

**A model to assist teachers in implementing  
children's rights in schools**

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## **DECLARATION BY CANDIDATE**

I, Tshose Phillip Maboe, hereby declare that the contents of this thesis represent my own unaided work. The thesis has not previously been submitted for academic examination towards any qualification. The ideas expressed throughout this research study reflect my own personal perspective.

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**SIGNED**

.....  
**DATE**

## **ACKNOWLEDGEMENTS**

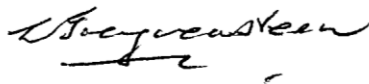
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Prof L A Greyvenstein was a member of the South African Translators' Institute, membership number: 1001691. She completed her primary, secondary and tertiary education, including a doctoral thesis, in English. She has done the English language editing of many proposals, dissertations, theses and scientific articles.

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## **ABSTRACT**

The global approach that pleads for the equality of all human beings and respect for human rights reaches children as well. Universal human rights should be awarded to all people and for all institutions, and, therefore, schools and children are no exception. Children's rights form an integral part of human rights.

This study sets out to explore a management model to assist teachers in implementing children's rights. The study argues that schools are expected to be places of support and respect for children's rights. Instead, extreme violations take place in some schools. This occurs in spite of the children's rights laws that are in place. Most of the human rights transgressions are committed by teachers. The study offers a new approach for teachers to respect and promote children's rights in schools. The new approach is in the form of a model.

A literature study and empirical research were undertaken, including national and international factors influencing children's rights. A number of serious gross violations were also explored. Qualitative focus groups and in-depth interviews formed the basis of the empirical research. Finally, a content analysis was conducted to categorise and evaluate data.

The findings revealed that teachers still use corporal punishment, even if it is totally outlawed. Other violations discovered included the following: verbal abuse, sexual relationships with girl learners, failure by teachers to attend classes and failure to treat all learners equally.

Recommendations in this study emphasise the need to train student teachers regarding human rights education. An induction programme for newly appointed teachers is viewed as ideal. Workshops are also

recommended for both the teachers and Teacher Liaison Officers (TLO's). The study finally identified areas in which further research should be done.

**Key words:** children's rights, human rights, human rights education, human rights culture, children's rights laws, violation of children's rights

## **OPSOMMING**

Die wêreldwye benadering van gelykheid vir alle mense en respek vir menseregte geld vir kinders ook. Die universele beginsel van menseregte moet geld vir alle mense en alle instellings, insluitende skole, en kinders is nie 'n uitsondering nie. Kinderregte vorm 'n integrale deel van menseregte.

Hierdie studie poog om 'n bestuursmodel te ontwikkel wat onderwysers kan help om kinderregte te implementeer. Die studie meen dat skole veronderstel is om die plekke van ondersteuning en respek vir kinderregte te wees. In stede daarvan vind ekstreme oortredings in skole plaas. Dit ten spyte van die kinderregwetgewing wat in plek is. Die meeste van hierdie menseregteskendings word deur onderwysers begaan. Die studie bied daarom 'n nuwe benadering aan onderwysers met betrekking tot respek vir en bevordering van kinderregte in skole. Die benadering word aangebied in die vorm van 'n model.

'n Literatuurstudie en empiriese navorsing is onderneem om beide die nasionale en internasionale determinante van kinderregte te bepaal. 'n Paar ernstige oortredings is ook bestudeer. Kwalitatiewe fokusgroepe en in-diepte onderhoude het deel uitgemaak van die basis van die empiriese navorsing. Inhoudsanalise is gebruik om data te kategoriseer en te evalueer.

Die bevindings toon dat onderwysers steeds lyfstraf gebruik, selfs al is dit geheel en al verbode. Ander oortredings sluit die volgende in: verbale misbruik, seksuele verhoudings met meisieleerders, versuim van klasse en nie-gelyke behandeling van leerders.

Aanbevelings vir hierdie studie sluit in dat student-onderwysers opleiding moet kry rakende menseregte. 'n Inleidingsprogram vir nuut-aangestelde

onderwysers is ideaal. Werkswinkels word aanbeveel vir onderwysers. Die studie het laastens areas geïdentifiseer waarvoor verdere navorsing gedoen moet word.

**Sleutelwoorde:** kinderregte, menseregte, menseregte-opleiding, menseregtekultuur, kinderregtewetgewing, oortreding van kinderregte

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## **LIST OF ACRONYMS**

ACERWC	:	African Children's Charter on the Rights and Welfare of the Child
ANC	:	African National Congress
CA	:	Children's Act
CAPS	:	Curriculum Application Policy Statement
CIHR	:	Cambodian Institute of Human Rights
COSATU	:	Congress of South African Trade Unions
DRC	:	Democratic Republic of Congo
ECECR	:	European Convention on the Exercise of Children's Rights
ECHR	:	European Convention of Human Rights
EEA	:	Employment of Educators Act
EFA	:	Education for All
EMD	:	Education Management Development
HRTM	:	Human Rights Teaching Methodology
HURISA	:	Human Rights Institution of South Africa
ICCER	:	International Covenant on Civil and Economic Rights
LRC	:	Legal Resources Centre
MDG	:	Millennium Development Goals
MEC	:	Member of the Executive Council
NAPTOSA	:	National Professional Teachers Organisation of South Africa
NCS	:	National Curriculum Statement

NEPA	:	National Education Policy Act
NGO	:	Non-Governmental Organisation
NWU	:	North-West University
PAM	:	Personnel Administrative Measures
RAPCAN	:	Resources Aimed at the Prevention of Child Abuse and Neglect
RCL	:	Representative Council of Learners
RSA	:	Republic of South Africa
RTE	:	Right to Education
SACE	:	South African Council for Educators
SADTU	:	South African Democratic Teachers Union
SAHRC	:	South African Human Rights Council
SAPS	:	South African Police Services
SASA	:	South African Schools Act
SGB	:	School Governing Body
SGD	:	School Governance Development
TLO	:	Teacher Liaison Officer
UDHR	:	Universal Declaration of Human Rights
UK	:	United Kingdom
UNCRC	:	United Nations Convention of the Rights of Children
UNESCO	:	United Nations Economic, Scientific and Cultural Organisation
UNICEF	:	United Nations Children's Fund

# **CHAPTER 1**

## **ORIENTATION**

### **1.1 INTRODUCTION AND BACKGROUND**

A human rights culture is widely accepted and promoted in most countries of the world, including South Africa. This has led to the realisation that children, as human beings, also have rights. One can consequently also speak of a children's rights culture. It is a culture that is dedicated to the promotion and implementation of children's rights in society. Historically, education is a fundamental human right (Himes, 1995:143-144) and a constitutional imperative that affords diverse educational rights to children (Bekink & Bekink, 2005:125-127).

Children's rights are also widely recognised in both international and regional instruments such as the United Nations (UN) Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Convention on Discrimination in Education, the African Charter on Human and People's Rights and the African Charter on the Rights and Welfare of the Child (Hart, Cohen, Erickson & Flekkoy, 2001:16). The above international determinants of the rights of children provide a moral code for how children should be treated. They require member countries to enact appropriate legislation to give these rights a concrete form (Sund, 2006:327).

In South Africa, following international trends, the Constitution (Act 108 of 1996) (SA, 1996a), the South African Schools Act (Act 84 of 1996) (SA, 1996c) and the National Education Policy Act (Act 27 of 1996) (SA, 1996b) are designed to complement one another to promote a human rights culture in education. Such laws endorse the diverse rights that children are entitled to in the community and at school. These laws are opposed to any behaviour that threatens the

dignity, safety and fundamental rights of any person, including a child (Joubert, De Waal & Rossouw, 2004:79).

Ensuring children's rights presupposes a series of obligations that include giving the child physical and psychological care, as well as supervision (Sund, 2006:328). The exercise of supervision means that a third party is obliged to protect the child. Educators, more than any other stakeholder, spend much time with learners at schools and, as third parties, are expected to protect all learners under their care against all forms of abuse and unfair discrimination. Teachers should provide a safe and stimulating environment for quality education to take place (Shumba, 2003:254-255). Oosthuizen, Rossouw and De Wet (2004:66) are of the opinion that teachers are obliged to ensure the physical, spiritual and intellectual well-being of their learners. This is supported by Joubert and Prinsloo (2001:147), who see the protection of children's rights as a compulsory role of educators. Schools are, therefore, places that should ensure that children enjoy their rights fully and without barriers.

A number of policies in South Africa are already in place to ensure children's rights in schools, for example:

- corporal punishment is a thing of the past in all schools in terms of sections 10, 11 and 12 of the Constitution of South Africa (Rautenbach & Malherbe, 1998:16);
- the stipulations of the South African Council for Educators' Code of Professional Ethics for Educators aim at ensuring children's rights by clearly stipulating that an educator should refrain from any form of child abuse: physical or psychological (SACE, 2006); and
- The South African Schools Act (SA, 1996c) also contains a number of stipulations that protect children's rights in the school, for example, Chapter 2 of the Act ensures that learners enjoy the right to education, are not refused admission to a

school, are not discriminated against on whatever grounds, and are not subjected to corporal punishment.

In spite of the favourable legislation promulgated in South Africa to protect and further children's rights, abuse and neglect still occur in schools. Schools do not adhere to the above stipulations. Cases of corporal punishment, cases of unhealthy relationships between teachers and girl learners, discrimination against pregnant girl learners and refusal of admission are reported daily in newspapers and other literature. The problem of neglect of children's rights is rife in schools. Acts that violate children's rights occur in schools daily. Thus this study investigates how teachers implement children's rights and what challenges they face in carrying out this task.

## **1.2 RELATED LITERATURE**

Since 1994 research in South Africa has shown a heightened interest in "children's rights to, in and through education" (Lundy, 2006:342). While some research deals with a human rights culture (Sarkin, 1998) and children's rights in society (Horsten, 2003; Lundy, 2006; Sund, 2006), some studies specifically address children's rights in education (Ziller, 1999; Maluleka, 2001). The above studies unearth a number of problems related to implementing children's rights. Sloth-Nielsen (1996:323) argues that laws are words on paper and the real results depend on how these laws are implemented. In support of this sentiment, Sarkin (1998:628) notes that a human rights-based constitutional democracy is proving to be a challenging task.

In other countries several studies have been conducted on the implementation of children's rights by way of ensuring that the stipulations and expectations expressed in the United Nations Convention on the Rights of the Child (UNCRC) are adhered to. Murray (2010) and Bardy (2000) indicate that the implementation of children's rights revolves around three P's, viz., provision, protection and participation. Provision includes the satisfaction of basic needs

such as food and shelter, while protection focuses on abuse and neglect of children, and participation centres on the right to participate in decision making (Murray, 2010:391). Research on the aspect of provision and protection tends to take a social welfare perspective and includes studies on abuses of children's rights (Tine & Ennew, 1998; Nieto & Pang, 2005; Shuttleworth, 2008), care of children in detention (Harding & Morgan, 2008), provision of health care to children (Kruger, 2004) and provision of shelter (McMurray, 2004). The findings from these studies indicate that cases of abuse and neglect are still prevalent in most countries. Attempts to address this situation in schools typically refer to different teaching strategies that educators can use in implementing children's rights in curriculum delivery (Nieto & Pang, 2005) and the suggestion that teacher education courses should incorporate knowledge and awareness of human rights principles (Shariff, 2006:478).

Research indicates that the aspect of participation is still a challenge in several countries. Murray (2010:402), writing about Rwanda, asserts that participation lags behind the aspects of provision and protection in the implementation of children's rights. Shariff (2006:476-496) mentions that in Canada, schools pay lip-service to the notion of "democratic school environments". In South Africa, research dealing with school governance shows that the participation of learners in matters of the School Governing Body presents unforeseen challenges (Heystek, 2001).

The above discussion shows that implementation of children's rights in schools still provides a challenge and requires further investigation. In search of solutions to the challenges facing implementation of children's rights, models are developed. In educational management models address the aspects of management and leadership. Bush (2007) presents a typology that matches management models with leadership models. Bush (2007:401) concludes that good management is not an end in itself, but an essential aspect, the

central aim of which is effective teaching and learning. Tam and Cheng (1996) discuss multi-models of school education quality. These authors (1996:16) maintain that different models emphasise different aspects of school quality education and propose strategies to enhance it. There is, however, no mention of how specific areas in the school, for example, learners, should be managed. It may be concluded that all these models provide frameworks that may be useful in developing a management model for the implementation of children's rights.

Models that specifically deal with the implementation of children's rights are few and far between. Murray (2010) proposes a parallel model and a hierarchical model of implementing children's rights. Basing the models on the mentioned three P's, Murray (2010:392) sees a hierarchical model as a model in which provision, protection and participation are addressed in sequential order, while in a parallel model the three P's are addressed simultaneously.

In any case, Murray's (2010:401) findings indicate that the implementation of children's rights, especially participation, is poor due to the specific circumstances found in Rwanda. In South Africa, for example, it appears that provision is accounted for with legislation, but protection and participation are still problematic due to the legacy of Apartheid and socio-cultural circumstances. This shows that a model that addresses protection and participation is necessary in the case of South Africa.

Hart provides the model of the ladder of young people's participation, and Fletcher (2008) focuses on the last P. The model suggests eight levels of participation, indicating degrees of participation. The first four rungs, manipulation, decoration, tokenism and youth informed are regarded as no participation, because participation only reinforces the perception that the youth are involved while the youth do not have an impact on decision making. In rung number five, consultation with youth takes place, but they are involved subject to the approval of

adults. From ladder 6 to 8 true participation takes place. This ladder of participation is a useful tool to gauge the level of participation of youth in community affairs.

These models do not take cognisance of the unique socio-cultural circumstances of a country and present a general model of participation. It is a fact that in South Africa participation is a novelty that is difficult to implement. The above models show the need to develop a model that will enable teachers to address the three P's effectively and that integrates all three P's.

Due to socio-economic and political circumstances of different countries it appears reasonable to develop a model that will take into consideration the unique circumstances within which the education system exists in South Africa. This study identifies a need for developing a model that suits the socio-cultural circumstances of the country. It advocates a model that will enable teachers to implement children's rights in a meaningful way, taking into consideration the socio-cultural and economic background of the schools in South Africa.

In the next section, the problem identified above receives more attention.

### **1.3 STATEMENT OF THE PROBLEM**

In spite of the progressive legislation and the Constitution at our disposal, indications in South African schools are that children's rights are not given the first consideration (Valley, 2002:20). Translating legislation into practice provides a number of challenges to those who should ensure children's rights. Some schools continue to treat children in ways that are unacceptable, ways that express contempt for the values of a free society (Franklin, 1995:25). Some of the challenges experienced in implementing children's rights are:

- Even though corporal punishment has been declared illegal, it is still commonly used in the school system in South Africa and also globally (Anon, 2004a:6; Hart *et al.*, 2001:53; Du Bois, 2002:1-4).
- Rape, sexual abuse and harassment, bullying and assault are common in South African schools (Mawson, 2004:3; Prinsloo, 2006:313; De Wet, 2006:63-64; SAHRC, 2006:1). According to Galloway (2002:4-5), most of the women raped in South Africa are below the age of fifteen and the perpetrators are often male school teachers.
- Furthermore, pregnant school girls are expelled from school on the grounds of their pregnancy or based on the fact that they have given birth to a baby (Ho, 2002:5). This is not the right way of respecting our learners and of acknowledging their dignity and integrity (Oosthuizen, Rossouw & De Wet, 2004:53).
- The charging of fees restrict access to basic education for the poor (Roithmayr, 2003:392) as 70% of children in South Africa live in poverty and 25% are stunted by malnutrition (Valley, 2002:20).
- Learners are denied basic education due to a lack of resources (Bekink & Bekink, 2005:133). Indigent children are sent home or their results are withheld by educators and the School Governing Body because of the non-payment of fees (Valley, 2002:20).

The literature is silent on the causes of this neglect of children's rights. It concentrates on reporting cases of abuse and how to deal with abuse and neglect in schools. From the causes of neglect of human rights mentioned by Mudzongo (2003), culture and subculture lack of prosecution of perpetrators and attitudes seem to be relevant to

teachers. If a school's culture does not include respect for human rights, teachers in the school will follow suit. The teachers may also hold the view that respecting children's rights interferes with discipline and presents teachers as soft in a culture where teachers are expected to be no-nonsense, tough customers to be feared by children (see Mudzongo, 2003:23). Moreover, teachers may protect each other when one has transgressed because of the buddy-system. The authorities may create the impression that one can transgress with impunity with the delays in prosecuting perpetrators (Mosoge & Taunyane, 2012:197).

Murray (2010:388) mentions the perception that affording human rights to children is a Eurocentric practice that has no place in developing countries. In a developing country such as South Africa, teachers may, therefore, see no need to respect children's rights. Another reason may be inadequate and limited knowledge of children's rights among teachers as found by Ersoy (2012:360) in his research.

The human rights culture has tended to overemphasise rights at the expense of responsibilities. According to Reid (2007:48), if learners accept rights without any acceptance of responsibilities, then teaching could become even more difficult than it has already been. Training on the dynamics of the violation of children's rights is vital to increase awareness and sensitivity among educators (Blair, 2001:337-343). While legislators are grappling with giving children's rights a concrete form, teachers and parents are struggling to come to terms with balancing rights with responsibilities.

While the implementation of a human rights culture presents problems among adults in society, it acquires greater significance in the schools, which are populated by young, largely immature learners. The above-mentioned studies do not address how teachers perceive, experience and implement a children's rights culture in a milieu dominated by a culture where children are usually seen and not heard. The major

question that arises is: How do teachers implement children's rights in schools and what challenges do they face when confronted with this task?

This study, therefore, attempts to answer the following research questions:

1. What do children's rights in schools entail?
2. How do teachers implement children's rights in schools?
3. What challenges do teachers encounter when implementing children's rights?
4. What are the perceptions and experiences of teachers with regard to implementation of children's rights in schools?
5. What management model can be developed to assist teachers to implement children's rights?

#### **1.4 AIMS OF THE STUDY**

The main aim of this study is to investigate the implementation of children's rights in schools by teachers. The sub-aims of the study may be stated as follows:

- Aim 1: To gain an understanding from a literature study of what children's rights in schools entail.
- Aim 2: To explore how teachers implement children's rights in schools.
- Aim 3: To determine the challenges that are encountered by teachers in the implementation of children's rights in schools.
- Aim 4: To explore teachers' experiences and perceptions with regard to implementation of children's rights in the schools.

Aim 5: To develop a management model that will assist teachers in implementing children's rights in schools.

## **1.5 RESEARCH DESIGN AND METHODOLOGY**

### **1.5.1 LITERATURE STUDY**

The literature review provides a framework for establishing the importance of the study, as well as a benchmark for comparing the results of the study with other findings (Creswell, 2003:30). It adds much to an understanding of the selected problem and helps to place the results of the study in a historical perspective (McMillan & Schumacher, 2001:108). Therefore, a literature study of both local and international sources was undertaken to determine the nature of children's rights.

Both primary and secondary literature sources were employed in gathering information on the implementation of children's rights in schools. EBSCO-HOST, NEXUS and ERIC searches were conducted to locate relevant and appropriate sources. The following key words were used in the searches:

*Children's rights, children's education rights, human rights in education, human rights education, human rights culture in schools, constitutional rights and education, undemocratic schools, traditional rights of educators, unfair discrimination in schools, equal educational opportunities, international children's rights, children's rights laws, case law on children's rights, diverse barriers on children's rights, and management model.*

### **1.5.2 RESEARCH PARADIGM AND METHODOLOGY**

The researcher used the interpretivist framework in order to gain knowledge and an understanding of children's rights from the perspective of the participants. The descriptions of beliefs, values, intentions, and reasons offered by participants with regard to the

implementation of children's rights in schools (Henning, 2004:20) clarified the meanings that participants attach to children's rights. According to Nieuwenhuis, Beckman and Prinsloo (2007:59), interpretivist researchers attempt to understand phenomena through the meanings that people assign to them. The researcher in this study focused on the participants' experiences, their understanding of children's rights and what they consider to be limitations in implementing children's rights within the context of the school and its surrounding community. The researcher will not be completely divorced from the interpretations of the participants because in the interpretive framework very little distinction is made between the subject and the object (Jansen, 2007:21; Leedy & Ormrod, 2005:135). In fact, the researcher is a school inspector (circuit manager) in the education district where the investigation was carried out and this enabled him to apply his interpretation based on his understanding of the context of the participants.

#### **1.5.2.1 QUALITATIVE APPROACH**

The use of the interpretivist framework is often seen as implying the adoption of a qualitative research approach. While Nieuwenhuis, Beckman and Prinsloo (2007:56) is opposed to such a classification, it seems useful to justify why the qualitative approach was adopted rather than the quantitative approach. In this study, the researcher was interested in exploring, understanding, describing and explaining events and experiences rather than the identification of cause-effect relationships (Willig, 2008:8-9; Leedy & Ormrod, 2005:137), which can best be done through qualitative rather than quantitative research. The qualitative approach is relevant because it allows the participants to express their ideas in words that will be captured and used to describe the implementation of children's rights. Moreover, the implementation of children's rights is a complex phenomenon that involves continuous interaction between the learners and the teachers where norms, beliefs and attitudes are exchanged. This can best be

done through the application of qualitative research (De Vos, Strydom, Fouché, Poggenpoel & Schurink, 1998:243).

Within the qualitative research design, data gathering techniques or methods include interviews, observations, case studies, an ethnographic approach, grounded theory and discourse analysis (Henning, 2004:40-45). The interview was selected for use in this research for reasons that will be clarified in the next section.

### **1.5.2.2 POPULATION AND SAMPLE**

In this research the population was drawn from the Ngaka Modiri Molema District, Area Office of Lichtenburg in the North West Province of South Africa. Purposeful sampling was used; a procedure during which the researcher identifies and locates individuals who are knowledgeable about the phenomenon of children's rights (Johnson & Christensen, 2004:215). According to McMillan and Schumacher (2001:404), purposeful sampling does not aim to involve a large number of randomly selected participants, but a few information-rich key participants who can provide many insights on the topic. To this end, in-depth individual and the focus group interviews were conducted:

- Focus group interviews were conducted with Teacher Liaison Officers (TLO's) in 21 schools in the Area office, consisting of four primary schools, six middle schools and eleven secondary schools from the four circuits of the Area office of Lichtenburg. Each focus group comprised of 6 teachers (Willig, 2008:21). While teachers were assigned randomly to the focus group interviews, care was taken to include TLO's as teachers belonging to the pastoral care committee. As people charged with the implementation of children's rights in schools, it may be assumed that these participants have in-depth knowledge of the implementation of children's rights and are rich in

information concerning the challenges teachers experience in implementing such rights (Willig, 2008:31).

- In-depth individual interviews were conducted in two sets. The first set was with 8 teachers from eight schools.
- In-depth individual interviews were also conducted with one functionary charged with the implementation of children's rights on behalf of the Area Office of Lichtenburg

During the formation of these groups, practical factors were taken into consideration, *viz.*, the homogeneity of the group, proximity of members, group size, limitation of costs and time, and easy access for the researcher.

### **1.5.2.3 DATA COLLECTION METHOD**

Data were collected using individual and focus group interviews. Individual interviews presented an opportunity for the researcher to interact on a one-on-one basis. This allowed more disclosure from the participants on the sensitive subject of children's rights (Willig, 2008:31). The focus group interviews acted as a great source of data because the participants queried each other, explained themselves to each other, challenged each other's contributions, extended, developed and qualified their views in ways that generated rich data (Hesse-Hiber & Leavy, 2006:200). The researcher used a tape recorder and made notes in order to capture and structure the experiences, beliefs, views and feelings of participants about the implementation of children's rights in schools.

The researcher used an interview schedule to conduct the interviews. According to Neuman (2006:276), an interview schedule is "a set of questions read to the respondent by the interviewer, who also records responses". The question items for the interview schedule were derived from the literature study to answer the research questions and meet the research aims. De Vos *et al.* (1998:297) are of the opinion

that interview questions should focus on the theme of the research in order to gather relevant information.

#### **1.5.2.4 DATA ANALYSIS**

The researcher used content analysis to analyse data and to achieve the aims of this research. The researcher listened to the audio-tapes, read transcripts and studied field notes in order to familiarise himself with the data. Concurrently, the researcher conducted open coding by marking or highlighting and coding sentences and phrases in the transcripts according to analytical and theoretical ideas developed during the literature study (Hesse-Hiber & Leavy, 2006:350; Willig, 2008:35). Focused coding was applied to develop a set of analytical categories that could be used for grouping topics. These topics related to each other, and in this manner the researcher could arrive at major themes (Creswell, 2003:192). The various major categories or key themes were used to develop an overall description of the data (McMillan & Schumacher, 2001:468; Henning, 2004:104-109).

#### **1.5.2.5 TRUSTWORTHINESS**

Trustworthiness is used as measure to establish the quality of the research findings, to reduce reactivity and bias and to give priority to participants' perceptions over those of the researcher (Lietz, Langer & Furman, 2006:443). In qualitative research, trustworthiness is used to establish the validity and reliability of the data (Leedy & Ormrod, 2005:100; Golafshani, 2003:601-602). In an attempt to establish trustworthiness, the researcher ensured that the study conformed to the criteria of trustworthiness, which includes truth-value, transferability, applicability, consistency and neutrality (Creswell & Clark, 2007:133-135; Leedy & Ormrod, 2005:100).

In order to meet the above criteria, the researcher employed the following techniques: triangulation, member checking and peer review.

### **1.5.3 ETHICAL ASPECTS**

The researcher adhered to ethical measures during the research in order to ensure the safety and rights of the participants. Care was taken to observe and carry out adequate ethical measures (Creswell, 2003:69; Koshy, 2005:83-84). The researcher:

- ensured that participants remained anonymous;
- ensured that the information is kept safely at the university and out of reach of unauthorised persons;
- provided an accurate account of the information;
- used unbiased language regarding race, gender, ethnic groups, sexual orientation, disability or age in drawing up the interview schedule and in conducting the interviews;
- avoided fraudulent practices such as suppressing, falsifying or inventing findings to meet the researcher's or audience's needs. The data were recorded honestly.

The research proposal and interview schedule were submitted to the NWU Ethics Committee for approval. Participants completed the Informed Consent Forms, which declared that they participate willingly and have the right to withdraw from the research at any time without adverse consequences. The prescribed research request documents from the Lichtenburg Area Office of the North West Department of Education and Training was completed and submitted for approval to conduct research in purposefully selected schools. The request documents were not in any way used as official instruction to persuade participants to be involved in the research.

### **1.6 CONTRIBUTION OF THE STUDY**

The research will contribute to a deeper and better understanding of what children's rights entail, will clarify the role of teachers in implementing children's rights and generally provide an overview of the current state of affairs concerning the extent to which children's

rights are ensured in schools. Through this research a number of challenges regarding implementation of children's rights will surface, which will make it easier to provide a coherent response to these challenges.

Most importantly, on a practical level the envisaged management model will present a guide to teachers on how best to implement children's rights in schools. It will also assist departmental functionaries charged with ensuring the implementation of children's rights by offering a much needed guide for training of liaison officers stationed in schools. It is envisaged that the management model will be an additional aid in efforts to make educational institutions more effective by ensuring a safe and conducive environment for teaching and learning. On the theoretical level, the management model will identify themes that constitute a culture of children's rights and assist further research on how these themes influence each other to produce a desirable culture that underpins the values of a democratic society.

## **1.7 CHAPTER DIVISION**

The research divides into the following chapters:

Chapter 1: Orientation

Chapter 2: The nature of children's rights from an educational law and management perspective

Chapter 3: The educator's role in the implementation of children's rights in schools

Chapter 4: Empirical research design

Chapter 5: Data analysis and interpretation

Chapter 6: A conceptual model for promoting children's rights

Chapter 7: Summary, findings and recommendations

## **1.8 SUMMARY OF THE CHAPTER**

The chapter oriented the reader in terms of the research. This included a discussion of the research problem, a brief outline of the research aims, as well as the methods used to realise the research aims. The population and sampling techniques were explained. The ethical standards of the research were accounted for. The chapter ended with the indication of a further chapter division. The next chapter exposes the nature of children's rights from an educational law and management perspective.

## **CHAPTER 2**

### **THE NATURE OF CHILDREN'S RIGHTS FROM AN EDUCATIONAL LAW AND MANAGEMENT PERSPECTIVE**

#### **2.1 INTRODUCTION**

The purpose of this chapter is to explain the nature of children's rights in the school system from both the educational law and management perspectives. An understanding of these perspectives provides muscle to assist in the promotion and development of children's rights in schools. To understand the objectives of this chapter, concepts will be explained. The chapter will give a brief history of human rights according to a timeline. All determinants relevant to children's rights will be explained and linked to this study. The chapter will also provide examples of gross violations of children's rights in schools. Finally, the chapter will end with a summary that will introduce the next chapter.

#### **2.2 EXPLANATION OF CONCEPTS**

##### **2.2.1 HUMAN RIGHTS**

Human rights are those rights that are inalienable and belong to all human beings. They are rights necessary for freedom and the provision of a reasonable quality of life. The notion that rights are inalienable, universal and inherent to the well-being of an individual was introduced by the Universal Declaration of Human Rights (UDHR) in 1948. Some human rights are also non-derogable. Such rights include the right to life, the right to be prosecuted according to the laws that are in existence at the time of the offence, the right to be free from slavery and the right to be free from torture (Anon, 2010:1-4; UDHR, 1948:1; Moyn, 2010:1-7).

Villiers (2001:1-3) asserts that human rights have three distinct characteristics that can be explained as follows:

- They are inherent. Human beings are born with them.
- They are universal. All human beings across the world are born with them.
- They are inalienable. They cannot be given away, either by ourselves or by other people. For instance human beings cannot voluntarily sell themselves into slavery in order to be fed.

Human rights are fundamental rights that humans have for the fact of being human. A person does not need to possess any other qualification to enjoy human rights other than the fact that he or she is a human being (Mubangizi, 2004:3-7). Such fundamental rights are supported by several international conventions and treaties like the Universal Declaration of Human Rights (UDHR) of 1948 with a package of cultural, economic and political rights that includes the right to life, liberty, education, and equality before the law, and the right to freedom of association, belief and free speech.

They are further perpetuated by, most importantly, the European Convention on Human Rights (ECHR) of 1954 and the International Covenant on Civil and Economic Rights (ICCER) of 1966.

Promulgation of these rights forms the basis of many modern national constitutions.

Arat (2006:2-9) explains human rights as the rights held by individuals and claimed from the state and society. Such rights derive from moral and ethical sources and enjoy both political and legal support. They ensure that the dignity of every person is promoted and protected. Moral rights are inherent rights to which each human being is entitled. Legal rights on the other hand are established in local, national and international laws. They are enforceable rights controlled by stable governments and intergovernmental organisations.

