

ORDINANCE

No. 3

1986

*(Assented to by the Administrator-General
on 2 September 1986)*

(Afrikaans text signed)

ORDINANCE

To provide for the provision of education to members of the Herero population group; and to provide for incidental matters.

BE IT ORDAINED by the Legislative Assembly of the Hereros, as follows:—

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PRELIMARY

1. In this Ordinance, unless the context otherwise indicates, —

Definitions.

- (i) "Administration" means the Administration for Hereros; (ii)
- (ii) "advisory board" means an advisory board referred to in section 17; (iii)
- (iii) "complementary education" means the complementary education contemplated in section 44; (1)
- (iv) "compulsory subjects of study" means the compulsory subjects of study referred to in section 68; (li)
- (v) "consultative or management committee" means a consultative or management committee established in terms of the Establishment of Local Government in Coloured Townships Ordinance, 1965 (Ordinance 34 of 1965); (xxx)
- (vi) "Director" means the officer at the head of the Division as contemplated in section 6; (vi)
- (vii) "Division" means the Education Division of the Administration; (iv)
- (viii) "education" means education for Hereros within the limits set in section 2; (xix)
- (ix) "education personnel" means the educational personnel referred to in section 50; (xxiii)
- (x) "educational institution" means a school or a hostel, or both a school and a hostel; (xxii)
- (xi) "employee" means an employee as defined in section 1 of the Government Service Act, 1980 (Act 2 of 1980); (liii)
- (xii) "Executive Committee" means the Executive Committee of the Hereros; (xliv)
- (xiii) "fixed establishment" means the fixed establishment defined in the Government Service Act, 1980 (Act 2 of 1980); (1)

- (xiv) "government educational institution" means a government school or a government hostel, or a government school and a government hostel; (xlvii)
- (xv) "government hostel" means a hostel controlled and maintained by the Executive Committee in terms of this Ordinance; (xlvi)
- (xvi) "government nursery school" means a nursery school controlled and maintained by the Executive Committee in terms of this Ordinance; (xlv)
- (xvii) "government school" means a school controlled and maintained by the Executive Committee in terms of this Ordinance; (xlv)
- (xviii) "handicapped child" means a child who, in terms of this Ordinance, is subject to school attendance and who, in the opinion of the Director, deviates to such an extent from the majority of children in body, mind or behaviour that he
- (a) cannot derive sufficient benefit from the instruction normally provided in the ordinary course of education; and
 - (b) requires special instruction; and
 - (c) should not attend an ordinary class in an ordinary school, because such attendance may be harmful to himself or to other pupils in that class,
- but is nevertheless educable and will derive sufficient benefit from special education; (ix)
- (xix) "Herero" means a member of the Herero population group in the territory as determined under Section 4(1) of the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980); (x)
- (xx) "hostel" means an institution for the board and lodging of pupils or students; (xv)

- (xxi) "junior primary education" means education provided to children in substandards A and B and standard one; and "junior primary course" shall have a corresponding meaning; (xii)
- (xxii) "junior secondary education" means education provided to children in standards five, six and seven; and "junior secondary course" shall have a corresponding meaning; (xiii)
- (xxiii) "medical inspector of education" means any person registered under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974) and appointed as medical inspector of education; (xvii)
- (xxiv) "nursery" means a school in which instruction is given to children who are not subject to compulsory school attendance yet; (xiv)
- (xxv) "officer" means an officer as defined in section 1 of the Government Service Act, 1980 (Act 2 of 1980); (v)
- (xxvi) "Official Gazette" means the Official Gazette of the territory; (xviii)
- (xxvii) "owner" means, in relation to a private school, the person who maintains or controls, or maintains and controls, such private school; (vii)
- (xxviii) "parent" means the father of a child, and, should there be no father, or should the father be unable to act or make a decision regarding the child concerned, the mother of that child, and, should there be no father or mother, or should neither the father nor the mother be able to act or make a decision regarding the child concerned, the person who has the guardianship of that child or the person who is responsible for the care or custody of the child; (xxiv)
- (xxix) "pre-primary education" means education provided in a nursery school; (xxv)
- (xxx) "primary education" means junior primary education and senior primary education (xxvi)

- (xxxvi) "primary school" means a school in which primary education is provided; (xxvii)
- (xxxvii) "private hostel" means a hostel which is not a government hostel; (xxviii)
- (xxxviii) "private school" means a school which is not a government school; (xxix)
- (xxxix) "pupil" means a child who attends and receives instruction at a nursery school, primary school, secondary school or special school; (xvi)
- (xl) "regulation" means a regulation made and in force under this Ordinance; (xxxi)
- (xli) "Representative Authority" means the Representative Authority of the Hereros; (lii)
- (xlii) "school" means an institution or place at which education is provided to children or other persons; (xxxvii)
- (xliiii) "school committee" means a school committee referred to in section 8; (xxxix)
- (xliv) "school term" means one of the terms into which a school year is divided; (xl)
- (xlv) "school year" means the school year as appears from the school calendar for a particular year drawn up by the Director; (xxxviii)
- (xlvi) "secondary education" means junior secondary and senior secondary education; (xxxiii)
- (xlvii) "secondary school" means a school in which secondary education is provided; (xxxiv)
- (xlviii) "Secretary" means the Secretary of the Administration for Hereros; (xxxii)
- (xlvix) "senior primary education" means education provided to children in standards two, three and four, and "senior primary course" shall have a corresponding meaning; (xxxv)

- (xlv) "senior secondary education" means education provided to children in standards eight, nine and ten; and "senior secondary course" shall have a corresponding meaning; (xxxvi)
- (xlvi) "special class" means a class in which special education is provided; (xli)
- (xlvii) "special education" means education of a specialized nature provided to meet the needs of handicapped children; (xlii)
- (xlviii) "special school" means a school in which special education is provided; (xliii)
- (xlix) "standard" means a course for the instruction of a group of pupils for a period of one year, or the group of pupils following such course; (xlvi)
- (l) "teacher" means a person who has been appointed as a teacher under section 9 of the Government Service Act, 1980 (Act 2 of 1980), in a post forming part of the fixed establishment of the Division or being additional thereto; (xx)
- (li) "teachers' training college" means a teachers' training college established in terms of section 35; (xxi)
- (lii) "territory" means the territory of South West Africa; (viii)
- (liii) "this Ordinance" includes any regulation; (xi)

2. This Ordinance shall be applicable to –

Application of Ordinance.

