

**Educators' perceptions and understanding of South African law
regarding sexual relationships with learners**

A dissertation by

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“Do good, O Lord, to those who are good, to those who are upright in heart”
(Psalm 125:4)

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Chapter 1 Contextualisation and problem statement

1.1 Introduction

Education as a universal right is enshrined in numerous human rights treaties. It has been recognised as having the power to transform the lives of its recipients. Despite all the international accolades it has received, millions of children around the world are still not exercising their basic right to this education due to the fact that our schools, like many in other countries, are still marred by varying degrees of violent and criminal behaviours that include bullying, substance abuse, sexual abuse, verbal abuse, racism and other anti-social behaviours.

Schools have an obligation to create a safe place for children. A report of the task group on sexual abuse (Department of Education, 2000:2) states that “we accept that schools have a responsibility to protect learners, and are culpable when they don’t”. From time to time the media report on schools, educators, principals, governing bodies and Department of Education in legal actions regarding learner safety. These actions arise from amongst others, being ignorant, uninformed, and unaware of the implications and/or misinterpretation of the legal requirements for learner safety. The task group also mentions that there are many reasons for the failure of schools to exercise their responsibility in regard of proving safety and protection to learners. Reasons for this failure are the following:

- the confusion amongst some communities about what is socially acceptable, unacceptable and criminal in relation to abuse and to sexual harassment.
- for decades society have condoned and in some cases even encouraged relationships between teachers and children. Cases of these inappropriate relations between learners are never reported as abuse, unless something goes wrong with the relationship.
- there is no common understanding of what constitutes sexual harassment. (Department of Education, 2002:3)

For the purpose of this research the ethical relationships between the educator and the learner will be the centre of focus. These relationships should be governed by genuine values of sharing, cooperation, respect and concern for fellow human beings. South Africa as a democratic country has to ensure that its legislation upholds that. The Constitution of the Republic of South Africa, (hereafter Constitution) (South Africa, 1996a) has brought an increased awareness of their human rights amongst citizens... “Educators too are expected to be aware of a legal obligation towards learners, because they work with young immature individuals who, because of their lack of experience and judgement, are not always able to foresee the consequences of their action” (Vollenhoven. 2007:22). Educators should also be conversant with their legal obligation so as to avoid possible liability for neglect and to avoid disciplinary measures being instituted against them. The principle of *ignorantia uris non excusat* will not be tolerated from educators who ignore the law.

1.2 Problem statement

The purpose of the study is to establish how educators understand and perceive the legal provisions regarding sexual relationships with learners. South Africa has one of the highest rates of sexual violence against learners in schools. The justices have not yet dealt with educators who make it difficult for female students to exercise their right to basic education in a safe school environment free from sexual harassment and sexual violence (Palm - Forster & De Wet, 2001:1)

The prerequisite of schools to provide a safe educational environment, free from any form of violence cannot be sufficiently emphasised. This is also stipulated in the South African Schools Act (thereafter Schools Act) (South Africa, 1996b:s1) that is intended to “combat racism and sexism and all other forms of unfair discrimination and intolerance”. A safe school can be defined as “a place where students can learn and teachers can teach in a warm welcoming environment, free of intimidation and fear of violence “(Stevens cited in De Waal, De Wet,

Rossouw and Huyssteen (2005:14). This statement is also echoed by Joubert and Squelch (2005:67) when they proclaim that schools have a legal duty to provide children with a safe environment and to protect them from deviant behaviours that affects their well-being and infringe on their basic rights to security, human dignity, privacy and education.

When educators have sexual relationships with learners an unsafe school environment is created therefore teaching and learning is disturbed. School teachers (educators) have been found by Human Rights Watch to be the largest group of perpetrators: 33% of 153 women indicated that they were raped by a teacher. Fifty six educators were found guilty of raping minor learners during 1999 and 2000 (Human Rights Watch 2001). In 2002 the South Africa Council for Educators (SACE) received about 30 complaints with regard to educators engaging in sexual relationship with learners from their school, and 15 were taken off the roll after they were found guilty of this transgression (De Waal , De Wet, Rossouw and Huyssteen 2005 :27). It is for this reason that the study intends to find out what the implications of the understanding of the educators in regard to having sexual relationships with learners are.

1.3 Research question

How do educators perceive and understand the legal provisions regarding sexual relationships with learners? The study asked the following critical questions:

- How do educators understand/ perceive sexual relationship with learners?
- How do they understand the provisions on the South African law pertaining to the care of learners?
- What do they regard as ethical behaviour of educators?

1.4 Statement of purpose

The purpose of this research is to establish how educators understand the legal provisions regarding sexual relationships with learners; how, despite the laws introduced, learners are still faced with hostile environments created by educators. South African girls of every race and economic class encounter sexual violence and harassment at school that impedes their realisation of the right to education.

There is international concern over educator-initiated sexual abuse in schools. The media in South Africa on a regular basis reports incidents of sexual violence in schools. In the global report of the international tribunal for children's rights released in 2001, the president noted that despite the universal ratification of the Convention on the Rights of the Child in 1989, ten years later all indication are that violence against children is on the rise (Department of Education 2002:2) Cases of violation of children's rights by educators too are reported to be increasing. Educators as professionals are required to be registered with a professional body that prescribes and govern their code of conduct. Most if not all educators are registered with the South African Council for Educators (SACE) which has formulated a Code of Professional Ethics for educators of which every educator receives a copy on registration, so as to ensure ethical behaviour in the teaching profession. The intention of SACE is to ensure that educators uphold their professionalism through ethics befitting the profession. The indication is that registration of educators with SACE is mere compliance because of the continuous reports in the media of alleged unethical behaviours by educators. The seriousness of their behaviour is reported by Joubert (14/10/2005) in *Beeld*, when he says that, "onderwysers wat onbetaamlike verhoudings met leerlinge aanknoop, sal voortaan nie meer pleitooreenkomste kan aangaan tydens tugverhore nie en dus aanhou skoolhou nie". Despite this warning, educators seem not to be aware of the implications of having unethical relationships with their learners.

Most of the sexual abuse in schools is perpetrated by male educators on female learners; there are, of course, rare incidents reported of female educators initiating sexual abuse on male learners. For this research, the male educator on female learners' version will be considered. According to Harber (2004:42) sexual abuses by educators in Sub-Saharan Africa need to be set in a wider context of gendered violence. In South Africa the ways in which gender inequalities operate at a societal level have also been reinforced in schools. Tolerance of gender-based violence in schools is a serious form of discriminatory treatment that comprises the learning environment and educational opportunities for girls. Girls are disproportionately the victims of physical and sexual abuse at school and in society at large (Human Rights Watch, 2001). These sentiments are echoed by Lalor (2004:442) when he says that studies conducted at Red Cross War Memorial Children's Hospital in Cape Town (1982) have revealed that 80% of the sexual abuse victims were females and another study conducted at the same hospital (1988) revealed that of the 88 cases reported 90% were females. This due to the male-dominated social structure. Thus the sexual abuse of children may be facilitated by a widespread belief and cultural acceptance of male dominance plus the socialisation pressure of respecting elders. Children's inability to question elders renders them vulnerable to sexual exploitation. Educators therefore take advantage of the situation by using, *ultra vires*, their age, power and physical coercion to have sexual relationships with learners (Lalor, 2002:445).

1.4.1 Aim of the study

The aim of this research is to explore educators' perception and understanding of the legal provisions regarding sexual relationships with learners.

Objectives

- To determine educators' perception of sexual relationship with learners.

- To determine educators' attitudes to South African education law regarding sexual relationships.
- To determine educators' understanding of the Code of Professional Ethics for educators.

1.5 Theoretical framework

According to Vithal and Jansen (2004:17) a theoretical framework could be described as a well-developed, logical description of an incident. It therefore means that a theoretical frame guides us on how we look and think about a topic, how we formulate important questions and make basic assumptions. A theoretical framework will also enables us to see the bigger picture and connect a particular study to the vast base of knowledge to which other researchers contribute.

This study has been conducted from a legal perspective. This legal perspective deals with the obligation of the government to its people through national law. Every country should have laws that protect its citizens from having their human and fundamental rights infringed upon. According to Bray (2004:10) the law is and should:

- Provide norms and rules that govern private and public action and interaction.
- These norms and rules should be accepted by society as the law.
- Order and certainty in society must be created and maintained by this law.
- Institutions of the state, like schools, should be seen applying and enforcing the law.
- Law must be obeyed by all society and, when it is disobeyed, the (legal) balance should be restored by the state.

It then follows that education as a state institution should be governed by law, hence education law. Education law is not a separate field of law and does not

have its own unique norms and rules. It is a hybrid field of law which comprises norms and standards from the entire field of law (Bray, 2004: 36). Because of its hybrid nature it is made up of these different types of laws namely-

- The Constitution of the Republic of South Africa, 1996, as the supreme law of the land.
- Legislation – This is passed by parliament and can be in the national sphere.
- Common law – enacted by government but arises through custom and historical developments.
- Case law – derived from Constitutional, Supreme, Appeal or High court rulings directly applicable to education which helps to form a basis for future case law in education- related matters (Joubert & Prinsloo, 2006, :34).

Therefore it follows that relationships in schools or in education should fall within the sphere of the national law, and all the other sources of education law. This means that the principle of democracy and the protection of human rights have to be part of education law (Joubert & Prinsloo, 2009:19). Education law may therefore be seen as an omnibus concept for all the legal rules to which all acts carried out in education are subject (Vollenhoven, 2007:17). Any actions by stakeholders in education that fall outside the concepts are considered illegal and could incur liability.

The other important consideration of education law is to bring education in line with the Constitution and to provide a secure environment in which the learner may develop (Oosthuizen, 1998:4). Educators are expected to create this environment by taking the interests of the learners, their well-being and even their safety to heart. This cannot be the case if educators ignore the legal provisions which regulate the ethical relationships between educator and learner.

1.5.1 The Constitution of the Republic of South Africa, (1996)

South African as an emerging democratic country has introduced laws that are intended to uphold its democratic values. The Constitution is the cornerstone of democracy in South Africa and is the supreme law of the country. This supremacy means that all government bodies, including parliament, are subject to it and any law or action which is inconsistent with the Constitution is invalid. These laws are intended to protect fundamental human rights. Like all social spheres in South Africa, education had to be adapted to the intentions of the government. Since education is seen as a key to providing knowledge of fundamental human rights as a basic towards a democratic, open and accountable government, there is a need for the creation of a human right culture in education.

There are global concerns about the violation of children's rights. South Africa as part of the global village became signatory to the United Nations Convention on the Rights of Children in 1993 thus committing itself to upholding children's rights and to taking steps to comply with the provisions of the Convention. Statutes have been introduced that are intended to uphold its democratic ideals throughout the government, education included. Section 1 of the Constitution highlights that – the Republic of South Africa is one sovereign, democratic state founded on the following values

- Human dignity, the achievement of equality and the advancement of human right and freedom.
- Non-racialism and non-sexism (South Africa, 1996c:s1).

Schools therefore have a social responsibility towards upholding human rights by creating a school culture where everybody understands his or her rights and he or her have a duty to respect and tolerate others exercising their rights.

1.5.2 Legislation

In addition to the Constitution, the safety of learners from sexual harassment is enlisted in numerous legal measures. According to the Employment Equity Act, 1998 (South Africa, 1998:s22) sexual attention (or awareness) becomes harassment if:

- behaviour is persistent although a single incident of harassment can constitute sexual harassment; and
- the recipient has made it clear that the behaviour is considered offensive;
- the perpetrator should have known that the behaviour is regarded unacceptable.

This definition should be of help to educators so that they understand what constitutes sexual harassment and that they can check whether the actions of accused really constitute sexual harassment. The Schools Act (South Africa, 1996d: s5 (1)) also makes provision for the protection of learners, both boys and girls to have equal access to education and to be treated equally and fairly. The preamble is based on the democratic values of the country which intend to combat racism and sexism, that are the components of violence at schools. The Act also aims at eradicating all forms of unfair discrimination within the education system and honour the promise of education for all.

Section 8(2) of the Schools Act makes provision for a code of conduct which is aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of learning. A disciplined environment is one where behaviours of both educators and learners are socially acceptable and no violation of human rights is experienced. Providing this kind of environment is envisaged by Maithufi (1997:260-261) as one of the two co-extensive pillars to the *loco parentis* principle – the duty to maintain order at a school. This order should be practised *diligens paterfamilias* –like a diligent father of the family. Extra care is required to care and protect learners from any harm psychologically and/or physically.

The Employment of Educators Act 76 of 1998 (hereafter referred to as EEA) (South Africa, 1998b: s1) was introduced “to provide for the employment of educators by the state, for the regulation of the conditions of service, discipline, retirement and discharge of educators and matters connected therewith”. Section 17 of his Act is totally against sexual relationships between educator and learner; it clearly states that an educator will be dismissed if he is found guilty of “having a sexual relationship with a learner of the school where he/she is employed”.