O'Byrne (2003:26-28) presents a definition of human rights as a set of ethical principles that seek to ensure the equal worth of each individual life and which are applicable to all people at all times and in all places. The definition also includes the following three properties of human rights:

1. Universality of human rights: human rights belong to each of us regardless of ethnicity, race, gender, sexuality, age, religious conviction and typical government.
2. The incontrovertibility of human rights: human rights are absolute by any political authority.
3. The subjectivity of human rights: human rights are the properties of individual subjects who possess them because of their capacity for rationality, agency and autonomy.

### **2.2.2 HUMAN RIGHTS CULTURE**

The human rights culture is a universal concept related to the fundamental rights of all people. The culture of human rights originates from the birth of the UDHR of 1948, which legally and globally enforced the practice started during the Renaissance period. Since then it became the 'culture' for international relations. It became a widespread practice respected and protected by law.

The human rights culture recognises, respects and protects all human beings as free and equal in dignity and right. It is a way of life in which personal and social human relations are based on respect of human dignity, without any kind of discrimination (Dudley *et al.*, 2007:1-8).

A human rights culture is a milieu in which the human rights of men, women and children are not violated by other human beings or societal institutions. It is an environment where everyone respects the principles, norms and values of human rights. It is a way of being in the world as the subject of rights, a way of respecting one's dignity and the dignity of others. It is a culture in which human rights and

fundamental freedoms of all individuals are fully recognised and implemented (Dudley *et al.*, 2006:1-14).

### **2.2.3 CHILDREN'S RIGHTS**

The term 'rights' can be defined in different ways. The term can mean advantages conferred to a person by a rule of law. It can mean a kind of claim, or an interest or benefit recognised by law. Rights are protected choices (Akwara, Soyibo & Agba, 2010:27-29; Archard, 2002:3-37). Children, as human beings, are entitled to rights. They are the bearers of rights just like adults. Children's rights are, therefore, rights that ensure their survival, development, protection and meaningful participation in the society. Such rights were codified in the United Nations UNCRC in 1989, ACRW of 1990 and other instruments.

The UNCRC has a set of universal entitlements for every child, defined as young persons below the age of 18. The entitlements are meant for children of all backgrounds. They encompass what children need to do and have to do to survive to lead stable and rewarding lives. The entitlements stated in the UNCRC grant children a comprehensive set of economic, social, cultural, civil and political rights. However, it does not give children unrestrained rights. The UNCRC recognises the principle that rights are balanced by responsibilities. Since the UNCRC is a legally binding document, governments are obligated to respect, protect and fulfil children's rights through their constitutions and other policies (Whitbread, 2006:2-7).

Children's rights as contained in legal instruments aim at ensuring that all children live and experience a quality life. Their dignity has to be protected. All children's basic needs such as adequate food, clothing, shelter, schooling and health care will be easily provided when children's rights are taken seriously. Right from birth children have the inalienable right to develop in a healthy and durable environment, free

of service and maltreatment (Streak & Poggenpoel, 2005:4; Alen *et al.*, 2006:11-13).

This study focuses on children's right to education, which is also a fundamental human right. The UDHR endorses and recognises all children's right to education. Education is a tool that is important for a child's personal development, sense of dignity and capacity to participate in society. It is an indispensable means of realizing other human rights, and serves as an eye opener when rights are undermined and violated. Education is a compelling obligatory right since the social and economic well-being of society depends upon having a well-educated citizenry that respects democratic values and human rights (Lundy, 2006:339-343; Koren, 2001:2-3).

Children must be treated with dignity and respect while at school. Children's rights for the purpose of this study refer to the protection of children at school against the following forms of human rights violation: the use of corporal punishment, sexual abuse, school fees discriminatory policies and discriminatory laws against pregnant girl-learners. There are a number of legal instruments protecting school children from the above violations. The Constitution of the Republic of South Africa, Act 108 of 1996, Chapter 2, is one such instrument that intends to protect children from both intentional and unintentional harm in the school system (Meintjes, 2009:14-15).

Children's rights are explained in different ways by various commentators. De Villiers (1993:293) is one such commentator with an appealing definition on children's rights originally taken from Cohen (1980). He explains children's right in the following statements:

- Children are not mere property. They are "persons" according to the law and entitled to protection when their rights are infringed.

- Children have their own destination. They have the right to develop a personality and abilities and should, depending on their level of maturity, be involved in deciding their destination.
- Children are persons in need of guidance. Children have not yet developed fully, but under the law they have rights as persons. However, the full realisation of these rights could only occur once maturity has been reached.
- Children are subjected to parental control, but not in an unlimited manner. Parents have an obligation to raise and educate their children, and this entails a limitation on the rights of children as individuals. The parent's obligation to teach and respect his or her child is of a temporary nature and is cancelled when the child reaches maturity.

#### **2.2.4 A TEACHER**

The two terms "educator" and "teacher" are interchangeably used in the school system and they basically mean the same. The new dispensation uses the noun "educator" in all statutes relevant to school matters. Educator means any person who educates or trains other persons or provides professional therapy at any school, technical college or college of education, or who assists in rendering professional services or performs education management services or educator auxiliary services provided by or in the Department of Education. The employment of such a person is regulated by legislation such as the "Personnel Administrative Measures" (PAM) contained in the Employment of Educators Act, 76 of 1998 (EEA).

The South African Schools Act (SASA) shares the same meaning with the EEA when explaining the meaning of the concept "educator". However, SASA goes further by saying that an educator is a person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and educational psychological services at an institution. This definition is contained in section 1 of SASA. This definition is also used by the

South African Council for Educators (SACE) Act, 31 of 2000 in section 1.

One of the qualifications of an educator is when one is registered with SACE. Chapter 3 of the SACE Act demands that a person be registered with the Council prior to being appointed as an educator. This chapter in terms of Section 22(2) maintains that no person may be employed as an educator by any employer unless the person is registered with the council. SACE Act goes further by presenting the qualities of an ideal educator in the school system with regard to the code of good practice in managing learners under his or her control. The Council expects from the educators, amongst other things:

(Section 2.2.3): To acknowledge, uphold and promote basic human rights as embodied in the Constitution of South Africa;

(Section 3.3.1): To respect the dignity, beliefs and constitutional rights of learners and in particular children, which include the right to privacy and confidentiality;

(Section 3.3.2): To acknowledge the unique individuality and specific needs of each learner, guiding and encouraging each to realise his or her potentialities;

(Section 3.3.3): To strive to enable learners to develop a set of values consistent with the fundamental rights contained in the constitution;

(Section 3.3.5): To avoid any form of humiliation, and refrain from any form of abuse, physical or psychological;

(Section 3.3.6): To refrain from improper physical contact with learners;

(Section 3.3.8): To refrain from any form of sexual relationship with learners at school;

(Section 3.3.14): To recognise where appropriate, learners as partners in education.

### **2.2.5 HUMAN RIGHTS EDUCATION**

Human rights education (HRE) is an international phenomenon. The mandate of the High Commissioner for the Promotion and Protection of All Human Rights in terms of resolution 48/141 of 20 December 1993 has always been the intention to promote and protect all human rights for all people. Promotion in this sense implies education. The UN has been conducting human rights education (HRE) through various campaigns and publications with some success. The Vienna World Conference of 1993 resolved to approach human rights education in a systematic and professional way. The General Assembly named the period from 1995 to 2004 as the International Decade for Human Rights Education. During this decade the Universal Declaration was disseminated in many languages. In 2000 the office of the High Commissioner for Human Rights launched an online human rights education database and a resource and documentation centre for HRE materials (Robinson, 2006:144-147).

HRE aims at bringing awareness of the need to respect the dignity and right of every individual at an early stage of development. Children in this way become the focus of attention. It becomes easier and possible to teach them human rights in the classroom. This can be achieved through the use of various activities. For instance, the children of today have access to computers and the internet, which can greatly assist in the promotion of human rights education if it is properly planned. It is also possible to infuse HRE within the school curricula.

The office of the High Commission for Human Rights defines human rights education as all training, dissemination and information efforts aimed at the building of a universal culture of human rights. This is done for the purpose of imparting knowledge and skills, as well as the moulding of attitudes. HRE according to the office of High Commissioner for Human Rights are directed towards the strengthening of respect for human rights and fundamental freedoms.

It also targets the full development of the human personality and a person's sense of dignity. It aims at the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups. Finally HRE aims at enabling all persons to participate effectively in a free society.

HRE contributes to the long-term prevention of human rights abuses and violent conflicts in terms of resolution 71 of 2004 of the Commission on Human Rights. It features in most of the provisions of the international instruments. The following are some of the instruments with provisions on HRE (Koren, 2001:6-8; Ofreneo, 2008:1-8):

- UDHR, Article 26: "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms".
- ICESCR, Article 13: "The State Parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for maintenance of peace".
- UNCRC, Article 29: "State Parties agree that the education of the child shall be directed at (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations, (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes,

and friendship among all people, ethnic, national and religious groups and persons of indigenous origin [...]"

- The International Convention on the Elimination of All Forms of Racial Discrimination, Article 7: "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view of combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the charter of the United Nations, UDHR, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination, and this Convention."

"Equitas", the International Centre for Human Rights Education, presents the following conclusions about the HRE:

- The role of HRE is empowerment. The result is social change. Ultimately people will be inspired to take control of their own lives;
- The role of human rights educators is to foster within each person an awareness of human rights, as well as a sense of the individual's capacity to effect change;
- The practice of HRE is founded on mutual respect and reciprocal learning. Participatory methods that promote the sharing of personal knowledge and experience are fundamental (Equitas: <http://equitas.org/English/ed-manuals/vision.php>.)

Flowers in Tibbitts (2007:1-6) defines HRE as the kind of learning that develops the knowledge, skills and values of human rights. The process involves learners' valuing and understanding of principles that are typically problematic for the particular society. In developing countries HRE is linked to economic, social and community

development and women's rights. In post-totalitarian or authoritarian countries HRE is associated with the development of civil society and the infrastructures related to the rule of law and protection of individual and minority rights. In older democracies it confines itself to reform in specific areas such as penal reform, economic rights and refugee issues.

The South African government is also committed to the teaching and protection of human rights. The South African Human Rights Commission (SAHRC), as established by the constitution, is at an advanced stage of educating the nation about its work. The commission has already conducted a number of cases on violation of children rights since its inception. For instance, in August 2006 the commission conducted an "Inquiry into school Based Violence in South Africa". The enquiry investigated the observances of the provisions contained in the Bill of Rights that protect the rights of learners to study in a safe environment free from all forms of violence. The enquiry established the underlying causes and the impact of human rights violations on learners in South African schools (Nel, 2006:1-9). In such involvements SAHRC demonstrated its authority with regard to its three major functions of (1) the promotion of human rights as set out in the Bill of Rights; (2) the protection of the human rights also as set out in the Bill of Rights and finally of (3) monitoring what the government has done to ensure the realization of socio-economic rights.

#### **2.2.6 EDUCATION LAW AS A PERSPECTIVE**

Education law is the area of law relating to schools and education. The law deals with the in-depth study of legislation, regulations, the SA constitution and other determinants. Common law and case law are part and parcel of "Education Law". This area of law focuses amongst other things on the importance of knowing and mastering the rights and duties of all stakeholders in the school system as determined by legislations such as learners, educators, parents,

SGBs, outside stakeholders, etc. Within this larger context, this research focuses on the rights of learners in the school system.

Education law not only focuses on the rights of learners. The study also provides a clear framework of the roles and responsibilities of educators. This blueprint of the roles and responsibilities of educators enables educators to perform their duties within the framework of the law. Education law compels educators to create a safe educational environment in which learners may develop (Oosthuizen, 2005:3-15).

### **2.2.7 EDUCATION MANAGEMENT**

Education management is the study of how schools should be managed effectively by following and applying four basic management actions, namely: planning, organising, leading and controlling (Palmer *et al.*, 1992:4-6). Principals and teachers are able to reflect on their own practices and the practices of others. From such reflections they are able to contribute to quality management of schools. The following critical areas of management will improve as a result of such reflections: management of pupils, management of resources, management of external relations and strategic management (Crawford, Kydd & Parker, 1994:xi-xiv).

Management can also be viewed as the art of getting things done through people. Hoadley (2007) defines management as a structural position that carries with it specific roles and responsibilities. Schools are of course highly structured organisations with clear lines of responsibility and accountability. Heystek (2007:493) on the other hand sees management as a structured role or approach or working within the confines of the rules, regulations and boundaries provided in a school situation. The school will come down on its knees if it operates without clear procedures, firm guidelines and clear lines of accountability (Van der Mescht & Tyala, 2008). It is, therefore, important to assist teachers in implementing what is prescribed by legislation so that they may become effective managers.

## 2.3 HISTORICAL REVIEW OF HUMAN RIGHTS

### 2.3.1 THE PRIMITIVE ERA

The concept of human rights has its roots in religion. All the earliest human rights claims were grounded in religion. According to a religious foundation for human rights a Supreme Being, God, has the ultimate moral authority that overrides the laws of the state. This Divine Power considers all people as sacred, including children, and requires that they be treated with equal dignity and respect. This idea is endorsed by the principle that humans are created in the image of God and, therefore, a person who undermines the dignity of another person belittles the Almighty God. The Ten Commandments emphasise these principles again, especially the commandment in Exodus 20:13 that prohibits the taking away of another person's life (Arat, 2006:3). The protection of the right to life urges all people to treat others in the same way they would like to be treated (Mubangizi, 2004:4-5; De Laet, 2006:15-17).

The Hammurabi Code (1700 BC) made influential contributions to the early origins of human rights that cannot be overlooked. The Code contained 282 laws drafted by King Hammurabi of Babylonia (1728-1686 BC), focusing on various liberties and a transparent judiciary system. There was no room for corrupt judges. The Code was transparent in that it was displayed around the Kingdom where it could be seen by the citizens, and contained fixed penalties for transgressions. There were laws against calumny. If a person was wrongly accused, the accuser was dealt with severely. Such a person had to suffer the punishment that would have been inflicted on the accused. The guiding principle of the Code was *lex talonis* "an eye for an eye, a tooth for a tooth". The Code can be viewed as barbaric by today's standards, but it protected citizens from arbitrary persecution and punishments. The only problem with the Code was that it had no protection of more abstract ideas such as race, religion, beliefs and

individual freedoms (Lewis, 2003:7-12; Ishay, 2004:28; Ishay, 2007:8-16).

The two first human rights documents, the US Declaration of Independence of 1776 and the French Declaration of the Rights of Man and Citizens of 1791 were influenced by religious overtones. Both the American and French Revolutions made reference to certain inalienable rights and moral entitlements and point to God as the ultimate source of such fundamental rights. The US Declaration of Independence maintains that "All men... are endowed by their Creator with certain inalienable rights". The French Declaration of the Rights of Man and Citizen claimed that "Natural, inalienable, and sacred rights of man ... are under the auspices of the Supreme Being". It is clear that the revolutionary thinkers who crafted the two above-mentioned documents were predominantly Christian. The western world has been dominated by Christianity.

The concept of human rights also has its origin in the natural rights theory. Natural Rights Theory shaped the 18<sup>th</sup> century movements in the United States and Europe. The theory was strongly articulated in the writing of John Locke, which asserts that human beings in the 'state of nature' lived in absolute freedom. According to the Natural Rights Theory the primary purpose of government is to protect the natural rights of its subjects. High emphasis was placed on individual liberties, particularly property rights. Individuals were viewed as possessing rights that absolutist governments could not violate and were bound to protect. For instance, Locke used the Natural Rights Theory to fight the different governments to end the evil practice of slavery. Natural Rights Theory had a major influence on the development of international human rights law. Most of the international human rights documents include in their preamble natural rights theory phrases. The Universal Declaration of Human Rights of 1948 speaks of 'inherent dignity and of the equal and inalienable rights to all members of the human family' (De Laet, 2006:15-17).

### **2.3.2 THE ENLIGHTENMENT ERA**

The Enlightenment period, defined as the 'Age of Reason' by the German philosopher Immanuel Kant (1724-1804), had a great influence on the development of human rights globally. The era employed reason not only to combat religious oppression and arbitrary ruling, but as a starting point to further individual rights. The principle of an individual's "right to life" was emphasised. The aim was to attack and end the ills of the reformation period of bartering human lives for religious power. Enlightenment social contract theorists such as English philosopher Thomas Hobbes (1588-1679) argued that every man possesses an alienable right to life and for the right to be secured an individual could consider entering in a social contract to join the commonwealth (Ishay, 2004:65-85).

The period also witnessed the condemnation of horrible tortures as form of interrogation and punishment. The Italian criminologist and economist Cesare Beccaria (1738-1794) condemned its usage in his writings. In addition Voltaire (1694-1778) continuously condemned torture in his writings. Jean Jacques Rousseau (1712-1778) also condemned the use of torture. Rousseau defended life "as an essential gift of nature", and by the end of the 18<sup>th</sup> century torture was widely denounced as a relic of the barbarism of another age (Ishay, 2004:87-89).

However, the use of the death penalty for criminals created a huge division amongst intellectuals. Kant, the German philosopher, defended the death penalty even though he was an advocate for the "individual's right to life". Supported by Rousseau, Kant maintained that "If an individual has committed a murder, he must die". Kant identified other crimes punishable by death. He for instance stated that conspirators against the state deserve the death penalty. Beccaria, however, counteracted the thoughts of Kant. Beccaria's powerful arguments against the death penalty were widely influential. His work touched the lives of political leaders like Benjamin Franklin

(1706-1790) and Benjamin Rush (1746-1813), who were motivated to end the death penalty (Ishay, 2004:88-89).

The social conditions of many people started to improve during the enlightenment period. The struggle for the right to life, freedom of religion and opinion and property rights found space, and the human rights agenda was partly realised. However, many individuals were still considered non-eligible to be entrusted with all the freedoms invoked by the English, American and French declarations of rights. Male citizens with no property and all women were considered secondary and were denied political participation and voting rights. The legal status of any woman was subjugated to the authority of her husband. Slavery still persisted. If women were nothing in the face of justice, it was worse for children (Ishay, 2004:107-113).

### **2.3.3 THE INDUSTRIAL REVOLUTION ERA (19<sup>TH</sup> CENTURY)**

Industrialization saw the emergence of greater public sympathy and compassion towards working children. It was a common practice during the pre-industrial period in different societies to use child labour. Formal education was reserved for the privileged classes. At the age of six most children were already working in the family household, in the field or in the handicraft factories. This attitude towards children was highly prevalent and it was endorsed by statesmen, for instance the French general controller of finance Jean Baptist Colbert (1619-1683) who once declared: "Experience had always shown that idleness in the first years of a child's life is the real source of all disorders in later life" (Ishay, 2004:155-167).

The success of the economy during the era of industrialization rested on child labour. Child employment freed their mothers to work in the factories. Child exploitation and abuse were rife. Entrepreneurs would employ either children or women and pay them less than they would pay a man for the same task. Children were exposed to unhealthy and hazardous working environments, and suffered chronic

exhaustion and malnutrition. Children worked in textile mills, coal mines, glassmaking, and chemical factories (Ishay, 2007:163-165).

A number of countries became outraged by the plight of children during this period. England, America and France put an end to child labour through legislation. The French Child Labour Law of 1841 changed the working conditions of children immensely. It limited children of eight to eleven years to eight hour working days and children of twelve to sixteen to twelve hours a day. To broaden the campaign on behalf of children, organised international efforts ensued. The following international campaigns to end child labour took off:

- International Labour Conference in Berlin 1890. However, international standards could not be reached;
- International Association of Labour Legislation was established in 1900 in Basel. Children gradually gained more legal protection, got schooling and freedom from the harsh demands of the working world of adults.

#### **2.3.4 THE DECLARATION OF THE RIGHTS OF THE CHILD IN 1924**

The 1920s saw noticeable developments with regard to the human rights of children globally. The League of Nations adopted the Declaration of the Rights of the Child on 26 September 1924. This Declaration is also called the Declaration of Geneva. The Declaration called upon all men and women of all nations to give the best care to the child. The Declaration maintained that "Mankind owes to the child the best it has to give". The Declaration only consisted of five provisions reading as follows (Liefwaard, 2008:22; Freeman, 2007:11):

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the

delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured;

3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

A number of significant points can be deduced from the Declaration of Geneva. The Declaration does not make use of phrases and wording that bind states to take care of the child. It rather places the full responsibility on the parents, i.e., "men and women of nations" to take care of children. It is encouraging to note that the Declaration was the first international document to introduce the concept of children's rights internationally. It, therefore, became the first example of International Human Rights Law. Both economic and social rights for children are features of the Declaration as explained by provision number 2 on the plight of the hungry, sick, and delinquent children. Such rights also explain the categories of children in need of help (Liefwaard, 2008:22-23; Freeman, 2007:11).

### **2.3.5 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN 1948**

The idea of human rights gained momentum after the Second World War. Many governments committed themselves by establishing the United Nations (UN) with the primary goal of bolstering international peace and avoiding international conflicts. Undertakings and commitments were made to ensure that never again would anyone unjustly be denied life, freedom, shelter and nationality. The four essential freedoms were spread across the world: freedom of speech, freedom of religion, freedom from want and fear. The four freedoms were unpacked by the American President Franklin Delano Roosevelt in 1941 in the state of union address wherein he spoke of a world

founded on the four freedoms. The call by the American president played a great role in the promotion of human rights standards across the world and also led to the drafting of the United Nations Charter in 1945 (Ishay, 2007:479-481; Flowers, 2010:1-5).

The commitment to international peace by member states of the United Nations yielded positive results. Member states pledged to promote respect for the human rights for all. To fast track the goal, the UN Commission on Human rights was founded. The commission was given the huge task of drafting a document that spells out the meaning of the fundamental rights and freedoms proclaimed in the charter. The efforts culminated in the establishment of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, adopted by 56 members of the United Nations in terms of Resolution 217 A (cf. Table 2.1). The preamble of the UDHR asserts that:

*"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."*

The UDHR is not a legally binding document, but its influence has been quite substantial. Many nations incorporated it into their constitutions (Flowers, 2010:3-1). It urged member nations to promote a number of human, civil, economic and social rights, asserting that these rights are part of the foundation of freedom, justice and peace in the world. Since its inception in 1948 it has become the parent of most of the rights documents in the world. The political changes in South Africa were also accelerated by the document (Lewis, 2003:453-458; Haragopal, 2001:1-3).

The UDHR comprises 30 articles over and above the preamble. The article uses all-inclusive phrases such as 'all human beings' 'everyone' and 'all are equal'. This implies inalienable rights for all people, including children, even though the declaration never uses the noun 'children'. Children are full human beings. The following articles are

quite relevant to children's rights and most of the international children's rights instruments were derived from them:

Article 2 talks about rights and freedoms on the basis of race, colour, gender, language, religion, political opinion, nationality, social origin, property, etc.;

Article 3 talks about the right to life, liberty and security of person;

Article 5 talks about freedom from degrading treatment or punishment;

Article 6 talks about recognition everywhere as a person before the law;

Article 7 talks about non-discrimination to ensure equal protection by the law;

Article 25(2) talks about special care and assistance that children and mothers are entitled to (Lewis, 2003:454-455; Alderson, 1999:188-189).

The above articles were the foundation stone of strategies and mechanisms that the UN employs to enforce human rights. Two covenants were adopted in 1996. Both covenants featured the right to self-determination and freedom from discrimination based on race, colour, gender, language, religion, political and other opinions. The first covenant is called the International Covenant on Civil and Political Rights (ICCPR) and the second is the International covenant on Economic, Social and Cultural Rights (ICESCR). Together with UDHR they are called the International Bill of Human Rights. As early as 1997, over 130 nations had already ratified the covenants. The two covenants played a big role in the promotion of children's rights (Arat, 2006:178-180; Normand & Zaidi, 2008:139-142; UDHR, Res 217 A, 1948).

The rights and freedoms expressed in the Universal Declaration of Human Rights of 1948 are presented in Table 2.1.

**Table 2.1: Summarised articles of Universal Declaration of Human Rights 1948**

<b>ARTICLE NUMBER</b>	<b>GRANTED RIGHTS</b>
1	Right to equality
2	Freedom from discrimination
3	Right to life, liberty, personal security
4	Freedom from slavery
5	Freedom from torture and degrading treatment
6	Right to recognition as a person before the law
7	Right to equality before the law
8	Right to remedy by competent tribunal
9	Freedom from arbitrary arrest and exile
10	Right to fair public hearing
11	Right to be considered innocent until proven guilty
12	Freedom from interference with privacy, family, home and correspondence
13	Right to free movement
14	Right to asylum in other countries from persecution
15	Right to a nationality and freedom to change it
16	Right to family and marriage
17	Right to own property
18	Freedom of belief and opinion
19	Freedom of opinion and information
20	Right to peaceful association and assembly
21	Right to participate in government and free elections
22	Right to social security
23	Right to desirable work and to join trade unions
24	Right to rest and leisure
25	Right to adequate living standards
26	Right to education
27	Right to participate in the cultural life of the community
28	Right to social order that articulates this document
29	Community duties essential to free and full development
30	Freedom from state or personal interference in the above rights

The above rights were ratified by all nations that are members of the UN. Every signatory of the UN aligned itself with these rights. It is also clear that these rights are applicable to children, for example, the right to education, the right to social security and the right to adequate living standards. Children, as human beings, are entitled to all the above-mentioned rights.

### **2.3.6 THE DECLARATION OF 1959**

A new declaration on the rights of the child was received into the international arena after the end of the World War 2 and the foundation of the UN. This came in the form of UN Resolution number 1386 (XIV). The UN General Assembly adopted the new Declaration of the Rights of the Child in 1959. The new declaration, also called the Declaration of 1959, was not the same as the 1924 Geneva Declaration in that it contained an explicit reference to state's obligations. The new declaration included a resolution that urged "National Governments to recognise the rights set forth (in the declaration) and strive for their observance" (Liefgaard, 2008:23-24; Freeman, 2007:14-15).

The Declaration of 1959 consists of a preamble and ten principles. The preamble calls upon member states to give the child the best it has to give. It is noteworthy to quote appealing phrases from the preamble of this Declaration:

*"Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."*

*"Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organisations concerned with the welfare of children."*

The Declaration of 1959 reaffirmed the principles of UDHR, especially articles that make special mention of children. The reaffirmed UDHR article is inter alia, 25 and 26. Article 25 of UDHR grants motherhood and childhood the right to special care, assistance and social protection. Article 26 grants the right of children to education and the right of parents to choose the kind of education to be given to their children. The Declaration also recognises the fact that the child as a human being has the same rights and freedoms as adults (Liefwaard, 2008:23-25; Freeman, 2007:14-15).

The ten principles of the Declaration of 1959 are as follows (Liefwaard, 2008:23-25; Koren, 2001:3):

Principle 1: Non-discrimination on the basis of birth, social origin or any other status.

Principle 2: Special protection and opportunities and facilities that enable the child to develop holistically.

Principle 3: The best interest of the child in all matters affecting the child.

Principle 4: Special care and protection to the child and the mother.

Principle 5: Special treatment, education and care for a physically, mentally or socially handicapped child.

Principle 6: Support of the child without family.

Principle 7: The right to education.

Principle 8: The right to protection and relief.

Principle 9: Protection against all forms of neglect, cruelty and exploitation.

Principle 10: Protection of the child against practices that may foster racial, religious and any other form of discrimination.

### **2.3.7 THE 21<sup>ST</sup> CENTURY AND HUMAN RIGHTS**

It is difficult to determine whether there have been serious human rights violations in the years since the inception of the UDHR in 1948 and the other subsequent peace initiative covenants and treaties. The answer is found in the report on human rights violations and development globally. From such reports the conclusion can be reached that in this era there are still some forms of human rights abuses (Clinton, 2010:3-20). The world is still littered with the violations of basic rights such as discrimination, political imprisonment, torture, poverty, refugees, etc. However, violations of basic rights differ from country to country (O'Byrne, 2003:5-8).

Clinton (2010:2-3) reports on human rights practices worldwide. The report covers countries plagued by conflict, wherein non-combatant civilians face human rights abuses and violations of international humanitarian law. In such countries terrorist organisations, parliamentary forces and government security forces use murder, rape and other inhuman tactics to gain control over territory, silence opponents and coerce the cooperation of civilian communities in conflict zones. As a result of such tactics many men, women and children have lost their lives in such conflicts. The following are examples of countries where human rights are violated at a rate of high frequency:

#### **1. The Democratic Republic of the Congo**

Conflicts in the mineral-rich parts of the East, including the country's insurgency operations by government security forces, claimed the lives of 1000 civilians. Large numbers of women were raped, children and men were killed and homes burned.

## **2. Vietnam**

The human rights history of the country is very poor. Political activists were convicted and arrested. Several prominent editors and reporters were fired for reporting on official corruption.

## **3. China**

The government exerts tight control over activities and people that the government perceives as a threat to the Chinese Communist Party. Lawyers who took on cases deemed sensitive by the government were increasingly harassed or disbarred. Their law firms were often closed.

South Africa is not an exception to the violation of human rights. The government of the day respects the human rights of its citizen. However, there are serious human rights challenges. The rights of women and children are still violated in atrocious ways. The SA government has identified societal groups that are vulnerable and who need attention since they suffer various human rights violations. The two identified groups are women and children. In this study the focus will only be on children (Jayasinghe, 2008).

Violation of children's rights is a global issue (Liefwaard, 2008:1-4). Such violations can occur in different forms. They are for instance denied family contract, legal or other assistance, health care and education. They are subjected to violence, abuse and neglect by those under their control. In South Africa gross violations include physical and sexual abuse, neglect, malnutrition, denial of access to school, and lack of transportation to and from school. It also includes poor sanitary facilities, bad buildings and inadequate feeding schemes. South Africa is sixteen years old as a democracy, but has not yet fully addressed the constitutional rights of children.

## **2.4 DETERMINANTS OF CHILDREN'S RIGHTS**

### **2.4.1 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC) 20 NOVEMBER 1989**

The UNCRC is the mostly globally ratified human rights instrument. It has a number of foundational principles that underpin all other children's rights. Such principles include *inter alia*: non-discrimination, best interests of the child, right to survival and development, and the views of the child. These principles are encapsulated in all the articles of this treaty.

The UNCRC also provides for the obligation of State Parties to promote and defend the rights of children. The Committee on the Rights of the Child (UNCRC Committee) is the supervisory body of the Convention. The Committee is composed of 18 experts elected by State Parties to the UNCRC. South Africa signed the UNCRC on 29 January 1993, but only ratified it on 16 June 1995. This was a milestone achievement towards the recognition of children's rights in the country.

When South Africa ratified the UNCRC it showed a commitment to respecting and ensuring that the rights stated in the Convention for each child will be recognized without discrimination of any kind. The country has also undertaken to adopt all appropriate measures to ensure that the child is protected against all forms of torture or punishment. South Africa, furthermore, has an obligation to adopt "all appropriate legislative, administrative, and other measures" for the implementation of the rights in the UNCRC. In relation to economic, social and cultural rights, the government has to undertake measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation (Bischoff, 1999:7-11; Davel, 1999:129-154).

