



## CHAPTER 3

### THE DEVELOPMENT OF LEARNERS' UNDERSTANDING OF HUMAN RIGHTS

#### 3.1. INTRODUCTION

Chapter 2 focused firstly on the definition of a learner (see § 2.2) and the position of a school as a legal organ (see § 2.2.4). Secondly the concept of the right to education being embedded in the sphere of human rights and on the right to education as being a core human right and the centre of investigation in this study is discussed. The historical development of the right to education was traced (see § 2.4.1), as well as its recognition in international law (see § 2.4.2), the core content of the right to education (see § 2.6) and the recognition of learners' rights to education in South Africa (see § 2.7). The recognition of the right to education, internationally and in South Africa, is based within social contracts. Governments have agreed by ratifying declarations, covenants and conventions that they will uphold human rights, which include the right to education. Finally, the limitation of the right to education was discussed, as no human right is absolute (see § 2.10). This concept is very important as it concerns the subtle balance between the violation of guaranteed fundamental human rights and the legal limitation of human rights. It is necessary to remember that the principles embodied in social contract theory, as reflected in human rights instruments and constitutions, are ideals which the state strives to achieve.

Having highlighted the basic content of the right to education as established in social contract theory (in the form of human rights instruments), the focus of this chapter is to determine the connection between the right to education and the development of human rights understanding. It makes sense to include the development of understanding of human rights as, in the school context, learners are frequently in contact with their educators as well as the learning content. This interaction needs to be harmonious for the benefit of all parties concerned. The *modus operandi* in this study was to consider the responses given by learners concerning their right to education and other human rights which are directly relevant to the right to education. The levels at which learners understand their rights were evaluated in terms of Kohlberg's theory of moral-ethical development (see Table 3.4 & 6.3). Since the main aim of education is to develop learners' critical thinking skills, it was necessary to explore the reasoning levels of learners, in order for educators to plan learning experiences accordingly. The theory investigated in this chapter assisted in evaluating and interpreting the data in this research study.

The initial focus in this chapter is the presentation of international and South African scholarship on learners' views and perceptions of human rights. The second focus is on aspects that influence learners' understanding of human rights. The third focus is the discussion of Kohlberg's theory of moral-ethical development which is considered to be important for this



study, as it provides the basis of how understanding of human rights develops. Fourthly the views of scholars in relation to the merits and demerits of this theory were considered. Since the right to education involves learners, parents, educators and the state, it was decided to include the review of research regarding the attitude toward the rights of learners all these parties.

### **3.2 SCHOLARSHIP ON LEARNERS' PERCEPTIONS OF (HUMAN) RIGHTS**

This section initially presents a discussion of international scholarship in connection with learners' perceptions of their legal and human rights, since the right to education is both a legal and moral right. Secondly, the parents' and educators' attitudes towards learners' rights are highlighted. Lastly South African studies, which have direct relevance to the topic under investigation are examined.

#### **3.2.1 International scholarship on learners' perceptions of human rights**

In this section international scholarship in connection with learners' perceptions of their legal and human rights is discussed, in order to align this study with what has already been written by other scholars on the issue of human rights.

##### **3.2.1.1 Learners' perceptions of their legal rights**

There has been an increase in the amount of literature and research on human rights in general, and learners' rights in particular. The topic of learners' rights has generated considerable debate over many years by lawyers, philosophers, parents, educators, political scientists and social theorists (Taylor, Smith & Nairin 2001:139). Yet research exploring learners' perspectives of their right to education and the rights they have in the school context is limited. Some researchers have paid greater attention to exploring learners' knowledge and perspectives relating to aspects of rights in their own lives (Ruck *et al.* 1998b:275) and their rights in special circumstances (Covell & Howe 1996:251).

Numerous studies have examined learners' understanding of their rights, concentrating more on the area of legal rights rather than on the right to education. Studies by Peterson-Badali and Abramovitch (1992:144, 1993:539); Abramovitch *et al.* (1993:313; 1995:1-2), Grisso and Pomicter (1977:333), and Tapp and Levine (1974:29-31) investigated learners' perception and understanding of their rights in criminal proceedings, including the assertion of their rights to silence, legal counsel and the waiving of rights. The main findings of these studies were that:

- Assertion and understanding of legal proceedings increases with age. As the age of the respondents increases, their understanding and reasoning about rights becomes more differential, focused, sophisticated and more abstract than concrete (Saywitz, 1989:148,



Peterson–Badali & Abramovitch 1992:156; Peterson-Badali & Abramovitch 1993:147). For example, grade five learners expressed a misconception with regard to lawyers' roles. The actions of younger learners were motivated by fear of punishment rather than for the purpose of achieving some positive goal. The majority of ten-year-old learners used legal rather than moral criteria when making their plea decision. They decided to plead guilty when the evidence against them was strong (86%) rather than when it was weak.

- Previous exposure to legal proceedings sometimes leads to a higher degree of understanding of legal rights. Grisso and Pomicter's (1977:337) study, using juvenile court records, found that refusal to talk (remaining silent) increased with the number of prior offences and generally when the offences were against persons (assaults, armed offences) rather than in connection with property (theft and damage to property).
- Verbal skills and legal language play a role in learners' conception of their legal rights. When asked to give the meaning of 'plead guilty' they gave the meaning of 'guilt' rather than 'plead guilty' (Peterson-Badali & Abramovitch 1992:155). This result is consistent with Saywitz's (1989:136) study, which determined that young learners display a misconception of legal language. Young people describe or define legal terms in concrete, everyday language. They consider a 'court' as a place to play basket ball; 'charges' as what one does with a credit card; 'hearing' as what one does with one's ears and 'case' as a container used to carry papers.
- Learners' understanding of waivers in criminal proceedings was unacceptably limited. Few learners understood that by signing a waiver form they would be relinquishing their right to a lawyer or other responsible adult to come to the police station to assist them. Most of those who understood the waiver, refused to sign (90%), while 65% of those who did not understand, signed waiver forms (Abramovitch *et al.*1993:317).
- The development of legal reasoning is characterised by changing perceptions of rights and roles, emphasising system (institution) maintenance and stabilising at the law and order level. Very few learners are able to reason at the principled level, where the value of the legal system is judged according to the degree to which it serves ethical standards (Tapp & Levine 1974:31).

Starkey (1991:22-24) notes that the understanding and experience of human rights is an important element in preparing young people for life in a democratic, pluralistic society. It is also through the understanding of human rights that learners develop social skills such as cooperation, conflict resolution, mechanisms without resorting to violence, positive relationships, openness towards others, acceptance of and respect for different opinions (Starkey 1992:132).



It is, however, important to emphasise that learners must be made aware of their rights in international law and be able to assert their rights in judicial and administrative proceedings (Mower 1997:4). In the absence of knowledge and understanding of human rights, learners' rights may be only nominal. A learner may have the right to education or the right not to be abused, but in the absence of an understanding of what it means to have a particular right or how to exercise it, a learner may not be able to claim and enjoy the benefits of that right. In particular, learners should be made aware of their right to education, as this is a prerequisite for human dignity and development. Learners in turn should acknowledge that they possess those rights (Covell & Howe 1996:253; Abramovitch *et al.* 1993:2; Covell & Howe 1999:182; Hodgson 1996:251).

The next sub-section deals with learners' perceptions and knowledge of human rights.

### **3.2.1.2 Learners' perceptions of human rights**

Dunkle (1993:287) investigated learners' understanding of policies in relation to their rights to equal access in a school context. He conducted two studies aimed at measuring secondary school and college learners' ability to understand the policy of equal access. In Dunkle's view, equal access as a democratic value concerns legal, as well as psychological issues. Attitudes and feelings towards the principle of equal access may differ among learners. When learners were asked to give their views on whether or not schools should allow learners from different religious groups to have equal access to school facilities to observe their own religious practices, or to allow learners to participate only in school-run religious sessions, their responses varied according to their grades (ages).

The fourth grade learners had trouble differentiating between school-run groups and learner-run groups. They also had difficulty in applying the rule which states that qualified groups must be granted nondiscriminatory access. They perceived that disruptive learners should not be allowed equal access to school premises (Dunkle 1993:291). Initially the seventh grade learners demonstrated difficulty in understanding non-discriminatory access policies. They were, however, able to distinguish between voluntary religious activities and involuntary religious or political activities within the school. After being informed about equal access policies, 50% of the seventh graders were able to apply consistently the rule that all learners should be allowed equal access to school facilities, unless otherwise prohibited by certain rules. This result confirmed the importance of informing and educating learners about all aspects relating to human rights.

When it came to the question of whether the school should grant disruptive political or illegal groups access to school facilities, responses generated a variety of opinions. Some learners



indicated that schools should not grant both groups equal access while others were of the opinion both groups should be granted equal access. These responses may represent the failure of learners to understand the policy of equal access. They relied on personal opinions relating to the value of some learner groups and the belief that schools have greater discretion over which groups should be admitted (Dunkle 1993:296). Schools cannot, however, allow religious or political practices which would place some learners' rights in jeopardy. If a school endorses one religion, some learners might feel that they are being compelled or coerced into participating in that type of religion against their will and beliefs (Dunkle 1993:291,297).

A similar study was conducted by Helwig (1995:152) who examined adolescents and young adults' conceptions of civil liberties, that is, freedom of speech, freedom of opinion and freedom of religion, in conflict with other moral issues (see Table 3.1). Forty-eight participants in three grade levels (mean ages 12.8, 16.10 and 19.6) participated in a structured interview containing an assessment of civil liberties, both in a general straightforward application and in conflict with other social, moral and legal concerns.

**Table 3.1 Rights related to civil liberties contained in the Convention on the Right of the Child (CRC) (1989)**

Article	Human right
Article 12	Freedom of speech and opinion
Article 13	Freedom of expression
Article 14	Freedom of conscience and religion
Article 15	Freedom of association
Article 16	Protection of privacy
Article 17	Excess to information

Source: Detrick (1999:23); Ochaita & Espinosa (2001:332); Taylor *et al.* (2001:39)

The results show that freedom of speech and religion are conceptualised as universal moral rights by adolescents in a Western cultural context, but can be applied differently in non-Western cultural societies. The results also show that a complicated view of civil liberties emerges by early adolescence and is used to evaluate social events. The abstract conceptualisation of rights is judged in accordance with moral criteria (Helwig 1995:162). Young adolescents on the whole, tend to give fewer affirmations of freedoms when they are in conflict with other social and moral issues. The seventh grade learners agreed with the notion of freedom of speech and religion (Helwig 1995:162). Similarly Dunkle's (1993:291) findings show that responses vary with grades and that more abstract thinking emerges with an increase in age.

Helwig's (1997:484) study examined another dimension of learners' judgement of freedom of speech and religion. He examined the role that agents and social context play in learners'



judgments of freedom of speech and religion. These civil liberties were examined in three social contexts namely home, school and society at large. The sample in his study consisted of 240 learners; college learners and adolescents were divided into five grade levels, with equal numbers of boys and girls (mean ages 6.6, 10.6, 12.4, and 27.7). All learners came from the Canadian middle-class, in terms of the families of both their parents. Helwig's findings (1997:492-493) indicated that:

- Primary school learners responded to individual desires, needs and prerogative endorsement of freedom of speech. They gave reasons concerning rules, authority and punishment when rights were not affirmed.
- Adolescents and college learners justified their judgment based on personal desires and choices. They also considered the harmful effects on others when exercising their freedoms of religion and speech.
- College learners endorsed learners' freedom of religion in the family in a lower proportion than any other age group, but they judged it as illegitimate for parents to draw up rules that prohibit them from engaging in religious practices of their own choice. They also judged that similar rules enacted by the school would be wrong. College learners' judgment of freedom of speech and religion differed according to the context where the right was being exercised. The majority of learners thought that it was acceptable for a child to violate societal laws prohibiting freedom of speech and religion, whereas a similar number thought it was unacceptable to violate such rules when they were enforced by their parents (Melton & Limber 1992:76).
- Gender related justifications were also observed in the learners' responses. Male learners gave fewer affirmations of rights, but they endorsed the perspective of the authorities to a greater degree than did female learners.

