

**EXPLORING THE HUMAN RIGHTS
UNDERSTANDINGS OF EDUCATORS**

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***THIS DISSERTATION IS DEDICATED TO THE MEMORY OF MY
LATE FATHER-IN-LAW, ADRIAAN . S . NEL (1926-2006). A MAN
WHO TRULY RECOGNIZED THE IMPORTANCE AND VALUE OF
EDUCATION.***

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ABSTRACT

The Bill of Rights (Constitution of the RSA, Act No. 108 of 1996) is a cornerstone of democracy in South Africa. It enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. As a legal instrument the Bill of Rights is open to differences in interpretation and understanding. The understanding and interpretation that educators attach to the rights contained in the Bill of Rights is of vital importance as it will determine how the upcoming generation will interpret and give meaning to these rights.

The purpose of this study was to explore the human rights understanding of the educators at a Catholic school, and then to determine whether the understanding that these educators have about human rights concurs with the existing literature and where applicable, judgements of the Constitutional Court.

A case study approach was undertaken with eight primary school educators at the school and using the evidence, collected from interviews conducted, the study found that as much as the understanding of the participants was generally in line with the literature and the Constitutional Court judgments, their understanding is largely theoretically based.

As much as the participants have a clear understanding of the different rights, are able to attach meaning that is in line with universal definitions and does not transgress the legal bounds, the emergence of the nuanced opinions indicates that this understanding is limited by the values, traditions and societal norms that the participants associate themselves with and could lead to intolerance.

In the final analysis, human rights and its associated concepts is defined and understood by individuals and groups of people in different ways. This understanding of human rights is intrinsically linked to culture, values, norms and societal perceptions. As a result, the understanding of this concept will differ from person to person and culture to culture.

It is however possible that in many instances these different understandings are no more than different cultural and religious expressions of the same fundamental principles. As long as these different cultural and religious practises remain within the boundaries of the law, are not imposed on others and do not lead to intolerance, they should be respected and allowed to continue. These differences in interpretation, understanding and practise not only contribute to the ongoing debate around human rights and its associated concepts but in addition, contribute to the nurturing of democracy and freedom in South Africa.

Where these differences in understanding, interpretation and practise become a contentious issue that cannot be resolved by the parties independently, as was the case in *Christian Education SA v Minister of Education-CCT 4/00*, the Constitutional Court can be approached in order to test the different understandings / interpretations and make an appropriate ruling on the matter.

KEY CONCEPTS

HUMAN RIGHTS

CULTURE

DEMOCRATIC VALUES

TRADITIONS

DIGNITY

RELIGION

FREEDOM

VALUES

EQUALITY

UNDERSTANDING

OPSOMMING

Die Handves van Regte (soos vervet in die Grondwet van die RSA, Wet Nr. 108 van 1996) vorm die hoeksteen van demokrasie in Suid - Afrika. Dit onderskryf al die regte van die mense in die land en bevestig die demokratiese waardes van menslike waardigheid, gelykheid en vryheid. As 'n wetlike instrument is die Handves van Regte oop vir verskillende interpretasies en begrip. Die interpretasie en begrip wat opvoeders aan die regte heg, wat in die Handves van Regte bevat is, is van uiterste belang omdat dit sal bepaal hoe die volgende generasie die regte sal interpreteer en betekenis daaraan sal heg.

Die doel van hierdie studie was om die begrip wat opvoeders van 'n Katolieke skool oor menseregte het na te spoor, en te bepaal of die begrip wat hierdie opvoeders het, ooreenstem met die bestaande literatuur en waar van toepassing, uitsprake van die Konstitusionele Hof.

'n Gevalle studie benadering is gevolg. Onderhoude is met laerskool opvoeders verbonde aan die Katolieke skool gevoer en die ingesamelde data is verwerk. Hierdie studie het bevind dat die opvoeders se verstaan van die begrippe in ooreenstemming is met die literatuur en die Konstitusionele Hof uitsprake, maar dat hulle begrip hoofsaaklik teoreties is.

Alhoewel die deelnemers se begrip van die verskillende regte in ooreenstemming is met die universele definisie en ook binne die wetlike grense val, is daar genuanseerde opinies wat daarop dui dat hierdie begrip beperk is deur die waardes, tradisies en gemeenskaplike normes waarmee die deelnemers hulleself assosieer en wat gevolglik tot onverdraagsaamheid kan lei.

In die finale ontleding blyk dit dat menseregte en al die geassosieerde konsepte deur individue en groepe op verskillende maniere gedefinieer en verstaan word. Hierdie begrip van menseregte is intrinsiek aan kultuur, waardes, normes en gemeenskaps persepsies gekoppel. As gevolg daarvan verskil die begrip van

hierdie konsep van persoon tot persoon en kultuur tot kultuur. Dit is moontlik dat in baie gevalle hierdie verskille in begrip niks meer as die verskillende kulturele en godsdienstige uitlewings van dieselfde fundamentele beginsels is nie en solank as hierdie verskillende kulturele en godsdienstige praktyke binne die perke van die wet bly, dit nie op ander afgedwing word nie, en nie tot onverdraagsaamheid ly nie, behoort hulle gerespekteer te word en toegelaat te word om voort te bestaan. Hierdie verskille in interpretasie, begrip en uitlewing dra nie slegs net tot die aanhoudende debat oor menseregte en die geassosieerde konsepte by nie, maar ook tot die versorging van demokrasie en vryheid in Suid-Afrika.

Wanneer hierdie verskille in begrip, interpretasie en uitlewing 'n kontensieuse saak word wat nie deur die partye onafhanklik opgelos kan word nie, soos in die geval van *Christian Education SA v Minister of Education – CCT 4/00*, kan die Konstitusionele hof benader word om die verskille in begrip en interpretasie te toets en die toepaslike uitspraak te gee.

SLEUTELWOORDE

MENSE REGTE

KULTUUR

DEMOKRATIESE WAARDE

TRADISIES

WAARDIGHEID

GODSDIENS

VRYHEID

WAARDES

GELYKHEID

BEGRIP

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CHAPTER ONE

1. OVERVIEW AND RATIONALE

1.1 INTRODUCTION

The Bill of Rights (*Chapter 2, Constitution of the Republic of South Africa, Act 108 of 1996*) has been applauded as progressive and exemplary for a modern democratic state. What is scribed in the Bill of Rights is open to differences in interpretation and as a result, the Constitutional Court has played an intricate part in clarifying differences in interpretation. In turn, it is important to assess the understanding that educators have and give meaning to the various clauses contained in the Bill of Rights. This understanding is of vital importance in so far as it will determine how the upcoming generation will interpret and give meaning to the rights enshrined in the Constitution of the Republic of South Africa.

It is educators after all who, metaphorically speaking, hold up the mirror of society (Bernstein, 1996). It is this image that is projected by educators that not only determines what is included and excluded but furthermore impacts on the way in which learners are taught and guided in schools. The studying of the understanding that educators have in relation to the rights enshrined in the Constitution may reveal nuances that will impact on how the learners are taught and guided in schools.

Assessing the understanding that educators possess in relation to the rights enshrined in the Bill of Rights is in essence the crux of this research. It is all very well for an educator to know and be aware of the individual rights that are enshrined in the Bill of Rights but what is his or her understanding of that particular right and how could this understanding affect the manner in which the learner in turn attaches meaning to these rights. The meaning an educator

attaches to specific rights will inadvertently (whether this meaning is projected covertly or overtly by the educator) have a bearing on the meaning that a learner attaches to this same right.

Standards set in law play a part in shaping our understanding and as much as this study aims to search for unique understandings, that the educators involved in this case study may have about human rights, a comparative analysis of the responses will be done in relation to Constitutional Court judgements that impact both directly and indirectly on the individual rights which formed part of this research.

It can be argued that human rights relate to what it means to be human. The conceptions of equality, freedom and social justice are intertwined with personal expressions of what every individual understands about being human and in turn human rights. Human rights are rights that attach to human beings and function as moral guarantees in support of our claims towards the enjoyment of a minimally good life (<http://www.iep.utm.edu/h/hum-rts.htm>).

1.2 RATIONALE OF THE STUDY

“Human rights are those rights that belong to every individual simply because (s)he is a human being.” – Flowers, (2000:2).

Human rights have always been an intricate part of human society and have manifested itself through various instruments.

The *Universal Declaration of Human Rights* was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948 and called upon all Member countries to publicize the text of the Declaration, so as to ensure that it is disseminated, displayed and expounded principally in schools and other educational institutions. The Universal Declaration of Human Rights further

recognizes that all human beings have inherent dignity and equal and inalienable rights which are the foundation for freedom, justice and peace in the world.

In the decades following the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations, we have witnessed the affirmation of additional human rights instruments. The International Covenant on Economic, Social and Cultural Rights was initially adopted by the General Assembly of the United Nations on 16 December 1966. This resolution recognized that the rights that underpinned the Universal Declaration of Human Rights could only be realized, if everyone is able to enjoy economic, social and cultural rights.

The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on 20 November 1989 and furthermore sought to promote the principles adopted in the Universal Declaration of Human Rights in 1948. The United Nations had proclaimed that children are entitled to special care and assistance. The work of UNICEF is guided by the provisions and principles of the Convention on the Rights of Children. In South Africa, a clause which aims to ensure that children do indeed get special attention, is Section 28 of the Constitution of the Republic of South Africa (1996).

The Convention on the Rights of the Child considered that the child should be fully prepared to live an individual life in society and raised in the spirit of the ideals proclaimed in the Charter of the United Nations, in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. The Convention on the Rights of the Child furthermore made reference to additional human rights instruments that extended special care to children.

These were:

- The Geneva Declaration of the Rights of the Child of 1924;
- The Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959;

- The Universal Declaration of Human Rights, 1948;
- The International Covenant on Civil and Political Rights (particularly articles 23 and 24), 1966 and;
- The International Covenant on Economic, Social and Cultural Rights (particularly article 10), 1966.

With the transition of South Africa into a democracy in 1994, a new era of human rights came into existence. This culminated in a new Constitution for the Republic of South Africa in 1996. Chapter 2 of the Constitution entrenched the human rights of individuals. Thus, the education system, being an instrument for the perpetuation of humanness, is underpinned by human values associated with human rights and democratic principles:

The Constitution of the Republic of South Africa (Act 108 of 1996) provides the basis for curriculum transformation and development in South Africa. The Preamble to the Constitution states that the aims of the Constitution are to: Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights (National Curriculum Statement, 2002:1).

A discourse of human rights has formally come to underpin education policy, to replace the past apartheid discourse (Kruss 2001:45). Educators are responsible for achieving the aims of the education system which are underpinned by, *inter alia*, human rights.

South Africa is by and large and particularly, if compared to the United States of America, not a very litigious society. There are indications, based on the increased number of court cases, that litigation within an education context is on the increase. This is partly attributed to the fact that, where the rights of learners are being infringed upon, parents are exercising their rights in terms of Section 38 of the Constitution of the RSA, Act 108 of 1996 and approaching the courts for

the protection of their children's rights. The infringement of the rights of learners may be attributed to the fact that educators are perhaps ignorant of the intricacies associated with human rights.

As a result, it is important to explore the understanding of human rights by educators and to juxtapose it with the judgements of the Constitutional Court of South Africa, thereby determining the extent to which educators share the same understanding of human rights as that of the courts.

1.3 PROBLEM STATEMENT

The adoption of the new constitution and entrenching of human rights have brought about far reaching changes in our schools and affects the manner in which educators conduct themselves. According to the 'Teacher's Guide for the Development of Learning Programmes' in the Revised National Curriculum Statement Grades R – 9 (Department of Education, 2003:5), it is the responsibility of educators to promote democratic values and social justice in our schools. The Teacher's Guide for the Development of Learning Programmes lists the following as "Principles Underpinning the Curriculum":

- Social Justice
- A Healthy Environment
- Human Rights
- Inclusivity

These principles are all intricately linked to the broader definition of human rights as presented by Flowers (2000:2).

Since education is a vehicle for the transmission of human rights, the understanding that the educators have, relating to the principles of social justice and the democratic values of human dignity, equality and freedom as enshrined

in the Bill of Rights, Chapter 2 of the Constitution of the RSA is important. **The purpose of the research is to determine whether the understanding that educators have about human rights is in accordance with the existing literature and where applicable, judgements of the Constitutional Court.**

An independent school was chosen as the research site. The school has a Catholic ethos. During the years of apartheid this school defied the Nationalist government and accepted Black, Indian and Coloured children into the school. This was done as the racist system of apartheid was viewed as being immoral and contrary to Catholic doctrine: *Belief in the inherent dignity of the human person is the foundation of all Catholic social teaching. Human life is sacred, and the dignity of the human person is the starting point for a moral vision for society. This principle is grounded in the idea that the person is made in the image of God. The person is the clearest reflection of God among us (Catholic Social Teaching. <http://www.osjspm.org/cst/themes.htm>).* On the other hand corporal punishment was an intricate part of the system of discipline which was prevalent in this school at the same time.

This in essence may point to a misalignment of principle, particularly with regard to human dignity. During the years of apartheid the school accepted Black, Indian and Coloured learners in defiance of the government of the day, as the principle of segregation was seen as demeaning and contrary to Catholic doctrine. The school was, as a result of the stance taken, therefore seen by progressive and liberal observers as a school that upheld principles associated with human rights. However the formal adoption of corporal punishment as a method of discipline is contrary to the doctrine of human rights.

The reason that corporal punishment was abolished after the adoption of the Constitution of the RSA in 1996 was attributed to the fact that it impaired the human dignity of the recipient. Similarly the racist system of apartheid impaired the dignity of those who were not classified as white and deemed to be inferior.

This school however accepted that the apartheid system impaired the dignity of individuals; but the inflicting of corporal punishment did not.

Thus the problem statement is not solely associated with the above contradiction, but initiates an investigation into whether the respect for one aspect of human rights, in line with a specific doctrine, value system or view, creates an overall culture of human rights, aligned with the democratic values of human dignity, equality and freedom.

This study will be guided by two pertinent research questions:

- What is the educators' understanding of specific human rights and in particular, the democratic values of human dignity, equality and freedom?
- Is this understanding in line with the rulings of the Constitutional Court of South Africa and the general understanding of these rights as reported in literature?

1.4 AIMS OF RESEARCH

Following on from the problem statement, it may be that educators are aware of what human rights are by definition and may be able to even recite all the human rights as entrenched in the Constitution of the Republic, but what is their personal *understanding* of human rights and its associated concepts?

The aim of the research is therefore to:

- Investigate and report on the broad understanding educators, in a Catholic independent school, have about human rights in general and the democratic values of human dignity, equality and freedom in particular;

- Ascertain whether this understanding is in line, where applicable, with cases finalized by the Constitutional Court of South Africa;
- Seek to clarify the perceptions and understanding of the educators interviewed, in line with the existing literature on human rights and the democratic values of human dignity, equality and freedom.

1.5 THEORETICAL PERSPECTIVE

The personal understanding that educators will have about human rights will be influenced by their personal knowledge and cognition in relation to human rights. Their social interaction, which will encompass their personal culture, values and beliefs, will influence their understanding of human rights.

1.5.1 Constructing Meaning and Understanding

Social interaction plays a fundamental role in the development of cognition (Vygotsky. 1978:57). Socialization is the lifelong process by which individuals acquire the beliefs, customs, attitudes, values and roles of their culture or social group in order to be integrated into and accepted by society (Louw, Van Ede, Louw. 2001:9). Therefore socialization will impact on the meaning and understanding that educators construct about human rights.

The impact this particular meaning and understanding that educators have about human rights in general will have on the learners in their care, is highlighted in Bandura's social learning theory (1977), which emphasises the importance of observing and modelling the behaviours, attitudes and emotional reactions of others. These new behaviours are performed and later, this coded information, serves as a guide for action (Bandura 1977:22). Lave and Wenger (1991) concur with Bandura and highlight the fact that learners are involved in a "*community of practice*" which embodies certain beliefs and behaviours to be acquired. It therefore follows that the meaning and understanding that educators have about

human rights will impact on the learners, who will model the behaviours, attitudes and emotional reactions of their educators in this regard.

Therefore meaning and understanding will be created through the interactions with one another and with the environment in which they live.

Social constructivism is another aspect of meaning and understanding that is closely linked with the theories of Vygotsky and Bandura, as it emphasises the importance of culture and context in which understanding occurs. Knowledge construction is based on understanding (Derry, (1999) in Kim 2001).

1.5.2 Cultural Perspective

The culture of a society is the way of life of its members; the collection of ideas and habits which they learn, share and transmit from generation to generation (Linton, (1945) in Haralambos & Holborn, 2000:3). To a large degree culture determines how members of society think and feel: it directs their actions and defines their outlook on life (Haralambos & Holborn, 2000:3). As a result, culture defines accepted ways of behaving for members of a particular society. This can lead to considerable misunderstanding between members of different societies, especially in a pluralist society consisting of different cultural groups (Klineberg, (1971) in Haralambos & Holborn, 2000:3),.

Subsequently the educators' perception of human rights and specifically the democratic values of human dignity, equality and freedom, will be influenced by their cultural background. As a multi-cultural society South Africa has a diversity of cultural groups. Therefore multiculturalism may present a further challenge to the understanding of human rights.

1.5.3 Values

Haralambos and Holborn (2000) state that values provide more general guidelines for conduct, whereas norms provide specific directives for conduct. They see a 'value' as something that is good and desirable (Haralambos & Holborn, 2000:5). Many sociologists maintain that shared norms and values are essential for the operation of human society. Values are important building blocks of thoughts, beliefs and the zeitgeist (mass mind; spirit of the times) in which we all live. It creates an internal structure that informs all decisions (Nieuwenhuis, 2003:28). As a result, the value system that has been built by an individual, will control his or her thoughts and manner in which he or she structures understanding of any issue. The understanding that educators have about human rights will be influenced by his or her particular value system.

1.5.4 Social Justice

Social stratification is a particular form of 'social inequality' which refers to the presence of distinct social groups that are ranked one above the other in terms of factors such as prestige and wealth (Haralambos & Holborn, 2000:23), indicative of 'social inequality'. Social justice goes to the heart of equality and freedom, which apart from being fundamental to human rights, forms an intricate part of this study.

Saunders (1990), apart from supporting the fact that there has never been a completely egalitarian society, distinguishes three types of equality, namely:

- *formal or legal equality* in which all members of society are subjected to the same laws or rules;
- *equality of opportunity* where people have an equal chance to become unequal. Individuals compete for success and those with greater merit, achieve more; and

- *equality of outcome* goes further than the idea of equality of opportunity by emphasizing the importance of equality in the outcome of opportunities.

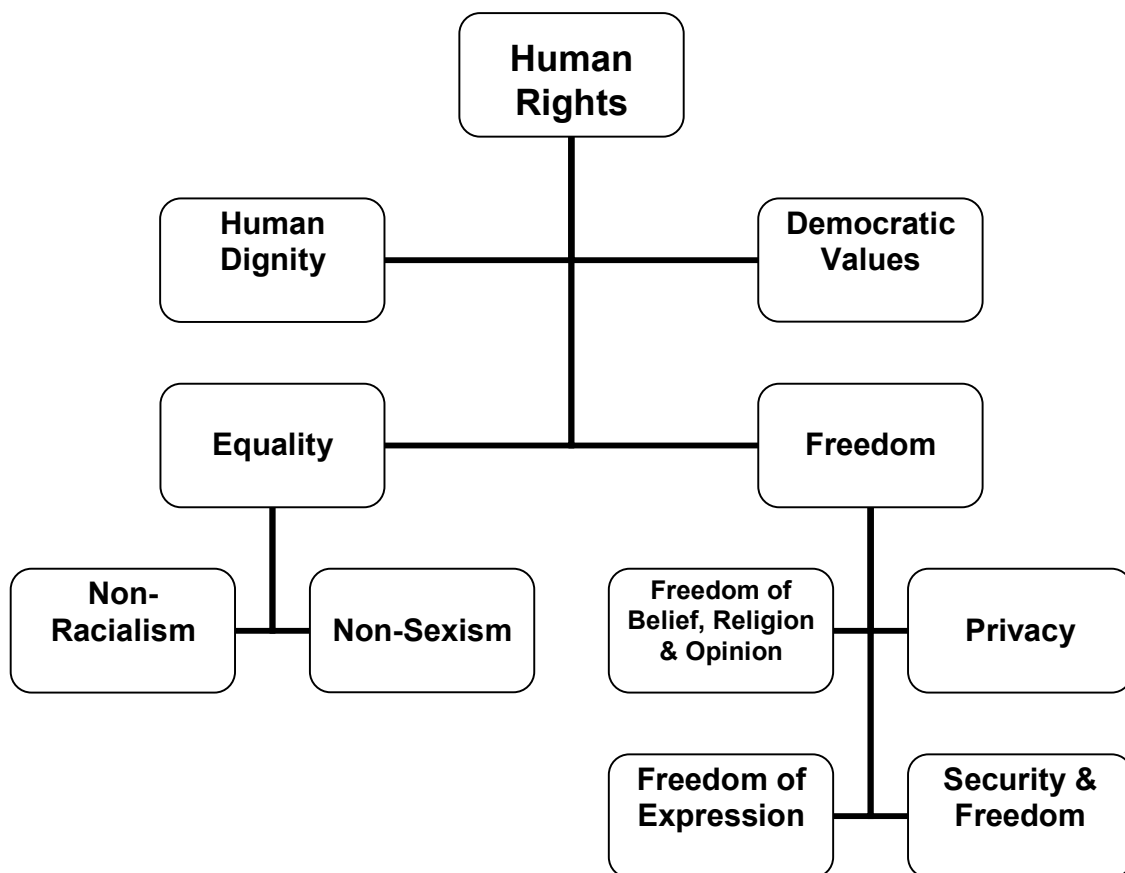
Saunders (1990) argues that any attempt to create equality of outcome undermines equality of opportunity and legal equality. To obtain equality of outcome one must treat people differently. Affirmative action is given as an example where discrimination is applied, in order to achieve equalization.

1.6 CLARIFICATION OF CONCEPTS

The clarification of concepts is where the concepts will be introduced and will be discussed and explored further in Chapter 2.

Culture, values, beliefs and social justice are some of the underlying theoretical constructs associated with the understanding and meaning of human rights. 'Human rights' as a concept encompasses numerous other concepts. The primary concepts, apart from the concept of human rights that will form part of this investigation, are democratic values, human dignity, equality and freedom. These five main concepts associated with human rights will be clarified further by an initial theoretical definition and thereafter pursued as the essence of the empirical work to be undertaken. Seven additional concepts, which are derivatives of the main concepts mentioned above, include non-racialism, non-sexism, freedom of belief, religion and opinion, freedom of expression, privacy, basic education and freedom and security of the person. A diagrammatic presentation of the inter-relatedness of the above concepts follows as Figure 1.

Figure 1: Human rights and related concepts



1.6.1 Human Rights

According to Nickel (1992:561-2), human rights are basic moral guarantees that people in all countries and cultures allegedly have, simply because they are people. Calling these guarantees “rights” suggests that compliance to them is mandatory rather than discretionary. All human beings hold all human rights equally and no one can legitimately be denied enjoyment of a human right without a fair judicial decision (Howard, 1995:1). Human rights replaced the phrase ‘natural rights’ in part because the concept of natural law¹ had become a matter of great controversy (Steiner & Alston, 1996:170). There is an initial problem in that many of the most important rights concepts are formulated at an

¹ The concept “natural rights” is often associated with the concept of “natural law” (“law according to the will of God”) and is problematic as a social construct.

exceedingly high level of abstraction and as a result, human rights concepts are capable of being given a wide range of meanings, including inconsistent meanings (Sidorsky, (1979) in Steiner & Alston, 1996:170).

1.6.2 Democratic Values

The democratic values associated with South Africa are captured in Chapter 1 (Founding Provisions) of the Constitution of the Republic of South Africa. It states:

1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:
 - (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
 - (b) Non-racialism and non-sexism.
 - (c) Supremacy of the constitution and the rule of law.
 - (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Consequently, the Bill of Rights in Chapter 2 of the Constitution of the Republic of South Africa enshrines the rights of people and affirms the democratic values of human dignity, equality and freedom.

1.6.3 Human Dignity

The philosopher Immanuel Kant (1724-1804) placed honesty and trustworthiness at the heart of his theory of how we should live. Wood (2001) writes that the most important features of Kant's ethical theory are his conceptions of human worth and of the ideal moral community. Kant believed that all people have absolute

value, or dignity, because they can be autonomous and rational and they should be treated in ways that recognize these capacities. Kant's version of the 'Golden Rule' is "*do as you would be done by*". This places a moral imperative on every person to act in a morally correct manner towards all other people.

1.6.4 Equality

The true meaning of equality can be found in mathematics where two objects are seen to be identical or of having the same value. In a human rights context however equality is one of the basic tenets of contemporary moral and political theories that hold that humans are essentially equal, of equal worth and should have this ideal reflected in the economic social and political structures of society (Pojman & Westmoreland, 1997:1). Equality should therefore, not be defined in terms of qualitative (or mathematical) exactness or of being identical, but rather that objects that share similar characteristics could be regarded as being equal in terms of the characteristics that they have in common (Rae, 1981: 132). 'Equality' as a common sharing of humanity implies, as Adler (1981:165) asserts, that "*...by being human, we are all equal - equal as persons, equal in our humanity. One individual cannot be more or less human than another, more or less of a person. The dignity we attribute to being a person rather than a thing is not subject to differences in degree. The equality of all human beings is the equality of their dignity as persons.*" Within the broad parameter of a shared humanity we accept that: "*Nature spreads its gifts unequally, so that inequalities among men on virtually any trait or characteristic one might mention are obvious and probably ineradicable. ...Inequality, while it may be the root of much that is cruel and hateful in human life, is also the root of just about everything that is admirable and interesting*" (Schaar, 1997: 167).

1.6.5 Freedom

In his *Lettres écrites de la montagne 1764*, Jean Jacques Roussouw, provides a concise account of what is meant by this key word or its synonym, liberty:

Liberty consists less in doing one's own will, than in not being subject to that of another; it consists further in not subjecting the will of others to our own....In the common liberty no one has a right to do what liberty of any other forbids him to do; and true liberty is never destructive of itself. Thus liberty without justice is a veritable contradiction....There is no liberty, then, without laws, or where any man is above the laws.....A free people obeys, but it does not serve; it has magistrates, but no masters; it obeys nothing but the laws, and thanks to the force of the laws, it does not obey men. (Lettres écrites de la montagne, Letter 8 Pleiade, vol 3, pp.841)

1.6.6 Human Rights Education

Keet (2006) in analysing Human Rights Education (HRE) developments in South Africa and elsewhere, indicates that despite the 'moral and legal' legitimacy and the exponential progress with regard to its practices and implementation, the influence and impact of HRE and related programmes have been limited. In reviewing the literature, Keet (2006) cites numerous studies, models and approaches to HRE and points to the conceptual muddle in which HRE finds itself as appropriate pedagogies and instructional frameworks, that may shape HRE, is still greatly lacking. In the main, Keet (2006) concludes that most HRE programmes sources its legitimacy from human rights standards and universals. In line with this reasoning, Lohrenscheit (2002: 175) describes the United Declaration on Human Rights (1948) as "a curriculum in 30 steps or paragraphs". In this study, this problematic aspect of HRE will not be interrogated, but the Revised National Curriculum Statement (RNCS) (2003) stance will be taken as a point of departure.

