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**AN ANALYSIS OF LEARNERS' KNOWLEDGE AND
UNDERSTANDING OF HUMAN RIGHTS
IN SOUTH AFRICA**

by

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September 2008



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DECLARATION

I declare that this thesis which I hereby submit for the degree

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April 2008



DEDICATION

I dedicate this thesis to:

- My caring husband, David Ailwei Netshihame, for his never-ending support, encouragement and understanding during my years of study, and our beloved children Ntswiseni, Mbavhalelo, Maṭodzi, Takalani and Andani;
- My mother Tshinakaho, my late father Makonḡele Musekene, my brother Nndanganeni; and
- South African learners - may your right to education always be treasured and pave the way for you towards the enjoyment of all other human rights!



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ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and People's Rights adopted in 1981
ACHR	American Convention of Human Rights of 1969
ACRWC	African Charter on the Rights and Welfare of the Child (1990)
ADI	American Declaration of Independence (1776)
CRC	Convention on the Rights of the Child (1989)
CDE	Convention against Discrimination in Education (1960)
CEDW	Convention on the Elimination of all forms of Discrimination against Women (1979)
CCA	Child Care Act (Act 74 of 1983)
CCAA	Child Care Amendment Act (Act 96 of 1996)
DoE	Department of Education
EBR	English Bill of Rights of 1689
ECRC	European Convention on the Rights of the Child
ECHR	European Commission on Human Rights
ECLAC	United Nations Economic Commission for Latin America and the Caribbean
EFA	UNESCO World Conference on Education For All (1990:1)
DVA	Domestic Violence Act 1998 (Act No. 116 of 1998)
FDRM	French Declaration of the Rights of Man of 1789
ICERD	International Convention on the Elimination of all forms of Racial Discrimination (1965)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
NEPA	South African National Education Act (1996)
PFVA	Prevention of Family Violence Act (Act 133 of 1993)
SASA	South African Schools Act (1996)
SAHRC	South African Human Rights Commission
SAPSD	South African Police Service and the Department of Education
SGB	School Governing Body
UDHR	Universal Declaration of Human Rights (1948)
UNDEIDRB	UN Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religious Beliefs (1981)
UNDRC	UN Declaration on the Rights of the Child (1959)
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VDR	Virginia Declaration of Rights (1776)



ABSTRACT

The concept 'human rights' has become a buzz word to which different people attach different meanings. There are persistent media reports of human rights abuses, especially the right to education. There are seldom reports on human rights observances and responsibilities aligned with the exercise of each right in schools. South Africa joined the democracy of the world when she stepped out of the apartheid regime and adopted a new constitution underpinned by the democratic values of human dignity, equality and freedom. Prior to 1994, human rights were not guaranteed to everyone. With the dawn of the new democracy, learners were confronted with a panoply of human rights, which they must access, and exercise. The right to education is one of these human rights. The right to education has now been awarded the status of a core human right, without which the possibility of the enjoyment and access to other human rights becomes tapered. The realities revealed by the literature are that more learners enrol in primary schools in large numbers, only to drop out later without acquiring functional literacy levels. Most of those who succeed in reaching secondary school level drop out too, with the consequence that very few learners are able to continue to tertiary level. Even though there is a host of scholarship on the topic of learners' rights in general, the voices of learners with regard to their right to education are relatively silent.

Given the above background, this case study seeks to explore, understand and analyse secondary school learners' knowledge and understanding of human rights, in particular their right to education. The investigation of this topic was twofold. Firstly, I explored learners' knowledge of the scope of their right to education and secondly, from their responses, I determined their level of understanding. This study was conducted within the interpretive research paradigm.

It is of fundamental importance to investigate learners' understanding of their right to education and the levels of rights reasoning at which they operate, since learners are the real beneficiaries of the right to education and the sustenance of the democracy depends on them. In short, research on learners' understanding of their right to education is critical to the development of curriculum, structures and procedures that will permit learners to exercise the rights due to them and to ensure that the purpose underlying each particular right is fulfilled.

I purposively sampled one rural public secondary school in the Soutpansberg East circuit, Vhembe district in the Limpopo Province. During inductive data analysis, four patterns



emerged from within the data: (a) the absolutising of the right to education by some of the learners; (b) not understanding how the right to education is limited within the context of the school; (c) assertion of the right to education and (d) non-assertion of the right to education based on three levels of human rights reasoning.

The main findings revealed firstly that although some of learners are *au fait* with the fact that their right to education, like all other human rights, involves responsibilities and that through the right to education various opportunities may be accessed, they still have limited knowledge regarding their right to education. Secondly, some learners are less conversant with regard to the exercising of their right to education. In addition, although learners exhibited three levels of human rights reasoning, their responses showed mostly levels I and II, and little level III of human rights understanding and reasoning. Lastly there were some isolated cases where learners' responses revealed their uncertainty as to whether or not they in reality have the right to education.

These findings can be ascribed to (a) the authoritarian school system where “you do it our way” (conformity) is emphasised; (b) lack of prior exposure to human rights experiences; (c) grinding poverty; and (d) cultural background.

Theoretical and practical recommendations, as well as suggestions for future research were identified.

KEY WORDS

Human rights	Understanding
The right to education	Pre-conventional level
Core right	Conventional level
Absolutising	Post-conventional level
Limitation	Moral development



“and a woman who held a babe against her bosom
said, speak to us of children.

And he said:

Your children are not your children.

They are the sons and daughters of Life’s longing for itself.

They come through you, but not from you.

And though they are with you yet they belong not to you.

You may give them your love but not your thoughts,

For they have their own thoughts.

You may house their bodies but not their souls’

For their thoughts dwell in the house of to-morrow,

which you cannot visit’ even in your dreams.

You may strive to be like them, but seek not

to make them like you.

For live goes not backward nor tarries with

Yesterday

You are bows from which your children as

Living arrows are sent forth”

Peens, B.J. (1998).



CHAPTER 1

ORIENTATION AND BACKGROUND

1.1 INTRODUCTION

The United States Supreme Court stressed the fundamental importance of education for all in the famous case of *Brown versus Board of Education* and asserted that “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he or she is denied the opportunity of an education” (Hodgson 1998:3). Similarly, a South African court, in the well known case *Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA at 223* (a case involving discrimination in an educational institution) referred to the provisions in the interim Constitution (the then supreme law) of the Republic of South Africa of 1993. These provisions protected learners’ right to education and stated that “every person shall have the right to basic education and equal access to educational institutions”. The court further stated that it was common cause that a school was prohibited from turning learners away on racial grounds (*Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA at 230*). These two provisions were invoked in cases where school authorities discriminated against learners on the basis of their race and in so doing, violated the learners’ right to education because in the long term, these actions would impact badly on the learners’ right to education. As a result, it constituted an infringement of their right to education.

These statements made by the courts reflect the breadth of the scope of both international and South African interpretations of the right to education and possible direct and indirect infringements of this right. There have been many incidents in schools concerning the protection that school authorities offer learners with regard to their right to education, and the courts have had to intervene in order to protect this right.

1.2 BACKGROUND

Human rights are often in the news. It is common to see articles in newspapers reporting the violation of learners’ right to education or other human rights that impact directly on the right of learners to education. More often learners’ voices are silent, even if their rights may have been violated. The violation of learners’ rights does not only occur with regard to their right to education, but also in connection with other fundamental human rights. The following paragraph cites several events which occurred in schools and threatened learners’ rights to education.

The Cape Times (3 May 1999:8) reported findings of a survey on racism, which was conducted in 90 schools countrywide. It was found that blatantly racist, segregationist, and



discriminatory practices were flourishing in schools. The findings of the Human Sciences Research Council (HSRC) indicated that 60% of school learners felt that racism existed in their schools. Roughly similar numbers of students observed that their schools did not have a policy or programme to eliminate racism (Vally & Dalamba 1999:6).

In *Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA at 223* the applicants contended that their children were refused admission to Laerskool Potgietersrus because of the respondent's policy to refuse black children admission on racial grounds. Clause 5 of the school's policy contained a requirement for admission, which stated that the proposed pupil should be white. This policy violated section 8(2) of the South African Schools Act, Act 84 of 1996 (hereafter referred to as Schools Act) and also sections 8(2), 10, 24(a) and 32(a) of the interim Constitution of 1993. The respondent failed to establish beyond reasonable doubt that there was no unfair discrimination against black children. The court held that the applicant's application had therefore to succeed. The school could not exercise powers in conflict with the Constitution and it was emphasised that a person should have the right to basic education and equal access to educational institutions (*Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA: 230*).

In *Michiel Josias De Kock versus The Head of Department of the Department of Education, Province of the Eastern Cape, The Governing Body, Overberg High School, and the Minister of Education of the province of The Western Cape, 12533 RSA 1998*, Floris de Kock was expelled from Overberg High school on the grounds of alleged serious misconduct. The respondents did not follow fair administrative procedures when investigating the offence and the decision that followed after this investigation was considered irregular and consequently nullified by the court. The court ordered that the plaintiff be enrolled as a learner at the school.

Mecoamere (2001:9) reported the case of learners who were chased from school and denied access to free textbooks and stationery, because of their parents' inability to pay school fees. In another instance, expulsion of learners also occurred following the inability of parents to pay school fees, or to buy school uniforms. Those learners were also denied free access to textbooks, stationery and examination results. These media reports reflect the violation of the learners' right to education. In other instances learners are unfairly expelled from school. A learner at Horizon International High School was expelled from school because of watching a pornographic tape in the boarding establishment TV room; however, proper disciplinary procedures were not followed. No disciplinary hearing was held (Somniso 2001:3). The rule of substantive fairness (reason for dismissal) was justified, but the expulsion was procedurally unfair.

According to Ngobeni (2001:9) corporal punishment is still in use in schools. The media reported real grievous bodily harm following the beating of a learner by an educator, which resulted in the learner losing her eye. A 16 years old learner died after he had allegedly been



caned by the school principal (The Educator's' Voice, 2004:16-17). Educators assaulted learners for reasons ranging from not having school uniform, coming late to forgetting their books at home, and making noise in the classroom (Mamaila 1996a:30, Mamaila 1996b:3; *The Star*, 13 September 1996). In another instance, an educator repeatedly burnt a learner with a cigarette and dripped melted plastic over his genitals. The educator suspected that he (the learner) had stolen her handbag (Prinsloo 2005:5).

Lorgat (2000:1-3) presents the findings of a research review of sexual violence in South Africa. This review was commissioned by the Crime Prevention Resource Centre of the HSRC and was conducted by the Gender and Health Group of the Medical Research Council. The findings were that 33% of women, who had been raped as children, identified school educators as their rapists. South African learners, who have been subjected to rape or sexual harassment by their classmates or educators, have sometimes become school dropouts in an attempt to escape trauma and pain. Such learners are forced to suspend their rights to education, without obtaining a matric certificate (The *Sowetan* 27 March 2001:4). In another instance, 13 educators were expelled from school for having sexual relationships with learners (Prinsloo 2005:5).

The above paragraphs cite the violation of learners' rights to education by the school. Learners do not endure silently only the violation of their right to education but also the violation of their right to freedom of expression (Van Vollenhoven 2005:1). Coercing learners to attend school where they are abused, bullied, and denied access to resources, seldom enhances learning, which is the school's primary function. Van Vollenhoven (2005:2) argues that educators themselves are victims of the past education system, which did not recognise human rights. They therefore unknowingly or unintentionally violate the rights of learners. The best safeguard of basic human rights in schools would be the enhancement of human rights knowledge through educator training. Educators should be educated on implementing human rights at schools. In support of this statement, Tomasevski (2003:60) notes that educators know a great deal about the wording of education policies and laws, because these are available in a codified form, but they know less about the process of teaching and least of all about human rights.

In a new school system, embedded in a democratic country where human rights should be protected, the right to education should be viewed as a prerequisite for the enjoyment of all other human rights; an indispensable means to the realisation of other human rights and therefore the solving of social, political and economical problems (Matsuura 2003:269). This implies that the right to education is a *conditio sine qua non* and that one cannot enjoy life fully without having the benefit of basic education. In the same vein, the right to education is characterised as a fundamental human right and can be considered as an "upstream right" in the sense that it determines whether other rights can be exercised. Individuals cannot exercise civil, political, economic, and social rights, unless they have received a certain



minimum education, without which their access to such rights remains illusory and theoretical.

In this regard, Daudet and Singh (2001:10) ask the following questions about the right to education:

What scope can freedom of expression and opinion have for those who, because they have not obtained, through their education a means for access to knowledge of the full range of opinion (under any, but a totalitarian regime) are unable to form any opinion of their own?

Of what use is freedom of expression to those who have not acquired through their education tools they really need for their self-expression?

It is, however, important to understand what specific human right is involved, in order to exercise it. Incidents like those mentioned in the media reports above indicate that learners and other stakeholders are not conversant with what the right to education entails, nor are they certain of how the right to education should be exercised. I therefore propose that learners' lack of understanding of their rights to education poses a threat to the implementation of their rights and the survival of democracy. Research is therefore essential to determine how learners understand their rights to education.

Although this study does not focus specifically on cultural and socio-economic backgrounds and socialising agents, such as the home and church in South Africa, a short overview of the nature of South African society serves as a background for the investigation of fundamental human rights in a democratic South Africa. Another reason for considering the influences mentioned above is that the literature shows that understanding of human rights is influenced to a certain extent by the following issues:

- The home environment (The level of education of the parents (Bohrstedt *et al.* 1981:455; Denney & Duffy 1974:279; Mehan 1992:34; Parikh 1980:1031-1037 (see § 3.4.1))
- The school environment (Keating 1990:77; Rowe 1992:70; Torney-Purta 1990:460) (see § 3.4.2))
- Prior exposure to human rights (Prior experiences with human rights (Cherney & Perry 1996:243; Edwards 1978:19; Grisso & Pomicter 1977:321; Tapp & Levine, 1974:33-34) (see § 3.4.3))
- Cultural environment (Melton & Limber 1992:176-97; Cherney & Perry 1996:243) (see § 3.4.5))
- Socio-economic status (Melton 1980:186; Melton & Limber 1992:176-197; Covell & Howe 1996:253; Peens 1998:25) (see § 3.4.7.))

A more detailed analysis of the aspects that influence the development of human rights understanding and reasoning is given in chapter three (see § 3.4). Knowledge of the above-



mentioned aspects might help during the interpretation of the findings. Since this study has been conducted as a qualitative case study, knowledge of the context in which the investigation was conducted is important to appreciate why learners understand human rights in a particular sense (Blanche & Kelly 1999:126; Merriam 2001:27). .

In the era prior to 1994, South Africa was governed by a white minority and was characterised by its apartheid policy. Human rights were neither protected nor respected and violation of the majority's rights was the order of the day. Learners did not enjoy the right to education on an equal basis. Free and compulsory education up to secondary level was available to the white minority, while for blacks there was a mixture of government and missionary provision, involving fees for learners who continued to higher levels of education. This placed a considerable financial burden on parents to erect and maintain school buildings, with the consequence that learners from impoverished families had to suspend their rights to education (Rex 1979:121). The government of the day introduced the Bantu education system, designed to promote white supremacy and black dependency by providing education of inferior quality. Bantu education suggested denial of learners' rights to education in all its forms. It ensured that black learners did not aspire to positions in life, which they could not attain, and it was also aimed at social control. The education system made sure that there was not even a slight chance for a black person to enjoy equal rights alongside the white minority. In 1953 the then Prime Minister of South Africa, Hendrik Verwoerd, introduced The Bantu Education Act with these words:

I just want to remind you, the Honourable Members of Parliament that if the native in South Africa is being taught to expect that he will lead his adult life under the policy of equal rights, he is making a very big mistake. The native must not be subjected to a school system, which draws him away from his own community, and misleads him by showing him the green pastures of European society in which he is not allowed to graze (Fourie 1990:108).

The role that separate development played in every sphere of the South African society was carried over onto the concept of human rights. Every kind of right (Peens 1998:62) was enjoyed by the whites; while blacks were deprived of their rights in terms of education, job opportunities, access to health care and freedom. As a result, most black people in South Africa had little or no formal education at all. Those who had the opportunity to receive education under the Department of education and training were indoctrinated into unconditional obedience to authority and thereby not to question any rules that were imposed on them.

The attempt to impose Afrikaans as a medium of instruction in black schools encountered opposition unparalleled in South African educational history. In 1976 black learners revolted against the system and took to the streets to protest. The result was police intervention, rioting and shooting of learners. For the first time in South Africa, influenced by the notion of the Black Consciousness Movement, learners fought for an adequate education, rejected the

education system based on subordination (Rex 1979:125), and rejected the violation of their rights.

Because of these past experiences, the South African government of that time inculcated into the larger parts of society the tendency to disrespect diversity, equality, human dignity, and promoted non-tolerance. Although apartheid has since been legally abolished, its effects were widespread and still remain engraved in the minds of some South African citizens (Peens 1998:62). The political, cultural and socio-economic backgrounds therefore complicate the realisation of the right to education.

The following table adapted from Louw, van der Berg and Yu (2006:31,32) shows quite clearly how the academic attainment rates of the various racial groups differed from 1890 to 1980:

Table 1.1 Attainment profiles in percentages of different racial groups from 1890-1980

Year	Primary				Matric				Tertiary			
	Blacks	Coloured	Indians	Whites	Blacks	Coloured	Indians	Whites	Black	Coloured	Indians	Whites
1890	02%	08%	05%	75%	00%	00%	00%	19%	00%	00%	00%	06%
1900	03%	18%	10%	86%	00%	00%	00%	21%	00%	00%	00%	09%
1910	06%	20%	19%	94%	00%	00%	00%	25%	00%	00%	00%	09%
1920	10%	38%	30%	98%	00%	00%	02%	30%	00%	00%	02%	11%
1930	14%	42%	45%	98%	00%	00%	04%	35%	00%	01%	03%	14%
1940	22%	50%	62%	98%	00%	02%	09%	40%	00%	02%	04%	17%
1950	28%	62%	82%	98%	09%	10%	28%	68%	03%	03%	09%	28%
1960	52%	70%	91%	98%	15%	16%	48%	76%	05%	05%	15%	35%
1970	52%	82%	94%	98	29	30%	68%	80%	07%	06%	24%	38%
1980	82%	89%	96%	99%	30%	41%	80%	82%	03%	04%	18%	24%

Adapted from Louw *et al.* (2006:31, 32) Figures 9, 10 & 11

The education attainment gap among races at primary level for those who were born in 1980 is narrow (14%) with Indians and whites amongst the best performing races (96% and 99% respectively). The attainments of blacks and coloureds are low at secondary level in the same year. When moving to tertiary education levels, the racial attainment gap widens. The percentages of Indians and whites born in 1980 who completed tertiary education is 18% and 24% respectively, while only 03% of blacks and 04% of coloureds born in the same year completed tertiary education. This seems to suggest that access to tertiary education is constrained by factors which are not as limiting at primary and secondary levels. Finances



and dropout rates at secondary school level might be the probable cause (Louw *et al.* 2006:13).

South Africa stepped out of isolation and apartheid and adopted a new Constitution (the Constitution of the Republic South Africa, 1996, Act 108 of 1996 (hereafter called the Constitution), based on the values of equality, human dignity and freedom (Dlamini 1997:40; Rautenbach & Malherbe 1998:6; Van Raemdonck & Verheyde 1997:245). The Constitution is aimed at redressing the past imbalances and protecting the rights of all persons. The Constitution guarantees human rights (in chapter 2), including the right to basic education, which is provided for in section 29(1) (a-b). This section compels the state to take reasonable steps or measures to make further education progressively available.

While incorporating the Bill of Rights (Chapter 2 of the Constitution) into a legal system is a significant step, it nevertheless remains empty, or only formal, unless the whole social, economic and political order is transformed so that it allows everyone equal enjoyment of human rights (Eide 1983:107). Without knowledge and understanding, human rights remain only words that do not have any practical value and impact. Human rights can only be upheld in a society where everyone is aware of these rights and will help maintain them, even for children (Ramsden 1997:18).

However, it is also important to emphasise that, in the absence of knowledge and understanding, learners' rights may be nominal (Covell & Howe 1996:253, 1999:182). Learners may have the right to education or be free from abuse, but in the absence of understanding what it means to have a right or how to exercise it, learners may not be able to claim and enjoy it. In this regard Belter and Grisso (1984:899) state that beyond the question of knowledge lies the ability to apply the knowledge about one's rights in a practical manner, and the ability to take appropriate actions to protect or claim a right that has been violated. Children should be made aware of their right to education and they, in turn, should acknowledge that they possess it.

As South Africa emerged from the apartheid system of education where human rights, especially the learner's right to education, were not fully recognised, the question of how learners receive and perceive this right is inevitable when an education system, which fully recognises the learners' rights to education, has to be created and developed.

South Africa now has a single education system. The Constitution and Schools Act (section 3) require that learners be admitted to schools without unfair discrimination. The number of learners attending the former 'White only' schools is increasing. As the number of learners belonging to different cultural, ethnic and religious minority groups increases in the same school, tensions among learners, parents and the school authorities emerge. They begin to realise that there are different cultures and their own is not the only or correct one. Some fail



to recognise other cultures and are therefore intolerant and abusive and absolutise their rights. According to Van Vollenhoven (2005:35), the concept 'to absolutise' implies the tendency to perceive rights as non-derogable. Symptoms of the phenomenon can be that rights are viewed as unquestionable, non-negotiable, unequivocal, undeniable and incontestable (see § 4.14.3). These trends can have a detrimental effect on learners' rights to education if allowed to persist in schools. Learners appear to be unaware that their rights to education apply equally to each and every one of them. In this respect it is imperative to investigate how learners understand their rights to education. If learners' understanding of these rights can be determined, policy makers would be better equipped to ensure that the exercise of these rights occurs within the parameters of the legislation, without infringing upon the rights of others.

Although learners have the right to education by virtue of being human (D'Engelbronner-Kolff 1993:65), they are, however, not born with knowledge of human rights. It is through different socialisation agents and practical encounters with human rights experiences that learners acquire appropriate attitudes towards human rights and understand what constitutes basic human rights.

The question arises whether this is also the case with learners specifically in the Limpopo Province. For the purpose of this study it was assumed that learners have limited understanding of their rights to education. Their lack of understanding will pose a threat in their exercise and implementation of the rights, as well as the survival of democracy. Further, because the right to education is aimed at the development of human potential and cognitive thinking skills, lack of understanding of this right would retard learners' development of understanding and reasoning to a more advanced level of human rights arguments. Research is essential to determine exactly how learners understand human rights, especially their rights to education.

Therefore this case study investigated secondary school learners' understanding of human rights, particularly their right to education in South Africa. The investigation of this topic was twofold. Firstly, it attempted to interpret learners' understanding of the scope of their right to education and secondly, from their responses, it attempted to determine their level of understanding through the lenses of social contract theory and moral ethical development theory (Kohlberg 1969).

1.3 RATIONALE

In terms of principle 7 of the United Nations Declaration of the Rights of the Child of 1959 the intention regarding education is that:



The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education, which will promote his general culture, and enable him, on the basis of equal opportunity, to develop his abilities, his individual judgment and his sense of moral and social responsibility, and to become a useful member of the society.

Since human rights should be protected by the rule of law, it is agreed internationally, through this principle, that the right to education is a fundamental human right and an indispensable means to enjoy human rights and freedoms in a democratic society and to eradicate poverty (Daudet & Singh 2001:9,82). It was in this principle that I discovered the purpose for undertaking this study. If it is agreed that the right to education is a fundamental human right, aimed at the development of human talent, individual judgment, respect for human rights and therefore the protection of democracy, it is important to determine learners' understanding of this right. The violation of this right could lead to the violation of other human rights and impede the enjoyment of other human rights (Daudet & Singh, 2001:10).

This research also arises from recommendations made by Torney-Purta (1982:47), who pointed out that research based on human rights education is not as strong as it should be. It is believed that further research is needed to address issues such as young persons' knowledge and understanding of the concept of human rights. Researchers are needed to evaluate the effectiveness of formal human rights learning experiences, and the ability of learners to make use of their rights. South Africa's Constitution entrenches the Bill of Human Rights in chapter two. Eide (1983:107) notes that incorporating the Bill of Rights into a legal system is a significant step, but it would remain empty or only formal unless the whole social, economic, and political orders have been transformed in such a way that it allows everyone equal enjoyment of human rights. Human rights can be sustained in a society where everyone is conscious of these rights and will help maintain them, even for vulnerable groups such as children (Ramsden 1997:18).

Research on learners' perceptions of rights in legal and general spheres are increasing in fully-fledged democracies (Abramovitch, Higgins-Bliss & Bliss 1993:313; Abramovitch, Peterson-Badali & Rohan 1995:1; Cherney & Perry 1996:243; Grisso & Pomicter 1977:333; Helwig 1995:152; Melton & Limber 1992:174; Ruck, Abramovitch & Keating 1998(a):404; Ruck, Keating, Abramovitch & Koelg 1998(b):275). However, relatively little research has been done in South Africa regarding learners' understanding and perceptions of their rights in general (Peens 1998:24), and the human right to freedom of expression in particular (Van Vollenhoven 2005:7). Much of the research in the area of learners' rights was done in developed countries such as England, Finland, Canada and America. Although one may draw on other scholars' findings, it remains important to investigate what learners in young democratic countries such as South Africa know and understand about human rights, since knowledge and truth are relative concepts.



Prior to 1994, the South African education system did not respect human rights for all, especially learners' rights to education (Peens 1998:6). After 1994, a new constitution was adopted, which is underpinned by the values of equality, human dignity and freedom (Dlamini 1997:40; Rautenbach & Malherbe 1998:6; Van Raemdonck & Verheyde 1997:245).

The right to basic education is provided for in Section 29(1) (a-b) of the Constitution. This section provides that everyone has the right to a basic education which includes adult basic education and also compels the state to take reasonable steps or measures to make further education progressively available. In a new democracy where human rights are respected, the question of how learners receive and perceive their rights to education is inevitable.

Research on learners' experiences of their rights will be useful in constructing an agenda for child advocacy, because it may illuminate the most critical problems for children in the fulfilment of their rights. It may also help to define the contours of human rights. Education planners and educators should know learners' levels of understanding in order to plan curricula. Strategies should be aligned to enhance the rate of the development of human rights reasoning. Information about learners' conceptions of their rights and the phenomenology of the exercise of their rights may be useful to design structures and procedures for implementing learners' rights in a manner that protects their rights, especially their right to education.

I hope that even if there are no immediate instrumental and tangible benefits in asking learners about their views of their rights to education, this step would be an important signal of respect for a learner as a person. This view may have a positive impact on learners' socialisation, since their understanding of human rights is, to a certain extent, influenced by the perceptions and attitudes of others toward them and also towards their rights (Campbell & Covell 2001:132) (see § 3.2.2).

1.4 STATEMENT OF THE PROBLEM

The problems and reforms outlined in § 1.2 usually generate fears. The recognition by the international community and the South African education system of the concept of human rights for learners has given rise to an almost hysterical debate. Situations related to human rights become conflictive on many occasions because interests of individuals are at stake. Balancing the educators and learners' rights, duties and interests at school does not involve solely rights issues but also moral values, justice and relationships. Learners' rights have too often provided confusion and biased interpretation even to this day. Learners' rights are often dismissed because some educators and principals feel that the recognition of the learners' right to education in full might reduce their authority to discipline learners at school (Joubert. 2006:445). At the same time learners feel that their right to education allows them to do as they please while they are at school, for example the *Saturday Argus*, 9 March 1999 as cited

in Joubert (2006:446) noted that a schoolboy, executed an educator in front of the class. Possibly one may ask this question:

How do learners understand human rights and in particular their right to education?

The working premises that underpin this investigation are:

- (1) Some learners have limited knowledge of their rights to education.
- (2) Some learners do not know how to exercise their rights to education.
- (3) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the rights and duties of the school authorities.

In terms of the first working premise, it was assumed that some learners

- (1a) know that their right to education, like all other rights, has corresponding responsibilities;
- (1b) know that through the realisation of their rights to education an array of opportunities can be opened;
- (1c) confuse their rights to education with other human rights;
- (1d) do not know who are the beneficiaries of the right to education.

In terms of the second working premise, it was assumed that learners would

- (2a) perceive their right to education as absolute;
- (2b) not know how their rights to education could be limited.

In terms of the third working premise, it was assumed that

- (3a) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the right and duties of the school authorities.



1.5 AIM OF THE STUDY

The aim of this research is to analyse learners' knowledge and understanding of human rights, particularly their right to education.

1.6 CONCEPTUAL FRAMEWORK

Jansen (2004:1-2) explains that a conceptual framework is an explanatory device that enables a researcher to make sense of collected data. It is relatively easy to collect data, yet much more difficult to explain what the data means. The conceptual framework also assists a researcher to focus the data collection and is done to understand the reason behind the research. This study focuses on learners' understanding of human rights, especially their right to education. It involves two phenomena: "understanding" and "human rights", which fall within cognitive, moral, ethical and legal domains. The right to education is a human right and is extensively documented in human rights instruments (see § 2.4.4), legislation and South Africa's Bill of Rights incorporated in the Constitution (see § 2.7). For these reasons, this section investigates social contract theory (Baah 2000:12-15; Balton 1992:211; Whittle 1994) and Kohlberg's theory of moral, ethical and social development (Kohlberg 1969:376-381) (see § 3.5).

1.6.1 Social contract theory

Many international 'social contracts' exist in which governments agree amongst themselves to treat their people in accordance with universally recognised laws. The United Nations Charter proclaims that the primary purpose of the organisation is to respect human rights. Traditional human rights law covers the period from 1648 to 1945. During this period international organisations were not as developed as they are today. Only the contractual legal agreements existed and states adhered voluntarily to the contracts. Since 1945, the United Nations (hereafter UN) has provided a forum in which governments have concluded numerous international social contracts in the field of human rights (see figure 1.1). Some of them are binding, while others are not. One can view the internationalisation process of the human rights instruments as the stages in a natural evolution of international law. In any event the social contract theory and human rights law both require that government observes the rights of the governed by proposing certain rules and laws to order the manner in which governments treat the governed (Balton 1992:211; Dorr 1994:10).

The social contract theory requires that once human rights instruments are ratified, they become law and legally binding on the countries that ratified them (Balton 1992:211; Dorr 1994:10). According to Dorr (1994:11), to ratify means to accede or accept. Internationally the member states of the UN have agreed to human rights principles by adopting several conventions, declarations and covenants and thereby affirm that they will uphold human rights



and protect the rights of their citizens, including the rights of the vulnerable and weak members, that is, among others, the learners and women. The Czech Republic (Kroupova 1996:681) and the United Kingdom (Freeman 2002:97) for instance, ratified the Convention on the Rights of the Child (CRC). In 1996 the UN General Assembly managed to get 187 ratifications or accessions (Kolosov, 1996:364).

The right to education is a human right and it is contained in international human rights instruments. This implies that the right to education is recognised in international human rights law and it is entrenched in South Africa's Bill of Rights in chapter two of the Constitution. Upon reviewing the human rights instruments and tracing the provisions which deal with the right to education it was found that most of them affirm learners' rights to education. South Africa ratified some of the human rights in 1994 –1996 and by so doing agreed along with the international world to abide by the international social contracts such as the following:

- The Universal Declaration of Human Rights (1948) (UDHR).
- The UNESCO Convention against Discrimination in Education (1960) (UNESCO CDE).
- The International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR).
- The Convention on the Rights of the Child (1989) (CRC) (Sarkin 1998:635).

By adopting the above human rights instruments, South Africa agreed to abide by the international human rights law standards and therefore recognises the rights of citizens on a legal basis. South Africa adopted a Constitution that incorporated a Bill of Human Rights in chapter 2 and it is the supreme law of the Republic of South Africa (Bray 2000(a):25, 2000(b):8). The right to education is provided for under section 29 of the Constitution.

It is imperative to have knowledge of international law, a clear understanding of the Constitution and how the development of human rights understanding occurs when researching any topic dealing with human rights and law. In practice case law has developed legal principles that are used as tools to guide people when implementing law practically. Hence the research of the understanding of learners' right to education should take place against the social contract and moral ethical development theories. These theories will help in the interpretation of the findings of this research. Figure 1.1 comprises the conceptual framework of this research.

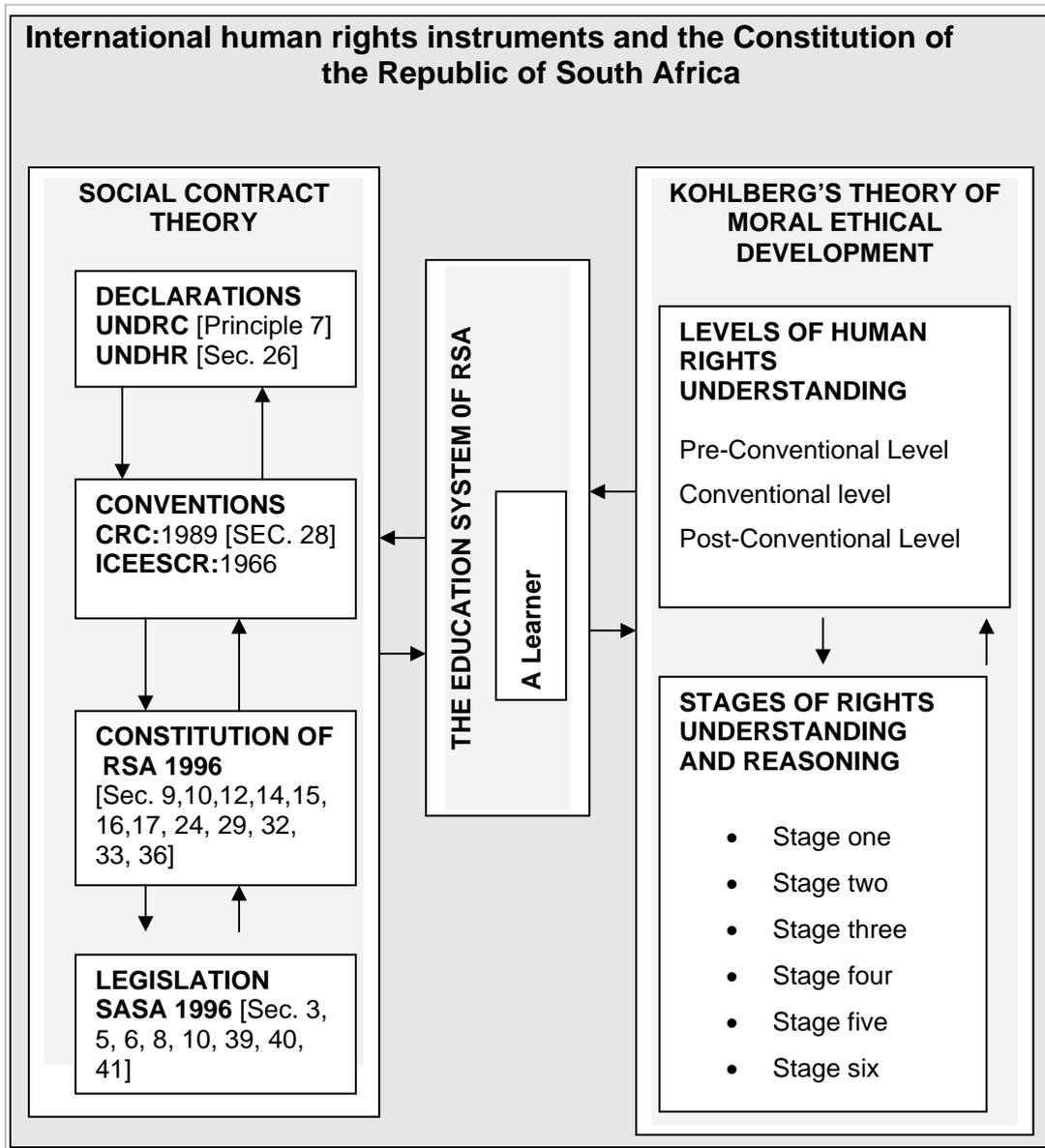


Figure 1.1 Visual representation of conceptual framework depicting the moral ethical development of a learner in relation to his¹ levels of human rights understandings within international human rights instruments and the Constitution of South Africa

The investigation occurs within the framework of the Constitution. As the Constitution is the supreme law of South Africa, all national or subordinate legislation must be consistent with the Constitution in the opinion of the courts (Bray 2000(a):30). The Constitution prescribes how the human rights contained in the Bill of Rights must be interpreted. It is important to have knowledge and understanding of international law and a clear understanding of foreign law when researching any field that concerns the law. In this way one would be better equipped to recognise when one's right has been violated. Hence the research on learners'

¹ In this thesis the masculine form includes the feminine, unless the context indicates otherwise.



understanding of human rights and their right to education should take place against the backdrop of this theoretical background.

1.6.2 Kohlberg's theory of moral ethical development

Since the right to education aims at the development of learners' talents, skills, critical reasoning capacity, and respect for human rights and to determine whether or not learners have developed to a level of autonomous human rights reasoning and judgment, Kohlberg's theory of moral ethical development should be useful. This theory stresses that the development of moral (human rights) judgement occurs in sequential stages. Each stage is qualitatively more advanced than the stage that has preceded it and this forms a hierarchy which integrates in the higher stages the structures found in lower stages (Fernhout 1990:81; Kohlberg 1969:352; Kohlberg & Kramer 1969:99; Kohlberg, Levine & Hower 1983:31; Kurtines & Greif 1974:454; Melton 1980:186; Snarey 1985:204).

Since this study involves learners' understanding of their rights to education, which is one of the fundamental human rights, it is imperative to understand how the development of human rights understanding and reasoning occurs. This can be best understood by looking at the learners' understanding of their rights to education through the lenses of Kohlberg's theory of moral ethical development. Kohlberg (1969:376) distinguishes between three general levels of moral development (also called stages of justice reasoning). Each level has three stages. The second stage is more advanced than the first stage. Kohlberg organised these stages in three levels, which he calls conventions. The convention indicates three types of relationships, that is, relationship between the self, the society's moral rules and personal and societal expectations. In this respect the term convention as explained by Peens (1998:40) refers to the moral values, norms and rules of a given society. This is the degree to which an individual conforms to socially prescribed views of morality.

When investigating the topic that involves the understanding of human rights it is of vital importance to understand how the development of human rights understanding occurs, especially since it is assumed in the third premise that learners' understanding of human rights would progress along three levels (see § 1.4). The social contract theory (a human rights theory dealing with social contracts in the form of legal agreements between states) and Kohlberg's theory of moral ethical development (dealing with the stages and levels of human rights understandings) have, therefore, been blended. Knowledge of these two theories and the intertwinement between them are of great importance, and could be used as a tool to interpret the results of this study.

The role that development plays in the way learners of different ages reason about rights and moral issues is particularly important in this study of learners' understanding of their rights to education. In this regard the relevance of the work done by Kohlberg on the issue of



development of morals could not be ignored (Peens 1998:40) in a study dealing with learners' understanding of their rights, since human rights fall to a certain extent within moral and legal domains. It is also necessary for this study to include a developmental theory as understanding of human rights falls partly in the cognitive and affective domains.

Whereas cognitive processes in the category of understanding include interpreting, classifying, explaining, comparing and summarising (Anderson & Krathwohl 2001:70) the affective domain involves the acquisition of social skills and values (D'Engelbronner-Kolff 1993:65). It is vital that a uniform background exists as to where learners are in terms of moral development and cognitive development in assessing their understanding of their rights to education.

1.7 DELIMITATION OR SCOPE OF THE STUDY.

This study was not conducted in all of the provinces of South Africa. Instead, I concentrated on the Soutpansberg East Circuit, Vhembe district in the Limpopo province.

This case study researched the understanding of human rights, the rights to education, in particular, of learners of one public secondary school, from a rural setting in one cultural group, falling within the age group of 15-18 years old, who are in grades 9-12. Learners from the foundation phase, intermediate phase, higher education and training phase and educators were not included. Learners receiving education in the independent schools were not included in this research. According to Schools Act section 1(ix) a learner is any person receiving education or obliged to receive education in terms of the Act. Although many learners in South African schools are older than 18 or 21 years they are not included in this studies. In this research a learner is defined as a person, who is being taught by educators at a public secondary school level, in grades 9-12 and aged between 15-18 years old. The detailed description of a learner is done in chapter 2 (see §2.2).

1.8 RESEARCH DESIGN

The following points describe the research design of this study in order to orientate the reader regarding the methodology and expectations of this inquiry. The study explores a single phenomenon namely learners' understanding of human rights, particularly their right to education. Three working premises and seven assumptions guide this inquiry.

1.8.1 Knowledge claim

At this point I present the justification of my choice of interpretive paradigm, as it is from its lens that I view the world or reality in this research (Cohen *et al.*, 2000:3). While I believe that science is a search for the understanding of a phenomenon, I am also convinced that there is



no single truth (Mouton 1996:26). When people search for the truth in their real world, they invoke their experiential knowledge and give meaning to their own truth as lived experiences and therefore they give subjective meaning to the phenomenon (Cohen, Manton & Morrison 2000:6). I therefore view knowledge from the interpretivist and constructivism epistemological theories (Denzin & Lincoln 1998b:26-27; Schwandt 1997:19, 2000:191-197) (see § 4.3).

Furthermore, people do not gain knowledge of a phenomenon from research only, nor does knowledge belong to the authentic voice of the specialist. It also belongs to the subjective and diverse voices of individuals, who view the reality in a holistic way. This therefore means that people interpret reality as it presents itself to them, at a specific time and context. One research finding, which dominates as truth for the time being, may be challenged by other researchers, who bring forth new truths that reject the previous research and can yet be followed by other research with new findings. The truth is therefore constantly evolving. This became even clearer when the historical development of learners' right to education and scholarly criticisms of Kohlberg's theory of moral ethical development were reviewed. The criticism is not described in this section. Scholarly views on Kohlberg's theory are discussed in chapter three (see § 3.6). As the image of the child changed with time (Melton 1991:61), so the right to education acquired greater significance and the next step was to incorporate it in the international and national human rights law (see the development of the right to education in § 2.4.1).

The study was conducted in terms of the interpretive paradigm. The interpretive paradigm assumes that realities are varied and how one person knows and understands reality can differ considerably from another person (Smit 2001b:69). I therefore construct my own understanding from the view of reality as constructed by the respondents. While the right to education is entrenched in the Constitution, everyone attaches an individual, subjective meaning to the interpretations of this right. I assumed that learners' understanding of human rights might differ from other people's understandings of this same phenomenon. They may interpret their rights differently and exhibit different levels of human rights reasoning. By understanding how learners understand their human rights, the authorities and managers will be able to pro-actively formulate and implement policies to ensure harmony and stability between learners and school authorities and avoid possible lawsuits.

1.8.2 Research approach

I researched fundamental human rights under the auspices of the Faculty of Education at the University of Pretoria. This combined the traditional law research method (historico-legal), as defined by Russo (1996:34,35) that is, the review of some human rights related court cases (see § 2.5.2.1 & § 2.6.3.1), human rights instruments with research methods commonly used in human sciences. (Russo, 1996:34). The source of information in legal research is mainly



the law itself and the research tends to be reactive I conducted this type of qualitative research in terms of a literature review based on an in-depth literature study of international instruments, Constitution, statutes, case law and common law relating to the research problem (see § 2.5).

It is a given that there are multiple realities and they are the results of subjective individual and societal constructions based on lived experiences. This view forms the rationale of my choice of the qualitative research approach. A qualitative research approach helped in determining learners' understanding of human rights and their rights to education in particular, which in turn will help the education managers and policymakers to develop more learner-centred policy approaches and approaches that accelerate learners' levels of human rights reasoning. The research approach was explained in detail in chapter 4 (see § 4.5)

1.8.3. Inquiry strategy

This study seeks to explore, understand and interpret learners' understanding of human rights, with special emphasis on the right to education. This study may be described as subjective and interpretive (see § 4.3) and was conducted as a qualitative case study. Because of its unique characteristics, it could be described as an exploratory case study (Cohen *et al*, 2000:183). Purposive sampling was adopted, with the focus being on one rural public secondary school, involving learners of one age group (15-18 years old) in grades 9-12, belonging to one cultural (that is racial, language and socio-economic) group. Therefore a homogeneous sample was used (see § 4.7).

1.9 RESEARCH METHODOLOGY

The following subsections explain the methodology chosen for this study. This orientates the reader in terms of the basic premises, epistemological position, research approach, data collection strategies, as well as data collection instruments.

1.9.1. Sampling

The respondents of this study were purposively sampled. Denzin and Lincoln (1998: xiv) state "*Qualitative researchers employ theoretical or purposive, and not random sampling model*". The justification of my choice of purposive sampling and the sample size is discussed in detail in chapter 4 (see § 4.7).

1.9.2 Data collection technique

The method of data collection consisted of three stages (see § 4.6.1). In stage one, I used an open-ended and semi-structured questionnaire, which was more appropriate during the first



stage of data collection, as it was aimed at the compilation of a demographic profile of the respondents (Cohen *et al* (2000:248). Unlike rigid structured questionnaires, open-ended questionnaires are flexible and allow the respondents to write a free response in their own terms (McMillan & Schumacher, 2001:260). This also allowed control of aspects that could influence the learners' understanding of human rights and their rights to education in particular and provided the basis of interpretations of unexpected data later on during the data analysis and interpretation stage (see chapters 5 and 6). In this regard consideration was given to what Cohen *et al* (2000:248) call "fitness for the purpose".

In stage two, I conducted focus group discussions, while stage three consisted of in-depth face-to-face interviews. These stages are explained in detail in § 4.6.1.2 & 4.6.1.3. In this way I was able to determine not only what learners understand about their rights regarding education, but also why they understand their rights in a particular way. Consequently, based on the reasons learners provided for their assertion or non-assertion of their rights, I was able to determine the levels of human rights understanding and reasoning at which learners operate (§ 6.2 and § 7.4.3).

1.9.3 Data analysis procedures

I analysed the data manually, firstly using open coding and then axial coding. I followed the step-by-step procedure as proposed by Tesch (1990:95) and McMillan and Schumacher (2001:462). Analysing data manually is a tiresome and time-consuming procedure but it was necessary in this study.

The tape-recorded data obtained from the focus group discussions and face-to-face interviews were transcribed (see addenda A and B respectively). The transcript was then read while listening to the tape and classifying the data into codes. This involved breaking the data into sections and organising them differently. Classification was done for this purpose and was guided by the research objectives. Codes that belonged together were coloured and clustered into one category. The correlations and connections between the categories were studied which resulted in clustering together the categories that belonged together into the same family. In the next step, patterns that emerged from the data were identified and a name was assigned to each pattern. A detailed description of the data interpretation process is presented in chapter 4 (see § 4.12).

The same processes of coding, categorising the data and clustering the data into families and eventually searching for the patterns that emerged from the data was done for both stages two and three, that is, focus group discussions and face-to-face interviews. The arrangement of codes, categories, families and patterns is available in addenda C and D respectively. The two stages of data collection (see § 1.9.2 and § 4.6.1) ensured comprehensive data. The merger of data from the focus group and in-depth face-to-face interviews added depth,



breadth and insight about how learners understand their rights to education. The numerous data collection methods afforded multiple viewpoints and the fact that data collection had been done in sequential stages assisted to expand and validate the findings. Additional information could also be obtained if the need arose.

1.10 SIGNIFICANCE OF THE STUDY

Since the right to education interlinks with other human rights, and the violation of other rights within the school context may impact negatively on learners' realisation of their rights to education, its implementation may pose challenges to school authorities with regard to balancing the rights of all learners. The focus of this study was on learners' understanding of human rights, especially their rights to education, since this would alert the authorities to learners' expectations and perceptions with regard to these rights. Information about learners' perceptions of their rights and the phenomenology of the exercise of their rights may be useful to design structures and procedures for implementing learners' rights in a manner that is protective of their rights, especially with regard to education.

Even when political and legal authorities have announced their good faith and intentions concerning the implementation of learners' rights to education, a central problem remains in persuading learners themselves to understand that they actually have those rights and that these would be meaningless, until they gain courage and confidence in order to exercise their rights.

This research was also intended to assist the school authorities to understand learners' understanding of their rights to education and guide them to develop appropriate policies to ensure that these rights are respected and balanced correctly to prevent court cases. I hope that, even if there were no immediate instrumental and tangible benefits in asking learners about their views of their rights to education, this step would be an important signal of respect for learners as individual persons. This view may have a positive impact on the learners' socialisation.

While other studies address learners' understanding of human rights in legal (see § 3.2.1.1) and medical spheres, this case study expands the knowledge base by documenting the learners' understanding of their right in the educational sphere. Whereas the right to education is a prerequisite for the enjoyment of other human rights, it may, however, be threatened by lack of understanding on the part of learners. Therefore it is important for authorities to know where the learners' levels of rights understanding are in order to design teaching strategies that would enhance their knowledge and accelerate the development of their understanding from the lower to advanced levels.



1.11 LIMITATION OF THE STUDY

This research focused on learners' understanding of human rights with special emphasis on learners' right to education. A study of this nature could cover all learners in South African schools. Since such an endeavour would be too expensive and time consuming for purposes of a dissertation, I decided to focus on one rural public secondary school in the Soutpansberg Circuit, Vhembe district in the Limpopo province. One limitation of my study is the sample size. The respondents of this study were purposefully sampled (see § 4.7), and as such do not represent the whole population, as in the case of a quantitative study. This choice of the purposeful sampling strategy was guided by the research paradigm. The sample was as homogeneous as possible so that variables that might influence the results were limited (see Table: 4.1). I cannot however, claim that one would achieve the same results with a more heterogeneous and inclusive sample.

The most obvious methodological limitation relates to the inability to construe global generalisations from the findings of this study. Since the focus was on the understanding of learners in one rural public secondary school, involving learners from one cultural group, low socio-economic background and one age-group (15 to 18 years old), it follows that these particular findings will not be representative of learners of different ages, cultural groups and socio-economic backgrounds in South African schools. The patterns that evolved from the data are therefore not necessarily typical of all learners. It cannot be claimed that all patterns in learners' understanding of human rights have been identified.

Despite this limitation, one may be able to contextualise the findings within a bounded context (Merriam, 2001:208-9). The results can be generalised within the context from which the results were obtained.

1.12 CHAPTER PLANNING

Chapter 1 Introduction and orientation

Chapter 2 The rights to education and other human rights of learners

Chapter 3 The development of learners' understanding of human rights

Chapter 4 Research design and methodology

Chapter 5 Data analysis: Knowledge and understanding of human rights

Chapter 6 Data analysis: Levels of human rights understanding and reasoning

Chapter 7 Overview, conclusion and recommendation



1.13 SUMMARY

In the years prior to 1994, the South African Government was characterised by its apartheid policies and the rights of the majority were not recognised. There was gross violation of human rights, including the learners' rights to education. The education system of South Africa was characterised by inequalities and discrimination (Dlamini 1997:39; Fourie 1990:122; Rex 1979:120). The type of political environment in which people find themselves tends to influence their way of understanding human rights. In this regard the South African Government inculcated into its society the tendency of disrespect of diversity, basic freedoms, equality and human dignity. The violation of learners' rights to education was the practice of the day and might still be to some extent today. The authoritarian philosophy based on different historical and cultural backgrounds might socialise the people of South Africa into disrespecting others' rights (Van Vollenhoven 2005:206). They therefore are not used to exercising their rights. In a democracy where human rights are known, understood and internalised (making feelings, attitudes and beliefs about human rights part of the way one thinks and behaves) a learner should understand exactly what it means to have the right to education and how to exercise this right. An in-depth study to determine learners' specific understanding of their rights to education was, therefore undertaken. This research aimed to determine learners' understanding of their rights to education. The conclusion of this study presents the main findings (see § 7.4) and recommendations (see § 7.8).

The next chapter focuses mainly on learners' rights to education and other human rights, which are directly relevant to the learners' right to education. This includes the historical development of learners' rights to education, the recognition of learners' rights to education in international human rights law, the recognition of learners' right to education in South Africa, some other human rights that are directly and indirectly relevant to learners' rights to education and limitation of human rights.



Chapter 2

THE RIGHT TO EDUCATION AND OTHER HUMAN RIGHTS OF LEARNERS

2.1 INTRODUCTION

The background and orientation, aims, rationale and conceptual framework of this research were discussed in chapter 1. The research design, data analysis procedures, limitations, significance, and delimitations of the study were explained. Lastly the chapter planning for the research were explained.

A review of the literature is presented in Chapters 2 and 3. I conducted a systematic literature search and traced published and unpublished information relating to my topic in the form of primary, secondary, and tertiary sources. Gash (1989), cited by Bartmann and Pretorius (1996:305), describes a literature search as a systematic and judicious search to trace and collect all the published and unpublished information about a specific subject, in whatever form it exists. The literature provides several definitions of a literature review. Hart (1998:13) defines a literature review as:

The selection of available documents (published and unpublished) on the topic, which contain information, ideas, data and evidence written from a particular standpoint to fulfil certain aims and how it is investigated, and effective evaluation of these documents in relation to the research being proposed.

