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THE NEXUS BETWEEN THE RIGHTS TO LIFE AND TO A BASIC EDUCATION IN SOUTH AFRICA

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*Education is the most powerful weapon which you can use to change the world.
Education is the great engine of personal development.
It is through education that the daughter of a peasant can become a doctor, that the
son of a mineworker can become the head of the mine and that a child of farm
workers can become the president of the country.*
(Nelson Mandela)

1 Introduction

The *Constitution of the Republic of South Africa*, 1996 aims at improving the quality of life of all citizens and ultimately to free everyone's potential.¹ In arguing that the right to life guarantees not only mere human existence, but the right to a quality of life, the importance of education in achieving the latter is highlighted. This is done within the framework of the law as being not purely a coercive system imposing duties on legal subjects but also as creating an emancipated framework allowing individuals a moral and autonomous life,² as it has the ability to order the living world. With regard to the role of the law in the sphere of education, Van Wyk³ and Stoker⁴ specifically refer to the duties placed on all educational role-players to perform a specific service and take responsibility therefore. In a pluralistic South Africa, the law in education moreover serves the purpose of securing an environment in which mutual rights, obligations, competencies and diversity can coexist.⁵ For this to be realised it is essential that educational role-players acknowledge the enormously important role they play in preparing learners for a meaningful life in a democratic South Africa.⁶

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¹ Preamble of the *Constitution of the Republic of South Africa*, 1996.

² Cameron and Ferreira "Tony Honoré's Contribution" 34.

³ Van Wyk *Inaugural Address* 9, 11.

⁴ Stoker *Aard en Rol van die Reg* 66.

⁵ Oosthuizen *Aspects of Education Law* 10.

⁶ Steyn, de Klerk and Du Plessis *Education for Democracy* i, iv.

While taking cognisance of the fact that the law is aspirational and that gaps do exist between legislation and reality,⁷ this article explores the nexus between the right to life and the potential of education to enhance the overall quality of life of all South Africans.

In studying the literature pertaining to the right to life it became evident that this right is often narrowed down to the obvious essential of "no one shall be deprived of his/her life."⁸ Emphasis is accordingly placed on how the lives of the disabled⁹ or chronically ill can be improved¹⁰ or how the welfare of society at large can be enhanced.¹¹ The African National Congress,¹² to the contrary, acknowledges that giving effect to this right necessitates much more.

An analysis of case law revealed that prominence is placed mostly on the right to die with dignity or not to die at all. Examples hereof include: *Ntamo v Minister of Safety and Security*¹³ and *S v Dougherty*,¹⁴ in which the right to life was addressed with regard to killing in self-defence. In *S v Makwanyana*¹⁵ it was acknowledged as so pertinent that the death penalty was abolished, and in *S v Williams*¹⁶ as well as in the *Robert James Stransham-Ford* case¹⁷ it was protected in connection with euthanasia. The right to life was emphasised in *Christian Lawyers' Association of South Africa v Minister of Health*¹⁸ in arguing against abortion, in *S v Walters*¹⁹ as being a justification to taking a life during arrest procedures, and in *Soobramoney v Minister of Health, KwaZulu-Natal*²⁰ by addressing life-saving medical care.

⁷ Law "Constitutions" 386.

⁸ Van Wyk *Rights and Constitutionalism* 215.

⁹ Wehmeyer and Schalock 2001 *Focus Except Child* 2.

¹⁰ Carr, Gibson and Robinson 2001 *BMJ* 1240; Malkoç 2011 *Procedia Soc Behav Sci* 2847.

¹¹ Adler "Social Security and Social Welfare" 400.

¹² ANC *Bill of Rights*.

¹³ *Ntamo v Minister of Safety and Security* 2001 1 SA 830 (Tk).

¹⁴ *S v Dougherty* 2003 2 SACR 36 (W).

¹⁵ *S v Makwanyana* 1995 3 SA 391 (CC).

¹⁶ *S v Williams* 1986 4 SA 1188 (A).

¹⁷ *Stransham-Ford v Minister of Justice and Correctional Services* 2015 4 SA 50 (GP).

¹⁸ *Christian Lawyers' Association of South Africa v Minister of Health* 1998 4 SA 1113 (T).

¹⁹ *Ex parte Minister of Safety and Security in re S v Walters* 2002 4 SA 613 (CC).

²⁰ *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 1 SA 765 (CC).

This article opens a new line of argument by proposing that reality in its diversity is encapsulated in life, both as the wholeness of every individual and society at large, as well as as the nodal point of human co-existence. The complexities of the right to life are accordingly studied in order to be able to delineate it as being inclusive of the entitlement to what is necessary for the safeguarding or provision of a life worth living. Cognisance is also taken of the fact that living a particular quality of life is a personal choice, for the making of which receiving a quality education is a prerequisite. It is through education that human beings can be empowered to take control²¹ of their own destiny,²² to make rational and informed decisions, and to choose the conditions under which they live.²³ It is in this regard that educators have the duty to empower learners to engage in democratic participation²⁴ and to teach them how to hold the State accountable for protecting their rights and for taking responsibility for meeting their basic human needs.

The importance of researching the nexus between the rights to life and to a basic education is evident when regard is taken of the fact that the majority of South Africans still struggle merely to exist, due to the social divisions and inequalities that remain, despite the initiatives taken by the State to bring about a good quality of life for all.²⁵

In view hereof the rights to life and to a basic education are scrutinized and the nexus between them investigated.

2 The right to life

It is recognised that the right to life is regarded as an intrinsic, God-given right and thus not conferred on human beings by the law.²⁶ The right to life is a moral (natural) right independent of the law, since people possess it simply by virtue of their nature

²¹ The quality of life is moderated by the degree of control over his or her life that an individual is perceived to have, and by the individual's opportunities for improvement in specific areas of life; Pajaziti 2014 *Procedia Soc Behav Sci* 4738.

²² Krause 2012 *Obiter* 49; Spinner-Halev *Enduring Injustice* 169.

²³ Rodin 2004 *Ethics Int Aff* 65.

²⁴ Freire *Pedagogy of the Oppressed* 12.

²⁵ HSRC *SASAS 2008*.

