



## CHAPTER 5

### PRESENTATION AND INTERPRETATION OF THE DATA Research premises one and two

#### 5.1 INTRODUCTION

In the literature review in chapter two I attempted to learn about the historical development of the right to education, the core content of the right to education and its recognition in the South African Constitution. While reviewing the literature about the right to education I discovered that although it ranks high on the list of other human rights, it was rather belatedly recognised as a human right. However, since its recognition, it has become valued as a prerequisite for the enjoyment of other human rights to such an extent that it now enjoys prominence along with most other human rights. As a result of this prominence of the right to education, I discussed other human rights that are directly relevant to it. I also realised that it is one of the most complex human rights and therefore its limitation impacts on other fundamental human rights. As this study concerns learners' understanding of their right to education, I explored (in chapter three) the development of human rights understanding, the mechanisms through which understanding occurs and the aspects that influence human rights understanding.

In chapter four I presented the research philosophy, research design, and methodology for this study. I justified the research design and methodology in terms of the research problem and the literature review. This is a case study which follows a qualitative approach. I explained the reasons for adopting this approach in chapter four (see § 4.5). This research study is based on an interpretive research paradigm (see § 4.2).

The question that underpins this enquiry is: "How do learners understand human rights, their rights to education in particular?" This right was explored within the context of the school. I believe that every person attaches subjective meaning to reality, depending on how they perceive it and their lived experiences, and so do learners. In this chapter I present the findings with regard to my first two research premises:

- (1) **Some learners have limited knowledge of their right to education**
- (2) **Some learners do not know how to exercise their right to education.**

The results concerning my third research premise are presented in chapter six (see § 6.2).

Direct quotations from participants are presented in italics. Data collection was done in Tshivenda and then translated into English. Editing and language checking was done after writing chapters five and six, so there may be a slight difference in some quotations in these chapters compared with

what appears in the focus groups and face-to-face transcripts in Addenda A and B respectively.

## 5.2 PREMISE 1: SOME LEARNERS HAVE LIMITED KNOWLEDGE OF THEIR RIGHT TO EDUCATION

The questions that I used to explore learners' knowledge of their right to education were as follows:

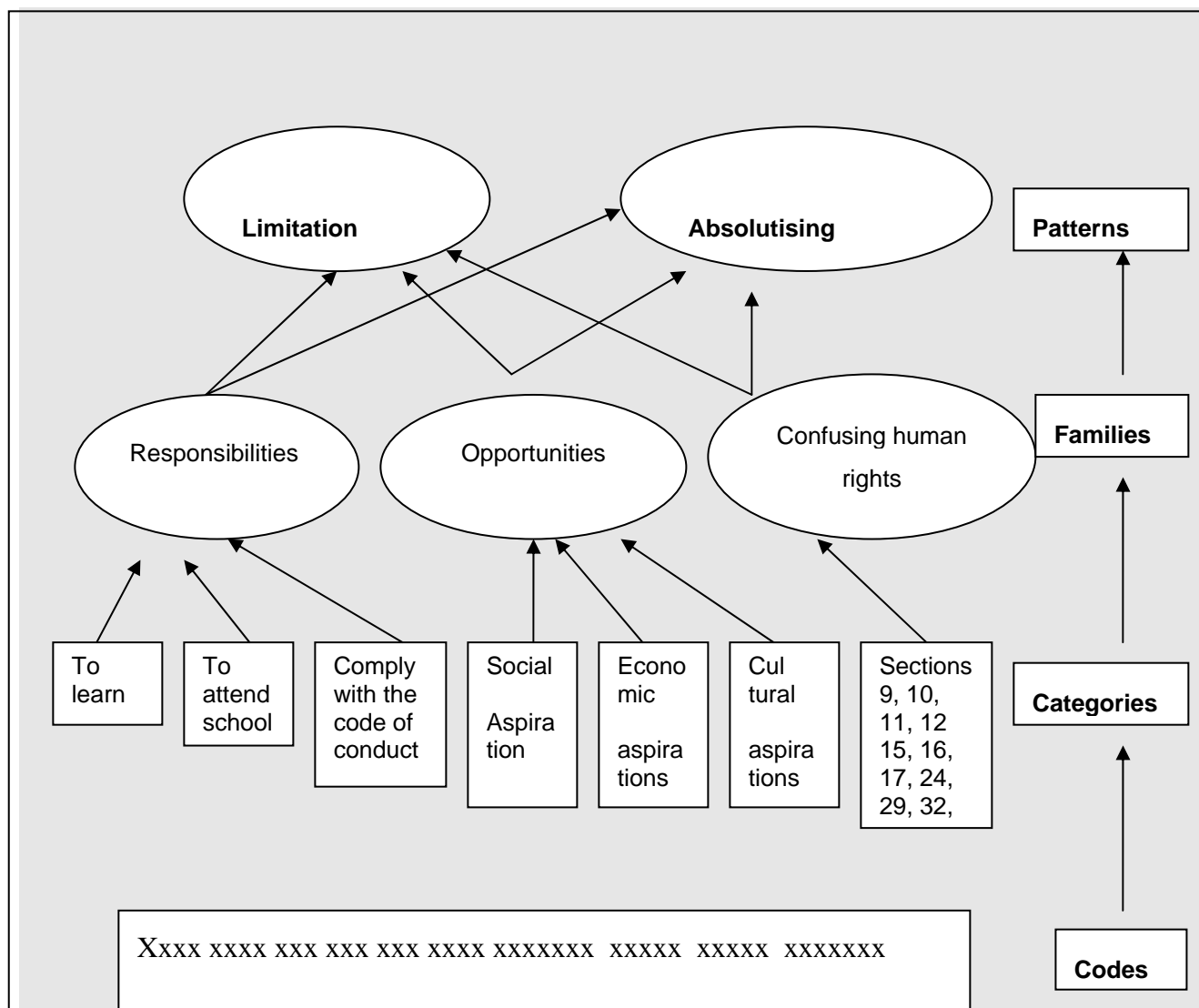
- (a) Explain what it means to you to have a right to education?
- (b) Which rights do you think are covered under your right to education?
- (c) Tell me why do you attend school?
- (d) Can anyone take away your right to education?
- (e) Who has the right to education?

Since my first premise is that some learners have limited knowledge of their right to education, I wanted to determine learners' perceptions of their right to education within the context of the school. Under this first premise I expected some learners to:

- (a) know that their right to education involves responsibilities;
- (b) know that through the realisation of their right to education an array of opportunities can be opened;
- (c) confuse their right to education with other human rights;
- (d) be unaware of who the beneficiaries of the right to education are.

I used content analysis in order to analyse the data (see § 4.12 for details). I coded the data manually using open coding. At first I coded every detail of the data. At the end of the first coding procedure, I was confronted with what Patton (2002:433) calls a 'massive amount of data'. I made a second attempt at data coding. I identified important patterns and separated the data into manageable structures. Eventually I worked with **182 codes**. I classified these codes into **16 categories** which in turn were classified into **three families**). Two overall patterns evolved from the data. I present first the explanation of each family against the background of what the literature says about each family, and then I present what the data shows.

The patterns that evolved from the interpreted data are discussed after each family has been explained. This is done in order to ensure consistency in the presentation of the results, and to enable the reader to follow the presentation with ease. The focus group discussions and interview responses are reported as a whole, as the same schedule was used for both methods. The discussion of the first premise follows and is done according to the three families that are depicted in Figure 5.1, namely responsibilities, opportunities and mixing of various human rights (see also Figure 7.1) .



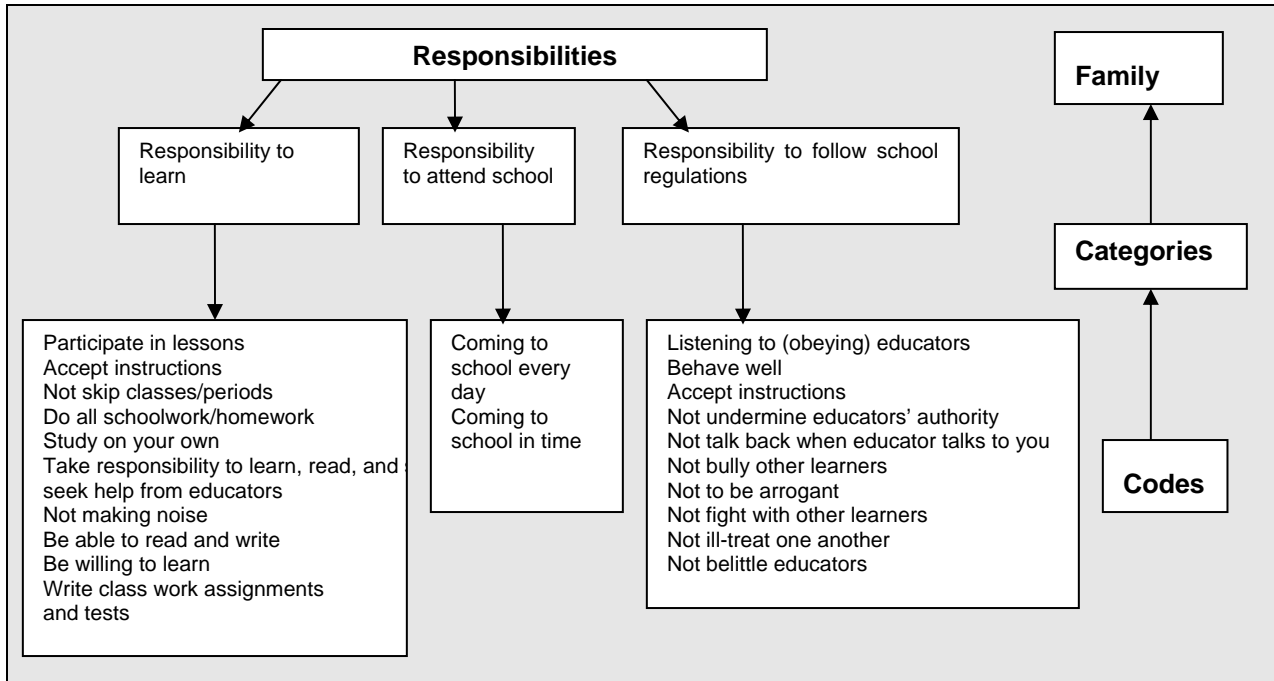
**Figure 5.1: Portrayal of categories, families and patterns that emerged from the data interpretation**

### 5.2.1 Learners’ responsibilities under their right to education

I assumed under my first premise that some learners have limited knowledge of their right to education. Surprisingly, when analysing the data, I found that the learners under investigation know that their right to education implies responsibilities on their part as learners. Oxford Advanced Learners Dictionary (2000:1002) defines responsibility as having a duty to do something independently and being accountable for what one does. Wringe (1981:27) asserts that (human) rights can be explained as a correlation of duty. Any right that one claims to have has a correlated duty; for example, if learners claim the right to education, which implies that they have the right to learn, then this imposes on them the duty to make learning occur. This consequently imposes the

duty on educators to teach.

When asked what the right to education meant to them, learners' responses showed that they were aware that their right to education, like all other rights, implies responsibilities.



**Figure 5.2: Portrayal of responsibilities that learners perceive they have under their right to education**

Under the family 'responsibilities' three categories emerged, namely to learn, to attend school regularly and to follow school regulations. Figures 5.2 & 7.1 form the basis for discussing each of these categories in turn.

### 5.2.1.1 Learners have the responsibility to learn

This responsibility, which emerged from the empirical data, indicates that learners profess to have responsibilities directed towards their own learning. They explained this responsibility in terms of what they think they must do, be allowed to do or must not do under the protection of their right to education. These opinions are evidenced by the following words from some of the learners:

- *I have the perception that this right means that when I ask ...questions, educators must give me correct answers (F4/1)*
- *...we must participate in every lesson (F2/4).*
- *...we must take responsibility to learn and ask questions (F4/2).*
- *I perceive that the right to education means that... We should write class work, home work, tests and assignments which our educators give us. (F2/2).*
- *We should be willing to learn.(F4/1)*



- ... and we must be able to study on our own (F2/1)
- I think, that we too have the responsibility to see to it that we stay in own classes, where we would study on our own during free periods. There should be no noise (F4/3).
- I must write all the school work. I must study. I must take heed of my education. I must not skip lessons (F2/2).
- What is meant here is that when I am here at school, I must see to it that I learn something. Most of the people who are successful in life they started here at school. We must make it our own business that we learn something each day (F2/2).
- I understand that this right means that, I, as a learner, have the responsibility to learn and study on my own. Nobody can do it for me (F4/2).
- I must also respect time, like not dodging or skipping classes. I must give myself time to read (F4/2)
- There must be no noise. Noise distracts our attention. I hate these people, who just walk around during classes, and make noise (F2/4)
- I think it also means that I should do all my school work. I should be submissive. I should would write my homework.(I9/1)

The above responses indicate that learners are aware that under their right to education they have a responsibility with regard to learning (F2/2), participating in every lesson (F2/4), willingness to learn (F4/1); seeking help from the educators (F4/2), not skipping classes/periods (F4/2) and doing schoolwork (F2/2). This is in line with section 5 (rights and duties of learners) of the Guidelines for the Consideration for SGBs in Adopting a Code of Conduct for Learners of 1998, which states that learners must commit themselves to their school work during classes, complete assigned homework, catch up work missed because of absence, and take an active part in their learning, so as to develop their own full potential (sub-section 5.2).