Covell and Howe (1996:250) conducted a study investigating the perspectives of Canadian youth on learners' rights. They assessed the attitude of youth towards learners' rights, the extent to which youth value learners' rights, their beliefs about rights and their basic knowledge of what rights Canadian youth have. They also considered the variations in support for learners' rights (Covell and Howe 1995:189). They found that values, beliefs and knowledge mutually determine the likelihood that youth would be the driving force for successful implementation of the CRC, which might depend on attitudes towards, and knowledge about learners' rights. Eide (1983:107) pointed out that incorporating the Bill of Rights into a legal system was a significant step. He further claimed, however, that this Bill would remain ineffective unless the entire social, economic and political order is transformed to allow everyone equal enjoyment of human rights, and to help to maintain them (Ramsden 1997:18; Covell & Howe 1999:71).



Covell and Howe's (1996:253) study sample included 50 male and 75 female Canadian learners between the ages of 15 and 18 years. Besides investigating the learners' views, beliefs and attitudes about their rights, the study investigated the potential roles that gender, social environment, and contextualisation play in Canadian learners' perceptions of their rights. The motivation for including these variables was based on the following points (Covell & Howe 1995:190-191; Covell & Howe 1996:257-259):

- Male and female learners tend to exhibit different attitudes and attribute importance to different aspects regarding rights and social issues. For example, statistically, female learners are more likely than males to seek help in an abusive situation.
- Female learners place more emphasis on gender equality and show greater concern about social issues pertaining to inequalities.

Gilligan (1982), as cited by Peens (1998:28), proposed that differential socialisation fosters different emphases in moral judgment and reasoning between female and male learners. The care and protection rights (nurturance) play an important role in the socialisation female learners and lead to greater awareness of these rights in their moral reasoning (Table 3.2). Male learners emphasise abstract justice principles more in their moral reasoning than do female learners. Covell and Howe (1995:194) note that male learners are more supportive of legal rights than female learners, since the justice principle and perspective focus more on autonomous self-determination rights than on nurturance rights. Table 3.2 gives examples of some of the nurturance and self-determination rights.

Covell and Howe's (1996:253) sample included 50 male and 75 female. The results of Covell and Howe's (1996:255-6) study showed that female learners were more supportive of learners' rights pertaining to socio-economic concerns, e.g. physical abuse and sexual exploitation, than male learners. Learners had limited knowledge concerning what recourse they had if and when their legal rights were violated during legal proceedings. Most of the respondents believed that nothing could be done.

In the area of legal rights, female learners showed less support than male learners. This was attributed to the fact that juvenile offenders misused their privilege, knowing they would be given limited punishment because of their immature status. The other reason was based on the concern that by affording juvenile offenders rights, adults' already negative perceptions of adolescents would be aggravated (Covell & Howe 1995:194).



**Table 3.2 Nurturance and self-determination rights**

Content area	Nurturance	Self-determination rights
<b>Health</b>	Free health care Protection from physical harm Freedom from substances abuse	Choice to refuse or to accept treatment
<b>Safety</b>	Products designed to be safe. Right to be safe from abuse, discrimination injustice, physical and mental health	Choice of where to live
<b>Legal Judicial</b>	Due process	Choice of legal counsel
<b>Political</b>	Protection of minority rights	Right to vote
<b>Education</b>	Right to quality education	Right to choose learning areas Right to choose where to attend school

Adapted from Rogers & Wrightsman (1978:63); Taylor *et al.* (2001:138)

Regarding abuse, only 8% of adolescents believed that educators should be allowed to use corporal punishment, but 55% of male learners and 41% of girls believed that it was necessary to administer corporal punishment. However, in those families where physical abuse was constant, 78% of adolescents believed that learners should have a right to ‘divorce’ their parents or even have the right to live elsewhere. 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 own experiences.

Covell and Howe (1999:172) suggest the inclusion of human rights in the school curriculum, which would enhance learners’ knowledge and understanding of their rights. They are of the opinion that this might, in some instances, improve learners’ attitude towards their own and their peers’ human rights. A curriculum was designed and offered to an experimental group to provide empirical evidence of the impact that human rights education has on learners’ understanding of what it means to have rights. The learners’ rights curriculum was implemented in Canadian schools over a period of one school year for learners aged eleven and twelve. To ensure the successful implementation of the curriculum, both educators and parents were consulted. Some resistance among educators and parents concerning the issue of teaching human rights in schools was anticipated. The researchers’ suspicions were based on the traditional concern among parents and educators that if learners have knowledge of their rights, it might undermine adults’ authority in the classroom and at home, thereby intensifying conflict between learners and those in authority. This idea seems to be flawed, since the research showed that providing for and educating learners about their rights did not cause learners to be defiant or disrespectful of adult authority (Campbell & Covell 2001:125).

Covell and Howe’s (1999:176,179) findings were that learners who participated in a human rights curriculum had a broader and more accurate knowledge of what it meant to have rights,



compared to learners who did not participate in the same curriculum. School is a valuable place from which to acquire an understanding about rights. These findings are consistent with Rendel (1992:160-162) who summarised four research projects that were conducted in Britain. The projects investigated learners' understanding of citizenship rights, civil liberties and their attitudes towards human rights. The target group was learners aged between 16 and 18 years. Some were taking A-level political science. Political science learners, who were taught citizenship rights, exhibited knowledge and understanding of citizenship rights which was far beyond that of the other group of learners. Learners who learned about their rights understood and valued their rights to equality, education, health care and protection from abuse; whereas those who did not participate in a rights curriculum either indicated that they did not understand what it meant to have rights in terms of freedoms and needs (Covell & Howe 1999:181), or understood their rights in terms of needs and freedoms only.

Other important findings in the same study were that girls demonstrated a greater level of perceived support than did their male peers. There also was a link between knowledge of learners' rights and a more positive attitude toward those with differences. Learners who felt good about themselves tended to behave in a pro-social manner. Those who believed that they would have a productive future believed that the curriculum on human rights had taught them to look at their future in a positive way and they were thus supportive of their rights (Covell & Howe 1999:182). They also learnt that some learners grew up in poverty; were abused and economically exploited. The empathy elicited by this knowledge was expected to impact on social concepts such as poverty, discrimination, equality and human dignity and acted as stimuli for the development of rights-respecting attitudes.

When analysing the responses of the learners' attitude towards human rights, the results of Rendel's study illustrated differences, although these were not in total conflict with one another. At a certain point there was a degree of understanding of what constitutes basic human rights and positive to less positive attitudes towards human rights. On the whole, the results indicated that there were misunderstandings, misconceptions, ignorance and plurality of views amongst learners (Rendel 1992:160-162).

Besides the importance of informing learners about their rights through curriculum interventions Morrow (1999:153) indicates that it is of great importance to allow learners to make decisions in matters concerning their education. Morrow's study of learners in British schools considered their accounts of what they thought their rights should be, and their feelings about the level of participation in decision making at schools. The findings indicated that United Kingdom learners did not only want to be seen, but they also needed to be heard. They wanted to be listened to and be given a say in matters affecting them. They also wished to be accorded some dignity and respect, which included being consulted and given information. In the words of a 15 year old female learner:



We are people too and we shouldn't be treated like low-life because we are young. I think kids deserve the same sort of respect that we are expected to give to so-called adults (Morrow 1999:153).

The irony is that although one of the aims of education is to enhance the capacity for decision-making in learners (Hodgson 1996:251-2), major decision-making in crucial areas about learners' education is carried out mostly by adults on behalf of learners. Learners are often expected to show unquestioning obedience and loyalty to their educators and parents (Anderson, 1999:186)

Tapp (1997), cited in Taylor *et al* (2001:141), held a discussion with 133 learners aged between 11 and 12 years. The discussion involved articles 12 and 13 of the CRC. Tapp's discussions elicited opinions from learners on issues such as subject choices, decision-making and discipline in school. The findings indicated that some learners resented the fact that some of their rights were limited by factors such as age, rather than ability. Learners who were members of the Learners Representative Council (LRC) had the feeling that they were only given jurisdiction over minor matters, such as the number and placement of rubbish bins. The findings showed learners had a strong desire to be involved in matters concerning the school curriculum, subject choices, school choices and privacy. When learners were asked about the provisions of articles 12 and 13 of the CRC, only three out of five classes interviewed recalled having heard of the CRC but did not know the provisions contained in articles 12 and 13. These findings support Covell and Howe's (1999:172) suggestion that in order to enhance learners' knowledge and understanding of human rights, the best and most efficient way would be through curriculum interventions.

Alderson (1999:185,193) conducted research examining English learners' views of their civil liberties or participation rights in schools. The survey was based on civil rights set forth in the CRC and included 2272 learners aged between 7 and 17 years old. When asked about the CRC, only 5% of learners said they had heard about it, 19% said they had heard a little about it and the rest had not heard of it at all.

Taylor *et al.* (2001:143-151) explore which rights learners and educators consider to be more important within the context of the school. They assume that discovering how learners view their rights in general would be important and helpful in designing procedures for implementing learners' rights effectively. Their argument is based on the fact that the image of learners is changing and learners are recognised as citizens, equal in value to adults, with voices to be heard. Freeman (1998:436) cited in Taylor 2001:139 regards learners as persons, not property; subjects, not objects of social concern or control; and participants in social processes, not social problems.



The findings of Taylor *et al.*'s (2001:148) study indicate differences in opinions between learners and educators concerning the rights learners should have at school. The right least mentioned by learners was privacy, whereas educators felt that health was least important. Learners stressed participation rights as being more important to them, compared to what the educators indicated. Learners were of the opinion that they were elected onto the school council with the expectation that they should say 'sensible' things. This seems to suggest that learners feel that they are being controlled (Allan & l`Anson, 2004:127). The importance of this finding is that educators should not underestimate learners' ability to make independent decisions concerning their rights.

Allan and l`Anson (2004:123) investigated learners' perceptions of their position and power within the school. They also investigated how schools translated learners' rights into practice. What emerged from discussions with learners and discussions among learners themselves, was that they had difficulty in engaging with the language and constitution of human rights. With regard to their influence in decision making and position within the school, learners expressed the feeling that they occupied a very low priority within the hierarchy, while adults and educators seem to make most of the decisions, including what, how and when to learn (Allan & l`Anson, 2004:125).

There is a different in understanding of human rights between learners of different ages, gender and cultural groups. On the whole, it seems as if there are misunderstandings, misconceptions, ignorance and plurality of views amongst learners. Having discussed learners' perceptions of human rights, in the next sub-section I discuss parents' and educators' attitudes towards learners' rights.

### **3.2.2 Parents and educators' attitudes towards learners' rights**

This section briefly investigates educators' and parents' attitudes towards learners' rights. This is important as educators and parents are in constant contact with learners. Their views of learners' rights may be useful later during data interpretation, as they may influence how learners perceive their rights.

The plurality of opinions between learners and educators about which rights seem to be important for learners raised much debate in the 1980's. Bohrnstedt *et al.* (1981:443) examined the perspectives of adults on learners' rights to autonomy in areas such as education, privacy, appearance, religion, economic matters, conduct, and access to media and social participation. They found that there was a lack of consensus among adults about learners' rights (Bohrnstedt *et al.* 1981:455). Some believed that learners' rights should be extended where discrimination was more likely to occur, or where the denial of learners' rights might have serious consequences. Adults were of the opinion that learners needed to be made comfortable rather



than being given more freedom, as this would be acting in their best interests and thereby protecting them from possible mental and physical harm.