²⁶ Villa-Vocencio "God, the Devil, and Human Rights" 227.

as human beings.²⁷ The acknowledgement of the right to life as a fundamental right in constitutions is important, as it has, according to Henkin,²⁸ destroyed the myth that the manner in which a State treats its inhabitants is of no concern to others. Jordaan²⁹ concurs in stating that it serves as proof of the value attributed to the sanctity of life by the law.

Section 11 of the *Constitution* guarantees the right to life to everyone as an unqualified right.³⁰ As such, the physical-biological existence of all people is guaranteed.³¹ It is also listed as a non-derogable right³² and can therefore not to be suspended at all; not even in a state of emergency.³³ As a personal right, the right to life³⁴ furthermore encompasses an individualised claim to a basic quality of life and the opportunity to share in the experience of being human.³⁵

2.1 A basic quality of life

Since the quality of life is perceived mainly according to individuals' subjective³⁶ evaluation of their lives in relation to their culture, values, goals, standards, expectations, concerns and past experiences,³⁷ no consensual definition thereof exists. Due to the fact that the idea of a quality life is not constant and is loaded with

²⁷ Meyerson 2001 *Acta Anaesthesiol Scand* 1110; Rautenbach *Constitutional Law* 333.

²⁸ Henkin 1985 *Wm & Mary L Rev.*

²⁹ Jordaan 2009 *THRHR* 211.

³⁰ The *Constitution of the Republic of South Africa*, 1996 (the *Constitution*) differs in this regard from other constitutions which provide for the right to life as a qualified right, examples being those of the United States of America, Hungary and India and from international instruments such as the *European Convention on Human Rights* and the *International Convention on Civil and Political Rights* (*S v Makwanyana* 1995 3 SA 391 (CC) paras 225 and 308; Currie and De Waal *Bill of Rights Handbook* 281).

³¹ Currie and De Waal *Bill of Rights Handbook* 289; Rautenbach *Constitutional Law* 341.

³² Van Wyk *Rights and Constitutionalism* 660.

³³ Section 37(5) of the *Constitution*.

³⁴ Van Wyk *Rights and Constitutionalism* 212.

³⁵ Gillon 1985 *BMJ* 1890.

³⁶ The subjective quality of life concerns feeling good and being satisfied with life in general. The objective quality of life concerns the fulfilment of societal and cultural demands for material wealth, social status and physical well-being; Pajaziti 2014 *Procedia Soc Behav Sci* 4739.

³⁷ Carr, Gibson and Robinson 2001 *BMJ* 1243; World Health Organisation in Malkoç 2011 *Procedia Soc Behav Sci* 2844.

emotions,³⁸ the measurement of its attainment is moreover extremely hard to construct.³⁹

Labuschagne⁴⁰ and Higgs⁴¹ measure the basic quality of life with relevance to the existence of conditions and the provision of resources adequate to enabling individuals to enjoy human existence, without which enjoyment life would be deemed senseless. Wehmeyer and Schalock⁴² indicate that research has identified eight core quality-of-life dimensions, namely emotional well-being, interpersonal relationships, material well-being, personal development, physical well-being, self-determination, social inclusion (friendship) and rights. Malkoç,⁴³ in turn, identifies four domains of a quality of life, namely physical health, psychological health, social relationships and the environment as significant predictors of subjective well-being. By placing emphasis on individuals' varied perceptions regarding the satisfaction of their immediate needs and subjective well-being or happiness, various authors⁴⁴ emphasise that people assess their own quality of life by comparing their expectations with their practical experiences. The idea of what a quality life consists of thus remains a dynamic notion associated with products, services, people, processes and an environment that meets the unique needs and expectations of human beings.⁴⁵

2.1.1 A basic quality of life for South Africans

Identifying what a life worth living involves in South Africa, the so-called rainbow nation, is even more problematic.⁴⁶ In this regard Carr, Gibson and Robinson⁴⁷ put forward that individuals' evaluations of their quality of life are made within the

³⁸ Naidu *et al Education Management* 38.

³⁹ Keith "Human Rights Instruments" 370; Standage and Gillison 2007 *Psychol Sport Exerc* 705.

⁴⁰ Labuschagne 2004 *SACJ* 90.

⁴¹ Higgs 2007 *Soc Indic Res* 333.

⁴² Wehmeyer and Schalock 2001 *Focus Except Child* 3.

⁴³ Malkoç 2011 *Procedia Soc Behav Sci* 2843.

⁴⁴ Carr, Gibson and Robinson 2001 *BMJ* 1257; Agyar 2013 *Procedia Soc Behav Sci* 2186-2193; Pajaziti 2014 *Procedia Soc Behav Sci* 4738; Gaibie and Davids 2011 http://152.112.253.5/research/output/outputDocuments/6004_Gaibie_Qualityoflife.pdf; Flanagan 1982 *Arch Phys Med Rehabil* 57.

⁴⁵ De Jager and Van Nieuwenhuis 2005 *Quality in Higher Education* 252.

⁴⁶ Kende *Constitutional Rights* 5.

⁴⁷ Carr, Gibson and Robinson 2001 *BMJ* 1257.

boundaries of the prospects that they foresee for themselves and are thus an essential constituent of their identity. Multiculturalism (a major characteristic of this country) must therefore expressly be taken cognisance of when shaping a true South African identity.⁴⁸

Such an identity should be based on the moral, spiritual, intellectual, and social norms underpinned by traditional African values such as individual and social responsibilities, respect for human life and sharing.⁴⁹ South Africans cannot be seen apart from their country and people.⁵⁰ While dominant Western societies are essentially individualistically orientated, traditional African societies are strongly communal in nature.⁵¹ In underscoring the latter, section 235 of the *Constitution* provides for the right to self-determination that people should enjoy as a whole, not individually.⁵²

The right to life should thus not be regarded as an all-inclusive personal liberating right. It should rather be viewed as being interconnected with respect for others as well as the idea of harmonising co-existence. Individuals or groups within the society should thus not be allowed to impose their own values on others, but rather be taught to respect (not merely tolerate) diversity. The freedom of individuals to live their lives as they see fit is accordingly subjected to restrictions to safeguard the freedoms of others.⁵³

Numerous authors⁵⁴ support this view by indicating that individual well-being is secondary to primary social group ties, which increase supportive personal relationships and a sense of having others to talk to and turn to in times of need (a sense of community) - life as the nodal point of being human. In view hereof, Van

⁴⁸ De Klerk *Liturgical Involvement* 55. Individuals from different ethnic and cultural background may have different values and perceptions of what is defined as a "good life": Agyar 2013 *Procedia Soc Behav Sci* 2187.