South African Council for Educators Act 31 of 2000 (hereafter SACE Act) (South Africa, 2000:s2) was introduced as a measure to uphold and safeguard professional ethics in the education system. To ensure that the duties of the council are fair and consistent with the intentions of the SACE Act the composition of the council is representative of all the stakeholders in education, namely educators, parents (school governing body) and learners. Representation is also ensured by considering race, gender, disability and geographical distribution. The South African Council for Educators (hereafter SACE) stresses the importance of educators in providing “the quality of education in this country” that is based on ethics and morals. It is expected of educators to uphold these virtues so that they “act in a proper and becoming way such that their behaviour does not bring the teaching profession into disrepute” and “to ensure that the educator interacts in an ethical manner with all the stakeholders in education”. This code deals with the relationship between the educator and the various partners in education, namely the learner, the parent, the community, colleagues, the profession, the employer, SACE and the government. The Code of Professional Ethics (South African Council for Educators) also prohibits and condemns sexual relationships with learners. Section 3 of this code affords learners, among other things, the following rights from their educators:

- To be free from any form of humiliation and abuse, physical or psychological,

- To be free from any form of sexual relationship with educators or sexual harassment (De Waal et al. 2005:54)

1.5.3 Common law

Common law is that part of the law that is not enacted by legislation. It has been developed through historical events or customs (Joubert & Squelch, 2005:6). This may include the *in loco parentis* which literally means “in place of the parent” (Beckmann, 1989:50). Parents have the duty and the responsibility to take charge of their children but in the event where this is not possible, they delegate these duties to another matured and responsible adult who will take care of their children like they would. Children spend most of their time at school as it is the prerogative of the government that any child of school-going age should be at school so it follows that educators should resume the duty of a secondary parent. Apart of being “in the place of the parent” educators also resume the duty of care which is another principle entrusted on them.

Law created the reasonable person in order to set an objective norm for the legally sound behaviour of person in society – a norm where a person has to meet a legally required standard of carefulness, thoughtfulness and prudence (De Waal, et al, 2005:81). A reasonable person therefore has to be able to foresee and prevent any harm that might befall learners in his/her care. Educators are entitled to this position when they act prudently. Prudent actions require an educator to be able to foresee possibilities of harm and to take relevant steps to prevent them. According to Beckmann (1989:56) a prudent educator acts like a *diligens paterfamilias*, which means that this educator also acts like a good father of the family. It is therefore expected of educators, to some degree, to be more careful in handling children than parents because of their training, their specialised knowledge and their experience. A critical question is whether educators who engage in sexual relationships with learners acting prudently, as *diligens paterfamilias* or even as reasonable men.

1.5.4 Case judgements

Case judgements also referred to as judicial precedent are important in the study of law because they help to understand legislative implications more clearly. Primarily, case law helps lawmakers to review the laws and to identify flaws in existing laws. They also serve as precedent to other similar cases.

1.5.5 Ethical relationships

“Ethical relationships arise from interaction of the student, instructor and institution. Teaching is viewed as leadership based upon moral and ethical principle, as opposed to technical ones” (Haughty, 2007:139). Prinsloo and Beckmann (1998:191) distinguish social ethics from professional ethics. Social ethics involves assessment of human acts, behaviours or relationships in a social or group context, whereas professional ethics refers to the ethics or norms applicable to a group of professional practitioners (for example, educators). It is for these reasons that educators should have both social and professional ethics. They should understand their roles and expectations to the learner and society. In addition to teaching, they should be role models, teach correct socialising habits and uphold society’s confidence in the profession. This could be achieved by establishing relationships between educator and learner that are based on conducts that are “bindingly’ good” (Prinsloo & Beckmann, 1998:192).

1.6 Research design and methodology

1.6.1 Research design

A qualitative research paradigm has been adopted for this study. The primary goal of studies using this approach is defined as describing and understanding human behaviour rather than explaining it. According to Babbie and Mouton (2001: 270), qualitative research distinguishes itself from quantitative research in terms of the following key features:

- Research is conducted in the natural setting of social actors. In this instance the natural setting of the research is the schools where the research is conducted.
- The actor's perspective (emic views) is emphasised – because the research is basically focused on the response of the participants.
- The primary aim is in-depth (thick) descriptions and understanding of actions and events. The aim of the research is on understanding educators' perceptions of the legal provisions regarding sexual relationships with learners which require educators to describe in details how they understand these legal provisions.
- The main concern is to understand social actions in terms of the specific context (idiographic motive) rather than attempting to generalise to some theoretical population.
- The researcher is seen as the main instrument in the research process.

Macmillan and Schumacher (2001:15) indicate that qualitative research is based on different assumptions:

- Assumptions about the world – qualitative research is based more on “constructionist” which assumes multiple realities that are socially constructed through individual and collective perceptions or views of the same situation. Different educators will give different views of how they interpret and understand sexual relationships with learners. This will then give an overall impression of the collective understanding of educators at large.
- Research purpose – qualitative research is more concerned with understanding the social phenomenon from the participants' perspective. The aim of the study is to understand sexual relationships with learners from the educator's perspective through interviews.
- Research methods and process–this is echoed by Barbie and Mouton,(2001:270) stating that qualitative studies will typically use

qualitative methods of accessing research subjects and qualitative methods of analysis.

- Prototypical studies – qualitative studies help to understand the multiple perspectives of the situation and ongoing events.
- Research role-qualitative research is noted for disciplined subjectivity and reflexivity throughout the entire research process
- Importance of the context in the study – the qualitative researcher believes that human actions are strongly influenced by the settings in which they occur. Interviews will be held with educators with different backgrounds hoping for different perceptions of how educators are influenced by these backgrounds. Rural high school educators will provide different views of their understanding of sexual relationships from urban high school educators because their contexts are different.

Mouton and Marais (1992:193) describe research design “as an exposition of the plan of how the researcher intends conducting the research”. This research is based on case study design. “A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Merriam, 1998:27). Firstly, a case study was chosen because the researcher is interested in insight, discovery and interpretations rather than hypothesis testing. A case study can provide us insight into sexual harassment in schools, how educators are discovering its impact and the interpretation of legal tools in dealing with the issue. I would say that sexual harassment is a contemporary phenomenon because it is occurring in the present. It is one of the challenges South Africa is facing in the form of violence in schools which is threatening teaching and learning. The real- life context is schools and there are no hard and fast rules on what the causes of this problem could be; it is unique in every situation.

1.6.2 Interviews

Silverman, (2005:126) explains interviews as social encounters where the speakers collaborate in producing retrospective (and prospective) accounts or versions of their past (or future) actions, experiences, feelings and thoughts. In an interview – talk is a joint version – the researcher will be collaborating with the respondents in sharing their experiences and feelings. Interviews are not a one-way sort of communicating whereby the respondents just talk; the interviewer should also share her/his thoughts in order to build rapport with respondents and to gain more information.

Semi- structured interviews were conducted with four educators (two males and two females) from four identified schools in the Bojanala District of North West Province. Participants were interviewed for an hour each. These interviews were tape-recorded after obtaining the permission from interviewees.

1.6.3 Data analysis

Data analysis is done when the interview scripts, field notes and all other material that the researcher has collected are systematically searched and arranged. Analysis was done through coding and summarising the interview transcripts.

To ensure validity, member checks were done. Member checks imply that the transcribed data are taken back to respondents to check whether what has been constructed from the data is the true reflection of what they said.

1.6 Conclusion

Educator initiated sexual relationships, which constitute harassment, still continues to be a concern. The common law principles of *in loco parentis* and the duty of care are taken lightly by educators. This chapter discusses the problem, the purpose of the study and the research design and methodology.

The next chapter discusses the literature review conducted as part of the research.

Chapter 2 Literature review on educator-learner sexual relationships

2.1 Introduction

This chapter discusses the literature review on relationships between educator and learner and the legal provisions governing these relationships. This review focuses on ethical relationships between educator and learner, which relationships are regarded as unethical, relationships that are considered harassing or abusive. The review tries to analyse the perception of other researchers on the statutory, legal and common law obligations of educators on ensuring that learners exercise their right to access education.

2.2 Educator – Learner Relationship

The Schools Act defines an educator as any person who teaches, educates, or trains other persons or who provides professional educational services, including professional therapy and education psychological services at school (South Africa, 1996b: s1). This definition puts a great emphasis on the role of educators at school. Not only are educators responsible for the cognitive development of learners but also for their psychological well-being. Teaching and learning cannot happen when there are emotional conflicts in the school.

The National Education Policy Act of 1996 (hereafter NEPA) in its Norms and Standards for Educators (South Africa, 1996d: s3) also emphasises the special seven roles of an educator. For the purpose of this study only the fifth role will be eluded upon, namely the community, citizenship and pastoral role. This role specifically indicates that the educator should strive to develop and nurture the learner in totality - the physical, social, emotional and spiritual aspects so that this learner can be acceptable to the community and society at large. All these expectations can be achieved through good, quality basic education.

Some learners are still denied their right to basic education by the same people who are supposed to guide and support them. Girls daily learn that sexual violence and abuse are an inescapable part of going to school every day – so they don't go (George, 2001:1). Learners are constantly, in one way or the other forced to endure a hostile environment or even drop out of school because of some sort of harassment or abuse in the hands of educators. According to the Human Rights Watch, (2001) it has been revealed that 37, 7% of reported cases of sexual harassment are perpetrated by school teachers or principals.

Who then, is the learner? The Schools Act refers to a learner as “Any person receiving education or obliged to receive education in terms of this Act” (South Africa, 1996b: s1). According to the Code of Professional Ethics (South Africa, 2000b: s1) – a learner means a pupil/student at any school, further education institution or Adult Basic Education and Training (ABET). It then follows that generally a learner is a person from 7 years to fifteen years old or a person up to the ninth grade (South Africa, 1996c: s3). These learners are considered to be within the compulsory school attendance band which is the General Education and Training band. There are of course, persons who are older than 15 years and still in school (Further Education and Training band). They are still learners and considered to be children because according to the Constitution, a child is anyone under the age of 18 years (South Africa, 1996e s28 (3)). Learners in the education situation are also children, who, owing to their youth and immaturity, need to be protected. This learner acts in different capacities in the education situation, e.g.

- As a learner in the educator–learner relationship – this implies that education authorities (e.g. educators) are obliged to give effect to the rights and obligations recognised and protected by the Constitution.
- As a partner in educator – learners have important interests to protect and promote and must act as responsible partners. Without their equal

participation and co-operation in education decision-making, education will be incomplete.

- As a person in education – The learner is a person with fundamental human rights entrenched in the Bill of Rights, (Section 2 of the Constitution). The state must protect these fundamental rights against possible abuse of public power.

Sexual behaviour is complex. It does exist in schools even though it is often unnoticed and/or ignored. When sexual awareness occurs between educator and learner, it is natural but when sexual attentions become persistent, offensive and unacceptable, then they constitute sexual harassment. In schools, particularly in high and secondary school, where young men and women are learning to become adults, the exchange between adults and learners is not always one direction. We may assume that because of their age, maturity, experience, authority and status, educators always hold the power in educator–learner relationships. However, educators also report being embarrassed, degraded, undermined and humiliated by learners (Hyams, 1997:297). Wolpe (1998:132) also notes that some girls in high schools behaved in a generally coquettish fashion. . . . They used body language and expressions that can be described as coquettish with young ‘dishy’ male educators. The educators’ role in this instance is to display their emotional maturity and their professionalism.

Sexual relationships between educator and learner, in any shape or condition are morally wrong. Many would argue that the relationship is consensual, as in a *quid pro quo* relationship because educators help these learners financially. The immaturity status of learners prohibits them to enter into any relationship because according to private law both natural and juristic persons can enter into a relationship if both parties are on equal terms, and are both acting voluntarily (Oosthuizen, 2005:55). The educator here is the ‘reasonable’ and trained expert, who has all the knowledge of the developmental stages of children and motivational theories. The educator should therefore develop learners instead of taking advantage of them. Pulerwitz, Gortmaker and De Jong (2000:637) talk

about Sexual Relationship Power (SPP). This SPP is made up of two theories, the Theory of Gender and Power and the Social Exchange theory. They say that this power is traditional, that men have always had the power over sexual relationships. As mentioned before, many of the sexual relationships in schools are initiated by male educators on female learners. There are few instances where male learners have sexual relationships with female educators but still power is in play because the female educator uses her interpersonal power to encourage the relationship.

2.3 Ethical conduct

Relationships between educator and learner should be based on ethics. Ethics involves more than merely acting in accordance with the law. It pertains to the morality and attitude with which it is taken. Authors describe ethics in different ways. Van Niekerk, van der Walldt and Jonker, (2001:116) say that ethics involves humanness, honesty, justice, reasonableness, freedom, truth, decency, integrity, order and fairness.

