

**Social Rights of the Children in the Context of
HIV/AIDS: What is the reality in the New Democratic
South Africa?**

By

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**A thesis submitted in partial
fulfilment of the requirements
for the degree of**

**Master of Education
(Social Justice in Education)**

**UNIVERSITY OF KWAZULU-NATAL
PIETERMARITZBURG**

JANUARY 2008

ACKNOWLEDGEMENTS

I would like to thank God Almighty for giving me strength to continue with the study during difficult times.

I would also like to extend my great appreciation to my supervisor, Professor Nithi Muthukrishna for sharing her expertise with me. Her tremendous insight and constructive criticism proved invaluable.

The assistance of my co-supervisor Jackie Naidoo is also acknowledged –her encouragement and academic support is much appreciated.

Further I would like to thank the School of Education and Development (UKZN) for granting me the permission to use the data for the NRF project.

A special thanks to my family and friends for support.

To everyone that carried me in their hearts and prayers, you did not go unnoticed.

Thank you

DECLARATION OF ORIGINALITY

I, Nozipho B. Mpontshane, declare that this dissertation titled, **Social Rights of the Children in the Context of HIV/AIDS: What is the reality in the New Democratic South Africa?**, is my work and that all the sources that have been used or quoted have been indicated and acknowledged by means of complete references.

N.B. Mpontshane

Professor A. Muthukrishna (Supervisor)

ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
ARV	Antiretroviral
CSG	Child Support Grant
CBO	Community Based Organization
DoE	Department of Education
DBST	District Based Support Team
FGM	Female Genital Mutilation
FPE	Free Primary Education
HCBCS	Home and Community Based Care and Support services
HIV	Human Immunodeficiency Virus
ID	Identity Documents
ILST	Institution Level Support Team
NACC	National AIDS Control Council
NCESS	National Committee on Education Support Services
NCSNET	National Commission on Special Needs in Education and Training
NGO	Non-Governmental Organization
NPO	Non -Profit Organization
NRF	National Research Foundation
OAU	Organisation for African Unity
OVC	Orphans and other Vulnerable Children
PI	Principal Investigator
PMTCT	Prevention of Mother to Child Transmission
SASA	South African Schools Act of 1996
SGB	School Governing Body
UIF	Unemployment Insurance Fund
UNCRC	United Nations Convention on the Rights of the Child
UNAIDS	United Nations Programme on HIV/AIDS
UNESCO	United Nations Education Scientific and Cultural Organization
UNICEF	United Nations Children’s Fund
VCT	Voluntary Counselling and Testing

ABSTRACT

South Africa's first democratic elections were held in 1994. Since then, the government has engaged itself in a process of reconstruction and development through the formulation of policies and legislation which are in line with the country's Constitution of 1996. Some of these policies and legislation pertain to the issue of children's human rights. This study, firstly, sought to analyze key South African policies and legislations related to children's rights that have emerged since 1994. These documents include, the Constitution of the Republic of South Africa of 1996; the Children's Act 38 of 2005; Education White paper 6: Building an Inclusive Education and Training Systems (Department of Education, 2001), the South African Schools Act 84 of 1996; and the National Policy on HIV/AIDS for learners and educators in public schools and students and educators in further education and training institutions (1999). Secondly, the study aimed to explore whether children's rights are a myth or reality in South Africa by analyzing *secondary data* gathered from a large scale research project conducted in the province of KwaZulu-Natal, titled "Mapping the Barriers to Basic Education in the context of HIV/AIDS". The data were collected from teachers, learners in grade 3, 6 and 9; School Governing Bodies, parents, and organizations - non governmental and community based organisations working in the district. The study used an in-depth qualitative case study approach. The study involved formal and non-formal centres of learning and their communities from four community contexts: rural, deep rural, urban and peri-urban. The data set provides insight into the lives of children in these contexts. The findings suggest that several barriers experienced by children and their families to accessing their social rights embedded in key South African policy documents related to key themes that emerged in the study: risks and vulnerabilities; control, regulation and powerlessness; the commitment of quality education not being met; and childhood poverty.

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CHAPTER ONE: BACKGROUND AND ORIENTATION TO THIS STUDY

1.1 INTRODUCTION

Since the new political dispensation in South Africa in 1994, much emphasis has been placed on transforming the society to provide equal opportunity to all, ending discrimination and moving toward a non-sexist and non-racist society. This commitment is expressed clearly in the new Constitution of 1996 as well as in variety of policies and legislations. Some of the policies provide a framework for addressing the situation of children, and commit the government in protecting the rights of the children. To show further commitment to its citizens, the South African government ratified the African Charter on the Rights and Welfare of the Child in January 2000. In line with international trends of ensuring the provisions of equal rights to children, South Africa had ratified the various international Human Rights Conventions. Among them is the United Nations Conventions on the Rights of the Child (CRC) in 1995 (UNICEF, 1989). However, according to Moletsane (2003) the capacity of the country to realize this commitment is threatened by the HIV/AIDS pandemic.

The Human's Rights Watch World Report (Human Rights Watch, 2002) instead sees the rapid spread of HIV/AIDS as posing a particular and complex threat not to the country as such, but to children's realization of their human rights, especially in Sub-Saharan Africa where the epidemic is most destructive. The reason behind this argument is the fact that children are often denied economic and social rights such as the right to education, basic health care, shelter, basic nutrition and other services due to HIV/AIDS (Ibid).

Sub-Saharan Africa according to UNAIDS is the worst hit region in the world affected by HIV/AIDS (Ranchod, 2005). It is argued that by the end of 1999, an estimated 23, 3 million people in countries of sub-Saharan Africa including over one million children, were living with HIV/AIDS (UNESCO, 2000). By 2003 the estimated number of people and children living with HIV/AIDS had increased to 25 million. About 2, 5 million people will probably have died of HIV/AIDS by 2010 in South Africa (Molestane, 2003).

Desmond & Gow, (2002) assert that every child in South Africa will feel the impact of HIV/AIDS, as most AIDS deaths are among adults. Children are experiencing at an increasing rate the death of their parents and other family members. As a result many of them have become orphans. Armstrong (2005) argues that 12 million children are orphaned by AIDS. Projections for the future indicate that by 2015, where the epidemic is expected peak, orphans will constitute between 9% and 12% of the total population of South Africa or about 3.6 to 4.8 million children (Coombe, 2000). The increase in number of children orphaned by AIDS in Africa is bound to continue until 2020 (Ranchod, 2005).

The HIV/AIDS epidemic is violating children's fundamental rights. Some of the factors that have led to the violation of children's rights are highlighted by Robison (2005). She asserts that in developing world, more than one in three children lack adequate shelter, one in five goes without safe water, one in seven has no access whatsoever to essential health services, over 16 % of children under five lack adequate nutrition, and 13% of all children in the developing world, over 100 million have never been to school. The bottom line is that for hundreds of million of children today from "developed" and "developing" countries alike, the promise of childhood affirmed in the Convention on the Rights of the Child (UNICEF, 1989) remains merely a promise (Robison, 2005).

1.2 MOTIVATION AND RATIONALE FOR THIS STUDY

Recent research emanating in South Africa suggests that children who are affected by HIV/AIDS are uniquely at risk and are vulnerable at all points in their lives in their families, schools and communities (Muthukrishna, 2006; Cohen, 2002) The 'Emerging voices' Report on education in South African rural communities (HSRC/EPU, 2005) states that children experience exclusionary pressures in a variety of intersecting ways, and often their vulnerability and marginalization have long term effects on their opportunities for their development capabilities. This kind of social exclusion is comprehensive and inactive and touches all aspect of the affected children. Social exclusion implies a denial of social rights. In addition social exclusion occurs in context in the complex conditions and factors that prevents a child from participating in schools, communities and society (UNESCO, 2000). The notion of social exclusion includes poverty. The data emanating from the project that

mapped the barriers to learning undertaken in the Richmond district highlights several injustices experienced by children and their families associated with powerlessness to access social rights embedded in policy instrument is evident, for example, the South African School Act of 1996, and social redistribution mechanism such as the Child Support Grant (see Muthukrishna, 2006). This is the situation despite the fact that South Africa was party to the African Charter on the Rights and Responsibilities of the Africa Child (OAU, 1994), and ratified the United Nations Convention on the rights of the Child (UNICEF, 1989).

The majority of children in South Africa are living in poverty. There are about 18 million children in South Africa of which approximately 60% live in poverty (Coombe, 2000). UNESCO (2000) argues that being a child living in poverty often means having no access to school or having access to those schools which are ineffectual and harmful, consistently having to suffer from poor nutrition, lack of shelter, living in a family with unstable income and limited opportunities, being affected by HIV/AIDS and other risk factors such as child abuse, disability, violence.

Galeneo (1998) cited in Vally (2005) explains how today's world hands down a death sentence to thousand of children every hour through hunger and disease. Furthermore, he contends that society squeezes them dry, watches them constantly, punishes them, sometimes kills them, and they are never listened to or they are never understood. The conditions are exacerbated by the emergence of HIV/AIDS pandemic that is infecting and affecting millions of young lives.

The literature review on mapping barriers to learning and development in the context of HIV/AIDS in sub-Saharan Africa (School of Education and Development, 2005) reveals that in many African countries different forms of discrimination against children in schools on the basis of HIV/AIDS exist. These include children being left out of the activities, and sometimes some of them are seated separately and isolated from the general hub of the class. These learners are most likely to leave school as the school has become another harsh environment with which they have to contend.

Despite the fact that South Africa has the most enlightened policies in place to protect the rights of the children, it seems that in reality children continue to face

marginalization and are extremely vulnerable members of society (see Killian, 2007, Muthukrishna & Ramsuran, 2007). They are still denied effective voice in defining their situation.

1.3 FOCUS OF THIS STUDY

This study seeks to analyze key South African policies and legislations related to children's rights that have emerged since 1994. These documents include

- The Constitution of the Republic of South Africa of 1996
- The Children's Act 38 of 2005
- Education White Paper 6: Special Education - Building an Inclusive Education and Training System (Department of Education, 2001)
- The South African Schools Act of 1996
- The National HIV/AIDS Policy for learners and educators in public schools and students and educators in further education and training institutions (1999).

It further aims to explore whether children's rights are a myth or reality in South Africa by analyzing *secondary data* that was gathered from a larger scale research project conducted in the province of KwaZulu-Natal, in Richmond district. This project aimed at mapping barriers to basic education in the context of HIV/ADS. The research was conducted by a team of researchers from the School of Education and Development at the University of KwaZulu-Natal, and funded by the National Research Foundation.¹ Data was collected from various participants including teachers, learners, parents, School Governing Bodies (SGBs) and various organizations through an in-depth qualitative case study. The study involved formal and non-formal centres of learning and their communities from four contexts: rural, deep rural, urban and peri-urban.

¹ This article/dissertation is based upon work supported by the National Research Foundation (NRF) under grant number 2054168. Any opinion, findings and conclusions or recommendations expressed in this article/dissertation are those of the author and, therefore, NRF does not accept any liability in regard thereto.

1.4 AIMS OF THIS STUDY

- To provide an understanding of the notion of child's rights embedded in South African policy and legislation,
- To make visible how children experience in a particular context their social rights in the context of HIV/AIDS.
- To ascertain whether children's rights embedded in South African policy and legislation are a myth or reality.

1.5 KEY RESEARCH QUESTIONS

This study intends to explore the following questions:

- ❖ What children's rights are embedded in key policies since 1994?
- ❖ How are those rights embedded in those policies being played out in context of HIV/AIDS in the Richmond area KwaZulu-Natal?
- ❖ To what extent are the rights of the children in legislations and polices being protected in the context of Richmond area?
- ❖ What are contextual factors impact access to the rights of the children embedded in policy documents in Richmond Area?

1.6 STRUCTURE OF THE DISSERTATION

The dissertation is divided into five chapters

Chapter 1 provides a general background and overview of the key aspects of the study. The study starts by giving a brief history of what South Africa has done after becoming a democratic country. Secondly it has pointed out the prevalence of HIV/AIDS in Sub-Saharan Africa, and some key statistics reflecting the extent to which people are affected by the pandemic. Then the focus of the study, aims of the study, key research questions and the motivation and rationale for doing the study are presented.

Chapter 2 forms the literature review. The review has four sections. The first section engages with recent literature that maps the lives of the children in the context of HIV/AIDS in sub-Saharan Africa and more specifically, in South Africa. Section two discusses the programmes that have been initiated by South African Government to

address the needs of the children in the context of HIV/AIDS. Section three examines literature that analyses South African policies on children's rights that have emerged in South Africa since 1994. Finally, section four examines research, in particular empirical studies, emanating from developing context that has explored the extent to which children's rights embedded in policy and legislation are protected.

Chapter 3 consists of two sections. The first section deals with theoretical framework for the study. The focus is on critical theory which is located within the critical paradigm. The second section provides an overview of the research design and methodology that is used in this study.

Chapter 4 has two sections. The first section engages in a content analysis of five key South African policy documents mentioned above. Section two focuses on the analysis of secondary data from the National Research Foundation study, 'Mapping Barriers to Basic Education in the context of HIV and AIDS (see Muthukrishna, 2006), using critical theory.

Chapter 5 presents the reflections and conclusions.

CHAPTER TWO: LITERATURE REVIEW

2.1 INTRODUCTION

This literature review, firstly will critically engage with recent literature that maps the lives of children in the context of HIV and AIDS in sub-Saharan Africa and more specifically in South Africa. Secondly, it will discuss social programmes that have been initiated by the South African Government since 1994 to address the needs of the children in the context of HIV/AIDS. Thirdly, it will critically examine children's rights that are embedded in key social policies and legislation that have emerged in South Africa since 1994. Finally, the review will examine research, in particular empirical studies, emanating from developing contexts that has examined the extent to which children's rights embedded in policy and legislation are protected in their real life contexts.

2.2 THE LIVES OF CHILDREN IN THE CONTEXT OF HIV/AIDS IN SUB-SAHARAN AFRICA

This section aims at mapping the lives of the children in the context of HIV/AIDS in Sub-Saharan Africa and particularly in South Africa by focusing on the following themes in the literature: childhood and vulnerability, the issue of orphan hood, poverty, children and HIV/AIDS, schooling in the context of HIV/AIDS, children in the context of care, and the complexities of addressing the needs of children in the context of HIV/AIDS.

2.2.1 Childhood and vulnerability

Different authors give different definitions of the term 'vulnerability'. For example Stalsett (2006) gives two dimensions of human vulnerability. The first one refers to the actual contingent of being wounded or a situation of immediate danger or risk. The second dimension is the ability to be affected, for example, to feel pain. For Chambers (1989) in Bohle, Gebhard & Harm (2003) vulnerability is the exposure to contingencies and stress, and the difficulty coping with them. Solnit (1983: 645) defines vulnerability of children as the "actual and latent susceptibilities and weaknesses immediate and delayed" that an individual child maybe subjected to. He further adds that vulnerability makes a child susceptible to factors that challenge a child biologically, environmentally and psychologically, and this leads to the

likelihood of detrimental outcomes (Solnit, 1983). In the context of my study, the term is used to denote any factors impending or serving as an obstacle to HIV/ AIDS affected children in accessing their rights.

Who are the vulnerable children? According to Palmqvist (2006) children who are considered as vulnerable include children with disability, girls, children living with HIV/AIDS, orphans, children in situations of conflict and violence, children born out of wedlock, and street children. Smarts (2003) uses the local South African community definition to define the vulnerable child as a child who is orphaned, neglected, destitute or abandoned, has a terminally ill parent, is born out of wedlock, is living with a parent or adult who lacks income generating opportunities, is abused or ill-treated by a step-parent or is disabled. In the following sections, the vulnerable groups such as children affected by HIV/AIDS, the disabled, the girl child, and out of school youth will be discussed further to highlight different factors that place them at risk.

Children who are affected by HIV/AIDS become vulnerable because with the decline in economically active people, children in particular those who live in child-headed households, are left to fend for themselves. Under these economically difficult circumstances where families are unable to access resources for their basic needs, the education of children becomes either a nuisance or a luxury. Whiteside and Sunter (2000) cited in Moletsane (2003) argue that when money is available, most of it is spent on medical and nutritional care of the sick and dying. As increasing amounts of money are spent on medical care, there are less resources for the education of the children. Often one or more of the children drop out of school either to care for sick parents or because there is no money for school fees. Thus, the possibility of successfully educating children becomes remote, and that of keeping them in school almost impossible. The result is high failure and retention rates, and eventually high dropout rates from school.

Malaney (2000), Giese (2002) and Moletsane (2003) state that there are financial consequences from the loss of a parent as children often lose the primary source of support. Children then are forced to find work to support themselves and their young siblings, thereby causing them to drop out of school. As most of them possess no

skills they end up in positions that put them at risk of physical, emotional and sexual abuse, and possibly HIV/AIDS infections. Moletsane (2003) adds that the demand for child labour tends to go hand in hand with absenteeism from school, tardiness in school work, and may impact negatively on the child's ability to learn and/ or remain in school. With family responsibilities on their shoulders, attending school or doing well in their studies becomes impractical. Bernard (2000) agrees with Moletsane (2003) by stating that children affected by HIV/AIDS are forced into sporadic or non-attendance by having to assume responsibility for family income and child care. School fees are another factor that excludes children from education and schooling. Williamson (2004) and Moletsane (2003) see the cost of compulsory school uniforms as exacerbating the exclusion of children from schooling, because the cost of it has been found to be beyond reach for many of the families in rural and township schools. With all the financial burdens imposed by HIV/AIDS pandemic, it becomes impossible for the families who are affected by HIV/AIDS to pay for the education of their children.

The other form of vulnerability experienced by children affected by HIV/AIDS is related to emotional trauma they undergo when they lose their loved ones. Malaney (2000) and Whiteside and Sunter (2000) are in agreement that children who lose a parent to AIDS suffer loss and grief, and this results in them experiencing deep psychological trauma. Their loss is exacerbated by prejudice and social exclusion. The psychological impact on a child who witnesses his/her parent dying of AIDS can be more intense than for children whose parents die from other causes. Malaney (2000) and Hepburn (2002) agree with this by stating that the psychological effects of losing a parent to a debilitating illness are severe and can have a long-term effect on a child's emotional and behavioural development. Further complicating these emotions is the fact that siblings are often divided among several households within an extended family to mitigate the economic burden of caring for the children. Relatives or neighbours, who have agreed to care for the orphans, may contribute to the despair by taking orphans' inheritance and leaving them more vulnerable to exploitation (Hepburn, 2002).