- (a) the education of Hereros up to and including the standard ordinarily required for an examination for the tenth standard; and
- (b) the training of teachers for the provision of education to Hereros of a standard not higher than the standard ordinarily required for an examination for the fourth standard.

CHAPTER I

CENTRAL CONTROL OF EDUCATION

3. (1) Education for Hereros shall, subject to the provisions of this Ordinance, be controlled by the Executive Committee in terms of this Ordinance.

Control of education.

(2) Only Hereros shall be admitted to any educational institution which is established or registered or maintained, or receives financial support, in terms of this Ordinance: Provided that pupils who are not Hereros may be admitted to such educational institution with the permission of the Executive Committee and on the conditions it may determine.

4. The Executive Committee may, from time to time, determine the general policy which is to be pursued in respect of education, within the framework of the following principles, namely that –

Determination of education policy.

- (a) subject to the provisions of paragraph (c)(i), the Christian principle in education shall be recognised and expounded in order to develop and foster in pupils a Christian philosophy of life and of the world;
- (b) the national principle shall be asserted in order to inculcate in pupils a healthy sentiment of undivided love for and loyalty to the common fatherland, and to cultivate appreciation for the traditions, language and culture of all population groups;
- (c) the principle of parental authority shall be accepted to the extent that –
 - (i) the individual parent may request that his child be exempted from attending the beginning of each school day with prayer and the reading of a portion from the Bible, and from instruction in Bible Study;
 - (ii) the individual parent may, where applicable, and subject to the provisions of Chapter VII, decide on the medium of instruction for his child;

- (iii) the individual parent be left an option in regard to admission of his child to a nursery school, and in regard to the admission to a primary school of his child who had already attained the earliest age for admission to a primary school referred to in section 58 but is not yet subject to compulsory school attendance;
- (iv) the parent community of a school may convey its wishes regarding the education of their children and the teaching system to the Division by means of the school committee established for such school.

5. (1) The Executive Committee may –

General powers of Executive Committee.

- (a) subject to the provisions of this Ordinance, establish, maintain and financially support government schools;
- (b) (i) establish, maintain and financially support government hostels at or in conjunction with government schools;
- (ii) levy the fees which it may from time to time determine for the provision of accommodation in such government hostels to pupils, students and other persons: Provided that different fees may be so determined in respect of –
 - (aa) different government hostels or categories of government hostels;
 - (bb) different categories of pupils, students and other persons provided with accommodation in such government hostels; and
- (iii) at its discretion bring to an end the existence of any such government hostel;
- (c) award study allowances to Herero pupils who take courses, for which the Division makes no provision, at approved educational institutions for primary, secondary or special education;
- (d) make provision, including the awarding of transport allowances, for the transport of pupils and students to and from educational institutions and other approved institutions;

- (e) on conditions prescribed by regulation, award money on the rand for rand or any other basis deemed fit by it, to government educational institutions for the purchase of equipment, aids and library books;
- (f) subject to the provisions of any law of some or other competent authority in relation to minimum standards and minimum requirements, make provision for conducting examinations under the control of the Division;
- (g) on conditions prescribed by regulation award money to private hostels with regard to pupils of government schools who are resident at such private hostels;
- (h) recognise any teachers' association or committee thereof as representing the teachers of the territory, or any group of such teachers, and at any time amend or withdraw such recognition;
- (i) take the other measures or action which it deems essential or expedient in the exercise of or in connection with any power granted to it by or in terms of this Ordinance.

(2) The Executive Committee may at any time cancel or withhold any financial assistance, provision, award or allowance (including any bursary, provision, award or allowance (including any bursary, or study allowance) bestowed, granted, made or awarded in terms of this Ordinance or any other law, if –

- (a) the educational institution to which it is bestowed, granted, made or awarded, is not managed satisfactorily or efficiently or in accordance with the provisions of this Ordinance; or
- (b) the educational institution or person to which or to whom it is bestowed, granted, made or awarded, no longer performs the function for which such assistance, provision, award or allowance is bestowed, granted, made or awarded, or no longer complies with or fails to satisfy the conditions to which such assistance, provision, award or allowance is subject;
or

- (c) the continuation of such assistance, provision, award or allowance no longer serves the interests of education or the territory.

(3) Whenever any government school no longer satisfies the requirements laid down in this Ordinance for the establishment of a government school of the category to which it belongs, such government school shall not continue to exist without the approval of the Executive Committee: Provided that the Executive Committee may act in accordance with the provisions of section 34 where the government school concerned is a government school for secondary education.

6. (1) The officer of the Administration at the head of the Division shall be known as the Director of Education and shall, subject to the provisions of the Government Service Act, 1980 (Act 2 of 1980), be appointed by the Executive Committee.

Director of Education.

(2) The Director shall, subject to the directions and control of the Executive Committee, exercise the powers and perform the duties conferred or imposed upon him by or in terms of this Ordinance or any other law.

7. In all schools under the control of the Executive Committee, the syllabuses for all compulsory and non-compulsory subjects of study shall, subject to the provisions of any law of some or other competent authority relating to minimum standards and minimum requirements, be as determined from time to time by the Director.

Syllabuses determined by Director.

CHAPTER II

LOCAL CONTROL OF GOVERNMENT SCHOOLS

8. (1) Subject to the provisions of subsection (2) there shall be a school committee for each government school for primary education and each new government school for secondary education which is established, a school committee shall be instituted within twelve months after the opening of such school: Provided that the Executive Committee may determine at any time that no school committee shall be instituted for any government school for primary education or government school for secondary education designated by it.