Reference has been made to the RNCS (2003:1) which places the Constitution of the RSA at the forefront of curriculum and development. In addition, the RNCS (2003:10) states that the curriculum can play a vital role in creating awareness of the relationship between human rights, a healthy environment, social justice and inclusivity. In particular, the curriculum attempts to be sensitive to issues of poverty, inequality, race, gender, age, disability and such challenges as HIV / AIDS.

1.7 RESEARCH METHOD AND DESIGN

A theoretical framework will be established from the review of the literature. For the purposes of my study, I needed to get close to the participants, as I believe that the only way to explore the participants' understanding of human rights, will be to interact with them directly and employ a research design that is anti-positivist and more inclined towards a research design which meets the requirements of constructivism / interpretivism. As its name may imply, *constructivism* emphasizes the *building* (i.e., constructing) that occurs in people's minds when they learn (<http://leo.oise.utoronto.ca/~lbencze/Constructivism.html>). Knowledge, its nature and how we come to know, are essential considerations for constructivists. In the constructivist perspective, knowledge is constructed by the individual through his interactions with his environment (Von Glaserfeld, 1995). The concept of constructivism / interpretivism will be discussed further in Chapter 3.

Making sense of the participants' understanding of specific human rights necessitates a thorough review of the literature dealing with the concepts pertinent to this study (human rights, democratic values, human dignity, equality, and freedom). This takes the form of a concept analysis to clarify the concept 'human rights' and the related concepts, in the context of the study. The purpose of this exercise is to present a clarification of the concept, based on the literature as well as the interpretation given to the concept by the courts. This will enable

me to juxtapose the participants' understanding with that reported in the literature.

In line with the rationale given, the research is qualitative. Qualitative research is designed to analyse the meaning attached/constructed by participants regarding the phenomenon being studied. It focuses on meaning rather than numbers (Taylor, 2000:79). Qualitative researchers attempt to analyse human behaviour in an unbiased way, while admitting that human activity by nature is largely subjective (Vockell & Asher, 1995:192). Some actions are relatively straightforward; others involve 'impression management' – how people want others, including the researcher to see them (Hariparsad, 2005:69). Qualitative data, with its emphasis on participants' 'lived experience', are fundamentally well-suited for locating the meanings people place on events, processes and structures of their lives: 'their perceptions, assumptions, prejudices, presuppositions' and for connecting these meanings to their social world (Miles & Huberman, 1994:10). Collecting data, through interviewing and conducting a content analysis of the data collected, should enable me to unpack the meanings given by participants to the concepts studied.

In this study, I have made use of purposeful sampling, as this sampling technique is based on the assumption that the researcher wants to identify participants or a site that will provide rich, descriptive data and will enable me to discover, understand, and gain insight (Merriam, 1998:61) into the phenomenon being studied. Having identified my main research question, I had to identify a site that maximises the opportunity to engage with the problem (De Vos, 2005:278). For this study I have selected an independent school that has challenged the previous apartheid system, by allowing children from different racial and ethnic backgrounds into the school, yet had stood firm on the use of corporal punishment. This provided me with a site that could provide rich descriptive data. I do acknowledge that the choice of site could perhaps lead to some degree of "subjectivity" (De Vos, 2005:278).

I obtained permission from the principal and the School Governing Body of the school to interview the educators at the school and, in addition, educators were invited to volunteer participation in the study. A more comprehensive discussion on research design, including the interview protocol, will be presented in Chapter 3.

1.8 DIVISION OF CHAPTERS

Chapter 1 consists of an orientation to the study, the problem statement and aim of the study. In Chapter 2 a theoretical framework, which defines the concepts associated with this study, will be established based on the literature reviewed. This will furthermore establish a theoretical foundation for the research.

Chapter 3 presents the research design, research method and data collection methods. The chapter will be used to begin the presentation of a primary data source: interviews with school personnel. The purpose of the interviews was to ascertain educator understanding of 'human rights' and the aligned concepts. I will report on analysis and interpretation of data relating to the emerging theme, categories, sub-categories and topics in Chapter 4.

In Chapter 5, I will summarise the findings from literature and the empirical work undertaken in the research, as well as juxtaposing the Constitutional Cases to the responses of the participants. Recommendations and guidelines relating to human rights, that could assist educators in their interaction with learners, will be made. Areas for further research will also be suggested. The chapter will end with concluding comments relating to the research.

1.9 SUMMARY

This chapter has captured the essence of the research which aims to explore the understanding that educators have about human rights and to juxtapose it with

existing literature and, where applicable, judgements of the Constitutional Court. The theoretical concepts associated with this research includes human rights, human dignity, democratic values, equality and freedom.

The phenomenon of human rights and all the concepts associated with this research, referred to in this chapter, will be expanded on in Chapter 2.

CHAPTER TWO

AN ANALYSIS OF HUMAN RIGHTS CONCEPTS

2.1 INTRODUCTION

Exploring the understanding that educators have about human rights and its associated concepts is intricately linked to the participants' personal worldview. According to Olsen, Lodwick & Dunlap (1992:13):

The dominant worldview in the culture of a society normally pertains to the totality of human existence and most aspects of social life. Virtually everything that we experience is shaped by the perceptions provided by our view of the world. Since the dominant worldview is generally held by most members of that society, it normally establishes the culturally accepted definitions of social reality.

Therefore the cultural society that one is part of, shapes and moulds one's thinking and understanding. In this chapter, it is my intention to analyse some of the human rights concepts pertinent to my study, with the aim of finding a general definition and interpretation of these concepts. I will define the concepts linked to this study, beginning with how one constructs meaning and understanding and then defining the concept of human rights and its associated concepts. In terms of a legal interpretation of these concepts, I will review a number of Constitutional Court cases and infer the possible legal interpretation of these concepts.

2.2 CONSTRUCTING MEANING AND UNDERSTANDING

"In the process of historical development social man changes the ways and means of his behavior, transforms the natural instincts and functions, elaborates and creates new forms of behavior."

Lev Vygotsky (<http://www.psy.pdx.edu/PsiCafe/KeyTheorists/Vygotsky.htm>)

According to Von Glaserfeld (2003:1):

We may credit Xenophanes (6th century B.C.) with insight that even if someone succeeded in describing exactly how the world really is, he or she would have no way of knowing that it was the "true" description. This is the major argument the sceptics have repeated for two thousand five hundred years. It is based on the assumption that whatever ideas or knowledge we have must have been derived in some way from our experience, which includes sensing, acting, and thinking. If this is the case, we have no way of checking the truth of our knowledge with the world presumed to be lying beyond our experiential interface, because to do this, we would need an access to such a world that does not involve our experiencing it.

Human beings construct meaning and understanding through knowledge in the form of text and discourse and through socialization. More than in any other species, humans rely for their survival on behaviour patterns that are learned. (Haralambos & Holborn, 2000:2). The way in which human beings behave is to a certain degree as a result of genetics, but they do not have pre-programmed behaviour patterns within this genetic makeup. At birth human beings do not have the necessary knowledge or skills to survive, but through their interaction with others they learn how to behave and establish meaningful relationships. The skills and knowledge required and that need to be acquired for survival vary depending on the culture of the society that the infant is born into (Haralambos & Holborn, 2002:3) and into which he/she will be socialised.

The following concepts contribute to the constructing of meaning and understanding:

2.2.1 Culture

Culture is a term that has in modern times become a catch phrase, that is used frequently, particularly in a South African context, to highlight diversity in its different forms, for example, language, race and ethnicity. Generally speaking, culture determines how members of society think and feel: it directs their actions and defines their outlook on life. (Haralambos & Holborn, 2000:3). This inevitably leads to the attaching of different meanings to actions. For example, in certain cultures hunting is the prerogative of men, something that would be frowned upon by feminists in Western cultures.

Culture is a comprehensive concept that includes ways of thinking and acting as well as material objects and hence, indicates a holistic approach to the study of the way of life of human beings (Lemmer & Badenhorst, 1997:192). Culture refers to ideas, to the knowledge that people use to interact with other people and to interpret experience, generate social behaviour, and produce artefacts (Spradley & McCurdy, 1975:5). Culture in a sense provides guidelines for behaviour; it is a *'sort of cognitive map which provides the individual with appropriate rules for behaviour in various situational contexts'* (Goodenough, 1970).

The process of enculturation starts soon after birth and from their exposure to the culture of their home environment and community, children begin to accumulate 'cultural baggage' in which fundamental ways of thinking, perceptions, values and behaviour are firmly entrenched (Lemmer & Badenhorst 1997:197). A community forms an intricate and important part of any school and therefore the role of the teacher in the development of fundamental ways of thinking, perceptions, values and behaviours is an important one. Therefore the understanding that a teacher has about any aspect of society, in the case of this study, the concept of human rights, will invariably, whether it is done consciously,

sub-consciously, overtly or covertly, influence how a learner accumulates this 'cultural baggage'.

As an organization a school will possess its own culture. The concept of organizational culture therefore applies to a school (Sergiovanni & Starratt 1988:103). They are convinced that organisational culture has a greater influence on what teachers and learners believe and think than any prescription of a Department of Education. Certain norms exist in all schools and are based on the manner in which people are expected to act (Van der Westhuizen, 2003:121). Organizational culture is furthermore, according to Torrington and Weightman (1989:18), related to the school spirit as well as the beliefs of those involved in the school. Torrington and Weightman (1989:17-19) typify organisational culture as being related to the hidden curriculum, beliefs, traditions, ethos, norms and values, and work ethics. According to Mentz (1990:76), organisational culture consists of a set of common assumptions, meanings and values, which form the background for all behaviour in the school. Organizational culture has an ideological aspect – the common expectations of everyone in the school – which acts as a magnet to pull people in a certain direction (Mentz, 1990:77).

Mentz (1990:86) typifies organisational culture as:

- a set of common assumptions, meanings and values which influence behaviour,
- providing a background for a cognitive framework for those involved,
- a set of common expectations,
- manifesting in certain traditions,
- being unique to a certain school.

Tradition forms an intricate part of any organisational culture. Loyalty to the inheritance of the past is a main characteristic of tradition (Mans, 1975:3). The essence of tradition lies in certain ceremonies, rituals and recurring behaviour

patterns (Van der Westhuizen, 2003:128). Rituals and ceremonies serve four major roles: to socialise, to stabilise, to reduce anxiety and ambiguity and to convey messages to external constituencies (Bolman & Deal, 1991:206-262). The art of teaching is a sacred ritual (Westoby, 1988:217). The values and norms and specific ethos of a school are made known to those involved in it and to outsiders through certain rituals (McClaren, 1988:217). On the other hand, rituals that become routine have no positive effect on organisational culture (Deal, 1985:218). Rituals can promote creativity and innovation, but can also cement the status quo and kill initiative (Bolman & Deal, 1985:63).

Therefore culture, and any traditions or rituals associated with a specific culture, whether applied to an individual or an organisation, plays a fundamental role in the construction of meaning and understanding of a particular concept. These traditions and rituals, *inter alia*, within a culture are learned through socialisation.

2.2.2 Socialisation

The process by which individuals learn the culture of their society is known as socialisation (Haralambos & Holborn 2000:4). Socialisation is the lifelong process by which individuals acquire the beliefs, customs, attitudes, values and roles of their culture or social group, in order to be integrated into and accepted by society (Louw, Van Ede & Louw 2001:9). Teachers are part of the group of significant others that influence the development of children. Such significant others play a particularly important role in social development because virtually all social influences act upon the individual through these people (Louw, *et al*, 2001:23). It is therefore significant that the understanding an educator has about any social issue, such as human rights, will impact on the social development of the children in that teacher's care. The children come to know of the existing norms and values through these significant others of which teachers are a part.

The social learning theory of Bandura emphasizes the importance of observing and modelling the behaviours, attitudes and emotional reactions of others:

Learning would be exceedingly laborious, not to mention hazardous, if people had to rely solely on the effects of their own actions to inform them what to do. Fortunately, most human behaviour is learned observationally through modelling: from observing others one forms an idea of how new behaviours are performed, and on later occasions this coded information serves as a guide for action (Bandura, 1977:22).

Educators are role models to the learners in any school and are responsible for the learning that a learner acquires through observation and modelling. Children acquire behaviour by listening to and watching others, rather than by overtly carrying out the behaviour themselves. (Louw, *et al*, 2001:308). The understanding which educators possess about human rights and its associated concepts will therefore invariably be conveyed to the learners through the words and actions of educators.

Apart from observation there is social interaction between educators and learners. The major theme of Vygotsky's theoretical framework is that social interaction plays a fundamental role in the development of cognition:

Every function in the child's cultural development appears twice: first on the social level, and later, on an individual level; first between people (interpsychological) and then inside the child (intrapsychological). This applies equally to voluntary attention, to logical memory, and to the formation of concepts. All the higher functions originate as actual relationships between individuals (Vygotsky, 1978:57).

Lave *et al* (1990) argue that learning as it normally occurs is a function of the activity, context and culture in which it occurs. They assert that:

Social interaction is a critical component of situated learning – learners become involved in a ‘community of practice’ which embodies certain beliefs and behaviours to be acquired. As the beginners or newcomers move from the periphery of this community to its centre, they become more active and engaged within the culture and hence assume the role of expert or old-timer. Furthermore, situated learning is usually unintentional rather than deliberate.

It would thus appear that educators interact with learners continuously and are observed by the learners who look to the educators, not only for the acquisition of knowledge through formal teaching, but learn about the social aspects of life through the observation of educators. An aspect of socialisation would be the norms that form part of any society or culture.

2.2.3 Norms

There are various control mechanisms which exist in human society. Social control includes all the means which a given society employs to persuade its members to think and act in compliance with the norms which make up its culture (Haralambos & Holborn, 2000:4).

The word *norma* took on a figurative connotation when Cicero (106-43 B.C) spoke of directing one’s life by a certain standard (rule) and system (Yonge, 1891:331). Rules and standards as guides are basic to understanding the functioning of any society. These rules and standards that have been adopted within a society therefore become a normative system, which although not part of the system associated with legal norms, nevertheless dictates how people act within a society.

Social norms are rules of conduct established and maintained within societies to guide the correct behaviour of all members (Ruch, 1984:562). A norm is a specific guide to action which defines acceptable and appropriate behaviour in

particular situations. For example, in all societies there are norms governing dress. Members of society generally share norms which define acceptable male and female apparel and appropriate dress for different age groups. (Haralambos & Holborn, 2000:4). Generally speaking norms ultimately lead to conformity where members of a particular society, in which these social norms exist, accept these norms and ways of acceptable behaviour, for fear of being excluded from the group, or being ridiculed as a result of any action which is contrary to the norm. Individuals within a society that is governed by specific norms seldom act in a manner which goes against those norms. The understanding and meaning one attaches to any concept will therefore be influenced by the norms that exist. The result is that by the time an individual becomes capable of pursuing his or her own personal well-being with some degree of prudence and wisdom, he or she is already caught up in the dictates of his or her society (Milne, 1968:92)

2.2.4 Values

Values cannot simply be asserted; they must be put on the table, be debated, be negotiated, be synthesised, be modified, be earned ... this process, this dialogue is in and of itself a value – a South African value – to be cherished. ... If we are to live our Constitution and our Bill of Rights in our everyday life rather than just hear it interpreted for us, we have to distil out of it a set of values that are as comprehensible and meaningful to Grade Ones and Grade Twos as they are to the elders of the Constitutional Court.

Prof Kader Asmal, MP, Minister of Education at SAAMTREK Conference, February 2001

The meaning of the term value is not easily defined. A value represents something that is important to human existence (Raths, 1978:8). Values apart from being aligned to a 'belief' are furthermore interrelated with morality and ethics. Norms are furthermore sometimes seen as reflections of values. Norms are established as a result of the value one places on a particular aspect of social life (Haralambos & Holborn, 2000:5). When reference is made to morality

at least three possible connotations of the term may require elaboration, namely the moral code of a religion; the moral decisions of the individual which emanate as the product of his conscience; and the accepted moral code of a community or its *mores* (Hosten, Edwards, Bosman, Church, 1998:4). The moral values or *mores* that exist within a community are not legal norms but can nevertheless, be enforced through members of that community who sanction any individual who transgresses these moral values. Very often an individual's position in the community is rendered untenable by the viciousness of an intolerant community, bent on enforcing adherence to its moral standards (Hosten *et al*, 1998:7).

For example, when commenting on homosexuality Lord Devlin, a former English judge of appeal stated the following:

Not everything is to be tolerated [by society]. No society can do without intolerance, indignation and disgust; they are the forces behind the moral law (Hosten, *et al*, 1998:7)

Nieuwenhuis (2003:27) claims that values, is a word that is frequently used in everyday conversations. Yet the word "value" is highly abstract and even though it is one of the most important concepts in philosophy, education, psychology and the social "sciences" at the same time, it is often the least studied and understood.

To understand the concept "values" better one needs to refer to axiology which is derived from the Greek word meaning "worth" and attaches value to an object as well as a belief or idea, which in essence, will create an internal value structure that informs all decisions (Nieuwenhuis, 2003:28)

Intricately linked to the concept of values is that of morality. Fagan (2006:4) states that the philosophically adequate completion of theoretical basis of human rights requires an account of moral reasoning that is both consistent with the

concept of rights. Fagan believes that the 18th. Century German philosopher, Immanuel Kant, provides such an account.

Fagan (2006:4) writes that any of the central themes, first expressed within Kant's moral philosophy, remains highly prominent in contemporary philosophical justifications of human rights, which bestows upon contemporary human rights' theory, the ideal of a potentially universal community of rational individuals autonomously determining the moral principles for securing the conditions for equality and autonomy. Doing the right thing is thus not determined by acting in pursuit of one's own interests or desires, but acting in accordance with a maxim which all rational individuals are bound to accept and although, often overlooked in accounts of the historical development of human rights, Kant's contribution to human rights has been profound and provides a formulation of fundamental moral principles that, though exceedingly formal and abstract, are based upon the twin ideals of equality and moral autonomy (Fagan, 2006:5).

Immanuel Kant has furthermore written of two things, *'the starry heavens above me and the moral law within me'*. In Cambridge in 1895, a century after Kant, Lord Acton wrote:

Opinions alter, manners change, creeds rise and fall, but the moral law is written on the tablets of eternity (Glover, 2001:1).

The basis of values and morality is furthermore often linked to religion. (Parsons, (1965) in Haralambos & Holborn, 2000:434), comments as follows:

The cultural system provides more general guidelines for action in the form of beliefs, values and systems of meaning.Religion is part of the cultural system. As such, religious beliefs provide guidelines for human actions and standards against which people's conduct can be evaluated.

Members of a community, religious or otherwise, are required to behave in a manner that conforms to the accepted moral values of that community. These moral values are not prescriptive to each and every individual within that community and are accepted by those individuals who have a conviction to these moral values. As much as this conviction is voluntary however, individuals who do not behave in the prescribed manner are often ostracized (Hosten, *et al*, 1998:10).

Culture, socialisation, norms and values will therefore influence the way in which an individual attaches meaning and understanding to any concept within society, including human rights and its associated concepts of which social justice is an intricate part.

2.3 SOCIAL JUSTICE

Justice is conscience, not a personal conscience but the conscience of the whole of humanity. Those who clearly recognize the voice of their own conscience usually recognize also the voice of justice (Alexander Solzhenitsyn, 1970).

Advocates of democracy strive to attain a just society that is founded on freedom, equality and dignity. The four principles associated with democratic values, namely, justice, freedom, equality and dignity are interlinked and it is at times difficult to refer to the one without mentioning the others. Social justice is by and large a moral value and a philosophical definition of justice. The origin of justice can be traced back to the time of Anaximander and to his cosmological belief that the world exists as a strife between the opposites, namely day and night; summer and winter; hot and cold. The preservation of opposites was called *dike* (justice) and any encroachment by one opposite on the other was injustice (Hosten *et al*, 1998:24). Justice is defined by Cicero (in Cairns, 1966:144), as that sentiment which assigns to each his own and maintains with generosity and equity human solidarity and alliance.

As a concept, social justice has fascinated philosophers ever since Plato rebuked the young Sophist, Thrasymachus, for asserting that justice was whatever the strongest decided it would be (*The Republic*, (trans.) Waterfield, 1993:18-25).

The debate around social justice continues and is centred around whether an objective or universal test of social justice can be formed, or whether social justice is merely determined by power, or the lack of it, or by changing custom. The virtue ethics of social justice was further developed by Aristotle. According to Aristotle moral virtue comes as a result of habit, while intellectual virtue is born and grows through teaching (*The Nicomachean Ethics of Aristotle*, trans. Chase , 1911).

Philosophers like John Locke have expanded on the concept of social justice:

The state of nature has a law, of nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.....And that all men may be restrained from invading others rights, and from doing hurt to one another... (Locke, (1690) in Singer,1994:250)

Expanding on the social contract of John Locke, John Rawls states that:

.....the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association.....This way of regarding the principles of justice I shall call justice as fairness. (Rawls, (1971) in Singer, 1994:362)

The rational basis of justice is the principle that like cases should be treated alike (Ginsberg, 1965). In a simple but fundamental way human beings are all alike: they are all humans (Milne, 1968: 95). For the purpose of my study, I therefore regard social justice as treating all human beings alike so that there is no unfair discrimination based on any aspect that is inherent in human difference.

The Catholic Church has, since the journal of the Jesuit Luigi Taparelli, *Civiltà Cattolica*, promoted the concept of social justice. Pope Benedict XVI in *Deus Caritas Est* (God is Love), 2006, teaches that social justice is the central concern of politics and not of the church, which has charity as its central social concern. The laity has the specific responsibility of pursuing social justice in civil society. The church's active role in social justice should be to inform debate, using, reason and natural law, and also by providing moral and spiritual formation for those involved in politics.

Social justice is associated with the concepts of freedom, equality and fairness which are, *inter alia*, fundamentals of human rights. These fundamentals will however only exist, be protected and promoted to the extent that they form part of the overall social structure within different societies, religions and community groups. These would all form part of a social structure which is founded on the principle of democracy.

2.4 DEMOCRACY

If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost.

(Aristotle, http://www.wisdomquotes.com/cat_democracy.html)

In its simplest form, democracy may be seen to be nothing more than acceding to the wishes of the majority; it has increasingly come to be realised, however,

that the “tyranny of the majority” could be undemocratic in the sense that it ignores the interests of some sections of the population. A true democracy will take account of minority interests without detracting from the basic principles, that the will of the majority must prevail (Hosten *et al*, 1998:948)

True democracy embraces the values associated with human dignity, equality and freedom and is the cornerstone of democracy in South Africa as entrenched in Section 7 (1) of the Constitution of the RSA, Act 108 of 1996:

This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

Democracy is by and large understood by people to be synonymous with representative government, universal suffrage and what is commonly regarded as the hallmark of democracy, ‘one man, one vote’ (Milne, 1968:270). People seldom associate the word democracy with the values of human dignity, equality and freedom. This is despite the fact that these concepts are intricately linked to the principle of democracy. In ‘*Two Treatises of Government*’, Locke (1690) presented the classical theory of representative government and the link between representative government on the one hand and the protection of the rights of the citizens on the other within a democracy. Further he states that popular consent is an essential grounding of government and the rights of individuals must be protected by the state if it is to be legitimate. Some of these rights, according to Locke, are inalienable. The state does not create these rights; it is bound to recognise and protect them (Davis, Cheadle & Haysom, 1997).

The United States Declaration of Independence is grounded in Locke’s theory:

We hold these truths to be self-evident, that all men are created equal that they are endowed by their Creator with certain unalienable Rights, that among these

are Life, Liberty and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. – That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it.....
(Davis *et al*, 1997).

As stated above the fundamental rights of human dignity, equality and freedom are an intricate part of democracy and are entrenched as rights in the Constitution of the RSA. (Chapter 2, Constitution of the RSA, 1996) This entrenchment of these democratic values is linked to the legal concept of constitutionalism. Constitutionalism is about balancing core values against the exercise of political power:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. (Davis, *et al*, 1997:3)

In order to safeguard people from tyrannical governments the inalienable rights associated with democracy are entrenched and legally protected in Constitutions and other legal documents. For this reason constitutionalism accords a vital role to the judiciary. Its power to review the actions of government and legislation is designed to ensure that government and legislation operates within the framework of the Constitution and the values and principles contained in a bill of rights (Davis *et al*, 1997:3)

Universal adult suffrage and the election of representative governments is an intricate part of democracy. Democracy however extends to the human rights concepts of human dignity, equality and freedom, which are protected from

erosion by representative governments in the form of legal instruments such as the Bill of Rights (Chapter 2, Constitution of the RSA, 1996).

2.5 HUMAN RIGHTS

"All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured . . . We must, therefore, insist on a global consensus, not only on the need to respect human rights worldwide, but also on the definition of these rights . . . for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that."

The Dalai Lama (http://www.wisdomquotes.com/cat_human_rights.html)

The concept of human rights dates back to the The Code of Hamurabi in Babylonia (Iraq c. 2000 B.C).

Human rights as a term has its roots in what was initially known as 'natural rights'. The writings of John Locke during the 17th century accentuated that certain rights self-evidently pertain to individuals as human beings; and that upon entering civil society (pursuant to a social contract), humankind surrendered to the state only the right to enforce these natural rights, not the rights themselves; and that the state's failure to secure these reserved natural rights gives rise to a right to responsible, popular revolution (Steiner & Alston, 1996:171).

The obligation of the state is entrenched in Section 7(2) of the South African Bill of Rights, Chapter 2 of the Constitution of the RSA, Act 108 of 1996:

The state must respect, protect, promote and fulfill the rights in the Bill of Rights.

During the 18th century other philosophers, particularly in France, expanded on the writings of Locke. These included Montesquieu, Voltaire and Jean-Jacques

Rousseau (Steiner & Alston, 1996: 170). The philosophers and others with a common supreme faith in reason, vigorously attacked religious and scientific dogmatism, intolerance, censorship, and social-economic restraints. In essence, the idea of human rights, called by another name, namely *natural rights*, played a key role in the late 18th – and early 19th –century struggles against political absolutism. It was the failure of rulers to respect the principles of freedom and equality, which had been central to natural law philosophy that was responsible for this development (Steiner & Alston, 1996:171). In 1789 there was a Declaration of the Rights of Man in the French National Assembly:

The end in view of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression (<http://www.yale.edu/lawweb/avalon/rightsof.htm>).

The contemporary idea of human rights was however formulated and given impetus during and after the Second World War. The United Nations Charter declared that promoting respect for human rights was a principal purpose of the United Nations Organization (United Nations Charter, 1945). The human rights idea found its contemporary expression in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 and in the numerous covenants and conventions derived from it (Henkin, 1990:1).