MacFarlane, quoted in Haughtey (2007:139) says “ethics involves engagement with complex situations and making hard choices”. Ethics means being able to solve difficult problems without a prescribed formula to do so. Ethics is that ability plus the difference between being wise and being clever. Wisdom entails doing the right thing at the right time. Educators should know that having sexual relationships with learners at school is the wrong thing at the wrong time because of the age of the learners.

De Villers and Wethmar (2000: 6) see ethics as a critical reflection on those values, norms and virtues which guide us in dealing with conflicts of interests which arise between us, God, fellow human beings and nature. Ethics guides us in having sound relationships within ourselves as human beings. Educators and learners as human beings are also guided by ethics to have harmonious relationships in a school situation so that effective teaching and learning can

takes place. The ways in which people interact in everyday life are the guiding principles of ethics.

Prinsloo and Beckmann (1998: 191) name two types of ethics namely the social and professional ethics. Social ethics involves assessment of human acts, behaviours or relationships in a social or group context, whereas professional ethics refers to ethics or norms applicable to a group of professional practitioners (for example educators). Professionals are part of the wider social group or society. The Bill of Rights, contained in Chapter 2 of the Constitution, is the cornerstone of how people should behave towards one another. Therefore educators should be conversant with the Bill of Rights so that their actions, behaviours and relationship are within the perimeters of this law.

Professional ethics as previously mentioned is ethics or norms applicable to particular professional practitioners. Education is a particular profession therefore practitioners within it should have guiding principles of behaviours according to the ideals of their profession. The SACE Act was formulated to provide for the continued existence of the South African Council of Educators; to provide anew for the functions of the said council; to provide anew for the composition of the said council; and to provide for matters incidental thereto. Subject to this Act and the National Education Policy Act, 1996 (South Africa, 2000c: s5(c)) the council with regard to professional ethics, must “compile, maintain and from time to time review a code of professional ethics for educators who are registered or provisionally registered with the council”. It then follows that the SACE Act provides the guiding principles so that educators registered with the council uphold ethical relationships within the education profession.

Steyn, de Klerk and du Plessis (2003:54) advocate these relationships in education that are governed by the following:

- Individual worth
- Personal dignity
- Ethics and morality

- Interpersonal understanding
- Mutual trust
- Authority and discipline
- School relations and curriculum.

They refer to these factors as “democratic relationships” in education. It is the duty of the school to educate learners in democratic values. They quote Tarrant (1991:40) stating that “the moral conception of democracy entails a view about the good society, though the latter is always a matter of debate. The aim of education is to equip man to take part in that debate”. Therefore the duty of educators in a school is to prepare learners for the future by role-modelling and instilling to them all the virtues of democracy for the benefit of a morally good, democratic society.

The fifth role, of the seven roles in the Norms and Standards for Educators National Education Policy Act (Department of Education, 2007) is the most significant for this research. This role is the community, citizenship and pastoral role. This obliges the educator to practise and promote a critical, committed and ethical attitude towards developing a sense of respect and responsibility towards others. By taking this role into cognisance, and role modelling its intentions, the educator will be upholding the Constitution and promoting democratic values and practices in schools and society.

2.4 The legal framework that governs educator- learner relationships

The state, through parliament promulgates laws to govern and regulate the conduct and actions of persons, natural or juristic, and the relationships among them. The law also regulates relationships between organs of the state and between public and private sectors. Laws are also instruments by which a state upholds its ideals. South Africa has a supreme law, the Constitution, which upholds its democratic ideals. All government bodies, including parliament and departments, are subject to the Constitution and their mandate is to translate and

implement the ideals as enshrined in the Constitution. The conduct and actions of individuals who are tasked to carry out the translation and implementation of the institutional ideals – the government officials including educators – have to make sure that their conduct and actions are consistent with provisions of the constitutional imperatives. Education law is therefore concerned with all relationships within the education system and the conduct of all stakeholders in education.

Sections of the Constitution that protect the right of learners from being infringed upon include, among others Section 9. According to Malherbe and Beckmann cited in Prinsloo (2005:39) this section is known as the “equality principle” which is a key provision of the Bill of Rights and underlies many other rights. The equality principle is undermined because “power and authority” relationships between teacher and learner are, not equal and teachers have a professional responsibility to treat all learners equally, which cannot be the case if sexual relations are taking place with certain individuals (Harber, 2004:98).

When the right to equality is infringed upon, it will also be in conflict with respect for human dignity. Section 10 of the Constitution states that everyone has inherent dignity and the right to have his or her dignity respected and protected. Human dignity and the respect thereof come natural with being human. Internationally or anywhere else, learners should be awarded that due respect by the simple virtue of being human beings. Educators therefore should not impose on learners, who, because of their status, cannot stand up against them thus creating a hostile environment for them (Section 24 of the Constitution).

Section 28 of the Constitution is about the right of children and their ability to exercise those rights. The section also explains the meaning of child -- “*child*” here means a person under the age of 18. In most of our schools the ages of learners are mostly lower than 18. It therefore means that educators will be violating the right of these children because according to section 28(d) “every child has the right not to be required or permitted to work, 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". Educators will not only be violating this right but they will also be abusing the learners by having sexual relationships with them. Chapter 1 of the Children's Act 38 of 2005 describe "*abuse* " as any other form of harm or ill-treatment deliberately inflicted on a child, and includes therefore:

- Sexually abusing a child or inflicting any other form of deliberate injury to a child
- Sexually abusing a child or allowing a child to be sexually abused
- Exposing or subjecting a child to behaviors that may harm the child psychological or emotionally.

Application for teaching posts requires a registration with SACE as a guarantee of a true professional with ethics bound by the Act and the Code of Professional Ethics. The intent of the code is to give us a picture of the ideal educator through the roles it espouses. (De Villers & Wethmar, 2000:15). How then do educators understand these behaviours in relation to the Code of Professional Ethics? An educator who is registered with South African Council for Educators agrees among others to acknowledge the noble calling of the profession to educate and to act in a proper and becoming way such that their behaviour does not bring the teaching profession into disrepute. The code also guides the relationship between educator and learner and is very explicit about sexual relationships with learners. Section 3(9) states that "an educator should refrain from any form of sexual relationship with learners at a school".

Some educators are aware of what their colleagues are doing – sexually harassing learners – but merely frown at such wayward conducts instead of reporting to relevant authorities and institutions. The abusive educators obviously have advantage over the learners because of inherent imbalances of power between educator and learner (Fogg & Walsh. 2002:2). Educators have a

Constitutional, statutory and the common law duty to report issues of abuse perpetrated by their colleagues as requested by section 42(1) of the Child Care Act (SA, 2005); South African educators are compelled to report cases of child abuse. It reads:-

“every dentist, medical practitioner, nurse, social-worker or educator, or any person employed by or managing a children’s home, place of care or shelter, who examines, attends to or deals with any child in circumstances giving rise to the suspicion that the child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease, shall immediately notify the Director-General or any officer designated by him or her for the purpose of this section, of those circumstances”.

2.4.1 Common law

A most common law principle that regulates educators’ action is the principle of natural justice. The rules of natural justice are usually applied where the rights, privileges or freedom of individuals could be affected (Joubert & Squelch, 2005:7). When learners in a school are abused/harassed it is necessary that they be given a fair hearing to present their side of the story. This is not usually the case because victims of abuse are in most cases not believed or ridiculed, this making it difficult for them to present their stories. Educators, on the other hand, will use their age, experience, knowledge and authority to intimidate their victims. Sometimes these learners are bought off the case with the consent of their parents. It is for this reason that some of the perpetrators still continue teaching after cases of harassment have been brought against them. Educators seem to be violating the learners’ right to the rules of natural justice.

There are two more important common law principles that also guide the relationship between the educator and learner.

Firstly, there is the principle of *in loco parentis*; educators stand “*in loco parentis*” during the time that the child is at school. By sending their children to school,

parents are naturally delegating these responsibilities to educators. This common law principle obliges educators to take good care of the children whilst they are under their supervision and not to abuse the trust parents have in them. According to Oosthuizen (1989:105) the “*in loco parentis* principle has the following implications:

- The persons who are *in loco parentis* in education are among others, principals, teachers, hostel fathers and hostel staff. In the absence of the child’s legitimate parent or guardian, the child is under the prudent supervision of the teacher.
- Teachers depend on an ordered learning milieu for the effective facilitation of specialised learning content. Order is a *sine qua non* for effective teaching: order is not evident if educators are disrupting order by behaving unethically in having sexual relationships with their learners.

What does it mean to be *in loco parentis*? *In loco parentis* means, as mentioned earlier, “the authority of the educator is, while it exists, the same as that of the parent. A parent, when he places his child with the educator, delegates to him all his own authority, so far as it is necessary for the welfare of his child” (Hyams, 1997:187). He also argues that today the principle of *in loco parentis* has little value because it has been overtaken by statute and case law. Parents might delegate the authority to educators but the boundaries of this delegation are not clearly defined.

Parental authority is complex as it does not have boundaries when relating to the welfare of children and educators will be confused to measure when they have overstepped the boundaries and trespassed against the child as a person. For an example, an educator might be trying to question what he/she believes to be improper sexual behaviour of a learner. Merely inquiring about the girl’s sexual behaviour might constitute sexual harassment. Educators might also feel unable to comfort learners physically for fear of being accused of sexual harassment. It is these unclear boundaries of delegated authority that might be contributing to

the confusion of educators not clearly understanding where they have crossed the boundaries and portrayed harassing behaviours and when they have not.

Secondly, the duty of care which is defined as the moral or legal obligation to attend (or protect) to a minor. Educators should be in *loco parentis* before the duty of care should be considered. Educators have a legal duty of care pertaining to the learners entrusted in them for either curricular or extra-curricular purposes. (De Waal et al. 2005:70). The duty of care of the educator is relevant when somebody (usually a child) suffers material or psychological damage because of a certain action or neglect on the part of the educator. This duty of care obliges the educator to protect the learner from possible harm like a parent would have. The educator, because of his/her professional training, should augment whatever skill the parent might lack to provide specialised knowledge and expertise to care fully for learners within the societal relationship of the school. Parents, on the other hand find themselves dependent on educators because of this expertise. This dependency of parents on educators gives them (educators) delegated authority to act *in loco parentis*.

In loco parentis can be seen to have little or real value today, mostly because it has been overtaken by statute and case law, but also because it assumes something which then has to be ignored – the home environment” (Hyams, 1997:187). Educators need to create an environment that would be as safe as a home and act as parents to protect learners from any harm, physical or psychological.

Therefore, when an educator has a sexual relationship with a learner, it is beyond the duty of care. By inflicting psychological harm to the learner, the educator engages in a delictual action. Delict is a “wrongful and culpable act which causes harm to another” (Joubert & Prinsloo, 2001:98). Educators having sexual relationships with learners will be delictually liable because they know that having these relationships with learners is “against good morals” and that they will be neglecting their duty of care and their *in loco parentis* status (Joubert & Prinsloo,

2001:59). In the preamble of the Convention on the Rights of the Child, Resolution 44/25 of November 1989 (Davel, 2000:321) it is stated that because of the child's physical immaturity, special care is needed to protect the child. Therefore the educator is held responsible for providing that care, for him /her to be able to do that she/he must adhere to the standards set by authorities.

2.4.2 Case judgments

Case judgments are important in the study of law because they help the researcher to understand legislative implications more clearly. Primarily case law helps law makers to review the laws and to identify flaws in the existing laws. It also serves as precedent to other similar cases. Case judgments can also be used to illustrate the importance of complying with the law. The following cases, even though they are not specifically education-related, demonstrate the impact of sexual harassment and how it can undermine the education of learners or employment of women and create a hostile environment for them.

2.4.2.1 Pretorius v Britz (1997) 5 BLLR 649 (CCMA)

Ms Pretorius was continually harassed sexually by Mr. Britz who had asked her about her virginity, made unwanted suggestions and even brought her gifts including G-string panties. She resigned because of the consistent sexual pestering by her employer. Mr. Britz was found guilty of sexual harassment which created a hostile environment for Ms Pretorius which led to her resignation.

In a school situation a hostile environment could be created by an educator who persistently asks a learner about her sexual life or "a male teacher carries a cane and uses it liberally to girls refusing to perform sexual favours to him" (Sowetan Sunday World, 6 May 2001) This could lead to a girls' dropping out of school because of the unfavourable environment created by an educator.

2.4.2.2 Christian v Colliers Properties (2005) 5 BLLR 479 (LC)

Ms Christian was dismissed two days after being employed because she did not give in to her employer's sexual advances. Mr. Colliers was also found guilty of sexual harassment which led to the unfair dismissal of Ms Christian. This can be illustrated, in a school situation when an educator fails a learner because she does not give in to his sexual advances. The educator uses his authority and power to punish a learner who does not deserve to fail but does so only because she refused to have sex with him.