While recognising that learners have the duty to learn, their learning could be hampered by several other issues, such as the availability of learning and teaching resources, socio-economic status, the type of school learners are attending, violence levels at school and competency in the language of learning and teaching. These aspects have a crucial influence on academic mastery across the curriculum (see § 3.4). Learners are also aware that it is their responsibility under their right to education to attend school, which is discussed in the following sub-section.

### **5.2.1.2 Learners have the responsibility to attend school**

Section 5.4 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners of 1998 provides for the learners' right to basic education and places the obligation on them to attend school regularly. Learners' responses indicate that they are aware of their responsibilities with regard to school attendance. Self-discipline is also regarded as a responsibility for learners in order to ensure that their right to education becomes a reality, for example:

- I think the learner is the one who is doing things which are not allowed. The principal is doing his job. He cannot allow her to come to school at will. She must come to school every day. Attending school and classes is not voluntary. You come to school, or they punish you (F2/10).



- *To have the right to education also means that I have the right to attend a school which is protected, when I want (I5/1).*
- *I have the right to attend school (F1/2).*
- *I must come to school every day (F4/2).*
- *I must...arrive at school in time (F3/2);(F4/3).*
- *I don't agree with you. What I see as wrong here is staying away from school. The others will proceed while she is away. She is missing some lessons (F1/7)*

The above responses show that learners are aware that they have the responsibility to attend school (F4/2 & F1/7). The responses are in line with section 3(1) of Schools Act, which states that parents must ensure that every learner of compulsory school-going age, for whom they are responsible, attends school. If parents (Schools Act 3(6)(b)), without reasonable cause, deprive a learner of the right to basic education, then in terms of sub-section 3(1) of Schools Act, they are guilty of an offence and are liable to be charged. The right to attend school is limited by age (Schools Act section 3) – once learners reach grade nine or are fifteen years old, whatever comes first, they are no longer compelled to attend school and their parents can then no longer be charged for not sending them to school. However, it seems as if learners perceive that their right to attend school continues for as long as they wish (see response I5/1). Article 28(1) of the CRC (1989) provides that the party states has the obligation to take measures to encourage regular school attendance and thereby to contribute to reducing the dropout rate (see § 2.6.2 and 2.7.10). In this way learners' rights to attend school are guaranteed.

### 5.2.1.3 Learners have the responsibility to follow school regulations

In terms of section 8(a) of Schools Act, the SGB should adopt a code of conduct for learners, aimed at establishing discipline and a purposeful environment. The code of conduct should be dedicated to the improvement of the quality of the learning process. Learners are expected to observe the code of conduct, which should be a deliberate act on their part. Besides recommending disciplinary procedures, the code of conduct should establish expected behaviour (Beckmann, 1997:10; Dlamini, 1997:51). The empirical data in this study indicates that learners know that it is their responsibility to follow school regulations and to respect their educators. The following responses serve as examples:

- *It is not good for a learner to criticise school rules publicly. If she dislikes school rules, she must just tell her parents that she could not attend that school, because its rules are difficult for her to follow. She can move to another school. It is better that way (F2/13).*
- *If you respect your educators, you will enjoy your schooling. You will learn more. If that is not the case, learning will become a struggle. The educators will also not enjoy teaching you. How can they enjoy teaching you? How can they teach a learner who undermines their authority (F2/2).*
- *Must listen to all what the school says. All the rules are there to be followed (F1/10)*
- *If she is a good learner, she must follow the rules which apply to her school. She must never criticise the school rules (F1/9).*
- *Rules are there to be followed (F2/12)*



I have explained the notion of following school rules in more detail in chapter 2 (see § 2.7.10.3.). The above responses from learners' indicate that they regard school regulations as unquestionable (F2/13 & F2/12). Viewing school rules as unquestionable may imply that, although learners know that they have the right to education, they may not have the courage to exercise their rights, but just do what school authorities direct. This way of thinking may hamper learners' progression to higher levels of rights understanding because the emphasis is shifted from exercising one's rights to respect for authorities (F4/2). Further, the responses seem to indicate that learners view their right to education in terms of what should happen in their own life situations and not necessarily what the right to education clause entails.

The data indicates that learners perceive it as their responsibility to follow school regulations and to respect their educators (F2/2), which respect should be mutual (F4/2). Their responses emphasise good and healthy communication and submitting oneself to the authority of the educators. Learners have the perception that, by respecting their educators, they may access the right to education and enjoy it to the full, for example:

- *And I understand that this right also implies that learners and educators should respect one another so that teaching and learning may go smoothly (F4/2).*
- *We must respect our educators and educators must respect us too (F1/2).*
- *We must not belittle our educators. There should be no prejudices (F1/10).*
- *... I must respect. I think it means I must respect my educators (I9/1)*

One issue that deserves mention is that some learners do not know that it is not their responsibility to pay school fees, but the responsibility of their parents. Some grade nine learners believe that if parents do not have money to pay school fees, a learner must leave school and go to work. He should also be denied access to his progress report because it would be unfair to the learners who have paid school fees, for example:

- *I agree with what the principal did. If a learner does not pay his fees, and yet he gets everything, it is not right; it is not fair because he would be spending other children's money (F1/8).*
- *You pay school fees, or you do not get services. If you are a school child, your work on week-ends finishes (F2/10).*
- *I perceive that her rights are being violated. The fact that she went to look for a job in order to pay her school fees is an indication that she likes school (F4/9).*

The above responses indicate that although some learners know that their right to education requires them to take the responsibility to attend school (Beckmann, 1997:10; Dlamini, 1997:51), they have limited understanding of their right to education (F3/10 & F1/8). The finding that learners are aware that their right to education comes with a measure of responsibility has not been previously reported in most studies dealing with learners' rights (Melton & Limber, 1992:175-179;



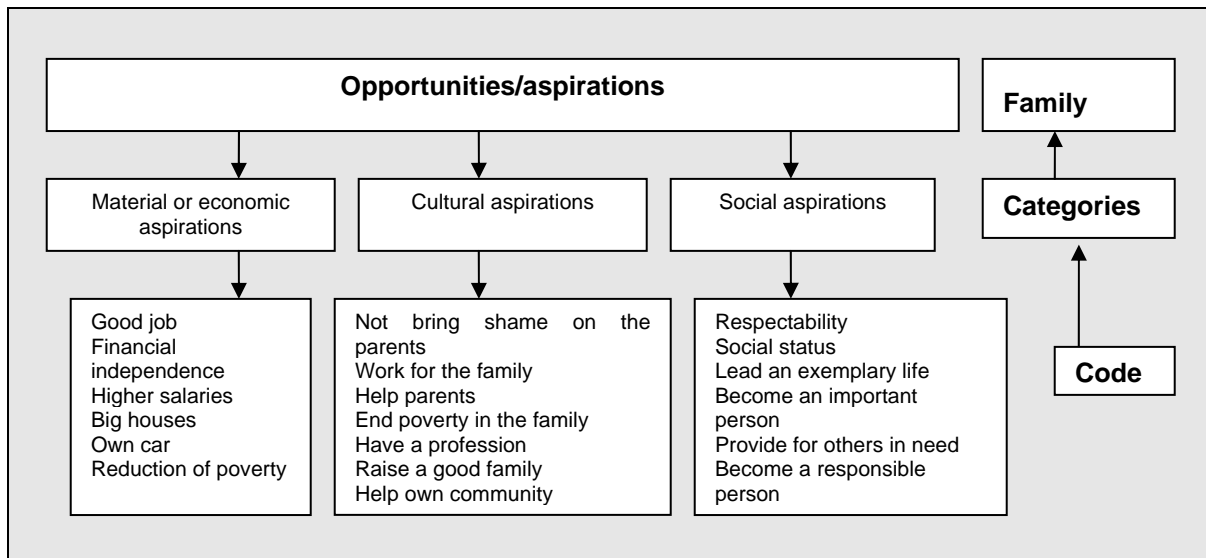
Covell & Howe, 1995:193-195; Visser, 1996:3), although it was reported by Ruck *et al.* (1998b:287).

In the next sub-section I explore the opportunities learners think they might access through their right to education.

### 5.2.2 Opportunities learners perceive can be created through the right to education

People attach different values and significance to the education of their children, depending on their socio-economic status, cultural background, religious beliefs and own levels of education attained (Melton & Limber 1992:176-197; Muianga 1998:278; Bohrnstedt 1981:455; Mehan 1992:34). Much inspiration for the provision of education has been drawn from the belief that schooling and education prevent pauperism.

When asked why they attend school, a question that explores the values, purposes and significance learners attach to their right to education, responses placed more emphasis on the opportunities learners perceive they might have through the realisation of the right to education. Under the family of 'opportunities', three categories were identified, namely economic, social and cultural opportunities, as illustrated in Figure 5.3.



**Figure 5.3 Opportunities learners perceive could be gained through the right to education**

Each category is explained in the following sub-sections.

#### 5.2.2.1 Economic opportunities (aspirations)

Principles 7 and 10 of the DRC of 1959 provide that education should aim at the development of a





sense of moral duty and social responsibility. In terms of an economic purpose, education provides a foundation for employment and prepares a learner for later professional training and eventually a professional career (Van Raemdonck & Verheyde 1997:250). Some of the outcomes learners think their right to education can offer them are, amongst others, obtaining a good job (F4/5), building their own big house, having a nice car, earning more money and having a brighter future, better life and a ticket to wealth. Of these material aspirations, having a good job and a better future were mentioned by the majority of the respondents, males and females, from different grade levels, for example:

- *In reality I go to school because I am preparing for my future. I want to have a better future; I want to have a good job, better house, and family. I do not want to find myself suffering in my daily life (F4/5).*

In this regard, the American Declaration of the Rights and Duties of Man of 1948 proclaim in article xii that the right to education should prepare a person to attain a decent life, to raise his standard of living and to become a useful member of society (Nowak 1995:193).

Another value learners attach to the right to education is that it is perceived as a means to eradicate poverty and to prevent pauperism. In this regard learners said:

- *I want to be educated ... I want to reduce poverty in my place, especially poverty in my own family. I want to get a job. Most children, like me, come from poor families. And I do not want that to continue (F2/7).*
- *I want to become a successful person one day (F2/5).*
- *I want to put food on the table. I do not want my children to go hungry. I want to be educated, get a job, and then help my parents, and one day when I am old, I will be able to support my family, and my brothers (F2/7).*
- *I want a place to stay. A home, a family with a big house. Those I can get if I am educated. This time my parents do not have a fixed job. When I grow up, I want to help them as they did to me (F2/7).*

The above responses indicate that learners view their right to education as a means of gaining material independence. The sample of learners under investigation was drawn from a disadvantaged community. This could be an explanation as to why they perceive their right to education as a means for reducing poverty and helping parents to buy food and send brothers and sisters to school. This finding is consistent with the findings of Melton and Limber (1992:176-178) that the type of socio-economic environment in which learners find themselves may influence their general perceptions of their rights, or may promote different emphases on different kinds of rights. Learners who grow up in a relatively affluent family environment possibly experience their needs being met and therefore have a sense of security about their future. They favour post-materialistic rights such as freedom of expression, promotion of equal rights and protection of the environment (self-determination rights) (Covell & Howe 1996:253; Peens 1998:25). In contrast, learners who grow up in poor families, value materialistic rights and feel a lesser sense of security about their



future occupation (.see § 3.4.7).

This finding is in line with what Halvorsen (1990:341) notes, namely that the right to education is associated with security, a good job, good wages and social mobility. Along these lines, Tomasevski (2003:102) indicates that education is seen as a passageway out of poverty or a means of preventing pauperism and ensuring that people are employable or self-employed. Wringe (1981:147) also believes that education offers an individual protection from gross material need; it is considered to be a necessity for employment and therefore a means to meet individuals' basic needs.