McMillan and Schumacher (1993:113 & 2001:108) define a literature review as a 'critique of the status of knowledge of a carefully defined topic'. In the same vein Jansen (2003:1-2) defines a literature review as a critical and integrative synthesis of the ways in which various researchers have dealt with the problem under study, with the goal of justifying one's endeavour. Mouton (2001:86) comments that it is important for 'every' research project to begin with a review of the existing body of accumulated scholarship in the same discipline as the study being conducted. Following this advice I carefully conducted a literature review. This provided an opportunity to locate my research within the existing body of knowledge, to define and limit my research problem, and to select appropriate research methods (McMillan & Schumacher 2001:109). By reviewing the literature I gained an understanding of the topic in relation to what other researchers have already written on the matter and, most importantly, I synthesised recent authoritative theorising about the topic (Mouton 2001:87; Hart, 1998:1).

Since the study involves learners' understanding of human rights, particularly their right to education, an in-depth review of human rights instruments was made, for example, existing



declarations, covenants and conventions (The Universal Declaration of Human Rights (1948) (UDHR), The Convention on the Rights of the Child (1989) (CRC), The UN Declaration on the Rights of the Child of (1959) (UNDRC), and The International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)). Whenever human rights are alleged to have been infringed, courts intervene to interpret the law and to ascertain whether or not an infringement of rights has actually occurred. Many studies that were undertaken in the past were concerned with learners' knowledge of their civil liberties (Helwig 1995:152) and rights in the legal sphere, and such studies consisted of large surveys (quantitative research) (Abramovitch *et al.* 1993: 313; Abramovitch *et al.* 1995: 1; Grisso & Pomicter, 1977:333; Ruck *et al.* 1998(a): 404 & 1998(b): 275; Tapp & Levin 1974:1). This study, besides exploring and understanding what learners understand about their right to education, tries also to determine the level of human rights reasoning that learners employ when they are dealing with situations at school where rights are in conflict. The literature on moral and ethical development assisted me to appreciate the mechanisms through which understanding develops, and the stages through which people pass during their moral and ethical development which, in essence, involves the understanding of human rights (see § 3.5.2).

The aim of this study was to investigate learners' understanding of human rights with particular emphasis on their right to education. It became clear that three phenomena are involved and interlinked namely **understanding**, **human rights**, and the **right to education**. The literature review chapters have been divided according to these observable occurrences. Firstly, in this chapter, the focus is on description of a learner the concept of human rights, since the right to education is embedded in the larger sphere of human rights. The second focus is on the right to education as this is a core human right and the centre of investigation in this study. The phenomenon of the development of understanding is discussed in more detail in Chapter 3.

The historical development of the right to education was traced, including its recognition in international law, the core content of the right to education and the recognition of the learner's right to education in South Africa. The recognition of the right to education, internationally and in South Africa, is based on social contracts in the form of human rights instruments upon which national states have agreed by ratifying various declarations, covenants and conventions signifying that they will uphold human rights (including the right to education). These treaties and covenants once ratified, become law, are legally binding and form the basis for the legal protection of human rights. Since the right to education is aligned with other human rights, various human rights which have direct and indirect relevance to the right to education are highlighted in this review. The infringement of these allied rights within the confines of the school may, in some form or other, impact on the realisation of learners' right to education.



Finally, the limitation of the right to education is explained, as no human right is absolute. This concept is very important, as it concerns the subtle balance between the violation of fundamental human rights and guaranteed human rights, and the limitation of human rights by the application of various legal principles. It is necessary to remember that the principles embodied in social contract theory, as reflected in human rights instruments and constitutions, are the ideals towards which states strive. The social contracts form the foundation on which the international law is derived.

2.2 WHO IS A LEARNER?

Before I discuss the public law status of a learner, it is important to define who a learner is. According to the Schools Act section 1(ix) a learner is defined as any person receiving education or obliged to receive education in terms of the Act. According to Davel (2000:281) a learner acts in different capacities in the education situation, for example, as a person who has fundamental rights, as learner in the educator-learner relationship, a partner in education and as a bearer of rights.

2.2.1. Public law status of a learner

The status of a learner in public law is influenced by sources of law such as international treaties, the Constitution, legislation, case law and common law. The legislation determines the public law status of a learner by providing sections dealing with the rights of learners (Oosthuizen 1994:54-57). An example of such legislation is the Schools Act. The Schools Act deals with protection of the learner's rights within the school and his competences and obligations in relation to his education. There are also guidelines and rules of public law which influence the status of a public law learner by dealing with issues such as suspension, expulsion and school discipline. These are dealt with in detail in § 2.6.6.1. The private law status of a learner is determined mainly by his age. Age determines the legal roles and duties of a learner. It is accepted that in his development a learner gradually becomes independent. As his capacity to make judgements increase, he is expected to take responsibility for his actions. Between the ages of 7-21 a learner has limited contractual capacity and cannot solely be held accountable for his actions. The duties and responsibilities of learners in terms of Section 5 (3.5-3.7) of the Guidelines for the consideration of the SGB in adopting a code of conduct for learners (1998) are explained in § 2.5.10.

2.2.2. Is a learner the bearer of the right to education?

Section 7 of the Constitution recognises that the Bill of Rights is a cornerstone of the democracy in South Africa. It enshrines the rights of everyone. According to Davel (2000:175) everyone within the territory of South Africa, is a bearer of rights contained in the Bill of Rights - adults and children, citizen and aliens. The right to education is contained in the Bill of



Rights. According to Bray (2000:79), the right to basic education in terms of s29 of the Constitution belongs to everyone including learners.

2.2.3 Relationship between the educator and the learner

Within the school context the educator and a learner enter into a relationship. This relationship is uneven in nature, due to the fact that the educator is in a position of authority and a learner is in a subordinate position. The educator derives his authority from his professional status and legislation. The authority of an educator is also based on the fact that the parents have delegated their parental authority to the educator who then possesses delegated authority. In this regard the principle of *in loco parentis* applies. The educator acts in the place of parents but cannot be entrusted with all parental authority (Beckmann, *et al* 1995:50,104). The Schools Act Sections, 3, 5, & 6 compel parents to take full responsibility for the education of their children. Learners are compelled to respect the educators and to submit themselves to the authority of the educator. The right to education applies to the teaching process in school and the involvement of an educator. This places a duty on the educators to teach, respect learners' rights, protect learners from foreseeable harm, and above all to know the nature and status of a learner. It is required by common law that schools should ensure both the physical and psychological safety of learners (Netshitahame 1999:14)

2.2.4 Position of a school as a legal organ

In terms of the Schools Act a school is defined as a public school which enrolls learners in one or more grades between grade zero and twelve. This gives rise to two categories of public school: an ordinary public school or public school for learners with special needs and an independent school. A school is at the centre of the education system and it may be a primary or secondary school. The legal status of a public school refers to the position the law affords to the public school. A school derives its legal status from the Schools Act. In terms of Section 15 of the Schools Act public schools are declared juristic persons with legal capacity to perform their functions (Beckmann *et al* 1997:12-13). As a legal person the law affords the school the rights and duties in its name not in the name of people associated to it. For example the school can enter into contracts, buy, sell, hire staff and make investments under its own name. The school governing body acts on behalf of the school. The school has special legal powers which it executes through its governing body. When the school governing body suspends a learner from the school, the action against a learner is taken in the name of the school. Parents and learners may approach a court of law if they feel that the action of suspending a learner was procedurally unfair. Parents may also lay charges against a school in matters concerning discriminatory school policies, corporal punishment, and refusal of access to information and denial of administrative justice. As a legal entity, the school is responsible for its actions. The school through its governing body has the legal



responsibility to see to it that its environment is conducive for teaching and learning by adopting a code of conduct for the learners and acting in the best interest of the learner (Potgieter, *at al.*1997:12,31; Bray 2006:95-99).

2.3 WHAT ARE HUMAN RIGHTS?

The concept 'human rights' has become a 'buzz word' to which many people and authors give different definitions and attach different meanings and purposes. D'Engelbronner-Kolff (1993:65) regards human rights as those rights and freedoms which are inherent in all human beings by virtue of their humanity alone, and which are not bestowed on them by any ruler, nor earned or acquired by purchase.

Human rights are those rights which belong to every man, woman and child simply because each of them is a person, a human being. These are rights which exist prior to, and independent of, governments and therefore human rights are rights which are inalienable. Perhaps in order to understand clearly what human rights are, it will help to say what they are not. For example, human rights are not a recent discovery, a passing concern, or a short-lived issue. They are not something about which only people in the Western world care, a new morality or a lay religion. They are claim-asserted and recognised as originating as rights, not in the form of love or grace that may be bestowed upon people. They are not related to any institution of welfare or charity. One does not have to earn or deserve them. Besides being aspirations or moral assertions they are increasingly becoming legal claims under some applicable laws, such as the UN Charter, the UDHR, the ICESCTR and the ICCPR (Branson 1982:7).

Singh (1986:70-71) writes that human rights are ideals for a democratic government as formulated in the UDHR of 1948. They are value expressions, relating to human beings by virtue of their humanity and are normative ideals of human life. Human rights belong to all human beings and, as such, they are universal and inalienable and cannot be overridden, except by other moral considerations.

Gewirth (1982:1-3) notes that human rights are of supreme importance and are central to all moral considerations. They can be justified by moral principles, because they are rights of every human being, and a necessary condition for human actions. Because they are such inherent and fundamental rights, they must be respected by every human being.

Bray (1996:151), Maree (1995:1,-2); and Kleyn and Viljoen (1995:236) regard human rights as basic rights or fundamental rights. Rautenbach and Malherbe (1998:10) and Beckmann, Klopper, Maree, Prinsloo and Roos (1995:3) indicate that the Bill of Rights, which is entrenched in the South African Constitution, contains value expressions relating to human beings by virtue of their being humans (or of humanity). People are born with human rights. In



the same vein, De Waal, Currie and Erasmus (2000:326) comment that people are equally entitled to rights, regardless of their sex, race, colour, language, national origin, age, class or religious belief. They further define human rights as 'generally accepted principles of fairness and justice or universal moral values, rights that belong equally to all people'. This means that people still have rights, even if the law of their countries does not respect or recognise them.

The above definitions lead us to the conclusion that human rights are natural rights, belonging to all human beings and therefore they do not need to be earned, bought or inherited by a specific group of people. What is common in all definitions is that human rights are, in essence, values belonging to all humans.

Against the background given above, this study firmly supports the definition provided by Beckmann *et al.* (1995:3) and Beckmann, Foster and Smith (1997:125) that human rights belong to all people, including learners. Because learners are human beings, they are also entitled to legal, moral and human rights, including the right to education. Learners should have a knowledge and understanding of their rights, because these are part of the broad set of basic values that inform the way in which humans organise the societies within which they live in order to ensure the preservation of those values (Dlamini, 1997:45). One should also understand that every human right comes with responsibilities.

2.4 THE RIGHT TO EDUCATION

The right to education is a core human right. The next paragraph explores the historical development of the right to education.

2.4.1 Historical development of the right to education.

The literature indicates that the term 'education' has long been with humankind (Volio, 1979:19), but the notion that education is a fundamental human right is a relatively new concept (Huberman, 1979:57). Societies have been educating their learners for ages, for different aims. Learners might be educated to fulfil different roles in the home and in society. This, therefore, means that societies continually ask themselves different questions about what kind of education is necessary for the child (Mialaret, 1979:48) and how relevant that particular kind of education would be for the child. For example, during the early Christian era, the aim of education was related to the moral-religious enlistment of both the individual and the community (Venter, Theron, & Van Zyl 1982:7), or the attainment of certain values and the preservation of one's own culture (Volio 1979:20), or protection from gross material need and as a means to experience the 'good life' (Wringe 1981:146-147).

In Western Europe, prior to the age of enlightenment and throughout the 19th century, education and schooling were provided completely by private agencies. Schooling was



provided either as private schools financed by parents, guilds or employers or, alternatively, by church-run schools aimed at the moral and religious improvement of the lower class (Huberman, 1979:57; Nowak, 1995:191; Hodgson, 1998:7). During this time it was very hard to accept the idea that public revenues could be used for education, that is, one man's taxes should be used to finance the schooling of another man's children. Education became a matter of public concern and state responsibility only with the emergence of the secular state. A letter written by Thomas Jefferson to George Wythe in Paris in 1786, as quoted by Volio (1979:22) and Starkey (1991:42) reads as follows:

I think by far the most important bill in our whole Code is that for the diffusion of knowledge among people. No other sure foundation can be devised for the preservation of freedom and happiness.... Preach! My dear sir, a crusade against ignorance; establish and improve the law for educating the common people.

There can be no doubt that Jefferson placed a high value on education, as it is through education that people can be freed from ignorance. Laws had to be passed to enforce such ideals and to ensure that people receive education.

In the sixteenth and seventeenth century philosophers such as John Lock and Jean-Jacques Rousseau adumbrated in their writings the modern concept of the individual right to education. They advocated a parental obligation to educate children until they become of age and are able to make full and proper use of their freedom and faculties. Education was perceived and conceived as pre-existing or as a natural right, which is superior to the positive law. This means that the right to education is a human right that man has by virtue of his or her being human, and parents have the obligation to nurture, protect and to provide children with basic education in order to prepare them for life (Hodgson 1998:7; Wringle, 1981:140). This idea is evidenced by the following quotation:

...giving children an education suitable to their station in life: a duty pointed out by reason, and of far the greatest importance of any. For it is not easy to imagine or allow, that a parent has conferred any considerable benefit upon his child, by bringing him into the world, if he afterwards entirely neglects his culture, and education, and ...leads a life useless to others and shameful to himself (Hodgson 1998:8).

In the wake of the French and American Revolutions, education was considered to be a democratic principle and the promotion of education became a state or public function. Public education, which dates back to antiquity, took on a new and wider meaning. Education was no longer used for the purpose of educating a particular social class or a 'selected few' but for the benefit of all and was made available to the majority (Volio, 1979:21). The argument that the state should provide education to all learners merged economics and governance. It was argued that the 'poor', illiterate and armed are difficult to govern (Tomasevski, 2003:2).

The right to education emerged rather belatedly in the history of civil liberties, despite its importance (Volio 1979:19). Civil liberties instruments such as the English Bill of Rights of 1689 (hereafter referred to as EBR), the Virginia Declaration of Rights of 1776 (hereafter



referred to as VDR), the American Declaration of Independence 1776 (hereafter referred to as ADI) and the French Declaration of the Rights of Man of 1789 (hereafter referred to as FDRM) focused on the rights to life, freedom, equality, private property, freedom of expression and religious beliefs. These instruments did not contain any specific mention of the human right to education (Volio 1979:19; Hodgson 1998:9).

During the course of the nineteenth century the development of liberalism and socialism placed education on the catalogue of human rights. The liberalist concept of human rights focused on the duty of parents to provide education, their freedom to choose the education of their children within the limits established by law, and the duty of the state to guarantee that every child receives education by means of compulsory school attendance and legal regulation of school curricula (Nowak 1995:192).

At the international level, the right to education has been recognised by a number of universal and regional instruments, adopted particularly after World War II. To mark the importance of education, different countries recognised the right to education and included it in their constitutions, for example:

- The Constitution of the German Empire of 1849 contained a section entitled 'Basic Rights of German People' which provides for education-related rights.
- The Constitution of Nicaragua (1986) proclaims in Article 121 that all shall receive free and compulsory education.
- The Constitution of the Union of Soviet Socialist Republics (1977) (in Article 45) declared that all citizens of the USSR have the right to education, which shall be free at all levels and compulsory at the primary and secondary levels, including higher education.
- Article 20 the Constitution of Cyprus (1960) provides that every person has the right to receive education or instruction, with primary education being free and compulsory.
- The Egyptian Constitution of 1971 provides for full and compulsory education (De la Vega 1994:48-49; Hodgson, 1998:11-12; Nowak 1995:191; Wringe 1981:139).

The right to education is recognised as a legal right in the above-mentioned countries. South Africa included s29 in her Constitution, which provides for the right to education which forms part of the national legislative framework. Its recognition reflects both the liberal and the socialist basis of equality of educational opportunity for everyone, citizens and the aliens alike.

In this section the historical development of the right to education was discussed and in the next section the recognition of the right to education in international law is presented.



2.4.2 The international law foundation of the learners' right to education

In this section I justify the importance of considering international human rights instrument when dealing with learners' right to education. Human rights were initiated on the international level. It is in the international level where the solid legal foundation of human rights and the right to education was laid. Previously the South African constitution made no mention of the place of international law in the South African legal system (Dugard 2005:55). The 1996 Constitution remedied this situation. The South African common law treats international law as part of its national law. In terms of section 232 of the Constitution customary international law is the law in the Republic unless it is inconsistent with the Constitution or an Act of parliament. Further, The Constitution recognises international agreements or "treaties". A treaty that has been signed and ratified, but not enacted in local law, is binding on the South Africa on the international plane. The Constitution also reveals a clear determination to ensure that South African law is interpreted to comply with international law particularly in the field of human rights. The Bill of Rights is modeled on international human rights conventions. These international human rights instruments are important as they guide the interpretation of the South African Bill of Human Rights (Van Raemdonck, 1997:258). The Constitution prescribes the interpretation of human rights in the Bill of Rights. In terms of section 39 of the Constitution:

1. When interpreting the Bill of Rights a court, tribunal or forum
 - a. must promote the values that underlie an open and democratic society based on human dignity equality and freedom,
 - b. must consider international law,
 - c. may consider foreign law.
2. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and the object of the Bill of Rights.
3. The Bill of Rights does not deny the exercising of any rights and freedom that are recognised or conferred by common law, customary law or legislation to the extent that they are consistent with the Bill. (Dugard 2005:65).

International human rights instruments such as the UDHR 1948, the ICESCR of 1960, the ICCPR and the ACHPR of 1990 heavily inspired the content of the South African Bill of Rights

The human right to education was not fully proclaimed at the international level until after the World War II. At that time the human right to education was recognised in international and regional instruments and in customary law, and appeared most prominently in the hierarchy of human rights (Hodgson 1998:39). The progress made in the recognition of the right to education has resulted in the fact that it is now recognised and reaffirmed in some detail by major international human rights instruments (UDHR, CDE, CRC, and ICSECR) (Daudet & Singh 2001:13). International states have agreed, by ratifying several declarations, conventions and covenants, that they will uphold human rights and protect the rights of their citizens, including the rights of learners to education. Once human rights instruments are ratified, they become legally binding on the state that ratified them (Balton 1992:211; Dorr



1994:10). Some of these human rights instruments are explained in the following paragraphs.

2.4.2.1 The Declaration of Geneva of 1924

Although the Declaration of Geneva of 1924 does not specifically make reference to the right of learners to education, it does lay some foundations for such a right. Principle V states that a child must be brought up in the consciousness that its talent must be devoted to the service of its fellow men (Arajärvi 1992:410; Detrick 1999:427; Hodgson 1998:11; Van Bueren 1995:7; Van Bueren 1998:3).

2.4.2.2 The Universal Declaration of Human Rights (1948) (UDHR)

According to the first sentence of Article 26 of the UDHR (1948) “everyone has the right to education”. This Article refers to both adults and learners and to education in the broad sense (Arajärvi 1992:406). It includes all activities by which human beings transmit to their descendants a body of knowledge and skills and a moral code, however elementary, which will enable that group to subsist in the particular conditions of its characteristic environment and ethics (M’Bow 1979:7; Detrick 1999:475). This declaration provides the foundation for both moral and legal principles in education. Although it was not recognised as being legally binding, it covers the political and moral scope of human rights resolutions by which member states to the declaration must abide. In order to make it binding, it was necessary that its major principles should also be taken up in an instrument such as a covenant. The importance of the UNESCO conventions, declarations and programmes adopted on the right to education, lies in the fact that firstly they reaffirm certain principles enshrined in the basic text of the conventions, and then these are given concrete substance, otherwise they would remain ‘mere principles’ whose application would not be clear. Secondly they ensure that member states commit to the right to education by updating the principles for reaffirming that right (Daudet & Singh 2001:14).

2.4.2.3 The UN Declaration on the Rights of the Child of (1959) (UNDRC)

In its preamble, the UNDRC reaffirms the proclamation made in the UNDHR of 1948 that everyone is entitled to the rights enshrined in the declaration without distinction of any kind. The first direct reference in an international human rights instrument to the child’s right to education is in Principle 7 of the UNDRC. This principle proclaims that “the child is entitled to receive education, which shall be free and compulsory at least in the elementary stage” (Arajärvi 1992:411; Detrick 1999:472; Van Bueren 1998:5), but it does not include provisions with regard to the quality of education.



2.4.2.4 The Convention against Discrimination in Education (1960) (CDE)

A further international recognition of the right to education came with the adoption of the CDE in Paris by the UN General Conference of UNESCO in 1960, which came into force in 1962. The Convention reaffirms Article 7 of the UDHR of 1948, which asserts the general principle of non-discrimination and proclaims in Article 26 that every person has the right to education. The Convention also reaffirms the UNESCO Constitution that advocates the ideals of equality of educational opportunity without regard to race, sex or any other discrimination (Daudet & Singh 2001:15). This convention not only proscribes discrimination in education, but it also promotes equality of opportunity and equal treatment for all. It allows the establishment and maintenance of private educational institutions based on language, religion and cultural beliefs, as long as their purpose is not to discriminate or exclude other groups of persons, and provided that they offer a quality and level of education equal to those provided by public authorities (Article 2(c) of the CDE of 1960).

2.4.2.5 The International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)

According to Daudet and Singh (2001:7), Detrick (1999:474), Singh (2003: 16) and Van Bueren (1998:72), the ICESCR of 1966 covers the right to education comprehensively, especially Articles 13 and 14, as they set out the aims of education systems and the content of education. Article 14 deals more specifically with the provision of free primary education. Article 13(2) corresponds with Article 26(1) of the UDHR (1948) and points out that “primary education shall be compulsory and available to all”.

2.4.2.6 The Convention on the Rights of the Child (CRC) (1989)

The latest of the international conventions concerning the child’s right to education is the CRC adopted by the United Nations General Assembly in 1989. This convention contains numerous provisions with regard to education. Whereas Article 23(3) obliges the state parties to ensure that disabled learners have access to education and training, Article 29(1) (a) provides for the aims and purposes of education and states that education shall be directed to the development of the child’s personality, talents and physical and mental ability. Article 30 guarantees the monitoring of education and states that learners must not be denied the right to use their language, observe their culture and profess their religious beliefs (Arajärvi 1992:417; Detrick 1999:471-472; Hodgson 1998:44; Tomasevski 2003:54; Van Bueren. 1998:16).



2.4.2.7 Regional human rights instruments

Regional human rights instruments are also important components of the international legal framework providing for the right to education. The African Charter on Human and People's Rights adopted in 1981 (ACHPR) provides that every individual shall have the right to education Article 17(1). Article 11 of the African Charter on the Rights and Welfare of the Child of 1990 (ACRWC) also covers the right to education and makes direct reference to the child (Ghandi 1995:330, 349; Van Bueren 1998:36). Article 11(1) provides for the content of education, non-discrimination, parental choice and school attendance, as well as the reduction of dropout rates.

South Africa ratified the human rights treaties such as UDHR of 1948, UNESCO CDE of 1960, ICESCR of 1966, CRC of 1989, ECCPR and ACRWC during the period 1994–1996 (Sarkin 1998:635, Davel 2000:199). By so doing South Africa agreed, along with the international world, to abide by international law (DUGARD 2005:27). Having discussed the recognition in international law of learners' rights to education, this overview continues with the core contents of learners' rights to education.

2.4.3 The state obligation with regard to the right to education

Aspects of the right to education are found in human rights treaties and declarations. States are under obligation to provide education at certain specific levels. They are also compelled under the law to provide education that exemplifies the following interrelated and essential features: it should be available, accessible, acceptable and adaptable. These features are referred to as the 'four A's' (Tomaševski 2003:51; UNESCO General Comment 13 of 2003: 9). What each feature entails with regard to the right to education is now briefly explained.

(a) Availability of the right to education

Availability of the right to education implies that functioning educational institutions and programmes have to be available in sufficient quantity. These may include, but may not be limited to, buildings, sanitation, safe drinking water, trained educators, teaching materials, libraries, computer facilities and information technology (UNESCO General Comment 13 of 2003::9; the South African Human Rights Commission (hereafter SAHRC) 2006:10).

(b) Accessibility of the right to education

Accessibility of the right to education incorporates three overlapping dimensions. Firstly, education must be accessible to all without unfair discrimination (see § 2.4.5 and § 2.5.2). Secondly, education must be physically accessible, that is, schools should be within safe physical reach. Schools and educational institutions must also be accessible to people with



disabilities to exercise their right to access education. Thirdly, education must be economically accessible, that is, it must be affordable to all. In terms of the human rights instruments there is a distinction between accessibility to primary, secondary and higher education, with primary education being made free and compulsory to all (UNESCO General Comment 13 of 2003:9) (see § 2.4.1).

(c) Acceptability of the right to education

Acceptability of the right to education refers to the substance of education, that is, quality of education, including curricula and teaching methods. These features should be acceptable in term of relevance, culturally appropriate for learners and in some cases, also for parents. Most importantly the standard and quality of education must be in line with the standards set by the state. Some of the rights arising from government's obligations to make education acceptable include language of instruction (see § 2.5.2.2), respect for religious convictions (see § 2.5.2.3), and prohibition of corporal punishment (see § 2.5.4).

(d) Adaptability of the right to education

Adaptability of the right to education refers to the capacity of the education system to adapt to the diverse and changing needs of learners, parents and communities. The adaptability of education requires schools to adapt to the needs of learners, by applying the CRC principle of the best interest of the learner. This includes whether or not education is adaptable in a manner to include the education of people with disabilities.

The following paragraphs cover the content of the right to education arising from the 'four A's' (Tomaševski 2003:51), and the scope of the right to education as set forth in international human rights treaties and declarations.

2.5 Principles regarding the right to education

Human rights treaties provide the basic principles which are pillars of the right to education. These are the principle of free and compulsory education, the principle of non-discrimination in education and the best interests of the child. Each of them will be discussed in the next paragraph.

2.5.1 The principle of free and compulsory education

Various international and regional human rights instruments, some of which are reflected in Table 2.1, make provision for the principles of free and compulsory education. The notion that education is a basic human right is widely accepted today. Through the ratification of the treaties in Table 2.1, the party states agreed that everyone has the right to education. To



make this agreement real, the party states also agreed on measures to be taken to make education accessible, available, acceptable and adaptable to everyone. They also laid down principles to guide states in their endeavour to make the right to education a reality for everyone.

In the eighteenth century it was believed that young boys should start working earlier in their lives than girls, to prepare them for work in adult life. For example

Going to school in comparison to working is idleness and the longer the boys continue in this easy sort of life, the more unfit they will be when growing up for downright labour (Tomasevski 2003:24).

This perception has evolved with time. Most people today no longer publicly advocate that primary school learners should work, as was done in the 1700s (Tomasevski 2003:24). Primary or elementary education has since been made free and compulsory for all. The concern about access to education is a relatively recent phenomenon, for example, neither France nor England introduced free and compulsory education until the 1980s (Rideout (1987:21). However compulsory primary education was advocated by some states as early as the late 1700s, with Prussia being the first country to introduce it in the year 1793. In South Africa compulsory education starts in grade 0 and ends in grade 9 and is not free. Parents pay school fees determined by the school governing body and approved by parents.

The expansion of public education was rapid during the first decade after World War II (Tomasevski 2003:69). The duty of states to provide free education differs according to the level of education, with the duty being stronger with respect to primary education and weaker in terms of the provision of secondary education (Van Bueren 1995:234). Article 26(1) of the UDHR (1948/1998) provides that education should be free at least on the elementary and fundamental levels. Article 13(2) (a) of the ICESCR (1966) provides that, with a view to achieving the full realisation of the right to education, state parties should make primary education compulsory and available free of charge to all. The same standard is reiterated in Article 28(1) (a-f) of the CRC (1989). In the same vein, Article 12 of the American Declaration provides that “at least a primary education should be free” and Principle 7 of the DRC (1959) provides that education should be free at least in the elementary stages.

All these instruments seem to indicate the direction in which states should move when extending free education (Arajärvi. 1992:408; Halverson 1990:341). Education as a universal human right requires worldwide monitoring in terms of governments’ obligations and policies for education, because inequalities accumulate in time and space (Tomasevski 2003:53).



Table 2.1: Key treaty provisions on free and compulsory education

INSTRUMENTS	ARTICLES	PROVISIONS
UDHR: 1948	Article 26(1)	Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.
UNESCO CDE (1960)	Article 4(a)	The state parties to this Convention undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and of treatment and in particular, to make primary education free and compulsory.
ICESCR (1966)	Article 13 (2)(a)	Primary education shall be compulsory and available free to all.
CRC (1989)	Article 28 (1)	State parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity they shall make primary education compulsory and available free for all.
ACRWC (1990)	Article 11 (3)(a)	State parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular (a) provide free and compulsory basic education.

Adapted from Gandhi (1995:349); Van Bueren (1998:38,69)

In this vein Davel (2000:204) observes that learners who live in rural areas have less access to the right to education than learners living in urban area in the same state and inequalities widen and affect them in their adult life. Article 2(1) of the ICESCR (1966) adds that state parties undertake to implement the rights to education progressively, to the maximum of their available resources. This Article indicates that the state should provide free primary education to a certain level, depending on the availability of resources. Article 14 of the ICESCR (1966) requires states to formulate and adopt a reasonable plan that determines the number of free and compulsory school attendance years for which states are obliged to provide. Not only is the number of years considered but also the level of education. Table 2.2 indicates the length of legally mandated compulsory education in different countries.

Table 2.2: The legally mandated length of compulsory education, by country

No of Years	Country
13	Netherlands
12	Belgium, Brunei, Jerusalem, Germany, St. Kitts and Nevis.
10	Argentina, Australia, Canada, France. Namibia, Spain, Venezuela, USA.
9	Algeria, Australia, Bahamas, China, Cuba, Hong Kong, Mali, South Africa, Tunisia.
8	Albania, Italy, Angola, Chile, Croatia, Egypt, Malawi, Romania, Zimbabwe.
7	Burkina Faso, Lesotho, Mozambique, Tanzania, Zambia, Mauritius.
6	Afghanistan, Benin, Burundi, Chad, Iraq, Peru, Togo, Rwanda.
5	Bangladesh, Colombia, Iran, Laos
4	São Tomé and Príncipe.

Adapted from Tomasevski (2003:26)



Table 2.2 shows that the number of years of compulsory education differs according to various countries, ranging between 13 years for the Netherlands to four years for São Tomé and Príncipe. In many countries the period of primary education has been lengthened. The problem of introducing and mandating free primary education lies in the fact that the state parties who are signatories to the covenants, have to introduce a range of education rights, usually within one historical epoch. This process in some ways hampers the goal of access to basic education for 80% of relevant school age learners, as set out in the plan of implementation of the World Declaration on Survival, Protection and Development of the Child (Van Bueren 1995:235).

The reason why primary education was made free and compulsory revolved around economic, social and cultural arguments (Tomasevski 2003:22). Economically, the need for a pool of literate and skilled people was a driving force behind compulsory education during the early period of industrialisation. One of the reasons was to ensure that people could be self-employed or employable after leaving school, rather than becoming a financial burden to public authorities. Although the present global emphasis is on primary education as a 'passage way out of poverty', evidence indicates that the key to reducing poverty is secondary schooling, rather than primary schooling (Tomasevski 2003:102). However, since primary education lays the foundation for secondary education, it can be concluded that primary education contributes indirectly to poverty alleviation.

The United Nations Economic Commission for Latin American and the Caribbean (ECLAC) has found that young people have to complete secondary school in order to achieve an 80% probability of avoiding poverty. The Commission's subsequent research also confirmed that 96% of families where the parents have less than nine years of education, live in poverty.

Another reason for making primary education free and compulsory was to keep learners out of the labour market, and to prevent possible learner exploitation and entry into the adult world too early in life. The International Labour Organisation (ILO) linked the age for completing compulsory education and the minimum age for employment and in 1921 set the latter at 14 years. In 1945 the ILO Convention on the Minimum Age for Employment set the upper limit of compulsory school attendance age at 16 years (Tomasevski 2003:22, 24). The minimum age of employment differs from country to country.

Article 14 of the CESCR establishes an obligation of conduct on states to implement free and compulsory education. It provides that state parties which have not yet secured free and compulsory primary education, have an obligation to formulate and adopt a detailed plan of action for the progressive implementation thereof, within two years after ratification. The implementation must occur within a reasonable number of years (Nowak 1995:199). The discussion with regard to education in South Africa will be dealt with in § 2.7. Having explored



the principle of free and compulsory education, the next section discusses the principle of non-discrimination in education, as it concerns the accessibility of the right to education.

2.5.2 The principle of non discrimination in education

The standard of non-discrimination and the right to education are not new. Non-discrimination is a fundamental pillar in international law. Table 2.3 summarises the original text of the treaty provisions that prohibit discrimination. These treaty provisions comprehensively cover the right to education without discrimination. They spell out what is considered to be non-discrimination and discrimination in education in international law (UNESCO 2003:16). The discussion that follows is based on the treaty provisions shown in Table 2.3.

The term 'discrimination', as defined in Article 1 of the CDE 1960/1962, includes any form of distinction, exclusion, limitation or preference based on race, colour, sex, language, religion, political or other opinion, national or social origins, economic condition or birth and has the purpose or effect of nullifying or impairing equality of treatment in education and in particular. It could be considered as discrimination in education if an education system deprives any person or group of persons of access to education of any kind or at any level or limits any person or group of persons access to education of an higher standard (Cullen, 1993:153; De la Vega 1994:46; Nowak 1995:208; Van Bueren 1995:246).

Article 2 of the UDHR (1948) sets out the basic requirements for non-discrimination in education. It states that everyone is entitled to all the rights and freedoms set forth in the declaration without discrimination of any kind. The principle of non-discrimination protects citizens and aliens alike. Knight (1995:200) states that the prohibition of discrimination applies in law and in practice in all fields regulated and protected by public authorities. The notion that discrimination against anyone is prohibited is made clear by the language used in the international standard-setting instruments such as UDHR, CRC and ICESCR

According to Daudet and Singh (2001:15) the purpose of the CDE is not only to proscribe discrimination in education, but also to adopt measures aimed at promoting equality of opportunity and treatment for all in the field of education. In the cases where discrimination has already occurred, Van Bueren (1995:246) states that parties are obliged to implement immediate measures to both prevent and eliminate further discrimination. The measures are clearly set out by Van Bueren (1995:246) and include repealing any statutory, administrative instruction or practice which involves discrimination; ensuring equality in the admission of learners to educational institutions; prohibiting differences of treatment between nationals by public authorities on the basis of merit or needs in matters of school fees, scholarship or other forms of assistance to learners; ensuring access to education for girls; and eliminating any form of stereotyping (Hodgson 1998:98).



Table 2.3 Key treaty provisions on non-discrimination in education

Instruments	Article	Provisions
CDE (1960/1962)	Article 1	The state parties to this convention undertake to formulate, develop and apply international policy, of which Article 4 tends to promote equality of opportunity and treatment in education. The term 'discrimination' includes any distinction, exclusion, limitation or preference which, based on race, colour, sex, language, religion, political opinion national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment and education and in particular: (a) of depriving any person or group of persons of access to education of any type or any level; (b) of limiting any person or group of persons to education of an inferior standard; (c) of establishing or maintaining separate educational systems or institutions.
ICCPR(1966)	Article 24	Every child shall have, without any discrimination as to race, colour, sex, language, religion, nation or birth, the right to protection.
ICERD(1965)	Article 7	State parties undertake to adopt immediate and effective measures, in particular in the field of teaching, education and culture, to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or nationality or ethnicity to equality before the law, notably in the enjoyment of the right to education and training.
CEDW(1979)	Article 10	State parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on the basis of equality of men and women: (a) Access to the same curriculum, the same examination, teaching staff with qualifications of the same standard and school premises and equipment of the same quality. (b) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education. (c)The reduction of female student drop-out rates and the re-organisation of programmes for girls and women who have left school prematurely, who acquire education at all levels on at least an equal footing with the rest of the national community.
CRC(1989)	Article 2 (1,2) Article 30	(1) The state parties shall respect each child without discrimination of any kind, irrespective of the child's, race, colour, sex, language, religion, political opinion, ethnic or national status. (2) State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination. In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such minorities shall not be denied the right in community with other members of his or her group, to enjoy his or her own religion or to use his/her own language.
ACRWC(1990)	Article 5(3)	The state parties to the present charter shall take all appropriate measures in respect to female, gifted and disadvantaged learners to ensure equal access to education for all Sections of the community.
UN DEID(1981)	Article 5(3)	Based on religion the child shall be protected from any form of discrimination on the ground of religion or belief.
UDHR(1948 1998)	Article 2	Everyone is entitled to all the rights and freedom set forth in this declaration without distinction of and kind such as race, colour, sex, language and religion.
CITP 1989		Measures shall be taken to ensure that members of the indigenous people have the opportunity to acquire education at all levels on at least equal footing with the rest of the national community.

Any unreasonable discrimination or distinction on the basis of sex, race, social origin or any other criteria relating to the law or/and practice of education, access to education, dismissal,



tuition and fees, subsidies, content and quality of education constitutes a violation of Article 26 of the ICCPR (Nowak 1995:201). Victims of such discrimination have the right to submit their complaints to the Human Rights Committee of the state concerned. Article 11(3) (e) of the ACRWC obliges state practice to take special measures to ensure equal access to education for girls.

Article 2(2) of the CDE (1960) provides that, when permitted in a state, the following situations do not constitute discrimination and do not contradict any provision on non-discrimination:

- a) The establishment and maintenance of separate educational institutions or systems for pupils of different sexes if those institutions or systems offer equivalent access to education and courses of study, provide professionally qualified teaching staff, equal standards in teaching, well equipped school premises and equipment.
- b) The establishment and maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupils' parents, if the participation in such a system or attendance at such institutions is optional and if the education of such institutions conforms to the standard laid down or approved by the competent authorities for education of the same level.
- c) The establishment or maintenance of private educational institutions, if the objective of such an institution is not to secure the exclusion of a group but to provide educational facilities in addition to those provided by the public authority or if the education provided conforms with the standards laid down or approved by the public authorities, in particular for the same level of education.

There are numerous instruments containing similar provisions on non-discrimination and the right to education as those indicated in Table 2.3. The laws and constitutions of several nations provide for the right to education without discrimination and specifically for equality of opportunity in the exercise of the right to education. Examples of such provisions in various countries are:

- Morocco: The National Charter of Education (1980) guarantees the right to education and equal access to educational resources for all citizens regardless of race or sex.
- Japan: Article 26 of the Constitution of Japan states that education is a right of people and that all people have a right to receive equal education according to ability or talent. Equal educational opportunity is guaranteed regardless of race, sex or economic position.
- South Korea: The Constitution of South Korea provides that all people have the right to education according to their ability. Article 81 of the education law of 1949 also guarantees equal opportunities in education regardless of faith and sex, and goes further to include socio-economic position.



- Provisions regarding the right to equal educational opportunities are also guaranteed by the constitutions of countries such as Denmark, Finland, Sweden and Iceland (Arajärvi 1992:405).
- Peru: The general law of education (1983) of Peru requires all Peruvian citizens to pursue primary instruction, states that public education is free, and prohibits discrimination on the basis of sex, race, language, political affiliation or socio-economic status (De la Vega 1994:49; Hodgson 1998:12-13; Knight 1995:195).

In the light of the foregoing one can conclude that the principle of non-discrimination seeks to promote equal educational opportunities for all and in the process outlaws unfair discrimination in educational institutions. To legalise the principle different countries included the clause dealing with equality in their constitutions. The next section discusses court cases with regard to the principle of non-discrimination in education.

2.5.2.1 Court cases with regard to the principle of non discrimination in education

Courts play a significant role in eliminating government practices which systematically violate human rights. Alexander and Alexander (1992:192-196), Knight (1995:186-187) and Hodgson (1998:19) refer to the *Plyler v Doe* case. The question presented in this case was whether, consistent with the Equal Protection Clause of the Fourteenth Amendment, the state of Texas may deny undocumented school learners the free public education that it provides for learners who are citizens of the United States or legally admitted aliens. The United States Supreme Court held in this case that the Equal Protection Clause of the US Constitution prohibits a state's discriminatory denial of education to undocumented aliens. It is evident that the Supreme Court's reasoning was due to its recognition that education is a right which all individuals should enjoy, regardless of their legal status or lack thereof (Alexander & Alexander 1992:196; Hodgson 1998:177). The comments on the implementation of Article 13(e) of the Convention against Discrimination in Education (CDE) (1960) (UNESCO 2003:16) confirm that the principle of non-discrimination extends to all persons of school age residing in the territory of the state party, including nationals irrespective of their legal status.

The next paragraph considers various realities which affect the principle of non-discrimination in education.

2.5.2.2 Extraordinary realities with regard to the principle of non-discrimination in education

From a legal point of view the position that all humans have the right to education and that the principle of non-discrimination should form the basis of all educational practices, is seldom



compromised. However, from a practical point of view, the implementation of the policy directives and the realisation of education free from discrimination, sometimes falls short (Rideout 1987:18). Charles Ammoun (special reporter of the Sub Commission on Prevention of Discrimination of Minorities) presented a research report dealing with the situation around the world covering all grounds for discrimination. The study concluded that while legal discrimination has virtually been eliminated, discriminatory practices are nevertheless frequent (Cullen 1993:147). Mower (1997:23) confirms that discrimination, or inequality in treatment of learners, takes many forms, for example, denial of equal access to education on the basis of sex, colour, language, religion or culture.

Gosh and Attieh (1987:41-46) conducted a comparative study investigating the right to education free from discrimination in India and Saudi Arabia. Their findings are that while the literacy rate has risen in some states, in other states it is below 20%. Nearly 120 million people in the age group 15-35 are illiterate. Dimensions of culture, religion and class still have a significant impact on the education of girls.

The next section considers the principle of the learners' best interests as it applies to the learners' right to education.

2.5.3 The principle of the best interest of the learner in relation to the right to education

Article 3 of CRC of 1989 provides that in all actions concerning children, whether undertaken by public or social welfare institutions, courts of law legislative bodies, the best interest of the child shall be a primary consideration. Along this line Chapter 2 of the Constitution entrenches human rights. Section 28 of the Constitution is meant specifically for children in addition to other basic rights. Section 28((2) of the Constitution reaffirms Article 3 of CRC and provides that a child's best interests are of paramount importance in every matter concerning a child.

The school as a public institution should promote and respect the learners' best interests. There are provisions in the Schools Act which are meant for the protection of the learners' best interests. Section 10 of the Schools Act prohibits the administering of corporal punishment to a learner at a public school. Section 9 of the Schools Act requires that a learner may be suspended from school after a fair hearing. In terms of Section 8(3) of Schools Act the code of conduct of learners must provide for due process to ensure the protection of the rights and the best interest of the learner and any other party who is involved in disciplinary proceedings. This provision is consistent with Section 33(1) of the Constitution which guarantees the right to administrative action that is lawful, reasonable and fair. To conclude, those who make decisions about the learner are increasingly required by law to act in the best interest of the learner.



2.6 THE CORE CONTENTS OF THE RIGHT TO EDUCATION

With the recognition of the right to education in public law, the scope of the right to education has widened to include legal issues. The next paragraph explores the core content of the right to education.

2.6.1 The right to secondary education

The right to secondary education includes the elements of availability, accessibility, acceptability and adaptability, which are common to education in all its forms and levels (UNESCO 2003:9-10; Tomasevski 2003:51). Article 28(1) (b) of the CRC (1989) obliges state parties to develop various forms of secondary education. The right to access to a secondary school should be achieved progressively; financial assistance should also be given where there is a need (Detrick 1999:471). Similarly Article 12(2) of the ICESCR (1966) provides that state parties recognise that, with a view to achieving full realisation of the right to education:

Secondary education in its different forms, including technical and vocational secondary education shall be made generally available, accessible to all by appropriate means and particularly by the progressive introduction of free education (Detrick 1999:481).

State parties are obliged to provide free secondary education to the maximum extent of their available resources. The reference to “financial assistance in case of need” legitimises fee payments for secondary education, even if primary education should be available ‘free of charge’. Financial assistance does not cover expenses incurred in providing transport and uniforms. Parents are required to meet these expenses with regard to the education of their children (Arajärvi 1992:408; Van Bueren 1995:236). The content of secondary education varies among state parties, but should include the completion of basic education. It is also important for secondary education to be flexible to respond to the needs of students in different social and cultural settings. This is because secondary education prepares learners for vocational and higher education (UNESCO 2003:11). The right to education requires learners to attend school regularly, which is dealt with in the next paragraph.

2.6.2 School attendance

There are international and regional instruments aimed at the realisation of learners’ rights to education through monitoring school attendance and attempting to reduce the dropout rate. The party states have an obligation under Article 28(1) (e) of the CRC (1989) which includes “taking measures to encourage regular attendance at school and the reduction of the dropout rate”. Article 11(3)(d) of the ACRWC (1990) contains a similar provision.

Although such provisions are documented, more and more learners are being kept away from school because of different reasons. Jeffs (1986:55) and Freeman (2002:112) note that truancy is a major problem facing school administrators, and the incidence thereof is



increasing. There is no single cause of truancy, but various factors might contribute towards the phenomenon. Such factors might include perceived irrelevance of the curriculum; poor relationships with educators; thin employment prospects; corporal punishment or other inhumane disciplinary measures in schools; poverty in the home; school uniforms; racism at school; schools charging or demanding higher school fees which parents are unable to afford; schools tending to label slow learners as special-needs learners (the labelled learners feel stigmatised); situations requiring learners to walk long distances to school; and violence and bullying at school.

Ohsako (1997:12-13) argues that school violence may impact badly on the realisation of learners' rights to education. He summarises the findings of studies conducted in Ethiopia, Israel and Latin America about the impact of violence on learning. The results show that 40% of students indicated that they had repeated classes or dropped out of school due to violence. In general, reported consequences of school violence were innocent learners joining gangs; increased corporal punishment by educators and parents; the weakening of school discipline and breaking down of school rules; changing schools and absenteeism; vandalism in schools; disruption of teaching; and wasting normal working hours of educators, principals and other school personnel.

The school and parents can work together to promote better school attendance. The school can draw up a school policy to promote better attendance. At the same time the policy should be sensitive to non-attendance and be able to differentiate between learners' behavioural problems or phobias, and learning difficulties. The school may improve school attendance by considering the individual needs of learners. Absenteeism can become habitual like anything in life. Written agreements between learners and the school could also help by serving as a reminder for a learner who is habitually absent (Whitney 1993:106,107 & 112).

There are various regulations that must be followed should circumstances arise which prevent a learner from attending school. For example, in Illinois (USA) a learner is allowed to stay on a school register for a period not exceeding three months. The parents of a learner must notify the school of the learners' illness or hospitalisation. On his return the parents must show valid proof of illness. Parents who claim that their child is ill and cannot attend school but fail to produce a valid medical certificate may face charges. An example of a case involving failure by parents to produce a valid medical certificate is the Illinois case (Alexander & Alexander 1992:22) which resulted in a charge of truancy. In this case the learner was absent from school for 339½ days over a period of two years. Testimony of the doctor about the illness of the learner indicated that he (the learner) suffered from allergies, but these were not of such a magnitude to warrant prolonged absence from school. Having no proof of illness and thus being guilty of non-compliance with the law, the parents' conviction was upheld. Parent's insistence on taking their learners out of school for unauthorised purposes may be



grounds for conviction under attendance laws. In such cases the school policy limits absence for educational trips to one trip per year not exceeding five days.

When dealing with learners' right to education, the issue of school discipline is inevitable. According to Alston and Staden (2006:373) education and a lack of sound discipline are a contradiction. Order and stability with the school create safety and result in an environment that is conducive to learning and teaching. No matter how comprehensive school policies and rules are, learners will always commit offences for which they could be disciplined. The next paragraph investigates the issue of school discipline through the lens of international treaty provisions.

2.6.3 Humane school discipline

One of the most persistent and troublesome problems confronting educators and school principals is learner discipline following misconduct. Various strategies used to command obedience and respect in school situations are briefly examined in this section. The legal and human rights stance in connection with humane disciplinary measures is explored.

The underlying principle concerning the imposition of school discipline is that it should be administered in a manner that is consistent with the dignity of a learner and in accordance with other applicable international laws on the rights of a learner (Van Bueren 1995:249). The principle of humane school discipline was first expressed in treaty form in Article 28(2) of the CRC (1989). Poland proposed the inclusion of this Article in the CRC, and was strongly supported by the Soviet Union and Ukraine on the basis that "in many countries degrading and cruel methods of discipline were still inflicted upon school learners" (Detrick 1999:488; Van Bueren 1995:249). Ray (1994:27), who wrote that cruel and unusual punishment is the problem of the society as a whole rather than of the school in particular, supports this viewpoint. Many societies still practise the infliction of pain on learners as the best way of discipline.

Article 28(2) of the CRC prohibits inhumane school discipline (Detrick 1999:208; Nowak 1995:208) and provides that "state parties shall take all appropriate measures to ensure that school discipline is administered in a manner that is consistent with the child's human dignity". This provision can be interpreted in line with Article 27(a) of the CRC (1989) which provides that "no child shall be subjected to torture or other cruel inhuman or degrading treatment or punishment". Articles 11(5) and 16(1) of the ACRWC (1990) also prohibit cruel and inhumane treatment. These articles compel state parties to respond appropriately to ensure that learners who are subjected to school discipline be treated with humanity and respect for their human dignity.



Article 1(d) of the UNESCO CDE of (1960) links the concept of human dignity to disciplinary measures in education. It binds state parties to follow educational practices which do not inflict “[O]n any person or group of person’s conditions which are incompatible with the dignity of man”. In international law, state parties are obliged to protect learners from all forms of physical or mental injury or abuse while they are with any person who has the duty to care for the child, including parents and educators. This protection is enshrined in Article 19(1) of the CRC (1990). Article 5(1) of the American Convention of Human Rights (1969) also provides that every person has the right to have his physical, mental and moral integrity protected (Van Bueren 1998:98).

In its General Comments, the Committee on ICCPR acknowledges that the prohibition of torture, cruel, inhumane and degrading treatment must be extended to include corporal punishment and excessive chastisement as educational disciplinary measure. Authors such as Imbrogno (2000:127) and Squelch (2000(a): 28-31) are opposed to corporal punishment. They define corporal punishment as a deliberate forceful act against a child that is aimed at inflicting pain or physical discomfort, but not injury, for the purpose of correcting or controlling the child’s behaviour. Although corporal punishment in schools and at home has deep historical, cultural and religious roots, it has been abolished in several countries. The United States continues to permit corporal punishment in public schools in some states (Imbrogno, 2000: 125).

Although tangible progress has been achieved with regard to learners’ rights within the school setting in the United Kingdom (Jeffs 2002: 45), it took until 1999 for corporal punishment to be eradicated there (Freeman 2002:112). The Human Rights Act of 1998 is the most significant step that led to the final eradication of corporal punishment in school and at home in the United Kingdom. Article 3 of the Act is concerned with freedom from torture or inhumane, degrading treatment. The next discussion explores court cases with regard to legally indefensible school discipline.

2.6.3.1 Court cases with regard to legally indefensible school discipline

Schools operate under an entrenched Constitution which is the supreme law of the country, and to which all other laws and school administrative actions must conform. Failure to do so may lead to legal charges levelled against the perpetrator. The case *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) is the last word on corporal punishment in South African public and private schools, outlawing it completely. In the case of *Halics v United Kingdom* a nine-year-old boy was beaten by his stepfather at intervals for over a week (Fortin 2002:125). The law in the UK at that time allowed parents the use “of moderate and reasonable” corporal punishment on their children. The jury in this case acquitted the stepfather of criminal assault. The Human Rights Act of 1998, which became fully operational in 2000, is considered to be significant in the history of English law. Article 3



of this Act protects learners from abuse and inhumane punishment even in the privacy of their own home. In the case of *UY v United Kingdom* the school principal of a private school caned a fifteen-year-old boy. According to Nowak (1995:209) and Van Bueren (1995:251), the European Commission on Human Rights found the four cane strokes on the buttocks of this boy to be degrading under Article 3 of the European Commission of Human Rights (ECHR).

Another case concerning the use of corporal punishment in school is the case of *Campbell and Cosans v UK*. In this case two mothers complained about the use of corporal punishment at the school attended by their learners. They alleged that their children had been hit with a leather strap. The court held that there was no evidence that the learners underwent any humiliation or debasement solely by reason of being subjected to strapping. However, the European Court of Human Rights not only found violation of Article 13 of the ECHR because the learners had been strapped, but also ruled that their suspension from school as a result of their parents' refusal to accept the existence of corporal punishment as a disciplinary measure, amounted to the denial of the learners' right to education (Detrick, 1999:490; Kilkelly, 1999:77; Nowak, 1995:208; Van Bueren, 1995:249).