Rogers and Wrightsman (1978:59) examined the attitudes of high school learners, undergraduates and adults towards nurturance (entitlement and protection) and self-determination (autonomy) rights. One of their findings was that high school learners endorsed the extension of self-determination rights over nurturance rights, whereas adults favoured granting learners the nurturance rights, as freedom issues often led to conflicts between children and adults. Bohrnstedt *et al.* (1980:443) confirmed these findings.

According to Wringe (1981:99-103) the reasons advanced for the unwillingness of adults to grant learners specific types of rights, while reserving self-determination rights only for adults, traditionally stem from the conceptions that:

- learners are not rational and therefore are not capable of making their own decisions;
- learners are not independent of adults' power, as adults may sanction some freedoms of learners;
- learners are expected to show unconditional obedience to their parents and to adult authority;
- learners are not held solely responsible for the consequences of their own actions while they are still minors;
- learners are not materially self-supporting or capable of protecting themselves, hence it is deemed necessary to limit some of their freedoms for their own good;
- learners lack wisdom born of experience and consequently in their choices (iudicium) they are likely to commit mistakes;
- the granting of a right to one party could infringe the right of another party. In this instance the right of a learner may sometimes be restricted so as to protect the rights of parents, educators or any other learner (Peens 1998:7).

Besides these lines of thought, there is apprehension among educators and adults that granting learners more rights and making them more aware of their rights might corrode adult authority. Learners may become disrespectful and, as a consequence, undermine adults' authority (Covell & Howe 1999:173). Basically the reason advanced against granting learners self-determination rights is motivated by adults' belief that learners cannot make their own informed decisions. There is a saying 'we must educate our children'. In essence this saying might imply that adults have to decide for learners all the time.

In contrast, those who want to liberate learners reject the above-mentioned reasons and advance the following reasons in favour of granting learners self-determination rights (Franklin 2002:23-26)



- It is important to avoid double standards. Adults are not always skilled decision-makers; they too are capable of making wrong decisions;
- Mistakes should not be judged as wholly negative, but should be viewed as experiences from which one learns;
- Learners have real competence for rational thought and are capable of making informed decisions;
- Limiting of rights based on age is inconsistent because learners assume adult responsibilities at different ages and in different areas of action (Wringe 1981:99-103). The majority assume adult responsibilities at the age of 18 years.

Melton (1991:66) stresses that a balance should be maintained between exercising adults' rights and withholding learners' rights. Some adults may seek to liberate learners, whereas others seek to protect them. The CRC includes both self-determination and nurturance rights which learners are supposed to know and exercise. These rights are integrated with the focus on respecting the dignity of the child. What is implied here is that learners' views should be heard within the limits of their ability to express themselves and their freedom should not be precariously denied.

### **3.2.3 South African scholarship concerning learners' perceptions of human rights**

In this section existing South African research relating to learners' understanding of human rights is presented. Venter, Kok and Myburgh (1996), cited by Peens (1998:29), undertook a study to determine the extent to which learners were made aware of their human rights by schools. Grade twelve learners in the Witwatersrand were included in the study. They were required to indicate the degree to which the school had made them aware of their rights by their final year. Matric learners indicated that the school had made them less aware of their rights than what was perceived by the educators.

Another South African study, which concerned learners' perceptions of rights, was conducted by Peens in 1998. Her work is of special interest to the current study of learners' understanding of human rights, since it provides some insights into how South African learners, residing in the greater Bloemfontein area and of different ages, gender and cultures, perceived their rights in general. Peens (1998:93) interviewed 312 school learners aged between 6 and 18 years. One third were English speaking, one-third Afrikaans speaking, and one-third Sotho speaking.

Peens' (1998:170) study showed that a strong correlation exists between increasing age and increasing permissibility granted to learners' rights. Learners between the ages of 14-15 justified their rights terms of fairness of an act while learners aged between 17-18 years made reference to abstract moral principles. Differences in perceptions of legal, choice and autonomy rights in



learners of different languages were noted. Fewer Sotho speaking learners proposed that learners should choose with whom to stay in case of divorce, than did Afrikaans and English speaking children. Sotho speaking learners were more supportive of autonomy rights than Afrikaans and English speaking children. With regard to the right of choice, Sotho speaking learners felt that learners of a certain age and adults (not necessarily parents) should be able to choose and make decisions about these rights (Peens 1998:168).

Lastly Van Vollenhoven (2005:21) embarked on a study to explore, understand and interpret learners' understanding of their right to freedom of expression. The results indicate that a plurality of views exists among learners. Some learners view their right to freedom of expression as non-derogable, whereas others believe that it can be limited, although they are not very clear as to the extent of the limitation. Others know they have the right to freedom of expression, but do not understand what is included in the spectrum of this right, with the consequence that they link it with an array of other human rights (Van Vollenhoven 2005:148,149).

Having highlighted international and South African scholarship on learners' views and perceptions regarding rights, the development of understanding of human rights is discussed in the following section.

### **3.3 INTERNATIONAL SCHOLARSHIP ON THE DEVELOPMENT OF UNDERSTANDING OF HUMAN RIGHTS**

Learners' understanding of human rights may be discussed in different ways. One approach could be formal or intellectual understanding of the concept 'human right'. Another might be the more practical and meaningful understanding which is presented in the ability to recognise one's right and the ability to apply this knowledge in a practical way (Belter & Grisso 1984:899). The ability of learners to comprehend information about rights, recognise when these are violated, and to apply their rights meaningfully, can be related conceptually to their level of cognitive reasoning (Belter & Grisso 1984:901).

Developmental psychologists such as Piaget and Kohlberg have been predominantly influential in determining how learners' moral and ethical understanding and reasoning develop (Rowe 1992:78). Piaget (1932), as cited by Torney (1971:140), suggested a practical progression from lower to higher levels of reasoning ability. Young learners between the ages of seven and eleven years are expected to think at a concrete, operational level. Learners at this level have limited understanding of rights, based on an orientation of defense to those who make rules. Learners above the age of eleven are expected to think at a more formal, operational (abstract) level (Rowe 1992:78; Torney 1971:140).



Tapp and Levine (1974:23) conducted a study aimed at tracing the development of learners from kindergarten through to college. This study illustrated a universality in ways of reasoning among pre-adolescents from six countries and seven cultures. Tapp and Levine's theory was built on that introduced by Jean Piaget and advanced by Lawrence Kohlberg. When asked: "What would happen if there were no rules", the response of United States youth showed developmental progression in legal thoughts from kindergarten through college. Young learners' answers were based on apprehensions about violence (a more concrete answer); with maturity, the responses shifted from pre-conventional and conventional (in which the majority of responses showed the importance of system-maintenance), to post-conventional thinking. The evidence from this study also showed that there were very few individuals who developed to the post-conventional level of thought. Tapp and Levine (1974:241) reported that in their study no respondent inferred that rules were necessary for protecting rights, or establishing legitimate claims or guarantees of freedom. This line of thought demonstrated that ethical legality had also been considered (Tapp & Levine 1974:240).

The most important study to elicit information directly from learners was conducted by Melton (1980:186). He provided the best-known account of the development of learners' reasoning about rights in hypothetical situations, as well as their general knowledge about rights. His respondents were learners in grades 1, 3, 5, 7 and 9. He investigated self-determination rights such as privacy, in various social situations. Melton (1980:189) reported that learners' conception of their rights had much in common with their level of moral judgment. He also reported a three level developmental progression of learners' concepts of their right towards principled reasoning. In this regard, Piaget (1932:65) conceptualised that development involves an understanding and acceptance of rules. Melton (1980:186) reported that rights have the same obligatory aspects as rules in general. He asserted that both rules and rights involve the relationship between learners and those in authority. He also examined learners' judgement of freedom of school press and learners' rights in situations where the exercise of their rights might be in conflict with the rights of those in positions of authority. The findings were that a developmental shift from the egocentric stage, based on the perception of rights in terms of 'what one can have', to an abstract stage thinking about rights based on moral considerations, is typically not seen before early adolescence.

The developmental progression and levels of moral reasoning reported by Melton (1980:189) coincide in many respects with the levels of moral and legal development reported by Tapp and Levine (1974:1); Kohlberg and Kramer (1969:100) and Peens (1998:25). Melton's (1980:129) three levels of moral development can be explained as follows: :At Level 1 (pre-conventional level), learners are unable to differentiate between what actually happens to them (what is) and what they should be entitled to (what ought to be) (see § 3.5.2.1). Initially learners are at the egocentric level, in which they believe that adults have more rights than they have, because adults are physically large and authoritarian. They perceive adults as the ones who bestow and



determine the extent of rights given to learners (Cheney & Perry 1996:243; Peens 1998:24). At Level 1 only the concrete reality seems to be clear. Learners at Level 2 (conformity reasoning) perceive rights as being directly related to fairness, or competence to act in self-determination, rather than being dependent on permission from authority figures (see § 3.5.2.2). Learners at Level 3 (autonomy reasoning) justify their rights in terms of abstract principles such as the right to privacy and non-discrimination (Ruck *et al.* 1998a:404) (see § 3.5.2.3).

Rowe (1992:78) notes that advances in the study of cognitive development have contributed much towards our understanding of levels and stages through which people pass in their thinking about moral issues (in essence, human rights issues). The most influential authors regarding development of moral-ethical thinking include Piaget, Tapp and Levine, and Kohlberg (Rowe 1992:78). Peens (1998:35) claims that the field of human rights is essentially moral. Discussions of rights always involve issues of fairness, reciprocity, equality, justice and welfare. Ruck *et al.* (1998a:405) concur with Rowe (1992:78) and Peens (1998:35) that the development of learners' understanding of their rights can be seen as being related to their level of moral development. Research conducted by Kohlberg (1969:374-390) on the domain of moral development cannot be ignored for he dealt specifically with learners' understanding of human rights, since human rights in essence involve moral issues. The way in which learners of different age groups reason and perceive their rights can be linked to their level of ethical, moral development. An understanding of moral development could serve to assist in the interpretation of certain unexpected trends that may emerge in the results of this study.

Aspects that influence the development of rights reasoning are discussed in the following subsection

### **3.3 ASPECTS THAT PLAY A ROLE IN THE DEVELOPMENT OF LEARNERS' UNDERSTANDING OF HUMAN RIGHTS.**

The development of learners' understanding of human rights tends to be influenced by several aspects such as socialising agents, specific circumstances in which human rights are involved, environmental and personal circumstances. These aspects may either impede or accelerate the rate of development of human rights understanding and rights reasoning. If the environment provides the necessary motivation and human rights reasoning opportunities, the development of human rights understanding and reasoning from the pre-conventional level (Level 1), through the conventional (rule-maintaining level (Level 2)) and ultimately to the post-conventional (autonomous or principle level) (Level 3)) may be enhanced (Rowe 1992:79-80) (see § 3.5.2.1, § 3.5.2.2 and § 3.5.2.3 respectively).

Since the aims of education include full development of the human personality towards becoming a responsible adult as provided for in article 26(2) of the UDHR, it is important to enhance a learner's development towards autonomy. The aspects represented in Figure 3.1 do



not only influence the development of human rights understanding, but also have an effect on a learner's academic achievement.

The discussion that follows elaborates on the aspects that influence the development of learners' understanding of human rights, as presented in Figure 3.1.