This finding is also in line with O'Hair *et al.*'s findings (2000:6) about what learners expect to be the outcome of their schooling. Learners themselves feel that learning without connection to the real world is meaningless. One learner commented that "it is hard to know if the school is doing a good job of getting you ready for life. Sometimes you cannot know until you've left school" (Tomasevski 2003:60). The United Nations Economic Commission for Latin American and the Caribbean (ECLAC) found that young people have to complete secondary school in order to achieve an 80% probability of avoiding poverty.

#### 5.2.2.2 Social opportunities (aspirations)

Learners also perceive their right to education as a means of acquiring social status (F2/5, I9/2), social responsibility, respectability and independence (F4/5, F3/6). In this regard, Learnhart and Salvolainen (2002:146) and Van Bueren (1995:23) note that one of the aims of the right to education is to develop in an individual a sense of dignity and to enable all people to participate responsibly in a free society.

In this regard learners gave the following responses:

- *The first thing is that I should become learned, so that I can improve my living conditions, and of those who live around me ... Let's say people of a certain education and status are needed; I should be able to occupy those positions. In meetings I must be among those who influence decisions, occupying high offices. I would be able to do that if I am educated. I should be able to give (provide) direction (I9/2).*
- *I should be able to help someone who is in need. Like, if I am a businessman I can help the poor. Another thing is that I want to be a respectable person (F4/5)*
- *I must hold higher positions, both in my work and my family (F3/4).*
- *Most of the time we hear about crime, sometimes people become criminals because they are not educated. Because of lack of education and skills they could not secure a job. I go to school so that I must not become a criminal. I do not want to take part in any crime. I also want to get a good job (F2/5).*
- *It is true that we attend school so that we must have a brighter future; I want to be a respectable person, someone whom people can look up to. I think if I am responsible for what I do in my own family, I can extend that to include developing my own community. This you cannot do if you are not educated. I also want to be a helpful citizen.(F4/5)*

From the above responses it is evident that learners regard their right to education as a means of acquiring social status (I9/2) and reducing crime. Once again, learners think of what should happen to them once they leave school, and not necessarily what is contained in the education clause. However, these responses show that they know about some of the aims of education (Van Bueren, 1995:23).

Learners also perceive their right to education as a means of gaining independence, autonomy and holding higher positions both in the community and at work. This way of reasoning was most prevalent in the way learners of different grades viewed their right to education, for example:

- *I go to school so that I must not be a problem to my own people and my family. I want to be independent. I do not want to be a burden to anyone (F2/5; F4/5).*
- *I attend school so that I must not be a burden to anyone. I must be able to do things by myself, instead of waiting for someone to do it for me. I must rely on myself (F4/5).*
- *... I must not be a burden to anyone. I must be able to rely on myself (I8/2).*

Along these lines, Wringe (1981:146) argues that education can be a means of gaining social independence and avoiding being reduced to lifelong dependency on the support of others. He regards the latter as unacceptable humiliation and therefore a harmful situation, from which an individual is entitled to be protected.

### 5.2.2.3 Cultural opportunities (aspirations)

In traditional African society, the goals of education are to develop in a learner a sense of belonging and participating in family and community affairs, and to inculcate respect for elders and those in positions of authority. There is a noticeable communal approach to teaching and learning. The over-used phrase “it takes a whole village to educate a child” accurately represents the African philosophy of education. This approach is intended to preserve the parents’ way of life and to prepare the child to live in a particular culture, by emphasising the cultural values and practices of a particular society (O’Hair *et al.*, 2000: 80-81).

Among the opportunities that learners perceive they could have through their right to education are those with cultural undertones. This includes holding the rightful position within one’s own family unit, caring for one’s parents (I1/3), other members of the community and one’s own children, and practising a profession. The desire to take on parental roles (F2/6) is evidenced by the following responses:

- *I must be able to support my family, my children and my parents someday (I1/3).*
- *Here in; my family, parents are working hard, labour because of lack of education. I do not want that to be like them. I want to make a change; I want to have a profession. I would be glad*



*to step in my parents' position. So that they get rest and enjoy what comes from the hands of their own child (F2/6).*

- *I want to bring food to the table. I do not want my children to go hungry. I want to be educated, get a job, and then help my parents one day, when I am a grown up person I want to be able to support my family and brothers (F2/7).*
- *I also want to relieve my parents. When I have finished school, I should work, I want my parents to sit down and rest, and enjoy what comes from their child's hands (F1/4).*
- *Because I want to become a good person. Perhaps after passing grade 12, I must have a good job. I want to become a doctor (I9/2).*

Although this study is not a cultural study, these responses exemplify the cultural and socio-economic background from which the participants come, which is a low socio-economic income group. This could be the reason why these learners perceive that they go to school to become educated, to practise a profession (F2/6), to put food on the table and to help and look after parents (F2/7).

In this regard Ncube (1998b:17) indicates that, in African cultures, children have duties towards their family, society and the state. The child has to work for the cohesion of the family and to support his parents in case of need. He should also preserve and strengthen cultural values. This finding resonates with Principles 7 and 10 of the DRC of 1959, which provides that the education of a child should aim at the development of a sense of moral duty and social responsibility. According to Muianga (1998:278) parents' viewpoints of and aspirations towards the education of their children in poor developing countries reflect a materialistic concept of learners' rights to education. They perceive that schooling enables children to get a job, to improve the living conditions of the family, and to take care of their parents. This may explain why the learners under investigation placed more materialistic value on their right to education, since they live in poverty and hunger. With the introduction of free and compulsory education and the prominence with which the right to education is perceived, the possibilities and likelihood of becoming educated and ultimately being freed from poverty are high (Peens, 1998:160). The ACRWC of 1990 provides in Art 11(2) that the education of the child shall be directed to the preservation and strengthening of positive African morals, traditional values and culture.

Under my first premise I assumed that learners perceive their right to education as a means to open up an array of future possibilities and opportunities. This assumption was affirmed (see § 5.2.2. and responses F2/6 and F3/4). I also assumed that learners confuse their right to education with all other human rights. This assumption is addressed in the next sub-section.

### **5.2.3 Confusing human rights**

When interpreting data about learners' knowledge and understanding of their right to education, I found that much of the data did not specifically concern the right to education, but covered a vast number of

other human rights that are directly or indirectly relevant to the learners' right to education. Table 5.1 lists human rights that some learners perceive in terms of their right to education.

**Table 5.1 Other human rights learners perceive in terms of their right to education**

Human rights	Sections in the Constitution	Responses
Equality	9	<i>...must be treated equally. Educators must not talk about our result telling other people, we must be allowed to enjoy the same rights whether you are a boy or a girl (F4/4). Another right is that we must be treated equally;... we must be allowed to enjoy the same rights, whether you are a boy or a girl (F2/4). We must get equal punishment for the same offence (F2/4)</i>
Human dignity	10	<i>Let's say if I have made a mistake, the educator should not ... drag me out of the class ... or beat me. It is humiliating and embarrassing. It would be better if they allow you to stay in the classroom and do you punishment after school (F3/2). ...must not yell at me and give me names (I3/2) The educator must talk to me respectfully, not shout at me or expel me or order me to leave the class (F3/2)</i>
Freedom and security of a person	12	<i>Educators must not ill-treat us. Either by beating or by calling us names.... (F4/3).</i>
Privacy	14	<i>Another thing that we do not want is to be punished... in front of other learners. It makes you feel somehow ... (F4/4).</i>
Freedom of religion belief and opinion	15	<i>...we must have time to pray, because we also have rights (F2/4) I must be a given chance to raise questions, and educators must respect my opinion. They must listen to me (I3/1).</i>
Freedom of expression	16	<i>Another thing is that when we do not have school uniform, educators must not send us back home (F4/2). We must be allowed to wear talismans (bangles associated with religious beliefs). Sometimes educators do not allow us to do so. Educators must listen to us too (F3/3). We want to be given an opportunity to have a say, or decide on things that affect us at school (F3/3).</i>
To have an environment that is conducive to learning	24	<i>All of us have the rights, a right to education in particular. A learner has the right to come to school and be taught, but he or she does not have the right to take away others' rights, or to disturb the whole class (F3/3). To have the right to education means that I have the right to attend the school which is protected (I5/1). No, we did not mention all our rights; what makes things worse or difficult are these broken windows. We are subjected to severe cold, cold air gets in through these windows.(F4/3)</i>
Quality education	29	<i>I think it means we must get an education that will develop us mentally. We must also have time for sports and ... (F4/2).</i>
Property	25	<i>This right means that we should not steal other learners' properties. I say there should be no stealing (F1/3).</i>
Access to information	32	<i>She must see her file if sees that some of her marks are low, she would be able to study hard so as to improve (F3/6).</i>
Administrative justice	33	<i>The worst thing is beating her. The principal should have listened to her side of the story because there are learners who stay away for a bad cause, but she is right... she has good reason (poverty) (F3/6).</i>
Equal access to educational resources	9	<i>What I want to say is that the school should provide us with books, study guides and a place to study. Another thing is that we want classrooms with desks and everything; heard other learner saying something about school library and laboratory. And at our school we do not have. I think we too should have those (F2/4).</i>

Although the right to education links up with other fundamental human rights and freedom (De Groof, 1996:224), it is a human right on its own. Learners' responses to the question requiring them to mention the rights they think are covered under their right to education reveal a variety of rights which they perceive as being part of, and protected by their right to education:

- *I must be given a chance to raise questions, and educators must respect my opinion. They must listen to me (I3/1).*
- *I think this right means that we must not fight with other learners (F1/3).*
- *... must be given a chance to read and to do what I want (F1/1).*
- *We must see to it that our school is clean. The school should be clean (F1/2).*
- *We must not steal other learners' properties. I say there should be no stealing. That is the right to education (F1/3).*

From the above responses, it is clear that some learners have limited understanding of their right to education, in that they confuse it with other human rights. Learners explain those rights within the context of the school and go further to indicate implications of those rights in connection with their own lives out of the school context. Some learners feel that their right to education means that they must be allowed to say what they want to and be listened to, which is the right to freedom of expression (I3/1).

Each of the above rights that learners confuse with their right to education is presented in the following sub-sections. Learners were correct when they responded that their right to education entitles them to an education of high standard or of good quality. This aspect is explained first.

### 5.2.3.1 Quality education

The responses show that some learners do not only know that they have the right to education, but also that they are entitled to quality education. They consider quality education to be most important and that it should be relevant to their lives in general. They went as far as mentioning that the education they receive must not only be of high quality and relevant, but should also be complete. This is evidenced by the following responses:

- *The main thing is that we must get an education of a good quality. The right kind, I think it means we must get an education that will develop us mentally. We must also have time for sports and ... (F4/2).*
- *The right that I must have here at school is that I must get education. I must get right or relevant education (I8/1).*
- *The main thing is that we must get an education of a good quality. The right kind of education, hmm the relevant one. On our part as learners we must participate in every lesson. We must also listen to our educators (F2/4).*

It is not enough to claim that learners have the right to education, without looking further at the nature and quality of education that should be provided, and to what extent it is relevant to the learners (Mialaret 1979:15). If learners observe a discontinuity between what happens in the classroom and what happens in the real life, they may feel that there is no need for them to attend



school. That might result in learners skipping classes, with a resultant increase in truancy. Perceived irrelevance of the curriculum might be one of the contributing aspects. It may result in learners being forced to abandon their right to education earlier in life than necessary (Jeffs 1986:5; Freeman 2002:112).

Some of the learners revealed something about the standard of teaching they expect from their educators and the optimal use of teaching and learning times. They expect educators to provide correct answers in time, should they ask about something they do not understand. They require an explanation, without being humiliated or embarrassed in front of other learners:

- *The right to education means that when I ask questions, educators must give me correct answers (F4/1)*
- *I think educators must supply us with answers when we ask questions. You might find that, when you ask questions about some points that you did not understand, educators may respond to your question negatively, for example: "You are wasting my time. Where has your mind been when I explained this thing to the whole class?" (F4/3).*

Learners' responses also show that they feel educators must teach them properly and must use their time fruitfully, without being left alone in the class doing nothing:

- *It is my right to come to school in time, and educators must teach me every time. There must be not too many free periods where we find ourselves not doing any thing; because that makes other learners make noise (F4/3).*

Some of the grade nine learners said that they want to be educated and to be able to read and write, for example:

- *Another right is that we must be able to read (F1/2).*
- *I must be able to learn what I want everything that I want. No one must choose for me what to learn or not to learn. I should be given a chance to choose for myself (I5/1).*

According to Rex (1979:123) literacy is the basic key to education and in principle it opens all the doors to the learners' realisation of their right to education. Learning to read, write and count means that a child could apply for non-manual work and thereby take up other occupations than traditional family trades. Another important thing about reading is that the material covered in school, in the lessons and reading materials, opens up a world that extends far beyond the local community (Huberman 1979:60).

