contradict the mother’s assertion that her daughter had been admitted having been “covered in bruises” but the trial judge (Johnson J.) found that the school had taken adequate steps to deal with the mother’s complaints. In the course of his judgement he took the opportunity to affirm the definition of bullying contained in the relevant circular letter from the Department of Education and Skills:

“Bullying is repeated aggression, verbal, psychological or physical conducted by an individual or group against others. Isolated incidents of aggressive behaviour, which should not be condoned, can scarcely be described as bullying. However when the behaviour is systematic and ongoing, it is bullying.”

I accept and adopt that definition of bullying.”

3.5 As regards the appropriate standard of care to be exercised by teachers in these situations, the trial judge stated:

“The law in this case would appear to be.... that the degree of care to be taken is that of a prudent parent exercising reasonable care and I accept that that must be taken in the context of a prudent parent behaving reasonably with a class of 28 four year olds having their first experience of mingling socially with other children..... I think that the suggestion that there should be a further and higher degree of liability, namely that of professional negligence, is a situation which has not yet been achieved in Irish law.”

3.6 Given the pervasiveness of bullying not only in schools but also, it is now realised, in society generally, it is difficult to see what more can be done by the State to deal with this issue, and even the most alert and pro-active schools can only do so much. The problem of bullying is not confined to any social class, economic group or ethnic or cultural level of society, and its causes are more complex than was initially realised. It is doubtful if it can ever be eradicated either in school or indeed in the wider society, and the most that can be hoped is probably containment. This has been the experience in other jurisdictions and it is unlikely that Ireland will succeed where others have not.

General statutory protection: the *Safety Health and Welfare at Work Act 2005*.

This is a general workplace health and safety act and it applies to all places where work is carried on. Schools are workplaces; the statutory definition of “place of work” is (in part): “place of work” includes any, or any part of any, place (whether or not within or forming part of a building or structure), land or other location at, in, upon or near which, work is carried on whether occasionally or otherwise...”⁴²

This definition comprehends *all* schools and not merely recognised schools, so that the legislation also applies to private schools, unlike the general corpus of education legislation in Ireland which only applies to recognised schools, although “school” is not mentioned anywhere in the Act.

The Act is specifically designed to secure the health and safety of *employees*; however the Act extends the employer’s obligations to persons who are present in the workplace but who are not employed there, such as visitors or customers and of course students in schools. Some sections are particularly relevant for school management and staff, and these are summarised below.⁴³ It came into effect on 1 September 2005. What is important for the purposes of this paper is that the obligations of management and owners are owed to all persons in the place of work and not just to employees, which means that students are also entitled to expect that their safety health and welfare will be protected. This is clear from the following sections:

Section 12 obliges every employer to manage the business so as “ensure as far as is reasonably practicable that... individuals in the place of work [who are not employees] are not exposed to risks to their safety, health or welfare.” (This in effect extends the general duty to visitors to the school and to students.)

Section 13 sets out duties of employees; generally to cooperate and assist the employer in achieving the safety goals of the Act by having regard to their own health and safety. The effect of sub-subsection (h) is to make every employee into a “safety reporter” by obliging him/her to report any defect “in the place of work, the systems of work or any article or

substance” which might be a risk to employees or “any other person” (i.e. visitors and even trespassers).

Section 19 obliges the employer to have carried out a hazard audit and risk assessment (covering safety, health and welfare aspects) of the workplace, taking account of the work being done and that persons other than the employees may be affected. These are to be recorded in a “risk assessment” which must be kept under review and updated by the employer as workplace circumstances change.

Section 20 requires the preparation of a safety statement based on the hazards and risks identified in the risk assessment. It must specify how safety is to be secured, and set out emergency plans, duties of employees, names and job titles of persons with specific responsibilities, etc. This must be brought annually to the attention of employees (new and existing) and any other persons who may be exposed to risk. A copy must be available for inspection at the workplace.

Enforcement:

Section 62 allows the HSA⁴⁴ to appoint inspectors and section 64 empowers an inspector to enter a place of work and carry out a wide variety of functions relating to examining and collecting evidence, and where the inspector is satisfied that there are safety issues, section 65 empowers him/her to order the employer to furnish a scheme (called “an improvement plan”) to remediate the problem. Where the inspector feels that for one of a number of stated reasons the section 65 process has not produced a satisfactory outcome, section 66 empowers the inspector to issue an “improvement notice”, which is a direction to carry out steps specified by the inspector to address the problem. Section 67 empowers an inspector who feels that some workplace activity is causing a risk of “serious personal injury to any person” to specify the activity and prohibit its continuance until the inspector is satisfied that the danger has been averted, when the notice may be withdrawn; there is also an appeals process provided by the section. Section 68 provides that if necessary the High Court may be enlisted to enforce such a notice by court order.

Each of the areas of possible violence numbered 1 – 3 above would be comprehended by this Act.

Endnotes

1. “Violence” for the purposes of this paper includes physical violence, child abuse and non-physical violence such as bullying in its various forms.
2. Samuel Butler, *Hudibras*.
3. This was the legal position not only in Ireland but in other common-law jurisdictions such as England and the United States.
4. For a long time it was touch and go as to whether the native or the foreign culture would prevail. The turning point was the Battle of Kinsale in 1601, after which the native Gaelic culture went into a gradual but irreversible decline. One aspect of this general process was the spread of the common law over the entire country and the slow demise of the Brehon law system, which today is merely of antiquarian interest. An attempt by the nationalist *Sinn Féin* Party (“We Ourselves”, a title emphasising national self-reliance and usually mistranslated as “Ourselves Alone”) in the second decade of the last century to set up a parallel system of courts in which any legal system except English common law might be employed was never going to succeed and had to be abandoned; the common law was by then too well entrenched in Irish life.

5. Unlike the Norman Conquest of England which began in 1066 and was largely accomplished, as far as England (but not Scotland and Wales) was concerned, within a generation.
6. See Glendenning, D., *Education and the Law*, 2nd ed., Dublin, 2012, chapter 10 where the sources of the authority of the schoolteacher are discussed.
7. The right of a husband to chastise his wife physically in certain circumstances was only abolished finally in the United Kingdom in 1891. It had been abolished a generation earlier in the United States.
8. *Rules for National Schools under the Department of Education*, Stationery Office, Dublin, 1965 edn. This rule remained in force until 1982, when it was amended by an administrative circular letter from the Department of Education.
9. This part of the rule was in practice almost entirely ignored, particularly in primary schools.
10. “Industrial schools” were large residential institutions to which children who were considered to be out of control or otherwise incorrigible were committed for a period of years on the orders of a Court. Frequently children were committed on the flimsiest of pretexts, such as irregular school attendance, or simply because a parent had died. Between boys and girls the numbers committed ran into thousands, and while not every institution was the scene of forms of child abuse, the system was an invitation to the exploitation of children. The blame did not lie entirely with the religious bodies that operated them on behalf of the State; inadequate and perfunctory inspection by State officials, and a general deference from the State side to the Churches, particularly the Catholic Church, helped considerably to create a culture in which those committed were at the mercy of their custodians and open to being abused. The name “industrial” derives from the idea that the inmates would be instructed in a trade by which they might ultimately support themselves.
11. Mary Raftery (1957–2012) is the journalist whose name is rightly most associated with these disclosures, principally through her three-part television documentary “States of Fear” which opened the eyes of a horrified public to a concealed world of child abuse within these residential schools. See *The Telegraph*, 20 August 2012; *The Irish Times*, 10 January 2012.
12. The first country to forbid the use of corporal punishment was Poland in 1783, but that was very much the exception. In the United States, Horace Mann (1796–1859) promoted a model of free public education that did not rely on the use of corporal punishment to control students, and established such a system, later widely copied, in Massachusetts.
13. The schools of Greece and Rome employed it as a common method of punishment and control, and thus the practice tended to acquire an acceptance and even a respectability as a result of the universally high esteem in which the classical world was generally held in Western culture. The Roman poet Horace spoke nostalgically of his old schoolmaster as “*plagosus Orbilius*” (“Orbilius fond of the rod”) and this attitude would have been common, although some Classical writers railed against the use of physical punishment in schools.
14. Principally through the pages of the *Sunday Independent* newspaper which provided a platform for him to air his views over several years as he campaigned against the practice.
15. Society of Teachers Opposed to Physical Punishment, est. 1968.
16. There was no rule for post-primary schools equivalent to Rule 130, as most post-primary schools were privately-owned institutions operated by Church bodies but largely financed by the State through capitation and other grants; teachers’ salaries were also in the main paid by the State directly.
17. (1932) ILTR 161.
18. (1932) ILTR 147.
19. (1860) 2 F & F 202.
20. (1929) 2 KB 416.
21. *Saorstat Eireann*, The Irish Free State, came into existence in 1922 and was the precursor of the Republic of Ireland which was brought into being in 1948.
22. See paragraph 1.6 and note 10 above.

23. The dioceses of Clonfert, Cork & Ross, Kildare & Leighlin and Limerick, and the congregations Of the Spiritans (formerly the Holy Ghost Fathers), The Missionaries of the Sacred Heart and the male order of the Dominicans.
24. A body established by the Catholic Church itself for the purpose of carrying out investigations and audits of religious orders and dioceses in relation to allegations of child abuse.
25. See *The Irish Times*, 6 September 2012.
26. Re-named The Department of Health and Children from 1997 to 2011 in order to emphasise the new commitment to the welfare of children as a specifically-identified group. It reverted to its former name in 2011.
27. The principal publications have been *Children First* and *Our Duty to Care*, of which there have been a number of versions, becoming more prescriptive over the years.
28. A large number of countries have established systems of vetting individuals in these situations; there are mixed feelings as to the effectiveness of the systems and even where they are adequately resourced, such as in New Zealand, there is uncertainty as to their effectiveness as a method of protection.
29. No. 49 of 1998.
30. *An Garda Síochana* (literally “the custodian of peace”) is the official title of the police force in Ireland, generally referred to colloquially as “the guards”.
31. There is also a provision in the Act to deal with malicious reports, but the effect of this is not what was intended, and an accusation alone can almost amount to a guilty verdict and for an innocent party can be difficult if not impossible to disprove; this has led to an imbalance and to severe injustices in some cases.
32. The *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012*.
33. Mandatory reporting of suspected child abuse cases is superficially attractive but in practice is likely to create as many problems as it solves. Whether making reporting mandatory will actually increase the incidence of reporting is unclear; research data from the United States, where reporting is mandatory in some states and optional in others, is not conclusive that the rate of reporting is any higher in the mandatory group than in the other. In addition the proposal to criminalize non-reporting (since the law must have a means of enforcement) will create a new category of criminal offences with the requirements of investigation and prosecution that will generate work for lawyers and the Courts without necessarily leading to any significant improvement in the situation for the children.
34. Others are family doctors, public health nurses and various therapists and counsellors who work closely with individual children.
35. See *The Irish Times*, 25 April 2012.
36. Gibbons, Norah (Chairperson of the Inquiry Team), *Roscommon Child Care Case: Report of the Inquiry Team to the Health Service Executive*, 27/10/2010. This was a particularly graphic and protracted case of child abuse in a domestic setting, in which an entire family of children was routinely abused in a variety of ways by both parents over a period of several years until the eldest child herself contacted the police, when action was belatedly taken. The presiding judge at the trial of the mother said “the children were failed by everyone around them and she was concerned that, while the former Western Health Board had been involved since 1996, [they] were not taken into care until 2004.” (at page 7.) Both parents were eventually jailed.
37. Ms Mary O'Rourke T.D was Chairperson of this Committee, but she has since lost her seat. The present Minister for Children Ms Frances Fitzgerald T.D., then a Senator, was also a member so there must be a chance that the agreed wording of the joint committee will be proceeded with.
38. Bullying has always been a feature of school life at some extent; for example Thomas Hughes wrote a graphic account of a bullying incident in his highly influential novel *Tom Browne's School Days* (1857) which describes life at Rugby, a well-known English public school, in the early years of the 19th century.
39. *Guidelines on Encountering bullying Behaviour in Primary and Post Primary Schools*, September 1993.
40. Many more have been initiated but settled by negotiation outside the Courts. As these settlements invariably contain a confidentiality clause it is impossible to give any estimate of their numbers or the size or nature of the settlements.
41. [2004] IEHC 134; (2004) 2 IR 497.
42. Section 2, *Safety Health and Welfare at Work Act 2005*.
43. In addition, there has been a great deal of subsidiary regulation by way of statutory instrument by the Minister pursuant to the Act, and some of these requirements are relevant to schools.
44. Health and Safety Authority, the statutory body tasked with the enforcement of the legislation.

Peace and Tolerance Education in Croatia: From Anti-war Campaign to National Framework Curriculum

Eli Pijaca Plavšić



Peace and Tolerance Education in Croatia: From Anti-war Campaign to National Framework Curriculum

Eli Pijaca Plavšić*

1. SUMMARY

In this paper recent researches done in Croatia will be presented in order to provide insight in teacher's skills and students attitudes towards peace education which is an important subject for the post conflict society like Croatian society is. Also, the presentation of key national policy document in the past 20 years will be presented and the special focus will be on the contribution of civil society organisations that developed and implemented different educational programs in the area of peace education.

Eli Pijaca Plavšić graduated Sociology at the University in Zagreb in 2004. Her career began as a project coordinator in different CSOs in Croatia, she started to work as a trainer in different educational programs for teachers and school staff mainly in the area of Civic Education with the special focus on Mediation. In 2009. she published a text book for teachers "We can Work it Out". She continued her career as a project manager in international organization Network of Education Policy Centers and from 2010. She is an executive director of Forum for Freedom in Education in Zagreb.

2. INTRODUCTION

Peace education implies a process of fostering knowledge, skills, attitudes and values needed for achieving changes in the behavior which enable children, youth and adults for conflict and violence prevention; for peaceful conflict resolution; as well as for establishing prerequisites that contribute towards peace, whether on individual, interpersonal, intergroup, national or international level (Zenzerović. 2011:53). In the literature one can find several versions: peace education; peace and tolerance education; education for nonviolent conflict resolution; education for peace, tolerance, mutual understanding and co-operation; international education; education for nonviolence; education for constructive conflict management; education for reconciliation; education for peace and disarmament; education for tolerance; peace pedagogy, peace studies; studies of peace and conflict, etc.

Peace education usually includes the following contents: development of consciousness of oneself; development of consciousness of own emotions and possibilities of controlling own emotions of frustration and anger; development of consciousness about others; co-operation, interdependency and reciprocity; helping others and friendship; understanding conflicts (understanding the causes of conflicts, skills of nonviolent conflict resolution, research of conflicts as a creative driving force of democratic process, communication skill, negotiation and arbitration in a conflict), and respecting ecological and global interdependency (Čudina-Obradović, Težak, 1995:19).

Throughout history, peace education has been developing according to the needs of society. It emerges after the Second World War when the programs of Education for International

Understanding and Co-operation were introduced with the intention of reducing international intolerance. At the end of 1960s the questions of inequality, poverty, addiction and oppression have the biggest influence on peace education and it develops into Peace Research and Development. By the end of 1970s peace activists start with the making of educational programs and materials because of the Nuclear threat and disarmament. At the beginning of 1990s, students have started to be taught, apart from nonviolent resolution and conflict management, how to behave assertively.

3. DEVELOPMENT OF PEACE EDUCATION IN CROATIA

3.1. Contribution of civil society organizations

In Croatia, peace education as a (technical) term, emerges at the beginning of 1990s, first of all within Croatian Anti-war Campaign when members of AWC completed the training and realized that it would be advisable to further transfer obtained knowledge and skills, so they did that by organizing, above all, workshops for school teachers and kindergarten educators. After those initial steps that were happening in the midst of the ongoing war in Croatia, more organizations have started to take up education for peace and nonviolence. Here, undoubtedly one should mention Centre for Peace, Nonviolence and Human Rights from Osijek which founded mediation centers in Osijek and Beli Manastir but also publishes books, manuals, and textbooks which deal with conflict and mediation on various levels; then 'Mali Korak', an organization that concerns itself mostly with conflict management with teachers and educators, but also directly with children and youth through peer mediation; Centre for Peace Studies that, for a number of years, has been organizing one year programs of peace studies and advocates for the introduction of peace education in the curriculum. Forum For Freedom of Education that organizes education on mediation and nonviolent conflict resolution for 12 years. There have also been various modules of education developed, one of which is a six month long program for obtaining school mediator qualification. Several thousand teachers and research assistants have been educated so far and the interest for mediation among educational experts is on a constant rise. Along with the organizations of civil society which have been mainly working on implementation of peace education in school curriculums and in the community, there have also been efforts for the introduction of mediation in judicial practice, above all on commercial courts in which Croatian Association of Mediators has a big contribution.

3.2. National policies

In order to meet the goals from the United Nation's Decade of Education for Human Rights, in 1996 a Committee as a special Government body was established with the function of appropriation of activities in the field of education for human rights. In 1999 four programs where published, one of which was intended for primary schools, named Education for Human rights and Democratic Civil Education. That one was included in the 1999/2000 Class plan and program for primary schools. It implies that the meeting of the goal of this field has to be done interdisciplinary through all subjects, as an optional class subject and through extracurricular activities. The creation strategy of National program of education for

human rights was based on the need for inclusion of Croatian educational system into European educational context as well as the need for inclusion of youth in the life of democratic society. Among the basic know-hows and skills that should be adopted are peace, security and stability. These terms imply that there is an understanding of the meaning of the following notions: peace, security, stability; an understanding of the connection between peace, stability and security; comprehension of the role of co-operation and peaceful conflict resolution in personal, national and global development; knowledge of some of the basic principles of peaceful conflict resolution (Goettlicher, 1999).

Croatian national educational standard instructs teachers on the education for human rights program by establishing seven program units (education for human rights, education for democratic citizenry, identity and intercultural education, education for peace and nonviolent conflict resolution, education for prevention of prejudices and discrimination and research of humanitarian law) that can be implemented interdisciplinary, as an optional class subject, through extracurricular and out-of-school activities and systematically throughout the entire school plan and program.

National plan of activities for rights and interests of children from 2006 until 2012 which was enacted by the Croatian Government i.e. Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity, enacts a measure for development of a more efficient preventive programs. Activities of the mentioned measure include, among other things, the development of efficient mechanisms of violence prevention among children in educational system, as well as establishing a network of experts that will aid in the implementation of the content concerning prevention into yearly plans and programs of all educational institutions with the intent of the prevention of discrimination violence, abuse, all kinds of addictions, trafficking of children and adults, exclusivity, etc. (Goettlicher, 1999.)

National Framework Curriculum for preschool education, general compulsory and high school education, which is centered on the development of competencies, brings about big changes in the Croatian educational system. Changes in the field of peace education are visible in its inclusion in inter-subject themes, namely in the program unit Personal and social development, as well as, Civic education program unit. According to the research done by Forum for freedom in Education in 2012 regarding Education for Sustainable Development and its presence in the NFC or school textbooks the authors of the study said that NCF gives greater emphasize on cultural diversity and understanding between cultures. One possible explanation of this reversal and change is a fact that Croatian society is becoming more a part of the global world and European Union as a multinational organization in which tolerance and understanding of other cultures is an essential prerequisite for the functioning of individual and society. (Bajkuša, 2012: 19) On the other hand, according to the study NCF provides very little emphasize on gender equality as in traditional society as Croatian could mean a further perpetuation of gender and gender roles and maintain existing levels of hostility towards gender and sexual minorities.

As part of a research conducted in 2011 by the Centre for Peace Studies a content analysis of strategic documents was published regulating compulsory education in Croatia relating to representation of content relevant to peace education. (Zenzerović, 2011: 79). On the subject level, according to the National Framework Curriculum, contents relevant for peace education are more present in history and catechism programs, and less in nature and society, Croatian and foreign languages. However, the main finding of the conducted

content analysis of the subject programs relates to the fact that neither subject in itself covers all dimensions of peace education, while at the same time, most knowledge, skills and attitudes are addressed in one or more subjects. In other words, in the present circumstances in which peace topic is not systematically incorporated in primary teaching plan and program, integration and correlation of individual subjects seems to be the primary precondition for realization of the aims of peace education. In that sense, one thing that especially stands out is the conceptual shift of the National Framework Curriculum from the transfer of knowledge to transfer of competences which puts focus precisely on the integrating aspects of educational contents.

4. COMPETENCES OF TEACHERS FOR TEACHING PEACE EDUCATION CONTENT

In the last several years there have been several research papers published on the subject of teacher competences for implementing peace education content in schools. One of the more prominently mentioned methods is mediation as a method of nonviolent conflict resolution. One Forum for Freedom of Education's volunteer, Ivana Veldić, has, in the 2012, conducted a small scale research in primary schools of Zagreb area. The main goal of this research was to establish the frequency of conflict and efficiency of mediation as a method of conflict resolution, along with the competences of teachers for dealing with conflicts. The research was carried out on 111 respondents.

From the research data that was obtained it can be inferred that the percentage of the pupils that haven't been involved in conflicts is negligible and also that educational workers are often themselves involved in conflicts, either being on one side of the conflict or as a third party that resolves the conflict. Above mentioned data shows that conflicts among school population are frequent and that there is a need to devise a preventive educational programs aimed towards all active participants of school life. The opinion of respondents, who stated that pupils, parents and teachers should be educated about nonviolent conflict resolution which would result in better school climate due to better competence for conflict resolution, also confirms that fact. Data that shows respondents competence and efficacy in resolving conflicts can also be correlated with the results of conflicts which they were resolving. Therefore it can be inferred that educational workers need further educating so that they would be confident in conflict resolution which would, in turn, surely result in greater percentage of successfully resolved conflicts. In order to achieve that, education of future educational workers needs to be implemented systematically into the programs of their studies.

With the analysis of the data it is visible that respondents believe that precisely education of pupils about nonviolent conflict resolution is the form of program for prevention of violence that needs to be implemented into schools. From the data mentioned it can be inferred that education on ways of conflict resolution was perceived as an important form of violence prevention.

Table 1
An estimate of the priorities concerning the implementation of violence prevention programs

Violence prevention programs	N	%
education of pupils about nonviolent conflict resolution	81	38.03
education of all parents about nonviolent conflict resolution	55	25.82
education of all teachers in school about nonviolent conflict resolution	33	15.49
introduction of school mediators in schools	26	12.21
introduction of nonviolent conflict resolution inter-subject topic	11	5.16
introduction of optional school subject about nonviolence	6	2.82
some other way	1	0.47

Respondents based on their own estimate consider themselves mostly confident and competent for conflict resolution and also believe that they are, in most part, successful in it.

*Table 2
Respondent's estimate of success in conflict resolution*

I strongly disagree	2.8	0.9
Mostly I disagree	8.3	29.6
I neither disagree nor agree	29.6	56.5
Mostly I agree	49.1	13.0
I strongly agree	10.2	0
M (SD) ¹	3.56 (0.89)	3.81 (0.66)

According to the estimate of respondents the most frequently used method of conflict resolution that they use is conversation with both parties in the conflict, followed by conversation with each individual pupil, mediation and pronouncement of pedagogical measures. Least used method that respondents use is avoiding of conflict resolution. Collected data shows that it is precisely the population of educational workers that needs to be educated also in the ways of conflict resolution, which could be introduced in all teacher studies as one of the compulsory competencies that every future teacher should imbibe.

Second relevant research is one from 2011, carried out by Centre for Peace Studies and The Institute for Social Research in Zagreb. Focus groups have been conducted with teachers and principals from primary schools in Zagreb dealing with contents and competencies of teachers for implementing peace education. Conducted discussions have shown that schools differ according to the frequency of the conflicts. For example, there was one school

in the research in which conflicts are rare, but when they do happen, they are mostly verbal, as well as one school where pupils and teachers are faced with conflicts on a daily basis, frequently even with physical ones (Zenzerović, 2011: 83).

According to the interrogated teachers and principals, topics and contents of peace education exist in every school and are threaded through content of teaching subjects (especially Croatian and English language, catechism and history), through class forum periods, through projects in which school takes part, but also according to the situation, when a conflict occurs. However, despite the fact there are relevant themes and contents of peace education in class (focus of which is more on knowledge than on attitudes/values and competences), teachers and principals believe that there is a need for systematic and explicit occupation with those themes in schools (namely in ways that are encouraging for pupils, e.g. interactive theater). As for some noteworthy obstacles for such more systematical occupation with contents of peace education in schools, teachers and principals have stated time limits and insufficiently developed competencies of teachers in the area of peace education. Concerning the competences of teachers, they are unanimous that during their studies they did not study educational contents relevant for peace education. Some of the interrogated teachers have had the chance to be further educated about those topics on workshops that have been organized by non-governmental organizations, but there is a need for additional trainings, and it would be ideal if they were to be held in the premises of the school. Also emphasized was the need for involvement of parents in workshops concerning peace education, and as for the preconditions for the parent's and teacher's greater involvement in such workshops, they mentioned motivation, money and school premises on which such workshops could be held.

5. PUPIL'S RELATION TO CONTENTS OF PEACE EDUCATION

According to already stated research "Learning for peace", that was published in 2011 by Centre for Peace Studies and The Institute for Social Research in Zagreb, pupils were also surveyed and their understanding of the content of peace education and ways that these contents are taught in schools was examined. From the pupil's estimates it is visible that in the surveyed schools equality of persons from various religions or nations and about equality of all people (human and citizen's rights) is the most frequently learned topic. More than half of the pupils (60% and 53%) answered that they had many or exceptionally many opportunities to learn about those topics in school, which doesn't come as a surprise due to the fact that those topics are part of the curriculum for a long time. It needs to be emphasized that peace topics concerned with nonviolence among people, forms of violence, its consequences, but also methods of nonviolent conflict resolution and disputes among pupils are also in that group of most frequently taught topics. From 41% to 49% of pupils estimate that they had many or exceptionally many opportunities to learn about the mentioned topics in school. An important finding is that among those topics there is equality of women men about which 43% pupils are learning much or very much in school (Zenzerović, 2011: 92).

However, when above mentioned topics are discussed as ones that pupils have most frequently learned in school, one needs to bear in mind that average answers range between 3,11 up to 3,47 which indicates that in schools, on average, they are learned about in a mediocre manner. In the group of topics which, according to pupil's estimates, least is

learned about are topics of equality of persons with dissimilar incomes, methods of nonviolent conflict resolution in the family and equality of persons that have different lifestyles or different musical, fashion, sport or other preferences. Only between 26 and 29% of pupils have estimated that they had many or exceptionally many opportunities to learn about them in school. However, according to the pupil's estimates, the topic that is least learned about in school is equality of persons with different sexual orientations, followed by the protection of the rights of persons with special needs. Only 16, and 20% of pupils respectively, have answered that they had many or exceptionally many opportunities to learn about them in school.

It is interesting that the biggest number of pupils believe that in schools one should teach those topics that are already most frequently taught, part of which are also topics on violence and nonviolent conflict resolution. As high as 80% of pupils have answered that in schools one should be taught about equality of all people (human and civil rights), consequences of violent behavior (physical, verbal, psychological), types of violence among people, equality of women and men, methods of nonviolent conflict resolution and disputes among pupils. Great number of pupils also considers that in schools one should be taught about the protection of the rights of persons with special needs (79%), consequences of conflicts and disputes among groups of peers (77%) and about ways of nonviolent conflict resolution in family (77%). When that is contrasted with its relatively modest representation in class at present, it is clear that pupil's estimates can serve as a suggestion for their implementation in peace education curriculum in primary schools. However, concerning the equality of persons with different sexual orientations, it is clear that this remains a marginalized topic. That topic is the least learned about in surveyed schools, but also topic that least amount of pupils (57%) thinks should be taught in schools.

6. CONCLUSION

Over the past 20 years Croatian educational system is in a state of permanent change and reform where the approaches to education as well as the documents changed numerous times. In this paper one of those constant changes are presented as well as the lack of civic education in schools. The most work in the area of civic education with the special emphasize to peace education was done by civil society organizations that began with Antiwar campaign in the beginning of 1990 and ended with the creation of the new National Framework Curricula in 2011. That needs to be fully implemented in the next few years. In the next phase of the development of the peace and tolerance education in schools there will be important to include all relevant stakeholders in development of programs and skills for creating active and responsible citizens. As it is shown in this paper there are few researches that presented the lack of teachers knowledge and skills in educating children about peace education and promote tolerance in Croatian schools. On the other hand it is shown that there is a political will but also a students and teachers who would like to learn more about this important topic.

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Endnotes

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1. M represents arithmetic mean between obtained answers on the scale from 1 to 5.

Creating a Safe Educational Environment Through Restorative Justice and the Promotion of Human Rights in School Discipline

Mariëtte Reyneke



Creating a Safe Educational Environment Through Restorative Justice and the Promotion of Human Rights in School Discipline

Mariëtte Reyneke

1. INTRODUCTION

School discipline is a persistent problem in some communities. Discipline problems range in severity and frequency and include minor issues such as minor disruptions in class to serious issues such as bullying, gang violence, assault and teenage pregnancies. These transgressions have an impact on several rights of educators, victims and third parties to these transgressions. These rights include their right to dignity, right to education, right to development and personal safety.

In addressing misconduct punitive measures, such as corporal punishment, expulsions, suspensions, detentions, belittlement, sarcasm and other humiliating forms of punishments are employed. These measures also infringe on several human rights of the transgressor, such as the right not to be subjected to cruel, inhuman and degrading treatment or punishment, the right to personal security and the right to dignity. It is also an affront to the dignity of the other learners to witness these punishments.¹ Many children are also exposed to mental stress and anxiety, because they are afraid that they might be next in line for some form of humiliating punishment. It can be argued that this is not in line with the right not to be subjected to cruel, inhuman and degrading treatment and their right to dignity. The dignity of the educator who imposes these humiliating forms of punishment is also diminished. They also often complain about the lack of job satisfaction due to the ill-discipline of learners. It is thus clear that not only the misconduct, but also the disciplinary methods employed to address it, results in the infringement of several human rights of several stakeholders in education.

It is conceded that measures such as the abolition of corporal punishment and due process provisions are in line with the obligation to respect and protect human rights. However, it is argued in this paper that it is questionable whether the application of the existing retributive measures to address misconduct would survive intensive scrutiny of its compatibility with all human rights standards related to education and discipline. Secondly, human rights should not only be respected and protected, but should also be promoted and fulfilled. It is argued that the existing punitive approach to discipline is unable to effectively promote human rights. The third main argument of this paper is that a restorative approach to discipline satisfies the requirement that constitutional rights should be respected,² protected³ and promoted.⁴

In what follows the concept of discipline will be defined, the restorative approach to discipline will be explained briefly and in the last instance the compatibility of the different approaches to discipline will be evaluated to determine whether the different approaches respect, protect and promote specified human rights.

2. DEFINING SCHOOL DISCIPLINE

Joubert and Serekwane⁵ found in a qualitative study that educators interpret the term discipline differently. Their opinions vary and include: forming of the moral character of learners, exercising control over learners, proactive and restorative measures, self-discipline and even a very narrow view that discipline equates punishment. It is thus important to determine the meaning of this concept.

The word *discipline* is derived from the Latin word *disciplina* which means: "instruction, tuition, teaching in the widest sense of the word; ... are the objects of instruction ... Subject: a custom, habit." Related words are *disciplinabilis* which means "to be learned by teaching"; *disciplinabiliter* which means "in an instructive manner"; *disciplinatus* which means "*instructed, disciplined*"; *discipulatus* which means "the condition of a disciple, discipleship"; *discipulus* which means "a learner, scholar, pupil, disciple."⁶

It is apparent from the above that there is no indication that discipline is about punishment or that there is some negative connection to it. It is rather indicative of a relationship between the educator and the learners and the focus is on the transfer of knowledge and skills through a process of instruction or teaching and learning in the widest possible sense. It also seems as though the aim was to instil customs and habits according to which man was supposed to act. It implies a two way process where the one party teaches and the other party learns and follows.

Brendtro, Brokenleg & Van Bockern⁷ indicate that: "Discipline is a process of teaching, not coercion. It seeks to involve youth in learning social responsibility and self-control." Discipline is again portrayed as a management process aimed at order to promote the learner's self-discipline and self-control. The aim is to enable the learner to develop his or her full potential with regard to social, emotional, cognitive, physical, psychological and all other aspects of the child. The aim of order is thus not to satisfy adults' needs for submissiveness, control or authority. Le Mottee⁸ clarifies it even further and says that:

Discipline has nothing to do with controlling disruptive or unacceptable bad behaviour.... It has everything to do with ensuring a safe and valuing environment so that the rights and needs of people are respected, vindicated and safeguarded...

While the learner is at school, the school must ensure that the learner is safe and protected from any form of harm. Thus, discipline must contribute to and ensure the safety of learners.⁹ Safety should also be seen in a broad sense and should include the physical as well as emotional and psychological safety of the child. Consequently, discipline is aimed at providing an environment where everyone's constitutional rights will be respected, protected and fulfilled.¹⁰ The aim is to guide the learner towards self-discipline and to become a useful citizen.¹¹

In developing learners sense of self-discipline and self-control learners must be afforded and opportunity to experience autonomy. Discipline, as a teaching and learning experience, therefore also entails a process of allowing learners the opportunity to make "intelligent"

decisions and to take responsibility for their choices. By making choices and taking responsibility for the consequences of their choices, learners learn and develop.¹²

It is argued in sum that discipline is a teaching and learning process with two distinct aims. The first aim is to create an orderly environment conducive to teaching and learning to enable all the learners to develop holistically. The second aim of this teaching and learning process is to teach learners to behave in a socially acceptable manner and to attain self-control, which will ultimately result in respect for the rights and needs of others.

With regard to the second aim of discipline, being to teach children to behave in a socially acceptable manner, it should be kept in mind that children are born basically without any social skills or knowledge on how to behave in an acceptable way. This they must be taught like any other skill. In this regard the following quote is regarded as quite profound and thought provoking.

If a child can't read... we teach,
If a child can't spell... we teach,
If a child can't swim... we teach,
When a child can't behave... we punish¹³

Brokenleg *et al*¹⁴ argue that the original concept of the adult provides guidance through teaching and the child following mutated over time to the point where many dictionaries include punishment as a synonym for discipline. In sum Le Mottee¹⁵ highlights the differences between discipline and punishment as follows:

Discipline is intrinsic, while punishment is external
Discipline is educative, while punishment is punitive
Discipline is about self-control for the sake of self-actualisation, while punishment is the exercise of control over people for the sake of compliance

For purposes of this paper a clear distinction is made between discipline as a process of teaching and learning and the traditional views which equate discipline with punishment. Therefore these terms cannot be used interchangeably.

3. DEFINING RESTORATIVE DISCIPLINE

To define restorative discipline it is essential to define restorative justice. There is general consensus amongst the proponents of restorative justice on the basic outlines of it, but there is not yet consensus on its specific meaning. Zehr¹⁶ indicates that the wisdom or usefulness of such a definition is questionable and highlights that the need for principles and benchmarks is recognized, but that there are concerns that a single definition might constitute some arrogance and finality which might result in the establishment of a rigid meaning. This position is understandable at this point in time because it is still an evolving concept. In what follows a few definitions of restorative justice will be provided. It is argued that the lack of a uniform definition does not diminish its applicability, but rather highlights the

different non-negotiable elements of this approach. He however, suggests the following working definition of restorative justice and defines it as follows:

Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.¹⁷

Hansberry¹⁸ defines restorative justice as follows:

An approach to addressing wrongdoing (or conflict) that focuses on repairing harm. Unlike traditional (retributive) processes, justice is not achieved by penalizing or punishing wrongdoers, but through asking wrongdoers to take responsibility for the harm they've caused. Those harmed are asked to identify their needs. It then becomes the obligation of the wrongdoer(s) to make attempt to put things right (restore) by responding to the needs of those harmed through symbolic or tangible actions.

Morrison¹⁹ says:

Restorative justice is about building communities of care around individuals while not condoning harmful behaviour; in other words, holding individuals accountable for their actions within systems of support.

The above definitions focus on the actions taken after harm occurred. Amstutz and Mullet²⁰ emphasizes the importance of applying restorative values and principles even before harm occurs and highlights the importance of its application in the way people speak and listen to each other. This should validate the experiences and needs of everyone in the community. The principles and values of restorative justice should thus be applied to build community and to prevent harm. If harm occurred the same principles should be applied to repair harm. They therefore propose a wider definition to restorative justice and hold that:

Restorative justice promotes values and principles that use inclusive, collaborative approaches for being in community. These approaches validate the experiences and needs of everyone within the community, particularly those who have been marginalized, oppressed, or harmed. These approaches allow us to act and respond in ways that are healing rather than alienating or coercive.

3.1. Contrasting the restorative and retributive approaches

In contrasting the restorative and retributive approaches to justice largely contributes to one's understanding of the restorative approach to justice. Hopkins²¹ summarises the difference between the two approaches in the context of school discipline as follows and refers to the old paradigm and the new paradigm:

OLD PARADIGM – RETRIBUTIVE JUSTICE	NEW PARADIGM – RESTORATIVE JUSTICE
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Zehr²² warns against the abovementioned stark distinction between the retributive and restorative approaches to justice. He indicates that these distinctions indeed contribute towards one's understanding of what the two approaches entail. However, this distinction also obscures the similarities of these two approaches and can wrongly create the impression that it always creates an either/or choice which is mutually exclusive.

It is argued that these two approaches are not really two polar opposites and in fact has much in common. Both approaches "vindicate through reciprocity, by evening the score." The approaches differ is what each approach claims would effectively right the balance.

Both these approaches recognize that the balance or equilibrium between people are disrupted by wrongdoing and should be restored. Therefore the victim deserves something and the offender owes something. Furthermore both approaches provide that there should be proportionality between the wrongdoing and the response to it. The similarity ends here, because the approaches differ in the currency that should be used to right the wrong.

The retributive approach proposes that pain inflicted upon the offender will vindicate. Thus, the victim is vindicated through the discomfort experienced by the offender. The restorative approach on the other hand proposes that the victim is only truly vindicated if the harm suffered by him or her and the subsequent needs is acknowledged, combined with an active effort by the offender to take responsibility for the actions, steps to set the wrongs right and interventions to address the causes of the misconduct to prevent repetition of the harm in future.

In an ideal world the application of a restorative approach to injustice would be possible. However, it is not possible because some offences are just too heinous to go unpunished and some offenders are just too dangerous. The community still need to be protected. Therefore, it would be unrealistic to argue that the restorative approach can fully replace the retributive approach. It is however contended that these processes are not mutually exclusive. It is argued, and proven though practice that restorative practices can also be applied in conjunction with retributive processes to ensure some vindication for the victims.

It is argued that the same principles are applicable in the context of school discipline. At this point it is important to highlight that terms such as offender and victim is normally inappropriate in the school context and should rather be replaced with terms such as transgressor or even better, the person who caused harm. It is also preferable to refer to the victim as the harmed person.

In some instances a retributive approach might be inevitable and a learner might need to be suspended, but a restorative approach can be applied after the fact to address the needs of the harmed learners, address the causes of the misconduct and assist the transgressor and or harmed learners to be reintegrated in the community. In some instance a restorative approach would suffice and the most appropriate method to resolve the matter. Sometime a primarily restorative approach would include an element of retribution as part of the solution to the problem.

3.2. Defining questions of the retributive and restorative approaches

The fundamental differences between the two approaches are further highlighted by contrasting the fundamental questions that underlie the two approaches. These questions are essentially guiding the processes followed in the respective approaches.

RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
• What laws/ rules have been broken?	• Who has been hurt?
• Who did it?	• What are their needs?
• What do they deserve?	• Whose obligations are these?

Zehr²³ provides a more expansive list of factors which can in essence be linked to the abovementioned three questions. His questions for a restorative process are:

- Who has been hurt?
- What are their needs?
- Whose obligations are they?
- What are the causes?
- Who has a "stake" in this?
- What is the appropriate process to involve stakeholders in an effort to put things right?

3.3. Levels of restorative practices

Hansberry²⁴ defines restorative practices as:

A set of practices philosophically aligned with the principles and values of Restorative Justice. The terms "Restorative Practices" acknowledges the range of different approaches/ strategies (particularly within schools), that can be deemed to be restorative by nature.

There are a vast number of programmes, models, methods and techniques used to deal with misconduct. These include pre-emptive relational approaches, restorative conferences, restorative thinking plans, reintegration meetings and different types of circles. Many of these were developed in different countries for different purposes. From an academic point of view this constitutes a serious challenge, because there is currently not a single set of definitions for the different practices. To give further structure to the discussion the different levels of restorative interventions are used as a point of departure. The different levels of restorative interventions and the different practices that can be applied on the different levels will be discussed below.

The point of departure is that there are three levels of intervention.²⁵ These three are grounded in the restorative justice values and principles. These values and principles is applicable on all there levels of intervention and guide the whole process. (See table 1)

The whole school is involved on the bottom level of this model. On this level the aim is to bring about a culture change in the school and to ensure that a restorative approach is followed throughout all the disciplinary processes in the school. On this level the focus is on building and maintaining relationships in the school and to develop a safe community where everyone in the school community (learners, educators, administrative staff and parents) experience a sense of community and belonging. Apart from changing the school culture from a retributive to a restorative environment the aim of the interventions on this level is to prevent misconduct and harm as far as possible. (See table 1)

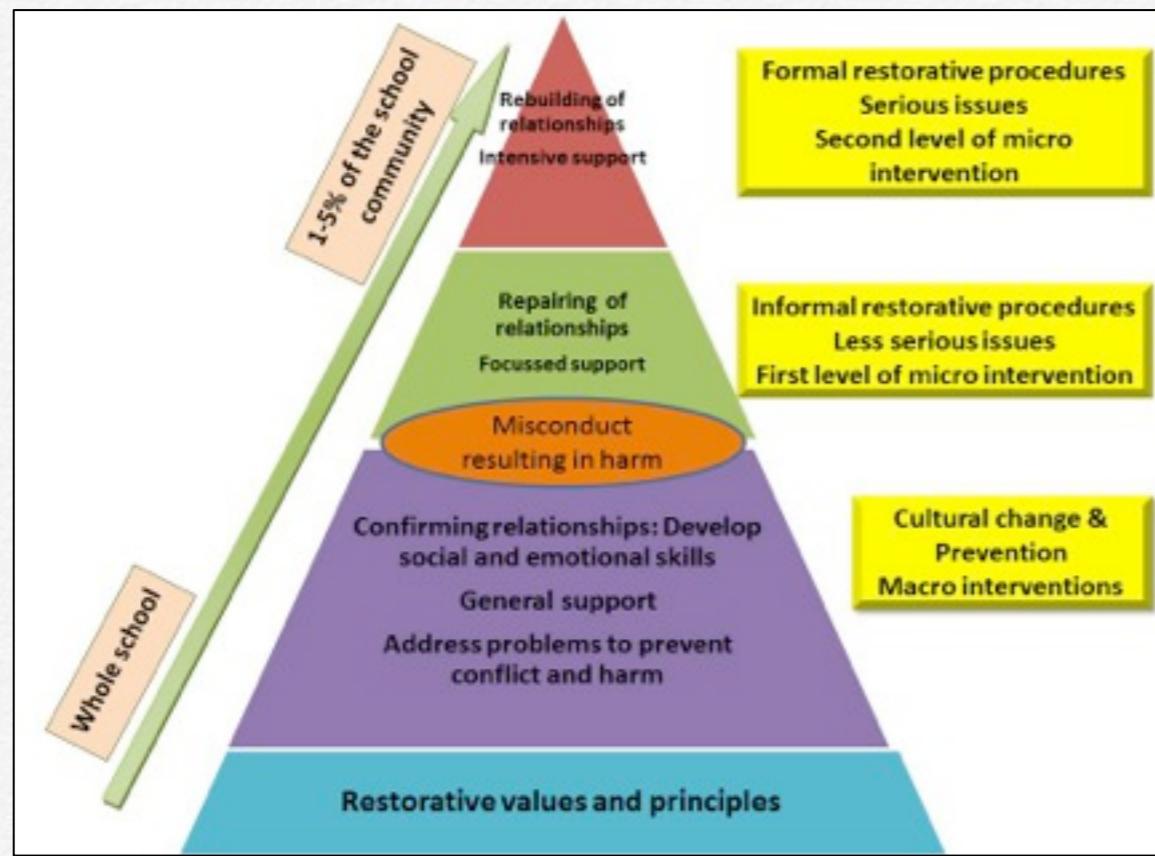


Table 1

Unfortunately, misconduct cannot be completely eliminated. Therefore once misconduct occurred informal restorative procedures will be employed to address the harm caused by the misconduct. On the first level of intervention after misconduct occurred the interventions will be on a micro level to deal with less serious transgressions. The aim would be to repair relationships as far as possible with focused support. On this level the whole school is not involved and as the transgressions increase in seriousness, fewer learners will be involved and the level of focused support will increase. (See table 1)

It is proposed that all staff or at least the majority of staff, and teaching staff in particular, should be able to use appropriate restorative practices to deal with misconduct on this level. (See table 2). On this level problems should be solved and harm repaired in as little as 10

seconds and in a maximum of 15 minutes. On this level it involves the everyday normal disciplinary matters that occur in a school. Educators need basic knowledge and skills and little preparation, if any is needed to resolve the issue restoratively.