In fact most human rights documents and bill of rights take their cue from the Universal Declaration of Human Rights (1948) which states in its preamble:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom

from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

“Rights” have figured prominently in moral, legal and political theory. The idea of rights is related to theories of “the good”, of “the right”, of “justice,” and to conceptions of the “good society” (Henkin, 1990:3). Human rights are *rights*; they are not merely aspirations, or assertions of the good. To call them rights implies that they are claims, “as of right”, not by appeal to grace, or charity, or brotherhood, or love; they need not be earned or deserved (Henkin, 1990:3). Respecting the rights of another person is to value that person’s humanity rather than personality. Respect involves:

.....a conscious effort to find our common essence beyond our apparent divisions, our temporary differences, our ideological and cultural barriers (Boutros-Boutros Ghali quoted in English & Stapleton, 1997:2).

In relation to religion and human rights, Christian churches have affirmed themselves to the principles associated with human rights. It must be said however that for thousands of years religion has been synonymous with intolerance and persecution (Witte & Van der Vyver, 1996:17). In fact all the great religious cultures of the world have given expression to ideals of justice and right order in human affairs, but they have not normally expressed those ideals in terms of subjective natural rights (Witte & Van der Vyver, 1996:17).

(i) Pragmatism v Principle

Natural law and natural rights begins with Thomas Aquinas, the medieval scholastic who made it his life's work to harmonise Aristotle's philosophy with Christian teachings (Singer, 1994:243). The result of this is a semi-official philosophy of the Roman Catholic Church. John Stuart (Singer, (1994:243) emphasizes that appeals to 'nature', as a basis for ethical judgement, often lead us astray and that the idea behind natural law ethics is that we have, within our own nature, a guide to what is good for us.

Jeremy Bentham (Flew, 1989: 27) dispels natural law:

Right is the child of law; from real laws come real rights, but from imaginary law, from 'laws of nature', come imaginary rights. Natural rights is simple nonsense, natural and imprescriptible rights, rhetorical nonsense, - nonsense on stilts.

Jack Donnelly (Howard, 1995:15) states the following with regards to human rights as a concept:

The concept of human rights is best interpreted by constructivist theory. Constructivist theory is a "moral theory of human nature" that acknowledges that rights are "not given" to man by God, nature or the physical facts of life". Rather, "human rights arise from human action [and] represent the choice of a particular

moral vision of human potentiality and the institutions for realising that vision. ...The evolution of particular conceptions or lists of human rights is seen in the constructivist theory as the result of the reciprocal interactions of moral conceptions and material conditions of life, mediated through social institutions such as rights." Constructivist theory, then, accords with the sociological view that human rights are a social phenomenon, a creation of the human mind. Human rights are human rights because humankind has decided they are. Human beings create their own sense of a morally worthwhile life.

The reality however is that there is a contest between universality and cultural relativism. The advocates of cultural relativism claim that rights and rules about morality are encoded in and thus depend on cultural context. Hence notions of rights and moral rules necessarily differ throughout the world, because the cultures in which they inhere themselves differ (Steiner & Alston, 1996:195). The strong relativist position simply asserts as an empirical matter that the world contains diverse underlying cultures and attaches an important consequence to this diversity: that no transcendent or trans-cultural ideas of right can be found or agreed on and hence, that no culture (whether or not in the guise of enforcing international human rights) is justified in attempting to impose on others what must be understood as its own ideas (Steiner & Alston, 1996:196).

Cultures are evolved by particular groups of people at particular times and are developed, consciously or sub-consciously, by every group. Culture in turn brings relativism with it as it does not describe the world as 'neutral', but comes heavily freighted with implications about nature and the (lack of) foundation of human values (Jones 1994:218).

Thus the concept of cultural relativism is used by many communitarians as a defence of their idealized way of life against the individualism and alienation that liberal human rights are thought to imply.

Traditionalists have a further objection to human rights, which is also based on the notion of cultural autonomy. Left collectivists and status radicals join traditionalists in this objection, also arguing for groups of collectives to be able to formulate their own ideas of human rights on the basis of their own social norms. For example, in many societies, to be dignified means to accept one's subordinate status, not to insist on equal and autonomous human rights (Howard, 1995:19).

In truth, we have to recognise that a doctrine of human rights is a moral doctrine and not a set of anthropological generalisations (Renteln, (1990) in Jones, 1994:218). We should also be sensitive to the possibility that apparently conflicting beliefs and practices may really be no more than different cultural expressions of the same fundamental principles. It is however inevitable that not all societies will embrace human rights and proponents of human rights must be prepared to stand their ground, as a doctrine of human rights cannot give its blessing to practices that it identifies as morally grotesque and inhuman, merely because those practices are shrouded in the mantle of culture (Jones, 1994:218).

As much as Christian churches align themselves with the fundamental principles of human dignity, equality and freedom, these are in many instances limited in practice to the overarching scriptures, doctrines and traditions associated with the relevant churches. Examples of this will be presented during the discussion of human dignity.

2.5.1 Human Dignity

In terms of Section 10, Chapter 2 of the Constitution of the RSA (1996):

10. *Everyone has inherent dignity and the right to have their dignity respected and protected.*

The right to dignity is a core fundamental human right which is reflected explicitly in many public international law instruments and constitutes the moral justification for many other universally accepted fundamental rights (Davis *et al*, 1997:71).

Immanuel Kant saw respect for dignity as owed not just to those with standing in a community, but simply to human beings:

Humanity itself is a dignity; for a man cannot be used merely as a means by any man....but must always be used at the same time as an end. It is just in this that his dignity (personality) consists....so neither can he act contrary to the equally necessary self-esteem of others....he is under obligation to acknowledge, in a practical way, the dignity of humanity in every other man (Glover, 2001:23).

The one conviction that underlies most conceptions of human rights is that all human individuals have intrinsic value simply as human individuals. That conviction is articulated in a variety of ways, sometimes it is expressed through the idea of human dignity (Jones, 1994:98). We also regard individuals as having 'worth' simply as individual human beings (Vlastos, (1984) in Jones, 1994:98).

The term human dignity, *dignitas humana* (Latin) or *Menschenwurde* (German), may be recent, but not the idea. Man's superiority over other species of the animal kingdom and of subhuman nature in general, dates back to man's consciousness of his own nature and status in the world. However, not until the idea of Natural Law came to be formulated in terms of subjective rights inherent in individual persons, does it make sense to think of man as worthy of respect simply on the grounds of his being a man (Spiegelberg in Gotesky & Laszlo, 1970:43).

Our inclination to show this respect and our disgust at someone's humiliation, is a powerful restraint on barbarism (Glover, 2001:23). Having said that however, in

many cultures the social order stratifies individuals in ways that enhance dignity for some categories of people, but leave other categories dishonoured, without dignity or respect. Such different conceptions of human dignity are rooted in particular understandings of the inner moral worth of the human person and his proper relations with society. These social evaluations are part of the cultures of every society; they reflect, and in turn shape, the values, norms, and customs that regulate people's lives (Howard, 1995:79).

The following Constitutional Court cases apply to, *inter alia*, the constitutionally entrenched fundamental right to human dignity:

2.5.1.1 S v Williams and Others - Constitutional Court Case No. CCT/20/94

In terms of Section 294 of the Criminal Procedures Act, 1 of 1977, magistrate courts were empowered to sentence juveniles to what was known as juvenile whipping. In this matter six juveniles were sentenced to receive "moderate correction" of a number of strokes with a light cane. The sentence and execution thereof was held over, pending a decision by the Constitutional Court in terms of the Interim Constitution of the RSA, 1993. The Constitutional Court found that legislation that allowed for juvenile whipping was indeed unconstitutional. The Constitutional Court found that in the case of such whipping, "*the juvenile is, indeed, treated as an object and not as a human being.*" The Constitutional Court reaffirmed the right that every individual has to human dignity and that the punishment meted out was "*brutal in its nature*" (S v Williams, CCT/20/94, 1994)

In terms of Section 11(2) of the Interim Constitution of 1993:

"no person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment."

In his judgement, Justice Langa states that over at least the last 30 years South African jurisprudence has been experiencing a growing unanimity in judicial condemnation of corporal punishment for adults. He refers to a number of cases where human dignity is central to the argument against corporal punishment:

Fannin J in *S v Khumalo and Others* 1965(4) SA 565 (N) at 574F:

“punishment of a particularly severe kind....brutal in its nature....a severe assault upon not only the person of the recipient but on his dignity as a human being.”

De Wet CJ in *S v Myute and Others and S v Baby* 1985(2) SA 61 (Ck) at 62H:

“a very severe and humiliating form of punishment ”

MT Steyn in *S v V en Ander, supra note 5, at 543 D:*

“ ‘n erg vernederende en fisies baie pynlike vorm van verstraffing.’ ”

In addition, Justice Langa refers to the report of the Viljoen Commission which was tabled in parliament in January 1977 which stated that:

“whipping for adults was a brutal assault, not only on the person of the recipient, but also on his dignity as a human being.”

Reference is furthermore made in the Justice Langa judgement to the European Commission of Human Rights (European Commission) which categorized degrading conduct as that which:

“...aroused in its victims feelings of fear, anguish and inferiority leading to humiliation and debasement.” Denmark et al v Greece: Yearbook of the European Convention of Human Rights XII (1969), 186.

Moreover, apart from his direct mentioning of human dignity Justice Langa makes mention of how the rights in the Constitution shall be interpreted:

“ Section 35(1) of the Constitution provides expressly that the rights entrenched in it, including sections 10 and 11(2), shall be interpreted in accordance with the

values which underlie an open and democratic society based on freedom and equality.”

Referring specifically to the above case he continues:

“...in the present context, it means that punishment must respect human dignity and be consistent with the provisions of the Constitution. There is unmistakably a growing consensus in the international community that judicial whipping, involving as it does the deliberate infliction of physical pain on the person of the accused, offends society’s notion of decency and is a direct invasion of the right which every person has to human dignity.”

In his judgement Justice Langa furthermore, concurs with the statement of Klecker in *Campbell and Cosans v United Kingdom (1980) 3 EHRR 531 at 556*:

“ Corporal punishment amounts to a total lack of respect for the human being; it therefore cannot depend on the age of the human being.... The sum total of adverse effects, whether actual or potential, produced by corporal punishment on the mental and moral development of a child is enough, as I see it, to describe it as degrading within the meaning of Article 3 of the Convention.”

In closing Justice Langa made the following statement:

“The objective must be to penetrate the levels of tolerance to pain; the result must be a cringing fear, a terror of expectation before the whipping and acute distress which often draws involuntary screams during the infliction. There is no dignity in the act itself; the recipient might struggle against himself to maintain a semblance of dignified suffering or even unconcern; there is no dignity even in the person delivering the punishment. It is a practice which debases everyone involved in it.”

2.5.1.2 S v Makwanyane and Another - Case No – CCT/3/94

T.Makwanayane and M.Mchunu were both convicted in the Witwatersrand Local Division of the High Court of, *inter alia*, four counts of murder. Section 277(1)(a) of the Criminal Procedure Act No. 51 of 1977 prescribed that the death penalty was a competent sentence for murder. The Constitutional Court was called upon to consider whether this form of punishment was consistent with the (Interim) Constitution of the RSA, 1993. The argument centred around, *inter alia*, sections 9,10 and 11(2) of the Constitution of the RSA, 1993 which entrenched the rights to life and dignity respectively. In its decision the Constitutional Court found, that apart from the death penalty being the most extreme form of punishment to which a criminal can be subjected, it is final and irrevocable. It is furthermore an inhuman punishment for it *“involves, by its very nature, a denial of the executed person’s humanity”* (S v Makwanyane, CCT 3/94, 1994). The Constitutional Court found that the provisions of Section 277(1)(a) of Act 51 of 1977 were indeed inconsistent with the Constitution of the RSA, 1993 and as a result the death penalty was abolished in South Africa.

As was the case in *S v Williams and Others*, section 11(2) of the Interim Constitution of the RSA was a major issue in this case.

In his judgment Justice Chaskalson states however that any form of punishment must meet the requirements of other sections as well, including section 10 of the Constitution, *“every person shall have the right to respect for and protection of his or her dignity.”*

Justice Chaskalson (para 58) states that:

“ Under our constitutional order the right to human dignity is specifically guaranteed.”

In supporting this Justice Chaskalson refers to the comments of Brennan J in *Gregg v Georgia*:

“ The fatal constitutional infirmity in the punishment of death is that it treats members of the human race as nonhumans, as objects to be toyed with and discarded. [It is] thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity.”

In addition Justice Chaskalson refers to the Federal Constitutional Court in Germany which stated that:

“Respect for human dignity especially requires the prohibition of cruel, inhuman, and degrading punishments. [The state] cannot turn the offender into an object of crime prevention to the detriment of his constitutionally protected right to social worth and respect.”

The most important aspect, with regards to human dignity, of the judgement delivered by Justice Chaskalson is to be found in paragraph 144 under his concluding remarks:

“The rights to life and dignity are the most important of all human rights, and the source of all other personal rights in Chapter 3. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be deterred thereby.”

In contrast to the decisions of the Constitutional Court, Lewis, (1970), (in Geisler, 1993:198) states the following:

“To be punished, however severely, because we deserved it, because we ‘ought to have known better,’ is to be treated as a human person made in God’s image. Capital punishment, then, is the ultimate compliment to human dignity”.

Although Lewis and Geisler refer specifically to capital punishment, what emerges clearly is the different understandings that prevail not only in the case of human dignity, but human rights on the whole. In the first instance and in terms of the Interim Constitution of the RSA, 1993, the Constitutional Court in South Africa found that corporal and capital punishment impairs the recipient’s dignity and is in both cases an inhumane form of punishment. On the other hand, and taking a religious view, Lewis and Geisler remark that the ultimate form of punishment, capital punishment is a compliment to human dignity. This supports the claim by Howard, (1995:79), that:

“.....different conceptions of human dignity are rooted in particular understandings of the inner moral worth of the human person and his proper relations with society,” and that, *“social evaluations are part of the cultures of each society; they reflect, and in turn shape, the values, norms, and customs that regulate people’s lives”.*

2.5.2 Equality

In terms of the Constitution of the RSA, (1996):

9. (1) Everyone is equal before the law and has the right to equal protection of the law.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status,

ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Equality is an intricate part of any democracy. In a legal sense equality is associated with unfair discrimination. All individuals are protected from being unfairly discriminated against in terms of law. Social equality refers to what is known as egalitarianism. This is a society in which all members are equal and where there is no ranking of individuals or 'haves' and 'have-nots' (Haralambos & Holborn, 2000:23).

In essence equality can be divided into legal equality and the protection of the fundamental right to equal treatment and social equality.

(i) Legal Equality

As the supreme law of South Africa, the Constitution of the Republic of South Africa, 108 of 1996, provides legal protection to every individual from any form of unfair discrimination on any grounds as per Section 9 (3) of the Bill of Rights. Any individual who feels that he or she is being unfairly discriminated against can approach any competent court and seek protection from such unfair discrimination in terms of Section 38 of the Constitution of the RSA, 1996. This would include approaching any Equality Court which was established in order to protect individuals against unfair discrimination. *The Promotion of Equality and Prevention of Unfair Discrimination (Act 4 of 2000)* is legislation that allows individuals legal recourse against anyone or any organisation that discriminates unfairly.

Human rights law is not only about establishing equality, but about protecting individuals from discrimination. One should not be discriminated against simply because of who one is, are or what one believes in. The law applies equally to

rich and poor. All educators are entitled to equal pay for equal work. Women have the same rights as men (English & Stapleton, 1997:3).

In terms of 'equality law' as a legal concept, every individual has the "*right to treatment as an equal*" (Dworkin, (1977) in Hosten *et al*, 1998:203). Dworkin regards this right to be both morally and constitutionally fundamental and applies to the right to be accorded the same degree of concern and respect as every other person. Every individual human being has equal human rights.

The reason why fundamental rights have to be entrenched in statutory documents to ensure enforcement and protection of these rights, is attributed to the fact that, although everyone has rights and consequently every person ought to respect the rights of others, no one can reasonably be required to constrain his pursuit of his own good by regard to the rights of others in a universal society, without the assurance that the others will reciprocate (Charvet, (1994) in Boucher & Kelly 1994:180). There needs to be some sort of coercion to ensure that there is reciprocation. This, in some instances, takes the form of legal enforcement.

The two Constitutional Court Cases that follow, illustrate how the right to equality is protected through the courts as a result of the entrenchment of this fundamental right in the Bill of Rights. The pronouncements of the judges in these two cases will be juxtaposed to the responses of the participants in Chapter 5.

2.5.2.1 Fraser v The Children's Court, Pretoria North and Others - Case CCT 31/96

In terms of Section 18(4)(d) of the Child Care Act 74 of 1983 a father's consent is not required in the case of the adoption of an illegitimate child. This section reads as follows:

A children's court to which application for an order of adoption is madeshall not grant the application unless it is satisfied-

- (d) *that consent to the adoption has been given by both parents of the child, or, if the child is illegitimate, by the mother of the child, whether or not such mother is a minor or married woman and whether or not she is assisted by her parent, guardian or husband, as the case may be;*

Lawrie John Fraser, the applicant, approached the Constitutional Court claiming that this section of the Child Care Act discriminated against him, *inter alia*, because he was not in a specific union with the mother of the child. Fraser's application was upheld by the court as it found that Fraser was being unfairly discriminated against in terms of Section 8(2) of the Constitution of the RSA. (Interim), which protects every person from unfair discrimination on the grounds of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

In his judgement, Justice Mahomed stated the following:

"There can be no doubt that the guarantee of equality lies at the very heart of the Constitution. It permeates and defines the very ethos upon which the Constitution is premised. In the very first paragraph of preamble it is declared that there is aneed to create a new order....in which there is equality between men and women and people of all races so that all citizens shall enjoy and exercise their fundamental rights and freedoms". Section 8(1) guarantees to every person the right to equality before the law and equal protection of the law. Section 8(2) protects every person from unfair discrimination on the grounds of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language." (para 20)

Justice Mahomad continues:

“In my view the impugned section does in fact offend section 8 of the Constitution. It impermissibly discriminates between the rights of a father in certain unions and those in other unions. Unions which have been solemnised in terms of the tenets of the Islamic faith for example are not recognised in our law because such a system permits polygamy in marriage.” (para 21)

2.5.2.2 Minister of Home Affairs and Another v Fourie, Bonthuys and Others - Case CCT 60/04

Marié Adriaana Fourie and Cecelia Johanna Bonthuys, of Pretoria, are the applicants in this case. Their complaint has been that the law excludes them from publicly celebrating their love and commitment to each other in marriage. They contend that the exclusion comes from the common law definition which states that marriage in South Africa is a union of one man with one woman, to the exclusion, while it lasts, of all others. The common law and Section 30(1) of the Marriage Act, which provides that marriage officers must ask each party the following question: “Do you AB...call all here present to witness that you take CD as your lawful wife (or husband)?” The reference to wife (or husband), they contend, unconstitutionally excludes same-sex couples. This case raised the question, whether the fact that no provision is made for the applicants and all those in like situation, to marry each other, amounts to denial of equal protection of the law and unfair discrimination by the state against them, because of their sexual orientation, contrary to the provision of the Constitution, guaranteeing the right to equality and dignity. The Constitutional Court ruled that the common law and section 30(1) of the Marriage Act are inconsistent with sections 9(1) and 9(3) [equality] and 10 [dignity] of the Constitution to the extent that they make no provision for same-sex couples to enjoy the status, entitlements and responsibilities they accord to heterosexual couples. (Constitutional Court Case CCT 60/04)

In his judgement Justice Sachs made the following statements in relation to equality:

“A democratic, universalistic, caring and aspirationally egalitarian society embraces everyone and accepts people for who they are. To penalise people for being who and what they are is profoundly disrespectful of the human personality and violatory of equality.....Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgement and acceptance of difference. At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma.” (para 60, Constitutional Court Case – CCT 60/04)

In direct reference to section 9(1) of the Constitution which states:

“Everyone is equal before the law and has the right to equal protection of the law.”,

Justice Sachs states:

“It is clear that the exclusion of same-sex couples from the status, entitlements and responsibilities accorded to heterosexual couples through marriage, constitutes a denial to them of their right to equal protection and benefit of the law.” (para 75)

Justice Sachs continues in paragraphs 76 and 77 of the judgement:

“ It is equally evident that same-sex couples are not afforded equal protection not because of oversight, but because of the legacy of severe historic prejudice against them. Their omission from the benefits of marriage law is a direct consequence of prolonged discrimination based on the fact that their sexual orientation is different from the norm.....Some minorities are visible and suffer

discrimination on the bases of presumed characteristics of the group with which they are identified. Other minorities are rendered invisible inasmuch as the law refuses them the right to express themselves as a group with characteristics different from the norm.”

The above two cases aptly demonstrate how legal equality and the right not to be discriminated against is protected by the Bill of Rights, as entrenched in the Constitution of the RSA.

(ii) Social Equality

Equality may perhaps be a right, but no power on earth can ever turn it into a fact (Honore de Balzac quoted in English and Stapleton, 1997:3).

Man is at birth born unequal in one sense or another:

No society can....be a scheme of cooperation which men enter voluntarily in a literal sense; each finds himself placed at birth in some particular position in some particular society (Rawls, 1971).

In *The Republic*, Plato, (Waterfield, 1993), echoes an extremely common sentiment when he complains of the Athenian democracy of his day in that it *“distributes a sort of equality to equals and unequals alike.”*

The doctrine of the social contract was responsible for the advancing of the idea of human equality. Thomas Hobbes, John Locke and Jean-Jacques Rousseau are the three main classical expositors of this doctrine, which was not a pact between rulers and ruled but a pact to establish rule. It marks the transition from ‘state of nature’ to the civil state (Forsyth, (1994) in Boucher and Kelly (ed.) 1994:35). Prior to this emerging transition from natural law to positive law, the belief that there was a much higher, or natural law, than man made law can be

traced back to Sophocles, (in Hosten, *et al*, 1998:45-6) where in his play *Antigone*, he illustrates rebellion against the authority of the state by a citizen convinced that a higher law demands prior observance. Antigone, defies the behest of her uncle King Creon by saying:

[N]or deemed I that thy decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of today or yesterday, but from all time, and no man knows when they were first put forth.

The arguments and counter arguments around equality and its existence has resulted in arguments for inequality within society. The standard defense of permitting inequality, adopted by, *inter alia*, David Hume, Adam Smith and John Rawls, has been that if you deprive people of the incentive they have from the prospect of being able to better their own situations, then:

.....you reduce society to the most extreme indigence; and instead of preventing want and beggary in a few, render it unavoidable to the whole community.

(Paul, Miller and Paul, 1985:44)

The arguments of, *inter alia*, Rawls, Hume and Smith are in conflict with those who believe in an egalitarian society, where all members of that society are equal. In such a society there will be an end to some people having power over others; positions of authority and the obedience they command will disappear (Paul *et al*, 1985:44). All human societies from the simplest to the most complex have some form of social inequality. In particular, power and prestige, are unequally distributed between individuals and social groups and in many societies there are also marked differences in the distribution of wealth (Haralambos & Holborn, 2000:23). Reality and the way we experience life makes an egalitarian society a dream. Exploitation and oppression will be concepts of history which have no place in the description of contemporary social reality. People will be equal both in the sight of God and in the eyes of man.

Social stratification emerges as a result of socially created inequalities. It refers to the presence of distinct social groups, which are ranked one above the other in terms of factors such as prestige and wealth. Those who belong to a particular group or stratum will have some awareness of common interests and a common identity. They will share a similar lifestyle which, to some degree, will distinguish them from members of other social strata (Haralambos & Holborn, 2000:23).

As a result of this stratification opportunities for individuals tend to be unequal as well. Tumin, (1967) (in Haralambos & Holborn, (2000: 29) argues that those born in the lower strata can never have the same opportunities for realizing their talents as those born into the higher strata. Tumin states:

It is only when there is a genuinely equal access to recruitment and training (education) for all potentially talented persons that different rewards can conceivably be justified as functional. And stratification systems are apparently inherently antagonistic to the development of such full equality of opportunity.

Following from this, is the principle of meritocracy, which involves allowing for everyone to start on an equal footing and be successful, based on his or her abilities. For example, if there is a competition or race everyone must be permitted to start the race equal. Those who win such an equal race deserve their success (Cavanagh, 2002:85).

Saunders, (1990) (in Haralambos & Holborn, (2000:31) argues that this competition in capitalist societies benefits the population and that much of the apparent inequality may be attributed to the unequal distribution of ability and effort. In other words, he argues, the children of middle-class parents deserve to be more successful than those from working-class backgrounds, because they tend to have greater genetically inherited ability and because they work harder. Therefore the unequal distribution of wealth and genetic predisposition are likely to influence the notion of social equality.

(iii) Discrimination: Racism and Sexism

Everyone should be given equal opportunity in acquiring a job for instance and their chances should not depend on other people's prejudices; in other words, they should not be discriminated against on the basis of race or sex (Cavanagh, 2002:153). Historically white male South Africans received preferential treatment with regard job opportunities. It is specifically for this reason that these two aspects, race and gender, associated with discrimination find legal protection in the Constitution of the RSA, 1996.

The legal protection of discrimination only applies in the case of unfair discrimination. In order to advance those that were previously disadvantaged during the years of apartheid in South Africa, the Constitution of the RSA allows for fair discrimination, Section 9(2), Constitution of RSA, 108 of 1996:

To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

Based on the above, it can be argued that equality as a concept is rather elusive and clearly open to interpretation and application that is relative to societies and circumstances on the whole. There is however a need, as a result of this, for the legal protection of this fundamental right.

2.5.3 Freedom

Our hope that freedom is not going to be ultimately destroyed by the joint pressure of totalitarianism and the general bureaucratization of the world, and indeed our very readiness to defend it, depends crucially on our belief that the desire for freedom.....is not an accidental fancy of history, nor a result of peculiar social conditions or a temporary by-product of specific economic life forms...but

that it is rooted in the very quality of being human. Attributed to Leszek Kolakowski (Flew, 1989:3).

Despite the diversity of justifications that can underlie rights and despite the diversity of rights that they can deliver, virtually all theories of rights gave an important place to freedom (Jones, 1994:120).

People are described as being free or enjoying liberties in so far as they are neither confined as prisoners, nor constrained by formidable threats. Man is free so long as he is not *'a prisoner and in chains'* (Hume, (1748) in Flew, 1989:4). It would however be false to say that people who are not prisoners are free or at liberty to do certain things, when the doing of those particular things would incur serious penalties (Flew, 1989:5).