Learners' responses reveal that they want to be empowered by educators:

- *The educators must guide and advise us (F2/4).*
- *The educators should teach us how to study. We should be able to study on our own. We must acquire good studying skills and habits. These will enable us to pass at the end of each year, and latter on if we manage to be educated we can get good jobs. And get what we want. At the end of our school years we should be able to look back and say that it was worthwhile. (F3/2).*



What the data reveals through the above responses is that some learners not only recognise that they have the right to education, but also that the kind of education that they receive should develop them mentally (F4/2), prepare them for a job (F3/2), make them literate (F1/2), guide them into making correct choices (I5/1) and liberate them from lifelong financial dependency (F2/5) and poverty (F2/7).

Learners, especially in grades eleven and twelve, feel very strongly that they need an education that is relevant. They are able to visualise their life beyond schooling. This is consistent with what O’Hair *et al.* (2000:34-35) suggest, namely that learners should be taught in a way that they can see the value of education beyond schooling. Ruck *et al.* (1998b: 271) suggest that adolescents’ understanding about their rights appears to be influenced by how they view a right in their own lives.

Some of the data indicates that learners who do not understand their right to education, link it with their right to human dignity. This perception is presented in the next sub-section.

### 5.2.3.2. The right to human dignity

Section 10 of the Constitution provides that every person has inherent dignity and the right to have their dignity respected and protected. Some respondents said that they should be respected. The issue of being respected by educators includes various issues, for example, not being ‘yelled at’ in front of all learners (F3/1 and I8/1), not being called names (F4/5) and having their opinions respected. The respect between learners and educators should be mutual (F4/2). Learners want their opinion to be heard, and educators must understand learners for who they are. This right is mentioned by the majority of learners:

- ...educator must not yell at me when I answer their questions wrongly and call me names (I8/1).
- The educators must not ill-treat us. Either by beating or by calling us names (F4/3).
- ... I think we must not be abused, especially we girls. I mean sexually or physically. (Laughter). You know, that happens sometimes, and if you refuse, they punish you for a very minor offence, and you would not know why. They may make you carry bricks. You see (F4/4).
- You may also find that, educators may teach you, yes, but shout at you at the same time, especially when they have noticed that you are not following the lesson. Sometimes you may answer the educators’ questions wrongly, and they call you names (F3/1).

Learners believe that it is their right to be heard in educational institutions. This finding is consistent with Marrow’s (1999:153) findings in a study conducted in the UK: learners do not only want to be seen, but they also need to be heard, they want to be listened to, and to be given a say in matters affecting them. They also wish to be accorded dignity and respect. This includes being consulted and being given accurate information. They want to be afforded the same respect afforded to adults

and they want to be regarded as people. This finding is also consistent with Peens' (1998:114) finding, in which most learners regarded it as important to be respected and not to be abused by their educators.

### 5.3.3.3 The right to a safe school environment

The word 'environment', when interpreted broadly, includes any physical or mental condition, or even a school (Cachalia *et al* 1994:29). Section 24 of the Constitution provides that everyone has the right to an environment which is not harmful or detrimental to one's health and well-being. The psychological environment extends to include physical and psychological conditions. The school environment is expected to be conducive to learning. A clean school environment, secure property, well cared for school facilities and furniture, and orderliness within the school create an atmosphere that is conducive to teaching and learning (sections 4 – 6 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners, 1998).

Amongst the rights which learners expect, which are directly relevant to their education, is to have an environment that is conducive to learning. The responses given by learners in grades nine to twelve reveal different levels of thinking. Grade nine learners emphasised the physical environment and older adolescents emphasised both the physical and mental environment, which they perceive to be important for their learning (F3/3). Grade eleven learners want a classroom where they can learn and study without disturbances:

- *All of us have the rights, a right to education in particular. A learner has the right to come to school and be taught, but he or she does not have the right to take away others' rights, of to disturb the whole class (F3/3).*

They want educators to treat them well. This in itself would create an environment that is not harmful to learners, for example:

- *Educators must not ill-treat us. Either by beating or by calling us names (F4/3).*

Learners want to attend classes, which are clean and have decent furniture, for example desks that are in good repair or condition:

- *No, we did not mention all our rights. What makes things worse or difficult are these broken windows. We are subjected to severe cold, cold air gets in through these windows. (F4/4).*

Learners also think that it is important for them to respect one another's rights during lessons:

- *I don't know for sure. But I think no learner must disturb me when the educator is busy teaching. I must have an opportunity to listen while the educator is teaching. There should be no noise in the class (I6/1).*

The above responses indicate that learners view their right to education in terms of a safe school environment.

#### 5.2.3.4 The right to equality

Section 9(3) and 9(4) of the Constitution proscribe unfair discrimination within the school situation, but do not preclude all distinctions, differential or fair discrimination (Beckmann *et al.* 1995:27, 35). The NEPA contemplates under section 4(a)(i) that every person must be protected against discrimination in educational institutions.

Learners perceive that their right to education means that they should be treated equally while they are at the school. They expressed different views about equal treatment; for example, some learners observed that educators treat them differently in allocating punishment that is inconsistently harsh or otherwise. They remarked that those who understand or learn quickly are treated with respect, while the slow learners suffer prejudices (F4/2). They also said that they should be treated equally and enjoy the same rights regardless of gender, for example:

- *I mean my educators should understand me and accept me as I am. My ideas and opinions should not be rejected unfairly. I also think that my opinions should be listened to. Educators must not oppress me. I must be given a chance to ask questions and be answered and not to be laughed at. I must have hmm ... (I5/1).*
- *It means that I should arrive at school in time; I must go to school everyday. Educators should teach me, mm and they must teach me together with other learners at the same time. They must not treat me differently. Sometimes educators can punish you by giving you work to do during school hours, and you miss classes (I3/1).*
- *...we must be treated equally; we must be allowed to enjoy the same rights. Whether you are a boy or a girl... for example, when it comes to punishment, we must get equal punishment for the same offences. You may find that even if we have done the same mistakes, some get lighter punishment while others are punished heavily (F2/4).*

The above responses indicate that some learners view their right to education in terms of the right to equality of treatment (F2/4) and (I5/1) and non-discrimination in education (I3/1). These responses strengthen my assumption that some learners confuse their right to education with other human rights, which implies that they have limited understanding of their right to education. NEPA provides directive principles in sections 3 and 4 that should be adhered to in all education practices, in all educational institutions. The policy directives contained in section 3 are directed towards the protection of fundamental human rights, and in particular, section 4(a) provides for the right of protection against unfair discrimination within an educational institution.

#### 5.2.3.5 The right to safety and protection

The Constitution provides in section 12(2) that everyone has the right to bodily and psychological safety. According to Cachalia *et al.* (1994:100) safety refers to freedom from danger or injury,

affording security, or not being exposed to risks. It is the duty of the school to provide learners with a safe school environment, in which learners feel secure and protected. In international law, state parties are obliged to protect children from all forms of physical or mental harm or abuse while they are with any person who has the duty to care for them, including parents and educators. This protection is enshrined in article 19(1) of the CRC of 1989. Article 5(1) of the SCHR of 1969 also provides that every person has the right to have his physical and mental or moral integrity protected.

This duty can be linked to the principle of *in loco parentis* which means 'in the place of parents'. In terms of this principle, educators are expected to exercise the same standard of care as a reasonable, careful parent in promoting the safety of learners under their supervision and care (Alexander & Alexander 1992:282; Beckmann *et al.* 1995:50,104). It is the educator's duty to ensure that learners under his or her supervision are protected from all forms of physical and mental harm. According to Saunders (1994:7), safety in school involves firstly the atmosphere of safety, that is, a climate in which learners feel comfortable and happy. The classroom environment should be a pleasant, peaceful setting, contributing to effective teaching, thinking and learning (Netshitahame 1999:33).

The right to be protected from all forms of abuse, physical or mental, is another right which learners include under their understanding of their right to education. Firstly, they think it should start with attending a school in which they feel safe and protected, for example:

- *To have the right to education means that I have the right to attend a school which is safe and protected (I5/1).*

The right to safety and protection is also directed towards the behaviour of learners themselves, for example:

- *We should not ill-treat one another in a way of beating and stealing each other's property, especially we boys (F4/2).*
- *We must be protected from abuse and bullying (F4/3).*

Learners also raised the concern of abuse; physical, sexual or mental. Their responses indicate that they are aware that their rights should not be abused while they are at school. They also indicated that they should not be subjected to harsh punishment, degraded, belittled, humiliated or called names. For example:

- *Educators must not ill-treat us. Either by beating or by calling us names. (F4/3).*
- *Another thing is that educators must not punish us in a harsh ways. There is too much beating in this school (F2/3)*
- *...educators must not punish us in harsh ways.*
- *Another thing is that, educators must not yell at me when I answered their questions wrongly and give me names (I8/1).*

Some learners expressed the right not to be sexually abused:

- ... Another thing is that, some educators like to have sexual affairs with learners. I think I should be protected from those abuses (I8/2).
- I think we must not be abused, especial we girls. I mean sexually or physically (laughter). You know, that happens some times. And if you refuse, they punish you for a very minor offence, and you would not know why. They may make you carry bricks, you see (F4/4).

Response (F4/4) reveals the reality that acts of physical and psychological abuse are common occurrences in some schools in South Africa. The Human Rights Watch found that an unacceptably number of girls suffer sexual violence at schools, in that they are raped and sexually harassed by both male learners and educators (Prinsloo: 2005:7).

The above responses show that some learners confuse their right to education with their rights to safety and protection (Section 12 of the Constitution). Some are of the opinion that their right to education includes protection from all forms of mental and physical abuse (see responses F4/2, F4/3, and I8/2). This is further evidence to enable me to conclude that some learners have limited understanding of their right to education.

Regarding corporal punishment at school, the responses show a mosaic of opinions. Some learners regard it as acceptable for educators to administer corporal punishment to learners, for example:

- I think the learner is the one who is doing things which are not allowed. The principal is doing his job. He cannot allow her to come to school at will. She must come to school every day. Attending school and classes is not voluntary. You come to school or they punish you (3/10).

Those who were against corporal punishment said:

- Let say, if I have made a mistake, the educator should not ... drag me out of the class ... or beat me. It is humiliating and embarrassing. It would be better if they allow you to stay in the classroom and do you punishment after school (F3/2.)

The above opinion may be ascribed to the fact that under the previous educational system, corporal punishment was legal and the impact thereof still lives in the minds of parents. As a result, it may influence the way in which learners perceive their rights, since learners' understanding of their rights is partly influenced by the views of people around them (Bohrnstedt *et al.* 1981:443; Parikh 1980:1031, 1037). Another explanation might be that corporal punishment is still being applied in some schools despite the fact that it has been legally abolished (Ngobeni 2001:9). Learners might have witnessed beatings or have practical experiences of suffering corporal punishment. This finding is consistent with the study conducted by Zulu *et al.* (2004:172) which indicated that 67% of

learners responded that their educators applied corporal punishment, while 74% had witnessed attacks on fellow learners. In the same vein Prinsloo (2005:8) found that 74% of principals and educators still apply corporal punishment.

The literature shows that corporal punishment is still being used in some schools despite its abolition. The finding in my study that learners are divided on the issue, is consistent with Covell and Howe's (1995:195) findings that in the domain of abuse, great differences are observed: Fifty five percent of male and 41% of female learners believe it to be right for parents to physically punish children (corporal punishment), but only 8% believe that educators should be allowed to punish learners in this way.

#### **5.2.3.6. The right to freedom of religion**

Section 15 of the Constitution recognises both personal freedom of conscience and of religion and the right to conduct religious observances at state and state aided institutions. Religious observations are guaranteed provided that they are conducted in accordance with the rules made by the school governing body (section 7 of Schools Act), are conducted on an equitable basis and the attendance thereof is free and voluntary (Beckmann *et al.* 1997:9 and 1995:95). For a more detailed discussion of freedom of religion see § 2.7.7.