In the case of *Warwick v the United Kingdom* the applicant was subjected to corporal punishment. An educator caned her on the hand because she smoked on her way from an examination. Article 13 of the ECHR was applied in judging this case. The European Commission on Human Rights held that the caning on the hand by the male educator in the presence of another male educator had caused the learner humiliation and the educator also violated Article 13 of the European Convention on the Rights of the Child (Van Bueren 1995:251).

In the case of *Jeremy Costello-Roberts v United Kingdom* the applicant was beaten with a rubber soled gym shoe by a schoolmaster at a private school. The European Commission on Human Rights concluded that this relatively moderate punishment of a nine-year-old boy did not constitute degrading treatment, but did however violate his right to respect for private life. Van Bueren (1995:252) comments on the inconsistency of the judgment in the *Jeremy Costello-Roberts v United Kingdom* case and suggests that it is difficult to argue that caning is degrading when administered to a learner at a state school, but that it is not so in a private school. She also argues that it is difficult to see how corporal punishment amounts to an assault when inflicted upon an adult, yet does not amount to assault when inflicted upon a child by an adult as in the case of *Tyre v United Kingdom*. In the latter case, the European Commission held that moderate corporal punishment in schools does not constitute institutional violence. The above discussion explored court cases with regard to legally indefensible school discipline, the next paragraph explains some views in favour of or against physical punishment.



2.6.3.2 Some views in favour of or against physical punishment

In the view of the United Nations Committee on Economic, Social and Cultural Rights, corporal punishment is inconsistent with the fundamental guiding principles on international human rights law enshrined in the preamble of the UDHR and both the covenants (UNESCO 2003:16). There are, however, people who are in favour of corporal punishment, despite the fact that it is prohibited in international law. Imbrogno (2000:130) and the Department of Education RSA (2000:6-7) (hereafter referred to as DoE) note that those who support the use of corporal punishment present various arguments. For example corporal punishment teaches learners to obey and respect authority and it helps build student character; it is consistent with the right of all learners to receive an education uninterrupted by a single disruptive learner; it is part of their cultural or religious beliefs; is a desirable alternative to more severe punishment like suspension; it is quick and easy and does not require any patience and skill on the part of the educator; and it is the only way to deal with learners who are disobedient, disruptive and who do not respond to punishment other than being beaten.

Those who do not support the use of corporal punishment argue its disadvantages (Imbrogno 2000:131 and DoE 2000:6-7). For example, corporal punishment legitimises violence in the eyes of the child. Research links the increased violence on the part of the recipient during childhood with violence occurring later in adulthood; it has been linked to juvenile delinquency and adult criminal behaviour. It generates feelings of anger, rage, resentment and indignation which cannot be expressed because of fear that further punishment will result. The learner is thereby forced to suppress his or her feelings. It does not bring about the intended results of discipline in the classroom but instead 'violence begets violence'; it does not nurture self-discipline in learners. Instead, it evokes feelings of revenge and it leads to anti-social behaviour. It transfers the focus of the learner away from the wrongdoing committed, to the act of beating itself. The next section explains measures to ensure legally defensible school discipline

2.6.3.3 Ensuring legally defensible school discipline.

Squelch (2000(a):28-24) suggests certain disciplinary measures that could be used as alternatives to corporal punishment. These measures include verbal reprimands of learners; written warnings, if the learner does not respond to verbal warnings; involving parents where necessary; suspension and eventually expulsion if the learner deliberately causes disturbance in a school. If the misdemeanour takes the form of violence, drug and alcohol abuse, carrying dangerous weapons or disobedience, then alternative disciplinary measures may be detention in the form of isolation or being asked to report to the principal's office at a specific time every day for a specific period. Having explored measures to ensure legally defensible school discipline the next paragraph explains aims of education.



2.6.4 Aims and purposes of education

The debate concerning the aims of education preceded the recognition of the right to education and the adoption of modern human rights instruments. Education is as old as humankind. The fascinating history of education unfolds to yield a rich variety of purposes of education. Different aims and objectives of the human right to education are well documented in the international and regional standard-setting documents, such as those presented in Table 2.5. There have often been contradicting or conflicting concepts of the purpose of education, some of which may even be at cross-purposes with each other (O'Hair, McLaughlin & Reitzug 2000:6). Tomasevski (2003:61) claims that schools reflect their surroundings and although education is embedded in existing values, it also helps to create other values. People attach different values and significance to the education of their children, depending on their socio-economic status, cultural backgrounds, religious beliefs and the levels of education they attained (Bohrnstedt 1981:455; Mehan 1992:34 Melton & Limber 1992:176-197; Muianga 1998:278). The following discussion on the aims of education is based on the key treaty provisions presented in Table 2.4.

Table 2.4 Human rights instruments and provisions on the aims and purposes of education

Instruments	Articles	Provisions
UNESCO CDE(1960)	Article 5(1) (a)	The state parties to this convention agree that (a) education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and religious groups.
UDHR(1948)	Article 26 (2)	Education shall be directed to the full development of human personality and to strengthening of respect for human and fundamental freedoms.
CRC(1989)	Article 29 (1)	(a) The development of the child's personality, talents and mental and physical abilities. (b) The development of the child's respect for his parents or his own cultural freedoms. (c) The preparation of the child for a responsible life in a free society in the spirit of understanding, peace equality, and friendship. (d) The development of respect for the natural environment.
ACRWC(1990)	Article 11(2)	(a) The preservation of and strengthening of positive African morals, traditional values, and cultures; (b) The promotion of African unity and solidarity, and (c) The promotion of respect for the environment and natural resources.

The aim of education places an obligation on children to perform their moral duties, that is, the duty expected of them in relation to their communities, parents and other social responsibilities. Many people believe that the purpose of education or of the school is to prepare learners for a future job.



Learners themselves sometimes seem to feel that learning without connection to the real world is meaningless and useless, despite good intentions by the government and education policies. In this regard Tomasevski (2003:60) argues that education can prepare learners for life well or badly, depending on the quality, nature and the standard of education offered. Learners might be abused in the name of being educated because of respect for authority figures or out of fear that they might be victimised if they challenge the authorities. Learners learn the value of their education after they have finished school. In this regard a particular learner is quoted as saying: “It is hard to know if school is doing a good job of getting you ready for life... You can’t know until you’ve left school” (Tomasevski 2003:60).

Much inspiration for the provision of education has been drawn from the justification that schooling and education prevent pauperism, ensure employability, and prepare learners for later professional training and eventual professional careers (Van Raemdonck & Verheyde, 1997:250).

Although the aims of education seem to differ according to the historical, political, cultural, religion or national context (Hodgson 1998:64; Nowak 1995:189), there is a growing consensus in present international law about the aims of education. While international law enshrines details of the aims of education (Van Bueren 1995:253), it does not provide guidance regarding the relative importance of each aim. Without that expression of priority one may assume that all educational aims are of equal value. International law, however, endeavours to provide a framework that enshrines the basic aims of education, to enable states to retain power to incorporate national characteristics in education.

The following basic aims of education are recognised in international human rights law:

- The full development of the individual’s personality, talents and abilities, including physical, intellectual, social and psychological development may be pursued (Singh 2003:16; Van Bueren 1995:253; Volio 1979:24). Article 26(2) of the UDHR (1948) proclaims that “education shall be directed to the full development of the human personality”. Other binding and non-binding human rights instruments that proclaim the same aim include Article 11(2)(a) of the ACRWC, Article 5(1)(a) of the UNESCO CDE (1960), Article 29(1)(a) of the CRC of 1989 and Principle 7 of the UNDRC of 1954.
- Article 29(1) (b) of the CRC of 1989 provides for the strengthening of respect for human rights and fundamental freedoms.
- Article 13(1) of the ICESCR establishes additional aims of education. These include the development of the sense of dignity; the enabling of all persons to participate effectively and responsibly in a free society; and the promotion of understanding, tolerance and friendship among ethnic groups (Lenhart & Savolainen 2002:146; Van Bueren 1995:253).



- Whereas the Article XII of the ADRDM of 1948 only proclaimed that the right to education should be based on the principles of liberty, morality and human solidarity and should prepare every person to attain a decent life, to raise his standard of living and be a useful member of the society, Article 13(2) of the Additional Protocol to the American Convention on Human Rights (AMCHR) adds the goal of strengthening respect for ideological pluralism, justice and peace (Nowak 1995:193). For example:
 1. Preparing a child for a responsible life. Articles 24(e) and (f) of the CRC (1989) provide particularly for children in that they should have access to and support in the use of basic knowledge of health and nutrition, as children cannot learn on a hungry stomach (Van Bueren 1995:253).
- Principle 5 of the Declaration of Geneva of 1924 and principle 7 and 10 of the DRC of 1959 provide that education should aim at the development of a sense of moral duty and social responsibility.
- Education aims to enable individuals to contribute to the economic and social development of the community (Hodgson 1998:79).
- Article 11(2) of the ACRWC(1990) provides that the education of the child shall be directed to:
 - e) The preservation of and strengthening of positive African morals, traditional values and cultures;
 - f) The promotion of African unity and solidarity, and
 - g) The promotion of respect for the environment and natural resources (Van Bueren 1998:36).

Cultural purposes of the right to education include preserving the parents' way of life and preparing the child to live in a particular culture by including particular cultural values. Education aims to enhance practices associated with the goals of traditional African society, such as to develop the learner's physical skills, to develop character, to inculcate respect for the elders and those in positions of authority, to develop intellectual skills, to develop a sense of belonging and to participate in family and community affairs. This reflects a communal approach to teaching. The over-used phrase "It takes a whole village to educate a child" accurately represents the philosophy of African education (O'Hair *et al.* 2000:80-81).

The next section considers parental choices with regard to the education of their children.

2.6.5 Guarantees of parental freedom of choice with regard to the right to education

Whitney (1993:11) notes that it is impossible to study the right to education without referring to parents, since they have a wide range of responsibilities towards the education of their children. Philosophers such as John Locke emphasise the obligation of parents to educate their children until they become of age, in order to enable them to make full and proper use of their freedoms (Hodgson 1998:189).



Although parents have the right to choose a particular kind of education for their children, they do not have the right to select learning content deliberately from the prescribed school programme or the right to reject individual educators they do not like (Lenhart & Savolainen, 2002:151). Several international human rights instruments recognise and regulate the rights of parents to choose the education of their children according to their religious or philosophical convictions. Their choices include either the component of freedom of religion or of language, within the framework of the right to education (UNESCO 2003:15; Hodgson 1998:189; Nowak 1995:206).

The human rights instruments that strongly support the liberty of parents to choose a kind of education for their children according to their own religious, moral, or philosophical convictions are listed in Table 2.5.

Table 2.5: Guarantees of parental freedom of choice

Instruments	Article	Provisions
UDHR(1948-1998)	Article 26(3)	Parents have prior rights to choose the kind of education that shall be given to learners.
UNESCO CADE(1960)	Article 5(1)	The state parties to this convention agree that it is essential to respect the liberty of parents; legal guardians firstly to choose for their children institutions other than those maintained by public authorities, but conforming to minimum educational standards and secondly to ensure the religious and moral education for their learners are in conformity with their own convictions.
ICESCR(1966)	Article 13(3)	State parties to the present covenant undertake to have respect for the liberty of the parents to choose for their children schools other than those established by the public authorities. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to direct educational institutions.
ICCPR(1966)		State parties to this covenant undertake to have respect for the liberty of parents to ensure the religious, moral education of their children is in conformity with their convictions.
CRC(1989)	Article 28 and 29	No part shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions.
UNDEIDRB (1981)	Article 5 (1) and (2)	Parents or legal guardians have the right to organise family life and moral education in accordance with their religion or belief, and no child shall be compelled to receive teaching on religion or belief against the wishes of his or her parents or guardians.

These human rights instruments are important because they also protect learners from the risk of being indoctrinated by state public schools (Hodgson 1998:190). Article 26(3) of the UDHR (1948) recognises that parents have prior rights to choose the kind of education that shall be given to their children. What is implied is that they can choose the quality of education that includes among other things their philosophical, ethical or religious principles. Public education that includes instruction in a particular religion or belief is inconsistent with Article 13(3) of the ICSECR, unless provision is made for non-discriminatory exemptions or alternatives that accommodate the wishes of parents (UNESCO 2003:15). The basic



principles regarding the learners' right to education are recognised in the International Bill of Rights (see § 2.4.1 & § 2.4.5).

2.7 The recognition of learners' right to education in South Africa

In the past South Africa was characterised by the policy of apartheid. Until 1994, the role that apartheid, or separate development, played in every sphere of South African society influenced the concept of human rights (Peens 1998:62).

Table 2.6: Comparisons between autocratic and democratic views of education

Autocratic views of education	Democratic views of education
Authoritarian education in its various forms has one person or a small group of persons making and implementing the decisions about what to learn, when to learn, how to assess learning and the learning environment before the learners are recruited as individuals or groups. As an exclusive method, it is favoured by a totalitarian regime because it produces a conformist mentality.	In a democratic system of education, learners have the power to make some, most or even all decisions, since power is shared and not appropriated in advance by the minority.
Knowledge is essentially information contained in traditional subjects.	Knowledge is essentially skills and information needed by a group to maintain and develop its learning.
Discipline is learning to obey the rules and instructions decided by the management.	Discipline is democratic discipline by working co-operatively according to agreed rules and principles.
Learning is mostly listening to subject experts and reading their books.	Learning is actively agreed by the group to gain experience, information or particular skills working either together or reporting back on tasks delegated to individuals.
Teaching is usually formal instruction by trained or approved adults.	Teaching is an activity including instruction that the group judges will lead to effective learning.
Parents are expected, for the most part, to be admiring spectators of experts.	Parents are seen as part of the resources available and potentially as partners in the learning group.
Resources are predominantly subject textbooks and subject educators trained in instructional methods.	Resources are anything appropriate to the groups' research and learning, including people, places and experiences.
Location is a central place (school) where the experts (educators) can easily be assembled.	Location is anywhere that the group can meet to pursue effective learning.
Organisation is usually in a class formally arranged for instruction of the whole class.	Organisation is usually in a group where cooperative dialogue can take place.
Assessment is mostly tests of how well learners can repeat the subject matter.	Assessment takes various forms using tests devised by learners or others that are seen to be appropriate to the situation.
Aims are essentially to produce mini academic subject experts. Those who fail in this enterprise are required to become useful in industry/commerce.	Aims are essentially to produce people with confidence and skills to manage their own lifelong learning within a democratic culture.
Power is in the hands of an appointed individual or small management team who impose decisions on others.	Power is shared in the group who are seen as responsible both as individuals and collectively for its exercise.

Adapted from Bobbett (1996:576-7)

Rex (1979:122-3), Fourie (1990:107) and Dlamini (1997:40) note that the education system in South Africa was characterised by inequalities and discrimination. It was designed to promote



white supremacy and black dependency. The policy of Bantu Education suggested denial of learners' right to education in all its forms. It ensured that black learners did not aspire to positions in life which they could not attain. It was aimed at social control and was characterised by an autocratic view of education. This view stressed the philosophy "you will do it our way". Table 2.6 compares such autocratic views of education with alternative democratic views.

Osler and Starkey (1998:315) note that traditionally schools were organised for instruction. They provided instruction in a specific curriculum, designed or laid down by the authorities, where the knowledge gained from each subject was compartmentalised and without any link to real life. Learners were required to be passive recipients of instruction and therefore it is not surprising that, in such situations, learners would not even have the courage to assert their right to education.

In this regard Belter and Grisso (1984:899) and Kisser (1996:413) argue that beyond the question of knowing and understanding lies the question of the ability to apply knowledge in a practical way. This is exhibited in a learner's capacity to take appropriate actions and decisions and to stand up for the rights they feel may have been violated.

After the elections in 1994, South Africa adopted a new Constitution which has the Bill of Rights enshrined in Chapter 2. The right to education was then recognised for the first time as a fundamental human right in South Africa. This right is very complex in that it is linked with other human rights. Figure 2.1 indicates the education clause as entrenched in Section 29 of the Constitution and its relationship with other fundamental human rights. Table 2.5 indicates a paradigm shift from an autocratic education system (South African education system prior to 1996) to a democratic education system (South African education system after 1994). For the survival of the new democracy the curriculum must be designed in such a way that it creates avenues where this new paradigm can be explored. This must also take cognisance of the teaching strategies employed by educators, different ways of learning, various resources, and including parents as partners in the education process. All these factors may ultimately influence the way in which learners view their right to education. The aspects that influence learners' understanding of their right to education are explored in more detail (see § 3.4.)

The apartheid education system adopted by the then South African government inculcated into society the tendency to disrespect diversity, equality and human dignity, and non-tolerance was viewed as being acceptable. Although apartheid has since been legally abolished, its effects were widespread and still remain engraved in the minds of some South African citizens (Peens 1998:62). The fragmentation of the education system led to the inefficient education of a large proportion of the population. The transformation of the



education system in South Africa was made possible by the fact that in 1994 South Africa abolished apartheid and thus stepped out of isolation. South Africa showed her commitment and obligation to redressing past imbalances, not only by adopting a Constitution that incorporates a Bill of Rights, but also by ratifying several human rights treaties during the years 1994 to 1996.

The new constitution is based on the values of equality, human dignity, freedom and security of a person (Dlamini 1997:40; Potgieter *et al* 1997:5; Rautenbach & Malherbe 1998:6; Van Raemdonck & Verheyde 1997:245)

Peens (1998:71) notes that some of the strategies which the present government has put in place are aimed at improving the rights of learners, especially their right to education. These strategies encompass providing at least nine years of compulsory education; upgrading qualifications and conditions of services for educators; reforming the curriculum in order to make it more relevant to the academic, vocational and cultural needs of learners by making it less biased and more race, religious, and gender sensitive; improving facilities and the physical environment of all schools; developing appropriate language and religious policies so that learners have the opportunity to be educated in their home language where reasonably applicable; and providing financial assistance to upgrade and develop pre-primary, primary, secondary and tertiary education facilities.

2.7.1 The Constitutional background of the right education

South African Constitution came into operation in 1997. It has been adopted as the supreme law of the country and therefore it is the most important legal document. This signalled the dawn of a new democracy. In its preamble, the purposes of the Constitution are written, that is, to heal the past imbalances and to create a society based on democratic values, social justice and fundamental human rights, to improve the quality of life of all citizens. In chapter 2 the Constitution enshrines the Bill of Rights. The right to education is protected in the bill of rights. Section 29 provides that everyone has the right to basic education (see Table 2.7). Unlike in the past where education was offered in unequal bases under a divided education system, the bill of Rights reversed that as is stated in the preamble of the Constitution. The general equality clause, Section 9 of the Constitution prohibits discrimination and it also applies to the right to education in educational institutions.

Other fundamental rights that have direct relevance to the right to education are also protected in the bill of rights (see Figure 1.1). Violation of one of these rights in the school



situation may impact on the right to education. Because the right to education is enshrined in the Constitution, it is protected in the supreme law of the country.

Table 2.7: The Education Clause in the South African Constitution of 1996

The Constitution	Section 29	<p>(1) Everyone has the right:</p> <p>(a) To basic education, including adult basic education and</p> <p>(b) To further education which the state, through reasonable measures, must make progressively available and accessible.</p> <p>2. Everyone has the right to receive education in the official language or language of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of this right, the state must consider all reasonable educational alternatives, including single medium instruction, taking into account:</p> <p>(a) Equity;</p> <p>(b) Practicability; and</p> <p>(c) The need to redress the results of past racially discriminatory laws and practices.</p> <p>3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that:</p> <p>(a) Do not discriminate on the basis of race;</p> <p>(b) Are registered with the state; and</p> <p>(c) Maintain standards that are not inferior to the standards at comparable public educational institutions.</p>
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Source: The Constitution of South Africa 1996

The content of the South African Bill of Rights resonates with international human rights instruments such as the UDHR 1948, the ICESCR of 1960, the ICCPR and the ACHPR of 1990 (Van Raemdonck & Verheyde, 1997:159). These instruments form the basis of human rights, in particular learners' rights to education. The discussion which follows the table below concerns the recognition of learners' rights to education and other rights which have direct relevance to the right to education in the South African Constitution and other related laws.

2.7.2 The public law foundation of learners' right to education

The sources of the right to education include international human rights instruments, such as UDHR, 1948, ICESCR, 1966, CRC, 1989, regional human rights instruments such as ECHR and the ACHPR, the Constitution and public law. This section is restricted to the Constitution and the public law foundation of the learners' right to education. In South Africa the right to education is constitutionally guaranteed. Chapter 2 of the Constitution contains the Bill of Human Rights. The right to education is a constitutional right. Section 29 guarantees educational rights which cannot be violated by national or provincial bodies when enacting legislation concerning education and natural and judicial persons. (Beckmann, *at al* 1997:3). Two laws were enacted in 1996. The NEPA of 1996 determines the national policy for



education under Section 3, stipulates directive principles for education under Section 4 and serves to facilitate transformation of the education system. The NEPA provides for the organisation, management, governance, funding, establishment, and registration of educational institutions educational rights under Section 3(4). The Schools Act in its preamble provides its general purpose which is to establish a legislative framework for uniform norms and standards for education of learners at school, governance and funding. It stipulates the duties of parents and learners with regard to the right to education. Basically it is the duty of the parents to comply with the provisions (Beckmann, *at la* 1997:3).

2.7.3. The right to basic education

In terms of Section 29(1) (a) of the Constitution everyone has the right to education, including adult basic education. The Constitution does not have a provision concerning compulsory education, neither does it provide that basic education is free and compulsory (see the education clause in Table 2.7). The Constitution does not provide for pre-primary education *per se* (Cachalia, *et al.* 1994:104; De Groof, 1996:68). The principle of compulsory school attendance is provided for in Schools Act under Section 3(1). It imposes an obligation on parents to ensure that every child for whom they are responsible attends school from the first day of the year in which the learner turns six years to the last day of the year in which the learner reaches the age of fifteen years or the ninth grade, whichever happens first (Beckmann *et al.*, 1997:7; Visser, 1997:135). The learner has to undertake nine years of compulsory education either at home, in public education institutions or in independent schools if the parents so choose. The state in turn has an obligation to ensure that compulsory education is attainable by establishing schools, ensuring that educators are trained and paid, and purchasing education materials (Potgieter, 1997:5).

In order to ensure that all learners in the provinces attend school and enjoy their right to basic education, Section 3(2) of Schools Act places a duty on the relevant Member of the Executive Council (MEC) to see to it that there are enough school places in each province. If the parent of a learner, without just cause, fails to ensure the attendance of a learner at a school, that parent is guilty of an offence and is liable, if convicted, to imprisonment for a term not exceeding six months (Schools Act Section 3(6)(b)).

Section 29(1) of the Constitution does not preclude the paying of fees at schools (Van Raemdonck & Verheyde, 1997:270). Public schools are authorised under Section 39 of SASA to impose school fees (Beckmann *et al.*, 1995:27). In terms of SASA Section 40(1), parents have a duty to pay fees for the education of their children, unless they are fully or partially exempted from doing so. The parents pay fees in terms of a resolution taken at a parents' meeting to determine fees payable at a public school. The governing body of each public school sees to it that the school fees determined by the parents are paid at its school. It may use legal processes if a parent of a learner refuses or fails to pay school fees, provided that



such parent is able to pay the fees (Potgieter *et al* 1997:41). Non-payment of school fees does not give the school the right to refuse learners admission to a public school on the basis that their parents are unable or unwilling to pay school fees.

2.7.4 Equal access and non-discrimination in education

The equality clause in Section 9 of the Constitution is particularly relevant to education. The clause outlaws unfair discrimination within the school situation, but it does not preclude all differentiation or fair discrimination (Beckmann, 1995:35, 27). The issue here is that due consideration should be given to matters that concern language, religious and language policies and the promotion of learners in schools. The policy directive in NEPA Section 3 is directed towards the advancement and protection of fundamental human rights and in particular, under Section 4(a), the right of:

- (a) Protection against unfair discrimination within an education department or institution on any ground;
- (b) Equal access to education in an institution; and
- (c) Education in one's own language or language of choice.

The education clause, Section 29 of the Constitution, does not explicitly include the right to equal access to educational institutions. The principle of equal access or non-discrimination is, however, covered in the general equality clause (Malherbe, 1997:64).

Section 9(3) prohibits unfair discrimination based on race, gender, sex, pregnancy, colour, culture, religion, conscience, belief, age and language (Potgieter, 1996(b):175, 1997:110). Discrimination based on these grounds is regarded as unfair and therefore forbidden, unless established that it is fair. According to Malherbe (1997:64), nothing in the education clause can be interpreted to condone discrimination or to prevent, redress and perpetuate inequalities in education. The education system of South Africa recognises diversity of cultures, languages and religion. The following subsections discuss learners' rights in terms of admission, language and religion.

2.7.5. Right of admission to a public school

In order to serve learners' educational requirements without discrimination, Section 5(2) of Schools Act prohibits, among other things, the governing body of a public school from administering any test related to admission tests. This section is consistent with the learner's right to basic education embodied in Section 2 (1) (a) of the Constitution. The Schools Act directs under Section 5(3) (a-c) that learners may not be refused admission to a public school



because their parents are unable or unwilling to pay school fees as determined by the SGB; do not subscribe to the schools mission statement; or refuse to release the school from liability for damages arising out of the education of the learner (Beckmann *et al*, 1997:9).

A school may not refuse a learner admission to a public school particularly on the grounds of race, colour, sex, religious belief, culture or language. If this happens without due cause, it may be considered unfair discrimination. The *Matukane v Laerskool Potgietersrus* case is a good example of discrimination based on race. The Promotion of Equality and Prevention of Unfair Discrimination Act, (Act 4 of 2000) Section 7(a-e) and the Constitution, Section 9(3) explicitly proscribes unfair discrimination based on race. In practice discrimination still persists in educational institutions. In the *Matukane v Laerskool Potgietersrus* case the Supreme Court sanctioned the primary school in Potgietersrus for discriminating unfairly against learners on the basis of race. The school refused the admission of black learners who applied for admission to the English medium class (Van Raemdonck & Verheyde. 1997:290). The next discussion concerns language rights

2.7.6 Language rights

South Africa is a country which is composed of minority groups with diverse languages, religions, ethnicity, races and cultures (Van Raemdonck & Verheyde 1997:248). With regard to language rights, Section 6(1) of the Constitution recognises, protects and makes provision for eleven official languages and sign language (Bray 2000(a):30; Cachalia. *et al*. 1994:102; Potgieter 1996:169). Table:2.8 represents home language groups in South Africa

Table 2.8 Home language groups and approximate number per group in South Africa

	Home language group	Approximate number per group
1	Zulu	6 041 000
2	Afrikaans	4 309 000
3	Xhosa	4 035 000
4	English	3 122 000
5	North Sotho	2 363 000
6	South Sotho	2 245 000
7	Tswana	2 113 000
8	Tsonga	918 000
9	Swazi	647 000
10	Venda	409 000
11	Ndebele	311 000

Source: Le Roux & Beckmann (1999:47)



Section 29(2) of the Constitution guarantees everyone the right to receive education in the official language or language of their own choice in public education institutions, where that is reasonably practicable (Rautenbach & Malherbe 1999:377).

Language rights are also provided for in NEPA Section 4(a)(viii). In order to ensure effective access to language rights in education, the state must consider all reasonable alternatives, including the use of single medium education (Bray 2000(a):80; Dlamini 1997:5). When doing so, equality, practicability and the need to redress past imbalances should be taken into account (Rautenbach & Malherbe 1998:18). The SGB of the school is vested with the power to determine the language policy as long as the policy does not unfairly discriminate against other groups of learners on the basis of race, gender, religion, or creed (Schools Act 6(2) (3)). Affording this power to the SGB was specifically aimed at improving democratic participation in education, but many governing bodies are not fully functional and thus their decisions may not reflect the true feeling of the parents with regard to the language of learning.

Although English is the home language of only 8, 2% of the population of South Africa, it enjoys the status of being a global economic language and thus parents want their children to be taught in English (SAHRC 2006:29). This seems to suggest that they do not take pride in their own languages. Although parents determine the language of instruction and number of languages taught at a school, the reality is that African languages are not sufficiently recognised in schools. African languages are being taught in some schools where parents exercise their right to a choice. Although an African language was compulsory in all model C schools from grade 5-9 and could be chosen as one of the 6 subjects in grade 10-12, it was usually a third language and never a first additional or home language. African learners were therefore forced to suspend their home language and enrol instead for either English or other non-African languages. However the choice still exists for them to learn their own language by moving to another school, even though this may have financial implications.

The impact of language on learning is felt particularly in poor rural schools. Often this causes learners to perform badly in examinations and thus impedes the realisation of intended educational outcomes. Instead of dealing with the tasks assigned to them, learners have to grapple first with the language of instruction, especially where this is not their mother tongue. The SAHRC reported that 42% of learners in poor rural schools have difficulty understanding their educators. This problem affects educators as well. "An inadequate command of language whether by educator, a learner or both, constitutes a serious barrier to effective schooling and education" (SAHRC, 2006:28). In this regard Tomasevski (2003:174-6) observes that learners may fail the examinations, not because they have learning disabilities, but because they could not read or understand a single word in the examination script. Yet failing the examination may be exacerbated by the diagnosis of severe learning disability.



Compulsory instruction in a language which learners do not understand constitutes an obstacle to the enjoyment of their right to education. Learners who are deprived of mother tongue instruction seem to progress well enough in their early school years but develop problems later in their school careers (Vermeulen 2000:14). Furthermore those whose proficiency in English is poor later bear the consequences of performing poorly in job interviews.

Mazaba and Nthepe (1979:163) argue that educating learners in their mother tongue offers unparalleled advantages for the learner. Their experimental project focused on improving primary education through mother tongue instruction, which, besides the transmission of culture, values and attitudes, equipped each individual to live fully and participate in the progress of his community. The outcome indicated that learners were able to discuss what they had been taught amongst themselves and with their educators. They mastered mathematical concepts and arithmetical concepts better and more quickly, and had a better grasp of the events and phenomena of the environment (scientific bases). The use of their home language helped to establish real links between the school and external institutions and laid the foundation for continued education in real life in the community. Given the above realities, it is evident that continued failure by learners due to the language barrier may influence the way in which they view their right to education and schooling. The next paragraph investigates the implications of religious rights.

2.7.7 Religious rights

Learners do not discard their religious rights when they enter the school premises. The school system through its religious policy should accommodate diversity of religion. Table 2.9 presents examples of religions and approximate percentages per religious group which are present in South Africa..

Table 2.9 Different religions and approximate percentages per religious group in South Africa

Religion	Approximate percentages
Christianity	70%
Traditional African religion	20%
Others	7%
Islam	1%
Judaism	1%
Hindu	1%

Source: Le Roux & Beckmann (1999:50)

Section 15(1) of the Constitution recognises personal freedoms of conscience and religion. This has implications for the right to education. The right protects learners' beliefs. A school may not expel a learner from attending school on the basis of hair style such as dreadlocks,



dress and wearing of head dress as these may express learners' beliefs. Consistent with this section of the Constitution, Schools Act Section 7 provides that religious observances may be conducted at state and state-aided schools, provided that they are conducted in accordance with rules as set forth by the SGB, are conducted on an equitable basis and the attendance thereof is free and voluntary (Beckmann 1995:99 &1997:9). In terms of Section 4 of NEPA, the Minister of Education determines the national policy for religion in schools. In line with the international conventions ratified by parliament, the Act guarantees in Section 4(a)(vi) the right of every person to freedom of conscience, religion, thought, belief, opinion, expression and association in education.

The governing body of a public school may determine the religious policy of the school, which should be consistent with the Constitution or else it would be invalid and of no legal force. The Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000 Section 29 lists some unfair practices that occur frequently in education and need to be avoided. For example: unfair exclusion of other learners in education institutions, and failure to reasonably and practicably accommodate diversity.

2.7.8 Parental freedom and responsibilities with regard to the education of their children

Section 29(3) of the Constitution provides that parents have the liberty to establish and maintain independent educational institutions (Bray, 2000(a):8). These private educational institutions may cater for the particular needs of cultural, linguistic and religious communities and the parents maintain those institutions at their own expense. This liberty is in line with Section 31(1) (a) of the Constitution which states that persons belonging to a cultural, religious or linguistic community may not be denied the right to enjoy their culture, practice their religion and use their language. What is also required is that the school must be registered with the state and may not offer education of a standard inferior to that offered in public educational institutions.

In terms of general law, parents have the freedom to choose the quality of education provided to their children and the right to choose the type of school to which they want to send their children (De Groof 1996:62; Malherbe 1997:55-58; Van Raemdonck & Verheyde 1997:273). Parents have the responsibility to ensure that their children attend school (see § 2.5.3) and they are responsible for paying school fees. The parent of a learner may apply to the head of department for registration of learners to receive education at home. The head of department may register learners for home schooling if satisfied that the education received is not of inferior standard when compared to the education offered in public schools, and if it meets the minimum requirements of the curriculum at a public school (Schools Act Section 46(



2.7.9 South African perspectives on human school discipline

Dlamini (1997:51) notes that no proper education and learning can take place without discipline. No matter how comprehensive school rules are, learners will always commit offences for which they should be disciplined. It is therefore important for the school to maintain discipline. Discipline creates safety in schools. The principals, educators and parents are vested with the responsibility of maintaining discipline, as they need to work hand in hand for the benefit of the learners.

Figure 2.1 forms the basis of the discussion on school discipline, since school discipline should be consistent with the Constitution. In terms of Section 10 of the Constitution everyone has inherent dignity and the right to have his or her dignity respected. This provision is extended to protect learners within the context of the school and the home. Section 10 of Schools Act prohibits the administration of corporal punishment to the learner at school by any person. It states that any person who does this will be guilty of an offence and liable on conviction to a possible sentence of assault (Beckmann *et al.* 1995:11 and Section 10 of Schools Act). As can be seen from Table 2.10, many schools still administer corporal punishment despite the fact that it is against the law. By practising corporal punishment, educators may infringe upon learners' right to freedom and security and as a consequence impact negatively on their right to education.

Table 2.10 Percentages of incidents of corporal punishment in schools practising corporal punishment according to learners, educators and principals

	Practising	Not practising
Learners	81.5%	18.5%
Educators	74.0%	26.0%
Principals	74.0%	26.0%

Source: Prinsloo (2005:8)

In terms of Section 8 of Schools Act, the SGB of a public school is empowered to establish a code of conduct for learners, aimed at establishing discipline and a purposeful school environment. A code of conduct for learners is also dedicated to the promotion of a quality learning process and sound relationships between learners and educators. Learners in particular are expected to observe the code of conduct, as they are party to its development.

The position of discipline of learners as illustrated in Figure 2.1 indicates the relationship between learners' rights and other provisions in the Constitution. Although learners have the right, amongst others, to equality, privacy and freedom of expression, those rights are limited by the code of conduct and school rules that are drawn up in order to maintain a safe school environment and respect for one another's rights (Beckmann *et al* 1997:10; Dlamini 1997:51).



When disciplinary measures are taken, common law principles should be considered in order to allow justice to prevail in educational institutions. The first principle to consider is that of just administrative action. Section 33(1) of the Constitution provides that everyone has the right to administrative action that is procedurally fair, reasonable and lawful. Due process is provided for in Section 8(5) and 9(1) of Schools Act and is in line with Section 33 of the Constitution. Learners' right to be heard is protected by the principles of natural justice. The reasonable educator must consider the learners' right to be heard (*audi alteram partem*) by allowing them a fair chance to state their side of the story. Oosthuizen *et al.* (1994:24-27) emphasise the importance and necessity of school rules in maintaining order and discipline in schools. The importance of rules lies in the fact that they create order and safety, protect human rights, and maintain properly functioning educational institutions.

Having highlighted learners' rights to education, it is relevant to discuss in the next section the duties of learners derived from their right to education.

2.7.10 Learners' duties and responsibilities under their right to education

According to Jennings and Eichinger (1999:37) learners' awareness of their responsibilities associated with human rights is the noblest outcome of education. While Section 29 of the Constitution guarantees the right to basic education for everyone, Schools Act Section 3(1) places the specific obligation on learners, who exercise their right to basic education, to undertake nine years of compulsory education. The argument here is that every right poses a corresponding duty on the bearer of that right. Therefore learners' right to education poses a duty on them to learn, attend school, comply with the code of conduct for learners, respect and obey the educators and respect the rights of other learners. The right of each person also poses a duty on other people, e.g. the right to education poses a duty on parents to ensure that their children attend school and on educators to be at school, be prepared and educate to the best of their abilities and in the best interests of the learners.

The following responsibilities of learners under their right to education are stipulated in the Ministerial Guidelines (developed and distributed by the Minister of Education) for SGB in formulating a code of conduct for learners:

- Responsibilities to attend school (Section 3);
- Responsibilities to learn;
- Responsibilities to comply with the regulations of conduct of the school they attend (Section 8 of the Guidelines).



Each of these responsibilities is discussed in more details in the following subsections

2.7.10.1 The responsibility to attend school

The right to basic education places the obligation on learners to attend school regularly (Squelch 2000(a):30). A learner of compulsory school going age is required to attend school. After the age of 15 years or passing grade 9, whichever comes first, a learner may stop attending school and there are then no legal steps that can be taken against his parents. Subject to Section 3(5) of Schools Act, if a learner who is subject to compulsory school attendance in terms of Section 3(1) of Schools Act, is not enrolled at or fails to attend a school, the Head of Department may investigate the circumstances of the learner's absence from school and take appropriate measures to remedy the situation. If the situation does not improve, a written notice may be issued to the parents requiring them to comply with Section 3(1). If the parents fail to comply, they are guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months. Parents have no right to deprive their children of the right to basic education. Learners themselves cannot be legally punished for truancy since the regulation imposes penalties on parents.

According to South African law a learner is allowed to be absent from school with a valid cause, for example death in the immediate family, an emergency, or other circumstances that cause concern to the parents. What is important is to provide valid proof of the reason for absence. If a learner is absent from the school for ten consecutive days and his parents fail to report the cause of such absence; and the educator's efforts to find a cause have been in vain, then such a learner will be withdrawn from the attendance register. That in itself places a learner's progress and his right to education in jeopardy. If he returns within 40 days he is readmitted and retains his/her former admission number. If he returns after 40 days he is allocated a new admission number. The head of department may exempt a learner entirely, or partially, from compulsory school attendance if it is in the best interest of the child (Section 4(1) of Schools Act).

2.7.10.2 The responsibility to learn

Ministerial guidelines for the SGB to adopt a code of conduct for learners (developed and distributed by the Minister of Education in terms of Schools Act section 8(3)), requires under Section 5 that learners must commit themselves to do their schoolwork during classes, complete assignments and homework and catch up on work missed because of absence. Disruptions of classes are not acceptable. Learners have the responsibility to learn and develop their academic, social, occupational, spiritual, and cultural potential. In this regard learners also expect their educators to assist them with their learning difficulties, report on



their progress, and to look after their wellbeing. These requirements presuppose a mutual relationship between educators and learners. Although learners have the duty to learn, their learning could be hampered by several other issues, such as the availability of learning and teaching resources, socio-economic status, type of school they attend, violence level at the school, and competency in the language of learning. These factors are crucial for academic mastery across the curriculum as stipulated in paragraph 3.4 of the Education Policy Document issued in 1997: The critical outcomes set forth in this document ensure that learners gain skills, knowledge and values necessary for their daily living. Educators thus have a responsibility to help learners to learn.

2.7.10.3 The responsibility to abide by the school regulations

School regulations and rules are drawn up to ensure that schools are safe and peaceful environments where learning and teaching can take place. This implies that discipline must be maintained at all times so that the education of learners proceeds without disruptive behaviour and offences. The main aim is to teach and lead learners to self discipline.

When disruptive behaviours are prevalent, educators are charged with the responsibility of restraining such activities or actions, as these may inflict harm on other learners or educators such that they may infringe upon others' rights to learn. Learners do not have the right to violate other learners' rights and the rights of the school authorities. If such offences occur, educators may use reasonable measures to ensure that such behaviour is corrected. Educators at a school have the same rights as parents (in *loco parentis*) to control and discipline learners according to the code of conduct during the time learners are at the school, or engaged in any official school activities.

In terms of Section 5 (3.5-3.7) of the Guidelines for the consideration for the SGB in adopting a code of conduct for learners (1998), the learners themselves must understand that action may be taken against them if they contravene this code. The Guidelines state that nothing exempts a learner from complying with the code of conduct of the school. Learners have the right though to be informed why particular conduct is considered to be misbehaviour and why they are to be disciplined. School rules are also designed to regulate the general organisation of school relationships between educators and learners. However, all rules should be consistent with the Constitution. A school should have precautions and corrective measures in place, to ensure that the code of conduct for learners is adhered to. There are some offences that can lead to suspension (Squelch 2000a:29) (see § 2.6.6.1).

2.8 Other human rights that have direct or indirect relevance to education

The right to education is often associated with other fundamental human rights and freedoms (De Groof 1996:224), namely the right to:

- Equality (Section 9);
- Human dignity (Section 10);
- Freedom and security of a person (Section 12);
- Privacy (Section 14);
- Freedom of religion, belief and opinion (Section 15);
- Freedom of expression (Section 16);
- Freedom of association (Section 18);
- Environment (Section 24);
- Language and culture (Section 30), and
- Just administrative action (Section 33).

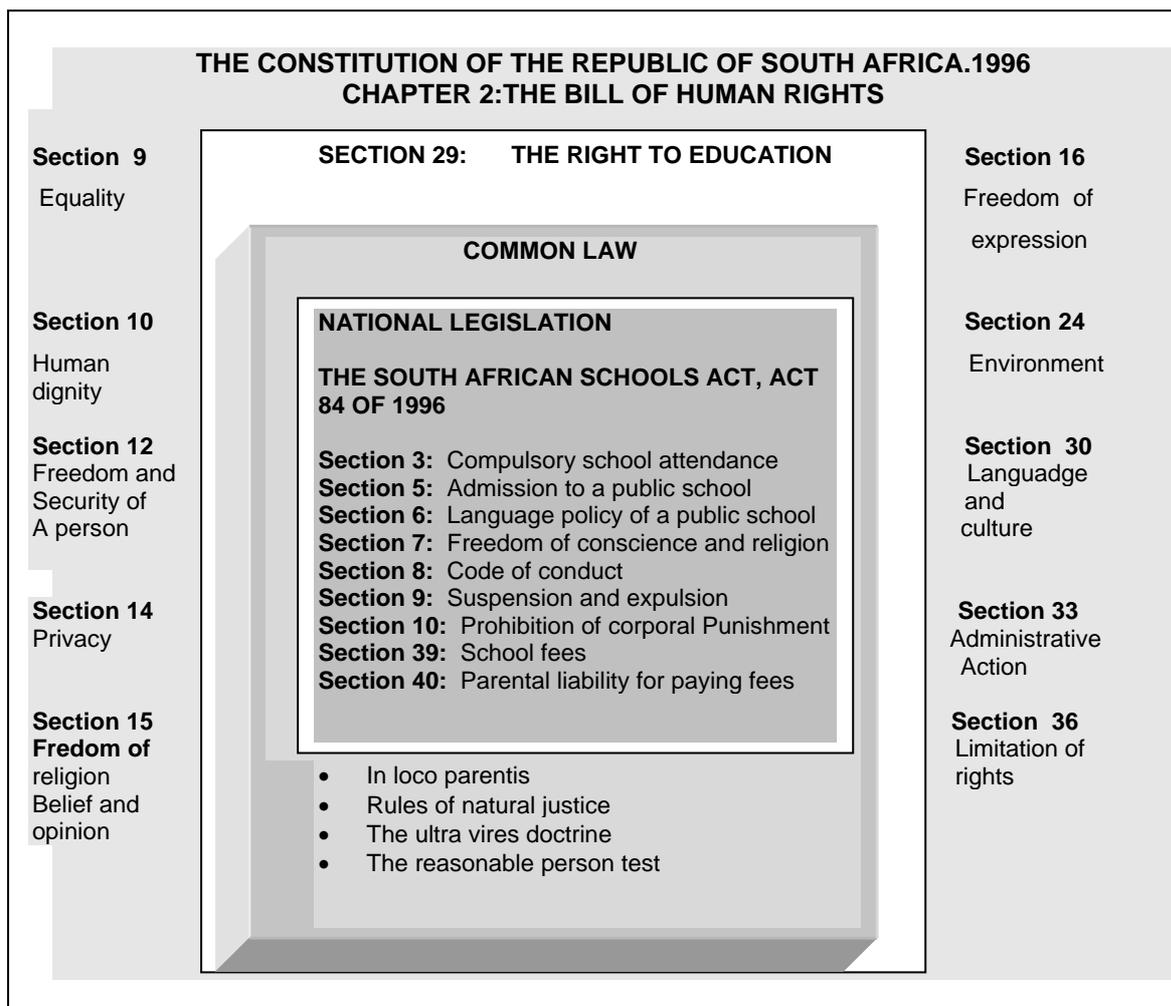


Figure 2.1: The right to education in relation to other human rights
Adapted from Joubert & Prinsloo (2001:36) and Van Vollenhoven (2005:13)



In the following sections, some of the human rights mentioned above are briefly discussed. Human rights under Sections 9, 10, 15 and 30 of the Constitution have already been covered in § 2.5.

2.8.1 The right to freedom and security of a person

The right to freedom and security of a person should be observed even in the school context. Section 12(1) of the Constitution provides that everyone has the right to freedom and security which includes the right:

- to be free from all forms of violence from either private or public sources;
- not to be tortured in any way; and
- not to be treated or punished in a cruel, inhuman or degrading way.

This right places the duty on the state and the SGB (by adopting the code of conduct for the learners) to take reasonable steps to ensure that learners are protected from mental and bodily harm or torture. In this regard the school must have a school safety policy and rules. The provision also includes protection of a person against cruel and degrading punishment that is not in accordance with the value of human dignity (Cachalia *et al.* 1994:38). Learners' right to education could be jeopardised if learners do not feel safe and secure within the school environment. Learning and teaching cannot function smoothly if learners and educators fear for their own safety.

Besides the Constitution, there is legislation which is meant to protect learners in their own home but which could also be applied to ensure the safety and security of learners at school. While the Child Care Act (Act 74 of 1983) (Sections (50-52A)) provides for the protection of learners against ill-treatment, the Prevention of Family Violence Act (Act 133 of 1993, now the Domestic Act 1998) (Section 4) protects learners against assault and encourages educators to report to the police if they have any reasonable suspicion that a learner has been ill-treated. Squelch (1995:3) and the Child Care Amendment Act, Act 96 of 1996 relate learner ill-treatment to learner abuse. Definitions of learner ill-treatment include **physical abuse**, that is, assaults such as beating and spanking, **emotional abuse**, such as name calling, labelling and hate speech, **sexual abuse** which includes rape, and **neglect** which includes exposure to hazards and failing to send a learner to school (Section 19 (b) (iii) & (iv) of the Child Care Amendment Act). When a learner's rights have been violated at school the provisions of this legislation may be invoked.



2.8.2 The right to privacy

The right to privacy is provided for under Section 14 of the Constitution and par 3.4 of the Guidelines for the consideration for the SGB in adopting a code of conduct for learners (1998). Under these provisions everyone has the right to privacy, which includes the right not to have:

1. their person or home searched;
2. their property searched;
3. their possessions seized; or
4. their privacy of communication infringed.

These provisions, as with all other rights, can be limited in terms of Section 36 of the Constitution, where it might be necessary to conduct a search and seizure of possessions. School authorities may conduct a search and seizure as long as it is done upon reasonable suspicion and is procedurally correct (Squelch 2000a:44). For example, a school may conduct a search and seizure of a learner's property, if an educator suspects that the learner possesses illegal drugs, weapons, alcohol or other contraband or illegal items. There is a compelling need for a search where the action of learners threatens the right to education of other learners. In this instance the search and seizure is done with the best interest of other learners to safety in mind.

Guidelines to be followed when conducting search and seizure require that searches should be authorised by the principal and strip searches are not permitted (school officials could be held liable if a learner can show that the person conducting the search acted with ill intentions and unfairly). Prior to search the principal and the educator should have reasonable suspicion that one or more learners have engaged in wrongful acts. Schools should have a clear set of rules dealing with searches and parents and learners must be informed of the school's procedures for carrying out search and seizure procedures (Squelch 2000a:49).

The right to privacy places a duty on the school not to disclose private information about a learner to an unauthorised person. Such information may, for example, include learners' HIV, AIDS and other disease status, school reports, disciplinary measures and inability of parents to pay fees. Educators must maintain records of the type of illnesses suffered by all learners. This is not only for the sake of knowing but also for the sake of the safety of the learner concerned and of other learners. For example, it is required by the National Policy on HIV/AIDS for Learners and Educators in Public Schools of 1999 paragraph 2.8 (hereafter called National Policy on HIV/AIDS) that learners infected by an infectious disease be kept away from school to prevent the spread of the illness. The educator may help inform the parents of infected learners about vaccinations if there are any. Notwithstanding the recommendation to maintain records of diseases, the compulsory disclosure of learners' HIV status and other diseases to school is not advocated. In cases of disclosure, educators must be able to handle confidential issues. Educators should also discourage unacceptable



behaviour that may create the risk of HIV transmission (National Policy on HIV/AIDS of 1999 par 2.5).

Under American law, the school is required to keep school records confidential, but parents are guaranteed access to their children's records. The law also prohibits the release of records without parental permission, except to those who have a legal right to know. An educator can be disciplined for sharing confidential information about a learner with unauthorised persons. In Minnesota, Fischer, Schimmel & Stellman (2003:280-281) a school guidance educator's service was terminated for breaching the confidentiality of learners when counselling. In this case the court ruled that sharing sensitive confidential information with those who did not have the right to know, was the most serious of the charges and could cause long lasting harm to a learner. An educator could share confidential information about a learner if it is in the best interests of the learner and the school. The best example is the Illinois case, in which the federal judge ruled that the school board did not breach the learner's right to privacy when it used a videotape without parental consent as evidence against a disruptive learner at a special education hearing meeting, because officials at the hearing had a legitimate educational interest in the school (Fischer *et al* 2003:280-281).

2.8.3 The right to freedom of expression

Section 16 of the Constitution accords learners and every person the right to freedom of expression. Learners have the right to express their views by speech or any other means, as long as the conduct does not materially and substantially disrupt the work and discipline of the school (O'Hair *et al.* 2000:256). Freedom of expression includes not only freedom of speech but extends to rights to hear, read and wear. Freedom of expression also applies to learners' hairstyles, clothing and the wearing of symbolic items (Squelch 2000(a) 63-64). Within the school context, learners have freedom of expression but it is not unlimited. Learners are, for example, not allowed to use vulgar words, insults, or racial slurs directed at either educators or other learners. If a learner's freedom of expression leads to a substantial disruption of school activities or infringes upon the rights of others, it can be limited. The limitation must be done with the purpose of maintaining orderly teaching and learning, enforcing regulations and ensuring the safety of all learners (Van Vollenhoven 2005:69).

2.8.4 The right to freedom of association

In terms of Section 18 of the Constitution everyone has the right to freedom of association. This section is particularly relevant and important in the school context. Learners are, for example, at liberty to participate in the learners' representative council. It is through this council that learners' voices are heard (Beckmann *et al.* 1997:38). The right to freedom of association allows learners to choose subjects they want to do at school and particularly in



further education and training, provided they do so within limits. For example, the Minister of Education passed a notice in 1999 regarding the National Policy on Instructional Time for School Subjects in terms of Section 7 of NEPA that requires him under Section 3(4) (1) to determine curriculum frameworks, core syllabi, education programmes and learning standards. In this notice, learners in grades ten to twelve are required to choose a minimum of six subjects of which two must be languages. One language must be taken at home language level and the second one either at first or second additional level. A minimum of four subjects should be taken from group A to F as provided in the notice. In addition, to meet the requirement for exemption, a learner is required to choose a minimum of six subjects thus; learners should exercise their right to choose school subjects within these limits.

The right to freedom of association also allows learners to participate in extramural activities of their own choice, provided that they are competent to perform those activities and proper instructions have been given before learners participate in the activities (Netshitahame 1999:31; Squelch 1994:103).

2.8.5 The right to a safe and secure school environment

The word 'environment', when interpreted broadly, includes any physical or mental condition or even a school (Cachalia *et al.* 1994:29). Section 4 of the Department of Education (1998) Guidelines for the consideration of SGB in adopting a code of conduct for learners provides that learners have the right to a clean and safe environment.



Figure 2.2: Example of classrooms at a rural public school
(Netshitahame & Van Vollenhoven 2002:315)

This section is consistent with Section 24 of the Constitution (1996) that provides that everyone has the right to an environment which is not harmful or detrimental to one's health



and wellbeing. This provision also concerns a safe school environment such as safe school buildings, grounds and school excursions. The school should protect learners from both physical and mental violence, as these are not conducive to teaching and learning. It is also the duty of the school to establish clear rules and regulations concerning the code of conduct during breaks and sporting and classroom activities. A clean school environment, security of property, fencing, well cared for school facilities and school furniture all create an atmosphere that is conducive to education.