In terms of freedom the social contract doctrine is largely dominated by the philosophers, Hobbes, Locke and Rousseau (Boucher & Kelly, 1994). Hobbes, states that *'to be free is to be unopposed and unconstrained in doing what one wants to do'*; the law is a form of constraint, so that the less the law forbids, the more free a man is. In Hobbes' view there is a correlation between law and freedom. Locke, (Boucher & Kelly, 1994) rejects this; he holds that the law does not diminish men's freedom, but effectively enlarges it, both by protecting a man from anarchic invasions of his liberty and by preventing collisions between one man's freedom and another's. Rousseau, (Boucher & Kelly, 1994) concurs with Locke stating that legal penalties are a device for helping the individual in his own struggle against his own passions, as well as a device for protecting society against anti-social depredations of law-breakers. As Rousseau states (Boucher & Kelly, 1994:118):

What a man loses by the social contract is his natural liberty and the absolute right to anything that tempts him and that he can take: what he gains by the social contract is civil liberty and the legal right of property in what he possesses.

Laws limit freedom. The law against murder makes one 'unfree' to murder. This is in essence not an infringement of a fundamental right but can be seen as upholding a fundamental right. The right to freedom therefore is to be understood not as an entitlement to unlimited liberty, but as an entitlement to engage in a limited sphere of activities, where the right of individuals to decide and to act as one chooses within a circumscribed sphere of life may be described as the right to personal liberty (Jones, 1994:122).

The right to freedom includes grand freedoms such as freedom of religion, freedom of expression, privacy and freedom and security of the person. The rights associated with freedom are civil and political rights which are often interpreted as "negative" rights. In application, the 'rights' have negative constraints in the sense that they require, above all, non-interference by the state in the private affairs (religion, speech, association) of the citizen and with the evolution of society the state was not only obliged to honour man's property (Lockean liberalism) but also his life, his liberty and his opinions (Howard, 1995:29).

Most international human rights instruments, beginning with the Universal Declaration of Human Rights, 1948, contain provisions relating to one form of freedom or another, though they generally use the word "liberty" in place of "freedom". It would appear that the words "freedom" and "liberty" may be used interchangeably (Davis *et al*, 1997:76).

The South African Constitution, Act 108 of 1996, protects these rights that are associated with the fundamental right to freedom. Those which are relevant to this study will be discussed briefly.

(i) Freedom of Religion, Belief and Opinion

Section 15(1) of the Act 108 of 1996 states that:

Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

Historically South African society, including the system of education through Christian National Education, was dominated by Christianity. With the dawning of a new era after 27 April 1994 and the entrenchment of religious freedom in the Constitution of the RSA, came the transforming of the social order in relation to the freedom of religion. This transformation and acceptance of religious freedom is aptly captured in the former Minister of Education, Kader Asmal's, foreword to the National Policy on Religion and Education (2003):

The Policy is necessary and overdue to give full expression to the invocation of religion in our Constitution and the principles governing religious freedom. As a democratic society with a diverse population of different cultures, languages and religions we are duty bound to ensure that through our diversity we develop a unity of purpose and spirit that recognises and celebrates our diversity. This should be particularly evident in our public schools where no particular religious ethos should be dominant over and suppress others. Just as we must ensure and protect the equal rights of all students to be at school, we must also appreciate their right to have their religious views recognised and respected. We do not have a state religion. But our country is not a secular state where there is a very strict separation between religion and the state. The Policy recognises the rich and diverse religious heritage of our country and adopts a co-operative model that accepts our rich heritage and the possibility of creative inter-action between schools and faith whilst, protecting our young people from religious discrimination or coercion... (National Policy on Religion and Education, 2003)

One of the main points made by the former Minister of Education is that South Africa is neither a religious state, nor is it a secular state with a very strict separation of state and religion. The freedom of religion would therefore not be

an overarching right in terms of the Bill of Rights and would be balanced against the other rights within the Bill of Rights, such as the right to human dignity.

This balancing of rights was demonstrated in the Constitutional Court case between *Christian Education South Africa v Minister of Education, Case CCT 4/00*.

2.5.3.1 Christian Education South Africa v Minister of Education, Case CCT 4/00.

Corporal punishment was specifically outlawed in South Africa through the passing of legislation which was included in Section 10 of the *South African Schools Act, No 84 of 1996 (SASA)*:

Section 10 Prohibition of Corporal Punishment

- (a) No person may administer corporal punishment at a school to a learner.*
- (b) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.*

The central question in this case was whether Parliament, by prohibiting corporal punishment in all schools, had unconstitutionally limited the religious rights of parents of children in independent schools who, in line with their religious convictions, had consented to what they termed the "corporal correction" of their children by teachers. Christian Education SA is a voluntary association of 196 independent Christian schools with a total of approximately 14 500 pupils. It contended that "corporal correction" was an integral part of the Christian ethos in its schools and hence, the blanket prohibition imposed by section 10 of the Schools Act should be declared invalid to the extent that it limited the individual, parental and community rights of the parents to practise their religion. In opposing the action, the former Minister of Education contended that it was the infliction, not the prohibition, of corporal punishment that infringed the

constitutional rights of children and their rights to equality, human dignity and freedom and security of the person. Alternatively, if the prohibition limited the religious rights of the applicant, such limitation was justifiable. Justice Sachs on behalf of a unanimous court stated that he would assume in *Christian Education SA v Minister of Education*, CCT 4/00, 2000, that their religious and community rights had been limited. He added that the question then was whether such limitation was justifiable. The case raised difficult questions which required weighing considerations of faith against those of reason and of separating what aspects of an activity are religious and protected by the Bill of Rights and what are secular and open to regulation in the ordinary way. He stated that believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or respectful of the law. In order to put the child at the centre of the school and to protect the learner from physical and emotional abuse, the legislature had prescribed a blanket ban on corporal punishment. Justice Sachs, (*Christian Education SA v Minister of Education*, CCT 4/00, 2000), emphasises that he does not underestimate in any way the very special meaning that corporal correction in school has for the self-definition and ethos of the religious community in question. Yet the schools associated with Christian Education SA of necessity function in the public domain so as to prepare their learners for life in the broader society. Just as it was not unduly burdensome to oblige them to accommodate themselves as schools to secular norms regarding health and safety, payment of rates and taxes, planning permissions and fair labour practices and just as they were obliged to respect national examination standards, so was it not unreasonable to expect them to make suitable adaptations to non-discriminatory laws that impacted on their codes of discipline. The parents were not being obliged to make an absolute and strenuous choice between obeying a law of the land or following their conscience. They could do both simultaneously. What they were prevented from doing was to authorise teachers, acting in their name and on school premises, to fulfil what they

regarded as their “conscientious and biblically-ordained responsibilities” (Christian Education SA v Minister of Education, CCT 4/00, 2000). Similarly, save for this one aspect, the appellant's schools were not prevented from maintaining their specific Christian ethos.

With regards to the right to equality the former Minister of Education had argued that:

“It would involve treating some children differently from others on grounds of their religion or type of school they attend.” (para 42)

In response to this Justice Sachs states the following in the judgement:

“I think this approach misinterprets the equality provisions. It is true that to single out a member of a religious community for disadvantageous treatment would, on the face of it, constitute unfair discrimination against that community. The contrary, however, does not hold. To grant respect to sincerely held religious views of a community and make an exception from a general law to accommodate them, would not be unfair to anyone else who did not hold those views. As the court said in Prinsloo v Van Der Linde and Another 1997 (3) SA 1012 (CC) , the essence of equality lies not in treating everyone in the same way, but in treating everyone with concern and respect.”

With regard to the right to ‘freedom of belief, religion and opinion’ the following statements were made in the judgement of Justice Sachs:

“The broad approach highlights that freedom of religion includes both the right to have a belief and the right to express such belief in practice. (para 18,19)

In the [R v Big M Drug Mart Ltd] case Dickson CJC said:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.”

Justice Sachs furthermore refers to Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR) which states:

“Everyone shall have the right to freedom of thought conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” (para 19)

In this case a conflict between religious beliefs and the law emerged. With regard to this conflict Justice Sachs states the following:

“The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientious and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can go and must go in allowing members of religious communities to define which laws they will obey and which not.....Accordingly such believers cannot claim an automatic right to be exempted by their beliefs from the law of the land.” (para 35)

Justice Sachs furthermore refers to another right, namely, security and freedom and by referring directly to this right he states the following:

“It should be noted that these rights to be violence- free are additional to and not substitutes for the right not to be punished in a cruel, inhuman or degrading way. Under section 7(2) the state is obliged to “respect, protect, promote and fulfil”

these rights. It must accordingly take appropriate steps to reduce violence in public and private life. Coupled with its special duty towards children, this obligation represents a powerful requirement on the state to act.”

When all these factors were weighed together, the scales came down firmly in favour of upholding the generality of the law in the face of Christian Education SA’s claim for a constitutionally compelled exemption. The appeal was accordingly dismissed (Constitutional Court Case No 4/00).

As was the case when I discussed human dignity in this chapter, it is apparent from the above Constitutional Court case that interpretation and understanding of human rights will differ among individuals within any society. It is clear that the different values and beliefs associated, with groupings within societies, will result in conflicting meanings being attached not only to specific rights, but to the whole concept of human rights.

(ii) Freedom of Expression

Section 16 (1) of the Constitution of the RSA Act 108 of 1996 states that:

- (1) *Everyone has the right to freedom of expression, which includes-*
- (a) *freedom of the press and other media;*
 - (b) *freedom to receive or impart information or ideas;*
 - (c) *freedom of artistic creativity; and*
 - (d) *academic freedom of scientific research*

One of the leading commentators of freedom of speech is Thomas Emerson who (in Davis et al, 1997:113) identified four particular values underlying the guarantee to this freedom:

- *Freedom of expression is essential as a means of assuring individual self-fulfilment. Suppression of belief, opinion or other expression is an affront*

- to the dignity of human beings.....Each person as a member of society has a right to share in the common decisions that effect him or her. To cut off the search for truth, or the expression of it, is to elevate society and the state of it to a despotic command.....*
- *Freedom of expression is an essential process for advancing knowledge and discovering truth.....Discussion must be kept open no matter how true and accepted opinion may seem to be.....*
 - *Freedom of expression provides for participation in decision-making by all members of society.....it promotes the establishment of a deliberative democracy.....*
 - *Freedom of expression is a method for achieving a more adaptable and hence a more stable community.....Suppression of discussion makes a rational judgement impossible, substituting force for reason.....*

Ronald Dworkin, (1977) (in Davis *et al*, 1997:112), reduces Emerson's four values to two:

- *The quality of government is improved when criticism is free and unfettered;*
- *Freedom of expression is an 'essential' and 'constitutive' feature of a just political society.....that government treat all its competent adult members as responsible moral agents.*

Freedom of expression raises complex problems requiring the balancing of competing interests. The outcome of disputes turning on the guarantee of freedom of expression will depend on the value a court is prepared to place on freedom of expression (Davis *et al*, 1997:111).

The Constitutional Court was required to balance competing interests in the case between *Laugh It Off Promotions v SAB International*, Case No CCT 42/04.

2.5.3.2 Laugh It Off Promotions v SAB International, Case No CCT 42/04.

This case presents a dispute around the proper interpretation of the anti-dilution provision, section 34(1)(c), of the Trade Marks Act in light of section 16 of the Constitution, namely the right to freedom of expression. Sabmark International (Sabmark) holds trade marks that it licenses to SAB Ltd for use on beer bottles and related products. One of the trade marks states:

“America’s lusty, lively beer Carling Black Label Beer Brewed in South Africa”.

In 2001 Sabmark discovered that Laugh It Off Promotions CC (Laugh It Off) was producing and selling T-shirts that lampooned the trade mark by stating:

“Africa’s lusty, lively exploitation since 1652 Black Labour White Guilt No regard given worldwide”.

Sabmark then sought and obtained an interdict from the Cape High Court to restrain Laugh It Off from using the mark. After losing the case on appeal in the Supreme Court of Appeals, Laugh It Off applied to the Constitutional Court for leave to appeal against the SCA judgment. It contended that the mark on its T-shirts either criticises the way SAB markets its beer by targeting black workers, or generally criticises the exploitation of blacks by whites. It contended that the right to freedom of expression protects both these messages and hence that an interpretation of the anti-dilution provision that gives adequate effect to this right, does not allow Sabmark to obtain an interdict, except where it has shown that it is likely to suffer economic harm. Sabmark opposed the application on the basis that the right to freedom of expression, though implicated, does not protect Laugh It Off’s use of the CARLING BLACK LABEL mark.

Writing for a unanimous Court, Justice Moseneke finds that the matter is not merely academic. The matter raises novel concerns in our law and is of

importance to the South African economy and public. This is so also because Laugh It Off would be able to resume trading were this Court to find in its favour. *“This Court holds that Sabmark failed to prove Laugh It Off’s infringement of its trade marks. The “likelihood of taking advantage of, or being detrimental to, the distinctive character or repute of the marks”, has not been established. **The rights of persons to express themselves cannot be lightly limited.** However, an interpretation of the section that conforms to the Constitution and the kind of society it envisions requires the one relying on the protection of the Act to show a real likelihood or probability of harm. This is impermissible in a democracy such as ours. The Court is of the view that it is not necessary to decide the question of parody in this case because no likelihood of economic harm has been shown. However, our Constitution does not exclude or afford special protection to any expression but that falling under section 16(2). Hence, all speech is protected and must be appropriately balanced against other rights, of which the right to property (including intellectual property) is one. Placing the onus on the trade mark holder to adduce evidence to prove the likelihood of substantial economic harm as a result of Laugh It Off’s expressive conduct is an appropriate balance of these rights. In the present matter, Laugh It Off is not selling another beer in competition with Sabmark but is rather involved in the sale of “an abstract brand criticism” for which T-shirts are merely a choice of medium. Such expressive conduct is acceptable in terms of our Constitution and, in light of Sabmark’s failure to establish likelihood of economic harm, not an infringement of the Act. Therefore the Court grants leave to appeal and sets the order of the SCA aside.”*

Concurring in the judgment, Justice Sachs states that in his view Sabmark’s case fails not only because of lack of evidence. The parody is central to the challenge to the cultural hegemony exercised by brands in contemporary society. The issue is not whether the court thinks the lampoons on the T-shirts are funny, but whether Laugh It Off should be free to issue the challenge. In his view, *the expression of humour is not only permissible, but necessary for the health of democracy* (Constitutional Court case No. 42/04).

In his judgement Justice Moseneke furthermore quotes Justice Mokgoro in the case of *Case and Another v Minister of Safety and Security and Others, 1996 (3) SA 617 (CC)*, where Mokgoro J says that freedom of expression should not be understood in isolation:

“But as part of a web of mutually supporting rights enumerated in the Constitution, including the right to ‘freedom of conscience, religion, thought, belief and opinion’, the right to privacy, and the right to dignity. Ultimately, all of these rights together may be conceived as underpinning an entitlement to participate in an ongoing process of communicative interaction that is of both instrumental and intrinsic value.” (para 46)

In a similar vein Justice Moseneke refers to Justice O’Regan in the case *South African National Defence Force Union v Minister of Defence and Another 1999 (4) SA 469 (CC)*:

“These rights taken together protect the rights of individuals not only individually to form and express opinions, of whatever nature, but to establish associations and groups of like-minded people to foster and propagate such opinions. The rights implicitly recognise the importance, both for a democratic society and for individuals personally, of the ability to form and express opinions, whether individually or collectively, even when those views are controversial. The corollary of the freedom of expression and its related rights is tolerance by society of different views. Tolerance, of course, does not require approbation of a particular view. In essence, it requires the acceptance of the public airing of disagreements and the refusal to silence unpopular views.” (para 46)

In addition to the above Justice Moseneke succinctly captures the link between the freedom of expression and other fundamental human rights:

“The importance of freedom of expression has been articulated and underscored by this and other courts in this country and indeed in other open democracies..... Suffice it to repeat that freedom of expression is a vital incidence of dignity, equal worth and freedom. It carries its own inherent worth and serves a collection of other intertwined constitutional ends in an open and democratic society.” (para 45)

The above case demonstrated the importance of freedom of expression in a democratic society and furthermore demonstrates how, when such a right is legally entrenched in a country’s statutes, the courts are able to protect and enforce these rights.

(iii) Privacy

Section 14 of Act 108 of 1996 states that:

- 14 *Everyone has the right to privacy, which includes the right not to have –*
- (a) their person or home searched;*
 - (b) their property searched;*
 - (c) their possessions seized; or*
 - (d) the privacy of their communications infringed.*

The right to privacy in a school context is important as the social interaction between educators and learners will test the boundaries of this important right which is linked to freedom.

In resolution 428 (1970) of the Consultative (Parliamentary) Assembly of the Council of Europe which contains the Declaration Concerning the Mass Media and Human Rights, the right of privacy as contained in article 8 was defined as follows:

The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection from disclosure of information given or received by the individual confidentially (Davis et al, 1997:93).

Privacy, and the high value it places on individualism, is one characteristic of liberal society that makes it distinct from both traditional societies and non-liberal societies. Privacy in its modern sense, as a sphere of thought that should be free from 'public' interference, constitutes what is perhaps the central idea of liberalism (Howard, 1995:25)

Legally the invasion of ones privacy is related to the delict of insult, since a person's right to privacy is also one of *"those rights relating to dignity"* (Hosten et al, 1998:842).

Recently the Minister of Education, Naledi Pandor has, in light of criminality in some schools in South Africa highlighted the need to balance a learner's right to privacy and the issue of 'search and seizure' and the right of learners to be taught in a secure environment.

(iv) Freedom and Security of the Person

Section 12 (1) of the Constitution of RSA. Act 108 of 1996 states that:

Everyone has the right to freedom and security of the person which includes the right –

- (a) not to be deprived of freedom arbitrarily or without just cause;*
- (b) not to be detained without trial;*
- (c) to be free from all forms of violence from either public or private sources;*

- (d) *not to be tortured in any way; and*
- (e) *not to be treated or punished in a cruel, inhuman or degrading way.*

Section 12(1) (c) and (e) were tested specifically in the Constitutional Court cases of *S v Williams and Others* and *Christian Education SA v Minister of Education* which were both mentioned in this chapter. In the case of *S v Williams* section 11(2) of the Interim Constitution of the RSA, 1993, and not Section 12(1) of the Constitution of the RSA, 108 of 1996, applies.

In both instances where corporal punishment, in one form or another, was central to the case the right not to be treated or punished in a cruel, inhuman or degrading way was part of the argument against the use of corporal punishment as a form of punishment. Internationally, this right is absolute, non-derogable and unqualified. All that is therefore required to establish a violation of the relevant section is a finding that the state concerned has failed to comply with its obligation in respect of any one of these modes of conduct (Davis *et al*, 1997:80)

A punishment which does not accord the inherent dignity of human beings is cruel. A punishment is cruel if it makes no measurable contribution to legitimate goals and hence, is nothing more than the purposeless and needless imposition of pain and suffering (Davis *et al*, 1997:81).

The right not to be punished in a cruel and inhumane way is inherent in the dignity of every human being. What can be classified as cruel punishment, which in turn impairs the inherent dignity of the recipient, is at times, as was witnessed in the case of *Christian Education SA v Minister of Education*, a point of contention with those representing the religious beliefs of Christian Education SA believing that corporal punishment was justified in terms of the Holy Bible.

(v) Limitations

In terms of Section 36 (1) and (2) of Act 108 of 1996:

36 (1) The rights in the Bill of Rights may be limited in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

- (a) the nature of the right;*
- (b) the importance of the purpose of the limitation;*
- (c) the nature and extent of the limitation;*
- (d) the relation between the limitation and its purpose; and*
- (e) less restrictive means to achieve the purpose.*

(2) Except as provided in subsection (1) or any other provisions of the Constitution, no law may limit any right entrenched in the Bill of Rights.

The only two rights that are entirely non-derogable are the right to life (section 11) and the right to human dignity (section 10).

In balancing the rights that are entrenched in the Constitution of the RSA, the Constitutional Court will apart from applying the basic maxim of *'reasonable and justified'* when considering the limitation of any right, consider the relevant factors as per section 36 (1) (a) – (e).

The Universal Declaration of Human Rights, 1948 recognises that rights are subject to limitations determined by law *"for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.* The idea of rights accepts that some limitations on rights are permissible but the limitations are themselves strictly limited. Derogations are permitted only in time of a public emergency which threatens the life of the

nation, not as a response to fears, for other values, or for the security of a particular regime (Henkin, 1990:4).

Therefore, as much as human rights are entrenched in legal instruments these can be limited in terms of law and where such limitation is reasonable and justified. This limitation of rights further adds to the complexities associated with human rights understanding and the meaning that is attached to specific human rights.

2.6 SUMMARY

This chapter illustrates how the concept of human rights is surrounded by different and conflicting views mainly as result of the diversity of people's ideas and cultures. I am of the opinion that in the final analysis, the leveller, in terms of principles versus pragmatism or theory versus practice is the legal factor. The reason for this is that from a moral, ethical, religious and traditional perspective, human rights is debated among philosophers and citizens who all forward their own understanding of the concept human rights. In the final analysis however and in a South African context, the reality is that the fundamental rights of human dignity, equality and freedom and all the other associated rights in the Bill of Rights, are legally protected and can be legally enforced. This was clarified by Justice Sachs in the case *Christian Education of SA v Minister of Education* where he stated in his judgement that as much as the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or respectful of the law, *"believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land."*

Individuals are therefore at liberty to attach meaning to human rights in terms of their own culture, values and beliefs but where these are to be practised, actions

can only be taken within the parameters of the Constitution of the RSA, 108 of 1996 and particularly in the case of human rights the Bill of Rights in Chapter 2.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1 INTRODUCTION

Chapter 2 offered a review of the literature regarding human rights to establish a theoretical platform for this study. The research design and methodology adopted will now be discussed. In designing the study I focused my design on exploring the understanding educators have about human rights and its associated concepts. In order to explore this understanding it was necessary to adopt a research design that allowed me to get close to the participants, so that I could gain an insider's perspective on how they attach meaning to the concepts being studied.

My epistemological and ontological point of departure is more aligned towards a constructivist / interpretivist understanding of how people make meaning of phenomena. Therefore a qualitative research approach was adopted in my research design. The design took the form of a case study where data was collected through the conducting of in-depth interviews with the participants (Henning, van Rensburg & Smit, 2004:74). The interviews were recorded on a digital video camera and where the participants indicated their unwillingness to be filmed, the camera was turned downwards and only audio was recorded. Notes were taken during the interviews. The recorded data was transcribed in order to ensure reliability and the inclusion of all data collected.

3.2 CONSTRUCTIVISM / INTERPRETIVISM

Unlike positivist researchers, anti-positivist social scientists believe that the understanding and interpretation of the individuals world around him or her has to

come from the inside not the outside (Cohen, Manion & Morrison, 2002:20). The purpose of social science is to understand social reality as different people see it. While the social sciences do not reveal ultimate truth, they do help us to make sense of how participants experience and give meaning to their world. What social sciences offer is an explanation, clarification and demystification of the social forms which participants may have created (Beck, (1979) in Cohen, *et al*, 2002:20).

Therefore as an alternative to positivist approaches, naturalistic, qualitative and interpretive approaches with distinguishing features were adopted in which the following were observed:

- People are deliberate and creative in their actions. They act intentionally and make meanings in and through their activities (Blumer, (1969) in Cohen, *et al*, 2002:21)
- People actively construct their social world – they are not ‘cultural dopes’ or passive dolls (Garfinkel, (1967) in Cohen, *et al*, 2002:22)
- There are multiple interpretations of, and perspectives on, single events and situations (Cohen, *et al*, 2002:22)

Anti-positivists would include, inter alia, constructivists, interpretivists and phenomenologists, who believe that there is a fundamental difference between the natural world and the social world (Mouton, 1996:47). The verbs “predict” and “test” would point in the direction of a positivist theoretical framework; whereas the verb “understanding” assumes a interpretivist / constructivist theoretical paradigm of which “uncertainty” is a key principle (Henning, *et al*, 2004:16,20).

Knowledge is constructed not only by observable phenomena, but also by descriptions of people’s intentions, beliefs, values and reasons, meaning making and self understanding (Henning, *et al*, 2004:20). Research conducted in order to discover meaning or understanding is related to hermeneutics, a theory of

meaning which originated in the 19th century. The term comes from a god in Greek mythology, Hermes, who had the task of communicating the desires of the gods to mortals (De Vos, 2002:7). Interpretive, or hermeneutical, theory is a necessary constituent of all forms of human social existence which involves the attempt to understand the meaning of other people's signs, gestures or action (Ashley & Orenstein, 1995:44). Social meaning can furthermore not be separated from human behaviours. In other words, social scientific research must not only observe human actions, but also unravel meanings that social actors assign to their actions (Nielson, (1990) in Hesse-Biber & Leavy, 2004:5). A social science researcher is not only interested in the physical behaviour and events taking place, but also in how the participants in the study make sense of these, and how their understandings influence their behaviour (Bickman & Rog, 1998: 75). The understanding that educators have, and the meaning they attach to human rights and its associated concepts will influence their behaviour not only within society, but more importantly with regard to their behaviour towards the learners in their care. This focus on meaning is central to what is known as the "interpretive" approach to social science (Bickman & Rog, 1998:75).

The most effective way in which to ensure an interpretive approach would be to adopt a qualitative research design.

3.3 QUALITATIVE RESEARCH

Qualitative research is a distinct field of inquiry that encompasses both micro- and macro-analyses drawing on historical, comparative, structural, observational, and interactional ways of knowing (Hesse-Biber & Leavy, 2004:1). Bryman, (2000) (in Miller & Brewer, 2003:239), notes that three characteristics are noteworthy of the qualitative tradition:

- An inductive view of the relationship between theory and research, in which theory is built up from the bottom through the data;

- An epistemological position, which sees knowledge as obtained through understanding how the social world is interpreted by its participants;
- An ontological position which sees social phenomena as outcomes of the interactions of people.

Hammersley & Atkinson, (1993) (in Miller & Brewer, (2003:239), note five essential traits of qualitative research:

- Data comes in the form of words and images, rather than numbers;
- These are natural occurring data, rather than artificial experimental data;
- The focus is on meanings that document the world from the point of view of those under study;
- Natural science models (i.e. the scientific method) of social research are rejected;
- Induction is used in data analysis and theory generation.

Sherman and Reid (1994:1) define qualitative research simply as research that produces descriptive data, based upon spoken or written words and observable behaviour, in contrast to quantitative methods, which involve numerically measuring the degree to which some feature is present.

According to Strauss and Corbin (1990:17), qualitative research is research that produces findings not arrived at by means of statistical procedures or other means of quantification. It can refer to research about persons' lives, stories, behaviour and also about organizational functioning, social movements or interactional relationships. Qualitative research can cover a wide range of strategies of data collection. Central to the process is the reality of *'getting in and getting close to'* the research participants (Welland & Pugsley, 2002:1).

For the purposes of my study these elements are vital as they will inform, not only my research approach, but also my data collection and analysis, as I will explain further.