This right was mentioned several times by learners in grades 10 to 12, although none of the grade nines mentioned anything about religion. Grades 10 to 12 were of the opinion that the school should allow them time to pray. Some of them suggested the times for prayers and the reasons for this need, for example:

- *We also want to be given a chance to attend prayers, some do have these opportunities (F3/3).*
- *We must be given time for prayer may be two-times a week (F4/3).*
- *Another thing is that we must have time to pray, because we also have rights, they must allow us time to attend prayers. May be in the morning or arrange for us a student run-religious forum (F2/4).*
- *We must be allowed to wear talismen (bangles associated with religious beliefs). Sometimes educators do not allow us to do so. Educators must listen to us too F3/3.*

The above responses indicate that some learners confuse their right to education with their right to freedom of religion ((F2/4) and (F3/3)). This finding is consistent with Peens (1998:137) who found that senior grades endorse freedom of religion. The best explanation might be the body of scholarship which suggests a developmental trend when it comes to learners' understanding of human rights (Abramovitch *et al.* 1995:4; Melton 1980:187; Melton & Limber 1992:175; Peterson-Badali & Abramovitch 1992:156; Ruck *et al.* 1998a:404, 413). Age is found to be the most powerful determinant of learners' understanding of their rights. With increasing age, knowledge in the social sphere also increases and become richer, more specific, sophisticated, abstract and differential. It



is between the ages of 14-16 years that learners start to speak in terms of actually having or not having a specific self-determination right, and they become more aware of the nature of human rights. A detailed documentation of the levels of understanding of the right to education and other human rights is presented in chapter six.

#### 5.2.3.7 The right to access to resources

Another right which learners perceive as being very important for their education is the availability of learning and physical resources. Access to resources impacts the intellectual and emotional outlook of students and affects the quality of education and the decisions learners make about their own lives (O’Hair 2000:344). Teaching and learning cannot proceed well if there are no educational resources. Most learners perceive that they have the right to be given learning support materials. The following responses confirm this point:

- *We should be able to get what is necessary for our education. Things like books... Educators must attend their periods in time. We must not lose any period... or find ourselves doing just nothing. Making noise and ... This always happens when we are left alone in the classes (F4/3).*
- *What I want to say is that the school should provide us with books, study guides and a place to study. Another thing is that we want classrooms with desks and everything. I heard other learner saying something about a school library and laboratory. And at our school we do not have them. I think we too should have those (F2/4).*

#### 5.2.3.8 The right to access to information

Learners should have equitable access to tangible resources such as supplies, material and equipment. They should also have access to non-tangible resources such as information, decision making and instructions. Section 32 of the Constitution provides that everyone has the right to access any information that is required for the exercise or protection of other rights. Access to information is limited by the fact that the information supplied to the learner must not be harmful to him and should be such that it affords him the opportunity to access and promote other human rights. Furthermore, supplying learners regularly with information on their progress and other useful information may support them in exercising their right to education.

Vignette 3 refers to the learner’s right to access his/her personal file. This was also addressed in part in vignette 2, which refers to equal access to learning resources and own progress information. Most learners were against the authority’s decision not to allow a learner to see his file. They were of the opinion that a learner must have access to his file, and would insist that they be given their file had they been in the same position as the main story character. The results indicate that various perceptions, reasons and motivations exist for either demanding to see a personal file, or not. Some learners were motivated by the fact that it is their right to do so, whereas others claimed that





a learner must see his file because it could be a motivation for working harder:

- *She must see her file if sees that some of her marks are low, she would be able to study hard so as to improve (F3/6).*
- *May be if I know what it says about me, I could change my ways of doing things.*
- *She must see her file so that if her mistakes are increasing, she must limit them, or reform (F1/9).*
- *...must be given chance to see her file so that she knows what is written or known about her. Perhaps there might be some issues she might want to redress. If the file says well about her, it could make her feel good about herself (laughter)(15/5,6).*
- *Yes, she must see her file because it contains her information. It is possible that educators might write something bad about learners. Especially about learner who are naughty (F3/6).*

These responses indicate that some learners perceive that their right to education allows them to access any information that the school has about them. The results are consistent with Peens' (1998:130) finding that seeing one's own progress chart might influence one to work even harder in order to improve. In this regard grade 11 learners said they would humbly request the principal to allow them to see their file.

Schools maintain much personal information about learners. These records may be sensitive and are certainly confidential. In essence, access to a student's records is restricted to persons within the school system and parents. Parents and students who are over 18 may challenge material in the learner's record file that they believe to be inaccurate or misleading (O'Hair 2000:263). The fact that most learners in this study affirmed their rights to access personal files and progress charts is consistent with Peens' (1998:137) finding with regard to learners aged 15 and 18 years.

The empirical results reveal that learners have different perceptions with regard to withholding results. When asked to judge whether or not the principal should withhold a learner's results and deny him access to his examination results, the responses exhibit a mosaic. Learners' answers were not totally congruent. The majority felt strongly that learners should not be denied their right to education (access to learning resources and examination results) due to non-payment of school fees (poverty). On the other hand, there were those who felt that principals are doing the right thing when they withhold learners' results and deny them access to examination results. The former group expressed the concern that by denying them their results and textbooks, the principals seem to be removing their right to education:

- *The principal's actions are wrong... When he deprives her of her results, it is like he is taking her right to education away. The law does not allow him to do so (F4/8).*
- *I see that the principal's action is wrong; he is violating her rights. It is not allowed to deprive a learner her right to access to her results and books. The people, who are responsible for paying the fees, are her parents. He should have talked to her first before taking any step, or he should have helped her to get over this problem (F4/9).*
- *I too say so. The principal's actions were wrong. He is violating Mary's right. If I have been in her position, I would demand to see my results and the books. If a learner just come to school, and has no books, the possibility is that he will not pass (F4/9).*

The above responses seem to suggest that some learners perceive that the right to access to information is important for the realisation of their right to education.

### 5.2.3.9 The right to freedom of choice

The right to make their own choices was affirmed by most of the learners and was in particular the same for male and female respondents. Learners felt they should be allowed to exercise their right to make choices, for example, to be able to choose what to learn and what not to learn (F2/2 and I5/1). They were referring to all information, but also to the freedom in terms of subject choice. They also felt that they should be able to learn without anyone standing in their way (F3/2):

- *I must be able to learn what I want, everything that I want. No one must choose for me what to learn or not to learn. I should be given chance to choose for myself...To have the right to education also means that I have the right to attend a school when is protected when I want. It also means that I can pursue any career of my choice and have a better life (I5/1).*
- *... Must get a chance to choose the subjects which we want (F2/2).*
- *Another thing is that no one must stand in my way (F3/2).*

This finding is consistent with that of Tapp, as cited by Taylor *et al.* (2001:141). He found that learners who were members of the Learner's Representative Council (LRC) had the feeling that they were only given jurisdiction over minor matters like the number and placement of rubbish bins. They presented a strong desire to be involved in matters concerning the choices of school curriculum and subjects.

### 5.2.3.10 The right to privacy

The right to privacy is provided for under section 14 of the Constitution and paragraph 4.3 of the Guidelines for the Consideration for the SGB in Adopting a Code of Conduct for Learners of 1998. Every learner has the right to privacy, which entails the right not to have their person, home or property searched; their possessions seized or their privacy of communication infringed. The school keeps confidential records of learners' progress (or lack thereof) that must not be disclosed to unauthorised persons. However, the school may conduct a search and seizure if they have reasonable suspicion that learners are in possession of harmful substances that might endanger the rights of other learners. Some learners think that under the scope of their right to education they have the right to privacy of space and information. They dislike being punished in front of other learners, for example:

- *Another thing that we do not want is to be punished heavily or in front of other learners. It makes you feel some how .... Like for example when educators make you plough or dig holes for nothing (F4/4).*
- *... educators must not just beat us; They beat us. I feel bad and humiliated... especially if they beat you in front of all other learners (I3/1).*
- *If you fail a test, they say it in front of the class, just like you are the dullest of the whole class*

- (I3/1).
- *The educators must respect her privacy (F2/16).*

From these responses it is evident that learners view their right to education in terms of their rights to privacy of space (F4/4) and information (I3/1). They are unable to differentiate among human rights. To them, their right to education implies human dignity (F4/4) *and* privacy of space (I3/1). This confirms my assumption that learners have limited understanding of their right to education.

The finding that some learners endorsed their right to privacy is in line with the findings made by Melton and Limber (1992:176-178), namely that a developmental trend is evident in learners' views of their rights to privacy. Younger learners tend to emphasise freedom of space, whereas older learners defend privacy of information as a matter of principle.

#### **5.2.3.11 The right to freedom to make decisions**

Learners' rights to make decisions about matters which affect them and the right to be heard are contained in sub-section 4.15 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners of 1998. This sub-section states that all learners at a school should have the right to participate in decision-making about matters affecting them at the school. They also have the right to have their views about these matters heard. Some learners' responses indicate that they regard their right to education to include their involvement in decision making:

- *Educators must also involve us in deciding important things (F4/3).*
- *We want to be given an opportunity to say or decide on things that affect us at school (F3/3).*

Learners feel they are not taken seriously when decisions are made. The irony is that one of the aims of education (Hodgson 1996:251) is to enhance the capacity for decision making in learners, and yet in crucial areas of major decision making about learners' education, this capacity is removed from those who are most affected (learners), with adults making decisions on their behalf. This result is consistent with the findings of Ruck *et al.* (1998a:25) that most adolescents believe that they should make their own decisions. In this regard Allan (2004:123) investigated learners' perception of their positions and powers within a school. She found that learners express the feeling that they occupy a very low position in the hierarchy within the school. Adults and educators seem to make most of the decisions (Allan 2004:125). In Taylor *et al.*'s (2001:139) study, learners stressed participation rights as being more important than what educators stress.

In conclusion, the results indicate that learners have a vague or general knowledge about human rights, but are not aware of the specific details of their right to education. It is as if learners perceive

their right to education as an umbrella or an embodiment of all other human rights.

In section 5.2.4 I discuss learners' perceptions of the beneficiaries to the right to education.

#### 5.2.4 Learners' perceptions of the beneficiaries of the right to education

Although in terms of articles 26 of the UDHR and 13 of the ICESCR, the right of 'everyone' to education is recognised, learners are naturally the main beneficiaries (Detrick 1999:474). The responses to the question 'Who has the right to education?' showed different perceptions. There is a trend ranging from everyone has the right to education (universal) to specific people having such a right. The majority of learners recognised that the right to education is universal, for example:

- *Everyone has this right (F 2/7, I10/2, F3/4 and I7/1).*
- *Everyone. It is the right of every one (I1/2).*

This response is consistent with the findings of Limber *et al.* (1999:373). When asking their respondents the question 'Who has rights?' they found that most respondents claimed that everyone has rights. Peens (1998:111), in her study, asked learners the same question, with the majority of respondents again recognising that rights belong to everyone.

However, in this study, some of the learners perceived that the right to education belongs to specific types of people, for example:

- *Young people (I3/2), Learners (I6/2).*
- *Me, leaders, youth, adults, young people, all mankind (I9/2).*
- *Educators and learners (I2/2).*
- *We, learners, educators. I am not so sure (laughter) (I8/2).*
- *The right to education belongs to every learner who is at school. Every learner at school has the right to education. I think so (I5/3).*

These responses show again that some learners have a limited understanding of their right to education. This mode of thinking may retard learners in being able to assert their right to education with confidence. While some learners think that the right to education belongs to a particular group of people, others perceive it as something that one must work for, or earn. This is evidenced by the following responses:

- *... You have a right, but you don't have it. If you are not responsible for your education, for your future, no one can learn for you. If you do not care what will become of you, you are like a person who does not have this right because it will not work for you (F3/4).*
- *All of us have the right to education. But not all of us can get it. You see. Poverty can take away everything from you. Even your self-respect (F4/6).*

Response (F4/6) seems to suggest that learners think that those who are from affluent families are

most likely to realise their right to education. Although the majority of 10 year old respondents in Ruck *et al.*'s (1998b:276) study were aware that human rights are universal, some misconceptions about the rights still persisted. My finding is consistent with Ruck *et al.* (1998b:276), who found that some misconceptions can be retained well into late adolescence. Surprisingly, even some of the grade 12 learners in this study thought that the right to education belongs to a particular group of people, as indicated above. They agreed on this point during the focus group discussion, and this was confirmed during interview sessions. This mode of reasoning would be expected from younger learners. Again it proves that some learners have a limited understanding of their right to education or that the development of their capacity to understand certain rights does not fit some of the prominent models in this regard.

Although learners are the main beneficiaries of the right to education (Hodgson 1998:5), there are substantial articles in human rights instruments that indicate that the right to education applies to anyone without discrimination of any kind; for example, "every one" in article 1-3 of the UDHR (1948), and 'all human beings' in article 6 of the ICCRP. This means that the right to education is universal.