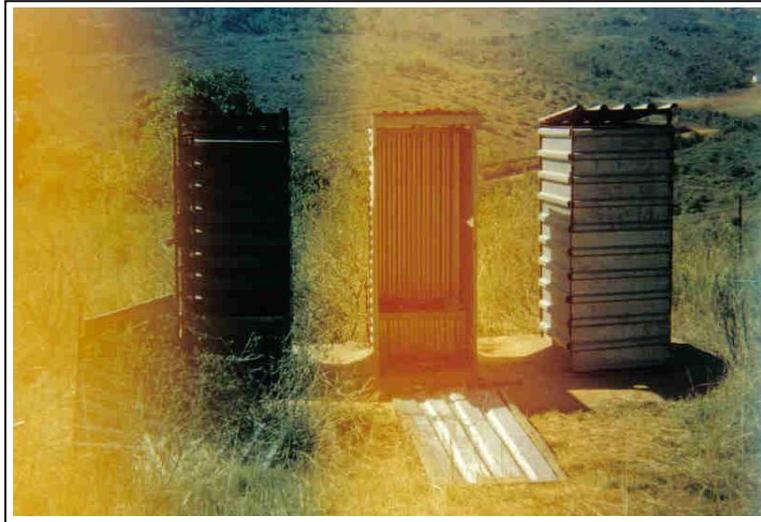


Figure 2.3: Example of pit toilets at a rural public school in Limpopo Province
(Netshitahame 1999:82)

Prinsloo (2005:5) states that a safe school environment is an environment that is free of danger; there is an absence of possible harm; educators and learners can teach and learn without fear of physical (bodily) and psychological (mental) harm. Unfortunately, this is not the case in some of our schools. Zulu, Urbani, Van der Merwe and van der Walt (2004:172) found that 75% of learners felt schools were unsafe places.

The South African Police Service and the Department of Education (2002:6-7) (hereafter called SAPSD) report that schools in South Africa are battling to provide quality education required for the holistic development of learners and find it difficult to keep order and control at schools. When there is no order at school, learners and educators fear for their own lives and safety. Instances such as bullying, fighting, insults, drug abuse, assaults, grievous bodily harm, disrespect of one another's dignity and worth, and even murder are likely to occur in some schools. The more learners realise that management does little to stop such happenings, the more likely it is for some learners to engage in criminal behaviour, truanting, skipping classes and forming gangs in order to protect themselves or simply to conform to peer pressure. Such activities expose innocent learners to learning environments that are potentially damaging to their physical, mental and emotional wellbeing. In order to create a



safe school environment, school management teams are advised to follow the key principles of safe school initiatives and interventions. Examples of such principles are understanding what a safe school is, developing safety policies, developing prevention and response plans on issues of safety and violence, building a safety net for troubled learners, knowing where to get help, treating the aftermath of violence and trauma, practising effective school management and knowing how to identify indicators of violence, delinquent behaviour and troubled learners (South African Police Service and Department of Education 2002:7-9).

2.8.6 The right to just administrative action

Section 33(1) of the Constitution provides for the right to administrative action that is lawful, fair, reasonable and procedurally just. Within the school context there are many situations that require fair administrative action, such as suspension and expulsion of learners where due process should be followed. Educators should be reasonable and fair when disciplining a learner and correct procedures must be followed (De Waal *et al.* 2000:378). Educators and principals of schools must follow fair procedures for adopting and enforcing a code of conduct for learners. Due process requires that the process must be fair, that is, learners should be afforded the opportunity to be heard and be given adequate notice of any action; officials that are in charge of the proceedings must be impartial and free of bias; and the information must be protected (Bray 2000b:88; Squelch 2000(a):36-38). Sections 8(5) and 9(3)(c) of the Schools Act affirm that due process safeguards the interests of learners in disciplinary proceedings.

2.8.6.1 Suspension from school

School suspension is a legal form of discipline for learners who violate school policies, including issues relating to safety in schools. Teaching and learning cannot occur in an environment that is unsafe and the rights of other learners and educators need to be protected. If learners do not respond to disciplinary measures taken by educators and frequently repeat misconducts such as interrupting education in the classroom, using abusive language, smoking or carrying tobacco, educators may try to discipline them. If the misconduct persists the educator may refer the case to the school authorities. Learners who have been found guilty of contravening the stipulated code of conduct may be suspended for a period not exceeding one week. What is important is that school suspension requires that procedural and substantive provisions on due process are met.

Offences that may warrant suspension and possible subsequent expulsion of a learner from a public school include: conduct which endangers the safety and violates the rights of others; possession, threats or use of a dangerous weapon; the use of unauthorised drugs, alcohol or intoxication of any kind; fighting, assault and battery; immoral behaviour or profanity; falsely



identifying oneself; harmful graffiti, hate speech, sexism and racism; theft or possession of stolen property, including tests or examination papers prior to the writing of tests or examinations; unlawful action, vandalism, or destroying or defacing school property; disrespect, objectionable behaviour and verbal abuse directed at educators or other school employees and learners; repeated violation of school rules or the code of conduct; criminal and oppressive behaviour such as rape and gender based harassment; victimisation, bullying and intimidation of others; infringement of examination rules and knowingly supplying false information or falsifying documentation to gain an unfair advantage at school (Squelch 2000a:30)

A learner may be suspended from school if, in the opinion of the principal, the language and conduct of a particular learner may jeopardise upholding an adequate level of moral behaviour, discipline or social wellbeing of the school, or a learner has committed a series of reprehensible deeds or has refused to participate in the prescribed curriculum or course of the school. Disciplinary measures can be taken against such a learner but the regulations and procedures should be followed. In terms of Section 9(1) of the Schools Act, as amended by Section 7 of Act 48 of 1999, and substituted by 2 (a) of Act 24 of 2005, the SGB may suspend a learner who is suspected of serious misconduct. Disciplinary proceedings must be held within seven school days after a suspension (Section 9 (1B)). If the proceedings are not conducted within the stipulated period the SGB must obtain approval from the HoD for the extension of the suspension (Sub Section (1B)).

Adequate notice must be provided to learners and parents regarding the existence of rules governing student behaviour. A record should be compiled that includes the type, time and place of an offence, those involved in the offence and previous efforts made to remedy the alleged misbehaviour. Learners facing suspension should be provided with a notice of charges brought against them either orally or in writing, followed by a formal hearing. During the hearing, the school official should listen to all sides of the issue (*audi et alteram partem*). Parents of the learner should be informed of the hearing. The suspension must be followed by written notification (Squelch 2000a:73; Essex 2005:94).

An example of a case regarding suspension of a learner without regard to due process is the American case of *Coss v Lopez* (Alexander & Alexander 1992:305). In this case, Lopez, a high school learner, faced suspension of up to ten days after causing a disturbance in the school cafeteria. There was no hearing prior to or after the suspension. Consequently Lopez was not afforded an opportunity to affirm or deny his participation in the disturbance. No notice of charges, no opportunity to be heard, no chance to confront witnesses and no right to further appeal were provided. Lopez filed a law suit. The lower court ruled in favour of Lopez. After due consideration of all evidence brought in the case, Justice White said that since the state had extended the right to attend public schools to learners, including Lopez, that right is legitimate and is protected by due process of the Constitution. He continued by stating that



the state “[may] not withdraw that right on the ground of misconduct and, in the absence of fundamentally fair due procedure to determine whether or not the misconduct has occurred, the Supreme Court affirms a learner’s right to due process” (Alexander & Alexander 1992:306). The court stated further that if charges were sustained and duly recorded, they could seriously damage the student’s standing in the school, as well as interfere with future opportunities to pursue education or employment. It is apparent that the rights claimed by the state to determine unilaterally without due process that misconduct occurred, clashed with the requirements of the Constitution.

2.8.6.2 Expulsion from school

When a learner is enrolled at a public school it should be understood that he or she is subjected to the authority of the school and is bound to the rules (Prinsloo & Beckmann 1989:197). Expulsion is one of the common punishments used to remove disruptive learners from the school environment, if a learner is an immediate threat to the health and safety of other learners and of the school. “Lawful, reasonable” procedures must be strictly followed (Oosthuizen *et al.* 1998:63; Squelch 2000a:29-31).

In the case of *Michiel Josias De Kock v The Head of Department of the Department of Education, Province of the Eastern Cape, The Governing Body, Overberg High School, and the Minister of Education of the Province of The Western Cape, 12533 RSA 1998*, a disciplinary investigation resulted in a learner being expelled from Overberg High school on the grounds of alleged serious misconduct. This involved possession of dagga on the school grounds during school hours. The court ruled in favour of the applicant, on the grounds that gross irregularity had taken place during the proceedings before the SGB. The school principal and his deputy who were members of the SGB were witnesses in the hearing and also took part in the decision against a learner and consequently the learner had not been afforded a fair hearing. In this regard the court referred to the Roman-Dutch precept which maintains that a judge cannot act as a witness, prosecutor, and judge in his own case.

The final judgment of the court in this case was that the decision by the HoD of the Department of Education, Province of the Western Cape to expel Floris Johannes de Kock, a learner at Overberg High school was irregular and that the learner may be enrolled as a learner at Overberg High school

The court’s decision seems to suggest that if the SGB should recommend to the HoD the expulsion of a learner from school, the learner must be afforded a fair hearing and the procedures which lead to expulsion should be lawful and not flawed.

All learners have the right to basic education under Section 29(1) of the Constitution. Suspension and expulsion do not prevent a learner, who is of compulsory school-going age,



from attending school. In the case of disciplinary transfer, the HoD must find a school place for learners until they are beyond compulsory school age (15 years old), as learners' right to basic education cannot be violated. If learners are beyond the compulsory education age they may pursue their education in an adult basic education facility. If the principal expels learners without permission from the HoD, he or she has performed an act that is beyond his power (*ultra vires*), which is in contravention of Section 9(2) (a) of the Schools Act.

In terms of Section 9(1C) (a) of the Schools Act, as amended by Section 7 of Act 48 of 1999, and substituted by 2 (a) of Act 24 of 2005, the SGB may, if a learner is found guilty of serious misconduct during a disciplinary hearing, make recommendations to the HoD to expel such a learner from the public school. The HoD is vested with the authority to make the decision to expel a learner from a school (Schools Act Section 9(1D)).

In the South African case of *R v Muller* cited by Prinsloo and Beckmann (1989:197), it was pointed out that discipline is aimed at promoting the general education of a child and the welfare of the institution. This, by itself, indicates that learners are obliged to obey the law

2.9 THE REALISATION OF THE RIGHT TO EDUCATION

More than four decades ago the nations of the world, speaking through Article 26 of the UDHR (1948), asserted that everyone has the right to education (see § 2.3.2). Despite notable efforts by countries around the globe to ensure the right to education for all, the economic gap between developed and developing countries seems to have become wider and wider. In its preamble, the World Declaration on Education For All of 1990 (EFA) states that more than 1000 million children have no access to primary schooling, and more than 1000 million children fail to complete basic education programmes and therefore do not acquire essential knowledge and skills. The economic disparities among and within nations create a daunting problem which has led to major setbacks in the provision of basic education in many countries, especially the least developed countries. In other countries, economic growth has been available to finance education expansion, but even so, evidence reveals that millions of learners remain in poverty and are unschooled or illiterate. Governments of developing countries may lack funds to pay for buildings, staff and supplies (Ray & Tarrow 1987:11).

According to Tomasevski (2003:69), the expansion of public education was rapid during the first decade after the Second World War. Enrolments increased as newly independent states made it a priority to educate their citizens. In the 1960s, newly independent states introduced constitutional guarantees of free and compulsory primary education. The right to education was written into the Independence Constitutions of Chad, Mali, Togo and Mauritius in 1960. However, ten years later, education statistics revealed that promises of free and compulsory education had been a mirage. Primary enrolments for Chad were 25%, for Mali 15%, for



Mauritius 12%, and for Togo 53%. Although South Africa enjoys high enrolment rates (97-98.5%) (SAHRC 2006:19), as compared to other African states, some learners drop out of the system along the way. The SAHRC (2006:39) in its report of the Public Hearing on the Right to Basic Education reported a high percentage of boys dropping out of the education system.

The child's right to education is a requirement of human dignity. It is unacceptable that in the world of ours, possessing a store of scientific and technical knowledge unprecedented in history, there should be, side by side with the privileged people commanding access to the resources of knowledge, hundreds of millions, not only of boys and girls, but also of men and women, who are denied the possibility of simply learning to read and to write (M'Bow 1979:14-15).

In developing countries such as Africa, learners enrol in primary schools in large numbers, only to drop out later without having completed primary education or having achieved the appropriate literacy level (Halvorsen 1990:360; Rideout 1987:21-23; Van Bueren 1995:237). Those who succeed in completing primary education often drop out in large numbers without achieving recognised secondary education certificates, and therefore very few learners manage to progress to higher education.

The pyramid is broad at the base with the numbers of learners in primary education, and gets narrower as they enter secondary school and higher education. In countries with higher enrolments, learners begin but tend not to complete primary school. Of 100% learners enrolled in 1960 in the People's Republic of Congo, Gabon and Libya, 50% had dropped out of school before the end of the primary circle. In Algeria, Burundi and Upper Volta, dropouts numbered 60%. In Botswana, the Central African Republic, Madagascar, Rwanda and Chad over 89% of learners dropped out. The will to provide education for all may have been there, but the ability to translate it into reality appears to be lacking (Tomasevski 2003:69). South Africa is no exception. Naidu (2005:2) reports that of every 100 learners who enrol in grade one, only 52% make it to grade 12. In the same vein, Momberg (2006:3) writes that South African learners are dropping out of school at an alarming rate, with coloureds appearing to drop out of secondary school in large numbers (generally around age 15) (Louw *et al.* 2006:14). Events recent years have shown that the implementation of the agreed rights to education has fallen far short of the widespread verbal commitment to the right to education. Almost daily the news media reports outright violations or neglect of a variety of rights, including educational rights (Ray & Tarrow 1987:11).

Hodgson (1996:261) indicates that the main obstruction frustrating the realisation of the learners' right to education in developing countries such as South Africa is grinding poverty and foreign debt. A Save the Children Fund study indicated that as a result of their debt burden, some African states have been forced to impose or increase school fees (Van Bueren 1995:237). As a result of fees, millions of learners never attend school or fail to complete basic education. Where school fees are not imposed, enrolments increase. For example, Tomasevski (2003:138-139) indicates that Uganda's Education Strategy Investment Plan of



1998-2003 pledged that universal primary education is its highest priority and emphasised the removal of financial impediments to schooling. As a result, enrolments increased from about 2.5 million in 1996 to 5.5 million in 1998 and about 6.5 million in 1999.

2.10 LIMITATION OF HUMAN RIGHTS

All human beings have rights which they should exercise and enjoy. However, human rights are not absolute (De Waal, *et al.* 1999:141; Dlamini 1996:119; Squelch 2000a:9), but are subject to limitation. Limitation of a right is synonymous with an infringement or 'justifiable limitation' of a right. Sometimes, during the exercise of human rights, different interests may be relevant. Different individual interests may lead to conflicts and violation of one another's rights. In order to promote harmony, human dignity and equality, individual interests and rights must be balanced by collective rights. The persuasions of individual rights may be counter balanced by a collective right and thereby contribute to the benefit of both rights. It is believed that public order, safety, health, and democratic values justify the limitation of individual rights (Helwig 1993:43).

Whenever a violation of a right is assumed, the courts become involved to interpret the law and determine legal principles that can be applied to balance the right. While the main purpose of the legal system is to maintain order and security and to restore balance and stability in society (Beckmann *et al.* 1997:125; Bray 2000a:10), the main purpose of the Bill of Rights is to protect human rights against infringement (Rautenbach & Malherbe 1998:140). If human rights were absolute, everyone would selfishly claim his or her rights without due respect for the rights of others, which would render the Bill of Rights nominal. The violation of human rights would prevail in different spheres of human life.

The discussions that follow concern the limitation of fundamental human rights under the following headings:

- Limitation of human rights in the USA
- Limitation of human rights in the Republic of South Africa (RSA)
- Limitation of the right to education in the RSA.

2.10.1 Limitation of human rights in the USA

Constitutions differ from one country to the other. Some countries include a limitation clause in their constitutions, while others do not. For example, the Constitution of the United States of America does not have a limitation clause (De Waal *et al.* 1999:142; De Waal *et al.* 2000:132). Therefore the courts play an important role in determining whether a right has been infringed and what legal principles may be used to balance the rights. Balancing human



rights is very important, since individuals might develop the attitude of absolutising their rights, in which case chaos might prevail. In USA courts different principles or tests have been developed to limit the rights and to establish whether or not a right has been infringed, for example:

- Some tests are called 'the least restrictive means'. These hold that the proposed limitation should be rejected in favour of the least restrictive means to achieve the same results.
- 'Clear and present danger' – this prohibits one from warning falsely about the existence of danger if there is none.
- The authorities may punish those who abuse freedom of expression by "utterances inimical to the public welfare, tending to corrupt morals, and incite or disturb the public order".
- Schools may limit the right to freedom of expression if in their opinion it is "contrary to the mission of the institution".
- Another test is the 'lifting words' test. This tends to limit the use of words that might contain an emotional message, arouse the interest of people such that they may cause them to act in a disruptive and unthinking immediate manner, and cause harm to others (Van Vollenhoven 2005:74-75).

2.10.2 Limitation of human rights in the RSA

Chapter 2 of the Constitution of the RSA contains the Bill of Rights. This means that human rights are guaranteed in the supreme law of the country and may not be unfairly, unreasonably and unjustifiably infringed upon. Each right entrenched in the Bill of Rights is inalienable but subject to limitation because no right is absolute (Bray 2000b:8, 29). Each right has a corresponding duty or obligation, and can be limited in a case where the corresponding duty is not executed. A person can claim a right if he/she has fulfilled a corresponding duty. Human rights belong to everyone; therefore one must be careful not to infringe upon other's rights while exercising one's own rights. This means that one must claim one's rights responsibly, unselfishly and reasonably. If one disregards another's rights, it may lead to the absolutising of one's rights and resulting chaos. De Waal *et al.* (2000 132) recognise that in order to maintain public order, safety, health, and democratic values, it is justifiable to impose restrictions on the exercise of fundamental rights.

In South Africa human rights entrenched in the Bill of Rights can be limited in certain circumstances. Bray (2000b:29, 34), De Waal *et al.* (2000 144-153) and Prinsloo and Joubert (2001:134-140) provide some guidelines on the limitation of human rights in South Africa.



They indicate the following types of limitation, which are discussed in the subsections that follow:

- Limitation through the application of the limitation clause (Section 36 of the Constitution);
- Limitation through the application of an inherent or built-in limitation; and
- Limitation during a state of emergency (Section 37 of the Constitution).

2.10.2.1 Limitation through the application of the limitation clause

This is the most common form of limitation and can be applied to all rights entrenched in the Bill of Rights (Bray 2000b:32). The criteria to ascertain whether or not the limitation of a right is valid are that the limitation must be reasonable and justifiable in an open democratic society and must be based on the democratic values of equality, human dignity and freedom (see Table 2.11). This serves to ensure that a balance is struck between the limitation of a right and the purpose for which the limitation is being applied. It is important that various factors be explored and due consideration be given when limiting a right. In the absence of valid criteria applicable in the limitation of human rights, the limitations could be applied arbitrarily and unrestrictedly. That is, such application could impede the sustainability of democracy and render the provisions in the Bill of Rights nominal and of no legal force or value. Let us first consider the content of the limitation clause (Section 36 of the Constitution) and the requirements which must be considered to lawfully limit a right or a group of rights. Table 2.9 contains the core content of the limitation clause.

The first criterion that may be used to limit a right is in terms of the law of general application (Section 36(1)).

- **A right may be limited only in terms of the law of general application**

Bray (2000b:31) states that a law may limit a right in the Bill of Rights if it is a law of general application. This means that the law must be authorised by law, and such law must be of general application. In the process of balancing the right (Van Vollenhoven 2005:56), the values which most closely reflect the Constitution scheme should receive appropriate protection.

Balancing the right must be justifiable in an open democratic society, based on the principles of equality, human dignity and freedom. The term 'law of general application' refers to law that can be equally applied. It must be a legal rule – law that provides that a right can be limited. For example, Schools Act provides for the suspension and expulsion of a learner from a school in specific cases (Section 8 & 9). When the Provincial Department of Education expels



Table 2.11: The content of the limitation clause

The Constitution	Section 36(1)	The rights in the Bill of Rights may be limited in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:
	(a)	The nature of the right;
	(b)	The importance and purpose of the limitation;
	(c)	The nature and the extent of the limitation;
	(d)	The relation between the limitation and its purpose; and
	(e)	Less restrictive means to achieve.
	Section 36(2)	Except as provided for in Sub Section (1) or in any other provisions of the Constitution, no law may limit any right entrenched in the Bill of Rights.

Source: The Constitution of the Republic of South Africa 1996

a learner from school, the law of general application must apply, in that national or provincial legislation must authorise such expulsion. What is important is that the law that limits the right must be known and must be clearly understood. The law of general application applies equally to all schools. For example, a learner may be suspended from school for vandalism of school property, or theft or consumption of alcohol. In order to satisfy the limitation test it must be shown that the law in question serves a constitutionally acceptable purpose, and that there is sufficient proportionality. The Schools Act Section 3(10) prescribes age limits for primary education within the school context. In this way, the right to primary education may be limited by age. For example, learners are subjected to compulsory education from 7 years until they reach the age of 15 or grade 9, whichever comes first. While admission to a public school is limited by age, the right to adult basic education is not (SAHRC 2006:7). Learners who are beyond the maximum age requirements for admission, may pursue their right to basic education through adult basic education..

- **The limitation must be reasonable and justifiable**

It is required that the limitation should be reasonable and justifiable in an open and democratic society, based on the principles of equality, human dignity and freedom. These principles can be explained by applying the criteria contained in Section 36(1)(a-e) of the Constitution (Table 2.11). These criteria are discussed individually in the following paragraphs.

- **The nature of the right (Section 36(1)(a))**



The question to be asked here is: “What is being protected by the right, and what is its significance in an open society based on human dignity, freedom, and equality?” The closer the nature of the right is to the values of human dignity, freedom and equality, the less it should be limited, since those values underpin democracy and the Constitution (Section 1:7(1) of the Constitution). A balance should be struck between the harm done by the law (infringement) on other rights, and the benefit it desires to achieve (purpose). De Waal *et al.* (1999:152 and 2000 144) reveal that sometimes it is difficult to apply the general limitation clause to rights with internal limitation and which carry more weight than other rights. For example, in education the right to equality (Section 9), the right to human dignity (Section 10), the right to life (Section 11), and the right to education (Section 29), carry more weight than other rights, such as the right to property (Section 25). The right to basic education is certainly a very important right, since education is an essential component of an open and democratic society, and enhances human dignity, freedom, and equality.

- **The importance and the purpose of limitation (Section 36(1)(b))**

Again, the question that should be asked is whether the limitation serves the values that underpin the Constitution, what public purpose is being protected, which rights of others are being protected by the limitation, and how important is the purpose of this limitation (De Waal *et al.* 2000 145). Let us take, for example, if a learner is suspended from school because he is selling drugs to other learners, the suspension should acknowledge the fact that discipline is an important part of education, and that other learners have the right to basic education. Drugs have a disruptive influence on education and on individual learners and therefore should not be tolerated on the school grounds. To suspend a learner in this case would be acceptable in an open and democratic society based on human dignity, freedom and equality (Bray 2000b:33).

- **The nature and the extent of limitation (Section 36(1)(c))**

In this regard, one should consider the seriousness of a transgression. The concern is to ensure that the cost of the limitation imposed on the bearer of a right is not greater than the benefit gained by society at large. In other words, the same test as applied above would suffice. That is, the right can be limited if the limitation is reasonable and can be justified in an open and democratic society based on human dignity, equality and freedom (Bray 2000b:32-33).

De Waal *et al.* (1999:156) recommend that one should ascertain the proportion between the limitation and the nature of limitation. ‘Proportionality ascertainment’ means that the infringement of rights should not be more excessive than is warranted by the purpose served by the limitation. An example of this test is where an educator wants to discipline a learner who has not done her homework, or who has arrived late at school. The educator then beat



the learner which resulted in the learner losing an eye (Ngobeni 2001:9). This punishment (intended as a means of maintaining an orderly school environment) was incommensurate with the purpose which it was supposed to serve. It infringed upon the learner's general right to dignity, protection and equality. However, in the case of a learner being suspended because he has consumed alcohol or is selling drugs to other learners, the principal may have a reasonable and justifiable cause.

- **The relationship between the limitation and its purpose (Section 36(1)(d))**

The question is whether the limitation will advance its purpose at all and if so, how effectively does it serve that purpose. There must be a good reason for the infringement (limitation of the right); this means that there must be a balance between the harm or limitation, and the beneficial purpose that the law is meant to achieve. The law must serve the purpose which it is designed to serve (De Waal *et al.*, 2000:148). In the example of suspension mentioned above, the purpose was not only to remove the culprit from the school temporarily as a form of punishment, but also to protect other learners from bad influences and to maintain a safe school environment, characterised by peace and harmony. The question is: what are the details concerning how seriously the right may have been infringed? Furthermore, can the limitation enhance the purpose of the limitation at all, and if so, how sufficiently does it serve the purpose?

- **The availability of less restrictive means to achieve the purpose (Section 36(1)(e))**

One should determine whether there are other measures that could be applied to achieve the same purpose of an intended limitation. If there is a less restrictive way to maintain discipline at school than suspending a learner, that way should be applied. But if the learner has received verbal and written warnings, suspension would be the best option, as one presumes that the less restrictive ways would have been exhausted (Rautenbach & Malherbe 1998:14-15).

2.10.2.2 Limitation through the application of an inherent limitation

An inherent limitation is also called a built-in limitation. This involves the formulation of a right in a way that it implies a limitation in itself, by means of the wording used. In addition to Section 36 of the Constitution, the Bill of Rights contains several inherent or built-in limitations or internal qualifiers that apply to a particular right. For example, everyone has the right to freedom of expression under Section 16(1) of the Constitution, but the right to freedom of expression does not extend to hate speech (Section 16(2)). This means that one is not allowed to use vulgar language, name-calling or use freedom of expression in a way that is



detrimental to the rights of others. In the same vein, Section 9(3) proscribes 'unfair discrimination' which implies that some form of discrimination (such as affirmative action) may be regarded as 'fair' (Bray 2000b:30).

Section 29 (1) of the Constitution guarantees the right to basic education and to receive education in an official language of own choice in a public institution. This right is inherently limited since the possibilities of exercising it to the full are dependent on other considerations, for example, whether or not the conditions are reasonably practicable. In order for learners to be educated in the language of their choice the educator: learner ratio should be at most 1:45 in primary schools and 1:35 in secondary schools, in terms of a specific medium of instruction. If that is not the case, it could be difficult for learners to exercise their right to choose their preferred medium of instruction.

The state must consider all reasonable educational alternatives, including single medium instruction, taking into account:

1. (a) Equity;
(b) Practicability; and
(c) The need to redress the results of past racially discriminatory laws and practices.
2. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that:
 - (a) Do not discriminate on the basis of race;
 - (b) Are registered with the state; and
 - (c) Maintain standards that are not inferior to the standards at comparable public educational institutions (SAHRC 2006:7, 8).

Whereas parents have the right to establish and maintain their own educational institutions, this right is limited in that the standard and quality of education are regulated in terms of the law. The Minister of Education is vested with the authority to determine the standard of education (NEPA Section 8(1)).

Although section 29(1) of the Constitution provides that everyone has the right to education, it qualifies this right by including the term 'basic' education. This inherent limitation presupposes that the right to education does not extend to a right to further education and training or higher education (Bray 2000b:30)



2.10.2.3 Limitation during a state of emergency

Section 37(5) of the Constitution provides for the derogation or suspension of rights during a state of emergency. The derogation applies only when the life of the nation is threatened by war, disorder or natural disaster. Some rights can be suspended under the state of emergency while others such as the right to equality with respect to unfair discrimination, human dignity and the right to life may not be limited. The difference between Sections 36 (the limitation clause) and 37 (state of emergency) is in their application. Section 37 applies only in a state of emergency, the duration of which may not exceed 21 days or may be extended to a period not exceeding three months from the time when it is declared. Section 36 applies continuously to human rights not temporarily suspended (De Waal *et al.* 2000:153 and 1999:162).

The right to education, like all other derogable rights, may be temporarily suspended in terms of Section 37(2) (a), when the country is experiencing a natural disaster like floods and it has been established that it would be unsafe for learners to cross flooded rivers, their attendance at school could be temporarily suspended until the threats are over or when alternative arrangements have been made.

2.11 Conclusion

In this chapter I explored the historical development of learners' rights to education, the recognition of learners' rights to education in international human rights law, the recognition of learners' rights to education in South Africa, the core content of the right to education, and other human rights that are directly and indirectly relevant to education. Lastly the limitation of human rights, including the right to education, was discussed.

In Chapter 3 I investigate international perspectives on learners' perceptions of their rights and the development of their understanding of human rights. Kohlberg's theory of moral ethical development is highlighted. This theory acquires a particular significance for this study, since understanding of human rights concerns social, moral and legal issues. Lastly, I shall consider the aspects that influence learners' understanding of human rights. The main focus in Chapter 3 is the development of the understanding of human rights.



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
Health	Free health care Protection from physical harm Freedom from substances abuse	Choice to refuse or to accept treatment
Safety	Products designed to be safe. Right to be safe from abuse, discrimination injustice, physical and mental health	Choice of where to live
Legal Judicial	Due process	Choice of legal counsel
Political	Protection of minority rights	Right to vote
Education	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.

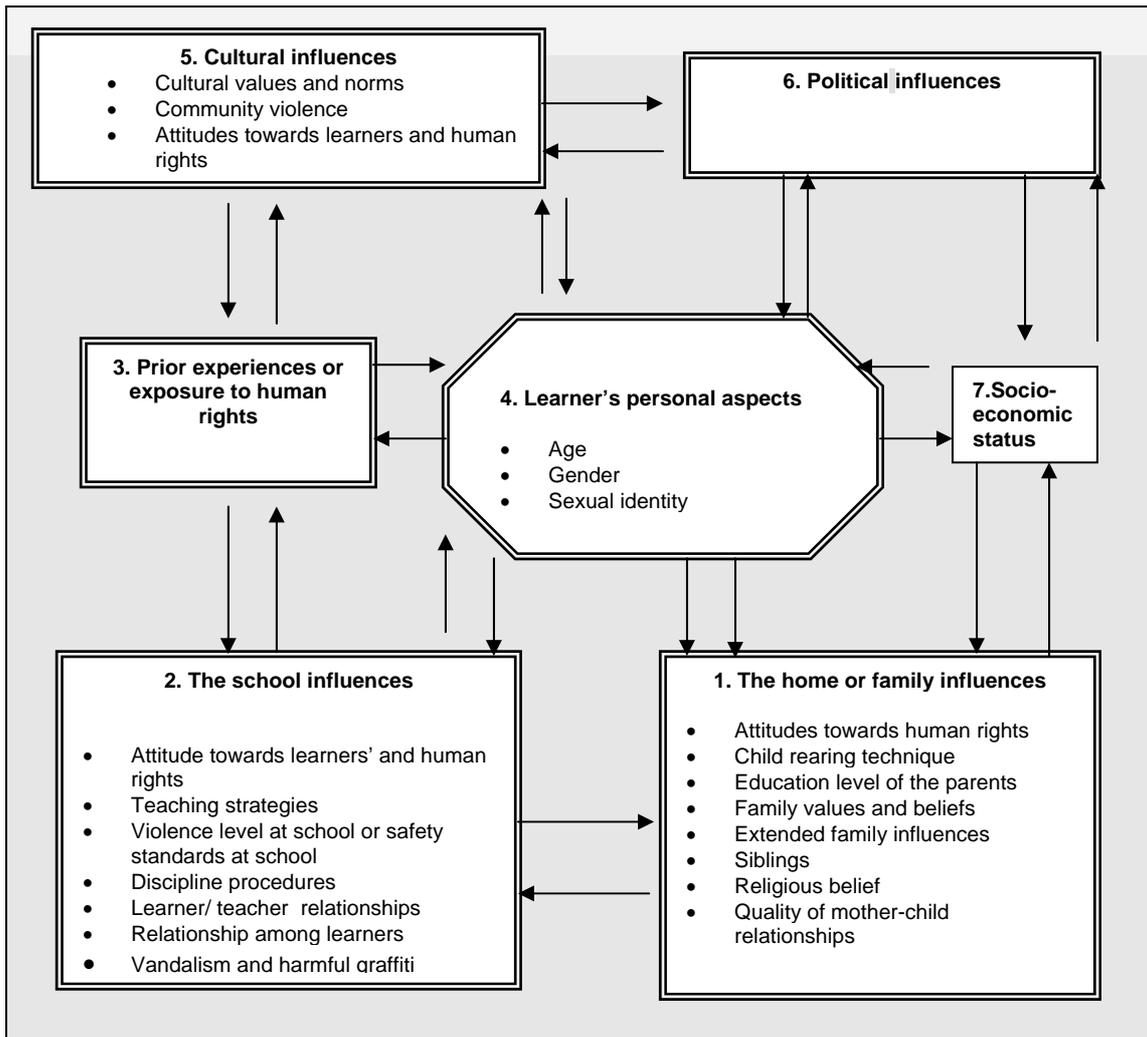


Figure 3.1: Aspects that influence learners' understanding of human rights (researcher's own synthesis)

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)

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
First level: Pre-conventional (rule obeying)	Stage 1: The punishment and obedient orientation	7-11
	Stage 2: The instrumental relativist orientation (egocentric)	10-13
Second level: Conventional (rule maintaining)	Stage 3: Conformity. Interpersonal concordance or good boy/girl orientation	11-25
	Stage 4: Law and order or social system maintenance	15-25
Third level: Post-conventional: Autonomous or principled level (rule making)	Stage 5: The social contract. Legalistic, individual rights orientation	20-25
	Stage 6: 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.



CHAPTER 4

RESEARCH DESIGN AND METHODOLOGY

4.1 INTRODUCTION

In chapter two I investigated the concept of human rights which I considered important since learners' right to education falls within the scope of human rights. It was also necessary to locate my study within the human rights conceptual framework as represented in social contract theory. This assisted me later during data interpretation, which is presented in chapters five and six. I focused mainly on learners' right to education. I reviewed the international and regional human rights instruments in order to trace specific provisions which concern learners' right to education, the recognition of learners' right to education in South Africa, the limitations thereof and some human rights that are directly and indirectly relevant to learners' right to education.

Chapter three linked the right to education with the development of understanding of human rights with the initial focus being the presentation of a critical review of international and South African research on learners' views, perceptions of rights and how the understanding of rights develops. The second focus was on aspects that influence learners' understanding of human rights. Thirdly a discussion of Kohlberg's theory of moral-ethical development was presented. Social contract theory and Kohlberg's theory are considered to be important for this study since they lay the basis for human rights understanding and how this understanding develops. Lastly, I dealt with scholarly views regarding the merits and limitations of Kohlberg's theory of moral-ethical development. As the right to education involves learners, parents, educators and the state, I included a review of research regarding parents' and educators' attitudes toward the rights of learners. This was deemed important because learners' understanding and views of human rights are mediated in some ways by their experiences of rights in their own lives (Ruck *et al.* 1998b:275); hence learners' attitudes and understanding of human rights may be influenced by the attitudes and perspectives of others (Campbell & Covell 2001:133).

The academic puzzle that guides this research is how learners understand their right to education. This study seeks to explore and analyse learners' understanding of this right and levels of human rights understanding at which learners operate. In this chapter I describe my knowledge claim, followed by the research philosophy, research design, methodology, research instruments, data collection strategies and data analysis procedures.

4.2 KNOWLEDGE CLAIM

At this point I present the justification for the theoretical foundation that underpins my study. The theoretical basis of this study stems from the research philosophy explained in section 4.3 (the



qualitative approach). It is from the lens of the interpretive or constructivist paradigms that I view the world of reality in this research study (Cohen *et al.* 2000:3; Guba & Lincoln 1998:206-207).

I discuss firstly the ontological and secondly, the epistemological positions of the interpretive or constructivist paradigm on which this study hinges. The interpretive or constructivist approach tends to move away from the assumption that the nature of knowledge is solid, absolute and based on universal truths, towards relative context-bound truths (Guba & Lincoln 1998:203). I concur with this viewpoint. As science is a search for the understanding of a phenomenon, I am convinced that there is no absolute, single, universal, interpretive truth (Mouton 1996:26; Denzin & Lincoln 1998a:27-3030). Truth is relative, that is, it is dynamic and constantly evolving (Cohen *et al.* 2000:23).

The basic assumption of the interpretive paradigm, on which this study is based, is the fact that the world is made up of multiple realities that can best be studied as a whole, while recognising the importance of the context in which the experiences occur (Henning *et al.* 2004:21). As what is considered to be truth changes over time and in context, people are constantly searching for new knowledge or what they can call basic knowledge about a phenomenon. This knowledge about a phenomenon is obtainable from various sources on which people rely, either through research, practical experience, expert's opinion, common sense, beliefs of what is right or wrong, intuition or from the subjective and diverse voices of individuals who view the specific reality in a holistic way. All these sources are legitimate and present the truth for a specific period (McMillan & Schumacher 1993:3; Cohen *et al.* 2000:3).

Truth is a matter of social construction, and should be based on the best informed constructions. What is real is the construction in the mind of an individual, and this is relative (Schwandt 1998:243). This means that people interpret reality as it presents itself to them at a specific time and in a specific context. Any one research finding that dominates as truth for a specific time period, may be challenged by other researchers who bring forth a new truth that rejects the dominating research, and is yet to be followed by other research with new findings. The truth is therefore constantly evolving. In this regard Kuhn (1970), as cited by Mouton (1996:16), concludes that the history of science can no longer be viewed in terms of the accumulation of facts and truth; he prefers the notion of science in revolution.

In the light of the aforementioned, I believe that learners construct their own realities and attach different meanings to their right to education. I view the truth not as an absolute that must be found by researchers, but rather as a phenomenon constructed or interpreted in the minds of individuals. This knowledge claim goes hand in hand with the qualitative research paradigm, since the intention is to establish how my respondents interpreted their 'truth' of the specific phenomenon of interest at certain times and in certain places.



This standpoint became even clearer when reviewing the historical development of the right to education. Although it ranks high on the list of other human rights, and despite its importance, it has rather belatedly been recognised as a human right (Volio 1979:19). Individuals had to first gain their independence (they attached greater importance to civil and political human rights) before recognising learners' right to education (Hodgson 1998:9). As the image of the child changed with time, so the right to education acquired greater significance. The next step was to incorporate this right into national human rights law (see § 2.3). Despite its recognition in international human rights treaties, there are still people who regard the right to education as a distant reality, depending on the contextualities in which this right is exercised, and their own constructions.

When people search for the truth in their real world, they invoke experiential knowledge and give meaning to their own truth as lived experiences, which results in subjective meaning being attached to the phenomenon (Cohen *et al.* 2000:6; McMillan & Schumacher 2001:396). I have followed the subjective, qualitative, interpretive paradigm in this research study. This approach assumes that knowledge is subjective (Guba & Lincoln 1998:107). People and societies construct their own realities. The researcher and the researched are assumed to be interactively linked as they are both physically present during the data collection process and the findings are a result of joint constructions. The results of this research are based on learners' understanding of their right to education from the concept of reality as reported by my respondents, and are subjective rather than objective, as the positivist approach suggests (Guba & Lincoln 1998:212).

I concur with the views of Guba and Lincoln (1998:107) that individuals' constructions of reality can be best elicited and understood through interaction among and between researcher and respondent. During the data collection process, I interacted with my respondents whilst viewing reality from a different perspective. I realised that learners under investigation create their own different reality, based on interpretations and understanding of their right to education as experienced within their environment. I was able to report learners' understanding of their right to education not solely from my own understanding, but as a joint and consensus construction between the learners and myself (Henning *et al.* 2004:22). In South Africa, the right to education is entrenched in the Constitution. People attach individual, subjective meaning to the interpretation of human rights. I assumed that learners' understanding of human rights may differ from other people's understanding of the phenomenon. I believe that learners' interpretations of their rights exhibit different levels of human rights reasoning. I endeavoured therefore to understand the right to education not only from my own understanding, but also from the learners' point of view (Merriam 2001:6).

The above paragraph explains the ontological and epistemological position from the interpretive or constructivist standpoints which I chose to follow. My understanding of reality is that



knowledge is not only gained through the authoritative voices of researchers as Cohen *et al.* (2003:3) note, but also through subjective experience and many voices of individuals. The environment in which individuals live is understood as a whole and individuals construct their own meanings from the information that they obtain, either through their senses (experiential), reasoning, research or belief systems, according to how reality presents itself. The knowledge that learners give subjective meaning and interpretations to their rights and reason at different levels will help education planners formulate a curriculum and compile learning experiences in accordance with learners' levels of human rights reasoning. Educators will be able to strategise at an advanced level in order to accelerate the rate of the development of understanding. How learners' conceptualise their rights and the phenomenology of exercising these rights may be of value when designing structures and procedures for implementing learners' rights in a manner that is protective, especially of their right to education. In the next section I present the research philosophy and approach that underpin this investigation.

4.3 RESEARCH PHILOSOPHY

This case study seeks to explore, understand and analyse learners' understanding of human rights and their right to education in particular. Although learners have the right to education by virtue of being human, they are not born with the knowledge and understanding of what it means to have the right to education, how to exercise this right effectively and how this right may be limited. I am of the view that learners would be able to make more meaningful and effective use of their rights and even reason at higher levels of human rights understanding if:

- they are made aware of their right to education through curriculum interventions;
- they are exposed to human rights experiences in a practical way; and
- they are involved in solving human rights dilemmas, during which their right to education is at stake on a daily basis.

Knowledge of human rights is derived not only from educators' interventions, but also through real life experiences. In this way, learners are able to attach their own meanings to the phenomenon. My personal subjective constructions of this phenomenon have influenced me in my choice of research philosophy and guided my epistemological and ontological assumptions and methodology.

I assume that learners' perceptions and views about human rights (in particular the right to education) cannot be fully understood through numerical means (quantitative methods); therefore I chose to embark on a qualitative mode of inquiry. I also assume that there are multiple realities and those who are socially involved, construct reality as individuals and collectively as society (Merriam 2001:4; Guba & Lincoln 1998:206; McMillan & Schumacher 2001:396). I construct my own truth as I perceive it. Learners construct their own truths (Smit



2001b:69) in terms of their own frame of references. This is in line with Schwandt (1997:137) who holds that qualitative research philosophy opposes the existence of universal truth.

I assume that learners' understanding of human rights may differ from my own understanding of this phenomenon. This presupposes that I attach meanings and make my own interpretations of reality and my respondents do the same. My role was to take an inter-subjective and interactive stance and become involved (that is be physically present) in the data collection and interpretations of reality (Guba & Lincoln 1998:207; McMillan & Schumacher 2001:35). The nature of knowledge that was acquired from this encounter is subjective, personal and derived from joint social constructions (findings were created as the research proceeded). In this regard Gay and Airasian (2000:220-223) believe that qualitative research observations and interpretations contain much of the researcher's being. It is difficult to say that the findings of a qualitative investigation present reality solely as perceived by the respondents (detached from the investigator's values, beliefs and world views). If that were the case, it would imply that in qualitative research verbatim transcript of interviews are presented (Blaikie 2000:252) without any interpretation by the researcher. The main concern in this study was understanding the phenomenon from the participants' views and not from the researcher's viewpoint. The results of this study are subjective and are time- and context-bound.

Following the research philosophy (interpretive, qualitative paradigm) as explained above, research methods were used that resonate with the subjective, time and context bounded nature of truth. The qualitative case study method was chosen, as it is commonly used in human and social sciences (see § 4.5) and the data was obtained through focus group discussions and face-to-face, in depth, interviews (see § 4.6.1.2 and § 4.6.1.3). This was done in order to elicit information about learners' understanding of the right to education directly from learners who were actually receiving their education in the school context.

The literature presents two broad approaches to research: qualitative and quantitative approaches. Both these approaches have merits and demerits. The qualitative approach provides contextualised data and assumes that human behaviour cannot be understood without reference to the meanings attached to reality by those involved in a particular situation (Guba & Lincoln 1998:197). Through the lens of the qualitative approach, it is possible to construct reality as seen through the eyes of the respondents. The qualitative approach is concerned with the discovery and understanding of the meanings seen from those who are researched (learners), comprehending their views and perspectives of the world, rather than those of the researcher (Kvale 1996:31; Blaikie 2000:249; Gay & Airasian 2000:204; Smit 2001a:57).

Learners' thoughts, feelings, conduct and aspirations about their rights cannot be fully evaluated or measured in numerical or quantitative terms. The qualitative mode of inquiry allows the researcher to study events and situations as they manifest themselves in a context and in time,



and to try to understand the ways in which individuals try to make sense of their lives (Van der Merwe 1996:28). Events have to be allowed to speak for themselves rather than be judged by the researcher. My study investigated learners' understanding of the phenomenon of human rights from their perspectives and then these findings were reconstructed/reinterpreted. The qualitative approach does not predict or claim rigidity or complete objectivity, but it ensures that research is value-laden (Guba & Lincoln 1998:199). In this regard, the epistemological foundation of qualitative study is based on a non-judgemental stand and understanding of whatever patterns or themes might emerge from the data (Gay & Airasian 2000:205).

The qualitative, interpretive approach was deemed to be appropriate as the aim of this study is an attempt to understand learners' recognition of their right to education and not to deduce universal laws or to predict universal generalisations (Henning *et al.* 2004:21). From the qualitative view of knowledge (subjective), it cannot be claimed that this research will produce rigid and objective findings. I was continuously involved in interpreting the findings of my research (Guba & Lincoln, 1998:199). In this regard, Gay and Airasian (2000:219) maintain that there is as much of the researcher as of the respondents in research findings, which results in a combined construction. The subjective and relative truths that learners attribute to their rights are of paramount importance in this study.

4.4 WORKING PREMISES

After 1994 South Africa emerged from the isolation resulting from apartheid and adopted a new Constitution based on values of equality, human dignity and freedom (Rautenbach & Malherbe 1998:6; Dlamini 1997:40; Van Raemdonck & Verheyde 1997:245). The new Constitution guarantees human rights including learners' right to basic education which is provided for in section 29(1)(a-b). This section compels the state to take reasonable steps or measures to make further education progressively available. South Africa also ratified several human rights treaties and thereby confirmed her commitment to upholding human rights for her citizens, including learners (see § 2.5). The right to education is significant in that it has a role in developing learners' personality, talents and potential, preparing them for adult life and developing their respect for their parents, human dignity, the natural environment and one another's cultural and natural values (Volio 1979:24; Van Beuren 1995:253; Singh 2003:16; CRC(1989) Art 29(1)b) (see § 2.5.7). In her literature review Peens (1998:9) notes that education is essential for the development of the individual, as well as the nation. Without skills and knowledge, the future of a country is doomed.

In developed countries such as England, Finland, Canada and America there has been an increase in the amount of literature and research on learners' rights in legal spheres and perceptions of rights in general (Abramovitch *et al.* 1993:313; Abramovitch *et al.* 1995:1; Cherney & Perry 1996:243; Grisso & Pomicter 1977:333; Helwig 1995:152; Melton & Limber



1992:174; Ruck *et al.* 1998a:404 & 1998b:275) (see § 3.2.1.1). However relatively little research has been done in South Africa regarding learners' understanding and perceptions of their rights in general (Peens 1998:24) or the human right to freedom of expression in particular (Van Vollenhoven 2005:7). Although one may draw from other scholars' findings, it remains important to investigate what learners in young democratic countries such as South Africa know and understand about human rights, as knowledge and truth are relative concepts. It is important for comparison and evaluation purposes to survey research in areas similar to the topic of this thesis.

The first study to elicit information directly from learners was conducted by Melton (1980:186), who found that both developmental factors and socio-economic background influence learners' understanding of their rights. He identifies three levels of developmental progression in learners' understanding of their rights which coincide in many respects with aspects evident in Kohlberg's theory of moral development (see § 3. 5).

The violation of learners' right to education was prevalent in South Africa prior to 1994 and is still so today. This is evident from persistent media reports of issues of violations happening in schools. In the past, the authoritarian philosophy based on different historical and cultural backgrounds socialised the people of South Africa into disrespecting others' rights and today citizens are still not accustomed to exercising human rights to the fullest (Van Vollenhoven 2005:4). The previous chapter discussed the extent to which the political environment affects people's perceptions of human rights (see § 3.4.6). In a democracy where human rights are known, understood and internalised, learners should understand exactly what it means to have the right to education and how to exercise this right. Learners should know that this right is not absolute and can be balanced in terms of the limitation clause (section 36) of the Constitution by laws of general application (Bray 2000b:35).

Although South Africa has declared her intentions to uphold human rights and redress past imbalances (preamble of the Constitution) and the education authorities intend to respect learners' right to education, it is uncertain whether they appreciate what learners understand about this right. It is of great importance to investigate learners' views and understanding of their right to education and to determine further the levels at which they understand their right to education.

In this regard the premises that underpin my investigations are:

- (1) Some learners have limited knowledge of their right to education.
- (2) Some learners do not know how to exercise their right to education.
- (3) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the school authorities .



Under my first premise I assumed that some learners

- (1a) know that their right to education involves responsibilities
- (1b) know that through the realisation of their right to education an array of opportunities can be created
- (1c) confuse their right to education with other human rights
- (1d) do not know who the beneficiaries of the right to education are.

Under my second premise I assumed that learners would

- (2a) perceive their right to education as absolute
- (2b) not know how to limit their right to education.

In terms of my third premise I assumed that

- (3a) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the rights and duties of the school authorities .

The right to education is linked with many human rights. Violation of other human rights may impact directly or indirectly on the realisation of learners' right to education. My investigation centred on learners' understanding of their right to education within the school context, from the perspective of how they understand and give meaning to the realisation of this right.

4.5 RESEARCH STRATEGY

Case studies differ according to the aims they set out to achieve. A useful strategy is to ask 'how' and 'why' questions (Blaikie 2000:254). The main research question that underpinned this study was 'how do learners understand human rights, especially their right to education?' The main focus of this case study was not to discover the universal, generalisable truth (Hammersley & Gomm 2000:3) any other researcher would be able to reproduce; instead it was to **explore, understand** and **interpret** learners' understanding of human rights with special emphasis on their right to education. This study may be described as subjective and interpretive (see § 4.3) and therefore be inclined to create particularised knowledge.

When choosing a particular research methodology the questions, purpose and unit of analysis should be taken into consideration. Cohen *et al.* (2000:181) define a case study as "a study of an instance in action". The case used for investigation involved an instance of learners' understanding of their right to education. It involved a study of a purposefully sampled, single case (see § 4.7). Learners' understanding of their rights within the parameters of the school was explored and their levels of understanding were determined. My reason for choosing the school context and investigating one topic was to explore, understand and interpret learners' understanding of a single phenomenon (Yin 1993:33). An attempt was made to minimise the



aspects that could influence learners' understanding of their right to education by sampling a homogeneous group and binding the topic into the context within which the data was interpreted (Merriam 2001:27; Blanche & Kelly 1999:126). Learners' construction of reality is understood more clearly when the context within which their interpretations rest is described together with the demographic profiles of the respondents (see Table 4.1). According to McMillan and Schumacher (2001:399), this can be viewed as an exploratory case study as it may open the way for further studies and generate new researchable hypotheses. Merriam (2001:38) calls this an interpretive case study as it examines initial assumptions on which to base other studies.

The main purpose of my study was not to make a value free (objective) description of how learners understand their right to education in the school context, but to probe their understanding and interpretations of their rights. This implies that the subjective values and interpretations of the right to education, which learners brought into this research study, were regarded as important. The respondents' social experiences, values and beliefs were not perceived as wrong or inferior to my point of view, but only as different (Neuman 1997:38). In this research study the emphasis was on the fact that reality is constantly interpreted and reinterpreted by those experiencing it, and may thus exhibit different world views. In this regard I concur with Henning *et al.* (2004:25) who argue that there is no value free or bias free research as the results of a study conducted under the qualitative paradigm reflects the stance which the researcher adopts.