Establishment of school committees.

(2) The Executive Committee may, at any time, abolish or dissolve a school committee of a government school for primary education or a government school for secondary education –

- (a) if, in the opinion of the Executive Committee, such school committee does not carry out its duties properly; or
- (b) if such school committee, in the opinion of the Executive Committee, does not efficiently serve the interests of the government school for which it was instituted; or
- (c) if the government school for primary education or government school for secondary education for which it was instituted amalgamates with any other school, or if it is divided into separate schools; or
- (d) if the Executive Committee, on account of any re-organisation of education amenities, considers it necessary or expedient that a new school committee be elected; or
- (e) for any other reasons which it may consider adequate.

9. Subject to the provisions of section 11(5), a school committee shall consist of three, five or seven members, as the Director may determine: Provided that the Director may, at any time when a new school committee is due for election, change the number of members for such school committee to any other of the aforementioned numbers.

Constitution of school committee.

10. A person shall be disqualified from being elected or nominated or appointed as a member of a school committee, or if elected, nominated or appointed, to hold office as such, if –

Qualifications and disqualifications of members of school committees.

- (a) he has at any time been convicted of an offence for which he was sentenced to imprisonment without the option of a fine, unless he has received a free pardon, or unless the period of imprisonment expired at least three years before the date of his election, nomination or appointment; or
- (b) he is of unsound mind and has been so declared by a competent court; or

- (c) he is unrehabilitated insolvent; or
- (d) he is not the parent of a pupil of the school for which the school committee concerned was instituted; or
- (e) he is in the service of the Division or any educational institution under the control of the Division, or is attached to the Division or any such educational institution; or
- (f) he is in the service of or has financial interests in any private educational institution in the territory; or
- (g) he is under the age of 21 years.

11. The members of a school committee shall, subject to the provisions of this section, be elected in the manner prescribed, and such election shall be conducted under the control of the Division.

Election, nomination and appointment of members of school committees.

(2) General elections of members of school committees shall be held triennially on dates determined by the Director.

(3) The first election of members of a school committee instituted after the commencement of this Ordinance shall be held on a day not more than sixty days after the institution thereof, which is determined by the Director, and each election of members of such school committee thereafter shall be held simultaneously with the general elections of members of school committees referred to in sub-section (2).

(4) Each parent of a child who, at the time of an election of members of a school committee, is a pupil of the school for which that school committee was instituted, shall be entitled to vote at such election: Provided that where any person other than the father or the mother has the guardianship of such pupil, only such person shall be entitled to vote at such election.

(5) (a) If –

- (i) the parents of the pupils of a school for which a school committee has been instituted belong to more than one language group; and

- (ii) at least one person from each such language group is not elected as member of the school committee concerned,

the Executive Committee may, at the request of the majority of persons who are entitled to vote from any such language group from which a person has not been so elected, nominate a person from any such language group whom it may designate according to its own choice as additional member of that school committee.

- (b) For the purpose of paragraph (a), every person who regards a specific language as his home language, shall be deemed to be a member of that language group.

(6) If at any time at any election of members of a school committee fewer than the number of members comprising such school committee are elected or the persons entitled to vote do not avail themselves of the opportunity afforded them to elect a school committee, the Executive Committee may, with due observance of the provisions of this Ordinance, appoint the persons whom it may deem suitable as members of that school committee, or to fill the vacancies, as the case may be.

12. A member of a school committee shall hold office from the day of his election, nomination or appointment, as the case may be, up to and including the day immediately preceding the day of election at the following general election of members of school committees held in terms of section 11(2).

Term of office of members of school committees.

13. A member of a school committee shall receive no remuneration, but expenses incurred by him, with the approval of the Director, in the exercise of his powers or the performance of his duties as a member of a school committee, may be reimbursed to him.

Remuneration of members of school committees.

14. (1) A school committee shall meet at least once in every school term.

Meetings of school committees.

(2) The first meeting of a school committee after an election thereof shall be held at a time and a place determined by the Director and each subsequent meeting of such school committee shall be held at a time and a place determined by the chairman thereof.

15. The powers and duties of any school committee shall be –

Powers and duties of school committees.

- (a) to exercise general supervision, as defined from time to time by the Executive Committee, over the school for which such school committee was instituted;
- (b) to advise the Executive Committee on matters pertaining to the welfare of the school for which such school committee was instituted;
- (c) to advise the Executive Committee in connection with any representations received from the parents of children who are pupils of the school for which such school committee was instituted;
- (d) to make recommendations to the Executive Committee in connection with the filling of posts or the making of appointments at the school for which such school committee was instituted;
- (e) to perform the other tasks lawfully imposed upon school committees in general or such school committee in particular by the Executive Committee or the Director;
- (f) to exercise and perform the other powers and duties conferred or imposed upon school committees by or in terms of this Ordinance:

Provided that a school committee shall never interfere with the performance of the professional duties of the teachers at any school.

16. The Director and any officer or employee under his control who has been duly authorised thereto by him, shall at any time have access to the books and documents of a school committee.

Access to documents of school committees.

17. The Executive Committee may at any time and at its discretion –

Establishment of advisory board.

- (a) institute an advisory board for –
 - (i) a teacher's training college;
 - (ii) a government school for special education;

- (iii) a government school for complementary education;
- (iv) a government nursery school;
- (v) a government school for primary education or a government school for secondary education which does not have a school committee;
- (b) prescribe the constitution, powers, duties, privileges, functions and terms of office of such advisory board, and the allowances, if any, payable to members of such advisory board; and
- (c) appoint the members of such advisory board.

18. (1) During the period that a government school does not have a school committee or advisory board, the duties and powers of a school committee or advisory board for that school shall be performed and exercised by the Director: Provided that the Executive Committee may at any time, if it is considered advisable –

Government school without school committee or advisory board.