On the second level of intervention, after misconduct, the number of learners would be much less and normally comprises 1% - 5% of the learners. The intensity of the intervention is much higher, because the seriousness of the misconduct is much higher. These interventions are also much more formal in nature and would be for those transgressions for which learners could be suspended or expelled. The aim of these interventions is to rebuild relationships and it requires intensive support. (See table 1 and 2)

In instances of serious misconduct learners are normally referred to skilled staff with the necessary knowledge, training and experience to deal with these matters. These interventions are time consuming and require a lot of preparation. Therefore, only a small number of the staff needs to be trained in these procedures. To deal restoratively with these matters takes a lot of time and preparation, before the actual restorative conference takes place and in serious instances would also involve the parents of the learners and even community members depending on the circumstances. (See table 2)²⁶

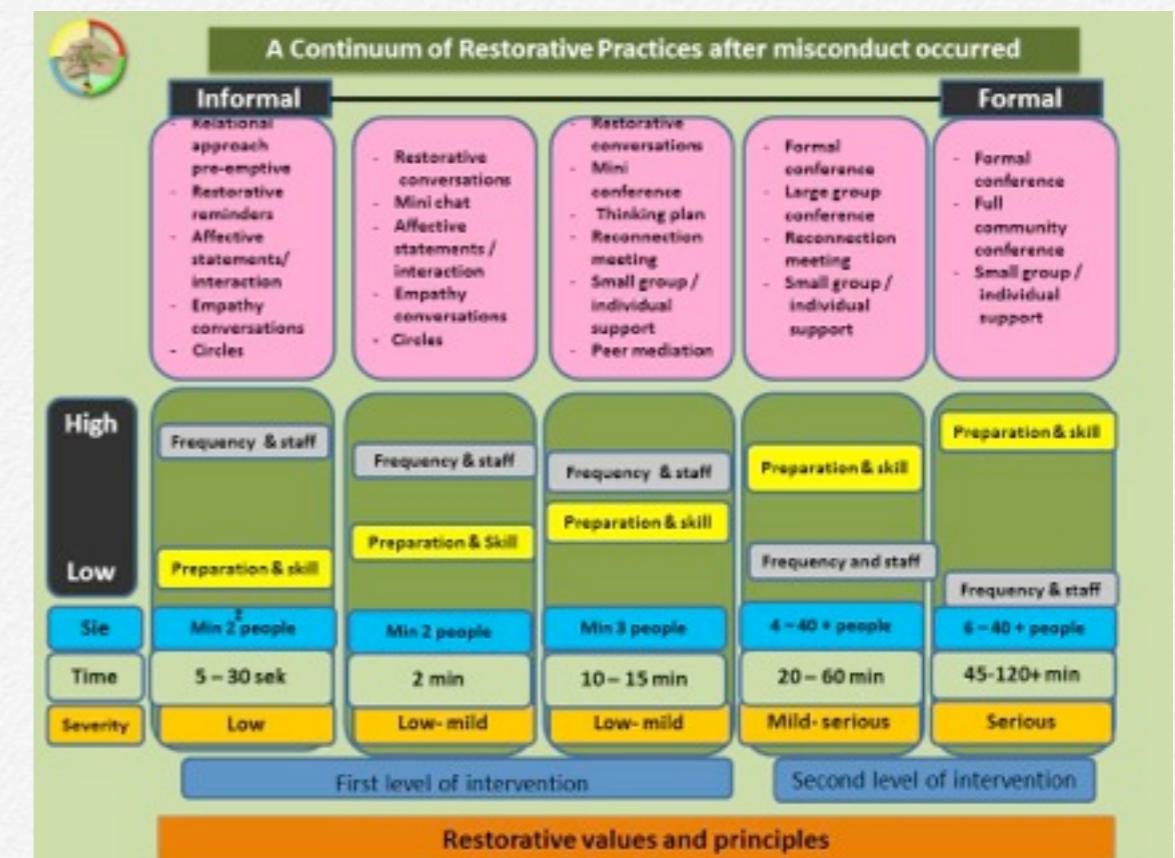


Table 2

It must be noted that table 2 only indicates restorative practices which are applied after misconduct or harm occurred and does not include the restorative practices which should be employed on a prevention level.

4. DEFINING POSITIVE DISCIPLINE

General Comment 13 of the Committee on Economic, Social and Cultural Rights on the right to education encourages States Parties in paragraph 41 to introduce “positive”, non-violent approaches to school discipline.” Although this is laudable it is argued that a proper definition should be provided of what constitutes “positive” approaches to discipline, because although corporal punishment might be outlawed, other forms of punitive punishments might be wrongly regarded as a “positive” approach to discipline.²⁷ There is also not a uniform definition of what constitutes positive discipline. It seems as though many equate positive disciplinary measure with prevention strategies, strategies to build relationships in schools and to create a caring school climate.²⁸ However, once a child transgresses they revert back to a punitive approach to deal with the misconduct.

Oosthuizen, Wolhuter & Du Toit²⁹ argue that: “preventive methods of discipline refer to methods designed to deter or avoid the incidence of disciplinary problems”. The focus of preventive measures is on the reinforcement of acceptable behaviour and on actions conducive to education. Joubert & Prinsloo³⁰ give a legal perspective on it and states that: “[p]reventive discipline is concerned with basic rights and clear rules and consequences.”

It is argued that key elements of positive discipline include role-modelling, communication, praise, listening, consistency, boundaries, routines and fairness.³¹ Positive discipline represents disciplinary measures that do not harm, but rather built the learner’s self-esteem. It allows the learner to feel valued, encourages participation and co-operation. It gradually enables the learner to acquire the skills necessary to assume the responsibilities for choices. It assists the learner to take initiative, relate successfully to others and to solve problems. However, once a child transgress the rules it is highly likely that the response will be punitive in nature. Furthermore this approach does not have a specific focus on the needs and interests of those harmed by misconduct, does not necessarily include those who were harmed in the process and decisions are normally taken by a person in a position of authority and does not always result in a negotiated outcome. It can include actions such a conflict resolution and negotiations, but the restoration of relationships and the needs of the harmed is not an explicit focus of this approach.

5. EVALUATING THE DIFFERENT APPROACHES TO DISCIPLINE

In what follows the content of a few human rights will be discussed briefly to highlight a few dimensions of those rights related to school discipline. The retributive and restorative approaches to discipline will then be evaluated to determine whether it is compatible with the standard set by the different human rights. The positive discipline model is not discussed since it has elements of both the punitive and restorative approaches in. It is difficult to

evaluate it, since there is not a single definition of what constitutes positive discipline. It also clearly overlaps with some aspects of the retributive approach as well as the restorative approach to discipline. The four foundational rights found in the United Nations Convention on the Rights of the Child will be discussed as well as the right to basic education and human dignity which are all closely related to the context of school discipline. The ability of these approaches to promote human rights will be highlighted in particular.

5.1. The right to basic education

It is argued that school discipline is a teaching and learning process and therefore disciplinary processes, policies and actions should be aligned with the aims of education. The point of departure is article 29 of the CRC. It is argued that a close analysis of this provision and other international instruments and documents reveal that education has two main aims namely to holistically develop the child’s full potential and to direct the child towards the ability to develop and maintain positive relationships with others through acquiring the necessary life skills.³² Consequently school discipline should be aligned with these aims of education. It is argued that disciplinary processes, policies, measures and practices which are not aligned with these aims of education constitute an infringement of the right to education. In fact, school discipline should contribute and promote the attainment of these outcomes. Human rights education should not only form part of the curriculum, but should be experienced in children’s lived worlds on a daily basis in the way in which school discipline is maintained.³³

The extent of a States Parties compliance with their responsibility to provide education can be determined with reference to the availability, accessibility, acceptability and adaptability of education.³⁴ Since discipline is part of the education process the four A’s is applied to the discipline context.

Availability:

- It refers to the availability of adequate, sufficient and functioning educational institutions and programmes. It is argued that despite the availability of or lack of resources a properly functioning school is necessary to render education available. Ill-discipline disrupts the education environment and makes education effectively unavailable, because it is not conducive to teaching and learning. Therefore properly trained educators (in particular on appropriate discipline measures) in adequate numbers should be available to maintain discipline in classes with a manageable number of learners.
- Learners with social and emotional problems find it difficult or even impossible to learn. The link between learners with social and emotional problems and those who cause discipline problems in schools are well known. Thus, adequate and high quality support measures and social services should be available to learners with these problems, because unless these challenges are overcome, education would not be really available to these learners and they would not be able to develop their full potential.
- It is argued that if money is spent on social services not only the learner with the problems will benefit, but the rest of the school community would also benefit, because

the root causes of misconduct would be addressed and would eventually lead to a decline in misconduct which infringes on several of the rights of other learners and staff.

Accessibility

- It entails that learners should not be unduly turned away and that steps should be taken to facilitate easier access. It has three overlapping dimensions namely non-discrimination, physical accessibility and economical accessibility. In the context of discipline the impact of pregnancy policies, religious symbols, age of admission, the refusal of admission based on a certificate of conduct and the re-enrolment of learners after expulsions are relevant.
- Some school rules have an impact on the financial accessibility of education and hinder learners' access to education because they cannot afford school uniforms and or reliable transport and are punished for non-compliance with school uniform codes or late-coming.³⁵
- Learners have a right to have access to education where they would be physically and emotionally safe. However it is evident that many learners are exposed to physical danger on their way to school, at school and on their way home. Some of these dangers are related to gang-violence at schools, bullying or other physical violence which are all related to school discipline. If it is not safe at the school parents and or learners might choose not to attend school. Thus school discipline can have an impact on the physical accessibility of education.

Recommendations:

It is argued that the abovementioned three dimensions of accessibility are insufficient and that a fourth dimension should be added, namely neurological accessibility. The way educators treat learners and maintain discipline can trigger the flight, fight or freeze responses in children. Once in this state, the child is unable to access the working brain and is unable to learn. It is thus imperative to create a calm and relaxed environment for learners to be able to learn. Measures should thus be in place to ensure that the disciplinary measures employed in the school promotes learners' access to the parts of the brain that enables them to learn. It is argued that if disciplinary methods are employed which would impact negatively on learners' ability to access those parts of the brain, it actually impacts on their right to education and makes education inaccessible.³⁶

Acceptability

- Inappropriate disciplinary measures would be any measure that does not contribute towards learners' holistic development and the ability to reach their full potential and/or does not contribute to or inhibit learners' ability to learn to function in a socially acceptable manner.

Adaptability

- It is imperative that education should be flexible enough to accommodate the needs of changing societies and communities and to address the challenges of diversity. Consequently regular evaluations and adaptations to the curriculum and teaching methods are necessary. In the same vein should school discipline, as part of the

teaching process, be evaluated and adapted to address changes and the diverse needs of individuals.

- It is often argued that school discipline should be enforced consistently. This opens the door for policies such as the zero tolerance policies of the USA which are aimed at ensuring that everyone is treated the same.

5.1.1 Evaluation of different approaches to discipline and the right to education

General Comment No 8 of the Committee on the Rights of the Child defines corporal or physical punishment as:

...any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement- a whip, stick, belt shoe, wooden spoon, ect. But it can also involve, for example kicking, shaking or throwing children, scratching, pinching, biting, pulling hair boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.³⁷

It is clear that punishment entails some form of physical or mental violence. This definition clearly has no element of teaching and learning in it to ensure that children are taught acceptable social behaviour or to develop their full potential. It is also not reconcilable with a process to ensure a safe environment conducive to teaching and learning. It rather reflects a process of assaulting children. Although it might be argued that punishment is used to teach children to act in a socially acceptable manner the inherent definition of punishment has no inherent element of teaching and learning in it. In fact the only educational argument available to defend a punitive approach is that children should learn from their mistakes.

In this regard Nelsen, Lott and Glenn³⁸ rightly ask: "Where did we ever get the crazy idea that to make people do better we first have to make them feel worse?" Skinner, one of the fathers of modern psychology warns: "When we punish a person for behaving badly, we leave it up to him to learn how to behave well."³⁹ This is unfortunately a reality in schools, for example, learners are suspended from class or school or have to do detention. Yet, in this process of being suspended or in detention, nothing is done to address the needs and interest of the child and to teach him or her acceptable behaviour. In fact, some children enjoy being suspended, because they are lawfully not attending school.

This is in sharp contrast to the definition of discipline. Since teaching and learning is not an integral part of the definition, punishment it is at risk of being misused to abuse children under the guise of teaching them a lesson for their bad behaviour and to deter others from future inappropriate behaviour.

Public opinion plays an important part and society regards punishment as an acceptable and even expected means to deal with instances of misconduct. If conduct is not in line with the accepted norms and values the majority of society expects the transgressor to be punished. Punishment is therefore regarded as

a facet of disciplines that involves actions taken in response to inappropriate behaviour in order to correct or modify behaviour and to restore harmonious relations.⁴⁰

This argument suggests that punishment not only corrects and modifies behaviour but it is also an acceptable or even preferred way of restoring relationships. The argument thus seems to be that once a transgressor is punished it automatically restores harmed relationships and therefore punishment is acceptable and an essential part of discipline. This argument is questionable. If a learner is bullied at school, his or her self-esteem is broken down and they often experience a sense of alienation. If the assumption that punishment restores harmonious relationships is correct then it should be argued that once the bully returns from detention or suspension that the relationship between the bully and bullied will be restored. Reality however indicates that relationships often deteriorate even further after punishment. It is argued that punishment in itself does not teach appropriate conduct and does not contribute towards the restoration of relationships.

It is argued that the abovementioned definition of punishment provided in General Comment 8 and the conduct described is hardly reconcilable with a process of creating an environment conducive to teaching and learning which will enable children's to reach their full potential or to teach them (albeit though example) how to behave in a socially acceptable fashion.

Despite all the criticism against punishment it is conceded that:

no society can exist without some negative sanctions to define limits. But children can never be effectively socialized if the balance of interventions is more punitive than positive. If punishment is to be "occasionally and judiciously used," it is essential that it come from adults who communicate an acceptance of the child. Punishment always has a destructive effect if youth interpret it as a lasting dislike or hostility from the people whom they are dependent for love and security.⁴¹

Punishment must therefore be administered in a caring community by people who convey the message that despite the fact that the conduct is unacceptable, the child is still accepted. This is unfortunately not always part of the school culture.

However, a restorative approach to discipline focus in the prevention phase on the building of a community of care. This includes a concerted effort to develop a sense of community and develop the child's emotional intelligence and resilience. Furthermore, once misconduct occurred the process focuses on the needs and interests of all the parties involved, on finding solutions to fix the harm done and most importantly the process focuses on determining appropriate ways to ensure that the misconduct and accompanying harm is not repeated. It is thus forward looking and teaching the child acceptable behaviour is part of the prevention strategies as well as addressing the misconduct. It also has a focus on repairing

or rebuilding relationships as far as possible. Since needs and interests of all the parties involved are investigated those who need support or professional help will be assisted.

It is argued that there are still room for punishment in the context of school discipline, on condition that it rather the last option than the first option in handling instances of misconduct, that it is done in accordance with what is in line with the provisions of the constitution and that the process of inflicting punishment should as far as possible be aligned with the purpose of discipline, namely to create a safe environment and to teach acceptable social conduct. Violence is however never an acceptable form of punishment.

It is conceded that consistency in school discipline is indeed necessary. It is argued that unlike in a punitive approach to discipline the consistency should not lie in the consistent enforcement of rules and punishment, but in the outcomes of the processes. It is argued that the restorative approach to discipline provides consistency, but it is to be found in a consistent focus on the best interests of every child involved in disciplinary matters and not in consistent punishments. Every child's needs and interests differ and a one size fits all approach to discipline does not make enough room for the individual needs of children. It can be argued that children might perceive it to be unfair that everyone does not receive the same punishment. However, if there is a school culture of care and respect everyone should understand that the aim is not consistent punishment, but to consistently ensure the optimal well-being of all the stakeholders in a particular school. Therefore the best interests of every child should be prioritized and not consistent punishment and or procedures. This approach would be in line with the notion of adaptable education

It is concluded that the traditional punitive approach to discipline is not only at risk to infringe on several rights of learners, but is also unlikely to effectively promote the transgressor's right to education. The punitive approach is unlikely to contribute to develop the child's full potential to the maximum possible extent and him or her ability to act in a socially acceptable way. In fact, there are ample evidence to indicate the negative consequences of punishment for some such as, learners who experience stress, anxiety, are suicidal, drop-out of school and the school to prison-pipeline created by the zero-tolerance policies.

On the other hand the restorative approach to discipline has a clear focus on teaching children appropriate social skills, to develop resilience and emotional intelligence, to build communities of care to support children and to address the harm after misconduct occurred. Children are taught appropriate conflict resolution skills and once harm was caused it is also used as a teachable moment. The process therefore explicitly requires a plan of action to ensure that the unacceptable behaviour is not repeated and support is provided where necessary. It is clear that the restorative approach to discipline is aligned with the right to education and contributes towards the promotion of the child's right to education. It is argued that a child has a right to be taught to act in a socially acceptable way and that this approach to discipline does exactly that. An emotionally intelligent child with the necessary social skills will also be able to reach his or her full potential. There is a clear link between the suspension and expulsion of learners and drop-out rates. Suspension and expulsion rates dropped dramatically in schools were a restorative approach was followed. This has a positive influence on the promotion of learners' right basic education.⁴² Research also

indicates that a restorative approach has a positive impact on the academic performance of learners.⁴³

5.2. The right to dignity

The learner's inherent dignity should be respected through disciplinary provisions and actions that accommodate diversity, provides for freedom of expression through religious and cultural symbols, focus on understanding and protecting rather than rejecting and infringing on their inherent dignity, convictions and traditions.⁴⁴

Dimensions of the right to dignity include the following:

- The intrinsic and infinite worth and equality of every person.
- Not to be subjected to any form of violence and nobody should be treated merely as an object of punishment.
- The capacity to make your own choices and recognition of autonomy and the ability for self-governance.
- The freedom to be who you are and to be the best you can be.
- To be treated with equal respect and concern.
- To experience self-respect and self-worth.
- Physical and psychological integrity.
- Prohibits objectifying people.
- Recognizes individual qualities and uniqueness and includes self-actualisation, self-fulfilment, self-identification and self-determination.
- A collective dimension.
- It crafts the boundaries between conflicting rights and interests.

The State has an obligation to model conduct that respect, protect and promote the dignity of others. Active steps are required in this regard.

5.2.1. Evaluation of different approaches to discipline on the right to dignity

The risks of a punitive approach to discipline infringing on the right to dignity of learners are acknowledged in a number of international instruments and States Parties are cautioned in this regard. There are numerous examples of current infringements of this right. The persistent use of corporal punishment, belittlement, sarcasm and other degrading punishments are still reported frequently. This is in sharp contrast to specific dimensions of the right to dignity such as the right not to be subjected to any form of violence (physical and psychological) and nobody should be treated merely as an object of punishment to deter them or others from future misconduct. A retributive system does not provide for autonomy and to be part of decision-making processes. Punishment is normally metered out by a person in a position of authority. Punishment can also infringe on the dignity of the collective, especially if punishment is not metered out in private. Normally punishment is metered out in the presence of the whole class.

Values play an important role in the restorative approach. These values include respect, participation, honesty, humility, responsibility, empathy, trust, reliability, acceptance,

empowerment, mutual commitment, self-control and self-discipline.⁴⁵ These values can also be linked with human dignity. The principals of schools where restorative justice are practised have in particular stressed the positive effect of the reinforcement of positive values through this process.⁴⁶ The restorative approach recognises the infinite worth and equality of every person affected by misconduct or harm and the processes are developed to ensure that everybody is treated with equal respect and concern. Everyone's needs and interests are determined in the process and appropriate steps are taken to address it. The processes recognize individual qualities and uniqueness and include self-actualisation, self-fulfilment, self-identification and self-determination. These are clearly dimensions of the right to dignity which one would like to promote in learners to ensure that their full potential is developed and that they are able to respect the dignity of others. This approach to discipline models to learners how to deal with conflict and harm without resorting to violence and infringing on the dignity of others. It is a process that allows everyone involved to experience a sense of self-respect and self-worth. Conflicting rights and interests are balanced in a restorative approach while the dignity of everyone is considered. Victims of misconduct also reported that they are satisfied with the process and it helped them to feel better about themselves.⁴⁷ Transgressors experienced less stigmatization and since they have to find a solution to the problem they develop their problem-solving skills. This has a positive impact on their self-worth.⁴⁸ Those who were harmed also reported that their sense of rejection and displacement decreased significantly after they had participated in a restorative justice programme.⁴⁹

Gonzales⁵⁰ refers to several studies and found that when school policies regarding discipline focus on responsive, reiterative and restorative mechanisms that they are more effective in creating and maintaining safe school communities. Learners feel safer and more connected to their schools in an environment where there are high expectations for good behavior on the one hand, but on the other hand they experience their educators to be caring and administering discipline fairly and tolerantly. Yet, learners exposed to a punitive system, such as the zero tolerance system, do not regard their schools as safe communities and experience high levels of unjustified fear.

It is thus concluded that the restorative approach to discipline not only respect and protect the right to dignity, but also has an explicit focus on promoting the dignity of everyone involved in the process. The punitive approach on the other hand must follow strict prescriptions to ensure that the dignity of the transgressor is respected and protected. There are real risks attached to the retributive system to infringing on the rights of the transgressor. This approach does not focus on the needs and interest of those harmed by misconduct, or the third parties to it. Thus, their right to dignity is not explicitly respected or protected in the retributive approach. It is argued that it is impossible to promote the right to dignity of the transgressor in a retributive approach and that the right to dignity of the other parties are not even considered, therefor there is no real chance of their right to dignity being promoted in a retributive approach.

5.3. The right to non-discrimination

Article 29(1)(a) of the CRC provides that one of the aims of education is the “development of the child’s personality, talents and mental and physical abilities to their fullest potential”. Any discriminatory practices in school discipline which impacts on learners’ ability to reach their full potential would therefore not only be an infringement of their right to equality, but also an infringement of their right to education.

States Parties are cautioned to ensure that children have equal access to quality services in *inter alia* education. States Parties thus have to monitor the availability and accessibility to quality services, such as social services, that contribute towards children’s development and survival. In addition, States parties should take appropriate steps to ensure that children have equal opportunities to benefit from the available services.⁵¹

Examples of formal equality with regard to discipline can be found in the application of policies which focus on similar treatment of all learners, such as the zero tolerance policies. These policies do not take account of the personal circumstances or needs of the individual learner, which is contrary to the best interests of the child concept.⁵² On the other hand substantive equality is in line with the best interests of the child, since it takes social and economic realities into account. The focus is not on equal treatment, but rather on equal outcomes. Equal respect and concern for the child’s interests and well-being would require an individualised approach to ensure equal outcomes. This approach would ensure that effect is given to the need for transformation and social justice and will contribute towards the dismantling of systemic inequalities.

Examples of direct discrimination would for instance be school rules which exclude and punish pregnant girls, but does not take similar steps against school boys who father children.

There are a number of issues related to school discipline which needs to be addressed to ensure that effect is given to the equality clause in this context. These issues are:

- **The provision of adequate and appropriate educational facilities and social services.**

The lack of resources can never, without qualification, provide justification for the violation of human rights. It is imperative that children should be treated in a humane and caring manner and therefore society should always aim for the highest standards and should not shrink from its responsibilities. One of the main aims of the equality clause is to prohibit patterns of discrimination and to remedy the consequences of such discrimination. Proper care should thus be taken to ensure that the limited available resources are distributed in a reasonable and justifiable way to ensure equality of outcome in education. In this distribution process the obligation to address the root causes of misconduct and disciplinary problems should be taken into account.⁵³

- **Gender discrimination and school policies pertaining to pregnant learners**

Section 9(3) of the South African Constitution explicitly provides that pregnancy is one of the grounds for unfair discrimination. However, school rules are often very strict and girls are punished for being pregnant and may not continue with their education, or may only proceed after a lengthy absence from school.⁵⁴

Single mothers and fathers, who do not pay maintenance for their children and contribute towards their upbringing, are huge social issues in South-Africa. Pregnant

teenage girls have to bear the brunt of the consequences and responsibilities associated with the pregnancy, while the boys can continue with their education, without taking any responsibility. It is argued that this approach unduly discriminates against girls and contributes to the systemic discrimination against pregnant school girls. On the other hand a teachable moment is lost if school rules do not contribute towards teaching school boys and girls to take responsibility for their actions and to accommodate these responsibilities as far as possible. Furthermore, these rules should bear in mind that not only the needs and interests of the teenage mother and father are at stake, but also the needs and interests of a baby.

- **Equality and the distinction between groups of children**

In terms of the South African Schools Act, if a child is under the age of 15 years is expelled, the HoD has a responsibility to find an alternative placement for the child. However, the HoD is relieved from this obligation if the child is not of compulsory school going age (15 years).⁵⁵ It is argued that this distinction is discriminating against children who are over 15 years of age, but still under 18 years of age, and under the protection of the best interests of the child provision of the Constitution. It is argued that this distinction is not justifiable in an open and democratic society based on human dignity, equality and freedom. This provision applies indifferently to all children above 15 years of age and is not in line with the South African Constitutional Court pronouncements that children’s rights cannot apply indifferently to children by category and that the individual circumstances of every child should be investigated before a decision can be made.⁵⁶ Every child must be treated with dignity and compassion in a caring and sensitive manner. In short, ‘every child should be treated as an individual with his or her own individual needs, wishes and feelings.⁵⁷ Therefore the court warns that to apply a predetermined formula, such as age limits, for the sake of certainty, irrespective of the personal circumstances of the particular child, would be contrary to the best interest of the child concerned.⁵⁸

- **Equality and the provision of support measures and counseling services**

Non-discrimination does not require equal treatment, but rather equal outcomes, especially for marginalised and vulnerable groups. The unequal provision of support measures and counselling services by the State would therefore be justifiable if more resources are spent on these services for learners with serious behavioural problems. The unique needs of different children should be kept in mind in the provision of these services. On the other hand, the legislative exclusion of some learners from support measures and counselling services can be interpreted as direct discrimination.⁵⁹

- **Equality and certificates of good behaviour**

Schools are at liberty to require learners to provide a certificate of good behaviour before admission to a school. This provision would not constitute discrimination if it is applied equally to all learners who apply to a specific school. In addition, if a learner are unable to provide a satisfactorily certificate the school must provide the learner with an opportunity to state his or her case, before the school makes a decision regarding admission.⁶⁰

- **Equality and the curriculum**

The inclusion of non-discrimination in the curriculum of all learners is highlighted in numerous international instruments.⁶¹ Furthermore the principles of non-discrimination should also be visible in the way discipline is instilled and maintained in schools.

5.3.1. Evaluation of the different approaches to discipline and the right to non-discrimination

The punitive approach tends to focus on rules and the consistent application of specific rules. However, this can lead to practices that are not in the best interests of children, because it does not take the individual circumstances of the child into account. This can result in marginalisation of certain groups of children such as pregnant girls and children in different age groups. It is thus argued that the punitive approach is capable of ensuring equal treatment, but this is not in line with the standard of ensuring equality of outcome. However, in the long run this approach to discipline can lead to further systemic discrimination. This is illustrated by the application of the zero tolerance policies which eventually led to the school to prison pipeline which impacted disproportionately on black and disabled learners.⁶²

The restorative approach focuses on the well-being and development of all learners and their equal best interests is thus an important feature of the process. The socio-economic needs in some communities are much more profound than in other communities. The disproportionate distribution of social services would thus be justifiable to eventually ensure equal outcomes for all. This approach also focuses on fixing harm and problems. Thus, the point of departure would not be to punish a pregnant school girl, but to assist her to take responsibility for herself and her baby and to fix the harm as far as possible, with the necessary support.

It is argued that existing practices indicate that a punitive system, which focuses on rules and consistency of treatment only, is not really capable of promoting the right to non-discrimination. Instead in some instances it contributes to further systemic discrimination. On the other hand, the restorative approach does not only respect and protect non-discrimination, but also contributes to the promotion of non-discrimination. It is argued that the processes applied in the restorative approach, such as circle work, is conducive to contribute to community building amongst diverse groups of learners. This will improve their understanding of discrimination and its impact on different groups of people. The focus is on building relationships between people. It is argued that it is less likely that people will discriminate against people they really know and understand.

5.4. The right to life, survival and development

The CRC provides for the right to life, survival and development. The South African Constitution does not explicitly provide for survival and development. Yet, an important element of this international provision is captured in the content given to the right to life. In *S v Makwanyane*⁶³ O'Regan held that the right to life is more than mere organic existence, but entails a quality life. A quality life is rightfully linked to the full development of the person through education.

The right to development and the appointment of intermediaries are linked through the *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime* to the right to protection and development of the child. It provides for the best interests of the child and provides that the child should be protected from hardship, abuse or neglect which would include physical, psychological, mental and emotional abuse on the one hand and on the

other hand it provides for the harmonious development of the child. Therefore traumatized children should be protected when they give evidence and their development should not be hampered through giving evidence. Some of the general guideline applicable to child witnesses should be applied to children who need to testify in a disciplinary hearing. These include that:⁶⁴

- Children should not be exposed to undue mental stress and suffering when they testify. An atmosphere which allows the child to speak freely must be created.
- That the child must be assessed prior to the hearing to determine whether it would be necessary to appoint an intermediary. If necessary the prosecutor has to apply for the appointment of an intermediary.
- If the prosecutor does not make such an application, the presiding officer needs to make sure that it would not be necessary to appoint an intermediary.

School discipline and the child's right to be taught socially acceptable behavior

It is argued that the right to education entails *inter alia* the right to be taught to act in a socially acceptable manner to enable learners to function properly in society. If a child misbehaves at school he or she often infringes on the rights of others and clearly did not master the necessary skills and attitudes to function properly in society. If that child is expelled from school and is unable to find an appropriate alternative placement and or drop out of school, the chances of the child acquiring the necessary social skills to function appropriately in society diminishes even further. It is thus argued that the current legislative provisions regarding suspensions and expulsions do not take into account that children's chances of rehabilitation are bigger than that of adults.⁶⁵ Furthermore, if the child is unable to access appropriate education after expulsion, the child's is deprived of an opportunity to learn the skills and attitudes which are necessary to function in a socially acceptable manner.

5.4.1 Evaluation of the different approaches to discipline and the right to life, survival and development

The same evaluation applicable to the right to basic education would be applicable to this right. With regard to the use of intermediaries in disciplinary hearings, measures can be put in place in a punitive system to address the needs of the witnesses. It is however argued that if a restorative approach is applied in a school, formal disciplinary hearings would only be necessary for those instances where the transgressors do not take responsibility for their actions and deny any guilt. However, if a restorative justice culture is properly established in a school it is highly unlikely that learners will not take responsibility for their actions. If learners do take responsibility, the matter will be addressed through a formal restorative conference. One of the basic principles of the restorative approach is that it must always be respectful and support will be provided for everyone who has to take part in the process. In addition, this process is not adversarial in nature, which diminishes the chances of subjecting the child to undue mental stress and hardship. Participants are well prepared before the proceedings commence and care is taken to ensure that secondary victimization does not occur. The quality of life of victims is improved, because they are empowered through the process to be more confident to handle similar situations in future.⁶⁶ There are also positive indications that the recidivism rate of transgressors declines with the application of a

restorative approach, which will also contribute to the quality of their own lives and those of the community at large.⁶⁷

5.5. The right to participate

Although children have a right to participate they are dependent on adults to allow them the opportunity to enforce it.

Participation entails on-going processes of information sharing and dialogue between children and adults, based on mutual respect. It is further regarded as a teaching and learning process where children can learn to express their views in a socially acceptable manner and where they can see how their inputs impacts decisions.

Care should be taken that all the children's right to participate is given due regard and that processes are in place to accommodate the views of minority and marginalised groups. Every child of such an age, maturity and stage of development, who is able to participate, has this right. A proper distinction should be made between the child's legal capacity and right to participate. The children have a right to participate in decisions in matters which concern them despite the fact that they do not have the necessary capacity to perform legal acts. The point of departure should rather be that the children have the ability to participate and do not have to proof that they have the necessary capacity to participate. The child's age, maturity and stage of development, however plays an important role in the weight accorded to their views. If the child has the necessary maturity his or her views should be taken seriously. However even very young children should be afforded an opportunity to participate. Therefore a child centred approach should be followed where the point of departure is that adults will listen to children, will respect their dignity and give their views the necessary consideration.

Adults and parents in particular, have an obligation to guide and direct children in such a way that they will be able to exercise their rights. It obliges them to supplement the child's lack of knowledge, experience and understanding and they should guide the child to gain the necessary knowledge and skills. As the children develop adults should proportionately decrease their own input and give them more opportunities to exercise this right independently. Children should not be intimidated or manipulated to express views against their will. Participation by the child should always be voluntary.

The educational value of the right to participation should be recognised as the socialisation of children into their community and society, and the contribution it makes towards the development of the child's skills to participate in decision-making process, the development of self-esteem and independence, to learn to voice opinions in an appropriate way in appropriate forums and the development of appreciation for the rights of others in decision-making processes.

The minimum acceptable level of participation would be to allow learners to express their views and to ensure that their views are considered. However, Shier indicates that there are two additional levels of participation, which are higher than the minimum required by the South African Constitution or the CRC. This would allow children to be involved in decision-making processes and on the highest level would allow children to share in the power and responsibility for decision-making. These additional levels of participation have the following advantages for children namely: the quality of service provision improves, children's sense of ownership and belonging increases, self-esteem increases, and empathy and responsibility

increase. In this way, the groundwork for citizenship and democratic participation is laid, which thus helps to safeguard and strengthen democracy.⁶⁸ It can be argued that these advantages are in the best interests of children and should be made available to children as far as possible to ensure that their best interests are optimised as far as possible in the process of enforcing their right to participate. On the other hand, care should also be taken to ensure that child participation is not watered down to "pseudonegotiation of nonconflict," where the impression is created that there is negotiation and dialogue, but the fact of the matter is that there was no conflict to begin with.⁶⁹

To enable the child to participate there must be a safe environment which will enable the child to voice his opinions through proper facilitation. There will be a specific adult or body who would be responsible to give the child a proper audience and the child must have the opportunity to influence decisions.⁷⁰

5.5.1 Evaluation of the different approaches to school discipline and the right to participate.

It is argued that the adversarial processes of the punitive approach to discipline are not really suitable to create a child-friendly space conducive to elicit the views of children. Cavanagh⁷¹ found that learners who are in a punitive disciplinary system experience it as confusing, inconsistent, pointless, lacking continuity, and a quick fix. The learners are of the opinion that the system do not afford them the opportunity to talk and do not assist them in resolving problems, to be restored and to feel safe. They are of the opinion that the system rather plunge them in trouble than helping them to sort out their problems. The learners experience the system as being characterised by determining blame, the destruction of relationships and a general feeling of lack of control or limited control over most aspects of their lives. In addition, they feel that they are not accountable for their choices. Taking all the above into account it would be fair to conclude that the space created in a retributive environment is not really child-friendly, inviting or created to ensure an environment conducive to the expression of personal views.

Research indicates that learners are of the opinion that effect is not given to their right to participate in schools since they are not involved or rarely involved in rule making, not even though the school council. They are of the opinion they have no voice.⁷² They claim that there are normally no agreed procedures to challenge the fairness, necessity, relevance ambiguity or inconsistency of rules. Furthermore, even if appeal procedures exist in school rules it is often futile to appeal decisions of educators. They aver that appeals, in even informal disciplinary matters or other issues, in school are seldom successful, because successful appeals would undermine the authority of the educators.⁷³ It is clear that learners subjected to a retributive approach to discipline are not often afforded the opportunity to express their views.

Children in a punitive system are of the opinion that their views were not listened to at school.⁷⁴ They therefore claim they have no audience. Even if it is clear what the views of children are, there is no guarantee that their views will be communicated to adults or if it was communicated that adults would accept their views and give effect to it.⁷⁵

To comply with the standards set for the right to participate learners need to feel that they can influence decisions. However, the lack of influence is unfortunately one of the major stumbling blocks in schools according to learners. They are of the opinion that the issues they are allowed to influence are predetermined by the adults. They do not really have the opportunity to initiate and bring their own issues to the table⁷⁶ Furthermore, as far as discipline is concerned those affected by the misconduct are not involved in the disciplinary process. The focus of the process is on the offender and not the victim. Victims of misconduct are represented by those in a position of authority and are mere spectators of the process and often experience a sense of powerlessness. They are only expected to provide evidence to find the offender guilty and have no influence on the outcome of the process.

With regard to the restorative approach Amstutz and Mullet⁷⁷ are of the opinion that conflict resolution education focus on finding a fair and acceptable solution to a problem while the restorative justice approach "adds the additional layer of working on the relationship that was harmed or deterred." It is therefore clear that the aim of a restorative approach is to build and reaffirm relationships on a prevention level and to repair and rebuild relationships on a reactive level. To develop the necessary social and emotional skills of learners to develop and maintain positive relationships is therefore a critical aspect of this approach.⁷⁸ The creation of a safe environment and flourishing relationships for the whole school is the point of departure of a restorative approach to discipline.

Although there are different programmes, methods and practices to utilise restorative justice principles⁷⁹ the key components to restorative practices are non-negotiable and include the child's participation on a voluntary basis. Another important aspect of restorative practices is that the child will receive support and information throughout the process and will be able to take part in the process in an age appropriate fashion.⁸⁰ Educators are required to use a process that makes it easy for children to express their views and voice their opinions.

In a restorative approach everyone with a stake in a matter is included in the process and has an opportunity to voice their needs and interest. Facilitators of a restorative approach are responsible to listen to the needs of everyone and have to facilitate the process in such a way that everyone experiences a sense of being heard and given a proper audience. Everyone should eventually be satisfied with the outcome of the process⁸¹ Since those who are harmed are part of the process, they are afforded the opportunity of relating their stories of hurt and pain. Morrison⁸² states that listening to someone's story "is a way of empowering them and of validating their intrinsic worth as a human being". She argues that feeling respected and connected is inherent in one's sense of self-worth and is a basic human need.

Those affected by the misconduct is part of the whole process and have the opportunity to give their opinions on how they think the harm can be resolved. Since they are part of the process they experience their influence on the decisions that are being made first hand.

It is thus clear that the punitive approach to discipline provides little or no opportunities for learners to participate in disciplinary processes. On the other hand in a restorative approach the child's right to participate is promoted through a deliberate process of creating a safe

environment where children can voice their opinions, they are given a proper audience and can influence the outcomes of the processes.

CONCLUSION

There is a clear overlap between the concept of discipline and the right to education. Both aim to ensure that the child develops his or her full potential and that the child will be able to conduct him or herself eventually in a socially acceptable manner. Therefore, any policies, legislations, measures or decisions taken regarding school discipline should be aligned with the right to education and the aims of education.

Restorative justice is a philosophy which seeks to address the needs and interests of all parties involved in misconduct and seeks to address the harm, to make things as right as possible and to take active steps to ensure that the harm is not repeated in future. It is argued that this approach to discipline is able to not only respect and protect the rights of all involved in misconduct, but also to promote these rights. It is illustrated that the retributive approach to discipline is not really able to promote human rights and that strict measures are necessary to ensure that a punitive approach does not unduly infringe on the human rights of any of the stakeholders.

A restorative approach is thus recommended to address disciplinary issues in schools. However, it is still an evolving concept and more research is necessary to provide more evidence to proof its positive impact and substantiate its alignment with human rights.

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Endnotes

1. *S v Makwanya* 1995 2 SACR CC 1; *S v Williams* 1995 (3) SA 632 (CC).
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3. Rautenbach & Malherbe 2004:300. To “protect rights”, on the other hand, requires that the state take steps to prevent the violation of rights.
4. Rautenbach & Malherbe 2004:300. To “promote and fulfil rights” means that the state must take steps to make it possible to exercise rights.
5. In Lessing and De Witt 2010:24.
6. Lewis & Short 1962: 587.
7. 1990: 109.
8. In Lessing and De Witt 2010.
9. Joubert, De Waal & Rossouw 2005:208.
10. Lessing & De Witt 2010:24; Oosthuizen 2006:48
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12. Lessing & De Witt 2010:25
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16. Zehr 2002: 36.
17. Zehr 2002: 37.
18. Hansberry 2009: 119.
19. Morrison 2002: 2.
20. Amstutz & Mullet 2005: 15.
21. Hopkins 2002: 145. Some perspectives of Zehr 2002:21 added.
22. Zehr 2002: 58-59.
23. Zehr 2002: 38; See also Amstutz & Mullet 2005: 14.
24. Hansberry 2009: 119.
25. This is an adapted version of the original model which was developed by Morrison 2005.
26. Table 2 is an adapted version of a model originally developed by Jansen and Matla 2011.
27. For instance see the South African *Guidelines for the Consideration of Governing Bodies in adopting a code of conduct for learners* Government Notice 776 of 1998.
28. Oosthuizen 2006:2.
29. 2003: 466; 469-470.
30. Joubert & Prinsloo 2008:107.
31. Siers 2007: 3.
32. General Comments of the Committee on Economic, Social and Cultural Rights namely General Comment 11 adopted at the twentieth session of the Committee on Economic, Social and Cultural Rights on 10 May 1999; General Comment of the Committee on Economic, Social and Cultural Rights on art 13 adopted by the Economic and Social Council on 8 December 1999; General Comment 1 on the aims of education adopted by the United Nations Committee on the Rights of the child on 17 April 2001; World Declaration on Education for All and the Framework for Action to Meet Basic Education Needs, adopted by the World Conference on Education for All Meeting Basic Learning Needs in Jomtien in 1990 and the Plan of Action of the World Programme for Human Rights, adopted by all United Nations Member States in July 2005.
33. UN Committee on the Rights of the child 2001: par 15.
34. UN Committee on Economic, Social and Cultural Rights 1999: par 6.
35. Bailey, Mtshali & Olifant 2012: 1; See also Wolhuter & Van Staden 2008: 389-398; Govender & Laganparsad 2011: 1 & 5. A principle was videotaped showing him kicking and beating a child with a hose, while shouting at the child for coming late to school; Olifant 2012: 2. Educators were spotted at the school entrances shouting at learners who arrived late at school while taxis arrived late, playing loud music and clearly exceeded the speed limits.
36. Goleman 1998: 73-74; Brendtro, Mitchell & McCall 2009: 29-32
37. UN Committee on the Rights of the Child 2007: par 16.
38. Amstutz & Mullet 2005: 11.
39. In Drewery 2004: 332.
40. Joubert, De Waal & Rossouw 2004: 78; 2005: 209
41. Jenkins in Brendtro, Brokenleg & Van Bockern 1990: 110-111.
42. Fields 2003: 49; Wearmouth, McKinny & Glynn 2007: 40; Karp and Breslin 2001: 257; Gonzales 2011: 27 -37; Ofer 2011: 1375.
43. Mirsky 2007: 9; Olfer 2011: 1404 – 1409.
44. Reyneke 2010: 71–105; 2011: 129-134.
45. Amstutz & Mullet 2005: 25; Pranis 2005: 25.
46. Fields 2003: 48; Varnham 2005: 97.
47. Fields 2003: 46; Hopkins 2002: 146; 2004: 105
48. Varnham 2005: 96.
49. Morrison 2002: 105-106.
50. Gonzales 2011: 14 -15.
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61. General Comment No. 11 1999: par 11; Programme of Action 2001 par 129 & 130; Convention against Discrimination in Education 1960: a 1(a).
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63. 1995 2 SACR CC 1.
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66. Fields 2003: 48; Morrison 2002: 4-5; Varnham 2005: 96.
67. Bloomenthal 2011: 319-320.
68. Shier 2001: 114.