3.4 SAMPLING

The selected research site was purposefully chosen (cf. Patton, 1990) and is an independent primary school with a Roman Catholic ethos. The school has a learner enrolment of 679 learners and an academic staff compliment of 30 educators. The 30 educators make up the population, which according to Mouton (1996:134), is a collection of objects, events or individuals that have some common characteristic which the researcher is interested in studying. In social research, populations of human beings in a certain area, or organization, may include, adults, school children, inmates of a prison or members of a sports team, etc. (Mouton, 1996:134).

In my research, I planned to “travel or wander with” the participants, who have agreed to “participate” and therefore the selection of the research participants (sampling) is important (Henning *et al*, 2004:71). During the process of selecting or sampling, the aim is to obtain a sample of educators who will be able to share their experiences and understanding, regarding the phenomena under study and this thus necessitated purposive sampling (Patton, 1990).

Talking about our understanding of human rights, may be regarded as sensitive by some educators and I had to take into account that some of the educators that formed the population may not be prepared to take part in this research. Owing to this, the researcher decided to select the participants for the depth interviews in a purposeful manner and to ensure that every participant has given his/her informed consent. For in-depth interviews, participants were selected in such a way that I included a range of educators (e.g. in terms of gender, age, experience) so as to maximise the richness of information pertinent to the

research question. As such, the sampling strategy should be purposeful and not random (Hesser-Biber & Leavy, 2004:191).

The educators were, through the principal of the school, invited to volunteer as participants in this research. In-depth interviews were conducted with eight educators. The first eight educators who volunteered were selected as the sample. There were seven female participants and one male participant. There were only two male educators on the school's academic staff. The average age of the participants was 44.6 years and the average teaching experience was 27.8 years.

3.5 INTERVIEWS

My initial methodological plan, which was to be executed within a qualitative research design, was to collect data through both interviews and observations. However, during the initial meeting with the school's principal, I was informed that it would not be possible for the data collection to take place by means of observation, as the educators felt very uncomfortable about this. It was therefore agreed, that only interviews would be conducted with eight educators who would volunteer to be part of the research. It was furthermore agreed, that the research would be conducted in a strictly confidential manner and that the identity of the school and the participants was to be completely protected.

Interviews generally provide a framework in which participants can express their own thoughts in their own words (Miller & Brewer, 2003:166). These interviews are done in the form of a 'conversation,' although interviews are not just conversations, but rather conversations with a purpose – to collect information about a certain topic or research question. These 'conversations' do not just happen by chance; rather they are deliberately set up and follow certain rules and procedures (Miller & Brewer, 2003:167). Research interviews are but one of many types of interviews – all of which assume that the individual's perspective is

an important part of the fabric of society and of our joint knowledge of social processes and of the human condition (Henning *et al*, 2004:50). The use of the interview for the collection of data has as a main aim: the bringing to our attention what individuals think, feel and do and what they have to say about a subject, providing their subjective reality in a “formatted” discussion - which is guided and managed by an interviewer and later integrated into a research report (Henning *et al*, 2004:50).

An interview should not be seen as either been exclusively subjective or objective but rather as inter-subjective, where participants - be they interviewers or interviewees - can discuss their interpretations of the world in which they live and express how they regard situations from their own point of view (Cohen *et al*, 2002:267). Interviewing is the predominant mode of data or information collection technique in qualitative research and according to Seidman, (1998) (in De Vos 2002:292), one interviews because one is interested in other people’s stories, which are in essence a way of knowing and a mean-making process. Every word that people use in telling their stories is a microcosm of their consciousness. All interviews are interactional events and interviewers are deeply and unavoidably implicated in creating meanings that ostensibly reside within participants (Holstein & Gubrium, (1995) in De Vos, 2002:292). As a result, I needed to ensure that my epistemological understandings of the theme did not in any way influence the participants and their understanding of the theme and its associated concepts.

There are three main types of interviews, namely, structured, semi-structured and unstructured interviews (Miller & Brewer, 2003:167). I chose to use a semi-structured format so as to allow for probing and exploration of participants views and understandings.

3.5.1 Semi-structured interviews

Semi-structured interviews allow for far more flexibility. The interviewer decides in advance what broad concepts are to be covered and what main questions are to be asked. However as much as semi-structured interviews contain a set of specific concepts, participants are allowed sufficient freedom to digress, while interviewers ask questions that are generally open ended, in order to gain richer information about attitudes and behaviour (Miller & Brewer, 2003:167). In general, semi-structured interviews allow researchers to gain a detailed picture of a participant's beliefs about, or perceptions or accounts of, a particular concept with the researcher being able to follow up with probing questions and the participant providing a fuller picture (De Vos, 2002:302).

All the participants were asked the same main questions. Additional probing questions and questions around clarity were asked, depending on the manner in which the interviews progressed. The following questions were asked of all the participants:

1. What do you understand by the term "**human rights**"?
2. What is your understanding of "**democratic values**"?
3. What do you understand by the term "**equality**"?
4. What is your understanding of the term "**human dignity**"?
5. What is your understanding of the term "**freedom**"?
6. What is your understanding of the term "**non-racialism**"?
7. What is your understanding of the term "**non-sexism**"?
8. What do you understand about the right to "**freedom of religion, belief and opinion**"?
9. What do you understand about the right to "**freedom of expression**"?
10. What do you understand about the right to "**privacy**"?
11. What do you understand about the right to "**freedom and security of the person**" ?

Prior to conducting the interviews, the following information and details were conveyed to the participants:

- All responses and details pertaining to the interviews were strictly confidential;
- The names of the participants and the name of the school would not be used in the final report in any way;
- The interview was in no way to be construed as a “test” – there are no right or wrong answers;
- The aim of the research was to determine what understanding the participants have, with regards to human rights and its associated concepts– in essence their own personal understanding of the subject;
- They were asked to relax and answer in a truthful and open manner.

The interviews were recorded on a Panasonic digital camera. In two instances, Participant 6 and Participant 8, the camera was turned downwards as these two participants did not want to be filmed. The recordings of all the interviews were transcribed and the data analysed.

3.6 DATA ANALYSIS

Qualitative research, according to Janesick, (1994) (in De Vos, 2002:339), depends on the presentation of solid descriptive data, so that the researcher leads the reader to an understanding of the meaning of the experience or phenomenon being studied. Data analysis is a messy, ambiguous, time-consuming, creative and fascinating process which brings order, structure and meaning to the mass of collected data (De Vos, 2002:339-40). The term analysis means *‘the resolution of a complex whole into its parts’* (Mouton, 1996:161). This is done by identifying patterns and themes in the data and certain conclusions from them (Mouton, 1996:111).

After the transcribing of the recordings, the researcher analysed the data by proceeding as follows:

- The transcripts were sent to the participants in order for them to read and confirm that there were no inaccuracies. This was done to ensure that the data used for analysis and the subsequent reporting is accurate and authentic;
- The transcripts were all coded. Codes are designated to different segments or units of meaning (Henning *et al*, 2004:105);
- The related codes were then grouped into a theme, categories and sub-categories, as they identified with direct responses from the participants to questions asked during the interviews;
- Summaries were made of all the responses. Codes and key words pertaining to the theme, categories, sub-categories were allocated to each participant. These were cut out and pasted together on a chart;
- Similarities and differences, as well as the common use of particular words and concepts, were identified;
- The emerging commonalities resulted in identifying topics that were synonymous with the theme, categories and sub-categories.

The detailed analysis of the data follows in Chapter 4. This takes the form of content analysis, which examines patterns of symbolic meaning within a written text, as well as audio and visual (Neuman, 2003).

3.7 VALIDITY

In qualitative data, validity might be addressed through the honesty, depth, richness and scope of the data achieved, the participants approached, the extent of triangulation and the disinterestedness or objectivity of the researcher (Cohen *et al*, 2002:105).

3.7.1 Triangulation

Triangular techniques in the social sciences have their roots in the original technique of physical measurement which, by using several locational markers, navigators, surveyors and military strategists, could endeavour to pinpoint a single spot or objective (Cohen *et al*, 2002:112). Triangulation in social research is the combination of different methods, methodological perspectives or theoretical viewpoints with the end result being a net gain for the research (Miller & Brewer, 2003:326). Therefore the inclusion of multiple sources of data is likely to increase the overall reliability of the study.

The most extensive discussion of triangulation, as a validity-testing strategy in qualitative research, is offered by, Bickman and Rog, (1998:93), who emphasize the fallibility of any particular method and the need to design triangulation strategies to deal with specific validity threats. For example, interviews, questionnaires and documents may all be vulnerable to self-report bias or ideological distortion; effective triangulation would require an additional method that is not subject to this particular threat.

The additional method that is adopted in this research, in order to eliminate any “bias or ideological distortion”, is the referring to Constitutional Court judgements, where they exist. The triangulation takes place in the form of juxtaposing the understanding of human rights and its associated concepts by the participants to the Constitutional Court rulings. Furthermore, the existing literature on human rights and its associated concepts is used as an additional comparative source.

3.8 ETHICS

Whatever the specific nature of their work, social researchers must take into account the effects of research on participants and act in such a way as to preserve their dignity as human beings (Cohen *et al*, 2002:56).

The characteristic connectedness and degree of intimacy that form between the researcher and the researched in qualitative research can generate a range of ethical issues (Welland & Pugsley, 2002:1). Interviewing is a form of social interaction and a traditional paradigm of 'interviewer detachment'. The common practice of the interviewer, who seeks to actively control and depersonalise the interview situation, has been challenged by certain interviewers viz. Anne Oakley who in her statement in Welland and Pugsley, (2002:33) states that:

In most cases, the goal of finding out about people through interviewing is best achieved when the relationship of interviewer and interviewee is not hierarchical and when the interviewer is prepared to invest his or her own personal identity in the relationship.

Researchers sometimes tend to relate to participants from a position of superior expertise and status and may think that the participants do not need to be fully informed about the research goals, processes or outcomes. A more egalitarian relationship, where participants are seen as co-researchers, may be suggested (Tutty, *et al*, (1996) in De Vos, 2002:62).

Three main areas of ethical issues relating to interviews are identified by Kvale, (1999), (in Cohen, *et al*, 2002:292), namely:

- **Informed consent**

In the case of this research, consent was received from the School Governing Body, the Principal and the individual educators who volunteered to be part of this research. This was preceded by a meeting with the principal as well as a written request, which summarized the aim of the research. In every instance, and prior to the commencing with the interview, the participants were informed in detail as to the aim of the research.

- **Confidentiality**

The principal and the participants were given the assurance of strict confidentiality. It was confirmed by the researcher that the names of individuals or the name of the school would not be mentioned in the final report.

- **Consequences of the interviews**

There are no negative consequences associated with the interviews which the researcher needs to make the participants aware of, or that may be harmful to the participants or the school. In addition, the principal was informed that a copy of the final dissertation / report would be made available to the school and that the researcher would be, upon the conclusion of the research and the publication of the findings, be willing to hold a workshop on human rights with all the staff members at the school.

3.9 SUMMARY

The above chapter describes the research design and methodology adopted for this study. A qualitative approach which involved the interviewing of the participants involved in this research was the preferred design and method, as it allowed for the researcher to optimally explore the understanding that the participants have about human rights and its associated concepts within a school environment.

The analysis and findings are dealt with in detail in Chapter 4.

CHAPTER FOUR

DATA ANALYSIS AND FINDINGS

4.1 INTRODUCTION

A discussion of the research methodology and design was done in Chapter 3. In this chapter I will analyse the data obtained from the interviews with the participants. In analysing the data, I have used the content analysis approach described in Chapter 3. The adoption of a content analysis approach and the subsequent coding of the data resulted in the emergence of various themes, categories, sub-categories and topics. These emerging themes, categories, sub-categories and topics associated with the qualitative data collected from the interviews with the participants, will be presented in a systematic manner which identifies and summarizes message content (Neuendorf, 2002).

4.2 STRUCTURE OF THE CHAPTER

Based on the analysis of the data, I have developed a generative flow chart displaying the relationship between the overarching theme, categories and sub-categories. This flow chart integrates and visually presents the participants' feelings, thoughts and understanding that contributed to the theme, categories, sub-categories and emerging topics.

The overarching theme is human rights. The four categories evolving as important dimensions of human rights are democratic values, human dignity, equality and freedom. Human dignity, equality and freedom form a cornerstone of the South African Bill of Rights. The six subsequent sub-categories that emerged are non-racialism, non-sexism, belief, religion and opinion, expression, privacy and freedom and security. These sub-categories are directly associated with all

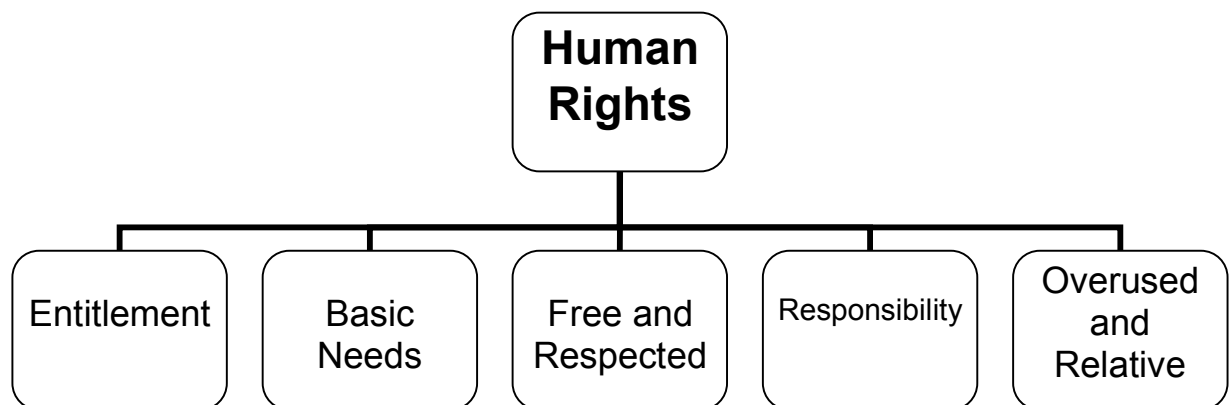
the fundamental rights that emerge in the categories. For example, the sub-category relating to non-racialism relates directly to all four categories.

The rights and freedoms mentioned as sub-categories, will be referred to, as they apply, when discussing the different categories, namely democratic values, human dignity, equality and freedom. The topics associated with the theme and categories will be presented and expanded on as the analysis progresses.

4.2.1 Human Rights

As indicated in Chapter 3, my interviews with the participants began by asking them to define what they understand by the concept “human rights”. In responding to this question I had to probe rather extensively in order to clarify what the participants meant by certain terms used. This was done by paraphrasing their response and checking whether my understanding was in fact what they meant when they used a specific term or comment. This enabled me to analyse the data in such a way that I could unpack their understandings in terms of emerging categories of comprehension. In terms of human rights, five interrelated aspects or topics emerged from the data that reflected the understanding of my participants. This is graphically illustrated in Figure 4.1.

Figure 4.1 Human Rights – Emerging Topics



The concept of human rights is the overarching theme associated with this research. As per Figure 4.1, the following five topics emerged from the data with regards to the term ‘human rights’:

4.2.1.1 Entitlement

It emerged during the interviews that human rights was something that every human being was entitled to. Two of the participants used the actual word ‘entitled’ while the rest implied it in the course of their response.

Participant 5 referred directly to entitlement:

“ What we are entitled in our own lives to live by”.

....as did Participant 7 :

“.....as the persons’ sort of what they are entitled to....their basic needs.”

These are a few examples where entitlement is implied:

“ That everyone has a right to the good life.” (P1)

“you’ve got your own human rights” (P2)

“.....we are born with human rights....” (P3)

“my everyday right of living.” (P4)“....everybody fights for their human rights...” (P4)

“...are the rights and privileges that every person, each child and each adult has.....” (P6)

“...your basic rights as a human being are protected.” (P8)

The understanding of the concept ‘human rights’ in relation to entitlement is in line with the human rights covenants and instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights (http://www.unhchr.ch/html/menu3/b/a_ccpr.htm). The

participants' understanding of the basic concept is therefore in line with the broad legal understanding of the concept.

4.2.1.2 Basic Needs

Although the right to food and shelter emerged as a fundamental human right, not all the participants referred directly to 'food and shelter', but rather to 'basic needs'. The mentioning of 'basic needs' as a human right furthermore ties in with the right to a 'good life'.

Reference to *'the right to a good life'* was specifically made by Participant 1: *"Everyone has the right to a good life.....A good life is not necessarily a financially secure life....It is a life where the benefits that are open to one are open to all"*.

Benefits would include the fundamental rights to basic food and shelter. These plural rights are entrenched in the Bill of Rights and would be included in Participant 1's understanding of a good life, to be associated with such basic benefits as food and shelter and not necessarily to be associated with excesses and luxury living. In essence, one derives benefit from a basic good life, when one's basic needs are met.

Although the other participants did not mention the right to a good life specifically, mention was made of *"the right to basic needs"* (P7). Furthermore mention was made of the *"right to be treated fairly and have equal benefits"* (P1) which would refer to the fundamental human right of equality.

Not all the participants mentioned 'food and shelter' or 'basic needs' during the discussion of their understanding of the term 'human rights'. Despite this, it is important to note that it was, even in a limited way, recognised as an intricate part of human rights.

Specifically a few of the participants had the following to say:

“ The right to running water, basic necessities in life.” (P4)

“What every person is entitled to have and achieve basically.” (P5)

“To have a roof over your head and food to eat.” (P6)

Those who did mention the right to ‘basic needs’ or ‘food and shelter’, whether directly or indirectly, tended to have a far more compassionate understanding of the term ‘human rights’. In addition, their understanding tended to indicate a fundamentally basic understanding with practical, rather than theoretical implications. This could be attributed to the fact, that during the interview, the responses of a few of the participants were associated with their own personal rights and as a result these participants did not identify with those less fortunate than them. The participants who included ‘basic needs’ or the right to ‘food and shelter’ in explaining their understanding of the term human rights, clearly placed far more emphasis on basic needs as a human right as opposed to emphasising, for example, the right to freedom of expression or opinion.

4.2.1.3 Free and Respected

It must be noted at this stage that when discussing their understanding of the term ‘human rights’, the participants were inclined to refer to specific rights or freedoms. For example:

“.....has got a right to their own opinion.” (P2)

“.....the right to a safe environment.” (P3)

“.....the right to running water, the basic necessities.” (P4)

It emerged therefore that, when discussing the concept ‘human rights’, the participants referred to rights which they considered as important. It furthermore emerged that ‘respect’ and ‘freedom’ were important aspects associated with human rights.

The following are examples of this:

“You’ve got to have respect towards other people.” (P2)

“...freedom to be able to be yourself.”(P3)

“...we need to be able to respect other people and to consider other people.”(P3)

The reference to ‘respect’ and ‘freedom’ is associated with the fundamental rights of ‘human dignity’ and ‘freedom’, which are discussed later in this chapter (see 4.2.3 and 4.2.5).

4.2.1.4 Responsibility

Participant 3 made mention of “responsibilities” which are intrinsically linked to human rights:

“Responsibilities are associated with human rights, in fact they go hand in hand.”, and,

“.....they’re always quick to say it’s my right, but they are not aware that they are stepping on other people’s rights as well.”

Participant 3 argues a point which is relevant to the extent that, indeed there is a tendency for individuals to demand respect for their rights, yet they fail to respect the rights of others.

I feel that it is important to mention this as the responsibilities associated with human rights forms part of the school curriculum. Rights and obligations are ultimately intricately linked, but despite this, no direct mention of responsibilities or obligations was made by any of the other participants. Participant 7 mentioned responsibilities when discussing the concept of freedom:

“Yes we are free to do whatever we want but it always goes hand in hand with responsibility.”

4.2.1.5 An Overused and Relative Concept

One of the participants, Participant 7, felt that the concept of human rights was overused. Participant 3 shares this view when expressing the opinion that:

“It is a term that is used so frequently, so often and that it’s this person’s right and that person’s right and in my mind, very often, the whole issue is blown out of proportion, because for me human rights is to be able to be free to be, without being concerned about one’s sanity and all types of issues.”

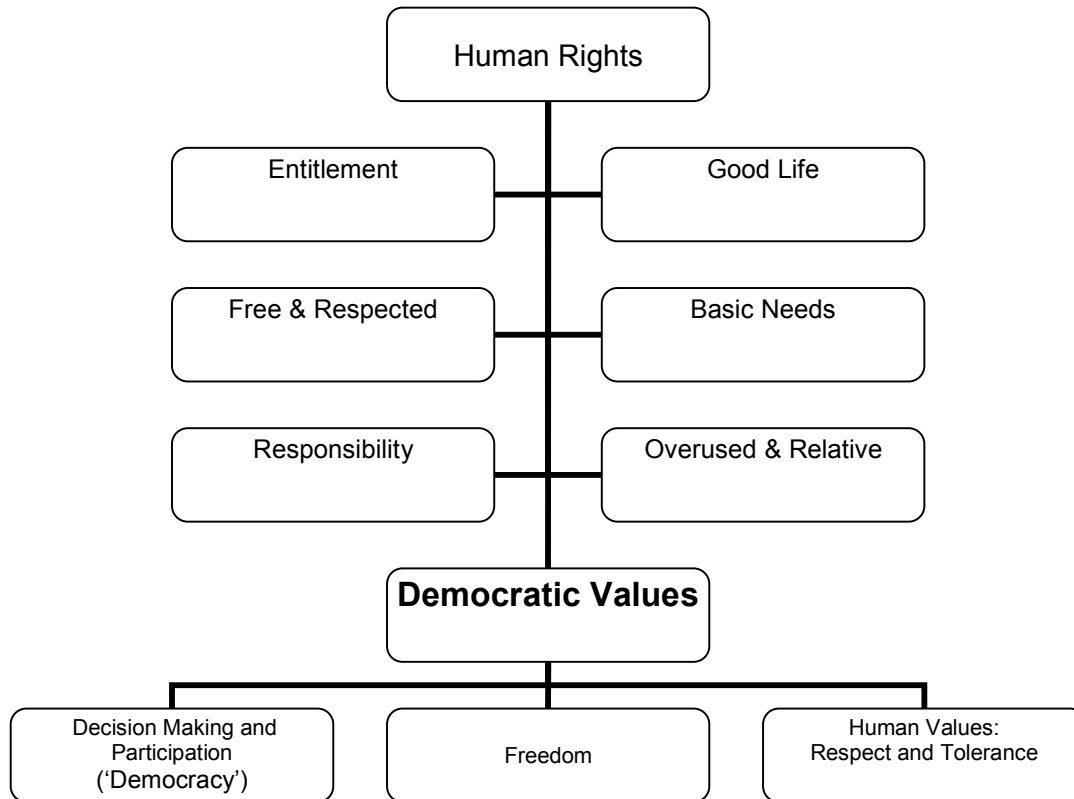
The response mentioned above is important, in that the fundamental issue associated with reality or pragmatism emerges clearly. The immediate reality of the concept human rights is contextualized by numerous challenges which limit our freedom to be without concern. The mention of it having a bearing on one’s own sanity depicts a very deep and indeed emotional understanding which may even be fraught with frustration and confusion. What furthermore emerges is that there is a tendency to relegate human rights, as a concept, to a mere slogan that has lost its absolute meaning.

From the discussions around the term ‘human rights’ none of the participants were able to align their understanding strictly in accordance with text book definitions. However, through the analysis of the data, I was able to summarize the general understanding, that emerged from the interviews relating to the concept of human rights, as follows:

Human rights refers to the rights that every individual is entitled to from birth. The right to a good life includes the right to be free, respected and to basic needs. Human rights is intrinsically linked to responsibilities and is a term that is overused and a phenomenon that is relative.

4.2.2 Democratic Values

Figure 4.2 Democratic Values - Emerging Topics



Democratic values is one of the four categories associated with human rights. There was a tendency by the participants to divide democratic values into two main concepts, namely, 'democracy' on the one hand, and 'values' on the other.

The understanding, feelings and thoughts of the participants were however captured into three main, interlinked, topics which emerged from the responses (Decision Making and Participation, Freedom and Human Values: Respect and Tolerance):

4.2.2.1 Decision Making and Participation

The majority of the participants understood and discussed the term ‘democratic values’ within the context of ‘democracy’. Their understanding of the term ‘democratic values’ was directly associated with decision making and participation in the decision making process.

Participant 1 felt that, as much as she understood it to mean that “ *most of the people have approved of this process*”, she does not believe that it always exists. In fact she continued by stating the reason for this belief:

“ Most of the people are not always educated in the area that they are taking the decisions.”

In this instance Participant 1 is clear as to the meaning of democratic principles, yet has reservations about its effectiveness. As much as she expresses these reservations, she does acknowledge that it is ultimately an:

“Opportunity created for people to express their views and if their views are swaying people in any particular direction, then that is also a product of democracy.”

Another participant, Participant 3, believed that ‘democracy’ allows you freedom to choose. Yet she was of the opinion that it was all “*wishy washy*” and “*just lovely talk*”. Participant 3 tended to, throughout the interview and regardless of the questions asked, continuously refer to reality when discussing her understanding.

The other participants, who shared similar views with regards to decision making and participation, mentioned the following:

“The freedom to do what everybody else is able to do, freedom to vote, freedom of speech.....” (P4)

“Democracy in my understanding is we are all the same and we all have the same values. In our cultures our values could maybe differ.” (P4)

“Democratic values I would understand as values that have been discussed by many people. The end result being that people had equal participation in making those values.” (P6)

“.....the right to be heard.” (P7)

“.....the majority of the people’s interests will be heard and acknowledged.” (P7)

“.....is the right for everyone over the age of eighteen to vote. For everybody to be treated the same, the same level handedness.” (P8)

A number of issues emerging from these responses was not directly linked to “democracy” *per se*. The first is the mentioning of ‘being free’, ‘freedom’ and ‘being equal’. Freedom and equality are two fundamental human rights associated with the concept, democratic values. Hence the participants, even though referring to ‘participation and decision making’, made reference to these fundamental human rights.

Secondly, reference is made to the terms ‘values’ and ‘culture’. In doing this Participant 4 acknowledges how our values will differ depending on our cultural backgrounds. This is of importance in a South African context where the society comprises many different cultural groups. In the second instance, Participant 6 mentions how the forming of a value system is done democratically, with people given the opportunity to participate in establishing these values.

In this particular instance, Participant 4 links ‘values’ to ‘culture’ indicating that her understanding of ‘values’ is intrinsically linked to ‘culture’. Participant 6, in this instance, believes that ‘values’ are established according to a democratic decision. If one was to refer to Chapter 2 of this dissertation, where the concepts of ‘values’ and ‘culture’ were discussed, it will appear that the understanding of Participant 4 is more in line with the literature on ‘values’ and ‘culture’. I make this assumption as there is a strong possibility that the term ‘democratic values’,

through its separation into two separate words, results in the understanding suggested by Participant 6 - a value system emerges through a democratic process. In reality, values are directly associated with specific cultural groupings of people which are furthermore linked through, *inter alia*, a common language or religion. (Haralambos & Holborn, 2000:3)

4.2.2.2 Freedom

In the discussions about the term ‘democratic values’, the majority of the participants mention the word ‘freedom’ in one form or another. In numerous instances their responses were preceded by the words “*Free to.....*”.