- (a) direct that a school committee referred to in section 8 shall be instituted or reinstated for any such government school, being a government school for primary education or a government school for secondary education; or
 - (b) institute or reinstate an advisory board referred to in section 17 for such government school.
- (2) The provisions of section 17 shall *mutatis mutandis* apply to the institution in terms of subsection (1) of an advisory board for such government school.

CHAPTER III

PUBLIC EDUCATION

Introductory and General Provisions in relation to Governmental Educational Institutions

19. (1) Government schools shall be divided into the following categories:

Classification and grading of government schools.

- (a) government nursery schools;
- (b) government schools for primary education;
- (c) government schools for secondary education;
- (d) teachers' training colleges;
- (e) government schools for special education;
- (f) government schools for complementary education;

Provided that any two or more such categories may be combined into one school.

(2) The grading of schools within each of the said categories shall be as determined by the Executive Committee from time to time.

20. (1) The Executive Committee shall determine, in respect of each government school, the highest and the lowest standards or classes in which instruction shall be provided at such government school.

Standards and subjects of study at government schools.

(2) Subject to the provision of section 68 and 73 and any law of some or other competent authority in relation to minimum standards and minimum requirements for courses of study, the Director shall determine the compulsory and non-compulsory subjects of study in which instruction shall be provided at a government school.

21. Both boys and girls shall be admitted to every government school: Provided that the Executive Committee may at any time determine, in respect of any government school, that only boys or only girls shall be admitted to such government school.

Sex of pupils of government schools.

22. (1) The Executive Committee may from time to time determine for any government school the area to be served by such government school.

Demarcation of school areas.

(2) A definition of any area determined for a government school in terms of subsection (1) shall be made known by notice in the *Official Gazette*.

(3) When an area is determined for a government school in terms of subsection (1), only pupils residing in that area shall be admitted to that government school:

Provided that pupils residing outside that area may be admitted to that government school on conditions determined by the Director.

23. (1) The Executive Committee may from time to time issue rules and instructions concerning education in, and the management of, government educational institutions, which shall be complied with in all government educational institutions and in the management thereof.

Rules and instructions.

(2) Different rules and instructions may, in terms of subsection (1), be issued in respect of different government educational institutions or different categories or grades of government schools.

24. The Director may at any time make such inspections as he deems necessary or expedient at a government educational institution, or cause such inspection to be made.

Inspection of government educational institutions.

25. The Executive Committee may —

(a) refuse to admit any pupil or other person to a government educational institution;

Refusal of admission to and expulsion from government educational institutions.

(b) order the expulsion of any pupil or other person admitted to a government educational institution from such government educational institution,

if the continued attendance of or residence at that government educational institution by such pupil or person will, in its opinion, be detrimental or harmful to other pupils or persons of such government educational institution or in the effective administration of such government educational institution or if the pupil or person has married.

Pre-primary Education

26. The Executive Committee may, at any time, establish a government nursery school, if it anticipates that the enrolment at such school will, in terms of this Ordinance, justify a staff of at least one teacher.

Establishment of government nursery schools.

27. A child who is three years old or older, but not yet subject to compulsory school attendance, may be admitted to a government nursery school and attend such school until the end of the year immediately preceding the year in which he becomes subject to compulsory school attendance.

Pupils admitted to government nursery schools.

28. Instruction at government nursery schools shall consist of informal instruction.

Informal instruction at government nursery schools.

Primary Education

29. The Executive Committee may, at any time —

Establishment of government schools for primary education.

- (a) establish a government school for primary education to which a government hostel is attached, should it anticipate that the enrolment at such school will, in terms of this Ordinance, justify a personnel of at least four teachers;
- (b) establish a government school for primary education to which no government hostel is attached, should it anticipate that the enrolment at such school will, in terms of this Ordinance, justify a personnel of at least two teachers.

30. Unless the Executive Committee, in terms of section 20, determines otherwise, instruction at government schools for primary education shall be provided in all standards from the initial stage of formal education, namely substandard A, up to and including standard four.

Instruction at government schools for primary education.

Secondary Education

31. The Executive Committee may at any time establish a government school for secondary education, if —

Establishment of government schools for secondary education.

- (a) it anticipates that at such school there will be at least fifty pupils in standard five; and
- (b) in its opinion, it is justified by the educational needs and the educational growth potential within the area normally served by such school.

32. The Executive Committee may at any time extend a government school for primary education to a government school for secondary education if —

Extension of government school for primary education to government school for secondary education.

- (a) there are at least fifty pupils in standard four at such school, or it anticipates that at such school there will be at least fifty pupils in standard five; and

- (b) in its opinion, it is justified by the educational needs and the educational growth potential within the area normally served by such school.

33. Unless the Executive Committee, in terms of section 20, determines otherwise, instruction at government schools for secondary education shall be provided in all standards from standard five up to and including standard ten.

Instruction at government schools for secondary education.

34. The Executive Committee may at any time change a government school for secondary education to a government school for primary education, if it is convinced that the educational needs of the area normally served by such school no longer justify the continuation of such school as a secondary school.

Change of government school for secondary education to government school for primary education.

Teachers' Training Colleges

35. The Executive Committee may at any time establish teachers' training colleges if, in its opinion, it is justified by the educational needs and the educational growth potential in relation to Hereros.

Establishment of teachers' training colleges.

36. A teachers' training college established under section 35 shall, subject to the provisions of section 2(b), provide for the training of both students and serving teachers in order to enable them to obtain the necessary qualifications as teachers, or to improve such qualifications.

Training at teachers' training colleges.

Special Education

37. The Executive Committee may at any time –

- (a) establish special schools; and
- (b) institute special classes at government schools for primary education and government schools for secondary education.

Establishment of special schools and special classes.

if, in its opinion, it is necessary or desirable for the proper care, education and training of handicapped children.

38. (1) The Director may cause a child who is, in terms of this Ordinance, subject to compulsory school attendance and whom he suspects of being a handicapped child, to be examined medically, mentally and otherwise by a person whom he regards as competent, in order to determine whether he is a handicapped child.