According to the School of Education and Development (2005) literature review children living in households with HIV-infected persons are more vulnerable to

opportunistic infections such as tuberculosis and pneumonia. With caregivers sporadically sick or absent, the child is less likely to get the medical attention s/he needs and more likely to have repeated infections. Ebersohn and Eloff (2002), Giese (2002), and Piwoz and Preble (2000) point out that a child may also be unable or unwilling to eat due to a range of physical, emotional and psycho-social factors which play a role in appetite suppression.

Disabled children are vulnerable because little attention is paid on educating them about HIV/AIDS. According to literature review emanating from the research project “Mapping barriers to basic education in an HIV and AIDS context” (School of Education and Development, 2005) sex education programme for the disabled are rare and campaigns on HIV/AIDS tend to exclude the disabled population. It is commonly assumed that disabled individuals are not at risk. They are incorrectly thought to be sexually inactive, unlikely to use drugs, and at less risk for violence or rape than non-disabled individuals (Ibid). But in reality disabled individuals, both male and female, are more likely to be victims of sexual abuse and rape. Closely allied to this is the universal belief that a disabled person cannot be a reliable witness or give dependable testimony on his/her behalf in the event of legal action against a perpetrator. These factors increase the vulnerability of disabled individuals and they render disabled persons susceptible targets for predators. Groce (2003) confirms that literacy levels of the disabled are lower than the non-disabled, thus making communication of messages on HIV/AIDS even more difficult. Where such campaigns are on radio or television particular disabled groups such as deaf and blind are at a very distinct disadvantage. It must be realized that the disabled people are equally sexually active and have the same chances of getting HIV/AIDS. Lack of information on the disease leaves them highly vulnerable.

Burns, Ruland, Finger, Murphy-Graham, McCarney & Schuller (2004) give different definitions of ‘out of school youth’. They define out of school youth as those youth that have never started school, those who have dropped out of school, or those who have completed their schooling but currently have no form of occupation. The “mainstream” out of school youth is defined as those youth, for varying reasons, who presently do not have access to any form of formal schooling and do not have access to other kinds of education alternatives such as further education and training. Burns

et al. (2004) further distinguishes “socially marginalized” out of school youth as those youth that are especially vulnerable and particularly marginalized such as orphans, street children, child sex workers, children involved in gangs, drug users, migrant children, refugee children, or child soldiers. In my study, ‘out of school youth’ encompasses both “mainstream” as well as “socially marginalized” youth. Out of school youth are vulnerable to HIV/AIDS because they lack access to sex education provided in educational settings. They are a vulnerable group that is being excluded from school, a pivotal node of care and support.

Odiwour (2000) argues that one obvious implication of the impact of HIV/AIDS on the home and school environment is that girls are more affected than boys. Girls are often withdrawn from school more frequently than boys in the event of hardship and deprivation. They are more likely to be held back to provide care both for infected relatives and younger siblings. Moreover, girls are more likely to become the victims of sexual exploitation in these circumstances and may in fact be driven to this course as a means of personal survival and household support (Badcock-Waters, 2002; Kelly, 2000a; Malaney, 2000; Williamson, 2004; Armstrong, 2005). Ewing (2002) adds that orphaned girls are vulnerable to sexual abuse because they assume adult responsibilities, such as caring for dying parents and raising siblings, without the maturity to understand quite what has happened to them.

2.2.2 The issue of orphan hood

The term ‘orphan’ is used and understood differently by different people. The definition varies among cultures and countries. For some, it refers to children who have lost one parents, (maternal/paternal orphans) while to others, it includes children who have lost both parents. Some statistics include children who are vulnerable, needy children, children in distress, children infected or affected by HIV/AIDS and children who are experiencing grief and loss because the primary caregiver is ill with AIDS (Guest, 2001).

South Africa has largest number of orphans in the world. According to Flanagan (2007), a UNICEF report (released in January 2007) indicates that a total of 15, 2 million children around the world are orphaned by AIDS. Of these, 1.2 million are in South Africa (Ibid)). Desmond and Gow (2001) state that it is estimated that in 2010

South Africa will have an orphan population mainly due to HIV/AIDS of close to 2 million. This indicates that the issue of orphan hood is serious in South Africa and is increasing at an alarming rate because of HIV/AIDS. Huber and Gould (2002) point out that those orphans are more likely to live in poor households, are more likely to be abandoned and become street children.

The literature I have reviewed highlights that in Sub-Saharan Africa when parents die of AIDS, the surviving children face an uncertain future about their custody and financial benefits, stigmatization, discrimination and unfair treatment of the children. They often suffer neglect, including emotional neglect long before they are orphaned. Eventually they suffer the death of the parents and emotional trauma. They have to adjust to new situations, with little or no support at all.

In a study of six districts of Uganda conducted by Ntozi (1997) investigating the problems experienced by orphans, she came up with the following picture: idealization of the lost of parent; guilty feelings towards the deceased parents; sometimes orphans have a death wish; they experience anger, anxiety, depression; they experience loss of household income and lack of parental care, they fail to understand the household split; they experience dispossession of their inheritance, reduction in access to health care services, increased household responsibilities, and the abuse by the people they know. Sometimes they go to school without food. To them education is not a priority due to lack of financial means causing a drop in school attendance and often high drop out rates. It is likely for most of them to engage in criminal activities, as they grow up without parents and poor supervision by relatives and welfare organizations.

2.2.3 Poverty, children and HIV/AIDS

Although South Africa has undergone dramatic social, political and economic transitions in the last decade, the dynamics of the apartheid era continue to reproduce poverty and inequality. This is evident by the majority of South African citizens experiencing either poverty or chronic poverty. There is emerging consensus on the definition of the concept of 'poverty' in South Africa, and it is conceded that poverty is multi-faceted and experiential in nature, that is, individuals' experience of poverty is different (May, 2000). It can be linked with hunger, unemployment, exploitation,

and lack of access to clean water, sanitation, health care or schools (May, 2000). According to May (2000) and SA-PPA (1998) poverty includes food insecurity, crowded homes, lack of job security, fragmentation of family, alienation from community, for example, young single mothers without the support of family and the fathers of their children. This section will look at how poverty impacts on children's education, health and their social lives in the context of HIV/AIDS.

In Sub-Saharan Africa, poverty is reported as the major force that leads children to leave homes as their families are unable to meet their basic needs. They often decide to leave school and become street children. There is an agreement among Giese (2002), Moletsane (2003), Malaney (2000) and Ebersohn and Eloff (2002) that HIV/AIDS impacts negatively on household income. It is because the financial burden of HIV/AIDS affects the living standards and quality of life of all household members. It leads to food insecurity, malnutrition, poor hygiene, loss of opportunity and other factors related to poverty. Giese (2002) and Moletsane (2003) add that when a family member has AIDS, the average household income will fall while expenditure increases owing to the health and nutritional requirements and eventually funeral costs.

In South Africa a huge proportion of South Africa's children are currently battling for survival, are underweight, malnourished, exposed to harm, exploitation and discrimination, and are deprived of their rights to education (UNICEF, 2005). Poverty threatens and negates all dimensions of childhood by depriving children of their capacities needed to survive, develop and thrive (UNICEF, 2005). Poverty undermines children of their rights to education amongst other things. UNESCO (2000) argues that being a child living in poverty often means having no access to school, consistently having to suffer from poor nutrition, shelter, living in a family with unstable income, and limited opportunities, being affected by HIV/AIDS and other risk factors such as child abuse, disability and violence.

Productivity also drops through the death of the economically active members of the families and communities, leading to inability and/ or unwillingness to pay for education. Ranchod (2005) concurs that these children from poverty-stricken families find it harder to continue with their studies as there are no resources to pay school

fees, purchase uniform, school books, stationary and meets need such as travelling cost and meals. Poverty becomes more extreme when other economically productive members of the family cut down on their work load to become caregivers thus resulting in increased financial hardship for the family. Often families sell off their possessions and go in debt. As a result children may not even want to be in school because they lack the material possessions that the other children have. With low or non-existent income in affected families, access to nutritious food and quality health services is reduced. For children this may result in stunted growth, poor health and withdrawal from or failure in school.

2.2.4 Schooling in the context of HIV/AIDS

Badcock-waters (2002), Giese (2002) and Hepburn (2002) point out that children affected by HIV/AIDS face many problems of social marginalization and discrimination in schools, communities and societies in Sub-Saharan Africa. A child having a parent die of the pandemic sometimes becomes a source of ridicule and negative treatment by one's peers and teachers. Hepburn (2002) stresses that the stigma associated with AIDS is very real and tangible. Community often discriminate against these children as they believe that their families have brought shame to their community.

In South Africa the number of children and youth who are HIV positive and of school going age is high. HIV/AIDS is impacting negatively on affected and infected children's willingness to attend school in South Africa. With parents either sick or dead from HIV/AIDS, life is a continuing struggle for survival - their own and that of younger siblings and relatives. Absenteeism, poor academic performance, food insecurity, low capacity for school work and ultimately dropout are inevitable as children scramble for scarce resources and take on responsibilities even adults find it difficult to fulfil in impoverished fragmented and demoralized communities (Moletsane 2003). The condition of poor performance might also be exacerbated by the fact that when they come back home from school instead of doing school work they have to do domestic chores.

The study by Department of Health/Department of Social Development (2003) shows that the burden of adult responsibilities that the children in South Africa are having to

assume at a very early age means that they are unable to engage in normal development activities including schooling (Kelly 2000a, Moletsane 2003, Bernard 2000, Malaney 2000). Ebersohn and Eloff (2002) and Armstrong (2005) are in agreement that when children are burdened by HIV/AIDS, they often experience emotional trauma which is very immense. Through all these difficulties there is often not a lot of time or consideration given to the psychological impact on the child. The morale of these children is lowered as they experience sickness, poverty intertwined with hopelessness. They may also be stressed by having to bear responsibilities beyond their age capabilities. Ebersohn and Eloff (2002) also describe the virus as a chronic and debilitating stressor in the lives of affected and infected children. Such children can not cope with the demand and the expectations made on them by the school.

The fear of stigma and discrimination in South Africa often leads HIV-infected and affected children to withdraw from school. Illness and death of relatives, their own poor health, fear of shaming and teasing, demands on child labour and unaffordable school fees, keep these children away (Ebersohn and Eloff, 2002). However the schools also contribute to the unwillingness of the children to attend schools since they aim at middle class children, their values and subcultures. Children from other class groups find it difficult to fit in. They are often marginalized and may drop out. With the prevalence of HIV/AIDS, children who are infected by the virus see little in the curriculum that connects them to the reality of their lives.

2.2.5 Children in the context of care

Huge changes are introduced in the lives of the children once their parents are deceased which are difficult for them to accept. When they are orphaned by AIDS, aunties, uncles, and grandparents often step in to raise them as their own. When they do not have extended family to turn to they would continue life without an adult at home. The family unit no matter how it is constituted is forced to reorganize itself.

Desmond & Gow (2002) argue that orphaned children are often sheltered primarily by households that are headed by females, affected and non-affected by HIV and AIDS. It is commonly believed that the households headed by women are poorer than those controlled by men. Coombe (2000) supports this belief by asserting that in 40% of

households headed by females the poverty rate is double the rate than in male-headed households. These households face a shrinking supply of labour and income at the same time as the need for both increases. Such families are not coping, and they have no job security. Desmond & Gow (2002) further argue that children in these households face many risks such as expenditure on food, clothing and education fall - placing the health and rights of children at risk. Orphan crisis in South Africa is placing unprecedented challenge on the family. It is not only challenging the financial means of the family, but also the coping and caring of this family at psychological level.

The family structure is modified across the entire region of Sub-Saharan Africa as grandparents, mostly grandmothers, find themselves in the position of taking care of young grand children, and survive on monthly social security payment of R700, 00 (less than US\$90,00) (Moletsane, 2003). The families find themselves raising more children than they planned to because they take in the children of dead siblings or cousins.

2.2. 6 Summary

HIV/AIDS impacts negatively on children rights to education, survival, and development, protection and participation. It causes irreparable harm to children lives. Therefore, HIV/AIDS serves as a powerful exclusionary pressure in the lives of the children.

2.3. ADDRESSING NEEDS OF CHILDREN IN THE CONTEXT OF HIV/AIDS IN THE SOUTH AFRICAN CONTEXT

This subsection will discuss three key social programmes that have been initiated by the South African Government to address the needs of the children in the context of HIV/AIDS. These programmes include The School Fee Exemption Policy, the Child Support Grant, the HIV/AIDS-Home and Community-based Care and Support Service. According to Hall, Muthukrishna and Ebrahim (2005) the programmes were initiated to address social exclusion and childhood poverty in South Africa.

2.3.1 School Fee Exemption Policy

The School Fee Exemption Policy was designed to make education affordable to poor children. The South African Schools Act (Act 84 of 1996) provided an exemption so that school fees could be formally waived for learners from poor families. Eligibility for full or partial school fee exemption is determined on the basis of parental income in relation to the fees. This policy stipulates that a parent is exempted from paying school fees, if the combined annual gross income of the parent is less than ten times the annual school fees per learner. Partial exemption is available for those whose income is more than ten times but less than thirty times the annual fees (Hall & Monson, 2006). Hall and Monson (2006) add that the new regulations released in October 2006, have modified the formula for calculating exemptions. The new formula takes into account the number of school-going children supported by a caregiver. In terms of the new funding norms, certain categories of children are automatically exempted from paying fees. These include Child Support Grant beneficiaries and children in foster care.

However this programme is clearly not working because as some schools have not yet implemented this policy, and they still exclude non-payers of school fees. Hall and Monson (2006) point out that implementation failure is the result of systematic constraints seen as a lack of budget to compensate schools for implementing the policy, and the absence of a monitoring mechanism to enforce it. Furthermore, schools have failed to inform parents about this policy. As a result some parents because of lack of information about this policy do not send their children to school for fear of their children being humiliated. The Department of Education has not budgeted to compensate schools for loss of revenue through the exemption policy. Furthermore, there are no sanctions against schools that fail to implement the policy. Schools fear that offering the exemption policy would mean that schools would have less money to maintain buildings, buy furniture and books (Hall & Monson, 2006).

2.3.2 The Child Support Grant

The Child Support Grant (CSG) is the largest poverty alleviation measure targeting children in South Africa. It aims at helping the caregivers of children to address basic needs, especially nutrition (Hall, Muthukrishna and Ebrahim 2005). Any primary care giver can apply for a grant on behalf of the child once s/he is able to prove that the

care of the child is his/her sole responsibility. The initial implementation began in April 1998 catering for children between 0 to 6 years. The Department of Social Development (2003) and Hall & Monson (2006) argue that the state of severe poverty and vulnerability, however, led to an extension of the grant to children under 9 years in April 2003 as an initial step to extend it to all poor children up to 14 years from 2005. The amount changes every year, for instance, at initial implementation it was R100, whereas in 2007 the Child Support grant is R200 per month (SA Government Services, 2007).

Desmong & Gow (2002) mention that there are requirements for accessing the grant. The care giver must present a bar-coded birth certificate of the child and his/her bar coded Identity Document to the relevant official from the Provincial Social Department processing the application. Both the caregiver and the child must be South African citizens, and both must be living in South Africa when applying for the grant. The caregiver must produce salary slips, bank statements for three months or pension slips, and any other proof of income. If the caregiver is unemployed s/he must present the Unemployment Insurance Fund (UIF) card or a discharge certificate from a previous employer. If a person is not a child's parent, information that shows that s/he is not a child primary caregiver and s/he has been given guardianship of the child must be presented.

Even though the government has initiated this programme to address basic needs of the children, many of the children cannot access the social security grant. Ranchod (2005) and Desmond & Gow (2002) highlight the following problems in accessing the grant:

- Lack of birth certificate and identity documents
- Lack of transport and money to get to the relevant government social development office and start the application process (particularly in rural areas)
- Age limit on the Child Support Grant. Only children zero to 14 years receive the grant, but many orphans and other children in need are between the ages of six and 18.

- Denial of the grant because the surname of the child on the health card is not the same as the caregiver (a situation that is common when the primary caregiver is the grandmother)
- Lack of access to the information about the availability of the grant.

In such situations, grants and any financial assistance is impossible to access for many children.

2.3.3 HIV/AIDS Home and Community Based Care and Support Services (HCBCS)

This programme forms one of three core components of the National Integrated Plan for children infected and affected by HIV/AIDS (Hall, Muthukrishna and Ebrahim (2005). The services involve the development of strategies for care of orphans, and community –based models of care for people living with HIV/AIDS. The HCBCS are intended to ensure that persons affected and infected by HIV/AIDS have access to integrated services that address their basic needs for food, shelter, education, health care family or alternative care, and protection from abuse and maltreatment (Department of Social Welfare, 2001).

Hall, Muthukrishna & Ebrahim (2005) highlight the following aims of the services. The services aim to provide a functional referral system that creates access and follow up for children and families infected and affected by HIV/AIDS. The programme seeks to empower families and communities to protect their health and welfare. It aims to integrate and structure a care plan into formal, non-formal health and social development system. These services are offered by the Department of Health and Social Welfare that work in partnership with non-governmental organization, community based organizations, faith-based organizations, and other services in the communities. The Government provides the finance and the professional expertise such as health worker and social worker in order to support the partnership organization to deliver HCBCS services directly to children and adult residing in affected households. The partnership organizations are instrumental in creating access, mediating between services for children and caregivers, and building capacities in communities (Giese, Mientjies, Croke and Chamberlain, 2003) The services operate with full-time paid personnel or volunteers.