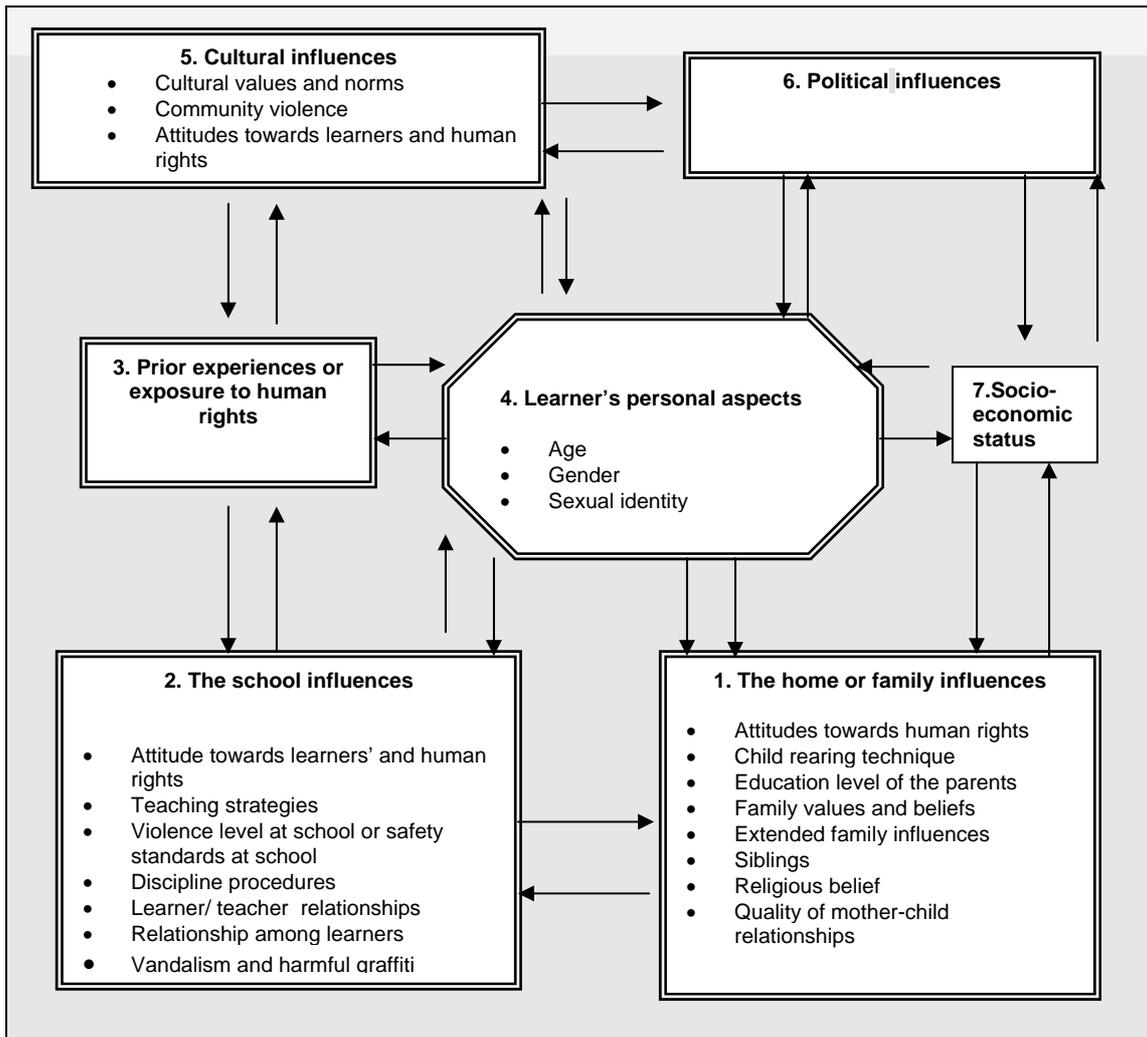
### 3.4.1 Home or family influences

The home is depicted as a major source of influence (McCandless 1969:801-6; Campbell 1969:828-830). Family environmental factors that have a profound influence on learners' development and understanding of human rights include, but are not limited to, the following:

- Parents' attitudes towards human rights (Bohrnstedt *et al.* 1981:443);
- Child-rearing techniques (Parikh 1980:1031-1037; Torney-Purta 1990:467; Helwig 1997:490-492; Imbrogno 2000:121; Sigel 1988:385);
- The level of education and the level of moral reasoning of the parents (Bohrnstedt *et al.* 1981:455; Denney & Duffy 1974:279; Mehan 1992:34);
- Quality of parent/child relationships (Sigel 1988:385);
- Religious beliefs (Bohrnstedt *et al.* 1981:455).

Parents' attitudes towards human rights may influence the way in which learners understand and perceive human rights and their right to education. Bohrnstedt *et al.* (1981:443) examined adults' perspectives on the right to autonomy in areas of privacy, education, conduct, responsibility and social participation. Although the results indicated a lack of consensus, adults felt more comfortable with granting learners nurturance rights, rather than granting them self-determination rights. Such attitudes among parents might socialise a child into viewing nurturance rights as being more important than self-determination rights. This in turn could hamper the child's development to Level 3 of rights reasoning (see § 3.5.2.3). Some parents might have the perception that allowing learners to have autonomy in exercising their rights at home and at school may socialise them into disobeying and undermining parental authority, hence their negative attitude towards learners' rights (Covell & Howe 1999:172).

Child-rearing techniques employed by parents also have an influence on the development of learners' understanding of human rights. Parikh (1980:1031, 1037) found that parents who used a high level of encouragement and advanced moral reasoning, provided more advanced ideals and reasoning to their children than parents who were less morally developed. She also argues that parents who resort to material discipline, physical punishment and love withdrawal, influence their children's views of their rights in a negative way, whereas parents who encourage their children to participate in decision-making tend to have children who are advanced in their moral reasoning and judgment.



**Figure 3.1: Aspects that influence learners' understanding of human rights (researcher's own synthesis)**

Toney-Purta (1990:467) is of the opinion that families who encourage their children to talk about moral and political issues tend to yield learners who exhibit positive thinking and reasoning in terms of political and moral issues. Children whose parents are warm and restrictive are responsive to adult authority, whereas those with warm permissive parents tend to be self-confident and self-assured, but unconcerned with rules. They have the feeling that their mistakes will be overlooked and, as a result, become spoiled. Learners whose parents are cold and restrictive tend to be angry, anxious and sullenly compliant and, lastly, parents who are cold and permissive tend to breed the most delinquent learners who defy rules and are hostile (Hogan, Johnson & Elmer 1978:9). Essentially the need to have access to primary affective relationships with parents is important in human development, especially for Level III of moral reasoning (post-conventional level). But it should also be understood that a child's need to make autonomous decisions does not necessarily mean that these decisions are justified. In contrast, caring parents provide suitable limits and norms that are perceived as being fair and serve as an external source of self-control (Ochaita & Espinosa 2001:371).



Concerning the quality of parental involvement in learners’ education, Sigel (1981:385) reports that parents who are actively involved in the education of their children tend to have children who achieve well academically. This in turn improves the children’s moral level. For example, among the Chinese, high parental involvement, especially direct involvement, participation and valuing education highly, contribute to learners’ high performance in mathematics. In contrast, the teaching style generally employed by American parents provides children with ample opportunity to handle learning materials on their own. This instills in children the feeling of independence and enables them to experience self-determination rights.

Louw *et al.* (2006:15) indicate that there is a strong link between learners’ performance and their parents’ level of education. This is illustrated in Table 3.3:

**Table 3.3 Performance of 14-18 year old learners by parents’ level of education for the year 2001**

Children’s performance	Education level of parent (Maximum)			
	Primary	Secondary	Tertiary	Total
Lagging well behind	80%	19%	1%	100%
Lagging slightly behind	64%	34%	2%	100%
On target	40%	49%	11%	100%

Adapted from Louw *et al.* (2006:21)

The academic performance of 80% of learners whose parents had only primary education lags well behind, compared with 1% of learners whose parents completed tertiary education.

Furthermore, learners from affluent families are more likely to succeed in completing their education than those from poor families. For example, the attainment profile of coloured learners aged between 16 -20 years reaching grade 12 in 2001 was only 14% from poor families and 30% from wealthier families. In the same year amongst white families, 30% of learners from poor households reached grade 12, compared with 50% from wealthier households (Louw *et al.* 2006:38; Appendix Figures 24 and 25).

Lickona (1969:342) notes that parents from different social classes differ in the extent to which they exercise authority over their children. Parents from the lower classes tend to use authority that promotes unquestioning, total acceptance of adults’ imposed values and the ‘letter of the law’ concept of morality. In so doing, parents consolidate the spontaneous realism that causes a child to think of moral rules as being physical, absolute and unchangeable. This retards the child’s development to an autonomous level of thinking. In contrast, higher social status parents accelerate children’s emergence from the morality of constraints to autonomous morality. Parents from a higher social class place themselves on the level of their children and engender feelings of equality, peace and reciprocity by means of example rather than precepts. Muianga



(1998:278) points out that, in poor developing countries, parents' viewpoints and aspirations regarding the education of their children follow the materialistic concept of learners' right to education. They perceive that schooling enables learners to ultimately take care of their parents. Therefore each child must have an education in order to get a job and thereby improve the living conditions within the family.

Mehan (1992:34) adds that more learners from working class and ethnic minority backgrounds do poorly in school; they also drop out at a higher rate, and thereby abandon their right to education earlier than learners from middle-income class and majority groups. Children from working class environments are encouraged to conform to external rules and authority and learn skills associated with manual work. In contrast, learners from elite backgrounds are encouraged to work at their own pace, without supervision, and to make their own choices. Therefore they have a better chance of internalising rules and they develop to Level III (principled reasoning) faster than learners from lower working classes (see § 3.5.2.3).

Research has shown that retention and drop out rates, as well as access to education and in particular higher education, differ between social classes, regions and ethnic groups (Rideout 1987:21-23; Grover 2002:7, 12). Learners from affluent families are able to proceed to a higher level of education; they also understand their right to education and future employment prospects better than learners from poor families. Learners from disadvantaged groups enrol in primary schools in large numbers, where most of them succeed. However the numbers drop with entrance to secondary school. Ultimately very few learners proceed to higher education (Connell 1993:12-13).

Melton and Limber (1992:172-183) summarised four cross-cultural studies on learners' views of their rights. They found that social class has a profound influence on how learners understand their rights. Understanding of their rights influences the degree of seriousness that learners attach to their education. The government has the capacity to provide equal resources to learners across social class levels, without discrimination on the basis of gender, nationality, race, or minority, and in so doing, to do justice to learners of low socio-economic status (Connell 1993:14).

Bohrstedt (1981:455) found that parental attitudes towards learners' rights differ according to their religious beliefs. Families with no religious identification side with the rights of their children and therefore by implication tend to allow their children to exercise their rights to freedom of religious convictions and conscience. Jews are more likely to side with learners' rights than Catholics and Protestants, whereas Catholics are less likely to side with learners' rights over the parental enforcement of religious rights.



### 3.4.2 School influences

Schools are important agents of socialisation and are institutions of transmission and maintaining the prevailing cultural ethos of a specific society (Rowe 1992:70). Learners' thinking and reasoning about their rights are influenced by formal schooling, among other things (Keating 1990:77). This occurs when learners are exposed to a variety of discourses. Torney-Purta (1990:460) is of the opinion that teaching strategies influence not only the acquisition of information, but also the rate at which learners reason about social issues. Learners in classrooms where educators encourage discourse of controversial issues and promote learners' expression of their own opinions, even if their opinions differ from the views of educators, are likely to perform at a higher level of reasoning (mentality) than those who are not exposed to their rights to freedom of thought and expression.