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71. Cavanagh 2009: 68.
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74. Lundy 2007: 936.
75. Lundy 2007: 934, 937; Wilson 2009: 92-93.
76. Lundy 2007: 934; Mabovula 2009: 226-230; Mabovula 2010: 5-10; Carrim 2011: 75-77.
77. Amstutz & Mullet 2005: 20.
78. Warren & Williams 2007: 10.
79. Reimer 2011: 30; Cavanagh 2009: 65-66; Warren & Williams 2007: 10; Amstutz & Mullet 2005: 46-72.
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81. Zehr 24-28.
82. Morrison 2002: 99-100. see also Ashworth *et al* 2008: 23-24.

Bringing Peace to Schools: Restorative Justice and Mediation in the Public Basic Education in the State of São Paulo, Brazil

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Bringing Peace to Schools: Restorative Justice and Mediation in the Public Basic Education in the State of São Paulo, Brazil¹

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This paper looks into the State of São Paulo School Protection System, an experience that has proven successful in promoting peace in public schools with high violence rates. The System was introduced in 2009 to guide and assist schools in creating a healthy social environment that fosters successful learning through interventions aimed at preventing violence as well as any form of symbolic verbal abuse or the breaking of school rules. These interventions consist of different types of actions and approaches that vary according to the target audience and school facilities, which include, above all, so-called mediation and restorative justice practices. From a legal perspective, the School Protection System seeks to ensure the right to education based on four fundamental principles set out in the Brazilian Constitution: equal access to school and the right to stay in school, freedom to learn, quality education, and valuing of teachers.

1. ABSTRACT

This paper looks into the State of São Paulo School Protection System (*Sistema de Proteção Escolar do Estado de São Paulo*), an experience that has proven successful in promoting peace in public schools with high violence rates. The System was introduced in 2009 through interventions aimed at preventing criminal violence as well as any form of symbolic verbal abuse, including bullying and intimidation, and the breaking of school rules. These interventions consist of different types of actions and approaches that vary according to the target audience and school facilities. They include, above all, so-called “mediation and restorative justice practices”, which are focused on solving conflicts through non-punitive methods, as recommended by the United Nations Economic and Social Council. From a legal perspective, the School Protection System seeks to ensure the right to education based on four fundamental principles set out in the Brazilian Constitution: equal access to school and the right to stay in school, freedom to learn, quality education, and valuing of teachers.

To sustain these findings, this paper is divided into four parts. Part one introduces the Brazilian educational system from a legal perspective. Part two describes legal procedures under the Child and Adolescent Act and student misconduct. Part three presents the State of São Paulo School Protection System and part four addresses the role of the School and Community Mediator Teacher in this System. This paper offers neither a complete analysis nor a conclusive solution to the problem of bringing peace to schools, but points out some of the facts that gave rise to the experience of preventing misconduct in schools, and from this viewpoint discusses the new roles that may be played by the school.

2. THE BRAZILIAN EDUCATIONAL SYSTEM FROM A CONSTITUTIONAL PERSPECTIVE

Among all the social rights enshrined in the Brazilian Constitution, the right to education was the one that deserved the highest number of provisions: there are approximately 50 articles that address the right to education, directly or indirectly.

In this universe of constitutional norms, the right to education is addressed as a long-, mid- and short-term public policy that unfolds into rights and duties for the individual, the society, the State and future generations, as established in Article 205, which says: “a right for all and a duty of the State and the family, promoted and fostered with the cooperation of society, aiming at the full development of the person, preparing the individual for citizenship and work”. For children and adolescents, education is not only a right and a duty but of utmost priority (art. 227). For this reason, schooling is compulsory by law, universal and free of charge.

There is a complex system in place to distribute lawmaking authority, duties and income to the federal units (the Federation, States, Municipalities and the Federal District) in order to fulfill the right to education. In doing so, the following features stand out: education in Brazil is organized collaboratively by the Federal government, the states, the municipalities and the Federal District (Article 211); priorities are defined by law according to the level of education, in growing order in of the scope of level of education (Article 211); the share of taxes to be applied to maintaining and developing education is established in statute (Article 212), this is an exception to the non-binding allocation of taxes clause (Article 167, IV); and the law forbids taxes on the assets, income or services of non-for profit educational entities (Article 150, VI, c). The 1988 Constitution established a National Education Plan – NEP (Law 10 172/2001), aimed at eradicating illiteracy, providing universal access to school, improving teaching quality, promoting training for the marketplace; fostering the growth of Brazil through the humanities, sciences, and technology (Article 214). For children and adolescents, education is a right and a duty and is an utmost priority (Article 227). For this reason, schooling is by law compulsory, universal and free of charge, in addition to being considered a subjective right (Article 208, paragraph 1), including for those who did not have access to school at the appropriate age.

Besides enjoying constitutional status, the right to education is protected and promoted, whether directly or indirectly, by the obligations set forth in international agreements to which Brazil is a signatory. Examples include the *Universal Declaration of Human Rights (UDHR)*, the *Convention against Discrimination in Education* (Decree 36 223 of September 6, 1968), the *Convention on the Elimination of all Forms of Racial Discrimination* (Decree 65 810 of December 8, 1969), the International Covenant on Economic, Social and Cultural Rights (Decree 591, 1992), the *Convention on the Elimination of all Forms of Discrimination against Women* of 1979 (Decree 4 377 of September 13, 2002), and the *Convention on the Rights of the Child* of 1989 (Decree 99 710 of November 21, 1990). At the regional level, the following have also been adopted by Brazilian legislation: the Charter of the Organization of the American States (1948), the Pact of San Jose (1978) on civil and political rights, and the San Salvador Protocol (1988); thus becoming laws in Brazil in 1950, 1992, and 1996, respectively.

As is widely known, the value of education, in the UN context, is not neutral. Its goals aim to promote human rights and peace and to affirm free and democratic societies. This is

strengthened by the UDHR article 26 (no. 2) which connects education with understanding, tolerance and friendship among all States and individuals. Duties in regard to education are not only duties of the States, but of individuals and society, as expressly mentioned under the preamble of the Charter. Additionally, education is attached to human dignity, due to its empowering nature. These international principles are mirrored in the 1988 Brazilian Constitution.

3. THE IMPLEMENTATION OF THE RIGHT TO EDUCATION UNDER THE BRAZILIAN LAW

The Brazilian educational system is decentralized and quite complex. Since Brazil is a Federation, comprised of 26 states, and more than 5,500 municipalities, its territory is divided into three different categories of educational systems: the federal (which includes all the schools and universities maintained with federal resources, and also the private universities and colleges across the country); the State systems (which include the schools and universities maintained with State resources, as well as all the private intermediate and secondary schools within each State territory); and the municipal systems (which include public and private preschools and primary schools). The rationale of this model is decentralization through the allocation of specific incumbencies to each level of government – local, state, and federal – all of which have to comply with mandatory minimum revenue investments established by the Constitution (articles 211 and 212). As with the rest of the Brazilian federative system, the Brazilian judiciary operates at both the federal and state levels.

All the federal entities are entitled to legislate about their own education systems, as long as they abide by the Federal Constitution and national laws such as the National Education Act – NEA (Law 9394/1996), the National Education Plan - NEP (Law 10 172/01) and the Children and Adolescent Act – ECA (Law 8 069/1990), the most relevant legislation concerning violence in schools. As a result, education systems, both in private and public schools, are free to decide how to provide education in response to local needs, including the power to create general rules of conduct, which may be supplemented by each school individually, pursuant to NEA provisions.

According to the NEA, the schooling levels are structured as follows: basic education, with four levels: daycare (0 to 3 years old), preschool (3 to 5 years), fundamental education (from 6 to 14 years), and secondary education (from 15 to 17 years); higher education, with two levels: undergraduate and graduate courses. Basic education is mandatory and free (except for daycare) and must be made available to all, at any age; the universalization of the access to basic education, based on the fundamental principles of non-discrimination and equality of educational opportunities, also guaranteed by the Constitution (Article 206, I), is also extended to the minorities under special conditions. Higher education should become equally accessible to all, based on students individual ability, through all suitable means, and especially as a result of the progressive implementation of free lower education.

The above-mentioned legal provisions make education, according to Brazilian Law, a subjective right, which is both individual and collective, fundamental and universal. Additionally, as with all fundamental rights, the right to education unfolds into several rights and possibilities,, standing out in this set of rights: the right *to* education and the rights *in*

education pursuant to Article 206 of the Brazilian Constitution. In short, we consider the right *to* education the hyperonym under which the other educational rights develop. The right to education (hyperonym) is, essentially, a right to positive and material obligations that have a social cost. Among which, the right to equal access to school, the right to stay in school; the right to free public education in government-owned schools; the right to fundamental education in the students mother tongue in indigenous communities; the right to special education to students with disabilities; the right to night school; the right to fundamental education, among other rights provided for under Brazilian laws. They are rights that essentially need to be promoted and protected, in addition to carried out through positive actions. On the other hand, the primary role of the unfolding rights *in* education is to protect liberties in the field of education, such as the freedom to learn, teach, research, freedom of thought, freedom to express one's art and knowledge; the right to pluralism of ideas and pedagogical opinions, and the right of private and public schools to coexist; the right to democratic governance of public schools; non-mandatory religious education; university autonomy etc. These are all rights that are instrumental in nature, that materialize through non-actions, and are subject to the constitutional liberties, the norms of which are fully effective and immediately applicable.

4. THE FULL PROTECTION OF THE CHILD AND ADOLESCENT UNDER THE BRAZILIAN CONSTITUTION

The reason why ECA is considered the most relevant legislation concerning violence in schools lies in its nature, which provides for the full protection of children and adolescents as foreseen by article 227 of the Brazilian Constitution. Full protection means priority in protecting and fostering the rights of children and adolescents trough an affirmative discrimination policy, the origin of which is the acknowledgement that the fundamental rights of children and adolescents require specific legal protection, due to their potentially vulnerable nature.

The legal basis of the full protection of the child and adolescent was originally set out in the Declaration of the Rights of the Child (1959). Its principles were later included as specific obligations of the signatory States of the United Nations Convention on the Rights of the Child - CRC, adopted by the General Assembly of the United Nations on November 20, 1989, and ratified by Brazil on November 24, 1990. For the purposes of the Convention, as set in Article 1, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." In regard to the right to education and student misconduct, Article 28.2 of the Convention states that "State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention."

This understanding is supported by the principle of the child's absolute priority stated in Article 3.1. of the CRC: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"²

One of the greatest difficulties in incorporating international treaties to national laws is the translation of the wording of the original. However, even when translation is not an issue per

se, the phrase “the best interests of the child” [*o interesse maior da criança*] has received in Brazil a wider interpretation, due to Article 227 of the Constitution. The Higher Federal Courts, in many cases, stated that any reductions invoking protection of the child and the adolescent, especially when it comes to criminal acts, should give the widest efficacy to the norms that apply to those who the Constitution aimed to protect most (STF, Appeal in Writ of Mandamus 108.970/DF; STJ, Appeal in Writ of Mandamus 33.620 – MG etc).³

As a result of this interpretation, the State Courts (the *Tribunais de Justiça*) and the Higher Federal Courts (including the Brazilian Supreme Court - *Supremo Tribunal Federal* [STF] and the Brazilian Superior Court of Justice - *Superior Tribunal de Justiça* [STJ]), have been fining negligent or lenient parents who overlook their child’s school evasion (as seen in the decision of the Civil Appeal 1.0687.07.054286-9/0001 - *Tribunal de Justiça de Minas Gerais*; and in the Civil Appeal 0004894-37.2004.8.19.0046 - *Tribunal de Justiça do Rio de Janeiro*, among others). Negligence of parents when it comes to the child’s welfare is also a crime, according to Article 249 of the ECA. On a different aspect of the best interests of the child, along the same line of thought, several lawsuits involving recovery of tuition from students enrolled in private schools, are decided in favor of the students by stating that schools cannot deny the student’s enrolment or consider their agreement terminated during – but only at the end of - the school year (*Tribunal de Justiça do Distrito Federal* – 2007.0020.020.331).

The views above are obviously mirrored when applying the ECA, and it is under their perspective that issues concerning student misconduct should be examined, notably: the adoption of codes of behavior, the duty of care, violence prevention as responsibility of the school and the responsibility for the failure to prevent bullying and potential liability on part of the school; legal powers of search and confiscation; the power to use ‘reasonable force’ as a restraining measure; anti-social behavior; liability in case of violence, among others. These issues shall be addressed below in general terms in the light of the ECA.

5. THE CHILD AND ADOLESCENT ACT AND STUDENT MISCONDUCT

Although Brazil has no specific laws on student misconduct and violence in schools, the ECA plays an essential role in defining the responsibilities of family members, guardians, schools and government authorities, based on the full protection doctrine. In the light of such principles, Article 53, for example, ensures the right of youngsters to be respected by their teachers and the right to question grading methods, individually or through their representatives, and to put their case to educational authorities or even to the Courts (in the *Tribunal de Justiça do Estado de São Paulo*, the majority of the law suits concern grading issues; this may reveal an infantile society that doesn’t know how to solve its own problems or even don’t assume their responsibilities).

The ECA is less specific in defining the legal duties of children and adolescents towards their schools, peers, and teachers. Nor is it more specific concerning the duties of the school with regard to their students. The Courts, however, have been creating jurisprudence to compensate for this lack of norms as, for example, in the case of bullying, in which the courts have found the schools liable with regard to the victim, when there is evidence the school was negligent or ineffective in taking the necessary measures (*Tribunal de Justiça do Distrito Federal*, Civil Appeal 20060310083312-DF).

Under the ECA, only crimes and misdemeanors are considered offenses (Article 103). Nevertheless, under the Brazilian law, people under the age of 18 are not legally liable, and therefore cannot be charged with a crime. If they commit a wrong, they are subject to socio-educational measures set out in Article 116, such as repairing damages caused, performing community services, or subject to supervised freedom , all under due process. In this context, according to the ECA, socio-educational detention measures are an exception and can only be established by the courts under certain conditions (Article 122), and in situations like a wrong committed through threats or violence, repeated serious offenses or systematically or unreasonably not complying with socio-educational measures. Reclusion shall be subject to the principle of brief detention periods and to the specific condition of being an adolescent. Based on this, the Brazilian Supreme Court is creating jurisprudence in the light of the fact that the adolescent is entitled to positive protection measures (including restorative justice) and to full protection constitutional norms (Articles 227 and 228). As such, detention measures shall not be based solely on the gravity of the act committed by the adolescent (Habeas Corpus 114 914/SP; HC 105 91/PE).

Policies designed to deter inappropriate adolescent behavior in the State of São Paulo’s public schools follow the protective rather than punitive character of ECA, which embodies the restorative spirit as one can clearly notice in situations like the remission of a judicial sentence (Article 126) and in the wide scope of socio-educational provisions (Article 112 ff.). Accordingly, in order to avoid criminalizing and judicializing interpersonal relations, such policies encourage the school representatives to create school rules that clearly establish the rights and duties of each member in order contain and solve the problems within the school walls. As such, victim support and healing is a priority; offenders take responsibility for what they have done; thus, the school community helps to reintegrate both victims and offenders, understanding that conflict is natural; understanding that conflict is always an educational opportunity; understanding the need to hold accountable those involved in the conflict; fully anticipating the consequences of their actions and repairing the harm done to someone. Such measures meet the recommendations of the ECOSOC Resolution 2002/12, adopted on 24 July 2002 by the Member-States of the United Nations, drawing up the basic principles on the use of restorative justice to solve conflicts resulting from school misconduct.

According to Resolution 2002/12, a “restorative justice program” means any program that uses restorative processes and seeks to achieve restorative outcomes. Restorative processes, in turn, mean “any process in which the victim and the offender, and, where appropriate, any other individual or community member affected by a crime, participate actively together in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.” In this context, mediation is a process in which an impartial third party helps to deter students’ inappropriate behavior and abuse, bringing the parties to an understanding and, if necessary, repairing the injury.

In the State of São Paulo, juvenile courts and the Department of Education act together to implement restorative justice when violence and misconduct can no longer be resolved within the school, albeit lawsuits concerning student misconduct are very few, as shown in an academic research conducted by Silveira (2010), due to many reasons, among them fear of retaliation. Regarding the rare lawsuits involving expulsion and suspension from school (3%), the courts have been limiting their analysis to whether due process of law had been

met and individual rights ensured. However, though the courts grant school officials broad discretion to ensure safe and orderly learning environments and school boards have the authority to adopt reasonable policies and procedures regulating student conduct, it is clear that generally people involved in violence at school don't seek legal reparation in the courts. This is a giant step forward when we take into account that prior to the ECA enactment, the statutory provisions on juvenile delinquency stemmed from the former Juvenile Code (Law 6697/79), which was blatantly discriminatory in content, considering children and adolescents not entitled to rights but subject to repressive measures. Drafted during the Brazilian military dictatorship and in line with the spirit of the time, the Juvenile Code consolidated the "abnormal situation doctrine", which stigmatized children and adolescents who, for instance, had addiction problems or were otherwise affected by social and economic exclusion or family abandonment. In situations like these they were subjected to punitive measures with no legal basis; additionally, they were also deprived from due process, since the court or authority that applied such measures were considered 'lawful protectors of order', as a *diligens paterfamiliae*.

Another critical step forward taken by the ECA was the creation of Human Rights City Councils (*Conselhos Municipais de Direitos*) and Child Protection Councils (*Conselhos Tutelares*) (Article 131) enabling the community to control and oversee public policies aimed at children and adolescents, and which allow continuous development of restorative justice programs, as required by the ECOSOC Resolution 2002/12, in addition to promoting a favorable attitude to the use of these methods.

6. THE STATE OF SÃO PAULO SCHOOL PROTECTION SYSTEM

The State of São Paulo is the most populated State in Brazil, with a population of approximately 41 million distributed across 645 cities. Immigrants comprise approximately 3 million of the total population. According to official data, in the State educational system, there is a rough average of 4.5 million students enrolled in more than 5,000 public basic and secondary schools, where 200,000 teachers are working under the oversight of the Department of Education. In 2010, this massive system was supported with a budget of almost 12 billion BRL (~6 billion dollars).

The public schools of the State of São Paulo can be used as a reference to educational problems arising from the universalization of basic education. The social, economic and cultural diversity of students is mirrored in the classroom which most teachers are unprepared to handle, especially in a violent environment, due to flaws in their initial teacher training. Under such circumstances, absenteeism among students and teachers, are frequent, tardiness is common and there is little commitment on both sides, who experience a feeling of not belonging to the school community. This results in adverse effects on the quality of education.

There is no reliable official data on school violence resulting from student misconduct. In general, people involved in these situations (school principals, teachers and students) do not report their complaints to the police or record them in the school books specifically kept for that purpose, due to fear of retaliation by the individuals or groups involved. Consequently, researches aimed at understanding violence in schools and policies developed by the Department of Education, in an effort to adopt preventive and repressive

measures, are mostly based on the press rather than on police reports or school records. The problem is that the press tends to give a generalized idea that public schools – especially those located in the outskirts of cities like São Paulo, Campinas and Santos – are violent, which is not always the reality.

Despite the inaccuracy of data, according to Ruotti, Alves and Cubas (2006), inappropriate behavior and/or abuse in public schools⁴ range from micro violence (name-calling, rude words, man-handling, humiliating) to criminal misconducts (bombs that damage school property, larceny, threat, drug use, and trafficking, gun possession by students). Although some problems are linked to the specific features of each school, the severity and frequency of violence events vary considerably among them, even when they are located in extremely violent neighborhoods.

In 2009, the School Reporting Register (*Registro de Ocorrências Escolares- ROE*), an online tool in which school misconducts and/or criminal issues are registered, was introduced in the public school system. The main goal of the ROE is to build a dynamic database tool enabling protection and prevention; paradoxically, its main weakness is the input which isn't reliable. Many school principals do not use the system because they believe the reports will not benefit the school in any way; others believe they will be punished because of how they dealt with the situation. On the other hand, there are those who believe that inputting data in the system will entitle them to extra pay due to the violent environment.

Regulations preventing school misconduct and violence were recently issued by the Department of Education, yet they are not enforceable. In fact, the General Rules of Conduct for State Public Schools - GRC of 2009 (Annex I) are not a code of conduct that attaches immediately applicable penalties to certain conduct; their purpose is to offer legal grounds for each school to define its own rules of behavior inside or outside the school premises. Besides, the GRC defines teachers' and students' duties and responsibilities, student punishment and the limits of school officials' discretion to ensure a safe and orderly environment.⁵

Student infractions described in n. 4 of the GRC, for instance, include, among others, disrespecting, disregarding or insulting school officials, teachers or employees; arriving at school under the effect of substances that are harmful to the student's health or to social interaction; exhibiting or distributing defamatory, racist or biased texts, literature or material, including exhibiting said material on the internet; engaging in illegal activities during school hours like buying, stealing, transporting or distributing forthcoming exams or their correct answers, in full or partially; damaging or destroying school equipment, material or facilities; writing on, scrawling on or marking up school walls, windows, doors or sports courts; threatening the school with a bomb threat; making comments or insinuations with an aggressive or disrespectful sexual connotation or engaging in any sexually offensive behavior; encouraging or participating in acts of vandalism that intentionally damage school equipment, materials and facilities or the belongings of any member of the school community or others; consuming, carrying, distributing or selling controlled substances, alcohol or other legal or illegal drugs on school grounds etc. The penalties that school officials can impose on students vary from verbal warning to suspension, expulsion or mandatory transfer to another school, as prevailing/set out in no. 6 of the GRC. Additional disciplinary measures may be applied involving parents and guardians in school activities, providing individual or group counselling to mediate conflict situations; holding counselling meetings for parents or

guardians etc. Obviously, GRC policies and procedures must meet the requirements of due process.

7. THE SCHOOL AND COMMUNITY MEDIATOR-TEACHER

The major player in the School Protection System is the School and Community Mediator-Teacher, a new position in the public schools since 2010, under an exclusive workload regime. The Mediator Teacher is responsible for introducing the GRC in the school as well as mediating and implementing restorative justice practices. This approach greatly differs from simple punishment without accountability and without repairing the harm caused. It also spreads a culture based on the consensus of the people involved. Thus, training teachers to act as Mediators is an important step which includes, besides the pedagogical content, methodologies of alternative dispute resolutions, and preparing the teacher to better understand the rights of children and adolescents. Likewise, introducing and implementing the Mediator Teacher Program in the schools are crucial for its success and has been gradually piloted in schools on a voluntary basis.

To assess the results of the Mediator Teacher Program, the Department of Education, in 2011, carried out a survey, which was sent out to 830 school principals, deputy principals and school coordinators. From the answers, it is possible to state that the program has been well-accepted among the school communities surveyed. What is more, there is a point of inflection in the curves regarding the school record of conflicts. Before the implementation of the program, there was an upward trend; afterwards, there was a downward trend in violence.

Regarding the acceptance of the program, 25% of the respondents said it exceeded their expectations, 46% said that it met their expectations, and 17% said it is still too early to judge. When asked if they wished Mediators to continue working, 90% answered yes. As a whole, 88% of respondents said the contribution of the program in improving the environment was good or very good, compared to 5% who said it was poor or very poor. Concerning teaching conditions and learning conditions, 76% responded the contribution of the program was good or very good, whereas 9% said it was poor or very poor. Concerning student performance, 75% of the respondents said that the Mediators' contribution was good or very good, against 9% who said it was poor or very poor. Nonetheless, regardless of the highly positive assessment results of the program, as a means of bringing peace to schools, there are still many practical problems to be solved, particularly in terms of planning and management since the program is on an entirely voluntary basis. Another critical point is the lack of teaching staff in the schools, which implies the principal having to make a choice between the teacher working as a Mediator or inside the classroom. In some neighbourhoods the dilemma increases as the school is the sole public institution in the region.

8. CONCLUSIONS

The School Protection System consolidates a set of actions and methods that aim to prevent conflicts in the school environment. In this sense, school protection refers to a broad set of

factors that influence the process of teaching and learning. The System's main features are its systemic character, involving the local community, and the role of the Mediator Teachers and their commitment to restorative justice in the school environment.

In conclusion, while the school is a place where teaching and learning take place, it is foremost a public space where people gather and socialize. Thus, the school – more than any other institution – is a place where social protection and inclusion problems are likely to surface. The use of restorative practices has proven to be a reliable tool to reduce misbehavior, bullying, violence, and crime among students and improve the overall learning environment. This proves that the Brazilian legal system, though not formally expressing the use of restorative justice, allows for new approaches in dealing with violence including restorative justice itself.

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Endnotes

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2. The origins of the *best interest of the child* principle dates as far back as English feudalism and the need to protect the vulnerable from the Crown. It was received by American law in the 20th century and recognized by the Supreme Court in *Finley v. Finley* (1925; 240 N.Y. 429, 148 N.E. 624), with Justice Cardozo's winning opinion. In *Finley v. Finley*, after their divorce, the parents were battling for the custody of their children through mutual accusations of irresponsibility. The court's decision took into account the 'best interests of the child', regardless of looking into the responsibility of either mother or father. Cf. *Yale Law Journal, December, 1925*, Case note - *235 EQUITY-POWERS UNDER THE DOCTRINE OF PARENTS PATRIAE. Copyright © 1925 by the Yale Law Journal Company, Inc. Westlaw documents, 170902.
 3. <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1641450>; https://ww2.stj.jus.br/revistaelectronica/Abre_Documento.asp?sLink=ATC&sSeq=19423383&sReg=201100128232&sData=20111219&sTipo=5&formato=PDF
 4. Districts of *Cidade Tiradentes, Iguatemi, São Mateus, São Rafael, Jardim Ângela, Jardim São Luís, Capão Redondo, and Campo Limpo*.
 5. The School Protection and Citizenship Handbook was adapted from the School Managers Handbook from the State Department of Education of the Federal District, and the General Rules of Conduct for State Public Schools were inspired in the Discipline Code of the City of New York.

Assessment of Violence in Different Levels of Education in Nigeria

Francis Chigozie Moneke



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Francis Chigozie Moneke¹

1. INTRODUCTION

Crime and violence are very critical challenges to development everywhere in the world. According to the World Health Organization, an estimated 1.6 million people worldwide lost their lives to violence in the year 2000 only – a rate of nearly 28.8 per 100 000. Physical, sexual and psychological abuse occur in every country on a daily basis, undermining the health and wellbeing of many millions of people, in addition to costing nations vast sums each year in health care, legal costs, absenteeism from work or school, and diminished productivity. (WHO, 2004).

The economic costs of crime and violence are high. In about 60 countries over the last ten years, violence has significantly and directly reduced economic growth. It has hampered poverty reduction efforts and limited progress towards the Millennium Development Goals. Countries in Africa have become increasingly concerned with soaring levels of crime and violence. In the past decade, the continent has experienced unprecedented levels of economic growth, with over 4 percent per year (IMF, 2008). However, despite strong levels of economic growth, the region still experiences high levels of poverty, increasing inequality, rampant unemployment, a very high rate of population growth, institutional inefficiencies and chronic levels of corruption (Mukum, 2007). These socioeconomic problems have historically contributed to creating a fertile environment for issues such as conflict, crime and violence.

Nigeria is indeed riddled with pervasive crimes and violence or violent crimes resulting from deep-seated socioeconomic challenges and very weak institutions and legal frameworks. Violence as a social problem has permeated educational institutions in Nigeria thus greatly undermining not only the quality of education in the country but also severely atrophying the right to education because of the increasing number of people who drop out or shy away from school due to the inherent dangers associated with schooling in violence prone environments.

In the context of education in Nigeria, violence is not restricted to violent behaviors *simpliciter* but includes hostile and mere negative behaviours that are adverse or prejudicial to adequate and conducive learning environment, hence undermining the right of persons to freely participate in and benefit from a functional system of education. Accordingly, behaviours such as undue influence (resulting from the fiduciary relationship of teacher and student) or financial exploitation in the form of excessive tuition and other fees associated with education may well be classified as violence in education. Indeed, school violence wears many faces. It includes gang activity, locker thefts, bullying and intimidation, gun use, assault – just about anything that produces a victim (Volokh and Snell 1998).

2. TYPES OF VIOLENCE IN NIGERIAN EDUCATIONAL INSTITUTIONS

The types of violence that are prevalent in Nigerian educational institutions can be categorized as physical, or psychological (mental or emotional), sexual, or economic.

Physical violence: includes beating, pushing, punching, slapping, hair pulling, burning, cutting, hurling objects, stabbing, shooting, attempts at choking, any action that causes physical harm and, at the far extreme, murder.

Psychological violence: involves acts of harassment intended to degrade the victim, exert control over him/her, and stand in the way of his/her academic progress. Such acts include: mockery; discrimination; constant put downs and criticism; ridicule; indifference; death threats; harassment; intimidation; mind control and blackmail.

Sexual violence: involves subjecting a victim to sexual activity against his/her will and includes sexually abusing minors. It also includes inducing a victim to surrender to sexual advances in exchange for academic benefits or advantage (World Bank, 2011).

Economic violence: this involves charging of exploitative fees and other pecuniary demands that make education unreasonably expensive to an extent that may warrant some students to drop out from school, or adopt unconventional strategies to contend with the high cost of schooling such as stealing or prostitution.

3. VIOLENCE IN BASIC BASIC EDUCATION IN NIGERIA

In Nigeria, millions of children are still out of school. For those lucky enough to be in school, poor learning environment does not provide the quality education that would allow pupils to achieve their full potentials.

Many children of primary school age also continue to experience physical, psychological and sexual violence both in schools and outside of school. Child labour continues to be a real source of concern; while it deprives many children of opportunities for schooling and development, it is increasing rampant in Nigerian primary schools to find pupils used by their teachers as labourers, during school hours, to do all many of odd manual labours not in any way connected with school work such as farming, selling materials, baby sitting or running errands.

Although educational institutions should have the capacity to train and socialise children without exposing them to violence, corporal punishment is still considered as a positive educational tool. Thus hard labour like grass cutting or farm work and canning as still very much acceptable practices in Nigerian primary schools, especially public schools, because of the traditional adherence to the principle of *spare the rod and spoil the child*.

Reliable data on violence against children in Nigeria is scarce because violence is often not reported as it occurs mostly within the context where it is regarded as ‘normal’ such as within the school setting, family circle or behind the privacy of homes. The predominant cultural belief is that children must be submissive to elders therefore behaviour not in conformity with this is punished. Indeed there is a generally high level of acceptance of school violence and domestic violence against children even amongst law enforcement officers and court personnel.

4. VIOLENCE IN SECONDARY EDUCATION IN NIGERIA

One of the major causes of violence in secondary schools in Nigeria is peer victimization. Peer victimization, also known as bullying is a common experience among school children with 10 to 15 per cent of children experiencing it (Popoola, 2005).

In Nigeria, peer victimization among students is often not given very serious attention by school authorities to the worry of parents whose children are victims of such victimization. The tendency therefore is for such parents to encourage their children and wards to brace up to the challenge and stand up strongly against the bullies and to bully them in return. This situation creates a lot of tension in the school environment and reduces the feeling of school connectedness among many students.

Peer victimization may be physical, as in fighting, punching, pushing, kicking, hitting, strangling, beating, physical assault and direct vandalism. However, peer victimization more often takes a non-physical form. Non-physical victimization includes a wide range of behaviours such as verbal abuse, hurtful name-calling, emotional intimidation, persistent teasing, gossip and racist remarks as well as social exclusion. Research has shown that peer victimization could severely impact on the social and psychological well-being of its victims. Indeed, the studies have further shown that students who are victims of peer victimization are at the risk of developing severe psycho-social adjustment and emotional problems, which may persist into adulthood (Popoola, 2005).

Another key purveyor of violence in secondary education schools in Nigeria is the incidence of gang groups. Gangsterism is fast becoming a serious security problem in Nigerian secondary schools. Students belong to different gangs either as a means of ensuring their own security, as a window for exhibiting youthful exuberance, or as a means of intimidating fellow students, their teachers or members of the larger community. Gang members are notorious for engaging in violent activities inside or outside the school environment. Some of their common exploits include fighting, stabbing, stealing, armed robbery, sexual harassment and rape. The risk factors that precipitate gangsterism include experience of child abuse, lack of parental care, poor or lack of school connectedness, peer victimization, drug or substance abuse, insecurity in school, religious extremism, etc.

Sometime in 2010 an Islamic gang group in Government Day Secondary School, Gandu, Gombe State, Nigeria beat to death one of their female teachers for allegedly throwing away the holy Qur'an. Oluwatoyin Oluseesin, the deceased teacher, was invigilating a group of students taking a test on "Islamic Religious Knowledge" and she saw a student attempting to sneak in some books into the testing room. She took the books and tossed them away without knowing that a copy of the Qur'an was among the books. Unfortunately for her such ignorance was not an excuse in the eyes of the delinquent gang, neither was the examination malpractice sought to be prevented by the teacher a mitigating factor. This was a good example of how the menace of gangsterism has become a serious threat to education in Nigeria especially at the secondary school level.

Youths who indulge in violent and delinquent activities more often than not associate with delinquent peers. At adolescence, this association usually become formalized, leading to gang oriented violence and delinquency (World Bank, 2005). In Nigeria this formal breeding of gang groups, as it were, is wont to happen in public or government schools where gangs have a profound influence due to weak administrative and disciplinary structures in such schools.

Some of the characteristics of gangs are the following:

- Gangs are primarily a male phenomenon,
- Gang members typically are in their teens or early twenties.
- Gang members tend to come from economically deprived areas, and from low-income and working-class urban environments.
- Gangs are associated with violent behaviour and crime, because as youths enter gangs, they become more violent and engage in riskier, often illegal activities. Gang members are at a greatly elevated risk for engaging in different type of crimes, including homicide and robbery (World Bank, 2011).

There has been a growing concern for the increasing level of student unrest, sexual victimization, violence and gangsterism in Nigerian secondary schools. The dimensions which these problems have assumed and the inherent danger which they portend for the educational development of the nation make it expedient for more critical research into the problems, which may well set a pattern for subsequent interactions involving victimization and violence in the wider adult society (World Bank, 2011).

5. VIOLENCE IN TERTIARY EDUCATIONAL INSTITUTIONS IN NIGERIA

In tertiary educational institutions in Nigeria, comprising of Universities, Polytechnics, and Colleges of Education, the paramount source of violence is the ubiquitous presence of cult groups. Cult groups are higher levels of gang groups found in the secondary schools. Cultism has spiritual undertones in that it involves various forms of initiation rituals, blood covenants, oath taking and such other sinister practices. Major cult groups in Nigerian tertiary institutions include: the Pyrates Confraternity, the Buccaneer Confraternity, the Eiye Confraternity, the Neo-Black Movement of Africa, the Vikings, the Mafia, the Daughters of Jezebel, and the Black Braziers (Oguntuase, 1999).

These groups, some of which enjoyed histories of noble formation and patriotic visions, have since degenerated into agencies of violence and insecurity both in the campuses and in wider society. They engage in frequent gun battles with one another often leading to numerous fatalities, they also engage in armed robbery, cultists are often used as political thugs by power hungry politicians to assassinate political opponents or rig elections in very violent ways. Cult members are laws unto themselves in the tertiary institutions, they intimidate lecturers and other school administrative personnel, and they are often fingered for acts of rape and gang rapes. Even with the emergence of Anti-cult groups in several tertiary institutions in Nigeria, the menace of cultism is still very much prevalent.

Sometime in 2011 a group of suspected cultists numbering five attacked a female student of Abia State University, Uturu in her hostel room and gang-raped her. The perpetrators went as far as recording the rape incident and uploading same on YouTube. This caused a great deal of national and international outcry against sexual violence in Nigerian tertiary institutions. Till date the perpetrators of that particular crime have not been apprehended. There have been other similar cases of gang rape, some of which are hushed up in the interest of the victim given the cultural taboo that goes with being a victim of rape in Nigeria.

Another aspect of sexual violence that occur in tertiary institutions in Nigeria is usually occasioned by lecturers who often take advantage of female students in order to pass them in examinations in which such students apparently failed or did not do well. This is one method of general victimization of students by professionally perverted lecturers. Such lecturers often make demands of money from students especially the male one who cannot offer them sexual gratification. Hence, the demand is usually in cash or kind for male and female students respectively.

An aspect of violence that is fast assuming alarming proportions in Nigerian tertiary institutions, but ironically largely neglected, is economic violence. Economic violence in this context includes extortionate tuition fees, admission acceptance fees, Students union dues, faculty dues, departmental dues, compulsory textbooks and handouts from lecturers, etc. These multitude of fees often make access to education almost impracticable for many students. Hence, many drop out before they can complete their education, many more are not able to take up their offers of admissions, while a lot more do all manner of odd things just to remain in school including prostitution, sleeping with lecturers, stealing, identifying with cult groups, etc. Viewed in this wise, economic violence is arguably the root cause of all other species of violence in Nigerian tertiary schools.sed Crime and Violence Prevention Printable Course Material.

6. GENERAL RECOMMENDATIONS FOR VIOLENCE PREVENTION IN NIGERIAN SCHOOLS.

Effective youth violence prevention programmes are those that:

Are provided across multiple levels of risk,

Begin early,

Involve families as they are the most constant influence in children's lives and are particularly important during the early years when patterns are developing,

Identify youth most at-risk for violence and offer specialized and tailored services for these youth,

Build assets and encourage healthy development, which is the best antidote to violence and problem behavior (World Bank, 2011).

7. INDIVIDUAL LEVEL PROGRAMMES

Universal, high-quality child care and preschool education for young children,
Social skills and problem-solving interventions for primary and secondary school Children,

Life skills training and civic education for adolescents, and university students (World Bank, 2011).

8. PROGRAMMES FOR FAMILIES, PEERS AND MENTORS

Home visitation programmes for parents of infants and young children,
Parent school partnerships that encourage parental involvement in children's education and learning,
Programmes and policies to prevent child abuse and maltreatment,
Parent training programmes, particularly those that help families utilize resources,
Gang prevention programmes that combine prevention, intervention and suppression.
Mentoring programmes that provide role models for at-risk youth (World Bank, 2011).

9. SCHOOL AND COMMUNITY PROGRAMMES

Improving the quality of education, including universalizing secondary school,
Emphasizing cooperative learning and student/family engagement,
Developing community policing programmes that are sensitive to local conditions,
Building infrastructure within communities to provide opportunities for youth and families to engage in positive activities (recreation, learning, employment),
Building physical and social capital in communities through collaborative efforts (World Bank, 2011).

Endnotes

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On Violence and Education and Peace and Tolerance education:Identification, Projection, Projective Identification in Social Processes of Education

Anneliese Menninger

On Violence and Education and Peace and Tolerance education: Identification, Projection, Projective Identification in Social Processes of Education

Anneliese Menninger

We have to consider patterns of social and personal behavior like Identification, Projection and projective Identification in social processes of education as the dependent variables, because they are irrational and they are the unconscious part of us. The voice of ratio is low, as Freud said.

I tell you a story about it:

There is a shipwrecked man, lived many years on a desert island. He was an ambitious man, who proceeded to do the best he could on the island, building himself a house and some other buildings. Finally a ship comes along and saw the man's distress signal. An officer and some crew members arrived and wanted to take him with them. He was pleased and asked them first to see what he had built, took them on a tour. He showed them his house and they were impressed, then he took them to a very fine hut, he had constructed, saying, this is my holy hut for worshipping. They were equally impressed and then he took them to another place and said "And this is the hut, I would not set foot in, even if my life depended on it." It seems as if we need this way of thinking, if we need to split in good and bad, the former education system is all bad the new is all good. If we can make the other/the others to be the bad one(s), we can be the good. A lot of archaic behavior between two people or two groups, the majority group and the minority group, can be understood as a provoking of the other to be the bad one.

We have to accept that the split between two groups is not necessarily something terrible. They do represent different ways of keeping tradition. So we face the problem within politics, religion, education, within nations and between of keeping our identities and letting the other keep theirs, coming to terms with one another, building bridges. We call this peace and tolerance education.

We should overcome old hats, but there are ways to overcome the former here and there dusty authoritarian thinking in social groups, or social institutions in a tolerant way of integrating the former into the new. This means consoling, stabilizing society on the long run.

Allow me now to begin to give you insight into the main psychic mechanisms in social processes- especially in educational processes. Freud's first published reference to projection deals with the distrust of other people becoming a replacement for self-reproach, a somehow paranoid mechanism in our daily life, in social interactions, in institutions, inner self-reproach turns over in reproachfullness towards the other, the other people. There is a continued connection between the biographic social patterns of the person who projects and what is projected into the other.

Certainly we do not find it difficult to observe the workings of projective mechanisms in social processes, in our everyday life. We tend to blame others, not always quite rationally, and one part of our self is still aware of it. All those others seem to want to "do us harm". It is almost easy to observe projection in group processes of a rigidly structured organization which does not allow for much direct expression of negative feelings. Thus it is often the leading person of the group, the teacher, upon whom aggressive tendencies and wishes are projected, so that he is seen as a threatening and in general feared figure. This projection occurs presumably because of the rigid hierarchic structure and the psychological implications of those authoritarian structures we meet in education.

There is another social area, quite familiar to us, where the projection of aggressive tendencies can be observed. I mean of course our professional societies and most of all our educational institutions. In these, where emotionally intense relationships exist for example among teachers and pupils, who care about what the other do or not and therefore argue and fight about it- projective processes necessarily take place. Thus we often find a member of any social group- could it at times be ourselves- regarding another member, with the other opinion, as "the villain". The one who finds himself viewed as the villain will often in turn see his antagonist very similarly. And as each thus views the other, he finds his own self-image enhanced by having an archenemy. In this way the projection of hostility and the creation of an enemy -in organizational as in other social processes provides two narcissistic benefits. We are as good as the "others" are bad; and our importance increases because we have archenemies.

This view on each social, educational processes in our professional and organizational institutions yields a picture which I suppose is not unfamiliar to us.

Let us look now on "identification". Identification occurs through various stages of development and is an intrinsic part of our relationships to others, especially in educational processes, which live from it.

Temporary identifications occur in us wherever we are. Some narcissistic gain we all experience through feeling at one with a person to whom we project our own wishes and affects. Clearly teachers frequently serve as the target for the projection of a variety of wishes and affects. Which the projector cannot directly express or even consciously tolerate within himself. Leaders are also recipients of projected superego material, which means how he/we should be in an idealized way. Followers also delegate to their leaders the authority to judge what is right and what is wrong, what is admirable and to be strived for, and what is not. Those among us who have difficulty in identifying with their parents, family find it much easier to project unacceptable feelings and wishes upon others, upon their teacher, the leaders of the class, or isolated class mates, former teachers, the far away ministry or even former educational systems.

In my way of summary, I would like to suggest that the projective mechanisms, the mechanisms of identification and projective identification - we have been discussing - can help us to clarify our thinking about social educational groups as well as about individuals.