It is therefore important to note that most of the participants believe that ‘democratic values’ and ‘freedom’ are intricately linked :

“Free to be able to do something and carry out something you believe in, I think, you know, having a democratic society, feeling free to give your opinion on something.” (P2)

“Freedom to be able to choose your religion, your choice of school.” (P3)

“Everybody should have the freedom to decide.” (P4)

“Yes....in a democratic society it should involve equality, freedom and that kind of thing. They have the right to freedom, the right to speak.” (P5)

In their responses the participants who made reference to freedom elaborated even further and mentioned specific freedoms which are sub-categories in this research and include, *inter alia*, freedom of religion, opinion and expression. The term ‘freedom’ which is a category in this research analysis will be expanded on when discussed later in this chapter. What is important to note is the fact that the participants regularly interlink and refer to the various fundamental rights despite

that fact that they were asked to relate their understanding in terms of a specific concept or term separately.

4.2.2.3 Human Values: Respect and Tolerance

It was mentioned above that, when discussing their understanding of the term 'democratic values' the participants tended to refer to 'democracy' and 'values' as separate entities. Human values is a topic that emerged from the discussions and was mentioned in conjunction with 'culture' earlier under 4.2.2.1.

In addition to what was mentioned in 4.2.2.1 with regard to 'values' and 'culture' by two of the participants, two other participants mentioned values and culture in relation to 'democratic values':

"I think it is all the agreed upon values. The majority would agree upon what they value." (P5)

"OK, values is like a culture or group of people that ties in with morality and religion. It is things that people hold in high esteem, things like respect and tolerance. It is the things that people hold dear to them. (P7)

As was the case in the first instance in 4.2.2.1, where two other participants mentioned 'values' and then 'values' and 'culture', these are two more participants making similar references. In this specific case, Participant 5 once again mentions the majority agreeing about values, which is probably as a result of him separating the term into two words, i.e democracy and values.

Participant 7 has once again mentioned 'values' and 'culture' as did Participant 4 in 4.2.2.1. In this instance, Participant 7 has detached 'values' from the term 'democratic values' and is giving meaning to 'values' independently.

In the Bill of Rights (Constitution of RSA, 108 of 1996) context, 'democratic values' (see Section 7(1)) encompasses human dignity, equality and freedom.

Even though none of the participants clearly mention this, the responses in many instances allude to the fact that equality and freedom, in particular, are linked to 'democratic values'. With regard to the separation of the two words, 'democratic values', it must be noted that, although the essential meaning of 'democratic values' is not captured in the responses, when the participants discuss 'values' independently, it must be recorded that human dignity, equality and freedom form an intricate part of most, if not all, 'human values' systems.

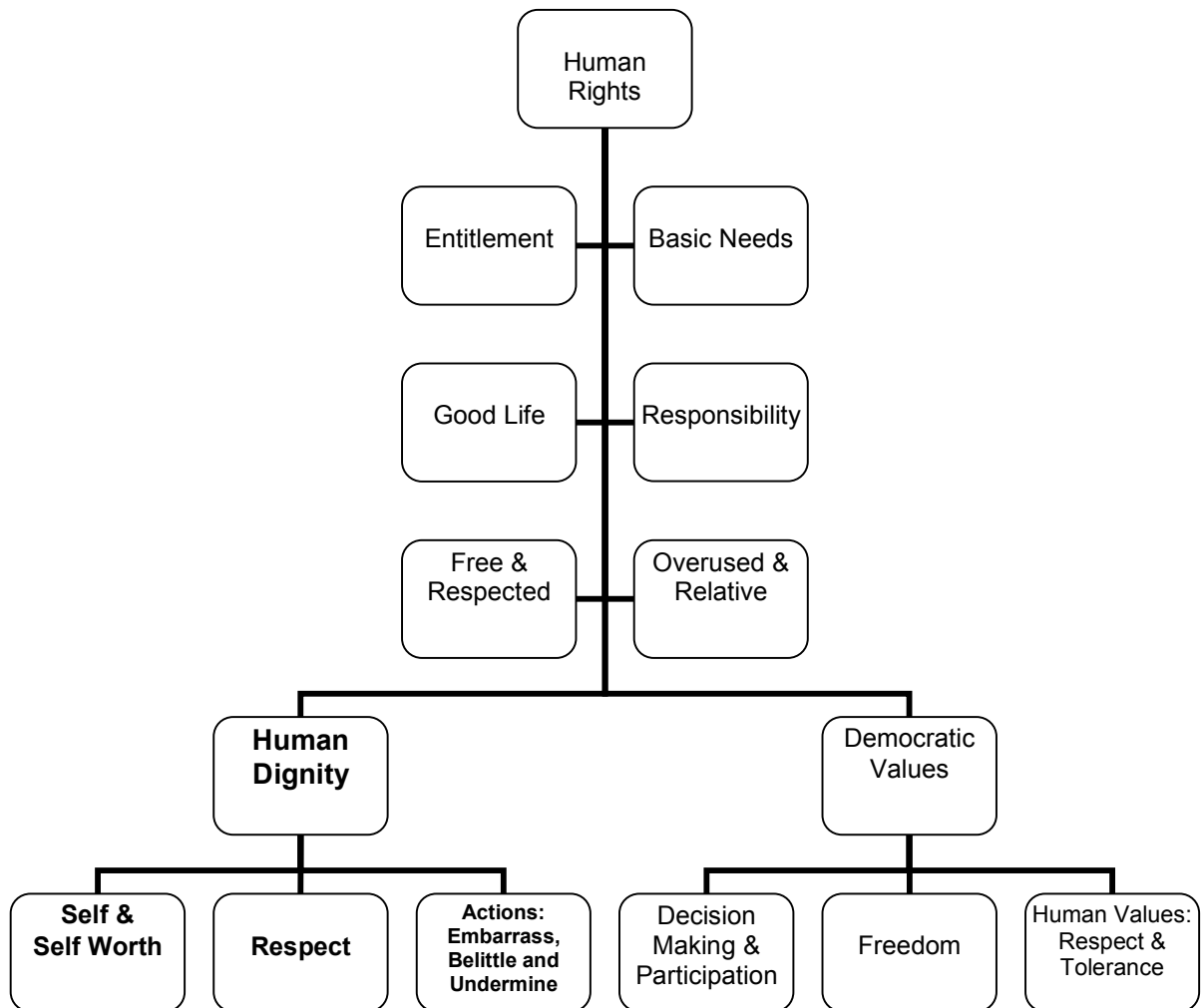
Even though none of the participants grounded their responses in a similar definition of 'democratic values', as referred to in Section 7(1), of the Constitution of the RSA, I was able to summarize the unique understanding presented by the participants as follows:

Democratic values are those values associated with public participation, decision making, freedom and equality. It, furthermore encompasses human values associated with respect and tolerance within society.

The discussion around the term 'democratic values' allowed for an introduction to the three remaining categories, namely, human dignity, equality and freedom which are intricately linked to democratic values. These categories will be discussed in detail with reference to the various sub-categories, where applicable, as well as the relevant topics which emerged from the responses.

4.2.3 Human Dignity

Figure 4.3 Human Dignity – Emerging Topics



Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Universal Declaration of Human Rights - 10 December 1948

All the rights and freedoms incorporated in the International Declaration of Civil and Political Rights (1966) are derived from “*the inherent dignity of the human person.*” In terms of the Constitution of the RSA, 1996 the democratic values of

human dignity, equality and freedom are affirmed in the Bill of Rights, which is a cornerstone of democracy in South Africa.

As indicated in Figure 4.3, three main topics, relating to the category human dignity, emerged from the interviews with the participants, namely self and self worth, respect and actions: embarrass, belittle and undermine.

4.2.3.1 Self and Self Worth

In all the interviews the participants, whether directly or indirectly, alluded to the fact that human dignity was intrinsically linked to one's inner self and self-worth.

Participant 1 believes that :

*“Everything hinges around human dignity”, and that it,
“Goes around self worth, self image.”*

Participant 1 furthermore felt, that attacking ones dignity causes far more damage than any physical injury. Participant 1 supported this by stating that she would:

“Rather be hit by a bus than somebody attack my dignity.”

In discussing her understanding about human dignity, Participant 1 emphasized that:

“No matter how young or old, fat or thin, your self-worth is important and goes back to what I said, that we are all created in the image of God.”

Participant 1 summarized her understanding by stating that:

“When you came to life, came your right to be treated with dignity. Anything that would lessen your self-worth to me is an infringement of your human dignity.”

Participant 4 used the care of the elderly in old age homes as an example to illustrate her understanding of human dignity as being aligned with self-worth:

“...the people that are caring for them [the elderly] must care for them in a dignified way, not like we saw once where they are just shoved into showers and hosed down. That to me is dignity, breaking down of self-worth.”

In discussing his understanding, Participant 5 mentioned the following with regard to human dignity:

“...can't take away a person's soul.”

“...their dignity is almost their self-esteem.”

Even though Participant 5 refers to “soul” and “self-esteem” as opposed to “self” and “self-worth”, his understanding focuses on the inner feelings of a human being and humanness. Human dignity is not something that is tangible, as is physical injury. A lack of human dignity harms the inner worth or self esteem of a person – a more searing injury.

4.2.3.2 Respect

The word respect has emerged frequently in the interviews. This is to be expected as respect for oneself and our fellow humans is an intricate part of human rights and humanness. Just as self-worth and self-esteem is an integral part of human dignity, as was indicated above, respect will feature as a topic that is intricately linked to human dignity.

Participant 2 believes that:

“We all have a right to be treated in a respectful manner by people...”

In elaborating, Participant 2 then refers to values and standards, as well as the right to an opinion to indicate that people impair ones dignity when they try to force their own views and opinions on others:

“...you've got certain values, values and standards that you keep to and you as a person have got the right to live like that and have an opinion and I think that people must respect that.”

Participant 3 believes that human dignity is associated with respect for people and believes that:

“Whether you are in rags, you are still treated with respect.”

Participant 7 sums her understanding of human dignity as follows:

“Human dignity is basically your respect for that persons right to exist. Sometimes it is absolutely loaded. I see it as the person on the side of the road should have the same dignity that I have. I feel that they are human beings and regardless of what you feel you have to treat them with respect. To me human dignity underlines everything.”

It is clear that the participants place a premium on respect and understand it as an intricate part of human dignity. Respect is clearly absent when a person is undermined, belittled or embarrassed through the actions of another.

4.2.3.3 Actions: Embarrass, Belittle and Undermine

“Good name in man and woman, dear my lord ,Is the immediate jewel of their souls, Who steals my purse steals trash; ’tis something, nothing; ’Twas mine, ’tis his, and has been slave to thousands; But he that filches of me my good name, Robs me of that which not enriches him; And makes me poor indeed”

Shakespeare, Othello Act III Scene 3

The participants used examples associated with actions to explain their understanding of human dignity. The participants felt that at times the actions of an individual embarrass, belittle and undermine another individual. It is through these actions that a person’s human dignity is impaired.

Participant 1 felt that any action *“damaging of the psyche”* of a person is an impairment of human dignity.

Participant 3 referred to actions of children which are executed in the name of fun and games, but result in the impairing of an individual's dignity:

“You need to be able to regulate yourself as a person. Very often people are spurred on to do things to other people that are so called ‘funny’ in their eyes. But if it was reversed it would be a different story. They do things that completely undermine the dignity of other people. I actually witnessed high school children throw ‘ultramel’ cups out of a double- decker bus onto a black man in a suit, on the pavement”

In a school setting and indeed in the case of children in general, one often finds that pranks and other actions are executed in the name of ‘fun’. The mentioning of how *“it would be a different story if it was reversed”*, by Participant 3, is in my opinion of importance, as this not only underlines the religious maxim of *“do unto others what you will have them do unto you”* but furthermore refers to the responsibilities associated with human rights. It is once again Participant 3 who alludes to the responsibilities and obligation which were referred to earlier in this chapter.

Participant 6 associated human dignity with the belittling of a person. Participant 6 used examples in a classroom context to illustrate how educators should refrain from belittling children in their care:

“.....by asking them to bring money to school now that we are having this swim-a-long. You must say ‘children you must try to bring R 300-00 at least. We would not belittle a child who cannot bring R 300-00.’ You cannot belittle them if they don’t do their work properly.....by calling them names or by shouting at them or by tearing their page out.”

In discussing her understanding on human dignity, Participant 8 did not specifically mention aspects associated with the three main topics that emerged. Participant 8 did however mention that:

“I think that human dignity goes hand in hand with your own background because I think in some societies something might be acceptable but in others it may not be. I think it is based on your cultural background.”

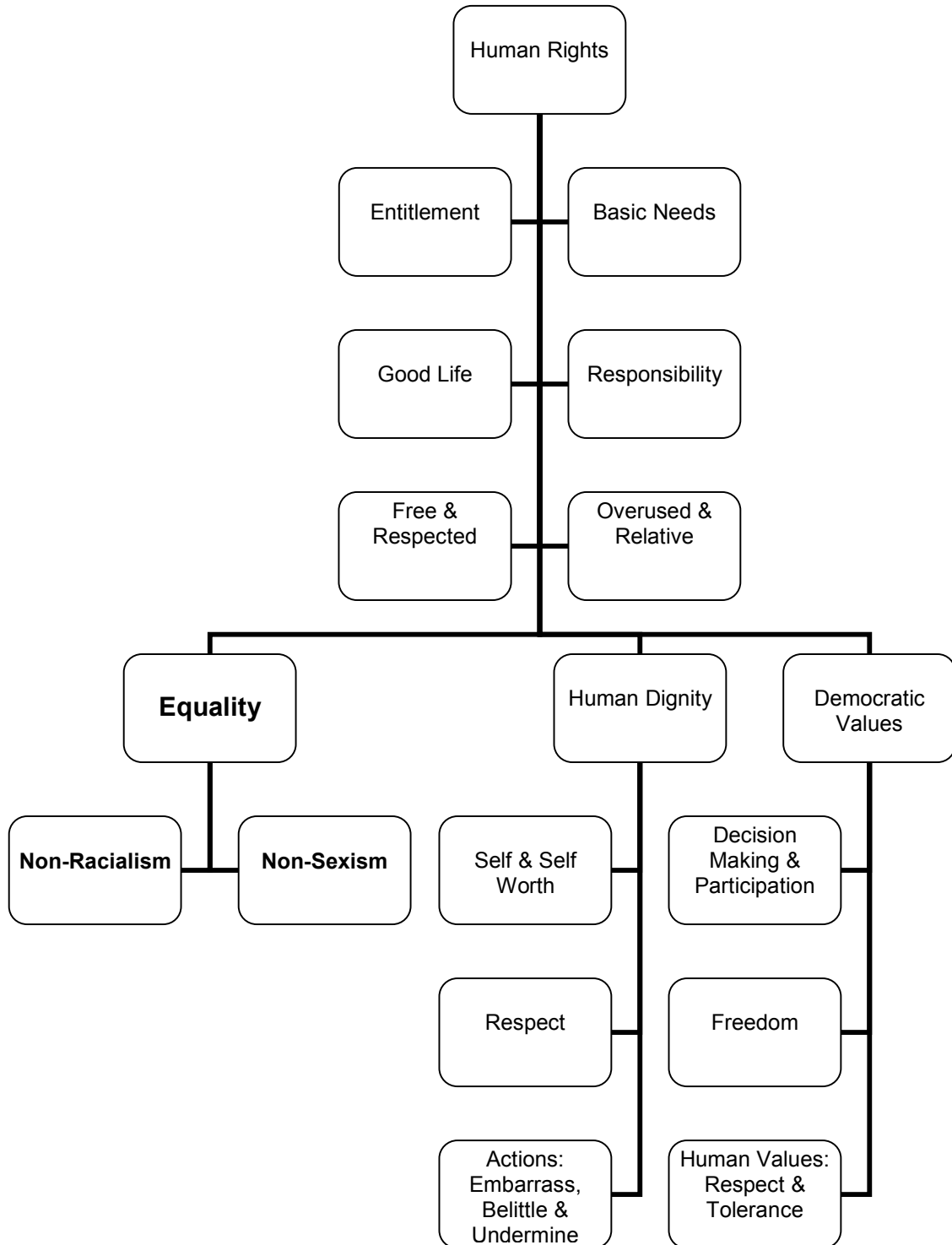
This can be elaborated on by referring, not only to corporal punishment, which some view as impairing the dignity of the recipient while others accept it as part of their religion or culture, but by referring to the cultural traditions of virgin testing and initiation camps, which are an intricate part of South African society on the whole.

The understanding demonstrated by the participants appeared to focus on the three main topics mentioned above. My summary of the understanding, that the educators have about human dignity, is as follows:

Human dignity, imbued in all human attributes, relates to one’s self, self worth and soul. Thus human dignity is inherent in respecting a person as a human being, regardless of social status. Consequently our actions towards others must not undermine, embarrass or belittle another person.

4.2.4 Equality

Figure 4.4 Equality – Emerging Sub-Categories



Equality is the second of the fundamental rights associated with democratic values in the context of the Constitution of the RSA, Act 108 of 1996. Non-racialism and non-sexism emerge as sub-categories of equality.

When discussing the term equality, in relation to human rights, the participants appeared to have a basic understanding of the term, as indicated by the quotes below:

“There should be no discrimination of any kind.” (P1)

“For me equality would be that everybody has the same opportunity, the same criteria to start off.” (P3)

“To be equal.... So that I have the same opportunity, job wise....They should not tell me I can't do anything because I am a woman....You must not be discriminated in language, race, appearance, even way of thinking...You cannot also discriminate against somebody that is an atheist for instance, if he is capable of doing the job then he must have opportunity to apply for it.” (P4)

“ That we are all equal even in certain groups..... workplace and life equality in terms of punishment, no matter what kind of person you are. So basically equal in terms of race, sex and that kind of thing.” (P5)

“Equality is the idealist equality where everybody is equal.” (P6)

“That people are treated equally but sometimes differently. By differently I mean we are all equal but for example a person who is disabled might have more consideration.” (P7)

“When I hear the term equality I always think of the French Revolution - liberty, equality and fraternity. To me, equality is that everybody has the same right and opportunity to succeed. That nobody is excluded because of religious or racial background.” (P8)

What emerged from the initial responses about equality was a clear understanding that equality implied that there should be no form of discrimination. The two sub-categories, namely non-racialism and non-sexism will be analysed.

4.2.4.1 Non-Racialism

The following perceptions materialized when discussing the term *non-racialism* with the participants:

“Regardless of what nationality you are, what colour you are, no decision you make should hinge on your nationality or colour.....If you’re talking about non-racial we have to look at our country and say that colour does not matter.” (P1)

“Not looking at colour I think is the main thing, for example teaching a class here and having ten black children in the class and treating them the same as the white children that are here.” (P2)

“Non-racialism is not making fun of, not picking on just because of your colour, not treating people differently because of their race.” (P3)

“We should not see a difference in race.....People should’nt be put in little boxes.” (P4)

“You don’t judge the person by their skin colour.” (P5)

“Don’t favour one race above the other one.” (P6)

“I don’t think we should ever treat people differently if they are another race....But then with every race comes its culture, comes with its certain way of doing things, and I don’t think any race would want to be absolutely flat, like a painting without dimensions. So I never think that we should treat people differently but at the same time we do have to acknowledge that everybody has their norms.” (P7)

“We are all human beings.” (P8)

Participant 7 was the only participant who linked race to culture and alluded to the fact that people of different race groups are culturally different with their specific norms. This concurs with Haralambos and Holborn, (2000:3), that generally speaking, culture determines how members of society think and feel: it directs their actions and defines their outlook on life.

Apart from the response of Participant 7, I perceived that the participants' responses regarding their understanding of 'non-racialism' were almost fine tuned to providing a politically correct response and even Participant 3, who constantly referred to reality throughout the interview, did not allude to reality in response to her understanding of non-racialism. A couple of the participants did however allude to the fact that affirmative action could be construed as racist: *"Take the laws around black economic empowerment.....it impacts badly on my own daughter, for instance, human resources becoming a very black oriented market."* (P1)

"It is discrimination. I know where it is coming from in terms of the past.....I'm really for giving chances but if you are not capable of doing the job then is it really fair to give them the position over somebody who can." (P5)

Furthermore it must be noted that none of the participants differentiated between 'racialism' and 'racism'. The question asked during the interviews specifically referred to racialism, which for the purposes of this study, was used interchangeably with the term racism. It must be noted however that as much as these two terms are often used interchangeably, Appiah (1993) argues that racialism is the philosophical belief that differences between the races exist, be it biological, social, psychological, or in the realm of the soul. He indicates that racism is using this belief to push forward the argument that one's particular race is superior to the others.

4.2.4.2 Non-Sexism

The following remarks were expressed when discussing the participants' understanding of *non-sexism*:

"I have to say at the outset that I do believe that there are certain jobs which men and women are cut out for. What I do not however believe, is that it must become the exclusive territory of a particular group. For example, in Portugal and Australia, a man like yourself can teach grade ones without there being an ugly connotation attached to it. Nobody immediately suspects that you are an abuser because you choose to teach young children. " (P1)

Participant 1 illustrates an understanding that non-sexism refers to discrimination between the gender groups, but at the same time refers to how society dictates how we perceive things. Participant 1 supports this by giving an example. This clearly demonstrates how established social norms influence and indeed, limit our understanding in relation to issues such as gender equality.

" Let me think...if I had to compare myself with M, I don't think he's any better than me because he's a male, but society has led us to believe that you must respect....like if you're married, you must respect your husband and his opinions and what he says, whatever he says, goes.....whether it is right or wrong." (P2)

Participant 2 supports what was stated by Participant 1 and by using a different example, in a different context, refers to the role that society plays in the forming of our understanding of certain issues. Participant 2 furthermore, alludes to our society as a male dominant society.

" I know that there should'nt be preference in anyway whether it be male or female. The reality is that when I need to carry a parcel from the car I don't have the physical strength that my sons do....Even in teaching your sexes do play

different roles....I think that we should have more male teachers because a lot of the boys and girls do not have male role models.” (P3)

Participant 3 presents an understanding of non-sexism acknowledging that there should, in theory, not be any discrimination between the different genders. In reality however there are instances where gender differentiation does play a part. This does not, however mean that one is unfairly discriminating. Participant 3 furthermore mentions that everything seems to be moving towards mediocrity, *“like moving towards two women bringing up a family or two men bringing up a family.”* By stating this Participant 3 infers that, as a society, we are becoming very accepting of what is clearly not intended by nature and furthermore, not in line with her own personal values system.

Participant 4, a female, understands non-sexism to mean:

“That I should have the same opportunities to either serve in the church, be it a minister, in the government or on any level.”

“It is not judging the person if they are male or female. That is what I would say. Not discriminating or favouring, based on their sex.” (P5)

“The same sort of thing (as with racialism) except it is with the two sexes. I would imagine with homosexuals as well.” (P6)

Participant 4, Participant 5 and Participant 6 clearly understand non-sexism to mean that there should be no discrimination in terms of gender. Participant 6 furthermore adds, that homosexuals should not be discriminated against either.

“Non-sexism is also difficult because I look at the guy teachers. Men teachers do things differently to women, thank goodness. By non-sexism it means that you must accept the dignity, never putting woman down, by saying, ‘you are only a woman, you are less’. Woman can also be terribly sexist by saying, ‘you are only

a man.’ There should not be any discrimination, I can’t say ‘men can’t teach art because they are not creative’. (P7)

Participant 7 concurs with the other participants that there should not be any form of discrimination between genders, but acknowledges that men and women are different. Participant 7, by giving an example about how men are perceived not to be creative, indirectly refers to stereotyping, which is another concept that is associated with societal perception. This is often something that is underestimated in society and there is a tendency for generalizations such as the one referred to by Participant 7 and once again, confirms how important an established role and traditional norms play in entrenching such stereotypical perceptions.

“If there is a position, for instance, a woman should not be deprived of the post because she is a woman and not a man”. (P8)

Participant 8’s understanding is similar to that of the other participants in that there should be no discrimination in terms of gender. Participant 8 did however, indicate that she has a problem with women in religion. This could be as a result of Participant 8’s upbringing and values system which, to a large extent, associated with a conventional perception of male dominant religious teaching. Furthermore it contradicts her initial statement and illustrates how there can be a general and broad understanding of a particular human rights concept, such as non-sexism, with subtle limitations resulting from our own personal upbringing, religion and culture. Our personal philosophy clearly controls our thinking and understanding.

All the participants indicated an understanding that conforms to the general definition of non-sexism and the fact that there should be no discrimination in terms of gender in a democratic society.

I then asked a follow up question, involving the manner in which the learners at the school line up outside the participants' classrooms. The participants were asked whether the learners lined up in two separate lines, one line comprising the boys and the other the girls. This question was asked as the participants initially gave an explanation of their understanding of the term non-sexism that clearly alluded to gender equality yet the boys and girls are made to line up in separate lines.