Covell and Howe's (1999:177-179) and Rendel's (1992:152) findings concur in that greater awareness of one's rights stems from curriculum interventions and methods of teaching. In these two studies learners who received instruction in human rights exhibited levels of understanding far beyond those who did not receive the same instruction. Methods of teaching that encourage peer participation through group discussions and exploration of opinions and values in an open way, entrench a more tolerant and respectful attitude towards the opinions of others. Learners also value their rights to equality, education, and protection from abuse, as well as the universality of human rights (Covell & Howe 1999:177).

School factors which may impede or accelerate the developmental rate of learners' understanding of human rights and their progress towards autonomy include the occurrence of violence, lack of safety standards and disciplinary procedures applied by the school, educator-learner relationships and relationships among learners. Inhumane disciplinary procedures tend to socialise learners into valuing violence and using it to solve problems, thus disrespecting the dignity and worth of persons (DoE 2000:7), and create in a learner feelings of alienation, depression and suicidal intentions (Imbrogno 2000:131).

Students who attend racially integrated schools are expected to show more mature moral judgments than those who attend culturally homogeneous schools, because the former schools expose learners to a greater diversity of values in a positive way, including the exchange of information with one another (Edwards 1978:26-27). The school climate, whether it is traditional, hierarchical or disciplinary, may influence the way in which learners perceive their rights as well as their rate of moral development (Melton 1980:189).

Osler and Starkey (1998:315) note that schools traditionally have been organised for instruction. They provide instruction in a specific curriculum designed or laid down by authorities. Sometimes knowledge gained from each subject is compartmentalised, without any link to real life situations. Learners are subjected to stringent rules and their role is often merely to conform.



These anti-democratic trends compromise the teaching and understanding of human rights (Alderson 1999:194). Learners are required to be passive recipients of instruction and therefore it can be readily understood that in such situations they would not even have the courage to assert their rights. Belter and Grisso (1984:899) and Kisser (1996:413) argue that 'beyond the question of knowing and understanding, lies the ability to apply the knowledge about one's rights in a practical way. This is reflected according to a learner's capacity to take appropriate actions and decisions to stand up for rights that they feel may have been violated.

Lastly, De Winter (1996:259-260) argues that there is a relationship between the goals which the school emphasises, and social roles that learners should adopt once they have finished school. The ideology prevails that children's and societal needs are best served by highly intellectual achievements. Society tends to divide learners into those who succeed and those who fail intellectually. The fear of failure is likely to push learners into delinquency and dropping out of school. Although children enter primary school with great expectations and enthusiasm, they are confronted with tasks and problems to solve, many of which they do not completely understand. Failing to succeed in those tasks and their inability to see the meaning and importance of the tasks in real life contexts, may cause learners to perceive themselves as being dumb and useless for society. What De Winter (1996:259-265) elucidated is that schools should aim at educating learners holistically, affording them an environment which allows them to take responsibilities such as developing and maintaining school buildings; involving them in decision making and the formulation of school rules; and allowing them to see that their opinions and contributions really matter. This, unfortunately, is not always the case.

### **3.4.3 Prior experiences or exposure to human rights**

Learners can experience their rights in the context of their own home, school and society. Cherney and Perry (1996:243) note that experience of or exposure to human rights issues may influence the way in which learners view human rights, as well as their development towards autonomy. Learners who are generally exposed to human rights experiences or who have an opportunity to be 'out in the world' and able to make their own decisions, seem to favour self-determination rights. Tapp and Levine (1974:33-34) are of the opinion that exposing individuals to conflicting reasoning opportunities provides practice in handling diversity, which stimulates development. Participation is also a crucial element of socialisation.

Grisso and Pomicter (1977:321) indicate that experience of the legal system has also been related to rights reasoning. They studied how the rate of refusal to talk in criminal proceedings increased with the number of prior offences, but below the age of 15 years, refusal to talk was non-existent. Experience was considered to stimulate moral development in that it provided role-taking opportunities and provoked a maximum amount of cognitive disequilibrium (Edwards 1978:19).



Learners' moral development is also influenced by societal norms (Melton & Saks 1985:256-258) to know good is to do good'. Learners can only construct the self in the context of relationships with others (Campbell 1969:837-841)

#### **3.4.4 Learner's personal aspects**

In the following sub-sections, personal aspects that are inherent within learners are discussed, namely age and gender. These characteristics could influence learners' understanding of human rights.

##### **3.4.4.1 Age**

There is a small but growing body of scholarship which suggests a developmental trend associated with 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 seems to be the most powerful determinant of learners' understanding of their rights. With increasing age, knowledge of the social domain also increases and becomes richer, more specific, sophisticated, abstract and differential. It is between the ages of 14 and 16 years that learners speak in terms of actually having or not having specific self-determination rights, and they become aware of the nature of rights. Between these ages learners begin to understand that their rights are not revocable (Ruck *et al.* 1998b:284). However, research has indicated that some misconceptions may be retained well into adolescence and some may become more prevalent with age. Younger learners express their rights in a more concrete form. They tend to appeal to personal desires, wants and rights (Belter & Grisso, 1984:900; Peterson-Badali & Abramovitch 1992:157; 1993:538; Melton & Limber 1992:174; Helwig 1995:162; 1997:492-3).

Ruck *et al.* (1998a:404, 413) examined the development of young people's understanding of nurturance and self-determination rights in the context of the home and school. Their findings suggest that, as learners become older, they are more likely to support both nurturance and self-determination rights. Learners aged between 8 to 13 years old supported nurturance rights more than self-determination rights.

Besides age, gender has also been found to influence learners' understanding of their rights (Helwig 1997:493).



#### 3.4.4.2 Gender

Gender differences have not been reported as a major determining factor in most research into examining learners' knowledge and reasoning about their rights (Melton 1980:186-189; Torney-Purta 1982:35-47; Melton & Limber 1992:174-181; Helwig 1995:159; Cherney & Perry 1996:245, 247). However, a number of investigations examining young people's knowledge of freedom of speech and religion, nurturance and self-determination rights, together with their development of understanding of rights, have reported gender differences. Gilligan (1982), as cited by Covell and Howe (1995:194), argues that moral reasoning differs between sexes. The reasoning of males stresses justice focused on individual rights and autonomy perspectives, whereas females exhibit care and consideration, and emphasise the need for the protection of nurturance rights more than self-determination rights. Covell and Howe (1996:258) note that, statistically, females are more likely than males to seek help in abusive situations. Male learners are more likely than females to endorse rights, support authority with regard to freedom of speech, and to consider harmful consequences of their moral judgments (Helwig 1997:493).

Gibbs *et al.* (1984:1040, 1042) note in their findings that gender differences are reflected in expressions of moral judgment, with females making greater use of conscience and sympathetic appeals than males. Females were found to be more responsibility oriented and could empathise more than males. A greater proportion of females used basic or societal based rights, and valued aspects such as honesty, conscience, consideration, self-respect, dignity, honour and one's sense of self-worth. Ruck *et al.*'s (1988b:286) study determined that gender differences according to age have emerged. For example eight-year-old female learners are less likely than all other females to know what rights learners have and eight to ten year old male learners are more likely than female learners to report that parents or adults could take away their rights. One of the findings of Bohrnstedt *et al.*'s study (1981:454) was that female learners are more accommodating in the area of the right to privacy and economic rights than male learners. Rogers and Wrightsman (1978:64) report differences between the sexes, with females holding significantly more positive attitudes towards nurturance rights than males. This could be the result of the traditional stereotypical role in which females are depicted as care providers in the home and males as economic providers.

Besides personal aspects such as age and gender, culture is also reported as one of the factors that influences learners' understanding of their rights (Melton & Limber 1992:176-178).

#### 3.4.4.3 Sexual orientation

Sexual orientation is a relatively recent notion in human rights law and practice and one of the controversial ones in politics. Prejudices, negative stereotypes and discrimination are deeply imbedded in some people's minds and patterns of behaviour. For many public officials and opinion-makers the expression of homophobic prejudice remains both legitimate and



respectable in a manner that would be unacceptable for any other minority. Lesbians, gays and bisexuals do not claim any 'special' or 'additional rights' but the observance of the same rights as those of heterosexual persons.

In South Africa the rights of lesbian and gay are protected in the Constitution under equality clause (section 9 of the Constitution). The main principles guiding the rights approach on sexual orientation relate to equality and non-discrimination. Human rights advocates, lawyers and other activists seek to ensure social justice and guarantee the dignity of lesbians, gays and bisexuals by applying section 10 of the Constitution that protects the dignity and worth of all human beings. Lesbian, gay and bisexual learners may not enjoy the right to education because of an unsafe climate created by peers or educators in schools. This may influence their understanding of human rights. (Sexual orientation 2008: [http://www.hrea.org/index.php?language\\_id=1](http://www.hrea.org/index.php?language_id=1))

### 3.4.5 Cultural influences

A significant body of scholarship suggests that cultural values have a profound impact on how learners understand their rights (Covell & Howe 1995:191; Covell & Howe 1996:253; Melton 1980:187; Melton & Limber 1992:176-178). Studies on learners' rights in the United States, Canada, Switzerland and Norway suggest cultural differences regarding attitudes towards rights and the saliency of the concepts. Different cultures emphasise different kinds of human rights (Melton & Limber 1992:177; Cherney & Perry 1996:243).

European cultures, for instance, place a higher priority on nurturance rights than on self-determination rights. They tend to reflect the views of Hobbes and Locke (Christie & Martin 1995:239) that learners have no natural rights and no rights by social contracts, because they lack the ability to make a covenant with other members of society (Cherney & Perry 1996:243). This view stresses the child's need for protection against injury from self and from other members of society. For example, Norwegian learners, when asked what rights learners should have, favoured nurturance rights (special entitlements), protection, care, safe homes and free health care (Melton & Limber 1992:177-178).

According to Sigel (1988:389) and Cherney and Perry (1996:242) some westernised cultures such as the USA focus on the importance of norms such as individualism, autonomy, self-reliance, assertiveness and competitiveness. For example, American learners tend to have special concerns about freedom of expression and freedom of choice and thus they place more emphasis on self-determination rights than on nurturance rights (Ruck *et al.* 1998b:285; Melton & Limber 1992:177-178). In general, westernised cultures are more aware of human rights than are non-westernised cultures.

When it comes to the right to privacy, American and Norwegian learners believe that protection of privacy is important, but it is of significantly more importance to the Norwegians. A



developmental trend is also evident in learners' views of their rights to privacy. For example, young learners prefer privacy of space (concrete reality), whereas older learners prefer privacy of information (abstract thought) (Melton & Limber 1992:179)

African culture places greater emphasis on the concept of 'vhuthu' (humanness), solidarity, respect for those in authority and respect for ancestral beliefs. In African cultures, learners have duties towards their family, society and the state (Ncube 1998b:17). Children have to work for the cohesion of the family, to support their parents in the occurrence of need and to preserve and strengthen cultural values and solidarity. This may impede children's development towards autonomy (Level III reasoning). African cultures may influence learners into valuing solidarity rights over individualism and competitiveness – norms which develop self-determination rights. This is evident in the saying 'Muthu ndi muthu nga vhathu' or 'motho ke motho ka batho' which means a person is (only) a person by other people. This philosophy concentrates on establishing relationships and strengthening unity of thoughts and deeds among people. The consequences of 'vhuthu' are that it instils in learners loyalty and honesty; respect for others and their property; and sensitivity towards the needs of others (Zulu *et al.* 2004:174). More traditional cultures have strong beliefs in the structure of an authoritarian, patriarchal society in which there is no room for freedom of expression and choice (Peens 1998:18). These perceptions would probably influence learners' perceptions of human rights and rejection of those rights, which emphasise freedom of expression and autonomous decision-making. The people's cultural attitude seems to be the major factor in law, human rights awareness, and practices. Certain rights touch upon deeply embedded traditions and cultural beliefs. For example, not only men, but also women, reject full equality between men and women, because it challenges the tradition that has been known, accepted, followed and been practised for generations (D'Engelbronner-Kolff 1993:77).