We will expect to see a consistent interaction between inner and outer reality in all psychic mechanisms. Indeed the psychoanalytic conception of relationships and unconscious processes makes such a connection inevitable.

The meaningful other and the environment we are part of are always directly or indirectly involved in intra psychic mechanisms, they have a constant impact upon the individual and the social group. What the discussion of their psychic mechanisms and social patterns has drawn attention to is how much of what we do in relation to others is connected with the way we dispose of aspects of ourselves and of our social group we belong to and how there are important processes of moving the representations of these around in different situations - if we do not reflect. Projection, Identification and Projective identification are unconscious psychic mechanisms. They amount out of anxiety-situations and are the basis of inner anxieties in a society which changes.

Those mechanisms reflect the fact that the ego makes every effort to maintain a minimum level of safety feeling, and well-being. Familiar and constant relation to persons and constant things in a child's environment carry a special affective value, they are known, familiar to the child. The need of constant presence of familiar persons and a supporting environment means to reestablish a safe psychological relationship, maintaining a minimum level of safety feeling like a frame within any development of relating to the self and to the other on a sufficient level of narcissistic self-cathexis might grow. Joseph Sandler (1987), From Safety to Superego, p 262f, said: "From the point of view of learning, it would seem that the maintenance of safety feeling is the most potent reinforcing agent after a certain level of development has been reached. ... The processes referred to are complex and continuous - every time one sees or does something new, a new structure is formed." And "we take the view that no (inner) structure is ever lost".

I thank all the members of the World Conference on Education for their interest and inspiration.

Educational Environment and School Culture

Per Kristensen



Educational Environment and School Culture

Per Kristensen¹

This article opens up the possibility to see the educational environment as part of a school's overall culture. The innovative school where the school's entire environment supports creativity, initiative and training in forming relationships and strengthen the child's personality, is a strong element in the Danish school tradition. This applies to both the public and the free schools.

Focus on children's and young people's educational environment means that the school's core tasks are changing from creating measurable academic skills and knowledge to a broader concept. In this broader concept the school will work diligently to ensure that children and students live in an environment that is safe; that it feels safe for the individual child and student and that the environment provides the best growing conditions for the individual in terms of academic, personal and social development.

In order to identify the good learning environment, it is natural to look at the school buildings, teaching, playing, classmates, leadership, teachers and several other factors. In order to approach good learning environment the pupils and students must be involved and their points of view and their wishes must be taken into account.

Although children do not experience their environment in school is divided into the dimensions of psychological, physical and aesthetic environment, it still makes sense to use these three dimensions when we indicate ways to improve the educational environment.

So ask the children about what they see and what they want, listen to their diversity of ideas and notions - and include this wealth of knowledge in the process toward a good learning environment.

The concept of "school culture" is an interdisciplinary reflection of the many factors which individually - and particularly interact with each other, - it is the foundation of the educational environment in a group, in a class and in the school as a society. My knowledge of school culture, how this culture is founded and how it can be crucial for school work and school quality is based on experience and numerous interviews with the children, their parents and teachers. It is based on a lot of "good stories" which are reports from classes where the children learn, are developing and thrive.

A school culture should be based on a set of values that are the foundation of a school's identity. The core values must be widely accepted by parents and school staff to make an impact. Children must be able to understand it. Therefore, it is probably a good idea to spread the process in which the value set is created and formulated, in addition to the whole school - even among parents and staff.

The core values might include values such as:

- Honesty
- Mutual respect
- Reliability
- Humor
- Personal courage
- Openness
- Immersion
- Curiosity

The values need to be separately elaborated and explained.

In a vibrant school culture these values are translated into and incorporated in the patterns formed of children playing and socializing with both adults and other children. And the values show up in children's interaction with the physical environment, - playground, - materials, etc.

"School Culture" can be understood as an overarching and unifying concept. One must require that "good school culture" is locally based, accepted and wanted. The good school culture must leave its mark throughout the school and in school life. Even when a class leaves school buildings, is on tour or on excursions. It may be felt when the new parents and children for the first time meet school. It must be integrated in the school's traditions, buildings, interior design, decoration, in playground construction, etc. It must be recognizable in the working environment for school staff.

A few examples of "arenas" where school culture must be appreciable:

- *The adults meet with each other* - as parents, at the school/home interviews, in the dialogue in the staff room, in the dialogue manager/parent, in the dialogue between different groups of employees, etc. It is essential that the adults assume to be role models - because they provide a framework for children's school.
- *The adult's meeting with the children* – at the playground, in teaching, in after school care. The adults are aware, they participate or intervene. Students experience the adults as visible and as carriers of the school's values.
- *Children's approach to teaching* - their understanding of what it is to learn, how teachers can be helpful, and which positive use they may have in peers, materials, etc.
- *Teachers' and educators' approach to learning* - there must be no discrepancy between the values and norms of a math class and an art class, which is not to be confused with a requirement that all adults should act similar to the children.
- *The children's manners with each other* - in games and in different organizational forms of teaching.
- *The school leadership* plays an important role in ensuring that conversations about values, goals and targets are spread out over the school in its entirety.

Denmark is the only European country with a special law for education and children's

environment. The law requires the individual school or child care center to prepare a written report of the environment, including an action plan to improve the educational environment. The law has been in force since 2001 and it states that children and adolescents have the right to a good learning environment which ensures that teaching can take place of safety and health. The law has no penalties attached. The whole idea behind the law is to create local awareness on the schools environment, and to make progress through dialog.

Endnotes

1. Per Kristensen is former headmaster for private schools in Denmark. He has been active in boards for private school organizations from 1985. He was the chairman for the Danish umbrella organization for independent schools 1992 to 2009. Since 2001 he has been the Secretary General for ECNAIS, European Council of National Associations of Independent Schools. He was member of the board for the Danish Institute for Educational Environment (www.DCUM.dk) from 2001 to 2009. Today Per Kristensen is the chairman for the “Det international RÅD”, through which Danish School organizations for independent schools are connected to ECNAIS.

Dimensions of Safety in Educational Settings. Lithuanian Case

Vaiva Zuzevičiūtė



Dimensions of Safety in Educational Settings. Lithuanian Case

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1. INTRODUCTION

Safety has many dimensions, among those: legal dimension, educational setting, safe neighbourhood and safety at home, overall positive and balanced legal system and regulations at national level; also, global trends should be considered. Also, the economic stability and the maturity of democratic state have a significant impact; and therefore, it is a difficult task to achieve with so many variables influencing a phenomenon.

In this paper some of dimensions are analysed, because analysis of all the dimensions (and probably, there might be more of them, would exceed the scope of this paper. Therefore the **object** of this paper: some of the dimensions of safety of educational setting. The aim is to discuss main characteristics and contents of the two chose dimensions of safety of educational setting. **Methods** of reference analysis (including scientific literature and document analyses), were employed for the task.

2. DIMENSIONS OF SAFETY IN EDUCATIONAL SETTINGS. LITHUANIAN CASE

Safety, has many dimensions, among those: legal dimension, educational setting, safe neighbourhood and safety at home, overall positive system and regulations at national level; also, global trends should be considered.

The contemporary world, also referred to as late modernity (Giddens, 2000), reflexive modernity and post-modernity (Lyotard, 1984), is characterised by insecurity, falseness, unpredictability and seclusion. In economics, falseness and insecurity are caused by the interdependence of national economies and political measures that are being utilised in order to sustain competition and hence survive. These profound structural changes are relative to the restructuring and distribution of labour, but also to the still growing consumption of resources (Edwards, Ranson, Strain, 2002; Jarvis, 2001).

A shift in political orientation (salient manifestations of neo-liberalism over the past decade) replaces ideas of emancipation, which dominated since the Second World War, with economic topics of „preservation of workplaces“. This shift is linked to a right to choice and flexibility advocated at the political level which is the base of the effectiveness of socio-economic activity (Edwards et al., 2002, 503). However, this evident growth of effectiveness hides the not so evident, but nonetheless widely manifested feelings of falseness and insecurity. It is when the right of choice and flexibility becomes a given, that traditions and social structures within which we used to feel safe and tell right from wrong, disintegrate.

Global politics is an arena of constant tension and conflicts, just as it had been up to mid 20th Century (Polanyi, 2002). Only some regions of the world are able to enjoy temporary moments of peace (i.e. Western Europe, North America), but even in this case, not even a decade has gone by since the Balkan war (which often crossed the line, turning into genocide). The Middle East is a spot of constant tension. Next to the ceaseless unease in

India and Pakistan, also in China and Taiwan, unforeseen violent outbreaks in other countries, such as Rwanda, which had been considered relatively stable (the 10th decade of the 20th century witnessed a genocide here, that resulted - over a period of three months - in deaths of almost 1 million peaceful inhabitants, infants, senior citizens and pregnant women) are to be evaluated with more scrutiny than outbreaks in our countries, which have been in relative peace for 60 years now.

The foundations of globalisation were set during the age of enlightenment—a time of modernity that cultivated such basic values as change, innovation, economical and technological effectiveness, mind and rationality, empiricism, science, universalism, progress, individualism, tolerance, freedom, worldliness and orientation to results. Globalisation is defined as a process, expression or phenomenon that takes place on a social plane and encapsulates the diverse activity domains of various social entities and their environments and manifests through the intensification of their ties, increased mobility and other characteristics on a global scale.

Some of the features of globalisation mark positive changes, such as the growth of capital, unrestricted workforce mobility and the possibility of reaching a market without middlemen. There are changes, however, that increase anxiety and highlight the risks involved, such as collapsing markets, the dominance of economy over politics, and the change from a market economy to a “market society”. Effective production and providing of services are concurrent with ecological issues. Long-term sustainable development is often sacrificed in the name of efficiency, as only results or temporary consequences are evaluated. The inequality between rich and poor nations is increasing, social inequality among people is deepening, and the government’s influence over education as well as social and health protection is weakening. In this way, globalisation becomes characteristic to all aspects of modern life: politics, economy, culture and education.

Globalisation can also be understood as a synonym for openness that determines the birth of the concepts “global person” and “global culture” and, at the same time, cultural levelling and the rejection of nationalism. A threat to the preservation of national language and culture, and also to learning of other languages, arises in this context. The processes of globalisation give way to the prevalence of a valueless and mass-oriented culture along with other negative phenomena, which pose a threat to the identity or culture of a small nation.

In this context it is clear that small measures, attention to class and each individual in class is of utmost importance in order to create a safe environment for children and young people. The crossroads of global changes and an individual’s learning process are sought in this paper, hence there is more detailed consideration of an individual’s capability of reasoning in an environment of uncertainty, anxiety and non-linearity. These are all characteristics of a postmodern world, where it becomes difficult to unambiguously identify influences of globalisation, which are complicated and intertwining forces that at times unify and at other times separate. For example, today we all agree that the rich should do more to aid the poor, but quietly wonder to ourselves as to why taxes are not decreasing in our countries. Riegel (1973, 1977) notes that mature reasoning is that which acknowledges alternatives and aids in choosing between them without additional stress and anxiety, which are already products of the contemporary world.

Ross-Gordon, Martin and Briscoe (1990; in Caffarella, Merriam, 1999) claim that for encouraging environment it is important:

- To value and nurture the characteristics of each group
- To modify the teaching methods used, adjusting them to learners' learning styles
- To give special attention to those who usually receive least attention
- To organise educational activities to accommodate the needs of learners, even if that would change regular procedure

Tisdell points out that the learning environment would be positive:

- each learner would have a possibility to reflect about himself/herself and others, and about the content and methods of instruction in that environment
- the other environment, a learner's working and living environment is taken into account during the learning process
- the changing needs of society are reflected upon in that environment.

Though dimensions of system and regulations, safe neighborhood and safety at home are of crucial importance, it would be impossible to analyse them to a greater depth in one paper, therefore, legal support and namely the recent document, will be at focus.

Recently, it was understood in Lithuania, that safety is at risk with too much emphasis on unreflected child's rights. It was understood that defending one child's rights, the rights of other members of educational interactions (child's peers, teachers) may be at risk. If someone's rights and safety are at risk, then the overall system leads to loss of safety.

At face of these developments, an Order Nr. V-1268 by the Minister of Education and Science of the Republic of Lithuania (August 28, 2012): '*Recommendations for the means of impact on misbehaving high school pupils*' was issued.

The document is aimed (let us quote): "Recommendations are aimed at helping a School's staff react effectively to the extreme cases of pupils' misbehavior and possible threat in order to ensure physical and psychological safety of the members of the School's community and (or) other individuals".

Recommendations for the means of impact on misbehaving high school pupils (further on referred to as Recommendations) are prepared for the high schools providing basic education as well as institutions providing vocational education and schools providing informal education (except for schools providing informal education to adults) (further on referred to as School).

Following concepts are used in the Recommendations:

Prohibited items are any items (or devices), products or substances whose usage is prohibited or limited by the law of the Republic of Lithuania or other legal acts in accordance with ensuring safety, health security and other societal needs. The list of prohibited items also includes items (or devices), products or substances that are mentioned in the School's inner policies manual or other documents that regulate everyday activities of the institution.

Misbehavior demonstrated by pupils is a type of behavior that endangers their own safety and (or) safety, health, psychological and physical security as well as property security of other individuals. Continuous, purposeful, aggressive, brazen behavior that destroys the process of learning and violates other individuals' honor, dignity, psychological and physical security also falls into the category of misbehavior.

Means of impact are actions performed by the member of the School staff aimed at terminating the pupil's misbehavior as well as at restoring learning atmosphere that is safe both psychologically and physically and is based on mutual respect.

Justified physical actions are described as actions that involve physical contact and are performed by a member of the School's staff on a misbehaving pupil. These actions occur when the member of staff seeks to stop the pupil's behavior that endangers his/her own safety and (or) safety, health, psychological and physical security as well as property security of other individuals (Article 4).

The document (Recommendations) provide a list of actions that might be undertaken in order to balance rights of a child and those involved in the situation: his/her peers, teachers, and even parent. Among the actions (Article 7):

7.1. change of the pupil's schooling place (Change of schooling place as a means of impact can be used upon the teacher's decision, when the pupil's behavior has an obviously destructive effect on the learning process during the class. After the schooling place is changed, the pupil has to complete tasks assigned by the teacher while being supervised by another member of the School's staff assigned by the principal of the School. He/she might also be given necessary educational help).

7.2. summon the principal of the School or an authorized person (Member of the School staff can summon the principal of the School or his/her authorized employee in order to terminate misbehavior of the pupil or a group of pupils. The principal of the School or an authorized person mediates in the process of solving the conflict between the teacher and the pupil or a group of pupils. He/she also helps the teacher to plan further means of organizing educational process for the misbehaving pupil(s) and suggest (or initiate) application of educational assistance or means of impact on the pupil or a group of pupils).

7.3. organize the examination of the pupil's belongings (If member of the School's staff reasonably suspects the pupil possessing prohibited items, he/she should immediately report about it to the principal of the School or an authorized person. Member of the School's staff and (or) the principal of the School or his/her authorized person all have a right to ask a pupil to demonstrate his/her personal belongings. Pupil's belongings cannot be examined without having his/her permission or in his/her absence during the procedure. If the pupil agrees to demonstrate his/her personal belongings, at least two School's staff members should be present during the procedure. Also, the principal of the School or an authorized person should be one of them. If the pupil appears to possess prohibited items, his/her parents (fosterers or caretakers) or at least one of them should be informed about that immediately. If needed, local police office has to be informed as well. If the pupil does not agree to demonstrate the belongings, his/her parents (fosterers or caretakers) or at least one of them are informed about the suspicion and are summoned to arrive to the School. If they do not agree to arrive or do not arrive until designated time, local police office is informed about the suspicion. Until individuals who have been summoned to the School arrive, the pupil should remain under supervision of the School's staff member, designated by the principal of the School).;

7.4. apply justified physical actions (this is the most strictly defined action, and Articles 23.1.-23.6, 24, 25, 26 are dedicated for the purpose¹⁾

The document emphasizes the need to apply means of impact with extreme caution: it is crucial to take into consideration special educational needs the pupil might have, state of his/her health, psychological state and other circumstances that might have impact on the

choice of the means and their application methods. It is also stated that means of impact defined in the Recommendations can only be applied when the School has already employed all other possible means and ways of delivering educational assistance (for instance, individual conversations with the pupil and his/her parents (fosterers or caretakers) or at least one of them have been carried out and have not produced desirable results (except for urgent cases, when the child's behavior threatens his/her own safety and (or) security of other individuals' lives, health or property) (Article 9).

It is evident that the Recommendations strive at balancing the rights of all involved participants in educational settings, therefore, prerequisites for safe environment in educational setting are better guaranteed.

3. CONCLUSIONS

Theoretical analysis of sources reveals that safety has many dimensions, among those: legal dimension, educational setting, safe neighbourhood and safety at home, overall positive and balanced legal system and regulations at national level; also, global trends should be considered. Also, the economic stability and the maturity of democratic state have a significant impact; and therefore, it is a difficult task to achieve with so many variables influencing a phenomenon.

In a paper it is possible to analyse just some of the dimensions and even then only few characteristics will be listed.

Safety in educational setting begins with pedagogical competencies, ability of teacher to initiate and maintain positive atmosphere, respect, appropriate pace of learning.

Legal frame for safety is very diverse, one of the most recent documents (Order Nr. V-1268 by the Minister of Education and Science of the Republic of Lithuania (August 28, 2012): *RECOMMENDATIONS FOR THE MEANS OF IMPACT ON MISBEHAVING HIGH SCHOOL PUPILS*) focuses and balancing the rights of individual child with the rights of all the participants in educational setting. Several means of action are being defined with an aim to provide all involved participants with guidelines for course of action in difficult situations.

4. REFERENCES

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Endnotes

1. Member of the School's staff can only apply justified physical actions if their purpose is one of the following:
 - 23.1. to prevent the pupil from harming him/herself or other individuals;
 - 23.2. to prevent or stop violent behavior the pupil demonstrates in regards to other pupils, members of the School's staff or other individuals;
 - 23.3. to prevent the pupil from leaving the facilities if this act could threaten his/her own security or safety of other individuals;
 - 23.4. to stop the fight between pupils if the pupil or a group of pupils does not pay attention to the School's staff member's verbal requests to stop the fight;
 - 23.5. to stop the pupil's actions that result in damaging of the property or if the pupil's actions threaten the destruction or damage of the property;
 - 23.6. to isolate the pupil who disturbs the order in the classroom or at the School event, if he/she does not react to the continuous requests to follow the norms of behavior. In this case the pupil is lead out of the facility (for instance, a classroom, hall, canteen, etc.).

Safe Educational Environment in Hungary

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1. BACKGROUND: THE CONSTITUTIONAL REGULATION AND INTERPRETATION

1.1. Right to education in the Basic Law

The right to education was an integral part of the historic Hungarian Constitution, which was in force from the founding of the state (AD 1000) until the end of the Second World War, when the Constitution of the Soviet dictatorship had taken place.¹ In its Article 59 of the constitution adopted in 1949,² included the right to culture and education, was modified in 1972, when the Bolshevik vocabulary was replaced by modern terms in the Constitution. This amendment was a milestone in the development of education approaching the contemporary meaning. In 1989 the Constitution was amended by the change of political system and the fall of the communist dictatorship and major provisions of the right to education remained the same with the previous text, only clarification of the text has been made.³ By this, the Constitution contained real democratic provisions.

On 1st January 2012 Hungary's new Basic Law came into force. After nearly twenty years of the Hungarian political changes the modernisation of the public law system has made a significant step. Besides the entering into force of the new Basic Law, the most important cardinal laws gained a new shape and modern content. Thus, in 2011 a new public education law⁴ and higher education law⁵ was adopted by the Parliament.

In the Hungarian constitutional system '[t]he right to education traditionally referred to schooling, which has different levels and forms that make different demands on the State. Recent elements have also been formed that can typically be evaluated among the state obligations to protect the institutions', such as maintenance of museums, public collections and libraries, or budgetary support given to theatres.⁶

As it is stated in the first commentary of the Basic Law on the same place 'Article XI of the Basic Law⁷ practically implements the provisions of former Article 70/F of the Constitution. A novelty regarding the right to education is granting that secondary education shall be free of charge. This was only mentioned earlier in the Act on Public Education, although it was obvious and self-evident as a condition of the fulfilment of compulsory education.'

The right to education *means a right* on the one hand. In a narrower sense it means the right to learn and to teach.⁸ The former is related to the quality and availability of teaching and equality. This is a subjective right of access to education, even free access to compulsory education. It means a right to have the freedom to choose a school as well as the freedom of someone to choose a religiously committed school. The latter access, according to the Constitutional Court, is accompanied by a protective right, i.e. the parents are not obliged to take their children to schools that are religiously and ideologically contrary to their convictions.⁹ The right to choose a school does not mean that the state shall guarantee tuition waiver in every chosen school.¹⁰ The doctrine of freedom of teaching is connected to the rights of teachers and the right to found an educational institution. In Hungary, educational institutions may be established by the State, the self-government of a nationality (minority), churches, civic organizations, and corporate or other persons, where the

permission of activity is acquired in accordance with the law.¹¹ The churches' role in education and the freedom of religion is detailed in prof. Schanda's previously study written, *inter alia*, for ELA.¹²

The right to education, on the other hand, *means an obligation* for both the state and the citizen. As to the state, it is an obligation to create institutions and protect this fundamental right, so to guarantee the possibility the access to education. The Constitutional Court stated that this obligation does not mean the State must guarantee education for all levels of education and for all ideology.¹³ In addition, it means the right to school establishment and maintenance, the obligation of an objective and balanced education, and the support for schools even if not state-maintained, but by foundation, church, or any other (legal) person.¹⁴ The obligation for citizens is to participate in compulsory education.

According to the Hungarian constitutional system, the 8 years of primary schooling is compulsory and free, the secondary education is free for citizens and universally available but not compulsory. The higher education is accessible to everyone bearing the right of free movement and stay in accordance with EU law and principles, according to his or her abilities.

The Basic Law have regard to the fact that Hungary has major *international obligations* as well. These are especially the International Covenant on Economic, Social and Cultural Rights (Article 13), the International Covenant on Civil and Political Rights (Article 18), UN Convention on the Rights of the Child (Articles 14.1., 28, 29, 31) and the European Convention on Human Rights (Article 9.1.), and European Charter for Regional or Minority Languages.¹⁵ These international standards concerned to all segments of the right to education. The practice of the state must be consistent with its international obligations, and controlled by the Constitutional Court on the one hand, and international organizations (UN, CoE) on the other hand.

1.2. Security and Safety in the Basic Law

The Basic Law repeatedly deals with the question of safety. On the one hand the National avowal states that 'We believe hurt the common goal of the Citizens and the State is to achieve a good quality of life, *safety*, order, justice and liberty.'

The Constitution thus recognizes the right to general safety that is valid for every citizen. It is confirmed by the Section Rights and Freedoms Article IV, which provides that 'Every person shall have the right to personal freedom and security.'

Security is a broad requirement, which means the physical, legal and moral-mental security as well. Therefore, the content of this principle is built up from more fundamental rights. It includes Article II (Right to Human Dignity), the aforementioned Article IV (right to freedom and to personal security) and Article XV, the equality clause.

The latter Article states that 'Every person shall be equal before the law.' Hungary condemns all forms of discrimination such as 'on the basis of race, colour, gender, disability, language, religion, political or other opinion, national or social origin, financial situation, birth, or on any other ground whatsoever.' It is important, however, that certain groups of the society are particularly protected; even the benefit of extra protection is also enshrined in the Constitution, the same place. Separate measures are granted to *children*, women, the elderly and the persons with disabilities. These measures are obligation to the state as it was

mentioned above at educational rights. According to education, these measures are set in specialized acts, see below on the compulsory and higher education.

One of the subjects of the protection are the children. Article XVI of the Basic Law, says that every child shall have the right to receive protection and it declares the highlighted element of care, as their “proper physical, mental and moral development.’ These are the key elements of safety, which subsequently, appear again in the laws on lower level. Children as students are in the same physical, mental and moral type of protection. This is of course in line with the UN Convention on the Rights of the Child, 1989, New York, to which Convention Hungary is a member state.

However, we shall mention that Article XVI does not regulate rights of the children in general.¹⁶ As the First Commentary says, “children, just like adults, are undoubtedly the subjects of fundamental rights. [...] Rights of children can also be understood as reasonable grounds for a kind of preferential treatment or even affirmative actions based upon their age.”¹⁷ Furthermore, it is important to mention that not only the state and the authorities are obliged to protect the children and the pupils, it is also an obligation to the society as well.

According to the practice of the Hungarian Constitutional Court, the fundamental freedoms cannot be limited generally, but only in that regard which is required for the protection of the child or the rights of others, applying the so-called necessity–proportionality test.¹⁸ And even no constitutional grounds can be named for a general limitation of a fundamental right of a child.¹⁹ A special case of the protection of children is stipulated for in Article XVIII para 1, when it prohibits employment of children.

1.3. Legal background

The most important provisions of safety are to be found in the Basic Law, as previously explained. Any further detailed provisions are regulated at a lower level in cardinal and other acts. The constitutional requirement of these laws are to be consistent with the Basic Law and with the international obligations undertaken by Hungary. Explicitly the UN Convention on the Rights of the Child is to be mentioned.

In 2012, parallel with the entry into force of the new Basic Law of Hungary, several cardinal laws have been made. Two of these are regulating the most important areas of education: one is on the national compulsory education the other is on the national higher education. These laws will come into force gradually, during 2012-2013, with respect to the academic years.

Further regulations are included in certain norms of *criminal* law (Criminal Code) and in *human rights and administrative* standards (Child Protection Act, Act on the Public Prosecutor, Ombudsman Act, etc.).

The government may be authorized by law to develop the details of these rules (technically in decrees), nevertheless, the presentation of any of these may go beyond the limits of this report.

2. ELEMENTS OF SAFETY

2.1. Human rights and their enforcement

Speaking about safety in education, in line with the presentation of the above cited constitutional rules, not only the sectoral rules of education must be applied, but all rights and obligations arising from the Basic Law as well. Safety means not only physical security, but also it relates to the constitutional rules. Therefore, besides laws of education, the rules on human rights, child protection, criminal law should be taken into consideration too.

It is similar in the field of law enforcement. The implementation of the safety means a co-operation between several public bodies of child protection, i.e. teachers, parents, schools, but similarly the police, the Ombudsman, the Public Prosecutor's Office and other professionals, as detailed below. The rights of teachers and students are explored in the next chapter in more detail, here the role of the Ombudsman and the prosecutors are to be mentioned.

Act CXI of 2011 is on the *Commissioner for Fundamental Rights*, who is exercising its functions (protecting fundamental rights) with the authority of the Parliament.²⁰ This cardinal law defines the tasks and powers of the commissioner, and states that the Commissioner shall do activity “affecting fundamental rights and/or the expression of consent to be bound by an international treaty’ (Article 2 para 2), and any further task of international mechanisms whether the Commissioner was designated. The cardinal law defines such groups of society (i.e. children, future generations, and minorities), who’s protection shall be paid a particular attention. This law also provides that the Commissioner for fundamental rights shall register a statistical summary of violations of the fundamental rights as fully as possible and to this register all other agencies dealing with protection of human rights are required to provide data. The Ombudsman reviews and analyzes the situation of fundamental rights in Hungary, evaluate the long-term plans and concepts, and propose legislation or international contract to recognize. He may initiate special actions at the Constitutional Court, contribute in the preparation of national reports to international agreements, and monitor the enforcement of their content in Hungary.

On the strengths of the ombudsman’s authority the First Commentary is rather clear: “[o]mbudsmen, due to the flexible nature of their proceedings, may concentrate on the relationship between an individual and a public or private body being effectively in a powerful position, leaving out of interest the origin of this power. Ombudsmen are helped by the stabilisation of the substantial content of rights by international documents.”²¹

The criterion of the Ombudsman’s assessment is defined as the infringements “should be in relations with the constitutional rights”.²² This criterion will constitute the boundary between the process of the Commissioner for Fundamental Rights and the Ombudsman of Educational Affairs, which will be presented in the section *Institutional Protection of Rights*. The former requires violations of human rights, while latter deals with educational violations. This is confirmed by their organizational status as well: the former is specialized parliamentary monitoring body, the latter is a government official under the control of the minister.

Article 1 Para 2a of this cardinal law presents the most important task of the Ombudsman to this report, that is “in the course of his or her activities the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings *ex officio*, to the protection of the *rights of children*.’ Child protection extends to the protection of pupils in the practice of the ombudsman, however, not in the assertion of rights in the field of education, but in the general field of human rights. We may recognize this practice in the booklet issued

by the Office of the Commissioner for Fundamental Rights in 2011, titled "Children's Rights Project".²³

This booklet reports a summary of the Ombudsman's inquiries, *inter alia*, on private student's legal relationship, the pre-school care of autistic children, and on pre-school free of charge services.

Since 2008, the Ombudsman maintains a website for protection of children's rights, which contains not only information, but also provides an interactive interface for everyone.²⁴ The usefulness of this initiative is demonstrated by the fact that besides the traditional treatment of complaints, in two years' time the site received about 140 questions from children and parents both. Typical questions were among the problems of behaviour in school (teachers "roaring"), duties of children, smoking, pornography available on the Internet, school policy, school punishment, classification, etc..²⁵ In many cases, the Ombudsman noted that the phenomenon appearing in school is known, however, the salvations of these are belonging to rather technical, educational, and not fundamental law questions. The Ombudsman believes that "the children shall be taught by us, the adult members of society to live with and not to abuse their rights. There is a responsibility of the parents, the pedagogues, and in general all adults who have contact with children."²⁶

The educational functions cannot be found among the powers of *the public prosecutor*. This institution, however, is necessary to mention indirectly, as to the competence regarding children is adequate to school-age children too.

The prosecution service has duties outside the criminal law as well in Hungary.²⁷ Child protection is a special sector, which affects both penal and non-penal areas. The powers of the prosecution service is regulated both the Act CLXIII of 2011 on the prosecution service and other special laws. The new Basic Law of Hungary emphasize that the prosecutor is a contributor to the jurisdiction both in its criminal and non-criminal law (protection of the public interest) tasks.²⁸ The new law breaks with the previous regime and restrict the former almost unlimited discretionary right of the prosecutor to investigate. This new regulation is now consistent with legal certainty. The public prosecutor in order to restore the rule of law – in the area of child protection too – primarily may initiate litigation before the court and other administrative procedures at administrative authorities on the first and second instant.

With regard to the outstanding importance of children's rights the prosecutor may control the legality of the child protection service's activities. If a violation of law is found the prosecutors may call out for restore legality. If the head of the institution does not agree, may contact his superior institute, and at the same time, may propose to postpone the planned measures until the negotiations are going on.

These tasks of the prosecutor are in line with the international standards, particularly the UN Convention on the Right of the Child Article 40.3.b.²⁹ The prosecutor has to take all legal measures in minor's cases to avoid criminal court procedure if the legal conditions for that are exists and also he has to initiate proceeding at social services to take measures for child protection. All the measures will be taken by social services, of course. During the investigation and prosecution stage of the procedure the prosecutor has a view of endangered circumstances of the minor (e.g. the crime was committed together with parents), so this rule obliges the prosecutor to initiate measures with the aim of child protection. This kind of action of the prosecutor is well known in Western Europe as well.³⁰

2.2. Safety of children in schools

The system and general rules of child protection is coordinated by Act XXXI of 1997 on Protection of Children and administration of guardianship. The Convention on the Rights of the Child, adopted on 20th November 1989, was promulgated in Hungary by the Act LXIV of 1991, which led to the creation of the abovementioned regulation. Just at the accession to the Convention the Parliament by its resolutions 47/1991. and 55/1992. called on the government to ensure the coherence between the Hungarian legal system and the provisions of the Convention. In 1995, the Government has adopted the conception of the protection of children and social guardianship.

The legal basis for the protection of children is created by abovementioned provisions of the Basic Law. Thus, the constitution allows the state a very large scale of regulation in this field that is thematically restricted (or guided) by the Convention. These regulations are to determine the structure of the system, the principles of organization, and the regulatory standards for certain minimum activity.

The aim of the Child Protection Act is to lay down the basic rules, to increase equal opportunities for the children, where the State, local governments, and natural and legal persons are provide assistance to the children by taking predefined measures and actions; and to help exercise rights and interests, parental performance of duties; as well as *prevention and elimination of the jeopardize of the child*; the substitution of the missing parental care, and help the social integration of young adults.

The Child Protection Act defines the notion of child care, child welfare, children's rights, the meaning of *jeopardize*, and the child's relatives. Child care is realized throughout a unified system, which includes both voluntary and regulatory measures. The welfare of the child is in accordance with the Convention. The definition of *jeopardize* is a cardinal part of child protection, especially when risk detection and indication of the tasks are implemented by various bodies and individuals, such as nurses, general practitioners, *educational institutions*, *educational counselling*, family support services, police, the prosecution service and the courts.

Chapter 2 of the Child Protection Act lays down the scope and actors of the child protection services and the upgraded child welfare administration. The Act identifies other sectoral activities relating to the protection of children. Such functions are performed, for example, by the school.

Within "protection" beyond the abovementioned duties the financial protection shall be created too. One of the means is an extraordinary child protection support, which can be given for families with children in an extraordinary period of life. The law specifies particularly those children who have come into an extraordinary situation because they need help in schooling after foster care.

We may clearly deduce from the text of the Child Protection Act and its case law that nowadays the state pay more attention to school-age children. Among the rights of children in the Act mentions that "the child has the right to grow up in a family environment ensuring his or her physical, mental, emotional and moral development, health and wellbeing." (Article 6 para 1.) In addition, "the child has the right to receive protection against environmental and social impacts jeopardizing his or her *development*, as well as against a health hazards." (Para 4) "The child has the right to have his or her *human dignity* respected and to be protected against abuse (physical, sexual or psychological violence), the neglect and the information nuisance. The child shall not be tortured, corporal punishment nor other cruel,

inhuman or degrading punishment or treatment.' (Para 5) And "the child has the right to access media that increases the development of appropriate knowledge, and the Hungarian language and culture, and to be protected from harmful influences, such as hate speech, violence and pornography.' (para 6)

The protection of all these fundamental rights is, on the one hand, a responsibility of the state that is, *inter alia*, performed by the schools. The Article 11 para 1 of the Child Protection Act says the protection of children's rights is an obligation for every natural and legal persons who are in connection with the children's education, care and administration of their affairs. A uniform system is established by the Act identifying which bodies are taking part of the child protection system (Article 17). These are the following thirteen types of bodies: health care providers, the family support centre, the educational institutions, the police, the public prosecution service, the court, the probation service, organizations for victim assistance and compensation, the reception center for refugees, social organizations, churches, foundations, the employment authority.

The *Hungarian Institute of Educational Research and Development*³¹, which is going to be presented in the last chapter of this report, publishes an analysis year-after-year on the Hungarian education and within the internal relations of students, their media consumption habits, and also about their aggression. So far, the last analysis was published in 2011 and reports the year 2010 issues.³²

Analyzing the students' media consumption habits *use of the Internet* was found in the first place. Two-thirds of students have a personal profile in a community portal.³³ In general we can say that "the greatest importance have gained by the Internet contact and content sharing systems."³⁴ In Hungary the school's responsibility and obligation to filter the pornographic and extremely violent content of the reachable internet sites on the equipments used on the school's IT network. However, it should be noted that more and more students use their own Internet access, where the limitation of content cannot be reached by the school, obviously. (The teacher may, for example, limit the use of these cell phones, tablets during the classes.) In such cases, the above-mentioned co-operation between school and parents is emphasized, where the school can indicate the problem to the parents.

The *school psychologist* is another element of the safe educational environment. In cooperation with the school's staff, it's the main tasks are the examination of the process of education; screening and orientation; individual and group sessions aiming at exploring and developing; consultations; and to explain and transfer his or her psychological knowledge. The school psychologist is employed by the school; the responsibilities are included in the school's Organizational and operational rules; the supervision is obligatory; and he or she is subject to the Professional Code of Ethics for Psychologists.

Years going back the major challenges that the students are facing are *the harmful habits*, especially smoking and alcohol consumption. In the Capital, compared to the country, drug appears too. Consumption of illicit drugs, according to a voluntary and anonymous questionnaire, 8% of students reported to have it used, while nearly 30% of the students had school conflict because of alcohol consumption.³⁵ The school's Organizational and operational rules may contain provisions on the consumption of harmful and illicit drugs in schools or in schooltime, and, where appropriate, disciplinary action can be initiated against the student (see below).

2.3. Tools against aggression

The analysis referred above states that "the social sensitivity on school aggression increased significantly in the last few years."³⁶ That means not an increase in aggression, but the growth of the social sensitivity. The forms of this aggression, however, may be verbal or physical violence.

According to a study, *verbal violence* is shouting, swearing (profanity), humiliation, ostracism, while *physical violence* is pushing, hitting, kicking. The 18% of the students are affected by this latter, according to the survey.³⁷ It is also important to mention among the deviances the unjustified absences (truancy) that is a grate problem in the poorer (northeast) region of Hungary.³⁸

The educational tools against violence are very limited. Some disciplinary actions used in the schools, such as physical aggression, or assignment from class – are formally and clearly forbidden by the Public Education Act. Article 46 para 2 of the Public Education Act states that "The child and the student may not be subjected to physical and psychological punishment, torture, cruel, inhuman or degrading punishment or treatment." A research by the Educational Ombudsman's staff finds that the discipline is softer in secondary grammar schools and they are mostly based on the verbal tools. In secondary vocational schools more teacher write in check books, while in vocational schools more student is assigned from class, call in the parents, and study type discipline tools are much less used.³⁹ This difference is in line with training profile of the abovementioned type of schools: secondary grammar schools are mainly training their pupils for white-collar worker life, while vocational (secondary) schools mainly for blue-collar worker life.

The disciplinary tools are therefore primarily remaining to the field of pedagogy. These are fully in line with human rights standards, however, in case of significant deviance, their "impracticability and untreatedness are meaning a significant barrier to quality education."⁴⁰ Interestingly, the educational researches clearly show that the treatment of aggression is *more effective in religiously committed to better schools*, however physical punishment is not allowed in these schools too. Surveys show that students reported significantly higher level of the teacher's attention in these schools than in non-denominational schools. Furthermore, in Hungary "in denominational schools there is a unique potential in the integration of different socio-cultural backgrounded students." too.⁴¹

According to the Public Education Act, the punishment for deviant behaviour committed by a student can be resolved in *disciplinary proceedings*. Article 58 of the Act states that "if the student is at a serious breach of duties by his or her fault, a disciplinary action may be taken through a disciplinary procedure ending in written decision. Starting and caring out of the disciplinary proceeding is obligatory if the student requests it against himself." Otherwise initiating is not obligatory. The disciplinary action may be: reprimand, severe reprimand, withdrawal or reducing defined benefits, transfer to another class or school or student group, disqualification from continuing the school year in the defined school, and exclusion from school.

This latter is most severe disciplinary action. It may be used only in exceptional cases of misconduct or repeated offence. In this situation the parents must look for a new school or college for the student.

It is true for disciplinary proceedings as well as criminal offenses that *most of them remain latent*, and will not be public.

Specific crime trends concerning schools can be divided into the following groups: (i) the crimes committed by minors, which do not affect the criminal law because the offenders are under the age of 14 and are not criminally liable. In these cases, the role of the child protection agencies appears. (ii) Crimes against property and persons committed by pupils in the schools against each other; and (iii) verbal and physical violence against the teacher. The latter have been increasingly highlighted in the recent years.⁴² A case-study:

'Why was she wearing glasses?'

After a serious conflict with a student of the 8 year (age 14), teacher TA needed to go for a long-term medical care. 'The problem was that at the break between classes "I dared to call on the boy to stop to provoke others, than he addressed me unsophisticated words and attacked me. He broke my nose, my glasses, and I was at home for several weeks afterwards. Not only the physical abuse hurt, but I mentally shattered." The student was not willing to appear at the disciplinary hearing, he was fugitive, even the parents did not know where he was. Finally, when he was told that the teacher was in hospital for several days, because the broken glasses cut up the face, his reaction was only: "Why was she wearing glasses?"⁴³

The great social echo can clearly be attributed to the intercession of the media, by which such cases have been published. The politics wanted to solve the social indignation and intended to approach the problem from several aspects: first, as a matter of socialization, on the other hand, as a matter of law. This latter aspect raised the questions of criminal law, which pointed out the fact that the teachers had no legal protection commensurate with the responsibilities imposed on them. By the Act LVI of 2010, Article 6 the Parliament *amended the penal code* and intends to establish an intensified criminal protection, so that at crimes committed against teachers and other assisting employees of public education the degree of penalties was increased.

Here, the narrow circle of the protected subjects is meaning only the public education workers, so for example the child protection staff does not belong to the subjects.⁴⁴

In order to protect schools, students and teachers from theft and reduce crimes against property the government found out several tools. One is *observation, placing cameras* in schools, which raises serious privacy and data protection issues.⁴⁵ Currently in Hungary placing cameras in schools is possible, but their operation is very limited. In line with the principles of the Data Protection Act, cameras cannot operate in school time, because it violates the purpose limitation. The "simple" observation is forbidden, as it unduly restricts the right to privacy. In fact, after teaching hours it is possible to operate cameras for security reasons, but even then a warning (like a placement of signs) has to be set on this fact and the time of operating. (According to the Hungarian law cameras can only set up in common places. In changing rooms and bathrooms cameras are forbidden, because it violates privacy.) The Data Protection Authority in a consequent on that any data management and should be proportionate and limited to purpose.⁴⁶

In the spring of 2012 another attempt rose, the so-called '*school guards*'. The Ministry of Interior had a special vision of security and law enforcement mission to set up a special service. This plan had also gained a great social echo and as a result the government had to rethink this idea and withdraw this proposal from the final draft.⁴⁷

A new direction is rising in the field of security and conflict management, which is *mediation*. In doing so, a professional mediator is involved in the solving of the conflict. Nevertheless, this system appears in multiple areas of law (civil law, labour law, agricultural law, etc), but

currently there is no established legal and institutional framework for schools, so we may only see this as a tendency or an early practice.

Above, at latency and the social impacts, I have mentioned that the *increasing influence of the media* can be measured in matters related to education, especially in terms of aggression. This trend is a double edged sword: on the one hand, effective, and it helps to find a solution to decade-long unsolved problems. On the other hand, it can be detrimental to the functioning of education if the school has to develop resources for defence against substantiated or unsubstantiated accusations, where, it must be noted, that schools sometimes have even operational difficulties because of the lack of budgetary resources. This topic is researched by the below mentioned Hungarian Institute of Educational Research and Development within a project, which soon will be published.

2.4. Institutional protection of rights

Next to the above-mentioned general children's rights protection, we have to mention two specialized institution which has considerable experience in the subject in Hungary.