All the participants confirmed that this was the case. When asked why the learners lined up in this manner they responded as follows:

"There is no good reason for it. It is historic." (P1)

"It is according to the values and beliefs that have been drummed into us and instilled into us. It is nice to see a row of boys waiting for the girls to go through."(P8)

"You know what Nick, I don't know if it is a sexist thing or if you can look at it as a respectful thing or to create order." (P3)

"It's just because otherwise the row is too long....It is easier for me to check my register of sixteen boys and fourteen girls." (P4)

"It is the old fashioned way of letting ladies enter first.....I do not know....Maybe they did it for order....to form two lines." (P5)

" Because it is tradition. It is just one of those things you do because it has always been done and we do not question it." (P6)

"It is just how you were brought up." (P7)

"It is much easier for checking uniforms. I never really thought about it." (P8)

It is interesting to note that in every response the participants initially provided a clear understanding of non-sexism as been intricately linked to no gender discrimination and as much as this tradition is by no means meant to discriminate in any way between the genders, it is interesting to note that when asked about

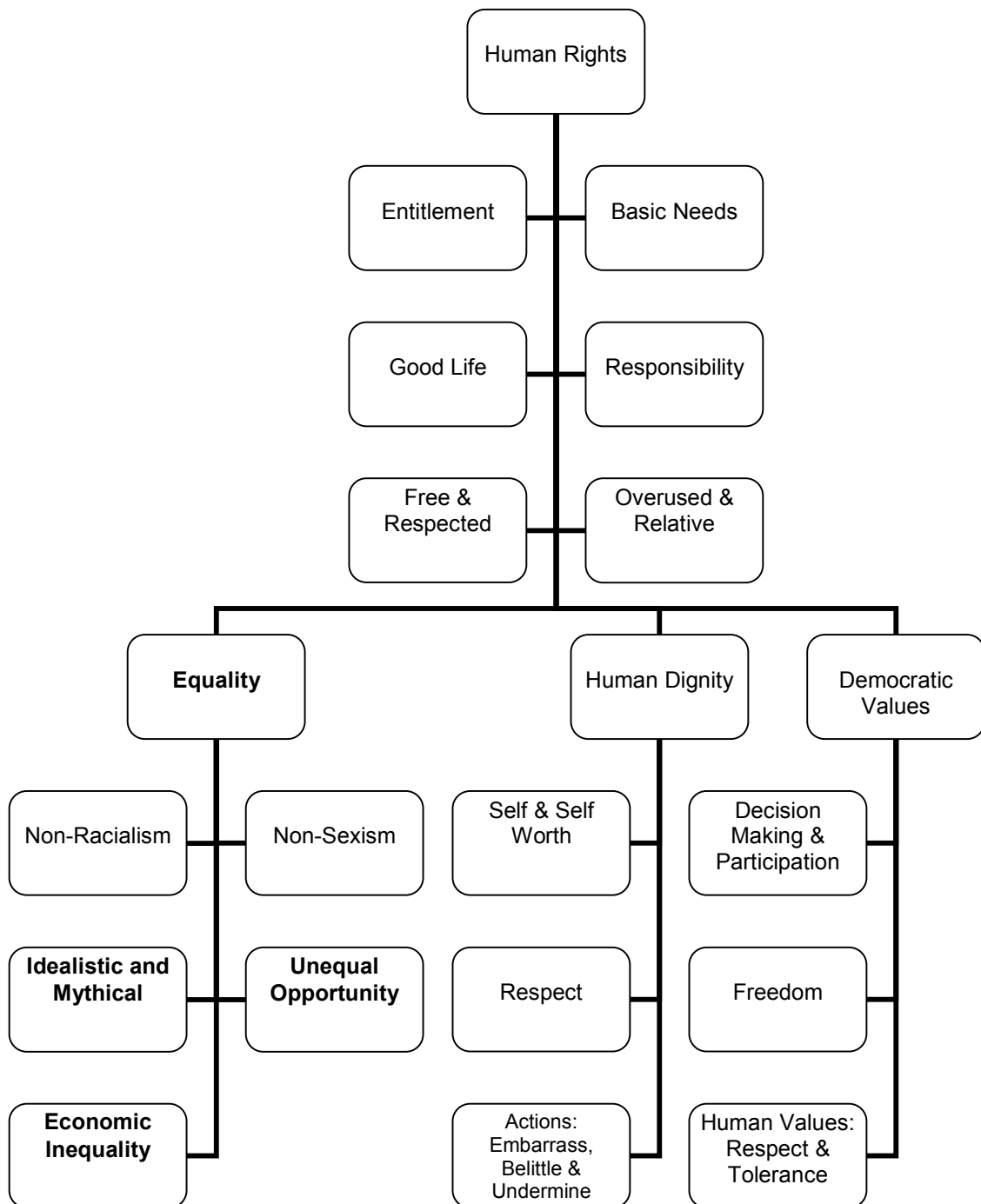
the separate lines every participant was not only taken aback, but it became clear that:

- (a) It is a fact that none of the participants had ever considered;
- (b) That it is more than likely linked to values, manners, history and tradition.

Furthermore, despite the fact that these actions may not be sexist *per se*, male and female learners are for some reason being separated. Whether this practice is necessary is debatable and in all probability is, as a few participants indicated, a result of tradition which has never been questioned. This highlights the immense influence values and traditions, associated with a specific organization or group, exercise on our patterns of behaviour. We respond and behave in an automatic manner which is not clearly understood or analysed.

The above analyses infer the general understanding that the participants have about equality and the sub-categories of non-racialism and non-sexism. There was however, a tendency for the participants to comment on whether equality, in the true sense of the word, existed. As a result apart from the initial and general understanding of the terms, as depicted above, three further topics emerged from the data:

Figure 4.5 Equality – Emerging Topics



4.2.4.3 Idealistic and Mythical

Apart from being able to attach meaning to the terms equality, non-racialism and non-sexism, the participants tended to believe that as much as equality is an important human right for which we must all strive, it is by and large an idealistic and mythical concept:

“Some people are more equal than others. My understanding of equality would be that people would have to be on a level for you to judge what equality is.”

(P1)

“Equality in education, getting the same things as other people. Yeh...but that doesn't exist, we don't live in that sort of a society.” (P2)

“No one can ever be equal. So, yes, it is mythical and relative this whole equality thing.” (P3)

“Wherever you go, people are racist, even though they think they're not.” (P3)

“Yes, because I do not believe there is equality. It is a good idea, but I don't know if it exists.” (P5)

“In an ideal world we would all be equal...” (P6)

“No, we are not.....It is almost impossible to treat everybody equally.” (P7)

“No, there is no equality in the world.....culturally and in everything.” (P8)

It is clear from the above responses, that as much as the participants understand the meaning of the term 'equality', the majority do not believe that we are equal in the true sense or that we will ever truly be equal. This once again illustrates that as much as the theoretical aspects of human rights and its associated concepts are to a large extent understood by the participants, there is a very clear and distinct divide between the theory and reality.

4.2.4.4 Unequal Opportunity

Opportunity was one word that featured regularly when discussing the term 'equality' with the participants:

“Equality is an opportunity thing.” (P1)

“From when you are born you just have different opportunities.” (P2)

“For me equality would be that everybody has the same opportunity.” (P3)

“Where you can try make it equal....Where everybody has the same opportunities where there is no favouritism.” (P6)

A number of the interviews yielded the result that equal opportunity was a prerequisite for equality. The participants, who referred to opportunity believed that it is difficult to attain equality unless everyone was starting on an equal footing. In reality, this is however impossible because as Rawls stated in Boucher and Kelly ed. , (1994:51):

“No society can....be a scheme of cooperation which men enter voluntarily in a literal sense; each finds himself placed at birth in some particular position in some particular society.”

4.2.4.5 Economic Inequality

As a result of unequal opportunities, economic inequality prevails in society:

“Some people just can’t send their children to a private school. They would love to but they don’t have the money to do so.” (P2)

“Just looking at our economic state, it would be impossible to say that we are all equal because some of us definitely have more than others.” (P4)

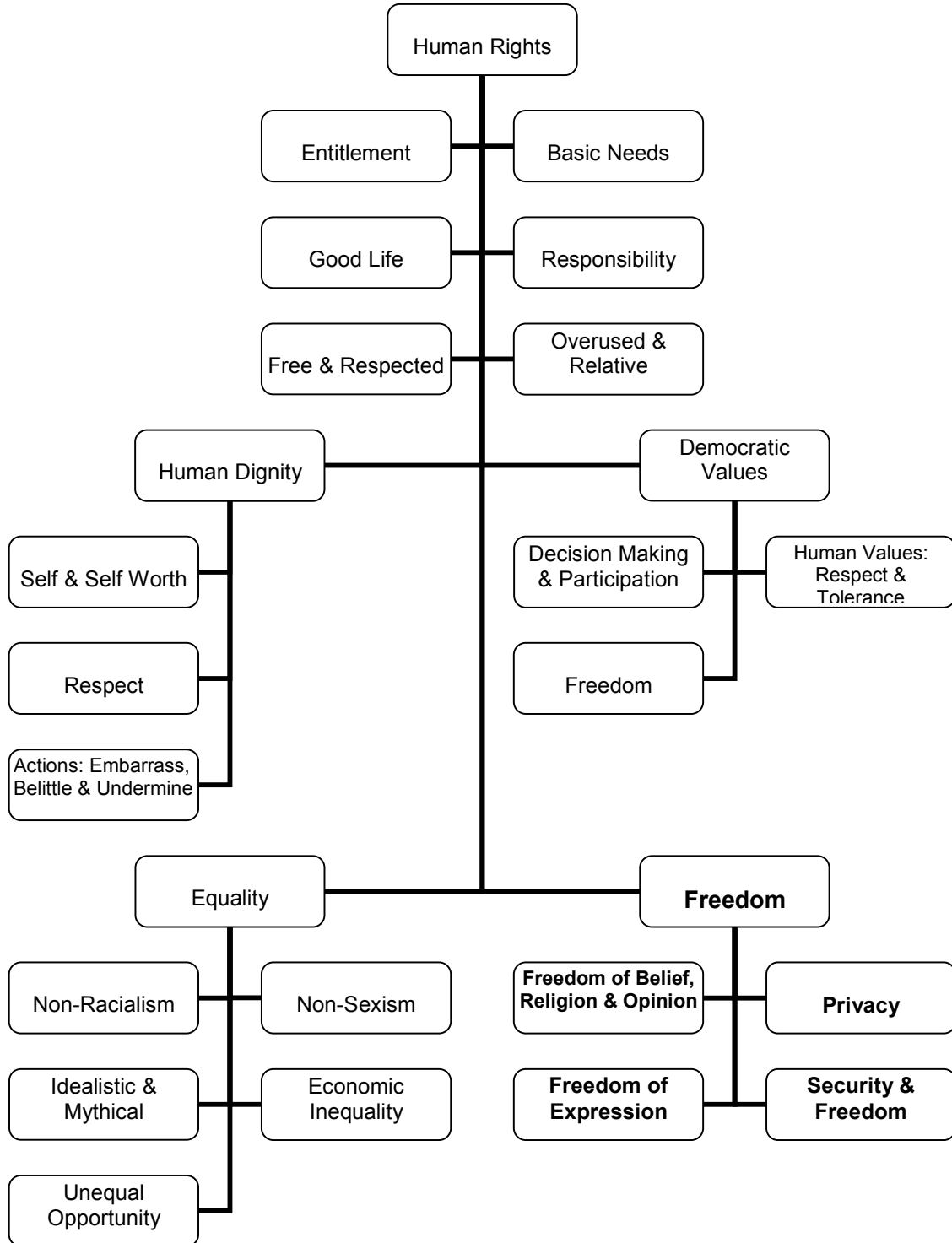
According to the participants, although we discuss and strive to attain equality, we cannot be equal.

The general understanding that the participants have about equality, non-racialism, and non-sexism is linked to unfair discrimination and the fact that there should be no discrimination based on race or gender. As much as the participants acknowledge that we cannot be equal they emphasized the need

not to discriminate unfairly against any human being, regardless of, *inter alia*, race, gender, religion, culture, sexual orientation and age.

4.2.5 Freedom

Figure 4.6 Freedom – Emerging Sub-Categories



As was the case with the term equality, the participants were initially able to define the term ‘freedom’ based on their understanding:

“Many people will say to you, you live in a democracy you are free, you choose your government, you choose where you want to live.” (P1)

“I think we are all free to choose and free to think the way we want to but then that’s all limited by society yet again.” (P2)

“Freedom is a case of waking up and making the choices and decisions for the day.” (P3)

“There is no restriction to where I live, what I do and what kind of work I want to do, how I dress, who I vote for, who I like, who I dislike.” (P4)

“In an idealistic world you know you have the right to choose work, religion and that kind of thing.” (P5)

“....to be able to live your life comfortably and be able to go where you want to go.to be secure.” (P6)

“Yes we are free to do whatever we want but it always goes hand in hand with responsibility.” (P7)

“Freedom to me is the ability to feel secure in a country. (P8)

The understanding that the participants have presented above indicates an understanding of ‘freedom’ that is in line with the literature referred to in Chapter 2. However this freedom (as was the case when equality was discussed) is to a large extent limited. The realities, practice and limitations, relating to this category (of freedom) will be discussed under the topics that emerged. This will follow on from the analyses of understanding that the participants have in relation to the sub-categories of freedom of belief, religion and opinion, freedom of expression, privacy and freedom and security have been discussed.

4.2.5.1 Freedom of Belief, Religion and Opinion

The interviews with the participants, regarding freedom of belief, religion and opinion yielded the following views:

"I think you are entitled to all three of those things. You are however not entitled to judge other people on their belief, religion and opinion, or impose yours on others." (P1)

"I think we've all got the right to have our own beliefs, so if you're born in a family where they adhere to Catholicism and you feel OK with that once you're aged, then that's fine." (P2)

"You have the freedom to choose what religion you are but as long as you don't impose it on anybody else." (P3)

"No one must tell me which church I must go to, which God I have to pray to." (P4)

"Each person must be entitled to their own beliefs in terms of their God. You have to respect people's beliefs." (P5)

".....that I have the right to praise any God I like." (P6)

"I think that for me it basically goes back to human dignity, acknowledging that there are different faiths and giving the person the right to practice their faith." (P7)

"We need to maintain our own religious identity while respecting others...but we must not let other religions impose their beliefs and culture on us." (P8)

In every instance the participants discussed their understanding predominantly in terms of religion. The general understanding was that every individual is entitled to his or her religious belief and that no one should be permitted to impose their beliefs on others. Participant 8 emphasized the fact that one needs to be tolerant of others while protecting one's own personal beliefs.

In relation to 'opinion' the participants mentioned that one has a right to ones own opinion while respecting the opinion of others. Furthermore, they confirmed that they did indeed respect the opinion of the learners in their care.

4.2.5.2 Freedom of Expression

The participants initially related freedom of expression only to freedom of speech. As the discussion proceeded, a few participants referred to other aspects of freedom of expression which included dress, art and dance.

The participants mentioned the following when initially referring to their understanding, as it pertains to freedom of expression:

“You can say what you feel...” (P1)

“There is no freedom of expression.....You can’t just say what you please” (P2)

“I might take my clothes off because this is how I feel close to nature and I am expressing myself.....But then there might be someone next to me that gets offended by it so depending on how society looks at it.” (P3)

“If I want to paint my car purple with pink spots on it, nobody can tell me that I am not allowed that on the car that has got that colour.” (P4)

“They are entitled to express their views.” (P5)

“I am free to express my opinions as long as I don’t impose on other people’s dignity.” (P6)

“When it comes to music, art, dance and drama, that is part of the human need.” (P7)

“I think mine would always be a verbal freedom of expression. I use that in the classroom especially because I teach religion and the children should be able to say what they want, regarding the nature of the topic that I am teaching.” (P8)

It is clear from the above that the participants have a basic understanding of what freedom of expression entails, with a few references other than speech to demonstrate this understanding - freedom of art and dance. In accordance with a few of the statements there is an inherent responsibility not to offend others when exercising ones right to freedom of expression.

Various topics identified, in relation to the term 'freedom', will be analysed later in this chapter.

4.2.5.3 Privacy

The participants were able to define and understand the term privacy when prompted by me. In the first instance the participants were asked to explain what they would do if a note being passed between two learners was confiscated and specifically if they would read it. These are some of the responses:

"The correct thing is to remove the note, as the passing of the note is the crime and that gets crushed up and put in a bin." (P1)

"You do not have the right to read it unless he has given you the OK, so you've got to respect that child." (P2)

"Yes, I do, because in a sense that, well you do have a right to privacy, but you also have the right to protect the child with whatever is in the letter." (P3)

"I think I will. It is my classroom and I have a right to know."(P4)

In terms of the above examples there are two participants, Participant 1 and Participant 2, who indicate that they would not read the note and two others, Participant 3 and Participant 4, who indicate that they would.

As much as it would be inappropriate for me to comment on which of the participants are correct I need to point out the fact that Participant 2 couples the child's right to privacy with his right to be respected. Respect in turn is associated with the right to human dignity.

There was a general consensus among the participants when the main concepts, associated with human rights, were discussed. The participants were however inclined to be unsure of their answers when asked to discuss their understanding of human rights concepts within specific circumstances or situations, which once again highlights the fact, that there is a divide between the theoretical

understanding they possess and their ability to transform and adapt this understanding in practice.

Another example involved the searching of learners' bags. These are a few examples of the responses:

In response to the searching for a missing item, presumably stolen:

".....At that stage I would ask her to come and empty her bag on the carpet and see if somebody never put it into her bag." (P4)

General responses relating to searching of learners:

"People are not allowed to search your stuff. If they are searching there must be a reason for it, otherwise they are invading your privacy." (P5)

"I think if there are banned substances that they are looking for, then I agree that it is fine to search." (P6)

Overall there appears to be a general understanding that ones personal belongings cannot be searched unless there is valid reason, for example, the searching for illegal substances.

4.2.5.4 Freedom and Security

When discussing freedom in general, a number of the applicants referred to security being an intricate part of freedom.

The participants spoke generally about security and the right to be secure. These are a few comments relating to their understanding of the right associated with freedom and security:

"This is one of the biggest infringements that we have at the moment. Security of a child would include being fed. Being able to operate like a child. ...Not worrying

about extraneous things like adults in the home inappropriately touching them.

Secure at school. Is there a lot of bullying going on?” (P1)

“I think we have the right to feel secure...we don't have it in this country.” (P2)

“I think that it is that the children feel secure in the classroom and are not threatened by the teacher or anyone in the school and also from outsiders.” (P6)

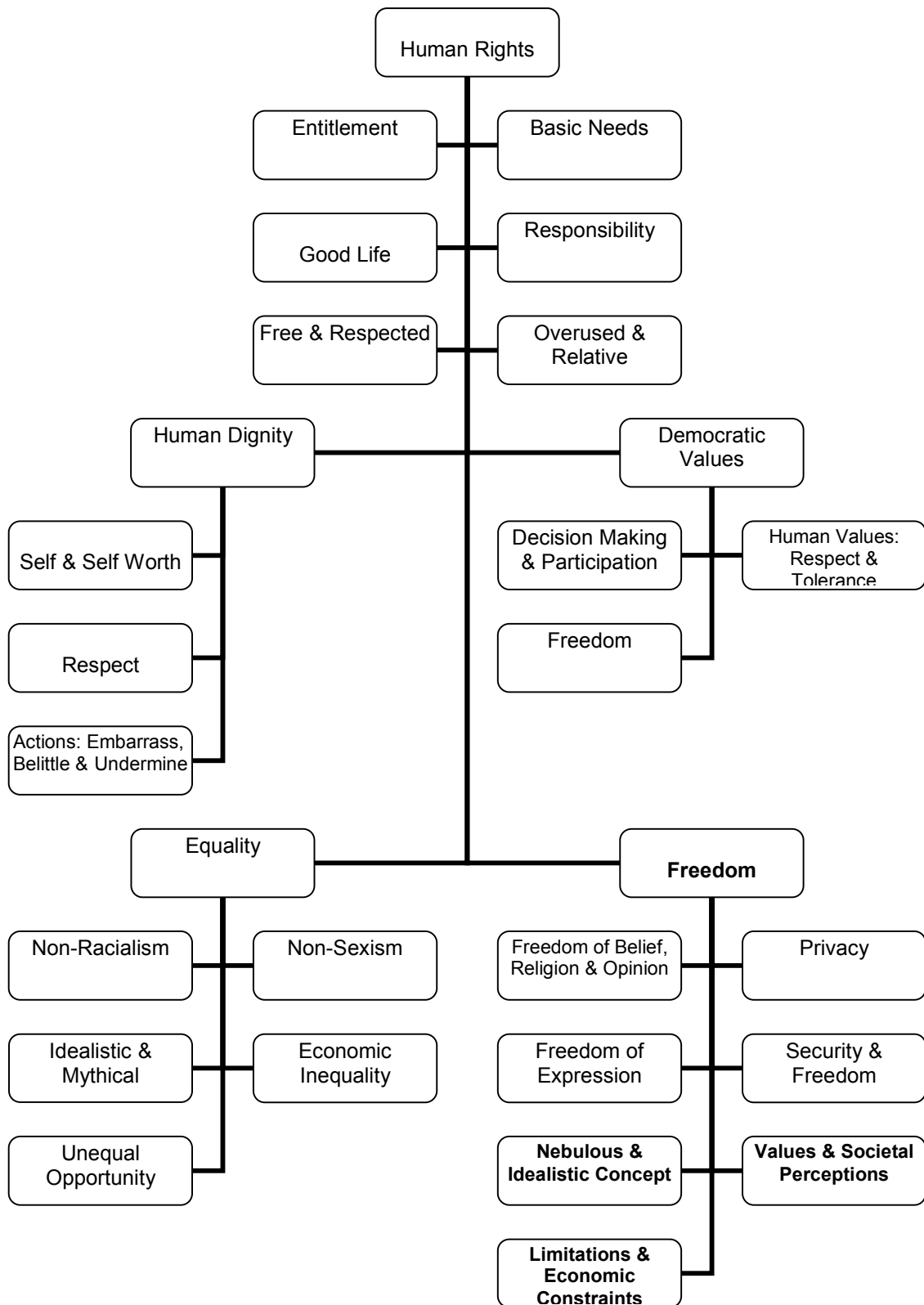
“That they [children] should be secure within their homes, their neighbourhoods and in their schooling environment without any fear of attack.” (P7)

“The child in a school situation must feel comfortable and not threatened by the teachers.” (P8)

All the participants mentioned security specifically, without referring to the 'freedom' aspect of this particular right. They understand security in this instance as the right to feel and be secure within macro and micro settings. The mentioning of security within a school environment is relevant as violence in schools has been prevalent in the media recently. The mentioning by Participant 6 and Participant 8 that a child must not feel threatened by the teachers is of importance, because these particular participants understand that the child's right to security is not only limited to bullying and external threats. There are instances where children have a distinct fear of a few teachers in the school. This fear which causes children to feign illness in order to avoid attending a particular teacher's class, according to Participant 8 is an infringement of that child's right to be in a secure and healthy environment.

The category of freedom and the subsequent sub-categories of freedom of belief, religion and opinion, freedom of expression, privacy and freedom and security give rise to three topics:

Figure 4.7 Freedom - Emerging Topics



4.2.5.5 Nebulous and Idealistic Concept

As was the case with the concept of equality, the participants have a basic understanding of what freedom is or what it ought to be. There was however, a feeling among a few of the participants that the whole concept of freedom is rather a nebulous and idealistic concept. These are a few of the issues that were raised in this regard:

“After 10 years of democracy and freedom people see it as superficial. Many people were disillusioned, because many people believed that once this freedom came about everything else would fall into place.” (P1)

“I don’t really think you are free to do anything, because you’re limited by everything.” (P2)

“Even though we are a free country, I don’t believe there is absolute freedom.” (P5)

It is clear from the responses that the participants have a clear understanding of ‘freedom’ as a human rights concept, but once again in reality, no one is really ‘free’ to do exactly as one pleases and true or absolute freedom is rather elusive and even ideological.

Following on from this is the topic dealing with the understanding of the participants of freedom as it relates to the limitations and economic constraints associated with freedom as a category and the associated sub-categories.

4.2.5.6 Limitations and Economic Constraints

The belief by a few of the participants, that there cannot be absolute freedom, is linked to specific limitations and the reality of economic constraints:

“People may want to move into a suburb which they would like to live in, but can they afford to live there?...” (P1)

“You are free to go on holidays, free to do certain things, but you’re always influenced by certain things like money.” (P2)

“Constraints of freedom could easily be your financial constraints.” (P3)

“You have to have rules, regulations and laws...We do not have absolute freedom. We have to abide by certain rules and regulations.” (P4)

“Absolute freedom would not make sense, it would be chaos. It has to be within certain boundaries.” (P5)

“With freedom comes huge responsibility and restrictions.” (P7)

“We have to have freedom within the laws of the country.” (P8)

Apart from absolute freedom being restricted by the reality of economic constraints, there is furthermore, a clear understanding by those participants who mentioned this, that freedom is restricted within the parameters established through rules, regulations and the law. This in turn, refers to the limitations and responsibility that accompanies freedom within society. As a result ‘economic constraints’ emerges as a topic in two of the three fundamental human rights which form a cornerstone in the South African Bill of Rights. This is significant in that despite a clear understanding of the meaning associated with ‘equality’ and ‘freedom’, a number of the participants believe that ‘economics’ is clearly a limiting factor where two fundamental rights are concerned.

There was a further topic that emerged that some of the participants felt restricted the right to freedom in general and the associated sub-categories as mentioned and discussed above.

4.2.5.7 Values and Societal Perceptions

Value systems associated with specific groups of people and societal perceptions further tended to limit individual freedoms:

“Freedom of expression is ultimately the ‘you’ that you are presenting to people. If a parent walks into a classroom....the first perception will be based on what this teacher looks like. Teachers look at parents in a similar way. Unfortunately people are judgemental. Appearance is a very important thing ” (P1)

“Society really does mould the way we think, so we’re not really free to think.” (P2)

“When we are at Mass, people hand out the Host. Previously our P.T teacher handed it out dressed in shorts. I could’nt take it. He should wear pants. If you go overseas to Fatima, you are not allowed to go into church with a dress like I am wearing now [no sleeves] it’s respect, respecting the belief.” (P2)

“....It comes back to values, I can’t see myself standing in front of a classroom trying to be a role model with ten studs in my ears, belly ring showing and a dog collar. I suppose artists can express themselves that way it is acceptable.” (P4)

It is clear from the above responses that a few of the participants believe that our freedom is limited by personal values systems and societal perceptions. The understanding that the participants have about ‘freedom’, and in this instance ‘freedom of expression’, is once again in line with their own personal upbringing, values system and religion. As much as they understand that one is free to express oneself, as educators, societal perceptions inadvertently place restrictions on that ‘freedom’. As Participant 4 mentioned, it may be accepted that an artist can present himself or herself in a particular manner but that appearance, *“.....ten studs in my ears, belly ring showing and a dog collar...”*, is not acceptable in a teaching environment. As we are an intrinsic part of a particular group, this group enforces rules (of dress) which consequently places limitations on our freedom. Participant 2 could not accept the fact that the former P.T teacher at the school dispensed the Host (Catholic Communion) dressed in his shorts. Her personal upbringing and values system dictated that one needs to be dressed appropriately, i.e what she perceives as appropriate within her own values system.

The participants were furthermore asked to comment on whether the school's code of conduct limited the learners' right to freedom of expression. These were some of the responses relating to the compulsory wearing of a school uniform and the fact that girls were permitted to wear studs in their ears, but not the boys:

"I have the simple belief that uniform is good for children from the point of view, that it cuts out unnecessary stress." (P1)

"....It is sexist, but if I had children and I had a boy and he said he was going to put in an earring, I would say, 'in a million years', you're not going to do it." (P2)

"We know what children are treated like when they dress differently. I think that freedom of expression is wonderful when you are at home but at school you have to have a set of values and a set of rules." (P3)

"I am 'old school'.....people are coming to our school knowing that it is a Catholic school. These are our values and these are our laws and this is what we expect.....If you are not going to behave in the way we expect, don't come to our school. (P4)

"We are talking pride in schools.....If you enter into a school you must be willing to accept the schools rules." (P5)

"Both my boys had earringsIt is all about our traditional view on what a man should look like. It is our ideal of what a man should look like...With me it is not a problem but I think with the school it is a breaking down of discipline." (P6)

"So we say, as a girl you are allowed to wear earrings, so the boys say well why can't we?.....So in a way if you think about it you are actually being sexist."(P7)

"I don't think that we are stifling them by putting them into uniforms. What children are doing today is following what fashion dictates. They are being dictated to by the media and what they see around them.....It is an external thing." (P8)

In some ways the responses of the participants echoes what was mentioned under values and societal perceptions above. In addition there are a number of words that derived from the above responses, namely, 'tradition', 'old school', 'pride' and 'it is a Catholic school and these are our values' that once again

reinforces the fact, that the understanding of human rights and its associated concepts are limited by one's own personal upbringing, norms and values. These norms and values are an intricate part of, *inter alia*, our religion, education and culture to which we are exposed from early childhood through our immediate communities, our churches and our schools.