Powers of Director in relation to handicapped children.

(2) The Director may instruct a parent of a child referred to in subsection (1) to bring such child to a specified place for the purpose of such examination, and if the parent fails to comply with such instruction, the Director may cause such child to be brought to the specified place.

(3) If the Director after such examination finds that the child is a handicapped child he shall notify the parent of the child in writing –

(a) that he has found that the child is a handicapped child and that he shall begin to receive special education within a period mentioned in the notification;

(b) that the parent may within thirty days of the date of the notification appeal to the Executive Committee against such finding and that the decision of the Executive Committee on such appeal shall be final.

(4) If the parent of the child fails to take steps to cause the child to receive special education within the period mentioned in the notification referred to in subsection (3)(a), the Director may determine to which school the child shall be sent to receive special education and if the parent fails to send the child to the school concerned within the period determined by the Director, the Director may cause the child to be taken to such school.

39. The Director may at the request of a parent approve that a child who is a handicapped child may, subject to the provisions of this Ordinance, be admitted voluntarily to a special school or a special class established or instituted in terms of section 37.

Admission to special schools of voluntary pupils.

40. (1) The Director may at any time, if he is of the opinion that it is no longer necessary or desirable for a child referred to in section 38 or 39 who attends a special school or a special class further to attend a special school or a special class, exempt that child from attending a special school or a special class or discharge that child from such school or class if it is a government school or a class at a government school.

Exemption from further attendance at, or discharge from special school.

(2) No person shall attend a special school or a special class after the end of the calendar year in which he attains the age of twenty-one years.

41. No person shall, without the approval of the Executive Committee, provide special education to a handicapped child at a special school or a special class exclusively for Herero children if such school or class has not been established or instituted in terms of section 37.

No special education without approval.

42. (1) Subject to any contrary provisions contained in any law, the Executive Committee may establish and maintain clinics and institute clinical services for the examination and treatment of handicapped children and the Director may at any time instruct that a handicapped child be sent to a clinic determined by him for examination and treatment or that a handicapped child be subjected to the clinical examination and treatment determined by him.

Establishment of clinics.

(2) For the purposes of subsection (1) "examination and treatment" shall mean examination and treatment intended to identify particular problems experienced in the instruction of the handicapped child and to minimise and eliminate such problems and to facilitate the education of the handicapped child in general as far as possible.

43. (1) Subject to any contrary provisions contained in any law, no person shall, without the written approval of the Executive Committee, establish and maintain any clinic exclusively for the examination and treatment of handicapped Herero children.

No clinics without approval.

(2) For the purposes of subsection (1) "examination and treatment" shall mean examination and treatment intended to identify particular problems experienced in the instruction of the handicapped child and to minimise and eliminate such problems and to facilitate the education of the handicapped child in general as far as possible.

Complementary Education

44. (1) The Executive Committee may at any time establish a school or institute a class for such complementary education as it may determine and as is not contrary

Schools and classes for complementary education.

to the provisions of section 2, if, in its opinion, it is justified by the educational needs of the Hereros or within the area normally served by such school or class.

(2) Persons who are subject to compulsory school attendance, as well as persons who are not subject to compulsory school attendance, may be admitted to the schools and classes referred to in subsection (1).

45. The Executive Committee may at any time, subject to the provisions of section 2, make provision for such out of school courses, educational competitions and lectures as it may determine, for persons who are subject to compulsory school attendance as well as persons who are not subject to compulsory school attendance.

Out of school courses, educational competitions and lectures.

Tuition Fees

46. The fees payable for instruction at government nursery schools and the requisites provided in connection with such instruction, shall be as prescribed by regulation.

Fees payable for nursery school tuition.

47. (1) Instruction given at government schools for primary education, government schools for secondary education, and government schools for special education, including the school books and other school requisites provided in connection with such instruction, shall be free of charge.

Free tuition in primary schools, secondary schools and special schools.

(2) The free tuition referred to in subsection (1) shall in no case include instruction in –

- (a) any special subject which does not form part of the normal school curriculum at such school;
- (b) any ordinary subject which is not taken by a pupil as part of his ordinary school curriculum;

(3) The fees payable for the instruction referred to in paragraphs (a) and (b) of subsection (2) and the books and other requisites supplied in connection with such instruction shall be as prescribed by regulation.

48. The fees payable for the training given at teachers' training colleges and the requisites and the amenities provided in connection with such training shall be as prescribed by regulation: Provided that the Executive

Fees payable for training at teachers' training colleges.

Committee may so prescribe different fees according to any basis of differentiation which it may deem suitable or desirable.

49. The fees payable for instruction given at government schools for complementary education and the books and other requisites provided in connection with such instruction shall be as prescribed by regulation: Provided that the Executive Committee may so prescribe different fees according to any basis of differentiation which it may deem suitable or desirable.

Fees payable for complementary education.

CHAPTER IV

EDUCATION PERSONNEL

50. The education personnel of the Division shall comprise the teachers, including the Director and the other professional officers and employees, who have been appointed in posts forming part of the fixed establishment of the Division or being additional thereto.

The educational personnel.

CHAPTER V

PRIVATE SCHOOLS

51. (1) No person shall establish, maintain or manage a private school for Hereros unless such private school has been registered by the Executive Committee under this Ordinance: Provided that a private school for Hereros which, at the commencement of this Ordinance, is registered under the Black Education Act, 1953 (Act 47 of 1953), shall be deemed to be registered under this Ordinance.

Registration of private schools.

(2) A private school for Hereros shall only be registered if it is attended by five or more pupils.

52. A State-aided school as contemplated in section 8 of the Black Education Act, 1953 (Act 47 of 1953), shall, if in existence at the commencement of this Ordinance and attended by Herero pupils only, be deemed as from the date of such commencement to be a private school as contemplated in this Ordinance.

State-aided schools deemed to be private schools.