2.4.2.3 Reddy v. University of Natal (1998) 1 BLLR 29 (LAC)

This is a South African case where the perpetrator was charged under Section 10 of the Constitution – Human dignity. The right that was violated was that of a female security guard by her senior in that he hugged and tried to kiss her and made unwanted advances over a period of four hours, resulting in the woman being treated for stress and depression. The male guard was dismissed from work because the Code of Conduct of the employer is explicit on the issue of gender discrimination and sexual harassment. An example of this at school could be sometimes when educators conduct searches on girls and touch them where they are not supposed to be touched -during physical education when a trainer by means of demonstrations touches a girls awkwardly.

2.4.2.4 Sookunan v. SA Post Office (2000) 21 ILJ 1923 CCMA

This case helped the researcher to realise that two forms of harassment can occur simultaneously, that is *quid pro quo* and hostile environment harassment. In this case the male supervisor at the post office was dismissed for sexually harassing two female employees who fell under his control because of the favours he was rendering to them in exchange for having sexual relationships with him. The manager exaggerated the situation and the ladies wanted out. The court found evidence of a *quid pro quo* harassment which led to a hostile working environment. There is an example in a certain school where an educator

would slip money notes in the girl's book while marking her work. The educator, it was later discovered, that he thought that he had bought the girl and owned her and did not want her to talk to any boy in the school yard. The girl used the money for a lunch-box and because of this the educator and made her life unbearable.

2.4.2.5 Ntsabo v. Real Security CC (2004) 2 BLLR 58 (LC)

Ms Ntsabo was sexually harassed by her supervisor; she had, on numerous occasions appealed to her employer for assistance but to no use. She resorted to resigning. The court ruled in her favour and the employer was ordered to compensate her for her sufferings. Schools prefer to deal with sexual abuse internally. Often children are not believed and not supported when they come forward with abuse allegations. They are either met with hostility from school administrators or are ridiculed by other learners. W.H who was interviewed by Human Rights Watch left school after she reported her ordeal to school officials and police because they could not help her. Instead she was ridiculed and called a liar (Human Rights Watch, 2001:4).

2.4.2.6 Media 24 Ltd & another v Gobler (2005) 7 BLLR 649 (SCA)

Ms Gobler was sexually harassed over a period of five months by a junior manager. The employer was charged with vicarious harassment because he had failed to take reasonable steps to protect her. This case judgment illustrates how the Department of Education as an employer can be charged with damages caused by an educator's actions. Section 60 (1) of School Act stipulates that "the state is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section".

The last two cases illustrate how the employer could be vicariously liable for the damages incurred by the employees. According to the doctrine of vicarious

liability, an employer is liable for the delicts of its employees if they are acting in the course and scope of their duties (Frogan, 2004: 2). This shows that schools and the Department of Education could be liable for the damages incurred by educators who harass learners.

The above court cases may not directly refer to the school environment but they help to illustrate how imbalance and improper use of authority and sexual power can impede the harmonious relationships in any environment. Educators would be misusing their power and authority over learners when they engage in sexual relationships with them.

2.5 Sexual Harassment and abuse

When sexual awareness occurs between educator and learner, it is natural but when these sexual attentions become persistent, offensive and unacceptable then they constitute sexual harassment. This has brought about the debate of sexual harassment and consensual sexual relationships. What constitutes sexual harassment? What if it is consensual? How can consensual relationships become harassment or even abuse?

Sexual harassing behaviour is described as unwanted sexual advances, requests for sexual favours and other verbal or physical conduct. Sexual harassment may include derogatory sexual comments written or said about others. Oosthuizen (2005: 29) names five forms of sexual harassment:

- **Gender harassment-** generalised sexist statements and behaviour that convey insulting, degrading or sexist attitudes.
- **Seductive behavior** - unwanted inappropriate and offensive physical or verbal sexual advances.
- **Sexual bribery** - solicitation of sexual activity or other sex-linked behaviour for promise of reward.

- **Sexual coercion**- sexual activity and other sex linked behaviour by threat or punishment.
- **Sexual assault** - indecent assault and rape.

The Children's Act 38 (South Africa, 2005:s1) describes "*abuse*" as any other form of harm or ill - treatment deliberately inflicted on a child, and includes:

- Sexually abusing a child or inflicting any other form of deliberate injury to a child
- Sexually abusing a child or allowing a child to be sexually abused
- Bullying by another child
- A labour practice that exploits a child
- Exposing or subjecting a child to behaviours that may harm the child psychologically or emotionally.

Brandenburg (1997:34) describes sexual harassment as unwanted sexual attention. She says that sexual harassment is not exclusively a sexual issue but may be an exploitation of a power relationship – initiated and negotiated by a person in a position of authority and sustained at the expense of another who cannot counter make demands without risk of reprisal. Girl children and young women are unable to counter these demands because in most cases they submit to sexual harassment because of fear of discrimination, punishment or failure. Some want the money (because of poverty) or other gains that might ensue from such relationships (Coombe, 2002:8). These young women and girls cannot even negotiate safe sex, thus resulting in teenage pregnancies and the spread of HIV.

Sexual harassment may take many forms; it is generally expected that sexual harassment happens when the victim is a female and the harasser is a male (Rood, 2002: 1). However, it should be kept in mind that sexual harassment can be committed by a female to a male, with same sex, where a woman harasses another woman, not meaning that they are gay and also among gay people too. It is all about the issue of power play. According to the Constitution (South Africa,

1996a:s28 (3)) the age stipulation regards all learners as children and even if they are older the power relations disqualify all relations between learner and educator. This relationship undermines the fundamental trust needed between educators' and learners.

Robinson (1995:109) refers to “sufficiently mature” or “sufficiently intelligent” for learners to enter into relationships with educators. Learners are neither matured enough nor intelligent enough because of their age to enter into relationships with their educators. Educators, on the other hand, because of their status and power will dominate the relationship. When issues of power are involved, such as when an older male educator has an affair with a younger female learner, it is not difficult to see the possibility of sexual harassment (Myers, 2002: 290). Therefore irrespective of age, educator-learner romances invariably are inappropriate, unacceptable and destructive.

The most popular forms of sexual harassment in our schools are the following:

- *Quid pro quo* harassment
- Hostile environment harassment

According to Cooney (1991:2) *quid pro quo* harassment occurs when unwelcome submission to or rejection of such (unwelcome sexual) conduct by an individual is used as the basis for employment decisions affecting such individuals. Learners here could be subjected to this harassment by being promised high marks and/or being failed for refusing sexual advances made by educators, while hostile environment entails unwelcome sexual conduct that causes the environment to become hostile, intimidating or offensive and unreasonably interferes with an employees or learner's work.

Oosthuizen (2005: 29) states other forms of sexual harassment, such as the following:

- Verbal sexual harassment includes sexual and sexist jokes, whistling, crude comments (for example about body parts), spreading slanderous rumours with a sexual connotation, to comment crudely on someone's sexual orientation and pressurising for sex.
- Physical harassment includes fondling, patting, grabbing, propping and brushing up against someone in a sexual way, pulling on a person's clothes in a crude manner and kissing.
- Non-verbal harassment includes conduct like spying on someone, leering, winking, looks, sexual graffiti, drawing or displaying sexually exploit pictures and rude gestures.
- Secondary harassment may occur when a person who has filed a complaint of harassment is harassed by educators or peers.

According to the Sexual Assault Counseling and Education Policy of Temple University (Human Rights Watch, 2001:13) sexual harassment is “an unwelcome sexual advance, a request for sexual favors, or other expressive, visual or physical conduct of a sexual or gender-motivated nature, when; submission to conduct is made explicitly or implicitly a term of condition of an individual's employment or status in a course, program, or activity; or submission to or rejection of such conduct is used as a basis for employment-related, educational or other decisions affecting an individual; or such conduct has the purpose or effect of unreasonably interfering with an individual's work, educational performance, or status; or such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment.”

This is a befitting explanation of the kind of sexual harassment happening in schools as it is inevitably, a power-play issue. Learners are forced into a *quid pro quo* relationship with their teachers in the hope of getting more marks or better grades as one learner was quoted in a report by Felicia Wilson on Gender Based Violence in South African Schools: “My teacher promised me a passing mark if I had sex with him. So when people asked me about studying, I just say why should I study when all I have to do is lift my skirt” such teachers really abuse

their powers and violate the trust needed between educator and learner (Human Rights Watch 2001:13).

Educators seem to be ignorant of these life-changing effects on learners when they engage in sexual relationship with learners. As one girl (P.C) interviewed by the Human Rights Watch lamented, “I don’t want to be there (at school). I just don’t care anymore. I thought about changing school, but why? If it can happen here it can happen any place. I didn’t want to go back to school”. Sexual harassment could have a vast spectrum effects on victims. Many situations can and do have life-altering effects on victims, especially on learners, such as:

- Decreased work or school performance and/or increased absenteeism.
- Having to change courses, changing academic plans or leaving school.
- Being objectified and humiliated by scrutiny and gossip.
- Less trust in the environment where the harassment occurred.
- Loss of trust in the types of people that occupy similar positions as the harasser.
- Teenage pregnancies, sexually transmitted disease and even HIV/Aids (Human Rights Watch, 2001).

Educators should be aware of these conducts and laws relating to defilement or statutory rape (having sex with a minor), or regulations stipulating acceptable levels of professional behaviours (Coombe, 2002: 9).

2.6 Conclusion

The literature review highlights the fact that, irrespective of the efforts by the legal and constitutional provisions to prohibit sexual harassment in schools, there seems to be no end to it. Learners, more especially girls, still experience hostile environments due to sexual harassment of some sort perpetuated by the people who are supposed to provide a safe and secure environment for them.

This is a global concern. In a 2000 national survey conducted for the American Association of University Women (AAUW (Human Rights Watch, 20001) it was reported that roughly 290 000 students experienced some sort of physical sexual abuse or harassment by a public employee, such as a teacher or coach. South African girls too often encounter violence in their schools. The Human Rights Watch (2001) shows that sexual abuse and harassment of girls by teachers is widespread in South Africa. Could it be that teachers are ignorant of their roles and obligations towards these learners, or could it be because of the culture of gender-based violence?

Chapter 3 describes the research design and methodology.

Chapter 3 Research design and methodology

3.1 Introduction

This chapter deals with the rationale for choosing a particular research design and methodology. Babbie and Mouton (2002:76) state that research design is the plan, the blueprint of how you intend to conduct the research, whereas the methodology refers to the process itself, the tools and the procedures that will be used for the research. These two, research design and methodology are greatly influenced by the three assumptions in social research, namely ontological assumptions (which are about proving reality), epistemological assumptions (about the science of knowing), and human nature (relationship with nature). If one favours the view which stresses the importance of the subjective experience of individuals in the creation of the social world, then the search for understanding will focus upon specific issues and approaches. The principal concern is with understanding what the individual creates, modifies and how she/he interprets the world in which she/he finds herself/himself, the approach will take on a qualitative aspect (Cohen & Manion, 2001:7).

The study seeks to examine educators' perceptions and understanding of legal provisions regarding sexual relationships with learners. It explores educators understanding of how the law expects them to relate to their learners and how educators understand their obligations towards learners and the implications of disregarding the law, more specifically education law.

The research study is of a qualitative nature. A qualitative research design will be used. Denzin (1989:83) describes a qualitative design as, "a thick description" which does more than record what a person is doing. It goes beyond mere fact and surface appearance. It also presents detail, context emotions, etc. It establishes the significance of an experience or the sequence of the event or the person". The above mentioned qualities of qualitative research deem it fit to get the perspective of educators on sexual relationships with learners and the laws

regarding the issue. For this research I used a case study design because I wanted to understand the educators' perceptions on the legal provisions regarding sexual relationship with learners in depth.

The research design has to be aligned to serve the purpose of the research. Cohen and Manion (2001:73) refer to "fitness for purpose". The research design that helps to answer the question of how educators perceive and understand the legal provisions regarding sexual relationships with learners should be the one that emphasises the participants' (educators) perspective and gives an in-depth description and understanding of actions and events and therefore helps to clarify social actions in terms of their specific context rather than to generalise to some theoretical population; hence the choice of qualitative case study research design.

3.2 What is a case study?

A case study is, according to Cohen and Manion (2001:181), the study of an instance in action. This study is of a single instance that could be a learner, a group of educators or even an institution like a school.