4.2.6 Summary

The analyses of the data and the direct reference to the responses of the participants are by and large in accordance with the literature and defines the concept of human rights and its associated concepts. The responses further reaffirm how societies, culture and value systems dictate to what is acceptable behaviour and what is not and how this in turn, influences ones understanding.

In the concluding chapter that follows, Chapter 5, the responses and understanding of the participants in relation to the theme, categories, sub-categories and topics, where applicable, will be juxtaposed to the Constitutional Court judgements and specifically the comments of the justices that delivered these judgements that were referred to in Chapter 2.

CHAPTER FIVE

CONCLUSIONS

5.1 INTRODUCTION

Exploring the understanding that educators have in relation to human rights, as per the Bill of Rights, is the focal point of this study. As much as human rights forms and intricate part of society and is manifested in various legal instruments the meaning that each individual attaches to human rights and its associated concepts differs. This difference in understanding manifested itself in the Constitutional Court challenge against the abolishment of corporal punishment brought by a voluntary association which represented 196 independent Christian schools (see page 60) (*Christian Education South Africa v Minister of Education*, Case CCT 4/00). Indeed the reason for choosing to conduct this research at an independent Catholic school was based on the fact that during the years of apartheid this Catholic school accepted Black, Indian and Coloured learners as the principle of segregation was seen to be demeaning and contrary to Catholic doctrine. On the other hand corporal punishment was an intricate part of the school. This would be seen by those who viewed corporal punishment as inhumane and degrading as a clear misalignment of principle (see page 44) (*Campbell and Cosans v United Kingdom* (1980) 3 EHRR 531 at 556).

The research was conducted within a qualitative research paradigm and involved the interviewing of eight educators who had volunteered to be part of this research. The interviews were semi-structured to elicit a conversation between the participants and myself. The interviews were then transcribed and coded. The data was grouped into an overarching theme, categories, sub-categories and topics (see Chapter 4). In the final analysis these groupings of data were used to identify and explore the symbolic meaning and understanding that emerged from the interviews with the participants.

The Constitutional Court cases as well as the literature that could be associated with the themes, categories, sub-categories and topics, as discussed in Chapter 4, were discussed in detail in Chapter 2. Specific aspects of the literature and case law will be referred to as they apply to the understanding which the participants have in relation to the emerging categories and specifically the fundamental human rights which form a cornerstone in the Bill of Rights, namely human dignity, freedom and equality. The juxtaposing of the understanding of the participants with the judgements of the Constitutional Court is relevant in that the rights of individuals in South Africa are entrenched in the Bill of Rights, Constitution of RSA, 1996 and are therefore legally enforceable.

5.2 HUMAN DIGNITY

I have reported on the participants understanding of human dignity in Chapter 4.

The theoretical aspects of human dignity were referred to in Chapter 2 (see page 40). The understanding of the concept human dignity by the participants is by and large in line with the literature mentioned in Chapter 2. Words that were specifically mentioned by the participants and appear in the literature include, *inter alia*, 'worth', 'respect' and the fact that it is inherent in every human being (see page 41 in chapter 2 and page 102 in chapter 4).

Three of the cases discussed in Chapter 2 will be juxtaposed to the responses and understanding of the participants. These are:

- *S v Williams and Others - Case No. CCT 20/94* (see page 42)
- *Christian Education South Africa v Minister of Education - Case No. CCT 4/00* (see page 60)
- *S v T Makwanyane and M Mchunu - Case No. CCT 3/94* (see page 45)

5.2.1 S v Williams and Others - Case No. CCT 20/94

The details pertaining to this case have been dealt with in Chapter 2. The aim now is to refer to certain specific aspects pertaining to the judgement which was delivered by Justice Langa, on 9 June 1995. The extracts which will be referred to from the judgment relate to the understanding that the participants have about human dignity as reported in Chapter 4 (see page 101).

In Chapter 1, and in the introduction to this chapter, I referred to what appeared to be a contradiction with regard to the Catholic doctrine, which is underpinned by human dignity and the practice of corporal punishment. Although the case of *S v Williams and Others* deals specifically with juvenile whipping, I am of the opinion that this case alludes to the general practice of corporal punishment.

What is important to note is that the understanding Participant 1 has, as illustrated by her when she said, “*I would rather be hit by a bus than somebody attack my dignity*”, is clearly in line with the judicial statements made by Justice Langa, and others he refers to, in this case (see page 43). This case was judged in terms of the Interim Constitution of the RSA, Act 200 of 1993. Chapter 3 of this Interim Constitution of the RSA entrenched the fundamental rights of all individuals. Justice Langa referred mainly to two sections of Chapter 3, namely Section 10 (Human Dignity) and Section 11 (Freedom and security of the person).

The utterances of Justice Langa and his reference to other sources where the authors concurred with his judgement, (see pages 43,44) would acquiesce with the understanding of the participants and in particular with those that are quoted under the topic in 4.2.3.3, namely, *Actions: Embarrass, Belittle and Undermine* (see page 104). These participants were able to associate actions that were embarrassing, belittling and undermining with impairing human dignity. This

ability to associate these actions with the impairing of human dignity is in line with the reference to degrading conduct in the judgement.

Justice Langa, along with the specific aspects of the brutality and inhumanness of corporal punishment, made specific comments with regard to human rights and societal values (see page 44). Under 4.2.3.2, (see page 103) the emerging topic is *Respect*. Participant 2 alludes to how as individuals we have certain values and standards which would be in line with Justice Langa's reference to societal values. In addition the issue surrounding values was discussed with the participants in relation to their understanding of the concept 'democratic values' (see page 99).

Once again it is clear from the extracts of this judgement that appear in Chapter 2 that the understanding the participants have about human dignity and it being intricately linked to respect is in line with not only this particular case but the international cases mentioned by Justice Langa in his judgement (see page 43,44)

Justice Langa's statement links to words reiterated by the participants when they presented their understanding of human dignity: these include, self, self-worth, self-esteem and soul (see page 102).

The understanding of the participants is by and large in line with the judgment of Justice Langa J in the case *S v Williams and Others*.

The case of *S v Williams and Others* dealt with the 'whipping' of juveniles as per an order of the court in terms of the Criminal Procedures Act, 1 of 1977. It must be noted that although the words '*corporal punishment*' were used in the judgement, this case did not deal directly with corporal punishment within a school setting.

This judgement, *S v Williams and Others*, together with the underlying values associated with the Constitution of the RSA played an intricate part in outlawing corporal punishment. This was further endorsed through the passing of legislation which was included in Section 10 of the *South African Schools Act, No 84 of 1996 (SASA)*. The abolishment of corporal punishment led to a constitutional court challenge brought by Christian Education South Africa.

5.2.2 Christian Education South Africa v Minister of Education - Case No. CCT 4/00

The broader details of this case have been discussed in Chapter 2. The aforementioned case will be used to once again juxtapose the understanding that the educators displayed about human dignity (see page 101).

Judgement which was delivered by Justice Sachs on 18 August 2000. The judgement applies to, *inter alia*, the right to human dignity. A reason put forward by the then Minister of Education, Mr Kadar Asmal, who opposed this application, was the impairment of human dignity. The impairment of human dignity was the basis for the abolishment of corporal punishment as per the SASA. It was anticipated that the abolishment of corporal punishment should apply across the board to all schools and children.

Furthermore, the former Minister of Education contended that the claim by Christian Education SA to be entitled to special exemption to administer corporal punishment (based on their religion doctrine) is inconsistent with the provisions in the Bill of Rights (see page 60).

In his judgement, Justice Sachs reinforces that human dignity is a central constitutional value which is echoed by participant 7 who states, "*To me human dignity underlines everything*" (see page 104).

In the judgement, and in relation to human dignity, Justice Sachs mentions the concept of self-worth (see page 61). The participants too referred to self-worth and human dignity (see page 102).

Apart from the fundamental right to human dignity Justice Sachs dwells extensively on the right to “*freedom of religion and belief*” with which other rights, including human dignity, are in conflict in this particular case. Justice Sachs recognises how religious beliefs affect ones view of society and is the basis for deciding between right and wrong (see responses of participant 2, page 130 and participant 8, page 113). It is apparent that these two participants’ religious beliefs, and traditions associated with these beliefs, influenced their understanding of human rights.

Justice Sachs referred to a number of cases, (including Mahomed, AJA in *Ex parte Attorney-General Namibia: In re Corporal Punishment by Organs of State*, that formed part of the *S v Williams and Others* judgement which condemned the use of corporal punishment (*S v Williams and Others*, CCT 20/1994).

Despite the fact that the former Minister of Education claimed that other rights in the Bill of Rights, apart from human dignity, were been infringed upon, it will appear that Justice Sachs’ reference to human dignity as a “*central constitutional value*” (para 15 of Constitutional Case No. CCT 4/00) was instrumental in the former Minister of Education emerging victorious in this matter.

This case aptly demonstrates how different individuals attach meaning to a concept such as human dignity in accordance with their own personal religious beliefs and value system.

The importance of human dignity is further elaborated on in the landmark judgment of *S v T Makwanyane and M Mchunu*. It can also be inferred from this study that the understanding that the participants had about the importance of

respect and self-worth are more in line with those of the court and not necessarily with the views held by **Christian Education South Africa** who challenged the banning of corporal punishment.

5.2.3 S v T Makwanyane and M Mchunu - Case No. CCT 3/94

The details of this case, which brought about the abolishment of the death penalty, were discussed in Chapter 2. Only the aspects which are relevant to human dignity will be referred to in this chapter.

The comment of Brennan J and the statement from the German Constitutional Court, (see page 46) supports the views of the participants on human dignity. Specifically the utterances of Participant 7 and Participant 3 (see page 104), where they succinctly link equality to human dignity, by inferring that regardless of a persons social standing or economic wealth they have the right to human dignity and to be treated with respect.

In addition the reference to words “respect”, “social worth” and “degrading” links the aforementioned responses of Participants 3 and 7 to the three emerging topics associated with human dignity, namely:

- Self and self- worth (see page 102)
- Respect (see page 103)
- Actions: Embarrass, belittle & undermine (see page 104)

The most important aspect, with regards to human dignity, lies in the judgement delivered by Justice Chaskalson and is found in paragraph 144 of same judgement, under his concluding remarks (see page 46).

In juxtaposing the understanding of the participants in relation to human dignity with three Constitutional Court cases, namely *S v Williams and Others*, *Christian Education v Minister of Education* and *S v T Makwanyane & Another*, I have

used the judgements comparatively. Based on the analysis above, relating to the understanding of the participants it becomes apparent that respect, self-worth and the absence of inhuman and degrading treatment is an intricate part of human dignity and that their understanding of this concept is to a large extent in line with the Constitutional Court cases referred to.

5.3 EQUALITY

The understanding that the participants have about the concept of equality in relation to human rights is congruent with the literature presented in Chapter 2 (see page 47). Every individual has the right to be treated equally (see page 47). In addition the belief that the participants have, that true equality is largely mythical, is supported by literature which claims that man is at birth born unequal in one sense or another (see page 53).

The following constitutional court cases will be referred to in relation to the understanding that emerged from the participants with regards to equality, non-racialism and non-sexism:

- Fraser v The Children's Court, Pretoria North and Others – CCT 31/96 (see page 49)
- Minister of Home Affairs and Another v Fourie and Another – CCT 60/04 (see page 51)
- Christian Education South Africa v Minister of Education - CCT 4/00 (see page 60)

The details pertaining to these constitutional court cases, and subsequent judgments were dealt with in detail in Chapter 2. The purpose of their reference in this instance is to juxtapose the judgements with the understanding of the participants.

5.3.1 Fraser v The Children’s Court, Pretoria North and Others – CCT 31/96

In this case an application was brought by the father of an illegitimate child that had been put up for adoption by the mother. The father in question, Lawrie John Fraser, challenged the constitutionality of section 18(4)(d) of the Child Care Act. (see page 49). The applicant felt that his Constitutional right to equality in terms of section 8(1) of the Interim Constitution, and his right not to be unfairly discriminated against in terms of section 8(2) were being violated by the relevant section of the Child Care Act, 74 of 1983.

In his judgment Justice Mahomed not only reinforces the importance of the right to equality in our society but furthermore makes direct reference to the fact that in this instance there is unfair discrimination against fathers of illegitimate children (see page 50). In line with the statements of Justice Mahomad and the responses of the participants, (see page 108), I can conclude that, apart from the participants reservations about the existence of absolute equality in society, their basic understanding of the term is in line with the findings of Justice Mahomad in this case.

5.3.2 Minister of Home Affairs and Another v Fourie and Another – CCT 60/04

The understanding displayed by the participants and the findings and judgement of Justice Sachs will be apposed in this matter.

Apart from the fact that Justice Sachs goes to the heart of what equality is, he furthermore refers to ‘respect’ and ‘self’ which are issues around human dignity. He highlights the fact that as humans we are all different and there is a profound need to accept and respect difference (see page 52).

As much as the participants generally understand the meaning of equality and the right not to be discriminated against there are certain instances where their responses depict subtle differences to the literature, (see page 114) and do not conform entirely to what Justice Sachs has stated. The difference may be as a result of their own personal upbringing and values system.

Furthermore, the reference to the fact that societal dictates raise the issue of entrenched norms within society ultimately results in individuals within that particular society gravitating towards a specific understanding of fundamental issues (see page 103).

In his judgement Justice Sachs makes direct reference to norms, and what is acceptable to the majority. He further alludes to how the inability of minorities to conform to the accepted norms of the majority ultimately leads to the discrimination of such minorities (see pages 52,53). Thus I believe that the understanding that any individual has about equality is always tested. I am further of the opinion that one only possesses a real understanding of equality when he or she is able to accept and be tolerant of any challenge to his or her own values, ideas and norms. Failure to tolerate difference, is in my opinion, equivalent to a superficial and theoretical understanding and practise of the concept 'equality'.

As was stated before, the participants possess an understanding of equality and discrimination which is largely theoretically based. There are however subtle inferences to set norms and the way in which things are done traditionally and within specific settings which may result in a lack of tolerance.

It must therefore be noted that the possibility may exist that participants provided answers that they regarded as politically correct, without revealing deep seated prejudices, beliefs and assumptions which they felt may not have been acceptable. These deeper seated opinions only emerged in a nuanced form

when they referred to things such as the role of culture, religion and upbringing that influences other peoples behaviour (projecting own feelings onto others). These hidden or nuanced expressions could not be probed further as it would have entailed coercing participants into sharing that which they try to smooth over and would have been unethical. In other words, the views shared by the participants remained at the level of declarative knowledge (that which we know from studying or learning) without penetrating into the deeper psychological levels of the inner world and the meanings that are hidden from everyday interactions. Between groups of people declarative knowledge would refer to a shared recognition or shared definition of a concept. This calls for agreement of identification and clear distinctions drawn from a shared base of knowledge and identifiers. By contrast, tacit knowledge is not easily shared and often consists of habits and culture which is only known to you and hard to share with someone else.

5.3.3 Christian Education South Africa v Minister of Education - CCT 4/00

The matter involving *Christian Education SA v Minister of Education* was referred to when analysing the responses around human dignity. The same case has a bearing on equality as the former Minister of Education presented further argument around the right to equality (see page 62)

In relation to equality Justice Sachs confirms that equality is not about treating everyone the same, but rather ensuring that there is no unfair discrimination, which would be in line with the understanding shown by the participants.

5.4 FREEDOM

As was the case with their understanding of equality as a human rights concept the participants indicated a clear theoretical understanding of the term 'freedom' while having reservations about whether there is really true freedom. As much as

they show an understanding as per definitions found in Chapter 2, (see pages 56, 57), they acknowledge that there needs to be a limitation to this freedom in order to ensure an ordered society. This is in line with the theoretical viewpoint that as much as laws limit freedom this is in essence not an infringement of a fundamental right but rather can be seen as the upholding of a fundamental right (see page 57).

Statements made by Constitutional Court judges, as they pertain to some of the rights referred to above under the main category of freedom are mentioned in Chapter 2. These will be referred to when juxtaposing the understanding of the participants with these judgments.

- Christian Education South Africa v Minister of Education - CCT 4/00 (see page 60).
- Laugh It Off Promotions v SAB International (Finance) – CCT 42/04 (see page 66).

5.4.1 Christian Education South Africa v Minister of Education – CCT 4/00

The understanding of the participants with regard to this particular right is in line with the broader definition of freedom to religion, belief and opinion (see page 121, 122).

It must be stressed however that this case deals with a particular issue which brings this right to freedom of religion, belief and opinion in conflict with other rights and in particular the right to human dignity. This, as was discussed above, emerges as a result of ones personal values and beliefs which have to a large extent been nurtured throughout ones life. The judgement however in essence reaffirms that regardless of ones personal beliefs and values the rule of law must prevail and that the South African Constitution is not underpinned by any particular religion. The right to religious freedom as entrenched in the Bill of

Rights merely ensures that every individuals religious beliefs are respected and tolerated within a broader and multi-religious society (see page 63).

Freedom and security is another right which was mentioned by Justice Sachs in his judgement (see page 63, 64). These statements not only tie up with the understanding the participants have of this specific right but how the understanding of the term ‘freedom’ by the participants is intricately tied up with security. Participant 6 equated freedom to being able to go where one pleases and feel safe (see page 121), while Participant 8 believes that one must feel secure in the country in order to be free (see page 121).

The understanding that the participants have about these two concepts associated with the category of freedom, namely the right to freedom of religion, belief and opinion and freedom and security, is broadly in line with the statements made by Justice Sachs in this case and also suggest a deeper lying tacit knowledge that participants could not always articulate in words.

5.4.2 Laugh It Off Promotions v SAB International (Finance) – CCT 42/04

Initially the participants showed a rather limited understanding of the concept ‘freedom of expression’ and showed an understanding that was by and large restricted to ‘freedom of speech’. There were furthermore subtle inferences that these freedoms are limited by societal perceptions and personal beliefs and values which are associated with a particular culture or religion (see page 123).

Generally their understanding does not extend to the broad definition reported on in Chapter 2, (see page 65), and they furthermore failed to link freedom of expression to other fundamental rights which once again depicts an understanding of the concept which is based more on declarative knowledge as opposed to tacit knowledge. Justice Moseneke, in his judgement under this particular case succinctly makes this connection (see page 69).

The extracts from the judgement of Justice Moseneke, (see page 67), captures the essence of not only what freedom of expression is but how it is intricately linked to the broad fundamental human rights of human dignity, equality and freedom.

5.5 AREAS FOR FUTURE RESEARCH

The research conducted for this study, which explored human rights understanding among educators, concentrated on one specific school with a Catholic ethos. It was prompted by what appeared to be a misalignment of principle in relation to human dignity. As much as this study highlights the fact that the participants' knowledge is basically a declarative knowledge that stems from earlier studies, life experiences or exposure to other sources of information, their deeper hidden understandings (tacit knowledge) could not be explored to the level which would provide us with these deeper seated understandings. There is a need for further research to be conducted amongst educators in order to fully explore the concept of human rights and the need for synergy with education. Another area that needs to be investigated is the manner in which human rights is conveyed to the learners. I believe that human rights is 'taught' in a theoretical manner and what requires investigation is the concept of *principle v pragmatism*, (see page 38), which should in essence precede inculcation.

5.6 CONCLUSION

The understanding that the participants have about human rights as an overarching theme and the associated concepts appears to be aligned with the understandings reported in literature. In the final analysis however as much as the understanding of the various human rights concepts by the participants does not in anyway transgress the legal parameters associated with the rights in question, there are certain inferences that confirm the important role that culture,

tradition, values and socialization plays in constructing understanding of any concept.

Olsen, Lodwick and Dunlap (1992:14) confirm that the dominant worldview in the culture of a society normally pertains to the totality of human existence and most aspects of social life. Virtually everything that we experience is shaped by the perceptions and culturally accepted definitions of social reality.

The ease of acceptance of traditions and practises associated with human rights demonstrated by the participants perpetuates the traditional views that have existed within this school. The understanding that the participants have about human rights concepts is limited to their personal epistemology which is grounded in a particular culture and religious dictates. As a result, it is possible that in the teaching of human rights the participants will pass on the legal understandings (declarative knowledge), but in their interactions with learners and others the tacit knowledge will play itself out in the examples that they set, the type of behaviour that they would reward and the type of behaviour that they will discourage. The tacit knowledge would therefore be evidenced in the hidden curriculum of the school and the examples that are referred to below:

- The traditional lining up of male and female learners in separate lines (see page 114);
- The allowing of the wearing of earrings in the case of girls only (see page 131);
- The response of Participant 2 with regard to the handing out of the Host at Mass by the P.T teacher dressed in short pants (see pages 103, 130)

In addition it is clear that learners that attend this school must be prepared to conform to the religious and values system that is associated with this school. In fact Participant 4 clearly states that parents are aware that they are enrolling their child at a Catholic school and if they are not prepared to conform to the norms

associated with the school they should not enrol their children at the school (see page 131). The participants therefore show an understanding about human rights and its associated concepts that is dictated to by their personal culture, value systems and traditions which the participants instil in the school system. This culture, traditions and value systems are entrenched by the participants who it may be said are acting as agents of conformity within a specific society or community of which a school is an intricate part.

Therefore as much as the participants have a clear understanding of what the different rights are and are able to attach meaning that is in line with universal definitions and does not transgress the legal bounds, as was illustrated when juxtaposing the Constitutional Court cases to the responses, this understanding is limited by the values, traditions and societal norms that the participants associate themselves with. This is in all probability the reason why the Catholic church, despite having human dignity at the core of its religious doctrine, allowed corporal punishment in its schools. Corporal punishment despite being viewed by critics as a cruel and dehumanizing form of punishment was accepted in schools because it was in line with the religious values and traditions associated with these schools. The reason why corporal punishment is no longer practiced in these schools is because human dignity is entrenched in the Constitution of the RSA. The right to human dignity as a “*central constitutional value*” was reaffirmed in the ruling by Justice Sachs in the Constitutional Court case, *Christian Education SA v Minister of Education*.

In the final analysis, human rights and its associated concepts is defined and understood by individuals and groups of people in different ways. This understanding of human rights is intrinsically linked to culture, values, norms and societal perceptions (see pages 22-27). As a result, the understanding of this concept will differ from person to person and culture to culture.

It is however possible that in many instances these different understandings are no more than different cultural and religious expressions of the same fundamental principles, and as long as these different cultural and religious practises remain within the boundaries of the law, are not imposed on others and do not lead to intolerance they should be respected and allowed to continue. These differences in interpretation, understanding and practise not only contribute to the ongoing debate around human rights and its associated concepts, but in addition, contribute to the nurturing of democracy and freedom in South Africa.

Where these differences in understanding, interpretation and practise become a contentious issue that cannot be resolved by the parties independently, as was the case in *Christian Education SA v Minister of Education-CCT 4/00*, the Constitutional Court can be approached in order to test the different understandings / interpretations and make an appropriate ruling on the matter.

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APPENDIX A

Letter to school principal requesting permission to conduct research.

Nic Karvelas
P.O Box 11206
RANDHART
1457

Tel: (011) 864-1422
Cell: 082-372-9008
e-mail: nikok@global.co.za

The Principal

NAME OF SCHOOL AND PRINCIPAL WITHHELD TO ENSURE ANONYMITY

P.O Box
JOHANNESBURG
2000

By Electronic Mail

8 January 2005

Dear _____

CONDUCTING OF RESEARCH FOR M.ED – UNIVERSITY OF PRETORIA

At the outset thank you very much for taking the time to meet with me with regard to the research I wish to conduct at your primary school.

As was discussed I am currently reading for my M.Ed at the University of Pretoria. In order to fulfill the requirements of this qualification I am required to submit a dissertation.

In order to complete same dissertation I need to conduct research on the subject I have chosen.

The research question associated with my dissertation is:

“What understanding do educators, in an independent school, have about human rights ? “

This is in essence a case study which will be based on the qualitative research method.

I wish to at this stage stress that there are no right or wrong answers associated with the research question (s) and this must in no way be construed as been some kind of “test” or “quality control”.

In collecting the data I would initially need to conduct in-depth interviews with approximately 8 educators who will ultimately need to volunteer for this. It may be necessary to follow this up with additional interviews or focus groups depending on the initial data collected.

As far as confidentiality is concerned be advised that no names, school or individual, will be mentioned in the final dissertation and interviews will be conducted in the strictest confidence.

It would be appreciated, once final approval is granted, if you could hand a copy of the accompanying letter to each educator in your school.

Upon completion a copy of the final dissertation will be made available to you as I believe that it may, in the final analysis, be of assistance to you and your school.

Furthermore, I would be willing to conduct a workshop encompassing human rights for all the educators once my research is complete.

Should you require any confirmation of any of the above kindly contact my supervisor at the University of Pretoria, Dr Jan Nieuwenhuis at Tel: (012) 420-2842 or e-mail : jan.nieuwenhuis@gk.up.ac.za.

Thank you for your indulgence in this regard.

In anticipation.



NIC KARVELAS

APPENDIX B

Letter from school principal granting permission to conduct research.

XX		
XXXXXXXXXXXX	XXXXXXX XXXXXXX	XXXXXXXXXXXX
XXXXXXXXXX	XXXXX XXX XXXXXXX	XXXXXXXXXX
XXXXXX		
28 July 2005		
<u>TO WHOM IT MAY CONCERN</u>		
This letter confirms that permission was granted to Nic Karvelas to conduct research at XXXXXXXXXXXXXXXXXXXX.		
The understanding was that all information so gained would be treated confidentially and would not be for public distribution at any time. The school as well as interviewees would also remain anonymous at all times.		
Yours sincerely		
XXXXXXXXXXXXXXXX		
Principal		
Primary School		

APPENDIX C

Research Ethics Committee Clearance Certificate

ANNEXURE D



UNIVERSITY OF PRETORIA
FACULTY OF EDUCATION
RESEARCH ETHICS COMMITTEE

CLEARANCE CERTIFICATE

PROJECT

CLEARANCE NUMBER: EM07/01

What understanding do educators in an independent school have about human rights ?

INVESTIGATOR(S)

N. Karvelas

DEPARTMENT

Educational Management

DATE CONSIDERED

6 July 2005

DECISION OF THE COMMITTEE

APPROVED

This ethical clearance is valid for 2 years and may be renewed upon application

CHAIRPERSON OF ETHICS COMMITTEE

Dr. C.Lubbe

DATE

25 July 2005

cc

Dr. J. Nieuwenhuisen

Mrs. Jeannie Beukes

This ethical clearance certificate is issued subject to the following conditions:

1. A signed personal declaration of responsibility
2. If the research question changes significantly so as to alter the nature of the study, a new application for ethical clearance must be submitted ,
3. It remains the students' responsibility to ensure that all the necessary forms for informed consent are kept for future queries.

Please quote the clearance number in all enquiries.

86680/03