Difficulties in implementing these services include lack of proper infrastructure and lack of state funding. There is also a heavy burden placed on HCBCS to provide essential services with very little funding and heavy reliance on full-time and unpaid volunteer staff. As HCBCS rely heavily on unpaid staff, it means that HCBCS can make few demands on their staff. In addition, the services have no control over staffing attrition (Department of Social Development, 2005).

2.3.4 Summary

Despite the fact that South African Government has initiated the above mentioned programmes to alleviate childhood poverty, the majority of the children continue to be faced with poverty and underdevelopment in their families and communities.

2.4. CHILDREN'S RIGHTS: EXAMINING LEGISLATION AND POLICY IN SOUTH AFRICA

2.4.1 Introduction

Since 1994, the South African government has expressed clearly its commitment to fundamental transformation of its society, through the new Constitution of 1996 and its various policies and legislations. The policies and legislations the government had put into place provide a framework for addressing the state of the country's children. All social policies and legislations formulated since 1994, related to children have been developed within the framework of human's rights, redress, equity and social justice (Muthukrishna, 2006). They suggest a commitment to the broad view of social inclusion and a strong commitment to the rights of a child. This section will list all the policies that have been developed since 1994 that pertain to children. Secondly, five policy documents are chosen to be explored further so as to highlight the children rights that are embedded in them.

A series of policy documents that have been developed since 1994, pertaining to children include the following:

- *The South African School Act 84 of 1996*
- *White Paper on Education and Training, 1995*

- *Education White Paper 6: Building and Inclusive Education and Training Systems (Department, of Education 2001)*
- *Education White Paper 5 on Early Childhood Education, 2001*
- *White Paper on Social Welfare, 1996*
- *National Programme of Action for Children, 1996*
- *Free Health Care Policy, 1997*
- *The Children's Act 38 of 2005*
- *The National policy on HIV/AIDS for learners, and educators in Public schools, and students and educators in Further education and training institutions of 1999 (Department of Education, 1999).*

There are five key policy documents which have been selected for the study, to explore what rights are embedded in them. These are:

- The Constitution of the Republic of South Africa of 1996.
- National Policy on HIV/AIDS for learners and educators in public schools, and students and educators in further education and training institutions ,1999.
- The Schools Act 84 of 1996
- The Education White Paper 6: Building an Inclusive Education and Training Systems (Department of Education, 2001).
- The children's Act 38 of 2005.

2.4.2 The Constitution of the Republic of South Africa of 1996

The Constitution of 1996, as supreme law of South Africa, has been founded on the values of freedom, equality, non-racism, non-sexism and human dignity. Since 1994, the South African government has strived to establish a society based on democratic values, social justice, social inclusion and fundamental human rights. The Constitution comprises of a Bill of Rights which guarantees various rights to all children, irrespective of race, gender, age, sex, ethnic, or social origin, sexual orientation, disability, religion, beliefs, culture, language and birth (The Constitution of Republic of South Africa, 1996). Provisions specifically related to children are in section 28 of the Constitution.

The Constitution proclaims that every child has a right to a name and nationality from birth. The children are guaranteed the right to protection by the Constitution as it states that every child has a right to be protected from maltreatment, neglect, abuse or degradation and exploitative labour practices. To enforce the right to protection it further adds that a child is not required or permitted to perform work or provide services that are inappropriate for a person of that child's age or place at risk the child's well-being, education, physical, or mental health or spiritual, moral or social development. This serves as an indication that in the Constitution the child's best interest is of paramount importance. The exploitation or abuse of the child is prohibited when it proclaims that a child is not to be detained except as a measure of last resort. But it makes it clear that the detention of the child must be done for the shortest appropriate period of time, and the child be treated in an appropriate manner that values his/her dignity.

The Constitution provides the children with the rights to survival and development. This is evident in section (1b & c) where it is stated that every child has the right to family care or parental care, or appropriate alternative care when removed from the family environment. A child is also guaranteed the right to have basic nutrition, shelter, basic health care services and social services.

Section 29 to 32 does not speak about the children directly but because everyone is equal before the law, children are entitled to those rights provided in those sections. For instance section 29 of the Constitution is concerned with the right to education. It states that "everyone has the right to basic education, including adult basic education and to further education". It further states that everyone has the right to receive education in the official language or language of their choice in public education institutions where that education is reasonably practicable. Children as South African citizens are entitled to this right.

Children are permitted to use the language and to participate in cultural life of their choice (section 30). In section 31 children have a right to practice their religion and use their language and to maintain their cultural practices. They have the right to access the information (section 32).

2.4.3 The National Policy on HIV/AIDS for learners and educators in public Schools, and students and educators in further education and training institutions (Department of Education, 1999)

The Department of Education (DoE) launched a National Policy on HIV/AIDS for learners, educators in public schools and students in September 1999. It was released in terms of section 3(4) of the National Education Policy Act, 1996 (No.27 of 1996) and was published in the Government Gazette on Tuesday August 10, 1999 (No. 20372). It was implemented as a commitment to minimize the social, economic and development consequences of HIV/AIDS to the education system, all learners, students, and educators and to provide leadership to implement an HIV/AIDS policy. The policy applies to public schools that enrol learners in one or more grades between grade zero and grade 12, to Further Education and Training Institutions, and to educators. It seeks to contribute towards promoting effective prevention and care within the context of the public education system.

The policy (Department of Education, 1999) is underpinned by the following key elements:

- Non-Discrimination and equality with regard to learners, student and educators. It stipulates that no learner, student or educators with HIV/AIDS may be unfairly discriminated against. But they should be treated in a just, humane and life affirming way.
- No learner may be denied admission to or continued attendance at school or an institution on account of his her HIV/AIDS status or perceived HIV/AIDS status. Learners and students with HIV/AIDS should be allowed to lead a full life, and be afforded to receive an education to the maximum of their ability. The policy also prohibits the testing of a learner as a prerequisite for admission or continued attendance at school or institutions.
- Learners and students with HIV/AIDS have the right to attend any school or institution. Learners of compulsory school-going age with HIV/AIDS, who are unable to benefit from attendance at school or home education, may be granted exemption from attendance in terms of section 4(1) of the South African Schools Act, 1996, by the Head of Department, after consultation with the principal, the parent and the medical practitioner where possible.

- If and when learners with HIV/AIDS become incapacitated through illness, the school or institution should make work available to them for study at home and should support continued learning, where possible. Parents should, where practically possible, be allowed to educate their children at home in accordance with the policy for home education in terms of section 51 of the South African Schools Act, 1996, or provide older learners with distance education.
- Learners who cannot be accommodated in this way or who develop HIV/AIDS-related behavioural problems or neurological damage should be accommodated, as far as practically possible, within the education system in special schools or specialized residential institutions for learners with special education needs.
- No learner is compelled to disclose his or her HIV/AIDS status to the school or institution.
- Voluntary disclosure of learners or students' HIV/AIDS status to the appropriate authority should be welcomed, and an enabling environment should be cultivated in which confidentiality of such information is ensured in which unfair discrimination is not tolerated.

2.4.4 The South African Schools Act 84 of 1996

The South African Schools Act (SASA) of 1996 stresses the need for all public schools to provide equal education for all learners regardless of their differences, and to admit learners and their educational requirements without unfairly discriminating them in any way (Department of Education, 1996: 2A-6). One of the basic aims of the Schools Act is to reverse the results of unfair discrimination that may still be present in the school system. A further basic aim of the Schools Act is to improve the quality of education of all learners. For example, it aims at having better facilities, better trained teachers, and better methods of teaching and better school conditions (Department of Education, 1997).

The South African Act of 1996 enforces the right of children to education by making school attendance compulsory for all the children of aged 7 to 15 years or to the completion of grade 9. It has placed the responsibility upon the parents and caregivers

to send their children to school from the first day of the year. The Act also places the responsibility on the state to provide enough schools in provinces so that every child would attend school as a requirement of this Act. The state is required to ensure that education is accessible and affordable for every child. As a result of the Act, the national Department of Education has developed two policies, School Fee Exemption policy and No-fee School policy so as to make education affordable to children from poor families.

The South African Schools Act protects the children from any form of discrimination. This is evident in section 3 of this Act, where it states that “no learners may be refused admission to a public school on the grounds his/ her parents are unable to pay or have not paid school fees determined by the School Governing Body” (Department of Education, 1996). Learners are also protected from receiving corporal punishment because no person is allowed to administer it.

The right to participation in school governance is reflected in this Act. A representative council of learners must be established at every public school enrolling learners in the eight grade and higher. The rights of the children with disabilities are reflected in the Schools Act when it stipulates that education for learners with special needs must be provided at ordinary public school with relevant education support services for such learners. It must also be ensured that the physical facilities at public school are accessible to disabled persons.

2.4.5 Education White Paper 6: Special Education - Building an inclusive education and Training Systems (Department of Education, 2001)

During apartheid regime, special schools were organized according to two segregating criteria, race and disability. In accordance with apartheid policy, schools that accommodated whites were extremely well resourced, whilst the few schools for black disabled learners were under resourced (Department of Education, 2001).

Learners with disability experienced great difficulty in gaining access to education, as very few schools were in existence. Learners who experience learning difficulties living in poverty stricken families did not qualify for educational support. The impact of policy makes only few learners to attend school. As a response to inequalities that existed during apartheid times and redress the imbalances of the past, the White Paper

6 was formulated. In other words White Paper 6 arises out of the need for changes to be made to the provision of education and training so that it is responsive and sensitive to the diverse range of learning needs (Department of Education, 2001).

White Paper 6 since its formulation has been guided by the principles of and values of the Constitutional framework of the country including human rights and social justice for all learners, participation and social integration, equal access to a single, inclusive education system, redress and equity. It enforces the promotion of education for all and development of inclusive and supportive centres of learners that would enable all learners to participate actively in the education process.

It realizes the right to education and participation of all learners by acknowledging that all children and youth can learn and that all need support. The differences in learners whether due to age, gender, ethnicity, language, class, disability, HIV, or other infectious disease are acknowledged and respected.

2.4.6 The Children's Act 38 of 2005

The Child Care Act 74 of 1983 has been repealed by the Children's Act 38 of 2005 (Proudlock 2006). Parliament passed the first Children Bill in December 2005. In June 8 2006 it was signed by the President of South Africa into law. It is now called the Children's Act 38 of 2005. It sets out principles relating to the care and protection of children. It defines the parental responsibilities and rights, and makes provision for matters such as children's courts, adoption, child abduction and surrogate motherhood. The best interest of the child is of paramount importance. The Act promotes the protection, development, and well-being of children. The children in need of care are: abandoned children; orphaned children; children who live on the street or beg for living; children who are exploited or who are in a state of physical, mental neglect; children who are being maltreated and abused; those who are victims of child labour, or children in child-headed households (section 150). These children are protected from forms of discrimination such as maltreatment, neglect, abuse, or degradation, discrimination, exploitation, and any other physical, emotional, or moral or hazardous factors. The Act encourages the respect of the child's dignity and the treatment of the child fairly and equitably. Recognition of the child's needs for development and engagement in play and other recreation activities appropriate to the

child's age is emphasized. The rights of disabled children are enforced in section 11 of this Act. The act stipulates that "A child with disability must be recognized and enabling environment be created to respond to the special needs that the child has"

The Act also encourages child participation in any matter concerning that child. The child has the right to participate in an appropriate way in matters that concern the child, and the views expressed by the child must be given due consideration. In any matters concerning the child with disability due consideration must be given to providing the child with parental care, family care or special care, and when appropriate, make it possible for a child to participate in social, cultural, religion, and educational activities, recognizing the special needs that the child may have. The Act stipulates that a disabled child must have conditions that ensure dignity, promote self reliance, and facilitate active participation in the community. The child and the child caregiver must be provided with the necessary support services (section 11). A child with a disability or chronic illness has the right not to be subjected to medical, social, cultural or religious practices that are detrimental to his her health, well being or dignity.

The Act also prohibits the testing of a child for HIV/AIDS unless consent has been given, and unless it is in the best interest of a child. A consent for HIV-test may be given by the child if the child is 12 years of age or older, or is under the age of 12 years, and if s/he is mature enough to understand the benefits, risks and social implications of such a test. The parent can only give consent if the child is under 12 years of age, and s/he does not understand the benefit, risks and social implications of such a test. However a child may be tested of HIV only after proper counselling by an appropriate trained person. No person may disclose the fact that a child is HIV-positive without given consent either by a child if s/he is 12 years of age or older, or under the age of 12 years but is able to understand the benefits, risk and social implications of such disclosure. The parent is eligible to give consent if the child is under 12 years and if the child does not understand the risk, benefit and implication of disclosure.

Regarding health care, every child has a right to have access to information on health promotion and the prevention and treatment of ill-health and disease, sexuality and

reproduction. The Children's Act also gives right to a child to have access to information regarding the causes and treatment of his/her health status, and confidentiality regarding his/her health status and the health of a parent, care-giver or family member, except when maintaining such confidentiality is not in his/her best interest.

2.4.7 Summary

There are several rights that are embedded in the policies and legislations discussed above. These rights comprise of the right to education, the right to survival and development, the right to protection, the right to participation, the right to non-discrimination, the right to express opinion and the right to health and a good physical environment. The children are guaranteed all these rights by all policy documents discussed above.

2.5 POLICY IMPLEMENTATION RELATED TO CHILDREN'S RIGHTS IN SUB-SAHARAN AFRICA: ANALYSIS OF KEY EMPIRICAL STUDIES

2.5.1 Introduction

This section engages in an analysis of other studies in Sub-Saharan Africa that look at the issue of children's rights and the reality. The main aim will be to examine the complexities in the realization of child's rights and in policy implementation in Sub-Saharan Africa.

2.5.2 Problems in the realization of the children's rights

Governments throughout the world are failing in their commitments to protect children from human rights abuses, despite the fact that nearly all states have ratified the Convention on the Rights of the Child of 1989. Children are suffering everyday as a result of the governments' inaction and unwillingness to meet their obligations under Convention on the Rights of the Child (CRC). As a result children become the vulnerable group and the group most affected by the government policies.

Mulinge (2002) and Lachman, Poblete, Ebigbo, Nandiya-Bundy, Killian & Doek (2000) point out that in many countries there are some often over-looked socio-economic factors that render impossible the protection of the rights of the child as

guaranteed through the 1989 UN Convention on the Rights of the Child. They add that in some countries, ratification of the UN Convention and the passing of legislation have not resulted in major improvement in the well being of children. Mulinge (2002) says this is due to lack of implementation strategies in the face of prevailing socio-economic factors such as poverty, HIV/AIDS, civil war and armed conflict.

Mulinge (2002) and Lachman et al (2000) are in agreement that the major impediment to the protection of the rights of the child is the lack of adequate legislation. They are of the opinion that legislation is inadequate because it focuses less on the need to involve children and young people in the planning, implementation or monitoring of the legal systems which have an impact on their lives. A reason for not involving children in matters that affects them is that, in many parts of the world children are not perceived as persons entitled to rights. Burr and Montgomery (2003) support this by saying the idea of children having rights is new and more problematic. Some people might feel that children do not need specific rights because they are too immature to understand them. Robison (2005: 2) confirms this when she says “we the adults of the world are failing the children of today if we still hold beliefs that the children are not entitled to any rights.”

It is also difficult to turn children rights into a reality due to limited resources. Children who are in need increase each day. Therefore sometimes resources allocated for children for each child becomes limited due to the increase in the number of vulnerable children.

2.5.3 Empirical data on policy implementation related to children’s rights

I have been able to locate one study emanating from Africa that examined policy implementation and children’s rights. This study was conducted in Kenya by Palmqvist (2006). The purpose of the study was to make an analysis of the Kenyan Convention on the Rights of the Child (CRC) country reports using the programme areas of the international NGO, Save the Children Sweden as the analytical framework. The analysis serves as platform to identify the status of children’s rights within the different programmes. There were 10 areas that were analyzed which consisted: children who are victims of exploitation and abuse; children without

sufficient family support; children in armed conflict and disaster; children's rights to non-discrimination; children's rights to health and good physical environment; children's rights to adequate and relevant education; children's rights to participation; the CRC and children's human rights; good governance in the best interest of the child; a civil society for the rights of the child.

Kenya had ratified the Convention on the Rights of the Child on 30 July 1990. Two CRC reports were submitted to the UN Committee. These reports were describing the situation of children's rights in Kenya and also describing the measures taken to meet their obligations and responsibilities outlined in the Convention. Palmqvist (2006) described the different purposes of each of the CRC Kenyan Reports. He pointed out that the first report (Initial Country Report, 2000) highlights the coming of Children's Act of 2001 (Kenyan Act) and what enormous improvement of the legal protection of the children's rights this will entail. The second report (Second Periodic Report, 2005) makes references to Act in almost every section, describing it as a new beginning for the development and effective protection of Kenyan's children. The initial report was submitted before the enactment of the Children Act of 2001. The Children Act came into force in 2002. Therefore this section will focus on what improvements made in Kenya with respect to children's rights after the ratification of the Convention on the Rights of the Child.

Even after the implementation of UNCRC government still fails to protect children from sexual abuse and exploitation. The reports points out that there are many indicators of sexual abuse and exploitation in Kenya. Many cases of abuse are never reported particular where the abuse is someone responsible for protecting the child for example, the parents, relative, maids and houseboys. It is also stated that most of the children in Kenya are engaged in child labour. They work hazardous, exploitative conditions, and the work prevents the children from attending school. Due to the rising levels of poverty and HIV/AIDS in the country the number of working children has been increasing. This also led to the increase to child headed households, street children and collapse of family structure in Kenya. To deal with street children, the government has put in place a policy to withdraw people living on the street, including children, and place them in rehabilitation programmes.

Drug abuse was a crisis in Kenya especially in schools and on the streets. It was outlawed by the Children's Act of 2001. This Act protects children from selling or in engaging in the production, trafficking, and distributing the drugs. It is highlighted that corporal punishment was banned in 2001 in Kenya. The teachers still use it to discipline learners. The various forms of corporal punishment use by the teachers include canning and cutting grass from 6 am to 7 pm. The analysis also reveals that Kenyan children are still hindered from reaching full participation on issues that concern them, as it has traditionally been elder members of the society that make decision concerning children. Their views are not taken into consideration within the learning institutions and family.