⁴⁹ Fowler 2010 *Koers* 136.

⁵⁰ De Klerk *Liturgical Involvement* 35; the principles of *ubuntu*, entailing humanness based on the premises that we are because of others.

⁵¹ De Klerk *Liturgical Involvement* 43, 68.

⁵² Dugard *International Law* 110.

⁵³ Dickens *Social Work, Law and Ethics* 57, 61.

⁵⁴ Ross and Van Willigen 1997 *J Health Soc Behav* 275; De Klerk *Liturgical Involvement* 111; Van Wyk *Rights and Constitutionalism* 215; Bayulken and Huisingsh 2014 *J Clean Prod* 2.

Wyk⁵⁵ cautions that the nature of individual rights and the structure of democracy must not portray the individual as an autonomous but isolated and threatened entity that needs to be protected from the threats posed by fellow citizens and society by a wall of rights. Individual rights must thus not grant individuals a position superior to that of others.

Labuschagne,⁵⁶ to the contrary, draws attention to the main reason behind guaranteeing individual rights, namely that individuals may not be sacrificed to the social good, at least without overwhelming or compelling justification. The State, through its judicial authority, is consequently obliged to harmonise the multiple interests of individuals and societal structures.⁵⁷ The State furthermore has economic, legal and ethical responsibilities towards the society it serves. This is essential as the fulfilment of the right to life, specifically, must be recognised as an imperative norm – it has a decisive character at all times.⁵⁸

In giving effect to their positive constitutional duties,⁵⁹ public schools must realise that learners born since the first democratic elections in 1994 were born free into a human rights culture and thus have different needs and life expectations. In contrast with their predecessors, who were willing to sacrifice education in their ultimate struggle for freedom, the new generation, for example, regard education as essential to attaining the quality of life they desire.⁶⁰ However, in researching the extent to which individuals' needs and desires are indeed met to enhance their quality of life Flanagan⁶¹ identified education as one of the five dimensions reported on to be the least met. The value of giving effect to everyone's right to a basic education to empower human beings to live a quality life is forthwith addressed.

⁵⁵ Van Wyk *Rights and Constitutionalism* 462.

⁵⁶ Labuschagne 2004 *SACJ* 98.

⁵⁷ Jansen, Pretorius and Van Niekerk 2009 *Koers* 69; Currie and De Waal *Bill of Rights Handbook* 315.

⁵⁸ Van Wyk *Rights and Constitutionalism* 214.

⁵⁹ Section 7(2) of the *Constitution*.

⁶⁰ Gaibie and Davids 2011
http://152.112.253.5/research/output/outputDocuments/6004_Gaibie_Qualityoflife.pdf; Möller 2007 *Soc Indic Res* 184.

⁶¹ Flanagan 1982 *Arch Phys Med Rehabil* 59.

3 The right to a basic education and its value in bringing about a quality life

Section 29(2) of the *Constitution* provides everyone with the unqualified right to a basic education, which the State is obliged to positively effect. It is a socio-economic right encapsulating the State's positive obligation to make life for its inhabitants purposeful.⁶² The duty of the State in terms of section 7(2) of the *Constitution*, namely to respect, protect, promote and fulfil all fundamental rights, was accordingly emphasised in the *Head of Department, Department of Education, Free State Province v Welkom High School*.⁶³ The High Court underscored the duty of schools as organs of the state to guard against the infringement of fundamental rights and thus to provide a basic education to all.⁶⁴

To fulfil their duties, the South African education system identified specific goals. The overarching goal is to prepare individual learners for employment (earning an adequate income) and for social and political participation in the context of a rapidly changing and dynamic global economy and society.⁶⁵ As such it is the aim of education to enable learners to make sense of their world and to prompt a natural curiosity amid learners to explore and act as means of realising their own life goals.⁶⁶ Schools, as embodying an important societal relationship, are thus essential institutions which must develop the logical and analytic faculties of learners.⁶⁷ As an important source of education law, the *South African Schools Act (Schools Act)*⁶⁸ aims at (a) the provision of a progressively high quality of education, (b) laying a strong foundation for the development of people's talents and capabilities, (c) advancing democratic transformation, (d) combating discrimination and intolerance, (e) assisting the eradication of poverty and the well-being of society, (f) upholding learner rights and (g) promoting the acceptance of responsibility.

⁶² Currie and De Waal *Bill of Rights Handbook* 290.

⁶³ *Head of Department, Department of Education, Free State Province v Welkom High School* 2014 2 SA 228 (CC).

⁶⁴ Okafor and Ugochukwu 2011 *AHRLJ* 411.

⁶⁵ DoE *Policy Framework for Education and Training*.

⁶⁶ Undiyaundeye 2013 *JETERAPS* 514.

⁶⁷ Oosthuizen *Aspects of Education Law* 73.

⁶⁸ Preamble of the *South African Schools Act* 84 of 1996.

The nexus between a basic education and a quality of life is forthwith explored within this legal framework. The value of giving effect to everyone's right to a basic education in order to empower human beings to live a quality life is firstly analysed.