First is the *specialized ombudsman for educational affairs*. The Office of the Commissioner for Educational Rights contributes to the promotion of citizens' rights concerning education of children, pupils, students, researchers, educators, teachers, parents and their associations. Its status in public administration is special as it is directly and exclusively responsible to the Minister of Education, therefore it works like the Commissioner of Fundamental Rights, though its authority is narrowed to the field of educational law. Before the Commissioner any child, pupil, parent, educator, student, researcher, teacher or their associations may file a petition in individual cases, if in their judgement their guaranteed rights have been infringed or there is a direct threat of such infringement. The Commissioner investigates all petitions, and if the petition is well founded, the Commissioner will initiate conciliation as sending the petition to the institution or person who had brought or omitted the decision in question for a declaration, and furthermore, he will initiate in writing that the claimant and the institution reach a consensus.⁴⁸

The second is a different kind of institution that does not work in protection of rights, but development and research topics related to education. As their mission statement says: "The aim of research and development done by the *Hungarian Institute of Educational Research and Development* is to continuously renew Hungarian public education, assist its adaptation to current professional and social requirements, support the decision-making process in educational matters as well as accumulate and spread knowledge concerning public education and its social environment. Demands of the society are also to be explored and international contacts of Hungarian public education are to be promoted."⁴⁹

3. CONCLUSION

Hungary is an average-sized Central European country. Neither is great nor too small in European context. Its population is about 10 million, the number of primary school pupils in 2011 was 750,000, number of high school people in full-time education was 567,000, and which data matches the European aging trend. In 2011, secondary education, nearly 25% of students educated in vocational schools, 41% in vocational secondary schools and 34% in

secondary grammar schools.⁵⁰ According to these data, the size of the Hungarian education is reasonable, detection of the problems is not impossible. The emerged problems in international comparison are mostly marginal, but within the country seem to be significant. After 2010, the legal environment of education has changed in many aspects, as a new Act was passed both for public compulsory education and higher education. Even the professional rules can not, however, change the social and economic circumstances in many respects. Education has been damaged in many senses that have affect to the safety operation too. Aggression existing in society and continuously appearing in the media is significantly obstructs the management of aggression in schools.⁵¹ Neither can be ignored the economic impacts and the spread of the Internet that almost overtook (and superseded) all "classical" forms of media. Also, it should be noted that 20 years after the political system changing the country hardly had got rid of one of the social heritage of communism: the social exclusion of teachers.

All this should only be handled in an integrated way: by legal, sociological, and economic instruments at the same time. If just the legal instruments are examined, violence in schools (methodized above), as well as to protect the security of schools, several subsystems are involved. The first of these is (i) *the professional educational protection* provided by the Commissioner for Educational Rights. Second is the (ii) *human rights protection* of the Ombudsman. The role of (iii) *physical protection* is important that belongs to the police and the child protection bodies. Finally, (iv) I would mention the *psychic protection* that is the task of the above presented school psychologist.

The advantage of the complicated Hungarian child protection system is that if a vulnerable situation develops either at the student's, the teacher's or the school's circumstances, surely there is a body that can take action in order to ensure protection.

In Hungary, in the spirit of the New York Convention, cooperation of child protection actors and parents, and definition of the responsibility of all parents and adults has been clearly established on regulatory level, though the need of further development is identified. All these are especially pronounced in maintaining the safe educational environment.

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Endnotes

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- 1. We may mention as a historic milestones the Ratio Educationis of 1777-es, which was on the public schooling in the Habsburg empire, and, furthermore, the life-work of J. Eötvös (19th century) and K. Klebersberg (20th century) who were the most important professionals helping to approach modern public schooling.
- 2. Act XX of 1949
- 3. Horváth, E. (2009), 'The right to education' [A művelődéshez való jog], in: Jakab, A (ed), *Commentary on the Hungarian Constitution* [Az alkotmány kommentárja] 2nd edn, Budapest, Századvég, 2595. From this amendment the Constitution defined itself as 'provisional' and declared its regulations until Hungary's new constitution comes into force. This latter became the new Basic Law of April 2011.
- 4. Act CXC of 2011.
- 5. Act CCIV of 2011.
- 6. Balogh, Zs. – Hajas, B. (2012), 'Rights and Freedoms', in: Csík-Schanda-Varga (szerk): *The Basic law of Hungary - a First Commentary*. Clarus, Dublin, p. 85.
- 7. Article XI of the Basic Law of Hungary
 - (1) Every Hungarian citizen shall have the right to education.
 - (2) Hungary shall ensure this right by providing general access to public culture, free and compulsory primary schooling, free and universally available secondary education, and higher education available for every person on the basis of his or her ability, and, furthermore, through the financial support for students in training, as defined by statute.
- 8. Horváth, E. (2009), p. 2599.
- 9. 22/1997 Decision of the Constitutional Court §1.4.
- 10. 1042/B/1997. Decision of the Constitutional Court
- 11. Act on public education of 2011 Article 2 para (3)
- 12. Schanda, B, *The place of religion in state-funded educational institutions in Hungary*. ELA <http://www.lawandeducation.com/>. See more: Schanda B., 'Considerations on the place of religion in constitutional law' in: Csehi Z, Schanda B, Sonnevend P (eds.) (2012) *Viva vox iuris civilis: Tanulmányok Sólyom László tiszteletére 70. születésnapja alkalmából* Budapest, Szent István Társulat, 278-285., Schanda, B., 'Hungary' in: Mark, H (ed.) (2011) *Religion and discrimination law in the European Union*. Oxford, Trier, 169-180., Schanda, B., 'Church Autonomy and Religious Liberty - National Report on Hungary', in: Robbers, G. (ed.) (2001), *Church Autonomy - A*

Comparative Survey, Peter Lang, Frankfurt/M., Berlin, Bern, Bruxelles, New York, Oxford, Wien, 2001. 716.

- 13. 18/1994 Decision of the Constitutional Court
- 14. In detail see Horváth E. (2009), pp 2601-2602
- 15. See more: Weller, M (1994), 'The right to education in international law' [Az oktatáshoz való jog a nemzetközi jogban], *Acta Humana* 17, pp 6-32
- 16. Balogh, Zs. – Hajas, B. (2012), p. 90.
- 17. See the Hungarian Constitutional Court's decision 995/B/1990 where it is stated that 'a child is a human being and is entitled to all the constitutional fundamental rights like anybody else, but in order to enable him to exercise all these rights, all the conditions of his growing up must be secured according to his age. Therefore Article 67 paragraph (1) of the provisional Constitution primarily refers to the fundamental rights of the children, meanwhile it also outlines the fundamental obligations of the State and society.'
- 18. Decision 30/1992 of the Constitutional Court
- 19. Balogh, Zs.– Hajas, B. (2012), 92.
- 20. Basic Law Article 30 para 1
- 21. Varga, A. Zs. (2012a), 'The Commissioner for Fundamental Rigths', in: Csík-Schanda-Varga (eds): *The Basic law of Hungary - a First Commentary*. Clarus, Dublin, 2012. p. 207.
- 22. Varga, A. Zs. (2012b), *Ombudsman, Public Law Liability* [Ombudsman, Ügyész, Magánjogi felelősség – Alternatív közigazgatási kontroll Magyarországon], Pázmány Press, Budapest, p. 138
- 23. Lux, Á. (2011) (ed), *The Children's Protection Project* [A gyermekjogi projekt], Országgyűlési Biztos Hivatala, Budapest
- 24. http://gyermekjogok.ajbh.hu/index_en.php (01.10.2012)
- 25. Á. Lux (2011) (ed), p. 131
- 26. Á. Lux (2011) (ed), p. 132
- 27. The role of the public prosecutor outside the field of criminal law is relevant in more than the half of the European states. A survey was published by a consultative body of the Council of Europe, the Conference of Prosecutors General of Europe (CPGE), see a comparative research by Varga, A. Zs. (2008), *Report on the Role of the Public Prosecution service outside the field of criminal justice*, Strasbourg, CoE
- 28. Varga, A. Zs. (2012a) pp. 192-194
- 29. Article 40.3.(b) of the UN Convention on the Right of the Child says 'whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.'
- 30. In the Netherlands, for example, contemporary and on-going cases are to be mentioned where only the prosecutor can achieve public order in cases related to minors, such as preventing them from paedophiles.
- 31. <http://www.ofi.hu/english>
- 32. Török, B. - Szekszárdi J. - Mayer J. (2011), 'The inside world of the schools' [Az iskolák belső világa] in: *Education in Hungary 2010*, Hungarian Institute of Educational Research and Development, Budapest
- 33. Török et al. referred on the same place: Ságvári Bence (2009), *The IT gereneration* [Az IT generáció. Technológia a minden napokban: kommunikáció, játék és alkotás.] Fanta Trendriport
- 34. Török et al. (2011) ibid
- 35. Elekes, Zs.(2009), *Youth of a changing age* [Egy változó kor változó ifjúsága. Fiatalok alkohol- és egyéb drogfogyasztása Magyarországon.] ESPAD 2007 Szakmai Forrás Sorozat. L'Harmattan Kiadó, Budapest. <http://www.tarki.hu:8080/drogkutatas/tanulmanytar/elekes-zsuzsanna-egyvaltozo-kor-valtozo-ifjusaga-fiatalok-alkohol-es-egyeb-drogfogyasztasa-magyarorszagone-spapd-2007>; and: Török et al. (2011) ibid

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36. Török et al. (2011) *ibid*
37. Hajdu, G. – Sáska, G. (eds.) (2009), *Danger in Schools. Research of the Ombudsman of School affairs.* [Iskolai veszélyek. Az oktatási jogok biztosának vizsgálata.] Az Oktatási Jogok Biztosának Hivatala, Budapest. http://www.oktbiztos.hu/ugyek/iskolai_agresszio_jelentes.pdf (20.09.2012)
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39. Hajdu, G. – Sáska, G. (eds.) (2009), p101
40. Török et al. (2011), *ibid* and citing: Mayer József (2009): *Pedagogue in vocational training II.* [Pedagógusok a szakképzésben II.] in: Szakképzési Szemle, 2. sz.
41. Török et al. (2011), *ibid*
42. A national weekly newspaper, for example, opened a separate section for these news: <http://hvg.hu/cimke/tan%C3%A1rver%C3%A9s>
43. Mayer, J. – Nádori, J. – Vígh, S. (2009), *A little book on responsibility* [Kis könyv a felelősségről. Adalékok az iskolai agresszió természetrajzához.] Mérei Ferenc Fővárosi Pedagógiai és Pályaválasztási Tanácsadó Intézet, Budapest. <http://www.fovpi.hu/kiadvanyok/konyvek/kiskonyv.html>
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45. Data protection is managed by a specialized authority in Hungary, that is the *Hungarian National Authority for Data Protection and Freedom of Information*. <http://www.naih.hu/general-information.html>
46. The case law of the Authority is in line with the Constitutional Court. See the decision 36/2005 of the Constitutional Court where it stated that cameras may only serve protection of property if it does not violate human dignity and privacy.
47. The final Act is CXX of 2012 on special policing responsibilities, and on truancy. The proposal contained the participation of police in defence of schools (Article 28 para 6), but at the final vote it has been withdrawn and it only remained in the title.
48. <http://www.oktbiztos.hu/mission/index.html>. legal background on the specialized ombudsman is the Article 77 of the Public Education Act and the 40/1999. Education Minister decree on the Operating of the Office of the Commissioner on Educational Rights
49. <http://www.ofi.hu/english>
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Value Based Education Vis-A-Vis Violence in Schools

Stuti Deka



Value Based Education Vis-A-Vis Violence in Schools

Stuti Deka¹

1. ABSTRACT

Education is not the amount of information that is put in our brain and runs riot there, undigested, all our life. Education should aim at multi-faced development of a human being his/her intellectual, physical, spiritual and ethical development... people must realize who they are and what is the ultimate purpose of human life. Self recognition would come through proper value education that would facilitate the spiritual march from the level of sub-consciousness to that of super consciousness through the different intermediary stages. Value-based education would help the nation fight against all kinds of fanaticism, ill will, violence, fatalism, dishonesty, corruption, and exploitation and drug abuse. Value-based education is the main instrument that can mould the students at the initial stage to become good citizen in their future life to achieve the good governance and the good society.

Regarding violence in school is alarmingly increasing in many countries all over the world. It occurs among the students, among teachers/staffs and the students of the institutes resulting fatal effects on students at their early life. The incidents of gun shooting or any other lethal weapons that are used in the educational institutions by the students against their class mates, teachers in the western countries as well as in India and in this part of the world. The news relating to violence in school is frequently reported now- a- days. The responsibilities lie on parents, teachers and school authorities to control such type of menace by way of value based education.

There may be numerous reasons of violence in school, such as, effects of home environment, social environment, and depiction of violence in cinema, Television programmes, harsh discipline and corporal punishment in schools/homes. Some case studies particularly from India would be discussed in the main paper. To combat the problem of violence at school some suggestions/recommendation will be supplemented in the concluding part of the paper.

2. INTRODUCTION

In this twenty first century with the advent of science and technology the behaviour of the people in general and young people in particular have been changing trimendously and at the same time they run after the materialistic pleasure ignoring the basic quality of human being. Therefore, all over the world, at this peak hour debates, discussions are going on regarding the value based education particularly in school to maintain peace, progress and prosperity of a nation. Education is not the amount of information that is put in our brain and runs riot there, undigested, all our life. Education should aim at multi-faced development of a human being his/her intellectual, physical, spiritual and ethical development... people must

realize who they are and what is the ultimate purpose of human life. Self recognition would come through proper value education that would facilitate the spiritual march from the level of sub-consciousness to that of super consciousness through the different intermediary stages². Value-based education would help the nation fight against all kinds of fanaticism, ill will, violence, fatalism, dishonesty, corruption, and exploitation and drug abuse. Value-based education is the main instrument that can mould the students at the initial stage to become good citizen in their future life to achieve the good governance and the good society. The father of the Indian Nation, Mahatma Gandhi, once expressed, “ Wealth without work; pleasure without conscience; knowledge without character; commerce without morality; science without humanity; religion without sacrifice; and politics without principle will lead to sinful acts disturbing peace and happiness.”³ Thus, to achieve the qualities in life a generous heart, kind speech, and a life of service and compassion are the things which renew humanity. At the same time, it is contemporary and always relevant in every society all over the world.

3. EDUCATION AND LITERACY

In general parlance education means ‘the process of teaching or learning, the theory of teaching or training in a particular subject.’⁴ But in broader sense, education is the process through which the person gather knowledge, become enlightened and can boldly face any situation which occur in their life. It is not a certificate to earn daily bread and butter. It is the process to innovate the positive human quality such as showing respect, honesty, compassion, care, humanity and responsibility in their tender age so that they may differ from other animals of this universe . To acquire these qualities value based education is one of the important means, which may combat the violence in school also. The prevailing education system all over the world is not similar and from the primordial days there is a feeling of deficiency in the system of education though the curriculum has been introduced with threadbare discussion with the renowned educationist within the nation or internationally. In every country there are some factors which influence the nature of educational system. Though literacy and education have been used interchangeably, literacy refers to the minimal level of exposure and education includes many more attributes besides literacy. The United Nations educational, Scientific and Cultural Organisation (UNESCO) defines literacy as the “ability to identify, understand, interpret, create, communicate, compute and use printed and written materials associated with varying contexts. Literacy can be regarded to involve a continuum of learning, in enabling individuals to achieve their goals, to develop their knowledge and potential, and to participate fully in their community and wider society.”⁵ The definition of education has been formulated by the UNESCO as, “the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and the international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge.”⁶ The report of the “ International Symposium and round Table”, UNESCO, 1990 on “Learning to Care: education for the twenty-first Century” emphasised some of the aspects for a desirable education system and stated the problem as one of participation in creating a more equitable, fairer and more liveable world in the twenty-first century. The report emphasised the need of many aspects of caring: “Caring for other people; caring for the social, economic and ecological welfare of one’s society and nation; caring for human rights; caring for other species; caring

for the liveability of the earth; caring for truth, knowledge and learning.”⁷ This is the global perception on education for the twenty-first century.

4. VALUE BASED EDUCATION

Value based education is the need of the day. Positive human value such as, respect, honesty, compassion, care, humility and responsibility improves the quality of education in school. Value based education fosters good interpersonal relationship, self-esteem and confidence. The admitted fact is that the future of a state lies in the education of their children. The peace, progress and prosperity of a nation can be achieved through inculcating value based education to their youth. The role of the world community in this aspect is worth mentioning. From the inception of the United Nations various declarations, conventions, Protocols adopted with an enthusiasm to access right to education universally at the primary level. One of the primary object of the International Community is to propagate human right education all over the world so that every one is able to understand what is their rights and how that can be protected effectively.

According to Dr Eknath Gawande (1994) defines value education in the following words: when human values are inculcated through curriculum to transcend to cognitive, affective and psychomotor level for conducive development of individual, society, national and international understanding, it is called value education.⁸ In the Indian context education is an effective tool for inculcating values. We should not forget our own spiritual, ethical and cultural values which have developed from the ancient time. The Indian ethos is based on values which enables proper use of knowledge for the cause of humanity.

5. HUMAN RIGHTS EDUCATION

The existence of human rights is as old as human civilization and without which we cannot live as human being. Human rights education on the other hand provide protection of human rights such as, protection from discrimination, unfair treatment, undemocratic attitude, deterioration of cultural values, exploitation, bondage human rights, illiteracy, abuse of human rights at any level.⁹ It is therefore, essential to know what is human rights. If people know their rights they can defend against the violation of human rights. But the prevailing position in the developing and underdeveloped countries are that most of the people die without knowing their basic human rights. It is the mandate of the nation to spread the human rights education among the citizens. ‘In an increasingly divided and insecure world, the protection of and respect for human rights can only be achieved if people are aware of what human rights are and how they can be protected, without that awareness nothing much can be done.’¹⁰

For achieving the full realization of human rights education the international covenant on Economic, Social and Cultural rights provided five devices;

1. Primary education shall be compulsory and available to all.

2. Secondary education in its different forms including technical and vocational education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.
3. Higher Secondary education shall be made equally accessible to all on the basis of capacity, by every appropriate means.
4. Fundamental education shall be encouraged and intensified as far as possible for those persons who have not received or completed the whole period of primary education and
5. The development of a system of school at all level shall be actively pursued and adequate fellowship system shall be established and the material condition of teaching staff shall be continuously improve.¹¹

In response to the proclamation of international community the education in India is orientated with Human Rights and Duties Education. The aim and objectives of the human rights education is to achieve common understanding and awareness with a view to strengthening universal commitment to human rights, and to develop a balance approach to build rights and duties conscious society. The University Grants Commission (UGC) in India, formulated UGC model curriculam of Human Rights and Duties Education. Apart from this initiatives from the govt. organization of the country, the NGOs have also taken various measures in the field of human rights education including both formal and informal awareness camps, demonstration, meeting, seminars with a target to reducing social tension, crime and offence. In the Constitution of India the provision for free and compulsory education for children until they complete the age of fourteen years is a Directive Principles of State Policy under Article 45, but by amendment of the Constitution ‘right to education’ has been incorporated in the chapter of fundamental rights under Article 21A, of the Constitution in the year 2002.

6. VIOLENCE IN SCHOOLS

Violence in school is alarmingly increasing in many countries all over the world, India is also not an exception. It occurs among the students, among teachers/staffs and the students of the institutes resulting fatal effects on students at their early life. The incidents of gun shooting or any other lethal weapons that are used in the educational institutions by the students against their class mates, teachers in the western countries as well as in India have been observed. The news relating to violence in school is frequently reported now-a-days. The students who become violent, disturb other students, teachers and other members of the educational institutes as well. The responsibilities lie on parents, teachers and school authorities to control such type of menace by way of fair administrative actions, appropriate management and through value based education.

7. REASONS OF VIOLENCE

There may be numerous reasons that provoke the young minds to do violence in schools, such as, effects of home environment, social environment, depiction of violence in cinema,

television programmes, stress and strain, harsh discipline, ragging and corporal punishment in schools and homes.

Healthy home environment moulds the nature of the young mind in the appropriate direction and at the same time if the home environment is polluted with hostile atmosphere, there is always quarrel between the parents that cast severe effects upon the children. There may be separation between the parents and as a result the child would deprive the love and care of both the parents which turns the child violent. In the same vein the influence of the social environment can not be ignored. A good society influences the character building of the children, they may be embarrassed and ashamed to do illegal activities such as violent in school killing or assaulting fellow mates, teachers etc. Some of the causes of violence in school have been mentioned as follows:

1. Stress and depression- If a child is over stressed or depressed due to burden in the curriculum, unhealthy competition, examination system etc. then there are higher possibilities of him to get violent.
2. Environment in the house- If the child fails to get an enriching or a good environment in the home place, then there is a tendency of him getting violent very soon. If he commonly views his parents beating, fighting, using abusive language, etc. he imitates the same at play or in the school.
3. Anxiety- There is great possibility that an individual may get violent due to higher anxiety levels. Many a times, it is seen that the young mind is over stressed continuously, maybe because of studies, career, examinations, etc. This increases the chances of him getting violent
4. Easy availability of weapons- In this century, the child, can easily access any weapon in an illegal way. They make an effort to purchase it through wrong ways and then try to utilize the same in the schools just to gain some name and fame.
5. Effect of media- This is the highest cause of generating negative attitudes in children. Children observe a lot of violence here and then they try to depict it in their real life. There are TV programs and movies that show violent scenes such as usage of weapons like knife or gun openly in the public. They observe and hence, learn the same.
6. No counseling- If the Child does not get proper counseling, affection or love, then he will become violent very soon.
7. Effect of Peers- A child tends to get violent, if he is having a peer group in which all his friends are violent. If his friends demonstrate violent behavior and language, then imitate and learn the same quite easily without any efforts, as such.
8. Lack of guidance in their difficult times- If the child does not receive proper guidance and support, at the time when he needs it the most, then there is tendency in them to become violent. They cannot resolve their own problems and this highly makes them irritated.¹²

In this context, some incidents of violence that happened in the schools in India may be mentioned herewith:

- a) The murder of a teacher in Chennai in the month of February/2012, by a Ninth standard student was shocking and disturbing to all over the country. According to media reports, the student was supposed to have seen the recent Hindi film, 'Agneepath'. Media report also suggest that he was from an affluent family and that he was apparently criticized by this teacher for poor performance in school through a written report to his parents.¹³
- b) In New Delhi, a class monitor tries to discipline his classmate for climbing the window, kicks him in the groin, four days later, the boy dies on his way to hospital, apparently from the injury.¹⁴
- c) Again in New Delhi, a student of Class ix bludgeons his school mate following a minor fight.¹⁵
- d) In Shanti Niketan, Kolkata, a hostel warden compelled a ten year-old girl student to drink her own urine for wetting in bed. The parents complained to the authority and the warden was suspended as reported in the news paper.
- e) In Guwahati, two students in a reputed school resorted to quarrelling over a trifling matter of a tiffin box resulting in the fatal death of one of the students due to collision. These are only a few mention herewith.

8. COMBATING VIOLENCE IN SCHOOL

The Convention on the Rights of the Child was adopted in the year 1989 by the world community and India is a signatory of this convention. After abolition of corporal punishment by way of a legislation, scolding, caning and other ways of punishment still continues in some schools in India. The reasons may be non-framing or implementation of proper policy, poverty, lack of effective training programme to all the teachers of the country etc. In this context some suggestions/ recommendation may be mentioned:

- In India, vernacular medium schools can very effectively provide for value based education. The rich traditions and ethos if provided in the curriculum that would certainly promote a healthy mindset of the students in their tender age.¹⁶
- It is felt that school should be built as a community, based on the principles of mutual respect and co-operation. Need to emphasize the value of non-violence as part of the school tradition.
- Students found in aggressive behaviour should be referred to counselling. Implementation of a fair system of discipline control using positive attitude is necessary.
- Implementation of school time table effectively so that students find no time to engage in anti-disciplinary activities.
- Yoga is an ancient system prevailing in India since Vedic period. It controls the mind from anti-social activities and improves the health of the person. Therefore, it can be suggested that the system of *Yoga and Pranayam* can be incorporated in school curriculum to stimulate the mind and body of the young students in school level. It works as violence control programme as initiated by Yoga Guru (yoga teacher) Baba Ramdeva.
- To improve teacher-student relationship some programmes should be conducted such as drama, education trips and hikes and staff development in innovative teaching methods.

- The use of caning and other forms of physical punishment should be discouraged/ abolished through proper framing of administrative policy.
- The students can also help to prevent school violence. They can report any knowledge of weapons with their fellow mates and suspicious behaviour of other students.
- The parents have also special duties to observe their sons/ daughters .They can easily detect the unnatural behaviour of their children such as sudden lack of interest, depression, talking about death, violence towards animal or bringing weapons to school etc.,
- Comparing with other members of the class sometimes make students violent .It should be avoided.
- Ragging in school and college should be abolished through adopting proper policy and ensure proper implementation of the same.

It is worthwhile to conclude the paper with the words of the great social reformer of India, Swami Vivekananda -- “ Ignorance is death, knowledge is life.... The miseries of the world cannot be cured by physical help only. ... The only solution of this problem is to make mankind pure. Ignorance is the mother of all the evil and all the misery we see. Let men have light, let them be pure and spiritually strong and educated, then alone will misery cease in the world.”

It is the high time to think on this burning topic and find out some solutions to combat this problem of violence in school and secure a safe environment for our children in the educational institutes all over the world. Though it is a common problem for students, teachers, and parents yet the responsibility not only lies upon them alone but on all the people of this universe.

Endnotes

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Education for Multiculturalism in a Deeply Divided Society between Peace and Conflict: The Israeli Case

Majid Al-Haj



Education for Multiculturalism in a Deeply Divided Society between Peace and Conflict: The Israeli Case¹

Majid Al-Haj²

1. ABSTRACT

One of the main debates in the sociology of education has to do with the relationship between peace education and education for multiculturalism, on the one hand, and the use of curriculum for shaping the collective memory and strengthening the national ethos, on the other. These issues are especially complex in deeply divided societies that, in addition to internal conflicts, are also involved in external ones with other countries or nations.

This paper deals with the above-mentioned issues through a content analysis of school curriculum in Israel. More in particular, it focuses on the education system in the context of the Jewish-Arab divide, which forms the main rift in Israeli society. After presenting a theoretical framework we analyze Jewish-Arab relations in connection with the broader socio-political context within Israeli society and the Israel-Palestinian conflict. The impact of these factors on the education system are examined over time, as reflected in school curriculum in history, which is aimed at shaping students' identity and political orientation.

Our analysis shows that school curriculum in Israeli education system reflects the power structure and the dominant culture that prevail in the wider society. It mirrors to a large extent the ethno-national character of the state of Israel and the asymmetry of Jewish-Arab relations. In addition, formal education functions to maintain the status quo rather than as a catalyst for social change. The analysis of the new history textbooks, which were introduced in the Jewish schools after the signing of the peace agreement between Israel and the Palestinians, do not reflect, by any criteria, a transition toward a multicultural or peace education that might help promote a civil culture and internalize peace values. While conflict has been taught in an active manner that aims to shape the collective memory of the new generation; peace, on the other hand, has been presented in a passive way, without any attempt to turn students into active partners in the public discourse over the transition from conflict to peace.

2. THEORETICAL FRAMEWORK

The origin of multiculturalism can be traced back to the beginning of the twentieth century, against the background of the dispute regarding the policy to be adopted toward immigrant ethnic groups (Banks 1981). This debate grew stronger in the wake of the failure of the "melting pot" strategy that long prevailed in the United States. Some American philosophers and writers defended the right of immigrants to that country to be culturally different, arguing that political democracy should be accompanied by cultural democracy. The main term used

to defend this argument was the "salad bowl," based on the idea that each ethnic culture would contribute and enrich the whole fabric of cultures in the American society (*ibid.*, 8).

Cultural pluralism started to gain more support after the Second World War, with the shift of attention to internal ethnic conflicts (Banks 1981). After the war many societies faced a sharpening of internal conflicts within counties, the result of competition in the reconstruction of the local stratification system and the attempts by disadvantaged groups to improve their status.

The first country to adopt multiculturalism as a part of its constitution is controversial (Wiewiora 1998). But whichever country was the pioneer to introducing of "multiculturalism," all agree that this notion has developed mainly in Western societies as a way of dealing with immigrants, minorities and other disadvantaged groups (Vertovec 1996). The main question has been how it is possible to respond to the demands by minority groups for equality and the preservation of their cultural uniqueness, while giving primacy to the national interest and "national unity." This kind of policy is associated mainly with countries that are taking in immigrants, which sought to find some balance between responding to the needs of immigrant groups to preserve their cultural uniqueness and the maintenance of reasonable social and political stability (*ibid.*)—in other words, how to satisfy the needs and demands of disadvantaged groups without endangering the interests of the majority-dominant groups, which are usually synonymous with those of the state?

Despite the huge body of research that has grown up about multiculturalism and multicultural education, there is still no universal theory for multiculturalism, but a number of theoretical models. Also, there are no comprehensive criteria for defining the parameters of cultural communities (Belay 1992, 296). These parameters usually include nationality, ethnicity, race, gender, class, and other visible divisions (*ibid.*). However, this does not resolve the confusion in the definition of the borders of these communities, the meaning of multiculturalism as a basis for the organizing of relations between and within these groups, and whether cultural diversity is a desideratum.

The different models of multiculturalism may be placed under two main approaches: the positivist-mainstream approach and, the critical approach. The differences between these approach are beyond the scope of this paper (for a discussion of the differences see McLaren 1995; Giroux 1992; Schwartz 1995; Estrada and McLaren 1993; Clark 1993; Jacobs, 2002; Joppke, 2004; Smits, 2011).

This paper follows the critical approach, which adopts a wide definition of "culture", including language, norms, values, traditions, cultural heritage, history, identity and narratives. According to this approach the various components of culture and their relative importance should be defined by each group, and should not be imposed from above. The various cultures that make up any society might include common elements and different elements, which are unique to each culture. Therefore, cultures are not necessarily non-conflictual, harmonious and consensual. The general principles of multiculturalism according to the critical approach are the following: The right to be different; recognition of cultural diversity at

the formal and public levels ; building of a joint citizenship circle between the different groups that make up a given pluralistic society, which should be based on equality and equity.

Education for multiculturalism is a natural byproduct of the multicultural concept. Students of multiculturalism have provided different definitions to multicultural education (see review of Bode, 2009, Sleeter, 1996). One of the well known definitions is that of James Banks, who is considered a leading scholar in the field. Banks spoke about five dimensions of multicultural education: content integration, knowledge construction process, prejudice reduction, equity pedagogy, and empowering school culture and social structure (2004).

"Content integration" and "knowledge construction process" may be most relevant to our analysis. The first aims at the inclusion and representation of different cultures, and identities within school curriculum, while the second has to do with positioning of the various groups through the way " knowledge" is presented in the school system. In this sense, it is of major importance not only to analyze the knowledge that is included in school curriculum, but also the knowledge which is excluded and overlooked.

History forms a central subject in school curriculum, which is usually used to shape collective identity and to promote patriotism and national cohesion (Nash, Crabtree and Dunn, 1998). This is especially evident in countries involved in continuing conflicts typically defined as " intractable conflicts" (Bar-Tal, 1996). In such situation, school curriculum is used to create social beliefs and values that together form national ethos used by nation-states to consolidate the nation and uplift its morals, while forming a catalyst for the continuation of the conflict. It should be noted that history curriculum is often taught in such a parochial approach and as a "body of truth not to be questioned, criticized or modified" (Banks, 2006: 25).

The question remains, however, whether the education system which is used by the dominant group for nation-building and for the strengthening of national ethos could be used at the same time for the building of shared civility based on democratic and multicultural values? The answers given to this question by philosophers of education range from support, to cautious support, to opposition (see review in White, 1997 cited by Al-Haj, 2005).

The above-mentioned question is becoming more and more important in the 21st century, which is characterized by internal conflicts within the same country, based on national, religious, ethnic, racial and ideological divisions. Even countries that have been successful in dealing with external conflicts have realized that this does not automatically resolve internal conflicts. At the contrary, the resolution of external conflicts and wars just sharpens the internal ones. Internal issues, which had been marginalized under the shadow of the " external danger", come to the surface and inflame relationships between the different groups. Therefore, Pluralistic societies are increasingly facing the question of how to deal successfully with internal issues of social inequalities and cultural diversity and, at the same time, build a shared civility among the different groups—national, ethnic, religious and cultural—that make up their societies.

3. SOCIAL STRUCTURE OF ISRAEL

In terms of its social structure and relative to its population, Israel is probably one of most pluralistic and multicultural societies in the world. The 2010 population of nearly 7.8 million includes a Jewish majority that originated in about 100 countries, and about 1.6 million Palestinians, who constitute 20.5% of the population (Israel Central Bureau of Statistics, 2011). In addition, Israeli population includes 323,000 who are non-Jewish and non-Arabs (largely Christians who came from the Former Soviet Union as immigrants). There is also a large population of over 200,000 foreign workers, and refugees (ibid). As elsewhere, this group is becoming an integral part of the local population, affecting not only the economic structure of Israel, but also the social and cultural spheres (Nathanson and Achdut, 1999).

The Jewish population is divided by ethnicity and religious orientation and by length of time in Israel. There are Ashkenazim (European origin) ; Mizrahim or Sephardim (North African and Asian origin); and Russian-Israelis (who came from the Former Soviet Union since 1989); religious and nonreligious (among religious the Ultra-Orthodox groups are most distinct). The Arab population is also heterogeneous, composed of Muslims, Christians and Druze.

The Jewish-Zionist character of Israel and the continuing Israel-Arab conflict, with the Palestinian issue at its center, have made the Jewish-Arab division the most salient and most problematic in Israel. The two groups differ in nationality, religion, language, national aspirations, social lifestyles, and many cultural components. The very definition of Israel as a Jewish-Zionist state has deeply affected its structure, priorities, and borders of legitimacy. Not only are Arabs situated outside the Jewish-national consensus in Israel, they are also outside the legitimate borders of the Israeli political culture (see Al-Haj, 2005 a). The socio-demographic segregation of the two groups merely deepens the Jewish-Arab divide. Some 90 percent of Arabs live in segregated Arab towns and villages. Even the other 10 percent, who live in mixed cities, tend to reside in segregated Arab-majority neighborhoods (ibid.)

Policy toward the Arabs has been guided by three main factors: the democratic character of the state, the Jewish-Zionist nature of the state, and security considerations. When the three principles collide, the latter two gain the upper hand (Al-Haj and Yaniv 1983; Rouhana 1989; Smooha 1990). The democratic character of Israel is stated in the Proclamation of Independence, basic laws, and institutions. Free, democratic, and proportional elections are conducted at both the local and national levels. This factor has given the Palestinians in Israel room for political organization and activity through which they have sought to improve their status and bargain for the advancement of the Palestinian case. These issues have been defined by the Palestinians in Israel as a collective struggle for equality and peace and have become integral part of the citizenship and national components of their identity.

However, the democratic character of Israel contradicts with its ethno-national character. Israel was founded by Jews to be the national home of the Jewish people. This definition, which conflicts with the democratic character of the state, is reflected not only in the collective and formal identity of the state but also in its institutional structure, the allocation of

resources, the setting of spatial policy, and the determination of national priorities (see Lustick 1980; Smooha 1990; Rouhana and Ghanem 1998; Yiftachel 1999).

4. ISRAELI SOCIETY BETWEEN PEACE AND CONFLICT

Israel is often described by sociologists as an “Overburdened Society”. Since its establishment in 1948 it has been dealing simultaneously with two main conflicts: The above-mentioned internal conflicts, and the external conflict, stemming from the Israel-Arab conflict, and at its core the Palestinian issue (see Lissak and Horowitz, 1990).

The Camp David accords of 1978 provided the groundwork for peace with Egypt, the largest and leading Arab country. The Palestinian intifada, which erupted in the territories at the end of 1987, had a profound impact on both Palestinian and Israeli society. It proved that the “status quo option” in terms of occupation is non-realistic(Al-Haj, Katz and Shai,1993). In practice the intifada paved the way for the Oslo accords of 1993 and the start of the Israeli-Palestinian peace process, after a century of conflict between the Palestinian and Zionist national movements. It was clear from the very beginning that these agreements have many shortcomings and risks as a result of deferring to a later stage the fundamental issues- mainly Jerusalem, refugees, settlements and borders (Sabet 1998). In any event, the start of a resolution of the Palestinian problem, which is the core of the Arab-Israeli conflict, provided legitimacy for some Arab states to sign a peace agreement with Israel (Jordan), establish partial relations (Morocco, Tunisia, and Oman), or conduct negotiations aimed at a peace agreement with Syria.

Unlike the common misconception, the peace process has not improved the status of the Arabs in Israel and has not made any significant change in the ethnic-national culture of the Jewish majority . What is most conspicuous to date is that precisely the struggle of the Jewish majority on behalf of the Jewish-Zionist identity of the state has been reinforced (Al-Haj, 2005a). The main motive force for peace on the Israeli side is the need for separation between the Palestinians and the Israelis, so as to preserve the Jewish-Zionist character of the state and prevent its conversion into a bi-national state. This argument has been voiced by Jewish leaders of both Zionist right and left. From this one may conjecture that even as the Jewish majority becomes more open to a compromise at the regional level it is becoming more closed on the civil level associated with a change in the nature of the state(ibid).

Since el-Aksa Intifada (year 2000), there has been a continuing stagnation in the peace process in the Middle East as a whole, and between Israel and the Palestinians, in particular. The el-Aksa Intifada has turned the stagnation in the Israel-Palestinian peace into total deterioration. Also, this intifada, and the violence that has occurred in both sides Israelis and Palestinians, have further deepened the Jewish-Arab division in Israel. They increased the fear of each side from the other and thus strengthened the existing alienation (see Al-Haj, 2005 a).

What are the implications of the aforementioned micro and macro socio-political factors on the education system in Israel? What has been the impact of the continuing national conflict

on the contents of education? What is the state of education for multiculturalism and peace in Hebrew and Arab schools in Israel? What has been the impact of the transition from conflict to peace or at least conflict resolution on school curriculum? We will attempt to answer these questions in the following sections.

5. THE EDUCATIONAL SYSTEM

The model that has come to guide policy toward Arab education was based on administrative and physical separation between Hebrew and Arab schools, with Jewish control of the administration, staffing, resources, and, most important of all, content of the educational system. This approach led to the separate development of two Jewish educational systems (the State stream and the State Religious stream, plus the independent Ultraorthodox school system) and an Arab system (including both state and confessional schools). In the context of the control policy, the educational system in the Arab sector became “education for Arabs” controlled by Jews through the state and a channel through which the ideology and narrative of the dominant Jewish majority is conveyed (see Mari ,1978; Nakhleh, 1977; Al-Haj 1996; Mazawi, 1994; Amareh and Mari 1999). The main aim of the educational system among Arabs has been therefore, to legitimize the ideology of the state, to enhance loyalty to the state, to maintaining order and stability, and to educate for Jewish-Arab co-existence in which Arabs rationalize their inferior status (Peres et al. 1968; Mari, 1978; Al-Haj, 1996).

While Arab education has been emptied of any Palestinian-Arab national content, Hebrew education has been focused on a national Zionist content (Mari, 1978; Peres et al. 1968). The goals for Jewish schools, however, do not mention “co-existence” and education for peace, aims that are strongly emphasized in Arab schools. It should be mentioned that the 1975 goals for Arab schools included a call to educate Arab students to “love of the country shared by all its citizens.” This was considered a revolutionary goal by many Arab and Jewish educators and was welcomed by the Arab leadership. Later, however, the word “shared” was omitted and the goal was stated as “to love the country”—with no word about whose country and how the Arab pupils are connected to it (see Al-Haj, 1995).

The goals of the Arab and Hebrew education are also reflected in the curriculum, mainly in subjects that are oriented to shape students’ identity and orientation. One of the main subjects that has been used to achieving this goal is history curriculum. In an article published elsewhere (Al-Haj, 2005) we have analyzed in detail the new history text books in Hebrew schools that were published in the late 1990s. In what follows we shall briefly analyze history curriculum in both Hebrew and Arab schools over time, since the establishment of the state of Israel.

6. HISTORY CURRICULUM

According to its goals and contents, history curriculum in Hebrew and Arab schools in Israel may be divided into three main periods: the 1950-1970s; the 1970s- 1990s and the 1990s-present

6.1. The first period

Until the end of the 1950s there was no special history curriculum in the Arab schools. As in other subjects, instruction depended on the teachers, each of whom prepared a course book that contained all the material to be taught. Of course this book was subject to the supervision and control of the inspector, so that the latter could control the material (Bargout 1991: 115). Only in 1961 did the Ministry of Education begin to prepare Arabic version of history textbooks. In practice the books were translated from Hebrew to Arabic almost word for word. The only difference was the addition of a chapter on the history of the Arabs, which was nowhere to be found in Hebrew textbooks (*ibid*: 116).

A comparison of the objectives of the teaching of history in Jewish and Arab schools reveals consistency in everything associated with the goals mentioned above. Whereas in the Jewish schools the emphasis is on the Jewish national theme, the curricula for Arab students ignore the Arab national theme. Arab students learn "that human culture is the fruit of the combined endeavors of all peoples of the world," whereas Jewish students learn that the Jewish people played a central role in shaping human culture. Values of Arab-Jewish coexistence, with the accent on the superiority of the Jews, are inculcated in Arab students by the repeated emphasis on the shared role played by Jews and Arabs in history and the shared destiny of the two peoples. Values of coexistence are not conveyed to Jewish students, for whom the Arabs as a people are included in the term "other nations." What is more, Arab students are expected to understand the importance of the State of Israel to the Jewish people, and not to Jews and Arabs in the same degree.

The asymmetry between Arab schools and Jewish schools is also reflected in the allocation of teaching hours in the two streams for world history, Arab history, and Jewish history. The world history occupies about 60% of the curriculum in both Arab and Jewish schools. Other historical topics are divided quite asymmetrically. Whereas Jewish schools devote about 40% of their teaching hours in history to Jewish history, Arab schools devote only half this to Arab history. What is more, whereas Arab students devote about 20% of their history classes to Jewish and Zionist history, Jewish students are exposed in less than 2% of their history studies to parallel Arab topics (based on Al-Haj 1996: 104–106).

6.2. The second period

Since the early 1970s there has been a growing criticism among the Arab population in Israel toward their school curriculum. The Ministry of education from its parts established a number of committees to deal with changes in the Israeli education system in general and Arab education in particular. The work of these committees furnished the way for some changes in school curriculum. These changes were reflected in the second version of the history curriculum, which went into effect in the early 1980s. In its statement of objectives this curriculum made a distinction between information and values. In addition to study of the "historical facts," information also includes the development of an analytical approach and the ability to analyze social phenomenon in the present and past (Ministry of Education and Culture 1982: 2–3).

With regard to values, the following objectives were defined:

To develop skills to judge historical events on the basis of general human values
To impress a spirit of tolerance and understanding of the feelings, tradition, and way of life of other people and other nations
To develop a feeling of identification with the Arab nation and its culture and with the State of Israel and all its inhabitants.

The main change in the new history curriculum was the reference to identification with the Arab nation as a central objective. But the new version, too, is vague, cautiously stated, and far from being parallel to the objectives set for the teaching of history in Hebrew schools. Identification with the Arab nation is not necessarily associated with an intensification of national consciousness. What is more, the Arab nation is mentioned in general terms, with no reference to the Palestinian people.

It should be noted that the revised high-school curriculum emphasizes Jewish-Arab coexistence, including an understanding and appreciation of the Jewish people's contribution to human culture and advancement. The curriculum for Hebrew schools did not incorporate parallel objectives. Only the curriculum for Arabs mentions the principle of cooperation and the joint efforts of Arabs and Jews in building a state for all its citizens (*ibid*.: 5–6).

The marginal nature of Arab history in general and of Palestinian history in particular is even more conspicuous if one analyzes the allocation of teaching hours by units. The curriculum includes 25 units, of which only four were required and included on the matriculation exams; all the rest were optional.

In practice, there were no substantial modifications in the new history curriculum as compared to the old one. The section devoted to Jewish history in the required units even increased slightly, from 20.2% to 22.0%. Modern Palestinian history and the annals of the Arab national movement were optional units. Students who did not take the expanded history curriculum had no chance of studying anything related to the Arab-Israeli conflict and relations between Israel and the Palestinians. World history constituted the lion's share of the required units, because it was included in the units on the history of the twentieth century and the contemporary Middle East (see Farah, 1991: Bargout, 1991).

6.3. The third period: The new history curriculum, late 1990s

The new history curriculum for junior high schools in the Jewish sector was published in 1998; an experimental history curriculum for senior high schools in the Arab sector was published in 1999. Even though the two stages are not parallel, it is possible to remain faithful to the comparative perspective, because the analysis will focus on the overarching declared goals that guide the curricula, in which there is no significant difference between junior and senior high school. This fact is conspicuous in the general guidelines, which state explicitly that the two curricula are complementary: the curriculum for junior high school is the stage of studying chronology, while the curriculum for senior high school is the stage of going deeper (Ministry of Education 1998: 6).