Due to HIV/AIDS pandemic the number of orphans had increased. According to the report produced by Kenyan government and UNICEF in 2004 the number of orphans was estimated to be 1, 7 million which is 12% of all Kenyan children. The HIV/AIDS pandemic has also led to an increase of child headed households where children as young as 10-12 years have taken many responsibilities of siblings. As a response to this issue the government had put in place Orphans and vulnerable children programme to support children affected by HIV/AIDS. The problem with the programmes is that, there are not enough human and financial resources to all the need.

According to two CRC reports different forms of discrimination against children in Kenya exist. The children who are most at risk of being discriminated include children with disabilities, girls, orphans, children who are affected by HIV/AIDS, and children born out wedlock. Some of the discrimination is rooted in cultural traditions. For example male children are preferred by many Kenyan communities particularly in rural areas. In addition, the rights to inheritance are restricted to male members of the family. This leads to discrimination of girls. The other discrimination rooted in cultural tradition is the practice of the Female Genital Mutilation (FGM) in which girls were forced to undergo. With the implementation of CRC the Kenyan government has implemented the Alternative Rite of Passage to FMG. The government is succeeding in abolishing FGM.

According to Kenyan alternative report children with disabilities face rejection, isolation and discrimination in their lives and are often considered as taboo since disability is associated with bad luck. In some communities are often hidden from the public. Often teachers, officials and communities do not take into account the needs of these children. Few of them are enrolled in Kenyan schools. There are insufficient efforts made to facilitate the inclusion of disabled children in the education system and in society in general. In response to these problems the government enacted the Persons with Disability Act in 2003, to provide for the rights and equal opportunities for persons with disabilities. The National Council for Persons with Disability was established to oversee the implementation of this Act. As a result programmes have been developed to integrate children with disabilities in regular schools. A teacher trained in special education is to be posted to every primary school. Despite the fact that Kenyan government has tried to address the issue of disabled children, very few of them are enrolled in education programmes. In most public places such as schools and hospitals infrastructure is not disability friendly. Health institutions still lack means to detect disabilities early, and the lack of statistics on the status of children with disabilities makes it difficult to plan adequate interventions. Ignorance and lack of awareness contribute to the continued violation of disabled children's rights.

According to first report the Kenyan government has succeeded in improving the situation of children's right to health and good physical environment. For instance the access to health primary health care was increased. But major health challenges still facing Kenya, include an acute shortage of professional staff in rural areas, and overpopulated hospitals with patients sharing beds. Few births registrations are done annually in Kenya as the majority of births take place at homes. To deal with this issue the Department of Civil Registration has taken action to increase awareness and the importance of registration. Community leaders and registration agents receive training in order to sensitise the public and influence positive change. Even though the government has tried to improve the registration of births, there is still a lack of an effective mechanism that ensures that registrations of births are done systematically.

HIV/AIDS is recognized as a crisis in Kenya. In response to HIV/AIDS the government established the National AIDS Control Council (NACC) which in turn published the HIV/AIDS Prevention and Control Bill in 2005. As a result 401

Voluntary Counselling and Testing Centres (VCT) and Prevention of Mother-to-Child Transmission (PMTCT) sites have been set up across the country. Antiretroviral (ARV) treatment is promoted in Kenya, but currently only 24 000 people are receiving ARV therapy, and most of them can not afford it. Child formulation of ARVS is still limited, which impedes the access to treatment for children who suffer from AIDS.

Looking at the physical environment of children, Palmqvist (2006) states that the situation is not good for school going children, as they often have to walk long distances to schools, a walk that is risky and sometimes even danger to their lives. The sanitary facilities in schools are inadequate. As a result girls often stay at home during menstruation. Due to poverty and deprivation in Kenya, children lived in a populated environment where many households share one room. Their right to privacy is compromised as it is guaranteed in the Children's Act of 2001.

Regarding the child's right to education, a number of improvements towards the realization of this right have been initiated. This is evident by the implementation of Free Primary Education (FPE). The FPE initiatives aim at attaining universal primary education and education for all. FPE has led to many children to enrolling in schools. With respect to secondary school education, there are bursaries for needy children as education is free at this level. Some major constraints still impeding the realization of this right include poor quality education provided by the unqualified teachers, the HIV/AIDS pandemic which makes children having to balance between being in school and taking care of the siblings, long distance to school and harmful cultural practices like early marriage and female genital mutilation, the use of corporal punishment in schools, shortage of school inspectors, lack of adequate physical facilities and inadequate bursaries given to students.

2.5.4 Making children's rights a reality: Tensions and dilemmas

Despite the existence of rights, children world wide suffer from poverty, homelessness, abuse, neglect, preventable diseases, and unequal access to education and justice system that do not recognize their special needs. Therefore governments and all the members of society are obligated to amend and create laws and policies that would fully realize and protect children's rights. The standards and principles

articulated in policies can become a reality when they are respected by everyone within the family, in schools and other institutions that provide services for children in communities and at the levels of administration.

To make children's rights a reality, the strategies that need to be taken into consideration must include a reaffirmation of children's civil and political rights (Human Rights Watch World Report, 2002). According to Children Charter of South Africa (2007), children should be placed first on the agenda not last and different groups who work with the children must act to support existing children's structures and organizations. Children's affairs should be taken seriously in all government structures. Children need to be given a chance to voice their concerns and to be heard, and to be involved in making decisions on matters affecting them. Other means of genuine realization of children's rights are education and training of personnel working with children such as nursery school, and other teachers, child psychologists and other health personnel, the police and other law enforcement personnel, social workers and others (Fact Sheet 10, 1993). A broad knowledge and knowledge of the different policies among people at large can be important or help.

This review of literature points to the fact that all stakeholders need to be educated on human's rights. Children should be empowered in how to claim their rights. They must be involved in planning, implementation and monitoring of legal systems. The implementation strategies should take into account the prevailing socio-economic factors such as poverty, HIV/AIDS, civil war and armed conflict. There is also a need for structures that would monitor policy. To create an environment which is safe for the children, the emphasis must be on eradication of poverty, civil instability, corruption and diseases.

Hilary, Penrose, King, Heaton and Wilkison (2002) argue that in order to safeguard children rights and protect their best interest, policies should be pro-poor and emphasis should be on equity. They argue that we should embark on policies which support the sustainable provision of universal, affordable, high quality basic services such as education and primary health care (Ibid). It is critical that governments embark on strategies for reducing poverty so as to safeguard children's rights. Robison (2005) points out that we need to mobilize popular opinion, political will,

and the public and private resources required to turn the legal commitment which governments have made under the Convention into realities in the lives of children everywhere. She argues for the need to generate new strategies, new energies and new commitment to action for children.

Robison (2005) suggests a number of practical “Quick Wins” contain in the Millennium Project report, published in January 2005, relating to the children. Among them include the following: eliminating school uniform fees to ensure that all children, especially girls, are not out of school because of their families’ poverty, providing free school meals for all children using locally produced foods with take-home rations and harnessing public-private partnership-governments, business and local groups working with children to accelerate implementation of these quick wins.

2.5.5 Summary

The review of literature suggests that despite the fact that children are guaranteed their rights by different policies and legislations discussed above, their rights are still violated. To help children realize their rights, all stakeholders must work together in reaffirming the children all of their rights. A sense of agency need to be instilled among the children to define and challenge their situation. Lastly, there is a need for constructive mechanisms that would be introduced at the national and local levels to coordinate and monitor policy and to ensure that children’s affairs are taken seriously in all relevant government structures (Fact sheet No.10, 1993)

CHAPTER 3: RESEARCH METHODOLOGY AND DESIGN

3.1 INTRODUCTION

This chapter has two sections. Firstly it draws on the critical theory as the theoretical framework with critical paradigm as the overarching paradigm. Secondly it focuses on the research design and methodology which has been used in the study.

3.2 FOCUS OF THE STUDY

The purpose of the current study was, firstly, to analyze key South African policies and legislations related to children's rights that have emerged since 1994. The study further attempted to explore whether children's rights are a myth or reality by analyzing the secondary data gathered from a large scale research project conducted in the province of KwaZulu-Natal titled "Mapping the barriers to basic Education in the Context of HIV/AIDS".

The key research questions of the study were:

- What children's rights are embedded in key social policies since 1994?
- How are those rights embedded in policies being played out in the context of HIV/AIDS in the Richmond area, KwaZulu-Natal?
- To what extent are the rights of the children in legislations and policies being protected in the context of Richmond area?
- What are the contextual barriers to accessing the rights of the children embedded in policy documents?

3.3 THEORETICAL FRAMEWORK

The study is located within the critical paradigm. A critical paradigm lens does not only allow one to understand the situation or the world but also to uncover the world and its processes in order to change it. The main focus of critical paradigms is lived experiences and social relations, and the structures that limit these experiences (Henning, Van Rensburg, and Smit, 2004). According to Babbie and Mouton (2002) cited in the School of Education and Development (2005), the core concept of a critical paradigm is to be found in the idea of transformation, human beings transform themselves and their environments. Its intention is to realize a society that is based on equality and democracy for all its members. Framed by this paradigm, a researcher

will aim to make a contribution to the goal of emancipating the disempowered, redressing inequality, to give voice to the voiceless, and to promote individual freedom within a democratic society. Through my study I hoped to make such a contribution by making overt how policy is being experienced in the community of Richmond, KwaZulu-Natal.

Central to my study is a critical theory. Critical theory refers to specific theoretical traditions which can be traced back to Karl Marx in the 19th century (Babbie & Mouton, 2002). For Karl Max the aim of critical theory is not only to explain or understand society but to change it for the better. Neuman (2000) argues that the critical theory seek to provide people with a resource that will help them understand and change their world. An analysis from a critical theory orientation would regard social structures as oppressive structures. As such, the task of critical theory is to contribute to the "transformation" of the social whole" (Rasmussen, 1999: 11). In arguing for a critical theory, the focus is on transformation and social change, and on the critical need to critique, question and challenge oppressive structures.

It can be argued further that critical theory aims at liberating human beings from circumstances that enslave them. It also aims at decreasing the domination and increasing freedom in all their forms. Henning, van Rensburg, and Smit (2004) argue that critical theory aims at promoting critical consciousness and breaking down institutional structures and arrangements that reproduce oppressive ideologies, and the social inequalities that are produced, maintained and reproduced by these social structures and ideologies.

In arguing for critical research, Myers (2005) assumes that social reality is historically constituted and that it is produced and reproduced by people. Neuman (2000) supports this argument by asserting that reality is seen as shaped by social, political, and cultural factors. The social reality is always is changing and is rooted in the tension, conflict, or contradictions of social relations. Both Neuman (2000) and Myers (2005) are in agreement that the critical researcher recognizes that the ability for people to act consciously to change their social and economic circumstances is constrained by various forms of social, cultural context and historical conditions in which they find

themselves. The world they live in limits their options and shapes their behavior and beliefs.

A related theory to critical theory is a theory of critical social science which was developed by Habermas in the Frankfurt school in Germany in the 1930s. It was developed further in the work of Brian Fay (1975) cited in Babbie & Mouton (2001). Fay (1975:94) makes the point that critical social science is one “that recognizes that a great many of the actions people perform are caused by social conditions over which they have no control (Babbie & Mouton, 2001: 35). In the context of my study, this means that critical social theory could acknowledge the sense of frustration and powerlessness many oppressed groups such as children affected by the HIV/AIDS may feel. In practical terms, a critical social science is one which attempts to account for the felt needs of the actors in a social group by seeing them as the result of certain structural conflict in the social order (Fay, 1975: 96 cited in Babbie and Mouton, 2001).

In my study, it was envisaged that a critical theory perspective would help me focus on wider-contextual factors and deep structural socio-economic conditions and the relations of the society that impact children’s lives. A critical paradigm would enable me to critique or question the nature of children’s rights in a democratic South Africa with the hope that my findings will make a contribution to current debates and transformative processes in the country.

3. 4 RESEARCH DESIGN AND METHODOLOGY

This section discusses a design and data collection techniques used in the study. The detailed account of research context, research procedure and ethical issues are given. Limitations in the study are highlighted.

3.4.1 Research context

My study is located within two contexts, that is the South African policy context and the context of National Research Foundation (NRF) study that focused on “Mapping the barriers to basic education in an HIV/ AIDS context in the province of KwaZulu-Natal. Firstly, my study analyzed the key South African legislations and policies pertinent to children’s rights. The key policy documents include:

- Constitution of the Republic of South Africa of 1996.
- Education White paper 6: Building and Inclusive education and Training Systems (Department of Education, 2001),
- The South African School Act of 1996.
- National Policy on HIV/AIDS for learners and educators in public schools and students and educators in further education and training, 1999.
- Children's Act 38 of 2005

Secondly, I analyzed data from the NRF project to gain insight into the realities of the children's rights in the context of HIV/AIDS

3.4.1.1 The South African Policy Context

Before 1994 South Africa was under the oppressive apartheid regime. In 1993 the first phase of transformation began. Under a Government of National Unity, a draft Constitution was published guaranteeing, freedom of speech, religion, access to adequate housing and numerous rights as well as prohibiting discrimination on any grounds (Wikipedia, 2007). In 1994, in South Africa the new democratic government came into power. Since 1994 South Africa has engaged itself in the process of reconstruction and development. A series of policies were formulated in line with the South African Constitution, as a sign of commitment to fundamental transformation of the country. Some of the policies and legislations formulated speak to the issue of children's human rights and these include the ones mentioned above. They guarantee the human rights to children as South African citizens.

3.4.1.2 Context of NRF study

A large scale research project was conducted in Richmond District, province of KwaZulu-Natal, by the researchers in the School of Education and Development at the University of KwaZulu-Natal. The project was funded by National Research Fund (NRF). As stated, the aim was to map barriers to basic education.

Richmond is a small town about 35 km south of Pietermaritzburg, the capital of the province of KwaZulu-Natal, South Africa. Richmond serves the farming and forestry communities and is surrounded by semi-formal and informal settlement. The

population tends to be dominated by young people and grandparents. The area has been hit by the HIV and AIDS pandemic, being situated in a province with highest HIV-positivity rate and one which, despite predictions to the contrary, is ever increasing (Muthukrishna, 2006).

During the 1980s and 1990s Richmond was characterized by large scale of political violence and it is estimated that some 20 000 people lost their lives and many more becoming refugees since 1984, leaving the communities impoverished, fragmented and struggling for basic daily survival (Higson-Smith and Killian, 2000). One of the effects of violence in Richmond was high population mobility, with thousands of refugees leaving the area and later returning when peace was restored, According to Whiteside and Sunter (2000), the high population mobility, high unemployment rates, and the continued social fragmentation have contributed to the extremely high rates of HIV/AIDS infection.

The larger research project was an in-depth qualitative case study of formal and non-formal centres of learning and their communities. The research extended over 2004-2005. It was conducted in four contexts: rural, deep rural, urban and peri-urban. Data was gathered from the learners, teachers, members of School Governing Bodies (SGBs), and organizations working in the district, both Non-governmental organizations (NGOs) and Community Based Organisations (CBOs). Data collection techniques included individual and focus group interviews, and various participatory techniques including photo-voice, social mapping, various ranking exercises, vulnerability matrices, time lines, the river of life, and transect walks (cf. Muthukrishna, 2006).

Most of the centres of learning included in the project are situated in areas characterized by high levels of poverty and unemployment. Although some of the areas appear to be peaceful, there are others where public opinion suggests that there is still instability and that the after effects of the violence are preventing them from returning to what might be considered a normal society (Muthukrishna, 2006). The unemployment rate is approximately 40%, and seventy seven percent of household earn less than R1 500 per month.

The data that emanated from this NRF project is a secondary data set that I analyzed. The data has been coded using the qualitative data analysis software programme NVIVO. These data sets have been further analyzed by me to ascertain whether children's rights are a myth or reality in this particular context, and to explore my specific research questions.

3.4.2 Study Design

3.4.2.1 Research approach

A qualitative approach was chosen for the study. Berg (2001) cited in Radmiah (2006) argues that there are three distinguishing assumptions of qualitative studies. Firstly, the researchers share in the understanding and perceptions of others and explore how people structure and give meaning to their daily lives. Secondly, people are deliberate and creative in their own actions. They act intentionally and make meanings in and through their activities (Cohen, Manion & Morrison, 2000).

Qualitative research is an inquiry that is grounded in the assumption that the individuals construct social reality in the form of meaning and interpretations (Henning, Van Rensburg and Smit, 2004). According to Descombe (1998) a qualitative approach is concerned with meanings and the way people understand things and patterns of behavior. It focuses on the meaning of human behavior and the context of social interaction (Daniels, 1993).

De Vos (1998) defines the term qualitative as a multi-perspective approach to social interaction aimed at describing, making sense of, interpreting or reconstructing this interaction in terms of the meaning that the subjects attach to it. The aim is to explore participants' beliefs and values that underlie the phenomena (Mouton, 1996).

Both in the larger study and in my study a qualitative approach was used as I intended to examine in depth participants' account of meanings they make of their experiences

3.4.2.2 Data collection techniques

The main research technique to explore the critical questions was *documentary analysis*. In analyzing the documents, five principles as laid out in the Convention on

the Rights of the Child (UNICEF, 1989), the right to education, the right to survival and development, the right to participation, the right to protection, and the right to express opinion were chosen to guide the policy document analysis process. As stated the policies included:

The Constitution of the Republic of South Africa of 1996

The Children's Act 38 of 2005

Education White paper 6: Building an Inclusive Education and Training Systems (Department of Education, 2001)

The South African School of 1996

The National Policy on HIV/AIDS for learners and educators in public Schools and students and educators in further education and training institutions (1999)

Various project documents were analysed including the final integrated project report (Muthukrishna, 2006), interim reports, reports on forums such as stakeholders' meetings and community meetings.