3.1 The provision of a progressively improved quality of education

Education is regarded by many⁶⁹ as an imperative tool to assist learners in acquiring and developing the skills, attitudes and knowledge to better fit the severities of socio-professional life, to fulfil their productive function and to bring about future social cohesion, prosperity and sustainability. Although education is thus seen as any countries' greatest asset and a crucial factor determining its development and global competitiveness, its influence in practice is regrettably often underestimated.⁷⁰

The proactive investment of the State, in partnership with all role-players,⁷¹ in public education is therefore essential to ensure quality education on an equal basis to all learners.⁷² Pertaining specifically to the role of the State in this partnership, case law⁷³ places emphasis on a dire need for revising and negotiating new efforts to resolve conflicting interests in education. The role that the other partners need to fulfil is equally critical. Despite the fact that studies have indicated that educators have the greatest effect (more than courses, content and pedagogies) on learners' experiences, motivation, personal development and therefore their quality of life,⁷⁴ Ananga⁷⁵ and the High Court⁷⁶ report that the characteristics of schools and educators are significantly contributing to the high dropout rates among learners from schools. In view of the fact that the future of any nation specifically depends on the quality of its

⁶⁹ Chenic, Angelescu and Gheorghita 2012 *Procedia Soc Behav Sci* 4561; Tudor, Grigore and Tudor 2014 *Procedia Soc Behav Sci* 10; Pajaziti 2014 *Procedia Soc Behav Sci* 4737; Benos and Zotou 2014 *World Development* 670.

⁷⁰ Petnuchova *et al* 2012 *Procedia Soc Behav Sci* 1325.

⁷¹ Chenic, Angelescu and Gheorghita 2012 *Procedia Soc Behav Sci* 4565.

⁷² Braathea and Otterstada 2014 *Procedia Soc Behav Sci* 1199.

⁷³ *Basic Education for All v Minister of Basic Education* 2014 4 SA 274 (GP) and *Section 27 v Minister of Education* 2013 2 SA 40 (GNP) in which the State was taken to court on not providing textbooks; *Madzonzo v Minister of Basic Education* 2014 3 SA 441 (ECM) in which the failure of the State to provide adequate furniture to schools had to be addressed.

⁷⁴ Escuder-Mollon *et al* 2014 *Procedia Soc Behav Sci* 515.

⁷⁵ Ananga 2012 *SARE* 103.

⁷⁶ *Centre for Child Law v Minister of Basic Education* 2013 3 SA 183 (ECG) para 14.

educators, the ones who have the responsibility to impart knowledge to learners,⁷⁷ the Constitutional Court⁷⁸ had to appeal to educators, schools and education departments to re-examine their responsibilities, attitudes, commitment and dedication to provide and maintain education of a high quality. This entails that educators themselves need to become life-long learners in order to assist learners in meeting the dynamic demands of modern life.⁷⁹

3.2 Laying a strong foundation for the development of people's talents and capabilities

Bontenbal⁸⁰ and Freire⁸¹ state that systems often diminish individuals into passive users and choosers rather than uplifting them to become makers and shapers. This robs human beings of the joy of producing – the truest form of happiness.⁸² In this regard, Nelson Mandela once said that "there is no passion to be found in playing small – in settling for a life that is less than what you are capable of living".

Dickens,⁸³ concurring, stresses the fact that higher value must be attributed to human life by treating individuals as ends in themselves. Fowler⁸⁴ concurs by emphasising that people are more than just a physical function – they are open to the possibilities of understanding ultimate order and meaning for their existence, and therefore open to education. Human beings are creatures who are not satisfied with function alone - they seek meaning.⁸⁵

The young should thus receive quality education in order to be empowered to create a new awareness of their own talents and capabilities, have a new sense of dignity,

⁷⁷ Osei-Owusu *et al* 2013 *JETERAPS* 499-501: *no educational system can rise above the quality of its educators and that no nation can rise above the level of its educating staff*.

⁷⁸ *Head of Department, Department of Education, Free State Province v Welkom High School* 2014 2 SA 228 (CC) paras 41, 45, 58-59.

⁷⁹ Petnuchova *et al* 2012 *Procedia Soc Behav Sci* 1325.

⁸⁰ Bontenbal 2009 *Habitat International* 187.

⁸¹ Freire *Pedagogy of the Oppressed* 15.

⁸² Fowler 2010 *Koers* 138-139.

⁸³ Dickens *Social Work, Law and Ethics* 76.

⁸⁴ Fowler 2010 *Koers* 144.

⁸⁵ Gaibie and Davids 2011

http://152.112.253.5/research/output/outputDocuments/6004_Gaibie_Qualityoflife.pdf.

and be instilled with new hope for their future.⁸⁶ Serfontein⁸⁷ similarly highlights the importance of education for sustainable human development, as it can unlock human potential.

Empowered through a basic education, individuals can gradually perceive personal and social reality as well as the contradictions in it, become conscious of their own perception of that reality, and critically deal with it.⁸⁸ Reflecting on aspects of reality is part of the process of empowerment and provides the force that allows people to take action to change that reality.⁸⁹ Through this they can discover themselves and their unique potential and win back the right to speak their own minds and pursue their own values.⁹⁰ The latter will give new meaning to the old maxims "over his own body and mind, the individual is sovereign"⁹¹ and "a lack of control over one's destiny essentially involves a loss of human dignity".⁹²

In order for people to take control of their lifestyles, choose the conditions in which they live, set their own personal goals⁹³ and determine their own future (as far as possible) they must firstly be well educated. Education has the potential to empower people to make the right, informed choices for themselves and to balance such choices against potential harm.⁹⁴ This is crucial since the internal choices that humans make can be extremely risky and can restrict their future lives.⁹⁵

For this to transpire, educators need to create ample opportunities for learners to develop holistically.⁹⁶ The importance of education in improving overall self-esteem,⁹⁷

⁸⁶ Freire *Pedagogy of the Oppressed* 15.

⁸⁷ Serfontein 2013 *IJAC* 138.

⁸⁸ Freire *Pedagogy of the Oppressed* 15.

⁸⁹ Freire *Pedagogy of the Oppressed* 16.

⁹⁰ Rodin 2004 *Ethics Int Aff* 65.

⁹¹ Dickens *Social Work, Law and Ethics* 58; Ghandi: the privilege of making one's own choices – the superior opinion of one's own life – is one of the most important freedoms of humankind.

⁹² Krause 2012 *Obiter* 49.

⁹³ Escuder-Mollon *et al* 2014 *Procedia Soc Behav Sci* 511.

⁹⁴ Dickens *Social Work, Law and Ethics* 85-86; Rodin 2004 *Ethics Int Aff* 65; Spinner-Halev *Enduring Injustice* 169-170.