The chapter that treats the general objectives of the teaching of history includes the following statement: “The abundance of past events and the sources that deal with them make it impossible to become familiar with all of history. Historical study is selective by its very nature, in accordance with various criteria” (*ibid.*, 9). This is an important statement and reflects the familiar situation of “selective information” that is followed in every educational system. It is true that the authors of the curriculum do not append clarifications to their statement, thereby leaving a number of key points without defined answers: What is the basis for selection in the curriculum under discussion? What standards are used to determine what information should and should not be conveyed to pupils? And what precisely are the “various criteria” referred to, which in the final analysis set the goals and content of the study of history in Arab and Hebrew schools?

The second significant section is section 4, which speaks of the specific central objective of the study of history: “In the teaching of history we must provide the pupils with a knowledge and understanding of Jewish history and human history, with an emphasis on the distinctive course of the Jewish people” (Ministry of Education 1998: 9).

This section in fact expresses continuity, rather than change, in the history curriculum. Similar to the situation in the 1950s, the enhancement of Jewish national awareness is the central axis of the history curriculum. There is no mention of exposing Jewish pupils to the rival narrative of the Palestinian national movement or that of pan-Arab nationalism. This goal is submerged into the general objective of familiarity with human history.

The other three sections are general and relate to pedagogical principles relevant to the study of history, such as the need to emphasize the variety in the lives of society and culture, learning about earlier generations, the need for a perspective on the trends in human development, and the importance of seeing the present as a process and the outcome of developments with many inputs (*ibid.*, 9–10).

In accordance with the guidelines, the general goals associated with information and values were defined as follows:

Jewish Schools	Arab Schools
Information	
1 Familiarity with important historical events	Same
2. Acquiring the skills necessary for the study of history	Same
3 Acquiring the historical concepts used in the description and explanation of historical events	Same
4 Viewing phenomenon in the present in their connection with the past	Same
5. Development of historical thinking (analytical, imaginative, and synthetic	Same
Values	

Source: Ministry of Education and Culture 1998: 10–12; 1999: 4–7.

The goals associated with information are conventional and also appeared in the previous version of the history curriculum, published, as noted, in the early 1980s. Under the heading of values, however, there is something new, although not far-reaching. The first two sections refer to very important educational values, such as fostering judgment of historical events on the basis of humane and ethical values, and fostering understanding and toleration of the feelings, traditions, and ways of life of other peoples and nations. But having stated these liberal generalities the curriculum in practice fails to relate to a cardinal point—the form in which the Arab-Israeli and Israel-Palestinian conflict and the various and contradictory narratives about this conflict are to be considered.

In addition, because the history curriculum was drafted after the beginning of the peace process in the region, and especially the Oslo Accords with the Palestinians, the peace treaty with Jordan, and the first steps toward a comprehensive peace in the Middle East, one might have expected that it would relate to the central question: What is the role of the history curriculum in a transition from conflict to peace? What new themes, both information and values, should reflect the historic change taking place in the region?

These questions are also left unanswered in the enumeration of the general goals, which relate to information, the acquisition of skills, types of historical concepts, analysis of social phenomena, development of historical thinking, fostering judgment of historical events, fostering understanding and tolerance and fostering an identification with the people and the state.

In fact, the only innovation with regard to values is in the goals for Arab schools: “Fostering a sense of affiliation with the Palestinian Arab people and the Arab people on one hand, and with the State of Israel and its citizens on the other” (pp. 8–9). This statement of about fostering a sense of affiliation with the Palestinian Arab people appears for the first time as a central objective of the history curriculum in Arab schools. In the previous curriculum the goals related, as stated, to developing “a feeling of identification with the Arab nation and its culture” with no specific reference to the Palestinian people.

It may be assumed that this innovation reflects the change that took place in the attitudes of the Israeli public in general, and Israeli policymakers in particular, with regard to the Palestinian people and Palestinian identity. The recognition of the PLO by the government of Israel and the establishment of the Palestinian Authority in the territories increased the legitimacy in Jewish eyes of the Palestinian identity and the identification with it of the Arabs in Israel.

It is true that the goal which appears in the curriculum for Arab students emphasizes for the first time the “fostering a sense of affiliation with the Palestinian Arab people”. However, it is accompanied by fostering a sense of affiliation “with the State of Israel and its citizens on the other,” with no reference to the nature of the State of Israel and the status of its Arab citizens. What is more, one of the key goals in the curriculum for Jewish schools is “recognition of the role of the state in the life of society and fostering a desire for active participation in shaping

its destiny" (Ministry of Education 1998: 12). This section, which is missing from the curriculum for Arab schools, aims at perpetuating the status quo that internalizes the perception by Jewish students that Israel is a Jewish state, and not a civil state shared by Jews and Arabs. Unlike Jewish students, Arab students are not called on to participate actively in shaping the destiny of the state and to feel full members thereof.

Consciously or unconsciously, then, Arab students are called on to "enhance the sense of belonging . . . to the state of Israel and its Israeli citizens" as a Jewish state and not as a bi-national state or the state of all its citizens.

Noteworthy is the section about values. In both Arab and Jewish schools the general clauses are phrase in a balanced fashion and refer to the need "to foster humane ethical values to permit judgment of historical events, fostering critical thinking and avoiding dogmatism, fostering recognition of the reciprocal influences among peoples, and evaluation of individuals according to their actions and not their affiliation." With regard to knowledge and understanding of different historical narratives, both curricula emphasize the following goals: "Fostering the ability to understand the position of the other from the other's point of view and fostering the recognition that there are other points of view (and not just one) that can be accepted with regard to national problems too (Hebrew curriculum, p. 12; Arabic curriculum, p. 8).

If we consider the translation of the general principles to the specific national context, however, we receive an asymmetric picture with different standards for Jews and Arabs. In Arab schools, the general principles are applied meticulously and with a broad multicultural perspective. The curriculum presents the two narratives, the Jewish-Zionist and the Arab-Palestinian-Muslim, in the same breath. Students are required to know about the place of Palestine in the Palestinian-Arab and Islamic consciousness vis-à-vis the place of the Land of Israel in the history and consciousness of the Jewish people. In the curriculum for Hebrew schools, however, the Palestinian narrative is almost totally overlooked.

Based on the general principles of the new history curriculum, a number of textbooks were prepared for Hebrew and Arab schools* The textbook for Arab schools is composed of two parts (1995, 1998) **. In our article, which was published elsewhere (Al-Haj, 2005). We have dealt in detail with the new history textbooks for Hebrew schools in Israel. Following, we provide a summary of this analysis.

These books endeavor to represent change in that they treat the Israel-Palestinian conflict from a more open and complex perspective than did the previous curricula followed in Israel during the first 50 years of independence. This change is manifested in the emphasis on the Zionist-Palestinian conflict as one between two national groups that have claims to terms borrowed from the Palestinian narrative, though in a sporadic and inconsistent fashion. In addition, with regard to the peace process the books present a passive and conciliatory message.

However, the narrative presented in these books remains the typical Zionist narrative in which the Jewish side has just national aspirations that it realizes by immigrating to the Holy

Land, making the deserts bloom, pioneering and developing the country, establishing economic, educational, and cultural institutions, and successfully organizing for self-defense against Arab assaults. With regard to the 1948 war (the War of Independence, as they refer to it), the Zionist narrative is the unifying thread in the tale of bravery and triumph of quality over quantity.

At the same time, Palestinian society appears as a collection of individuals with no institutions and organizations, without its own social and cultural life, under a tribal and religious leadership. The major occupation of the Palestinian population was hostile organization to the Jewish Yishuv in order to prevent its development and the realization of its national aspirations, by means of terrorism and devastation carried out chiefly by disorganized gangs.

It should be noted that as a whole new history books for Hebrew schools address peace between Israel and the Palestinians in a passive, formal and factual way. For example, the Ministry of Education book (edited by Danny Jacoby) presents the Middle East peace process in chapter 32 (pp. 259–273). The process is recounted in a dry fashion that describes the sequence of events from the 1988 Algiers declaration by the PLO until the Oslo Accords.

Like the other books, the presentation of the peace process, with its hesitations, problems, and challenges, is narrow and factual, with no attempt to make students partners in thinking and even potential participants in strengthening peace. This fact is prominent, among other places, in the type of questions posed to students. Here are a few of them:

"What caused Israel and the Palestinians to take the road of negotiations?" (p. 260). "What was the status of the PLO at the Madrid Conference, and why?" (p. 261). "What commitments did the PLO make in the Oslo Accords?" "What commitments did the State of Israel make in the Oslo Accords" (p. 264). "What Israeli interests is the draft of the permanent arrangement intended to satisfy?" "What Palestinian interests is a draft of the permanent arrangement intended to satisfy?" (p. 266).

These questions lead students to one-dimensional thinking that goes no farther than the information presented in the book. It assigns the students a passive role of regurgitating the material and provides no opportunity for making them into active participants in the learning process.

The books for Arab schools, unlike the books intended for Hebrew schools, ignores a number of important points having to do with the Palestinian national movement after 1948, Jewish-Arab relations in Israel, and the peace process in the Middle East. Thus, the Arabic book concludes with the establishment of Israel and makes no mention of subsequent events, whereas the chapters that deal with the Arab world generally continue through the early 1990s.

7. CONCLUDING REMARKS

In this paper an attempt has been made to deal with school curriculum in Israeli society within the micro-level context of Jewish-Arab relations and the macro-level factors associated with the Arab-Israel conflict, and in particular the Palestinian-Israel conflict and the shift to conflict resolution. We have mainly focused on history curriculum in Hebrew and Arab schools, since it is the main subject through which the formal political culture is usually conveyed to students and teachers alike. Under a state of conflict , history curriculum is a central tool for inculcating national ethos and patriotism.

Our analysis of the school curriculum over time shows that formal education in Israel reflects the political culture of the dominant Jewish group and the asymmetric Jewish-Arab relations in the wider society. In this sense, education mirrors the power structure in the wider society and forms a mechanism of control over the minority. As a result, the school curriculum in Israel failed to establish any form of multicultural education among both Jews and Arabs. However, curriculum in Arab schools has been designed in a way which provided Arab students with a wide knowledge of the Jewish history in ancient and modern times, including the exposure of Arab students to the central Jewish national ethos of Israel. At the same time, this curriculum has been emptied of any equal citizenship education. Arab students are expected to understand the importance of the State of Israel to the Jewish people, and not to Jews and Arabs in the same degree. Therefore, such kind of imposed curriculum is far from promoting any model of multiculturalism, be it the positivist-mainstream model or the critical model.

Some important changes took place since the mid-1995 among both Hebrew and Arab schools. These changes have been, undoubtedly, affected by the Israel-Palestinian-Arab peace process, or at least the transition from conflict into conflict resolution. The changes might have been also resulted from the globalization process, which has been accompanied by dramatic technological changes that allows students to derive information about their culture, history and identity from various sources outside of the school system. Under these changes the new history curriculum for Arab schools has become more open and has started to address, for the first time, issues connected to identity and culture of Arab students. Nevertheless, even these changes have been limited and overlooked cardinal issues that have to do with the students' identity and status as Palestinians and Israeli citizens at the same time. Arab students are called on to "enhance the sense of belonging . . . to the state of Israel and its Israeli citizens" as a Jewish state and not as a bi-national state or the state of all its citizens. Also, the Palestinian narrative of the conflict (such as the discussion of the Nakba- The Palestinian Catastrophe as a result of the 1948 war) has not been addressed by this new curriculum.

As to the new history books for Hebrew schools, some include a number of departures from the history textbooks previously used. There is also some diversity in the basic notions presented regarding the Israel-Arab conflict. However, this pluralism is still far from leading to multiculturalism or peace education. It is restricted to Jewish-Jewish discourse, with the core goal of safeguarding national-Zionist values and presenting them in a proper, convincing manner to the next generation. In addition, conflict is taught in an active manner that aims to shape the collective memory of the new generation; peace, on the other hand, is presented

in a passive way, without any attempt to turn students into active partners in the public discourse over the transition from conflict to peace.

Two main conclusions may be derived from this analysis: the first has to do with the Israeli-societal level and the second at the theoretical level. At the first level, School curriculum in Israel reflects that gap that exists between the social structure of Israel and its political cultural. According to the social fabric and relatively to its small population, Israel is among the most diverse and multicultural societies over the globe. But such multicultural structure has not resulted in the development of a multicultural ideology of the state, despite the formal democratic structure of Israel. On the contrary, the formal ideology of Israel and its political culture very much reflect an ethno-national ideology, in which the Jewish character of Israel is considered a supreme value, that gains the upper hand when juxtaposed with its democratic character. The very fact that Israel is involved in an " intractable conflict" does not ease this contradiction.

At the theoretical level, we may conclude that deeply divided societies, that lack multicultural ideology, produce deeply divided education systems. In such societies, the use of formal education to shaping of exclusive patriotism and national ethos among the dominant group, is contradictory , and by no means conciliatory, with goals of education for peace, shared civility and multiculturalism . Hence, a curriculum which places at its core the safeguarding of a hegemonic narrative is unable to pave the way for multicultural and peace education. This is especially true in a society still living under the shadow of conflict, where a sizeable proportion of its citizens has a counter- narrative to the hegemonic one. Therefore, the nourishing of a multicultural ideology and a shared civil culture necessitates the development of an all-encompassing curriculum that leaves room for competing narratives and recognizes the legitimacy of different identities.

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9. NOTES

* This series comprises five core textbooks—three for ninth grade and two for senior high school. One of the books for ninth grade, *A Journey to the Past*, was developed by the history group of the Unit for Adapted Pedagogy of the Center for Educational Technology. The team was headed by Ketzia Tabibian with a number of academic advisers, chapter authors, and technical advisers. The second book, *A World of Changes*, was edited by Danny Jacoby; a number of persons took part in writing it, with the assistance of a group of academic advisers. This book was published by the Pedagogic Administration of the Ministry of Education and Culture. The third book, *The Twentieth Century*, was written by Ayal Naveh. It too was supervised by academic and professional advisers. *Modern Times*, a two-volume set for senior high school, written by Eli Bar-Navi and Ayal Naveh, was also published (for more details, see bibliography).

** In 1995, the Ministry of Education published the first part of the series of history textbooks according to the new senior high school curriculum for Arab schools. The second part was published in 1998 (see bibliography). Part 1 was written by Said Bargout, George Salameh, and Atallah Kopti. Prof. David Kushnir was the scientific advisor. Part 2 was written by Said Bargout and a team of authors, with academic advice from Dr. Ilan Pappe.

Endnotes

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Addressing the Safe Educational Environment Through Policy and Legislation - Albania Case

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Addressing the Safe Educational Environment Through Policy and Legislation - Albania Case

Edlira Haxhiymeri & Nikoleta Mita¹

1. OVERVIEW

Schools are expected to provide a safe environment and to play an active role in socializing children for participation in a civil society. This expectation is a challenge in Albania.

The societal changes that occurred in the last twenty years in Albania provided expanding opportunities in the field of education, but at the same time they were accompanied by many social phenomena that schools have to challenge.

Migration is one of the social phenomena, that is considered to have a positive impact in general, but in Albania it is accompanied with many negative consequences. The chaotic and unstable character of internal migration in Albania has created economic, social and demographic imbalances. Internal migration has affected the school climate and it is accompanied with intolerance, exclusion, bias, and violence. Schools in urban areas are overcrowded, while the number of students in rural schools has decreased.

The state collapse in 1997, the land conflict, trafficking of human beings, drug abuse and domestic violence have caused behaviour problems in schools, such as physical violence, psychological violence, bullying, carrying weapons, increased level of hate among pupils. This kind of social environment does not support students' development of fullest potential.

In this social context the government has undertaken the initiative to improve the legislation on education and child rights and to implement policies that support the creation of a safe educational environment. Although positive developments in the legislative and institutional direction, the issue of violence against children in schools is sensitive.

2. LEGAL FRAMEWORK ON SAFE EDUCATIONAL ENVIRONMENT

In recent years, the legal framework in Albania is improved and enriched notably. Child rights have undergone sensitive improvements through comprehensive legal and institutional reforms approaching European standards. The laws, recently approved, support combating school violence and creating a friendly environment at school.

In '90-s, Albania began to make major progress in the field of legislation: it ratified the main international human rights instruments, including those on child rights. Along with the fundamental legal instruments (the Constitution of the Republic of Albania, the Criminal Code, and the Family Code), a number of other laws and specific decisions, directly or indirectly affecting observance of children's rights and their protection from different forms of

violence, have been adopted to ensure compliance of Albanian legislation with the international conventions.

The child protection in school environment in the Republic of Albania has been legislated in these main documents:

- The Constitution of the Republic of Albania approved by the Popular Assembly by the law N0. 8417 date 21.10.1998 and decreed by the President of the Republic on 28.11.1998, changed by the law N0. 9657 date on 13.1.2007 and by the law N0.9904, date 21.04.2008).²
- LAW No. 69/2012 dated 21.06.2012 "On Pre-university Education System in the Republic of Albania".³
- LAW No. 10 347, dated 4.11.2010 "On Protection of the Child Rights".⁴
- Normative Provisions for the Pre-university Education approved by the Ministry of Education and Science in 2002.⁵

The Republic of Albania has ratified the following international documents that contain rules on child rights and protection:

- Convention on the Rights of the Child (ratified in March 1992)
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (February 2008).
- Optional Protocols on the involvement of children in armed conflict (December 2008)

The ratified international agreements have already become part of the Albanian legal system.⁶ The Constitution recognizes the power of legal agreements and of ratified international treaties, subsequent to their publication in the official gazette. It also acknowledges the principle of direct effect or self-execution of the international norm, except in cases where legal provisions by themselves can produce no direct effect and would therefore require the adoption of a specific law⁷.

The Constitution of Republic of Albania

The Constitution of the Republic of Albania guarantees the human rights in general and child rights as well.

Taking into the consideration the topic of this report, it is important to underline that Constitution describes the rules based on the principle of non-discrimination, on best interest of the child, on the right of information and expression, on the right of protection, and on the right to education.

Article 18.2 states that "No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry."⁸

Article 54.1 of the Constitution, based on principle "best interest of the child", guarantees the right of children to have a special protection by the state. In this context, public and private institutions, courts and administrative authorities, in their decisions have as a priority the interest of the child.

Principle of the child protection is guaranteed by the Article 25 of the Constitution that states: "No one may be subjected to cruel, inhuman or degrading torture, punishment or treatment."⁹ The right to protection is supported by Code of Criminal Procedure.

Article 54 of the Constitution of the Republic of Albania is the only article of the Constitution addressing violence against children specifically and directly, assuring children of their fundamental

Rights. This article provides other dimensions of protection. According to this article, children have the right to special protection by the state. More specifically, paragraph 3 of this article recognises the right of every child to be protected from violence and ill treatment. It also recognises their right to be protected from exploitation and work that may harm their health or morals, or put their normal development at risk; especially protected in this regard are children under the minimum age for work (set at 16 years by Albanian legislation).

Albanian legislation allows children to participate actively in socio-cultural life expressing their thoughts, taking and exchanging information and ideas.

Article 22 and 23 of the Constitution guarantee the freedom of expression and the right to information.

Article 56¹⁰ of the Constitution sanctions the right of everyone to be informed for the status of the environment and its protection. As children are included in the category of individuals it follows that they have the right to information. Children receive information and express their opinions mainly through the learning process. Of great importance in this respect is the approval of Law No. 8503, dated 30.06.1999 "On the right to information on official documents". The law has not special provisions for children, but even does not states for exceptions. The educational legislation foresees the rules that support the student exercising the right to information and the freedom of expression.

The Article 17 of Constitution states that "the limitation of the rights and freedom provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights".¹¹

The Criminal Code of the Republic of Albania and other legal instruments address various forms of violence against children in more specific and direct ways.

Law No. 69/2012 "On Pre-university Education System in the Republic of Albania"

On the basis of the law "On Pre-university Education System in the Republic of Albania" stand the requirements of international agreements ratified by Albania, in particular, children's educational rights under: Article 26 of the Universal Declaration of Human Rights; Articles 27 - 28 of the Convention on the Child Rights, Articles 13-14 of the International Convention on Economic, Social and Cultural Rights", Article 18 of the International Convention on Civil and Political Rights", section 9-12 of the European Convention "On Protection of Human Rights and Fundamental Freedoms ", Article 7 of the International Convention" On the Elimination of All Forms of Racial Discrimination ", article 10 of the Convention" On the Elimination of All Forms of Discrimination against Women ", articles 2-5of the Convention "On the Fight against Discrimination in Education."

The Law "On Pre-university Education System in the Republic of Albania" that guarantees the constitutional right to education, according to the relevant legal framework for the functioning of the pre-university education system, contains provisions that support creating a safe environment in schools. Idea that creating a safe environment at school is institutional and individual responsibility lies at the basis of this law. Through seven articles, the law assigns responsibilities for local government units responsible for schools, defines tasks for bodies that operate at the school; stipulates the rights and obligations that teachers, students and parents have for creating and maintaining a safe environment at school.

The Article 3¹² of this law presents as the general aim of pre-university education system the formation of each individual, in order to meet the challenges of the future, be responsible for the family, society and nation. It underlines that the individual must have a deep conviction on that as justice, peace, harmony, cooperation and respect for others are the highest human values.

The Article 6¹³ states the general principles that guarantee the respect and promotion of the children's rights and their protection from any kind of violence.

1. In the activities of the institutions of pre-university education system, the interest of the student is paramount.
2. In the pre-university education system are respected, protected and promoted the rights and freedoms in general and children's rights in particular.
3. In the pre-university education system, students and employees were offered protection from any form of action or inaction that may cause discrimination, violence, harassment or moral harm.

The Article 28¹⁴ sets two main competencies of the basic unit of local government that are to ensure the integrity of the educational institutions under its jurisdiction, and their environments and to preserve and maintain the public educational institution.

Article 32¹⁵ states that educational institution is responsible for creating friendly environment for students and opportunities for each student to show, to develop individuality and to fulfill its potential in accordance with this law.

The Article 33¹⁶ determines the function and task of Commission of Ethics. According to this article, the Commission has a duty to consider complaints of students, parents and employees of the institution to violations of ethical norms and behavior and to propose to the director of the institution the relevant measures.

The Article 61¹⁷ describes the rights and duties of students.

1. The student has the right to: ... d) express his viewpoints on education issues, to complain about the attitude towards him/her and to have educational institution employees' attention to his/her viewpoints and complaint;
2. The student is obliged to:
 - a) respect the rights of other students and staff of the institution, recognized by law;
 - d) respect the rules of the institution to protect the health, safety and environment and require their respect by other students and educational staff;
 - d) respect the code of the institution.

Considering parents as key partner of the educational institution for the well-being of the child and the institution, Article 62¹⁸ recognizes the right of a partner to be informed on the conditions of safety, health and environment of the institution and requires their compliance to the standards set by the Albanian legislation.

Normative provisions (Pre-university education)¹⁹

"Normative Provisions on Pre-university Education" is a bylaw document that presents the responsibilities and duties of the school, the students' rights and duties, the teachers' rights and duties, the parents' rights and duties and the responsibilities of the educational authorities.

Taking into the consideration that protecting children is a shared responsibility and schools have the obligation to provide safe environments where children and young people can enjoy their rights and develop happily, this document sets the detailed rules for the schools, teachers, students, and parents.

Normative Provisions provides the following student rights, duties and the disciplinary measures in the case of the breaking the school rules.

Article 36

Rights

[1] Preschooler and student have the right to be educated in kindergarten and school in the normal, safe and appropriate health conditions...

[2] Individuality and human dignity of the preschooler and the student is respected; preschooler and student are protected from physical and psychological violence, discrimination and isolation. Physical punishment, denigration and humiliation of children are strictly prohibited in the kindergarten and school.

Article 40

Duties

- [1] a) To behave properly and correctly inside and outside the school.
- e) To respect the code and discipline at school, he/she must not impede the progress of teaching activity in the classroom or study activity of other students.
- f) To demonstrate respect and correct behaviour towards teachers, instructors, school director, administrative, technical and assistance staff inside and outside the school.
- [2] a) Prohibited the violation of the rights of others.
- b) He/she must not exercise any kind of physical or psychological violence and must not tolerate ill-mannered, insulting and humiliating acts in school and must to demonstrate critical attitude toward them.
- c) Smoking, alcohol, drug use and distribution, possession of firearms and cold weapon are categorically prohibited for student.

Article 42

Discipline measures

- [1] Discipline in schools has educational nature. It is part of the whole school activity.
- [2] a) Disciplinary measures taken after extensive efforts were made prior to the recognition of students with their responsibilities, rights, and the rules in force.
- b) Disciplinary measures defined carefully, taking into account values and their usefulness, student age, psychology and personality.
- c) Student of 9-years school is not allowed to be removed from the classroom.
- d) In very rare cases, the teacher can remove the high school student outside the classroom, when it becomes a serious obstacle for the normal instruction. After classes, the teacher informs the teacher responsible for the class, arguing his/her actions and proposing disciplinary measures.
- [4] The disciplinary measures that can be implemented in schools are:
 - a) "Reprimand".
 - b) "Rebuke".
 - c) "Expulsion to three days of school" (only for a high school student).
 - d) "Warning for expulsion from school".
 - e) "Expulsion from school for that school year" (only high school student).
 - f) Cases of points [4. a) and b)] are responsibility of the class teacher. Decision in the case of points [4. c), d) and e)] are taken by the school principal with the consent of not less than 2/3 of the members of the council of discipline. He/she designs a special circular which presented to the school. Decision and circular deposited in the archives of the school for four years.
- [5] a) For the case of section [4.d] the student's behaviour is assessed "Sufficient" and he/she has no right to be admitted to the final key stage exams, but has the right to pass on the

intermediate classes. b) For the case of section [4.e)] the student's behaviour is assessed "Poor" and he/she loses the school year.

[7] Measures a) and b) of point [4] are reflected in the register. They considered settled, as a rule, after two months without any action. Measures c, d and e) of point [4], are also reflected in the register.

[8] In all cases, when a disciplinary measure against student is (point [4]), parents are informed by a written note and they confirm to the class teacher that they are informed.

[9] Any measure of punishment, which is not included in the Article 46, point [4], is prohibited.

[10] The student against whom disciplinary action is taken has the right to appeal within 7 days at the school directory for points [4. a), b) and at the Educational Directory for points [4.c), d), e)]. Their decisions are final.

[11] The school principal, based on the class teacher proposal and based on the consent of not less than 2/3 of the members of the Board of Discipline, has the right to make the decision to improve behavioural assessment "sufficient" to students given based on point [4. d).

[12] The disciplinary measures that are given during a school year may not be transferred to the next year.

Law No. 10 347, dated 4.11.2010 "On Protection of the Child Rights"²⁰

The aim of this Law is the special protection of child rights through the implementation of a comprehensive legal and institutional framework pursuant to the Constitution, international acts operating in this field, as well as the legislation in force. Two articles have direct link with child protection from the violence.

Studies of violence have revealed how difficult it is to define violence. The major difficulties are related to the concept of violence, what is culturally accepted as violence, both by those who study it and those who exercise or experience it.

The Article 3 of the Law on Protection of the Child Rights gives the main definitions related to child violence. The effort made by the mentioned law is positive, but the contribution is limited.

According to the Law, the following terms have the following meanings:

b) "Violence against children" is the intentional use of physical force or other forms of abuse, against a child, a group of children, which results or is likely to result in injury, death, psychological harm, mal-development or deprivation".

c) "Psychological violence" includes actions that harm the physical, mental, moral and social development of the child and that, among others, have caused the restriction of freedom of movement, degrading, threatening, intimidating, discriminatory, mocking behaviour or other forms of hostile or rejecting attitude by parents, sister, brother, grandfather, grandmother, a

legal representative, a relative of the family or any other person who has the duty to care for the child.

c) "Physical violence" is any attempt or any physical damage or injury of a child, including its physical punishment, which are not accidental.

e) "Child protection" is the prevention and response to violence, abuse, exploitation and neglect of children, including abduction, sexual exploitation, trafficking, child labour and harmful traditional practices such as genital mutilation and child marriage.

f) "Corporal punishment" means any kind of punishment that uses physical force intended to cause pain or discomfort, however light, used by parents, sister, brother, grandfather, grandmother, legal representative, relatives or any other person legally responsible for the child. Bodily punishment includes such forms as: beating, torture, shock/forcible compulsion, burning, smashing (buffet or kick), bites, claw, bite, severe reprimand, coerce by force to perform an action, a use of substances that cause pain or discomfort.²¹

The second article related to the child violence is Article 21. It is dedicated to the child protection from all forms of violence. This article states:

Protect the child from all forms of: a) physical and psychological violence; b) corporal punishment, humiliating and degrading handling; c) discrimination, exclusion and insult; c) abuse and abandonment; d) disregard and neglect; f) exploitation and abuse; e) sexual violence.²²

As it mention above, the legislation improvements are a good support for the creating a safe educational environment, but there is a need for bylaws to give more concrete specifications taking into the consideration the Albanian context. The educational legislation prohibits in a declarative way the use of violence, but do not specify the necessary legal mechanisms for prevention of violence and protection of children in the school premises. The legal framework also fails to provide for sanctions against teachers who use violence or to prescribe procedures for the identification of and reporting channels for indicators of violence coming from outside the school setting.

3. POLICIES AND PROGRAMMES TO ADDRESS VIOLENCE AGAINST CHILDREN

Research findings for this report illustrate that the Albanian Gcontinues to address the protection of children's rights at the level of political documents. The following key policy documents present the priorities, objectives and the actions foreseen to protect child rights and to create democratic schools without violence.

National Strategy for Integration and Development (2008-2013)

This document replaced the previous National Strategy for Social and Economic Development (NSSED). It includes priorities and objectives for the integration of Albania into the EU and NATO, and provides a vision for the country's development and its integration

into these structures. NSDI refers to sectoral strategies as more detailed documents for strategic intervention in certain areas or sectors. Among these strategies are the sectoral strategy for children and the strategy against child trafficking.

National Strategy for Children and its Plan of Action (2005-2010)

This strategy was an important document in the establishment of the Albanian Government's official policy toward child rights. The Strategy was guided by the principles of the CRC and includes references to four main aspects: child survival; child protection; development of the child; and child participation. The document described the measures to be undertaken by different ministries for the purpose of the exercise and protection of children's rights.

Social Protection Strategy and its Action Plan (2008-2013)

This document presents a policy for reforming the system of payments and social services, not only for groups in need, but for the whole society. Children outside parental care and those with disabilities are explicitly included in the strategy, while the objectives are designed to directly impact the enforcement of children's human rights as espoused by the CRC.

Strategy for Social Inclusion (2007-2013)

This strategy is inter-sectoral and focuses on poverty and social exclusion, threats that remain even after economic growth. In particular, the strategy refers to children at risk of being affected by violence, abuse and neglect and to Roma children and those with disabilities. This strategy, in relation to children at risk, aims at developing an integrated policy and an institutional structure to ensure early intervention towards child development and their protection from all forms of abuse, violence and exploitation.

National Strategy for improving conditions of the Roma community

This Strategy aims to improve the living conditions of the Roma minority through concrete policies and programs for poverty alleviation, their involvement in public life, and the preservation and development of their ethnic identity. Roma children are specifically referenced, especially in the section, which addresses education and awareness.

National Strategy for Persons with Disabilities and its Plan of Action

The objectives of this strategy and measures identify the rights of children with disabilities, such as the right of the child to be heard; the right to education, healthcare, and entertainment; and the right to information. However, the strategy lacks a particular focus on children and an even lesser focus on their protection from abuse, violence, neglect or exploitation; all fundamental principles of protecting the rights of children are in the context of the CRC.

"National Strategy for Fighting Child Trafficking and the Protection of Child Victims of Trafficking" (2008-2010)

It is a component of the "National Strategy on the Fight against Trafficking of Human Beings "(2008-2010). Both documents are part of the National Strategy on the Fight against Organized Crime, Trafficking and Terrorism (2007-2013). The National Strategy against Trafficking of Human Beings aimed at increasing access of children to education and

increasing school enrolment rates by improving the system of registration with the civil registration offices; eliminating child labor; and building a child protection system.

Analysing the documents of the strategies we can mention that The National Strategy for Children is a very ambitious but somewhat unrealistic instrument. It has a detailed action plan, but the plan is not binding for certain sectors, and structures are not in place to facilitate its implementation.

The National Strategy for Social Services has similar difficulties.

A common striking features of these strategic documents is that they do not provide for the funds to implement. Neither do the Ministries dealing with child-specific issues set aside a budget for these issues. Still, these documents are a step towards developing a framework for a comprehensive policy concerning violence against children.

There are a number of top-level state institutions that deal with children, including the Ministry of Education and Science, the Ministry of Labour, Social Affairs and Equal Opportunity, the Ministry of Health, the Ministry of Justice, the Ministry of Interior, the Ministry of Tourism, Culture, Youth and Sports, the General Prosecutor's Office, and the Ombudsman.

Several of these institutions have established offices that are responsible for addressing the problem of violence against children. For instance, the Minors' Sector, established in the Ministry of Interior, focuses on minors as an object and subject of crime; the Minors' Sector at the Ministry of Justice focuses on developing legislation on minors, and following cases involving minors in conflict with the law; the Human Service Directorate in the General Prosecutor's Office, which includes the Sector for the Protection of Children's Rights, addresses the protection of children's rights with a focus on their economic, psychological and social development and well-being, abiding by the Convention on the Rights of the Child. This last sector builds cases of violence against and abuse of children on the basis of reports by citizens, other public and non-public structures, and non-profit organisations; which it refers to the relevant justice office. At the local level, Child Protection Units are functioning.

The main issue in the institutional level is related to the lack of effective harmonization of the activity of different bodies, otherwise said, lack of a synergy. Although there are certain sectoral structures and policies, Albania does not yet have a comprehensive and harmonised inter-sectoral policy to improve the situation concerning violence against children, backed up by legislation and associated with the structural mechanisms, financial and human resources required for its implementation and monitoring.

Many governmental and non-governmental sectoral policies on issues relating to children, including violence, also have been developed. Over the past decade, international donors have made numerous investments in the area of human rights, including the protection of children from violence. A better coordination and organisation among various actors involved in the framework of a national policy aimed at protecting children from violence, would bring a more effective and efficient allocation of human and financial resources.

In default of a comprehensive policy and program concerning violence against children, the Albanian Government has provided direct support to those agencies offering programs aimed at preventing and responding to violence against children. Likewise, these agencies have been allowed to implement their own projects in state-run institutions, with the space or materials of the institutions being made available to them, if necessary. In this regard, the Government and its bodies have proven to be highly supportive.

The Government has not been able to monitor the observance of the obligations of public institutions laid out in the National Strategy for Children, as monitoring structures are not in place. Similarly, the programmes concerning violence against children implemented by non-profit agencies have not been monitored. These agencies are obliged to provide information on their activities. However, this does not seem to be working properly because of a lack of transparency about reporting procedures. International and local civil society organisations monitor on their own the programmes and projects they implement.

Three main projects have supported the realization of the objectives of the Government to create safe educational environments: TACT III (Transnational Action against Child Trafficking), COMBI (Communication for Behavioral Impact) and CPSN (Developing a Child Protection Safety Net). UNICEF and Terre des Hommes in Albania have been cooperating with various national and local partners, to ensure and strengthen the role of schools in assisting and protecting children within their environments.

The aim of the projects mentioned above was to develop child protection mechanisms which are actively engaged in assisting and protecting children within the school environment and to ensure that schools are an active part of the child protection safety net developed in Albania. The projects are focused on building capacities and knowledge of professionals working in schools and on developing and institutionalizing child protection tools in the schools. School psychologists, coordinators, supervisors, and school directors are seen as the key persons to be trained. School psychologists were empowered to identify and refer high risk cases of children in need of protection, while managing and coordinating protection responses for low and medium risk cases themselves.

As a result of lessons learned from TACT III, the aims of CPSN project activities with school actors were significantly extended. On the one hand, CPSN aspired to make the education system more effectively incorporated into the local child protection safety nets while on the other hand, it strongly advocated for institutionalization of child protection tools in the school.

National Programme Campaign: "For a friendly school, pro positive behaviours"

The programme is focused on alternative ways of discipline that is consistent with the Convention on the Rights of the Child. The programme shows how to solve conflicts between teachers and students, or between students, without challenging the authority of the teacher, and without humiliating students or using force.

Observing the institutional activities at the highest decision-making levels, it is remarked that policies and programmes on violence against children have been developed without consulting children directly. Adults have decided for the children. The participation of children in planning, implementation and monitoring is a new development for Albania. On many occasions, children are invited purely as a formality. Children's regular involvement is not viewed as essential. They are consulted sporadically.

4. SOME CHARACTERISTICS OF THE SCHOOL VIOLENCE IN ALBANIA

No nation-wide surveys or studies concerning violence against children have been conducted in Albania. No surveys or in-depth studies have been conducted on the impact of legislative safeguards on violence against children. Though there have been a number of studies (mainly conducted locally by non-profit organisations), Albania does not have an information system covering violence against children.

The picture of the school violence in Albania will be presented based on the findings of the research "Violence against children in Albania"²³. This research shows that the violence in schools is a sensitive issue.

The data of this research highlighted three fundamental attitudes towards the use of physical and psychological violence.

The first, upheld by a relatively limited number of parents (fathers) and teachers, is that physical violence is absolutely the most effective tool to ensure children's discipline. Some children also agree with this attitude.

The second attitude is that physical violence has very negative consequences for children. This attitude is maintained by a considerable number of parents, teachers, and children.

The third attitude is halfway between the foregoing diametrically opposed attitudes. Its bottom line is that, though there may be numerous negative consequences, physical and psychological violence also has positive effects on children's education. Therefore, parents should use it where necessary. This attitude is embraced by the overwhelming majority of parents and, to a somewhat lesser extent, by teachers.

Forms and extent of violence against children

Most common forms of physical violence perpetrated against children in schools are: pulling of the ear, pinching, hitting with an object, smacking (with an open hand) on the body and head, pulling hair, forcible pulling and pushing, kicking.

Children are more likely to report physical violence other children perpetrate against them, and less so to report violence exercised by teachers.

Children report the following most common forms of psychological violence exercised against them in the school: shouting, threatening with summoning a parent to school, verbal threats; name-calling and derogative nicknames; and threatening with firing them from classroom.

The reported level of psychological violence in social care institutions is substantially higher than for the school.

According to the research, 40 per cent of the interviewed children report having seen weapons (mostly knives and in very scarce cases guns) on the school grounds and 6.7 per cent report having been threatened by weapons.

The physical violence against children in schools is practised by: a) using parts of the body: palm of the hand (smacking), fist (punching), teeth (biting), foot (kicking), and fingers (pinching); b) using objects causing pain: slipper, stick, register, fly-swat, rolling-pin, carpet beater, rubber stick, wooden spoon, broom, book, ruler, cosh, baton for the geography lesson, belt, chalk; c) dragging (dragging along, forcibly grabbing by the arm, grabbing by the blouse); pushing (pushing off the sofa, the chair); d) slamming (slamming children's heads against each other, slamming someone's head against blackboard, door, wall); pulling (pulling someone's ear, hair, fingers); e) isolation: making someone stand on one foot; sending someone out to the corridor; shutting

The most common forms encountered at school are forcible pulling and pushing, and striking on the body and head with an object.

Bullying, which comprises both physical and psychological violence, also exists in schools in Albania. It is particularly important to mention that there is no term in Albanian and in most Balkan cultures specifically to describe bullying.

Perpetrators of violence

Children also perpetrate violence against children. Indeed, students in schools are more likely to be victims of other children than of teachers or other adults.

Female teachers more commonly resort to physical and psychological violence in schools than male teachers. Male teachers exercise harsher forms of physical violence, whereas female teachers exercise harsher forms of psychological violence. Female teachers are more likely to use physical violence against female students, whereas male teachers are more likely to do so against male students.

There is also a tendency to ignore the problem rather than seek help, possibly through fear of exacerbating the situation or because victims do not trust the designated authorities.

5. CONCLUSION

Despite the fact that Albania has made great progress in terms of legislation and policy for child rights and child protection, many issues need to be handled.

It is clear that violence against children in schools is a complex problem, with many underlying causes and, unfortunately, no simple solution.

Recognizing the role of the state and the society, a series of actions must be taken such as harmonizing the policies against school violence; putting in place mechanisms to enforce the

law; putting in place mechanisms of report violence against children; creating a database on school violence; elimination or reduction of the factors that cause the school violence.

Considering that the schools have a key role in the educational development of children, future efforts must be focused on assisting schools to develop and implement policies for promoting safe schools without violence, to increase collaboration with local child protection stakeholders, particularly the Child Protection Units, and to empower the school psychologists, through continues trainings, support and supervision, to better fulfil their child protection role within the education system.

Endnotes

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Towards Creating Safe Educational Institutions In India - Challenges And Opportunities

Ruhi Paul



Towards Creating Safe Educational Institutions In India - Challenges And Opportunities

Ruhi Paul*

Two fatal shootings and a stabbing in Indian schools have rattled parents and teachers here, forcing India to confront an issue it had previously known mainly through TV news footage from other countries. School violence affects children both physically and mentally, and is hazardous to the child's future. It largely contributes as one of the major factors for school drop outs and academic failures. School violence creates a fear in the mind of the children, as they become reluctant to attend school. School violence should be determined not by the degree of crime, but by considering the physical and mental status of the children involved. A welcoming environment is particularly important for those students who are struggling in school and need extra support.

It is important to create a balance between a safe school and a welcoming, caring environment. It is important to create a school climate that does not tolerate bullying, intimidation, and terrorism. Students who are afraid often stay away from school. A safe learning environment is focused on academic achievement, maintaining high standards, fostering positive relationships between staff and students, and encouraging parental and community involvement. For students to learn, they must attend school. A welcoming and accepting environment motivates students to attend school.

Violence at educational institution include corporal punishment, sexual violence, verbal abuse, emotional abuse, neglect, bullying, peer – to – peer violence, youth gangs, use of weapons, and harassments in school and on the journey to and from the school. Ragging is another problem with which the educational institutions especially the higher educational institutions are grappling with, in India.

The author has been working throughout her teaching career in the Higher Educational Institutions in India so the research paper will be generally referring to problems and suggestions in respect of schools and specifically referring in respect of institutions of higher education.

1. REASONS FOR VOLATILE BEHAVIOUR IN STUDENTS

Incidents of violence are on the rise not only in India but worldwide. Violence has become part of the fabric of almost all societies. It is pervasive on television, in sports, music, video games, and even in our schools and workplaces. Schools are no longer safe havens for children. Students cannot learn in an unsafe environment. The reasons as to why schools have become such volatile environments are various and any attempt to provide an exhaustive list will be not possible for the author. Some of the responses of psychologists and the teaching fraternity in India are as follows¹:

1. Lack of human touch, empathy and moral-based education;
2. Easy availability of fire arms;
3. Violent TV programmes, films and video games;

4. Growing intolerance to public authority;
5. Lack of teacher-student contact;
6. Lack of parent-teacher contact;
7. When students can't deal with the pressure of not performing well academically some turn to self-harm and commit suicide, others externalise the anger which may lead to such an incident;
8. Less physical activity no longer have an outlet in physical play where they could release their pent up aggression;
9. Violent atmosphere at home or bad company;
10. Some children want to become rebellious and daring in front of friends and so challenge authority;
11. In India, the concept of nuclear family with both parents busy in their professional life is a recent concept. This leads to either no or less supervision of children, etc.

Resolving conflict and preventing violence are important factors in creating a safe learning environment. Students respond to conflict by confronting it, usually in a violent manner, or avoiding it. Neither of these responses helps them to learn how to deal with conflict in an appropriate way. Students need to learn effective interpersonal skills to cope in group situations. It is important for students to know how to deescalate conflict, manage it, and resolve it.