I used a case study design because the results of case studies are easily understood by a wide audience, including non-academics because they are written in everyday, non-professional language. Participants receive feedback on the research process and its conclusions. They were asked to comment on drafts through participation review so as to modify the data; data were phrased in everyday language participants found easy to interpret the data. Case studies can be undertaken by a single researcher, thus reducing the cost of acquiring a full research team. The results of interviewing educators about sexual relationships with learners are on strong on reality because they were direct verbatim transcript of what the educators said. The results are among others:

- Immediately intelligible, they speak for themselves.
- They catch unique features that might hold the key to understanding the situation.
- They provide insight into other, similar situations and cases, thereby assisting interpretation of other similar cases

As much as case studies have these distinctive features and advantages, there are some shortcomings. The results are not easily open to cross-checking; hence they may be selective, biased, personal and subjective. The results of one participant can be biased because the topic could be too personal and the influence of the researcher could also be significant because of the nature of the topic.

These negative sentiments are echoed by Danscombe (1998:40) as follows:

- Negotiating access to case studies can be a demanding part of the research. Research can flounder if permission is withdrawn.
- It is hard for the case study researcher to achieve aim of investigating situations as naturally as they occur without any effect from his/her presence. Because case studies research tends to involve protracted involvement over period of time, there is a possibility that the presence of the researcher can lead to the observer effect.
- Unwarranted though it may be, case studies are often perceived as producing 'soft' data. The approach is accused of lacking the degree of vigour expected of social research.

3.3 Sampling

In this research I used a non-probability sampling called purposive sampling because I intentionally handpicked the sites. Purposive sampling is a method of sampling where the researcher handpicks the cases to be included in the sample on the basis of their judgment of their typicality. These schools were chosen because of their different location, diverse staff component and their diverse

leadership styles. In this way they build up a sample that is satisfactory to his/her specific needs. As its name suggests, the sample has been chosen for a specific purpose (Cohen et al, 2000: 103). For the selection of participants I used Rubin and Rubin's (1995:98) four key areas around recruitment, which are:

- initially finding a knowledgeable informant
- getting a range of views.
- testing emerging themes with new interviewees.
- choosing interviewees to extend results.

I also relied on the principals of the identified schools to recommend participants. McMillan and Schumacher (2001:402) label this sampling strategy as a reputational-case type. This strategy is when, for an example, the principal recommends a "competent" educator to be interviewed. I used this strategy because I thought principals knew educators who would supply the required information. Participation remains voluntary, meaning that the said educator has the right to object to the recommendation. In addition to the recommendation of the "competent" educator by the principal, Spradley's criteria (cited in Babbie and Mouton, 2002:288) were also considered:

- Enculturation – when participants have been around quite a while to be able to provide information.
- Current involvement - when participants are currently involved in the case under study.
- Adequate time – when participants are available throughout the required time of the study.

These criteria also helped in the selection of participants because all the participants have been teaching for a minimum period of 15 years, so they have been around to give rich, relevant information. Participants were currently teaching at schools and were readily available throughout the required time of the study.

3.4 Data collection instrument

Qualitative interviews were chosen for this study. An interview is outlined by Cohen and Manion (2001:267) as an interaction of views between two or more people on a topic of mutual interest.

The reason for selecting qualitative interviews for this study is that they are the principal means of gathering information having direct bearing on the research (Cohen & Manion, 2001: 268).

The researcher interacted and shared knowledge with participants for an hour each. Standardised open-ended/semi-structured interviews were used where the exact wording and sequence of questions were pre-determined and interviewees were asked the same questions in the same order. The advantages of using this type of interviews are the following

:

- They increase comparability of responses.
- Data are complete for each person on the topics addressed in the interview.
- They reduce interview effect and bias when several interviewers are used.
- They facilitate organisation and analysis of data (Cohen & Manion, 2001:271).

3.5 Data management and analysis

Data analysis is primarily an inductive process of organising the data into categories and identifying patterns/relationships among them (McMillan & Schumacher, 2001: 461). Rubin and Rubin (1995) cited in Mouton (2001:226) describe data analysis as follows: "Data analysis begins while the interview is still

underway. This preliminary analysis tells how to re-design your questions to focus on the central theme as you continue interviewing”.

Grounded theory analysis was used. According to Denzin (2000:782) “grounded theory tries to understand people’s experiences in as rigorous a manner as possible through an interactive process analyst “grounded” in data and develops increasingly richer concepts and models of how the phenomenon really works” All recordings were transcribed. I read transcripts two or three times. The data were broken down into bits and pieces. Line by line I highlighted or circled responses relevant to the central question. Codes we selected and clustered into themes.

The data were then assessed if they honoured the criteria of validity through member checking. Member checks took place when the researcher took the transcripts and analysed texts back to the respondents to check whether what had been constructed from the data was a true reflection of what they said.

3.6 Reliability and trustworthiness

To ensure the reliability of the research data participant reviews were made. This is when participants are asked to modify any information or interpretation of the data (McMillan & Schumacher, 2001: 401). Comments from participants were used to make the collected data trustworthy. If the information that had been provided was not correctly transcribed, corrections were made. Participant reviews also ensure that the following criteria mentioned by Lincoln and Cuba (1985) (cited in Babbie & Mouton, 2002: 274-278) were met:

- Credibility – participating educators agreed that the researcher had adequately represented their construction of reality and did not misquote them.
- Transferability – the readers of the research agreed that the conclusions reached related to the settings, which they themselves were immersed in.

- Dependability – the researcher was able to identify his/her effects during fieldwork and discount them. As an educator and a parent I tried very hard not to be emotionally involved which would have impeded the objective perception and interpretation of the data.
- Conformability – the analysis was grounded on the data and inferences based on the data were logical and of high quality.

Reliability of qualitative designs is the degree to which the interpretations and concepts have mutual meanings between the participants and the researcher. (Macmillan & Schumacher, 2001:407). Factors that the researcher considered for ensuring validity include going to the identified schools more than once which also helped the researcher to build rapport with the participants. Using the language that the participants understood and adhering to participant reviews also helped the researcher to ensure reliability. The researcher also used literal descriptions that were understood by both the participants and the researcher to construct mutual understanding of the data collected and to find similarities and regularities.

3.7 Ethical considerations

Ethics generally deals with beliefs about what is right or wrong, proper or improper, good or bad. One of the most important ethical concerns faced by researchers is mentioned by Cohen et al (2000:56) as the “cost/ benefits ratio which happens when a researcher tries to strike a balance between the demands placed on them as professional scientists in pursuit of truth, and their subjects’ rights and values potentially threatened by the research.

These concerns are best summarised by MacMillan and Schumacher (2001:96):

- A primary investigator of a study is responsible for the ethical standards to which the study adheres.

- The investigator should inform the subjects of all aspects of the research that might influence their willingness to participate and answer all inquiries of subjects on features that may have adverse effects or consequences.
- The investigator should be as open and honest with the subjects as possible.

For ethical considerations in the research, participants were met before the study to explain to them the purpose and importance of the research. The meeting was used to build rapport, establish good interpersonal relationships and display quality credentials as a researcher who took ethical issues into consideration. The following ethical principles were discussed:

3.7.1 Informed consent

This is defined by Diener and Crandall in Cohen et al. (2000:51) as “the procedure in which individuals choose whether to participate in an investigation after being informed of facts that would be likely to influence their decisions. Respondents were given the full detail of the research so that they participated voluntarily in the research. An application letter was written to the Department of Education (North West) and then to identified schools disclosing the full information on the purpose of the research and informed consent was granted.

3.7.2 Access and acceptance

The ethical issue here is for the researcher to present his\her credentials as true and serious researcher. These credentials also helped the researcher to build rapport with the respondents and to be accepted by them. This rapport was built by going to the sites more than once so that participants and the researcher learn to know each other. When the rapport had been built and the respondents were assured of the noble intention of the research, the researcher was permitted to access the relevant information at the site.

3.7.3 Anonymity

“The essence of anonymity is that information provided by participants should in no way reveal their identity” (Cohen.2000:61). Studying sexual behaviour is sensitive. It is largely hidden and all that we have is information from respondents. This information can only be obtained when participants are reassured of the secrecy of their identity. Data disclosed in confidence should not be revealed publicly because in a way it will cause embarrassment, anxiety or perhaps suffering and psychological harm to participants. This happens when for instance an educator discloses having an affair with a learner. The information cannot be revealed for fear of causing anxiety to the participant. The principle of deception in ethical consideration also occurs when the true identity and the true intention of the research is concealed from participants. In order to obtain information on a sensitive topic some researchers feel that it is necessary not to disclose credentials for fearing to scare-off potential respondents.

3.8 Delimitations of the study

The study contributes greatly to the practice and actions of educators. Educators seem to be ignorant of their duties towards upholding the learners’ rights and considering their best interest. Their conduct contradicts their professional ethics as stipulated by South African council of educators and the code of professional ethics. Their registration to SACE is mere compliance and nothing else. They have to abide by the constitutional, statutory and common law obligation to have relationships with learners that are ethically and morally good.

3.9 Limitations

A discussion about sexuality is a great challenge because of numerous reasons like culture, age and gender. Educators found it difficult to open up about their understanding of sexual relationships or even disclosing about sexual relationships with learners because some of them taught me, so the cultural issue of not discussing sexual issues with a younger person more especially of

the opposite gender was evident, so it is going to be challenging or even impossible to get to the root of the issue.

3.10 Conclusion

Research design as mentioned before is the plan for the research which will guide the choice of methodology so that the purpose of the research is achieved. 'Fitness' for the purpose is important so that the research question is answered. Procedures followed for sampling, data collection and analysis should be relevant to the intentions of the research and be able to answer the research question. This chapter elaborates on the advantages of selecting and using a qualitative research approach, the relevant case study design plus the individual interview instrument for collecting data so that the study is effective and worthwhile.

The next chapter presents the research findings.

Chapter 4 Data presentation and discussions

4.1 Introduction

This chapter presents the findings of the semi-structured interviews conducted to find out about educators' perceptions and understanding of legal provisions regarding sexual relationships with learners. Educators have the obligation towards their profession not to bring it into disrepute and the obligation towards learners to be *in loco parentis*. The Constitution as the supreme law also upholds respect for human dignity. What then do these legal frameworks mean to educators in the light of sexual relationships and harassment still occurring in our schools?

The study involved four schools in the Letlhabile Area, Bojanala Region - North West province; one primary, one middle school; one rural high school and one urban high school were selected. From each school four participants were interviewed, two males and two females respectively. The rationale was to obtain as much diversity as possible. All the participants were asked the same open-ended structured questions to guide and control the flow of the conversation without rendering it too rigid to yield a "yes" or "no" answer. The study asked the following critical questions:

- How do educators understand/perceive sexual relationship with learners?
- How do they understand the provisions in South Africa law pertaining to the care of learners?
- What do they regard as ethical behaviour of educators?

4.2 Data Analysis

Qualitative researchers integrate the operations of organising, analysing and interpreting data and call the process "data analysis" (McMillan & Schumacher (2001:466). The data were transcribed and coded. Coding, according to McMillan and Schumacher (2001:467) is the process of dividing data into parts

according to classification system. The codes were then categorised and classified as themes.

The following themes emerged:

- Understanding of sexual harassment.
- Ethical relationships.
- Legal measures and compliance.

4.3 School A

School A is a primary school situated in one of the rural villages in the Jericho Area. It offers Grades R – 6; ages range from 5 – 14 and it is a Section 21 school with a total number of 524 learners; it is a quintile 3 school. Section 21 schools are schools where the School Governing Body (SGB) applies in writing to be allocated the functions specified in Section 21 of the Schools Act. A quintile is a resource targeting category, where schools are arranged from the poorest (quintile 1) to the poor (quintile 5), depending on the conditions of the school and the poverty of the community served by the school (Government Gazette No 19347, 1998). School A has 14 staff members, three males and eleven females.

The school is neatly kept; electrified but still uses pit toilets because there is no running water. The principal's office is immaculately kept and I was offered something to drink while waiting to be attended by the principal. This portrayed a sense of a disciplined school. There seemed to be co-operation between educators and learners because when I arrived, learners were busy with sporting activities and the educators had no problems with engaging learners to participate.

4.3.1 Understanding of sexual relationships with learners

At this school educators did not regard sexual relationships with learners as sexual harassment. They talked about “having affairs with learners” and never once had it occurred to them that these affairs constitute sexual harassment. One educator said *“it is not like they are forcing learners to do it, they do so out of free-will. One female educator replied that the learners “were asking for it. You should see how they flirt with educators. If you say they are too young to consent, then they should leave adult things to adults.”*

Male educators seem to think that women are “cry-babies” because of too many rights entrusted to them. *Men are human too.* One male educator said that they are already afraid just to joke with female learners. If they like it, it is ok, if they do not, and you are in trouble. An older male educator said that during their times they married their students because their intensions were good, but today you will lose your job for proposing to a girl.