South Africa is further obliged to submit reports on the measures it has adopted to give effect to these rights to the UNCRC Committee through the UN Secretary-General. The country, furthermore, has to report on the progress made on the enjoyment of the rights. The UNCRC has provided information on how to write the reports. It is expected from the State Reports to indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the UNCRC. The reports should contain sufficient information to provide the UNCRC Committee with a comprehensive understanding of the implementation of the UNCRC in the country concerned. Where a State has submitted a comprehensive initial report to the UNCRC Committee, it need not in its subsequent reports repeat basic information previously provided. State Parties are expected to be highly transparent in this exercise. Member states are required to make their reports widely available to the public in their respective countries (Bischoff, 1999:7-11; Davel, 1999:129-154).

All articles in the UNCRC are important for the total well-being of all children. Here the focus will only be on those relevant to this study, such as the following (Bischoff, 1999:25-251; Davel, 1999:129-154; Hart *et al.*, 2001:21-27):

- Article 19 requires that all appropriate measures be taken to protect children from the physical and mental violence, injury or abuse, neglect or negligent maltreatment or exploitation, including sexual abuse while in the care of parents, legal guardians or any other person.
- Article 2 places upon the state an obligation to protect children from all forms of discrimination.
- Article 3 requires that in all actions concerning children, “the best interest of the child shall be a primary consideration”.
- Article 6 requires states to “ensure to the maximum extent possible to the survival and development of the child”

- Article 28, the child's right to education requires states to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conforming to the present convention”.
- Article 37 requires states to ensure that “No child shall be subjected to torture or other cruel, inhuman degrading treatment or punishment”.
- Article 40 declares that all children involved with the juvenile justice system “have the right to be treated in a manner consistent with the promotion of the child's sense of dignity”.

The articles of the UNCRC specifically refer to the care of children by adults. It was necessary to define the rights of the child specifically because in certain communities children are not seen as fully-developed human beings and the consequent view is that parents can do as like with their children. According rights to adults does not automatically mean that rights are accorded to children.

#### **2.4.1.1 FOUR PRINCIPLES OF THE UNCRC**

The UNCRC is governed by a set of principles. Different authors explain the principles governing the UNCRC in different ways (Alen *et al.*, 2006:42-43; Willems, 2007:16-22). However, when interpreted in-depth they mean the same. The following are considered the four principles of the UNCRC:

##### **2.4.1.1.1 Survival and development**

The principles view the right of children to life, survival and development as fundamental. This relates to article 6 of the UNCRC. Development rights are those rights relating to education, such as articles 28 and 29 (Willems, 2007:18). Article 29 for instance explicitly states that the education of the child shall be directed towards the full development of the child's personality, talents and mental and physical abilities to their fullest potential. Education aims at the total

preparation of the child for an active adult life in a free society and also fosters respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others. For children's rights of survival and development to be realised in the schooling set-up, much effort must be taken. The school must create an environment conducive to survival (Bischoff, 1999:28-29). The child must be protected from all forms of humiliation, torture and punishment.

#### **2.4.1.1.2 Best interest of the child**

The principle in terms of article 3 of the UNCRC calls for a child focus approach both at home and in schools. The principle is highly superior in that it features in most of the articles of the UNCRC such as 9, 18, 20 and 40. The principle cuts across the whole of the UNCRC so as to be used as an important guideline for policy making, resource allocation and specific laws for children (Bischoff, 1999:138-140). It is obligatory that all actions concerning the child take full account of the child's best interest (Davel, 1999:132). The Committee on the Rights deems the best interest of the child as one of the cornerstone principles of the UNCRC, jointly with the ones discussed above and below. The implication is that all agendas in which children's rights were not taken seriously before have to be reviewed to take children's interests seriously. The principle is spearheaded by article 3.1, which maintains that "In all actions concerning children, the best interest of the child shall be a primary consideration". The committee places it upon every legislative, administrative and judiciary body or institution to apply the best interest principle in their actions and decision making processes in matters affecting the child. Schools are also called upon to take serious action to defend this principle according to article 3, paragraph 1, which maintains that the best interest of the child should be "a primary consideration" for the state, its organs and its public and private social welfare institutions.

Schools are state owned public institutions and they cannot, therefore, refrain from promoting this principle (Willems, 2007:199-203).

It might seem difficult to define the concept "best interests" since the UNCRC does not give the exact meaning. However, because children are more vulnerable today it is easy to determine what is in the best interest of the child. Their interests are in some circumstances completely ignored. Their welfare, psychological well-being, security and developmental needs are not always prioritised. The explanation by Freeman (2007:27-31) states "best interests" to be "basic interests, for example, physical, emotional and intellectual care, developmental interests, entering adulthood as far as possible without disadvantage, autonomy interests, and especially the freedom to choose a lifestyle of their own." Principle 2 of the 1959 Declaration, which is the origin of this principle, gives a clear explanation of what the principle means (Freeman, 2007:25):

*"The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration".*

The best interest principle for the child was the bone of contention in the court case *M v The State* CCT 53/06 (2007). M was a 35 year old single mother of three boys aged 16, 12 and 8. Between 1996 and 2002 "M" committed a number of crimes like fraud and theft. In 2002 she was convicted in the Wynberg Regional Court on 38 counts of fraud and four counts of theft. Her attorney pleaded that she not be sent to prison. The court ignored the request and sentenced her to four years direct imprisonment. "M" registered a series of appeals at the lower courts, which were turned down, but finally reached the Constitutional Court through the intervention of The Centre for Child Law as *amicus curiae* based at the University of Pretoria. The Chief

Justice required from all the parties involved in the case to address the following questions:

- What are the duties of the sentencing court in light of section 28(2) of the constitution and any relevant statutory provisions when the person being sentenced is the primary caregiver of minor children?
- Were these duties observed in this case?

The court unpacked real issues when sentencing the primary caregiver, such as the following:

- Establishing whether there will be an impact on a child;
- Considering independently the child's best interests;
- Attaching appropriate weight to the child's best interest;
- Ensuring that the child will be taken care of if the primary caregiver is sent to prison.

Finally in the interest of the principle the sentence imposed on "M" by the high court was set aside and replaced by a more reasonable one. One part of her sentence was to be placed under correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act 51 of 1977 for three years. The conditions enabled "M" to be closer to her children and she was able to take care of them. The decision was informed by reports that stated, among other things, that the three boys rely on their mother as the primary source of emotional security and, furthermore, that the imprisonment of their mother would be emotionally, developmentally, physically, materially, educationally and socially disadvantageous to them.

#### **2.4.1.1.3 Non-discrimination**

Rights apply to all children without exception. The principle is found in article 2 of UNCRC (Davel, 1999:130-131). The article calls upon state parties' obligation to respect and ensure the rights set forth in the UNCRC to each child within their jurisdiction without discrimination of

any kind. The following forms of unfair discriminations are condemned: Parents or guardians' race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other statuses. The second part of the article calls upon all states to take positive action to promote children's rights and protect children against discrimination and other forms of unacceptable punishment. Schools as state institutions are not the exception, since they house children for many hours daily.

#### **2.4.1.1.4 Children's participation**

Participation is also a general human rights principle. The principle is embodied by both article 12 and 13, which means that the child has the right to express his views freely in all matters affecting him. The concept is used to refer to adults consulting children, children's civic participation, children taking part in programmes and interventions initiated and facilitated by adults, children organising themselves in informal situations, as well as children's own decision making, among others (Trägårdh, 2009:13). The state parties are also called upon in terms of UNCRC to ensure that those views are given due weight.

Trägårdh (2009:13-15) writes about the benefits of children's participation in her study of children's rights by stating that participation is not only about having a voice or being involved in decision making, but also about being included in human relationships where children can learn to be capable, caring and responsible members of society. It brings along feelings of belonging and of inclusion. It is about getting the opportunity to state your views and at the same time acknowledgement of such views. In this the child feels important and valuable. From participation the child learns a skill of protection in that he gains knowledge of his own diverse rights in different environments. Participation brings growth of a healthy self-esteem and emotional stability, which empowers the child. The child starts to learn about partnerships and to share responsibilities. The child gets an opportunity to develop social skills. Finally, great skills

are acquired such as negotiation, communication, leadership and conflict management.

#### **2.4.1.1.5 Conclusion**

One of the remarkable features of the UNCRC is the three P's (Osler & Starkey, 1998:313). The three P's are schematically represented in Table 2.2. They explain and define the three children's rights: protection, provision and participation. The last right, i.e. participation, is closely linked to the last principle of the UNCRC. The right of protection relates to the security of children both physically and psychologically. Provision on the other hand refers to the rights of children to education, and the obligation of the schools and state to provide education for children. The key features of the UNCRC are presented diagrammatically in Table 2.2.

**Table 2.2: Representation of the key features of the UNCRC**

<b>Rights</b>	<b>Purpose</b>	<b>Articles from the UNCRC</b>
1. Protection	<ul style="list-style-type: none"> <li>• Security of children</li> <li>• Physical and psychological securities</li> <li>• Moral and legal responsibilities to protect children.</li> <li>• Protection from abuse and neglect</li> <li>• Protection of children from all forms of discrimination.</li> </ul>	2, 19, 28(2), 37
2. Provision	<ul style="list-style-type: none"> <li>• The rights of children to education</li> <li>• Schools/state obliged to provide education for children</li> <li>• Right to survival and development</li> </ul>	3, 28, 29
3. Participation	<ul style="list-style-type: none"> <li>• The right to participate in decisions about their own lives</li> <li>• Freedom of expression</li> </ul>	12, 13, 14, 17

#### **2.4.2 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD 29 NOVEMBER 1999**

The African Children's Charter on the Rights and Welfare of the Child (ACRWC) adopted in July 1990 and entered into force on 29 November 1999 guarantees the rights and freedoms of children. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is responsible for overseeing its implementation. South Africa signed the African Children's Charter on 10 October 1997 and ratified it on 7 January 2000. The Department of Women, Children and Persons with Disabilities is responsible for overseeing its implementation at the national level.

As a State Party to the African Children's Charter, South Africa has committed to adopt legislative or other measures as may be necessary to give effect to the provisions of the Charter. It has also undertaken to discourage any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter (Chenwi, 2010:55-56).

South Africa has further undertaken to submit to the ACERWC reports on the measures it has adopted to give effect to the provisions of the African Children's Charter through the Secretary General of the African Union. The Charter, just like the UNCRC, goes further to provide some guidance on the form and content of State reports. It is expected from the reports submitted to the ACERWC to "contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country. The report should also indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter (Chenwi, 2010:55-56).

The ACERWC has further adopted guidelines for initial reports, and plans to develop guidelines for periodic reports in due course. Similar

to the African Commission and other treaty bodies, the ACERWC is of the view that the reporting process provides States with an opportunity to conduct a comprehensive review of various measures they have undertaken. Similar to the UNCRC Committee, the ACERWC groups the provision of the African Children's Charter into various sections: general measures of implementation; definition of the child; general principles such as non-discrimination, best interest of the child, right to life, survival and development, respect of the views of the child, provision of information to children and promotion of their participation; civil rights and freedoms; family environment and alternative care; health and welfare; education, leisure and cultural activities; special protection measures; and responsibilities of the child (Streak & Poggenpoel, 2005:4; Chenwi, 2010:55-56).

### **2.4.3 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)**

The International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR) is one of the treaties signed after the 1959 Declaration of the Rights of the Child. Most of the articles in this treaty speak to rights of children. For instance, article 10 calls for "Special measures of protection and assistance from economic and social exploitation". The ICESCR was jointly adopted with ICCPR in the same year. The two treaties are regarded as international human rights laws because the UNCRC Committee still today monitors compliance of these laws by all member states. However, the ICCPR only entered into force in 1976 (Freeman, 2007:16).

A number of the treatments meted out to children in the school system, such as the school fees system, are condemned by General Comment 13 of ICESCR. This piece of legislation calls upon global governments to provide the kind of education governed by the following four features: availability, accessibility, acceptability and adaptability. Of the four features accessibility is relevant to this study with its three dimensions: Non-discrimination, physical accessibility

and economic accessibility. The dimension of economic accessibility implies that education has to be affordable to all. This dimension is closely related to the contents of article 13(2) of ICESCR, which also calls for free education for all in primary and secondary education. However, the rest of article 13 of this instrument talks to rights of children to education. The state parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen respect for human rights and fundamental freedoms. They further agree that "education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace ..." (Liefwaard, 2008:25-26; Freeman, 2007:15-16).

#### **2.4.4 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 108 OF 1996**

South Africa, in conjunction with the fundamentals of the international human rights law, strongly upholds the notion of promotion, protection and fulfilment of all human rights and the fundamental freedoms of all citizens, including children. All human rights and freedoms are guaranteed by the Bill of Rights, which is Chapter 2 of the Constitution. The Constitution has further created independent institutions to defend and promote human rights. Chapter 9 of the Constitution creates seven such institutions, also referred to as protection mechanisms. They are the South African Human Rights Commission (SAHRC), Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Auditor-General, Commission on Gender Equality, the Public Protector, Independent Electoral Commission and Independent Communications Authority of South Africa. For instance, the SAHRC promotes human rights by (i) educating and training people about

human rights and the Bill of Rights; by (ii) raising awareness of human rights, the Bill of Rights and the work of the SAHRC; by (iii) making policies on the rights in the Bill of Rights; by (iv) giving advice on human rights to all levels of government; and by (v) working with international human rights bodies (like the United Nations) to promote human rights.

The constitution has a number of provisions intended to protect and promote learners' rights in the school system from various forms of violation. Listed below are all the rights in the Bill of Rights relevant for this study:

- Section 9(1) of the Constitution commits the state to ensure that all individuals have the right to equal benefit, and protection under the law. Protection from all forms of unfair discrimination is guaranteed to all persons, including children at school. All people are equal and must be treated equally. No-one is allowed to discriminate against someone else because of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.
- Section 10 grants every individual human dignity. Every learner has dignity because he or she is a human being and his or her dignity must, therefore, be respected and protected.
- Furthermore, children are provided with the right to protection from maltreatment, neglect, abuse or degradation in section 28(1). All forms of corporal punishment and humiliation are addressed and condemned by this section of the constitution.
- Section 28(2) can also not be left out since it has implications for the implementation of children's rights. The section declares that "A child's best interests are of paramount importance in every matter concerning the child". Therefore, all people and institutions dealing with children are compelled to

promote the best interest of all children by way of protecting their rights.

- Section 29 grants everyone the right to a basic education. The right provides access for all to receive education (Roithmayr, 2003:383). It becomes the responsibility of the state to ensure that a learner's right to education is not impeded and that all children enjoy equal unimpeded access rights to education.
- Section 12(1)(c) of the constitution grants all persons, including children, the right to security. This includes the right to be free from all forms of violence. The section also relates to the right to bodily and psychological integrity, dignity, privacy and equality.
- Administrative action (that is, action by the government or government departments) must be allowed by the law, it must be reasonable, and the procedures used must be fair. Children must be taught to ask for written reasons for any decision that is made by government, which goes against their rights in terms of Section 33.

It is important that schools adhere to the above provisions of the Constitution. However, there are many impediments in actualizing these provisions. Giving expression to Section 12(1)(c) may be impeded by a lack of security guards at the schools. Some schools do not have decent fencing and are situated in areas where gangsterism and drug-peddling are the order of the day. However, the government and the school should ensure that security at the schools is improved.

In the next section the Children's Act is discussed.

#### **2.4.5 CHILDREN'S ACT 38 OF 2005**

The Children's Act, 38 of 2005 (CA), puts the articles of the Children's Rights Charter of 01 June 1992 into law. The Charter was adopted during the South African Children's Summit on the rights of children held in Cape Town. About 200 children were in attendance in drafting

the charter. It is encouraging to note that South Africans have been aware of the necessity of recognizing children's rights even before signing and ratifying the UNCRC. Most of the articles contained in the Charter were incorporated into law in the Children's Act. The Charter reflects on the experiences, expectations and feelings of children on violence, homelessness, child labour, family life, health, welfare and education (Anon, 1992:213-219). According to Singh, Naidoo & Usdin (2000:11), the Charter is loaded because it explains many children's entitlements. The Charter was a milestone in ensuring that the legal rights of all children are taken very seriously by all societal institutions.

The preamble of the CA is an expression and extension of the democratic values and fundamental human rights contained in the Constitution, Act 108 of 1996 to improve the quality of life of all citizens. The preamble states its intentions of ensuring that the rights of children are respected, protected, promoted and fulfilled in terms of section 28 of the Constitution. The preamble sees itself weightless and valueless without reliance on international instruments such as UDHR, UNCRC and ACRWC. The CA also recognizes the important roles played by statutes, specialized agencies and NGOs in promoting the rights of children. Finally, the CA is committed to making a meaningful contribution towards the full development of children to create an atmosphere of happiness, care and love for them.

The objectives of the CA in terms of section 2 are meant to defend the constitutional rights of children. It relates to the following:

- Protection from maltreatment, neglect, abuse or degradation;
- The best interest of the learner in every matter concerning the child;
- Giving effect to the Republic's obligations concerning the well-being of children in terms of international instruments binding on the Republic;

- Making provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;
- Protecting children from discrimination, exploitation and any other physical, emotional or moral harm or hazard;
- Providing care and protection to children who are in need of care and protection.

The CA in sections 7 and 9 categorically emphasises the principle of the "best interest of the child's standard by maintaining that in all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance must be applied". The principle is an international yardstick featuring in most of the international instruments. The Act sets out the factors to be taken into account in considering the best interest where engagements and decisions are made about the fate of children. Such factors feature in the objectives of the Act.

An evaluation of the relevance of the CA in the promotion of children's rights in the school system will be incomplete without reference to section 15 of the Act, which talks about the "enforcement of rights". The section declares that a competent court can be utilised when it is alleged that a right in the Bill of Rights or in this particular act has been infringed or threatened. The court may grant appropriate relief, including a declaration of rights. The section states the persons who should approach the courts. Such persons include the child who is affected, anyone acting in the interest of the child, a group or anyone acting in the public interest of the child. Teachers and principals are, therefore, fully included since they work with the interest of children at schools.

#### **2.4.6 SEXUAL OFFENCES ACT 32 OF 2007**

The enactment of the Sexual Offences Act (Criminal Law Amendment Act, 2007 (Act 32 of 2007)) has been a milestone achievement to offer protection to children as victims of sexual offences. The act came into effect on 16 December 2007. Section 72 of the act is solely for the implementation of Chapters 1 to 4 and 7, which is about the creation of statutory sexual offences, special protection measures for children and person who are mentally disabled, etc. The act is a good tool to help fight sexual crimes against all persons, in particular sexual offences against women and children.

There are a number of new developments brought along by the act. For instance, the definition of sexual crimes has been reviewed to explain it as forced oral or anal sex, or rape with an item other than a penis. The common law offence of indecent assault has also been repealed and replaced by a new offence of sexual assault, which contains an expanded definition of a wider range of acts of sexual violation without consent. New offences relate to the following: sexual exploitation or grooming, exposure to or display of child pornography or pornography to children and the creation of child pornography. Section 15 aims to criminalise acts of sexual penetration by adults with children between the ages of 12 and 16 years, despite their consent. Section 16 on the other hand is intended to criminalise acts of consensual sexual violation committed by adults with children between the ages of 12 and 16 years. The Act prohibits prosecution of children for certain acts, such as kissing, if both children agreed to the act and the age difference between the two is not more than two years.

#### **2.4.7 SOUTH AFRICAN SCHOOLS ACT 84 OF 1996**

The SASA provides the uniform system for the organisation, governance and funding of schools. The act, like other local instruments, reflects on the fundamental human rights principles. In

its preamble it indicates that it is waging war against forms of unfair discrimination in the school system. The preamble also talks about the promotion and protection of the rights of stakeholders in the school system. Children are amongst the group of stakeholders to enjoy the protection of rights.

SASA has a number of sections adjudicating and refereeing violations of learners' rights at school. For instance, children's exposure to corporal punishment is considered a violation of rights by the SASA. Section 10(1) and (2) condemns corporal punishment as humiliating and maintains that:

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

The National Education Policy Act, 27 of 1996 shares the same principles with the Schools Act to end corporal punishment. Section 3(4)(n) of this legislation maintains that 'No person shall administer corporal punishment or subject a learner to psychological or physical abuse at any educational institution.'

The following sections of the SASA strongly condemn discrimination against learners for non-payment of school fees:

Section 5(1) maintains that: A public school must admit learners and serve their requirements without unfair discrimination in any way.

Section 5(3) of SASA qualifies the above section by clearly stating that:

No learners may be refused admission to a public school on the grounds that his/her parents/caregivers are unable to pay, or have not paid, school fees that have been lawfully determined.

Section 41(6) SASA as amended ban the discrimination against learners for non-payment of school fees by parents or caregivers. The section states various forms of infringement that are anti-legislational, such as the following:

The school may not exclude any child from class, or culture, sporting or social activities at the school, whose parent cannot afford nor has not paid school fees,

The school cannot withhold report cards; matriculation certificates or transfer cards; and the school cannot discriminate against any child in any way for parent's failure to pay school fees.

Section 10 of the Public Admissions Act in Public Schools of 1998 complements section 41(6) of SASA. The section says that:

A learner is admitted to the total school programme and may not be suspended from classes, denied access to cultural, sporting or social activities of the school, denied a school report or transfer certificate, or otherwise.

SASA did away with the traditional sanctions against learners forcing teachers to look for alternative sanctions. However, it appears that teachers are reluctant to move away from their comfort zones and continue to mete out punishment in the traditional way. Rossouw (2003) and the government (Department of Education, 2000) suggested alternative ways of handling transgressing learners. It seems this message has not reached the teachers or teachers just ignore this advice. Maphosa and Shumba (2010:395) found that educators generally feel disempowered in the absence of corporal punishment and find alternative measures of discipline ineffective.

#### **2.4.8 EMPLOYMENT OF EDUCATORS ACT 76 OF 1998**

The Employment of Educators Act, 76 of 1998 was also enacted by the SA government to protect learners from all forms of violence in

schools. The Employment of Educators Act was amended in 2000, Section 17 of the Amendment Act, 53 of 2000, provides for the dismissal of an educator if he/she is proven guilty of one of the following:

- Committing an act of sexual assault on a learner, student or other employee.
- Having a sexual relationship with a learner of a school where he/she is working.
- Seriously assaulting, with the intention to do or cause grievous bodily harm to a student or other employee.

The section provides that if it is alleged that an educator has committed a serious misconduct, the employer must institute disciplinary action. The act also further dictates that sanctions may be imposed on the educator. A description is also given in Schedule B of this act on how a disciplinary hearing on cases of misconduct should be conducted.

The fight against unfair discrimination against pregnant girls in schools is not only pursued by the constitution. The Employment of Educators Act 76 of 1998 is also up in arms to condemn such discrimination. In terms of Section 18(k) of this Act it is misconduct if a teacher discriminates unfairly against any other person on the basis of pregnancy. If it could be established that the teacher has committed misconduct by unfairly discriminating against pregnant girls, a sanction must be imposed. The forms are contained in Section 3 of this, with dismissal as the most severe sanction.

## **2.5 IMPLEMENTATION OF CHILDREN'S RIGHTS**

### **2.5.1 APPLICATION OF RIGHTS IN SCHOOLS**

Children at school are entitled to a number of rights. The recognition of the children's rights by the justifiable Bill of Rights in South Africa corresponds with a number of international and regional instruments

on children's rights. To maintain children's rights within the standards of international laws, South Africa is complying with such instruments mentioned already in the above paragraphs (Bekink & Bekink, 2005:125-126). The different children's rights provisions are all important. However, this study will not focus on all rights. The study will focus on the following common violations with regard to children's rights that are committed by teachers in the school system: Corporal Punishment, sexual abuse, school fees discriminatory policies and preventing pregnant girls from attending school.

### **2.5.1.1 CORPORAL PUNISHMENT**

Corporal punishment is a kind of violence that undermines the learner's ability to learn. It puts their physical and psychological well-being at risk, and is a breach of their fundamental human rights. Corporal punishment demonstrates disrespect for the human dignity and self-esteem of a learner. It sometimes causes learners to leave school entirely. Sometimes it makes learners transfer to less abusive schools. It causes fear in learners. Fear is not an element that is good for the culture of learning (Burton, 2006:1; Vally, 2005:2-3). It is expected of all schools not to practice corporal punishment because it is outlawed by both national and international determinants. Section 12 of the Constitution Act, 108 of 1996 and section 3(4)(n) of the National Education Policy Act, 27 of 1996 have laid it to rest. Article 7 of ICCPR (1966), Article 7 of UDHR (1948) and Article 37(a) UNCRC (1989) also emphasise the rights of children not to be subjected to torture or degrading treatment or punishment (Selangor, 2010:2-9).

The Committee on the Rights of the Child has for many years in its reports to member States consistently stated that legal and social acceptance of physical punishment of children in the home and in schools, is not compatible with the Convention. It has, therefore, recommended total prohibition of this inhuman practice across the globe. The efforts of the committee became greatly noticeable with the adoption of a new General Comment on corporal punishment at

the 42<sup>nd</sup> session held in Geneva on 2 June 2006. The objectives of the Comment were "to emphasise the obligation of all state parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures states must take".

The interpretation by the Committee that distinguishes between violence and humiliation as forms of punishment is highly commendable. The two practices are highly rejected by the Committee as ways of disciplining learners. The Committee calls for necessary guidance and direction as good for the healthy growth of children. Of great significance is the definition of corporal punishment in terms of paragraph 11 of the General Comment, which reads as follows:

*"Corporal punishment is any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (smacking, slapping, spanking) children, with the hand or with an implement - whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."*

Corporal punishment is as old as the hills. In examining the history of corporal punishment Miller and Kritsonis (2010) link it with the two principles of "*in loco parentis*" and common law. The *in loco parentis* doctrine legally protected teachers who felt the need to administer corporal punishment to learners. Case law *Rex v Muller* 1948 (4) SA

848 (0) maintains that anyone placed *In loco parentis* is entitled to inflict moderate and reasonable chastisement on his or her children where necessary for purposes of correction and discipline. However, the case maintained that regard be given to the nature of the offence, the age and bodily and mental condition of the child, and the amount of punishment inflicted, the nature of the instrument used, the motive of the person inflicting punishment and the effect of the punishment. The case further indicated that where the object of the whipping is not for the purpose of correction or by way of admonition or instruction or the proper vindication of authority, the person administering the corporal punishment is guilty of assault.

Some Christians still believe that corporal punishment is the will of God and a good technique that was used in the time of Christ. They see nothing wrong if it is continued to be used by teachers today. They base their arguments in Scriptures. Proverbs 13:24, containing the words of king Solomon, reads that "*He that spareth his rod hateth his son: but he that loveth him chastenth him betimes*" (Bible, 1982). King Solomon is highly regarded by some Christians, since he is regarded as one of the wisest spiritual figures in the Christian tradition.

The Human Rights Watch (2007:1-7) states a number of brutal forms of corporal punishment used commonly in schools:

- Hurting learners with a wooden cane on the buttocks or palms of their hands.
- Flogging with whips made of rubber.
- Slapping, kicking, shoving or punching learners.
- Beating learners on the back, face and head.
- Painful body postures.
- Use of excessive drills.
- Prevention of urine.

Mishra, Thakur, Koiral, Shrestha, Poudel and Jha (2010:98-99) mention some more commonly used forms of corporal punishments:

### **Physical punishment**

- Beating with a stick, cane, belt, pipe, fist, wet stinging nettles, dusters, etc.
- Pulling ears and the hair of the temples.
- Making learners stand for the whole day in the sun.
- Kneel down and do the work and then enter the classroom.
- Making learners stand on a bench.
- Making them raise their hands for a long period.
- Pressing a pencil between two fingers, etc.

### **Emotional punishment**

- Slapping by the opposite sex.
- Scolding, abusing and humiliating.
- Giving animal names: donkey, monkey, ox, bitch, buffalo.
- Calling parents to the school.
- Suspending them for a couple of days.
- Pinning a paper on their back and labelling them "I am a fool".
- Ordering girls to stand in the rain.
- Making students stand naked in the classroom.

### **Negative reinforcement**

- Detention during the break and lunch.
- Locking learners in a dark room.
- Asking learners to bring explanatory letters from parents.
- Sending learners home or keeping the children outside the gate.
- Making the learners sit on the floor in the classroom.
- Making the learners clean the premises.
- Sending the learners to the principal, etc.

Even if it is outlawed globally, there are some schools in South Africa that are still administer prohibited forms of punishment for a wide

range of reasons (Hart *et al.*, 2001:53; Du Bois, 2002:1-3; Franks, 2009:8-9; Clinton, 2010). There are a number of both formal and informal reports on the *status quo* of corporal punishment in schools. One such report is the report by Yende (2007:8) in "The City Press newspaper" on the case of Khutso Mathega. This is a learner of Mmamekwa Primary School in the Limpopo Province who became a casualty in a most emotional case of inhuman punishment. Khutso, who was ten years old in Grade 3, was locked in a class for the whole night for being unable to write. The Pretoria High Court gave Khutso's mother, Mmina, leave to sue Limpopo Education MEC. Mmina sued the Department of Education for R250 000 for damages for the ordeal suffered by her son. Angrily and disappointed Mmina made the following remarks, "I want the department to pay for this horrible deed. It was winter and my son had no blankets, food and water for the whole night".

Khutso's case is not the only one to refer to. The Legal Resource Centre has assisted in many ways to attend to learners who have been inhumanly punished by school teachers. For instance, the Legal Resource Centre satellite office in Durban assisted a young girl in 2007 to obtain educational and occupational therapy after she lost an eye as a result of corporal punishment (Love & Mayet, 2007:1-7).

The local newspapers are helping to expose culprits of this inhuman practice in the school system. A case in point is the report by Maponya (2010:1-3) on behalf of the "Sowetan Newspaper" of a school in Limpopo Province called Phahlaphahla High School in Rebone outside Polokwane where corporal punishment is the order the day fourteen years after it has been outlawed. A girl learner at this school was at one stage allegedly beaten mercilessly by a female teacher for failing to produce her homework. It is alleged that the female teacher used her bare hands to beat the girl learner. The report also indicated that fan belts and sticks are used to beat learners. In some cases police are also called to assault pupils who

are having love affairs with fellow pupils. It is alleged that the assaults are conducted by the police in full view of other learners.

Naidoo (2010:3-4) reported on 23 January 2010 in the "Sunday Times newspaper" that Glenhills Primary School has allegedly been meting out corporal punishment to learners. The culprit is the Deputy Principal. An 11 year old boy changed schools after he has allegedly been assaulted by the deputy principal. The mother of the son reported that the son came home with marks and bruises. The principal has also been accused of assaulting a Grade 4 learner. The office of the deputy principal is regarded as the slaughter house where learners are kicked and beaten severely. The allegations were investigated by the Provincial Department of Education and the culprit described such allegations as "hogwash".