2. VIOLENCE IN EDUCATIONAL INSTITUTIONS

Today, there are several instances where children have become victims of physical and sexual abuse in schools inflicted by school teachers and largely condoned by the school management. In India, there is societal acceptance of violence as a form of discipline. There is a lack of awareness about the issues of children's rights among children and adults. In India, Corporal Punishment is often defended in the name of traditions and sometimes in the name of religion. Hitting a child is considered the rights of parents and teachers. The supposed beneficial impact on children's behaviour is also frequently used as an argument to defend physical punishment as a discipline method². The short-term consequences of Corporal Punishment are physical injury or even death and the long term consequences may be development of violent behaviour in students, depression, lowered educational, occupational and economic achievement.

Another problem prevalent in Indian educational institution is sexual violence. According to a WHO Study of 2006, the lifetime impacts of child sexual abuse accounts for approximately six percent of cases of depression; six percent of alcohol and or drug abuse / dependence; eight percent of suicide attempts; ten percent of panic disorders and 27 percent of post traumatic disorders³.

The subject of child sexual abuse is still a taboo in India. Partly due to the traditional conservative family system and partly due to a community structure, talk about sex and sexuality is not encouraged. This silence encourages the abuser so that he is emboldened to continue the abuse and to press his advantage to subject the child to more severe forms of

sexual violence. Girls in Indian society, where women are accorded a lower or more passive status are more likely to suffer sexual violence at school. The effects of sexual violence in school are multiple and overlapping. Victims suffer physical and psychological trauma and are at risk of sexually transmitted infections, unwanted pregnancy, unsafe abortion, social stigma, etc.

Sexual harassment and violence form a major barrier to girl's and young women's access to education and their ability to benefit from it. It is a powerful factor in influencing parents to keep girls out of school, for girls themselves avoiding school and for girls' underperformance in the classrooms.

Where children fail to report sexual violence because of guilt or fear of negative repercussion, they often turn to alcohol or drug abuse in an effort to cope with their experience. They may also become prone to depression and also resort to crime. Those who manage to report abuse are likely to experience hostility, which can force them to change and sometimes quit school. Unfortunately, teachers or students accused of abusing them often remain in place and experience no repercussions⁴.

All forms of violence against children in school must be outlawed. A school that tolerates one form of violence against children such as corporal punishment is also likely to be permissive of others. Indeed corporal punishment and sexual violence are linked. A girl who submits to giving sexual favours to a teacher will expect to avoid being beaten, whereas, one who turns down a teacher risks a beating.

2.1. Legal Framework in India to Address Issue of Violence towards Children

There is a growing appreciation for addressing the issue of violence against students in an educational institution. There are many provisions through which the State can intervene on corporal punishment under Article 21, Constitution of India, the 'right to life' has been expanded to mean:

1. A life of dignity
2. A life which ensures freedom from arbitrary and despotic control, torture and terror.
3. Life protected against cruelty, physical or mental violence, injury or abuse, exploitation including sexual violence.

Under Article 39, Constitution of India, the State shall in particular direct its policy towards securing:

F. That children's are given the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Section 23, The Juvenile (Care and Protection) Act, 2000⁵ has no exceptions to exempt parents or teachers. Though it is intended to punish cruelty by those in authority, it equally applies to parents and teachers. The purpose of the Juvenile Justice Act 2000 is to translate the objectives and rights enshrined in Convention on Child Rights, which include separation

of juvenile in conflict with law from ordinary judicial proceedings to avoid corporal punishment.

Para 5.6 of the National Policy on Education (1986) states "Child – Centered Approach: A warm, welcoming and encouraging approach, in which all concerned share solicitude for the needs of the child, is the best motivation for the child to attend school and learn. A child-centered and activity based process of learning should be adopted at the primary stage. First generation learners should be allowed to set their own pace and be given supplementary remedial instructions. As the child grows, the component of cognitive learning will be increased and skills organised through practice. The Policy of Non-Detention at the primary stage will be retained, making evaluation as disaggregated as feasible. Corporal punishment will be firmly excluded from the education system and school timings as well as vacations adjusted to the convenience of children".

The National Charter for Children (2003): This Charter acknowledges the principles and provisions of the Constitution of India and of the 1979 National Policy as comprising its guiding frame, and includes 'neglect' and 'degrading treatment' in its listing of conditions from which children must be protected. The Charter states its intent to 'secure for every child its right to be a child and enjoy a healthy and happy childhood... and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse...' and asserts that 'the state and community shall undertake all possible measure to ensure and protect the survival, life and liberty of all children'.

Article 7(f): The State shall ensure that school discipline and matters related thereto do not result in physical, mental, psychological harm or trauma to the child.

National Plan of Action for Children 2005 (NPA): One of the core objectives of NPA is "to protect all children against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, pornography, corporal punishment, torture, exploitation, violence and degrading treatment."

Apart from these legal instruments, India is signatory of the United Nations Convention on Rights of Child, 1989 and other major International commitments and documents which prohibit all kinds of cruel, inhuman or degrading treatment towards children and women. India has received recommendations on corporal punishment by Human Rights Treaty Bodies:

Committee on the Rights of the Child (26 February 2004, CRC/C/15/Add. 228, Concluding Observations on Second Report, paras 44 and 45)

"The Committee notes the decision of the Delhi High Court of December 2000 regarding prohibiting corporal punishment in the schools under its jurisdiction, but remains concerned that corporal punishment is not prohibited in the schools of other states, in the family, nor is other institution for children, and remains acceptable in society.

"The committee strongly recommends that the state party prohibit corporal punishment in the family, in schools, and other institutions and undertake educational campaigns to educate

families, teachers and other professionals working with and / or for children on alternative ways of disciplinary children".

Committee on the Rights of the Child (23 February, CRC/C/15/Add.15, Concluding Observations on Initial Report, paras, 38, 40, 44 and 45)

"In the light of Articles 19 and 39 of the Convention, the committee is concerned at the widespread ill-treatment of children in India, not only in schools and care institutions but also within the family. The committee recommends that the state party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and care institutions.

The committee recommends that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children. The Committee recommends that the state party promote positive, non-violent forces of discipline as an alternative to corporal punishment, especially in the home and schools."

In view of this, there is a need for formulating a central legislation on banning corporal punishment and creating a system wherein such cases are not only reported but strict action taken against abusive teachers and principals. However, till date every attempt to draft law on corporal punishment has been futile due to deep rooted value system of Indian society in favour of corporal punishment as mode of discipline. However, even enactment of laws alone is not sufficient. Strong enforcement is a necessary next step to reducing the number of children who suffer violence at school.

2.2. Judicial Approach to Corporal Punishment

The historic judgement delivered on December 1, 2000⁶, held that Rule 37 (1) (a) (ii) and (4) of the Delhi Education Act & Rule 1973 as violative of Article 14, 21 of the Constitution and accordingly struck down. It once again draws our nation's attention to the importance a child deserves: "Child being a precious national resource is to be nurtured and attended with tenderness and care and without cruelty. Subjecting the child to corporal punishment (CP) for reforming him cannot be part of education."

The Hon'ble judges have categorically emphasized the constitutional rights of a child as guaranteed in Article 21 which runs counter to the practice of CP. "Freedom of life and liberty guaranteed by Article 21 is not only violated when physical punishment scars the mind of the child and robs him of his dignity. Any act of violence which traumatizes, terrorizes a child, or adversely affects his faculties falls foul of Article 21 of the Constitution.

The Court viewed the provisions of the Delhi Education Act in the light of the Indian Constitution, National Policy of Education (NPE) and Convention on the Rights of the Child (CRC), adopted by the UN and signed by India in 1992. The judges, after citing these provisions at considerable length sum up as under:

... in a nutshell the thoughts which pervade the various Articles of the Convention are basically protection of the child from all forms of physical or mental violence, injury, neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or

punishment and adoption of means for the welfare of the child in every conceivable way and preservation of dignity of the child. (p.11)

The judgement focuses on the long term consequences of corporal punishment: "The fallout of physical force on the children in schools by teachers defeats the very purpose for which it is applied. By infliction of bodily pain as penalty for indiscipline by the children, some children may become submissive while others may learn that punishment is an accepted mode of ensuring compliance of one's wishes by others and that physical violence is an accepted means of exercising control over them. With the latter class of subjects, violence becomes means to acquire what they wish."

It not only perpetuates but inculcates violence in children as the judgement observes. Thus violence becomes an integral part of their lives. It is difficult to imagine the future of a nation whose children believe in violence for subjugating others or being submissive to force. Brutal treatment of children can never inculcate discipline in them. Obedience exacted by striking fear of punishment can make the child adopt the same tactics when he grows up for getting what he wants. (p.16)

The judgement noted the anti-educational effects of CP denying right to education: "Children who are ruled by the rod in school may acquire disdain and hatred for their teachers. Beating affects their concentration in studies and leads to development of fear psychosis towards learning. Fear of corporal punishment discourages regular attendance at schools and increases dropout rate. This obviously hampers and obstructs education and affects their right to education, which is a fundamental right flowing from Article 21."

The judgement refocuses the objective of the nation: "The child has to be prepared for responsible life in a free society in the spirit of understanding, peace and tolerance. Use of corporal punishment is antithetic to these values." If we want our country to move in the direction of a peaceful and well ordered society, we have to begin by building on such values from early childhood. The judgement cites Gandhiji's insight in this regard: "If we are to reach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children, and if they will grow up in their natural innocence, we won't have to struggle, we won't have to pass fruitless idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which, consciously or unconsciously, the whole world is hungering. (p. 17)."

Dismissing the concept of a school discipline based on physical punishment as untenable and outdated, it also directed the state to ensure that "children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear. (p.22)"

In India, many High Courts and Supreme Court judgments⁷ have clearly banned corporal punishment. State governments in India have also passed strict rules to prevent and ban corporal punishment.

2.3. Legal Framework in Respect of Sexual Violence and Abuse towards Children / Women

The Protection of Children from Sexual Offences Act, 2012⁸, has been passed by the Lok Sabha on 22 May, 2012. The Bill was earlier passed by the Rajya Sabha on 10 May, 2012. The Protection of Children from Sexual Offences Act, 2012 has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the

first time, a special law has been passed to address the issue of sexual offences against children.

Sexual offences are currently covered under different sections of IPC. The IPC does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims. The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court. An offence is treated as "aggravated" when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc.

2.3.1. Punishments for Offences covered in the Act are:

1. Penetrative Sexual Assault (Section 3) – Not less than seven years which may extend to imprisonment for life, and fine (Section 4)
2. Aggravated Penetrative Sexual Assault (Section 5) – Not less than ten years which may extend to imprisonment for life, and fine (Section 6)
3. Sexual Assault (Section 7) – Not less than three years which may extend to five years, and fine (Section 8)
4. Aggravated Sexual Assault (Section 9) – Not less than five years which may extend to seven years, and fine (Section 10)
5. Sexual Harassment of the Child (Section 11) – Three years and fine (Section 12)
6. Use of Child for Pornographic Purposes (Section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))

The Act provides for the establishment of **Special Courts** for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates **child friendly procedures** for reporting, recording of evidence, investigation and trial of offences. These include:

1. Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector
2. No child to be detained in the police station in the night for any reason.
3. Police officer to not be in uniform while recording the statement of the child
4. The statement of the child to be recorded as spoken by the child
5. Assistance of an interpreter or translator or an expert as per the need of the child
6. Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
7. Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
8. In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
9. Frequent breaks for the child during trial
10. Child not to be called repeatedly to testify

11. No aggressive questioning or character assassination of the child
12. In-camera trial of cases

The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The **attempt to commit an offence** under the Act has been made liable for punishment for upto half the punishment prescribed for the commission of the offence. The Act also provides for punishment for **abetment of the offence**, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.

For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the **burden of proof** is shifted on the accused. This provision has been made keeping in view the greater vulnerability and innocence of children. At the same time, to prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, punishment is higher (one year). The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year. For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible.

To provide for **relief and rehabilitation of the child**, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.

The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act. The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority to monitor the implementation of the Act.

2.4. Criminal Law (Amendment) Bill, 2012

The Union Cabinet approved the proposal for introduction of the **Criminal Law (Amendment) Bill, 2012⁹** in the Parliament on July 27, 2012. The Law Commission of India in its 172nd Report on 'Review of Rape Laws' as well the National Commission for Women have recommended for stringent punishment for the offence of rape. The High Powered Committee (HPC) constituted under the Chairmanship of Union Home Secretary examined the recommendations of Law Commission, NCW and suggestions various quarters on the subject submitted its Report along with the draft Criminal Law (Amendment) Bill, 2011 and recommended to the Government for its enactment. The draft was further examined in consultation with the Ministry of Women and Child Development and the Ministry of Law & Justice and the draft Criminal Law (Amendment) Bill, 2012 was prepared.

The highlights of the Bill include substituting sections 375¹⁰, 376, 376A and 376B by replacing the existing sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code 1860, replacing the word 'rape' wherever it occurs by the words 'sexual assault', to make the offence of sexual assault gender neutral, and also widening the scope of the offence sexual assault.

The punishment for sexual assault will be for a minimum of seven years which may extend to imprisonment for life and also fine for aggravated sexual assault, i.e., by a police officer within his jurisdiction or a public servant / manager or person taking advantage of his position of authority etc. The punishment will be rigorous imprisonment which shall not be less than ten years which may extend to life imprisonment and also fine.

The age of consent has been raised from 16 years to 18 years in sexual assault. However, it is proposed that the sexual intercourse by a man with own wife being under sixteen years of age is not sexual assault. Provision for enhancement of punishment under sections 354¹¹ and 509¹² of IPC and insertion of sections 326¹³A and 326B in the IPC for making acid attack a specific offence have been made.

2.5. Protection of Women against Sexual Harassment at Workplace Bill, 2010

The Union Cabinet approved the introduction of the Protection of Women against Sexual Harassment at Workplace Bill, 2010 on November 4, 2010 in the Parliament to ensure a safe environment for women at work places, both in public and private sectors whether organised or unorganized. The measure will help in achieving gender empowerment and equality.

The proposed Bill¹⁴, if enacted, will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

Salient features of the Bill are as follows:

- The Bill proposes a definition of sexual harassment, which is as laid down by the Hon'ble Supreme Court in *Vishaka v. State of Rajasthan* (1997). Additionally it recognises the promise or threat to a woman's employment prospects or creation of hostile work environment as 'sexual harassment' at workplace and expressly seeks to prohibit such acts.
- The Bill provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, and daily wageworker or in ad-hoc capacity. Students, research scholars in colleges/university and patients in hospitals have also been covered. Further, the Bill seeks to cover workplaces in the unorganised sectors.
- The Bill provides for an effective complaints and redressal mechanism. Under the proposed Bill, every employer is required to constitute an Internal Complaints Committee. Since a large number of the establishments (41.2 million out of 41.83 million as per Economic Census, 2005) in our country have less than 10 workers for whom it may not be feasible to set up an Internal Complaints Committee (ICC), the Bill provides for setting up of Local

Complaints Committee (LCC) to be constituted by the designated District Officer at the district or sub-district levels, depending upon the need. This twin mechanism would ensure that women in any workplace, irrespective of its size or nature, have access to a redressal mechanism. The LCCs will enquire into the complaints of sexual harassment and recommend action to the employer or District Officer.

- Employers who fail to comply with the provisions of the proposed Bill will be punishable with a fine which may extend to ` 50,000.
- Since there is a possibility that during the pendency of the enquiry the woman may be subject to threat and aggression, she has been given the option to seek interim relief in the form of transfer either of her own or the respondent or seek leave from work.
- The Complaint Committees are required to complete the enquiry within 90 days and a period of 60 days has been given to the employer/District Officer for implementation of the recommendations of the Committee.
- The Bill provides for safeguards in case of false or malicious complaint of sexual harassment. However, mere inability to substantiate the complaint or provide adequate proof would not make the complainant liable for punishment.

Implementation of the Bill will be the responsibility of the Central Government in case of its own undertakings/establishments and of the State Governments in respect of every workplace established, owned, controlled or wholly or substantially financed by it as well as of private sector establishments falling within their territory. Besides, the State and Central Governments will oversee implementation as the proposed Bill casts a duty on the Employers to include a Report on the number of cases filed and disposed of in their Annual Report. Organizations, which do not prepare Annual Reports, would forward this information to the District Officer.

Through this implementation mechanism, every employer has the primary duty to implement the provisions of law within his/her establishment while the State and Central Governments have been made responsible for overseeing and ensuring overall implementation of the law. The Governments will also be responsible for maintaining data on the implementation of the Law. In this manner, the proposed Bill will create an elaborate system of reporting and checks and balances, which will result in effective implementation of the Law.

2.6. Judiciary on Sexual Harrasment

The Supreme Court in the case of *Vishakha v. the State of Rajasthan*¹⁵ laid down for the first time strictures that aimed at protecting a woman employee by giving her right to a safe/ healthy working environment. In the decision, the Court also defined sexual harassment and recognised it to be a paramount violation of human rights. The court thereby laid down certain mandatory and binding guidelines to be followed by all workplaces, belonging to the public and private sectors and made it imperative for every employer to ensure a safe,

harassment free working environment for the women. These strictures can be applied to educational institutions as well.

2.6.1. Provisions of Vishakha's Guidelines

The Vishakha guidelines lays down certain preventive steps that an employer or responsible persons within the organisation should keep in mind in order to prevent women from sexual harassment at workplace. They can be summarized as follows:

- a) Express prohibition of sexual harassment as defined (in this decision) at the workplace should be notified, published and circulated in appropriate ways.
- b) The rules/regulations of Government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- c) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Guidelines 6 and 7 lay down by the Supreme Court deal with the effective complaint mechanism for dealing with complaints of sexual harassment. They are as follows:

- “6. Complaints mechanism- an appropriate complaints mechanism should be created in the employer’s organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.
7. Complaints Committee- The complaints mechanism, referred to in (6) above, should be adequate to provide, where necessary, a complaints committee, a special counsellor or other support service, including the maintenance of confidentiality.

After so many years of the judgement, no efforts were made in the direction of enacting a law. So the guidelines continued to be the law required to be followed across the country. However, the guidelines were followed more in their breach. Very few complaints committees were set up, service rules were not amended and the judgment was widely disregarded both by public and private employers. In fact a number of these cases arose from university and college campuses across the country. By and large, the response of the employers was to sweep such cases under the carpet and at times even to victimize the women. But one could still see an increasing fervor of protest. The media also started giving important space and time to this issue¹⁶.

Various cases of victimization led certain womens' organizations wrote protest letters to the Chief Justice of India. The letters were converted into a Writ Petition and the Court started supervising the implementation of Visakha's guidelines. Notices were issued to the Central Government, all State Governments and the Union Territories, asking them to report to the Supreme Court the measures taken by them for complying with the Visakha Guidelines. The Governments filed Affidavits which bordered on the pathetic. However, it at least triggered a flurry of activities at the Central Government and the State Government level. Many of the service rules were amended to bring in sexual harassment as a specific head of misconduct.

In many states, the Employment Standing Orders Act which applies to private employers was similarly amended. Committees were set up in various public sector organizations. University Grants Commission sent a letter to the Universities asking them to set up committees. On the other hand, the Supreme Court continued monitoring the progress and issued notices to even professional bodies. However, although things were moving, the changes were essentially cosmetic¹⁷.

What needs to be borne in mind is that the guidelines laid down by the Hon'ble Supreme Court were only a framework. In such cases, it becomes necessary that each employer adapt the guidelines according to the set up of his/her institution. Individual universities guidelines become even more imperative because of the large number of female employees and students that form a part of it. Also given the geographical outreach of the universities, they sometimes extend up 4-5 districts in a state. In such a scenario and given the various levels within the university structure, each university should not establish only a complaints committee but also set up guidelines keeping in mind the structure of the individual institution.

2.6.2. Technical Flaws in the Guidelines

1. Very clear guidelines have been laid down for the functioning and working ACC but when it comes to the UUCC and CCC, the guidelines at best are non-existent.
2. Another disturbing aspect of the guidelines is that Committee will consider allegations of sexual harassment “to have taken place within the campus.”⁹ Thus, it leaves very little scope for registering cases that may take outside campus, even though both the parties involved maybe from the University.
3. The stand to be taken in cases of third parties is still not clear. This includes the possible redressals or the actions that the Committees shall make when a third party is involved.
4. A major drawback is that there is no mention of a separate provision of funds for the committees.
5. The committees have only recommendatory powers; the final decision has to be taken by the university authorities. There is no clause within the guidelines that binds the university authorities to the decisions of the committees.
6. The Vishakha guidelines states that the complaints mechanism should ensure time bound treatment of complaints yet there is no time limit has been fixed for disposing off cases in the University guidelines.
7. Although the guidelines state “Complaints can be filed by the victim either through proper administrative channel or directly”, there is little clarity on what constitutes the “proper administrative channel”.
8. The guidelines are very vague regarding the “government department” to which the annual reports are to be submitted. Therefore, accountability problems surfaces.

The findings of the Report¹⁸ confirmed that committees on sexual harassment, even when constituted as per the guidelines, remain largely ineffective, a good indicator of which is the low turnout of cases. While meetings are held regularly and records are kept there still exists ambiguity in regard to the Governmental authority that these committees are accountable to. As of now, the committees seem to be completely focused only on case redressal, acting

mainly as a complaints committee. The members do not seem to perceive a broader role for the committees in terms of awareness building and university wide gender sensitisation. Another concern was the lack of decision making power vested with the committees.

Members themselves continue to be confused about the range of behaviour that may be termed as sexual harassment. This confusion may lead not only to dismissal of complaints, but also discourages women from complaining in the future. Thus there exists the need for adequate orientation of the members, which in turn will enable complaints committees to respond effectively to the problem of sexual harassment.

While, ensuring a safe campus environment is the primary responsibility of the University officials, this does not absolve the unions from discharging their own responsibility to maintain a conducive environment. Unions also have responsibilities to their own members and they can and should play an important role in the prevention of sexual harassment in the University. This perhaps can be aptly summed up in the following words: "Unions have a duty to make members aware of the nature and scope of the problems involved, to take action to prevent sexual harassment occurring and to set up a grievance procedure to deal with it. Male trade unionists will need to examine their behaviour towards women at work and in the union. The more the problem of sexual harassment is discussed in the open by the trade unionists, both female and male, the easier it will become to eliminate it from the workplace. Unions will need to be aware of the existence of any sexual harassment in their own ranks and take steps to eradicate this."¹⁹

Though the Universities have set up committees, they still fail to reach out to the concerned sections. In that sense, the Vishakha guidelines alone cannot single-handedly address the issue of sexual harassment. There is a need for subsidiary interventions in the form of policy, programmes and awareness amongst the students and employees, as is the participation of all these sectors in such initiatives.

2.7. Ragging in Educational Institutions

Ragging is a practice in educational institutions in India, Pakistan, Bangladesh and Sri Lanka that involves existing students baiting or bullying new students. It is similar to the American phenomenon of hazing. It often takes a malignant form wherein the newcomers may be subjected to psychological or physical torture which may drive students take extreme steps to commit suicide and drop out of educational institution.

In Special Leave Petition No. 24295 of 2006, *University of Kerala v. Council of Principals of Colleges* [with SLP (C) No. 24296-24299 of 2004, W.P. (Crl) No. 173/2006 and SLP (C) No. 14356/2005], the Hon'ble Supreme Court of India was pleased to direct that a Committee headed by Shri R.K.Raghavan, former Director, Central Bureau of Investigation (CBI) be notified to give suggestions on means of prevention of ragging in educational institutions.

2.7.1. Key Recommendations of the Raghavan Committee²⁰

1. Central Regulatory bodies to take ragging situation as an important factor in accreditation of educational institution
2. Set up anti-ragging cells at central, state and college level
3. Set up of toll-free helpline for ragging victims
4. Strong law against ragging with responsibility to prove not-guilty that of perpetrator
5. NCERT, SCERT school books to include chapter on ragging

6. Psychological counseling on anti-ragging and human rights at senior secondary level
7. Colleges to organize interactive sessions between juniors and seniors in presence of college staff.
8. Staggered entry of freshers and seniors in colleges

The key point of the Report is identifying that spreading awareness about the prevalence of criminal forms of ragging both to stakeholders and civic society is necessary to solve the problem of ragging. The report suggests a concentrated effort on part of government and NGO's to spread awareness in this regard through print media, TV, radio and other campaigns. This bottom-up approach to the problem has been for the first time proposed as a policy by the govt. in regard to ragging. Though it is left to be seen how well it is implemented.

The second key aspect is provision of alternate means of interaction and 'ice breaking sessions' between seniors and juniors. The government seeks to protocolize the structure of these sessions for the colleges to implement. The third key aspect is proactive monitoring to identify existence of ragging on campus to relieve the burden of reporting the incident from the traumatized victim. The fourth element is formulation of a strong law and affirmative action for guilty of ragging.

There is a need for a uniform law against ragging is necessary and should be enforced, however its nature and implementation needs more thought and debate to prevent misuse. The law should act more like a deterrent than the need of actual punishment.

2.7.2. Ragging: Prohibition, Prevention and Punishment

The University Grants Commission vide its letter no F.1-16/2007 (CPP-II) dated June 17, 2009 has reiterated the ban on ragging of students in Institutions of Higher Learning. The students are therefore directed to strictly desist from any kind of ragging.

2.7.2.1. Forms of Ragging:

Display of noisy, disorderly conduct, teasing, excitement by rough or rude treatment or handling, including rowdy, undisciplined activities which cause or likely to cause annoyance, undue hardship, physical or psychological harm or raise apprehensive fear in a fresher, or asking the students to do any act or perform something which such a student will not do in the ordinary course and which causes him/her shame or embarrassment or danger to his/her life, etc.

2.7.2.2. Punishment for Participation in/or Abetment of Ragging:

1. Cancellation of admission.
2. Suspension from attending classes.
3. Withholding/withdrawing scholarship/fellowship and other benefits.
4. Debarring from appearing in any test/examination or other evaluation process.
5. Withholding results.
6. Debarring from representing the institution in any national or international meet, tournament, youth festival, etc.
7. Suspension/expulsion from the hostel.

8. Rustication from the institution for periods varying from 1 to 4 semesters or equivalent period.
9. Expulsion from the institution and consequent debarring from admission to any other institution.
10. Fine up to Rs. 25,000/-

2.7.2.3. Affidavit by students and parents

Each student and his/her parents/ guardian shall have to furnish an affidavit alongwith the application form to the effect that they will not participate in or abet the act of ragging and that, if found guilty, shall be liable for punishment under the penal law of India.

Recently²¹, the Union Human Resource Development Minister Kapil Sibal launched an anti-ragging website 'www.antiragging.in' to help students of various universities, colleges and professional institutes to lodge online complaints against ragging or harassment and seek faster response. The UGC-managed portal has been created by the Aman Satya Kachroo Trust in active collaboration with Rajendra Kachroo, father of Aman who was ragged to death by four of his seniors in a medical college in Himachal Pradesh in 2009.

Students can also register their complaint by dialling 18001805522 as part of the facility, which will be followed up in a structured software system. "The complaints would be examined. If they are of serious magnitude, they would be transferred immediately to the police, the magistrate and head of the institution," said UGC acting chairman Ved Prakash. "The web portal is a medium of managing complaints, follow up of complaints and escalation of unresolved complaints to regulatory authorities, enhanced communication with colleges and universities, developing database, displaying status of complaints etc," said the HRD Ministry statement.

2.7.3. Judicial Approach to Menace of Ragging

The Supreme Court in a series Writ Petitions in *Vishwa Jagriti Mission through President v. Central Govt. Through Cabinet Secretary ors*²², had directed the UGC to frame guidelines in respect of the Ragging and to give wide publicity to the issue of ragging and to ensure measures to curb it. The Supreme Court also viewed with concern the increase in number of ragging in educational institutions and have observed that reported incidents have crossed the limits of decency, morality and humanity. The Supreme Court also observed that the Police should be called in or allowed to enter the campus at the instance of the Head of the Institution or the person-in-charge. The Supreme Court also directed the Police to deal with such incidents when brought to its notice for action by keeping in mind that they are dealing with students and not criminals. The action of Police should never be violent and be always guided by a correctional attitude. The court also held that ragging in exceptional circumstances could be treated as cognizable offence and reported to the Police.

In *University of Kerala v. Councils, Principal's College, Kerala and ors*²³, the Supreme Court directed for creation of database to be maintained by a non-governmental agency to keep a record of ragging complaints received, and the status of action taken thereon. It also held that when database / crisis hotline is operative, state governments shall amend their anti-ragging statutes to include provisions that place penal consequences on institutional heads.

Again in *University of Kerala v. Council, Principal's College in Kerala and ors*²⁴, the Supreme Court held that the Ragging is synonym of teasing, terror, harassment, cruelty, fear and physical and mental torture. Ragging is systematised form of Human Rights abuse as embodied under the Constitution of India. UGC was asked to frame regulations binding on Institutions and to be indicated to Students at the time of admission as well as the consequences of non-observance of guidelines.

In yet other cases²⁵, the Supreme Court has emphasised about the mandate to curb ragging at educational institutions and strict penal action to be taken against perpetrators.

3. LOOKING FORWARD

In the opinion of the author, inspite of legal framework and positive judicial approach the menace of violence in various forms still continues in educational institutions. Hence, the issue of creation of safe educational institution would require further more action than just enacting legislations, regulation and ensuring judicial enforcement of these laws, like:

- There is a need for positive disciplinary;
- Ensuring children's participation in meetings on issues of dealing with school functioning, governance and maintenance of facilities at school;
- Development and enforcement of gender-sensitive anti-violence regulations, including systematic reporting of offences and holding perpetrators accountable.
- Employing a higher number of female teachers and school-based social workers and ensuring they receive adequate training in preventing and responding to gender-based violence.
- The development of skill-based curricula that include modules to build both boy's and girl's awareness of the power dynamics of gender inequality, practical sex and sexuality classes to provide alternative models to the often abusive relations that children may see modeled within the household or community.
- Training youth leaders and peer educators to tackle school violence, especially empowering children and young people to stand up to and report violence.
- Development of preventive healthcare services, including training personnel to raise awareness in the community, recognise warning signs of abuse and to intervene sensitively.
- More than punitive measures, there is a need to focus on capacity-building of educators / teachers;
- Responsible behaviour among children needs to be inculcated;
- Effective positive school programmes focus on interactive methods (role-plays, real life situations, practical work on feelings and emotions) rather just information transfer;
- Developing and promoting non-violent values, attitudes and behaviour.

These are some of the recommendations of Plan India in its recent Report (2010): Learn without Fear – The Campaign to End Violence in Schools – Challenges in India. The author subscribes to all these recommendations.

4. PROMOTION OF NON-VIOLENT VALUES, ATTITUDES AND BEHAVIOUR

The author would like to delve in details as to how promotion of non-violent values, attitudes and behaviour can be done because in the opinion of the author, this is one of the most significant and fundamental steps which need to be taken as it can help substantially in overcoming this problem of unsafe educational institutions in near future.

The promotion of a culture of non-violence and peace is not an end or final goal but a process. It is about creating an enabling environment for dialogue and discussion and finding solutions to problems and tensions, without fear of violence, through a process in which everyone is valued and able to participate. The International Federation of Red Cross and Red Crescent Societies (IFRC) has defined a culture of non-violence to mean “respect human beings, their well being and dignity; it honours diversity, non-discrimination and inclusiveness, mutual understanding and dialogue, willingness to serve, co-operation and lasting peace. It is a culture where individuals, institutions and societies refrain from harming others, groups, communities or themselves. There is a commitment to positive and constructive solutions to problems, tensions and the source of violence; violence is never an option.”²⁶

There is a need of value-based transformation of human behaviour we need to start with ourselves. We all carry biases and prejudices. Awareness, questioning and critical self-reflection can help break conditioning or correct bias learned through schooling, media and upbringing. Equipping parents, teachers, communities, organizations and each and every individual with skills to interact constructively and live harmoniously together, such as empathy, active listening and non-violent communication will support and help sustain this value-based mind-shift.

Values and skills-based education is a concrete action contributing to this required change of mindsets, attitudes and behaviours. This type of education is participatory and stimulates critical thinking and independence. It puts those involved at a level of equality, where both learners and ‘transmitters’ learn from each other and value this as part of a lifelong learning process. Through values and skill-based education, whether in school, family or community life – children, for example, can learn how to act non-judgmentally or listen actively and therefore will lesson their chance of participating in discriminatory behaviour and, later on, in adolescence or adulthood, to resort to violence when confronted with tensions or problems. According to YABC (Youth as Agents of Behavioural Change),²⁷ the youth should take up an ethical leadership role in inspiring a transformation of mindsets, attitudes and behaviours within themselves and their communities. This can be done through:

1. The development of behavioural or interpersonal skills: active listening, empathy, critical thinking, dropping bias and non-judgmental, non-violent communication, mediation and peaceful resolution of tensions;
2. A non-cognitive or ‘from the heart to the mind’ methodology using games, role-plays, visualizations and storey-telling;

3. Peer-education – Youth are more receptive to learn from other youth instead of being ‘taught down to’ by adults. Peer education, therefore, favours exchange at a level of equality, trust and thought-provoking learning where solutions are explored and found together;
4. Creative autistic platforms to reach out to the local community through art, dance, theatre, music, sports, etc.
5. Inner change; i.e., the commitment and action to start with oneself, to “be the change we want to see in the world” (Mahatma Gandhi). This means embarking on a lifelong learning process to ‘walk the talk’, which instill a sense of humility and of taking up responsibility;
6. The development of a capacity to operate from inner peace. Pursuing peace and harmony within ourselves is essential to be able to inspire change outside. This further enables the youth to strengthen resilience to cope with stress, peer pressure or resistance when faced with energy - intensive challenges like violence, discrimination or exclusion.

In the opinion of the author, to ensure non-violence and pace based education to the children, the participatory method of dispute resolution should be included in curricula at all levels of education system.

5. PARTICIPATORY JUSTICE SYSTEMS OF RESOLVING CONFLICTS

Participatory Justice is an approach that engages everyone affected by conflict in finding a satisfactory resolution. The concept of participatory justice encompasses restorative justice in the criminal justice system and consensus-based justice in the civil and administrative justice systems. Both approaches are attempts to rethink how conflicts are framed, rethink our assumptions about who is properly a party to a dispute, and rethink how we ought to respond to the conflicts.

Restorative justice processes (victim-offender mediation, sentencing circles, community boards, etc) focuses on redressing the harm to the victims, holding offenders accountable for their actions and engaging the community in the conflict resolution process. Consensus-based justice processes (mediation, conciliation, settlement conference, etc) refer to innovative methods of resolving non-criminal conflicts. Three key considerations are hallmark of participatory justice methods²⁸:

1. Conception of harm: Harm arises from the impact of a conflict on others as individuals and as community members. Participatory justice aims at exploring the context and impact of harm.
2. Conception of Justice: Participatory justice approaches reject the idea that to be just, an outcome must only be consistent with pre-existing rules. Instead, these presume that in almost every case the solution to the conflict is integrative rather than winner takes all.
3. Focus on Relationships: While we often assume that there cannot be any kind of future relationship between the parties to the conflict, participatory justice is open to this possibility. The goal is to transform relationships in healthy and meaningful ways.

The participatory justice processes foster early intervention, which is more likely to de-escalate conflict quickly. These processes are accessible and user-friendly. Participatory justice processes insist and ensure that all parties are participating voluntarily and that they are not coerced into agreeing to a possibly unfair outcome. Dispute resolution professional in these processes do careful preparation to minimize the risk that vulnerable groups will be disempowered in an informal process. Participatory processes are flexible, responsive and confidential to ensure fair outcomes which are relevant and realistic. These processes aim at reducing the financial and social costs of conflict.

Participatory justice processes involve all the values of post modernistic thinking and is inclusive in nature, believes in diversity, plurality and does not believe in rigidity and formalism. In the view of the author, if these values, objectives and skills which are needed in a conflict resolution professional are taught to the students it will help in developing a culture of understanding, tolerance, non-violence, taking responsibility and adherence to ethical and moral values of the society to which they may belong. Undermentioned are some of the objectives and values which participatory systems of justice adhere to and strive for:

5.1. Objectives of Participatory Justice Processes

The four key objectives of consensus based system of dispute resolution are²⁹:

- Classification of the wrong and an appraisal of its impact;
- Distribution and assumption of responsibility;
- Relationship transformation;
- Moving forward.

5.1.1. Classification of the Wrong and an Appraisal of its Impact

The first step in conflict resolution is classification of the wrong, rather than attributing it to or blaming someone. This implies an exploratory and investigative element in the dialogue, as well as an appraisal of the actual impact of the harm done by the act. The motivation and rationale for gathering information and the use of it are quite different in a consensus building process and is not to substantiate a particular version of events³⁰. In adversarial model, the information is for winning and not for sharing. However, in consensus based process the purpose of collection of information is clarification. Information is sought and disclosed to build a better collaborative outcome for the parties³¹.

5.1.2. Distribution and Assumption of Responsibility

The information sharing helps in more accurate, fair and practical allocation of responsibility. A consensus – based justice approach to conflict enables factors to be taken into account in responsibility allocation beyond what formal rule of law might suggest. Responsibility is divisible and it need not add up to 100 percent.

5.1.3. Relationship Transformation

Transformation refers to a range of possible outcomes, from reconciliation to future avoidance. There is a possibility that the conflict resolution method may be able to

significantly change the relationship between the parties regardless of whether the conflict has actually been addressed and resolved between them". However, the consensus based methods give importance to relationships as both a symptom and a cause of conflict, and the need to offer process opportunities to the parties to enhance this relationship.

5.1.4. Moving Forward

The emphasis in a fair, accessible and constructive process of dialogue of consensus based methods is not only instrumental in achieving a given end but it also anticipates a future in which other conflicts can be addressed and offers some tools for future.

5.2. Values cherished by Participatory Processes

5.2.1. Fair treatment

People want to be treated fairly. Perceptions of fair treatment in the process itself are as important as actual outcomes when disputants come to appraise dispute resolution processes³². While there is an obvious relationship between a sense of fair process and a welcome outcome, research suggests that these judgments are independent³³.

Research shows that perceptions of fair treatment are as important as outcomes when disputants come to appraise dispute resolution experiences³⁴. Moreover, research shows that there are higher levels of compliance with court orders when, in the view of the disputants, the process is a fair one³⁵ and that a feeling of procedural fairness may enhance perceptions of apparently negative outcomes, described as the "cushion effect."³⁶ Similarly, there are those whose negative experience of process persists, notwithstanding a good outcome.³⁷

5.2.2. Respect for agreed outcomes

As with restorative justice, a key practical element of consensus building in a consensus-based approach is the voluntary acceptance of agreed outcomes and compliance with them. However, since consensus-based justice emphasizes a healthy process, relationship restoration and forward looking outcomes, many of the elements of an agreed outcome (for example, how these parties will treat one another in the future or how they have agreed to get past their conflict) are not readily monitored or enforceable. This makes an authentic commitment and a desire to maintain the outcomes—perhaps with some self-monitoring—especially important.

5.2.3. Flexibility of process and outcomes

Finally, as with restorative justice, consensus-based justice adopts a commitment to the flexibility and responsiveness of both process and outcomes. This flows naturally from the emphasis placed on the emergence of effective resolution within a pre-existing context. The process of developing a resolution must also reject a rigid procedural approach, both to reduce unnecessary formality and to enable the appropriate process model to emerge for these parties and this conflict.

5.2.4. A focus on relationships

The nature of an adjudicative system that determines outcomes according to established rules and principles leaves little room to consider relationships. The formal legal system is

interested in objective notions of relationships (parent, corporate officer, agent), rather than their subjective realities. Moreover, relationships are considered as they are presently constituted, with the evaluation of future relationships of little or no relevance (other than perhaps in child custody and access litigation). Adjudicators are not charged with mending relationships, only with addressing events and their ramifications.

Within every conflict or criminal behaviour, a relationship or set of relationships is affected. These relationships might be personal and intimate, arm's length and formal, long term or short term, important to the parties or not. However, to neglect to recognize that there are relationship consequences of some kind for every type of conflict or conflict-producing act is to ignore what lies at the heart of personal experiences. Wherever there are people, the possibility of relationship conflict exists, and behind every corporate, institutional or otherwise representative action (including Crown prosecutions), there are real people. Relationships and their possible transformation—or more often perhaps simply relationship issues and closure—are central concerns of restorative and consensus-based justice processes. Both approaches are committed to exploring the context and impact of harm and creating a sense of justice, rather than adopting pre-determined solutions.

Different types or levels of conflict resolution have different implications for future relationships. Bernard Mayer³⁸ suggests that there are three possible levels of resolution for conflict:

- Behavioural resolution—in which behaviour is changed, by court order or perhaps by agreement;
- Cognitive resolution—in which there is a change in how the parties perceive the causes and outcomes of the conflict; and
- Emotional resolution—in which there is a difference in how the parties feel about the conflict and about one another.

The adversarial system primarily addresses behavioural resolution; rarely does it address the parties' attitudes toward one another or the causes of their conflict or their emotional needs. Mayer argues that while the potential exists for disputants to choose a different level of resolution, one not purely behavioural, this is the prerogative of the parties themselves and should not be imposed or assumed by any single process or third party.

On one level, restorative and consensus-based justice approaches re-establish the primacy of the personal experience of conflict and its resolution. This is implicit in the emphasis on face-to-face dialogue and “giving voice” and in the commitment to context-sensitive and individually chosen outcomes. In this way, both the restorative justice and the consensus-based justice models attempt to give conflict back to the disputants themselves, reversing the “theft” of their conflict by lawyers, prosecutors and justice officials³⁹.

However, restorative justice processes, in particular, encourage the expansion of who we understand to be affected by criminal behaviour. They promote community empowerment and ownership of the causes and consequences of antisocial behaviours. Similarly consensus-based justice approaches, in practice, engage any person or group whose interests might be affected by the conflict, often dispensing with conventional notions of standing, to bring all those affected into the process of dialogue.

5.2.5. Early intervention

Participatory processes should be designed with an awareness of the benefits of early intervention. Participatory processes should consciously aspire to the creation of a culture in which early problem diagnosis and proactive intervention are widely accepted, in much the same way as the medical community uses early identification and diagnosis of health problems.

The principle of early diagnosis and intervention wherever possible should not discourage the important development of post adjudication processes—for example, post-incarceration Victim–Offender Mediation or the use of talking circles in a workplace after the adjudication of a grievance. Such processes serve many helpful functions for the participants and contribute to the resolution of long enduring conflicts and the reduction of the costs of those conflicts for our society.

5.2.6. Voluntariness

Genuine voluntariness seems to be more than a desirable principle in the design of participatory processes; indeed, it is fundamental. To ensure that parties to a dispute genuinely volunteer to participate in a program, they must be provided with full information about the process and its alternatives and all the assistance necessary to make an informed choice.⁹ This does not mean that each person who chooses a participatory process over a more traditional rights-based approach will do so with no concerns or fears, but that they should do so with authentic voluntariness, having appraised it as a good option for the resolution of the conflict at issue.

Choice must be respected. Participatory processes assume that individual parties are best suited to determine whether a consensual approach is suitable for the resolution of their conflict, whether this lies in the criminal domain or in the civil domain. At the same time, however, the mediator must exercise judgment when considering whether to proceed with a mediation, particularly when issues of fear and violence are present⁴⁰.

Introducing mandatory mediation programs in the civil courts has been criticized on the grounds that requiring the parties to mediate corrupts the concept of voluntary bargaining. Others argue that this is the only way to ensure that clients, rather than their legal representatives, decide whether mediation is appropriate and to enable their legal representatives to experience a process that is otherwise unfamiliar and perhaps counterintuitive to legal training.