The differences among cultures relating to the emphasis placed on specific rights do not necessarily mean that the rights of children are not respected. What is implied is learners' rights have to be interpreted and applied with sensitivity and with due regard to the diversity of cultural norms and values.

Besides the diversity in cultural, economic and social concerns, the underlying values and philosophy forming the foundation of human dignity and basic freedoms are the same for all and are formulated in universal terms. The only difference between cultures might be the ways in which they understand human rights, in particular learners' rights, and the methods and processes which each culture applies to secure these rights (Ncube 1998a:1-8). Bloom (1982), cited by Torney-Purta (1982:37), notes that the literature is not totally congruent regarding the fact that there are cultural differences in the understanding of basic human rights, but in some respects, cultures do respect the same universal values. Bloom's (1977:37-38) respondents were from three cultures: Hong Kong, France and the United States of America. He found that



separate dimensions exist which are common across cultures, namely 'social principledness' (the ability to differentiate between conventional and personal standards of morality in making decisions), 'social humaneness' (the tendency to give priority to the human implications of decision making), and respect for human dignity and personal integrity.

Besides culture, the political context seems to significantly influence the way in which learners understand their rights (Covell & Howe 1996:253).

### **3.4.6 Political influences**

According to Covell and Howe (1996:253) the political environment in which learners grow up would in, some instances influence their understanding of rights. If learners grow up in rights conscious and rights supportive nations, they are more likely to have concern for the rights of others. Covell and Howe (1995:189, 1996:253) note that adolescents who grew up in the 1980's showed a decreased concern for the well-being of others, especially the disadvantaged and those in need of protection. The responses of learners who lived in countries which were politically unstable and war torn, when asked where they thought they might be in some years to come, indicated their needs were to be alive and free from torture. They placed greater value on the rights to life and personal safety than on other human rights (Ncube 1998a:19). Melton (1980:189) reported that experiences with rights which were dependent on social class and political setting, could have an effect on the acquisition of the concept of rights, and may account partly for development trends.

Having highlighted the aspects that influence learners' understanding of human rights, the focus now shifts to Kohlberg's theory of moral-ethical development, in order to contextualise different levels of moral reasoning.

### **3.4.7 Socio-economic status**

Socio-economic status has a profound influence on learners' understanding and judgment of human rights (Melton 1980:186; Melton & Limber 1992:176-197; Covell & Howe 1996:253; Peens 1998:25). Melton and Limber (1992:172-173) report the findings of four cross-cultural studies that were conducted in Massachusetts, Nebraska, Washington and Norway. These studies provide an overview of learners' views of their rights, their attitudes towards rights and what rights mean in their daily lives. The Massachusetts study consisted of 90 learners in the Boston area, including learners from affluent, working class and inner city, poor homes. The sample was further divided into Italian, Portuguese, African and white American learners aged 6, 8, 10 and 12 years. The Nebraska study included a sample of 300 learners between the ages of 4 and 14 years, of whom 50% lived in an urban area and 50% lived in various rural areas. The Washington sample included more than 100 learners aged 4 to 13 years, at variance with



the law, while the Norwegian sample consisted of a representative sample of 192 learners aged from 7 to 16 years from several schools of diverse social classes.

Melton and Limber (1992:176-178) found that the type of socio-economic environment in which learners find themselves may influence their general perceptions of their rights, or promote different emphases on different kinds of rights. The values exhibited by youth reflect their socio-economic conditions. Learners who grow up in a relatively affluent family environment generally experience their needs being met and therefore have a sense of security about their future. They favour post-materialistic rights such as freedom of speech, promotion of equal rights and a protected environment (self-determination rights) (Covell & Howe 1996:253; Peens 1998:25). In contrast, learners who grow up in a sub-economic environment value materialistic rights and have less sense of security about their future occupations. They tend to support materialistic values such as law and order. According to Melton (1980:186), learners of high socio-economic status achieve Level II reasoning several years earlier than learners of low socio-economic status. Learners of high socio-economic status also show a more positive attitude towards learners' rights approximately two years earlier than do learners of low socio-economic status. These findings are consistent with the findings of Melton and Limber (1992:175).

### **3.5 KOHLBERG'S THEORY OF MORAL-ETHICAL DEVELOPMENT**

Kohlberg's theory does not only address issues pertaining to development in general, but also combines them with moral development and reasoning. Through the understanding of this theory, one can obtain insight into how individuals interpret, perceive and interact morally in their social environment. Since human rights are social issues, and social issues include moral issues, it is necessary to discuss this theory in my study since learners' understanding of their right to education may be observed and interpreted against the background of this theory.

#### **3.5.1 Background to Kohlberg's theory of moral-ethical development**

Kohlberg studied the development of moral reasoning (Rowe 1992:77-79). His study involved 50 boys who were asked to respond to hypothetical moral dilemmas. His focus was mostly on the forms of analysis and expressions they used with regard to hypothetical moral questions. He found that his respondents passed through qualitatively differential stages as they progressed towards more complex and abstract levels of moral reasoning and judgment. Kohlberg concluded that these stages are found in all cultures and that they are irreversible. Reasoning capacity continues to develop and is limited only by the lack of further incentives and further reasoning opportunities (Rowe 1992:279; Snarey 1985:202; Peens 1998:35).

Kohlberg's work was influenced to a certain extent by Piaget's theory of cognitive development. Kohlberg's work extended Piaget's two stages of moral heteronomy (moral realism) and moral



autonomy (Piaget 1997:95). Moral heteronomy (realism) refers to the more concrete and self-centred way in which young children (aged between three and seven) reason about moral issues. Learners at this stage judge wrong and right behaviour by considering the consequences thereof and not the intention of the individual. At this stage, all acts that show obedience to authority are perceived as being good, whereas all acts that do not conform to the rules, are considered to be bad. The general idea shared by learners at this stage is that rules are unchangeable and are formulated by authority figures such as God, parents, educators and other adults (Salkind 1994:537). There is ample evidence suggesting that learners with concrete, operational thoughts generally are more vulnerable to conformity to parental authority than adolescents (Bohrstedt *et al.* 1979:460). They expect that if a rule is not observed, physical punishment should follow immediately. Cognitive development and interaction with peers during this stage result in a change of perspective and shift development to the next, more advanced and autonomous stage of reasoning (Piaget 1980:125; 1997:95,189; Smetana 1993:112; Peens 1998:39).

Piaget's second stage is moral autonomy. Learners reach this second stage between seven to ten years of age. This stage entails a shift in emphasis towards viewing values and conformity in a more realistic sense. Moral autonomy is viewed as morality of cooperation, rather than of adult constraint. Learners at this stage value fairness, equality and reciprocity. Rules are considered to be a product of contracts, based on mutual cooperation. Absolute moral heteronomy is replaced by understanding that rules are merely convenient, socially agreed upon conventions that are flexible and subject to change if everyone consents. During the moral autonomy stage, learners still do not judge moral actions in terms of the intentions of the individual performing those acts. Conformity in social relations is based on mutual, but not unquestionable respect for authority and respect for equality among individuals (Piaget 1997:95; Peens 1998:39; Kurtines & Greif 1974:453; Fernhout 1990:80-81).

Kohlberg's stages of moral development conform to the criteria specified in Piaget's two stages of moral-ethical development. In both cases, the stages:

- Involve movement from one development stage to the next, in which the new stage is a qualitatively different structure, which nevertheless serves the same function (moral reasoning) as the previous one.
- Form an invariant sequence, order, or succession in individual development. Learners go through these stages without skipping any of them. While cultural factors may speed up, slow down or stop development, they do not change the sequence. The time interval for moving from one stage to the next varies between individuals and probably between cultural groups (Snarey 1985:204).



- Form a structured whole. A given stage response to a task does not only represent a specific response based on knowledge, familiarity with the task of a particular stage, but also includes the levels archived at later stages. Each has its own equilibrium.
- Form a hierarchical integration, in that higher stages integrate the structures found in lower stages. People do not lose insights gained during earlier stages, but integrate them into new, broader frameworks. For example, formal operational thoughts include all features of concrete operational thoughts. Moral reasoning becomes more sophisticated as development proceeds through each stage (Fernhout 1990:81; Kohlberg & Kramer 1969:99; Kurtines & Greif 1974:454; Melton 1980:186; Snarey 1985:204; Kohlberg 1969:352; Kohlberg *et al.* 1983:31).

Both Piaget and Kohlberg see learners' moral development orientation as being an outcome of cognitive development that unfolds as a consequence of interaction between creative constructivism and social experience (Gibbs 1977:44, 51). Learners interact with their world; they construct and reconstruct reality in their search for meanings and cognitively organise their world (Tapp & Levine 1974:14; Kohlberg 1969:352).

Kohlberg (1969:35) found that stages of moral development are not only a product of maturation and socialisation or a result of the influence of socialisation agents such as educators and parents, but the stages also emerge as a result of an individual's own independent thinking about moral problems. He asserts that social experiences promote the development of moral thinking by stimulating mental processes through interpersonal discussion. This implies that perceptions and preconceived views are challenged by social context, which, in turn, motivates the revision of former perceptions in order to incorporate new perspectives and new ideas.

### **3.5.2 A detailed discussion of Kohlberg's levels and stages of moral development**

Before entering into a discussion of the different levels and stages of moral development it is necessary to explain the mechanism by which development is said to occur. Piaget (1997:251) and Kohlberg (1969:376) refer to the mechanism through which moral judgement changes as 'equilibration'. Equilibration involves the process by which a learner's reasoning about moral issues pertaining to justice, intent and social responsibilities moves from the position of disequilibrium to a consolidated stage of equilibrium. Disequilibrium occurs when conflicts are experienced by way of moral reasoning. Conflicting ideas presented by parents, educators and peers force learners to re-evaluate their current perspectives of their rights and then to consolidate new ideas. These new ideas are then incorporated into more advanced levels of reasoning and understanding of human rights and moral issues (Gibbs 1977:52).



According to Snyder and Feldman (1984:981), disequilibrium (imbalance) is associated with a period of transition between stages. Equilibrium involves a period of consolidation and stableness within one stage. During consolidation people use one mode of reasoning, namely the level of reasoning found at a lower stage. The level of reasoning at the transitional stage (disequilibrium) is expanded in the direction of the next, more advanced stage (Peens 1998:42). Pulaski (1980:14) sees equilibrium as the arrival of a relatively stable state in a system of constant imbalance, disturbance, or conflict between an individual and his environment. Lickona (1969:338) sees equilibrium as a process of self-regulation whereby an individual advances his development through successive revision of his actions in his environment. In this way, the individual's understanding is broadened. Equilibration enables individuals to eliminate contradictions in their cognition. When these contradictions are overcome, individuals are then able to move to a higher level of equilibrium and become more stable in their moral reasoning (Pulaski 1980:11).

Kohlberg (1969:376) distinguishes between three general levels of moral development (also called stages of justice reasoning). Each level contains two stages (see Table 3.4). Each second stage is more advanced than the stage which preceded it. Kohlberg defines the three levels of moral development in terms of conventions. The conventions indicate three types of relationships, that is, relationships between the self, society's moral rules and expectations. The term 'convention', as explained by Peens (1998:40), refers to moral values, norms and roles of a given society. It refers to the degree to which an individual conforms to socially prescribed views of morality.