It should be noted that only one out of four participants alluded to sexual harassment in the definition of school safety. All other participants explained school safety with relevance to physical injury. Female educators were concerned about hijackings and the like; never once was sexual harassment mentioned until they were asked and replied that *there is nothing we can do about that.*

4.3.2 Legal measures and compliance

At school A educators blamed the existing legal measures for the confusion and anarchy happening in some of the schools. They said that there are so many legal tools with no directives or clarity. They said that the Schools Act is very vague about matters of discipline. The school does not have a code of conduct for educators and the principal said that *with all the documents telling us what to do and not monitoring whether we do it, it is pointless. We have the Schools Act*

and South African Council for Educators; they are there to guide and protect learners and educators. When asked about measures they use to safeguard the safety of learners, sexual harassment was never mentioned. Safety to them refers to injury or accident.

In addition educators are subjective in their interpretation of the legal measures and one particular educator had a negative attitude towards these measures. *There is nothing that has not been corrupted by your government he said our children at home and even at school, the duty of parenthood have been stripped from us.* He also lamented the fact that measures of discipline have been destroyed by legal measures. One female educator said that morals have little to do with legal measures. *“You know what is good or bad even if you cannot read the laws.* When referring to the adoption of the code of conduct by the school governing body, female educators said that it was pointless because half of the school governing body are not conversant with their duties *“They are only interested is in money matters, they are not interested in learners or educators.”*

4.3.3 Ethical behaviour of educators

All educators at School A have been affiliated with the South African Council for Educators since its inception. One male educator said that he “sees no point in affiliating”. Many serious cases of misconducts are reported to SACE but nothing happens. *Offending educators are still roaming the streets and teaching.* He believes that educators should be guided by their self-discipline and morality. One female educator believes that affiliating with SACE is very important because “it provides educators with knowledge of laws governing the education of the child and with further development of the educator”.

The male educator agreed with the educator that the importance of SACE affiliation is that it upholds professional behaviour and the development of educators. When educators are professionally developed they take their professional ethics seriously. They behave according to the prescriptions set by

the governing bodies of their professions. In this instance SACE, educators were very clear about SACE's stance regarding educator-learner relationships; they are totally against these types of relationships.

A male educator at school A cited ignorance of the educators' obligations towards learners as one of the reasons for these unethical behaviours. A female educator was very vocal, mentioning that those educators are "*weak-minded and weak-willed*". Another female educator said that those educators that "relate with their learners in this disgusting manner, have a very low self-esteem". Educators at School A do not understand the seriousness of educators having sexual relationship with learners. As one educator mentioned, learners do so out of free will. Such educators take their *in loco parentis* and duty of care principle very lightly, forgetting that they should act as parents to the learners since their parents entrusted their children to them.

Female educators believe that educators who do practise such behaviours have had abnormal upbringing. "We know our country is violent, but why take it out on poor learners? There is a saying that violence begets violence. Maybe the perpetrators have a violent family background so we really need psychologists in schools. These people are sick".

Ethical behaviour is still not clear to some educators. Male educators should know that "having affairs" with learners is unethical. Female educators understand the relationship between SACE and ethical behaviour. These female educators and one male educator were totally against unethical behaviour of having sexual relationship and labelled them as "disgusting". From this information it can be deduced that educators are not yet much aware of the legal provisions regarding sexual relationships with learners, learners here are still at risk.

4.4 School B

School B is a deep rural middle school in Jericho Village in the North West Province. The school is a Section 21, Quintile 1 school offering Grades 7 – 9 with 333 learners' ages range from 12 to 18. There are nine educators in the establishment, five of which are males and four are females. Learners are provided with food at the school because the school community is very poor.

Despite the challenge of poverty, the school is neatly kept and learners are neatly dressed in their uniforms. The principal's reception was very warm and she was very eager to offer any help to facilitate the volunteering of other educators. There is a well kept garden that is maintained by some of the parents; it provides vegetables for the feeding scheme. There seems to be discipline because all learners were in classes with an educator in attendance.

4.4.1 Educators' perception of sexual relationship with learners

School B educators consider sexual relationships with learners and sexual harassment as a serious misconduct. Male educators thought that women are 'cry- babies', always making noise about harassment even though they (women) are harassers themselves. The male educators said that they did not see any difference between how they relate with learners nowadays and in previous years, but now everything is considered abuse. One of the male educators even suggested that there should be girls' schools with only female educators because their teaching lives were threatened. A serious incident in the school was an eye-opener to involve parents and the Representative Council of Learners in formulating a code of conduct for both educators and learners and to form a disciplinary committee to handle these "types of misconduct". A female educator believed that if *educators act as parents to all the learners, promote gender equality and clearly understand and recognise learners as partners in education, sexual relations in schools will be curbed*. Educators as parents are not expected to harm the child psychologically or physically. Educators as partners are not

expected to undermine the status of the one partner as is the case in educator-learner relationships.

4.4.2 Legal measures and compliance

A female educator at School B believes that the government is doing all it can to protect learners in schools. All the South African laws in education have good intentions regarding the safety of learners. The problem lies with their implementation at school level. The Bill of Rights was mentioned by a female educator, more especially section 10 on human dignity. She believes that *learners should be treated with respect; there should not be any improper physical contact with them*. Educators at this school are in unison about the interpretation of the legal measures. They believe that developing a code of conduct for both educators and learners is a good starting point to ensure compliance with the legal measures in education. The female educator believes that when/if the code of conduct is adhered to it will be easy to comply with other legalities. A male educator referred to SACE as one of the legal measures that safeguard educator-learner relationships. The Code of Professional Ethics was mentioned as being explicit about education. This educator also mentioned that “the government cannot do it alone; that is why we have the school policy, code of conduct and the disciplinary committee to uphold compliance”.

Another female and male educator were not so open in our discussions. The male educator felt that the topic was very delicate and controversial because *people are always suspicious*. He talked about an incident where he tried to help a girl-learner by buying her a bus-ticket because the girl was usually absent; when asked about the absenteeism she said that she did not have money to come to school. The male educator said he was accused of having an affair with the particular learner. He said *I tried to prove my innocence but the suspicion is still there, I am no longer trusted by other educators, especially females*. He said that he was a father and *could never do that to someone's daughter*

One female educator said learners should be taught about their rights. She praised a workshop she had attended that was called “No apology” where learners were taught about their human rights and how to protect them. She believes that learners should be helped to make informed decisions. Adhering to legal measures is mere compliance; educators do not give themselves time to read and understand them. They are aware of SASA and SACE but the content, meaning and implication for their everyday interactions with learners are lost.

4.4.3 Ethical behaviour of educators

All four educators interviewed are registered with SACE. Out of the four, only one female educator saw the necessity of being a SACE member. She said that by registering with SACE *you acknowledge the noble calling of the teaching profession to educate and train the learners*. Educating and training learners means giving them a life-skill and this involves *acting in a proper way that would be exemplary to these learners*. Educators having sexual relationships with learners are not good role models. The educator also mentioned that once you engage in sexual activities with learners, you lose respect among learners. *They talk about you and write about you in the toilets, then everybody knows and you no longer have discipline in the classroom*.

The first male educator added that SACE registration is a mere formality. Educators just register and do not take pains to read about it. *Do you think we could have been talking about this, if they (educators) knew what SACE says about educator-learner relationships?* One male educator also lamented the fact on entering the teaching profession, they were proud to be teachers, and appreciated the respect and the dignity they were treated with. “And we lived up to those standards- the custodians of morality in society”.

A male educator who was very reluctant to answer questions said that *you will not understand because you are a woman, men sees these things differently*. He said that these young girls are *provoking and testing us*. He added that he was

once accused of having a sexual relationship with a learner but “did not want to talk about it. *It was invasion of my private life if what I did after school with “whoever” is questioned. It is not as if we are publicising the whole thing to the world.* When questioned about the age of the learners and the implications for their studies, he said that learners should not be underestimated; *they are tougher than you think.* An older male educator said that talking about sexual relationships with learners just makes him mad. *“I am a father of an only daughter, if one of these stupid teachers does that to her, I’ll kill him”* He said he felt sorry about the way these young girls “throw themselves” to male educators. *Their intentions are never good, you should listen to how they talk about their sexual adventures, and to them it is just a game”*

The female educators said that they wished that the Girls Guide Movement could be brought back, because there were discussions about the sexuality of young girls and at least those were “well behaved.” They said that parents do not help; they either ignore these relationships or condone them. They wished that educators would be work-shopped on sexual harassment. When they tried to advise learners they were told that they were jealous because they had reached their “sell by” date.

4.4 Overview

According to the responses of the educators interviewed (male and female) the school got a wake-up call when one educator was allegedly charged with harassing a learner. The principal then took it upon herself to make all educators aware of their obligations toward learners. All educators at school B were aware of their *in loco parentis* status. One female educator mentioned that “educators should act as parents to all learners.

Educators at School B are much aware of the relevant legal measures. They seemed to understand the legal measurements regarding the provisions of safety and protection of learners. Educators were cynical about registering/affiliating

with SACE; they said it was a mere formality. Only one female educator understood the intentions of this compulsory affiliation. She said by affiliating with SACE “You acknowledge the noble calling of the teaching profession”. She believes that having sexual relationships with learners puts your dignity and self-esteem at risk. This information provided by educators indicates that at least there is some understanding of the legal provisions regarding sexual relationships with learners.

4.5 School C

School C is a township secondary school 15 km away from Brits in the North West Province. It has a total number of 980 learners and it offers lessons for Grades 8 – 12 whose ages range from 13 – 21. The school is classified as a Quintile 2 school. There are 45 educators, 25 of which are females and 20 (twenty) which are males. The school is a well maintained modern school with modern double storey classroom blocks. The school offers quite a range of extra-curriculum activities like soccer, cricket, netball, gymnastics and drum majorettes and has won a number of trophies on these activities and is displayed in the office. The principal have recently won an award in the National Teaching Awards for Secondary Leadership. There seemed to be discipline and respect among both educators and learners.

4.5.1 Educators’ perception of sexual relationship with learners

At school C the first male educator was very vocal about this issue. He mentioned that in his vocabulary “sexual relationship with learners” does not exist. Any relationship whatsoever between educator and learner cannot have any sexual issues in it. *That will be sexual abuse, no fancy names, no frills but simple abuse.* One male educator highlighted the different forms of sexual harassment as he understood them and said that *“this is highly overrated, you touch a learner mistakenly and they cry abuse”*. He said that they are people with “common sense” and know the difference between right and wrong. “We know that any sexual relationship with learners is a very serious issue, not only

for the educator because of SACE, but also because of the implications on the poor learner”.

The first female educator said that it is a very sensitive and complicated issue. *We wish it not to happen, but it does. No matter how disciplined the school is, there will always be those isolated cases, educators taking chances and getting away with it.*

4.5.2 Legal measures and compliance

Both male educators were very conversant about many legal measures pertaining to education. The Children’s Act 38 of 2005 and the Bill of Rights were mentioned as prescribing clauses to address the protection of learners’ rights but not enough. The first male educator also mentioned the Batho-Pele and the Bana-Pele principles as some legal measures to protect learners and uphold values amongst people. The educator believes that these legal provisions should appear in the school policy and be incorporated in the code of conduct of both educators and learners to address misconduct of any nature. The first male educator strongly believes that compliance depends on the type of leadership and governance. The School Management Team and the School Governing Body should implement and monitor whether these codes of conduct are observed. He added that it becomes a challenge though, but it should be a positive exercise acceptable by educators.

A female educator believes that good leadership and exemplary behaviours are necessary to implement disciplinary measures in a school. When a leader is not afraid to charge the educator for any form of misconduct, then you will not have a problem with compliance to legal measures. Some school leaders have a problem with charging sexual harassment misconducts because they themselves are harassing learners.

Another female educator said that they did not have problems with educators engaging in sexual relationships with learners because an educator was charged for misconduct and suspended so a precedent was set for other educators who thought of having a sexual relationship with learners. Educators believe that compliance should be an institutional effort. All stakeholders should be aware of the legal measures pertaining to education so that they are not caught by surprise when the inevitable happens.

4.5.3 Ethical behaviors of educators

All educators teaching at this school are members of SACE. They all strongly believe that SACE registration is necessary. “It does not only acknowledge you as only an educator, but also as a human being, a professional who needs constant reminders of his/her professional ethics and standards”. Female educators also believe that people should not rely on the law to prescribe their behaviour. They believed that compliance should be obligatory because it is for the good of all involved. One of the female educators said that legal measures are there to correct misconduct but does not “wish to test them, because if we do , it means someone did what she/he was not supposed to do; we all know what we should do, when and where.”

A male educator believes that ethical behaviour is *about behaving as a parent, a professional and a community leader*. He also believed one should role model the behaviours one expects from learners. A female educator said that as a mother *one tries to instill good behaviours into your children but when they get to the street they change*. She said that if a learner consents to having a sexual relationship with an educator, it is purely out of curiosity. Learners are much aware of the risks involved because they are constantly taught about the implications. Another female educator said that educators should always remember their role when they engage with learners, that they are parents to all learners and that they know better and realise what is at stake when they behave in an unbecoming manner.