### 5.2.5 Conclusions with regard to my first premise

The above discussion confirms my first premise that learners have limited knowledge of their right to education.

Under this premise I assumed four things, all of which were confirmed by learners' responses:

(a) Some learners know about their responsibilities under their right to education:

Learners knew that under their right to education they have responsibilities, for example:

- **To learn:** for example, not making noise in the class (F4/3), not skipping classes/periods (F4/2), doing all schoolwork/homework (F1/3), being self-disciplined (I5/1), using time fruitfully, seeking help from educators (I5/1), studying on their own (F2/4), accepting instructions, being accountable for what one does, participating in lessons (F2/4), being willing to learn and not doing funny things in the class (F4/1) (see § 5.2.1.1).
- **To attend school:** for example, coming to school every day (F4/2), coming to school on time and attending all classes (F3/2) (see § 5.2.1.2).
- **To follow school regulations:** for example, behaving well, listening to the educators (F2/4), accepting instructions (F4/2), not being arrogant, respecting educators and learners; honouring and respecting educators (F2/3), not belittling educators (F1/3), not undermining educators'

authority (F1/2), not talking back to educators (F1/3), learning to know when one is doing the right or wrong things, listening to one's conscience (F3/4), not ill-treating one another and not bullying other learners (F4/2) (see § 5.2.1.3).

What also emerges from the responses is that learners do not understand that they cannot be held accountable or solely responsible under the law, if they do not attend school, but that their parents are liable if they fail to send a child of compulsory school-going age (under the age of fifteen) to school. Some view it as their responsibility to pay school fees and they recommend that if parents do not have money to pay school fees, learners should go to work.

A possible explanation for this opinion is that in the past, the notion of free education was unheard of and those whose parents did not have money, had to drop out of school or seek part time work in order to get money to pay school fees. In this regard Covell and Howe (1996:253) claim that the political environment influences the way in which learners understand their rights. In South Africa today able parents are liable to pay school fees in terms section 40 of Schools Act as imposed by the SGB and approved by the majority of parents (Schools Act sections 38 and 39(1)), unless they qualify for full, partial or conditional exemption. If able parents fail or refuse to pay fees, the SGB may, by the process of the law, force payment in terms of section 40 of Schools Act and on conviction they are liable to be charged. This might have influenced the learners to reason that the principal was right and fair to deny a learner access to his results because of non-payments of school fees.

(b) Learners regard their right to education as a means to access future opportunities or to fulfill their aspirations:

Learners' responses indicated that, amongst other things, they aspire to material or economic independence (F2/5), social status (I9/2) and cultural fulfillment (F2/6),

(c) Learners confuse their right to education with other human rights:

When asked what it meant to have the right to education, they tended to explain their right to education in terms of other human rights that they perceive are covered under the scope of their right to education.

(d) Lastly, learners' responses show limited understanding concerning the beneficiaries of the right to education

Some think that the right to education is reserved for a specific group of people. This finding is consistent with Ruck *et al.* (1998b:276) who found that some misconceptions about human rights may well be retained until late adolescent stage. Melton (1980:189) found that learners from disadvantaged communities are suspicious as to whether or not they too really have rights. Those

who live in impoverished environments may grow up to see themselves as having few rights, less access to self-actualisation and fewer opportunities for self-determination. Similarly, Melton and Limber (1992:175) found that socio-economic status plays a role in learners' understanding of their rights.

Covell and Howe (1995:191) conclude that whereas even young learners can understand and exercise some of their rights, their knowledge of rights tends to be limited to their experiences and they do not understand what different human rights entail (Van Vollenhoven 2005:149). Van Vollenhoven's (2005:151-152) findings show that learners have a vague knowledge about human rights. They know the different types of human rights by name, but do not understand what specific human rights entail. What can be deduced from the data in this study is that when it comes to the level of understanding of human rights, the learners showed some maturity, but in other cases they lack maturity.

Next I explore what the data reveal about my second premise that some learners do not know how to exercise their right to education.

### **5.3 PREMISE 2: SOME LEARNERS DO NOT KNOW HOW TO EXERCISE THEIR RIGHT TO EDUCATION**

My second premise is that some learners do not know how to exercise their right to education. In this regard I assume that:

- **Some learners regard their right to education as unlimited**
- **Some learners perceive that their right to education can be limited**

The data that I use to explore this assumption was obtained from the responses to the questions contained in sections A and B of the schedule used for both the focus group discussions and face-to-face in-depth the interviews (see Addenda P & R). The responses from the focus group discussions and the in-depth face-to-face interviews are reported as a whole. The criteria used in the limitation of the right to education were discussed in § 2.8.2.1.

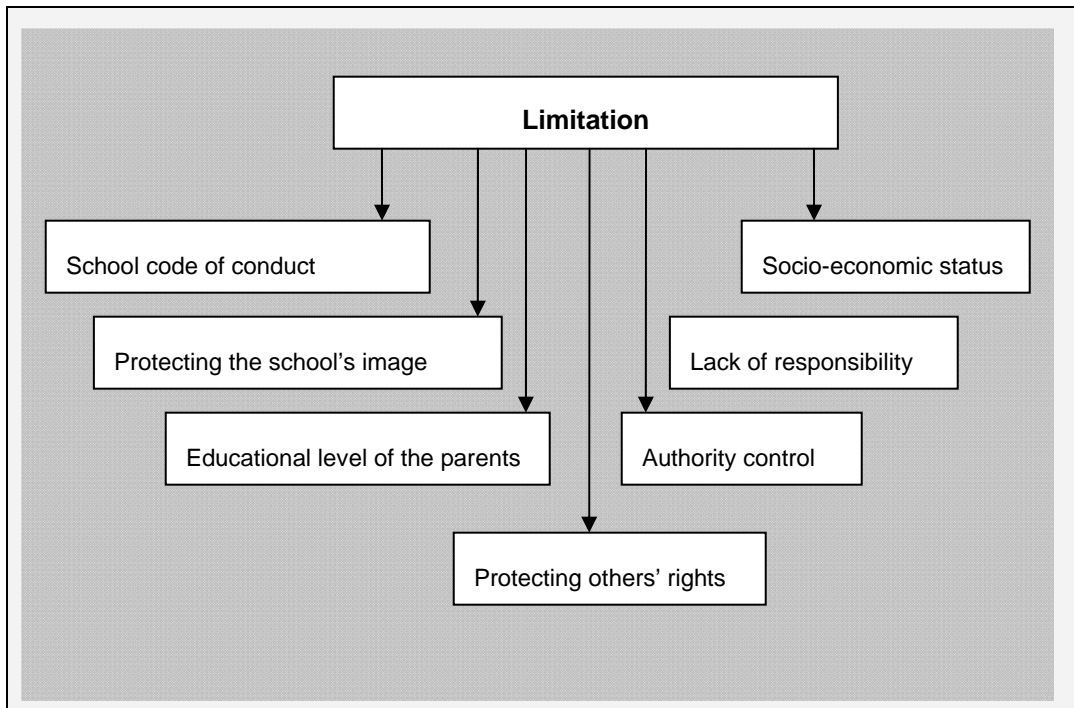
When asked whether or not their right to education can be limited, the results show a medley of different perceptions. There are learners who believe that their right to education cannot be limited, while others think that it is possible to limit the right to education. Very few responses showed evidence of learners not knowing whether or not their right to education can be limited. Mostly, learners' responses about the limitation and non-limitation of their right to education refer to other



human rights they perceive are protected under their right to education. Another aspect to consider is the learners' rationale for thinking that their right to education is absolute or not absolute. I shall discuss the pattern of limitation of the right to education as depicted in figure 5.4 and, secondly, the pattern depicting non-limitation of the right to education, as shown in figure 5.5.

### 5.3.1 Limitation of the right to education

Limitation of a right can be referred to as a 'justifiable limitation' of a right. The right to education, like all other human rights, is not absolute. It is subject to limitation. Learners have the right to education which they should exercise and enjoy. Sometimes, during the exercise of this right, different interests may emerge, which may lead to conflict and violation of one another's rights. In order to bring harmony rights are therefore limited. The justifications learners gave for limitations of their right to education are depicted in Figure 5.4.



**Figure 5.4: Portrayal of the pattern of limitation of the right to education as perceived by the learners**

Learners think that school rules can be used to limit their right to education. In fact, their responses point to the aspects learners think have the potential to impede or hamper their realisation of their right to education. Figure 5.4 depicts the practical grounds that learners think form the basis for limiting their right to education, namely limitation in terms of the code of conduct, limitation in order to protect the school's image and other learners' rights, limitation ascribed to the level of education of the parents and their authority and control, and limitation due to lack of responsibility.

Each of these aspects that learners think may limit their right to education is discussed in the following sub-sections, beginning with the school code of conduct.

### 5.3.1.1 Limitation in terms of the code of conduct

In terms of Schools Act section 8(1) the SGB is vested with the power to adopt a code of conduct aimed at providing a safe school environment and to ensure that the school performs its functions smoothly. Learners are expected to behave as the school requires them to. When a learner is enrolled at a public school it should be understood that he is subjected to the authority of the school and is bound by the rules (Prinsloo & Beckmann, 1989: 197). If learners' behaviour does not conform to the code of conduct or endangers the safety of other learners, they may be suspended from school and that could compromise their right to education. During the focus group discussion, learners agreed with the following response:

- *I think if a learner is disturbing the class, the educators would be doing the right thing if he asks that learner to leave the class, because he is not the only one who has the right to education. We cannot allow him or her to trample on our rights. We cannot tolerate to be disturbed by one learner (F3/3).*

This response implies that school rules are absolute and must not be contravened. Learners perceive that school rules are there to be followed and that it is their responsibility to conform to school rules. This seems to confirm what I assumed earlier in § 5.2.1.3 that some learners know about their responsibility to follow school rules. This is evidenced by the following responses:

- *I know so. As families have rules, so are the schools, for example, if we hear that a certain school does its things in this way, we must not just do or follow what they do, we must first look if it is applicable or does not contravene the regulations of our school (F3/7).*
- *...as a school child, he must follow the school's decision. He must do all the subjects that are compulsory. The school is not denying him his right to education, the thing is each school has its own rules and regulations which must be followed (F3/4).*
- *She must never criticise the school rules. If she senses that those rules are difficult for her to follow, she must just leave and go seek admission in other schools. If she criticises school rules openly, she might spoil other learners and that would not be good for us (F1/9).*
- *But remember, he is not the only one who has the rights. He has the right to choose the subjects he wants depending on what he wants to become, but the school authority too, has the responsibility to decide on the stream they want their learners to follow. ... you know that we have commercial schools, agricultural colleges and technical schools, they are different (F3/5).*
- *Some rules help us to keep things in orders and they prevent us from doing wrong things. A rule serves as deterrence... Especially if you think the consequence of breaking the rules might be bad (F2/15).*

These responses are evidence of the fact that some learners think school rules can be used to limit learners' right to education. This is backed up by response (F3/4) which concerns the opinion of learners with regard to their rights to choose school subjects and follow school rules.

From these responses one can deduce that learners view school rules as one aspect that can limit their right to education. They think that school rules must be followed strictly (F3/4). This finding may be ascribed to the fact that educators are the products of bureaucratic schools system where human rights were unheard of and learners had to do as they were told. According to Covell and Howe (1996:253) the political environment in which learners grow up may influence their understanding of rights. If learners grow up in rights conscious and rights supportive milieus they will more likely have concern for the rights of others.

### 5.3.1.2 Limitation in order to protect the school image

Some learners think that their right to education can be limited in order to protect the school's image. They think that if the behaviour of some learners is such that it may harm the good name of the school, those learners may jeopardise their own and other learners' right to education. The principal might be forced to take steps against such perpetrators. In this case, learners tend to side with the school authorities:

- *That article should not be printed because it may damage the good name of the school. The learner might not have looked at all sides of the rules. No. It must not be printed (F4/10).*
- *Learners might fight with one another. Crime in the school may increase, learners may stab one another. We may find that girls might be raped, here in the school premises. So many bad things might happen. Male learners may bully the girls or even stealing and theft may increase. Rules protect us (I3/3).*

Protecting the school's image is one of the ways in which learners think their right to education can be limited (F4/10). Some learners think that if learners are allowed to criticise school rules and end up not following what the school says, then some learners might do as they wish, for example, that bullying, stealing and crime in the school may increase (I3/3), thus adversely affecting the good name of the school. The notion that learners may not assert their right to education because they want to protect their school's good name is in line with the findings reported by Peens (1998:148,164) that learners try to avoid conflict in school matters, that there is a strong feeling of loyalty toward one's school, and that one should avoid giving one's school a bad name. This result is also consistent with Van Vollenhoven's (2005:176) finding that some learners may abandon their right to freedom of expression in order to uphold their school's image. This finding seems to suggest that schools are authoritarian and as such emphasise conformity. So schools have an influence on how learners view their rights (see § 3.4.2).