The three levels and six stages of moral reasoning and judgment shown in Table 3.4 can best be discussed and understood when compared against a set of different aspects of moral judgment and reasoning (Peens 1998:41). Different aspects of moral judgment considered in the discussion for the purpose of this study are:

- Socio-moral perspectives (Kohlberg 1969:381; Kohlberg & Kramer 1969:100-101; Pagliuso 1983:149),
- What are rights? (Kohlberg *et al.* 1983:18-19; Fernhout 1990:101-107),
- The motivation for doing right (Kohlberg 1969:379-381; Nisan & Kohlberg 1982:867).

The aspects of moral reasoning mentioned above are discussed below under the three different levels of moral development and each of the six stages of moral judgment.

The socio-moral perspective refers to the characteristic point of view that individuals adopt in formulating moral judgments. At the same time, individuals creatively construct and integrate their social environment into their moral repertoire. Membership of different social groups will, to



**Table 3.4 Classification of moral judgement into levels and stages of development**

Levels	Stages and their characteristics	Strongest at ages
<b>First level:</b> Pre-conventional (rule obeying)	<b>Stage 1:</b> The punishment and obedient orientation	7-11
	<b>Stage 2:</b> The instrumental relativist orientation (egocentric)	10-13
<b>Second level:</b> Conventional (rule maintaining)	<b>Stage 3:</b> Conformity. Interpersonal concordance or good boy/girl orientation	11-25
	<b>Stage 4:</b> Law and order or social system maintenance	15-25
<b>Third level:</b> Post-conventional: Autonomous or principled level (rule making)	<b>Stage 5:</b> The social contract. Legalistic, individual rights orientation	20-25
	<b>Stage 6:</b> The universal ethical principles or conscience orientation	21-25

**Adapted from Fernhout (1990:105-107); Kurtines & Greif (1974:376 & 454); Kohlberg & Kramer (1969:100); Melton (1980:187); Pagliuso (1976:34); Rowe (1992:79); Snarey (1985:203); Salkind (1994:635); Tapp & Levine (1974:21)**

a certain extent, influence a point of view taken in moral and social reasoning (Pagliuso 1983:24). Distinguishing what learners at each stage perceive as right, together with their motivation for carrying out the right action, highlights the reasoning process followed in their thinking about social and moral norms (Peens 1998:41). Norms in this instance refer to formalised conventions (rules) as applied in broader, formally accepted laws. These rules prescribe a way of behaviour which reflects 'a common, shared way' of behaving. Justice reasoning is seen as being directly related to moral reasoning. Fairness and concern for the well-being of others falls into the domain of justice and always comes to the fore when discussing moral issues. In the case of this study, the topic of human rights falls in the moral domain. For this reason the issue of justice cannot be ignored.

In his approach to moral development and socialisation of learners, Kohlberg illustrates the issue of justice in moral reasoning. His stages of moral reasoning have been typically referred to as stages of justice reasoning; not of emotions, aspirations or actions (Kohlberg *et al.* 1983:17; Blasi 1980:28). Kohlberg incorporates three aspects of justice reasoning into his distinction of moral stages. The three areas of justice as stated by Kohlberg *et al.* (1983:19) read as follows:

A person is said to be unjust (a) if he breaks the law of the land, and (b) if he takes more than his share of anything. Where injustice is equivalent to unfairness it means more than one's share of the goods of fortune. The lawbreaker being unjust and the law abiding person just, it follows that whatever is lawful is in some sense just. The interest of law is the community as



a whole. All that tends them to create and conserve happiness in the body of politics is in one sense just. Justice as so defined is complete virtue in relation to one's neighbor. Hence justice alone of virtue seems to be the good of others. This justice is not part of virtue but the whole of virtue. Justice and injustice as whole are generally determined by law making. Particularly, justice may take three forms: One distributive justice, which is the distribution of honor and wealth among members of the community, distribution which is either equal or proportionate to merit. The second form is communicative justice, which is proportionality or equality in private transactions. The ... corrective justice aimed at redressing an unfairness or inequality by restitution to the victim.

This lengthy quotation about justice forms the basis of moral development and judgement and is applicable when approaching the issue of human rights, and learners' right to education in particular. The first area of justice is 'distributive justice', which refers to the way in which society distributes resources equitably or divides honour, wealth and other desirable assets of the community equally among its members (Connell 1993:16). In education, distributive justice is both a goal and a process. It involves full and equal participation of all groups of society, mutually shaped to meet their needs (Phendha 2000:16). The distribution of assets should be structured around a respect for fundamental human rights, including the right to education. Education is a major public asset. 'Who gets what' in the school system is an important question. Educational institutions exhibit unequal distribution benefits. In different countries, the 'shape' may appear as a pyramid. The pyramid is broad at the base where developing learners are in primary school, becomes narrow in the middle where learners enter secondary school, and even narrower at the level of higher education Connell 1993:12).

The next section discusses the levels and stages of moral development and rights reasoning as depicted in Table 3.4

### **3.5.2.1 First level: Pre-conventional (rule-obeying) level**

Learners at this level exhibit an egocentric orientation, in which rights are perceived in terms of privileges that are bestowed or withdrawn on the whim of authority figures (Ruck *et al.* 1998a:405; Salkind 1994:540). Learners aged between 7 and 13 years comprise this first level. They obey rules and laws imposed by adults in positions of authority, such as educators and parents. The reason for obeying rules is to avoid punishment or any other physical harm, or as a result of fear of a person in authority. Learners at this stage are unable to internalise laws and rules (that is, to understand and accept laws and rules so that they become a natural part of one's character) (Cambridge International Dictionary of English, 1995:743). Rules and laws are seen as external to oneself. Rules restrain people from 'doing wrong'. Learners of this age group are responsive to cultural rules and labels of 'good' and 'bad', 'right' and 'wrong', but they interpret these labels in terms of either physical consequences of action, or physical power of those who make the rules. They do not understand or uphold socially shared moral values, nor do they consider the interests of others. Individual orientation and fulfilling one's own needs are of paramount importance. (Kohlberg & Kramer 1969:100; Tapp & Levine 1974:21; Rowe 1992:79; Pagliuso 1976:24; Piaget 1997:95; Salkind 1994:540).



The pre-conventional level is divided into the following two stages:

**A. Stage 1: The punishment / obedience orientation**

This stage has many characteristics found in Piaget's first stage of morality of constraints.

- **Socio-moral perspective**

Learners at this stage have an egocentric, socio-moral perspective. They do not consider the interests of others, nor do they recognise that they differ from others. They have very little ability to put themselves in another person's place. They perceive the world with a sense of naïve moral realism and give a literal interpretation of the moral significance of an action. They take rules literally and think of goodness only in terms of obedience. The goodness or badness of an action is seen as a real and unchanging quality of the act. Rules are seen as morally good and require little or no justification. All rules handed down by those in authority such as parents, educators or God must be unquestioningly obeyed. Punishment is seen as a consequence of bad actions. Acts that show disobedience must be followed by punishment immediately. Learners at this stage are unable to understand concepts such as mediation, or circumstances like the intentionality and intentionality of an act. They confuse the perspectives of the authority with theirs. This means that learners at this stage cannot distinguish good intentions from bad intentions, as they have not yet developed balanced interpersonal relationships (Fernhout 1990:104; Kohlberg & Kramer 1969:100).

- **What is right and motivation for doing right**

Those in authority determine what is right or wrong. They are seen as physically large and powerful, and should be obeyed. Learners at this stage see 'right' as sticking to rules, backed by punishment. Obedience is followed for its own sake. The 'right thing' is avoiding physical damage to person and property. The perceptions of rights at this stage are more concrete, and learners are unable to understand rights in an abstract way. They perceive grown-up people such as parents and educators as the ones who have rights, but the notion that other learners, like themselves, have rights too, is not clear at this stage. Their motivation for doing right is to avoid punishment and is based on an irrational fear of authority, instead of in terms of respect for the underlying moral order supported by punishment and authority (Kohlberg 1969:376,381; Pagliuso 1976:49).

**B. Stage 2: The instrumental, relativist and individualistic morality**

- **Socio-moral perspective**

This stage is characterised by a concrete, individualistic perspective. Learners at this stage are aware that everybody has their own interests to pursue and that at times conflicts may develop. Learners start to understand that different people can have different justification for claims to justice, which can be equally valid. Learners at this stage are also characterised by an



awareness that more than one perspective on an issue can exist and that pursuing their own interests can therefore be justified. Interpersonal relationships are based on maintaining one's own welfare first and foremost; hence the stage is called 'instrumentality'.

There is a decline in heavy authority dominance. In pursuing their own interests, learners guard against negative consequences to themselves that may result from these actions. At this stage, individuals still operate pre-conventionally, in that they speak as isolated individuals rather than as members of society. They believe in the exchange of favours for mutual good, but they have not yet internalised the values and norms of society. When judging the badness and or goodness of an act, motives and need-consequences are not ignored (Fernhout 1990:104; Snarey 1985:203). This age group acknowledges that the ideas of others should be considered.

- **What is right and motivation for doing right**

What is right is understood as following the rules for immediate personal benefit and primarily one's own best interests. Learners at stage 2 perceive right as that which is fair, or is an equal exchange, deal or agreement. Doing what is right is motivated by the desire for reward or benefit. Possible guilt reactions are ignored and punishment is viewed in a practical concrete way (Kohlberg 1969:381).

### **3.5.2.2 Second level: Conventional (rule-maintaining) level**

Learners reach this level between the ages of approximately 11 and 25 years and are able to identify with, or internalise the rules and expectations of others, especially those in authority. They are more concerned with maintaining the expectations of individuals, family, groups or the nation. Maintaining expectations of those in authority is perceived as valuable in its own right, regardless of immediate and obvious consequences. This means that learners at this level have gained an understanding of socially shared expectations and perceptions about moral norms, with which they identify personally. The attitude of learners towards accepted moral norms is positive, not only in connection with conformity to personal expectations and social order, but also being loyal to and actively maintaining, supporting and justifying the order to which they belong. Tapp and Levine (1974:121) call this level of thinking the 'law maintenance' level. At this level, disobedience and obedience stem from perceived requirements of personal, social and moral conformity.

Level 2 learners see rights as being based on fairness, maintaining social order and obeying rules. They understand that rules and laws are necessary to prevent disorder, though the reasons for obeying rules and laws are still avoidance of negative consequences, disapproval or chaos (Peens 1998:40; Rowe 1992:80; Tapp & Levine 1974:21; Kohlberg & Kramer 1969:100; Abramovitch *et al.* 1998a:405; Blasi 1980:35; Salkind, 1994:540). Tapp & Levine (1974:24-25) argue that most people are unable to proceed further than this level.



The conventional level consists of the following two stages:

**A. Stage 3: Conformity/interpersonal concordance or good-boy/girl orientation**

- **Socio-moral perspective**

Learners at this stage are aware of shared feelings, agreements and expectations, which are valued higher than self interest. There is also a shift towards understanding that mutually trusting relationships exist between people. All actions are geared towards maintaining one's trustworthiness and honesty. Learners at this stage believe that conforming to the expectations of others (family, peers and church members) helps one and maintains interpersonal trust and social approval.

- **What is right and motivation for doing right**

What is considered to be right by learners at stage 3 is living up to expectations of people close to one in terms of the roles one plays as a child, sibling, friend or person in the community. Being 'good' is important in terms of having good intentions and motives and being able to express inter-personal feelings such as love, empathy, trust, respect, gratitude, loyalty and concern for others. The motivation for doing well lies in the golden rule of "do unto others as you would have them do unto you". Other motivating factors are the need to be a good person in one's own eyes and those of others, the desire to maintain rules and authority that support stereotypical good behaviour, and anticipating that others might disapprove of one's actions, choices or decisions (Snarey 1985:203; Fernhout 1990:105; Kohlberg 1969:381; Gibbs 1977:45-47).