As if that was not enough, Sowetan Live Newspaper and its partners reported the suspension of a female teacher on 22 March 2011 for allegedly hitting a pupil at Glenbrack High School in Alberton. Parents of learners of this school complained about the use of corporal punishment at the school. A preliminary investigation was instituted at the school, which led to the decision to suspend the teacher. However, the forms of punishment used have not been released. The provincial Department Spokesperson, Charles Phahlane, reminded the public that corporal punishment has been outlawed by the Constitution and SASA and its usage is, therefore, illegal. The Spokesperson encouraged learners to report instances of corporal punishment at schools.

It is encouraging to see the role played by case law in ending corporal punishment. From such concluded court decisions it is expected that all people handling the daily affairs of learners at schools will learn much. Some of the landmark cases that have affirmed the rights of children in South Africa include the following:

***Christian Education South Africa v Minister of Education 1999 (4) SA 1092 (SE)***. In this case the court refused to allow teachers at Christian Education Schools to apply corporal punishment. An association of 196 Christian Independent Schools had argued that corporal punishment was an integral part of the Christian ethos and pleaded that the prohibition imposed by section 10 of SASA be declared invalid. In passing judgement the court took into consideration the importance of the child's rights to dignity, as well as the right to be free from all forms of violence. The court demonstrated its muscle to protect and enforce the rights of children as enshrined in the Constitution and also in line with international instruments.

***S v Williams***. The case involved six juveniles who had been sentenced to receive "moderate correction" of a number of strokes with a light cane in line with section 294 of the Criminal Procedure Act of 1977. The court declared corporal punishment unconstitutional because it violates the dignity of children. The court also maintains that it violates the right to be treated in a human way. The court declared section 294 *unconstitutional*. From that time whipping was considered to be an illegal punishment to be imposed by the courts.

There are also international case law on corporal punishment that are of great significance in terms of this study such as the following:

***Tyrer v The United Kingdom 1978 5856/72***. The legal questions of this case were amongst others whether the existence of corporal punishment was in conformity with the prohibition of degrading treatment or punishment. Also whether the administration of corporal punishment has compromised the human dignity of the applicant Mr Tyrer, the applicant, was sentenced to three strokes of the birch after having been found guilty of assaulting a senior pupil at school in the company of three other boys. The applicant made an appeal and was dismissed by the high court of Justice of the Isle of Man. The applicant was indeed humiliated in that he was made to take down his trousers and underpants and bend over a table. He claimed before

the commission that the facts of his case constituted a breach of Article 3 of the Convention. He claimed that there had been torture or inhuman or degrading treatment or punishment or any combination of the two. The Commission expressed its opinion that judicial corporal punishment, being degrading, constituted a breach of article 3 and, therefore, its infliction on the applicant was a violation of that provision. The court found that the applicant was subjected to a punishment in which the element of humiliation attained the level inherent in the notion of "degrading punishment". It, therefore, concluded that the judicial corporal punishment inflicted on the applicant amounted to degrading punishment within the meaning of article 3 of the UNCRC.

***Philip Williamson and others v UK 55211/00***. This case is similar to the South African case already mentioned above, viz, *Christian Education South Africa v Minister of Education* 1999 (4) SA 1092 (SE). The UK Christian Schools also challenged the banning of corporal punishment. The European Court in September 2000 unanimously and without a hearing by individuals associated with a group of Christian Private Schools in the UK rejected the application. The UK Christian Schools alleged that the implementation of a ban on corporal punishment in private schools breached parents' rights to freedom of religion and family life.

***Naushad Ali v State (Criminal Appeal No HAA 0083 of 2001)***. The high court of Fiji at Lautoka on 21 March 2002 ruled on this case concerning an appeal against a judicial sentence of six strokes of corporal punishment. Most of the cases on corporal punishment have been condemned and rejected by the Fiji courts. Naushad Ali was the first that examined the constitutionality of corporal punishment. The Fiji Commission on Human Rights had requested that corporal punishment in schools also be considered, arguing that all corporal punishment is against section 25(1) of the Constitution and International Human Rights Law. Section 25(1) of Fiji Constitution of

1997 states: "Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhuman, degrading or disproportionately severe treatment or punishment". The ruling of the court called for changes in the society with regard to human rights and also condemned all past practices on corporal punishment as offensive for the present. The court further ruled that the provisions on corporal punishment under the Penal Code and the Criminal Procedure Code as a breach of section 25(1) of the Constitution and, therefore, unlawful. The judgement made powerful statements on children's rights in addressing corporal punishment: "Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students."

***Campbell and Cosans v UK.*** School corporal punishment was challenged in this case by two Scottish mothers, Mrs Grace Campbell and Mrs Jane Cosans, who alleged that the corporal punishment used at their sons' school was contrary to article 3 of the European Convention. The matter was rejected by the UK court since the boy had in fact not received any corporal punishment. The European Court found that the UK had failed to respect the parents' philosophical convictions. According to article 2 of Protocol 1 to the Convention, "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions". The boy, Jeffrey Cosans, aged 15, was suspended from his school when he refused to accept corporal punishment. The court ruled that he had been denied his right to education. This judgement led to the abolition of corporal punishment

in all state-supported schools in the UK in 1987. Its use remained legal in private schools until September 1999.

Corporal punishment knocks a child's self-confidence and self-esteem. It causes poor concentration, an inferiority complex, depression, suicide, gang formation and anti-social activities. It is a practice that humiliates, denigrates, belittles, threatens, scares or ridicules the child. It is destructive when administered in front of other learners, especially when accompanied by much verbal abuse, shouting and nasty remarks from the teachers. It becomes worse when learners are forced to perform humiliating physical exercises in front of the whole class (Anon, 2004b:1-20). Aside from the psychological and social consequences mentioned above, such actions also have serious consequences for the teacher as a legal employee and a person. The teacher may end up losing his or her job if they continue to use abusive corporal punishment methods because it is a dismissible offence in terms section 17(d) of EEA, 76 of 1996. Learners or their parents may take revenge. The teacher may be confronted with litigation. In some instances serious sanctions may recommend a transfer of the teacher to a place far away from home. Sometimes teachers are ordered to pay medical compensation for the treatment that the child has to receive (Mishra *et al.*, 2010:103-104).

Incidents have been reported where learners have taken their own lives after being humiliated in front of classmates by his or her teacher. An example of such a case occurred in the Indian Education system. It was reported by the newspapers of Kolkata (formerly known as Calcutta) in India on 4 January 2011. The question asked in this article was "What should be [the] punishment for a teacher stripping [who stripped] [a] 13 year old girl student in front of students (boys too)?" This 13 year old minor girl was searched by her teacher in a classroom after a complaint by another girl student that she stole some Rupees (money) and was keeping it in her pocket. As a result the girl was searched by her teacher by a process of removing all her

articles of clothing one by one in the presence of all the other students, including boy students in the classroom. About 124 Rupees were recovered from her pocket, but it became difficult to establish whether the money belonged to the complainant. The little girl was embarrassed to the extent of taking her own life by consuming poison that night. Her dead body was found lying in front of her house the morning of the next day. The police did not even bother to investigate the matter (Prasad, 2011:1-3).

The use of corporal punishment will never bring discipline and order back into schools. The views of the Eastern Cape Province school principals in South Africa on the use of corporal punishment cannot be left unchallenged. The Mail & Guardian Newspaper reported that these principals, represented by a few of their colleagues, had a meeting with the state president, Mr Jacob Zuma, on 7 August 2009 to request that corporal punishment be reinstated in schools to restore order (Anon, 2009). The representative of the principals received a round of applause for his utterances on corporal punishment. The expression of opinion by the representative is unwarranted and barbaric. Corporal punishment is inhuman. It violates the fundamental rights of children.

#### **2.5.1.2 CONCLUSION**

Corporal punishment is a violation of a child's right to respect for physical integrity, human dignity and equal protection in terms of legislation. Its use in schools in South Africa still remains a challenge. This is informed by a number of reported cases of its continuous use. Though there are many statutes on the practice of corporal punishment nationally and internationally, much still needs to be done about its total eradication. Schools and authorities are expected to create a conducive environment where learners can develop themselves at their best. This mandate to educators is non-negotiable in terms of the UNCRC. Article 19 of the UNCRC requires states to

protect children from all forms of physical or mental violence while they are in the care of teachers, parents and others.

## **2.5.2 SEXUAL VIOLENCE IN SCHOOLS**

Prinsloo (2005:5-10) and George (2007:2), on behalf of the Human Rights Watch Organisation, and Clinton (2010:14-22), maintain that sexual violence in schools in South Africa is still prevalent amidst the best domestic and international legislation to end it. Among the crimes reported against children in schools in South Africa, sexual violence takes the lead. School going girls are the most vulnerable. Culprits are often their male classmates and their male teachers. Sometimes community members become the culprits of sexual violence towards girls after school when travelling back home. The Child Care Act and the Sexual Violence Act place statutory obligations on schools and all centres housing children to disclose and report such cases to the authorities. However, administrators sometimes conceal sexual violence or delay disciplinary action. This kind of misconduct in schools increases the risk for girls to contract HIV/AIDS, sexually transmitted disease or to become pregnant against their wishes.

Sexual violence is defined in different ways by commentators (Du Plessis, Fouché & Van Wyk, 1998:418; Prinsloo, 2005:5-10; Waterhouse, 2008:3-14). It is defined as physical violence of a sexual nature against a child. It includes non-physical processes that include verbal abuse, exhibitionism, visual and auditory exposure to adults having sex. Physical acts characteristic of this violence include fondling, masturbation and intercourse. Violent acts such as serious bodily injury during forced sex are also regarded as sexual violence.

Naylor (2002:1-9) names sexual abuse as one of the forms of sexual violence. The other forms of sexual violence include the following:

- Rape and sexual coercion

- Sexual harassment
- Sexual assault
- Intimidation
- Sexual touching, and
- Emotional abuse.

The Children's Act, 38 of 2005 defines sexual abuse in relation to the child as sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted. It means encouraging, inducing or forcing a child to be used for the sexual gratification of another person. Sexual abuse also includes using a child in or deliberately exposing a child to sexual activities or pornography. Finally, the term includes procuring or allowing a child to be procured for commercial sexual exploitation or to in any way participate or assist in the commercial sexual exploitation of a child.

Waterhouse (2008:3-14) contends that most victims of sexual violence in South Africa are girl learners and that the crime is accompanied by a high degree of under-reporting. Only a small proportion of sexual crimes are ever reported. Under-reporting is influenced by a number of factors. It is influenced by the psychological consequences of sexual assault such as denial, avoidance, subjective interpretation of the abuse and also fear of the consequences of disclosing the abuse. In some instances the close relationship between the child and perpetrator can compromise the reporting. The child's confusion about or feelings of being responsible for the abuse or the child's fear of reprisal by the perpetrator or the child's feelings of being protective of the perpetrator or family members and other factors may undermine reporting on sexual crimes.

In its submission to the Task Group on Sexual Abuse in Schools (Anon, 2002:1-6), the National Department of Education unpacked a series of reasons for under-reporting and failure of schools to take rigorous responsibility for this matter:

- Many learners find it difficult to speak out for fear of the stigma that may be attached to them. Such learners would not be able to face the public because of the wrong perceptions the society has about raped learners, e.g., such learners are sometimes viewed as naughty and immoral. They are objectified and humiliated by scrutiny and gossip.
- Fear of not being believed. It is common for parents not to believe everything said by a child about adults.
- Fear of being blamed for the abuse. Girl learners are sometimes accused of dressing inappropriately. Their lifestyles and private life come under attack. They are accused of flirting with male educators. This is unacceptable because male educators are expected to be parents and they also have girls as their children.
- Where the teacher is the abuser the power relations often intimidate learners into silence. Colleagues of the teacher start to view the learner negatively and lose trust in the learner.
- The inability of learners to discuss sexual matters with adults for cultural and religious reasons.
- Poor and ineffective management systems in schools. These are schools that are run without taking the policies and statutes aimed at promoting the rights of learners seriously.
- Deliberate non-reporting to protect the image of the school.
- Lack of understanding of the reporting channels in the event of sexual abuse incidents.

The effects of sexual violence on school going girls can vary depending on the mental strength of the abused girl, the severity of the violence and the duration of the violence. Some situations can have life altering effects, especially when they involve chronic abuse such as rape. They can lead to the abused girl committing suicide. The common effects include, amongst others, decreased school performance and increased absenteeism to avoid coming to contact with the perpetrator. They also include loss of trust in environments

similar to where the abuse has taken place. Finally, the abused person may end up losing relationships. Classmates may distance themselves from the abused or shun her altogether (George, 2001:2-5).

Serious psychological and health effects can be caused by sexual violence. Such effects include: depression, anxiety and panic attacks. Incidents such as sleeplessness or nightmares, shame and guilt, headaches, fatigue or loss of motivation may also occur. The abused may also develop stomach problems, eating disorders and may lose weight. Different feelings may also develop. The abused may feel angry towards the perpetrator, powerless or out of control and may suffer from high blood pressure. The level of confidence and self-esteem may also become affected (George, 2001:2-5).

On 3 December 2008 the National Department of Education announced to the nation that it will introduce mechanisms and strategies to manage sexual harassment and violence in schools in 2009. Through the mouth of the Director General, Duncan Hindle (2008), the Department of Education announced that the guidelines for the prevention and management of sexual violence and sexual harassment in public schools have been finalised. It was announced that such materials have been distributed across the country to all districts. The department also indicated that there will be advocacy workshops for all schools starting in 2009. The calendar year of 2009 passed without such advocacy workshops on sexual harassment and violence matters. In the meantime girl learners' ability to learn remain compromised (Department of Education).

The occurrence and escalation of sexual violence in schools in South Africa, especially the rape of girls, is not exaggerated. The fact that male educators are engaging in serious sexual misconduct with girl learners is not a fabricated story. The truth of this matter is defended extensively by the local newspaper reports. The newspapers and electronic media continuously report sexual violence as widespread.

For the purpose of authenticity and objectivity in this study a few newspaper reports on sexual violence are discussed and unpacked.

Mogakane and Mnisi (2007) reported on behalf of News 24 a serious sex scandal in Bushbuckridge in Mpumalanga Province of South Africa on 9 May 2007. A principal and teacher were accused of having sex with under-aged girls on a sponge mattress. Two of the girls reportedly fell pregnant. The principal insisted that he was innocent. The teacher was arrested and later released on bail with strict conditions. The local ANC youth league organised a protest to blow the whistle on the violation of children's rights.

Another recent report on sexual crimes against school girls was reported by Mbabela (2010:3-4) in the Times newspaper dated 24 February 2010 with the heading, "Trio held for pupil's rape". The school learner was allegedly raped in the storeroom of the Kopanang/Hlanganani High School in Warden in the Free State Province of South Africa during school hours. The girl allegedly reported the abuse to the principal, who in turn referred her to the deputy principal. The deputy pleaded with the girl not to report the matter to the police. The teachers were arrested after the parent reported the rape case to the police. The two, the principal and his deputy, were arrested as accomplices for failing to report to their authorities, i.e., the provincial Department of Education. The response by the Department of Education on the matter was highly rational: "We need to stop all forms of sexual harassment in schools, and the department relies on clear reporting mechanisms and the commitment of teachers and school managers to respond firmly and sensitively to such allegations."

The overseas court case *S v The Corporation of the Synod of the Diocese of Brisbane, Supreme Court, Queensland, 2001* teaches us a lesson on the consequences of under-reporting by school principals. "S" was involved in cases of sexual abuse with girl learners at a boarding school as boarding master. The girls complained to the

principal about several incidents and the principal ignored it and dismissed them, stating that the reports are unfounded. Finally one reported case exposed the principal. Another female complained that the teacher had interfered with her. "S" committed suicide on the eve of the trial and left a note that says he might have been involved with more than 20 students. The outcome of this case demonstrated that the principal had failed to take appropriate action in time. There is also a need to ensure that systems are in place and to ensure the safety of learners. Wherever learners express concern regarding their personal safety, action must be taken (Stewart & Knott, 2002:127-131).

Butler (2010:1-2) reported in the Herald Newspaper about the involvement of a teacher in a sex scandal at the Victoria Park High School in Port Elizabeth in the Eastern Cape Province of South Africa. The parents of the 16-year-old pupil laid a complaint against a teacher for having sex with their daughter. The parents alleged that the teacher had consensual sex with the pupil during the July school holidays of the year 2009. The Grade 11 pupil was removed and placed in another school. The teacher was charged with misconduct and improper behaviour. The police opened a case of statutory rape based on the complainant's information, but later withdrew it on advice from the Police Legal department. The case was handled by the Education Department.

Otto (2009:1-2) reported a horrible case of misconduct and improper behaviour by a male teacher towards school boys in the Pretoria News Newspaper on 9 August 2009. The male educator, a certain Mr Steven Frank de Wet (44) made two brothers hit him on the buttocks while playing a social game called 'school school' after school hours. The teacher preferred to be hit on his bare buttocks. The matter was handled by the Sexual Offences Court of Pretoria in Gauteng Province of South Africa. The educator pleaded not guilty to 12 charges of contravening the Sexual Offences Act, including rape, exposure to

porn and sexual assault at a Pretoria North School at which he was a teacher. The male teacher allegedly penetrated the boy anally and touched or licked his private parts. All these ugly actions took place in the teacher's bedroom. The culprit reported to the court that some of the 'deeds' were painful and made him feel sad.

The war waged against teachers who are sexual predators since the year 2000 by the South African Council for Educators (SACE) is a milestone achievement in the defence of children's rights in the school system. SACE handled and investigated over 1 000 cases of teachers with charges of sexual misconduct since 2000. Different sexual misconduct cases have been investigated such as those of serial abusers, teachers who impregnated learners, teachers who had affairs with learners, teachers who raped learners and teachers who had sex with under-age learners. SACE has taken such teachers to court and some have been convicted. Sanctions for sexual misconduct range from being struck off the roll to dismissals. Teachers struck off the roll are listed in both the government gazette and SACE website as teachers who brought disgrace to the profession and are not allowed to teach again. By 1 July 2009 SACE had convened 348 hearings in total. As a result of these hearings 68 educators were struck off the roll. Most of the sanctions involved sexual misconduct cases (Stephen, 2007:2-3; Brijraj, 2009:2-4).

It is sad to realise that not only girls in main stream schools are sexually abused, but children from special schools. Kotlolo (2010:3) reported on behalf of the Sowetan Newspaper a story of disabled learners who were raped at Filadelfia School in Soshanguve by their teachers. Nothing was done to the teachers. The rapist teachers were still at school. During interviews the learners reported being afraid of their teachers. The school houses 400 blind, deaf and physically disabled learners.

The country's legislation, especially the Bill of Rights, has strong provisions that protect the rights of school going girls in terms of

sexual violence and abuse. For instance, the legal meaning of section 28 of the Bill of Rights was clearly explained in the case of *Government of South Africa and the Others v Grootboom and Others* 2001 (1) SA 46 (CC) at 82C-E. A number of interesting conclusions can be derived from this case with regard to the socio-economic rights of children. The Constitutional Court cited section 28 of the Bill of Rights as one of the mechanisms through which South Africa honours its constitutional law obligations in relation to the rights of children as contained in the UNCRC. The court further interpreted section 28 to mean that the state has an obligation to pass laws and create enforcement mechanisms for the maintenance of children, their protection from maltreatment, abuse, neglect or degradation, and the prevention of other forms of abuse of children in the rest of this section (Dutschke, 2006:52-57).

#### **2.5.2.1 CONCLUSION**

Many school going girls across South Africa still experience sexual violence and harassment. Their access to education, which is a fundamental right, becomes impeded. The effects of sexual violence are serious to such an extent that they cause both psychological and medical problems for these girls. Most of these girls end up dropping out of the schools. However, there are plenty of international and national laws to curb the spread of sexual violence and abuse in schools. The South African government is committed to intensifying strict measures to make sure that girls are not raped, sexually harassed and sexually abused in schools. However, the newspaper reports do not reflect this commitment, because the practice is still recurring.

#### **2.5.3 UNFAIR DISCRIMINATION BY SCHOOLS TOWARDS GIRLS ON THE BASIS OF PREGNANCY**

The right to a basic education (section 10), which is a cornerstone of all other rights for children, is emphasised by most of the domestic

laws in South Africa, such as SASA and NEPA. The state has the duty to respect, protect and fulfil this right. One of the aspects of the right to basic education includes the rights of pregnant learners to education. Section 9(1) of the Constitution guarantees such learners the right to equal protection and the benefit of the law. The section 9(3) further prohibits unfair discrimination on the basis of pregnancy. The rights of learners in terms of this section should be jointly understood with the other rights, human dignity (section 10), life (section 11), freedom and security of person (section 12) and protection from maltreatment, neglect and abuse (section 28(d)). The full implementation of these provisions of the law rests entirely on the shoulders of all schools.

The Promotion of Equity and Prevention of Unfair Discrimination Act, 4 of 2000 is one of the domestic determinants discouraging unfair discrimination in formal settings on the basis of pregnancy. Section 8 of the act spells out clearly the aspects that fall under unfair discrimination. Only relevant aspects to this study will be quoted such as discrimination on grounds of pregnancy, limiting a woman's access to education and social security, denial of access to opportunities. The proper application of this law, used in conjunction with the provisions of the Bill of Rights, will assist schools greatly in following the law.

Unfortunately the management of pregnancies still remains a challenge in most of the schools in South Africa, even if there are strategies available to handle such problems. The rights of such learners to education should be respected and defended at all costs. Such learners need to be supported and guided during the pregnancy. To assist pregnant learners to cope and know their rights, and also to assist teachers to manage them successfully without disregarding the law, the National Department of Education has issued Guidelines on the "Measures for the Prevention and Management of Learner Pregnancy" in 2007. The measures are underpinned by three

important principles of the Constitution: the right to equality, the right to education and the right of the child. The measures condemn unfair discrimination towards school girls in terms of the Constitution, the Schools Act and the Promotion of Equality and Prevention of unfair Discrimination Act, 4 of 2000.

The Measures for the Prevention and Management of Learner Pregnancy impress upon every teacher to encourage learners to continue with their education prior to and after the delivery of the baby. Teachers are obliged to give such learners educational support in whichever possible way. There should also be appropriate mechanisms to deal with complaints of unfair discrimination, hate or harassment of pregnant girls. The Life Orientation educator is also singled out and is tasked with offering advice and counselling on motherhood and child rearing to such learners after giving birth. The schools are also called upon to assist such learners with the registering of child grants if it is possible (Anon, 2007:6-7).

Even though local legislation states clearly that it is unconstitutional to prevent pregnant girls from attending school, there are schools that continue to discriminate unfairly against such learners by expelling them. Some information on such practises can be obtained from newspaper articles. For instance, on 24 May 2010 the Mercury Newspaper reported the story of a 17-year-old girl from Chesterville High School who was expelled by the principal because she was pregnant. The principal told the parents of the learner that it was against the school policy to admit pregnant learners. The parents were advised to bring the learner back the following year for admission. The learner fell pregnant as a result of rape. The school also failed to support her emotionally. The school principal was backed up by a group of parents who maintained that pregnant girls will bring the school into disrepute. It was only through the intervention of the district officials of the Department of Education that the matter was resolved. The Department of Education maintained

that it will be unconstitutional to stop a girl learner from attending school (Mbonambi, 2010:4).

Majangaza (2011:1-21) reported to the nation on behalf of the Daily Dispatch newspaper about the conduct of a Transkei school principal in the Eastern Cape Province of South Africa who defied orders from the Department of Education by expelling pregnant learners from the school. This was the first time that this had happened at the school. At one stage the principal was instructed by the Eastern Cape MEC of Education to reinstate pregnant learners. The new case involved four learners. Three of the four learners were instructed to come back to school after two years. Their parents were summoned to the school by the principal. During the parents' meeting at the school the parents agreed that pregnant learners should not be allowed at school. This happened in the presence of the principal, and he neglected to advise the meeting on what the policy says about such learners. The Provincial Department of Basic Education intervened by issuing an instruction again to the school by making this statement: "There is no policy that allows principals or school governing body members to expel pregnant learners".

The unconstitutional banning of pregnant girls from school is an international problem. Global Voice is an international community of bloggers who report on blogs and citizen media from around the world. They published an article on 28 May 2008 of a pregnant teenager who was banned from school. A young Cape Verdean student who was doing Grade 11 at the Januario Leite Secondary, District of Paul, was asked to cancel her enrolment after giving birth to a baby. The headmistress of this Cape Verdean school boldly wrote a notice to all learners and teachers at the school of the steps taken by her against the girl learner. The notice indicated that the girl has been suspended from classes on the grounds of childbirth and that the girl must apply by herself for the cancellation of the matriculation for the current year. This was a form of humiliation of the teenager. The

case of this teenager led to citizen movements writing petitions and Cape Verdean Blogs signed by 220 citizens contesting the discrimination against pregnant youngsters and teenagers in Cape Verdean schools. The organised citizenship movement demanded from the state a legal framework to manage pregnant girls in schools.

Research (Chigona & Rajendra, 2008:15-26) on child abuse confirms that schools are doing very little to defend the rights of teen mothers to remain at school and continue with their education. One worrying factor is the perception that the society has of such girls. Such girls are viewed by society as:

1. A representation of adolescent female sexuality out of control;
2. A representation of rebellion against parents and other adults;
3. A drop-out;
4. A contaminated, lazy and incompetent young woman.

Furthermore, these girls are viewed as girls who became pregnant easily, who do not care, who are wrong and always fail. Such views stigmatize pregnant girls and undermine the girl's dignity as a human being.

#### **2.5.3.1 CONCLUSION**

The state has the duty to respect, protect and promote the right to basic education of every child. One of the state responsibilities is to ensure that pregnant learners are not unfairly discriminated against whilst they are at school. Unfortunately, this right is sometimes infringed by the schools when these learners are expelled from the schools. Even if there are Measures for the Prevention and Management of Learner Pregnancy in place, supplied by the National Department of Education, schools do as they wish. The problem of expelling pregnant school going girls is both a national and international matter. This is informed by the volume of newspaper

reports locally and internationally. Society displays negative perceptions of such learners for a number of reasons, and this contributes to the problem.

#### **2.5.4 REFUSING LEARNERS ACCESS TO SCHOOL FOR NON-PAYMENT OF SCHOOL FEES**

The constitutional right of indigent children to access to education is still compromised in South Africa. Poverty and unfair discrimination against such learners remains a barrier. Cases of denying children of indigent parents access to school for non-payment of school fees are still common in South Africa (Pretorius & Veriava, 2006:1-21; Weber, 2006). This occurs even if there are laws banning this discrimination. The law does not allow the school to exclude any child from classes, cultural, sporting or social activities taking place at the school for non-payment of school fees by parents. Discrimination against such learners takes many forms such as withholding reports cards, matriculation certificates, transfer cards, stationery, etc., but it is illegal in terms of the Schools Act. Treatment of this nature directed at indigent learners raises eye brows about the constitutionality of the school fees.

The constitution in terms of section 29 provides for the best right, access to education for all (Roithmayr, 2003:383). The phrase 'access for all' refers to both the poor and the rich parents. This becomes a problem for poor people who cannot afford to pay school fees. It becomes inappropriate to make parents pay fees that should be the responsibility of the state. The school fee system, therefore, divides people according to their socio-economic status, which is in violation with section 9 of the constitution.

The aim of this section on the school fees in the school system is to demonstrate how children are humiliated due to the problems of their parents. The primary focus will be on how access to school, which is guaranteed by the Constitution, is compromised. All other legislation

that makes basic schooling a basic right will also be discussed. To explain how school fees become a barrier to access to education, newspaper articles and case law will be used.

It has to be said first that the effort of the state to address the rights of the poorest of the poor should be acknowledged. In 2009 the non-fee status of schools was extended from 40% to 60% of the learner population nationally. The final implementation took place in 2010. The total percentage of such schools is 64%. The non-fee school receives larger state allocations per learner than other schools. In schools that do not fall into this category, poor parents are continuously encouraged to apply for fee exemption. The guidelines for exempting parents are available in all fee charging schools (Burger, 2009:2).

Many infringements of children's constitutional right to access education occur in fee-paying schools. For instance Cilliers (2010), a Beeld Newspaper reporter, wrote a story of three children who were denied access at the gates of Coligny Primary School in the North West Province on 27 August 2010. These drastic actions were spearheaded by the SGB of the school against the learners for the failure of their parents to make arrangements to pay outstanding fees. The non-paying parents had been issued with written warnings for their failure to make arrangements, which led to the following anti-school Act drastic actions:

1. Children were refused entry to the school.
2. The report cards were withheld.
3. Children were not considered for merit awards.

What is touching about the article is how these learners were handled in front of the others. One of them cried, according to the report. The other children laughed at them as they were sent home. This humiliation touched the hearts of many South Africans. One of the

people who were deeply moved was the Benoni town businessman Vic Doman, who paid the outstanding school fees of the sacrificed children of Coligny Primary School to the amount of R14 200 one day after the incident took place. The businessman explained how he lost the benefit and opportunity of going on school trips because of his indigent parents. As a result other learners teased him.

It would appear that the school fees system is a thorny matter internationally. Rout (2007), reporting on behalf Herald Sun's Australian Newspaper, explains the humiliation children suffer because of the non-affording parents who do not pay school fees. The report explains the following forms of humiliation:

- Parents were informed that a child will not be allowed to participate in extra-curricular excursions if subject contribution arrears are not settled.
- A school newsletter advised parents that new courses for the current year will not be approved before arrears are settled.
- A school withheld re-enrolment when subject fees were not paid.
- Students were denied a school diary if parents could not pay subject contributions.
- Pupils were not allowed to take their finished artwork or cooking home because of unpaid subject contributions.
- Schools denied students access to workbooks needed in class.
- Parents choose subjects with cheaper fees.
- Students were denied the opportunity to participate in inter-school sports if levies were not paid, etc.

It is encouraging to see parents who are well-informed on school fee rights. It is pleasing to have NGOs that fight against social injustices in schools. The case in point is the matter between the *Centre for Applied Legal Studies (CALS) and Other Hunt Road Secondary School and Others*. CALS, which is based at the University of Witwatersrand, made an application on behalf of Audrey Ngubane and

Emily Ngwira against Hunt Road Secondary School in Durban on 15 June 2007. CALS contended that the school acted unlawfully by suing the two parents for non-payment of school fees. CALS further contended that the parents were not notified of their rights to apply for fee exemption, for which they would have qualified (Tucker, 2006:1-4).

The favourable outcome of the case affirmed the constitutional and statutory rights of indigent parents. The school was interdicted from proceeding against parents for the non-payment of fees unless it was able to demonstrate that it had acted in line with the Schools Act. The court requested the school to show proof that they had notified and informed parents of the school fees exemption. The school was further ordered to implement its obligations in terms of the Schools Act. The case drew much public attention. The South African Human Rights Commission (SAHRC), for instance, applied and was granted leave by the Durban High Court to be admitted as *Amicus Curiae* in this case. The case also assisted the SAHRC in fulfilling its functions of creating social justice in our schools (Tucker, 2006:1-4) with relation to the required fees.