Given the school environment as the context, the learners' perception of the phenomenon of 'human rights understanding' could be examined in a bound context. Schwandt (1997:13) indicates that a case study is an empirical inquiry that aims at investigating a contemporary phenomenon. The phenomenon in this study is 'human rights knowledge and understanding' in the real life context (the school) (Miles & Huberman 1994:25). This study focuses on the understanding of dynamics present within a single setting, which is unique or particular and bounded within the context (Huberman & Miles 2002:8). The qualitative case study method was the method of choice as I strove to portray the reality of a particular situation (Cohen *et al.*, 2000:182), and to capture a comprehensive description of the participants' 'lived' experiences together with their thoughts and feelings (Gay & Airasian 1992:202). Learners' thoughts, feelings, behaviour and aspirations cannot be assessed or captured in numerical or quantitative terms but through qualitative methods; a case study being one such method.

The main criticism and shortcoming leveled against a single case study approach is that it is considered to be the 'weakest' style of research, as it tends to produce casual and context bound findings and not universal generalisations (Vidich & Lyman 1998:74). To counter this criticism, I used various methods of data collection and produced a consistent and revealing description of, and perspectives on, the sample, site and context of the study. The results obtained from this case study, although highly contextualised, are of great significance as they



shed light on learners' levels of human rights reasoning and understanding. In the next section I discuss the data collection techniques used for this study

4.6 DATA COLLECTION

The data collection process for this study consisted of three stages and lasted about eight months. I commenced with data collection during April 2005, paused during the last quarter of the year as learners were preparing themselves for final year examinations, and resumed the process again in early 2006. Most of the data analysis was carried out manually. The following sub-sections present my data collection plan and strategies.

4.6.1 Data collection plan

According to Yin (1993:40) a case study that uses a single means of collecting data is criticised as being unreliable. Using multiple sources of data is more advantageous as it enhances the validity and reliability of the data. The qualitative case study provides such opportunities (Huberman & Miles 2002:9). The data was collected in three stages, using the following three methods: a questionnaire, focus group discussions and face-to-face interviews (see figure 4.1):

4.6.1.1 Questionnaire.

In stage 1, 48 learners completed a questionnaire. The data gathered by means of the questionnaire served to confirm the demographics of the learners I was working with, namely grade 9-12 learners, within the ages of 15 and 18 years and belonging to one cultural and socio-economic group. The reason for selecting this single group was that I wanted to control other variables that might influence learners' reasoning and understanding of their rights, especially when dealing with vignettes, and to give an illuminating description of the sample and site (Melton & Limber 1992:176-197; Muianga 1998:278; Bohrnstedt *et al.* 1981:455; Mehan 1992:34) (see § 4.7). These descriptions are important in order to establish the context within which the findings were made. To ensure a high response rate and to reduce time wastage, I administered the questionnaire in a controlled group environment during one single sitting. I had the chance to explain some of the items about which learners were not clear (De Andrade & Ross 1999:331; McMillan & Schumacher 1993:238). Before administering the questionnaire I introduced myself, explained the aim of the research and the confidentiality of the responses.

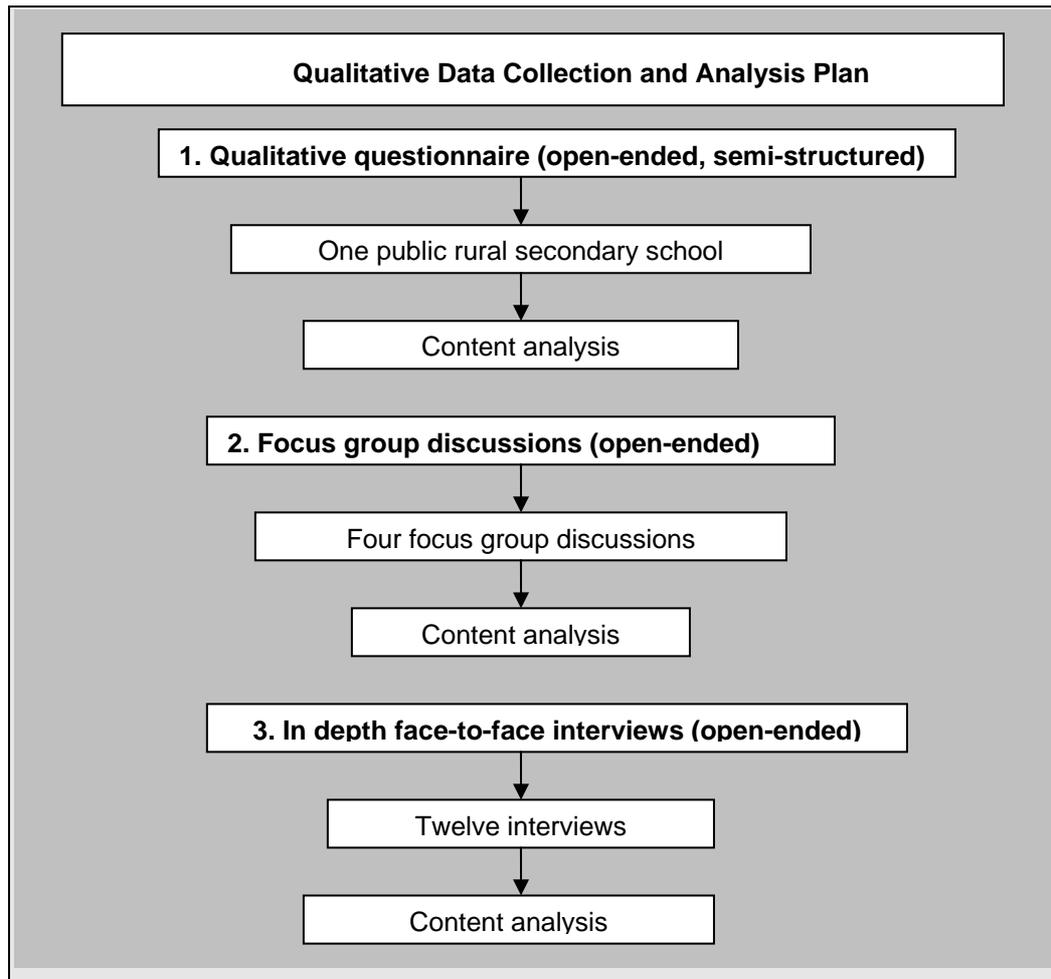


Figure 4.1 Qualitative data collection and analysis plan

4.6.1.2 Focus group discussions.

According to Kruger (1988:18), a focus group is a carefully planned discussion, designed to obtain perceptions of a defined area of interest in a permissive, non-threatening environment. During the second stage, I held four focus group discussions according to grade levels. As the emphasis of this study was to explore (an attempt to develop an initial understanding of the social phenomenon) and understand (Blaikie 2000:72-73) learners' understanding of their right to education, focus group discussions seemed appropriate for my study. This method is flexible and provides a platform for learners to share their views and build on one another's views.

During stage two I conducted focus group discussions for several reasons: firstly, to gather information (Frey & Fontana 1993:22; Cohen *et al.* 2000:287-8), secondly, to generate assumptions (Bellenger *et al.* 1979:21-2; Caruso 1979:60; Wells 1979:2; Morgan 1988:11; Frey & Fontana 1993:33; Gibbs 1996:2) and thirdly, to complement and confirm the findings obtained through my other methods (face-to-face interviews) (Cohen *et al.* 2000:187-8; Morgan 1988:10, 24). The main aim of holding focus group discussions was to gain broader views about learners' knowledge and understanding of their right to education and to interrogate my first premise that learners have limited understanding of their right to education.



I chose to hold focus group discussions because of their many advantages and uses (Oats 2000:188; Gibbs 2004:1-7). Focus group discussions allowed me to obtain data in the participants' own words and I quote their words verbatim in the presentation of the results (see chapters 5 and 6). I had the opportunity to interact directly with the respondents, because they 'think and reason out loud'. I noticed the change in attitudes and expressions when we were dealing with conflict-laden vignettes and I gained insight into the learners' shared understanding of their right to education. I probed them to talk more and to stimulate new ideas.

To ensure that spontaneous data emerged (Wells 1979:3) from interaction within the group, I drew up a focus group schedule, which was used as a prompt or a guide, from which all questions followed. Given that the main value of the focus group discussions resided in the interaction within the group based on the topic under discussion (Morgan 1988:17; Morgan & Krueger 1993:3,18; Morgan 1997:12), questions used were open-ended (unstructured) (Cohen *et al.* 2000:289). Such questions allowed me to stimulate divergent thinking, obtain different responses, facilitate discussion and ensure that a mere dialogue between the respondents and the researcher was avoided (Cohen *et al.* 2000:288).

The focus group discussions were particularly useful in answering questions in section B of the schedule, in which my emphasis was to determine 'why' learners think or perceive their rights the way they do (Oats 2000:187; Gibbs 2004:3; Morgan 1988:25) and then to determine the levels of human rights understanding at which learners operate.

Of the 48 learners who completed the questionnaire, 24 participated in the four focus group discussions that were held. Each focus group discussion consisted of six learners from a particular grade, firstly grade nine learners, then grade tens, grade elevens and eventually grade twelve learners (six learners per grade). The learners were reluctant to engage actively in the focus group discussions at first, especially when dealing with conflict-laden vignettes, in which they were supposed to give their opinion in relation to their rights against the wishes of the school authorities. In this regard Bailey (1994:192) states that because privacy is lacking in focus group discussions, respondents may be fearful of answering sensitive questions. Given the fact that learners come from a culture that emphasises unconditional respect and obedience for elders, and are taught by educators who were part of the authoritarian school system in the past, their reactions are perhaps not very surprising (see § 3.4.5 & 3.4.6). Although some learners were reluctant to actively engage in the discussion at first, by means of the establishment of trust and encouragement, they were eventually able to participate freely.

My role as a moderator was to steer the discussion (Bellenger *et al.* 1979:16). I promoted debate by asking divergent questions such as 'why', challenging the participants' views and their differences, or by simply repeating the respondents' exact words (Bellenger *et al.* 1979:18).



These debates resulted in data that contained conflicting views and different levels of human rights reasoning (see § 6.2). The contradictory views helped in providing answers to the third premise (see § 1.4).

The first two focus group discussions were conducted in one day, with the grade nines and grade tens. During the discussions, the main points were noted relating to the focus group protocol, and recordings were made. After each focus group discussion, I played back the tape recorder and verified my summary with the respondents. One focus group discussion with grade tens had to be repeated, as the voices were not audible because of flat batteries. I did not use the same group of grade ten learners the second time, as that would have compromised the validity of the data. Focus group discussions yielded an enormous amount of data as they consisted of open-ended questions. On completion I was confronted with what Patton (2002:433) calls an overwhelmingly 'massive amount of data'. I transcribed two focus group discussions at the same time and allocated a number to each one. Only the number of a focus group has been used in reporting the results, for confidentiality purposes.

According to Oats (2000:193), each focus group has its own group dynamics and it is sometimes difficult to predict how and why its members will react. Some learners were cold, passive and silent with one or two members dominating the group during the discussion. I tried to engage them all by asking questions directed from various angles. The discussions were held in a laboratory which was a neutral environment. Each focus group lasted between 45 minutes to one hour.

I read the vignettes aloud to the respondents who were required to listen to and concentrate on the story, and then to answer the relevant questions. The questions in section B of the schedule required the respondents to judge the action of the main story characters (a learner and an educator or a principal of the school). They were expected to say what their decisions and judgments would be, had they been in the same position as the learner depicted in the story and in connection with their right to education. They were also required to give reasons for their decisions. The main reason for this method was to determine the level of human rights reasoning learners engage in when balancing the rights they think they must have (covered under section A of the shedule) with the rights of the school authority. I started with questions in section A and then proceeded to section B.

The rationale behind basing the discussion on the order of the sections in the data collection instrument was:

- Section A oriented the respondents with respect to the concept of their right to education, with which they were required to be familiar throughout the second part of the focus group and the in depth face-to-face interviews;



- Section B introduced the respondents to dealing with scenarios which required them to give their judgements of the situations.

The rationale furthermore realised the following advantages:

- It orients the reader towards the learners' knowledge and understanding of their right to education in general.
- It shifts the focus to specific trends with respect to the learners' understanding of their right to education;
- It establishes how learners of different grades handle or balance their right to education with other rights involved in education within the context of the school.

Even though the data collection began by asking questions in section A, followed by questions in section B, I did not always adhere strictly to the order of questions in each section. It became obvious, after the first focus group discussion, that learners had difficulty in answering the first question in section A. Therefore the order of questions was changed in the following focus group discussions, by beginning with easier questions in order to help respondents feel at ease. However, questions that belonged to each section were kept together.

Although focus group discussions are time-consuming in terms of transcribing and coding the data, they are inexpensive, yield more data and have a stimulating effect, since during the discussion, learners may react and build on the points made by other group members (Bellenger *et al.* 1979:13; Morgan & Krueger 1993:18; Oats 2000:188,194). An explanation of the third stage of data collection follows in the next sub-section.

4.6.1.3 In-depth face-to-face interviews

The third data collection stage was face-to-face, in-depth interviews with twelve learners. These interviews were intended to consolidate and verify the information gathered during the focus group discussions. Before the start of each interview I introduced myself to the respondents, explained the purpose of the study and ensured them of the confidentiality of their responses. The participation in the whole data collection process was completely voluntary. Interviewing ceased when relatively similar responses were given and less and less new information materialised. This was an indication that the data had become saturated.

In-depth, non-directive and semi-structured interviews were used, as the aim of this study was to discover the extent to which learners know and understand their right to education. This type of interview seemed relevant as face-to-face interviews are able to focus on experiences,



opinions, values and feelings (Cohen *et al.* 2001:442). Such textual data, rich in meaning, is difficult to capture in 'short and structured' interviews (Mouton 2001:107). The main purpose of using in-depth interviews was to seek to describe and understand the meanings and central themes in the learners' learned world and to make sense of their interpretations (McMillan & Schumacher 2001:443). Patton (2002:340-341) emphasises the importance of interviews in this way:

We interview people to find out from them those things we cannot directly observe. The fact is that we cannot observe everything. We cannot observe feelings, thoughts and intentions. We cannot observe behaviour that took place at some previous point in time. We cannot observe situations that preclude the presence of the observer. We cannot observe how people have organised the world and the meaning they attach to what goes on in the world. We have to ask people questions about those things. The purpose of the interview then is to allow us to enter into another person's perspective.

The central question to this study was 'how do learners understand human rights, especially their right to education?' To be able to answer this question, scenarios were designed in which learners had to judge the actions of a learner and an educator depicted in each vignette, and to give the reasons for their decisions. The vignettes were conflict laden, that is, the learners' right to education was in conflict with those in authority. I began with the assumption that the perspectives of others are meaningful and can be made explicit. Learners were also asked to mention rights which they perceived to be covered under their right to education and why they perceived it in that way. Such questions cannot be fully examined by using structured interviews or questionnaires. The open-ended semi-structured interviews enabled me to probe learners' perceptions of their rights and the reasons why they perceive their rights in a particular way.

Conversational questioning is flexible, spontaneous and more responsive to individual differences. The main reason that probing questions were utilised was to find out what was 'in and on someone else's mind' (Patton 2002:241). Face-to-face interviews also allowed any misunderstanding about questions to be clarified. The time and place of interviews were arranged with the principal and all interviews were recorded on tape. Tape recording was important since one cannot remember everything the respondents have said. Furthermore, I could listen to actual responses during the transcription of data, which is the first step in data analysis. Notes were also made during interviews. Although taking notes during an interview is problematic in that one loses contact with the interviewee and it can disturb the flow of information, it is, however, useful during analysis as a comparison with the tape-recorded responses can be made. I used interview protocols such as the one developed by Creswell (1998) cited in Gay and Airasian (2000:215) for each of the interviews, which I adapted for use in learners' understanding of their right to education. During the interviews, I wrote down key points in the interview protocol (see Addendum S). A variety of probes were utilised to expand the participants' responses to the questions provided in the interview protocol.



4.7 SAMPLING TECHNIQUES

Many authors have written about purposive sampling (Cohen *et al*, 2001:103; McMillan & Schumacher 2001:175). Denzin and Lincoln (1998b:xiv) and Miles and Huberman (1994:27) note that qualitative researchers often employ purposive and not random sampling models. The logic and power of purposive sampling is the opportunity to select information-rich cases (Morse 1998:74; Merriam 2001:60). The purpose of any investigation is paramount when considering the selection of an appropriate case and sample. The intention of this study was not to determine learners' understanding of their right to education in the Republic of South Africa as a whole, but to explore the phenomenon within the bounded context of a particular school (Yin 1993:33), based on personal judgment and knowledge of the context (Babbie & Mouton, 2001:166). A qualitative case study is characterised by a small sample size, which is not a true representation of the population and a single generalisation in the statistical sense is not the goal of qualitative research. A large sample does not always guarantee true representation of the population, but is only an approximation (Cohen *et al*, 2000:99-103). For this reason a small sample was chosen from a rural public secondary school in the Soutpansberg East circuit, Vhembe district in Limpopo Province. The Limpopo Province is one of the poorest provinces in the Republic of South Africa and consists of diverse cultural groups. It is necessary for educators and school managers to understand diverse beliefs about human rights from the perspectives of learners and also to raise their awareness and consciousness of human rights.

My sample consisted of 48 learners in grades 9, 10, 11 and 12 from the same cultural group (Tshivenda speaking learners) of low socio-economic status. As human rights are abstract principles, I chose senior learners in the 'adolescent' age group (15-18 years old). Cognitive or developmental theory indicates that learners belonging to this age group are capable of abstract reasoning (Keating 1990:64) and their reasoning is associated with understanding human rights in an adult-like manner (Covell & Howe 1996:253). One may call adolescence the 'age of understanding'. As age increases, knowledge in the social domain also increases and becomes richer, more specific, sophisticated and differential (Melton & Limber 1992:175; Peterson-Badali & Abramovitch 1992:156; 1993:538; Ruck *et al*. 1998a:104). Goss (1996:119) argues that during focus group discussions, participants are likely to express themselves more freely than a heterogeneous group in which power relations may have an influence. The socio-economic status of the learners' families (Helwig 1997:493) and culture (Covell & Howe 1995:191 & 1996:253; Cherney & Perry 1996:243) play a role in the development of learners' understanding of human rights and the right to education (see § 3.4).

The choice of a single cultural group on the same socio-economic level was because learners' perceptions of human rights may be complex and could not be dealt with independently of the context. This strategy could be useful in guiding efforts to educate learners about their rights. The respondents were selected according to the criteria obtained from the analysis of data



collected during stage 1. Table 4.1 indicates the demographic information of the learners and this concurs with Merriam's (2001:61) view that the sample should satisfy the attributes essential for case studies.

Table 4.1 Demographic profile of participating learners

Grade	Gender		Average age	Socio-economic background	Environmental background	Cultural group
	Male	Female				
9	6	6	15	Low SES	Rural	Muvenda
10	6	6	16	Low SES	Rural	Muvenda
11	6	6	17	Low SES	Rural	Muvenda
12	6	6	18	Low SES	Rural	Muvenda
Total	24	24				

Figure 4.2 depicts the number of learners who participated in each stage of the data collection, beginning with a sample of 48 learners who completed questionnaires. Twenty four learners from this group then participated in the focus group discussions. In order to crystallise the results obtained from stage two (focus group discussions) the sample was narrowed further to include only twelve participants in stage three. The sample was reduced in order to control the variables that might influence the results and to meet the requirements of the sample. There are many over-aged learners in the specific grades in rural area; therefore the sample was reduced from 48 to 24 for the focus group discussions. The interviewing stopped after 12 face-to-face interviews when it became clear that virtually the same responses were being given and less and little if any new information was emerging. This was an indication that the data had become saturated.

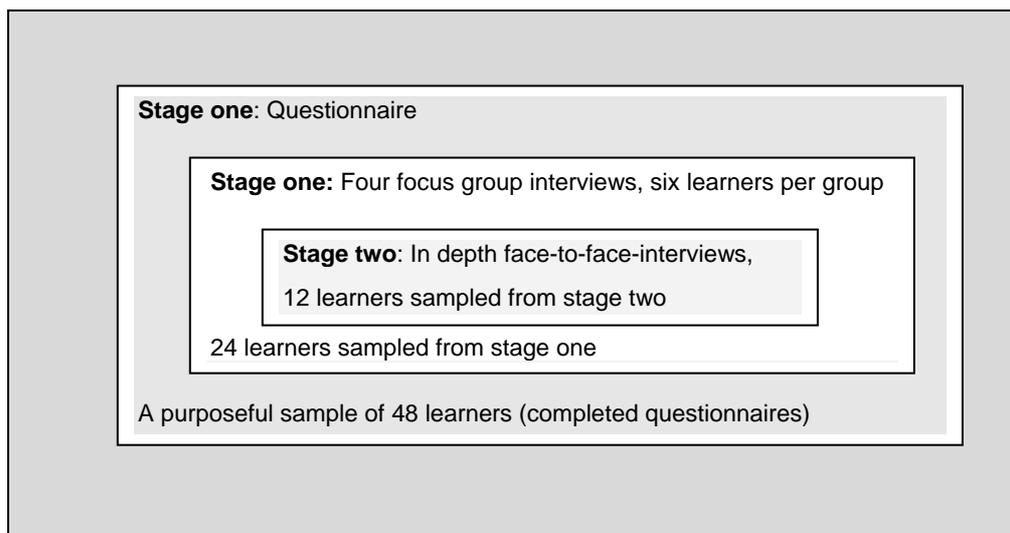


Figure 4.2 The process of narrowing the sample size per data-collecting stage

In the next section I discuss the procedures which were followed in order to obtain the necessary approval from different authorities.



4.8 APPROVAL FOR THE RESEARCH

An official research application letter (Addendum E) was submitted to the Vhembe district office in the Limpopo Province and permission to conduct the research study was granted (Addendum F). An application letter to conduct research was also sent to the Soutpansberg circuit manager (Addendum G) and approval was again granted (Addendum H). As the prospective learners were all minors in grades 9-12 in a public school, permission was requested from the school governing body (Addendum I) which was also granted (Addendum J). An application letter was submitted to the school principal (Addendum K) who also granted permission for data to be collected from his school (Addendum L). Application letters were then sent to the parents of learners who were involved in the study, explaining the aim of the research (Addendum M) and requesting them to sign consent forms (Addendum N). The parents were also required to indicate the stage at which their child could participate, as data collection comprised three stages.

4.9 DATA COLLECTION INSTRUMENTS

Two data collection instruments were used, namely questionnaires and a schedule for the focus group discussions and in-depth interviews. The following paragraphs briefly explain the composition of each instrument.

4.9.1 Questionnaire

A questionnaire was constructed, consisting of nine items and this was reviewed for validity by one of my colleagues who is also an educator. The questionnaire consisted of open-ended questions aimed at collecting the demographic information of the respondents (Addendum O). The information obtained by means of the questionnaire was summarised and is presented in Table 4.1.

4.9.2 Focus group discussion schedule

The following schedule was drawn up and used for both the focus group discussions and the in-depth interviews. The schedule contained two sections. Section A consisted of the following five open-ended questions:

- (a) Explain what it means to have a right to education?
- (b) Which human rights do you think are covered under your right to education at school?
- (c) Why do you attend school?
- (d) Can anyone take away your right to education? And why ?



(e) Who has the right to education?

Section A was presented first and contained questions regarding learners’ knowledge and perceptions of their rights, especially their right to education (Addendum P). Section B comprised 11 conflict-laden vignettes. The vignettes addressed aspects of the right to education and other rights that are directly relevant to the learners’ right to education. The following aspects were addressed in the first draft of conflict-laden vignettes (Addendum Q):

- Vignette One: Free and compulsory education
- Vignette Two: School attendance
- Vignette Three: School discipline
- Vignette Four: Non-discrimination in education
- Vignette Five: Admission to school.
- Vignette Six: Language choice (medium of instruction)
- Vignette Seven: Privacy rights (search and seizure)
- Vignette Eight: Religious rights (attending religious education classes)
- Vignette Nine: Safe school environment
- Vignette Ten: Administrative justice (expulsion from school)
- Vignette Eleven: Freedom of choice (choice of school subject).

After careful review and consideration of the vignettes, some were omitted (namely vignettes four, five and nine), while others were amalgamated. Vignettes one to three and ten were fused into one which then became vignette number two. Vignettes eight and eleven were fused into one and this then became vignette number one. In the end five vignettes were used (Addendum R). Since the right to education is a most complex human right, its whole spectrum could not be covered in the scope of this study, hence the reduction of some of the scenarios. Issues such as learners’ rights to be educated in the language of their choice and the parents’ rights to establish private schools, which are provided for in the general right to education, were not covered.

Table 4. 2 Content of vignettes used in section B

Vignette no	Description of the right to education issues and other relevant rights
1	Freedom to choose subjects and participate in religious education classes
2	The right to education, school discipline and access to Resources
3	The right to education, and access to own personal school file
4	The right to education, freedom of expression and school rules
5	The right to education, confidentiality and the right to privacy



4.9.3 The in-depth interview schedule

One schedule was used to collect data during the focus group discussions and the in-depth face-to-face interviews, the composition of which was presented in the preceeding sub-section (see § 4.9.2). An focus group and interview protocol was also constructed containing key questions, and with a margin for any comments noted during the interview session (see Addendum S).

4.10 ETHICAL CONSIDERATIONS

According to Durrheim and Wassenaar (1999:65) the purpose of ethical research planning is to protect the respondents' rights and welfare, as well as those of the researcher, and to ensure the credibility of the research report. An ethical clearance certificate was obtained from the University of Pretoria (see Annexure A). The participants in the study were learners under the age of 18 years; therefore necessary ethical guidelines were followed to ensure that this study did not deceive them. Since the respondents were minors, a letter was sent to all parents requesting permission to allow their children to be involved in this research study and they were required to sign a consent form (Addendum N) (see § 4.8). The research purpose and processes were explained to the learners and anonymity and confidentiality for both the school and respondents was guaranteed. Numbers instead of names have been used to report the results of this study. The respondents were informed that they would be able to verify the findings and have access to the final report. Participation in all stages of this research study was voluntary.

4.11 METHODOLOGICAL LIMITATIONS

The initial shortcoming of this study is with regard to subjectivity, as an issue of validity. The core of this limitation lies not in the extent to which my observations or interpretations of data are a true description of, or match to, a particular reality, but in the trustworthiness of the responses. Since the purpose of this study was to explore and determine how learners understand human rights, particularly their right to education, validity is determined by the trustworthiness of their responses. 'Trustworthy' is defined as what learners believe to be true in their own eyes and what they have experienced. This truth is supported by their responses. For example, during the focus group discussions, when asked whether or not their right to education is revocable, the responses show that to some of the learners their right to education is something more distant than poverty experiences, for example:

- *Sometimes parents could be held responsible if their children drop out of school or do not attend school ...regularly, you see. They don't give you school fees You ask them to give you, they say quit, go to work (F3/4).*
- *All of us have the right to education but not all of us can get it. You see. Poverty can take away everything from you. Even your self-respect (F4/6).*



From these responses one can infer that learners view poverty as a possible impediment to their right to education. This is an example of what constitutes the truth and validity of the responses in this context, although it is a subjective and experiential observation by some of the learners (Kincheloe & McLaren 1998:288).

The second methodological limitation is what positivist researchers call generalisability or external validity (transferability). Qualitative data does not lend itself to statistical analysis as the purpose is not to produce standardised results that any other researcher in the same field could replicate. The purpose is to produce a coherent and illuminating description of the context from which the results were obtained. The focus of my study was on the understanding of learners in one rural, public, secondary school, involving learners from one cultural group with a low socio-economic background and belonging to one age-group (15 to 18 years old). This implies that my particular findings are not representative of learners of different ages, cultural groups and socio-economic backgrounds in other South African schools. The patterns that evolved from the data are therefore not representative of all learners and I cannot claim to have identified all patterns in learners' understanding of human rights. In this regard Stake (2000b:22) notes that particularisation of the findings is the lone dictate of merit.

Furthermore, I acknowledge that I am a black Tshivenda-speaking female (from a South African ethnic minority group) influenced by history, culture and religion. I found it hard not to interpret some of the learners' revelations as reflected from my own experiences of violation of human rights as a result of apartheid and oppression in the name of culture. According to Blaikie (2000:252) it is difficult to report the results of a study purely from the point of view of the respondents. In this regard Gay and Airasian (2000:223) note that a researcher brings in something of himself to a setting and ultimately his individual background and preference might surface in the outcomes of the research. Most scientists today acknowledge that a scientist's personal outlook on life and image of the world will influence his scientific work (Botha 1996:333). Whilst attempting to be objective throughout, I believe that everyone creates their own truth and therefore I cannot claim that my personal experiences did not influence my research. Although I experienced problems with learners not wanting to respond freely to some of the questions, especially when dealing with conflict-laden vignettes and confronting school authorities, this was overcome by making neutral probes or confirming what I had heard and motivating them to speak freely.

One limitation of this study is the sample size which was small. Care was taken to select a sample which was as homogeneous as possible so that variables that might influence the results were limited (see § 4.7). It cannot be claimed that the same results would be achieved with a more heterogeneous or broader sample. Even if another unbiased researcher were to undertake a study within the same parameters, identical interpretations and findings would be unlikely (Gay & Airasian, 2000:223).



4.12 DATA ANALYSIS

Qualitative enquiry tends to produce large quantities of data. Questionnaires were used to collect data on the demographic background of the respondents, together with four focus group discussions and twelve in-depth interviews. Processing this quantity of information required careful data management.

In this section, I explain the theoretical grounding which informed the data analysis stance that was taken, together with the steps followed in data analysis. My theoretical grounding was based on the works of authors such as Tesch (1990:95-96); Miles and Huberman (1994:56-57); and Kvale (1996:187). Data analysis is a significant step in the research process. Bernard (2000:177) refers to data analysis as:

a process of bringing order, structure and meaning to the messy, ambiguous, time-consuming, creative and fascinating process.... Qualitative data analysis is a search for general statements about the relationship between the data.

While Smit (2001a:85) notes that data analysis literally means to break data into bits and pieces, Kvale (1996:178) states that 'to analyse' means to separate something into parts or elements. Data analysis aims at describing data, as well as describing objects to which the data refers. Authors such as Vithal and Jansen (1997:22-24) note that the purpose of data analysis is to make sense of the accumulated information. Tesch (1990:95-96) and Smit (2001a:85) provide guiding principles for data analysis, which I adopted in this study, for example: Data analysis is not the last phase in the research process. The data analysis process starts immediately the first piece of data is gathered – it is done concurrently and is integrated with the data collection process. Data analysis ends only after new data no longer generates new insights. Miles and Huberman (1994:50) comment that early data analysis helps the researcher to cycle back and forth between thinking about existing data and generating the strategy for collecting new, often better, data. Early data analysis allows the researcher to reflect continuously on impressions and relationships while the data is being collected.

Having highlighted the guiding principles that are important in qualitative research analysis, a discussion of content analysis follows, which was the method used for data analysis. Content analysis involves reading, judging and making inferences. When drawing conclusions from unstructured content, inferences are made, including interpretations, and giving meaning to the content (Creswell, 1998:142-148) as seen from the respondent's viewpoint.

Firstly the data was analysed manually using open coding (Neuman 1997:422; Blaikie 2000:239 and De Vos 2002:346). Although a step-by-step data analysis procedure was followed as described by Tesch (1990:95) and McMillan and Schumacher (2000:462), a flexible data



analysis mode was used, which provided the opportunity to utilise dovetail codes and cluster them differently. I adopted an inductive analysis approach, which involves coding and categorising the information; consequently the analysis was grounded in the data and was not abstraction or speculation (Schwandt 1997:70).

The data was collected in the learners' home language, that is Tshivenda, and the responses were tape recorded. Verbatim transcriptions were made of the tapes which were then translated from Tshivenda into English. I went through each transcript with an open mind, firstly to gain a global impression of the content, and secondly (Henning *et al.* 2004:104), to explore what emerged from the text. The inductive data analysis technique employed in this research study supports the notion that categories and patterns emerge from within the data, and are not imposed before data collection (Janesick 1998:47, Gay & Airasian 1992:169).

For research premises one and two the codes were not determined before analysing the data. I searched for the codes from within the data. Initially I coded every detail of the data, separating different codes by different shades of colour in order to aid visibility (Miles & Huberman 1994:56-57). After reading each transcript, I cut and pasted the codes that belonged together in separate files and at the end of the first coding was confronted with what Patton (2002:433) calls an overwhelmingly 'massive amount of data'.

A second attempt was then made at data coding (axial coding) (Blaikie 2000:239). This time I did not code everything, but sorted the data into important patterns and framed the information that emerged into manageable data elements. Eventually I worked with **182** codes for the first and second research premises, ensuring that I did not write a code without reference to its source and page number. Consequently I was able to synthesise the 182 codes into **16 categories** which were classified into **three families**. Two patterns then evolved from the data. To reach this stage, I engaged in the constant comparative method (Tesch 1990:96; Hart 1998:131; Merriam 2001:179), going through the data over and over again to identify, revise, modify and amend new categories and families until manageable patterns emerged. The process of coding and categorising data was not linear, but a cyclical process. The codes were counted according to my research premises and files opened and named for research premises one and two (see Addendum T) and research premise three (see Addendum U). I organised the responses in tabular form depicting the responses to each vignette in which learners either asserted or not asserted their right to education (see Addendum V). An independent coder helped with the coding. I did my own manual coding and we then compared the codes.

The results of stages two and three are reported as one complete whole or hermeneutic unit¹. When reporting the findings of this research study, I used a narrative storyline approach,

¹ Unit of transcribed data

starting from coded data through categories to emerged patterns (Schwandt 1997:98; Cohen *et al.* 2001:190). Figure 4.3 represents the process of clustering of codes until patterns emerged.

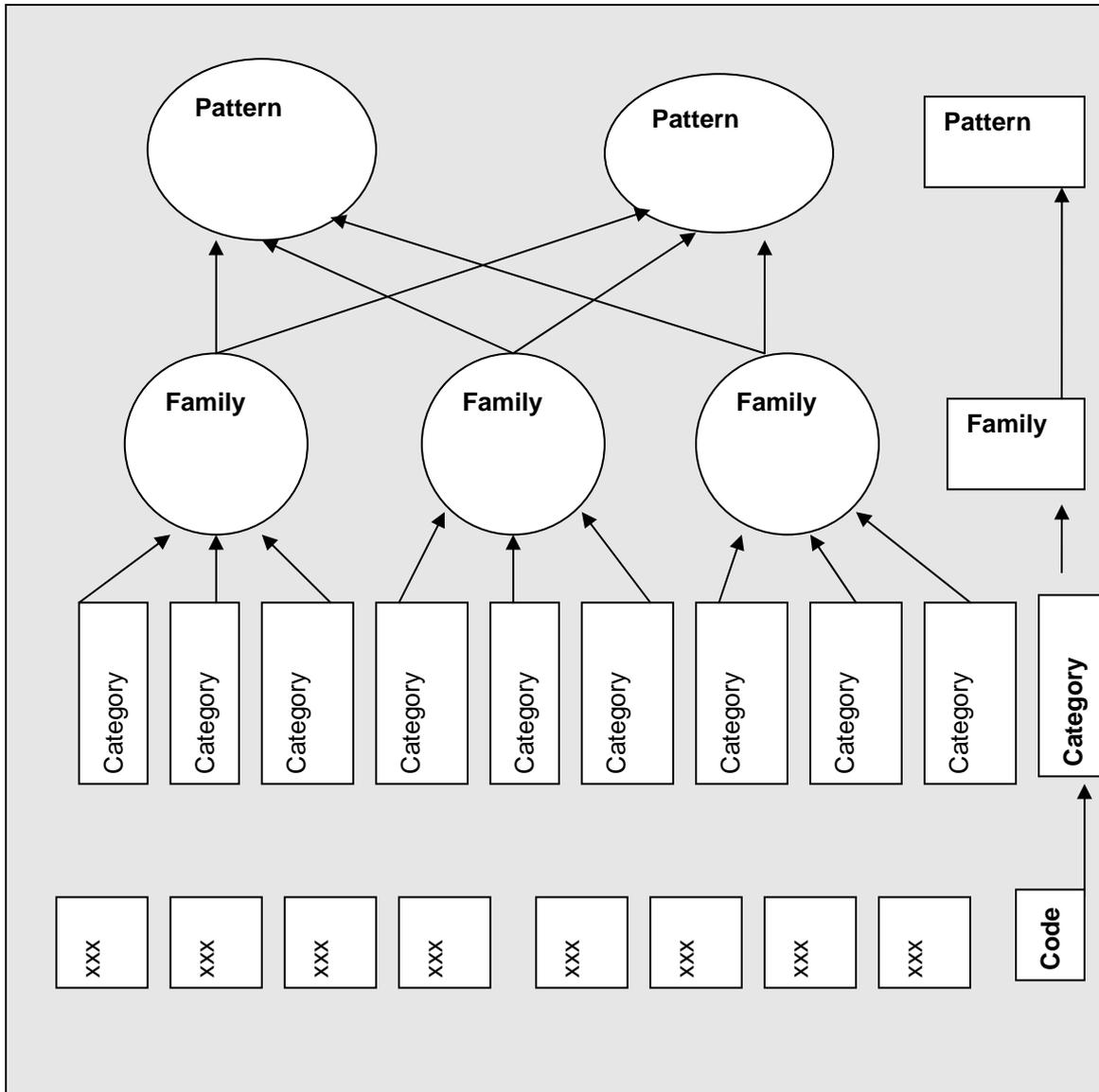


Figure 4.3 Diagram of the process of data coding, categorising and clustering until the patterns emerge.

In order to analyse the levels of human rights understanding and reasoning at which learners operate (research premise 3) I classified learners' responses according to the stages and levels of moral-ethical development prevalent in Kohlberg's theory of moral development as it applies directly to human rights reasoning (see addendum V). Detailed explanations of the stages and levels of moral-ethical reasoning can be found in chapter three (see § 3.5.2). Tables 3.4 & 6.3 indicate the stages and levels of moral-ethical development and the mode of reasoning that is involved during each stage and level. Figure 4.3 depicts the process of data coding, categorising and clustering until the patterns emerged.



4.13 SUMMARY OF THE RESEARCH DESIGN

As the intention was to determine how learners understand human rights, especially their right to education, I commenced the study by making an in-depth study of scholarly research already conducted on the topic, articles on international human rights instruments and national legislation, and decided court cases. My choice of the qualitative approach was motivated by the assumption that there are multiple realities of the truth, which are socially constructed by individuals. This approach assisted in determining and giving insight into how learners perceive human rights, particularly their right to education. The qualitative method was best suited for a study of this nature since it assumes there are different methods of making sense of reality. Since this research study sought to understand learners' understanding of their right to education, an interpretive research approach seemed relevant.

The theoretical, methodological base that underpins this study as explained above, is the interpretive paradigm (see § 4.3). This approach is subjective, in that it presupposes that individuals socially construct their own reality based on their own lived experiences and individual interpretations and understandings. The research question that underpins my study is how learners understand human rights, in particular their right to education. The focus of my study is not to obtain universal or global generalisations, as is the case in the quantitative approach, but subjective truths as understood by the respondents in a given context and to describe the phenomenon from the learners' perspective.

My working premises were that some learners:

- (1) have limited knowledge of their right to education
- (2) do not know how to exercise their right to education
- (3) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the rights and duties of the school authorities.

I purposefully sampled one case (a school) and described its boundaries: Learners in grades 9-12, within the range of 15 to 18 years of age, from the same cultural group, of low socio-economic status and attending a rural, public, secondary school were selected. Their understanding of their rights was explored within the parameters of the school (see Table 4.2). Data collection was done in three consecutive stages in order to answer research premises one, two and three. In stage one I collected data with regard to the demographic characteristics of the learners, by means of a questionnaire. In stages two and three I conducted focus group discussions and face-to-face interviews using the same schedule for each method.



The reason for choosing this context and exploring one topic was to explore learners' understanding of a single phenomenon (Yin 1993:33), to limit the aspects that could influence their understanding of their right to education and to bind the topic in the context within which the data was interpreted (Merriam 2001:27; Blanche & Kelly 1999:126). The respondents' construction of reality may be understood more clearly if it is interpreted within the selected context.

This study may be viewed as an exploratory case study, as it may open the way for further studies and generate new researchable hypotheses. Merriam (2002:38) calls this an interpretive case study design, which examines initial assumptions on which other studies could be based.

Table 4.3 provides a summary of the research question, working premises, assumptions, instruments and data analysis for this research study.

Table 4.3: Summary of premises, assumptions, methods and analysis used in this research study

Research question:			
How do learners understand human rights, especially their right to education?			
Premises	Assumptions	Methods	Analysis
(1) Some learners have limited knowledge about their right to education.	Some learners (1a) Know that their right to education involves responsibility. (1b) Know that through the realisation of their right to education an array of opportunities can be opened. (1c) Mix their right to education with other human rights. (1d) Do not know who are the beneficiaries of the right to education.	Focus group discussions Face-to-face interviews	Content analysis
(2) Some learners do not know how to exercise their right to education.	Some learners (2a) Perceive their right to education as absolute. (2b) Do not know how to limit their right to education.	Focus group discussions Face-to-face interviews	Content analysis
(3) Learners employ different levels of human rights understanding when interpreting dilemmas where the exercise of their rights is in conflict with the duties of the school authorities.	(3a) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the duties of the school authorities	Focus group discussions Face-to-face interviews	Content analysis



4.14 POINTERS

This section provides guidelines to be followed when reading this research thesis.

4.14.1 Notation

A total number of four focus group discussions was held, and numbered according to grades, with grades 9, 10, 11 and 12 being numbered 1, 2, 3 and 4 respectively. References to the responses made by the participants are indicated as follows, for example: F3/8 or I3/7. The 'F' indicates the focus group discussion while the 'I' indicates the in-depth interviews. The first number indicates the number of the focus group or in-depth interview and the second number indicates the page in the transcript where the response may be read. The above example is thus a response from focus group 3 (grade 11 learners) obtainable on page 8 of the focus group transcript. The second example above indicates in-depth interview 3 (also with grade 11 learners) which can be read on page 7 of the interview transcript.

4.14.2 Referencing

The discussion that follows concerns citation and referencing used in the body text and at the end of this thesis. I have organised my citation and referencing according to the Harvard method of citing part of the sources (Mouton 2001:228-237). This citation style has been used because of its simplicity. I have written the full name of the human rights instrument in the first citation and the abbreviated name in the subsequent citations. This rule has been followed with references made from sections of the acts and the Constitution. When the work has three or more authors I have written the surnames of all the authors in the first citation and in the subsequent citation only the surname of the first author followed by "*et al.*" with the year and page following in brackets.

4.14.3 The concept to 'absolutise'

Although I decided to exclude a glossary and instead to explain concepts in the text where relevant, I find it necessary to explain the concept of 'absolutising' as it features as a golden thread throughout this thesis.

Some human rights are referred to as non-derogable, whereas others are said to be derogable (the Constitution section 37(5)). Where there is a tendency not to limit rights, one can say that the rights are non-limited, not limitable or cannot be limited. Rights would therefore be unrestricted. Synonyms for this phenomenon are that rights are unquestionable, non-negotiable, unequivocal, undeniable and incontestable. As a result, one could say that such rights have



been raised to the state of being absolute or tend towards the absolute. I have opted to use the verb 'absolutise' as done by Van Vollenhoven (2005:155).

4.15 CONCLUSION

The question that underpins this enquiry is "How do learners understand their right to education?"

The first two research premises are :

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

Learners' right to education is explored within the context of the school. I believe that persons attach subjective meaning to reality, depending on how they perceive it and their lived experiences which also applies to learners.

In this chapter, I described the research philosophy, research design, methodology, research instruments, data collection strategies and data analysis procedures. In the next chapter (chapter 5), I present the findings from the data that I used to answer my first two research premises. In chapter 6 I present the findings from the data used to answer my third research premise.



CHAPTER 5

PRESENTATION AND INTERPRETATION OF THE DATA Research premises one and two

5.1 INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

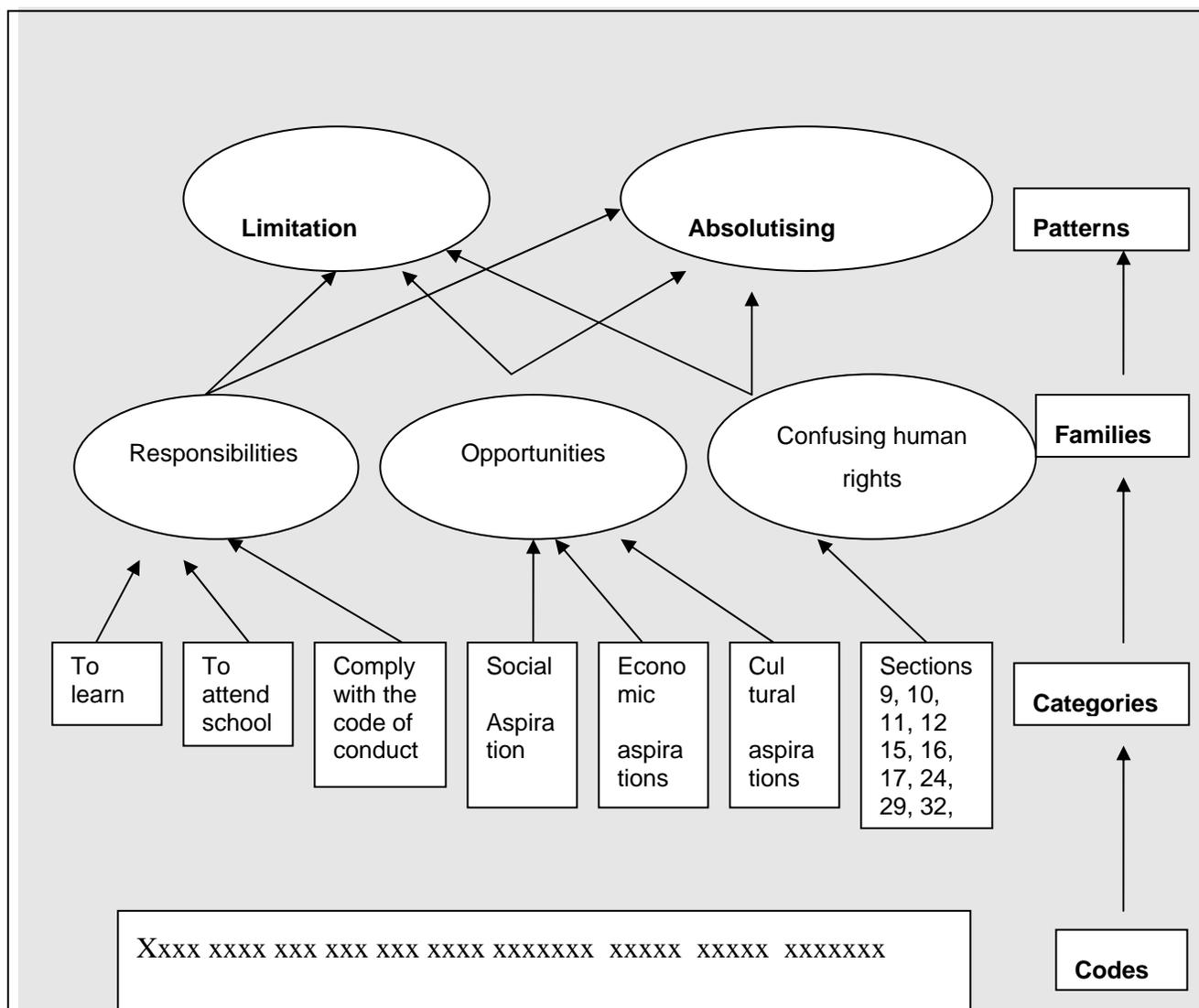


Figure 5.1: Portrayal of categories, families and patterns that emerged from the data interpretation

5.2.1 Learners’ responsibilities under their right to education

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

duty on educators to teach.

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

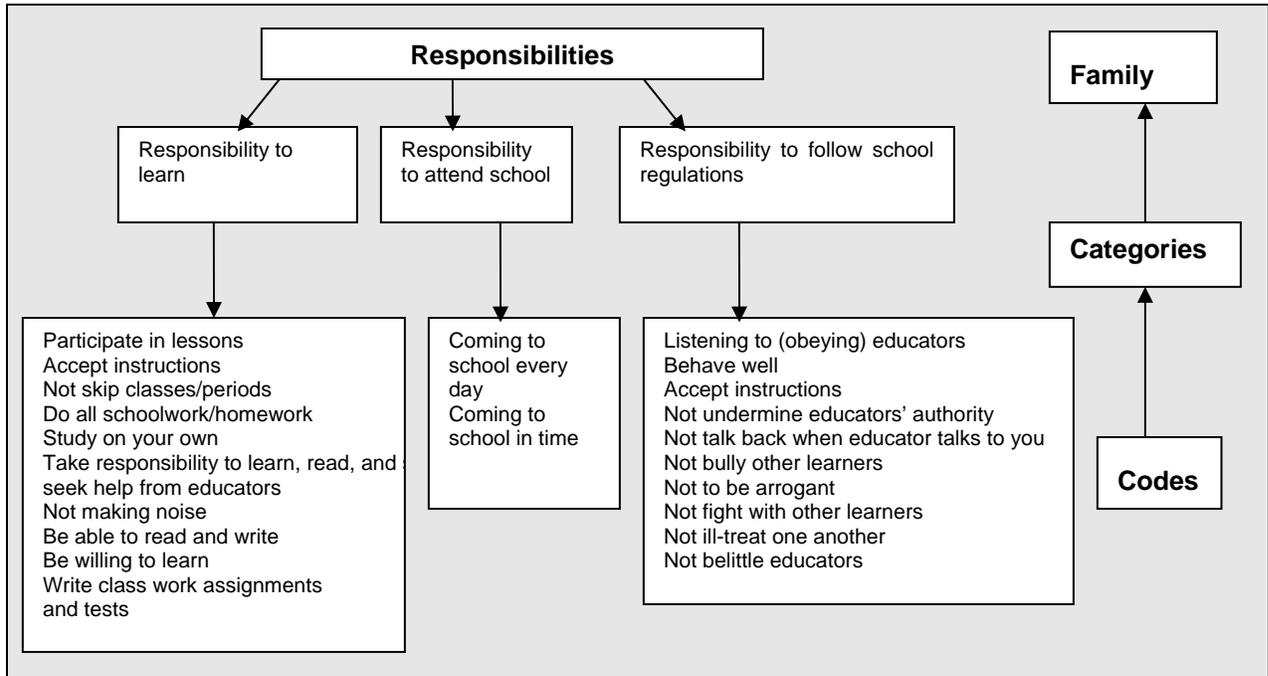


Figure 5.2: Portrayal of responsibilities that learners perceive they have under their right to education

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

5.2.1.1 Learners have the responsibility to learn

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

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



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

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

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

5.2.1.2 Learners have the responsibility to attend school

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

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



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

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

5.2.1.3 Learners have the responsibility to follow school regulations

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

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



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

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

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

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

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

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

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

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

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

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

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

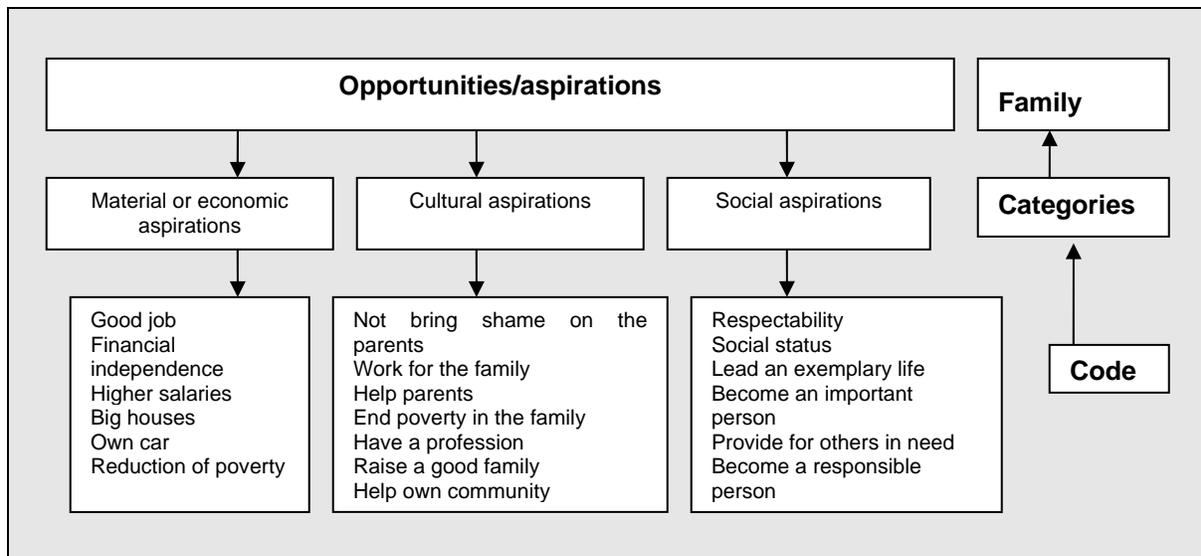


Figure 5.3 Opportunities learners perceive could be gained through the right to education

Each category is explained in the following sub-sections.