⁹⁵ Carr, Gibson and Robinson 2001 *BMJ* 1257; Higgs 2007 *Soc Indic Res* 356.

⁹⁶ Chetty *et al* 2012 *SAMJ* 315; Oosthuizen *Aspects of Education Law* 73.

⁹⁷ True self-esteem can only be enhanced when one's actions are self-determined – that is only when one acts with an internal perceived locus of causality; Standage and Gillison 2007 *Psychol Sport Exerc* 706.

interpersonal relationships, mental and health status, happiness, well-being and life satisfaction⁹⁸ must never be underestimated.⁹⁹ A narrow utilitarian approach to education aimed at cognitive development¹⁰⁰ and economic productivity alone must be avoided.¹⁰¹ Since human beings face a variety of difficulties in society, more emphasis must be placed on the capabilities of practical reason and affiliation as being critical for individual and societal development and transformation.¹⁰²

3.3 Advancing democratic transformation

In acknowledging the governing role of the political domain in human functioning (political structures, restrictions, effects, identity and engagement) and the degree to which political conditions impact all dominions of functioning (economic, educational, familial and psychological), cognisance needs to be taken of politics in the contexts of the quality of life.¹⁰³ It is acknowledged in this regard that values such as justice, rights, dignity and self-determination, which underlie political structures, are core elements of human functioning.¹⁰⁴

Democracy is globally recognised as offering the best possibility of social happiness and progress.¹⁰⁵ Democracy in essence concerns a particular way of life.¹⁰⁶ The potential of education to enhance national awareness and individuals' general level of knowledge pertaining to democracy is underscored by various researchers.¹⁰⁷ The social function of education in enculturating individuals to become empowered members of a particular society is crucial.¹⁰⁸ It is through education that citizens can

⁹⁸ Often referred to as a subjective way of measuring quality of life, life satisfaction is a complex construct that entails a human's overall evaluation of life domains such as health, wealth, job, interpersonal relationships and self-esteem.

⁹⁹ Powdthavee, Lekfuangfu and Wooden 2014 *J Behav Exp Econ* 3.

¹⁰⁰ Braathea and Otterstada 2014 *Procedia Soc Behav Sci* 1199; Wiesmann and Hurni *Research for Sustainable Development* 113.

¹⁰¹ Cockerill 2014 *Int J Educ Res* 15.

¹⁰² Sayed 2002 *Compare* 36.

¹⁰³ Barber *et al* 2014 *Soc Sci Med* 92.

¹⁰⁴ Barber *et al* 2014 *Soc Sci Med* 92.

¹⁰⁵ Bekerman and Zembyla *Teaching Contested Narratives* 189.

¹⁰⁶ Steyn, De Klerk and Du Plessis *Education for Democracy* 15.

¹⁰⁷ Freire *Pedagogy of the Oppressed* Foreword; Bekerman and Zembyla *Teaching Contested narratives* 189.

¹⁰⁸ Braathea and Otterstada 2014 *Procedia Soc Behav Sci* 1194.

be drawn together through multi-layered mutual understanding, respect, beneficial communication and individual self-scrutiny, as part of the national project of building a democratic culture that is truly well thought through.¹⁰⁹

The interactive learning environments created in schools are particularly valuable in contributing significantly to enhancing the quality of the informal education experiences of learners associated with social interaction and groups.¹¹⁰ Aguilar and Retamal¹¹¹ concomitantly refer to "healing school climates" that create opportunities for learners to be actively engaged in creative social activities, which are just as important as reading, writing and numeracy. An interactive learning environment also enables the free expression of opinions and ideas, which ability enhances negotiation, listening, communication, participation and critical thinking skills on the one hand as well as respect for and sensitivity towards others, honesty, loyalty, openness, and team work on the other hand.¹¹² The latter is essential, as life within a democratic and open society requires of all to be empowered to participate in free, open, critical discussions and make their voices heard for the attainment of the quality of life all deserve.¹¹³

Learners, however, also need to be formally taught to reason in critical ways - to become explorers of the mind who uncover the way in which society is organised and have the knowledge and skills to envision an alternative design for such a society.¹¹⁴ To attain this, educators must critically pay attention to the close relationship between individual identity and the larger socio-political context in which their learners should be able to function.¹¹⁵ The economic, political, historical and social contexts in which transformation occurs must be thoroughly investigated and must feature in classroom discussion.¹¹⁶

¹⁰⁹ Nussbaum *Cultivating humanity* 294.

¹¹⁰ Allison *et al* 2012 *Computer Networks* 3812.

¹¹¹ Aguilar and Retamal 2009 *Int J Educ Dev* 3.

¹¹² Steyn, De Klerk and Du Plessis *Education for Democracy* 18; Braathea and Otterstada 2014 *Procedia Soc Behav Sci* 1194.

¹¹³ Mautjane 2012 <http://www.idasa.org.za>; Bekerman and Zembyla *Teaching Contested Narratives* i.

¹¹⁴ Clark 2003 *Oxford Dev Stud* 175.

¹¹⁵ Bekerman and Zembyla *Teaching Contested Narratives* 193.

¹¹⁶ Bajaj "Critical Peace Education" 136.

3.4 Combating discrimination and intolerance

To combat the negative effects of discrimination and to prevent the repetition thereof in future, people need to be enabled to recognise and value other people for who and what they are¹¹⁷ as well as for what they can become.¹¹⁸ This entails that all must be taught to respect identities and cultures other than their own, rather than simply labelling them, a mean process which inevitably leads to suffering.¹¹⁹ The advantage of this lies in the fact that when diversity is respected, feelings of inner peace, faith, hope, optimism and spiritual connection (an ultimate goal of human rights)¹²⁰ increase.¹²¹

Schools should thus aim at having a considerable influence on the mental health and the quality of life of their learners. One overarching aim of the school system should therefore be to promote self-esteem (mental health) and emotional well-being and to assist individuals to form and maintain worthwhile and satisfying relationships, based on respect for themselves and for others, at home, school, work and in the community.¹²²

In this regard, education is regarded as encompassing all the means, instruments and methods which are oriented towards changing human behaviour, either through imparting knowledge, or through changing attitudes.¹²³ It is, accordingly, an imperative that educators, working with learners from diverse backgrounds, increase their competence in dealing with conflicting historical narratives at both the cognitive and the emotional levels. For this to occur, school curricula should suit the unique life, needs, interests and environment of South Africans and provide ample opportunities for learners to experience real-life situations.¹²⁴ Since the quality of life, as a long-

¹¹⁷ Cameron and Ferreira "Tony Honoré's Contribution" 34.