The policy documents on National Norms and Standards for School Funding (Notice 2362 of 1988 as amended in 2004), maintain that not all learners should pay school fees. The school fee system should address the plight of the poor and the destitute. In accommodating the diverse learner population in terms of their economic status, paragraph 127 of the Norms and Standards states that there are those learners who qualify for automatic school fee exemption. The Norms and Standards dictate that it is illegal to charge any school fees for a learner:

- Who is an orphan in an orphanage;
- Who is an orphan in a child-headed household;
- Who has foster parents;
- Who has been placed in a youth care centre or a place of safety;

- Who has been placed in the care of a family member; or
- Whose parents receive a social grant on behalf of the same learner.

The school fees system is condemned by General Comment 13 to the International Convention on Economic, Social and Cultural Rights (ICESCR). This piece of legislation calls upon global governments to provide the kind of education governed by the following four features: availability, accessibility, acceptability and adaptability. From the four features, accessibility is relevant to this study with its three dimensions: Non-discrimination, physical accessibility and economic accessibility. The dimension of economic accessibility implies that education has to be affordable to all. This dimension is closely related to the contents of article 13(2) of ICESCR, which also calls for free education for all in primary and secondary education.

The United Nations Children's Fund (UNICEF) and the World Bank embarked on a massive campaign to abolish school fees in 2005. The aim of the campaign was two-fold. Firstly, the aim was to gain a landslide victory in as far as access to basic education is concerned. In the second instance the aim was to achieve both the Millennium Development Goals (MDGs) and the Education For All (EFA) targets. The initiative was taken with the belief that the abolition will play a prominent role in boosting learner enrolment in schools amongst the poor (Jolie, 2005:1-4).

Both UNICEF and the World Bank registered a massive success. Firstly, countries were adequately prepared to manage the outcomes of the impact of the abolition of school fees. In the second instance the intention was to provide support and guidelines for countries as they engage in the process of abolishing school fees. The support and guidance was in the form of planning, implementation of the new policy, and provisioning of appropriate external assistance according to agreed timeframes (Anon, 2006:1-120).

The collaborative efforts of UNICEF and the World Bank culminated in a workshop on the abolishing of school fees held in Nairobi from 5-7 April 2006. The workshop showcased the experience of the countries that had already implemented a policy of school fee abolition: Ethiopia, Ghana, Kenya, Malawi, Mozambique and Tanzania. Countries that had the intention of abolishing school fees took part in the workshop, for instance, Burundi, the DRC and Haiti. The three world powers Japan, Germany and the Netherlands attended this important workshop. It is disturbing to realise that South Africa, as a democracy, did not attend this policy shift workshop. This was a workshop that addressed issues around making the global right to free basic education a reality (Anon, 2006:1-120).

UNICEF has not been alone in addressing the issue of education. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) joined hands with UNICEF by addressing issues of education from a rights based approach. In an attempt to provide education for all, both UNESCO and UNICEF in 2007 published a report on three interrelated rights: The right of access to education, the right to quality education and the right to respect within the learning environment.

#### **2.5.4.1 A COMPARATIVE STUDY ON THE SCHOOL FEE SYSTEM**

##### **South Africa**

South Africa has not altogether abolished the payment of school fees. The country's schools are divided into 'No Fee' and 'Fee Charging' schools. In a 'No fee school' parents are not expected to pay any fees, including registration or activity fees. In the year 2007 the no-fee status of schools was extended from 40% to 60% of learners. Such schools also receive larger state allocations per learner than other schools (Burger, 2009). On the other hand 'fee charging schools' are allowed to charge tuition fees, but not any form of registration fee. In the fee charging schools parents are legally entitled not to pay school

fees if they do not earn enough money (Pretorius & Veriava, 2006:1-21).

South Africa still remains a very unequal country in terms of the socio-economic dynamics. About twenty percent of the population is rich and the rest poor according to UNICEF reports (Anon, 2008b). In an attempt to make the MDGs achievable, especially MDG 2 which addresses free access to primary education, the poorest children are exempted from paying school fees. The policy aims to increase learner enrolment and retention of children. School fees exemption can be partial or complete. The implication is still that SA practices charging school fees.

The school fee exemption model is clouded with a number of policy interpretation challenges. 'Fee charging schools' that have implemented the model fully are not reimbursed by the Provincial Department of Education. The total amount that the exempted parents are expected to pay should come from Provincial Departments of Education. Schools with a high number of exempted parents are highly disadvantaged. This leaves such schools in serious financial crises with their budget crippled to meet the running costs of their schools. The case in point is Coligny Primary School's SGB which raised concerns about the failure of the North West Department of Education to pay the school the amount owed to the school after the implementation of the model. The public is anxiously waiting to see whether Coligny Primary School's SGB will be reimbursed (Cilliers, 2010).

It is encouraging to have countries in Africa that have totally abolished school fees such as Kenya, Ethiopia, Ghana, Malawi and Mozambique. The lessons learned from those countries and others are of great significance in that learner enrolment after the abolishing soared (Otchet, 2004:1-3). These countries and others will always remain shining examples of the promotion of children's fundamental right to education, especially free access to schooling. This policy

shift is important for poor parents, the marginalised and the orphans (Jolie, 2005:1-4). It is hoped that SA will follow in the footsteps of these countries such as India and Zimbabwe.

## **India**

The passing of the Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) on 4 August 2009 marked a historic milestone achievement for the children's rights in India. The Act came into force on 1 April 2010. This made India one of the 135 countries to make education a fundamental right. This act serves as a building block to guarantee every child in India his or her right to quality elementary education to be provided by the state with the help of families and communities to fulfil this obligation. RTE is a part of article 21 A of the Indian Constitution, which makes education a fundamental right (Walker, 2010).

The act makes education a foundational right for all children between the ages 6 and 14. SASA talks of ages between 7 and 15. The right to free and compulsory elementary education was granted to them. The act abolished school fees and other indirect costs such as uniforms, textbooks, mid-day meals and transport. The state undertook to provide schooling free of cost until a child's elementary education is completed. Also, private schools are obliged in terms of RTE to reserve 25% of seats to children from poor families. For these families private schools will be reimbursed by the state as part of the public-private partnership plan (Walker, 2010; Raina, 2010).

The RTE provided many stipulations that promote free access. Some of these are similar to the South African Schools Act, 84 of 1996. The Act has the following highlights:

- It has adopted the UNCRC definition of a child as someone under the age of 18.
- It prohibits all unrecognised schools from practice i.e. it encouraged schools to register.

- It prohibits interviews of the child or parent for admission. The school Act in South Africa condemns this practice as well.
- It has provision for special training for school drop-outs to bring them on par with students of the same age. South Africa should adopt this practice since there is a high occurrence of school drop-outs.
- The Rights to Education of persons with disabilities until 18 years of age was made a fundamental right. In South Africa this is attended to by the white paper 6 of Inclusive Education.

Access to education in terms of RTE is clearly defined in that private schools know what the act expects of them. In South Africa, the Bill of Rights contained in the Constitution of 1996 stipulates that everyone has the right to a basic education, including adult basic education and further education, which the state must make available progressively and accessible through reasonable measures. 'Every one' explicitly interpreted means every child, every person, every school and every group. Certain schools are excluded. Schools that were formerly called former Model C, private or quintile 4 and 5 schools do not benefit. Most of these schools house children from disadvantaged communities. Parents of learners in these schools are discriminated against, since they are made to pay school fees. The Schools Act needs to be fine-tuned to meet the RTE standard.

#### **2.5.4.2 CONCLUSION**

The practice of denying children of indigent parents' access to school for non-payment of school fees is still a challenge in SA. This infringement occurs even though the laws of the country are trying to bring the practice to a halt. The policy documents on National Norms and Standards for School Funding, SASA and international instruments provide guidelines on how such learners should be assisted. However, schools continue to punish learners for the fault of their parents by preventing them access to school. The courts are up in arms to defend the constitutional right of learners to education. The

case of the *Centre for Applied Legal Studies (CALs) and Others v Hunt Road Secondary School and Others* has sent a clear message to all schools in South Africa. It is encouraging to have countries in Africa that have totally abolished school fees such as Kenya, Ethiopia, Ghana, Malawi and Mozambique. South Africa should also totally abolish all school fees.

#### **2.5.5 HANDLING OF CHILDREN'S RIGHTS BY NGOS**

The vulnerability of children as a societal sector to all forms of abuse worldwide has not gone unnoticed. It has touched the hearts of many human rights organisations, and they join hands with governments to combat all forms of abuse as demanded by both domestic and international legislation. The organisations referred to here are the Non-Governmental Organisations. The previous sections have already referred to some of such NGOs, e.g., the Human Rights Watch. The Human Rights NGOs has been whistle-blowing on the degree to which children's rights are infringed in schools by teachers and other people. The whistle-blowing manifests itself in a number of different forms such as: newsletter writing, conducting of research, report writing, conferences, workshops, media publicity, etc. Only a few NGO's relevant to this study will be discussed.

Reports by human rights NGO's have been of great help. It has assisted children rights' activists to continue the struggle to protect the rights of children courageously and has inspired such activists to be conscientious in this regard. Reports have been useful to governments to be able to monitor compliance and implementation of children's rights laws. From such essential reports government was able to craft strategies to encourage protection of the human rights of children in schools. Report writing by NGO's have also brought changes in some school environments by contributing to the creation of an environment in which human rights are secured and practiced.

The Community Intervention Centre situated at Milnerton in Gauteng Province of SA is an NGO fighting against gender violence. The organisation reports that South Africa has the highest rate of rape, which is violent in its very nature. Sexual assault figures are reported to have increased steadily since the birth of democracy in South Africa. Six times more girl children are HIV-infected than boys. The organisation is highly concerned about the inefficient mechanisms in place to deal with reporting by educational authorities.

The organisation noted with regret the unprofessional manner in which some schools deal with rape and abuse. Some examples of how schools deal with rape and abuse are provided by Teddy Bear Clinic manager Luke Lamprecht (2004:1-4). Here follows the ill treatments, shoutings, utterances, remarks, etc.:

1. "Would the three girls who were gang raped last week please come to the office", shouted by educator across the 2playground at a Soweto Primary School.
2. A primary school child was placed on the floor of the staff room so that the teacher could 'examine' her vaginally and check what a raped child looks like.
3. "Whose penis was the longest?" - A principal at a private school confronting a 13 year old girl after she reported that three 17 year old members of the school rugby team had raped her. He confronted her in his office with the three boys and the male vice-principal present. She was alone.

The Human Institute of South Africa (HURISA) is also one of the NGOs that form part of the solution to the problem of violation of children's rights in schools. HURISA is a South African NGO based in Braamfontein, Johannesburg in the Gauteng Province of South Africa. HURISA is a response to concerns of abuse taking place at school, home and in the broader community. The organisation began its training on children's rights in rural areas of the Limpopo Province in

2001. The training includes educators, parents and SGB members, since they are all ill informed about children's rights. The programmes were also taken to other provinces such as the Northern Cape, Eastern Cape, Gauteng and Kwazulu-Natal.

HURISA's main primary objective with this programme is to build a culture of respect for children. The NGO has been partnering with the locally based organisations working in the human rights field. A broad number of topics have been covered in each training session such as introduction to human rights, the Bill of Rights, the Constitution and economic and social rights. Themes such as corporal punishment also feature. The trainer system of training has been used, which is followed by an evaluation programme. Although HURISA has not managed to provide training in all the nine provinces of SA, it is commended for providing three training courses on children rights in 2005 in the following provinces: Eastern Cape (Bizana), Limpopo (Nape Tladi, April Makgakga and Mochocho Primary Schools) and Kwazulu-Natal (Ezingolweni) (HURISA, 2006).

The Legal Resources Centre (LRC) has also joined hands with other NGOs based in most of the South Africa universities to advocate laws on children's rights. The LRC operates with the principle that says "children are the foundation on which a new South Africa must build itself". The LRC has challenged a number of barriers towards the education of children, such as the following: Non-feeding of learners in schools, lack of transport for learners, under-resourced schools, inadequate infrastructure and overcrowding of classrooms, discrimination against children who cannot afford school fees, uniforms and books, and inappropriate and illegal disciplinary measures against learners in the school system. The LRC also reported on the number of crimes reported against children. Just like the other sister NGOs, the LRC reports sexual violence as number one on the list, especially against girl-children (Anon, 2009b:1-4).

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) based in Cape Town in the Western Cape Province of South Africa is also a stalwart in advocating issues of children's rights. RAPCAN is successful with its activities as a result of the support and funding of SAVE the children (Sweden), also an NGO. The NGO condemned the use of corporal punishment in both school settings and family settings even though it has already been outlawed. RAPCAN contributed greatly towards the process of working with the Children's Amendment Bill as members of the Children's Bill Working Group. It was through its efforts that all forms of corporal punishment were condemned by the Children's Bill. The NGO achieved this by using advocacy campaigns to change the mindsets of both the schools and the parents (Bower, 2008:1-18).

The section will be incomplete without the inclusion of the Centre for Applied Legal Studies (CALS) based at different universities in South Africa. CALS are based at universities such as Witwatersrand and Pretoria. CALS has assisted many parents and children with regard to violation of rights in the school system. Many human rights queries in education have been amicably resolved through the intervention of CALS. The centre has lawyers who are well-informed on children's rights issues in the school system. The volume of case law on children's rights issues this country has is through the intervention of CALS. Most of these cases have been discussed in the previous sections. CALS has not only been challenging matters of children rights within the school system, but has also crossed the borders to challenge other state departments that infringe on the rights of the children. One case in point was *CALS & Another v Minister of Home Affairs & Others Case No 22866/04*. CALS in this case fought for the rights of refugee children who were detained at Lindelani, a repatriation centre where illegal immigrants are detained until they are deported home. The children were living under horrendous conditions at the centre. The high court used both international and national laws on children's rights when adjudicating on the matter. An interim

interdict was granted by the court, preventing the minister of Home Affairs, the Director-General of Home Affairs and the Busasa/Lindela Centre from proceeding with the deportation of the children (Dutschke, 2006:61-65; Tucker, 2006:1-4).

### **2.5.6 CONCLUSION**

The children of South Africa have been the victims of inhuman punishment and sexual violence in schools for many years. The children have suffered many infringements such as being expelled from school for being pregnant and for non-payment of school fees. The state has not been alone in ensuring the protection and support for such learners. Different NGOs joined hands with the state in protecting and promoting the constitutional rights of children against unfair discrimination, violence and abuse. In some instances perpetrators were exposed. In some instances advocacy workshops were conducted, newsletters written, research conducted, reports written, conferences, workshops, and media publicity held to promote the rights of learners. In some instances violators were litigated against and this contributed to case law on children rights in South Africa. The following NGOs have been stars in advocating the rights of children: Human Rights Watch, RAPCAN, HURISA, Community Intervention Centre, LRC and CALS.

### **2.6 SUMMARY OF THE CHAPTER**

The chapter focused on the nature of children's rights as an aspect of educational law and from a management perspective. Rights in the school system should be managed within the ideals of UNCRC, which include the spirit of peace, dignity, tolerance, freedom, equality and solidarity. Schools are the main instruments for the state to assist in the fulfilment of commitments in Articles 28, 29 and 42 of the UNCRC. Teachers are, therefore, the main catalysts in the implementation of such rights. Not only are international laws important for the promotion of children's rights, but also national laws (cf. Table 2.3).

The world looks at these measures to provide protection and security for the life development of children. However, the opposite is happening. There are still a number of violations with regard to children's rights in spite of the best international, regional and national instruments on children's rights. To mention but a few: the use of corporal punishment in schools, sexual violence and unfair discrimination.

Table 2.3 summarises the national statutes on children's rights.

**Table 2.3: Representation of national statutes on children's rights in schools**

<b>Fundamental Rights</b>	<b>Statutes</b>	<b>Section</b>	<b>Theme</b>
Right to basic education	Constitution Act, 108 of 1996	29	Human rights
Right to freedom and security	Constitution Act, 108 of 1996	12(1)	Corporal punishment
Right to freedom and security	South African Schools Act, 84 of 1996	10(1) and (2)	Corporal punishment
Right to freedom and security	National Education Policy Act, 27 of 1996	3(4) and (n)	Corporal punishment
Right from any physical or psychological harm	Children's Act, 38 of 2005	9	Corporal punishment
Right to be free from all forms of violence	Constitution Act, 108 of 1996	28(i) and (d)	Corporal punishment
Right to be free from all forms of violence	Criminal Law (Sexual Offences & Related Matters) Amendment Act, 32 of 2007	15 and 16	Sexual offences
Right to be free from all forms of violence	Employment of Educators Act, 53 of 2000	17	Dismissal of educators for sexual violence action
Right not to be unfairly discriminated against when pregnant	Promotion of Equity and Prevention of Unfair Discrimination Act, 4 of 2000	8	Limiting access to education Pregnancy cases
Right to equal benefit of the law	Constitution Act, 108 of 1996	9(1)	Pregnancy cases
Right to basic education	Constitution Act, 108 of 1996	29	Non-payment of school fees

## **CHAPTER 3**

### **THE TEACHER'S ROLE IN THE IMPLEMENTATION OF CHILDREN'S RIGHTS**

#### **3.1 INTRODUCTION**

The chapter intends to explain the role of the teachers in the implementation of children's rights in the school system. Teachers are better placed to equip children with the following values: justice, equity, citizenship and social responsibilities. Their role in this instance is to respond to the shocking and overwhelming violations of children's rights taking place both nationally and internationally. Teachers are in this way described as the main catalysts in implementing children's rights in schools. The roles of teachers will be linked with various national determinants with a number of sections on the rights of children. The chapter will conclude with a number of curriculum strategies that can be used to promote children's rights in the school system, as well as the concluding remarks in the form of a summary.

#### **3.2 TEACHERS AS THE MAIN CATALYST IN THE PROMOTION OF CHILDREN'S RIGHTS**

South Africa as a signatory of the UNCRC is expected to do much to advance the principles of the convention. All member states are, in terms of Article 4 of the Convention, required "To take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention". Schools are, therefore, better placed to translate the contents of the convention into practice (Asiegbor *et al.*, 2001:1-3). The only tool in the actualization of children's rights is the classroom. The teachers as the classroom managers and curriculum implementers remain the main catalysts or

role players in the teaching of human rights in the school (Hammarberg, 2009:9, 16, 19, 24; De Mello, 2003:16-21).

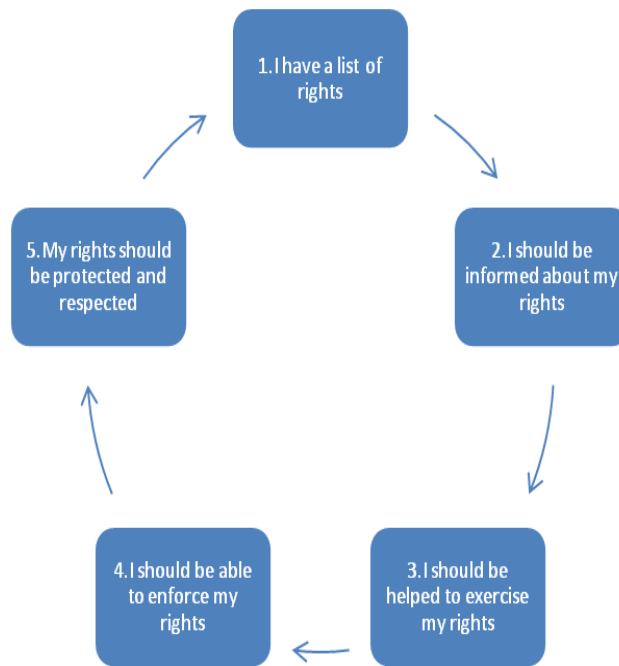
Cohen *et al.* (1999) and Parker (1996:8-18) view teachers as strategically well-placed to fast track the mandate of the UNCRC to educate learners about human rights. In the effort to educate learners on human rights, various strategies are suggested. It is suggested that human rights education be incorporated into the preparation of teachers. High quality education materials and programmes are recommended for practicing teachers to use to teach human rights. In meeting the needs of future teachers, training colleges and universities are advised to incorporate course work on human rights. The inclusion of human rights course work will prepare teacher trainees to teach human rights and to implement human rights in their classrooms (Gollob & Krapf, 2006:5-8).

There are a number of reasons for children's rights teaching. Article 29 of UNCRC addresses the aims and goals of education fully. The aims and goals should encourage children to respect others. They must respect human rights and their culture, as well as the culture of others. Education is called upon by the Convention to prepare the child for a responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all people, ethnic, national and religious groups and persons of indigenous origin. Finally, education should be directed fully at developing respect for the natural environment.

Article 29 of the UNCRC is taken further by Article 26 of the Universal Declaration of Human Rights, with the following selected relevant passages: "Education shall be directed to the full development of 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 or religious groups and shall further the activities of the United Nations for the maintenance of peace". Article 13, sub-section 1 of the International

Covenants on Economics, Social and Cultural Rights states that State Parties agree that education shall be directed at the full development of the personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. The two pieces of instruments speak in unison that education is the tool to enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

The latter instruments are not only concerned about the rights of children with regard to protection. The instruments emphasize education for peace and tolerance. These are features of high importance with regard to the child's growth and development (Bischoff, 1999:215). Education for peace and tolerance implies human rights education. With it learners will be sensitized. Learners will be able to defend their rights and to resist their disregard and violation. A discovery wheel of rights (Diagram 3.1) teaches children about what they have discovered from learning about human rights:



**Diagram 3.1: A discovery wheel of rights**

In implementing the wheel of rights children will also be able to defend the rights of others. A skill and attitude of tolerating the difference of others will develop in time (Wissen, 1997:1-3).

A wealth of knowledge and experience can be deduced from human rights teaching activities in the school system. Wissen (1997) emphasises the importance of the following forms of knowledge and teaching:

- The meaning of basic rights and human rights for both the rights of the individual and for the objective principles for structuring a community,
- The mutual dependence of personal rights of freedom, basic social rights and personal rights of participation,
- The differing understanding and ways in which human rights are fulfilled across a range of political systems and societies,
- The historical development and enforcement of human rights,

- The fundamental importance of human rights in the creation of a modern constitutional state,
- The necessity of incorporating protection of an individual's human rights into civil law,
- The importance of human rights for easing world tension and creating peace in the world,
- The importance of international cooperation in the realization of human rights and securing of peace.

The philosophy of teaching school children about rights is strongly defended by Whitbread (2006) of Save the Children, the NGO for the promotion of children's rights globally. The organisation believes that teaching children's rights is a means of providing a platform for healthy personal development and respect for the civil and political forces that underpin stable societies. The NGO maintains that rights are balanced by responsibilities. Rights and responsibilities are viewed as intrinsic to the aims of education. In teaching children about rights and responsibilities the following benefits will be realized:

- Children will build on ideas they have already acquired e.g. their sense of justice,
- Children will build on what they already know, e.g. children are exposed to issues on television in their daily lives, so they need help to develop their understanding of those issues and their relevance to their own lives,
- Children will gain the opportunity to address the need for them to become informed citizens and what it means to be part of society,
- Children will be exposed to their basic entitlements to learn about their rights the way it is explained in Article 42 of UNCRC:

"Parties undertake to make the principle and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

The UNCRC guiding principles should be upheld. The guiding principles will be easily achieved when included in the school curriculum. The guiding principles maintain that:

- The children have rights,
- Children have the right to be informed about their rights,
- Children should be given opportunities to exercise their rights,
- Children should be given opportunities to uphold their rights,
- Children should be given the opportunities to advocate their rights.

De Mello (2003:16-19) asserts that educators will always be key in starting new initiatives. Educators carry a great responsibility in communicating human rights messages to the learners. Opportunities may vary in conducting the exercise. Human rights themes may be infused into the existing school subjects. There may be courses specifically allocated for human rights. Human rights may be pursued through less formal education arenas within and outside the school such as after-school activities, clubs and youth forums. A sustainable comprehensive and effective national strategy for infusing human rights education into the school system is important and may include the following course of action:

- The incorporation of human rights education in national legislation regulating education in schools,
- The revision of curricula and textbooks,

- Pre-service and in-service training for teachers to include training on human rights and human rights education methodologies,
- The organisation of extracurricular activities both based in schools and reaching out to the family and the community,
- The development of educational material,
- The establishment of support networks of teachers and other professionals from human rights groups, teachers' unions, non-governmental organisations or professional associations, etc.

De Mello (2003:16-19) recommends that human rights be geared towards the developmental stage of learners. Their social and cultural context should be given due attention to make human rights principles meaningful to them. Human rights education for younger children should emphasize the development of self-esteem and empathy. Complex human rights documents will be appropriate for secondary learners with better developed capacities. Such learners are already in possession of analytical skills. A step-by-step approach to familiarize learners with human rights concepts is suggested below in the form of a table (cf. Table 3.1). The guidelines were developed by the UN human rights practitioners in 1997 at Geneva.

**Table 3.1: Familiarization of children with human rights concepts – a step-by-step approach**

LEVELS	GOALS	KEY COCEPTS	PRACTICES	SPECIFIC HUMAN RIGHTS PROBLEMS	HUMAN RIGHTS STANDARDS, SYSTEMS & INSTRUMENTS
<b>EARLY CHILDHOOD</b>					
Preschool Ages 3-7	<ul style="list-style-type: none"> <li>• Respect for self</li> <li>• Respect for parents and teacher</li> <li>• Respect for others</li> </ul>	<ul style="list-style-type: none"> <li>• Self</li> <li>• Community</li> <li>• Personal responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Duty</li> <li>• Fairness</li> <li>• Self expression/ listening</li> <li>• Cooperation/sharing</li> <li>• Small group work</li> <li>• Understanding cause/effect</li> <li>• Empathy</li> <li>• Democracy</li> <li>• Conflict resolution</li> </ul>	<ul style="list-style-type: none"> <li>• Racism</li> <li>• Sexism</li> <li>• Unfairness</li> <li>• Hurting people (feelings, physically)</li> </ul>	<ul style="list-style-type: none"> <li>• Classroom rules</li> <li>• Family life</li> <li>• Community standards</li> <li>• Universal Declaration of Human rights</li> <li>• Convention on the Rights of the Child</li> </ul>
<b>LATER CHILDHOOD</b>					
Upper Primary School Ages 8-11	<ul style="list-style-type: none"> <li>• Social responsibility</li> <li>• Citizenship</li> <li>• Distinguishing wants from needs, from rights</li> </ul>	<ul style="list-style-type: none"> <li>• Individual rights</li> <li>• Group rights</li> <li>• Freedom</li> <li>• Equality</li> <li>• Justice</li> <li>• Rule of law</li> <li>• Government</li> <li>• Security</li> </ul>	<ul style="list-style-type: none"> <li>• Valuing diversity</li> <li>• Fairness</li> <li>• Distinguishing between fact and opinion</li> <li>• Performing school or community service</li> <li>• Civic participation</li> </ul>	<ul style="list-style-type: none"> <li>• Discrimination/ prejudices</li> <li>• Poverty/hunger</li> <li>• Injustice</li> <li>• Ethnocentrism</li> <li>• Egocentrism</li> <li>• Passivity</li> </ul>	<ul style="list-style-type: none"> <li>• History of human rights</li> <li>• Local, national legal systems</li> <li>• Local and national history</li> <li>• UNESCO, UNICEF</li> <li>• Non-governmental organisations (NGOs)</li> </ul>

<b>ADOLESCENT</b>					
Lower Secondary School Ages 12-14	<ul style="list-style-type: none"> <li>• Knowledge of specific human rights</li> </ul>	<ul style="list-style-type: none"> <li>• International laws</li> <li>• World peace</li> <li>• World development</li> <li>• Political economy</li> <li>• World economy</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding other points of view</li> <li>• Citing evidence in support of ideas</li> <li>• Doing research/ gathering information</li> <li>• Sharing information</li> </ul>	<ul style="list-style-type: none"> <li>• Ignorance</li> <li>• Apathy</li> <li>• Cynicism</li> <li>• Political repression</li> <li>• Colonialism</li> <li>• Economic globalization</li> <li>• Environmental degradation</li> </ul>	<ul style="list-style-type: none"> <li>• United Nations</li> <li>• Elimination of racism, sexism</li> <li>• United Nations Commissioner for refugees</li> <li>• Regional Human Rights Conventions</li> </ul>
<b>YOUTH</b>					
Upper Secondary School Ages 15-17	<ul style="list-style-type: none"> <li>• Knowledge of human rights as universal standards</li> <li>• Integration of human rights into personal awareness and behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• Moral inclusion/ exclusion</li> <li>• Moral responsibility/ literacy</li> </ul>	<ul style="list-style-type: none"> <li>• Participation in civic organisations</li> <li>• Fulfilling civic responsibilities</li> <li>• Civic disobedience</li> </ul>	<ul style="list-style-type: none"> <li>• Genocide</li> <li>• Torture</li> <li>• War crimes</li> </ul>	<ul style="list-style-type: none"> <li>• Geneva Conventions</li> <li>• Specialized Conventions</li> <li>• Evolving human rights standards</li> </ul>

### **3.3 ROLE OF TEACHERS IN NATIONAL DETERMINANTS**

Even though SA operates without a clear-cut policy on the teaching of children's rights, the Government of the day is putting much emphasis on respect and preservation of children's rights. The country is compelled to take such progressive steps since it is a signatory of UNCRC. It is a commendable effort to have laws in existence to protect the rights of children. Not only have parliamentary laws been passed, but also education and administrative measures to protect children. The Constitution, NEPA and SASA are the three important laws with muscle to defend the rights of children in schools. The latter is supplemented by the different guidelines such as alternative measures to corporal punishment and the management of pregnancy cases in schools.

#### **3.3.1 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 108 OF 1996**

The constitution is the supreme law. This is an international trend. All other pieces of legislation are drawn from it. The constitution guarantees and protects human rights in general. The children's rights are part and parcel of human rights. The South African Constitution is a shining example in guaranteeing human rights and children's rights. The second chapter of the constitution focuses on the Bill of Rights and states in unequivocal terms the need to protect such rights.

The rights in the Bill of Rights would only survive through an informed citizen who is educated on basic rights and freedoms. Whitehead (2009:1-3) is worried about an ill-informed citizenry on basic rights and freedoms. He is concerned about the absence of rights and freedoms teaching in schools. Schools lay major emphasis on Mathematics and Science and not on civics. In this way children are not prepared to experience the beauty of becoming responsible citizens. These children

are both future leaders and political leaders. They will be able to enjoy and exercise their freedoms to the fullest.

Sections that have direct implications for what happens in schools and in the classroom are explained in the paragraph below. These sections relate to the roles of teachers as human rights promoters. They will greatly assist in eliminating the volume of rights violations in our schools. In the explanation of rights, which is the responsibility of teachers, a number of values are also involved. Values and human rights are inseparable concepts when it comes to education. They are acquired through the process of education and socialization (Veny & Pauwels, 2006:247). A national policy on children's rights education has not yet been drafted for the school system.

Section 7(1) states "This Bill of Rights is the cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom". The teachers should understand the deep meaning of this section to be able to explain it to learners. The section says the Bill of Rights protects all people in the country. "All" also refers to the rights of children. Children should, therefore, be made aware that they are important people in the eyes of the law.