Some responses indicated that learners think the level of education attained by a parent could in some way be a limiting factor to the right to education of their child. This idea is discussed in the following sub-section.

### 5.3.1.3 Limitation ascribed to the educational level of the parents

Bohrnstedt *et al.* (1981:455), Denney and Duffy (1974:279) and Mehan (1992:34) found that the level of education and the level of moral reasoning of the parents may influence the way in which learners reason about their rights. Louw *et al.* (2006:21) found that the level of education attainment of parents determines to a certain extent how 'high up the education ladder' their children may climb. I asked learners to respond to the question: 'Can anyone take away your right to education?' Of those who perceive that their right to education can be taken away, the education level of the parents is depicted as a major possible threat that can deprive a learner from exercising his or her right to education. Among others, one learner responded in this way:

- *... But sometimes it might happen. Yes. Let's say a parent, when, he, himself, is not educated, he may consider it useless to send you to school. He may decide not to send you to school, or end your schooling if there is no money (16/2).*

Learners mostly think about their right to education not in terms of the law or the education clause in the Constitution, but in terms of their circumstances in their day-to-day lives. They perceive that their right to education can be limited by aspects outside the school, in particular that it is dependent on the whims of their parents and how they view the value of education. If the parents do not understand the value of education, they may not support their children effectively in matters concerning their education. This response indicates that although some learners know that their right to education can be limited, they tend to refer to their practical experience with rights and not what is contained in sections 29 and 36 of the Constitution. In this regard I infer that learners do not know how their right to education is limited. The next sub-section deals with the protection of the rights of other learners as a possible reason for limiting the right to education.

### 5.3.1.4 Limitation in order to protect the rights of other learners

Sections 8(1) and 8(2) of Schools Act provide that the SGB must adopt a code of conduct, which is aimed at maintaining school discipline and a purposeful school environment to make sure that quality learning processes are maintained. If a learner's behaviour is such that it may disturb other learners' rights to learn, such a learner may be subjected to disciplinary measures and the school code of conduct may be applied to reprimand that particular learner. In this regard, some learners think that their right to education can be limited if they are punished in order to protect the right of other learners in terms of an environment that is safe and conducive to learning. This is supported by the following responses:

- *Learners may do things which are unacceptable like smoking, bringing in knives, drugs, fire arms and things like these; boys might come to school mixed up or they might bully other learners. If there are rules, we may feel protected. We will not fear for our lives and health (13/4).*



- *She must never criticise the school rules. If she senses that those rules are difficult for her to follow, she must just leave and go seek admission in other schools. If she criticises school rules openly, she might spoil other learners and that would not be good for us (F1/9).*
- *I think if a learner is disturbing the class, the educators would be doing the right thing if he asks that learner to leave the class, because he is not the only one who has the right to education. We cannot allow him or her to trample on our rights. We cannot tolerate to be disturbed by one learner ... (F3/3).*

The last response (F3/3) illustrates the view of some learners that the right to education can be limited in order to protect other learners' rights to learn. They go to the extent of saying that instead of contradicting the right of other learners; one must just leave and must not say anything (F1/9). This implies that some learners know that their right to education can be limited in order to protect the rights of others.

#### **5.3.1.5 Limitation by the authorities in order to control**

When asked whether or not their right to education can be taken away, some learners expressed the feeling that this could happen. The school authorities are depicted as the ones who may limit their right to education. In this regard:

- *And if you have bad manners, you disrespect your educators, you cannot expect to enjoy your right if you dodge classes, then you are taking away your own right (laughter) (F4/6).*
- *If there are no rules at school, no one could respect one another. Learners may leave and stay at school as they wish (F2/15).*
- *She must never criticise the school rules. Because even at her own home there are rules and if she continues to criticise school rules, the school might expel her (F1/10).*
- *Say for example if a learner has been reprovved or reprimanded more than twice, we understand that punishment should follow. If there is a recurrence of the same offences, parents can be called to the principal's office, and informed about their child's behaviour (F3/2)*

Learners are of the opinion that those in authority can limit their right to education. Maybe this is because some learners hold the view that a learner must never challenge the decisions of the authorities as a matter of culture and due to the nature of authoritarian schools that emphasise unconditional respect for authority (F4/6). This mode of reasoning is said to be at pre-conventional level (Ruck, *et al.* 1998(a): 405; Salkind, 1994: 540) (see § 3.5.2.1 & § 6.2.1.2.) and may delay learners' development to a post-conventional level, as the school authorities are considered to control everything that goes on at school (F2/10)

The findings on levels of rights reasoning (research premise: 3) are presented in chapter six.

#### **5.3.1.6 Limitation ascribed to a lack of responsibility**

Some learners believe that their right to education can be limited by a lack of responsibility on the part of learners. They are of the opinion that the right to education can only be real to those who

take responsibility and work in order to earn their rights. They expect educators to help them in their education quest and, if that is not the case, their rights will only be nominal and unreal. In this regard learners provided the following responses:

- *It depends on what you do. The right might be yours, but if you do not know what you want in life, you will not enjoy your right to education. And if you do not follow school rules, disrespect educators, dodge classes; you might be expelled from school (laughter). And poverty can take away everything from you, your education, your self-respect and ... that is all (F3/4).*
- *I do not think so. You have a right, but you do not have it. If you are not responsible for your education, for your future, no one can learn for you. If you do not care what will become of you, you are like a person who does not have this right because it will not work for you (F3/5).*
- *... Everyone must make sure that he or she enjoys his or her right by working hard towards the accomplishment of your goal. That is becoming educated (I3/2).*

Although the learners' right to education is protected under section 29 of the Constitution, some learners have the perception that their right to education is limited by a lack of responsibility (F3/4-5) and that education is something that they must work for (I3/2). These responses support the notion that some learners know that their right to education can be limited, but do not understand how and why it can be limited. They also do not seem to know that one cannot accept rights without corresponding duties.

I now turn to the last aspect that learners perceive could limit their right to education, as revealed by the data, namely socio-economic status.

### 5.3.1.7 Socio-economic status

The socio-economic environment in which learners find themselves may influence the way they view their rights. Those who grow up in affluent families experience their rights being met (Melton & Limber 1992:172-183) whereas those who grow up in poverty may experience uncertainty as to whether or not they really have any rights. The socio-economic status seems to affect the seriousness with which they value their right to education (Connell 1993:14) (see also § 3.4.7). In this study, learners' perception that their right to education can be limited by the socio-economic status of their families emerged strongly. Most of the learners raised the fact that they come from poor families which has the potential to hamper or limit their right to education. Learners provided the following responses in this regard:

- *All of us have the right to education, but not all of us can get it. You see. Poverty can take away everything from you. Even your self-respect, and if you have bad manners, you disrespect your educators, you dodge classes, then you are taking away your own right (laughter). (F4/6).*
- *...when we do not have school uniforms, educators must not send us back home. Because we are not responsible for buying school uniforms. Educators also send us back home if our parents are unable to pay school fees. I think that is unfair (F4/2).*
- *Sometimes parents could be held responsible for if their children are drop out of school or do not attend school regularly you see. They don't give you school fees .... You ask them to give you, they say quit, go to work. I want an education that will make me feel confident and be able to raise a*



*good family. Some parents would not tell their children when they are wrong or right. And so, a child ends up thinking that there is no difference between what is wrong and what is right ... going to school or not is the same ... (F3/3).*

One can deduce from these responses that some learners know that their right to education can be limited, albeit by some aspects that affect them outside the context of the school. For example, aspects such as poverty (F4/6) and parents' attitude towards school (F3/4) have a direct influence on whether or not they succeed in their schooling. The report of the public hearing of the SAHRC (2005:38) rates poverty as one of the major aspects that impacts negatively on learners' right to basic education.

To conclude this section on the limitations of the right to education, it is evident from the data that some learners know that their right to education can be limited, but do not fully understand how it can be limited. This assumption is substantiated in the preceding paragraphs. Those who said that their right to education could be limited ascribed the limitation to the following issues:

- Limitation in terms of a code of conduct (F3/4) and (F3/7)
- Limitation in order to protect the image of the school (F4/10)
- Limitation in order to protect the rights of other learners (I3/3)
- Limitation ascribed to the educational level of the parents (I6/5)
- Limitation ascribed to lack of responsibility (F3/4)
- Limitation ascribed to socio-economic background (F4/6)

These aspects are depicted as major possible limitations to the learners' right to education as perceived by learners, although some of these issues are not in line with the limitation criteria as provided for under section 36 of the Constitution.

Next I discuss the non-limitation (absolutising) of the right to education as perceived by learners, according to the coded data.

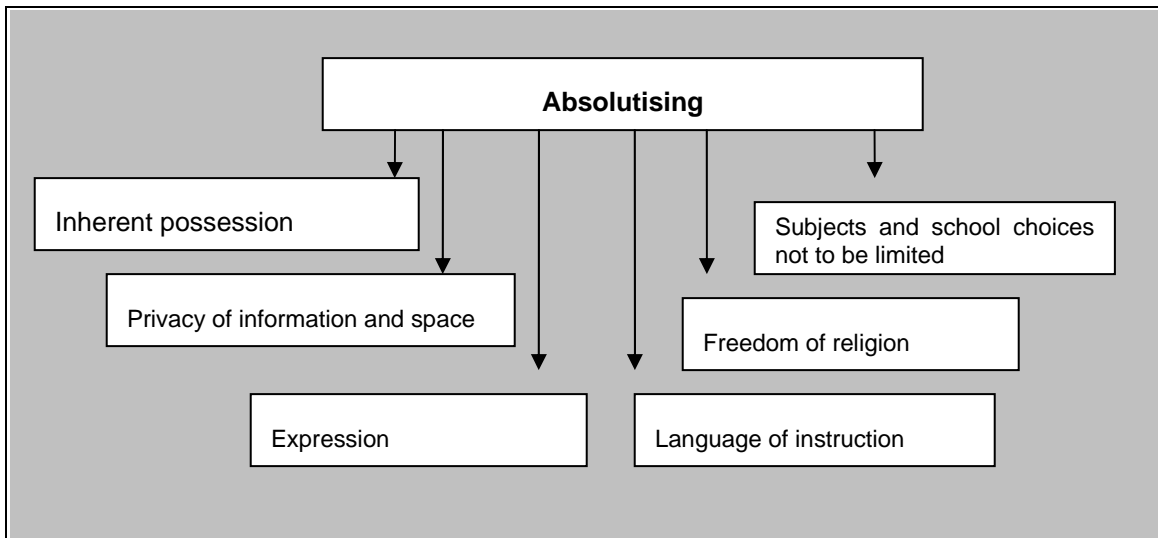
### **5.3.2 Absolutising the right to education**

The right to education is one of the fundamental human rights. Everyone has the right to basic education, including basic adult education (section 29(2) of the Constitution). Although everyone has the right to education, this right can be limited, like all other human rights entrenched in the Constitution (De Waal *et al.* 2000: 22-23,144; Bray 2000b:29, 34; Prinsloo & Joubert 2001:134-140). The criteria that are applied in order to limit the right to education are discussed in § 2.8.3.

When asked whether or not their right to education can be taken away, the responses varied. While



some learners understand that their right to education can be limited (see § 5.3.1), some perceive their right to education as illimitable, and others expressed the view that they did not know. In order to explore their understanding, the next question I asked as a probe was why they perceived their right to education to be unlimited. The majority of learners, who said that no one could take away their right to education, supplied the reasons depicted in Figure 5.5:



**Figure 5.5 Portrayal of the pattern of absolutising as perceived by learners**

The discussion that follows presents the findings with regard to the assumption that some learners regard their right to education as absolute. This discussion hinges on the reasons which learners supplied as depicted in figure 5.5.