¹¹⁸ Du Toit 1998 *J Soc Dev Afr* 12.

¹¹⁹ Bekerman and Zembyla *Teaching Contested Narratives* 219-220.

¹²⁰ Heyns and Kilander "Towards Minimum Standards".

¹²¹ WHOQOL 2006 *Soc Sci Med* 1490.

¹²² Self-esteem = "the awareness of good possessed by self". Standage and Gillison 2007 *Psychol Sport Exerc* 705.

¹²³ Pajaziti 2014 *Procedia Soc Behav Sci* 4738.

¹²⁴ Arden "Balancing Human Rights and National Security" 328; Pamfilie, Onete and Maioreescu 2012 *Procedia Soc Behav Sci* 4030.

term goal, is a highly subjective state that is related to attitude, motivation, integration and community participation, it is evident that education can promote individuals' quality of life.¹²⁵ Learners should, among other matters, be taught to deal with emotions, be encouraged to have empathy for others (thus being guided to a better understanding of the self in society), and to design better alternatives to prejudices and conflict in the context of critical dialogue.¹²⁶ The latter is referred to as the socialisation function of education,¹²⁷ which can best be performed in an informal and interactive learning environment. The creation of such an environment is the responsibility of all educational role-players.¹²⁸

The prominent role of emotions during learning processes is also highlighted by Lackéus,¹²⁹ who indicates the importance for learners to have more positive educational experiences. This reflects a view of the learner as comprising both body (genetic, physical and biological being) and mind (knowledge, skills, attitudes, values, emotions, meaning, beliefs and senses) and postulates that learning occurs through thought, action and/or emotion. The same author states that schools are full of emotions, and that quality education is all about emotionally connecting with learners, their feelings, their interests, creativity, self-sufficiency and excitement. Education without emotion, on the other hand, risks getting lost in boredom and stagnation.

With regard to combating intolerance, Le Fanu¹³⁰ recommends that learners' capabilities need to be expanded through education while focusing on their real needs and expectations. In this regard, schools need to be receptive to unique realities, as they shape the needs of individuals and are obliged to provide opportunities to effectively meet such needs. As such, aspirational human rights goals such as peace,

¹²⁵ Escuder-Mollon *et al* 2014 *Procedia Soc Behav Sci* 511. "Education draws citizens toward one another by complex mutual understanding and individual self-scrutiny, building a democratic culture that is truly deliberative and reflective, rather than simply the collision of unexamined preferences. We hope in this way to ... increasingly learn how to understand, respect, and communicate, if our common human problems are to be constructively addressed." Nussbaum *Cultivating Humanity* 294.

¹²⁶ Undiyaundeye 2013 *JETERAPS* 515.

¹²⁷ Braathea and Otterstada 2014 *Procedia Soc Behav Sci* 1200.

¹²⁸ Allison *et al* 2012 *Computer Networks* 3812.

¹²⁹ Lackéus 2014 *IJME* 375, 376, 377.

¹³⁰ Le Fanu 2014 *Int J Educ Dev* 77.

tolerance, justice and equality can be promoted through educational system reforms.¹³¹

Since life expectations are informed by daily experiences, they are heavily influenced by differences in social, psychological, socio-economic, demographic, and other cultural factors. Taking cognisance of the diverse environments from which learners come, educators should thus remain aware of the fact that some learners may, due to their past experiences, have unrealistically low life expectations and thus tolerate low levels of life fulfilment. In raising these expectations, an essential part of the "critical consciousness" of improving the overall quality of life, educators can assist individuals to become aware of their own abilities and thus enable them to take control over and enhance their own life opportunities.¹³²

3.5 *Assisting the eradication of poverty and the well-being of society*

Individual well-being is closely related to the fulfilment of economic needs, seeing that access to work opportunities¹³³ and economic resources increases a sense of control over one's life, and thus one's overall perception of living a quality life.¹³⁴ As a result, individuals must not merely be assisted to survive economically, but also be enabled to engage in hobbies, environmentally focused activities and practices that produce countless dimensions of connectedness and a sense of belonging.¹³⁵

Since employers need employees with high levels of reading, writing, mathematical, negotiation, problem solving, critical thinking and innovation skills (objective life conditions),¹³⁶ the importance of education is apparent. By providing quality programmes, education serves as an essential economic source to empower

¹³¹ Bekerman and Zembyla *Teaching Contested Narratives* 190; Bayulken and Huisinigh 2014 *J Clean Prod* 10.

¹³² Ross and Van Willigen 1997 *J Health Soc Behav* 275-276.

¹³³ Clark 2003 *Oxford Dev Stud* 173-196 found that most South Africans perceive job opportunities as crucial to living a quality life and improving their self-confidence and self-respect, their ability to rise to life's challenges, and their ability to plan for the future.

¹³⁴ Ross and Van Willigen 1997 *J Health Soc Behav* 276; Malkoç 2011 *Procedia Soc Behav Sci* 2847; Bayulken and Huisinigh 2014 *J Clean Prod* 10; Cheng *et al* 2014 *Pers Individ Dif* 246.

¹³⁵ Carr, Gibson and Robinson 2001 *BMJ* 1250. Individuals measure their quality of life in line with the judgments they make of all of their life experiences.