Section 9 of the Constitution refers to the right to equal protection and benefit of the law (Rautenbach & Malherbe, 1998:16). This is one of the greatest rights' guarantees that learners need to know. The subsection of this section also explains some forms of unfair discrimination as violations of rights. The entire section should be explained to learners to have a good understanding of what human rights means for them.

Section 10 is one of the most important rights for every citizen: "The right to have one's dignity as a human being respected and protected". Willemse (2009:115-6) views human dignity as the inherent right of every

individual to be respected as a person. It is dual, it is about the respect for others and self-respect. The school is responsible to inculcate self-respect in learners, especially at the foundation phase of the school system. The other deeper meaning of this section is that human beings are "valuable" and "worthy" and, therefore, deserve to be respected. This is also the responsibility of the school to teach learners about this core fundamental human right that appears in all international law instruments (Nieuwenhuis, 2007:91-92).

Section 12 on the right to freedom and security of the person has serious implications for learners and teachers. This section includes amongst the others (D) the right not to be tortured and (E) the right not to be treated or punished in a cruel, inhuman or degrading way. This section is closely linked with section 10, the respect of human dignity. The section condemns the continuous use of corporal punishment in schools. Teachers are encouraged by the section to preach self-discipline and acceptable moral values to prepare learners adequately for a violence-free society (Nieuwenhuis, 2007:92).

In promoting a violence-free society, the value of peacefulness needs to be emphasized. Peacefulness stresses calmness amongst people. Peaceful people always treat others with kindness and respect. They do not bully one another. They do not fight to have their own ideas accepted. They accept and tolerate different ideas from others. They always meet people half-way and reach an agreement (Raatma, 2005:1-15).

Section 28(2) declares that a child's best interest is of paramount importance in every matter concerning the child. This is an international law and principle covered also by Article 3(1) of UNCRC, Article 4(1) of ACRWC and the European Convention on the exercise of Children's Rights of 1996 (ECER). The interest principle criticizes and condemns

many practices that obstruct children from benefiting from their constitutional rights. There are many references to corporal punishment and sexual violence (par 2). It becomes the responsibility of the school through the role of teachers to respect, protect and promote the rights of children. The best interest principle is also influenced by other sections of the constitution, for instance the child's right not to be tortured. Section 29 is implemented precisely for the sake of the best interest of the child in the school system (Nieuwenhuis, 2007:97-98).

Section 29 of the constitution guarantees the right to a basic education: Basic education may mean developing a person to a stage of literacy that enables him or her to be employed, to make critical decisions, and to be aware of his or her duties and obligation as a citizen (Maithufi, 2005:118-119). It is the compulsory responsibility of the school through teachers to make the right to education available and accessible. This is the most important fundamental right that, when ensured, will enable children to face the future with ease because they are educated. Through education children will master their responsibility as people, since rights and responsibilities go hand in hand. Responsible people follow rules and are honest.

### **3.3.2 NATIONAL EDUCATION POLICY ACT OF 1996**

The act, among other things, calls upon the school to uphold the principles of the Constitution of the Republic of South Africa, Act 108 of 1996, and to promote democratic values. The last part of the preamble of NEPA ends with a responsibility that says "Uphold their fundamental rights". The preamble covers the needs and interest of all people of South Africa. The school children are the first beneficiaries, since the school system is meant for them.

NEPA requires of every teacher in terms of section 4(a) not to violate the fundamental rights of every person guaranteed in terms of Chapter 2 of

the Constitution. The section also calls for non-violation with regard to international conventions ratified by parliament. The nature of such rights is indicated in the following sections of the Act:

Section 4(a)(i): Protection against unfair discrimination within or by an education department or education institution, which means a school, on any grounds whatsoever. This refers to all forms of unfair discrimination mentioned in section 9 of the Constitution. NEPA (in section 9.2.6 on HIV/AIDS for learners and educators in public schools) calls for a culture of non-discrimination towards persons with HIV/AIDS. The practice does not just come; it demands efforts of some degree from educators. They must work hard to achieve what section 10.5 of the National Policy on HIV/AIDS states "Educators have a particular duty to ensure that the rights and dignity of all learners, students are respected and protected".

Sections 4(a)(ii): The right of every person to basic education and equal access to education institutions. This implies that all barriers that make it difficult for learners to benefit and gain access to a school must be eradicated.

Section 4(b): The section talks about the role of the teachers in preparing learners in totality to become dynamic societal assets. The section calls for an effective education system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes.

### **3.3.3 SOUTH AFRICAN SCHOOLS ACT, 84 OF 1999**

SASA like its sister Act the NEPA, reiterates the democratic principles outlined in the constitution and a number of discriminatory practices in the school system. However, the act is filled with provisions relevant to

school governance such as school admission policies, school fees policy, religious policy and language and code of conduct for learners. For the purpose of the study only provisions with implications for the role of the educators to promote a human rights culture in schools will be addressed.

SASA in its preamble has phrases that describe roles, calling teachers to implement them. The preamble calls for the education system to advance the democratic transformation of society. The second part calls for a school system that will combat other forms of unfair discrimination and intolerance. A system that will uphold the rights of all learners, parents and educators is demanded by this Act. The preamble finally links the rights with responsibilities. This is addressed by talking about the promotion of acceptance of responsibility by learners, parents and educators for the organisation, governance and funding of schools in partnership with the state.

### **3.4 TEACHING STRATEGIES TO PROMOTE CHILDREN'S RIGHTS**

The school curricula in South Africa have undergone a number of changes in the past decade. In recent years the curricula have changed from the National Curriculum Statement (NCS) to the Curriculum Application Policy Statement (CAPS). In all these changes the full teaching of children's rights are not fully addressed like in other countries (Davies, 2000:1-2). Children's rights issues are briefly addressed in subjects like Life Orientation and History. Emphasis in the curriculum is on the teaching of literacy and numeracy, now called language and mathematics, as a result of CAPS. A subject like civics would have been ideal to teach children constitutional rights and urge them to exercise their freedom to the fullest (Whitehead, 2009:1-3; Hainsworth, 2008:1-9). This remains a matter of concern, since South Africa is part of the international world.

Preparing our children for a violent-free society requires that children be helped to understand their rights while they are at school. Their rights must be addressed in all grades. This can happen by regularly teaching learners the history of the democracy. This could be done easily through storytelling, drama and other activities in which they can actively participate. In this way the learner's retention will improve. Freedom fighters can also be utilized to give testimony on how many of them sacrificed to attain rights (Davies, 2000:1-2).

The Social Science (SS) as a learning area in the NCS is not consistent in the teaching of human rights. SS is the combination of both history and geography in the intermediate and senior phase of the schooling system. There are gaps identified in the syllabi between Grade 4 and 9. Grades 4, 5, 6 and 9 provide for the teaching and assessment of activities on the various human rights topics to sensitize learners to their rights.

For instance, in Grade 4, the SS syllabus in the first term has a topic on the valuing of human rights. In achieving the objectives of the topic the teacher is expected to use as a resource a person or group of people from South Africa who have fought for human rights. Such political leaders should be invited to come and address the class. The information given by such leaders is recorded and organised. From the information given, questions are set for the learners.

The Grade 5 SS syllabus during the second term introduces the concept of democracy. The syllabus builds on the Grade 4 knowledge on human rights. The concepts democracy and Apartheid are addressed. The reasons for participating in democracy are shared. A mock election process is organised as an activity to cement the teaching of democracy.

The NSC syllabi present the issue of children rights quite late in the school system. The learners start to hear about their rights in the first

term of Grade 6 in Social Sciences. The children's charter is introduced to learners for the first time, with a class discussing why it is important for children to have rights and responsibilities. The ten rights in the children's charter are discussed. Children are asked to prioritize the rights in the children's charter. Learners are also asked to design a poster, collage or art work depicting the importance of having rights as children.

Both the Grade 7 and 8 syllabi of Social Sciences are silent on human rights related topics. It is indeed worrisome not to touch on human rights education for a period of two years. It is only in Grade 9 in the second term where learners meet the topics again. The Grade 9 syllabus addresses the Universal Declaration of Human Rights. The different violations of human rights are discussed. Interviews expressing personal experiences of human rights are conducted. A comparison is also drawn between the human rights violations in the USA and South Africa.

Good practices could be learned from other countries on the teaching or promotion of children's rights in the school system through the use of the curriculum. The United Kingdom (UK) is one world power in an advanced stage of teaching rights through the use of the curriculum. The country is committed to teaching rights and responsibilities to enable children to meet their basic entitlements. Various subjects are used and are linked with the UNCRC articles (Whitbread 2006:1-25).

An example of using English as a subject to teach rights is given by Whitbread (2006:8-10). In teaching learners Article 12 of UNRC "The right to an opinion and for it to be listened to and taken seriously", a number of strategies are recommended: English is ideal since all schools are teaching it. Speaking and listening: Group discussions are used to give children opportunities to share opinions and to listen to the viewpoints of others. Reading: A range of texts such as autobiography,

fiction, etc. can be used to encourage learners to broaden their perspective and extend their thinking around the issue of rights, including personal experiences and accounts.

Writing: Learners can be given creative writing exercises to help them to explore feelings and ideas. Such exercises teach them to write persuasively and urge their point of views. An example would ask learners to write a set of rights for them at school and the reason why such rights have been chosen (Lucas, 2009:79-81).

Case studies are also good strategies in the teaching of rights, especially in secondary schools (Hainsworth, 2008:2-7). Case studies can be provided on a variety of topics such corporal punishment, children without schools to attend, schools without adequate resources, schools practicing the fee paying system, girl learner pregnancies, etc. The case study will help learners to appreciate that some children elsewhere have difficulties in accessing their right to education. They will also realize that the right to education is law in most of the countries and the age for compulsory schooling differs from one country to another (Whitbread, 2006:20-21).

In integrating the above-mentioned human rights education issues in the English teaching classes, the standard of children's rights will be raised. Learners will develop a sense of having a greater say in decisions of direct consequence to them (Bischoff, 1999:160-63).

One effective way of ensuring that learners understand their rights is by giving them more responsibilities. Responsibilities that can be given to learners in the school milieu are to make them support peers in their own classes or other classes. They should also take the responsibility of looking and taking care of the school environment of their education. Learners must take part in creating schools and classes to ensure everyone understands what is expected of them as members of the school/class community. They should be asked to set a high standard of

behaviour for themselves. In developing such roles the teacher can work together with learners. The teacher will guide learner with statements concerning behaviour and conduct, relationship, responsibilities, participation, protection, etc. (Osler & Starkey, 1998:329-331).

UNICEF is also contributing in the area of teaching strategies to promote children's rights. Much information is contained in the UNICEF website on what schools and teachers can do to advance the principles set forth by the UNCRC ([www.unicef.org/rightsite/whatyoucando-356htm](http://www.unicef.org/rightsite/whatyoucando-356htm)). UNICEF requires schools and teachers to take the following actions:

- Teach children about their rights. It is only when learners are informed about their rights that they will be able to claim and express them.
- Ensure children's participation. Teachers should encourage and establish learners' participation at all levels. Learners should be involved in the development of the school policies.
- Protect integrity. All forms of violence against children, including physical and humiliating punishment in schools and at home.
- Train youth to teach younger children about children's rights.
- Develop oral history projects. Learners must be asked to interview their elders born before 1971 regarding their experiences with children's rights.
- Organise workshops, seminars, lectures, debates and symposia on children's rights inside the school.
- Establish safe complaint mechanisms for all forms of violence against children, including sexual violence and abuse, bullying and corporal punishment.

Wissen (1997:1-5) presents best advice on the teaching of human rights in schools. The tips are based on Article 26 of the Universal Declaration of Human Rights, which speaks to human rights education in the same tone as section 29 of the UNCRC. The tips are sorted into four didactic categories:

1. **Perceiving:** From the UDHR perspective both the learners and the teachers should make a thorough audit of the following rights to education: the right to education and the right to social resources such as houses. The current situation is then assessed based on the same of the provision of those rights.
2. **Understanding:** In this category the causes of human rights violations are unearthed. Possible solutions are provided to solve such problems. Lessons learned from the history of human rights activists and organisations are also interrogated. The impact of the following rights on today's life is also discussed: quality, religion and freedom of speech.
3. **Action:** Various activities are used such as music, dance, theatres and art to learn about different cultures. These actions are used to express thoughts and feelings and human rights issues. In this way a school is made to be a place where human rights and democracy are cherished.
4. **Deriving energy:** Self-help groups and democracy movements are utilized. There are groups committed to upholding human rights. The history and work of such groups are compared and people are studied. Their good work is compared with other citizens or individuals to see whether they can be emulated.

The methods to complement the categories mentioned will be presented in a table form (see Table 3.2).

**Table 3.2: Methods for teaching categories on the teaching of human rights**

CATEGORIES	METHODS
Perceiving	Use observation, description and research. Reading books, interviews, carry out photo searches, searching archives, conducting talks, watching or creating film documentaries.
Understanding	Use analysis, systemization, creating of relationships, data collection, interpretation, discussions. The following activities may be used: round table discussion, group discussions, lectures.
Action	Includes methods for preparing to act, role playing, experimental games, excursions, fund raising activities.
Deriving energy	Uses approaches aimed at getting feedback, self-ascertainment and communication, interaction and co-operation, acknowledgement of strength, working together, etc.

It is important that all classrooms be made important sites for the transmission of human rights. Since a number of information charts and posters hang on classroom walls for a number of reasons e.g. class rules, vision and mission statement, textbooks policies, etc., it is important to have posters hanging in the classrooms fostering children's rights. An example is the statement made by the child delegates representing the children's forum at the opening of the United Nations General Assembly's special session in children in May 2002 (Nieto & Pang, 2005:1-12). The statement reads as follows:

*"We are the world's children.*

*We are the victims of exploitation and abuse.*

*We are street children.*

*We are the children of war.*

*We are the victims and orphans of HIV/AIDS.*

*We are denied good-quality education and health care.*

*We are victims of political, economic, cultural, religion and environment discrimination.*

*We are children whose voices are not being heard: it is time we are taken into account.*

*We want a world fit for children, because a world fit for us is a world fit for everyone."*

The focus is not only on teaching human rights for the development of knowledge, values and skills of human rights contained in UNCRC and UDRC, but also the United Nations (UN) values of peace. McLeod and Reynolds (2010:17-19) argue that schools are a critical context for the development of the values of the UN. The UN has established key guidelines that teachers could communicate through curriculum provisioning in order for these values to be realized in a more explicit framework. It is recommended that they be taught as both content and classroom experience. The UN values of peace are ecological awareness, tolerance, respect for life and human dignity, intercultural understanding, non-violence, social responsibility and global agency. Suggestions on how values can be evidenced through classroom teaching are presented in the form of a table (see Table 3.3.):

**Table 3.3: Values of human rights**

Learn about values of human rights	Learn through: pedagogy of values
<p><u>Ecological awareness</u></p> <p>Being aware of and working towards the balance that must be maintained to live sustainably on our planet.</p>	<p>Establishing a sustainable classroom environment including recycling, gardening, monitoring use of water and powder, service learning in land care projects.</p>
<p><u>Tolerance</u></p> <p>Respecting, accepting and appreciating the diversity of the World's cultures, forms of expression and ways of being human (UNESCO, 1995:8).</p>	<p>Class organisation to "foster Openness, communication and freedom of thought, conscience and belief" (op cit) including cooperative learning, substantive communication, discussion circles, role plays.</p>

Learn about values of human rights	Learn through: pedagogy of values
<u>Respect for life &amp; human dignity</u> Practicing social justice in conflicting relations, knowing about conflict and justice, engaged agency in unjust contexts beyond the classroom.	Class ethos of social support to develop skills for peer interaction, group roles, use of narrative in teaching and learning through children's stories and community oral histories.
<u>Intercultural understanding</u> Helping to build a just society with dialogue and tolerance between peoples of different cultures, beliefs, and religions.	Class exposure to difference in content and resources, use of community texts, students background knowledge, acceptance of others experiences, multiple perspective taking.
<u>Non-violence</u> Rejecting aggression and violence to achieve goals or resolve conflicts in a constructive way (UNESCO, n.d.).	Negotiating classroom rights and responsibilities and consequences of actions, establishing procedures for peaceful resolution of conflicts in class and on the playground.
<u>Social responsibility</u> Ensuring that any action ensures the preservation of the social fabric of that society.	Establishing opportunities for service learning beyond the classroom, defining consequences of social actions using metacognitive tools such as Y charts.
<u>Global agency</u> Disseminating a knowledge of culture and education that enables justice, liberty and peace throughout the world.	Establishing a global classroom by using IT to access current global data, setting up international e-mail pals, using connected classrooms.

There are some powerful expressions that are employed to teach children human rights. For instance: walk the walk, don't talk the talk. It means teachers should not just teach, but must be a model of respect for human rights in all spheres of life. Children learn through example. When wrong and ugly things are done in front of them, they take that as correct. Pockets of excellence should be demonstrated throughout.

It is beneficial to include in this work the UNICEF framework for rights-based, child friendly schools. In terms of the framework the school is a significant personal social environment in the lives of its learners. A school ensures every child of an environment that is physically safe,

emotionally secure and psychologically enabling. Such schools pursue the principles of the Convention on the Rights of the Child by enhancing the health, well-being and guaranteeing a safe and protective space for learning, free from violence and abuse. Children in such schools are treated as subjects of rights. All activities in such schools are conducted in the best interest of the child's full potential ([www.unicef.org/lifeskill/index7260.html](http://www.unicef.org/lifeskill/index7260.html)).

### **3.5 TEACHING HUMAN RIGHTS: A COMPARATIVE STUDY**

#### **3.5.1 A MODEL LESSON ON THE TEACHING OF HUMAN RIGHTS FROM AMNESTY INTERNATIONAL, USA**

Much can be learned by our South African teachers from this lesson by Amnesty International, USA. This is a one hour lesson with many resources and strategies.

The topic of the lesson is "*Who has rights and who are defenders of human rights?*" Participants identify pictures that illustrate human rights as contained in the Convention on the Rights of the Child. Learners discuss what human rights are and who protects them.

#### **Resources:**

The following resources are used in this lesson: photographs, pictures from magazines or newspapers demonstrating various rights, poster paper, tape.

#### **Procedure:**

1. The teacher has to decide before the lesson how to illustrate human rights. Examples could include pictures from magazines, newspapers, the Internet, drawings by the learners or photographs of staged situations. Some of the pictures should depict situations

that are not addressed in the Convention on the Rights of the Child. Possible rights or non-rights could be a child or children:

- going to school in a refugee camp in front of home
- playing video games
- reading in school
- going to the movies
- gathered in a group
- practicing religion
- buying designer clothes
- buying CDs
- seeking medical help
- eating candy
- living in freedom and safety in an area of armed conflict near police officers

2. The pictures are then shown to learners and responses as to whether the person illustrated is demonstrating a human right is discussed.
3. Display pictures on chart paper as participants identify those showing human rights.
4. Discuss whether human rights can ever be taken from a person.
5. Introduce the term 'inalienable' and emphasize that human rights cannot be taken away.
6. Discuss that if all people have human rights, then who defends those rights?
7. Discuss if all people are capable of defending human rights.
8. Discuss the responsibility to defend the rights of others.
9. Read/display story of Iqbal Masih:

### **Iqbal Masih's Story**

*Iqbal Masih was four years old when his father sold him into slavery. He was forced to work more than twelve hours a day. He was constantly beaten, verbally abused, and chained to his loom by the carpet factory owner. He suffered greatly. On December 2, 1994, when Iqbal visited the United States, he looked much younger than his twelve years: his growth had been stunted by a lack of proper nutrition and years working in front of a loom.*

*In 1992 Iqbal's life changed dramatically. He and some other children stole away from their carpet factory to attend a freedom day celebration held by the Bonded Labour Liberation Front (BLLF). At the gathering they learned about their rights. Iqbal was moved to give an impromptu and eloquent speech about his sufferings, which was printed in the local papers.*

*Afterwards Iqbal refused to return to the factory. On his own initiative, he contacted a BLLF lawyer and obtained a letter of freedom that he presented to his former master. Iqbal was an articulate, confident, and powerful speaker and an uncompromising critic of child servitude. Iqbal's words of encouragement to other children and his willingness to speak out against child slavery had helped free many other illegally bonded children. At the time of his death, he was enrolled in a school for freed bonded children, where he was a bright and energetic student. His dream for the future was to become a lawyer. That way, he reasoned, he could continue to fight for freedom on behalf of Pakistan's seven and a half million illegally enslaved.*

10. Discuss how a child could speak out against human rights abuses.

**Questions:**

1. What might happen if people do not protect human rights?
2. What happens when all people defend human rights?
3. How could the participants take action to protect human rights?

**3.5.2 INDONESIAN SCHOOL SYSTEM**

Major socio-political changes took place in Indonesia around 1998. A slow shift was experienced towards democratization and decentralization. Freedom of expression, the transparency principle, and equitable social services are not yet realized in their society. Socio-cultural conflicts still occur in some regions of the country. In some urban areas the feelings of social insecurity have surfaced. The government of the day responded by enforcing the teaching of human rights to its children and youth. General public awareness on values and practice of democracy, tolerance and non-violent conflict resolutions were prioritized (Inagaki, 2002:279-280).

A pilot project on the teaching of human rights was spearheaded by the Curriculum Development Centre of the Ministry of National Education and the Indonesian National Commission for Human Rights. The project was also supported by UNESCO. The project covered primary and secondary schools, including Islamic junior secondary schools. Teacher Training Colleges were also targeted. Training was done through workshops on human rights education. Such workshops were conducted by high learning institutions such as the Faculty of Law and Socio-Political Sciences of the Institute of Teaching and Educational Sciences in Kupang and the Indonesian National Commission for Human Rights (Inagaki, 2002:279-280).

The teaching of human rights education in the pilot schools was done through extra-curricular activities and daily interaction in the classroom.

Human rights education was integrated into subjects such as social sciences and civic education. The project provided teachers with the opportunity to practice more active, participatory and joyful teaching methods. Teacher's manuals on human rights education and human rights reference materials for all schools and tertiary institutions were developed. The development of the materials was done with the guidance of the Curriculum Development Centre and the Indonesian National Commission for Human Rights (Inagaki, 2002:279-280).

### **3.5.3 INDIAN SCHOOL SYSTEM**

Education in India has always been prioritized as a vehicle to address inequalities in the entire society by promoting equality and respect for the individual human being (Pandey, 2006:167-168). The attempt to address these pre-conditions for ensuring rights was done through government policy. Almost the whole chapter of the 1986 National Policy of Education (NPE) spells out the measures to be taken through the curriculum to teach children's rights. The NPE recommended the redesigning of the curriculum, textbooks, training and orientation of teachers. Some core values such as equalization, democracy, equality of senses were prioritized in the new arrangements.

Human rights are not taught as a separate subject. Various values related to human rights are integrated into all subjects and in all stages of the school curriculum. This approach is further emphasized by the Curriculum Framework of 2006. The framework reiterated the view that education is an important tool to, among other things, fight against inequalities, and to respond to the social, cultural, emotional and economic needs of learners. The framework was also further committed to ensure the right of the child to equal access to quality education and other equal educational opportunities as though it was enough. The 2005 National Curriculum Framework Committee committed itself to

democracy and values of equality, justice, freedom, respect for human dignity and rights (Pandey, 2006:168).

### **3.5.4 CANADIAN SCHOOL SYSTEM**

There is much to learn from the Canadian school system about teaching strategies on human rights. The country has a chapter of rights and freedoms. These rights are infused into the school curriculum. The teaching of social studies in schools as a subject has a number of topics on rights, the United Nations Rights of the child, responsibilities, etc. (Lenchner, 2000; Donsky, 2000:1-3).

The Grade Five social studies curriculum for instance has the following lessons/topics (Donsky, 2000:1-3).

#### **Lesson 1**

What is a "right"?

In this lesson, a student will begin to investigate what a fundamental right is by thinking about rights they may desire or have in the home, with friends and at school. By using these examples, students can use their own experiences to begin to understand the concept of a right.

#### **Lesson 2**

Taking Responsibility.

In this lesson, students apply what they have discussed in their cooperative groups about the rights they believe they should have in the home, with friends and at school. When they apply the idea that with every right there is an inherent responsibility, students begin to think on a deeper level about the rights they have suggested in the previous lesson.

### **Lesson 3**

The United Nations Rights of the Child, Part A.

Students will begin to investigate the United Nations Conventions on the Rights of the Child using the Internet. This will enable the students to inquire what the various rights mean in a context closer to them as children. Students will also develop skills in using the Internet and how to use this information and paste it into a document.

### **Lesson 4**

The United Nations Rights of the Child, Part B.

Students will apply what they learned about the various rights of the child when writing an exposition to describe why the right they chose is important. Students will also use a peer-editing sheet to work with partners to edit their work, checking for both grammar and meaning. Students will use a template to develop a clear argument to support their point of view in an exposition about one of the eleven rights of the child.

### **Lesson 5**

The United Nations Rights of the Child, Part C.

Students will use hyper studio to visualise the importance of the right they wrote about in their exposition. Students can refer to the website they used in the previous lesson to help them when designing their illustrations.

### **Lesson 6**

Practicing Freedom.

Students will read a story that tells the story of a kingdom with no rules and what ensues as a result of the lawless society. They will then use a

narrative template to create their own story about a place with no rules or laws. This will help the students understand the concept of freedom and the responsibility that comes with freedom.

### **Lesson 7**

Rights of the Child.

Children reflect on each of the rights of the child and what it would mean for children if those rights did not exist. Students will also develop skills to create databases to store information.

### **Lesson 8**

The Character of Rights and Freedoms.

In this lesson, the students will learn what rights are included in the Canadian Charter of Rights and Freedoms. They will compare these rights with the rights of the child using a Venn diagram to show where these two charters link and have commonalities.

### **Lesson 9**

Rights of a Child: What do I know?

Students use their knowledge of the rights of the child and apply this to the story of an Aboriginal boy who suffered in the residential schools. Again, students will compile information in a database.

### **Lesson 10**

Interviewing Skills: What do you want to know?

Students will begin to prepare for an interview, which they will do with an Aboriginal person. This is to provide the students with an authentic voice when learning about the Charter of Rights and Freedoms and what this

charter means to the Aboriginal peoples. The interview skills will also prepare students for the interviews they will be doing with a family member to learn about their own family's immigration story.

### **3.5.5 TEACHING HUMAN RIGHTS IN CAMBODIA**

The teaching of human rights in schools in Cambodia is done in different forms and ways. The approaches are different in both primary and secondary schools. The case study approach is given as an example from the Cambodian school system. The case study is the secondary school material that requires learners to answer the following questions:

What would your life be like if you could not drink clean water, eat enough food, receive an education or train for a job? How will you feel if you are deprived of practicing your religion? How would you feel if you are deprived of expressing and thinking what you feel? Living in this way means living without your human rights.

Cambodia was ravaged by civil war and conflict during the latter half of the 20th century. As a result violence, lawlessness and fear were the order of the day. To counteract this lifestyle a project to teach human rights was born. A large number of people were involved in this project. Teachers and the children were the first to be prioritized in this project.

The project was accorded a speciality and space in the education system of Cambodia. The project was called "The Human Rights Teaching Methodology" (HRTM). The aim of HRTM was to make the teaching of human rights a permanent part of Cambodia's education system. This involves training teachers on how to teach human rights, democracy and non-violence in the classroom. The project encouraged the inclusion of human rights project principles in all aspects of teaching, especially in writing and social studies. The project also encouraged excellent

teacher-learner and learner-learner relationships. It intended to extend the respect for human rights to families and the wider community.

The support from the Cambodian Institute of Human Rights (CIHR) to train teachers cannot be left unemphasised. CIHR trains teachers on the teaching of human rights in schools. A five to six day course is offered to teachers in all regions of the country. Trainees attend lectures or discuss student-centered learning and human rights principles, including the UDHR. In groups they read classroom resources and share ideas for assisting students to learn about and experience human rights. These courses are the 'train the trainer' courses. Selected trainees conduct model classes with local schools and they are observed and evaluated by other trainees ([www.globaleducation.edna.edu.au](http://www.globaleducation.edna.edu.au)).

### **3.5.6 TEACHING HUMAN RIGHTS IN THE UNITED STATES OF AMERICA**

The United States Bill of Rights grants all US citizens a number of freedoms. It further makes it obligatory to inform all citizens to uphold basic democratic principles such as tolerance and civic responsibilities. In an attempt to achieve the objectives of educating all citizens about their fundamental rights, children have been targeted. Children of all grades are coached on their rights and obligations and about the history of US democracy on the level they can comprehend (Davies, 2000:1-2).

A series of activities are used by the schools to teach human rights and inspire citizenship. In fostering citizenship in children human rights values are learned and acquired. Children learn to grow to become responsible active citizens who will not be violators of rights. The following are some of the activities used in the US schooling system (Davies, 2000:1-2):

1. Holding discussions on what citizenship means. The discussions cover rights and responsibilities of citizens, including also children's rights.
2. Definition of a good citizen. Learners share personal stories about times when they exhibited citizenship. Examples can include the fight against xenophobia, or taking care of national assets.
3. Asking learners to describe what would happen if there were no rules or laws at home, in schools, in traffic or stealing, attacking, etc.
4. Involving learners in making classroom rules. Learners discuss why rules are important and why they should have them. They also discuss the consequences of breaking the rules.
5. Teaching or understanding the country's founding documents: Declaration of independence, US constitution and the Bill of Rights.

### **3.6 THE TEACHING OF CHILDREN'S RIGHTS THROUGH LIFE SKILLS EDUCATION**

The Measures for the Prevention and Management of Learner Pregnancies in schools are important tools to teach learners their fundamental rights. They provide an environment in which learners are fully informed about reproductive matters and have the information that assists them in making responsible decisions. They also inform affected learners about their rights to education, and support teachers in managing the effects of learner pregnancy in schools. The challenge is that many learners in public schools misunderstand what the Constitution says about their legal rights and responsibilities (Soobrayan, 2009:1-3).

The Measures provide a framework for educating and assisting learners to understand and exercise their rights and responsibilities with regard to healthy lifestyles and to guide and support vulnerable learners. Involving all relevant role-players, and integrating these measures with available systems and structures will assist the learners. Role-players include parents, learners, educators, communities, non-government organisations (NGOs), the South African Police Services (SAPS), and the Department of Education, Health and Social Development.

The measures are firmly anchored within a prevention context - the prevention and reduction of pregnancy, as well as HIV and other sexually transmitted infections - in order to promote learning, development and healthy lifestyles for all learners. Therefore, the measures highlight the importance of sex education, HIV and AIDS education programmes, and peer education among learners. However, it is recognized that unplanned pregnancies may occur, and thus the measures also provide for procedures and guidelines to be followed in cases where learners do fall pregnant.

The measures include three important principles of the constitution: the right to equality, the right to education, and the rights of the child, including the newborn child. The legal and other requirements pertaining to children and pregnancy are highly prioritised. They are supported and supplemented by the National Policy on HIV/AIDS for Learners and Educators (Government Gazette No. 20372 of 10 August 1999). The Act maintains that "... there are high levels of sexually active persons within the learner population in schools". As a result of these findings it is clear that there is a high risk of HIV transmission in schools and institutions for further education and training. This is besides sex education, morality and life skills education provided by educators.