5.2.2.1 Economic opportunities (aspirations)

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

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

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

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

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

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

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

future occupation (.see § 3.4.7).

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

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

5.2.2.2 Social opportunities (aspirations)

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

In this regard learners gave the following responses:

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

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

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

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

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

5.2.2.3 Cultural opportunities (aspirations)

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

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

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



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

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

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

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

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

5.2.3 Confusing human rights

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

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

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

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

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

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

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

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

5.2.3.1 Quality education

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

5.2.3.2. The right to human dignity

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

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

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

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

5.3.3.3 The right to a safe school environment

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

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

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

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

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

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

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

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

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

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

5.2.3.4 The right to equality

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

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

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

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

5.2.3.5 The right to safety and protection

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

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

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

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

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

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

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

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

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

Some learners expressed the right not to be sexually abused:

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

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

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

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

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

Those who were against corporal punishment said:

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

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

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

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

5.2.3.6. The right to freedom of religion

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

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

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

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

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

5.2.3.7 The right to access to resources

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

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

5.2.3.8 The right to access to information

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

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



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

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

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

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

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

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

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

5.2.3.9 The right to freedom of choice

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

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

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

5.2.3.10 The right to privacy

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

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

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

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

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

5.2.3.11 The right to freedom to make decisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2.5 Conclusions with regard to my first premise

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3.1 Limitation of the right to education

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

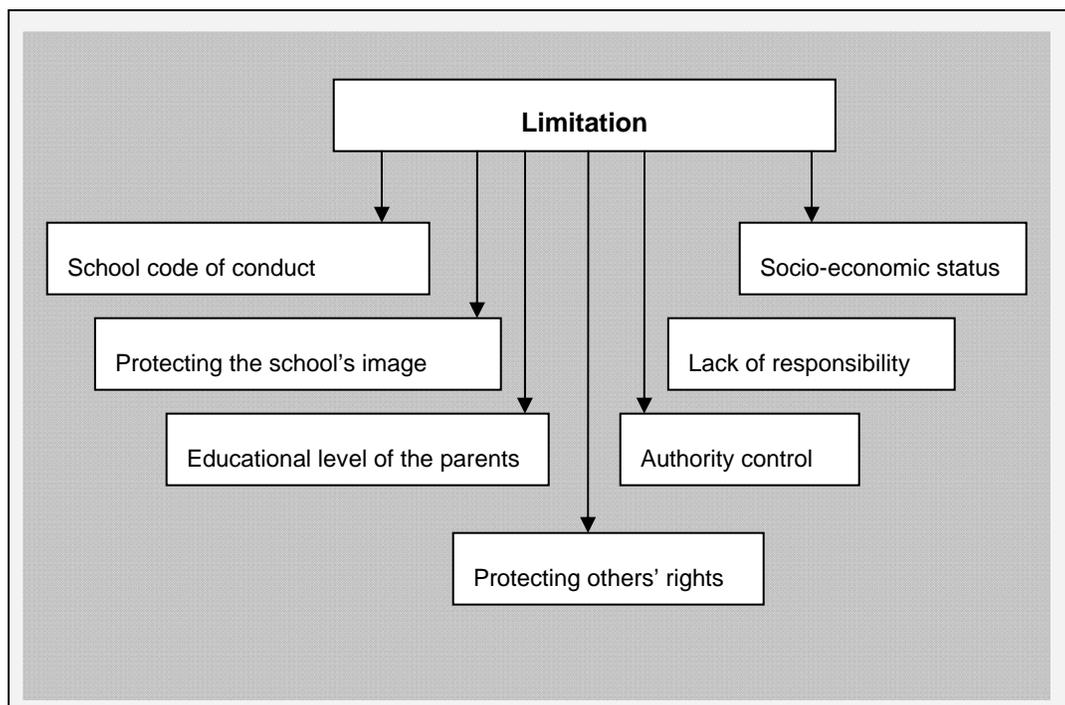


Figure 5.4: Portrayal of the pattern of limitation of the right to education as perceived by the learners

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

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

5.3.1.1 Limitation in terms of the code of conduct

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

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

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

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

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

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

5.3.1.2 Limitation in order to protect the school image

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

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

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

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

5.3.1.3 Limitation ascribed to the educational level of the parents

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

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

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

5.3.1.4 Limitation in order to protect the rights of other learners

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

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



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

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

5.3.1.5 Limitation by the authorities in order to control

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

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

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

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

5.3.1.6 Limitation ascribed to a lack of responsibility

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

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

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

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

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

5.3.1.7 Socio-economic status

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

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

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

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

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

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

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

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

5.3.2 Absolutising the right to education

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

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

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

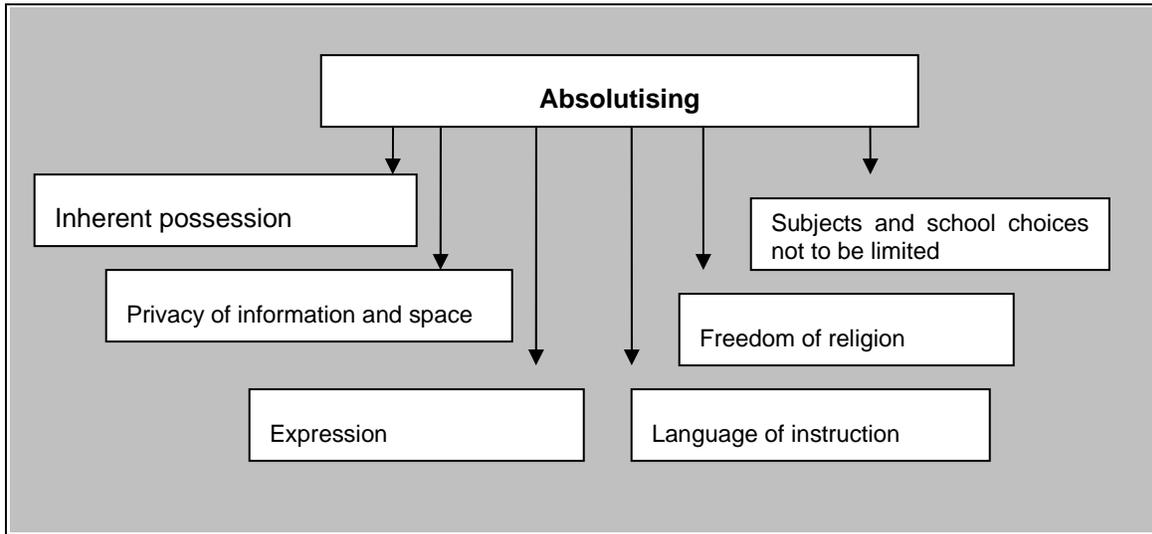


Figure 5.5 Portrayal of the pattern of absolutising as perceived by learners

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

5.3.2.1 Inherent possession

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

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

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

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

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

5.3.2.2 Privacy and confidentiality of information

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

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

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

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

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

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

5.3.2.3 Expressing of ideas

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

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

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

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

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

5.3.2.4 Language of instruction

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

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

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

5.3.2.5 Subject choices

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



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

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

5.3.2.6 Religion

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

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

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

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

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

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

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

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

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

5.4 CONCLUSION

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



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

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

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



CHAPTER 6

PRESENTATION AND INTERPRETATION OF THE DATA

Research premise three

6.1 INTRODUCTION

I presented and interpreted the results obtained from the focus group discussions and in-depth face-to-face interviews in Chapter 5. The results from these instruments were reported as an integrated unit. The research question that underpins this investigation is: “How do learners understand human rights, in particular their right to education?” I explored this question by considering two areas.

Firstly, my emphasis was on learners’ understanding of the **content** of their right to education and the **value** and meanings they attach to this right. I found that learners knew that their right to education implied responsibilities and to them the realisation of their right to education opened an array of future opportunities. In some cases, learners were unsure whether the right to education belonged to them. Secondly, I found that some learners tended to view their right to education as **absolute** and nothing and no one should stand in its way. However, some learners knew that their right to education could be **limited**, but they did not understand how such limitations may be implemented. The results substantiate the fact that learners have an imprecise knowledge of human rights and consequently they confuse their right to education with other human rights. Some learners do not understand the specific provisions of their right to education. These lines of judgement confirm my first two premises:

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

In this chapter, I shift the emphasis from knowing the content of, absolutising and limiting the right to education, to a more in-depth understanding of the right to education. The emphasis is placed on learners’ levels of human rights reasoning and understanding as illustrated by their responses. I used the data gathered during phase two (focus group discussions) and phase three (in-depth face-to-face interviews) and these results are presented together as an integrated whole. Learners’ levels of understanding were determined by evaluating the reasons they gave for their assertion or non-assertion of their right to education.



6.2 PREMISE 3: LEARNERS EMPLOY VARIOUS LEVELS OF HUMAN RIGHTS UNDERSTANDING WHEN DEALING WITH DILEMMAS WHERE THE EXERCISE OF THEIR RIGHT TO EDUCATION IS IN CONFLICT WITH THE RIGHTS AND DUTIES OF THE SCHOOL AUTHORITIES

Learners' levels of rights reasoning were addressed by considering the responses learners provided when answering questions under sections A and B of the in-depth face-to-face interview and focus group discussion schedule. Five conflict-laden vignettes were designed. They involve the interplay between a learner's right to education in relation to other rights which are directly relevant to their education, within the context of the school (see Table 6.1).

Each vignette is followed by questions designed to test the levels at which learners understand their right to education (see addendum R). I probed their rationale for asserting or not asserting their rights in which their relationships with the school authorities were involved. I also asked them how they would have acted had they been in the same position as a learner depicted in the vignette, and why.

I recorded learners' judgements and opinions about the situation depicted in each vignette and the reasons behind their judgements and decisions. The interpretation was done by comparing learners' reasoning against the levels of legal, moral-ethical development provided in Kohlberg's (1969:736-384) and Tapp and Levin's (1974:21-32) theories of legal and moral development and rights understanding (see § 3.5.2). Table 6.1 depicts the issues contained in each vignette:

Table 6.1: Description of the right to education issues and other relevant rights contained in each vignette

Vignette no	Description of the right to education issues and other relevant rights
01	Freedom to choose subjects and participate in religious education classes
02	Learners' right to education, corporal punishment and access to resources
03	The right to education and access to personal school file (information)
04	The right to education, freedom of expression and school rules
05	The right to education, confidentiality and the right to privacy

The discussion that follows presents firstly, the results about whether or not learners affirm the rights depicted in Table 6.1. These results are presented in Table 6.2. Secondly, their reasons for affirmation and non-affirmation of their rights were evaluated to determine their levels of understanding (see Addendum V). Although the interest of this study is not in counting the number of learners who said what, I counted recurrences of certain responses in order to ascertain in which vignettes learners sided with the authority and thereby non-



assertion of the right to education and where learners sided with a learner depicted in the vignettes, thereby affirming their right to education.

Table 6.2: Assertion and non-assertion of rights issues contained in each vignette (Number of respondents = 24)

vignette Number	Content of each vignette	Non-assertion of rights (percentages)	Assertion of rights (percentages)
01	(a) Freedom to choose subjects	11 (45.8%)	13 (54.2%)
	(b) Freedom to participate in religious education	11 (45.8%)	13 (54.2%)
02	(a) Learners' right to education and corporal punishment.	10 (41.7%)	14 (58.3%)
	(b) Learners' right to education and access to resources.	10 (41.7)	14 (58.3%)
03	Access to own personal file	05 (20.8%)	19 (79%)
04	(a) Learners' right to education and freedom of expression.	18 (75%)	06 (25%)
	(b) Learners' right to education and school rules	18 (75%)	06 (25%)
05	Learners right to education and privacy	15(62.5%)	09 (37.5%)

It appears that learners would assert the rights in vignettes 01 to 03 and choose not to assert those in vignettes 04 and 05.

Investigating premise three, I sifted the data into important patterns and framed the information in manageable data groups, as I did under premises 1 and 2. I worked with **182 codes**. I classified the codes into **16 categories**, which were further sub-classified into **three families**. Two patterns evolved from the data. Learners would either assert or not assert their rights (see Figure 6.1 which represents the learners' responses to the different vignettes).

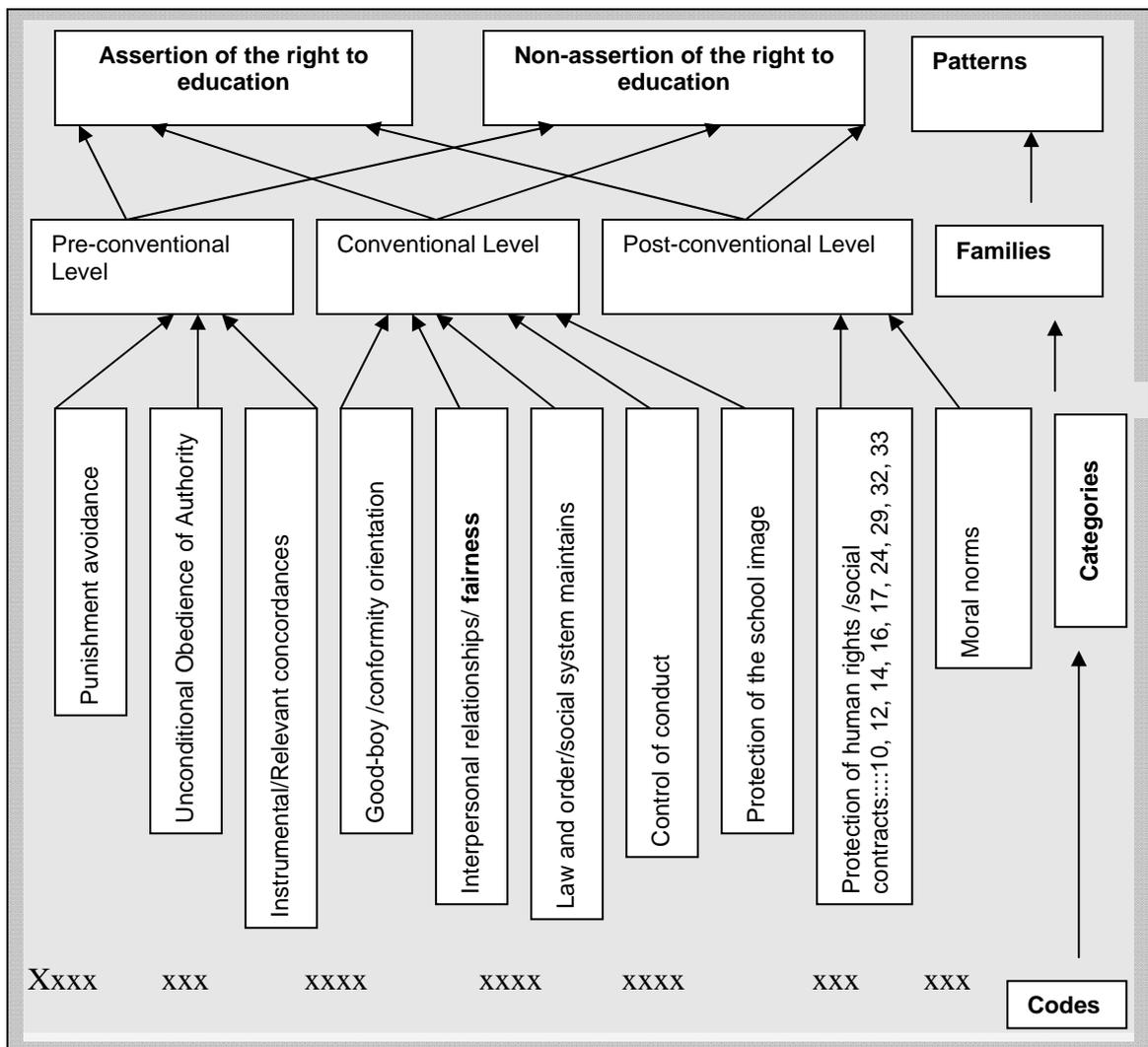


Figure 6.1: Depiction of the categories, families and patterns which evolved from the interpreted data

The following discussion deals with each family depicted in Figure 6.1. The discussion refers constantly back to a specific vignette, so as not to lose the question to which the responses were directed. The levels provided in Table 6.3 were used as a guide when evaluating the reasoning behind each response.

If learners' responses demonstrated reasoning based on unconditional obedience to authority, the avoidance of punishment and motivations that are oriented towards self benefit, it was regarded as a Level I response. If learners' responses demonstrated the reasons for assertion or non-assertion of their right to education that were based mainly on the protection of the school's image, interpersonal relationships, control of conduct, conformity or loyalty to the school to which one belongs, maintenance of the social system (the school) it was regarded as a Level II response.



Table 6.3: Depiction of levels and stages of human rights understanding and reasoning

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

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

Lastly, if learners' reasons for assertion or non-assertion of their rights demonstrated personal commitment to universal principles, such as human dignity and self worth, equality, defending individual human rights and other moral norms, it was regarded as a Level III response (see Table 6.3 & Figure: 7.2).

6.2.1 Human rights understanding and reasoning at the pre-conventional level

The literature indicates that learners operating at the pre-conventional level (Level I) exhibit an egocentric orientation in which rights are perceived in terms of privileges that are bestowed or withdrawn at the whim of authority figures (Ruck *et al.* 1998a:405; Salkind 1994:540). The reasons for obeying rules are to avoid punishment or any other physical harm, or are as a result of fear of a person in authority. 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 action. Acts that show disobedience must be followed with punishment immediately (Fernhout 1990:104; Kohlberg & Kramer 1969:100). The pre-conventional (rule-obeying) level was discussed under § 3.5.2.1.

In this section I present learners' responses that demonstrate Level I reasoning. I clustered these responses under the family 'Pre-conventional level' of rights reasoning and the categories in this level are:

- Punishment avoidance;
- Unconditional obedience to authority;



- Instrumental/relevance concordances.

I present the findings in each of these categories in the three sub-sections that follow.

6.2.1.1 Punishment avoidance

When learners were confronted with dilemmas where they had to supply their reasons for assertion or non-assertion of their right to education, some of them justified their decisions based on punishment avoidance and/or fear of any other physical harm. An example given below concerns subject choices that were addressed in vignette one (see Addendum R). When asked what their judgements would be if they were in the same position as the learner depicted in the story, learners' responses showed different understandings. They seemed to assign different values and significance to different subjects and have different perceptions about school authorities.

There were those who affirmed their right to choose the subject they want; those who felt the school had to exercise its authority; those who were not sure whether they should or should not affirm the authority; and those who did not know what to do. The results, which are worth noting, are that few learners were against the decision of the learner who refused to attend Mathematics classes. They however affirmed the authority of the school to make Mathematics a compulsory subject. Learners gave the following reasons for affirmation of the school's decisions:

- *If I were in the same position, I would do the subject... If educators say the subject is compulsory, then it is compulsory. Those who are saying the subject is compulsory know more about the subjects. They know the importance of the subject. If he is a real school child, he would do as his educators say. If he refuses, the educator must tell his parents that their child is refusing to do the subject (I10/2).*

This response indicates that learners, reasoning at the pre-conventional level (Level I), renounce their right to choose subjects only to avoid punishment (being reported to their parents) and out of fear of the authority figure (I10/2). Another reason furnished by learners, affirming the school authority's decision, was their understanding that different schools emphasise different subjects, for example:

- *As a school child, he must follow the school's decision. He must do all the subjects that are compulsory. The school is not denying him his right to education, the thing is, each school has its own set of rules, regulation, which must be followed (F3/5).*

This level of thinking is consistent with Dunkle's (1993:291-292) finding that learners relied on their personal feelings and opinions about the value of equal access policies and their believed that the school has greater authority over what should or should not be done at school. Learners who felt that they should be afforded the opportunity to choose their subjects, reasoned that the school was committing an injustice and were therefore against



the idea that Mathematics was compulsory. They expressed the following reasons for non-affirmation of the school's decisions:

- *A person should be allowed to choose the subject he or she wants to do... I prefer to have a choice or a say in choosing my subjects (F1/6).*

This response is in line with what Fernhout (1990:104) calls the “\concrete individualistic perspective’ in which a learner recognises that everybody has interests to pursue and the interests may conflict. Doing the right thing at this level is motivated by serving one's own needs.

I probed the reasons why they think learners should be given a chance to choose their subjects. These were their responses:

- *... he has the right to choose the subject he wants, depending on what he wants to become but the school authorities, too, have the right to choose the streams they want to follow (F3/5).*
- *I would like to choose the subjects which I like, which are relevant for my future career (F4/8).*
- *She must see her file, because it contains her information. It is possible that educators might record something bad about learners, especially learners who are naughty. Learners must know what the school says about them (F3/6).*

These responses confirm that some learners affirm their rights when those rights are of immediate benefit to them (F3/5) and relevant to what they aspire to (F4/8). This finding is consistent with the findings of Limber *et al.* (2000:373) who state that most learners in higher grades were of the opinion that they should be given the opportunity to make their own decisions. Peens (1998:137) found the same results in that learners between the ages of 17-18 affirmed their right to freedom of choice.

Another issue addressed in vignette one is freedom of religion. According to Article 14 of the CRC (1989), everyone has the freedom of conscience and religion (Detrick 1999:23; Ochaita & Espinosa 2001:332; Taylor *et al.* 2001:39). Section 15 of the Constitution recognises personal freedoms of conscience and religion and the right to conduct religious observances at state and state-aided schools. Religious observances are allowed in public schools, provided they are conducted in accordance with rules and on an equitable basis (Beckmann 1995:99 and 1997:9). If a school endorses one religion, learners might feel that they are being compelled to participate in that particular, religion against their will or beliefs. Such practices are inconsistent with the provisions of article 14 of the CRC of 1989 (Dunkle 1993:291).

While public school cannot promote only one religion at the expense of other religions, schools themselves are not necessarily religion-free zones. What is prohibited is to use an organ of the state such as a school, to promote a particular religion, or to privilege a particular religion over non-religion or *vice versa* (O’Hair *et al.* 2000:258).



With regard to freedom of religion (vignette one), responses of learners showed mixed perceptions. There were those who felt that religious education should be a compulsory subject and therefore affirmed the decision of the authority of the school to coerce learners into attending religious education classes. These learners were against the decision of a learner who refused to attend religious classes and they gave the following reasons:

- *If I were in the same position I would agree just to avoid bad treatment. I do not want to argue with the school authorities (F4/7)*
- *I do not understand well about religious education and rights at school. I would just attend and see what comes out of it. (F2/9)*
- *I am afraid that I might become spoiled (F2/12).*
- *I am afraid that if I do not follow school rules I might end up having a bad name in educator's records. Even if you are good in doing your school work, educators might see you as a spoiled learner or it may harm your reputation (I2/3)*

These responses indicate that some learners relinquish their rights and side with the school authority in order to avoid bad treatment (F4/7). Such lines of reasoning exemplify a Level I human rights understanding, because the reason given for asserting or not asserting the right is the avoidance of punishment.

With respect to whether or not learners should have access to their own school file (vignette three), some learners affirmed their right to see their progress files, while others affirmed that school authorities should keep school records confidential. I probed the reasons for their decisions. Fear and avoidance of bad consequences were the most prominent reasons when decisions were made. These are some of their responses:

- *I follow all the rules because if I do not do so, I suspect that the school might expel me. I do not know where I would go should that happen to me (F1/11).*
- *A learner must know what her file says about her. I think it might happen that an educator hates you. Then he can just record bad things about you just to spoil your name (F2/12).*
- *If I do not follow the rules, the educators may recommend that I be suspended from school (F1/11)*

Again these responses reveal the fact that some learners assert or not assert their right to education, because of possible negative consequences (F1/11).

Learners' responses showed mixed perceptions with regard to whether or not a learner should be allowed to publish an article criticising school rules (vignette four). Some would assert this right, while others were afraid that if one writes such an article, it could lead to expulsion (F1/11), suspension (F1/11) and being failed (F1/11) and that rules are rules (F2/3). This way of reasoning is exemplified by the following responses:

- *I follow all the rules, I do even at home, and there are rules which I follow. I follow all the regulations. If I do not follow the rules, the educators may recommend that I be suspended from school (F1/11).*



- *I follow all the rules... educators may fail you (Laughter) I suspect that they might fail me (F1/11).*
- *I follow all the rules so that I learn good manners. I do not want to become a bad learner. And if you display bad manners, educators may fail you (laughter). I suspect that they might fail me. Another thing is that we must follow the rules, because educators believed that those rules are good (F1/11).*
- *... cannot criticise the school rules. Follow all rules. Rules are there to be followed (F2/12).*

The above responses indicate a pre-conventional level of human rights reasoning, because the motive behind assertion or non-assertion of rights is the avoidance of punishment.

With regard to whether or not a learner should tell his educators of his illness (vignette five), their reasoning was not based on the fact that their right to education allows them to choose whether to do so, but out of fear of negative consequences, exposure or prejudices, for example:

- *I am afraid the educator might tell other educators, or learners and everything that I do could be judged against my illness. I once heard an educator saying that "don't listen to him he is not well" and that was bad (F1/12).*
- *I think a learner is the one who is doing things which are wrong. The principal is doing his job. He cannot allow her to come to school at will ... you come to school, or they punish you (F2/10).*

From the above responses, which again illustrate learner reasoning at Level I, I conclude that these learners regard it as their responsibility to follow all the externally defined rules, simply in order to avoid punishment or bad treatment. They understand a one way imposition of authority.

The second category that was derived from the data is that some learners, when confronted with the challenge to take decisions regarding exercising their right to education, tend to side with the authority and thereby surrender their rights. Other responses indicate that some learners' reasoning about the action of the learner depicted in each vignette was based on unconditional respect for those in authority. This attitude is discussed in the following subsection.

6.2.1.2 Unconditional obedience to authority

Some learners' reasoning indicates that they did not assert their right to education due to unconditional respect for authority (see Figure 7.2). They do not question the decisions of those in authority. Learners' responses show a trend where rights are perceived in terms of privileges that are bestowed or withdrawn upon the whims of authority figures. Their motivations are based on fear of authority, for example:

- *I follow all the regulations. If I do not follow the rules, the educators may recommend that I be suspended from school (F1/11)*
- *I must respect. I think it means I must respect my educators (I9/1)*



- *I would agree. If I were in John's position I would agree. I would not argue with older people. Arguing with older people shows disrespect (I7/2).*
- *The school knows why it should be like that (F2/11).*
- *I would agree, I would not argue with older people. Arguing with older people shows disrespect (I7/2).*
- *...must accept everything the educator says (F2/8).*
- *...a learner must do everything that his educators tell him to do (F2/8).*

When studying the above responses, one can deduce that some learners' reasoning about their right to education is still at Level I (pre-conventional level). They obey their educators unconditionally. When confronted with a challenge in which they have to judge whether or not to assert their right to education, they tend to side with the school authorities. The reasons given are that one must follow the school's decision no matter what (F2/8), and one must not argue with educators (F4/7) because educators know more (F2/11). This way of reasoning means that although some learners know that they have the right to education, they may choose not to exercise it because of respect for authority.

With regard to subject choices, some learners prefer to have a choice in the selection of subjects, whereas others believe that the school has greater autonomy in deciding the streams to be followed, for example:

- *I think it is important for the school to have subjects which are compulsory. Educators know which subjects are important for every learner. We must agree on everything which our educators say. If you do not want the subject that your school offers, then you do not want to become successful. And you are not respecting the decision that your school has taken (F2/8).*
- *I concur with the last speaker who says that a learner must do everything that his educators tell him to do. Because, if the school says these subjects are compulsory, and you do not want to do them, then why did you go to that school in the first place (F2/8).*

Concerning access to their own personal school files (vignette three), those learners who reason on a pre-conventional level again showed unconditional obedience to authority, for example:

- *When the school says a learner is not allowed to see her or his file, they mean that you must not see it. The school knows why it should be like that F2/11).*
- *Because rules were there, because rules were there before I came to this school, I must just obey (F4/13).*

Learners' responses indicate that they obey rules and laws that are imposed by adults in positions of authority, such as educators and parents. Rules and laws are seen as external to oneself. Rules are implemented to prevent learners from doing wrong, for example:

- *If there are no rules, fighting may increase. Schools might become hostile environment. Things like bullying; stealing may become rife (F2/15).*
- *If a learner did something wrong, the school may use the rules to charge him or her...and to demand respect. It is better to ...to attend a school which is governed by rules. You feel safe (F4/12)*



- *Rules help us to get to school in time. If they say you must arrive at school in time, and you arrive here during short break, educators use that rule to reprimand and to call you in to order (F2/14)*
- *Must listen to what the rules say. Rules are there to be followed (F1/9).*
- *There is nothing I can do because the school keeps the file (F4/10)*

From the evidence given above, the issue of respect for educators emerges strongly. The respect that is considered due to the educator is equated with the respect learners afford their parents, for example:

- *... he must respect his educator. We must hold them in higher esteem and treat them like our parents no matter what...it stays that way (F1/12).*

This finding of unconditional obedience to authority is consistent with that of Melton (1980:189), that learners from a low socio-economic background are suspicious that exercising their rights might lead to them being punished or may cause personal discomfort. This might be the case with respondents in this study who come from low socio-economic backgrounds.

Another point is that the respondents in my study are from a culture that encourages unconditional obedience to authority. African culture places greater emphasis on the concept of 'vhuthu' (humaneness), solidarity and respect for those in authority. This finding is consistent with Peens (1998:147) and Ncube (1998b:17), who confirm that some cultures naturally emphasise unconditional respect for authority (see § 3.4.5).

In the next sub-section, I focus on the category 'instrumental or relevant concordances'.

6.2.1.3 Instrumental/relevant concordances

Another fact that is evident from the learners' responses is that they assert individual rights presented in a particular vignette, because these rights may offer them something beneficial as individuals, for example:

- *In reality I go to school because I am preparing for my future. I want to have a better future, I want to have good job, better house and family ... I do not want to find myself suffering in my daily life (F4/5).*
- *There are some things that you get from Religious education, something like good morals, these are important in our lives (f1/6).*
- *... religious education would help you improve your morals. That is important even in the work place (F1/7)*
- *... if you follow rules, you become educable and learning becomes possible (F2/10).*
- *I want to be educated ... I want to reduce poverty in my place, especially poverty in my own family. I want to get a job. Most children, like me, come from poor families. And I do not want that to continue (F2/7).*

The above responses indicate learners' desires to fulfil own needs and aspirations, like having a brighter future (F4/5). There is much interest in satisfying one's own needs and



doing things that are instrumental in enhancing one's future, like following school rules, because if one does so, one becomes educable (F2/10). This way of thinking was also evident when learners were asked about subject choices. Some would do Mathematics after due consideration of its relevance to their future career, their competencies in the subject (F1/6), and the consequences of doing or not doing the subject. Grade twelve learners said:

- ... but I would take it or leave it depending on my ability in Mathematics (15/4).
- I would first consider if it is relevant to my future career. If it is not, I would prefer to choose other subjects which are relevant to my future career (15/4).

The above responses indicate a pre-conventional level of reasoning, where learners' reasons for affirming or not affirming their rights exhibit an egocentric orientation and rights are perceived in terms of privileges that are bestowed or withdrawn on the whim of authority (Ruck *et al.* 1998 a:405; Salkind 1994:540) (see § 3.5.2.1).

This finding is consistent with Helwig's (1997:492-493) finding that adolescent learners justify their judgments in terms of personal desires. However, the difference in this study is that when the right to education is not affirmed, learners give reasons concerning what is beneficial to them and personal needs (Level 1 responses). This level of reasoning is usually exhibited by primary school learners as revealed in part in Helwig's (1997:492-3) findings. Respondents in this study could have been expected to reason at a more advanced level as the literature suggests (Melton & Limber 1992:174; Helwig 1995:162 and 1997:493).

The most likely explanation might be that the learners participating in my investigation were previously not exposed to human rights experiences. The previous school system did not provide that experience, since exposure to human rights experience can be expected to improve the levels of human rights reasoning (Cherney & Perry 1996:243) (see also § 3.4.3). Another possible explanation could be that different cultures emphasise different kinds of human rights (Melton & Limber 1992:177; Cherney & Perry 1996:243).

Lastly I asked learners what it means to them to have the right to education. The evidence obtained from the interviews and focus group responses also confirms that some learners perceive their right to education in terms of what they must have or do in concrete terms (pre-conventional level), for example:

- I must get all learning support materials (14/1).
- Educators must teach us (F3/1).
- To me this right means that I should be given textbooks (F4/2)
- We must be taught by qualified educators (15/2)
- We should be allowed to do what we want (F3/1)
- I must be able to learn what I want, everything that I want. No one must choose for me what to learn or not to learn (15/1)



These responses imply that learners view their right to education in tangible and concrete terms (I4/1) and (F2/4). The educators are expected to confer this right upon them (F3/1). These responses exemplify a pre-conventional level of human rights understanding because the reasoning is based on what learners think they must have or be allowed to do in concrete terms. This finding is consistent with the results of the research conducted by Peens (1998:24) that learners may justify their rights in terms of concrete reality, especially those thinking at a pre-conventional level.

By way of conclusion, the responses presented in this section show that some learners reasoning about their right to education is at a pre-conventional level (Level I), although according to the literature they could be expected to reason at a more advanced level (Ruck *et al.* 1998b:284).

When learners were confronted with dilemmas where they had to supply their reasons for assertion or non-assertion of their right to education, some of them justified their decisions based on punishment avoidance and/or fear of any other physical harm.

Some learners' reasoning indicated that they assert or not assert their right to education due to unconditional respect for authority. This is consistent with Lickona's (1969:342) observations that parents from different social classes differ in the extent to which they exercise authority over children. This might be the core reason why some of the learners cannot envisage going against the authority of their educators. Parents from lower classes tend to use authority that promotes unquestioning, total acceptance of adults' imposed values. Parents, in so doing, cause a child to think of rules as physical, absolute and unchangeable. This retards the child's development to an autonomous level of thinking. This view is in line with the results of Peens (1998:147) that respect plays a strong role in the Sotho culture, in particular, strong respect for elderly people. Melton and Limber (1992:177) and Cherney and Perry (1996:243) also found that different cultures emphasise different kinds of human rights.

Another fact that is evident from the learners' responses is that they assert individual rights presented in a particular vignette, because these rights may offer them something beneficial as individuals. This finding is consistent with the literatures which reveal that learners who reason at instrumental stage reflect an individual orientation. There is much interest in fulfilling one's own needs (Kohlberg & Kramer 1969:100; Tapp & Levine 1974:21; Rowe 1992:79; Pagliuso 1976:24; Piaget 1997:95; Salkind 1994:540).

The second level of human rights understanding is the 'conventional level', which is explored in the following section in terms of the data that evidences learners' responses that can be classified under this level.

6.2.2 Human rights understanding and reasoning at the conventional level

In this section my focus is on the responses, which I interpreted as belonging to the family that I named the 'conventional level'. I dealt with the theory of the conventional rule maintaining level of rights understanding or reasoning in § 3.5.2.2. When analysing the data, I realised that some learners are capable of reasoning on the conventional level when dealing with conflict-laden vignettes. Categories that make up the conventional level family are:

- Good-boy/girl or conformity orientation;
- Interpersonal relationships/fairness;
- Law and order/social system maintenance;
- Control of conduct;
- Protection of the school's image (see Figures 6.1 & 7.2).

Each of these categories is now discussed in turn.

6.2.2.1 Good boy/girl or conformity orientation

According to Fernhout (1990:106), Kohlberg and Kramer (1969:100) and Peens (1998:46-47) this level has two stages of human rights reasoning (see Table 6.3). The main reason for asserting or not asserting individual rights is the fulfilment of the expectations of a group or any institution to which one belongs.

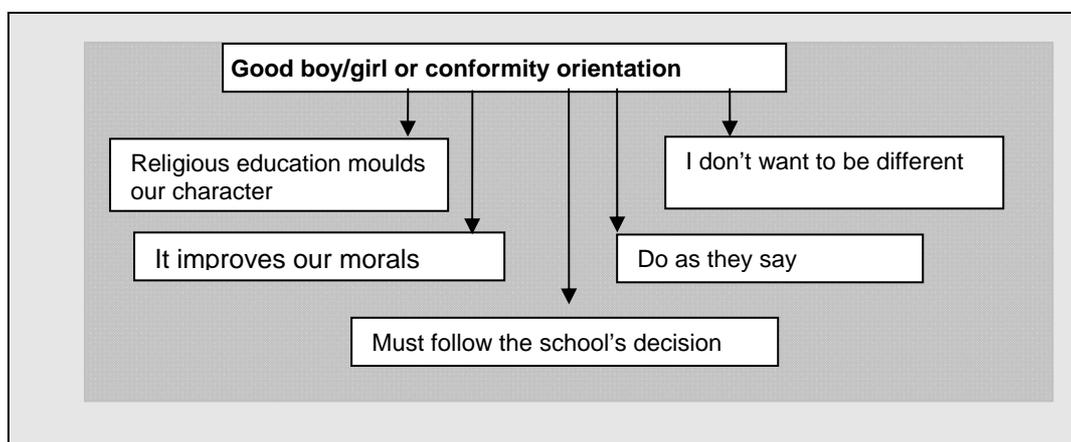


Figure 6.2: Depiction of the category: Good boy/girl or conformity orientation

Figure 6.2 depicts the category good boy/girl or conformity orientation. According to this line of thought, good behaviour is that which pleases or assists others and is approved by them. With regard to freedom of religion (vignette one), responses of learners showed mixed perceptions. There were those who felt that religious education should be a compulsory subject and they therefore agreed with the decision of the authority of the school to coerce learners into attending religious education classes and in so doing, give-up their right to



religious freedom. These learners were against the decision of the main story character not to attend religious classes and gave reasons such as the maintenance of the expectations of those in authority and conformity to rules (F2/9), following the school's decisions or just leaving for another school (F3/5). These opinions are evidenced by the following responses:

- *I think he must attend the religious education classes, it is important and he must follow the school rules, and attend religious education classes, or otherwise he should have left his school for another one where there are subjects which he likes (F2/9).*
- *If educators say subjects are compulsory, then it is compulsory. Those who are saying the subjects are compulsory knows more about the subjects, they know how, and the importance of that subjects. If he is a real school child he would do as his educators' say, if he refuses, the educator must tell his parents that their child is refusing to do those subjects (I10/3).*

These kinds of responses were observed also in vignettes three (Access to own file), four (Freedom of expression and school rules) and five (Confidentiality and privacy). Learners showed that they want to conform to what is good for the school, for their own good. In this regard the majority of learners did not affirm their rights. Responses that emphasised conformity are, for example:

- *I see. If the school says the subjects are compulsory then, John must take them, if it is the grouping of his school. He cannot come and impose his own rules upon the school. If he does not want their grouping, he should just leave and go and seek admission in other schools, where the grouping suits him. Because it is like schools are not the same and they offer different subjects (F3/5).*
- *If she is a good learner, she must follow rules which apply to her own school (F2/9).*
- *I follow the school rules; I put on my school uniform every day. I want to look like all other learners. I do not like to be different. Rules help to mould us. And we become responsible people and help us to prepare for our future (F2/14).*
- *It is not good for a learner to criticise school rules publicly. If she dislikes school rules, she must just tell her parents that she could not attend that school because its rules are difficult for her to follow. She can move to another school. It is better that way. Because other learners find nothing wrong with those rules (F2/13).*

The above responses indicate that some learners' reasoning is at the conventional level where they affirm or do not affirm their rights, with the sole purpose of wanting to conform (F2/14) to the expectations of those in authority. They do not want to go against what has already been already agreed upon (F2/13).

Other learners seem to consider interpersonal relationships before making any claims on their right to education. In the next sub-section, I explain the category 'interpersonal relationships' based on the fairness of any act.

6.2.2.2 Interpersonal relationships or fairness

The discussion concerning interpersonal relationships or fairness is based on Figure 6.3. Some learners considered interpersonal relationships before asserting or not asserting their rights. They considered whether or not their choices would damage the relationships

amongst themselves and their educators. Some responses show that they affirm their rights to see their files (vignette three):

- *She must see her file if she sees that some of her marks are low, she would be able to study hard so as to improve. If she sees that her conduct is bad, may be she could want to change and behave well. They must allow her to see her file. If I were in Andani's position I would humbly ask them to let me see my file (F3/6).*

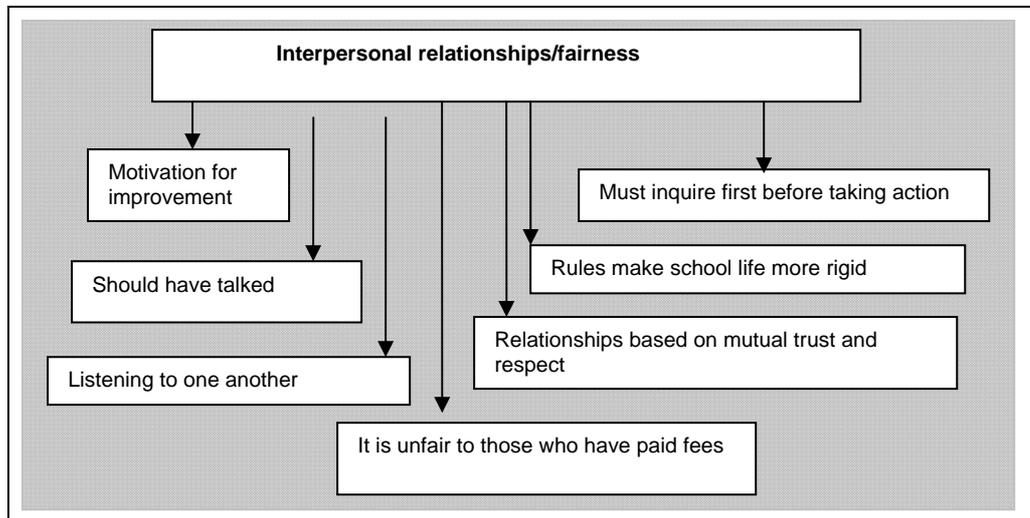


Figure 6.3: Depiction of the category: Interpersonal relationships or fairness

- *If you respect your educators you will enjoy your schooling. You will learn more. If that is not the case learning will become a struggle. The educators will also not enjoy teaching you. How can they enjoy teaching you? How can they enjoy teaching a learner who undermines their authority? (F2/3).*
- *I would try by all means to persuade the principal to let me see my file, because everything that is written on that file concerns me. It contains my news, my work and all my rights and wrong doings. May be if I know what it says about me, I could change my ways of doing things. Or after all I have the right to know what it says about me (I5/5).*
- *I would tell him that a learner must be given a chance to see her file so that she knows what is written or known about her. Perhaps there might be some issues she might want to redress. If the file says well about her, it could make her feel good about herself (I5/5).*

Some of the responses indicate that learners are of the opinion that they must have access to their files, and would humbly request that they be given their files, had they been in the same position as the main story character (F3/6). The results indicate that various perceptions, reasons and motivations exist for demanding to see a personal file or not. Some learners are motivated by the fact that it is their right to do so (I5/5), whereas others claim that a learner must see a personal file because it will lead to motivation to work harder (F3/6), or to limit one's mistakes (F1/8) and ask for forgiveness (I5/5). Some are suspicious that educators may record wrong or damaging information under their name (F3/6 and F4/9) and therefore a learner must humbly ask to see a personal file (F3/6) as it may give them chance to redress any wrong doings.



Learners were also required to judge whether or not the principal was right to deny a learner access to learning resources, because of non-payment of school fees (vignette two). A learner, who believed that the principal was right, responded in this way:

- *I concur with what the principal did. If a learner does not pay her fees and yet he gets everything, it is not right; it is not fair because he would be spending other children's money (F1/7).*

Learners who believed that the principal was wrong when he denied a learner access to learning resources because of non-payment of school fees, responded in this way:

- *I have said earlier on that learners come from different backgrounds. I think that the principal is making things difficult for Mary. Mary should get her results, books and everything, because her parents do not have money. The principal should have tried to help her, maybe by contacting the social worker to help in this matter. Beating her is also not the good option. It is wrong. The principal should have listened to her first before taking any action against her (I9/3).*
- *Yes, the principal should have listened to her, but she in turn should have informed her principal about her problem. Maybe the principal would have listened to her. Maybe he would have acted differently. The principal and the learner should discuss the matter, listen to each other, respect each other. The older people should respect the young people, and so should the young people (F3/6).*

The above responses indicate that the learners' motivations for asserting a right are based on interpersonal relationships and what they perceive to be fair (F3/6). They reasoned that if a learner did not pay school fees, and yet received everything, it would be unfair to those who had paid school fees (F1/7).

With regard to whether or not the principal was right when he administered punishment to a learner (vignette one) for not attending school regularly, again the results revealed different views. Some learners felt that the principal violated the learner's right to education by administering corporal punishment. They provided alternative strategies that could be used such as lending support to the learner, listening to problems and talking the problem through. Besides emphasising good relationships and fairness, senior grade learners also considered the intention of an act, for example:

- *The worst thing is beating her. The principal should have listened to her side of the story, because there are learners who stay away for a bad cause, but hers is right. She has a good reason (poverty) (F3/6).*
- *I think, the principal did not do the right thing. He should not punish somebody who is trying to make things work for himself. He should have allowed him to have access to everything that concerned his education (F3/10).*
- *Beating hurts. I hate a person who beats me. The principal is not right here. Instead of beating her, he should have talked to her and advised her not to stay away from school (F1/8).*
- *He should have known beforehand that Mary is coming from a poor family, it is not right to punish her. Because this learner is trying to make things work for her ... (F4/8).*
- *There is too much punishment here. We are not totally against punishment, but it should be fairly administered ... if there is a recurrence of the same offence, parents can be called ... and be informed about their child's behaviour (F3/2).*

The deduction I made after analysing responses to most of the vignettes is that learners indicated some concern about maintaining mutually beneficial relationships (F3/6). Persons who exhibit this mode of reasoning are classified under the conventional level of reasoning. They differ from pre-conventional thinkers in that they understand that people may hold different views about the same issue, but both may have good intentions. So it is important to consider the views of others before taking sides, to avoid being judgemental and to maintain good relationships. This mode of rights understanding is confirmed by the literature. The work of Peens (1998:40), Rowe (1992:80), Tapp & Levine (1974:21), Kohlberg & Kramer (1969:100), Ruck *et al.* (1998a 405), Blasi (1980:35) and Salkind (1994:540) confirms that a learner who reasons at a conventional level considers interpersonal relationships and fairness of an act as the motivation for the assertion or non-assertion of legal rights.

The discussion now turns to the category 'law and order or social system maintenance'.

6.2.2.3 Law and order or social system maintenance

Tapp and Levin (1974:21) call this level of thinking the law maintenance level. At the law and order conventional level, affirmation and non-affirmation of rights and obedience stem from the perceived need for personal, social and moral conformity. Learners understand that rules and laws are necessary to prevent disorder, although the reason for obeying rules and laws remains the avoidance of negative consequences and chaos.

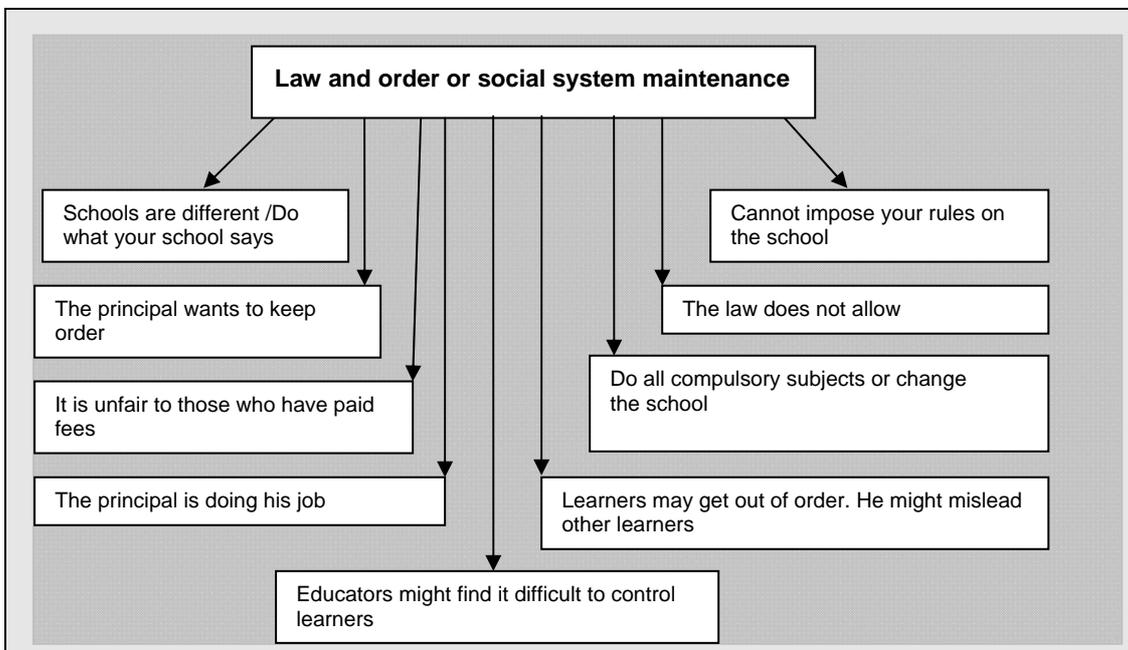


Figure 6.4: Depiction of the category: Law and order or social system maintenance



The conventional mode of reasoning was evident when learners responded to vignette four in which a learner wanted to publish an article criticising school rules and the principal refused the learner the right to express these ideas. Some learners considered what might happen to the school as a whole if every learner were to be allowed to criticise the school rules publicly and inconsiderately. Their reasons for affirming the school's decision were:

- *She must never criticise the school rules. If she senses that those rules are difficult for her to follow, she must just leave and go and seek admission in other schools. If she criticises school rules openly, she might spoil other learners and that would not be good for us (F1/9).*
- *A learner must not criticise school rules. They are rules which people (adults) have drawn up and agreed upon. If she feels that the rules are difficult for her to follow, she must ask for a transfer and just leave for another school (F1/9).*
- *We follow the rules which we think are of value, the rules which protect us, rules which help us to respect another and one another's rights. Rules that have best intentions, if that is not the case I see no reason to follow them (F4/9).*

These responses indicate reasoning at the conventional level. Learners recognise that schools are different and as such, a learner of a particular school must do what the school says (F1/9) in order to maintain its functionality, and they value mutual agreement.

With respect to whether or not a learner should see a personal file (vignette three), learners' judgements were based on maintaining the orderly functioning of their school.

- *She must not see her file...it is confidential... a learner knows when she has done something wrong or right. By recording your mistakes the principal is trying to call you into order, you must just know that your mistakes are being noticed (F2/11).*
- *She cannot see her file... because the principal said so. The principal is the person in authority here. A learner may be tempted to stealing or distorting the file (I6/3).*

With respect to whether or not a learner should be subjected to corporal punishment for not attending school regularly, some justified their choices by making references to the law. Those who affirmed the authority's actions reasoned as follows:

- *When he deprives her of her results, it is like he is taking her right to education away. The law does not allow him to do so.(F4/9)*
- *I think the learner is the one who is doing things which are not allowed. The principal is doing his job. He cannot allow her to come to school at will. She must come to school every day. Attending school and classes is not voluntary. You come to school or they punish you... You do not pay school fees or you do not get services. If you are a school child, your work on weekends finishes (F2/10).*
- *I would first explain to my principal about the financial status of my family. I would tell him that my parents do not have money to pay the school fees, but I know that there is a law that says that a learner must not be denied access to his school report and books, and other resources, because his parents can not afford to pay school fees. He must be given books and other learning material. For this reasons I think the principal is not right. When it comes to beating that is not allowed. He should have listened to the child's story before taking any action (F2/10).*

Some respondents affirmed the principal's decision to administer corporal punishment to a learner (vignette two). One response given was:



- *When they beat you, they are sending the signal that you are doing wrong (F2/10).*

The data indicates that learners also justify their reasons by making reference to what is allowed by the law. Learners who reason at the law and order level (conventional level) assert or give up their rights in order for the school to operate effectively and to maintain order for the wellbeing of the school and to avoid the system breaking down (F2/10, F2/11). Fernhout (1990:106) points out in this regard that the motivation for affirming or not affirming a right for a person thinking at the conventional level, is the anticipation of failure and wanting the institution to function as a whole.

With respect to the right to choose subjects at school, learners who reason at the conventional level expressed the idea that they would do mathematics, not because it is important, but out of respect for the school authorities or because it is the grouping of the subjects of their school, for example:

- *... as a school child, must follow the school's decision. He must do all the subjects that are compulsory. The school is not denying him his right to education, the thing is each school has its own rules and regulations which must be followed (F3/5).*
- *In case of religious education, I agree with you. But remember, he is not the only one who has the rights. He has the right to choose the subjects he wants to become, but the school authority too, has the responsibility to decide on the stream they want their learners to follow. Guys, you know that we have commercial schools, agricultural colleges and technical schools; they are different (F3/5).*
- *I see. If the school says the subjects are compulsory then, John must take them, if it is the grouping of his school. He cannot come and impose his own rules upon the school. If he does not want their grouping, he should just leave and go and seek admission in other schools, where the grouping suits him. Because it is like schools are not the same, and they offer different subjects (F3/5).*

Another dimension about how learners understand their right to education was observed when learners considered what would happen if they were allowed to exercise their rights without limits. Vignette four concerned learners' rights to voice their opinion (freedom of expression) in the school's newspaper. Learners were asked to judge whether or not learners should be allowed to publish articles criticising the school rules. Learners who were of the opinion that a learner must never publish that kind of an article were in the majority (see Table 6.2). They viewed it as correct for the school authorities to deny a learner the right to freedom of expression; their main reason was that the rules are there to control a learner's conduct and to maintain the school as a learning institution.