Descombe (1998) and Stewart & Kamins, (1993) argue that documents should not be accepted at face value, because not all information obtained from them is equally reliable or valid. The documents must be evaluated carefully and weighted according to its recency and credibility. Therefore I used four criteria to assess the quality of documents and reports related to the NRF study undertaken in the School of Education and Development. Firstly, authenticity was used to check origin and authorship of the documents, and to check whether is what it purports to be? Secondly credibility which refers to the extent to which the evidence is undistorted and sincere, free from errors and evasion. It was employed to check who wrote the documents and how reliable are they in their translation of the information that they received. Thirdly, representativeness was used to check whether the documents represent opinions or unusual view points. The last factor is meaning use it to check whether the documents are clear and comprehensible.

As explained earlier, the second level of analysis involved the secondary data from the NRF project.

3.4.2.3 Research process

The study has two phases. Phase one of the study is document analysis (analysis of five key policy documents mentioned above) with the aim of exploring them further so as to highlight what rights are embedded in them. Phase two of the study is the analysis of secondary data (NRF data). This means that two distinct procedures for each phase were undertaken.

Both policy documents and NRF research data were selected through purposive sampling based on the fact that I had easy access to both of them.

Regarding the policy documents, the process was as follows:

The search began with an electronic data base using different on-line programs for all South African policies on children's rights. It was only limited to documents since 1994. The reprints of abstract or full versions of the policy documents were ordered. After I have finished searching on my own I consulted the reference librarian to determine whether some important sources have been missed. All policy documents were analyzed through content analysis.

With the analysis of secondary data that has emanated from the NRF research project titled "Mapping the barriers to basic education in an HIV/AIDS context, the process was: Consultation of the principal investigator of the NRF research project requesting permission to use of NRF research data, Ethical clearance was also requested from the University of KwaZulu-Natal for the larger project. The data base and reports that have emanated from the NRF study undertaken in School of Education and Development were assessed to check their quality using four criteria: authenticity, credibility, representativeness and meaning.

3.4.2.4 Data analysis

Policy documents that were chosen were analyzed through content analysis.

Researchers are in agreement that content analysis is a method of textual investigation that involves establishing categories and then counting the number of instances when these categories are used in a particular item of text (Silverman 2000: Grbich 2007).

In content analysis, communications, in this case written, are coded or classified into a conceptual framework (Babbie, 2002).

For Neuman (2000) content analysis is a technique for examining information or content in written or symbolic materials. The content analysis refers to words, meaning, pictures, symbols, ideas, themes or any messages that can be communicated. When using this method of analyzing the data, a researcher firstly identifies a body of material to analyze and then creates a system for recording specific aspects of it. The system might include how often certain words or themes occur. Finally the researcher records what was found in the material.

When analyzing the social policy documents, the unit of analysis was the whole text. The policy documents were closely examined and same rights were combined with the purpose of creating common themes and ideas. It was necessary for the researcher to inspect different policies and legislations to discover which themes appear across all policies chosen. Categories of rights embedded in documents were established, for example the right to protection, the right to education, the right to survival and development, the right to participation and the right to express opinion. The data was coded to delineate key rights evident in data.

Through content analysis, it was possible to discover patterns or themes among the data-patterns that point to a theoretical understanding of the lives of children in the context of children's rights in legislation and policy in South Africa since 1994. It was also possible to discover the extent to which the children's rights are protected in legislations and policies in South Africa.

The next phase in the analysis involved my analysis of the secondary data from the NRF project. Through the lens of critical theory, I aimed to examine evidence of deep structural, political, social conditions and the relations of power that impact children's lives. Drawing on the work of Henning Rensburg and Smit (2004) and Miles and Huberman (1994) I engaged in open coding to identify topics and units of meaning, keeping focused on my research questions. I then grouped the related codes into categories. I then worked to identify themes or patterns across these categories.

One of the challenges of this study was engaging with secondary data sets.

3.4.2.5 Ethical issues

The ethical process in my research project involves the following: I consulted the Principal Investigator (PI) of the NRF Research project to request the permission to use the data that was collected for this project. The identifiable information was not used in my dissertation in order to protect the participants. The Principal Investigator was informed about the aim and the purpose of the study.

As it has been mentioned before that the study used secondary data from the larger study of NRF project, I applied for the ethical clearance for the larger project from the University of KwaZulu-Natal. The autonomy of the participants was protected through the use of informed consent in the primary study. The project data and documents that were used in my study and made available by the School of Education and Development kept in a locked cupboard during the period of research. It was returned to the school of Education and Development after my research project was completed.

3.4.2.6 Validity and Reliability

In establishing trustworthiness in my study validity and reliability were central concept to be employed. According to Cohen, Manion and Morrison (2000) the concept of validity and reliability are multi-faceted, since there are many ways in which it can be addressed. Validity is defined as the demonstration that a particular instrument measure what it supposed to measure, whereas reliability is a synonym with consistency and refers to the extent to which research findings can be replicated over time. Therefore, peer review was used as a strategy to establish validity and reliability in my study. Peer evaluation entails getting a colleague either familiar with the research or new to the topic to scan some raw data and then assess whether findings are plausible based on the data. I used my supervisor for peer evaluation to check the validity and reliability of the study since she was familiar with the study.

3.5 Summary

This chapter has highlighted how my research was designed and the methods I used. A detailed account with regard to the methodological approach, research sites, research process, ethical issues and limitations in a study has been presented. In the next chapter, I present the findings and my interpretation.

CHAPTER FOUR: DATA ANALYSIS AND DISCUSSION

4.1 INTRODUCTION

The aim of the study was, firstly, to analyze key South African legislations and policies pertinent to children's rights. These policies include, the Constitution of the Republic of South of 1996, the Children's Act No. 38 of 2005, Education White paper 6: Building an Inclusive Education and Training System, (Department of Education, 2001), the South African Schools Act 84 of 1996, and National Policy on HIV/AIDS for learners and educators in public schools, students and educators in further education and training institutions (1999).

Secondly, my study aimed at analyzing secondary data emanating from a research project that sought to map barriers to basic education in the context of HIV/AIDS. The aim was to ascertain whether children's rights are a myth or reality in Richmond area.

As stated previously, the key research questions for this study were as follows:

- What children's rights are embedded in key social policies and legislations since 1994?
- How are those rights embedded in social policies and legislations being played out in the context of HIV/AIDS in the Richmond area, KwaZulu?
- To what extent are the rights of the children in policies and legislations being protected in the context of Richmond area?
- What are the barriers in accessing the rights of the children embedded in policy documents in Richmond area?

This chapter constitutes two parts. The first part explores how key principles such as the right to protection, the right to participation, the right to education, the right to survival and development and the right to express opinion are embedded in the selected social policies and legislations?

The second part of the chapter focuses on how the policies and legislations mentioned above impacted on the lives of the children in Richmond area, KwaZulu- Natal in the context of data emanating from the project, “Mapping Barriers to Basic Education in an HIV and AIDS context.”

4.2 SOCIAL POLICY ANALYSIS: EXAMINING CHILDREN’S RIGHTS EMBEDDED IN KEY SOUTH AFRICAN POLICY AND LEGISLATION

4.2.1 Introduction

This section analyzes social policies and legislations in order to explore what children rights are embedded in them. In analyzing the policies and legislations, the notion of policy is discussed. Current debates about the politics of policy development and implementation are discussed. In addition, I look at how policy could be analyzed. Finally, the analytical framework and findings of the policy analysis in the study is presented.

4.2.2 What is policy?

In this section a variety of definitions of the term policy by a range of authors were examined. Taylor, Rizvi, Lingard and Henry (1997) argue that achieving a definition of policy becomes a difficult task for many people as it tends to mean different things to different people. Hogwood and Gun (1984) provide a wide variety of definitions of the term policy. For instance they define policy as ‘an expression of general purpose or desired state of affairs’, ‘policy as a specific proposal’, ‘policy as a decision of government formal authorization’, ‘policy as a programme’, ‘policy as output’, ‘policy as outcome’, ‘policy as theory’, ‘policy as model’, and ‘policy as process’ (Hogwood and Gun, 1984: 13-19). Hogwood and Gun’s definitions indicate that there is no single universally accepted definition of ‘policy’. They also indicate the complexities and multi-layered nature of the term ‘policy’. They show that policy could mean different things to different people depending on the context in which it is used.

Helco (1972) considered ‘policy’ as something broader than the tangible pieces of legislations which at any moment are being administered by government departments. Helco (1972) further defines policy as a course of action or in action rather than a

specific decision or action. He sees policy as not only about making decisions but also about indecision by government, party or ruler. Dye (1972) cited in Taylor, Rizvi, Lingard and Henry (1997) share a similar view with Helco (1972), when he defines policy as anything which a government decides to do or not do. The strength of the Dye and Helco's definitions is that they highlight that whether a government chooses to take an action or non-action regarding any issue, the government is still making a decision. Their definitions emphasizes that indecision also forms part of policy. When the government chooses to do nothing it is also making a decision. This is referred to as non-decision-making. As a variant on this Easton (1953: 129-130) cited in Levin (1997) noted that 'a policy consists of a web of decisions and actions which allocate values'. His definition takes into account the political nature of policy as a compromise which is struggled over at all stages by competing interests.

Harman (1983:13) cited in Taylor, Rizvi, Lingard and Henry (1997) defines policy as the implicit or explicit specification of courses of purposive action being followed or to be followed in dealing with a recognized problem or matter of concern, and directed towards the accomplishment of some intended or desired set of goals. This means that policy is seen as a response to a problem or issue of conflict, and directed towards achieving or solving that problem. In this definition, Harman characterizes 'policy' as a set of problem-solving activities. In essence, policy is an instrument in which changes are effected onto existing policies, programmes or organizations, and onto the demands made by particular interest groups. In short, 'policy' is a text and action, and words and deeds. It is what is enacted as well as what is intended.

Hill (1997) shares a similar view with Harman (1983) cited in Taylor et al (1997) when he defines 'policy as a plan of action or statement of aims of ideals, intended to accomplish some end, utilized and followed by a government, party or ruler'. Based on the context of study and in relation to my study, I define 'policy' as a field of government activity, expressing the broad purposes of government to bring about a particular situation. It can be either government actions that are good or bad, effective or ineffective, responsive or unresponsive.

4.2.3 The politics of policy

There are politics involved in policy formulation and policy implementation. Taylor, Rizvi, Lingard and Henry (1997) support this view by arguing that it is important to recognize policy processes as inherently political in character and involving compromise, trade-offs and settlement. By this they mean that in the policy processes there are competing interests and the policies represent compromise over struggles. Prunty (1984), Ball (1990) and Easton (1953) cited in Taylor, Rizvi, Lingard and Henry (1997) define policy as the authoritative allocation of values, in recognition of the fact that policy is never value free, and that power and control are central in policy processes. The political nature of policy processes is highly emphasized by the point that the society we live in consists of competing groups having different values and access to power. This statement raises a question of whose values are allocated in the policy processes and whose interest these values represent. According to Ball (1990) the dominant groups in society are more likely to influence government in their exercise of power. It is likely that their values are being reflected to the policy processes. They achieve formalized, institutionalized access to policy making. It is argued that policies legitimate and initiate practices in the world and they privilege certain vision and interests (Taylor et al., 1997). This shows that there will always be political struggles over whose voices will be heard and whose values will be reflected in policies. It also means that policies cannot be divorced from interests, from conflict, from domination or from justice (Ball, 1990).

Codd's (1994) definition of policy cited in Taylor et al. (1997) emphasizes that there is politics involved in policy, when he argues that fundamentally policy is about exercise of political power and the language that is used to legitimate a process. He further argues that contestation is involved right from the moment of the appearance of an issue on the policy agenda, through the initiation of action to the inevitable trade-off involved in formulation and implementation. Contestation is played out in regard to whose voices are heard and whose values are recognized or authoritatively allocated in the policy process, and which group ultimately benefits as a result of the policy.

The above debates were borne in mind as I analyzed the data in my study.

4.2.4 How can policy be analyzed?

There is no prescribed recipe for doing policy analysis. Looking at the definition of policy analysis, Dunn (1994) defines policy analysis as the activity of creating knowledge of and in the policy-making process. It is any type of analysis that generates and presents information in such a way as to improve the basis for policy-makers to exercise their judgment (Ibid). In policy analysis, the word “analysis” is used in its most general sense. It implies the use of intuition and judgment and encompasses not only the examination of policy by decomposition into its components but also the design and synthesis of new alternatives (Dunn, 1994). The activities involved may range from research to illuminate or provide insight into an anticipated issue or problem to the evaluation of completed program.

Policy analysis seeks to create, critically assess, and communicate policy-relevant knowledge within one or more phases of the policy-making process. Policy analysis is concerned with exploring the impact of a particular policy when it is implemented which was the focus of my data analysis.

4.2.5 Analysis of Key South African Policy documents

Against the above debates and perspectives on policy analysis, this section aims to address the research question: What children’s rights are embedded in key policies since 1994?

4.2.5.1 Analytical framework in the study

In analyzing these policies and legislations, five principles as laid out in the United Nations Convention on the Rights of Child (CRC) were identified (UNICEF, 1989), and the aim was to examine to what extent the principles are embedded in social policies and legislations (refer to Box 1)?

Box 1: Principles embedded in the UN Convention on the Rights of the Child (UNICEF, 1989).

- The right to protection
- The right to participation
- The right education
- The right to survival and development
- The right to express opinion

The United Nations Convention on the Rights of the Child is an International treaty that recognizes the human rights of the children.

It provides a universal set of standards to be adhered to by all countries. It has been ratified by 192 countries. It was used in this analysis because South Africa ratified and signed the UNCRC. South Africa is guided by the principles of the UNCRC in the treatment of the children. As a result policies and practices of South Africa are expected to be in accordance with the standards in the Convention.

The term ‘principle’ is defined as a guiding standard or rule for personal behavior. UNCRC has defined the following five principles:

The protection rights include protection of children from all forms of child abuse, neglect, exploitation and cruelty, including the right to special protection in times of war and protection from abuse in the criminal justice system (UNICEF, 1989)

Participation rights recognize that children should be enabled to play an active role in decisions affecting their own lives in their communities and societies in preparation for responsible adulthood.

Survival and development rights are rights to the resources, skills and contributors necessary for the survival and full development of the child. They include rights to

adequate food, shelter, clean water, formal education, primary health care leisure and recreation, cultural activities and information about their rights. The term development in this context means not only physical health is intended but also mental, emotional, cognitive, social and cultural development (ibid). Development rights outline what children require to reach their full potential such as education, play, leisure cultural activities, access to information and freedom of thoughts, conscience and religion.

Education right recognizes the child’s rights to compulsory education. It also recognizes that education should prepare the child for life in a spirit of understanding, peace and tolerance.

The right to express opinion means that children should be free to have opinions in all matters affecting them.

Table 1 below provides an overview of the status of five policies and pieces of legislation with respect to the principles.

Table 1: Status of Policies and Legislation with respect to Convention on the Rights of the Child (CRC) principles

Principles	Social policies and legislation reflective of principles
The right to protection	The Constitution of the Republic of South Africa of 1996 The Children’s Act No. 38 of 2005 National Policy on HIV/AIDS for learners and educators in public schools and students and educators in further education institutions 1999 The South African Schools Act No 84 of 1996
The right to participation	The Constitution of the Republic of South Africa 1996 The National Policy on HIV/AIDS for learners and educators in public schools and students and educators in further education institutions

	<p>The Children’s Act 38 of 2005</p> <p>Education White paper 6: Building an Inclusive Education and Training Systems (DoE, 2001)</p> <p>The South African Schools Act 84 of 1996</p>
The right to basic education	<p>The Constitution of the Republic of South Africa Act 108 of 1996</p> <p>The National Policy on HIV/AIDS for learners and educators in public schools and students and educators in further education institutions, 1999</p> <p>The South African Schools Act 84 of 1996</p> <p>Education White paper 6: Building and Inclusive Education and Training Systems (DoE, 2001)</p>
The right to survival and Development	<p>The Constitution of the Republic of South Africa Act 108 of 1996</p> <p>The Children’s Act 38 of 2005</p>
The right to express opinion	<p>The Constitution of the Republic of South Africa Act 108 of 1996</p> <p>The Children’s Act 38 of 2005</p>

Table 1 illustrates the principles identified in particular policy documents and legislations.

4.2.5.2 Examining Key Principles embedded in selected Policy and Legislation

In the following sections below, the policy and legislations documents are analyzed in further depth with respect to the principles identified in Table 1.

The right to protection

In 4 of the 5 selected South African policies the principle of the right to protection is evident. According to the Constitution of the Republic of South Africa (1996) section 28 (1(d) & 1(e) and the Children's Act 38 of 2005, section 2 (iii), a child has to be protected from all forms of abuse, including physical, mental and sexual abuse, maltreatment or exploitation, neglect and degradation while in the care of parents, legal guardians or any other person who has the care of the child. This indicates that it is unlawful to administer torture, cruel and inhuman treatment or punishment to a child. Protection of the child is stressed even if a child is removed from a family environment which is familiar to him/her, and has to be placed in alternative care which is safe for his/her well being. According to the Constitution of South Africa (1996) section 28 and Children's Act 38 of 2005, section 2(b) & (f) a child is also protected in terms of performing work or providing services that are inappropriate for a person of that child's age or situations that place at risk the child's well being, education, physical or mental health or spiritual, normal or school development. The Children's Act 38 of 2005 section 2 (h) also guarantees the right to protection to children who are disabled as it recognizes the special needs these children may have, and right to protection, development and well being of these children.

The literature review emanating from the research project 'Mapping the Barriers to basic education in the context of HIV/AIDS' (School of Education and Development, 2005) reveals that in African countries different forms of discrimination against children in many schools, communities and society on the basis of HIV/AIDS exist. Children who are HIV infected and affected have to deal with these different forms of discrimination in their daily living. The children who are HIV infected and affected are guaranteed the right to protection by the National Policy on HIV/AIDS for the learners and educators in public schools and students and educators in further education institutions (Department of Education, 1999), by prohibiting the discrimination of the child on the basis of his/her status. It proclaims that whether a child is HIV positive or not, the child must be treated in a just, humane and life affirming way (section 3.1).