Through the Measures the Department of Education strives to ensure that learners, both boys and girls, are educated about the likely outcomes of engaging in sexual activity. All schools are called to conduct programmes to ensure that all children, whatever their situation, receive information and guidance to:

- encourage them to attend school every day;
- stay in school;
- practice a healthy lifestyle; and
- make appropriate and informed decisions about activities that will impact on their future health and educational prospects.

The following guidelines for improvement and support are recommended:

- Prevention programmes should be offered in collaboration with NGOs and other agencies, and should provide information and education that builds on the learners' own knowledge, skills, values and attitudes.
- Schools should provide special guidance and support to vulnerable or troubled learners, who are most at risk.
- A school should avoid any action that may constitute unfair discrimination against a pregnant learner.
- The pregnant learner should also understand that some members of the school community might not readily accept and be supportive of their situation because of the value system to which they subscribe.
- Schools should strongly encourage learners to continue with their education prior to and after the delivery of educational support to

the learner, within reasonable limits, and in whatever way possible given the particular context.

- Schools should strive to ensure the existence of a climate of understanding and respect with regard to unplanned pregnancies, and should put in place appropriate mechanisms to deal with complaints of unfair discrimination, hate speech or harassment that may arise. These may include:
  - ✓ Name-calling of a sexual nature, or jokes demeaning the dignity of a person, self-image and concept;
  - ✓ Written or graphic discrimination in the form of notes or suggestive material relating to the pregnant learner; and
  - ✓ Breaking confidentiality in a condemning or judgmental manner.
- Schools should ensure that a record of learner pregnancies is maintained, and that reports are submitted to the relevant authorities in the provincial Department of Education.
- Schools should also ensure that it is informed of alleged cases of rape (including statutory rape), as defined in the Sexual Offences Act (Act 23 of 1957), and that they report the case to the police.

### **3.7 THE ROLE OF TEACHER ORGANISATION IN THE PROMOTION OF HUMAN RIGHTS IN SCHOOLS**

Most of the educators in South Africa are organised within professional unions or associations. One of the largest teacher organisations in South Africa is the National Professional Teachers Organisation of South Africa (NAPTOSA), which is a federation of geographical or cultural bodies. NAPTOSA is politically non-aligned and pursues the following ideals

about the child: *The child has the right to be educated in a contended school community where there is no discrimination. The teacher as a role model should be a committed educator with respect for the profession and human dignity, and an understanding of the different aptitudes, attitudes and aspirations of the learners, and should allow for cultural, political and racial differences. Educators should make schools places where peace and tolerance are encouraged* (Parker, 1996:38-40).

Many educators are members of the South African Democratic Union (SADTU). SADTU is a unitary organisation allied to the ruling party the African National Congress (ANC) through its affiliation to COSATU. The stance of SADTU is that educators are obliged to live and work according to the code of conduct agreed upon by the South African Council for Educators. As trade unionists SADTU have developed its own additional codes that govern appropriate conduct of educators, and between educators and learners and colleagues. The code of conduct is written as follows (Lewis, 2011:1-4):

As a teacher, in line with the South African Council of Educators (SACE) Act 31 of 2000, I promise to:

- *teach, to advance the education and the development of learners as individuals;*
- *respect the dignity and rights of all persons without prejudice;*
- *develop loyalty and respect for the profession;*
- *be punctual, enthusiastic, well prepared for lessons, and of sober mind and body;*
- *maintain good communication between teachers and students, among teachers themselves; and between teachers and parents;*
- *provide regular information to parents on their children's progress;*

- *eliminate unprofessional behaviour such as teacher-pupil relationships, drunkenness, drug use, assault, and others;*
- *make myself available to provide extra-mural activities.*

### **3.8 THE ROLE OF TLO'S IN THE UPHOLDING OF CHILDREN'S RIGHTS IN SCHOOLS**

The Teacher Liaison Officers (TLO's) occupy an important position in the school life of learners. TLO's are democratically elected by other educators of the same school to act as the liaison between them and the learners. They may as well be called guarding teachers. It is expected of them to be reliable and sympathetic. They must create a sincere and trusting relationship with the RCLs (Representative Council Of Learners), and should promote spontaneous communication between themselves, the principal, staff and RCLs.

As a structure responsible for inculcating a sense of leadership in the members, it is strategically possible for TLO's to promote a human rights culture in schools. They are agents that promote democratic participation of learners in the school policies (Mabovula, 2009:5). RCLs are guided to contribute to the making and interpretation of policies. They are also coached on how to comply with all relevant RCL policies and to refrain from fouling them.

TLO's are able to use their experience by raising awareness of the children's rights as contained in both National and International determinants. This is possible through the meeting they always have with RCLs, which is informative in nature. Such awareness information sessions also cover the precautionary steps against abuse and violation of the rights of children. Learners learn strategies to defend their rights in the school system. The learners can also be given hints on how to

support their fellow learners when they are the culprits of abuse and violence.

The purpose of conducting advocacy for children rights is to increase awareness and change attitudes on children's human rights in schools. This exercise can be done in many ways. The parents could either be briefed by the SGB or the principal or teachers. The school can do this through a monthly newsletter that includes items related to human rights. Such items should be able to respond to the following questions:

What happens if a child is refused admission to a school on the basis of language, failure to pay school fees, HIV/AIDS status and pregnancy? An advocacy package can include school funds exemption policies. The current legislature on punishment is also important. The different kinds of corporal punishments should be explained to parents. The advocacy should be able to demonstrate performance indicators with regard to transgression of the law.

The learners should not be left out. In their meeting user friendly mechanisms should be used. Their rights should be linked with responsibilities, for instances the following (Anon, 2008a:1-13):

- Children have the right to be heard, but they have the responsibility to listen to other people and to respect them as well.
- Children have the right to go to school and learn. On the other hand they have the responsibility to respect teachers.
- Children have the right to be loved and protected from harm. They have the responsibility to care for other people.
- Children have the right to belong even if they are different from other people. They also have the responsibility to accept other people who are different from them.

The TLO's session with RLCs can be used as a 'train-the-trainer' session. The RCLs after having been coached by TLO's, will in turn be able to cascade the information to their constituency, which is the entire school's population. The list of rights should include the name of the right and the implication. This has already been addressed throughout this research.

### **3.9 THE ROLE OF THE SGBs IN THE PROMOTION OF CHILDREN'S RIGHTS IN SCHOOL**

The School Governing Bodies (SGBs) have been given the power in terms of SASA to promote and defend the rights of learners in schools. The SGBs are responsible for the materials such as the language of instruction, religious instruction, school fees and the code of conduct for learners. These policies must not by any means violate the rights of children or prevent them from entering the school system. The SGB policies must promote the value of non-racialism and equality amongst all learners. The policies must also preach tolerance and respect for one another's religion and culture.

One of the most challenging roles of the SGBs in school is the promotion and management of discipline. In exerting and executing these roles, the SGB must view learners as legal beings with rights. The code of conduct should not include degrading punishment such as the cleaning of toilets. Such punishments, including hidings, are inhuman in terms of the constitution. The suspension of a learner must be for serious offences. This can only happen after the learner has been heard to offer his/her side of the story. For serious offences the learners can be suspended from the school while the Head of Department adjudicates on the matter. Neither the principal nor the SGB has the right to expel a learner from the school. Only the Head of the Department can do so.

The security of the learners at school is also in the hands of the SGB. Safety procedures in school include drug problems, fighting amongst fellow learners and rape and sexual harassment of girls by either fellow learners and/or teachers. Problems of this nature are addressed through the writing of the Code of Conduct. The Code of Conduct should explain the importance of respecting the dignity of all girl learners. The actions against transgresses should be serious and should be clearly indicated.

Children's rights in all societal institutions are constitutional court matters. The SGB should, therefore, in their operations avoid actions that infringe on the rights of children. Every SGB member knows the consequences if, for instance, a child is refused access to a school on the grounds of language. There are instances where admission is refused due to failure to pay school fees. Other cases involve schools that refuse learners admission because of their HIV status, or schools that refuse admission or expel learners due to pregnancy. An SGB should decide on admission policies that are not contrary to the national constitution.

It is important that the SGB should promote the best interest of children in their fulfilment of duties. Of the three basic principles related admission policies: equity, redress and access, access should be highest on the list. No learner should be prohibited to attend school as a result of number of discriminatory rules, such as the ones mentioned above. Child rights should be a standing item at all parent meetings. Parents should be educated on all things that can become barriers in the way of children's rights.

### **3.10 SPORT AS A VEHICLE TO PROMOTE A HUMAN RIGHTS CULTURE**

The right to play means the right to be a child (Van Gils in Alen *et al.*, 2006:359). This means that a many children rights' programmes can be cascaded to the children through play. The right to play is emphasized by article 31 of UNCRC, which states that "States parties recognize the

right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and participate freely in a cultural life and the arts." This article strongly refers to the child's right to participation in social activities to express their feelings, their ideas and their opinions. This has already been discussed in the previous chapter (cf. par 2.4.1.1.4).

The intention of this paragraph is to explain how sport can be used by the school to promote a human rights culture. There are a number of values inherent to sport such as tolerance, acceptance, forgiveness, togetherness, rules learning, etc. These values are also important for the thorough understanding of human rights. Sport is able to equip children with the information, skills and support needed to make key life transitions successfully. Well-designed sport based programmes and actions can assist in teaching children human rights. Abused children can be reached through sport and can be provided with skills that will develop their self-esteem and self-confidence. Sport programmes can help to develop children's social and communication skills. Children can learn skills needed for survival in abusive situations. The skills inherent to sport help children establish positive relationships and make friends and from such relationships they gain social support.

The report from the UN Inter-agency Task Force, value sport as an important social activity. The report views sport as a forum where skills such as discipline, confidence and leadership are acquired. Some core principles such as tolerance, co-operation and respect are taught through sport. Sport programmes promote social integration and foster tolerance. They help to reduce tension and generates dialogue.

For the purposes of this study sport is defined quite broadly. It is seen as all forms of physical activity contributing towards physical fitness, mental well-being and social interaction. Physical activities include play,

recreation, organised competitive sport and indigenous sport or games. Play is a physical activity geared for fun and participation and it is often unstructured. Play is free from adult directions. Recreation is highly organised and entails physical activity leisure activities (Ogi, 2002:2).

Sport events are ideal forums to educate children about their rights. Such sport events can be school athletics competitions, netball, soccer and crickets or rugby competitions. Methods of raising awareness can include public announcements before such games or during intervals. Banners on different children's rights could also be displayed. Players could wear T-shirts condemning violation of rights. Half time shows could assist if children are granted the opportunity to showcase their frustrations and challenges in the school system. Good lessons could be learned from the example of the "Say Yes for Children" campaign during 2002 FIFA World Cup in Korea/Japan. Multiple elements were used to promote children's rights such as public announcements by players (Ogi, 2002:16-18).

Outdoor games are also ideal in promoting children rights. The success of such an attempt will depend on proper planning. Both the rights and responsibilities could be included in a game. For instance, the different rights can be listed and numbered on a chart. The rights are then linked with the list of responsibilities. One learner is chosen to act as the director of the game. The director calls any listed right. The boys say the called right aloud and the girls say the corresponding responsibility aloud. The game then turns around so that the girls respond to the rights while the boys respond to the responsibilities. The intention of this game is to emphasize the essential connection between rights and responsibilities.

### **3.11 MONITORING OF CHILDREN'S RIGHTS IN SCHOOLS**

Thus far it has become clear that there are structures within the school responsible for the monitoring of the implementation of children rights.

The first legitimate structure is the School Management Team (SMT), headed by the school principal. The principal should ensure that children's rights are not violated and also that policies regulating the rights of children are adhered to properly. It was reported in the earlier discussions that failure by the principal to report cases where rights have been violated constitutes serious misconduct. This is not only the responsibility of the principal, but also of his right hand officials such as the deputy principals and heads of departments.

There are no fixed tools that can be used to monitor rights in schools. The TLO's can be asked to report quarterly to the SMTs on compliance with regard to the management of children's rights. The SMT can also discuss and present TLO's reports in different meetings, such as the SGB and staff meetings. The LRC in secondary schools can be given a special slot in the SGB meetings to report on human rights issues in the school. This would not be a problem, since LRCs in Secondary School fully participate in SGB meetings.

Children's rights in schools can also be monitored through the usage of "Suggestion Boxes". The boxes can be put in all the classrooms. The boxes should be properly managed, labelled e.g. Let's Talk Rights. They should be emptied by the TLO's on a monthly basis. All the burning issues must be collated and brought to the attention of the SMT and the SGB for corrections (Gaynor, 2007:16-17).

Questionnaires are also ideal for monitoring children's rights. The strategy will be quite effective in secondary schools where children are able to read and write. The questionnaires can have a five point scale where 1 is the worst treatment and 5 the most excellent treatment. The management of questionnaires can be similar to the suggestion boxes. The approach can be used once a term by the school. When properly used these interventions can indicate the level of intervention needed.

Osler and Starkey (1998:327-328) provide an example of a questionnaire to assess whether the spirit of the Convention of the Rights of the Child is followed in a school. The intention is to determine whether the school environment gives everyone a chance to enjoy their rights. The learners are given the opportunity to evaluate the implementation of human rights in their school. Not all examples will be written down. The questionnaire is presented as Table 3.5.

**Table 3.4: Questionnaire to assess whether the spirit of the Convention of the Rights of the Child is followed in a school**

PROVISION	ALWAYS	SOME-TIMES	NEVER
1. Girls and boys have equal access to all subjects and lessons (Art 2, 28, 29)			
2. Any intelligence or skills tests administered by the school authorities take account of cultural differences in minority populations (Art 2, 28, 29, 30)			
3. Resources for sport are equally accessible to girls and boys (Art 2, 28, 31)			
4. Extra-curricular activities organised by the school are available to all regardless of ability to pay			
5. The school is accessible to people with disabilities			
6. Teachers do not cause any physical harm to learners (Art 19, 28, 2)			
7. No posters, images or drawings of a racist, sexist or discriminatory kind may be displayed anywhere on school premises (Art 2.17.29, 1b, c, d)			
8. A student accused of breaking the rules is presumed innocent until proven guilty and carries on with classes (Art 28, 2, 40)			
9. Freedom of expression and religion is tolerated by the school (Art 12, 13, 14, 17)			
10. The student newspaper is treated like any other publication and is not censored (Art 13)			
11. Students can create their own student movement recognized by the school to represent all students (Art 15)			
12. Students and parents are consulted about the quality of teaching at school (Art 5, 12,18)			

### **3.12 THE ROLE PLAYED BY THE UNITED NATIONS IN THE TEACHING OF HUMAN RIGHTS**

The United Nations (UN) Decade for Human Rights Education (1995-2004) produced a number of publications on the teaching of human rights in school, like for instance "*ABC: Teaching of Human Rights - Practical activities for primary and secondary schools*". This book emphasizes the process of teaching and learning the significance of the inherent "dignity and worth of the human person", which is the foundation of freedom, justice and peace in the world. The lessons learnt from this book are not only relevant in the classroom, but also good for life. Individuals are empowered by this book to defend their own rights and the rights of others. Empowerment constitutes an important investment for the future if the aim is to achieve a just society in which all human rights of all persons are valued and respected (De Mello, 2003:6-29).

Different techniques for human rights education are suggested in this book. The techniques encourage critical thinking, and both cognitive and affective learning. They encourage respect for differences of experience and opinion. The techniques encourage the active engagement of all participants. The pedagogical techniques for human rights education include the following: brainstorming, case studies, creative expression, discussions, field trips, interviews, research projects, role play and evaluation (De Mello, 2003:24-29).

One example of a human rights lesson extrapolated from this series is provided below. The example is based on the creation of a genuine human rights culture. In this lesson learners must learn to evaluate real-life experience in human rights terms, starting with their own behaviour and the immediate community in which they live. They need to make an

honest assessment of how the reality they experience every day conforms to human rights principles, and then they have to take active responsibility for improving their community (De Mello, 2003:96-99).

The steps of the human rights temperature lesson of the school are as follows (De Mello, 2003:96-99):

Learners are requested to evaluate their school's human rights climate i.e. take its "temperature", by completing the survey below.

Record and discuss the following:

- In which areas do your school seem to be promoting human right principles?

In which areas do there seem to be human rights problems?

How do you explain the existence of such a problematic condition?

Is it related to discrimination or to participation in decision making?

Who benefits and who loses/suffers from this human rights violation?

Have you or any other members of community contributed to the existing climate, either to improve or to worsen it?

What should be done to improve the human rights' climate in your school?

Develop an action plan as class, identifying goals, strategies and responsibilities.

### **Instructions to learners**

- Read each statement and evaluate how accurately it describes your school community.

Keep in mind all members of your school: learners, teachers, administrators and staff.

Add up your score to determine the overall assessment for your school.

**Rating scale:**

<b>1 = never (no/false)</b>	<b>2 = rarely</b>	<b>3 = often</b>	<b>4 = always (yes/true)</b>	<b>DN = don't know</b>
-----------------------------	-------------------	------------------	------------------------------	------------------------

1. Members of the school community are not discriminated against because of their race, sex, family background, disability, religion or life style.	
2. My school is a place where I am safe and secure.	
3. All students receive equal information and encouragement about academic and career opportunities.	
4. My school provides equal access, resources, activities and accommodation for everyone.	
5. Members of my school community will oppose discriminatory actions, materials or words in the school.	
6. When someone violates the right of another person, the violator is helped to learn how to change her/his behaviour.	
7. Members of the school community care about my full human as well as academic development and try to help me when I am in need.	
8. When conflicts arise, we try to resolve them in non-violent and collaborative ways.	
9. The school has policies and procedures regarding discriminations and uses these when an incident occurs.	
10. In matters related to discipline, everyone is assured of fair, impartial treatment in the determination of guilt and assignment of punishment.	
11. No one in our school is subjected to degrading treatment or punishment.	
12. Someone accused of wrong-doing is presumed innocent until proven guilty.	
13. My personal space and possessions are respected.	
14. My school community welcomes students, teachers, administrators, and staff from diverse backgrounds and culture, including people not born in the country.	
15. I have the liberty to express my beliefs and ideas without fear of discrimination.	

16. Members of my school can produce and disseminate publications without fear of censorship.	
17. Diverse perspective (e.g. gender, race/ethnicity, ideological) are presented in courses, textbooks, assemblies, libraries and classroom instructions.	
18. I have the opportunity to participate in cultural activities at the school and my cultural identity, language and values are respected.	
19. Members of my school have the opportunity to participate in democratic decision-making to develop school policies and rules.	
20. Members of my school have the right to form associations within the school to advocate for their rights or the rights of others.	
21. Members of my school encourage each other to learn about societal and global problems related to justice, ecology, poverty and peace.	
22. Members of my school encourage each other to organise and take action to address problems related to justice, ecology, poverty and peace.	
23. Members of my school community are able to take adequate rest/recess time during the school day and work reasonable hours under fair work conditions.	
24. Employees in my school are paid enough to have a standard of living adequate for their own health and well-being and that of their families.	
25. I take responsibility in my school to ensure that people do not discriminate against others.	
<b>TOTAL</b>	

Possible temperature=100 human rights degrees

Your school's temperature = ----- human rights degrees

Children at school need to understand their rights. Their knowledge and understanding of rights will enable and empower them to tackle any form of violation of their rights. This will also lead to a healthier school culture. It will lead to reductions of bullying and other negative behaviours.

### 3.13 CONCLUSION

The South African School curriculum does not address the issue of children's rights thoroughly. The curriculum is focused on preparing the

learners adequately for the labour market. Educating the learners about children's rights will lead to an informed society, which will strengthen democracy. Schools should offer basic information on human rights norms and systems of protection. Teachers across all the subjects must use different materials to teach human rights. Human rights education is essential in high quality learning and teaching. It should be the legal duty of every teacher to defend and promote human rights the way it is demanded by the statutes. Children should be taught about the state institutions supporting constitutional democracy. Such institutions are schematically presented in Table 3.6. This kind of education will foster essential values such as mutual respect, non-discrimination, equality and democratic participation. The school remains an ideal place to implement children's rights (Hammarberg, 2009:1-2)

**Table 3.5: State institutions supporting constitutional democracy**

<b>NAME OF INSTITUTION</b>	<b>SUMMARISED FUNCTIONS</b>	<b>TERM OF OFFICE</b>
1. Public Protector	To investigate and report improper conduct and take remedial actions	Non-renewable period of seven years
2. South African Human Rights Commission	To promote respect for human rights	Permanent
3. Commission for the Promotion & Protection of the Rights of Cultural, Religious & Linguistic Communities	To foster respect for the rights of cultural, religious and Linguistic communities	Permanent
4. Commission for Gender Equality	To promote respect for gender equality and the protection, development and attainment of gender equality.	Permanent
5. Auditor General	To audit and report on the accounts of national and provincial state departments	Fixed non-renewable period of between five and ten years
6. Electoral Commission	To manage the elections of national, provincial and municipal legislative bodies	Permanent

NAME OF INSTITUTION	SUMMARISED FUNCTIONS	TERM OF OFFICE
7. Independent Authority to Regulate Broadcasting	To regulate broadcasting in the public interest	Permanent

### **3.14 SUMMARY OF THE CHAPTER**

This chapter explained that a teacher is a real catalyst in the teaching of human rights in schools. The chapter highlighted a number of statutory provisions speaking to the constitutional rights of children, and shows that these should be taken seriously by teachers. A number of curriculum strategies to promote children's rights were also provided, as well as a comparative study on teaching children's rights. The next chapter will present the research design and methods used in this study.

## **CHAPTER 4**

### **RESEARCH DESIGN AND METHODS**

#### **4.1 INTRODUCTION**

The purpose of this chapter is to outline the research design and methods employed in this study. This includes the rationale behind the methodology used, how the research will be conducted and the steps taken to ensure that validity and reliability of the study are provided. In addition, the chapter will elucidate the reasons for using qualitative research methodologies. The data collection plan, which sets out the detailed strategy on the collection of data, i.e., where, when, how and from whom (Schulze, 2002b:4) is included in this chapter. The analysis of data will also be addressed.

#### **4.2 RESEARCH DESIGN**

A research design is a set of guidelines and instructions to follow in addressing the research problem (Mouton, 2002:107). According to De Vos *et al.* (2005:132), research design is a plan or a blueprint of how one intends to conduct a research project. It is a plan for selecting subjects, research sites and data-collection procedures to answer the research questions, and its main function is to enable the researcher to anticipate what the appropriate decisions should be in order to maximize the validity of the eventual results. It shows which individuals will be studied, when, where and under what circumstances. The aim of doing this is to give valid and accurate answers to the research question and to show the credibility of the research study. This study uses a qualitative approach as part of its research design.

#### 4.2.1 QUALITATIVE APPROACH

Commentators and researchers define the qualitative approach in different ways and forms. De Vos *et al.* (2005:74) views qualitative research as a multi-perspective approach (utilizing different qualitative techniques and data-collection methods) to social interaction, aimed at describing, making sense of, interpreting or reconstructing this interaction in terms of the meaning of the subject attach to it. Qualitative research is based on the notion of context sensitivity, which is the belief that the physical and social environment is a direct function of human behaviour. It, therefore, proceeds from a holistic approach.

According to Leedy and Ormrod (2005:94), qualitative research is used to answer questions about the complex nature of phenomena in order to describe and understand the phenomena from the participants' point of view. Denzil and Lincoln (2000:3), on the other hand, agree and maintain that qualitative researchers study things in their natural settings. Merriam (1998:6) explains qualitative research as "an umbrella concept covering several forms of inquiry that help us understand and explain the meaning of social phenomena with as little disruption of the natural setting as possible". The qualities, characteristics or properties of phenomena are examined through qualitative research.

De Vos *et al.* (2005:265) hold that it is important for a qualitative researcher to select a paradigm or a frame of reference that underpins and guides his study. Once the researcher has selected a paradigm, a decision must be made regarding the extent to which theory and a literature review should guide the investigation.

Woods (2006:22 -24), De Vos *et al.* (2005:74) and Leedy and Ormrod (2010:94-96) identify the following characteristics of a qualitative research:

- The researcher attempts to gain a first-hand, holistic understanding of phenomena of interest by means of a flexible strategy of problem formulation and data collection, shaped as the investigation proceeds.
- Methods such as participant observation and unstructured interviewing are used to acquire in-depth knowledge of how the persons involved construct their social world.
- As more knowledge is gained, the research question may shift and the data-collection methods may be adjusted accordingly.
- Qualitative methodology rests on the assumption that valid understanding can be gained through accumulated knowledge acquired first hand by a single researcher.
- The attention to detail, the ability to embrace both verbal and non-verbal behaviour, to penetrate fronts, discover meanings, and reveal the subtlety and complexity of cases or issues.
- Portray perspectives and convey feelings and experiences.
- Actions are contextualised within situations and time.
- Theory is generated from the empirical data, and consequently there is closeness of fit between theory and data.

As much as qualitative research possesses some strong qualities, there are also difficulties and weaknesses in implementing it. Woods (2006:23) elaborates on a number of difficulties and weaknesses. He argues that single qualitative studies cannot provide grounds for generalising across cases. It can take time to negotiate access, assemble a sample, develop trust and rapport and to find out what is "going on" or what people are thinking. Hanging around and muddling through can bring worries. Qualitative research is often accused of being impressionistic, subjective, biased, idiosyncratic and lacking in precision. Many researchers are

tempted to use a number of rhetorical devices, such as metaphors, jargon, loaded terminology, selected and valuable use of transport, quotations and the selective use of examples.

#### **4.2.2 DATA COLLECTION METHODS**

It is imperative that data should meet the requirements of a qualitative research design. This study employed a combination of three different approaches (Schulze, 2002b:14):

- **Literature study**

A literature study was conducted to explore the extent of other researchers' coverage of this specific or related subject matter. The survey included books, thesis, dissertations, articles, case law, legal documents and newspapers.

- **Focus group interviews**

Focus group interviews form the second method used to collect data. Participants in these interviews were TLO's. The questions asked in this part of the research were approved by the ethical committee of the University (cf. Schedule A: Focus group discussion guide). Thorough preparations were made, such as confirming appointments on the eve of the interviews, checking the recording equipment in advance to ensure its total functionality and filing participant consent forms. The interviewer stated the research aims and the purpose of the interviews so that the interviewer and focus groups could remain focused on the topic during the interviews (Donalek, 2005:124-125).

Mouton (2002:314) defines a focus group interview as a purposive discussion of a specific topic or of a set of related topics by eight to twelve individuals with similar backgrounds and common interests. Furthermore, De Vos *et al.* (2005:300) view a focus group interview as a

carefully planned discussion designed to obtain perceptions on a defined area of interest in a permissive, non-threatening environment. Cohen (2006:1-3) maintains that focus group research will vary based on the research question being studied. He also gives an indication of where and when focus groups should be used and provides reasons for that.

Focus groups were used in this research because the researcher wanted to balance individual views with group views. This ensures reliability and validity of responses. The topic is fairly novel in South Africa and the group interview was suitable to collect a concentrated set of observations in a short space of time (Cohen, 2006:1-3). Moreover, focus group interviews were used as part of a multi-method study together with individual interviews. This type of interview produces reliable data as members check on each other, but the downside of this is that some respondents may be inhibited by the group. Focus group interviews allowed the researcher to observe group interaction in a controlled setting on a very sensitive topic (Deem, 1997:1).

- **Individual in-depth interviews**

In-depth interviews constitute the third method used in this study to collect data. All preparations for the focus group interviews were also applied here. Teachers (cf. Schedule B: Individual interviews discussion guide) and the functionary (cf. Schedule C: Individual interviews discussion guide) were involved in this section. Questions that encourage a detailed response were asked rather than “yes” or “no” or one word answers. The rationale behind this was to elicit unstructured talk from participants about their experiences and opinions. Their comments were analysed at a later stage. Just like data collection, in-depth interviews have advantages. They are helpful for learning about the perspective of individuals as opposed to group norms of a community (Woods, 2006:12-15). Interviews stimulate participants to talk about their

personal experiences, opinions and feelings. They provide the opportunity to gain insight into how people interpret and order the world. They are appropriate for addressing sensitive topics that people might be reluctant to discuss in a group setting (Anon, 2009a:29-30).

Berry (1999:1-11) regards in-depth interviews as unstructured interviews. The method is used to gather information that would bring about a holistic understanding of the interviewee's point of view or situation. It can also be used to explore interesting areas for further investigation. Since this method involves qualitative data, it is also called qualitative interviewing.

### **4.2.3 DATA ANALYSIS**

Data processing is a systematic process of categorizing, comparing, synthesizing, and interpreting in order to provide explanations of the phenomenon of interest (Schulze, 2002a:37; De Vos *et al.*, 2005:333). It involves two kinds of operations, namely data reduction, during which the quantitative and qualitative data are summarized, and data analyses, which includes qualitative (i.e. thematic and content analysis) and quantitative analyses (Mouton, 2002:67).

Processing begins with whole events that are fragmented analytically and then reintegrated. Data have to be coded and prepared for processing, to which end field notes are organised and synthesized, and data are summarized, manipulated and in essence reduced to enable the researcher to describe the data.

### **4.2.4 ETHICAL MEASURES**

The success of data collection depends on a good working relationship between the researcher and the participants. Not only should the participants be respected during this process, but the sides for research as well (Creswell, 2009:89-91). Ethics is about what is considered

acceptable or justified behaviour in the field of social research. It speaks to the reasonable ways in which researchers gather data. The focus is on the feelings, conduct, sensible dialogue and negotiation skills during the research process.

In an effort to ensure the proper observation of all ethical measures throughout the study, the following principles were put into practice (Leedy & Ormrod, 2010:101-104; Creswell, 2009:89-90):

#### **4.2.4.1 PROTECTION FROM HARM**

Respondents in this research were not exposed to any physical or emotional harm. The participants were not subjected to stress, embarrassment or loss of self-esteem. All forms of psychological discomfort were avoided.

#### **4.2.4.2 INFORMED CONSENT**

The nature of the study was explained to all the participants beforehand. The participants were given the choice of either participating or not participating. Participation in the study was strictly voluntary. Information was provided in a language understandable by the participants. The language preferred for this study is English. An informed consent form was presented to the participants to describe the nature of the research and to provide information (cf. Annexure 7).

#### **4.2.4.3 RIGHT TO PRIVACY**

The participants' right to privacy was carefully upheld during this study. The nature and quality of participants' performance was kept strictly confidential. Neither the names nor any information of the participant were disclosed.

#### **4.2.4.4 HONESTY WITH PROFESSIONAL COLLEAGUES**

The final report of this study was written in a complete and honest fashion. No data was fabricated to support a particular conclusion. The researcher did everything in his power to report in a clear, accurate, and biased-free manner. Information and materials found in sources by other authors were acknowledged.