However, there were those who felt that learners must be allowed to publish such an article, and they reasoned in this way:

- *... must allow her to print ... might help the school to rectify mistakes/things that most learners are against ... Help educators understand what learners think (F4/11).*
- *It depends on what she wants to print. If she wants to print something that will bring the school into disrepute or that will damage the good name of the school, she must not be allowed to print her article. She must print things that place her school in*



good position. She must print things which are acceptable to the learners, educators and other people around the school. She must print rules that will bring good changes. However, if people agree with what she has written, to me it is OK. I am afraid if she just prints her article, she might hurt the feeling of other people (I3/3).

Learners confirmed the significance of school rules in terms of maintaining law and order, and reasoned that if there were no rules:

- *I am afraid; if I do not follow rules I might offend other people. If I follow rules, I respect others' rights, like I would not hurt other people. The school itself may become a safe place. And education may go smoothly. But, however, I do not follow all the rules. I follow rules which I understand, which are reasonable (I3.4).*
- *Learners might fight with one another. Crime in the school may increase, learners may stab one another. We may find that girls might be raped, here in the school premises. So many bad things might happen. Male learners may bully the girls or even stealing (I3.4.)*

Learners were expected to weigh their right to freedom of expression against the rights and duties of the school authority in fulfilling its educational purpose and ensuring that the institution itself is maintained, including censoring all written school press, maintaining sound school discipline by means of enforcing the rules, and creating an environment conducive for learning (Netshitahame 1999:14; O'Hair *et al.* 2000:257; Van Vollenhoven 2005:174-175).

Learners' responses in this regard showed that they should be considerate when affirming their right to freedom of expression (I3/3), in order to avoid misleading other learners (I3/3). They also indicated the significance of school rules in that if rules are not followed, bullying and theft at school might increase (I3/4).

All the above responses indicate the conventional level of human rights reasoning. The category discussed in the following sub-section is 'control of conduct'.

6.2.2.4 Control of conduct

Figure 6.5 forms the basis of the discussion of learners' responses that exhibit this mode of understanding of rights. It portrays the category 'control of conduct'. Conduct implies a positive action ('commission'), as well as a negative side of doing nothing ('omission'). If learner A, for example, sees that learner B is destroying school property and does not report it (omit to report or to speak up), then learner A is also at fault.

The governing body of a public school is empowered to establish a code of conduct for learners aimed at establishing discipline and a purposeful school environment. Such a code should, *inter alia*, encourage school children to protect school property and to respect the various rights of other learners.

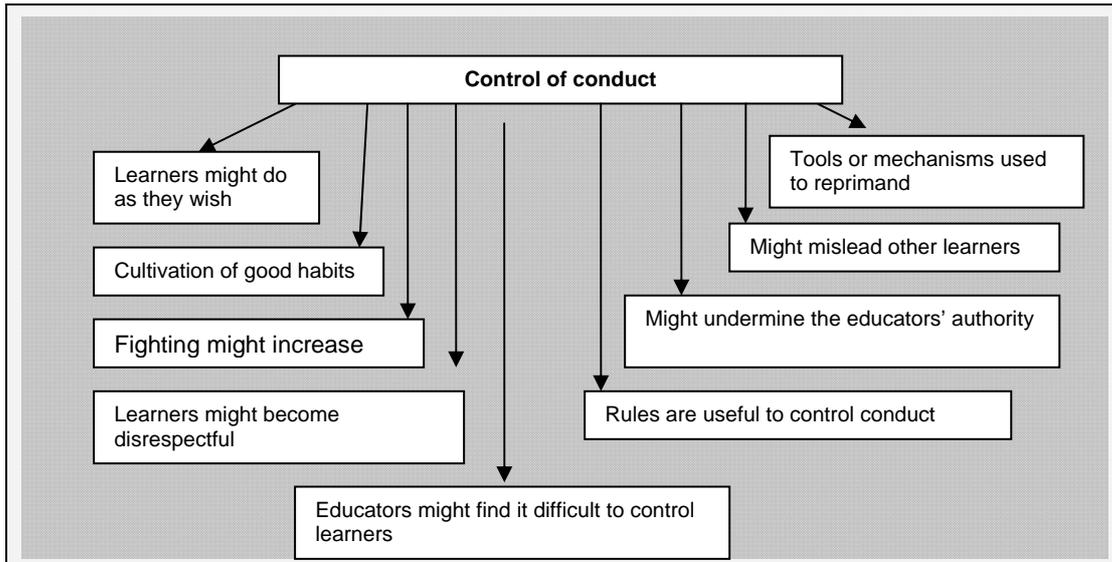


Figure 6.5: Portrayal of category: Control of conduct

The code should also be clear on the penalties to be imposed for various kinds of misconduct. A code of conduct for learners is also dedicated to the enhancement of a quality learning process and sound relationships between learners and educators. Learners are expected to observe the code of conduct as they are party to its development (Beckmann 1997:10; Dlamini 1997:51).

A school could encourage learners to commit to the code of conduct by means of a questionnaire, or by involving learners in drafting the school's code. They will realise the need to obey the rules set by themselves since, in fact, learners desire discipline. In this regard learners reason that educators may find it difficult to teach and if that is the case learning will not occur, for example:

- *It must not be printed. May be the rule prohibits something that he wants and feels bad about that. And then he wants to draw some learners towards him and the rules are not meant for one learner, but for all of us. He wants to mislead other learners (F4/11).*
- *If there are no rules, fighting may increase. Schools might become a hostile environment. Things like bullying; stealing may become rife (F2/15).*
- *Everyone could do as he or she wishes. Things might be in chaos. Learners may dodge classes. (F2/15).*

The above responses indicate the conventional level of human rights reasoning as learners emphasised the maintenance of the school system through the control of learners' conduct (F2/15 and F4/11). Mostly when rights were not affirmed, learners seemed to side with the authority and base their reasoning on the observance and the importance of rules and control of conduct (F2/15). With regard to vignette one, in which a learner was subjected to corporal punishment because of irregular school attendance, learners' reasoning shows that they sided with the principal, for example:



- *I think the learner is the one who is doing things which are not allowed. The principal is doing his job. He cannot allow her to come to school at will. She must come to school every day (F2/11).*
- *Some rules help us to keep things in order and they prevent us from doing wrong things. A rule serves as deterrence. Especially if you think the consequence of breaking the rules might be bad (F2/14).*
- *Learners may do things which are unacceptable like smoking, bringing in knives, drugs, fire arms and things like these; boys might come to school mixed up or they might bully other learners. If there are rules, we may feel protected. We will not fear for our lives and health (I3/4).*
- *Learners might fight with one another. Crime in the school may increase, learners may stab one another. We may find that girls might be raped, here on the school premises. So many bad things might happen. Male learners may bully the girls or even stealing and theft may increase (I3/4)*
- *Some rules help us to keep things in order and they prevent us from doing wrong things. A rule serves as deterrence. Especially if you think the consequence of breaking the rules might be bad (F2/15.)*

Some learners reasoned that if a learner is allowed to criticise school rules learners might do as they wish (F2/12); the educators' authority may be undermined (F2/12); learners might become disrespectful (F4/10); and fighting might increase (F2/12). In such cases, educators might find it hard to control learners (F2/12). However, there were some learners who reasoned that school rules should not be too strict, as this would restrict their freedoms. For example:

- *I don't think so. Rules make school life more rigid .You see. They prevent freedom of movement. You do things as they say (F4/13)*

The aforementioned responses indicate that learners who reason on the conventional level motivate their decisions to assert or not to assert their rights based on the necessity for good conduct in the school (Fernhout 1990:106-107). Response (F4/13) also implies that although schools need a system of rules, the rules should not be too rigid.

A formal institution such as a school should serve conflicting interests and promote a harmonious environment in which effective learning and teaching may occur (Peens 1998:47). However, rules that are too rigid may socialise learners into unconditional observance of the letter of the rule and this in itself may slow their development to Level III of human rights reasoning.

6.2.2.5 Protection of the school's image

The protection of the school's image is discussed in this sub-section. Learners' responses that exhibit this mode of reasoning are illustrated in Figure 6.6. Some learners value mutual agreements. They are of the opinion that once authorities have agreed on certain matters concerning the learners' right to education, this agreement must be upheld.

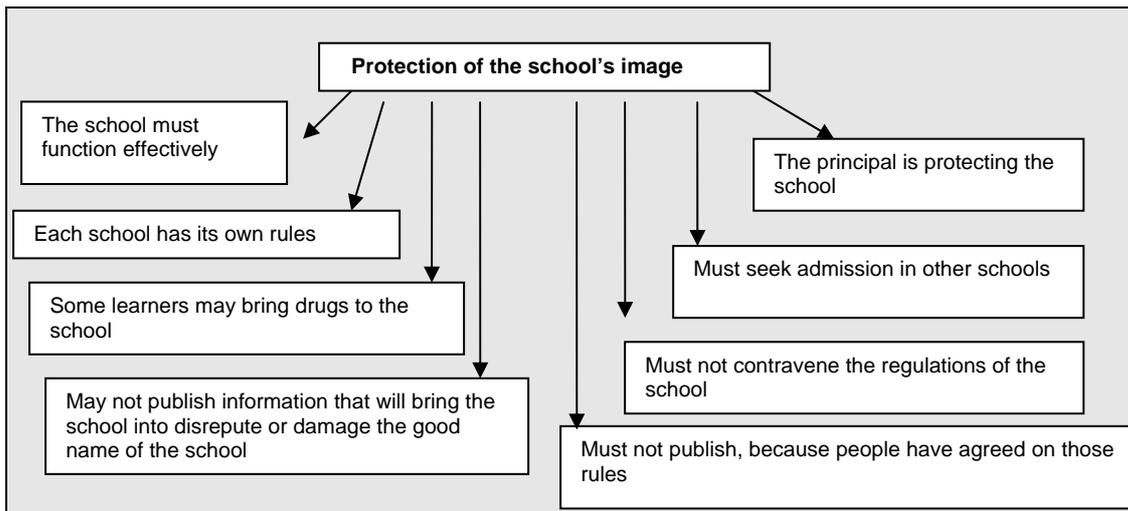


Figure 6.6: Depiction of the category: Protection of the school's image

It is like a contract that is binding on the individuals that sign it; however, the signing must be a deliberate act. In their opinion, this should be done in order to protect the school's image.

Under the category 'protection of the school's image', I found that the responses resonate with the previous category 'control of conduct'. This discussion goes further in showing why learners perceive it as important to protect the school's image instead of exercising their right to education. After being confronted with several dilemmas in which learners were supposed to take a stand and exercise their right to education, some learners considered the image of their school in deciding whether to affirm their rights or to side with the authorities. It seems as if the image of their school is more important than their rights, for example:

- *May not print the information that will bring the school into disrepute or damage the good name of the school (F2/9).*
- *She cannot criticise the school rules. The principal is protecting the school and other learners. If she feels that she would not be able to follow those rules, she must go to seek admission in other schools (F2/12).*
- *That article should not be printed because it may damage the good name of the school. The learner might have not looked at all sides of the rules. No. It must not be printed (F4/10).*

When asked to respond to the issues in different vignettes about their reasons for asserting or not asserting their rights, they said that because schools are different, a learner who dislikes the rules or subjects of his school should simply leave and seek admission at another school without expressing any objections, for example:

- *Must not print because people have agreed on those rules (F4/10).*
- *The first thing is that there should be a conversation and an agreement between her and those in authority. She cannot just say something bad about her school without consulting the principal. I would prefer to talk to the principal first (F3/7).*
- *Some rules help us to keep things in orders and they prevent us from doing wrong things. A rule serves as deterrence. Especially if you think the consequence of breaking the rules might be bad (F2/14).*



The above discussion indicates that some learners reason about their right to education on a conventional level. They justify their reasons for asserting or non-asserting their right to education in terms of maintaining the image of the school, control of conduct and references made to the rules. School rules are seen as the absolute law of the school, which should be upheld in order to maintain the system.

Tomasevski (2003:169) notes that the school system and the content of education may instil in learners or socialise them into the kind of thinking that makes them accept some practices that prevent or encourage them to exercise their right to education. A school is a communication centre for a whole range of values and aspirations of society and an arena for the exchange of ideas and should encourage learners to express their feelings and thoughts without fear. Educators occupy a position of trust and confidence and exert a considerable amount of influence over their learners as a result of this position (Tomasevski 2003:177). The possibility is high that schools, as a result of their rigidity of authority, might have contributed to learners valuing school rules as supreme law, since in the past the notion of the learners' right to education was not afforded to all groups of learners.

At this point, after analysing data captured from the conflict-laden vignettes, the results show that most responses depicted the conventional level of reasoning (Level II). The data shows that learners generally consider interpersonal relationships (see Figure 6.3), fairness of an act, maintaining social order (see Figure 6.4), the control of conduct at school (see Figure 6.5) and upholding the good name of their school (see Figure 6.6) as reasons for not asserting their rights. The results also show that the attitude of learners towards accepted moral norms reflects conformity and loyalty to personal expectations and social order, as well as active maintenance, support and justification of the order (the school) of which learners form part.

Kohlberg argues that most people are unable to proceed further than the conventional level of rights understanding, although only some do (Peens 1998:40; Rowe 1992:80; Tapp & Levine 1974:121; Kohlberg & Kramer, 1969:100; Abramovitch *et al.* 1998a:405; Blasi 1980:35; Salkind 1994:540).

The next section deals with learners whose decisions to assert or not to assert their right to education represent the family 'post-conventional level of reasoning'.

6.2.3. Human rights understanding and reasoning at the post-conventional level

The literature presents the post-conventional level (Level III) of human rights understanding as the highest level of ethical principled reasoning. People who reason at Level III understand that human rights are universal values and principles that all human beings have by virtue of

being human. To them the validity of social laws is evaluated in terms of the degree to which they protect and serve fundamental human rights and values. They also understand that social systems consist of a social contract that human beings deliberately enter into, and are relative, that is, they can be changed if they are inconsistent with universal principles (Tapp & Levine 1974; Fernhout 1990:105-106; Cherney & Perry 1996:242; Peens 1998:49; Ruck *et al.* 1998a:405).

When analysing the data, I discovered that some learners are capable of reasoning on a more advanced level (Level III) when dealing with conflict-laden vignettes. I realised that some learners assert or renounce their individual rights in order to protect the human rights and the rights of others. I classified this mode of reasoning under the family 'post-conventional level'. Figure 6.7 is the basis for the discussion of the family 'post-conventional level' or 'principled reasoning'. This figure represents learners' responses to different vignettes.

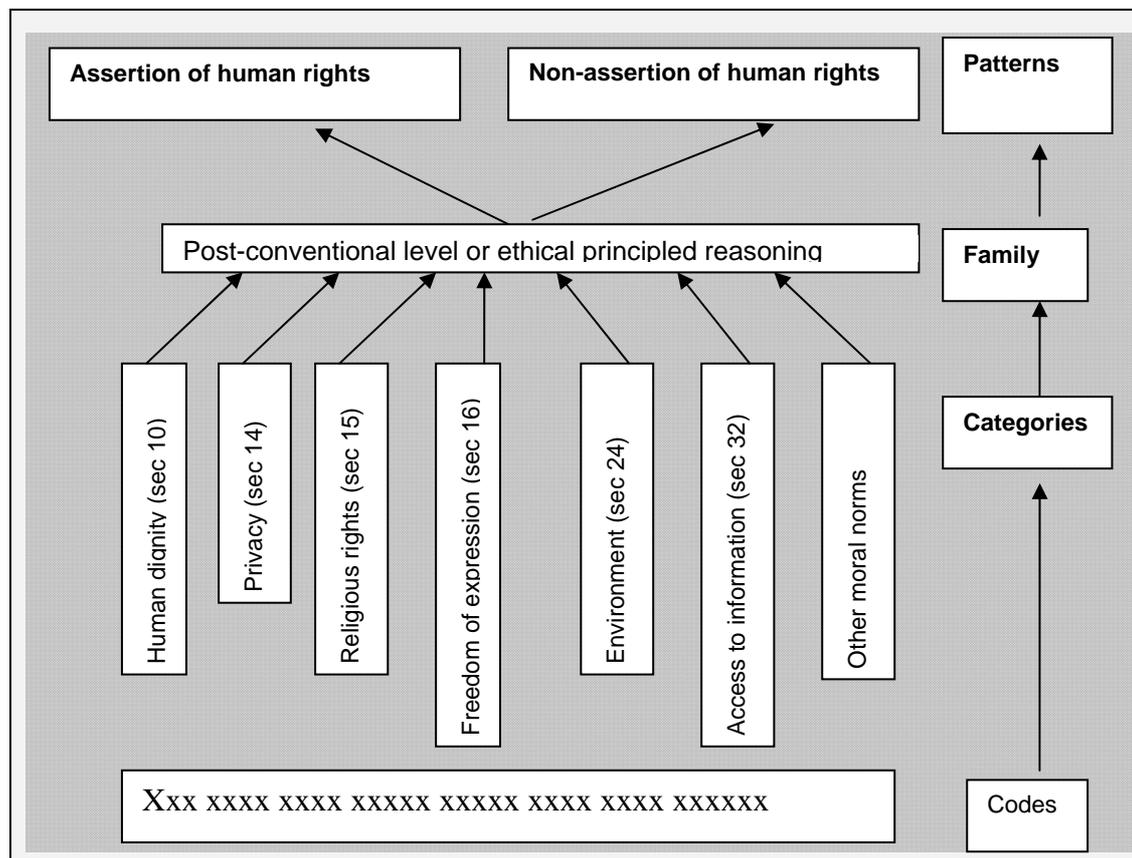


Figure 6.7: Portrayal of the family 'post-conventional level': Protection of individual human rights and other moral norms.

In the following sub-sections, I discuss the family 'post-conventional level' or 'ethical principled reasoning' under the category 'Protection of individual human rights'.



Categories that make up this family are:

- Protection of individual human rights:
 - Human dignity (Section 10 of the Constitution).
 - Privacy (Section 14 of the Constitution).
 - Religious rights (Section 15 of the Constitution).
 - Freedom of expression (Section 16 of the Constitution).
 - Environment (Section 24 of the Constitution).
 - Access to information (Section 32 of the Constitution).
- Moral norms values

The above figure represents the family in which learners affirm or do not affirm their rights with the intention of protecting individual human rights and other moral norms. Their reasoning is motivated by moral principles such as respect for the dignity of human beings as individuals, privacy, freedom of religion and beliefs, freedom of expression, safe environment and access to information.

6.2.3.1 Protection of individual human rights

The first human right to be discussed here is the right to human dignity.

- **The right to human dignity**

The next issue addressed in vignette two was that learners should not be subjected to inhumane and degrading punishment while they are at school (this refers to learners' right to education and to not receive corporal punishment). Legally, it is categorically clear that corporal punishment is not acceptable – there are several legislative and human rights instruments that ban the administration of corporal punishment (see § 2.6.3 & § 2.7.9 respectively).

With regard to the principal administering punishment (vignette two) to a learner for not attending school regularly, the results revealed different views. Some responses indicated learners were against corporal punishment and reasoned that the principal violated a learner's right to dignity. Other learners revealed that the principal did what was right for the school. I probed the reasons why they were for or against corporal punishment. Their reason ranged from value judgments, to the principle of fairness and other moral elements. They went as far as providing solutions and alternative strategies that could be used, such as lending support to the learner, listening to the learner's problem and just talking the problem through. Senior learners also considered the intention of an act, for example:



- *Let's say if I have made a mistake, the educator should not ... drag me out of the class ... or beat me. It is humiliating and embarrassing. It would be better if they allow you to stay in the classroom and do you punishment after school (F3/2.)*
- *Beating hurts. I hate a person who beats me. The principal is not right here. Instead of beating her, he should have talked to her and advised her not to stay away from school (F1/8).*
- *He should have known before hand that Mary is coming from a poor family, it is not right to punish her. Because this learner is trying to make things work for her ... (F4/8).*
- *The worst thing is beating her. The principal should have listened to her side of the story, because there are learners who stay away for a bad cause, but she is right. ... she has good reason (Poverty) (F3/6).*
- *Yes, the principal should have listened to her, but she in turn should have informed her principal about her problem. May be the principal would have listened to her. May be he would have acted differently. The principal and the learner should discuss the matter ... listen to each other ... respect each other. The older people should respect the young people, and so should the young people (F3/6).*

These responses indicate that learners assert the right to education by making reference to the human dignity of an individual. They are against the principal's action and reason that subjecting a learner to corporal punishment and dragging her out of the classroom is degrading and embarrassing (F3/2). They consider the socio-economic background, from which the learner depicted in the scenario, comes and argue that this learner has a good cause and should therefore be listened to (F4/8). From such responses I deduced that some learners are capable of reasoning at the highest level of human rights understanding and they defend their judgements by appealing to the universal principle of human dignity and the worth of a person.

The difference of opinion about corporal punishment exemplified in the responses may be explained in terms of societal and school beliefs. Cruel and unusual punishment is a problem of society as a whole, rather than that of the school in particular. Many societies and schools still prefer infliction of pain on learners as the best way of discipline. Those who are in favour of corporal DoE 2000:6-7). Corporal punishment is a sensitive issue (see Table 2.10). It is sensitive in that there are parents and educators who support corporal punishment while others are against it. Some think it is the best way to maintain discipline, despite the fact that it is a punishable offence and inconsistent with section 10 of Schools Act.

Covell and Howe (1996:255) found that 55% of boys and 41% of girls believed that it is sometimes desirable to administer corporal punishment. The best explanation could be that learners' understanding of human rights is sometimes influenced by the political environment and social agents from which they come (Keating 1990:77; Torney-Purta 1990:460; Covell & Howe 1996:253). Those who come from schools, families, cultures or religions that emphasise the infliction of pain as a disciplinary measure would probably endorse corporal punishment. Furthermore, the DoE (2000:7) notes that educators who cling to the use of corporal punishment believe that since they themselves experienced no harmful effects from having been beaten as children, there is no reason not to use it.



- **The right to privacy**

The right to privacy places a duty on the school not to disclose private information about a learner to unauthorised persons. Such information includes learners' records, school reports, disciplinary measures and learners' HIV status and other diseases. A learner's right to privacy is guaranteed under Section 14 of the Constitution and paragraph 3.4 of the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners of 1998. Under these provisions everyone has the right to privacy, which includes the right not to have:

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of communication infringed.

When considering learners' responses to vignette five concerning confidentiality and learners' rights to privacy, interesting facts can be deduced. A minority of learners perceived that they had to be afforded their right to privacy in terms of keeping their illness confidential (see Table 6.2). They gave different reasons ranging from knowing that one has the right to privacy (F2/16), mistrusting educators (F3/8), being afraid that it may be used against them (F3/8) and feeling uncomfortable talking to educators about one's illness (I9/5), for example:

- *In reality, when it come to matters concerning illness, there are other illnesses which you would feel uncomfortable telling anyone about them ... some illnesses, make you feel shameful, but you have the right to keep it a secret, any way (I9/5).*
- *The educator must respect my privacy (I8/4)*
- *Issues concerning illnesses are confidential (I2/4). We are afraid that your illness could be known by all learners, educators. The educators, we suspect that they might use your illness to discriminate against you, or to humiliate you or to prejudice you. If an educator cannot keep secrets, he may tell others about your illness (F3/8).*
- *The educators must respect her privacy. But what is important is that there should be an agreement between them (F2/16).*

From the responses by learners about their rights to privacy, it is evident that some learners regarded this right as being very important. Their reasoning behind asserting their rights to privacy of information (for example, their school report) was that they considered moral principles such as non-discrimination in education. They argued that learners must not reveal their status of illness to people (educators) they do not trust, because such people could use that information to discriminate against or humiliate them (F3/8). They were clear about the fact that educators should respect a learner's right to privacy (I8/4).

This type of abstract thinking is not evident until the late adolescent stage, a theme which is repeated in studies that suggest a developmental approach to understanding human rights (Melton & Limber 1992:174; Gallatin 1985 cited in Helwig 1995:153; Ruck *et al.* 1998a:405; Limber *et al.* 1999:379). My finding that a developmental trend was evident in learners' views



of their rights to privacy is consistent with that of Melton and Limber (1992:179) who found that young learners prefer privacy of space (concrete reality) whereas older learners prefer privacy of information (abstract thoughts).

In my study learners who preferred to disclose their illness to the authorities did so because they considered other moral principles such as telling the truth, honesty and respect for authority (see Figure 6.8) for example:

- *The educators must respect her privacy, but what is important is that there should be an agreement between them (F2/16).*
- *The educator is right. He should ask and get honest answers. The educator is like your parent. I would tell him about my illness (F2/16).*

The above responses indicate that some of those who asserted or did not assert their rights to privacy reasoned at Level III, in terms of moral principles such as respect for privacy (F2/16) and honesty (F2/16).

- **The right to freedom of religion**

Section 15 of the Constitution recognises personal freedoms of conscience and religion and the right to conduct religious observances at state and state-aided institutions. Religious freedoms are guaranteed, provided that they are consistent with the provisions of the Constitution, are conducted on an equitable base and the attendance thereof is free and voluntary (Beckmann *et al.* 1997:9 and 1995:95). For a more detailed discussion on freedom of religion see § 2.7.7 and § 5.2.3.6.

When considering learners' responses to vignette one in which a learner did not want to attend religious education classes, because of not believing in God, some fascinating facts emerged. According to the learner's particular school, religious education is compulsory. Some learners judged that the learner in the scenario was right and should not attend religious education classes, whereas others were of the opposite opinion. The reasoning behind their opinions was:

- *I understand that people believe in different things. I think this learner should tell the principal that what the school believes in is different from what he believes (F2/9).*
- *I feel that it is not right to force learners to do things that they do not want to do, because people's beliefs are different. For example, here at school they do not allow us to put on an arm ring of copper (talisman) or any other object that is associated with ancestral beliefs. I think it is wrong for a school to do that, because our parents gave us those charms to wear (F4/7).*
- *Yes. It is not right to force a person to attend religious education if it is against his own beliefs. If I were in this position, I would not... attend... I would tell the school authority that it is against my beliefs (F4/8).*
- *I concur with what has just been said. Most learners here at school believe in their ancestors. They wear all sorts of charms. I think the school should not get mixed up with that stuff. The school must allow each learner his or her right to believe in what they want (F4/8).*



What can be deduced from the above responses is that learners regard it as important to have the right to freedom of religion. In considering the reasons learners provided in terms of the affirmation or non-affirmation of the right to freedom of religion, some learners exhibited Level III of human rights understanding, since they based their opinions on universal principles and abstract thoughts. Response F2/9 recognises that people have different religions; as such it would be wrong to coerce a learner to attend a religious class contrary to his or her own beliefs (F4/7). Some learners were confident and had the courage to stand up for their rights and say that if they were in the same position as the learner depicted in the story, they would decline to attend religious education classes and tell the principal that it is against their beliefs. Some indicated that they should be allowed to express their beliefs through the wearing of a talisman and related bangles (F4/8).

The right to religion was mentioned several times by learners in grades 10 to 12. Most grade 10 to 12 learners were of the opinion that the school should allow them time to pray. Some of them suggested times for prayers and gave reasons about their need for the time to pray, for example:

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

This finding is consistent with Peens (1998:137) that senior grades endorse freedom of religion. The best explanation might be (as in the case of the right to privacy) the body of scholarship, which suggests a developmental trend when it comes to learners' understanding of human rights (Abramovitch *et al.* 1995:4; Melton 1980:187; Melton & Limber 1992:175; Peterson-Badali & Abramovitch 1992:156; Ruck *et al.* 1998 a:404,413).

- **The right to freedom of expression**

Section 16 of the Constitution accords learners and every person the right to freedom of expression (Beckmann *et al.* 1995:53). Freedom of expression includes not only freedom of speech and the written press, but also the right to hear, read and wear what one chooses (Squelch 2000a:63-64; Van Vollenhoven 2005:69). In the school context learners have freedom of expression, but it is not unlimited. Freedom of expression may be limited by other regulations, which are meant to ensure the safety of all learners (paragraph 4.5.1 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners of 1998). School authorities have the right to restrict the freedom of opinion



expressed in school newspapers, as long as they have reasonable cause for action and an acceptable rationale for their decision (O’Hair *et al.* 200:257; Van Vollenhoven 2005:75).

Vignette four concerned learners’ rights to voice their opinions (freedom of expression) in the school’s newspaper. Learners were asked to judge whether or not a learner should be allowed to have her article criticising the school rules printed in the school newspaper. Learners were expected to weigh the learner’s right to freedom of expression against the rights and duties of the school authority to censure all written school press (O’Hair *et al.* 2000:257).

Only a few learners endorsed the right to freedom of expression by perceiving that the school authority should allow the learner to publish her article. Their response showed greater maturity when it comes to criticising the school rules. They also considered the consequences of their choices and a way of balancing the rights, for example (some grade 11 and 12 learners):

- *The school must allow her to print her story. Sometimes her article might help the school to rectify its mistakes, or things that most of the learners are against as educators might overlook what learners think or feel. Perhaps if the article is printed, they might have an idea about what learners think (F4/11).*
- *She must be given a chance to print her article. It is time that those in authority listen to us. Most of the time learners are not consulted when decisions are taken (F3/7).*

The argument brought forward by learners in these responses serves to defend human rights. They reasoned that if the learner in the scenario were not allowed to criticise school rules, educators may overlook what learners think and feel. To them, being allowed to publish the article affords them the chance to express their thoughts (F4/11 and F3/7). This mode of reasoning can well be classified under Level III of understanding of human rights.

The majority of learners’ responses to vignette four showed that the learner should not be allowed to publish her story. They affirmed the rights of the school authorities to regulate the school press. They were of the opinion that a learner could perhaps criticise the school or school rules, depending on what he wants to print. The reason given for this choice was:

- *I am afraid that if she just prints her article, she might hurt the feelings of other people (I3/4)*

What can be deduced from response (I3/4) is that when exercising their rights to freedom of expression, some learners are sensitive about the rights of others (protection from mental harm), in the sense of not hurting the feelings of other people.



To some learners the right to education implies that they should be given an opportunity to express their opinion (I5/2), to present their side of the story and be listened to (I3/1). For example:

- *My ideas and opinions should not be rejected unfairly. I also think that my opinions should be listened to... I must be given a chance to ask questions and be answered and not to be laughed at (I5/2).*
- *I must be given a chance to raise question, and educators must respect my opinions. They must listen to me. I should also listen to them (I3/1).*
- *We want to be given an opportunity to have a say, or decide on things that affect us at school (F3/3).*

It is evident from these responses that some learners value their right to freedom of opinion and express reasoning at the post-conventional level. This finding concurs with Taylor *et al*'s (2001:149) finding where learners revealed that they want to be afforded an opportunity and freedom to voice opinions without fear of being turned down.

Learners in my study also judged it wrong for a learner to use offensive words when they wanted to express their rights to freedom of expression (vignette four). In this regard they responded as follows:

- *That we say is wrong. Shouting at your educators is not allowed. It shows disrespect. If it were me, I would prefer to have a healthy communication between myself and my educators (F3/9).*
- *Shouting at the educator is wrong, because if you are asking for something, for you to get it you must humble yourself. You cannot always use a push and expect to be successful in getting what you want (F1/13).*
- *This learner is wrong by scolding the educator. Educators are like his parents. One is not allowed to scold his parents. Educators are very important to our school life, because they give us an education which we could not otherwise have had we not been to school (F1/13).*

The above responses indicate that learners take heed of what is morally acceptable when asserting their rights to freedom of expression. They argue that if the school has rules, their rights are protected, because rules create safety (F4/14) and protect their right to education (F1/13). Some learners expressed the feeling that there should be healthy communication between educators and learners. Learners may not use vulgar words directed at educators, even when they feel that their rights are being violated (I4/9). The right to freedom of expression does not include the use of vulgar language.

Van Vollenhoven (2005:69) also notes that learners are not allowed to use vulgar words, insults or racial slurs directed at either educators or other learners. If a learner's freedom of expression leads to a substantial disruption of school activities or infringes upon the rights of others, it can be limited. However, the limitation must be carried out with the purpose of maintaining orderly teaching and learning.



The finding that some learners regard freedom of expression as important to them is consistent with the findings of Taylor *et al.* (2001:149), who found that freedom of expression is a right that was most frequently mentioned by learners.

- **To have an environment that is conducive to learning**

Section 24(a) of the Constitution (1996) provides that everyone has the right to an environment, which is not harmful or detrimental to one's health and wellbeing. Consistent with Section 24(a) of the Constitution (1996), Section 4 of the Guidelines for the consideration for the SGB in adopting a code of conduct for learners of (1998) provides that learners have the right to a clean and safe environment. The word 'environment' therefore, includes any physical or mental condition or even a school (Cachalia *et al.* 1994:29). These provisions also concern a safe school environment such as safe school buildings and grounds. Van Aswegen, Fraser, Nortje Slabbert and Kaske (1993:136) maintain that the school physical and psychological environment should be conducive to teaching and learning. The school should protect learners from both physical and mental harm as these are not conducive to teaching and learning (see § 2.8.5).

Learners viewed their right to education in terms of their right to a safe environment that is conducive for learning. For example:

- *All of us have the rights, a right to education in particular. A learner has the right to come to school and be taught, but he or she does not have the right to take away others' rights, or to disturb the whole class (F3/3).*
- *To have the right to education means that I have the right to attend the school which is protected (I5/1).*
- *No, we did not mention all our rights; what makes things worse or difficult are these broken windows. We are subjected to severe cold, cold air gets in through these windows (F4/3)*
- *Another thing is that, educators must not yell at me when I answered their questions wrongly and call me names (I8/1).*
- *I think we must not be abused, especially we girls. I mean sexually or physically (laughter). You know, that happens some times. And if you refuse, they punish you for a very minor offence, and you would not know why. They may make you carry bricks, you see (F4/4).*
- *There should be school rules, so that the school must be a suitable place to learn (F1/10). Rules protect us (F1/11)*

The above responses reveal that some learners view their right to education in terms of the physical (F4/3) and psychological (I8/1) safety which the school must provide them. Effective learning cannot occur if learners do not feel secure. Responses (F1/10 & F1/11) reveal that learners yearn for school rules. Although learners' responses did not make it categorically clear that rules protect their right to safety and consequently their right to education, it can still be inferred that this type of reasoning partly reveals a post-conventional level of human rights reasoning. This finding is consistent with Tapp and Levine's (1974:22) observations that people who reason at the post-conventional level make judgements that are guided by an appreciation of the rights and conditions of others (see § 3.5.2.3).



- **The right to access to information**

The Promotion of Access to Information Act, 2 of 2000 (PAI Act), was enacted in accordance with Section 32(2) of the Constitution of South Africa, which provides that national legislation must be enacted to give effect to the right of access to information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights. The PAI Act of 2000 regulates both publicly and privately held information and overrides other legislation in the matter of access to information. The right to freedom of expression converges with the right of access to information, as the former right includes the freedom to receive information and ideas (Section 16(1)(b) of the Constitution). The right to access to information is entrenched in the Human Rights Bill. Access to information is limited by the fact that information supplied to learners must not be harmful to them and should be such that it affords them opportunities to access and promote other rights. This applies to the need to supply learners regularly with information on their progress and other useful information in order to promote access to their right to education.

Vignette three refers to learners' rights to access personal files. This was addressed in part in vignette two. Most of the learners' responses were against the authority's decision of not allowing a learner to see her file. Some learners reasoned that they must have access to their files. When asked what they would have done if they were in the same position, Grade 11 learners said they would humbly request the principal to let them see their files. Some learners were motivated by the fact that they have the right to do so, whereas others said that learners must see their files because of the following:

- *To rectify one's own mistakes (F1/8), it could be a motivation for working hard (F1/5), reform and to ask for forgiveness (15/1) boosting self confidence and being suspicious that educators may record wrong and bad information (F3/6).*

Others felt that seeing their files could keep them aware of their progress and behaviour (F3/6) and motivate them to work even harder. The fact that most responses affirm learners' rights to access personal files is consistent with Peens' (1998:130) findings that seeing one's own progress chart might influence one to work more diligently and that learners aged 15 to 18 years affirm their rights to access to personal progress charts (Peens 1998:137).

These responses indicate that some learners' reasoning seems to be at Level III of rights understanding. Their motivation behind the affirmation of the decision of the learner depicted in vignette two was the protection of their right to education.

Vignette two also refers to equal access to learning resources and own progress. Learners responded in this way:



- *The principal's actions are wrong. When he deprives her of her results, it is like he is taking her right to education away. The law does not allow him to do so (F4/8).*
- *I see that the principal's action is wrong, he is violating her rights. It is not allowed to deprive a learner her right to access her results and books (F4/9).*
- *I too say so. The principal's actions were wrong. He is violating Mary's right. If I had been in her position, I would demand to see my results and the books. If a learner just comes to school and has no books, the possibility is that he will not pass (F4/9).*

These responses indicate that some learners respond at the Level III mode of reasoning. The reason exhibited by response F4/8 indicates that this learner is defending the right to education, in that depriving a learner the right to access results will hamper the learner's actualisation of a deserved and entitled right to education.

Learners know that they have the right to education and access to learning resources, even if their parents are unable to, or do not pay school fees, for example:

- *She must get everything; she must enjoy her right to education even if her parents did not pay school fees, because her parents are poor. If I were in her position I would have explained my situation to the principal so that he knows my problem (I3/3).*
- *She does not have any duty to pay her own fees. I think the principal is doing her wrong. She must have access to books and her results, which are necessary for her education (F3/6).*

Clearly the empirical results pertaining to equal access indicate that there are learners who agree with the action of authority figures and those who do not. The level of reasoning for the affirmation or non-affirmation of the action of the authority also differ, the main finding being that some learners exhibit Level III of human rights understanding. Their motivation for asserting rights is prompted by the need to protect other rights.

Although most learners affirmed their right to education and other rights, which are directly relevant to their right to education, there were fewer responses that could be classified on the post-conventional level. The responses that I classified under the family post-conventional level are those that affirmed or did not affirm their right to education with a view to protecting individual rights and other ethical principles (human rights)..

The above responses were classified under the family post-conventional level because the reasons for assertion and non-assertion of the rights were defending individual human rights, moral values and basic human rights.

The category of moral norms and values is discussed in the following sub-section.

6.2.3.2 Moral norms and values

Figure 6.8 forms the basis of the following discussion, and depicts learners' responses regarding the category of moral norms and values.

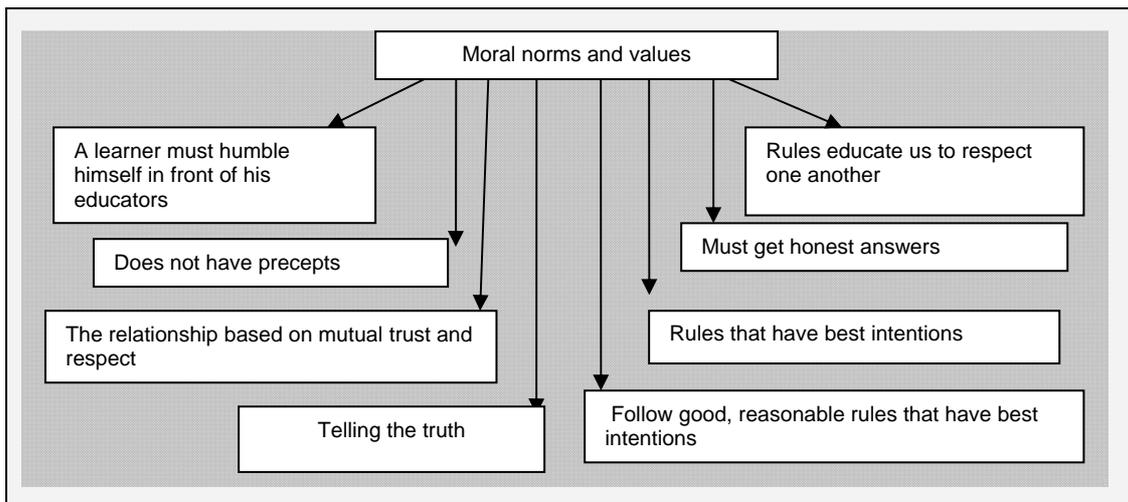


Figure 6.8: Depiction of the category: Moral norms and values

The democratic values that educators must engender in learners are provided for in the preamble of the Constitution. These include the rights to equality, human dignity, freedom and security, freedom of religion, beliefs and expression. The specific values that educators should foster in learners that would demonstrate respect for these democratic values are: care, empathy, fairness, honour, integrity, justice, moral courage, respect for self and others, respect for privacy and properties of others, responsibility, trustworthiness, truthfulness and fairness (De Villiers *et al.* 2000:26, 27).

When asked to say what they would have done if they were in the position of the learners portrayed in different scenarios, learners' responses indicated that there are some moral values which they respect (see Figure 6.8). As has already been depicted in the families 'pre-conventional' and 'conventional' levels, the responses were diverse. There were those who affirmed their right to education and those who aligned themselves with the school authorities. The responses that affirmed the right to privacy, human dignity and basic freedoms varied according to the level of human rights reasoning. The responses in line with the right to privacy were fewer than those asserting the idea that a learner should disclose his illness, thereby renouncing the right to privacy. The reasons behind their choices were the consideration of moral norms, for example:

- *What is important is that a learner must humble herself in front of her educators (F2/16).*
- *The educators must **respect** her privacy, but what is important is that there should be an agreement between them (F2/16).*
- *We follow the rules which we think are of value, rules which protect us, rules which help us to respect another, and one another's rights. Rules that have the best intentions ... if that is not the case I see no reason to follow them (F3/8).*
- *I think the principal must allow her to print her story. As long as she says something that is true about the rules, to me it is OK. The principal drew up those rules and if they were good and reasonable rules, the learner would not dislike*



them, may be learners did not have a say at the time when rules were drawn up (F3/7).

- *Let say if I have made a mistake, the educator should not ... drag me out of the class ... or beat me. It is humiliating and embarrassing. It would be better if they allow you to stay in the classroom and do you punishment after school (F3/2)*
- *The educators must respect my privacy. But what is important is that there should be an agreement ((F2/6)*
- *...but I think it would be unfair to the learners who belong to other religions if they are forced to attend Religious education. And if I belonged to other religions I would objects to the school's decision, because I would be going against my own beliefs (I3/3)*

The relationships between learners and educators should be based on mutual trust and respect:

- *Yes, the principal should listen to her first, and she in turn should have informed her principal about her problem, may be the principal would have listened to her. The principal and the learner should have discussed the matter and then listen to each other. We must listen to one another. We must respect one another. The older people should respect the young people and so are the young people (F3/6).*

What emerged in the reasoning of other learners on the post-conventional level, was references to moral values, for example, humbleness (F2/16), respect (F2/16), trust, truthfulness, best intentions (F3/8) and reasonableness. This kind of reasoning captures the core of human rights in general. Peens (1998:35) notes that human rights are social issues which cannot be dealt with without touching on moral issues such as fairness and equality. Even if one has rights, they cannot be exercised without limits. When exercising one's rights, one must consider the rights of others and the intentions of one's actions.

6.3 CONCLUSION

In this chapter I presented the findings on my third premise. I shifted the emphasis from knowing the content, beneficiaries, absolutising and limitations of the right to education, (chapter five) to a more in-depth understanding of the right to education. The emphasis was on the learners' levels of understanding the right to education and their reasoning which emerged from their responses. I used the data gathered during phase two (focus group discussions) and phase three (in-depth face to face interviews). The results from phases two and three were presented together as an integrated whole.

After writing this chapter, I came to the conclusion that my third premise was affirmed, namely that learners are capable of reasoning at different levels when dealing with dilemmas in which the exercise of the right to education may be in conflict with school authorities. Learners' responses exhibited all three levels of moral-ethical reasoning according to Kohlberg's and Tapp and Levine's theory of moral ethical reasoning (Kurtines & Greif 1974:376 & 454; Tapp & Levine 1974:21-22; Kohlberg & Kramer 1969:100; Fernhout 1990:105-107).



There were those who supplied responses at the pre-conventional level (Level I). Their reasons for the assertion or non-assertion of human rights were avoidance of punishment and other personal harm, unconditional obedience to authority, and individual benefits. This mode of reasoning is in line with the works of authors such as Kohlberg and Kramer (1969:100), Tapp and Levin (1974:21), Rowe (1992:79), Pagliuso (1976:24), Piaget (1997:95) and Salkind (1994:540), who wrote that people reasoning at the pre-conventional level have a significant interest in fulfilling their own needs, avoiding punishment and being unconditionally obedient to authority.

There were those learners who reasoned at the conventional level (Level II) and they were in the majority. Their reasons for the assertion or non-assertion of their right to education were based mainly on conformity and loyalty to the school to which they belong; interpersonal relationships, law and order, and maintenance of the social system (the school); control of conduct and the protection of the school's image. These findings lend support to the literature which confirms that people who reason at the conventional level (Level II) see rights as being based on fairness, maintaining social order and obeying rules, because rules help to maintain the social system or order. Learners at this level understand that rules and laws are necessary to prevent disorder, though the reason for obeying rules and laws remains the avoidance of negative consequences and chaos (Peens 1998:40; Rowe 1992:80; Tapp & Levine 1974:21; Kohlberg & Kramer 1969:100; Abramovitch *et al.* 1998a:405; Blasi 1980:35 and Salkind 1994:540). It is believed that most people's development ceases at this level and they are then unable to proceed further than this level, although some manage to do so (Tapp & Levine 1974:21-22).

Lastly there were a few learners who reasoned at the post-conventional level (Level III). Their reasons of asserting or non-asserting their rights were the protection of individual human rights such as human dignity; privacy; religious rights; freedom of expression; safe and secure school environments and access to information. Their reasoning was also based on moral norms and values such as humbleness, respect, trust, truthfulness, best intentions and reasonableness.

Based on the literature, people who reason at the post-conventional level (Level III) reveal personal commitment to universal principles. When laws violate universal ethical principles, one is expected to act in accordance with universal principles of justice, which are equality of human rights and respect for the dignity and worth of human beings as individuals (Fernhout 1990:107). Learners at this level are said to understand that individual human rights are balanced by social standards and essential principles and conscience (Cunningham 1991:97).



Limber *et al.* (1999:379) found that most learners' responses belonged to Levels II and III of human rights reasoning, and the levels of reasoning varied per vignette. The same learners who provided Level II reasoning in one vignette could provide Level III reasoning in another vignette. This trend is evident in the findings of this study, in that learners provided responses that showed understanding of human rights on all three levels of human rights understanding (Levels I, II and III). One should note the fact that the sample in Limber *et al.*'s (1999:379) study included learners from grades one to eleven. This study consisted of learners only from grades nine to twelve, aged between 15 and 18 years who, according to the literature, are more likely to reason at a more advanced level (Peterson-Badali & Abramovitch 1992:156 Melton & Limber 1992:175; Covell & Howe 1996:252; Ruck *et al.* 1998a:404,413).

How do I explain my finding that some learners as old as 15-18 years reason at Level I and are still afraid to assert their right to education out of fear of punishment and unconditional obedience for authorities? Van Vollenhoven (2005:201) claimed that somehow the authoritarian school environment could contribute to learners' fears of asserting their right to freedom of expression and thereby renounce their rights in favour of siding with the authorities and protecting the school's image.

The next question I ask myself is: How do I account for the findings that learners from the same school, same cultural background and falling in the same age group differ in their levels of reasoning about their right to education? The best possible explanations could be:

- Respondents of this study are from the lower classes and ethnic minorities (see Table 2.8 & § 4.1). The literature indicates that sometimes learners from minority groups are suspicious that exercising their rights might result in less favourable treatment by authorities or may lead to punishment. This perception may render the notion of having rights meaningless and useless. Accordingly there may be little reason for these learners to believe the guarantees by benevolent authorities that their rights will be regarded as outstanding entitlement (Melton & Limber 1992:184).
- The same learner is capable of giving Level III responses in one context, yet regresses to lower levels of reasoning in another scenario, depending on the context in which a right is being applied (Limber *et al.* 1999:379).
- Some misconceptions about human rights may persist until late adolescence (Ruck *et al.* 1998b:276).
- Learners' development of understanding of human rights does not happen in a uniform way, but differently, depending on how they are exposed to human rights experiences within their own homes and school. Some will develop to the level of principled reasoning faster, while others will never reach this level (Melton 1980:189; Helwig 1997:485, Ruck *et al.* 1998b:276).
- The right to education is a relatively new concept in South Africa, which is a new democracy. This trend may change in future, since the political environment and



exposure to human rights experiences may stimulate the rate and level of human rights understanding (Grisso & Pomicter 1977:321; Covell & Howe 1996:253)

- Although respondents of this study fall within the same age group, there is an age difference between grade nine (\pm 15 years) and grade twelve (\pm 18 years), which could influence the development of understanding of the right to education according to age or grade level (Peterson-Badali & Abramovitch 1992:156; Abramovitch *et al.* 1995:4; Ruck *et al.* 1998a:404,413).

Chapters 5 and 6 have explored and interpreted the data in terms of my three research premises. Chapter 7 discusses my findings and the recommendations that logically emerge from them.

CHAPTER 7

CONCLUSION: OVERVIEW, FINDINGS, IMPLICATIONS AND RECOMMENDATIONS

7.1 INTRODUCTION

The main research question that underpinned this investigation was: How do learners understand human rights, particularly their right to education? The main issues that drew my attention to this question were:

- (a) The persistent media reports on the violation of learners' right to education in schools, For instance, Ngobeni (2001:9) reported the real grievous bodily harm following the beating of a learner by an educator, which resulted in the learner losing an eye. This is a direct violation of the learner's right to a safe school environment and human dignity and impacts negatively on the learners' right to education. Schools should be a safe place where learning can occur and where learners' right to education can be realized?
- (b) In the well known case *Matukane and others v Laerskool Potgietersrus 1996(3) SA 223* (a case involving discrimination in an educational institution) the court referred to the provisions of the interim Constitution protecting learners' right to education and stated that "every person shall have the right to basic education and equal access to educational institutions" *Matukane and others v Laerskool Potgietersrus 1996(3) SA 230*. The court further determined that in terms of this provision, a school is prohibited from turning learners away on racial grounds. In the case cited, the school authorities discriminated against learners on the basis of their race and in so doing constituted an infringement of learners' right to education.
- (c) Although there has been an increase in the amount of literature and research done on learners' rights in the legal sphere , (Abramovitch *et al* 1993:313; Abramovitch *et al* 1995:1; Cherney & Perry 1996:243; Grisso & Pomicter 1977:333; Helwig 1995:152; Melton & Limber 1992:174; Ruck *et al* 1998(a):404; Ruck *et al* 1998(b):275), relatively little research has been done in South Africa regarding learners' understanding and perceptions of their rights in general (Peens 1998:92) and freedom of expression in particular (Van Vollenhoven 2005:61).

Because of the relative silence of learners' voices in matters concerning their right to education, I became interested in knowing how learners experience their right to education. I wondered whether learners really understand what it means to have the right to education and whether they are aware of the fact that their right to education can be limited. Since the main question of this study was how learners understand their right to education, I became interested in understanding the levels of rights reasoning at which they operate when dealing with real life school dilemmas.

The working premises for this study were:

- (1) Some learners have limited knowledge of their right to education.
- (2) Some learners do not know how to exercise their right to education.
- (3) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the rights and duties of school authorities.

Under my first premise I assumed that most learners would:

- (1a) Know that their right to education involves responsibilities;
- (1b) Know that the realisation of their right to education can provide access to an array of opportunities;
- (1c) Confuse their right to education with other human rights;
- (1d) Perceive the right to education as belonging to a specific group of people.

Under my second premise I assumed that some learners would:

- (2a) Regard their right to education as absolute
- (2b) Perceive that their right to education can be limited.

Under my third premise I expected learners to:

- (3a) Employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the rights and duties of school authorities.

As a result of the above-mentioned assumptions I embarked on a quest to discover learners' knowledge, understanding of and reasoning about their right to education.



7.2 OVERVIEW OF THE JOURNEY TOWARDS UNDERSTANDING

In **Chapter one** I discussed the background and orientation, aims, rationale and theoretical framework of this research. I introduced the design and methodological considerations of the research. Lastly I addressed strategies to ensure the trustworthiness of the research and set out the chapter planning for the research.