According to South African Schools Act 84 of 1996 section 3 (a), a child is protected from being refused admission to a public school on the grounds that his parents are

unable to pay school fees. It states clearly that a public school must admit learners and serve their educational requirements without unfairly discriminating in any way. The abolishment of corporal punishment is enforced by this Act, as it stipulates that no person may administer corporal punishment at school to a learner (Department of Education, 1996 section 10(i)).

According to the Children Act, 38 of 2005 (2(h)), a child is not to be discriminated on any grounds, including on the grounds of the health status or disability of the child. It states that an enabling environment must be created to address special needs that the child has.

Summary: From the discussion above, it has appears that the right of the child to protection is if paramount importance. Every member of the society is obliged to adhere to this right. This right has to be applied everywhere, at home, school, in the community and society for the well-being of the child.

The right to participation

The principle of the right to participation is evident in all five policy documents mentioned above. According to Children's Act 38 of 1996, it is the right of the child whether physically or mentally disabled to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Section 11 (b) of the Children's Act stipulates that it must be made possible for the child to participate in social, cultural, religious, and educational activities .This is in accordance with Article 31 of the CRC that recognize the right of the child to engage in play and recreation activities which are appropriate to the age of the child, and to participate freely and fully in cultural life and artistic life.

The National HIV/AIDS policy for learners and educators in public schools and students and educators in further education institutions (1999)(section 4.1) realizes a right of the child to participation when it states that “no learners or students may be denied admission to continue attendance at school or an institution on account of his/her HIV/AIDS status or perceived HIV/AIDS status. But learners with HIV/ AIDS are expected to attend classes in accordance with statutory requirements as long as

they are able to do so effectively” (section 5.2). In other words learners with HIV/AIDS are expected to attend classes in accordance with the state requirement and be must allowed to attend any school as long as they are in a position to cope with the demands of the school.

According to section 10 of Children’s Act 38 of 2005 every child has to be able to participate in any matters concerning that child. This means that a child has to be involved all matters that concerns him/her. S/he must be allowed to voice his/her opinions and to be heard in decision making.

The right to participation of the children is also stressed in the South African Schools Act when it states that ‘a representative council of learners must be established at every public school enrolling learners in the eight grade and higher grade’ (section 11). This indicates that learners need to have some representative in School governing body, so as to voice their opinion to the school council.

Even though the South African Constitution does not speak about the children directly, since everyone is equal before the law, therefore, the children are guaranteed the right to participation in section 30, 31 and 32. Section 30 states that ‘Everyone has the right to use language and to participate in the cultural life of their choice. In section 31 it stipulates that persons belonging to a cultural or religious group may not be denied the right to enjoy their culture, practice their religion and use their language (section 31). In Section 32 of the Constitution, the right to participation is stressed when; it is states that everyone has the right of access to any information held by the state and another person which is required for exercise or protection of any rights.

Summary: The right to participation also has to be enjoyed by every child irrespective of *colour*, race, gender, and disability. This right is more controversial and problematic than other rights; because it is not stipulated at what stage (age) can children genuinely participate in society and decisions about their lives. It is also not stipulated, when a child should be considered as mature enough to handle his/her affairs.

The right to basic education

In 4 of the 5 documents the principle of the right to education is evident. It is evident in South African Constitution Act 108 of 1996, Education White paper 6: Building an Inclusive Education and Training Systems (Department of Education, 2001), the South African Schools Act 84 of 1996, and the National Policy on HIV/AIDS for learners and educators in public school and students and educators in further education institutions (1999)

The South African Constitution of 1996 recognizes the child's right to education when it stipulates that everyone has the right to basic education, including adult basic education and to further education (section 29 (1). It guarantees the right to receive education in the official or language of their own choice in public educational institutions where that education is reasonably practicable (section 29, 2).

The South African Schools Act 84 of 1996 section 3 (1) enforces this right and places responsibility upon the parents, that they must cause every learner for whom they are responsible to attend a school from first day of the year in which such a learner reaches the age of 7 years until the last day of compulsory education.

The National Policy on HIV/AIDS for educators, learners in public schools and students and educators in further education institutions (1999) stipulates that if and when the learners with HIV/AIDS become incapacitated through illness, the school or institution should make support available to them to enable them to study at home and should support continued learning where possible (section 5.5). This serves as an indication that a child is entitled to the right to education whether sick or not. Reasonable steps must be taken to ensure that a child gets educated. However it further stipulates that learners who cannot be accommodated in this way or who develop HIV/AIDS-related behavioral problems or neurological damage should be accommodated, as far as is practically possible, within the education system in special schools or specialized residential institutions for learners with special education needs (Department of Education, 1999, section 5.5)

Education White Paper 6 (Department of Education, 2001) acknowledges that all learners can learn, whether able or disabled, and must be provided with support. It

also recognizes the fact that learning occurs in the home and community, and within formal and informal modes and structures.

Summary: It is evident from the analysis above that education should be provided on the equal basis. This statement raises the question of how education can be achieved on equal basis if the majority of the children are faced with poverty and underdevelopment in their families and communities, failing to afford school fees and attending poorly resourced schools.

The right to survival and development

In two of the five selected policies, the South African Constitution Act 108 of 1996 and the Children's Act 38 of 2005, the principle of survival and development is present.

The Constitution of South Africa (1996) recognizes that every child has a right to life. Section 28 (1) of the Constitution guarantees the right to life by emphasizing that every child has a right to basic nutrition, shelter, health care and social services.

The Children's Act 38 of 2005 section 4 (1) states that every child have an inherent right to life and that it is the responsibility of the government and the family to ensure the survival and development of the child. This would be ensured by combating disease and malnutrition and providing adequate nutrition and clean drinking water and taking into consideration the danger and risk of environment pollution so as to allow a child to attain the highest standard of health care. Appropriate measures should be taken into account to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse, torture or any form of cruel, inhuman or degrading treatment or punishment or armed conflict.

Summary: There are many challenges and constraints facing the realization of this right, as most of the children are failing to access basic health care, basic nutrition and other social services.

The right to express opinion

The right to express opinion is stressed by the UN Convention on the Rights of the Child in article 12. It states that governments are obliged to ensure that children are listened to and their views sought and considered in matters that affect their lives. Children must be given an opportunity to be heard and express their views freely in all matters affecting them and their views must be weighted in accordance with the child's age and maturity. Article 13 of the CRC states that the child shall have the right to freedom of expression and that this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers either orally, in writing or in print, in the form of art, or through any media of the child choice.

This principle is reflected within 2 out of five selected South African policies, and these are South African Constitution Act 108 of 1996 and the Children's Act 38 of 2005. Section 15 and 16 of the Constitution of South Africa guarantees the right to freedom of opinion, belief, thought and expression, but does not mention children specifically. Section 3 (2) of the Constitution of 1996, states that all citizens are equally entitled to the rights, privileges and benefits of citizenship, this guarantees children to the right to express opinion. The Children's Act 38 of 2005 is in agreement with CRC and the Constitution when it stipulates that views expressed by the child must be given due consideration (section 10).

Summary: While the Constitution of South Africa Act 108 of 1996 guarantees the right to freedom of opinion, thought and expression. It did not mention the children specifically.

4.2.5.3. Limitations of policy imperatives

The idea of children having rights is new and problematic in South African context. Some of the rights are more controversial than others. For instance, participation rights are more problematic. The problem arises regarding the issue that the children must be consulted about any decision that shapes their future. However, participation rights mean that children should be seen as full human beings, not simply as dependant on their parents neither are they the property of families, but full members of society who have a right to be consulted about any decision concerning them. In

practice, there may be a clash between adults and children over children's rights to participate in such decisions. Burr and Montgomery (2003) make an example to illustrate this tension. They say the best known example comes in article 28 of the CRC which gives children rights to *compulsory* education. Children are not allowed to refuse this right even if they have strong opinion about not going to school, they have no choice. In this instance, their rights to participate are severely compromised because a decision is forced on them against their will.

The principle of the best interest of the child which serves as guiding principle for the CRC is questionable. Firstly Kehler (2003) argues that children's lived realities are not a reflection of "the best interests of a child" as most of them live in poverty, a number of them are in child-headed household, and some are living on the street. He further argues that the lack of clear guidelines of what defines "the best interest of the child" in current legislations allows for a wide scope for interpretation of the concept. Achieving consensus on what is a child's best interest is highly problematic. Different groups of adults disagree on what is in the child best interests. Children 'best interests' sometimes can clash with their wishes. Therefore the definition of the best interest of the child might depend on who is interpreting and applying the concept in a child- related matter.

There is also a potential risk regarding the fact that what is perceived to be "in the interest of a child" by adults might not necessary be considered by a child to be in his/her interest. To illustrate this point, usually when the parents have died a child is removed from his /her known environment, placed in an alternative care and possibly separated from her or his siblings in the process. This is seen mostly as 'in the best interest of the child'. But on the other hand, it may not be 'in the best interest of the child' especially if the child's views and perceptions were not taken into account when making this decision. It should be realized that a child's development and well being can be greatly affected by this placement if he/she is not happy about it. Armstrong (2005) points out this affects the children especially if they are not happy about the division of siblings.

Another question raised about children's rights relates to the issue of competence. Nobody is sure about when children become physically, mentally, and emotionally

competent to participate fully (at what age). Holt (1975) and Farson (1974) cited in Burr and Montgomery (2003) argue that children are imprisoned in childhood, that they are not incompetent but are made incompetent by adult attitudes. This indicates that it is not easy for adults to recognize that children are mature enough to defend their rights.

Burr and Montgomery (2003) raise two main concerns regarding the principles in the CRC: Firstly, is the difficulty of applying general principles to local situation. Second concern is the cross-cultural differences regarding the concept of a child. Regarding the first concern it is stated that UNCRC offers generalized intentions, whereas the local laws tend to be more detailed and less generalized. As result it becomes difficult to apply general principles of the UNCRC to local situations.

The second concern about the CRC is the cross-cultural differences concerning the concept of the child (ibid). The argument is that it upholds and supports a Western understanding of childhood. The child is given rights as an individual based on Western understanding of the child and is seen as an autonomous individual. This is a problem because within many African societies this idea of child does not exist. In many African countries a child is seen as part of a wider network, a family and community but not as individual (Burr and Montgomery, 2003),

4.2.5.4 Summary

The analysis has presented a picture of the rights of children embedded in policies and legislations including the South African Constitution Act 108 of 1996, the National Policy on HIV/AIDS for learners and educators in public schools and students and educators in further education institutions (1999), the South African Schools Act, 84 of 1996, the Children's Act 38 of 2005 and Education White paper 6 (Department of Education, 2001). It has highlighted the rights the children are entitled to exercise. It is the duty of the state and every one to make sure that those rights can be realized.

4.3. ANALYSIS OF SECONDARY DATA

4.3.1 Introduction

A key aim of my study was to explore the secondary data to ascertain whether children's rights are a myth or reality in Richmond area, province of KwaZulu-Natal.

The secondary data used in this study is from a larger research project that aimed at mapping barriers to education and learning in the context of HIV/AIDS. It involved a range of formal and informal centres of learning and their communities. It was conducted in four contexts, rural, deep rural, urban and peri-urban. The participants in the study were child and adult learners, parents and caregivers, school governing bodies, organizations working in the district, officials from the Departments of Health, Education and Social Welfare and members of a support group for people living with HIV/AIDS.

When analyzing secondary data, I focused on the following research questions:

- How are the rights of children embedded in policies and legislation being played out in the context of HIV/AIDS in the Richmond district, area of KwaZulu-Natal?
- To what extent are the rights of the children in legislations and policies being protected in the context of Richmond area?
- What are the contextual barriers to accessing the rights of the children embedded in policy documents?

4.3.2 Findings and Discussion

As stated, my study was framed by critical theory and is located in the discipline of critical social science. In analyzing the data, I examined the wider-contextual factors and deep structural socio-economic conditions and the relations of the society that impact children's lives. Such an approach enabled me to critique or question the nature of children's rights in a democratic South Africa.

In looking at the relationships in meaning between all the categories that emerged in the data, I was able to identify certain key themes. These will be presented and discussed in the sections below, and the discussion will be interfaced with findings from the policy analysis part of study.

4.3.2.1 Risks and vulnerabilities

Across all secondary data sets various risks and vulnerabilities in the lives of children in this particular context became evident. The data reveal that risks and vulnerabilities may be seen as created and sustained by social and structural arrangements in the

community. Children seem to be vulnerable and at risk in the sense that they are subjected and exposed to wide range of health, social and economic difficulties.

Children's voices in the study reveal that schools and communities are not safe havens for them. Learners commented on being exposed to crime and violence from the community and also from learners within the school. When they were asked to comment about things they would like to change about the school they gave the following responses:

P: I would like to have security in this school because the community comes here if there is no one here and steal school food and school kit

P: I would like to have security in this school to search every one if they get in because there are learners who carry knives and others who are smoking

²F: Is there anyone who is stabbed in this school?

³P: They point the knife at the teacher.

P: Others are carrying 'izikero' (scissors) and this learner stabbed another learner so I would like to change it that every learner must be checked if they get in the gate so that the other learners will be safe

P: Others carry toy guns to frighten the teachers

One learner commented,

P: I want to change the place where I am staying because there are gangsters and they assault you and kill you.

The exposure of children to crime and violence is not only the major concern for the children. The data emanating from caregivers reveal that children are exposed to psychological and physical threats, and physical and sexual abuse. This is in contravention of the South African Constitution of 1996 and Children's Act 38 of 2005 which guarantee the protection of a child from all forms of abuse, including physical, mental and sexual, maltreatment and exploitation. The data reveal

² F: refers to the facilitator in the focus group interviews.

³ P: refers to a pupil

3C: refers to a child

vulnerabilities of girls to various forms of abuse such as rape. Rape of children was pointed out as a serious problem by the community members and caregivers. One of the comments given by the caregivers include,

Children are being raped. Many children are raped

When the facilitator posed this question to grade 3 learners: What makes girls afraid to walk on their own? The response was:

C1: The boys will stab them

F: Why will they stab the girls?

C1: They do not get on with the girls

F: Have you ever seen this stabbing happening?

C2: Yes

F: Who was this girl?

C2: Nellie

F: was she big or young?

C2: She was big

F: Did you know the boy who stabbed her?

C2: Yes

F: Where is Nellie now?

C2: She is still in hospital

F: Was she badly hurt? Did police come and fetch the boys?

C2: Yes

Children's exposure to poor infrastructures in the broader community were seen by children as hampering their school attendance. Poor access routes to school, both in terms of distance and the quality of the roads makes the journey to school for many children extremely difficult. Children explain that the roads to schools are dusty or muddy, and these unpleasant conditions meant that they arrive at school tired and dirty. Children's account shows that they face much hardship which makes attending, accessing, and participating in school difficult for them. Their motivation to attend the school is affected by these adverse and dangerous conditions. Some of the poor

conditions identified by them include a river that they must cross to get to school, and a forest that they feel places them at risk of harm. The excerpt below reveals their comments about their journey to school. It is clear that these experiences place children at risk of harm, and it is likely that they are vulnerable to school drop out and school disaffection.

P: When we are walking on the road to school, we look like the people that didn't take a bath because of the wind (and dust). The other thing is that my uniform becomes dirty and I have to go back home and change. While you going home, the time is moving and you get back to school the teacher punishes us as if we are late at school, and they also close the gate. The car also splashes me with dirty water while I am walking to school and my shoes become wet. In the afternoon, I need to wash my shoes and it is not easy for me to go to school on the following day if my shoes are not dry.

One learner commented,

P: The storm makes me absent at school because I cannot walk.

Children were aware of their vulnerability in view of poor infrastructure in the area, and that they are at vulnerable to illnesses in particular caused by exposure to cold weather conditions.

Another issue that emerged was poor infrastructure in certain schools. Even community members had some concern about the poor quality of toilets in some schools. The stories about the toilets were revealed when the children were asked this question: What things don't you like about school?

F: Okay, let us now go to toilets. You said there is huge problem in the toilet. What is the problem?

P: Let's say you are eating here you see the toilets are closed and flies can come and sit on your food.

P: You find that we are learning and bad odour comes in and you can't even concentrate well because of the odour.

- P: We don't like the toilet - are dirty*
- P: When you go to the toilet, they don't flush; they pee on the seat and write on the wall, they write bad things on the wall, and on the door*
- F: Who are these people who are doing this?*
- P: Big children*

Grade 6 learners at a special school included in the study complained about the lack of piped water at the school. They explained how this was a threat to learner health and well-being:

- P: I think we need to have water in the school. Every time we go to the toilet we need to carry water to pour into the toilet.*
- P: All the time we have to be pumping for water. We must change the pump and have taps for water. We cannot go quickly to the toilet because we have to pour the water into the toilet and this takes a long time.*
- P: Sometimes the small children don't pour water in the toilet and the toilets are bad and smelly.*

4.3.2.2 Control, regulation and powerlessness

The data suggest that there are mechanisms within the schools and communities to regulate and control children's access to education and social programmes. For example, in this schooling context, non payment of school fees seems to be an exclusionary factor despite the fact that South African School Act of 1996 protects children from this exclusionary practice. Children do not go to school on account of not having a school uniform. From the data, it is evident that the school uniform and school fees serve as barriers to schooling to many children in Richmond schools. Children reveal their difficulties experienced in relation to the payment of school fees and uniform.

Children explained the ways in which schools deal with non-payment: school reports are withheld; children are expelled; sometimes it seems children are punished if they do not have appropriate stationery.

P: ...they do not have someone who will pay school fees for them. If you do not pay fees you don't get your report.

P: She does not go to school because she does not have a uniform or school books.

P: They don't go to school because they don't have money and afraid that the teachers are going to hit them.

P: They don't have money to pay

F: What about those who are absent at school. Why they don't come to school?

P: Maybe she doesn't have a uniform and she doesn't have money to buy it.

A teacher at a local school confirmed that school fees are used as a mechanism of control and regulation,

We are doing what we are NOT supposed to do. We hold their results at the end of the year and then they come in numbers ...then they will pay and we release the reports - even the parents pay in the following year. Now we are in 2005 the parent will pay in 2006 January. You know in order to see the position (results) of the child. Then you (the parent) can see if he's going backwards or forward (Teacher, Primary School).