**B. Stage 4: Social system maintenance or law-and-order maintenance**

- **Socio-moral perspective**

Learners at Stage 4 progress to becoming responsible members of society, which is a system that defines the roles and rules. This stage underlines the idea that any social system or structure is made up of consistent sets of codes and procedures that apply impartially to all members. Individual interest is judged to be good or bad by considering if it is consistent or inconsistent with the maintenance of the social system as a whole. Another emphasis is on obeying the laws, respecting authority and performing one's duties so that social order is maintained. Interpersonal relationships occur within this context and rights and responsibilities are recognised. Development of honesty and integrity between people is valued (Pagliuso 1976:91). This stage is reached at adolescence or late adolescence. Justifying behaviour by appealing to good intentions is no longer sufficient. There is a new focus on good or bad character in society. Transgression of the law at this stage could mean jail, and this turns the



person who transgresses the law into a possibly dangerous member of society upon their release from jail (Gibbs 1977:47).

- **What is right and the motivation for doing right**

What is right for learners at Stage 4 is fulfilling duties which one has accepted. Laws and rules that are agreed upon should be upheld except in extreme cases where they conflict with other fixed social duties. Upholding laws keeps the system cohesive, whereas breaking laws leads to chaos. The motivation for 'doing good' therefore is to keep institutions whole and avoid possible break-down if laws are disrespected. Another motivation is the anticipation of disorder, blame for failure of duty and guilt in the event of concrete harm being done to the system or institution (avoiding guilt) (Nisan & Kohlberg, 1982:866).

### **3.5.2.3 Third level: Post-conventional (autonomous or principled) level**

Some learners enter this level in early adolescence. It represents a state of increased autonomy in which the individual comes to recognise the intrinsic value of rules and laws (Rowe 1992:80). Rules are seen as human contracts reflecting active consensual participation of equals moving towards shared exceptions, instead of being derived from dictates of unilateral authority. This means that rules are no longer regarded as rigid and unchangeable as in Level 2 thinking (Tapp & Levine 1974:22). Although learners at this level see rules as a social contract, they are able to understand that social contracts are voluntarily entered into. In addition, they tend to differentiate self from rules and the expectations of others. They define moral values in terms of self-chosen principles. They distinguish between rules and principles of justice and societal conventions so they can evaluate the system in terms of criteria for ethical legality and morality.

The validity of laws is generally viewed and evaluated in terms of the degree to which they protect and serve fundamental human rights and values. Learners at this stage appear to be viewing society from the outside (externally) and constructing their own behaviour based on principles that a society ought to uphold. Individuals are, in certain circumstances, justified in breaking laws or rules which violate universal moral principles. This implies that learners at level 3 deeply analyse the perspectives of rights, duties of individuals and society in terms of origins, social contracts or principles of universal ethics. By late adolescence very few people show movement in this direction, and in adults, this level never becomes dominant. Principled reasoning is tested in real life cases of individual and social issues, such as the provision of legal services for the poor, protection of human rights on behalf of the deprived, the sick and the economically disadvantaged (Tapp & Levine 1974:22; Rowe 1992:80; Pagliuso 1976:29; Keating 1990:70).

The post-conventional level consists of the following two stages:



**A. Stage 5: Human rights / social contract and social welfare morality**

- **Socio-moral perspective**

According to Peens (1998:49) the views held by learners at this stage are those of rational, moral beings who are aware of universal values and rights that would be included in any moral society. Social laws and systems are evaluated in terms of the degree to which they protect and serve fundamental human rights and values. Laws which are inconsistent with fundamental human rights are seen as invalid and therefore of no moral or legal force. Learners at this stage consider moral and legal points of view. They integrate the afore-mentioned societal perspective by means of formal mechanisms of agreement, contract, objectiveness, impartiality and due process. At this stage the main criterion is a legal point of view, but with more emphasis upon the possibility of changing the law in terms of rational considerations of social utility (rather than Stage 4 law-and-order) (Kohlberg *et al* 1983:101). The emphasis at this stage is of society creating rather than society-maintaining. Learners now begin to think of society in abstract theoretical terms by stepping out of their own society and considering what rights and values any society ought to uphold. At some point they recognise that moral and legal rights sometimes conflict and are sometimes difficult to integrate (Fernhout 1990:107; Kohlberg & Kramer.1969:101)

- **What is right and motivation for doing right**

At this stage, learners consider what is right as being aware that people subscribe to a variety of values and that most of these values and rules are relative. Most of their values are relative to those of their own group. Relative values are usually contracts upheld in the interests of impartiality, while non-relative values are human rights, for example, the value of life, the importance of liberty and social welfare, which are considered necessary to uphold in any society, regardless of the majority opinion. Motivation for doing right is a sense of obligation to law, because the law is seen as a social contract that has been freely entered into. Learners abide by the law for the welfare of all and for the protection of all people's rights. This same feeling of contractual commitment, freely entered into, is evident in the commitment shown to friends, family, work colleagues and other social groups (Fernhout 1990:106; Pagliuso 1976:110; Kohlberg & Kramer 1969:101; Snarey 1985:203). At Stage 5 the essence of what human rights and the welfare of others entails, is captured. All people are seen as free, autonomous persons who are capable of making decisions about their own and others' lives.

**B. Stage 6: Morality of universal, prescriptive ethical principles**

Stage 6 is the last and the highest of Kohlberg's stages of moral-ethical development.



- **Socio-moral perspective**

This stage has been described as one where people take the moral as well as legal points of views from which social arrangements are derived (Tapp & Levine 1974:22). It has been suggested that it is this stance which all human beings should take towards one another as free, equal, autonomous people. When resolving conflict at this stage, equal consideration of claims or the point of view of each person involved in the conflict, must be taken into account. The important emphasis becomes that of balanced individuals who respect people as they are, and not just as a means of achieving other societal values. Learners now value not only the mutual agreement of contracts, but also the procedures followed when reaching such contracts, such as fairness, reciprocity and equity. Each agreement or decision must be based on the respect of human dignity and worth of people (Fernhout 1990:107) (Peens 1998:51).

- **What is right and motivation for doing right**

What is right is defined by the decision of conscience in accordance with self-chosen ethical principles (Kohlberg & Kramer 1969:101). Particular laws or social agreements are usually valid because they rest on such principles. The reason for doing right is a personal commitment to these universal principles. When laws violate universal ethical principles, the expectation is to act in accordance with the universal principles of justice, which are equality of human rights and respect for the dignity and worth of human beings as individual persons (Fernhout 1990:107). These principles are not concrete moral rules such as the Ten Commandments, but are abstract ethical principles.

Thus far the levels of moral development and justice reasoning show a progression from heteronomy (pre-convention) in which standards of behaviour are imposed from without, to conformity (conventional) in which behaviour is voluntarily modified to match the conduct of others, to the final level of autonomy. This means that individuals internalise their own codes of conduct and assent to the principles of democratically expressed values of the group, based on personally held principles.

One implication for my study of the progression from one level to the next is that educators should be aware of the level at which their learners are operating, in order to provide stimuli for effective development. A second implication is that progression through the stages may be encouraged when learners' thoughts are challenged by advanced arguments and judgement of situations in which human rights are involved. Development takes place when learners try to resolve the disequilibrium (imbalances) created by problems occurring at any time. This seems to suggest that educators should provide problem-solving opportunities and involve or adopt an open-ended approach to teaching and learning, so that learners are allowed to interact with the subject matter at hand (Rowe 1992:82).



### 3.6 SCHOLARLY CRITICISMS OR VIEWS CONCERNING KOHLBERG'S THEORY OF MORAL-ETHICAL DEVELOPMENT

Several authors acknowledge Kohlberg's work. However, certain reservations have been expressed about the way he selected his subjects. His respondents consisted of a small number of white, lower and middle class males, which is not regarded as a representative sample (Salkind 1994:541; Kurtines & Greif 1974:463).

In a review and evaluation of Kohlberg's approaches, Kurtines and Greif (1974:462-463) suggest that although there may be trends in moral development, there is insufficient data to support an invariant development sequence. They distinguish between moral judgment and moral behaviour. Most studies, however, support the invariant sequence of moral development (Snarey 1975:204, 226; Fernhout 1990:80-81).

Gilligan, as referred to by Salkind (1994:542) and Kohlberg *et al.* (1983:131) criticises Kohlberg's stages of moral development in that they are gender biased – he concentrated more on justice and autonomy, which is characteristic of the way men think, than care and responsibility that women bring to most moral issues. It has also been suggested that Kohlberg over-identified moral reasoning with moral development and in some way ignored significant aspects such as moral habits, personality traits and situation constraints (Rowe 1992:79).

Kohlberg's work was also criticised for being culturally biased in that his universal stages seem to reflect a liberal, individualistic Western cultural orientation. Although learners in various cultures seem to progress sequentially through the three or four stages of moral development, the post-conventional stages (five and six) are most frequently found in educated middle class people in countries such as the United States of America, Canada and Britain. It is not clear why members of tribes or villages tend not to experience or express post-conventional moral reasoning (Snarey 1985:227). It could be the result of various aspects, such as the lack of formal education and literacy levels in a less developed society. Such lack of opportunities could lead to impaired cognitive development which is necessary for advanced moral development, or to the omission of reasoning which underlies certain cultural values, such as collective solidarity that is evident in African cultures. What is expected though is that one should act according to the level of moral development that has been reached. Peens (1998:55), however, is of the opinion that our moral reasoning may largely determine our moral talk, and that our moral behaviour is determined by several influences. What people do is powerfully determined not only by inner attitudes and thoughts, but also by the social system in which they live.

The results of twelve studies summarised by Blasi (1980:1-18) show a confusing picture, when comparing moral behaviour with either habitual action in real life or specific behaviour. Six



studies indicated that there is a significant correlation between moral reasoning and moral behaviour. Three studies yielded negative results and the remaining three had mixed results. For example, delinquent behaviour traits were found to go together with pre-conventional modes of reasoning and behaviour characterised by the supremacy of concrete self-interest. Peens (1998:56) suggested that more attention should be paid to the observation of learners' general age-related moral behaviour in addition to testing their moral reasoning. This observation could be of assistance when instructing learners on how to behave or act morally in different situations

Although some criticism has been levelled against Kohlberg's theory of moral-ethical development, the importance of his work cannot be ignored in studies dealing with learners' understanding of their right to education and other human rights. Human rights are social issues and therefore involve moral issues. At the time of writing this thesis, Kohlberg's theory which combines the development, social and moral domains involving learners' understanding of their rights was deemed to be the most appropriate.

### **3.7 CONCLUSION.**

In this chapter, international and South African research on learners' views and perceptions of human rights and the development of understanding of human rights were discussed. A detailed discussion of Kohlberg's theory of moral-ethical development was given, as this theory provides a foundation on which to build the analysis and interpretation of the results on how learners understand their right to education, a question this study seeks to answer. These aspects might be helpful when interpreting why learners understand their right to education in a certain way, as this study primarily concerns two phenomena, that is, understanding and human rights, which fall under cognitive and social domains respectively.

Having discussed scholarly perspectives on learners' perceptions of their rights and the mechanisms through which the development of understanding occurs, this study tries to explore, interpret and analyse learners' understanding of human rights, particularly their right to education. The research philosophy, research design, methodology, research instruments, data collection strategies and data analysis procedures followed in investigating this problem are described in the next chapter.