53. The owner of a private school registered or deemed to be registered under this Ordinance shall keep and furnish the registers and returns required by the Director in the form and manner which the Director may from time to time determine, or cause such registers and returns thus to be kept and furnished by the headmaster of such private school.

Registers and returns to be kept and furnished.

54. The Executive Committee may at any time and on such conditions as it may impose, allow a pupil of a private school –

Powers of the Executive Committee in relation to pupils of private schools.

- (a) to sit for any examinations or tests conducted, in terms of this Ordinance, with the approval of the Executive Committee or under the control of the Division; and
- (b) to undergo any examination or treatment which may be conducted or supplied in terms of this Ordinance.

55. The Executive Committee may grant financial assistance to private nursery schools, private primary schools and private secondary schools which are registered or deemed to be registered under this Ordinance: Provided that –

Financial assistance to private schools.

- (a) financial assistance shall be so granted to such private nursery schools only in respect of pupils of such nursery schools who have already reached the age of three years but are not yet subject to compulsory school attendance;
- (b) no financial assistance shall be so granted to any such private nursery school, private primary school or private secondary school to which financial assistance has not already been granted at the commencement of this Ordinance, unless no government school is providing or will provide for the educational needs of the pupils of such private school.
- (c) financial assistance shall thus be granted to such private nursery schools, private primary schools and private secondary schools only in respect of the pupils of such schools who are Hereros.

56. (1) The Director, a medical inspector of education, an inspector of education and any other officer or employee authorised thereto by the Director may, at any reasonable time, visit a private school and there conduct any inspection which he deems necessary or expedient.

Inspection of private schools.

(2) Whenever the owner or the headmaster of a private school requests him in writing to do so, the Director may conduct any inspection which he deems necessary or expedient, at such school or cause it to be conducted by an inspector of education or any other officer or employee authorised thereto by the Director and transmit a report on such inspection to the owner or headmaster concerned free of charge.

(3) If the Director, on account of any inspection conducted at a private school in terms of subsection (1) or (2) is not satisfied with –

- (a) the management of that private school; or
- (b) the general welfare of that private school or the pupils thereof; or
- (c) the school attendance of the pupils of that private school; or
- (d) the kind of standard of the instruction given at that private school,

he may, with the approval of the Executive Committee, issue a written certificate in which he states that the instruction which is given at such private school is not regular and efficient tuition;

57. The Executive Committee may at any time by means of a notice in writing to the owner thereof cancel the registration of a private school which is registered or deemed to be registered under this Ordinance –

Cancellation of registration of private school.

- (a) if a certificate referred to in section 56(3) is issued in respect of such private school; or
- (b) if such private school is attended by fewer than five pupils.

CHAPTER VI**SCHOOL ATTENDANCE**

58. A child may be admitted to a primary school during a calendar year –

Earliest age of admission to primary school.

- (a) if he attained the age of six years during a previous calendar year; or
- (b) if he has attained or will attain the age of six years before or on the thirtieth day of June of the calendar year concerned.

59. (1) Every child shall be subject to compulsory school attendance and shall regularly attend a school where he receives regular and efficient tuition from the first school day of the calendar year in which he attains the age of seven years up to and including the last school day of the calendar year in which he attains the age of sixteen years or until he has passed standard ten: Provided that –

Compulsory school attendance.

- (a) the Director may extend the period during which any handicapped child shall thus be subject to compulsory school attendance up to and including any date which shall not be later than the last school day of the calendar year in which that child attains the age of nineteen years;
- (b) the Director may, on such conditions as may be determined by him, exempt any child thus subject to compulsory school attendance from school attendance either temporarily or permanently, if such child, in his opinion –
 - (i) receives or will receive regular and efficient tuition in any other manner;
or
 - (ii) is unable to attend any school on account of ill-health or any other cause.

(2) The parent of a child who is subject to compulsory school attendance in terms of subsection (1) shall ensure that such child regularly attends a school where he receives regular and efficient tuition during the period that he is so subject to compulsory school attendance.

(3) For the purposes of the provisions of this section —

- (a) the instruction given at all government schools shall be deemed to be regular and efficient tuition;
 - (b) the instruction given at a private school in respect of which the Director has issued a certificate referred to in section 56(3), shall, with effect from the date of issue of such certificate, be deemed not to be regular and efficient tuition.
- (4) (a) If the parent of a pupil feels aggrieved by any decision given by the Director in terms of paragraph (b) of the proviso to subsection (1), such parent may appeal against such decision to the Executive Committee, the decision of which shall be final.
- (b) Any appeal referred to in paragraph (a) shall be lodged with the Director within fifteen days after the date on which the decision against which such appeal is lodged, was conveyed to the parent concerned.

60. The Director shall to the best of his ability take steps or cause steps to be taken to ensure that every child who is, in terms of this Ordinance, subject to compulsory school attendance, attends school regularly, and he may conduct or cause to be conducted, any investigation which he deems necessary for that purpose, and he may, for that purpose, require from any person such information as he may deem necessary in connection with the said investigation.

Director to ensure regular school attendance of child subject to compulsory school attendance.

61. (1) No person above the age of fifteen years shall, without the approval of the Director, be admitted to or remain in a government school for primary education.

Maximum age of pupil in primary school.

(2) The provisions of subsection (1) shall not apply to a handicapped child who attends a special class at a government school for primary education.

62. (1) The Director, a headmaster of a school and a school committee may require the parent of any child to produce an identity document, birth certificate, certificate of baptism or other proof in connection with the age of such child, whether or not such child is, or is believed to be, subject to compulsory school attendance.

Proof of age.

(2) For the purposes of subsection (1) "identity document" shall mean an identity document referred to in paragraph (a) of the definition of "identity document" in section 1 of the Identification of Persons Act, 1979 (Act 2 of 1979).

CHAPTER VII

MEDIUM OF INSTRUCTION AND LANGUAGE INSTRUCTION

63. Subject to the provisions of section 67, the medium of instruction through which children in government nursery schools and in the junior primary course of government schools are taught, shall be either English or Herero, whichever of the said languages such children in the opinion of the Director know better and if, in the opinion of the Director they know the said languages equally well, it shall be either English or Herero, as the parents may prefer.