Further instances of control and regulation by schools emerged with respect to teenage pregnancy and discipline procedures in schools. There seems to be evidence of poor and inconsistent implementation of policy in certain schools as pregnant learners experience exclusionary pressures by school personnel.

P: Ma'am, another child was expelled from school, Ma'am; she was pregnant (School C, Grade 3).

P: Some do not come to school because it will be noticed that they are pregnant.

F: Okay, others are afraid to come to school because they are pregnant. What happens when someone is pregnant at this school?

- F: Okay can you talk one by one. What happens?*
- P: The teacher tells them to go and not to come back to school.*
- P: They are told to go home and not come back.*
- F: So when do they come back?*
- P: When they have given birth. When the stomachs are too big they are told to go home.*
- P: If the stomach is still small they remain at school.*
- P: But only those in the lower grades are chased away, those in grade 12 are not chased away. (Grade 9 girls)*

With regard to discipline, corporal punishment is in direct contravention of the South African School's Act of 1996. However, many educators appear to be using corporal punishment as a means of disciplining their learners. Learners expressed their fear of corporal punishment, and indicated that it is a significant barrier to schooling when asked, 'what don't you like about school?'

I do not like when teachers beat us (Grade 3 learner)

(I would like them to) throw away sticks that they (are) using to beat us Grade 3 learner)

F: Okay what don't you like about school?

P1: Corporal punishment

F: Corporal punishment? Do teachers hit you in this school?

P1: Yes

F: For what?

P1: if we made a mistake

P2: If we didn't do homework (Grade 6 learner)

F: Why do you get punishment?

P1: If we come late at school.

P2: If we do not do homework.

P3: If we don't participate in class, the teacher hits us.

F: How do you feel after punishment?

P: Sad and painful (Grade 6 learner)

The theme of control, regulation and powerlessness was also evident with respect to access to social welfare programmes for children. For example, as poverty alleviation strategy the government initiated the Child Support Grant (CSG). The findings in the study suggest that many children in Richmond area are eligible for the Child Support Grant but are not receiving it. To access the grant, certain requirements prescribed by the government need to be fulfilled. In this case, to access the grant the caregiver has to present his/her identity document, the birth certificate of the child, and sometimes the death certificate of a child's parents if the person who is applying for a grant is not a biological parent of the child. The data emanating from community members reveal that documentation and long delays in getting the Child Support Grant pose a problem in a number of cases in a way that children fail to access them. The difficulties of access in many cases appear to be the required documentation such as ID and birth certificate. There appear to be no systems in place to support families in obtaining these documents, and there are no monitoring mechanisms in this community to address barriers to access.

F: Are there still many children who are not getting the child support grant who should be getting the Child Support Grant?

Community Member:

Ja, ja, there's, there are a number of those children but eh that's the problem, according to my experience, are the documents, like birth certificate, er, ja, those are the problems or maybe...

The following story emerged from NGO volunteer worker,

The Ngcobo family took refuge in Richmond because her husband abused her. The house does not belong to them. The house does not have a roof. They get wet when it rains. She lost her I.D. (Identity Document), and therefore cannot access the Child Support Grant for her child. Her child was burnt by a candle in the head. She supports herself by doing odd jobs in the neighbourhood – like building walls of the houses, working in the garden. She (the mother) cannot get other employment because she does not have an ID. The situation is not good because she does not get help with her ID (Volunteer, NGO).

4.3.2.3 Quality education and support for all learners: Myth or reality?

All South African policy documents and legislations make a commitment to quality education for all learners. In addition, there is a commitment to educational support for learners to meet their diverse learning needs. This commitment to quality education is emphasised in the Education White paper 6 (DoE, 2001) by acknowledging that all learners can learn, whether able or disabled, and must be provided with support.

The data reveal that learners experience many problems in terms of lack of educational resources such as desks, textbooks, exercises books and stationery, and library facilities. This was revealed as a major concern in a number of community meetings that were held. Besides the lack of educational resources, participants at the urban community meeting complained of a lack of accounting teachers at grade 10, 11, 12 levels. In a deep rural project area community members said that there were no teachers for maths, science and biology. This could be regarded as major barrier to children in accessing quality education.

The data also reveal that children experience poor quality of teaching and learning. Learners commented that teachers do not explain sufficiently, are often critical and often not approachable when learners want to ask question. Sometimes teachers use personally derogatory terms when learners give incorrect answers or ask questions. Learners also complained about the absenteeism rate of the teachers in their schools. The excerpt below is one of the comments by learners about poor quality teaching styles used by teachers:

If the teacher just dictate (reading notes for use and need to write down) notes not writing in board. So it is difficulty for us because there are other words you can't spell it.

F: Okay the way teachers educate you and think you know the spelling but you don't know spelling.

P: There are other teachers who are not capable of teaching

F: How you see

P: teacher from the beginning of the year give the same thing and there is no change. If she comes in that what she is going to talk about.

The poor quality of teaching and lack of commitment among the teachers is also evident in the special school in the study. The learners were very critical of the fact that educators were unable to communicate in South African Sign Language, the learners' first language. They stated that their learning is severely compromised.

F: Tango, your school work, is it easy or difficult?

P1: English and Maths are difficult. Sometimes I don't understand the questions. When I ask the teacher, she explains to me sometimes. Sometimes she cannot explain. She goes away. When she comes back, I ask her again. But she does not explain. She tells me to keep quiet and she goes away.

F: Then your work becomes difficult and you don't understand the other work..

P3: When I'm writing, I get stuck. I go to the board and ask teachers to help me. Teacher says that she does not know. I think that she does not know the Sign Language. Then my work is poor and I get zero. Teacher marks my books and I get wrong.

P4: Maths is difficult. Addition is difficult. But I am trying to improve. When I am reading and I don't know any words then I call teacher and ask teacher. But she gives me the book and tells me to read again. Then she goes and talks to someone else. She takes a long time to come back. When she comes back I ask her again. She tells me to wait. Some of my work I can manage on my own. If I can't manage I ask teacher to show me. But maybe she doesn't understand me or explain to me in Sign Language.

F: Okay, now we are going to discuss problems and why schoolwork is sometimes difficult. Tell me about the problems you have in the classroom.

P: Sometimes the teachers don't know Sign Language and they can't teach us well. The other problem is that there is no interpreter.

P: We don't understand the hearing teachers, but we understand the Deaf teachers.

The issue of race was raised by some of the learners at School C, which is a racially mixed school. The school also has educators primarily from different race groups. It appeared in the data that teachers treat differently the children of different race, gender or ability, thereby modelling discriminatory practices for the learners.

P: Some teachers treat children according to their colour...maybe when you do something wrong they shout at you, but other children do something wrong and don't shout at them. (School C, Grade 6).

The data from the community members in one of the peri-urban project areas also reveal some concerns about the lack of commitment on the part of teachers.

Teachers from rural areas do not work; they sit and do their own things as a result children end up going to school in urban areas.

Teachers don't have a vision. They drink; don't encourage learners to learn, so kids think it's useless to go to school

Educators are lazy

Teachers don't care about learners, and whether are there or not.

The lack of commitment on the part of the teachers is evident in the issue of teacher absenteeism. There seem to be no arrangements made to substitute for educators who are absent. From the learners voices the learners were required to mind themselves or be in care of other learners.

P: I don't like this school because education here is going down. I feel that we are oppressed. Sometimes the teachers don't come to school. The teachers are absent and there is no teaching and I have to learn myself. Sometimes when teachers are absent I have to watch other children.

F: If your teachers are absent, what do you do in your classroom?

P We just stay in the classroom and I am leader. (School G)

The data reveal that most of the children have experienced death, and loss in their families, and are living with grief and loss with no support. In the focus group most of them spoke about illness and death of their close and extended families. Coping with death appeared to be difficult experience for them. According to Malaney (2000), the

death of a parent particularly can be expected to have deep psychological effects on children. There is increased time spent by children in mourning for loved ones, and there are long-term effects of such trauma on children ability to learn. Apart from mourning most of them have to cope with new changes in their lives, for instance taking adult responsibilities, which may be stressful for them because the responsibilities are beyond their age and capabilities. Death of primary caregivers is accompanied by grief and family disruption. These experiences of disruption and loss could be detrimental to the children's appropriate development and progress in schools. The disruption is also caused by the fact that children are often placed in the care of distant relatives. They have to cope with radical readjustment in their lives. The emotional trauma that such children undergo is reflected by one participant who indicated that it pains him to walk past his father's grave daily on his way to school. When the children had to reflect to their 'Road of Life' (a participatory research task), it appeared that most of them had experience of multiple deaths in their families. The excerpt below indicates their experiences of loss of family members:

P1: In 2001 it was hard when my uncle died and I stay at home a whole week without going to school...but I did come back to school...A few weeks after my uncle died, my father was sick and I had to stay at home...

P2: In 2001 my father died and it was very painful...In 2004 they took me to stay with my aunt.

P3: In 1997 I started at (School B). It was hard when I come to school I found that my grandmother passed away. In 2000 it was hard again when my mother was sick. I had to stay at home for the whole year and I came back to school in the following year.

From learner voices, it is evident that children who have emotional problems often do not do well at school. Due to anxiety, depression and lack of interest, they cannot cope with expectations and demands made on them by the school. This was evident when the learners were asked what made the work at school difficult. The learners commented that the reason why learner did not do well at school, or attend school, was because:

He is always thinking of his mother who is sick...of what he will do if he loses his mother because he is still young (School C. Grade 3)

(She is) always thinking of her mother, thinking that maybe (by) the time she comes home, the mother will be death. (School C, Grade 3)

Children's responses indicated fear of death and sickness as a common concern among them. To illustrate, when asked: What do you like about your life? What do you like about yourself? What would you change about your life? In a focus group interview, three grade 3 learners responded:

I am happy that both my parents are still alive.

I wish no one would die at home.

I am still alive (in response to the question: What do you like about yourself?)

The learners' data also suggest that learners are aware of the impact an HIV/AIDS and death have in the family. Here are some of the comments given by them about HIV/AIDS and death:

The fact that there is someone at home with HIV/AIDS will definitely affect his learning...because there is someone sick. Sipho will have to take care of the sick person. The mothers are not there, they are working on the farms (School, FG3)

(If her mother was sick, this learner would)... abscond from school and go home to take care of her (School A, G3)

P: If there is someone that passed away at home, it makes it hard to learn.

F: In this group, do we experience this problem of having someone pass away at home?

P: Yes, we do

F: If there is someone who had passed away at home, what happens in relation to your school work?

P: It is painful and it is hard to concentrate at school.

P: If parents say, you have to obey..... You are not going to school; you have to do this and that.

P: if the coffin comes to the house on the Friday, then we do not go to school. (School A, Grade 6).

A key finding is that issues of grief, loss and death are not included in the curriculum of the project schools, and that teachers are clearly not equipped to provide the support children need to cope with the trauma in their lives. None of the project schools have established the educational support structures recommended in Education White paper 6 (July 2001) such as Institution Level Support Teams (ILST), neither are there in place District Based Support Teams (DBST). The schools in the study had no knowledge of these structures and no training had taken place.

4.3.2.4 Childhood in the context of poverty, marginalisation and oppression

Findings in the study suggest that poverty is the greatest barrier to schooling and development in the lives of children. The study also reveals that poverty is multi-faceted and experiential in nature, that is, individuals' experience of poverty is different. There is no doubt that poverty seems to be part of a web of human rights violation that children and their families experience in this context (Muthukrishna, 2006).

From the focus group discussions with volunteers from a local NGO, the following story emerged,

There are 7 children staying with their father who drinks too much. He is unemployed and sometimes he is not at home. The whereabouts of the mother of these children's is unknown. She has been missing for four years. There is no cleanliness in the house. The children are too young, and therefore, cannot clean. The oldest of them is 11 years old – there are 6 boys and a girl in the family. I asked the neighbour to take the girl to live with them because of fear that she might get raped. The children do not have birth certificates and attend a school that is too far away from home. They go through bushes when they go home. I found the children crying on my first visit because they did not have anything to eat. (Volunteer, NGO)

What emerges in the stark manner is how poverty intersects with other barriers to schooling and development such as sexual abuse, fractured families, abandonment of

children, poor infrastructure in community, barriers to accessing local schools, and social programmes such as the Child Support Grant.

The data also reveal that poverty clearly denies children the right to basic education guaranteed in Constitution of South Africa of 1996 and in the South African Schools Act of 1996. The data suggest that because of poverty many children in Richmond were reluctant to go to school, since they lack money to pay school fees, to buy school uniforms, and stationery. The fear of being humiliated and marginalized in schools compels them to stay at home. It was pointed out by a number of NGO (non-governmental organisation) representatives that hunger and a lack of income severely impact on children's attendance at school and ability to concentrate and perform well.

Through poverty and unemployment children are affected, because some of them, they don't have money to buy stationery and other textbooks, so those, those are the experiences that they are experiencing and obviously some of them, they are going to school hungry, they sometimes don't like to go to school because if they are at home they might get something to eat, but at school nothing. But that mostly happens in the high school learners, because at high school there is no food scheme (Organisation 7, Interview).

Some participants at the community meetings confirmed that poverty denies children access to school due to no-payment of school fees. These children are often excluded from schooling because they cannot afford to pay school fees or there is a lack of money to buy school uniforms and books. These are some of the comments given by the community members:

My problem out of my two children only one goes to school because I cannot afford, he lost his father and his paying his own way, I have an odd job, we sometimes go to be hungry. (Participant, rural community meeting).

Poverty makes it difficult to continue with education - can't pay school fees, don't have food, do don't go to school, can't afford to buy books and stationery. (Participant, peri-rural community).

Section 28 of the Constitution of South Africa (1996) and Children's Act 38 of 2005 guarantee the right to life to a child, by emphasizing that every child has a right to basic nutrition, shelter, health care and social services. The data reveal that poverty denies the children this right because most children go without food for several days. This problem is regarded as severe in rural areas. The findings also reveal that children enjoy being at school because of the food provided by the government's school feeding scheme. However, many children stated that school meals should be provided at high schools as well. Learners from school G shared their experiences of hunger

P1: There were lots of problems in my family in the last 5 years. There was no food. I used to ask everybody for food. But now we are okay. There were lots of problems before. But now we are fine. Nobody used to listen to me nobody worried.

It is evident from the data that poverty serves as an exclusionary pressure that drives children to drop out of school. As a result children are forced into child labour to supplement the family income or to earn money to buy food.

In the farm areas, teachers complain about harvesting season. During the harvesting of oranges, children are not in school. They rather earn a little pocket money. - I don't know how much-than attend school. That little money means a lot to those children (Organisation 2).

In the data poverty manifests itself as including lack of access to safe and efficient resources of energy. This is evident when many children spoke of the difficulties they encounter when doing homework due to lack of electricity or space. The children explain that if there was someone who was sick or someone who needed to go to sleep, the light needed to be switched off and everyone would go to bed-thereby limiting time available to do homework:

F: What prevents you from doing homework?

P: Others don't have electricity to do homework (School B, Grade 6)

F: Why are you doing (Homework) in the kitchen?

P: because I like the light that we are using in the kitchen, and if I am doing home work in the bedroom, they will tell me that I am going to finish the candle because we are sleeping. We need to save the candle. (School E, Grade 9 girl)

The data also show the link between poverty and risky behaviours. The link is highlighted by the fact that poverty causes children to engage in risky behaviours, for example prostitution. Participants in the urban community meeting confirmed the link between early sexual behaviour and poverty:

Poverty and unemployment leads to children sleeping with anyone to get him/herself some money (Urban community meeting).

One of the volunteers for a community organisation confirmed that poverty leads children to crime. It was also mentioned that girls are falling pregnant in order to access the Child Support Grant. However there is no research to support this contention.

Things are not good because there is high unemployment rate. Our children finish school and they cannot get jobs and they end up being criminals. We are afraid that the crime rate may rise. (Community Source A, volunteer, focus group)

4.3.2.5 Summary

From the discussion above it has appeared that children in Richmond district are guaranteed various rights by key South Africa policy documents. In reality those rights are not exercised by the children. Rights are enacted on the ground. Children in the context of the study are vulnerable, marginalized, and oppressed all the time, and there is a lack of effective voice to address their situation. The children's rights to education, survival and development, protection and participation and right to express opinion are compromised.

CHAPTER FIVE: REFLECTIONS AND CONCLUSIONS

This study has sought to analyze key South African legislation and policies pertinent to children's rights such as South African Constitution Act 108 of 1996, Children's Act No. 38 of 2005, the Education White Paper 6: Building and Inclusive Education and Training systems, (Department of Education, 2001) and National Policy on HIV/AIDS for learners and educators in public schools and students and educators in further education and training institutions (1999).

Secondly it has analysed *secondary data* from NRF project titled "Mapping the barriers to basic education", to ascertain whether children's rights are a myth or reality. The aim was to make visible how children experienced their social rights in the context of HIV/AIDS.

Framed by critical theory this study has enabled me to critique or question the nature of children rights in a democratic South Africa. The data has revealed that the rights embedded in policy documents are not reaching the children. The various rights guaranteed by the above policy documents to which children are entitled such as the right to education, the right to participation, the right to protection, the right to survival and development and the right to express opinion are not protected in the context of Richmond district. Most of the children in Richmond are excluded, subjected and exposed to a wide range of health, social and economic difficulties such as poor school infrastructures, loss of educational opportunities, fear of violence and crime, poor school infrastructures that places them at risk. Children are also exposed to risk factors such as child abuse, physical abuse and sexual abuse both in the schools and in the community. Children experience difficulties in accessing social services. They attend schools which have limited resources with many teachers who are not totally committed to ensuring that children receive quality education in an environment of care and support. The environment they live in is not safe for them to develop their full potential. They frequently suffer from discrimination, social stigma including gender discrimination.

There is no doubt that commitments in policy documents and legislation do not reach children and their families in this context. Education policy is inconsistently

implemented in most sampled schools in the project. Many children experience problems in accessing education because there are exclusionary pressures related to failure to pay school fees and failure to have appropriate school uniform. This is contradictory to what is stipulated in South African School Act (section 3) which state that *“no learner may be refused admission to a public school on the ground that his/her parents are unable to pay or have not pay school fees”*.