4.6 School D

This is a rural high school in the Madibeng Municipality in the North West and 75 km away from Brits. The school has a total number of 158 learners and caters for Grades 10 to 12 with the learners' age ranging from 15 to 24 years. The educator component is 11, six of which are males and five are females. The school is a quintile 1 school and the community is very poor with an unemployment rate of 80%. On our arrival learners were seen roaming the school grounds some were seen among the bushes leaving the school freely during lessons. There are no extra-curricular activities since most educators have to catch the only bus that leaves at 13h00.

The school environment is very unattractive, there is litter all over the yard and the buildings seem very old due to neglect. I was made to wait for a long time before anyone could attend to me. Educators were very reluctant to be interviewed on the topic until they were re-assured of anonymity.

4.6.1 Educators' perception of sexual relationships with learners

At School D the first female educator was very despondent. She said that the only concern was to make sure educators are in class and doing their job. "*What they do beyond that is their extra-mural activities. They do not concern me*". She said that no matter how much "noise" people make about sexual relationships with learners, they are still happening and still going to happen. Female learners are identified and "colonised" as sex puppets for educators. For the duration of their studies, learners are with a particular educator. When they pass, another colony is formed. One female educator lamented *there is nothing we can do*.

The school is quintile I (poorest of the poor) school. The community around the school is very poor. Girls tolerate these behaviours because of poverty. The learners depend on the educators to give them money for "plaiting hair, buying

cosmetics and stuff like that”. They do so because their parents cannot afford to. A male educator said that they had a case where an educator who had impregnated a girl, gave her money for a backstreet abortion. The girl was very ill and nearly died. She disclosed this information to one female educator but the parents did not want to hear anything about the issue. The girl got better and came back to school. The educator is still there, looking for another prey.

A female educator was very emotional. She said that some educators do not deserve to be educators. *The things they do to these girls are cruel and inhuman. They do not respect women; to them we are just play things.* She said that these educators are “educated illiterates;” they read the documents on sexual abuse and harassment, yet the information does not change their behaviour. *It is frustrating; you want to jam all these information into someone’s throat.* Another female educator echoed these sentiments and added that she is just glad she does not have a daughter.

A male educator said that he does not condone these relationships but whether we like it or not they are there. *The blame is not entirely on the educators, these learners are not so innocent. They know what they want and how to get it.* When the age of the learners was mentioned the educator referred to the cliché that age is nothing but a number and that in his culture a woman is never too young.

4.6.2 Legal measures and compliance

The female educators were supporting one another, saying that there are no legal measures to protect learners. In theory, they are there but not in practice nothing. *You see all these policies decorating these walls, they are just formalities. They were just put there and nobody ever bothers to read or discuss them.* The female educator said that no amount of legal measures will ever correct the plague. Educators need to be self-disciplined.

Educators did not want to get involved in a discussion of the legal measures because they said that they have no relevance to their school. *If you want copies we have them, but they are not helping anybody.* Male educators applauded the introduction of all the legal measures but said that they do not see their effects. *“What is the use of a measure if it cannot help you in anything?”* One male educator asked. He said that a girl will become pregnant and you will hear rumors that it is teacher so and so but nothing will happen. He said that there is so much anarchy because the school is led by unions and their leader is so afraid of them. *They said that no one is above the law but the unions in our school are.* It seems that the unions are taking advantage of the SGB and the school leader’s lack of knowledge of the legal measures pertaining to discipline and more especially to sexual harassment issues.

One male educator blamed the system. He said that democracy has been interpreted by some as anarchy. People are taught much about their rights and so little about their responsibilities. People were promised a better life. When it does not materialise, they get angry and the weak, women and children, have to bear the wrath. The leaders do not even lead by example. The Zuma rape case was cited as an example of how the legal system is failing victims of sexual abuse and harassment.

Another male educator said that *one man’s meat is another person’s poison.* He believes that a sexual relationship with learners is unethical. He believes that having a relationship with learners might be one way of keeping girls in school. He said that he was not admitting to having sexual relationships with learners. He just did not like how all female educators make so much noise about the issue. How do we know if the educators’ intentions are good or bad? What if he truly loves the girl and wants to marry her?

4.6.3 Ethical behaviour of educators

One female educator quoted a minister and said that *education has gone to the dogs*. There are no morals, nor ethical behaviour in education. She said that the ills are not only in education but in all spheres of government, hence in the whole country. *Leaders should be exemplary*. The ladies said that their leaders should do introspection to make sure that educators and learners do not copy what they do. Another female educator said that ethical behaviour is being destroyed by politics. They cannot discipline educators because of the interference of unions in the running of the school.

4.6.4 Overview

At school D educators seem not to be giving any attention to legal measures. The first female educator said she was not concerned about what happens outside the classroom and she seemed to have given up on concerning herself with the nature of relationships between educators and learners. It seemed that she was aware of the sexual relationships happening in the school because she mentioned how learners were *colonised* to become sex puppets for educators. Another female educator was upset about these relationships but she was out of hope because some parents condone them. Female educators said that they knew about these legal measures only in theory but not in practice because they were not implementable.

4.7 Discussions

4.7.1 Educators' perception of sexual relationships with learners

Educators of schools A, B and C agreed that learners best interests can be protected by making learners aware and teaching them about their rights. The immorality of these behaviors should also be highlighted to learners irrespective of their reasons to engage in such behaviours. Open ways of communication should be fostered where learners can report such cases. Transparency and

fairness should be the order of the day when dealing with perpetrators. The law must also be allowed to rule without prejudice and compromise.

4.7.1.1 Code of conduct at schools

Schools cannot be safe places and education cannot proceed in an orderly manner in the absence of clear guidelines for the management of the school (Prinsloo & Beckman, 1988:179). To ensure the safety of learners, schools should provide rules and regulations that will guarantee that both educators and learners behave and interact accordingly. Schools should have their own code of conduct and school rules that will cater for their particular type of environment, because the dynamics of individual schools differ, what works in one school cannot necessarily work in another school. Joubert and Prinsloo (2009:111) differentiate between the two as follows;

- a code of conduct can be defined as a standard of behaviour.
- a school rule can be defined as a code of discipline in a school or classroom, or a principle to which actions in a school or classroom conform or are required to conform.

What the two entities have in common is that both are concerned with the prescription of acceptable, good behaviour. The way educators and learners in a particular school behave towards one another and the way in which they interact should be based on the code of conduct and rules of that particular school. Consultation with all stakeholders when drawing up the code of conduct and school rules will ease the smooth running of the school because everyone will know his/her rights and duties and the penalties of non-compliance. Since educators know that sexual relationships with learners are wrong, learners will be made aware of their limits when relating with educators.

4.7.1.2 Educator-learner relationships?

Participants were all clear about the stance of SACE in this regard. One principal referred to section 3.8 of the Code of Professional Ethics. Among others SACE clauses state that educators must respect the dignity, beliefs and constitutional rights of learners. Educators are agreeing that the role between educator and learner is that of parent and child. It should be governed by mutual respect. The role of the educators is to exercise good professional conduct towards learners and to act as role models. The role of learners is to act appropriately in accordance with the code of conduct and to report any improper behaviour by educators.

One educator pointed out that if every stakeholder understood his/her role we should not, would not be arguing about anything beyond or above that. *Educators teach, learners learn, full stop.* Another educator supported this and mentioned that confusion occurs when one party encroaches onto the rights of another. When an educator oversteps the mark and goes beyond teaching or a learner decides that she/he wants more than learning. *These learners are not innocent victims, they know their effect on some educators,* said one male participant, *and we are human, we have red blood.*

Schools A and C agreed that they had drawn up their school policies including the code of conduct and that all the stakeholders were involved in developing these policies. Parents, learners and educators were actively involved in deciding what they wanted their school to be like. They agreed that sexual relationships between educators and learners were addressed in the policy and the penalties were also stipulated. Their greatest challenge was that irrespective of the specific penalties there are isolated rumours of sexual relationships with learners. These remain rumours until they die out because learners are intimidated and cannot produce solid evidence. Sometimes the unions also protect these educators because of insufficient evidence and the perpetrators get away with murder.

One school admitted to not having a code of conduct policy but relies on the South African Council for Educators code only. They believe that educators are the ones initiating the behaviours and that they are the ones who should take it upon themselves to act according to the code. Learners in such an instance are only victims, even if they are requested to participate in developing the school's code of conduct and understand their rights; they will always be dominated by educators because of their immaturity.

Another school agreed that they have developed a code of conduct which was then referred to as a prospectus of the school and had not updated and revised it since. One educator said, "It is of no use, it is just some writing on paper with no significance. No-one even remembers what it says. Educators and learners just come to school, whatever wrong-doing, is internally solved. Parents trust us to do the right thing. You just use your common sense. As for sexual relationships with learners, parents are the main decision-makers in the issue. It is usually rumours and it is settled between them and the particular educator. It never occurs in the school yard so; it is solved outside the school yard."

Schools A, B and C educators reported that their schools are trying very hard for educators to comply with the code, but it is a difficult battle. Even though the schools might try internal disciplinary measures, "the unions always interfere with that. One can no longer reprimand a problematic educator, she/he will run to the union and they will make your life difficult, and the school will be lawless," complained one principal. Participants complained that their local education office does not offer any support. They demand evidence and records from the principal. The principal in fear of being victimised will hesitate to supply the records. Compliance seems very difficult in the schools because of the misinterpretation of policies. During discussions some educators mentioned the factors contributing to these unethical behaviours.

4.7.1.3 Factors contributing towards these relationships

Participants cite different factors. Male educators and female educators at school C put the blame entirely on the educators. All educators at the four schools reported that most of the educator–learner sexual relationships they heard of and know about are initiated by male educators on female learners; instances of female educators on male learners are very rare. If there are any, the educator has no maternal instincts and is not fit to be in class at all. Two participants stressed the fact that the cause is due to the lack of discipline and low morale of the educators. Educators who have low self-esteem manipulate learners because they cannot negotiate anything with learners but will agree to anything because of their emotional, intellectual and physical immaturity. One female educator referred to these educators as “weak minded and weak willed”.

One of the factors cited was misuse of power. Educators because of their positions, take advantage of these learners. One male educator mentioned that he knew of a school where the principal himself would identify a girl, abuse her sexually and pass her or introduce her to one problematic educator; the girl would then seduce the educator so that this educator cannot report sexual harassment since he is also the perpetrator. A number of girls are “colonised” to be instruments for educators’ sexual pleasures until another colony is organised. The girls in turn are given presents or given money to make themselves beautiful. In most cases colonies are made up of beautiful girls from poor homes who cannot afford the beautiful things they long for. Poverty was indicated as another reason for learners to fall prey to these “predators”. Female learners accept these offers of sex-for-money from educators because they really do need the money. This money buys food at home, some of it even pays for the girls’ school fees.

Some of these relationships are entered into with the encouragement of parents because they do not have anything to offer to their children. Female educators put the entire blame on the girls. These girls like experimenting with fire. They are still young and beautiful and want to test the extent of their feminine powers.

They cut up their school skirts way up too short. They flaunt themselves in the faces of the male educators. When the male educator picks up the challenge the girls do not know how to take the game further.

Ignorance of educators' obligations towards their profession and towards their learners was also named as another factor contributing to these relationships. Educators deliberately enter into relationships with learners knowing that they will get away. One participant quoted an African idiom that says that you can carve any object from wood/stone but a person/man is self-made. No law can change a person unless that person really wants to change. Educators therefore should not only rely on the law to force them to do right.

4.7.2 Legal measures and compliance

Educators seem to be aware of the legal framework pertaining to education. The Constitution was mentioned as being the cornerstone of democracy in the country and all laws should be based on it. Sections of the Constitution that were quoted as protecting learners as persons are the following:

- Section 9 –equality
- Section 10 – human dignity
- Section 24 – safe environment
- Section 28 – children

The South African School Act was cited as the main statutory in education also protecting learners from any form of abuse or physical harm.

The Children's Act, 38 of 2005 – chapter 1 protects children against any form of abuse.

The Employment of Educators Act, section 17 specifies the disciplinary procedure for educators who are found violating the rights of learners.

The South African Council for educators regulates professional ethics among educators and guides relationships between educators and learners.

Irrespective of all these legal measures one educator stated that she did not believe that there is adequate protection by law for learners since these sexual relationships between educator and learner still occur to this day. She believes that if there were adequate protection the perpetrators would be in prison or be demoted. Instead “those who are guilty are still roaming around to further harass their victims and they still have an arena to repeat their dirty deeds.