It was disturbing to become aware of gruesome events at schools where learners were subjected to gross violations of their right to education. Ngobeni (2001:9) reported an incident in which an educator punished a learner and it resulted in the learner losing her eye. This occasion jeopardised the learner's right to education in that education cannot take place in a situation where learners are subjected to gross bodily harm and fear for their own safety. In the *Matukane and Others v Laerskool Potgietersrus 1996(3) SA 223* case learners were denied access to education because of race, a violation of the equality clause of the interim Constitution of 1993 and Schools Act Section 5(1) which provides that every learner has the right to be admitted to school without unfair discrimination based on colour, sex, language, religion or race. The *Wittmann v Deutscher Schulverein and others 1998(4) SA 423* case involved learners' right to freedom of religion at school. In this case a learners' right to education was seemingly infringed in that he was forced to attend religious instruction classes against his will but the court rules that this independent school could enforce attendance.

I decided to investigate aspects that influence the implementation of learners' right to education and the levels of human rights understanding and reasoning. I engaged in a literature review in order to find out what other scholars have already written about the topic. The literature review constitutes Chapters two and three in this thesis.

In **Chapter two** I tried to gain from the literature a sense of the historical development of the right to education (see § 2.4.1), the core content of the right to education (see § 2.6), and its recognition in the South African Constitution. When reviewing the literature about the right to education, I discovered that it was rather belatedly recognised as a human right (Volio 1979:19). After the Second World War the right to education joined other groups of human rights and it now appears prominently in the hierarchy of human rights (Hodgson 1998:39). Since human rights apply equally to everyone, education has become an undeniable means through which one can access one's rights. This implies that the right to education is a *conditio sine qua non*¹ for the enjoyment of all

¹ A *conditio sine quo non* : necessary precondition for

other human rights and one cannot fully enjoy life without having the benefit of basic education. As a result, it is one of the most complex human rights. The right to education enjoys the status of being a prerequisite for the enjoyment of other human rights (De Groof 1996:224) and it is guaranteed in the following bills of human rights or conventions: UDHR of 1948; CDE of 1960; CESCR of 1966 and CRC of 1989 (M'Bow 1979:10; Hodgson 1998:39; Detrick 1999:474-175) (see § 2.4).

The right to education is so important that it is entrenched in the constitutions of most countries of the world, including South Africa (Arajärvi 1993:405; De la Vega 1994:49; Knight 1995:195; Hodgson 1998:12-13). Knowing that the right to education is guaranteed in international human rights conventions (UDHR of 1948; CDE of 1960; CESCR of 1966 and CRC of 1989) (see § 2.4.2), the constitutions of the countries of the world and the South African Bill of Rights in particular (see § 2.7.1), one may tend to think that it is without limitation. The literature, however, indicates that human rights are not absolute (see § 2.10.). Bray (2000b:31) states that a law may limit a right in the Bill of Rights if it is a law of general application. It means therefore that the right can be limited by a law and that law must be of general application. In balancing the right (Van Vollenhoven 2005:56), the value whose protection most closely illuminates the values underpinning the Constitution should receive appropriate protection in the process. Limitation of the right can only occur when it is justifiable in an open democratic society based on human dignity, equality and freedom (section 36 of the Constitution). As the right to education is linked to most fundamental human rights, its limitation impacts on other fundamental human rights; hence it is difficult to find grounds for its limitation besides the built-in limitations and limitation by laws of general application (De Waal *et al.* 2000:135; Bray 2000b:31). Van Vollenhoven (2005:195) notes that the line between a limitation and a violation of human rights is very subtle and is not obviously clear. School authorities can easily 'limit' this right but in the process violate it or other rights and thereby compromise the principles of democracy.

In **Chapter three** I explored the scholarship on learners' perceptions of human rights (see § 3.2), development of human rights understanding, the mechanisms through which understanding occurs, the age of understanding and the aspects that influence human rights understanding. I learned from the literature that the development of understanding of human rights matches the levels of moral judgement to the extent that one could use them interchangeably. The development of learners' understanding of their rights relates to their level of moral development. In this regard the work done by Kohlberg (1969:375-388) on the domain of moral development cannot be ignored, for this study specifically deals with learners' understanding of human rights and human rights in essence involve moral issues (De Villiers *et al.* 2000:26-27). At that stage, I realised that an understanding of

moral development could assist in the interpretation of certain unexpected trends that may emerge in the results of this study (Peens 1998:35). I also discovered from the literature that the development of human rights understanding and reasoning occurs in stages and levels (see § 3.5). Although there is an overlap in reasoning with the stages of moral development, the levels of human rights reasoning are more distinctive. The works of Fernhout (1990:105-107), Kurtines and Greif (1974:454) Kohlberg (1969:376), Kohlberg & Kramer (1969:100), Kurtines & Greif (1974:454), Melton (1980:187), Pagliuso (1976:34), Rowe (1992:79), Snarey (1985:203), Salkind (1994:635) and Tapp & Levine (1974:21) provide explanations about the stages and levels of human rights reasoning and understanding (see § 3.5.2).

I discovered from the literature that development from one level of understanding to the next does not occur at the same time or same rate for every learner, but is dependent on other variables or aspects, such as the school environment (Keating 1990:77); cultural environment (Melton & Limber 1992:176-197); prior experiences with human rights (Grisso & Pomicter 1977:321); parents' attitudes towards human rights (Bohrnstedt *et al.* 1981:443); child-rearing practices (Parikh 1980:1031-1037); the level of education and the level of moral reasoning of the parents (Bohrnstedt *et al.* 1981:455); socio-economic status (Peens 1998:25); the quality of parent-child relationships (Sigel 1988:385); religious beliefs (Bohrnstedt *et al.* 1981:455) and the political environment (see § 3.4).

In **Chapter four** I described the research strategy (qualitative case study), the participants, and the process. Data collection was done in three phases. In phase one, 48 learners completed an open-ended questionnaire designed to collect demographic information about them (Table 4.1). From the 48 respondents, 24 were sampled for the second phase (focus group discussions) (see § 4.7). I purposely sampled a homogeneous sample, so that variables that might influence the results would be limited. Four focus group discussions were conducted. Each focus group consisted of six learners from a particular grade. That is, the first focus group consisted of six grade nine learners, the second was six grade ten learners followed by six grade elevens and eventually six grade twelve learners of whom three were males and three females. The main aim of holding focus group discussions was to gather broader views about learners' knowledge and understanding of their right to education. Twelve respondents then participated in phase three, namely face-to-face interviews, which lasted about 30 minutes each (see § 4.6.1.3). The third phase was intended to consolidate the information gathered during phases one and two. The decrease in number was due to the fact that some learners dropped out, as participation was completely voluntary and the increasing intensity of the methods. The interviewing stopped when it became clear that virtually the same

responses were being given and less and little if any new information was emerging. This was an indication that the data had become saturated.

The method used for data analysis was content analysis (see § 4.12). The data was manually analysed, using open coding. I worked with 182 codes for the first and second research premises. I made sure that I did not write a code without reference to its source and page number, as this would mean going back to read all the transcripts. I classified these codes into 16 categories, which in turn, were classified into three families. Two patterns evolved from the data. I counted the codes according to my research premises and then opened and named a file for the specific research premises 1 and 2 (see Addendum U). Codes for research premise 3 are recorded in Addendum V.

In **Chapters five** and **six** I presented the research findings as revealed by an inductive analysis of the data. After coding the raw data I grouped the codes into categories. These categories represent different responsibilities, aspirations (opportunities) and human rights learners perceive to have under their right to education. The categories were classified into three families, which I named responsibilities, opportunities and confusing of human rights (see figure 5.1). After interpretation of the data, two patterns evolved: some learners perceived their right to education as unlimited (see § 5.3.2), while others believed that it could be limited (see § 5.3.1). These two patterns evolved from the data addressing research premises one and two and are presented in Figure 7.1.

The same procedure of data analysis was followed to answer research premise three, for which the results were presented in **Chapter six**. I assumed that learners engage in different levels of human rights reasoning and understanding when dealing with dilemmas in which exercising their right to education may be in conflict with the wishes of school authorities. The data was analysed and classified into codes. The coded data was grouped into categories that represented the stages of human rights reasoning. I further classified the data into three levels of human rights understanding. The interpreted data evolved into two patterns indicating that learners at different levels of reasoning may either assert or not assert their right to education (Figure 7.2).

In this chapter, **Chapter seven**, I present an overview of my journey towards understanding; a summary of the main findings and their implications; and finally my conclusions and recommendations.

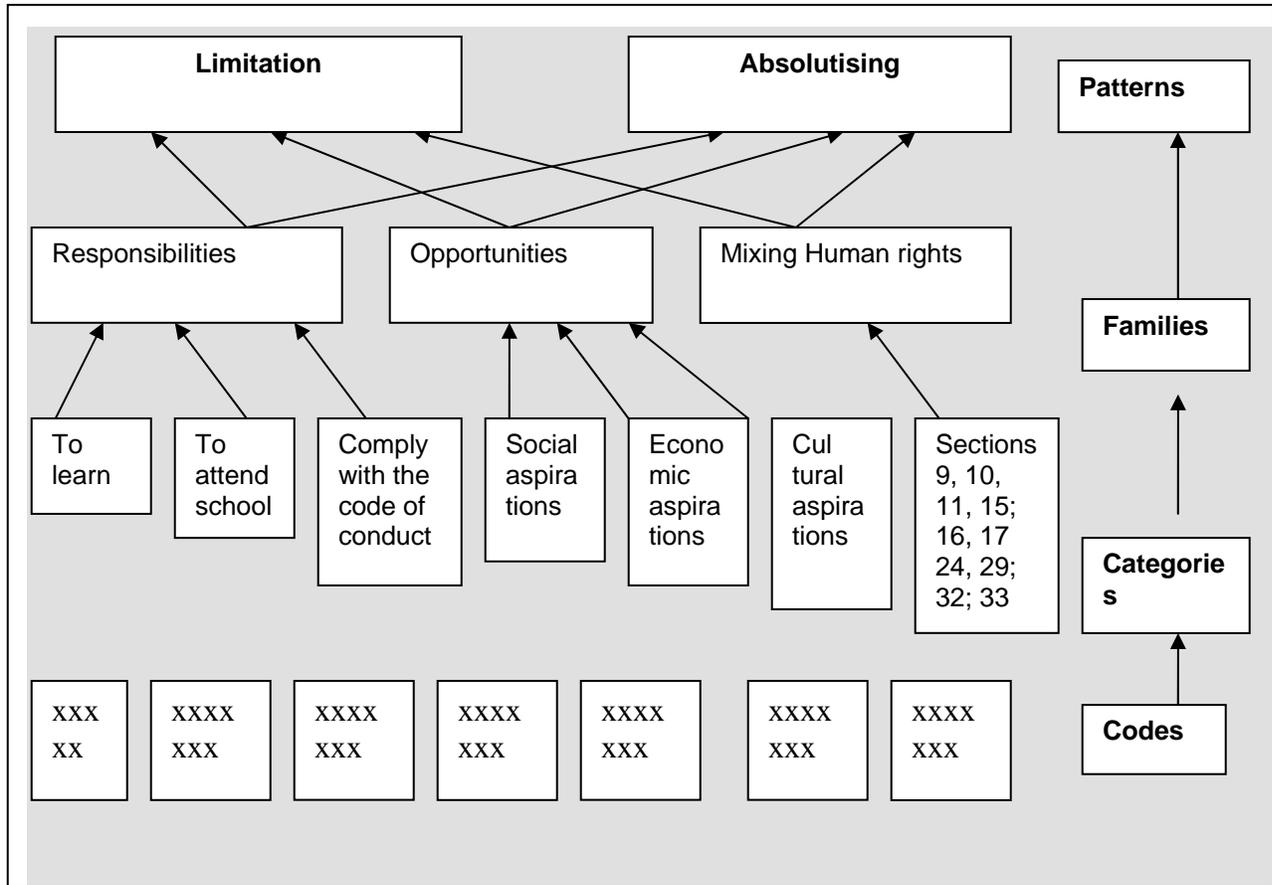


Figure 7.1: Depiction of the codes, categories, families and patterns which evolved from data analysed for premises one and two

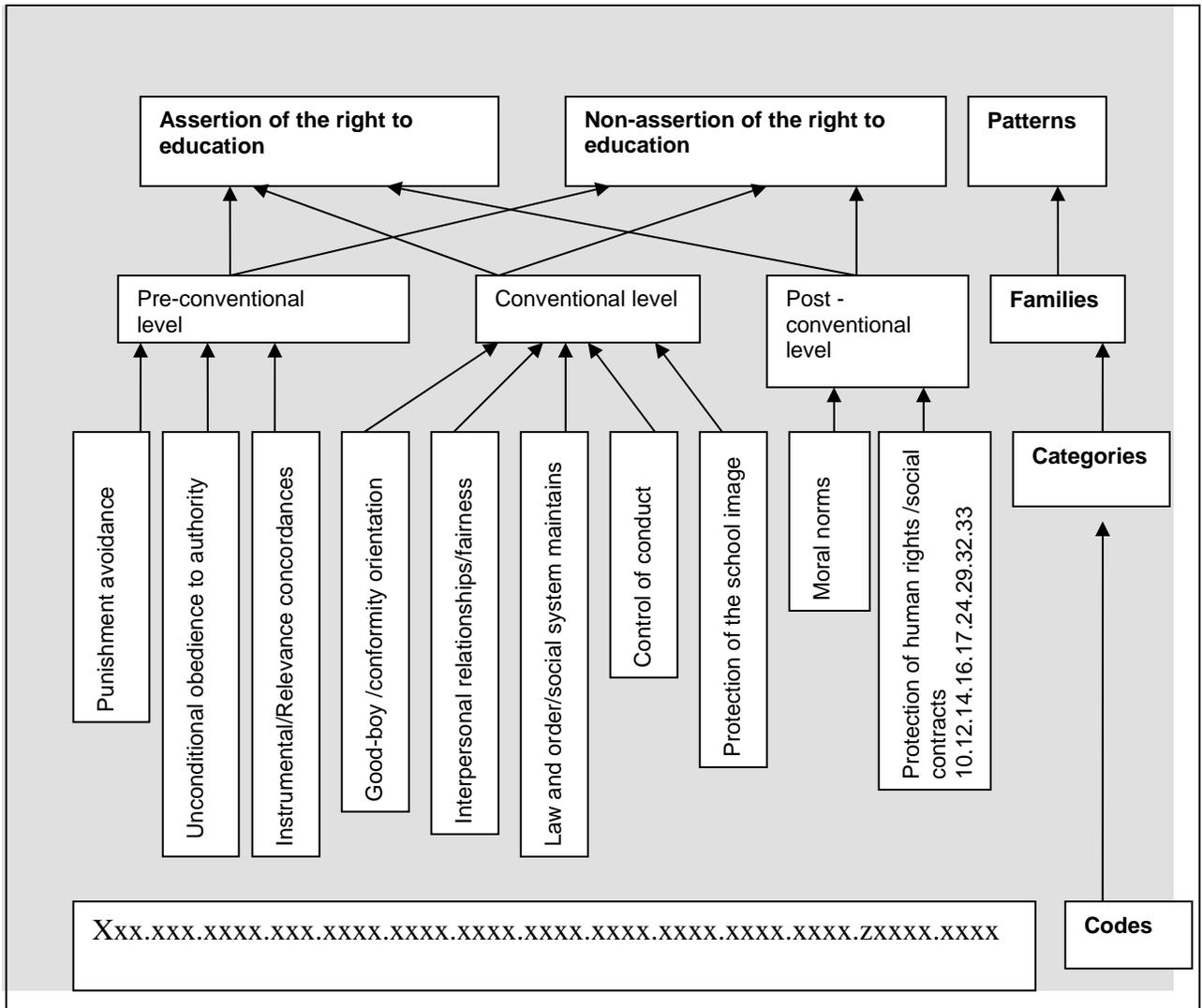


Figure 7.2: Depiction of the codes, categories, families and patterns which evolved from data analysed for premise three

Three main conclusions were reached, namely that learners have limited understanding of their right to education; do not know how to exercise their right to education and learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with rights and duties of the school authorities (see § 1.4).



7.3 TRUSTWORTHINESS

This research is based on the interpretive research paradigm. The interpretive paradigm assumes that realities are varied and how one person knows and understands reality differs considerably from how another person understands it (Smit 2001a:69). This study examined how learners understand human rights, especially their right to education. I assumed that learners' understanding of human rights might differ from other people's understanding of this same phenomenon, as there is no single truth. The goal was to develop an understanding of how individual learners construct meanings based on their lived experiences and how they understand human rights in the context of the school (Neuman 1997:69).

My epistemological stance is underpinned by a postmodern approach. I do not believe in one objective world. I believe that the knowledge that emerges from learners' experiences of human rights in the context of the school is subjective and time bound (Cohen *et al.* 2000:22). My epistemological position is that construction of reality is relative and subjective and evolves over time and in context and thus there is no single truth (Mouton 1996:26; Denzin & Lincoln 1998b: xvii, 23). From my point of view, the social experiences, values and beliefs which learners bring to their right to education are not perceived as wrong, but only as different (Neuman 1997:69). I therefore attempted to investigate human rights understanding from the learners' point of view.

I ensured validity and reliability and trustworthiness of the findings in the following way:

During data collection, the focus group discussions and the in-depth face-to-face interviews were tape-recorded. The face-to-face interviews took place between me and one respondent at a time. At the end of each focus group discussion and in-depth face-to-face interview, I played back the tapes to verify the audibility of the interview and for the respondents to listen to their responses. The respondents were given the opportunity to add to their original responses, if they so wished. I designed focus group and in-depth face-to-face interview protocols (see Addendum S) in which I wrote notes and summaries. This gave me the chance to verify my interpretations with what the respondents had said (Gay & Airasian 2000:225; McMillan & Schumacher 2001:408-9; Schwandt 1997:137-8; Kvale 1996:189,253).

During the focus group discussion and in-depth face-to-face interviews, I asked probing questions and repeated the respondents' own words to verify points that were not clear, and to confirm with the respondents what I had heard. In this way I double-checked my interpretation of their understanding with the respondents, in order to ensure objectivity and reliability. The most

important way in the pursuit for credibility is triangulation. I used different methods of data collection. In this way I was able to check for consistency of evidence across the data sources. The same patterns evolved from both data sources (focus group discussions and in-depth face-to-face interviews).

To enhance validity, a colleague, who is an educator and a researcher, helped to choose the final vignettes (see Addendum R) from the first draft of vignettes (see Addendum Q). This was done to ensure that the instruments measured exactly what they were intended to measure. The focus group discussions and the in-depth face-to-face interviews were conducted in Tshivenda, the first language of the learners in this study. After transcribing the focus group discussions and face-to-face interviews in Tshivenda, the responses were translated into English. During transcription, the main source of error could have been that meanings might have been lost during translation, as I did not translate word-for-word, but teased out the meanings of whole sentences. I tried to translate word-for-word at first and then read the whole sentence, but in some cases it did not make sense, as I could not find English equivalents for some of the Tshivenda words. One interview transcript was given to an English educator to evaluate my translations and to ensure that the loss of meaning was reduced wherever possible. The provision of data sources in Addenda F and I, and reference to both data sources is a way of ensuring that the findings of this research adhere to the criterion of truthfulness.

During data analysis I coded the data manually and also asked an independent coder to code the data. We then compared and discussed the codes until consensus was reached. The reason behind the comparison of codes was to ensure reliability during coding and the reduction of bias.

7.4 MAIN FINDINGS

I categorised my findings according to my three research premises. Consequently I discuss first the finding that learners have limited understanding of their right to education; secondly the finding that learners do not know how to exercise their right to education; and lastly the finding that learners' levels of human rights reasoning and understanding are lower than what they should be.

7.4.1 Knowledge and understanding of the right to education

The question that underpins this enquiry is: "How do learners understand human rights; especially their right to education?" This right was explored within the context of the school. The findings of my first premise are summarised in this section.

7.4.1.1 Learners have limited knowledge of their right to education

The empirical data confirms the assumption that some learners have limited understanding of their right to education. In this study most of the responses showed that learners understand that their right to education, like all other human rights, has corresponding responsibilities (see § 5.2.1). The responsibilities that learners accept include the responsibility to attend school regularly, to learn and to follow school regulations. What emerged from the responses was that some learners do not understand that they cannot be held accountable and solely responsible under the law, if they do not attend school, but that their parents are liable if they fail to send them to school. Some learners view it as their responsibility to pay school fees and they recommended that, if the parents do not have money to pay school fees, the learner should work in order to pay the fees.

Under the first premise it was assumed that learners regard their right to education as a means to access future opportunities or to fulfill their aspirations (see § 5.2.2). This assumption was affirmed. Learners perceive their right to education as a means to gain material and financial independence, and to fulfill their cultural aspirations and social responsibilities. They feel that learning without connection to the real world is meaningless. The learners who participated in this study were drawn from a disadvantaged community. This could be the best explanation as to why they perceive their right to education to be a means of reducing poverty and helping parents to buy food and send brothers and sisters to school.

7.4.1.2 Learners confuse their right to education with other human rights

The third assumption under the first premise was that some learners confuse their right to education with other human rights. When interpreting the data, it was found that certain responses did not concern the right to education in particular, but covered a vast number of other human rights that are relevant to the learners' right to education. Learners perceived most of these other human rights as being part of their right to education. Although the right to education is related to other fundamental human rights and freedoms, it is a human right on its own. It seems that learners perceive their right to education as an umbrella or an embodiment of various other human rights. This assumption was confirmed by a number of responses (see Table 5.1).

This finding is consistent with Van Vollenhoven's (2005:151-152) finding that learners have only a vague knowledge of human rights. They know the different types of human rights by name, but do not understand what specific human rights entail.

7.4.1.3 Not knowing the beneficiaries of the right to education

Under my first premise, I assumed that some learners perceive their right to education as belonging to a specific group of people. Learners' responses showed that some of them have a limited understanding of their right to education when it comes to matters concerning the beneficiaries of the right to education. Although the majority of learners' responses recognised that the right to education is universal, some perceived that it is reserved for a specific group of people. There was a trend of perceived beneficiaries, ranging from everyone has the right to education (universal) to all learners, learners who are attending school, or only educators (specific people)(see § 5.2.4). The assumption that learners have limited understanding of their right to education was substantiated in part, in that some learners have a vague understanding of who the beneficiaries of the right to education are.

7.4.2 Learners do not know how to exercise their right to education

In terms of my second premise I found that some learners do not know how to exercise their right to education. This premise was substantiated by data collected during phases two and three. The results from the two phases were presented together as an integrated whole. Under the second premise the assumption was that some learners regard their right to education as absolute while others believe that it may be limited. The findings confirm this assumption.

7.4.2.1 Learners absolutise their right to education

The empirical data indicates that some learners tend to perceive their right to education as being absolute. As noted earlier, learners believe that their right to education in a way encompasses other human rights, without being able to distinguish between them (see § 5.3.2). As a result, they perceive that the right to education is absolute, if it concerns:

- privacy and confidentiality of information;
- expressing one's ideas;
- language of instruction;
- subjects and school choices; and
- religion.

The learners believe that their right to education allows them to learn, to do and say anything and everything they want to, at any time, and that nothing or no one must stand in their way. They also think that their right to education allows them to learn in the language of their choice, select any subject and pray at any time that they wish to. In matters concerning privacy of information, some believe that the information about test results and illness should be confidential. All these perceptions point to the fact that learners do not know how to exercise their right to education and have a vague knowledge of human rights in general.

7.4.2.2 Learners do not understand how the right to education is limited

The right to education is a fundamental human right (Hodgson 1998:18-19; Singh 2003: 16). Everyone has the right to basic education, including basic adult education (the Constitution section 29) (see Table 2.7). However, like all other human rights entrenched in the Constitution the right to education can be limited. The criteria applied in order to limit the right to education were discussed under § 2.10).

Some learners know that their right to education can be limited. Although some understand this, the empirical data revealed that they do not know how it can be limited. Most of their responses did not refer solely to the criteria for limitation laid down in sections 29, 36 and 37 of the Constitution, but instead they referred to some impediments they perceived could impact negatively on their right to education. Their understanding of the criteria for limiting human rights is inexplicable because they seem to perceive the right to education as a right that one may enjoy under certain conditions. The

following concerns were mentioned as possible ways in which the right to education could be limited:

- by the code of conduct of the school;
- in order to protect the school image;
- the educational level of the parents;
- poverty;
- in order to protect the rights of other learners;
- by the authority in order to control conduct.

The above aspects were mentioned by learners as issues that could limit their right to education (see § 5.3.1). It seems as if learners refer to what they observe around them in their daily life and school career. I conclude that although some learners know that their right to education can be limited, they still do not understand the criteria laid down in the Constitution and the legal guidelines that could help them to apply the limitation.

7.4.3 Levels of human rights understanding

The literature indicates that the age at which learners understand human rights in more abstract terms is around 15 years and older (Covell & Howe 1996:252). Although the development of understanding may be retarded or enhanced by other contextual factors such as the school environment, socio-economic background, the amount of exposure to human rights experiences and cultural factors (see § 3.4), age is a significant determinant. However, contrary to the literature, this study seems to reveal that most learners in the study sample do not yet understand human rights at Level III. The findings showed that most of them still understand human rights at Levels I and II.

After analysing the data, it was found that learners employ different levels of reasoning in situations where the exercise of their right to education is in conflict with the wishes of the school authorities (premise three). Three levels of human rights understanding seem to exist (see § 6.2.1, § 6.2.2, § 6.2.3 respectively).

7.4.3.1 Pre-conventional level (Level I)

When analysing the data, I found responses that demonstrated that some learners' reasoning could be recorded under the family 'Pre-conventional level' (Level I). Their reasons for assertion or non-

assertion of their rights were based on the fear of punishment and unconditional respect for authority. They exhibited egocentric orientations, in which rights were perceived in terms of privileges that are bestowed or withdrawn on the whim of authority figures (see § 6.2.1).

7.4.3.2 Conventional level (Level II)

The majority of learners reasoned at the 'Conventional level' (Level II). Their reasons for the assertion or non-assertion of their right to education were based mainly on the protection of the school's image, interpersonal relationships, control of conduct, conformity, and law and order, that is, maintenance of the social system (the school). Various reasons were identified for the fact that learners were concerned with siding with the school authorities and the maintenance of the school's image (see § 6.2.2).

7.4.3.3 Post-conventional level (Level III)

The most advanced mode of reasoning was classified under the family called the 'Post-conventional level'. The empirical data indicate that although the learners did not express this level of reasoning unambiguously, they did show some degree of Level III reasoning (see § 6.2.3). There were learners whose reasons for asserting or not asserting their individual human rights were motivated by the need to protect human rights and the rights of others. They took cognisance of moral-ethical principles, like the right to human dignity, privacy, equality and basic freedom. They also understood that social systems, like schools, function effectively when there are codes of conduct. A school community enters into these social contracts deliberately. But rules may be changed if they are inconsistent with universal principles.

Some learners understood that individual human rights are balanced by social standards. The best explanation for the lack of Level III reasoning might be that the learners under investigation were not previously exposed to human rights experiences, since the previous school system did not provide that experience. Cherney and Perry (1996:243) note that previous exposure to human rights experience should improve levels of human rights reasoning (see §.3.4.3).

7.5 IMPLICATIONS OF THE FINDINGS

In this section, I discuss the implications of the findings in terms of my three premises, namely that some learners have limited understanding of their right to education; they do not know how to exercise their right to education; and they reason at different levels of human rights understanding.

7.5.1 Limited knowledge of their right to education

While the literature indicates that there is a tendency amongst learners to over-emphasise their rights without taking cognisance of their duties or responsibilities (Visser 1996:3), this study found that some learners know that their right to education involves responsibilities (see § 5.2.1) and that through their right to education, various opportunities may be accessed (see § 5.2.2). However, the fact that learners view the right to education as being reserved for a specific group of people and that they are unable to distinguish their right to education from other human rights, implies that they will not be able to exercise their right to education to the full. Consequently this will have a detrimental affect on the main aims of education and learners' enjoyment of their rights in later life. Adequate knowledge and understanding of their right to education is of great importance in learners' exercising their rights. Having inadequate knowledge of their right to education could impede learners from executing their moral duty, that is, the duty expected of them in connection with their community, parents and other social responsibilities.

The foundation for the survival and development of democracy is laid in schools designing teaching programmes that are directly aimed at conveying human rights values. Understanding and experience of human rights are important elements in preparing learners for life in a democratic society.

The fact that learners as old as 15-18 years are still not sure, after twelve years of democracy, whether or not they really have the right to education, implies a lack of seriousness on the part of schools and education management in disseminating information about human (learners') rights. In other words, this finding implies that the school system is not doing enough to make learners believe that they too have this right. Perhaps schools, through their activities and the way they are run, engender in learners the perception that they do not have rights. Traditionally schools have

been organised to provide instruction in a specific curriculum, designed or laid down by the authorities, in which the knowledge gained from each subject is compartmentalized, without any links to real life. Learners are required to be passive recipients of instruction and therefore it is not surprising that in such situations they would not have the courage to assert their right to education.

Some learners tend to confuse their right to education with other human rights. When asked questions regarding their right to education, they responded in terms of their right to freedom of expression, privacy, human dignity, religious rights, freedom and security of the person and of the environment. The implication of this finding is that this poses a threat to the survival of our newly-found democracy. One way to enhance democracy is through knowledge of human rights and the application of that knowledge to the benefit of individuals and society as a whole. Learners should be able to distinguish between human rights and understand what each human right entails. People who are systematically made aware of, know and understand their rights, are more likely to have the confidence to claim them.

7.5 2 Exercising the right to education

The implications of the findings for premise two are discussed in terms of the limitations of and absolutising the right to education.

7.5.2.1 Absolutising the right to education

There are learners who believe that their right to education is absolute. This finding has implications for school management. Exercising the right to education should start with the knowledge that this right does not apply arbitrarily to any one learner. All learners at school have to enjoy their rights on equal footing, without trampling on one another's rights, or else schools will become hostile environments where all learners do as they please. If all learners were to absolutise their rights, schools might degenerate into chaos, which would threaten the safety of all learners, with the consequences that the educational purposes of the school would not be realised (Prinsloo, 2005:10). This finding might contribute to an explanation as to why schools experience discipline problems and school violence (Van Vollenhoven 2005:202).

Another point to consider is the degree to which schools are committed to human rights in general. This was not entrenched in the previous national curriculum, and thus we are far from basic knowledge and understanding of human rights in general and the right to education in particular. In the past, the notion of human rights was unheard of and, all of a sudden, learners are now confronted with an array of human rights which they should know and exercise. This might be the reason why some learners perceive their right to education as absolute.

If learners absolutise their rights it shows disrespect for other people's rights. They should be educated in a way that would enable them to work and communicate effectively with others as a member of a team, group, organisation or community, as stipulated in one of the critical outcomes of OBE (DoE 2003:2). Learners should also understand their right to education in a way that would enable them to solve problems without resorting to anger or violence.

7.5.2.2 Not understanding the limitation of the right to education

It was evident from the data that some learners know that their right to education can be limited, but do not fully understand how it may be limited. The implications of this finding are discussed here in terms of the criteria learners perceive to be the basis for limiting the right to education. Those who said that their right to education can be limited ascribed the limitation to the following issues:

- Limitation in terms of the code of conduct;
- Limitation in order to protect the image of the school;
- Limitation in order to protect the rights of other learners;
- Limitation ascribed to the educational level of the parents;
- Limitation ascribed to a lack of responsibility;
- Limitation ascribed to socio-economic status (see § 5.3.1).

These aspects emerged as major possible limitations to learners' right to education as perceived by learners, although some of these aspects are not in line with the limitation criteria provided under section 36 of the Constitution. The finding that some learners do not fully know the criteria that are used to limit human rights, particularly their right to education seems to suggest that schools are not doing enough to enhance learners' understanding of human rights. Lack of knowledge could further impede learners' assertion of their rights

7.5.3 Levels of human rights reasoning and understanding

Learners employ different levels of understanding when interpreting dilemmas in which exercising their right to education is in conflict with the school authorities. The implication of this finding is discussed under the three levels of reasoning and human rights understanding as exhibited by learners' responses, namely the pre-conventional level (Level I), the conventional level (Level II), and the post-conventional level (Level III).

7.5.3.1 Human rights understanding at the pre-conventional level (Level I)

Some learners' reasons for asserting or not asserting their right to education were based on unconditional respect and obedience to authority and the fear of punishment or bad consequences that they perceive might happen to them. This finding implies that their level of human rights reasoning is at a low level (Level I). This mode of reasoning might have originated due to the cultural background of learners, for example, some cultures stress unconditional obedience to authority. Learners from poor societies have never experienced their rights being recognized, and they are therefore suspicious as to whether exercising their rights might result in punishment. The school is an institution that is supposed to enhance learners' reasoning and should develop their ability to think critically and develop into independent citizens. It should create strategies that enhance critical thinking and develop learners' reasoning potential that exemplify Level III reasoning, that is, principled reasoning. The literature stresses that the age at which learners should understand human rights at a more abstract level is around 15 years and above (Covell & Howe 1996:252).

The implications of this finding is that educators need to be aware of the level at which learners are operating, in order to provide effective motivation to enhance or to accelerate their rate of development towards a more advanced level of human rights reasoning. Learners at Level I (the punishment /obedience level) need to be encourage to proceed to Level II (the conformity and social system maintenance level).

7.5.3.2. Human rights understanding at the conventional level (Level II)

There were some learners in this study whose level of human rights understanding exemplified the conventional level of reasoning. Their justifications for asserting or not asserting their right to education were based on a conformity orientation, interpersonal relationships, control of conduct

and protection of the school's image. The literature indicates that learners who think in this way are still unable to make decisions on their own. They need systems of rules and regulations that give them directives on what to do. This contradicts the aims of OBE, which stresses the fact that education must develop decision-making and critical thinking habits within learners, and they must be able to use knowledge they have gained to solve problems they face in their daily life. Learners at Level II (the conformity and social system maintenance level) need to develop to Level III reasoning.

One can ascribe the Level II mode of reasoning to the fact that the previous school system required learners to abide strictly by school rules and regulations and the 'do it our way' philosophy. Most of the educators who are teaching today are products of the previous education system. The implication is that the development to principled reasoning and critical thinking is being retarded instead of accelerated, if schools and the home emphasise conformity and the maintenance of the social system. The blame cannot be placed only on the school system, since a learner is a product of different socialisation agents, such as faith communities, the home, the political environment, one's cultural and socio-economic background, experiences with human rights, and age.

7.5.3.3 Human rights understanding at the post-conventional level (Level III)

The post-conventional level (Level III) of human rights understanding is the highest level of ethical principled reasoning. People who reason at Level III understand that human rights are universal values and principles that all human beings have, by virtue of being human. To them, the validity of social laws is evaluated in terms of the degree to which they protect and serve fundamental human rights and values. Although some learners did exhibit reasoning at Level III, the majority of responses were classified under the first two levels. This implies that there is still room for those learners to develop to Level III of human rights reasoning and understanding.

Rowe (1992:80) argues that progress to the higher level can be accelerated by challenging learners at a particular level, with arguments pitched at the next level. In other words, progress through the stages takes place when a learner's thinking is challenged by a more advanced argument. This seems to suggest that educators should adopt open-ended approaches that require learners to interact mentally with the learning content and dilemmas at hand, in such a way that their existing mode of thinking is challenged and they contribute their own reflections. This would be the first step in ensuring that democratic values are promoted and sustained.

7.5.4 Learners' theoretical understanding of their right to education

When analysing the data it was found that learners' knowledge of human rights, and their right to education in particular, is limited. When answering questions directly related to their right to education, they give responses that concern other human rights to such an extent that they seem to interweave the right to education with other human rights. To them, the right to education seems to be the embodiment of other human rights and they scarcely referred to the right to education as provided for in the Constitution. Only on one occasion did grade eleven learners say that their right to education allows them to be educated in the language of their choice (see § 5.3.2.4). No learners referred to their right to compulsory education, until they were confronted with the scenario in which they were required to solve a dilemma concerning payment of school fees (see addendum R). Even though the right to education has inbuilt limitations, learners appeared to be unaware of such limitations.

The fact that learners have a limited theoretical understanding of their right to education poses a threat to the survival of democracy, because learners are the leaders of tomorrow; they should be able to think critically, solve problems without resorting to violence, and be able to respect the rights of others as they would like others to respect their rights. Learners should be able to differentiate between human rights as provided for in the Constitution, and know what each human right entails.

What came to the fore is that learners regard the school code of conduct as the basis for limiting their right to education and as the supreme law of the school, surpassing even the Constitution in importance. This might be a consequence of the bureaucratic nature of schools and their emphasis on strict adherence to the school's code of conduct. As a result, most learners regard the code of conduct and the authority of educators as unquestionable, although some consider school rules as being relative and changeable. Such anti-democratic trends compromise the teaching situation and learners' reasoning and understanding of human rights (Alderson 1999:186).

Some learners viewed their right to education as absolute. Again this is indicative of the fact that they do not understand that human rights are not absolute. They believe that their right to education cannot be limited if it concerns religious education, privacy and human dignity. The danger herein lies in the fact that absolutising human rights, either by a code of conduct or any other justification is not healthy for the survival of democracy. The fact that learners are reasoning mostly at Level I and not yet at Level III, and the authoritarian leadership style that is still rife in our school system, impact

significantly negatively on the development of a human rights culture, specifically the right to education.

7.6 SIGNIFICANCE OF THE STUDY

This section reflects on the interpretive significance of the findings of this study. While other studies address learners' understanding of human rights in legal and medical spheres, this case study expands the knowledge base by documenting learners' understanding of human rights in the educational sphere, in particular their understanding of their right to education. This study documents a case study from a rural school in a developing, twelve year old democracy. After twelve years in the 'new' democracy, learners are aware of human rights, but still need to learn to differentiate between various rights and to balance the rights with one another, using the values that underpin the Constitution.

This study found that, in the particular sample of learners selected, their understanding of human rights is limited. The right to education is a prerequisite for the enjoyment of other human rights; however it is threatened by the fact that learners still believe that it is a right that is reserved for a specific group of people. That, in itself, is a hindrance to the realisation of the right to education and consequently an impediment to the realisation of democratic values.

In this case study, the learners' levels of understanding and reasoning were not at the levels that could be expected in terms of Kohlberg's (1969: 376-386) theory of moral-ethical development. This mode of reasoning might have surfaced because these learners come from low socio-economic backgrounds and may have experienced their basic needs not being met (see § 3.4.7). The challenges facing schools and curriculum developers are to discover means and have strategies in place to enhance and accelerate the rate at which learners' reasoning and understanding of human rights develop. The school system also faces the enormous task of persuading learners that the right to education belongs to them too; if not, it will remain nominal and of no practical, social, economical and cultural value.

Another significant phenomenon is the fact that when the right to education is not asserted, learners tend to side with the school authorities. They exhibit unconditional respect for authority and defer to the supremacy of the school code of conduct. Although there are several aspects that influence learners' development of understanding of human rights and rights reasoning, the cultural

backgrounds and the school environment in which learners find them could have contributed toward this finding. The learners under investigation belong to a cultural group that emphasises unconditional respect for and obedience to authority, and a school system that is authoritarian. The authoritarian school system might have emerged from the fact that the notion of human rights was unheard of in the previous South African education system. These two modes of understanding (unconditional respect for and obedience to authority, and the perception of the supremacy of the school code of conduct) retard learners' development towards principled human rights understanding, including the principles that inform the right to education, namely human dignity, equality and basic freedom. The fact that learners tend to abandon their right to education in these ways, suggests that school authorities, education planners and government should take into consideration the cultural background of learners when designing the curriculum, so as to accommodate divergent perceptions of the right to education.

Furthermore, this study has shown that learners employ different levels and modes of human rights understanding. Most responses gathered exhibit understanding at Levels I and II. This finding is of great importance in that education planners and educators need to be aware of learners' levels of understanding and reasoning, in order to plan curricula accordingly and to design strategies to enhance the rate of development of human rights reasoning. Information about learners' concepts of their rights and the phenomenon of the exercise of their rights is necessary in designing structures and procedures for realising learners' rights in a manner that is protective of their other rights, particularly their right to education.

7.7 LIMITATIONS OF THE STUDY

The respondents of this study were purposefully sampled and the sample was small. Besides these limitations, this case study involved the learners of one school from a rural setting, one cultural group and one segment of learners aged between 15 and 18 years. I did not intend to seek global generalisation of the findings, but only to contextualise the findings within a bounded context. The patterns that evolved from the data are not representative of all learners in South Africa and it cannot be claimed that all patterns in learners' understanding of human rights have been identified. In this regard Stake (2000b:22) notes that particularisation of the finding is the lone distinction of merit. I cannot claim that one would achieve the same results with a more heterogeneous sample or that the results of this study apply to a broader sample beyond the scope of this study. Even if another unbiased researcher were to undertake a study within the same parameters as this study, it would be improbable that identical interpretations and findings would emerge (Gay & Airasian

2000:223). The greatest value of this study hinges on the fact that instead of producing findings that are generalisable, it points to new trends, which further studies may explore (see § 7.8.3).

I experienced difficulties with regard to gaining access to the school originally selected. Permission was granted from the circuit manager of the Soutpansberg East Circuit to conduct research at one of the secondary schools in this circuit (see Addendum H). One secondary school was purposefully selected, after which the principal was phoned and informed that his school had been selected. An appointment was made in order to discuss the arrangement with him. On arrival I introduced myself to the principal and gave him a letter of permission which I had obtained from the circuit office to conduct my research. The purpose of the study was explained, and what learners would be expected to do. Various documents were handed to the principal, including the letter of permission to conduct the research and the consent forms which the parents had to read and sign (see Addendum N). A date was arranged on which data collection should start. On the scheduled date the principal was not in and the deputy principal of the school had not been informed about my visit. A second appointment was made and confirmed with the principal telephonically. On the return visit, it was found that no arrangements had been made with the learners. I was told that the principal was very busy and could not attend to my request. Considering that my second attempt had failed, I decided to purposefully select another school. I followed the same procedures as I did with the first principal. This time I was more cautious and I succeeded in collecting the signed consent forms from the principal.

The focus group discussions and in-depth face-to-face interviews were conducted in Tshivenda. After transcription, I translated the text into English. I translated a few paragraphs word-for-word at first, only to find that some sentences were not clear, and I could not find English equivalents for some Tshivenda words in the context. Later on, where necessary, I translated the meanings of whole sentences. In order to ensure reliability, I asked one of my colleagues who is an English educator to translate one transcript in order to compare the resultant meanings.

Although I encountered difficulties in data collection and transcription, I was ultimately able to collect data rich in themes and patterns. I was then confronted with the problem of a massive amount of data. Analysing data manually is a laborious, tiresome and time consuming process. I asked an independent coder to help me with the coding and we then compared codes. I clustered the codes into categories, and the categories into families. On the bases of the fact that I worked in an interpretive paradigm, I assigned subjective meanings to the data in terms of the relationships

between the families; hence the possibility that another researcher would find other relationships between families is high.

Furthermore, I acknowledge that I am a black Tshivenda-speaking female (from a South African ethnic minority group) influenced by history, culture and religion. I found it hard not to interpret some of the learners' revelations as reflected by my own experiences, because I have experienced the violation of human rights as a result of the previous apartheid regime, and oppression in the name of culture. According to Blaikie (2000:252) it is difficult to report the results of the study purely from the point of view of the respondents. In this regard, Gay and Airasian (2000:223) note that researchers bring something of themselves into a setting and ultimately their individual backgrounds and preferences might surface in the outcomes of the research. I tried my best to be objective in conducting this research. I believe that everyone creates his own truth and I therefore cannot claim that my beliefs and experiences did not influence my research.

7.8 RECOMMENDATIONS

Yin (1993:31) indicates that a case study is an empirical inquiry that aims at investigating a particular contemporary phenomenon and the context within which a phenomenon is occurring. The contemporary phenomenon in this study is 'knowledge and understanding of the right to education' in a real life context (the school) (Miles & Huberman 1994:25). This case study was concerned with the discovery and understanding of meaning, as seen from the perspectives of those who were researched (the learners), and trying to comprehend their views and perspectives of the world, rather than my own (Smit 2001a:58).

In this section, I present my recommendations in line with the findings of this study, in terms of theoretical and practical recommendations, and those for further research.

7.8.1 Theoretical recommendations

Amongst the critical outcomes of the OBE, is to develop in learners critical and creative thinking skills and to enhance their understanding of democratic values (DoE 2003:2). Understanding of democratic values is important for the survival of our democratic South Africa, because values and morality give meaning to our individual and social relationships. These ideals cannot be realised if schools are authoritarian and emphasise conformity, as such processes discourage divergent

thinking. The right to education is a prerequisite for the enforcement and fulfilment of all other human rights; this right and all the values which underpin the Constitution need to be realised through human rights education. Human rights education is more than just lecturing or providing basic education; it is an overarching process of addressing all variables and systems in society. The education system should be able to produce a citizenry that is imbued with values and acts in the interests of society based on the respect for democracy, equality, human dignity and social justice, as promoted in the Constitution. This can be achieved if schools and stakeholders understand and respect learners' right to education, and are committed to exploring all avenues that will enhance the actualisation of this right (see § 7.8.2).

7.8.2 Practical recommendations

In Chapter 2 aspects were identified that could contribute towards a better understanding of the right to education and acceleration of the development of human rights understanding and reasoning from a lower level to a higher level. The findings indicate the following issues that need to be addressed:

Learners have a limited understanding of their right to education and other human rights. This was evident from the fact that respondents confused human rights with one another, and did not know what each right entails. Schools have the capacity to fully and effectively develop learners' understanding of their rights and to shape their attitudes. They are the potential agents for socialisation. I therefore recommend that the school curriculum should include human rights education as a compulsory subject, in order to enhance learners' understanding of human rights. I emphasise that human rights education must transcend the cognitive domain (knowledge of human rights) to include the affective domain (feelings and emotions, such as appreciation and sensitivity). This would involve not only teaching learners the provisions contained in the South African Bill of Human Rights and about human rights in general, but also transferring skills, values and attitudes necessary for the survival of a human rights culture and democracy. Thereafter the curricula should be expanded to include the provisions in the Convention on the Children's Rights and the Declaration of Human Rights. This should be in the form of a process, which would take time. People who are systematically made aware of, and know and understand their rights, are more likely to claim them and be able to apply them.

Some learners perceive the right to education as belonging to a specific group of people. They do not believe that they too, along with all other citizens, are entitled to the right to education. The reasons they bring forth for such perceptions include, among others, their socio-economic background and the level of education of their parents. Learners perceive these as potential impediments toward attaining an education. Learners experience poverty, illiteracy in the family and authoritarian school systems in their daily life, and one may not ignore the impact on learners' understanding of their right to education. Consequently I recommend that measures be taken to make education more accessible for the poor. Primary, secondary and ultimately, tertiary education should be made progressively free, where possible.

Learners do not understand how to exercise their right to education. Some learners tend to view their right to education as unlimited, while others express the knowledge that it could be limited, and there were a few isolated cases in which learners did not know whether or not limitation is possible. In this regard, it is recommended that schools should exemplify or be an embodiment of the culture of human rights. Schools should, through their ethos, policies, mission and eventually administrative activities, embody respect for human rights. The wording of the provisions of human rights in the Constitution and other human rights instruments is very abstract and there is a need to distil the meaning to an extent where learners know how the rights apply to them. Learning should go hand in hand with practical experience, exercising rights and executing duties in daily school life. As soon as issues of human rights are remote from learners' everyday, life they (human rights) seem to be dead words and there seems to be no incentive to learn about them.

There were learners whose level of human rights understanding and reasoning were at Level I and II, but rarely at Level III. Their reasons for asserting or not asserting their right to education were based on unconditional respect for and obedience to authority, fear of punishment or bad consequences that they perceive might happen to them, maintenance of the school's image and loyalty to the school. This finding implies that, with a low level of human rights reasoning, it is difficult for learners to exercise their right to education. It is important to engender in them the courage to stand up and claim their rights meaningfully and without fear. The teaching of human rights is recommended, using methods that will promote critical thinking skills and accelerate the development of Level III of human rights reasoning. Level III reasoning takes cognisance of ethical moral values and respect for one's own and other people's human rights. Learners must be engaged in discourses of dilemmas that contain moral and controversial issues (De Villiers *et al.* 2000:27).

The remedy lies with the government and the Department of Education in particular, to ensure that all learners are educated. Those who have already left school without obtaining basic education and functional literacy should be forced to pursue adult basic education, which should be free and compulsory. That would serve to redress past imbalances, particularly with regard to human rights education.

The education system should be able to contribute to a citizenry that is imbued with values and acts in the interests of a society based on respect for democracy, equality, human dignity and basic freedoms as promoted in the Constitution. This can be achieved if schools and the social communities understand and respect learners' right and are committed to explore all possibilities that will enhance the development of human rights reasoning to higher levels. Schools should be positive towards all learners, and recognize that all achievements are important, weather they be academic, artistic, musical or sporting. In short, what is needed is *education for human rights* not *education about human rights*

7.8.3 Recommendations for future research

The findings of this research are that:

- **Some learners have limited understanding of human rights, and of their right to education in particular**
- **Some learners do not know how to exercise their rights, especially their right to education**
- **Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the rights and duties of the school authorities.**

Various avenues for further studies are discussed in this section, which will be more effective and extensive if certain lacunae of the present investigation are considered.

This study analysed the understanding and reasoning about human rights of learners belonging to one cultural group, from non-affluent families, between the ages of 15 and 18 years, and attending a rural public secondary school in the Limpopo province. Future studies could perhaps focus on the participation of other cultural groups, and learners in primary schools, to ascertain what their understandings of human rights are, in particular their right to education.

The influences of socio-economic status, age, political changes, and cultural beliefs on how learners understand human rights might be an area for further research. The extent to which these variables affect learners and adults' perceptions of themselves, their future, and human rights is not known. In order to obtain such information, we would need to explore a number of thorny questions, namely:

- How should schools teach human rights to such an extent that learners gain courage to assert their rights?
- To what extent does practical experience with human rights influence the assertion or non-assertion of rights?
- How does/should the school system educate learners for human rights? How should that differ from human rights education offered by the legal fraternity?
- What is the influence of authoritarian school leadership styles on learners' development of understanding of human rights?
- What is the influence of school leadership styles on the survival of democracy and respect for human rights?
- How can human rights be taught at schools to ensure that learners' understanding and reasoning about human rights reach the post-conventional level (Level III)?
- How can human rights principles be established in schools?

7.9 EPILOGUE

In this chapter, I presented the overview, findings, implications and the recommendations that have emerged from this research. The purpose of this study was to analyse learners' understanding of human rights, particularly their right to education. All my three premises were substantiated.

Surprisingly, some learners have limited understanding of their right to education, which right is perceived in the literature as a prerequisite for the enjoyment of other human rights. They have a vague knowledge of human rights in general, and do not know how to exercise their right to education, despite the fact that they have lived in a democracy for more than twelve years.

Contrary to the literature which indicates that the levels of human rights understanding and reasoning of learners between the ages of 15 and 18 years should exemplify adult-like levels, the findings of this research indicate that there are some learners whose levels of human rights understanding and reasoning are still at lower levels (Levels I and II). This occurs particularly when

they are confronted with dilemmas in which they have to decide whether to assert or to abandon their right to education.

As a result of these findings, it can be argued that schools are not doing enough to make learners' right to education a reality and to enhance their levels of human rights understanding reasoning. Given the fact that some learners still understand human rights at the lowest level (Level I) it is assumed that there must be other explanations and influences that surround the development of rights understanding, besides the school.

This study concluded with a number of recommendations, including opportunities for further research. It is hoped that the strategies suggested in the recommendations will contribute to enhancing learners' understanding and realisation of their right to education, and their reasoning capacity, as these skills are important for the continued existence of democracy and the enjoyment of all other human rights. We must, however spare ourselves disappointment, and not pretend that we can enhance learners' knowledge, understanding and reasoning of human rights by means of a few human rights lessons over a month, a year or so. Certain human rights thoughts and attitudes are deeply embedded in traditions and cultural beliefs. Some human rights have been accepted or rejected according to beliefs and practices known and followed for generations. To be able to transform such entrenched thoughts and beliefs, human rights education will have to be a long-term process; the results of which will only become evident in future generations.

In conclusion, I quote from the following writers who encapsulate my philosophy about human rights:

If we can make learners appreciate anything, we should emphasise that human rights issues do not lie dormant in the dusty writings of philosophers long dead, but rather continue to evolve to advance our history in new ways (Nader, 1992:212)

The child's right to education is a requirement of human dignity. It is unacceptable that in the world of ours, possessing a store of scientific and technical knowledge unprecedented in history, there should be, side by side with the privileged people commanding access to the resources of knowledge, hundreds of millions, not only of boys and girls, but also of men and women, who are denied the possibility of simply learning to read and to write (M'Bow 1979:14-15).



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