A key issue that has emerged in this study is the lack of policy implementation monitoring mechanisms and human resources to monitor policy in this context. For example, there is a powerlessness to address the barriers to accessing social rights embedded in policy documents, and poor commitment and accountability on personnel in the social system. Their powerlessness prevents them from claiming their rights guaranteed in policy documents and legislation.

The data suggest that there is a lack of structural mechanisms to ensure that people can access policy. For instance many people in Richmond are eligible for the grants, but most of them do not access it due to problems such as having no identity document and lack of birth certificate. The other problem includes delays in getting a grant. Therefore there is a need for structural mechanisms that would enable people to access grants easily, to support people, and to closely monitor the process.

The data have revealed that poverty is the greatest barrier to basic education and child development. Poverty limits the range of possible experiences the children can have in the education system. Furthermore, poverty appears to be part of a web of human’ rights violation, which the children and their families experience in this context (Muthukrishna, 2006). As a result of poverty, many children have unfulfilled basic needs; there is widespread hunger amongst them and their families, and neglect of the well being of children. This argument suggests a need for affirmative, persistent, systematic action to change the conditions of poverty and exclusion in the lives of the children and their families, and to ensure they are able to access basic education (Ibid).

There is no doubt that children in Richmond area are not enjoying their rights provided by the South African policy documents that have emerged since 1994. These

children have been failed by the government and society. The study raises these questions: How can we make these children realize their rights? How do we empower them with a language of emancipation and how can we instil the sense of agency among them to challenge and question their situation?

REFERENCES

Armstrong, L. (2005). *AIDS Orphans*, UK: Topsy Foundation, SA.

Avert organization (2003) AIDS Orphans: from:
<http://www.avert.org/aidsorphans.htm> (retrieved 19 December 2007)

Babbie, E. (2002). *The basic of social Research*. (2nd ed.). Belmont, CA: Wardsworth/Thomson.

Babbie, E. & Mouton, J. (2001). *Practice of social research*. Cape Town, Oxford: University Press.

Badcock-Waters, P. (2002). Education. In Gow. J. & Desmond, C. (eds), *Impacts and interventions. The HIV/AIDS Pandemic and the Children of South Africa* (pp. 95- 110). Pietermaritzburg: University of Natal Press.

Ball, S. (1990). *'Policy Matters! 'Politics and Policy making in Education*, London: Routledge.

Bernard, A.K. (2000). *Education For all and children who are excluded*. Dakar: World Education Forum.

Bevan, P. (2004). *Exploring the Structural Dynamics of Chronic Poverty. A sociological approach*: Department of Economics and International Development, University of Bath.

Bohle, H.G., Gebhard, Initial, & Harm, C. (2003). SAVI-Workshop Maputo, University of Heidelberg, Germany: South Asia Institute.

Burns, A., & Ruland, C.D., & Finger, W., Murphy-Graham, E., & McCarney, R & Schuller, J. (2004). Reaching out of school youth with reproductive health and HIV/AIDS information and services (Electronic Version). Family Health International, Youthneth Program. Retrieved March 3. from:

<http://64.233.179.104/search?q=cache:ovaf8k5rdpwj.www.fhi.org/nr/rdon/yreso/egkwwx7wo3ry305vwgn6gh5xcbir5fxzr23ke7rd2mnts2koqs61sgvbsydjliuhsi33gmfnbn/y14tinal.pdf%22reaching+out+of+school+youth%22&hl=en>

Burr, R.C., Montongomery, H. (2003). Children and Right. In M. Woodhead and H. Montgomery (eds). *Understanding childhood: An interdisciplinary approach* (pp.136-173) Milton Keynes: Open University Press.

Carr, W. & Kemmis, S. (1986). *Becoming critical: Education, Knowledge and action research*, London: the Farmer Press.

Children's Charter of South Africa. (2007). From:
<http://www.anc.org/misc/childcht.html>. (Retrieved 21 June 2007)

Chisholm, L. (ed.). (2004). *Changing Class: Education and Social change in Post-apartheid South Africa*, Pretoria: Human Science Research Council.

Cohen, D. (2002). HIV & Education in Sub-Saharan Africa: Responding to the impact. *Perspective in Education*, 20(2): 13-23.

Cohen, L. Manion, L. & Morrison, K. (2000). *Research methods in education* (5th ed.), London and New York: Routledge Farmer

Coombe, C. (2000). Keeping the education System Healthy: Managing the impact of HIV/AIDS on Education in South Africa. *Current Issues in Comparative Education in South Africa*, 3(1): December.

Daniels, R.E. (1993). *An exploratory qualitative based investigative of the impact of a Community interventions on some participants in Newlands East*. University of Natal, Pietermaritzburg.

Department of Education (1996). National Education Policy (Act No. 27 of 1996). Draft National Policy on HIV/AIDS for learners and Educators in Public Schools and Students and Educators in Further Education and Training

Institutions.

Department of Education (1997). *Understanding the South African Schools Act: What public schools governors need to know*, Pretoria: CELP.

Department of Education (2001). *Education White Paper 6: Special Needs Education: Building an Inclusive Education & Training Systems*: Pretoria: Government Printers.

Department of Health/Department of Social Development (2003). *Research report on Health and Social services to address the needs of the orphans and other vulnerable children in the context of HIV/AIDS*: Pretoria: Department of Health/Department of Social Development.

Department of Social Development (2003). Fact sheet: *Extension of the Child Support Grant*. Available at www.welfare.gov.za. (accessed 9 July 2004)

Department of Social Development (2005). *The evaluation of costs and process indicators for Home Community based programmes phase report*, South Africa, Wits & CWHC.

Department of Social Welfare (2001). *Integrated Home/Community Based Care Model Options*: Input into Cabinet Lekgotla: Pretoria.

Descombe, M. (1998). *The research guide*. Buckingham: Open University press

Desmond, C. & Gow, J. (2001). *The cost-effectiveness of six models of care for orphans and vulnerable children in South Africa*. Health Economics and HIV/AIDS Research (HEARD), Durban: University of Natal and UNICEF.

Desmond, C. & Gow, J. (2002). *The current and future impact of the HIV/AIDS epidemic on South Africa's children*. (pp. 1-47). UNICEF, South Africa.

De Vos, A.S. (1998). *Research at Grassroot: A primer for caring professions*. Pretoria: Van Schaik Publishers.

Dunn, W.N. (1994). *Public Policy Analysis*. New Jersey: Prentice-Hall, Inc.

Ebersohn, L. & Eloff, I. (2002). The black, white and grey of rainbow children coping with HIV/AIDS. *Perspective in Education*, 20 (2): 77-85

Ewing, D. (2002) Welfare. In Gow, J. & Desmond, C. (eds.), *Impacts and Interventions. The HIV/AIDS Pandemic and the Children of South Africa*. (pp. 79-93) Pietermaritzburg: University of Natal Press.

Fact Sheet No.10 (1993). *The Right of the child: Making children rights a reality*, Office of the High Commissioner for Human Rights (A/conf.157/24(part1)Chap111) From: <http://www.unhchr.ch/html/menu6/2fs10htm> (accessed 02/04/2006)

Flanagan, L. (2007). *South Africa has most AIDS orphans*. Johannesburg: South Africa

Giese, S.H., Meintjies, S.H., Croke, R. & Chamberlain, R. (2003). *Health and Social services to address the needs of orphans and vulnerable children in the Africa context of HIV/AIDS in South*, University of Cape Town: Children's Institute.

Giese, S. (2002). Health. In Gow, J. & Desmond, C. (eds.), *Impacts and Interventions. The HIV/AIDS Pandemic and Children of South Africa* (pp. 59-77) Pietermaritzburg: University of Natal press.

Govender, S. & Masango, D. (2007). *Government explains new Children's Act, South Africa information*. <http://www.southafrica.ifo/publicservices/citizens/your-rights/childact.03070.htm> (11 July 2007)

Grbich, C. (2007). *Qualitative data analysis: An Introduction*, Thousands Oaks, CA: Sage.

Groce, N.E. (April 2003). HIV/AIDS and people Disability. *The Lancet*. Vol.361
Integrated National Disability Strategy (1997). South Africa. Cape Town.

Guest, E. (2001). *Children of AIDS. Africa's Orphan Crisis*. Pietermaritzburg: University of Natal Press.

Hall, K. & Monson, J. (2006). *Free to learn: The School Fee Exemption-policy and the National nutritional programme*, Cape Town: Children's Institute.

Hall, K., Muthukrishna, A. & Ebrahim, H (2005). Childhood poverty and social exclusion in England and South Africa, *Journal of Education*, No 35, 49-67

Hanson, S. (2003). *Tropical medicine and International Health*. Vol.8.No.9 (pp.765-766).

Harvey, L. (1990). *Critical social research: Contemporary social research*. London: Unwin Hyman. (opac)

Helco, H. (1972). Review Article. Policy analysis, *British journal of Political Science* 2. (pp 83-108).

Henning, H., Van Rensburg, W. & Smit, B. (2004). *Finding your way in qualitative research*. (1st ed.). Pretoria: Van Schaik

Hepburn, A. (2002). Increasing primary education access for children in AIDS affected areas. *Perspective in Education*, 20(2): 87-98

Higson,-Smith, C. & Killian, B.J. (2000). Caring for children in fragmented communities. In Donald, D., Dawes, A. & Louw, J. (ed.). *Addressing childhood adversity*. Cape Town: David Phillip, pp. 202-224

- Hill, M. (1997). *The policy process in the Modern state* (3rd ed). British Library Prentice Hall.
- Hilary, J., Penrose, A., King, F., Heaton, A. & Wilkison, J. (2002). *13 Globalisation and children's rights*. UK: (Ltd)
- Hogwood, B., W. & Gunn, L.A (1984) *Policy Analysis for the Real World*. London: Oxford University Press.
- Howell, C. & Lazarus, S. (2006). *White Paper 6: A framework for change or limiting new possibilities?* Unpublished manuscript, Education Policy Unit, University of Western Cape.
- HSRC/EPU (2005). *Emerging voices. A report on education in South African rural communities*. Cape Town: HSRC press.
- Huber, U. & Gould, W. (2002). *HIV/AIDS, poverty and Schooling in Tanzania and Uganda*, UK: University of Liverpool, London Routledge.
- Human Rights Watch World Report (2002). Children's Rights: Defending human Rights Worldwide From: <http://www.hrw.org/wr2k2/> (26 June 2006)
- Kehler, J. (2003). *A gender perspective on the Draft Children's Bill*, Cape Town: Agenda 56.
- Kelly, M.J. (2000a). Adapting the education sector to the advent of HIV/AIDS. UNAIDS Pre-Conference Satellite Meeting, UNISA, 9 July 2000. (<http://www.unaids.org/html/pub/publication>) 22 August 2004)
- Kelly, M.J. (2000b). *The encounter between HIV/AIDS and Education*. Lusaka: University of Zambia.

Kilian, B. (2007). Mapping barriers to education: the experience of learners in the context of HIV/AIDS and poverty. Paper presented at the 'Education for South Summit-the way forward', Cape Town, 5-9 March.

Lachman, P. Poblete, X., Ebigbo, P., Nyandiya-Bundy, S., Bundy, R.P., Killian, B., Doek, J. (2000). Challenges facing child protection, *Child abuse and neglect*, Vol.26 No.6/7 (June) pp.587-617

Levin, P. (1997). *Making Social Policy: the mechanisms of government and politics, and how to investigate them*. Buckingham-Philadelphia: Open University Press.

Malaney, P. (2000). The Impact of HIV/AIDS on the education sector in Southern Africa. Consulting Assistance on Economic Reform (CAER). Discussion Paper No.81.(S.1:s.n.).

Marcus, T.C. (1999). *Living and dying with AIDS!: Wo Zaphela izingane! It's destroying the children*. Pietermaritzburg: University of Natal Press.

May, J. (2000). Growth, development, poverty and inequality, in May, J. (Ed.), *Poverty and inequality in South Africa: Meeting the Challenge*. Cape Town: David Phillip publisher, (pp.1-81).

Merrian, S.B. (2002). *Qualitative research in practice: example for discussion and analysis*, (1st ed.). San Fransisco: Jossey-Bass.

Miles, M.B & Huberman, A.M. (1994). *Qualitative data analysis: an expanded source book*. London:Sage.

Moletsane, R. (2003). Another lost generation? The impact of HIV/AIDS on schooling in South Africa. *The International Journal of School Disaffection*, 1(2): 7-13

Mouton, J. (1996). *Understanding social research* (1st. ed.). Pretoria: Van Schaik. (opac).

Mulinge, M.M. (2002). Implementing the 1989 UN Nation's Convention on the Rights of the Child in Sub-Saharan Africa: The overlooked Socio-economic dilemma, *Child abuse and Neglect* Vol.26 (November) 1117-1130

Muthukrishna, A. & Ramsuran, A. (2005). Layers of oppression in the context of HIV/AIDS: The case of adult and child learners in the Richmond district, province of KwaZulu-Natal, *International Journal of Inclusive Education*, 4,401-416.

Muthukrishna, A. (2006). *Research report: Mapping the Barriers to basic Education an HIV/AIDS context. School of Education and Development*, Pietermaritzburg: University of KwaZulu-Natal.

Myers, M.D. (2005). *Qualitative research information system*. Retrieved 03 August 2006 from <http://www.qual.auckland.ac.nz/>

Neuman, W. (2000). *Social Research methods*. (4th ed.). Boston: Allyn & Bacon

Ntozi, J.P.M. (1997). Effects of AIDS on children: The problems of orphans in Uganda, *Health Transition Review*, Vol. 7.33-40

Odiwour, N. H. (2000). The impacts of HIV/AIDS on primary education: A case study of selected District of Kenya. Institute of International Education , Stockholm University (Retrieved date) from <http://62.23.245.46/ev.php?1D=1101201&1DU=DO TOPIC>

Organisation for African Unity (OAU). (1994). African Charter on the Rights and Responsibilities of the African Child. AOU Doc. CAB/LEG.24.91990. *Entered in force* Nov.29. 1989.

Palmqvist, E (2006). *Children's Rights in Kenya,-an Analysis Based on the CRC Reports*, Kenya.

Piwoz, E. & Preble, E. (2000). *HIV/AIDS and Nutrition: A review of the Literature and Recommendations for Nutritional Care and Support in Sub-Saharan Africa*. Washington: Academy for Educational Development.

Proudlock, P. (2006). *Children's rights*, University of Cape Town: Children's Institute.

Radmiah, P. (2006). *Teachers Dominant Discourse of Barriers to basic Education in an HIV/AIDS Context*: University of KwaZulu-Natal, Pietermaritzburg.

Ranchod, D. (2005). *HIV/AIDS and its impact on children in South Africa*. 4th World Congress on family law and Children's rights. Cape Town: University of Stellenbosch.

Rasmussen, D.M. (1999). *Handbook of critical theory*, Blackwell: Polity press,

Republic of South Africa (1996). *The Constitution of the Republic of South Africa (Act 108 of 1996)* Pretoria: Government Printers.

Republic of South Africa (2005). *The Children's Act 38 of 2005*, Cape Town: Government Gazette.

Robison, M. (2005). *Harnessing energies to make children's rights a reality*: 4th World Congress on Family Law & Children's right, Cape Town: South Africa

SA-PPA (1998). *The experience of Poverty, the South African participatory poverty index*. Data research Africa report, Durban.

School of Education and Development. (2005). *NRF Project: Mapping barriers to basic education: A literature review*. School of Education and Development: University of KwaZulu-Natal, Pietermaritzburg campus.

- Scott, J. (1990). *A matter of records: Documentary sources in social science research*. Blackwell: Polity press.
- Silverman, D. (2000). *Doing qualitative research: A practical handbook*, London: Sage.
- Smart, R. (1999). *Children living with HIV/AIDS in South Africa. A rapid appraisal*. Pretoria: Department of Health and save the Children (UK).
- Smart, R.A. (2003): *Policies for orphans and vulnerable children: A framework for moving ahead policy*. Pretoria: USAID/ Save the children
- Solnit, A.J. (1983). *The Vulnerable children child –in retrospect*, Schratz, M &
- South African Government Services (2007). Child Support Grant.
<http://www.services.gov.za/en-za/chilsupportgrant.htm> (retrieved 08 November 2007).
- South African Schools Act No. 84 of 1996. Government Gazette.
- Stalsett, S. J. (2006). *Ethical dimensions of Vulnerability and struggles for social inclusion in Latin America*. Washington DC: University of Oslo, Centre for Development and the Environment.
- Stewart, D. W. & Kamins, M.A. (1993). *Secondary research information sources and methods* (2nd ed.). Vol.4. London: Sage
- Taylor, S. Rizvi. F. Lingard, B & Henry, M. (1997). ‘*The policy Phenomenon*’ *Educational Policy and the Politics of Change*. London & New York: Routledge.
- UNESCO (2000). *Education for all and children who are excluded. Thematic studies-World Education forum*: UNESCO.

UNICEF (1989). Convention on the Right of the Child: Geneva. Available online: <http://www.unicef.org/crc/crc/html> (accessed 02/02/07)

UNICEF (2005). *The state of the world's children. Childhood under threat.* (Retrieved 30 March 2005). From: <http://www.unicef.org/sowc05/english/fullreport.html>.

Vally, S. (2005). Citizenship and children's rights in South Africa. *Journal of Education*, 35, 31-47.

Walker, R.C. (1995). *Research as social change: New opportunities for qualitative research.* London: Routledge.

Whiteside, A. & Sunter, C. (2000). *AIDS. The Challenge for South Africa.* Cape Town: Human & Rousseau and Tafelberg.

Williamson, J. (2004). Communication from Williamson, Technical Advisor, USAID. (<http://www.aidsmap.com/en/docs>) (22 August 2004).

Wikipedia, the free encyclopaedia. The history of South Africa in the apartheid era. In. <http://en.wikipedia.org/wiki/apartheid.html> (Retrieved 26 June 2007)