4.7.3 Ethical behaviour of educators

All participants are members of the South African Council for Educators and have been members since its inception. They all agree that the intentions of SACE are to uphold professional and social ethics. A professional is not isolated from society, so whatever educators as professionals are displaying is always judged by society. The trend of ill-behaved educators has really tainted the value of the teaching profession and lowered its worth. Even after SACE there are reports of sexual harassment in schools and these educators are still in schools. Participants agree that membership of SACE is necessary. Among other objects of the Act is to set, maintain and protect the ethical and professional standards of educators. It also provides the educators with knowledge of education law and the development of educators.

The Batho-Pele principles were quoted as a policy legislative framework to improve quality service delivery in the public sector, including education sector. The principles are intended to promote and maintain high standard of professional ethics. The fourth principle, ensuring courtesy requires educators (as service providers) to empathise with the citizens (learners in this instance) and treats them with as much consideration and respect as they would like for themselves.

The Bana-Pele was introduced by the Gauteng Provincial Government in 2005 and is currently being adopted by other provinces. This policy was built on the necessity of ensuring that children exercise their basic rights, amongst others, the right to protection from abuse, exploitation, suffering, neglect, violence and hatred. The first principle puts children first in all actions related to children. The best interest of the child is the primary consideration.

4.8 Conclusion

Most of the information collected during the interviews revealed that perception and interpretation of the legal provisions governing relationships in schools are still subjective. Educators seem to be ignoring their constitutional, statutory and common law duties. The male educators seemed more aware of these provisions but ignore them because of the precedent set by other male educators. Female educators are much more aware of the legal provisions and hope that more will be done to protect learners.

Educators are aware of the need for professional ethics since they are all members of SACE. What is evident at those schools is that they are trying to enforce compliance with the law but there is interference from the unions and a lack of support from other stakeholders. There are many cases that are not reported because some educators pay off learners to silence them; some learners are ashamed to report because they have lost faith in the education and legal systems. Whatever the reasons, it is the learners who pay the price at the hands of those who are supposed to care and protect them.

Most of the information also indicates that much still has to be done to ensure gender justice in schools. Some of the female participants have lost all hope of the situation ever improving. Girl learners will always be harassed as long as schools are still meshed with patriarchal values. Schools are still seen as reproducing hegemonic masculinity; therefore schools are not necessarily safe places for girls.

The next and final chapter discusses the conclusions and the recommendations.

Chapter 5 Conclusions and recommendations

5.1 Introduction

This study intends to find out how educators perceive and understand sexual relationships with learners considering the legal implications. The professional and social ethics of educators and the need for educators as professionals to be guided by legislation has been considered. Factors contributing to these relationships are discussed. This chapter concludes by presenting findings of the research and recommendations which have been obtained from the gathered data.

5.2 Conclusion to the study

The study found that educators perceive and understand the legal provisions regarding their relationships, especially sexual relationships with learners subjectively. Educators seem to disregard the implications of non-compliance with these legal provisions. Observations from the study are discussed below.

5.2.1 Educator- Learner sexual relationships

The Schools Act puts a great deal of emphasis on the role of an educator. An educator is expected to “teach, educate or train other persons”; this can only be achieved through good role modelling and good behaviour. The Schools Act further emphasises that educators should “provide professional educational services, including professional therapy and education psychological services” What the researcher has observed in schools is that not all schools take up these responsibilities and obligations to heart- for example, schools A and D. Some educators still do not comprehend the psychological services they are to render to learners; they still do not understand the psychological harm that could befall learners if some educators have sexual relationships with learners and when some educators ignore these relationships knowingly.

A percentage of educators still do not regard learners as partners in education and do not realise that effective and efficient teaching and learning cannot take place when one side of the partnership is compromised and undermined. Learners are also persons in education; meaning that they are entitled to the benefit of all fundamental rights enshrined in the Constitution and the Bill of Rights and should be allowed to exercise these rights :

- The right to education
- The right to human dignity
- Equality
- A safe environment

The immaturity status of learners (Davel 2000, 282) requires educators to handle them with extra care. Educators are simply ignorant of this fact when they blame learners for seducing educators (School A). *You should see how they flirt with educators.*

Up to this stage of conscientised human rights the media is still reporting on educators having sexual relationship with learners. The *Sowetan* (Friday, 19 February, 2010) reported on the Deputy Minister (Public Works) saying that she was also abused and impregnated by a school teacher at a “School of shame” (Filadelfia Secondary School for the visually, hearing and physically impaired) while she was a learner there. She lamented how her life had been shattered by that experience. *City Press* (21 February, 2010) “Tackle those child-abuse teachers” reported on teachers in Mpumalanga who were “competing with each other on the basis of who slept with more learners” as if they are not dealing with human lives.

Are these educators not aware of the laws in education that prohibit this kind of behaviours? The community knows those perpetrators but it seems to be the norm not to talk about these incidents. Some parents condone the relationships

because of poverty. *City Press* (06 January, 2002) “Call to arrest teacher for affair with school girl” the parent was proud to “marry off” her 13 year old daughter to a 41 year old educator for R2500.00, not aware of the future implications on the poor learner.

5. 2.2 Legal measures and compliance

Interpretation of the legal measures still seems to be a challenge to educators. The supremacy of the Constitution is not appreciated by some of the participating educators. School A educators said *there are so many legal tools with no directives or clarity*. What the educator does not comprehend, like most educators, is that all legal measures are guided by and entrenched in the Constitution. All the democratic ideals of the Constitution should be reflected in all other subordinate legal measures, education law included. Educators at school D said *there are no legal measures to protect learners*; when in reality all laws are intended to protect learners as bearers of all human rights.

It is evident from the study that although most of the participants know what the legal provisions pertaining to educator-learner relationships expect from them, adherence to educational policies is still a challenge. The fact that some schools still do not have sexual harassment policies for their schools is disturbing. One of them still has the old “school prospectus” which they do not even bother to revisit. Schools need policies to govern and regulate behaviour and interactions amongst all stakeholders. These policies will also help maintain discipline because everyone concerned will know what is expected of him/her in relation to keeping discipline in the school. It has never occurred to some of the participants that relationships between educator and learners should be part of some of their policies; they regard these policies as something to do with uniform, late-coming, fighting in the school but not with relationships.

A school that had a code of conduct for learners could not guarantee that every stakeholder was aware of the contents of the code of conduct. To them having

the code of conduct displayed on the wall was mere compliance. Its purpose of promoting positive discipline, self discipline and exemplary conduct was lost to them.

Perception and interpretation of the legal provisions still remain voluntary and subjective. Some educators are concerned about the inadequacy of the law to protect learners. There are discrepancies in some of the education legislature which the educators are exploiting. For example, South African Schools Act (section 8) is places so many powers on school governing bodies, that sometimes are not conversant with the due process when handling disciplinary procedures against educators. Educators get away easily for harassing learners simply because they are witty enough to convince the SGB of their innocence. The learners on the other hand for fear of being ridiculed decide against reporting incidents of abuse by some members of the community who still believe that when a girl is sexually harassed or abused she has asked for it.

As for the South African Council for Educators, compulsory affiliation is merely a token gesture. Sexual harassment still occurs even after its introduction. Perpetrators in schools are still continuing to harass many learners. The good intention of SACE is lost because some educators do not uphold the professional ethics expected of them by SACE.

5.2.3 Ethical relationships

Ethics according to Van Niekerk, van der Waldt and Jonker, (2001:116) involves more than merely acting in accordance with the law. It pertains to the morality and attitude with which it is taken. There are so many definitions of ethics, but basically ethics involves being able to differentiate between right and wrong.

All educators who participated in the research are registered with the South African Council for Educators, but it seems as if the rationale for being members of this body is vague to them. The code of conduct of SACE clearly stipulates

that “an educator should refrain from any form of sexual relationship with learners at a school”. If all educators took this statement seriously, we would not have unethical behaviours occurring in schools

Educators do not need the law to tell them to do what is right. Their morale and attitude should be the guiding force behind their behaviour. There are also common law principles like in *loco parentis*, duty of care and *diligent pater familias* which clearly distinguish the role of an educator in any relationship with a learner. Having sexual relationships with learners is totally unacceptable and all participants agreed to that.

For effective and efficient teaching and learning to take place, all stakeholders in the school community should have discipline. Discipline according to Joubert and Prinsloo (2009:107) is any training intended to develop moral character or produce pattern behaviour. Educators should be seen as custodians of a disciplined school environment by setting examples of good behaviour to learners. As professionals they should also display their skill of professional competence and conduct themselves in a professional manner (Joubert & Prinsloo, 2009:170). Professionals do not exist in isolation but within the society at large; educators therefore need to balance their professional ethics with their social ethics so as to be good and moral citizens. Educators are entrusted with the duty of taking care of learners, of upholding ethical behaviour and role-modelling them. When educators have sexual relationships with learners they do not only violate the human rights of learners, they violate the trust parents entrusted to them to take care of their children but also violate their professional qualities. Children need special protection and care because they are both mentally and physically young and inexperienced. Ethics here is required, which involves humanness, reasonableness, decency, integrity and fairness.

5.3 Recommendations

The education system has been affected by so many changes; every sector should strive to be conversant with the legal provisions relevant to them. Educators should be aware of their obligations towards their profession and to their learners.

1. Educators should make it a point of understanding the legal provisions impacting on their work. It was evident during interviews that educators do not read their educational legislative documents only a few are aware of them.
2. Educators as professionals should be lifelong learners. Continuous learning is one of the hallmarks of professionalism. Learning about current affairs also leads to continuing professional development and this will boost their morale because they will know better and regain their confidence.
3. Schools must not be flooded with education legislation and left on their own for its implementation. Local circuit offices should provide support for the implementation and sustainability thereof.
4. Schools should involve all the stakeholders when drawing up school rules and codes of conduct so that they instill a sense of ownership and do not encounter resistance when trying to implement them.
5. Competent and efficient people/educators should be appointed in leadership roles so that they do not have qualms when dealing with issues of unethical behaviour. School leaders should be able to initiate changes through legislation to reduce gender imbalances that still reign in schools.
6. Girls' education movements should be reinforced so that learners are motivated to consider and appreciate their self-worth and not be manipulated into doing petty things that could cripple their lives forever.

5.4 Conclusion

Sexual harassment and abuse still remain a challenge in South African schools even in an age in which human rights are everybody's concern and when the democratic ideals of our country are highlighted in all spheres of the government. Educators as civil servants should be upholding these ideals. Instead, some educators are constantly and unashamedly continuing to infringe upon the rights of learners and take advantage of them. Some educators ignore their legal obligations to the learners. The interpretations of the legal provisions pertaining to educator–learner relationships are still a challenge.

Until educators seriously consider the implications of their ignorance of the laws and until they consider the child's best interest the education and lives of young girls are still at risk. One educator was quoted by Ginott in Harber (2004:8): "I have come to a frightening conclusion: I am the decisive element in the classroom. It is my personal approach that creates the climate. It is my daily mood that makes the weather. As a teacher I possess tremendous power to make a child's life miserable or joyous. I can be a tool of torture or an instrument of inspiration. I can humiliate, humour, hurt or heal. In all situations it is my response that decides whether crises will be escalated or de-escalates; a child is humanized or dehumanized".

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APPENDICES

INTERVIEW SCHEDULE

Topic: Educators perception and understanding of the legal provisions regarding sexual relationships with learners

The aim of the study is to find out how educators perceive and understand sexual relationships with learners

Section A: Biographical information.

1. Your age:

2. Gender: F/M

3. Race: A/C/W

4. Marital Status Married Divorced Married

5. You teach at P- Primary M – Middle S – Secondary

6. Location: R – Rural U – Urban T – Township

7. Position at school Pri – Principal Dep. – Deputy Principal H.O.D – Head of Department Edu - Educators

8. Years in service

Section B: Educators perception of sexual relationship with learners

1. Is there a code of conduct policy at your school? Who developed this code of conduct?

2. How does the code of conduct address aspects of sexual relationships with learners?

3. How do you understand the role between educators and learners in this regard?

4. How does your school implement and monitor compliance with the code of conduct for educators?

5. How do you think the learners' best interest can be protected in a case of sexual relationships between educators and learners?

Section C: Educators understanding of the provisions in South African law pertaining to the care of learners?

1. How does the law protect learners in schools? Do you think there is adequate protection in the law? (Substantiate)

2. How do you understand the following provisions from legislation?
Chapter 1 of the Children's Act, 38 of 2005 describes abuse as any form of harm or ill-treatment deliberately inflicted on a child and includes:
- a) sexually abusing a child or inflicting any other form of deliberate injury to a child.
 - b) sexually abusing a child or allowing a child to be sexually abused

AND

Section 17 of Employment of Educators Act provides that an educator can be dismissed in the following cases:

- 1. a) an educator must be dismissed if he/she is found guilty of-
 - b) committing an act of sexual assault on a learner or other employee,
 - c) having a sexual relationship with a learner of the school where he/she is employed.
2. How do you think should these legal provisions be complied with in schools?