Medium of instruction of children in government nursery schools and in the junior primary course of government schools.

64. Subject to the provisions of section 67, the medium of instruction through which a child in a government school receives his senior primary education and his junior secondary education shall be Afrikaans or English or Herero, whichever of the said languages such child in the opinion of the Director knows better, and if, in the opinion of the Director, he knows the said languages equally well, it shall be either Afrikaans or English or Herero as his parent may prefer: Provided that if the parent requests that the child should receive his junior secondary education through that one of the said languages which he, in the opinion of the Director, does not know as well as the others, the Director may approve of that language as the medium of instruction through which the child concerned shall receive his junior secondary education if, on production of proof to his satisfaction, he is convinced that the child concerned knows that language well enough to receive such education through that medium.

Medium of instruction of child in the senior primary course and the junior secondary course of a government school.

65. Subject to the provisions of section 67, the medium of instruction through which children receive their senior secondary education, shall be Afrikaans or English or Herero, as their parents may prefer.

Medium of instruction of children in senior secondary course of government schools.

66. The media of instruction through which a student receives his training at a teachers' training college shall be Afrikaans and English: Provided that the Executive Committee may in its discretion also introduce Herero as a medium of instruction at teachers' training colleges.

Media of instruction of students at teachers' training colleges.

67. (1) The Executive Committee shall designate Afrikaans or English or Herero as the medium of instruction through which instruction is given in the senior secondary section of a government school: Provided that the Executive Committee may for any government school designate Afrikaans and English jointly as media of instruction through which instruction is given in the senior secondary section of the same government school.

Medium of instruction of a school.

(2) The Executive Committee shall designate Afrikaans or English or Herero as the medium of instruction through which instruction is given in the junior secondary or senior primary section of a government school: Provided that the Executive Committee may designate two or more of the said languages jointly as media of instruction through which instruction is given in the junior secondary or senior primary section of the same government school.

(3) The Executive Committee shall designate either English or Herero as the medium of instruction through which instruction is given in any government nursery school, the junior primary section of any government school and any government school for special education: Provided that the Executive Committee may in its discretion designate both the said languages as media of instruction for any such school or section.

(4) The Executive Committee shall designate Afrikaans or English or Herero as the medium of instruction through which instruction is given in any government school for complementary education: Provided that the Executive Committee may in its discretion designate any two or more of the said languages as media of instruction for any such school.

68. Both Afrikaans and English shall be compulsory subjects of study —

Afrikaans and English as compulsory subjects of study.

(a) in all the standards and classes of all government schools excluding government nursery schools and government schools for complementary education:

Provided that the Executive Committee shall determine in which standards of such schools, or classes at such schools, in which Herero is the medium of instruction, Afrikaans or English, or both Afrikaans and English, shall be compulsory or non-compulsory subjects of study;

- (b) in all the standards and classes of all private schools for Hereros excluding private nursery schools for Hereros.

69. Notwithstanding anything to the contrary in this Ordinance contained, but subject to the provisions of section 70 –

Medium of instruction for instruction in Afrikaans and English.

- (a) English shall be the medium of instruction when English as subject of study is taught to any pupil in any standard or any class at any school;
- (b) Afrikaans shall be the medium of instruction when Afrikaans as subject of study is taught to any pupil in any standard or any class at any school.

70. The Director may either temporarily or permanently exempt any pupil from the provisions of this Ordinance relating to medium of instruction and language instruction, should he deem it necessary or fit in the case of the pupil concerned or should the said pupil reside in the territory only temporarily.

Exemptions regarding medium of instruction and language instruction.

71. (1) Should the parent of a pupil feel aggrieved by any ruling of the Director in relation to the medium of instruction through which that child receives his instruction or the language instruction of that child, he may appeal against such ruling to the Executive Committee, the decision of which shall be final.

Appeal against ruling regarding medium of instruction or language instruction.

(2) Any appeal referred to in subsection (1) shall be lodged with the Director within fifteen days after the date on which the ruling, against which such appeal is lodged, was conveyed to the parent concerned.

CHAPTER VIII

MORNING PRAYERS AND BIBLE STUDY

72. Each school day shall, in every school, excluding a school for complementary education, be opened with prayers and a reading from the Bible.

Morning prayers.

73. Instruction in Bible Study shall be given at every school, excluding a school for complementary education.

Instruction in Bible Study.

74. (1) No child whose parent has requested the headmaster of the school concerned in writing that such child should not attend the prayers and reading from the Bible referred to in section 72 and should not receive the instruction in Bible Study referred to in section 73, shall be compelled to attend such prayers and reading and to receive such instruction, and no child thus exempted may be prejudiced in any way because of such exemption.

Exemption in relation to morning prayers and Bible Study.

(2) No teacher who, on account of conscientious objection, has requested the Director in writing to be exempted from attending the prayers and reading from the Bible referred to in section 72 and from giving the instruction in Bible Study referred to in section 73, shall be compelled to attend such prayers and reading and to give such instruction and no teacher shall be prejudiced in any way because of such exemption.

(3) The Executive Committee may at any time exempt any private school from the provisions of section 72 and 73 should the owner of such private school apply for it in writing, and the decision of the Executive Committee on any such application shall be final.

CHAPTER IX

GENERAL AND SUPPLEMENTARY PROVISIONS

75. (1) The Executive Committee may at any time, when it is deemed necessary or expedient, appoint a commission of enquiry consisting of one or more persons to investigate and report to it on the affairs of any school,

Appointment of commission of enquiry.

hostel, advisory board or school committee, or on any aspect of education for Hereros, or on any particular incident, event or condition at or in connection with any school or hostel.