What emerges from these debates is the need to design programs in such a way that they ensure that disputants themselves actively decide whether to use a participatory process to address a conflict. Attention must also be directed at removing the disincentives to using participatory processes that currently exist in our system of justice, for example, the absence of full legal aid coverage. Is there a case for requiring some form of participation in consensus-building processes, as, for example, in mandatory court connected mediation programs? Mandatory requirements vary widely. Some jurisdictions require that the parties and their counsel simply meet to negotiate the most appropriate process (mandatory consideration rules)⁴¹. An argument can be made that mandatory mediation is sometimes appropriate to expose both disputants and their legal representatives to a process that they would otherwise likely decline⁴². Moreover, research now shows a correlation between actual experiences of mediation and positive attitudes toward the usefulness of the process⁴³. Research also shows no significant differences in satisfaction between participants in voluntary processes and those in mandatory processes⁴⁴.

5.3. Qualities/Skills of a Conflict Resolution (Mediator)

5.3.1. Practical Skills:

Practical mediation skills comprise a combination of management and facilitation abilities, enhancing communication etc. Some of the mediator's skills are as follows:⁴⁵

- (i) Listening: This is a fundamental but often neglected communication skill. For a mediator, except where the circumstances require the mediator to interrupt a party to stop a line of discussion for a specific reason, it is important to exercise restraint and patience, to listen carefully what is being said before responding.
- (ii) Observing non-verbal communication: Non-verbal communication includes eye signals, facial expressions, gestures, body-postures, tone of voice and maintenance of personal spaces.⁴⁶
- (iii) Helping parties to hear: People do not always hear what is being said, especially when they are in a stressful situation. They may hear the words, but they are caught up with what they are planning to say, or with their own perceptions of the positions, or are so emotionally troubled in relation to issues or to the person speaking that they cannot necessarily take in what has been said. The mediator can help the parties in hearing each other by reiterating the statement, by acknowledging it, or perhaps by asking it to be repeated. Similarly, the mediator needs to ensure that the parties do not misunderstand one another.
- (iv) Questioning: Skilled questioning is an important tool of the mediator. Questions can be used for a number of purpose, for example, for gathering information, for better understanding of issues; reality-testing; to encourage a party to review a position or to focus on specific issues; may redirect the way in which discussions are moving; may be used as a form of intervention in conflict management to divert parties away from a heated discussion into a more productive field; may be strategic, where the mediator knows the answer but wishes the party to arrive at the answer himself; questions can be asked to allow parties to consider issues needing examination without compromising the mediator's neutrality; etc.⁴⁷ Questions may be of different forms; they may be open, allowing for any kind of answer, or closed and more specific, usually calling for a yes or no response. They may be general or focused. They may be directed to a specific party, or may be undirected, allowing any party to respond. They may be in the form of minimal prompts to parties to develop more fully what they are saying.⁴⁸
- (v) Summarizing: It can be very helpful in a number of ways like, it helps the mediator to ensure that he or she has a correct understanding of what has been said; it crystallizes and focuses the issues to facilitate decision-making. It requires careful and accurate paraphrasing. At times, summarizing can be done, when a mediator finds it useful like at the end of a parties' presentation of his case particularly if complex issues have been covered, after a separate meeting with a party or selectively during the course of discussion in a joint meeting.
- (vi) Acknowledging: One of the functions can be to hear a party's views, feelings and grievances about the issues, even though the mediator's role is not to adjudicate on them. Sometimes, what is needed is an acknowledgement that they have been

heard and their views are recognized. This does not mean that the mediator needs to agree with them. On the contrary, that may not at all be appropriate and would damage neutrality. A simple acknowledgement that the mediator has heard and understood the views and feelings is usually sufficient.

- (vii) Mutualising: It means clarifying that the other party shares a similar feeling and that concerns are mutually felt. It is no surprise that parties to a dispute tend to see the issues from their own point of view and that each is likely to have quite different perceptions of the same facts. One way that a mediator can help to bridge this discrepancy of perception is to make observations that tend to show that there are similar concerns or interests on both sides. For example, if one party feels that he has been making all the concessions, the mediator might observe that both have actually been doing so.⁴⁹
- (viii) Reframing: Mediators need to take special care in using the language effectively. Language needs generally to be neutral, and the mediator should not adopt the words or images of one party. The mediator has to avoid language directing parties ("I think you should..."). Some words and ideas are best avoided; for example, asking for a "bottomline" in negotiation is unhelpful because the words carry a connotation of ending the negotiations if the proposed terms are not agreed. Words also have to be used with care when carrying messages, ideas and proposals between parties in the course of shuttle mediation. Sometimes, paraphrasing is necessary without distorting the meaning of what has been said. A party might, for example, tell the mediator privately that he considers a claim to be grossly inflated and typical of the claimant's greed, and that he will not pay it, but he might explore settlement at a more realistic level. It will be more productive if the mediator paraphrases this into something like "It may not surprise you to hear that X does not agree with the level of your claim. He thinks that it is much too high; but he tells me that he would be willing to explore settlement possibilities at a rather lower level, which he thinks would be more realistic..." This may be called 'reframing'.⁵⁰ The term 'reframing' is taken from the language of family therapy. It refers to a technique that assists people to change the frame of reference against which a person views an event, so that the judgement placed on that event takes a different meaning or perceptive. The use of reframing in mediation does not, hence, distort the meaning of a party's actions, but rather allow those actions to be seen in a positive rather than negative way.⁵¹
- (ix) Normalising: Parties to mediation may feel that their situation is an unusual and rather extraordinary one that no-one else could have encountered and that may be beyond anybody's capacity to resolve. The mediator, in such a situation, can reassure them of the normalcy of such feelings, while taking care not to minimize or be dismissive of those feelings. That can help to put their minds at rest, and allow them more easily to address the issues facing them.
- (x) Managing conflict and the expression of emotions: Conflict management involves the ability to intercede between two opposing sides and to channel their energies, which may have been devoted to sustaining the conflict, into a more productive and creative mode. Sometimes the parties need to be diverted from their conflict on an immediate basis, when they are engaged in a high level of conflict with one another during the meeting. A mediator needs to be able to distract the parties from their

immediate altercation and to direct them towards a more productive line of discussion.

This leads to the question of the mediator's ability to allow a party to express his feelings arising from the dispute without damaging the mediation process or losing the other party. Situations of conflict can involve a high level of emotional content. If a party is upset or angry, or is experiencing any other strong feelings, it may be necessary for the mediator to allow those feelings to be expressed rather than trying to keep them bottled up. At times, the expression of emotions may move from being necessary and sometimes cathartic and restorative, to being unhelpful to the process and even destructive.

The mediator needs to remember that the letting expression of emotions is with the object of the exercise of dispute resolution not counseling. The mediator will have to judge how far emotions can be allowed to be expressed before the party is gently, or if necessary briskly, brought back to the business at hand. Highly conflictual and emotional situations can be defused in a number of ways. This may call on the mediator's emphatic skills, or may involve acknowledgement, mutualising or other skills.

- (xii) Lateral thinking⁵²: This term, invented by Edward de Bono, involves thinking in a different way from the usual method, by changing perceptions and concepts and seeking new perspectives, ideas and alternatives. De Bono identifies methods of developing lateral thinking skills. These include finding ways of generating alternatives; challenging assumptions; suspending judgement; "fractioning" (breaking situations down to their basic components in order to restructure); using a "reversal" method of standing on their heads; brainstorming; and designing problem solving solutions.
- (xiv) Encouraging a problem-solving mode:⁵³ While some parties may enter mediation receptive to a problem-solving mode of negotiation, many others tend to be in a competitive mode, because of their strong views or feelings about the dispute or because they believe that to be the best or most effective way to negotiate. One of the mediator's skills is to help the parties to move towards a more creative and problem-solving negotiating approach. This is not to expect the parties to abandon their self-interest but rather means that the mediator helps the parties to realize that each party's aspirations may be more readily achieved in the context of an approach which seeks to imaginative and resourceful solutions that can benefit all the parties. Lax and Sebenius indicates that negotiation even in a problem-solving mode will still involve tensions between the needs, wants and aspirations of the parties. Hard bargaining will inevitably and understandably continue even in the mediation context. One of the skills of the mediator is to create a balance between these different negotiating tensions⁵⁴.
- (xv) Centering: This term has two different usages: first, a mediator maintains a centered position in relation to the disputants, showing none of them more favour than the other and secondly, the mediator being in a balanced frame of mind, unflustered and in personal control. A mediator who is knocked off balance by the parties, and who stops being centered within himself / herself is less likely to be effective in his work⁵⁵.

(xvi) Constructive facilitation: This summarizes the essence of the mediator's role: to prioritize issues, devise and implement strategies to help the parties to communicate and negotiate effectively with one another, encourage them to develop and consider options, and help to direct the process towards a consensual resolution. The way in which a mediator communicates with the parties will depend in part upon the level of facilitation adopted by the mediator: A mediator playing an active facilitation role may want to be pro-active in discussion, inviting options or brainstorming, asking questions and stimulating discussion. Alternatively, the mediator may prefer a lesser role, allowing the parties themselves to reflect and initiate thoughts and ideas. There is also a relationship between the parties' perception of the mediator's trustworthiness and commitment, and the way in which the parties communicate with the mediator. Where the mediator is seen as competent, honest, empathetic, committed and authoritative, the scope for a productive dialogue is enhanced. However, there is no set of right ways to communicate. Those mediators who are experts in dealing with people in dispute or distress will no doubt deal instinctively with the parties to a mediation.⁵⁶

5.3.2. Ethical Awareness:

The role of mediator carries considerable responsibility, not only to provide effective assistance to the parties, but also to do so in an ethically proper manner. A mediator intervenes in a private dispute and has significant power and opportunity to affect the outcome. Mediators should have regard to the following ethical considerations in carrying out their functions⁵⁷:

- (i) The Code of Practice, providing clear ethical and practical guidelines, under which they mediate.
- (ii) The ethical rules of any professional body to which they belong
- (iii) The extent and limitations of the mediator's responsibility for fairness.
- (iv) Not to mediate when there are circumstances in which it would be inappropriate for the mediator to mediate, or having stated, to continue, for example, in cases of actual and potential conflict of interest.
- (v) The need for confidentiality
- (vi) The requirement of impartiality

5.3.3. Emotional Sensitivity:

Emotional sensitivity does not mean that the mediator must have the skills and expertise of a counselor. It rather means that the mediator can offer the parties some of the following⁵⁸:

- (i) An ability to cope with the emotions by the parties in the mediation in a way that accepts them normally and non-judgmentally.
- (ii) An ability to work sensitively with parties in exploring issues and concerns underlying those that they present in the mediation.
- (iii) An ability to acknowledge parties' feelings in a non-patronising way.
- (iv) Assistance in getting back to the task of finding a resolution to the issues when the parties or any of them are caught up with the strength of their feelings.

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- (v) An understanding of the network of resources available to help parties where the strength of their emotions is so great that it impairs their ability to resolve matters in mediation.

5.3.4. Personal Empathy:

This is also an attribute that cannot readily be taught, though it is possible to develop an attitude that makes it easier to be genuinely empathetic to parties even when one does not readily find them likeable. Empathy is the power of identifying oneself mentally with a person. A mediator tries to identify with both or all parties and to fully comprehend their positions, concerns and aspirations. Yet such identification has to be properly bounded to maintain the necessary professional balance. Sometimes mediators can come across parties who conduct themselves in a way that the mediator may find unattractive. It can be difficult to be empathetic towards parties whose behavior and approach feel offensive to the mediator's sense of justice and propriety. Yet, if the mediator has to function effectively he has to be empathetic and patient towards all parties and understanding of the positions of the parties.

Sometimes, it may be necessary for a mediator to review his or her attitude towards a party. One of the impasse breaking strategies to which the mediator should reflect is whether he / she, himself / herself is not perpetuating the problem by being stuck on one approach or unwittingly supporting one party's position. In that situation, the mediator has lost balance and almost certainly empathy with all the parties.

5.3.5. Creativity:

Edward do Bono considers creativity to be an essential part of the process of designing dispute resolution outcomes. In his view, people in dispute are least likely to be able to adopt a creative approach to the resolution of their issues. The neutral practitioners who are brought to help parties in dispute will ordinarily be in good position to help them to see beyond the confines of their argument. Many other situations call for a more thoughtful and creative approach necessitating a wider look at the issues, the underlying needs and concerns and the surrounding circumstances⁵⁹.

5.3.6 Flexibility:

One of the greatest advantages of ADR is its flexibility. Instead of facing the rigid structures of litigation, disputing parties have the benefit of processes that are adaptable to their specific needs. An ADR practitioner can create a process that responds to the requirements of the parties and their issues. This is the origin of the various hybrid processes of ADR⁶⁰. The flexibility extends not only to the creation of processes, but also to the way in which each process is conducted. While some framework is helpful, there is a scope of flexibility and creativity within that framework. However, there cannot be flexibility of process without flexibility on part of the person responsible for administering the process. One of the hallmarks of a good mediator is the ability to be flexible where the situation requires it.

5.3.7 Balance:

At the top of the construct is balance which is a mediator's critical quality. This involves impartiality and even-handedness between the parties. A mediator needs to maintain a centered position in relation to the parties, showing favour to neither. Another concept of

balance refers to the mediator being in a balanced frame of mind. This reference to personal balance in mediation has led to some comparisons with the practice of the form of *aikido*, a Japanese martial art, which requires a practitioner to be balanced, centered, perceptive and decisive, moving responsively with the flow of the challenges⁶¹.

6. CASE STUDY – NATIONAL LAW UNIVERSITIES IN INDIA

The author has experience of working in the Law Universities (NALSAR University of Law, Hyderabad and National Law University, Delhi) in India for more than six years. In India, the concept of single discipline National Law University is fast gaining momentum. There are ---- National Law universities in India and all these Universities are residential in nature and more or less follow same pattern of governance, course curriculum, teaching methodology, code of conduct.

The course curriculum includes the teaching of participatory processes of resolving conflicts. These courses are clinical courses so the teaching include not only theoretical aspect but skill based education is also part of the curriculum. The author has been teaching these courses in both the Universities and in a survey conducted of the students of these University, the students have said that after doing a course in participatory processes of dispute resolution, their attitude towards dispute resolution has changed and the skills learnt in the course have helped them in development of their personality as responsible people who strive to resolve conflicts in non- violent ways keeping in mind interests of all stakeholders.

The governance in the National Law Universities is inclusive and the student representatives are there in most of the committees governing the University, like Proctorial Committee, Academic Committee, Hostel Welfare Committee, Library Committee, Mess Committee, etc. The author has been Faculty Co-ordinators of various committees and has observed when students are involved in decision-making, it is very easy to govern them. In the National Law University, Delhi, all the policies which have impact on students are drafted by student's bodies and then finalised by the University Authority.

As far as handling ragging is concerned, the National Law Universities follow almost all the recommendations of Raghavan Committee. National Law University, Delhi has been following the mandate of staggered entry of students at the admission from its inception in 2008. This helps the freshers to familiarise with the University campus as well as the functioning of the University. There is an ice-breaker function organised by the University to facilitate the interaction of senior batches and the freshers in front of the faculty members and University Authorities. Anti- Ragging Committee has student representatives from all batches. University also arranges sanitization programmes on regular basis to apprise students about consequences of indulging into the act of ragging.

In respect of sexual harassment, the National Law Universities adhere to the guidelines of ten Vishaka's case. The National Law University, Delhi also organises number of Inter – University dialogues and workshop on prevention of sexual harassment.

However, the problems which are very common in these Law Schools, in view of the author, are serious peer pressure of performance and as a result depression and drug abuse in the students. There is a need to have counsellors appointed in Law Universities.

7. CONCLUSION

In India, violence at educational institution has been there due to number of reasons. However, recently lot of efforts have been undertaken both at the legislative as well judicial front to tackle the problem of violence at educational institutions. However, there is a need to make changes in the curricula at all levels of educational system to include values and skill based education to promote peace and non-violence. This can be achieved by teaching the conflict resolution methods to the students of all ages. There is a need to strengthen the Right to peace and Peaceful resolution of conflicts through education, dialogue and co-operation. There should be increasing opportunities across the curricula for studying the consequences of violence to encourage students to formulate alternative non-violent outcomes. Students should be made to understand the difference between factual and fictional violence because banning TV programmes, films and video games seems to be impracticable. Studies to promote conflict prevention should be undertaken. The Law Schools has seen some paradigm shifts towards non-violence through education.

School administrators, policy makers, and concerned parents have attempted to devise ways to prevent school violence. Some of these measures have targeted society at large. For example, some have called for stricter gun control laws to keep young people from getting access to deadly weapons. Others have demanded that the entertainment industry tone down the violence in its movies, music videos, and video games, fearing that such depictions of pretended violence inure children and teens to the consequences of real violence. Still others call for more parental involvement in children's lives or a greater emphasis on religious and moral values at home and in the schools. Another set of solutions focuses on the schools themselves. Schools worldwide have increased their security efforts, installing cameras, metal detectors, and increased security personnel. Some countries have adopted zero-tolerance policies, which provide mandatory, harsh punishments for any student caught possessing a weapon or making threats of violence. Another controversial school-based solution to the problem of violence is student profiling. It is beyond the scope of this research paper to discuss in detail the pros and cons of these methods.

It is important to recognise the crucial role of education in contributing to building a culture of peace. A culture of peace and non-violence goes to the substance of fundamental human rights: social justice, democracy, literacy, respect and dignity for all, international solidarity, respect for workers' rights and children rights, equality between men and women, cultural identity and diversity, etc. The educational action for promoting the concept of peace concerns the content of education and training, educational resources and material, school and university life, initial and ongoing training for teachers, research, and ongoing training for young people and adults. A culture of peace must take root in the classroom from an early age. It must continue to be reflected in the curricula at secondary and tertiary levels. However, the skills for peace and non-violence can only be learned and perfected through practice. Active listening, dialogue, mediation, and cooperative learning are delicate skills to develop. This is education in the widest sense. It is a dynamic, long term process: a life-time experience. It means providing both children and adults with an understanding of and respect for universal values and rights. It requires participation at all levels - family, school, places of work, news rooms, play grounds, and the community as well as the nation.

Recently in the last month, the Central Board of Secondary Education for the first time in its history, has decided to include a student nominee in its course committees. Though its a small step towards participatory methods but is very significant one.

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causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

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10. Section 375: Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—
First.—Against her will.
Secondly.—Without her consent.
Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly.—With or without her consent, when she is under sixteen years of age.
Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.]
11. Section 354, IPC: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
12. Section 509, IPC: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
13. Section 326, IPC: Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- Classification of offence: Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.
- Classification of offence: Punishment—Simple imprisonment for 1 year, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the woman whom it was intended to insult or whose privacy was intruded upon with the permission of the court.
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Furthermore, only 8.5 percent described themselves as completely satisfied with the outcome, reflecting perhaps the fact that further enforcement steps were often necessary after securing a favourable judgment. In some cases, this seemed to overshadow the final result. For example, one successful litigant told the interviewer, "It's taken so long, and we're still waiting. It's taken its toll on myself and my family. Nothing could have prepared us for this process." J. Macfarlane, *Court-based Mediation in Civil Cases: An Evaluation of the Toronto General Division ADR Centre* (Toronto: Ontario Ministry of the Attorney General, 1995).

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Tackling Violence in African Schools

Solomon Sacco



Tackling Violence in African Schools

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1. CORPORAL PUNISHMENT

Caning of stubborn students in primary and secondary schools is mandatory....

(Margaret Sitta, Minister for Education and Vocational Training
in Tanzania Daily News Reporter, 2006)

Corporal punishment is defined by the UN Committee on the Rights of the Child as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light."¹ Several international instruments prohibit the use of corporal punishment on children. These include Article 16 of the African Charter on the Rights and Welfare of the Child, and Article 37 of the Child Rights Convention. Also, the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment would prohibit the application of many types of corporal punishment. However, only a few African countries have banned all forms of corporal punishment. Even where it has been criminalised (or the exceptions that allowed it removed) the practice is socially accepted and it continues.

Egypt

In Egypt, Article 3 of the Child Law of 2008 protects children from violence and abuse. However, corporal punishment is still not prohibited in domestic legislation. Article 7A of the Child Law allows the right to discipline of parents and carers ('reasonable corporal punishment') indicating that provisions against violence and abuse are not interpreted as prohibiting corporal punishment.² A Ministerial Directive discourages corporal punishment in schools, but there is no explicit prohibition of corporal punishment in law. Surveys and studies suggest that corporal punishment by teachers, and violence between students, is widespread in schools. One study found that 42 per cent of teachers "use violence as a means of controlling the teaching process".³

GHANA

Corporal punishment in schools is permissible. Section 13 of the Children's Act, 1998 protects children from torture and inhuman degrading treatment. However, as per section 13(2), corporal punishment is permissible in so far as it is justifiable and reasonable:

No correction of a child is justifiable which 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.

KENYA

In Kenya corporal punishment has been banned in schools but the law banning it is hardly enforced. The Children's Act of 2001, chapter 586, enacted the UN Convention on the Rights of the Child in a domestic context. On 1 March 2002, the minister responsible for overseeing the Act issued a proclamation in Kenya Gazette stating that the entire act was entering into force. The banning of corporal punishment by the government in all learning institutions

came in 2001 through legal notice number 56/2001. The following year, the Director of Education issued a circular to all heads and principals of learning institutions reminding them that corporal punishment was outlawed by the legal notice. The notice referred to the 2001 Children's Act, which stated that a child shall be entitled to protection from physical and humiliating abuse by any person, and a child shall not be subjected to torture, cruel treatment or punishment.⁴ However, these laws are not strictly enforced and most people in Kenya do not know that corporal punishment in schools is illegal.⁵

Article 29 of the Kenyan Constitution (2010) provides for the "right to freedom and security of the person, which includes the right not to be" –

- (a) subjected to any form of violence from either public or private sources;
- (b) subjected to torture in any manner, whether physical or psychological;
- (c) subjected to corporal punishment; or
- (d) treated or punished in a cruel, inhuman or degrading manner.

In particular, Article 53(1), in relation to the rights of children, states that every child "has the right (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour". The Bill of Rights "applies to all law and binds all State organs and all persons (Art.20(1)).

There is also a Basic Education Bill, 2012, under consideration, which states that elimination of corporal punishment or any form of cruel and inhuman treatment or torture is to be a guiding principle in the provision of basic education (s.4(n)). Further, section 35(1) of the Bill provides that "No pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner whether physical or psychological" and that any person who contravenes this provision shall be guilty of an offence (s.35(2)).

NAMIBIA

Section 56(1) of the Education Act, 2001 [No.16 of 2001] provides:

A teacher or any other person employed at a state school or hostel or private school or hostel commits misconduct, if such teacher or person, in the performance of his or her official duties imposes or administers corporal punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.

NIGERIA

In Nigeria, the only law that prohibits the application of corporal punishment to children is the Child Rights Act of 2003. However, the Criminal Code Act in Section 295 (4)⁶, and the Penal Code Act in section 55, which govern criminal justice in Nigeria, still permit the application of corporal punishment.⁷ The effect of the law is to automatically bestow upon "a schoolmaster or a person acting as a schoolmaster", unless the parent or guardian withdraws such consent, "the authority for correction, including the power to determine in what cases correction ought to be inflicted" (art.295(4)). Thus, this provision provides a legal justification for "a blow or other force, not...extending to a wound or grievous harm".

On the other hand, the Child's Rights Act 2003 appears to prohibit corporal punishment in schools. Section 11, ensuring the "right to dignity of the child", prohibits a range of activity against children including "physical, mental or emotional injury...including sexual abuse" and "torture, inhuman or degrading treatment or punishment" (ss. 11(a);(b)). However, the legislation does not seem to be operating in all states.⁸ An interpretation may be that corporal punishment is allowed as long as it does not reach a certain threshold of harm. This is an undesirable position as it places too much power and discretion in the hands of often untrained teachers and head teachers.

SOUTH AFRICA

The South African Schools Act, 1996 [No.84 of 1996] prohibits corporal punishment in schools:

10. (1) No person may administer corporal punishment at a school to a learner.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

Section 16 of the Further Education and Training Colleges Act, 2006 [No.16 of 2006] similarly prohibits corporal punishment (and initiation practices) by any person to a student at a college. See also the decision of the Constitutional Court in *Christian Education South Africa v Minister of Education* (2000), which confirmed that the general ban (South African Schools Act) did not contravene freedom of religion by prohibiting the practice in independent Christian Schools.⁹

In addition the National Education Policy Act provides that "no person shall administer corporal punishment or subject a student to psychological or physical abuse at any educational institution". Corporal punishment of children in children's homes, schools of industry and reform schools is also prohibited, as is corporal punishment imposed by foster parents on foster children within their care. This has been achieved through regulations under the Child Care Act (Act 74 of 1983).¹⁰ Before the South African Schools Act was passed, the Constitutional Court had ruled in *S. v Williams and Others* that all forms of judicial juvenile corporal punishments were unconstitutional.¹¹

The South African government has taken a number of measures to implement the prohibition of corporal punishment in schools. Staff members have been appointed at the national and provincial Departments of Education to ensure adherence to the prohibition within the educational system. The national department has also published a manual for teachers on alternatives to corporal punishment, which has been distributed widely together with a guide for persons facilitating training on the manual. Training of a number of teachers as trainers of their peers on alternatives to corporal punishment has also been initiated. It now seems that the prohibition to administer corporal punishment on learners is well-known within the school system.¹² However, corporal punishment and other forms of humiliating and degrading punishment are still widely used in South African schools. It seems that the main reasons for this are linked to a lack of understanding of the human rights framework protecting children, as well as of the harmful effects of corporal punishment of children, among teachers and parents. A large number of teachers have not been reached by the training on alternatives to corporal punishment and they are not equipped with skills to manage discipline in the classroom through non-violent means.¹³

Tanzania

Corporal punishment may be administered for serious breaches of school discipline or for grave offences.... (URT, 2002b)

Corporal punishment doesn't just incidentally happen in Tanzanian schools; it is a thoroughly developed system. Corporal punishment is "punishment by striking a pupil on his hand or on his normally clothed buttocks with a light, flexible stick but excludes striking a child with any other instrument or on any other part of the body" (URT, 2002b). It is to be administered for "serious breaches" or "grave offences," to a "reasonable" extent, and "shall not exceed four strokes" (2002). Only headmasters, or other teachers with the headmaster's written approval, may administer such punishments, and female students may only receive corporal punishment from female teachers, unless none are present (2002).

In reality, these regulations are often broken. Students are beaten for almost any reason, by any teacher, sometimes to severe extents. Typically it is accepted as the norm. Politically, social values play a strong role and may compromise legal progress as politicians, policy-makers, and policy-implementers may potentially turn a blind eye to any stipulation prohibiting corporal punishment. This social context is the greatest obstacle to ending corporal punishment in schools. It seems the vast majority of Tanzanians—from community leaders to parents to teachers—strongly believe that corporal punishment is absolutely necessary when teaching children, whether at home or in schools. A total ban on corporal punishment, in schools and elsewhere, made its way into Zanzibar's Draft Children's Act 2010. However, this did meet a lot of opposition, including from members of parliament.

UGANDA

It appears that government policy prohibits corporal punishment although this has not been expressly criminalised. The Penal Code Act and Children Act are silent on corporal punishment in the schools setting.

A Ministerial circular (2006)¹⁴ and the Guidelines for Universal Primary Education (1998, article 3.4 iii) state that corporal punishment should not be used in schools, but there is no explicit prohibition in law. In *Emmanuel Mpondi v Chairman Board of Governors & 2 ORS UHRC 1 (1999-2002)* the Human Rights Commission Tribunal ruled that the beating of a student to the point of severe injury violated his right to protection against cruel, inhuman and degrading treatment, but did not condemn all corporal punishment in schools.¹⁵

ZAMBIA

Article 28 of the Education Bill, 2011 prohibits corporal punishment or degrading or inhuman treatment in schools, which extends to a "teacher, employee or other person at an educational institution".¹⁶

ZIMBABWE

In Zimbabwe, corporal punishment can only be inflicted only by the school head or a teacher to whom authority has been delegated by the head, or any other teacher in the presence of the head, and should be inflicted on the buttocks with a suitable strap, cane or smooth light switch.¹⁷ The school head is required by law to keep a register or record of all cases of corporal punishment.¹⁸ Earlier, the Supreme Court had decided in *S v A Juvenile* that judicial

corporal punishment is outlawed.¹⁹ However, in 1992, the government of Zimbabwe nullified the 1989 Supreme Court judgment and reintroduced judicial corporal punishment on boys.²⁰ “Moderate” corporal punishment for boys, alone, is lawful in schools under article 241 of the Criminal Law (Codification and Reform) Act 2004. Article 241(6) further details the factors that the court should consider in deciding whether punishment was “moderate”, such as “nature of punishment”, “instrument”, and “degree of force”.

Summary

From the countries examined above, the major problems are a lack of laws to prohibit corporal punishment in schools, or where there are laws inadequate knowledge and enforcement of the laws. Another problem is that school teachers and authorities are not adequately trained on alternatives to corporal punishment of students.

There is also the problem that cultural and religious beliefs are used to support the continued use of corporal punishment. Both society and teachers hold four common myths about corporal punishment: the belief that corporal punishment builds character; the belief that corporal punishment teaches respect; the belief that corporal punishment is the only thing some children understand; and, the belief that without corporal punishment, behavioural problems increase.²¹

To tackle these problems States need to enact laws (where there are none) to prohibit all forms of corporal punishment in schools. This should be coupled with adequate enforcement mechanisms and reporting systems to ensure compliance.

States should also embark on training teachers and other authorities on effective alternatives to corporal punishment, and should educate the general public so as to change the current attitudes that support the continued application of corporal punishment. Governments should initiate and support public awareness and education campaigns to promote positive, non-violent methods of child-rearing. This could be done in close collaboration with NGOs and CBOs working for children’s rights, political and traditional leaders, faith-based organisations, educational institutions and international donor organisations. Children themselves could play an important role in these efforts. However, before embarking on awareness and education campaigns, the governments need to secure financial and human resources to implement a programme that can be sustained in the long-term. The media could also become a key partner in campaigns to raise awareness of children’s rights and alternative, non-violent forms of discipline.²²

The public needs to be educated that despite certain common opinions, research shows that corporal punishment does not bring about the desired changes in children (Kelly & Wesangula, 2010) and that beatings are not an inherent part of African culture but are part of the culture of slavery and colonialism brought to Africa by Westerners (Levens, 2009; Global Initiative to End All Corporal Punishment of Children, 2010). In their pursuit for behavioral change, teachers need to be exposed to forms of positive reinforcement as well as non-violent forms of negative reinforcement, so when there is talk of abolishing corporal punishment they will not feel that they are having their only tool of control taken away. If these matters are not addressed, corporal punishment will no doubt continue in many areas through the demand of communities, parents, and teachers despite any policy against it.

Where societies do not change their attitude towards corporal punishment it may well continue despite criminal sanctions. In Uganda, for example, corporal punishment continues in schools despite a 2006 circular issued by the Ministry of Education and Sports banning it.

Similar results have come about in Kenya where corporal punishment in schools remains though the legal provisions permitting it were repealed in 2001.

2. SEXUAL VIOLENCE

Sexual violence can be defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic a person’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work.”²³ African States have a duty, under Articles 16 and 27 of the African Charter on the Rights and Welfare of the Child, to protect children, and invariably students, from all forms of sexual violence or exploitation. Sexual violence by teachers and other students can, in addition to being a violation in its own rights, be a barrier to girls’ access to education. If a school is thought to be a site of physical or sexual violence then parents will be reluctant to send children to school, and students will be reluctant to attend (Hayward 2003, Jones and Espey 2008).

GHANA

The Criminal Code Act, 1960 contains the relevant provisions. In particular, section 101 creates the offence of “defilement of child”, which is defined as the “natural or unnatural carnal knowledge of any child under sixteen years of age” (s.101(1)), “whether with or without his or her consent” (s.101(2)). Other relevant provisions include householder (“owner or occupier of any premises or a person acting or assisting in the management of premises”) permitting defilement of child on his premises (s.106); and causing or encouraging the seduction or prostitution of a child under sixteen (s.108).

Tanzania

“Violence, and the fear of violence, is an important reason for girls not to attend school in Tanzania. There is limited research on actual levels of sexual violence against girls within the country. However, within the sample of one survey, half of primary school girls reported having had sexual intercourse with adults, including teachers, and 40% of those reported that the sex had been forced. The majority of cases of sexual violence go unreported. A culture of patriarchy often condones sexual violence and leaves many girls feeling such violence is inevitable and that they are powerless to prevent it (Matasha et al. 1998). According to the Tanzanian Sexual Offences Special Provisions Act (1998), any act of ‘gross indecency’ between a teacher and pupil in primary or secondary school is a criminal offence irrespective of age (s138A). In failing to protect girls in schools, the Tanzanian government is failing to uphold national law and protect rights established in the National Constitution (art. 9, 29 particularly). It is furthermore failing to fulfil obligations under several international treaties (ACRWC art. 16, 27, CEDAW, CRC art. 19, 34). Although Tanzania is a high performing country on availability, its practice in this regard leaves it falling short of desired standards of acceptability. Making education acceptable is therefore dependent on ensuring that safety is enjoyed at school, and on the journey to and from it. A review of best practices by UNICEF, USAID and Plan International found that gender-based violence in, to and from school can be reduced by investing in interventions under the broad areas of: Awareness of Violence (national legislation, monitoring and enforcement, legal access for reporting and

codes of conduct), *Infrastructure Reform* (safe latrines, recreational spaces, lighting and fences, and more schools), *Stakeholder Involvement* (reform of teacher training, increased school transport and accompaniment, peer to peer education and parent committee training), *Curriculum Reform* (reducing stereotypes, life-skillsbased sexuality education and sex health rights content), and *School Personnel* (more female teachers, violence counselors) (Global AID S Alliance, 2007). Alongside this, acceptable education requires the prevalent culture and practice of impunity for many who sexually abuse students to be challenged. This requires sustained campaigning to enforce the legal infrastructure surrounding education: ensuring that perpetrators are punished.²⁴

KENYA

In Kenya, the State has passed two laws that deal with sexual violence against children and that would apply to children in schools. Section 15 of the Children's Act of 2001 provides for the State to protect children from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials.²⁵ There is also the Kenya Sexual Offences Act of 2006 which criminalises several forms of sexual exploitation and violence against children among other things.²⁶

The Sexual Offences Act criminalises a range of offences in relation to children. Section 8 criminalises "defilement", which is defined as "causes penetration with a child" (s.8(1)), with child being defined as any person under 18 years of age. The Act also specifies the minimum sentence for those convicted under this section depending on the age of the child (ss.8 (2)-(4)): life imprisonment where child is aged eleven years or less; twenty years where child is between the age of twelve and fifteen; and fifteen years where the child is between the age of sixteen and eighteen.

Importantly, section 24 criminalises sexual offences committed by persons in a position of authority or trust:

(4) Any person who being the head-teacher, teacher or employee in a primary or secondary school or special institution of learning whether formal or informal, takes advantage of his or her official position and induces or seduces a pupil or student to have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.

Further, section 30 makes it a criminal offence for a person "convicted of a sexual offence and who fails to disclose such conviction when applying for employment which places him or her in a position of authority or care of children or any other vulnerable person or when agreeing to take care of or supervise children or any other vulnerable person."

Where a person has been convicted of a sexual offence against a child, the court may declare such a person a "dangerous sexual offender" (s.39(1)(c)). In such cases, the offender must be placed under long-term supervision when he or she is released after serving part of a term of imprisonment (s.39(2)). Section 7 of the Sexual Offences Regulations, 2008²⁷ mandates the Registrar of the High Court to maintain a Register of Convicted Sexual Offenders. The Register is to be accessible at all times to children officers

(s.7(9)(d)). The Children Act, 2001 similarly includes provisions to safeguard the interest of children. Section 13 provides for protection for children from child abuse, which is defined in section 2 to include "physical, sexual, psychological and mental injury". Section 15 has a similar provision as regards "sexual exploitation."

However, it seems that cases of sexual violence at school are never reported to the authorities. A study conducted between 2003 and 2009 revealed that 12,660 girls were sexually abused by their teachers, yet only 633 teachers were charged with sexual offences. Furthermore, 90 per cent of sexual abuse cases involving teachers never reached the Teachers' Service Commission, responsible for monitoring and implementing teachers' codes of conduct.²⁸ One reason for this is that parents want their children to avoid the stigma associated with sexual abuse, and also teachers often pay families to keep the cases out of court. Thus in 2000, the Teachers' Service Commission issued guidelines designed to protect children from sexual abuse in schools. The new rules ban students from visiting teachers' homes, warn teachers against using the promise of academic progress to coerce children into sexual liaisons and stipulate that any sexual abuse of a child should be reported to the commission within 24 hours.²⁹

NAMIBIA

Under the Combating of Rape Act [No.8 of 2000], where the victim is under the age of 14 and the perpetrator is more than 3 years older, no force or threat is necessary to establish rape (s.2(2)(d)), where rape encompasses "sexual act" and is not limited to penetration. The age of consent is gender neutral. The sentencing provisions in the Act account for perpetrators who are in a "position of trust or authority over the complainant", or when the complainant is "under the age of thirteen years" or "by reason of age exceptionally vulnerable" (ss.3(a)(iii)(bb)-(cc)) (minimum sentence of fifteen years).

South Africa

In South Africa, the government has passed the Criminal Sexual Offences and Related Matters Amendment Act, 2007. The Act criminalises all forms of sexual exploitation of adults and children including rape, statutory rape (where the child 'consents'), child pornography among others. The sexual crimes which the Act spells out cover all possible sexual offences against school students whether they are below or above 18.³⁰ The Act also creates a National Register of sex offenders and stipulates that anyone convicted of any sexual offences against children may not be allowed to work in a school or other place which involves children. Such convicted persons are also not allowed to own or manage institutions that involve children. Employers in institutions that involve children are to check the register to confirm that any potential employee's name is not included before they can employ him or her.³¹

Before that Criminal Sexual Offences and Related Matters Amendment Act of 2007 was passed, the Constitutional Court of South Africa had held in the case of *Carmichele v The Minister of Safety and Security and another* that "South Africa also has a duty under international law to prohibit all gender-based discrimination that has the effect or purpose of impairing the enjoyment by women of fundamental rights and freedoms and to take reasonable and appropriate measures to prevent the violation of those rights."³² The case is important in its analysis of the State's obligation to protect against sexual violence, which will

be heightened in the circumstances of children attending school. In that sense, the creation of the National Register of Sex Offenders created by the Act is in line with that responsibility.

Ghana

In Ghana the Criminal Code Act of 1960 devotes a chapter to sexual offences and criminalises rape, defilement of children under 16 and indecent assault among others.³³ It does not contain any provisions as to how to protect children from sexual violence in schools, or to protect children from sexual offenders. Thus, it leaves of lot of loopholes that can still be exploited to violate children sexually.

NIGERIA

Section 11 of the Child's Rights Act 2003 prohibits a range of activity against children, including sexual abuse. Section 31, in particular, makes it unlawful to have sexual intercourse with a child. Belief of the offender that the victim was eighteen years or older or the consent of the child itself does not provide a defence (s.31(3)). Section 32 of the Act further covers any other form of sexual abuse or sexual exploitation, but does not explicitly exclude the defence of mistaken belief or consent. However, the Act is not applicable in all of the States and each State has to pass it into law. So far, only 15 states, out of the 36, have passed the Act into law.³⁴ Thus, the majority of states of the federation have no legal means of protecting school children against sexual violence and exploitation. Also, the Nigerian Child Rights Act provides no measures to protect children from sexual violence in the school, or to keep them away from sex offenders.

UGANDA

As per the Penal Code (Amendment) Act, 2007, s.129 of the Penal Code Act creates the offence of "defilement", defined as performing "a sexual act with another person who is below the age of eighteen years". Moreover, s.129(3), creates the offence of "aggravated defilement", which is applicable where, *inter alia*, the victim is under the age of fourteen years (s.129(4)(a)), or where the offender is "a parent, guardian of or a person in authority over the...person against whom the offence is committed" (s.129(4)(c)). Other relevant offences in the Penal Code Act, 1950 include indecent assault (which is limited to women), wherein consent is no defence if the girl is under the age of eighteen (s.128); indecent assaults on boys under eighteen (s.147); and "householder, etc. permitting defilement of girl under the age of eighteen" (s.133).

ZIMBABWE

Part III of the Criminal Law (Codification and Reform) Act 2004 details sexual crimes. Section 70 of the Act makes it an offence to have extra-marital sexual intercourse with a young person, perform an indecent act with a young person, or solicits a young person to have extra-marital intercourse or commit an indecent act. "Young person" is defined as "a boy or girl under the age of sixteen years" (s.61). Consent of the young person is not a defence (s. 70(2)), but it is a defence if the accused had reasonable cause to believe that the victim was sixteen years or over (s.70(3)). The legislation currently does not provide any preventive measures to protect school students from sexual violence, although the government claims that it intends to set up a National Sex Offenders' Register.³⁵

ZAMBIA

Section 138 of the Penal Code Act³⁶ creates the offence of "defilement of a child." Child is defined as a person "below the age of sixteen years" (s.131A). Section 154 clarifies that it is "immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age". As regards non-sexual violence, section 248A makes it an aggravated offence to commit an "assault or battery on a child occasioning actual bodily harm".

3. OTHER STRATEGIES

In countries like Sierra Leone, Gambia, Cote d'Ivoire, a Code of Conduct has been passed dealing with issues such as child sexual exploitation and abuse among many other issues. The Code regulates how teachers are to interact with their students in a way to prevent the teachers from sexually abusing the students.³⁷ Other methods that have been suggested include:

- the development and enforcement of gender-sensitive anti-violence regulations, including systematic reporting of offences and holding perpetrators accountable.³⁸
- employing a higher number of female teachers and school-based social workers, and ensuring they receive adequate training in preventing and responding to gender-based violence so that they can serve as role models and counsellors to girl students.³⁹
- the development of life skills curricula that include modules to build both boys' and girls' awareness of the power dynamics of gender inequality, and practical sex education and sexuality classes to provide alternative models to the often abusive relations that children may see modelled within the household or community.⁴⁰
- training youth leaders and peer educators to tackle school violence, especially empowering children and young people to stand up to and report violence.⁴¹
- development of preventative healthcare services, including training personnel to raise awareness in the community, recognise warning signs of abuse and to intervene sensitively.⁴²
- training police officers to deal with crimes of sexual violence and employing specially trained court intermediaries to support child victims in prosecuting cases of abuse.⁴³
- developing a curriculum that builds up the self-esteem of the students and does not make the teacher a know-it-all. Teachers should be encouraged to use discovery and higher order thinking in students so that they can see what they are capable of. Hence, they would not be targets of abuse that is precipitated by low self-esteem.⁴⁴
- sensitization of men together with tougher punishment—this was cited as the best long-term solution to the problem.⁴⁵
- reorganizing the legal system so that it is more sensitive to children especially those that have been defiled. Stiffer penalties should be put in place.⁴⁶
- educating both boys and girls as to their rights especially with regard to sexual abuse and how to seek recourse in case they are violated. Hence, there is a need to integrate these messages in the school system.⁴⁷

- sensitize teachers in all schools regarding sexual violence and ways of identifying sexually violated children.⁴⁸

4. STUDENT VIOLENCE

Student violence (or bullying) affects large numbers of children in African schools. For example, in a Kenyan survey of 1,000 students in Nairobi public schools, between 63.2 per cent and 81.8 per cent reported various types of bullying. Similarly, in a South African survey, more than half of respondents had experienced bullying at least once in the previous month.⁴⁹

Unfortunately, most countries lack legislation that provides specific protection against bullying. In Africa, partial exceptions include Kenya, where it is possible to take administrative action against bullying in schools (a student found bullying another may be suspended or expelled from school), and Guinea Bissau, where the penal code can be applied.⁵⁰

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