¹³⁶ Ross and Van Willigen 1997 *J Health Soc Behav* 276.

individuals on an ongoing basis¹³⁷ and thus to ensure sustainable human development.¹³⁸ Educators themselves should, in this regard, pay attention to the relationship between individual well-being and the bigger economic milieu in which their learners should be able to function.¹³⁹

The term "poverty" refers to any form of fundamental deprivation, and/or lack of the means to meet basic human needs.¹⁴⁰ In this regard, Manala¹⁴¹ expresses the opinion that life's fulfilment and expectations are threatened when people live in a state of extreme poverty. Bayulken and Huisingsh¹⁴² similarly disclose that the physical and social elements of individuals' immediate surroundings play an integral role in terms of a better perception of a quality of life. Seeing that the human dignity of individuals is also undermined by poverty, the eradication thereof is not a mere gesture of charity but both a moral and economic issue and, as such, an act of justice.¹⁴³

Although education *per se* cannot provide a variety of essential services to meet the most basic needs¹⁴⁴ of individuals, it can provide equal access to a basic education of a high quality that creates public awareness and instils knowledge, thus empowering individuals to achieve a sustainable standard of life.¹⁴⁵ Empowered by such knowledge, they can furthermore participate in decision-making processes to protect their own interests and fundamental rights as well as to hold government accountable for fulfilling their basic needs.¹⁴⁶

¹³⁷ Chenic, Angelescu and Gheorghita 2012 *Procedia Soc Behav Sci* 4561; Pomeranz 2012 *Econ Hist Dev Reg* 148.

¹³⁸ Bayulken and Huisingsh 2014 *J Clean Prod* 10; Vosloo "Towards a Sustainable Development View" 14; Jeffreys 2008 *GMJ* 117.

¹³⁹ Bekerman and Zembyla *Teaching Contested Narratives* 193; Bajaj "Critical Peace Education" 146.

¹⁴⁰ Okafor and Ugochukwu 2011 *AHRLJ* 398.

¹⁴¹ Manala 2010 *Scriptura* 525.

¹⁴² Bayulken and Huisingsh 2014 *J Clean Prod* 5.

¹⁴³ Manala 2010 *Scriptura* 528.

¹⁴⁴ Access to water, sanitation, food, clothing, shelter.

¹⁴⁵ Escuder-Mollon *et al* 2014 *Procedia Soc Behav Sci* 515; Gaibie and Davids 2011 http://152.112.253.5/research/output/outputDocuments/6004_Gaibie_Qualityoflife.pdf.

¹⁴⁶ Serfontein 2013 *IJAC* 136.

3.6 Upholding learners' rights

With regard to the rights of individuals born in the South African democracy, the *Constitution*¹⁴⁷ makes it clear that children are "part of the common South African citizenship and equally entitled to the rights, privileges and benefits of citizenship and equally subject to the duties and responsibilities of citizenship". Due to the fact that giving effect to such rights and responsibilities will not only ensure a better life for children but also for the entire society, the rights of children should be taken more seriously.¹⁴⁸

To enable them effectively to exercise their rights, children need to be educated into democratic action and civic responsibility. They need to be guided towards a shared sense and understanding of citizenship¹⁴⁹ and allowed to discover what it means to be the bearers of fundamental rights. They must be empowered to optimally participate in democracy, to make informed choices and to take the initiative to transform this society into one that can guarantee them a quality of life.¹⁵⁰ They need to personally experience the values of social justice and equity,¹⁵¹ thus respecting and promoting individuality and human freedom.¹⁵² In this regard, education is viewed as the ideal tool to translate the rights of the child from abstract principles into practical curricular strategies.¹⁵³

In support, research conducted by Ross¹⁵⁴ revealed that the level of education received by individuals directly links to their levels of enjoyment, hope, happiness, fitness, and energy. This is also true in the sense that education provides individuals with valuable knowledge related to health care, as chronic illnesses are generally

¹⁴⁷ Section 3 of the *Constitution*.

¹⁴⁸ Freeman 2007 *Int J Child Rts* 20; *Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development* 2014 1 SACR 327 (CC) para 1.

¹⁴⁹ Wilde *Political and Citizenship Education* 7.

¹⁵⁰ Ross "Education for Citizenship" 185.

¹⁵¹ Ministry of Education *Manifesto on Values, Education and Democracy*.

¹⁵² Spinner-Halev *Enduring Injustice* 169.

¹⁵³ Aguilar and Retamal 2009 *Int J Educ Dev* 14.

¹⁵⁴ Ross and Van Willigen 1997 *J Health Soc Behav* 290.

viewed as threatening the right of human beings to a good quality of life.¹⁵⁵ Education is therefore also a direct predictor of adult quality of life.¹⁵⁶

3.7 Promoting the acceptance of responsibility

It is obvious that people cannot merely rely on others or on the State to give effect to their fundamental rights in general and to their moral right to life specifically. They cannot hide behind the notion that the *Constitution* should shield them from the adverse consequences of their own life choices.¹⁵⁷ Everyone must take responsibility to conscientiously and positively react to the existing social situations in which they live.¹⁵⁸

Education plays an enormous role in teaching learners to take responsibility and be accountable for their choices and concomitant actions.¹⁵⁹ By being enabled to take charge of bringing about the changes the world needs¹⁶⁰ and reflecting on these changes, individuals are empowered to understand themselves as distinct human beings, to acquire a sense of self-respect and pride, and to increase their self-determination.¹⁶¹

Being held accountable for changing the world for the better moreover allows human beings to obtain a sense of distinctive personal character and moral identity. Gaining such wisdom is valuable to the preservation of social order as it encourages good and discourages bad behaviour.¹⁶² It also leads to humility and democratic behaviour and thereby prevents individuals from enforcing their own will on others.¹⁶³ It is in this regard that education has an important function to perform, namely to teach learners specific ethical principles by way of schools' Codes of Conduct. When they are taught to adhere to such codes or take the risk of being punished for non-adherence, learners

¹⁵⁵ Okafor and Ugochukwu 2011 *AHRLJ* 407.

¹⁵⁶ Cheng *et al* 2014 *Pers Individ Dif* 241.

¹⁵⁷ Cameron and Ferreira "Tony Honoré's Contribution" 35.

¹⁵⁸ Freire *Pedagogy of the Oppressed* Foreword; Cheng *et al* 2014 *Pers Individ Dif* 246.

¹⁵⁹ Bekerman and Zembyla *Teaching Contested Narratives* 189.

¹⁶⁰ Cameron and Ferreira "Tony Honoré's Contribution" 36.