- (2) (a) The commission of enquiry may take evidence and for that purpose may subpoena witnesses, require the production of any book, record or document relevant to the enquiry, administer an oath or an affirmation to any witness and examine him, and examine any such book, record or document.
- (b) A subpoena to appear before the commission of enquiry or to produce any book, record or document, shall correspond as nearly as practicable to the form prescribed for the purpose, shall be signed by the chairman, and shall be served on the person subpoenaed either by registered letter sent through the post or by delivery by a person authorised by the chairman so to serve it, or in the same manner as it would be served if it were a subpoena in a criminal case issued by a magistrate's court.
- (c) Any person who fails to attend at the time and place specified in a subpoena served upon him in terms of paragraph (b), or to produce any book, record or document in terms of any such subpoena, or refuses to be sworn or to make an affirmation when called upon in terms of paragraph (a) to do so, or when being examined in terms of that paragraph refuses to answer fully and satisfactorily any question lawfully put to him, shall be guilty of an offence: Provided that any person so subpoenaed shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the Supreme Court is entitled.
- (d) A witness who after having been duly sworn or having made an affirmation, gives false evidence before the commission of enquiry on any matter relevant to the enquiry, knowing such evidence to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law in respect of perjury.
- (3) A commission appointed in terms of subsection (1) shall have the power to exclude the public and the press from any session of the commission, or a part thereof.

76. No person shall, without the written approval of the Executive Committee –

Political activities and elections at government educational institutions.

(a) exhibit, circulate or distribute, or cause to be exhibited, circulated or distributed, any placard or notice or other document or paper –

(i) in furtherance or to the prejudice of any political party; or

(ii) in furtherance or to the prejudice of the election of any person as member of the Legislative Assembly of a Representative Authority, and other legislative body of the territory, the council of a municipality, or a consultative or management committee, or which has any bearing on such election,

at or on the premises of any government educational institution or anything on such premises or any fence of such premises or at or during any function of that educational institution, either during or after school hours; or

(b) perform any act, other than an act referred to in paragraph (a), in connection with the election of any person as member of the Legislative Assembly of a Representative Authority, any other legislative body of the territory, the council of a municipality or a consultative or management committee, at or on the premises of any government educational institution or anything on such premises or at or during any function of that educational institution, either during or after school hours; or

(c) conduct, or cause to be conducted, any poll in connection with the election of any person as member of the Legislative Assembly of a Representative Authority, any other legislative body of the territory, the council of a municipality or a consultative or management committee, on the premises of any government educational institution or anything on such premises.

77. (1) The Executive Committee may take regulations in relation to –

Regulations.

(a) any matter which is required or permitted to be prescribed in terms of this Ordinance;

- (b) the functions of the Division;
- (c) the powers and duties of the Director and other officers and employees of the Division;
- (d) the election of members of school committees, the powers and duties of school committees, the election of office bearers of school committees, procedure at meetings of school committees and filling of vacancies in the membership of school committees;
- (e) the establishment, management, control and maintenance of government educational institutions and the educational program followed at such educational institutions;
- (f) the establishment, management, control and maintenance of private educational institutions, the educational programs followed at private educational institutions and the conditions on which money is awarded to private educational institutions;
- (g) matters relating to special education, including the provision and utilisation of artificial medical aids, the transport of handicapped children, escort fees and the appeal which a parent may lodge against a finding of the Director that a child is a handicapped child;
- (h) matters relating to complementary education and out of school courses, educational competitions and lectures;
- (i) the admission, accommodation, school attendance, control, transfer, expulsion and discipline of pupils and students of government educational institutions;
- (j) examinations conducted with the approval of the Executive Committee or under the control of the Division, including conditions and fees in connection with such examinations;
- (k) the award, cancellation, suspension, recovery and take-over of bursaries to pupils and students and the payment of transport and other allowances in respect of pupils and students;

- (l) the compulsory medical inspection of educational institutions, the buildings thereof, the pupils or students attending them and the personnel attached to them;
- (m) the control of funds collected for a government educational institution or a private educational institution to which financial aid is provided in terms of this Ordinance;
- (n) the recovery of any monies payable or levied in terms of this Ordinance;
- (o) generally any matter which the Executive Committee may deem necessary or desirable to prescribe in order to achieve the aims and objects of this Ordinance and to ensure the effective execution of the provisions thereof.

(2) Any regulations made by the Executive Committee in terms of subsection (1) may be made with effect from such date, either before or after the date of publication thereof in the *Official Gazette*, as may be determined by the Executive Committee: Provided that such date shall not be earlier than the date of commencement of this Ordinance.

78. No person shall resist or hinder or impede a member of the education personnel in the exercise of a power or the performance of a function or duty granted to or imposed upon such member by or in terms of this Ordinance, or wilfully interfere with such member in the exercise of such power or the performance of such function or duty by him.

Interference with members of education personnel.

79. Any person who —

Offences.

- (a) contravenes or fails to comply with any provisions of this Ordinance; or
- (b) contravenes or fails to comply with any direction, instruction or notification given under this Ordinance, or any demand or any determination made thereunder; or

- (c) refuses or fails to furnish the information demanded from him in terms of this Ordinance, or furnishes false or incorrect information, knowing it to be false or incorrect, when such information is demanded from him,

shall be guilty of an offence.

80. Save where this Ordinance provides otherwise, any person convicted of an offence in terms of this Ordinance shall be liable to a fine not exceeding three hundred rand or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

General penalty.

81. (1) Subject to the provision of subsection (2) the Black Education Act, 1953 (Act 47 of 1953) and all amendments thereof are hereby repealed in so far as such act and such amendments are applicable to Hereros.

Repeal of laws.

(2) Any regulation, determination, instruction, notice, direction, command or exemption made, done, promulgated, issued, given or granted and any other act performed in terms of the provisions of any Law repealed by subsection (1) shall, if not inconsistent with the provisions of this Ordinance, be deemed to have been made, done, promulgated, issued, given, granted or performed in terms of the corresponding provisions of this Ordinance.

82. This Ordinance shall be called the Education Ordinance, 1986

Short title.