### 5.3.2.1 Inherent possession

When asked why they think their right to education cannot be limited, some learners explained their answers in terms of universal principles. They reasoned that their right to education is something that they have as a matter of principle. Everyone has that right, and therefore it can never be taken away, for example:

- *No, there is no one because, because, this right to education is not something that I am given by someone. It is something that I have. And it is not something that I hold in my hand (I2/2).*
- *It is because; this right to education is. It is in my blood (I5/2).*
- *Because it is my right (I5/3).*
- *The right to education is for everyone (F3/4).*
- *I would not.. my right easily. It is something ... something that is in your mind. I will work for it. I have responsibilities to hold on to my right. It is mine after all (F1/5).*
- *This right is something that I have. Is inherent. What is important is that I must hold on unto it. I must respect my right or else I can lose it (I8/2)*

The empirical findings indicate that learners justify the possession of their right to education in

universal terms. They believe that if everyone has the right to education, it cannot be taken away (I5/3) and it is something that is inborn (I2/2). In this way they have the perception that nothing and no one can limit their right to education.

Many of them stress their responsibility to hold on to the right.

### 5.3.2.2 Privacy and confidentiality of information

The right to privacy is provided for in terms of section 14 of the Constitution and paragraph 3.4 of the Guidelines for Consideration of Governing Bodies in Adopting a Code of Conduct for Learners of 1998. Under these provisions everyone has the right to privacy, although these provisions can be limited in terms of section 36 of the Constitution. The right to privacy places a duty on the school not to disclose private information about a learner to an unauthorised person. Such information may, for example, include learners' HIV/AIDS status and other diseases, school reports, disciplinary measures; learners whose parents are unable to pay fees and drug use, misuse or dependency by a learner. The school is required to keep school records confidential (Paragraph 16 & 17 of the National Policy on the Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training Institutions of 2002). This law guarantees that parents have access to their children's records. It also prohibits release of the records without parental permission, except to those who have a legal right to know. An educator can be disciplined for sharing confidential information about a learner with unauthorised persons (Fischer *et al.* 2003:280-281) (see § 2.8.2 on the right to privacy).

With respect to whether or not a learner must disclose his illness (vignette 5), learners' responses varied. While the majority of responses favoured the idea that learners must disclose their illness, a few responses were against the action of the school authorities asking learners to reveal illnesses. In this regard they gave the following responses:

- *My illness is my secret (I4/7).*
- *Issues concerning illness are confidential (I2/4).*
- *The educators must respect her privacy (F2/16).*
- *We are afraid that your illness can be known by other learners. The educators, we are suspicious, that educators may use your illness to discriminate against you or to humiliate you, or to prejudice you. If the educator could not keep a secret, he may tell others about your illness. Therefore, I think the educators must not know everything (F3/8).*
- *...we do not want is to be punished heavily or in front of other learners. It makes you feel somehow, like for example, when educators make you plough or dig holes for nothing (F4/4).*
- *Another thing, educators must not just beat us. They beat us. I feel bad and humiliated. Especially if they beat you in front of all other learners (I3/1).*
- *Before I disclose my illness to any person, I must first establish if he or she is a person I can trust not because he or she is an educator, or a principal of my school. I think I would be happier if I explain my illness to the right person. There are people who can be told secrets and could keep them quiet. If it were a doctor who is asking me about my illness, it would be better (I5/8).*
- *In reality, when it comes to matters concerning illness, there are other illnesses which you would feel uncomfortable telling any one about them. You would feel uncomfortable telling anyone.*

*Some illnesses make you feel shameful, but you have your right, to keep it secret anyway (I9/5).*

The above responses indicate that learners perceive that their right to privacy is absolute if it concerns illnesses (F3/8), particularly that educators should not reveal their test results in front of other learners (I3/1). Some feel that educators should respect their privacy in general (F2/16).

Only a few learners endorsed their right to privacy. This finding is inconsistent with the findings of Melton and Limber (1992:176-178) regarding the developments evident in learners' views of their rights to privacy. The fact that the majority of learners did not assert their rights to privacy may have two explanations. Firstly, it may be an indication that learners from disadvantaged backgrounds do not experience their rights being met, which implies that exposure to human rights experiences influences how learners understand their rights. Secondly, it may be culturally explained, in that the extended family usually lives together (parents, grandparents and children) or in terms of the role that respect plays in African culture.

### **5.3.2.3 Expressing of ideas**

Within the school context, learners have freedom of expression, but this right is not unlimited. For example, learners are not allowed to use vulgar words, insults, or direct racial insults to either educators or other learners. If a learner's freedom of expression leads to a substantial disruption of school activities or infringes upon the rights of others, it can be limited (Van Vollenhoven 2005:55). The limitation must be done with the purpose of maintaining orderly teaching and learning, enforcing regulations and ensuring the safety of all learners (Section 4.5.1 of the Guidelines for the Consideration for the SGB in Adopting a Code of Conduct for Learners of 1998). The school authorities have the right to censor-learner written journals and thereby can limit the learners' rights to print an article if, in their opinion, the article could breed unnecessary tension or disruption of school programmes and discipline (O'Hair 2000:256) (see § 2.8.3).

Some learners responded that their right to education affords them the right to express their ideas freely, ask questions, get answers and be listened to. Learners expressed this view when they responded to vignette four, requiring them to judge whether or not a learner should be allowed to print his article criticising school rules. They were of the opinion that they can express their position and feelings about school rules through the written press and no one must stand in their way (I5/3), for example:

- *The principal should not refuse her opportunity to publish her article. He should allow her to do so (I5/7)*
- *It is because she also has a right as a learner to say something in order to air her views, opinions, especially because the school rules affects her as well (I5/3).*

- *In that instance I agree with you. She must be given a chance to publish her article. It is time that those in authority listen to us. Most of the time learners are not consulted when the decisions are taken (F3/7).*
- *OK. I must be given a chance to raise questions, and educators must respect my opinions. They must listen to me. I should also listen to them. (I3/1).*
- *As learners, we must be given a chance to express ourselves so that we must not find ourselves in trouble with educators without being first listened to. They must give us an opportunity to speak for ourselves (I4/1).*

These responses indicate that some learners think that their right to freedom of expression is unlimited. They can say what they want to, in their own time and educators must listen to them. They perceive it to be acceptable to criticise school rules (I5/3). This finding is consistent with Van Vollenhoven's (2005:199) findings that some learners tend to absolutise their rights to freedom of expression.

#### **5.3.2.4 Language of instruction**

Section 29(1) of the Constitution guarantees the right to basic education and to receive education in an official language of own choice in a public institution. Although every learner has the right to receive education in the official language of his choice in public educational institutions, this right is limited. However, learners are of the opinion that their right to education allows them to be taught in the language of their own choice unconditionally, for example:

- *Another thing is that I must be taught in the language that I want (F3/2).*

The above response indicates that some learners tend to absolutise their rights to choose the language of instruction at school (F3/2). Although the right to be educated in the language of one's choice is guaranteed in terms of section 29(1) of the Constitution, it is limited in terms of subsection 29(2) and by the principle of reasonable practicability (see § 2.7.6.). The possibilities to exercise this right to the full are dependent on various considerations, for example, the school should consider whether or not the choice of a specific medium of instruction is reasonably practicable. In order for learners to be educated in the language of their own choice, the educator: learner ratio should be at most 1:45 in primary schools and 1:35 in secondary schools. If that is not the case, it may be difficult for learners to exercise their right to choose their medium of instruction.

#### **5.3.2.5 Subject choices**

Learners view it as their right to be allowed to choose the subjects they want and their choices should be unlimited. They view it as wrong for schools to prescribe compulsory subjects, for example:



- *If we look carefully and rightly, a person should be allowed to choose the subjects she or he wants to do. That thing called compulsory subjects I don't get. I should be given a chance to choose (F1/6).*
- *I must be able to learn what I want, everything that I want. No one must choose for me what to learn or not to learn. I should be given a chance to choose for myself (I5/1).*
- *I just perceive that a person should not be forced to do subjects that he does not want. A person must be given chance to decide, and to choose what he wants, a person has the right to do so (F2/8).*

These responses reveal that some learners view the right to choose school subjects as being unlimited. They think that they can select any subject they want and learn anything they want to (I5/1). Although learners do have the right to choose the subjects that they want, the choices are not unlimited. They do not understand that some school subjects are compulsory while others are ancillary subjects (F1/6). Compulsory and non-compulsory school subjects are set in accordance with the National Policy Act sections 3(4)(l) and are determined by the Minister of Education. Learners, however, have the right to exercise their rights to choose the subjects they want within the limits provided in the policy.

### 5.3.2.6 Religion

Learners view their rights to freedom of religion as being part of their right to education. This is in line with the findings discussed in § 5.2.3 which imply that learners confuse their right to education with other human rights. Although section 15 of the Constitution recognises both personal freedom of conscience and religion, and the right to conduct religious observances at state and state aided schools, this right is not absolute. The fact that some learners tend to absolutise their right regarding the practice of religion is illustrated by the following responses:

- *I think he must say that what the school is forcing him to do; he will not do because he belongs to a different religion. The principal is a person too; he would understand him, I suppose. It is allowed that he prays in his own time, When he wishes so (F2/9).*
- *Another thing is that we must have time to pray, because we also have rights, they must allow us time to attend prayers. May be in the morning or arrange for us a student run-religious forum. We must be given a chance to do what we want (F2/4).*
- *When it comes to religious education I would do it because I believe in Christianity. I grew up attending a church, my parents also do, and I found it like that. But I think it would be unfair to the learners who belong to other religions if they were forced to attend religious education. And if I belong to other religions I would object to the school's decision, because I would be going against my own belief (I3/3).*
- *Yes. It is not right to force a person to attend religious education if it is against his own beliefs. If I were in this position... I would tell the school authority that it is against my beliefs. But I would prefer to chose the subjects which I want (F4/7).*
- *I feel that it is not right to force learners to do things that they do not want to do, because people believes are different, for example, here at school they do not allow us to put on arm ring of copper (talisman) or any other object that is associated with ancestral beliefs. I think it is wrong for a school to do that, because our parents gave us those charms to wear (F4/8).*

These responses show that some learners view their right to freedom of religion as absolute and

that they must be allowed to practise it at school without limits. They must be given a chance to pray at any time they wish to (F2/10), (F4/7) and (F4/8). This right was mentioned several times by learners in grades ten to twelve who also suggested times for prayers and reasons for their need for time to pray (F2/4). They also think their right to education allows them to wear copper arm rings (talisman) and that the school should never tamper with such practices (F4/8).

These findings are consistent with Peens (1998:137) who found that senior learners endorse freedom of religion. Van Vollenhoven (2005:163), in his thesis about learners' understanding of their rights to freedom of expression, found that some learners tend to absolutise their rights to freedom of religion. Religious ceremonies are guaranteed at public schools, provided that they are conducted in accordance with rules, are conducted on an equitable basis and the attendance thereof is free and voluntary (Beckmann *et al.* 1997:9 and 1995:99) (see also § 2.7.7).

There was an isolated case in which a learner did not know whether or not the right to education could be limited, for example:

- *I do not know why. But I think I have that right (F1/5).*

This finding is consistent with Ruck *et al.*'s (1998b:283) finding of isolated instances in which learners aged 10, 14 and 16 did not know if their rights could or could not be limited.

After considering the responses learners provided when asked what it means to them to have the right to education, who has the right to education, and whether anyone could take away their right to education, I found that learners do not know how to exercise their right to education. Some learners tend to view their right to education as unlimited, whereas others understand that their right to education can be limited. There was an isolated occurrence where one learner did not know whether or not the right to education could be limited.

## 5.4 CONCLUSION

In this chapter I presented and interpreted in an integrated way the results obtained from both the focus group discussions and interviews. The research question that underpins this investigation is: 'How do learners understand human rights, their right to education in particular?' I explored this question by considering two areas. Firstly, my emphasis was on learners' understanding of the **content** of their right to education and the **value** and meanings they attach to this right to education. I found that learners knew that their right to education implies responsibilities, and that the realisation of their right to education opens for them an array of future opportunities. In some cases, learners were not sure whether or not they actually have the right to education.



Secondly, it became clear that in some cases, learners tended to view their right to education as **absolute** and nothing and no one must stand in their way. However, other learners knew that their right to education could be **limited**, but they did not understand how such limitations are implemented. The results also substantiated the fact that learners did not distinguish between human rights and consequently they confused their right to education with other human rights. Some learners did not understand the specific provisions of their right to education. These lines findings confirm my two premises that:

- **Some learners have limited understanding of their right to education**
- **Some learners do not know how to exercise their right to education.**

In the next chapter I shift the emphasis from knowing the content of, limitations of and absolutising the right to education, to a more in-depth understanding of the right to education (premise 3). The emphasis is placed on the learners' levels of human rights reasoning and understanding as depicted by their responses. I used the data gathered during phase two (focus group discussions) and phase three (in-depth face-to-face interviews). The results from these phases are also presented in an integrated way, as I have done in this chapter.