¹⁶¹ Powers *et al* 2012 *Child Youth Serv Rev* 2180; Furnham, Jensen and Crump 2008 *Int J Select Assess* 365.

¹⁶² Freire *Pedagogy of the Oppressed* 33.

¹⁶³ Steyn, De Klerk and Du Plessis *Education for Democracy* 18.

are made aware of the fact that a sense of ethics is not just about individual decisions and behaviour but is rather interwoven with personal values and enacted in social living. In this manner learners learn from and with others. By placing their behaviour in the social context (schools) in which it occurs, learners also realise that their choices and behaviours affect not only themselves but also have consequences for society in general.¹⁶⁴

It follows that, if people are empowered through education to take responsibility for changing circumstances in a manner profitable to themselves and therefore to others with whom they have mutual relations, each successive generation will have a better chance not only surviving but of living a quality life.¹⁶⁵

4 Conclusion

The purpose of this article was to explore the nexus between the fundamental right to life and the right to a basic education. This was done within the ambit of the legal framework created by both the *Constitution of the Republic of South Africa*, 1996 and the *South African Schools Act* 84 of 1996. In line with the aims of the *Constitution* it was argued that the right to life entails much more than mere physical human existence. Instead, it involves a right to live a life worth living. The importance of education becomes evident when one emphasises the fact that people need to take responsibility for their own lives, the conditions under which they live, the choices they make and the changes they bring about to better their lives.

In accordance with the aims set out in the *Schools Act*, the essential role of education has been delineated as being to lay a strong foundation for the development of learners' talents and capabilities, to advance democratic transformation, to combating discrimination and intolerance, to assist in the eradication of poverty and the promotion of the well-being of society, to uphold learner rights, and to promote the acceptance of responsibility. The very close nexus between these two fundamental rights was thus identified.

¹⁶⁴ Dickens *Social Work, Law and Ethics* 57; Cockerill 2014 *Int J Educ Res* 21.

¹⁶⁵ Meyerson 2001 *Acta Anaesthesiol Scand* 1108.

It was recognised, however, that the aims of the education system can be achieved only if a progressively higher quality of education is provided and made accessible to all. In this regard, this article identifies the need for further research pertaining *inter alia* to:

- the practical factors inhibiting the provision of quality education and thus optimally fulfilling the rights of every South African to a basic education and a life worth living; and
- the expectations and experiences of South Africans, as well as their perceptions regarding the extent to which their needs are indeed being met.

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LIST OF ABBREVIATIONS

Acta Anaesthesiol Scand	Acta Anaesthesiologica Scandinavica
AHRLJ	African Human Rights Law Journal
ANC	African National Congress
Arch Phys Med Rehabil	Archives of Physical Medicine and Rehabilitation
BMJ	British Medical Journal
Child Youth Serv Rev	Children and Youth Services Review
Compare	Compare: A Journal of Comparative and International Education
DoE	Department of Education
Econ Hist Dev Reg	Economic History of Developing Regions
Ethics Int Aff	Ethics and International Affairs
Focus Except Child	Focus On Exceptional Children
GMJ	Global Media Journal
HSRC	Human Science Research Council
IJAC	International Journal of Arts and Commerce
IJME	International Journal of Management Education
Int J Child Rts	International Journal of Children's Rights
Int J Educ Dev	International Journal of Educational Development
Int J Educ Res	International Journal of Educational Research
Int J Select Assess	International Journal of Selection and Assessment
J Behav Exp Econ	Journal of Behavioural and Experimental Economics
J Clean Prod	Journal of Cleaner Production
J Health Soc Behav	Journal of Health and Social Behaviour
J Soc Dev Afr	Journal of Social Development in Africa

JETERAPS	Journal of Emerging Trends in Educational Research and Policy Studies
Oxford Dev Stud	Oxford Development Studies
Pers Individ Dif	Personality and Individual Differences
Procedia Soc Behav Sci	Procedia - Social and Behavioral Sciences
Psychol Sport Exerc	Psychology of Sport and Exercise
SACJ	South African Journal of Criminal Justice
SAMJ	South African Medical Journal
SARE	Southern African Review of Education
Soc Indic Res	Social Indicators Research
Soc Sci Med	Social Science and Medicine
THRHR	Tydskrif vir die Hedendaagse Romeins-Hollandse Reg
WHOQOL SRPB Group	World Health Organisation Quality of Life - Spirituality, Religiosity and Personal Belief Group
Wm & Mary L Rev	William and Mary Law Review

THE NEXUS BETWEEN THE RIGHTS TO LIFE AND A BASIC EDUCATION IN SOUTH AFRICA

EM Serfontein*

SUMMARY

This article aims at exploring the nexus between the fundamental rights to life and to a basic education within the ambit of the legal framework created by both the *Constitution of the Republic of South Africa*, 1996 and the *South African Schools Act* 84 of 1996. Attention is drawn to the role of the law to order the living world humans live in and thus creating an emancipated framework allowing individuals a moral and self-sufficient life. The overarching goal of the supreme Constitution is to improve the quality of life of all citizens and ultimately to free everyone's potential. In order to reach this goal and allow everyone to live a dignified life that it is worth living, the importance of education is highlighted.

As important source of education law, the objectives of the *Schools Act*, namely to (a) provide education of a progressively high quality, (b) lay a strong foundation for the development of humans' talents and capabilities, (c) advance democratic transformation, (d) combat discrimination and intolerance, (e) assist the eradication of poverty and the well-being of society, (f) uphold learner rights and (g) promote the acceptance of responsibility are discussed and their practical realisation scrutinised. This leads to the author to establish the nexus between the two fundamental rights and to delineate the prominence of the delivering of a progressively high quality of education is provided to all South Africans to enhance their quality of life.

By taking regard of the role of the law in the sphere of education, the duties placed on all educational role-players to take responsibility for the delivery of educational services and be accountable therefore, are highlighted. The value of education was in this regard stressed in order to enable humans to take responsibility for their own

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lives, the conditions under which they live, the choices they make and the changes they bring about to better their lives.

KEYWORDS: right to life; right to education; law in education; quality; participation; choices; human development; transformation; well-being; responsibility.