#### **4.2.4.5 ACCURACY AND INTEGRITY OF THE DATA**

Operario (2008:11-13) asserts that accuracy and integrity should be considered as two important principles of ethical research. Participants in the research should not be pressured to respond in ways that do not represent their true beliefs, perceptions, or experiences. Data should be represented and reported accurately. Any fabrication or manipulation of data is a serious violation of research ethics and can undermine the integrity and aims of the study.

### **4.3 PILOT STUDY**

A pilot study is a mini version of a full scale study. It is also called a feasibility study. It is a specific pre-testing that tries out a particular research instrument such as questionnaire or interview schedule. Pilot studies are a crucial element of a good study design. They give a warning in advance about where the main research project could fail. They help to assist the researcher to follow the research protocols. The pilot study assists the researcher to find out whether the proposed methods or instruments are inappropriate or complicated (Van Teijlingen & Hundley, 2001:1-9).

De Vaus (cited by Van Teijlingen & Hundley, 2001:1-9) offers good advice when saying “Do not take the risk, pilot test first”. For this reason a pilot study was conducted for both types of interviews. Table 4.1

presents schedules for the pilot study of this research. There are a number of reasons why a pilot study was conducted:

- Developing and testing adequacy of research instruments
- Assessing the feasibility of the study
- Designing a research protocol
- Assessing whether the research protocol is realistic and workable
- Establishing whether the sampling frame and technique are effective
- Identifying logistical problems that may occur
- Determining what resources (finance or staff) are needed
- Developing questions and a plan

**Table 4.1: Pilot study schedule**

<b>TYPE OF INTERVIEWS</b>	<b>CIRCUIT</b>	<b>DATE</b>	<b>VENUE</b>
Focus group	Coligny	06-09-2011	Bethel High School
Focus group	Itsoseng	08-09-2011	FM Ramaboa High
4 Individual in-depth interviews	4 circuits represented	12-09-2011	Coligny High School

A number of deficiencies were revealed during this study. Such deficiencies were resolved prior to the main study. The deficiencies included a number of logistical issues, such as the correct operation of the digital tape recorder to produce computer files and quality voice recordings. The selection of venues was also a challenge. The use of big rooms for interviews produced poor quality voice recordings.

## **4.4 SAMPLING**

A sample is a small group from a target population that is selected for inclusion in a study (Schulze, 2002a:33). As noted by Booyse *et al.* (2002:53), it stands to reason that it is impractical to mount surveys that include an entire target population. A sample that is representative of the target population is gathered. This process is called sampling.

The following concepts are important to understand the sampling process:

### **4.4.1 POPULATION**

A population is a collection of objects, events or individuals who have some common characteristics that the researcher is interested in studying (Mouton, 2002:134). This is called a target population. A portion of the target population to which the researcher has reasonable access is known as the accessible population (Mouton, 2002:134). In this study the population was drawn from the Lichtenburg Area Office of the Department of Education and Training with 88 schools within the Ngaka Modiri Molema district of the Department of Basic Education in the North West Province.

### **4.4.2 SAMPLING METHOD**

A purposeful/purposive sampling method was used to select the participants in this study. De Vos *et al.* (2005:329) hold that in purposive sampling the researcher must first think critically about the parameters of the population and then choose the sample case accordingly. The selection is entirely based on the judgment of the researcher whose overriding motivation was to gain as much information as possible from what were considered to be the richest potential sources. The sample included eight (8) teachers, twenty four (24) TLO's and one (1) area office

functionary responsible for monitoring compliance of policies in schools. All thirty two (32) teachers came from the four corners of the area office. In other words, all four circuits of the area office were represented in the sample. The mentioned sample was useful for selecting interviews:

- Teacher Liaison Officers (TLO's) work with Learner Representative Councils in schools (LRCs). Cases of violation of children's rights in schools reach them easily and quickly through the LRCs.
- These teachers have been working in these schools for a number of years. They possess a wealth of experience in as far as children's rights are concerned.
- The functionary from the area office works with children's rights policies. Their unit is called the Education Management and Governance Division (EMGD). Cases of violation of children's rights are reported at this office. The investigation of such cases is conducted from the office of the EMGD.

#### **4.4.3 SAMPLE SIZE**

Schulze (2002b:31-32) maintains that time and cost considerations would usually make it impossible to include the whole population in the study. The use of smaller numbers (sample size) results in accurate information because with a sample, time and effort can be concentrated to produce better quality research. The first question to decide is the number of participants to be included in the sample. In a study that is qualitative in nature, the size of the sample is determined by the repetition of data that the researcher obtains from interviews with participants (Schulze, 2002b:32). In this study the researcher conducted two types of interviews, namely focus group interviews and in-depth individual interviews. The size of the groups was as follows: 4 sets of 6 TLO's for focus group interviews, 8 teachers for individual in-depth interviews and 1

Area Office functionary for an individual in-depth interview (see Table 4.1).

**Table 4.2: Sample size and forms of interviews**

<b>Groups</b>	<b>Number of participants</b>	<b>Methods of collection</b>
1. Teacher Liason Officers (TLO's)	24 (4 sets of 6 participants each)	Focus group discussion
2. Teachers	8	In-depth individual interviews
3. Area office official	1	In-depth individual interviews

## **4.5 THE TRUSTWORTHINESS OF THE RESEARCH**

As indicated previously (par 1.5.2.5), in qualitative research, trustworthiness is used to establish the validity and reliability of the data (Leedy & Ormrod, 2005:100; Golafshani, 2003:601-602). The researcher conformed to high standard of trustworthiness in this study. This was achieved through the use of many guidelines to enhance trustworthiness. Lincoln and Guba (as cited by Seale, 2002:1) identified guidelines for the trustworthiness of qualitative research. They conclude that trustworthiness can be established by, amongst others, prolonged observation in the field, persistent observation, the collection of sufficient data, triangulation, member checking and peer review. They state further that the conformability of findings is based on the researcher's critical self-reflection. Guba's model of trustworthiness (as cited by Rutherford, 2009:133-134) is used in this study. The model has four criteria, of which some were applied in the study.

### **4.5.1 TRUTH VALUE ENSURED BY THE STRATEGY OF CREDIBILITY**

The truth value was considered in this study to describe accurately the phenomenon involved. This was done by establishing confidence in the truth of the findings. The personal experiences and perception of the

participants were crucial during the process of information giving. The principle of credibility was influenced by the following criteria (Schulze, 2002b:79):

#### **4.5.1.1 PROLONGED STRATEGY**

More time was spent with the participants in the language they were comfortable with. This enhanced free, maximum participation and the revelation of facts that are close to the chest. The individual interviews lasted for about one hour each and the focus group interviews lasted for two hours. In addition the researcher spent two days at each school to observe how children's rights were catered for in the usual running of the school and to understand the culture and ethos of the school.

#### **4.5.1.2 REFLEXIVITY**

The researcher has a psychological and emotional buy-in with this study. However, such feelings and experiences can become detrimental to the study. The risk of this happening was minimised through the promotion of reflexivity. Reflexivity was promoted through the use of a tape recorder and the interview field notes.

#### **4.5.1.3 TRIANGULATION**

Responses from transcripts, field notes and draft reports from individual and focus group interviews were compared to establish consistency and accuracy of statements (Gall, Gall & Borg, 2003:463-464).

#### **4.5.1.4 MEMBER CHECKING**

The research results were discussed with the Area Office functionaries and liaison officers at schools to determine the accuracy of the findings (Creswell, 2003:196).

#### **4.5.1.5 PEER REVIEW**

The research data was reviewed by the supervisor of this study, together with colleagues from the North-West University (Creswell, 2003:196).

#### **4.6 PERMISSION TO CONDUCT RESEARCH IN SCHOOLS**

Schulze (2002b:19) maintains that approval should be obtained before any data can be collected from institutions such as universities and schools. For this study the researcher was permitted to conduct interviews by the area manager and principals of selected schools from the Lichtenburg Area Office of the Department of Education and Training in Ngaka Modiri Molema District of North West province of South Africa.

#### **4.7 THE LIMITATIONS OF THIS STUDY**

Qualitative research condemns generalisation at all cost. In this study generalisations are even more limited because the area of investigation was small. The study involved only four circuits of the Lichtenburg Area Office (cf. Table 4.1) out of a possible 15 Area Offices in the North West Province. Although a cross section of all Lichtenburg Area Office teachers were represented and gender representativity was achieved in that 13 participants were females and the rest males, this hardly qualifies as the basis for the generalisability of the study.

Another limitation, one which could have had a negative influence on the results, is that the researcher is a circuit manager in one of the four circuits of the Lichtenburg Area Office. This could have resulted in respondents giving socially accepted responses thereby affecting the validity of the results.

In qualitative research, the researcher is not completely divorced from the interpretations of the participants because in the interpretive framework very little distinction is made between the subject and the object (Jansen,

2007:21; Leedy & Ormrod, 2005:135). The researcher, as a circuit manager in the education district where the investigation was carried out, may have been influenced by his own perceptions and knowledge of the teachers in his interpretation of the responses.

#### **4.8 CHAPTER SUMMARY**

This chapter described the research design and how the instruments were affected throughout this study. The reasons behind the rationale for using qualitative research methodologies have been accounted for. The chapter also touched on specific ethical issues and the way in which they were taken into consideration in this chapter. A pilot study employed in this study corrected all the loop holes. The next chapter presents data analyses and interpretation of the findings.

## **CHAPTER 5**

### **DATA ANALYSIS AND DISCUSSION OF THE RESEARCH RESULTS**

#### **5.1 INTRODUCTION**

The aim of this chapter is to present the findings of the study. An investigation was conducted to explore the possibilities for a model to assist teachers in implementing children's rights in schools. To achieve that objective, both focus group and individual in-depth interviews were conducted with selected schools and teachers. The interviews were tape recorded and transcribed.

A total of thirty three (33) participants were interviewed in this study. The participants were selected from all the four school circuits of the Area Office of Lichtenburg of the Department of Education and Training. Each of the four focus groups consisted of six teachers who are serving as TLO's at their different schools. The individual in-depth interviews were conducted with nine (9) participants, of which eight (8) were teachers and one (1) a functionary from the Area office of Lichtenburg Department of Education and Training. Finding the participants for the focus groups was a tedious task that took a great deal of time and patience. The interviews took place at an awkward time of the year when the teachers were busy compiling the year end promotional schedules. Finally, all the interviews were completed at the intended time, including the interviews of the functionary responsible for children's rights at the Area Office. Tables 5.1 and 5.2 below summarise the most important information about the participants.

**Table 5.1: Focus group interviews participants**

Focus group No	Circuit	Type of schools	No of participants	Roles	Gender	Date of interview
1	Coligny	1 primary 5 secondary	6	TLO's	2 females 4 males	08-12-2011
2	Itsoseng	6 secondary	6	TLO's	1 female 5 males	09-12-2011
3	Bodibe	6 secondary	6	TLO's	2 females 4 males	09-12-2011
4	Lichtenburg	2 primary 4 secondary	6	TLO's	3 females 3 males	12-12-2011

**Table 5.2: Individual in-depth interviews participants**

Official No	Type of school	Gender	Circuit	Date of interview
Teacher 1	Secondary	Female	Coligny	08-12-2011
Teacher 2	Secondary	Male	Itsoseng	11-12-2011
Teacher 3	Primary	Female	Lichtenburg	12-12-2011
Teacher 4	Secondary	Male	Bodibe	12-12-2011
Teacher 5	Secondary	Female	Coligny	14-12-2011
Teacher 6	Secondary	Female	Lichtenburg	15-12-2011
Teacher 7	Secondary	Male	Itsoseng	16-12-2011
Teacher 8	Secondary	Female	Bodibe	19-12-2011
Area office functionary	Area office	Male	Area office	15-12-2011

A number of sources were consulted on useful methods of analysing the data obtained through focus groups and in-depth interviews. McKenzie (2007:11-12) provides useful techniques for analysing focus group data. He offers a list of stereotypes that have to be avoided in the form of characters.

1. **The ESN Squirrel:** Collects tapes of interviews as if they are nuts. He does not know what to do with them. He regularly plays them on his Hi-Fi.

2. **The Ego Tripper:** Knows in his heart that his hunch is right, but needs a few pieces of interview fodder to justify it.
3. **The Optimist:** Plans 200 interviews with a randomly selected group of secondary school heads by Christmas. Will shortly discover 200 synonyms for "Get lost!".
4. **The Amateur Therapist:** Although ostensibly enquiring into parents' attitudes towards lacrosse, gets so carried away during the interview that he tries to resolve every social/emotional problem he encounters. Should stick to lacrosse.
5. **The Guillotine:** Is so intent on getting through his schedule that he pays no attention to the answers and chops his respondents short in mid-sentence.

Not only were the stereotypes avoided, but a number of other factors were also considered. The actual words and their meanings used by the participants throughout the interviews were considered. This was done to link the words properly with the objectives of the study. To obtain more revealing information from the participants there was much focus on the actual rather than on the abstract or hypothetical. Participants were allowed to express their own thoughts. No words were put in their mouths. They were listened to patiently so that they could say what they wanted to say. Over-reactions by the interviewer were thoroughly prevented. The group dynamics were also properly managed. Participants who were dominant over the others were controlled with ease. The reserved participants were involved tactfully in the interviews (Leedy & Ormrod, 2010:149-152).

## **5.2 DATA ANALYSIS**

The research study used content analysis to organise and evaluate data systematically. The researcher performed an analysis of the data that emerged from the content of the three sets of interviews. Content analysis is a qualitative technique used to "classify words in a text into a few categories chosen because of their theoretical importance" (Burns & Grove, 2005:731). Stemler (2001:1) broadly explains content analysis as "a systematic, replicable technique for compressing many words of text into fewer content categories based on explicit rules of coding". It is a useful technique for identifying emerging trends and patterns in documents such as transcribed interviews. In this study a list of words and phrases was created to describe different themes or ideas during the interview process.

Once the data were analysed, the "coding" of the data followed. Coding means the process of categorising and classifying words or phrases that recur in the data (Bruns & Grove, 2005:548). This was done to reduce data into meaningful segments for interpretation. Taylor-Powell and Renner (2003:2) stress the value of "coding" of the data by terming this process as "indexing of the data". The process is also referred to as "open coding". Open coding means generating codes while reading through the transcribed interviews (Henning, Van Rensburg & Smit, 2004:104).

The task was made easy by both Creswell (2009:185-187) and Leedy and Ormrod (2010:153-154) with their simplified approaches towards data analysis. Their approaches entail the following steps:

### **1. Organisation**

Electronic files were opened, since a digital voice recorder was used. Thirteen files were established, and responses were audio-typed. The

hard copies and notes were filed. The researcher transcribed the verbatim interviews by himself.

## **2. Perusal**

All the data were thoroughly read to get a general sense of the information and to deal effectively with the general meaning. While reading through the data the general ideas of participants were interrogated. The tone of the responses was also interrogated to establish whether they are significantly meaningful. All observations were plotted down in the form of preliminary interpretations.

## **3. Classification**

After the coding of all the data, the process of determining the categories started. All responses were analysed to find the categories of meanings. The process resulted in the crafting of the following categories from the participants responses:

- Fair treatment to all children
- Relationship of rights
- Forms of rights
- School subjects on children's rights
- Teaching of rights
- Integration of school subjects
- Violation of children's rights
- Non compliance with statutes
- Intolerable behaviour
- Misconduct cases
- Barriers on the implementation of rights
- Quality assurances strategies

- Recommendations for improvement
- Structures for support and promotion of children’s rights
- Conduct of office bearers
- Monitoring and support

To assist in the data coding process a strategy was developed to provide guidance. This was in a form of a code book (Kodish & Gittelsohn, 2011:54). The code book was developed as part of the qualitative data coding process. The method assisted greatly more so that no computer software was used to develop codes and categories. The results of the analysis of data according to the code book are presented in Table 5.3.

**Table 5.3: A code book for the analysis of the collected qualitative data**

A brief Code	Full description of Code	When to be used ?
1. Understanding children's rights 1.1 Children's constitutional rights 1.2 Fair treatment 1.3 Relationship of rights 1.4 Forms of rights	Teacher's experiences and exposure on children's rights	To explain the teacher's perceptions about children's rights
2. School curriculum 2.1 School subjects 2.2 Teaching of rights 2.3 Integration	Usage of the curriculum to promote and protect children's rights	To name and explain different school subjects as ways and means of promoting and protecting children's rights
3. Infringements 3.1 Violation of rights 3.2 Non compliance with statutes 3.3 Intolerable behaviour 3.4 Misconduct	Human rights infringements committed by teachers at school.	Using the code to explain and explore different forms of infringements prohibiting the realisation of the human rights culture in schools

<b>A brief Code</b>	<b>Full description of Code</b>	<b>When to be used ?</b>
4. Implementation challenges 4.1 Barriers 4.2 Obstacles	Challenges facing schools in the promotion of rights	To unpack a series of school based human rights challenges
5. Hints for improvements 5.1 Quality assurances strategies 5.2 Recommendations	Hints provided for a better human rights culture	A number strategies are discussed to improve the current state of affairs
6. School based structures for support 6.1 Roles of structures to support and promote children's rights 6.2 Conduct of office bearers	The different school based structures to promote the human rights culture are explained.	To explain the roles of the different structures to effectively assist in the creation of a healthy human rights milieu in schools

After the process of identifying categories was finalised, the second phase of developing the themes started. The themes were developed from the identified categories. A total number of six themes were developed. The code book was used to arrive at the themes of this research. All the full description of the codes was taken as themes. The identified themes are explained in the following paragraphs viz, par from 5.3.1 to 5.3.5. The identified themes from the transcribed written data have a direct link with the objectives of this research study (cf. par 1.4). Table 5.4 presents the themes of this research.

**Table 5.4: Themes emerging from the study findings**

1.	Perceptions about children's rights in the school system
2.	The promotion of children's rights through the integrated school curriculum
3.	Serious school based infringements on the constitutional rights of children in schools
4.	Challenges experienced in the implementation of children's rights in schools
5.	Hints for the creation of a healthy human rights culture in schools

6.	The School system structures to promote children's rights
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### **5.3 THE DISCUSSION OF THEMES EMERGING FROM THE STUDY FINDINGS**

The paragraphs which follow will discuss data from the three sets of interviews. The different types of interviews have already been explained under paragraph 5.1 of this study. The six identified themes will now be discussed:

#### **5.3.1 PERCEPTIONS ABOUT CHILDREN'S RIGHTS IN THE SCHOOL SYSTEM**

This theme presents responses of participants about their perceptions about children's rights in the school system. The theme is informed by the following categories: Fair treatment to all children, Relationships of rights and forms of rights. Participants in the interviews gave different responses regarding their perceptions about children's rights in schools. A number of rights in this analysis were given and linked with children's rights.

The different responses linked the subject of children's rights with education as a fundamental right to all children. Every child's right to education featured as the most important right in the interviews. It was explained as a constitutional right for every child globally. The analysis indicated that education as a right should be promoted in line with the ideals of the RSA Constitution. The ideals of the Constitution are access, free, equitable and quality education for all children. This is a demonstration that the participants understand the meaning and interpretation of Section 29 of the Constitution of South Africa "Everyone has the right to a basic education".

Participant 1 in focus group 2 interviews gave this input on education as an important right to all children:

*"Because children are part of a democratic South Africa, they have various rights that are enshrined in the constitution and, therefore, as they are in the school compound they have the right to be educated."*

The above-mentioned responses show that the participants understand the provisioning of education to children as a fundamental right. This understanding of the participants on education as a fundamental right concurs with the literature study's broader definitions on children's rights (par 2.2.3). The analysis further demonstrated that it is obligatory for a school to be a zone of safety for children. This means a school must be a respectful environment. These inputs are easily linked with the UNCRC articles that describe what a school should be like. These are articles 2 on discrimination, article 3 on the best interests of the child, article 6 on the child's right to life, survival and development and article 12 on the views of the child (par 2.4.1).

The realisation that children have the right to education is accompanied by references to safety in the school so that learners can learn undisturbed. Participant 2 in focus group 1 interviews responded as follows:

*"The learners have the right to education; they have the right to safety environment, and to be listened to. The white paper 6 says all children no matter what problems they have; they have the right to education."*

The following responses were given on how schools are expected to treat children: Participant 1 in schedule B in-depth interviews responded in this way:

*“The education system must be free from abuse. There should be no corporal punishment. They have the right to be treated fairly and with respect. Those are the main things I think.”*

The same expressions on the safety of learners were presented by participant 5 in schedule B in-depth interviews with the following remarks that *“children have the right to quality education, the right to safety and security”*. In support of this, participant 2 in schedule B in-depth interviews also perceived children’s rights as referring to the safety of learners by saying that *children’s rights in schools are all about protecting children and securing them from anything that can harm them.”*

The reason for lack of safety in school was presented by participant 7 from schedule B in-depth interviews who said that: *Schools do not have a safety Code of Conduct. Schools do not follow safety measures and as a result, they put the life of learners in danger.”*

The analysis indicated also that children rights also refer to the rights of learners to participate in matters affecting them. This may refer to the rights the children can exercise to elect their own leaders. The children, therefore, according to the analysis, have the right to elect their RCLs and TLO’s. The following responses by participant 4 from the schedule B in-depth interviews refer to the children’s participation rights in matters affecting them.

*“Learners have a democratic right to participate in decision making, the right to information and disclosure about matters affecting them at school; they also have the right to have their views heard about matters affecting them.”*

The analysis also indicated that some teachers regard themselves as the sole authority. They do not want to give learners a hearing and recognise them as persons with rights. Opportunities are seldom created to listen

to the voices of learners. The teachers want to dominate the learners, so their voices are stifled. In doing so, their right to free speech and identity is not recognised.

The findings of the above paragraph are supported by the following inputs from participant 6 in focus group 1 of the interviews:

*"The educators regard themselves as the sole authority over the learners. They don't give learners a hearing. Their voices are totally taken away by the teachers. The teachers make them silent."*

This finding is consistent with the literature, which refers to participation as a right (par 1.2 and 2.4.1.1.4). However, respondents did not indicate the level at which participation takes place. According to the participation ladder (par 1.2), representation indicates rung 5 of participation in which adults are still in control. The literature also points to the difficulty experienced in developing countries with regard to the participation of children (par 1.2). The finding that children participate at rung 5 confirms the findings of the literature study.

The right not to be discriminated against featured. However, the grounds for unfair discriminations as they appear under Section 9 of the Constitution were not raised e.g. pregnancy, age and disability. The issue of unfair discriminations was touched in the responses by participant 2 in focus group 4 by stating the following remarks:

*"My understanding about children's rights is that all children should be treated equally by not discriminating and by not favouring others and ignoring others."*

Even though the UNCRC was mentioned by the respondents, it was not mentioned as the most important international legal instrument for the recognition and protection of children's rights. It was not mentioned as the basis on which countries plan their programme of children's rights.

No indication was given of how the UNCRC is positioning children's rights at the forefront of its struggle for human rights and social justice. Not even the guiding principle of "the best interest of the child in all matters concerning the child" was mentioned. Neither the African Charter on the Rights and Welfare of the African child nor the South African Children's Rights Charter could be mentioned or linked with the understanding of children's rights. This implies ignorance of the determinants of children's rights. It appears that the respondents' knowledge of rights is acquired through interaction with learners. It is a knowledge gained haphazardly without any systematic learning. This finding agrees with the literature study (par 1.3) that one of the reasons why neglect and abuse of children continues can be attributed to a lack of knowledge.

It was encouraging to see how the respondents reflected on the different human rights concepts that can be linked with the understanding of children's rights. Such concepts are contained in the national instruments such as SASA and the Constitution. The same concepts are also mentioned in the literature study (cf. par 2.4.4 and 2.4.8). The different rights were generally stated by different participants as follows:

Participant 7 from the schedule B in-depth individual interviews gave the following responses:

*"Children I think deserve the right to be heard, the right to express their own views, the right to be taught, the right to be respected, the right not to be discriminated against, the right not to be assaulted and the right to a healthy environment."*

Participant 3 from the focus group 2 stated the following on the different human rights concepts linking with the meaning of children's rights:

*“They are the rights referring to the kind of education which promotes freedom of expression, right to privacy, the right to be treated with respect and the right to be listened to.”*

In summary the perceptions of participants about children’s rights centre around acquired knowledge, i.e. knowledge gained in practice and not based on statutes. Another finding is that the rights of children are associated with a safe environment free from drug-peddling, gansterism, fights and bullying. Participants indicated that children have the right to participate in decision making by electing representatives to bodies that take part in decision making in the school. However, as the literature indicated, participation lags behind provision and protection.

### **5.3.2 THE PROMOTION OF CHILDREN'S RIGHTS THROUGH THE INTEGRATED SCHOOL CURRICULUM**

A number of categories which were identified culminated in this theme. The identified brief codes were as follows: school subjects on children’s rights, the teaching of rights and integration of school subjects. The responses under this theme touched on a number of school subjects that can be used to improve the current practice.

The use of school subjects and learning areas such as Life Orientation, Social Sciences, Arts and Culture and the teaching of English set works were mentioned as vehicles to promote and defend children's rights. Through these subjects and the others the values of democracy are taught. Respondents indicated that these subjects contain topics on human rights. Also, human rights related principles are found in these subjects such as tolerance, respect and togetherness as it was explained in the literature review (cf. par 3.4 and 3.5).

The importance of school subjects to promote children rights is affirmed by the following responses from participants of focus group 1:

*"The teaching of subjects like Arts and Culture and Life Orientation are used to promote the rights of children... These subjects emphasise tolerance like religious tolerance... All are encouraged not to undermine other religions. Learning from one another is important because understanding breeds respect."*

The usage of school subjects as vehicles to promote the teaching of children's rights was endorsed also by the following responses from focus group 3 participant 5:

*"Life Orientation as a subject is teaching learners about their constitutional rights... In Social Sciences the learners learn about the constitution and their rights. In Setswana as a language they learn about "Ditshwanelo" meaning their constitutional rights."*

It also emerged from the analysis that most of the participants regard Life Orientation as the ideal subject to help in the promotion of children's rights in schools. This is raised in the different responses such as the following by participant 4, schedule B in-depth interviews:

*"A learning area like 'Life Orientation' is extensively used to teach learners about their rights, other than that, the school may at times invite professional people like the Police on issues like drugs, guns and rapes, lawyers may also be sourced to ascertain learners of their legal rights."*

The findings here have a close link with the literature study (par 2.5.3; 3.4 and 3.5), which state that Life Orientation is a subject that inculcates human rights meaningfully to all learners. This is a subject taken by all learners in the school system. In the foundation phase of the school system, this subject is called Life Skills.

The common topics on human rights in the secondary schools subjects have a close link with children's rights. One of the topics is the study of

UDHR in the study of history as a school subject. Here an in-depth study is made of the violation of human rights. In the primary school phase the common topic is the constitutional rights of children. An opportunity is created for all children to explore their responsibilities and rights as enshrined in the Constitution. Rights and responsibilities are linked with problematic situations, such as child abuse and child neglect. This is the Grade 5 syllabus.

The question of the integration of children's rights into school subjects also surfaced during interviews. The integration of children's rights in different school subjects will reduce the costs of drafting schools human rights manuals. The integration of human rights education into different school subjects was endorsed by the responses of participant 2 in schedule B of the in-depth interviews who had this to say:

*"It is important that [children's rights] is been integrated. Once it is integrated children will know their rights and responsibilities. It is integrated in some aspects of the Life Orientation."*

The analysis also revealed that the teaching of children's rights is integrated in all subjects. Not only Life Orientation was viewed as a tool to promote the teaching of children's rights. One of the interviewees explained other strategies employed in other subjects. The interviewee indicated that in Grade 12 English teaching they deal with human rights topics. The human rights topics used in the teaching of set works are prejudices, discrimination, stereotyping and tolerance. This is clearly articulated by participant 8, schedule B in-depth interviews:

*"As an English teacher of Grade 12 we deal with human rights topics such as discrimination, prejudices, stereotyping and tolerance."*

The integration of human rights education in the teaching of various subjects is supported by the literature (par 3.4). It is clear from the

responses in this theme that the subject of children's rights can be easily addressed when integrated in the school curriculum. Integration helps learners to see human rights in a holistic manner from different perspectives. Integration also helps them to identify human rights with all subjects in the school and not associate it with Life Orientation only. It helps teachers to assume responsibility to teach children's rights thereby increasing their awareness of these rights. If the English teacher is able to teach human rights concepts it means other language teachers can do it as well.

The findings on this theme point to Life Orientation as the subject considered to be most suitable for the teaching of children's rights. However, the findings also indicate that the teaching of children's rights is not confined to Life Orientation, but occurs throughout the teaching of other subjects.

### **5.3.3 SERIOUS SCHOOL BASED INFRINGEMENTS ON THE CONSTITUTIONAL RIGHTS OF CHILDREN IN SCHOOLS**

The responses under this theme indicated that serious infringements of children's rights occur in schools. The different categories responsible for the birth of this theme are the following: violation of children rights, non-compliance with statutes, intolerable behaviour and misconduct cases. The different treatments viewed as violation of children's rights will be addressed in the paragraphs that follow.

The analysis indicated that corporal punishment is still used in some schools in the same way it is explained by the literature study (par 2.5.1.1). This disciplinary system based on fear is still used, even if it has been declared illegal (par 2.4.8). There are also reasons stated in some instances why it is still used.

The different responses on the use corporal punishment in schools follow:

Participant 4 in focus group 3 remarks as follows on corporal punishment:

*Corporal punishment is still applied. Teachers are kicking and slapping learners. Verbal abuse is also still common. I would say that since corporal punishment has been abolished there is an increase in verbal abuse whereby learners are sometimes degraded by the teachers' remarks."*

Participant 6 focus group 2 remarks on corporal punishment were as follows:

*"Corporal punishment is still used in some schools. This is used even if it has been outlawed."*

The finding that corporal punishment is still used in schools has been investigated by several authors, for example, Rossouw (2003) and Maphosa and Shumba (2010). Thus the finding agrees with the literature study on the subject. The reasons for the continued use of corporal punishment, even if it is illegal, are also found in the literature (par 2.4.7).

A surprising and upsetting finding is that teachers have substituted the use of corporal punishment with the use of verbal abuse. The banning of corporal punishment seems to have triggered other forms of abuse in the school such as verbal abuse that constitutes psychological torture. This is also accompanied by the use of abusive and obscene language. It has a negative impact on the emotional stability of learners (par 2.5.2). Responses on the cruel or degrading tongue lashing system were as follows:

Participant 4 from schedule B in-depth interviews stated the following:

*“Inhumane, cruel or degrading tongue-lashing aimed at disrespecting learner’s dignity is commonly used in schools.”*

Participant 3 from focus group 1 made the following submission:

*“Verbal abuse is also a common practice in some of the schools. However sometimes it is not done deliberately. It can be a sort of abuse.”*

Not only did emotional and physical forms of abuse surface. The interviews reported that a number of constitutional rights of children are being violated. Section 15 of the Constitution on freedom of religion, belief and opinion was reported to be compromised in some instances: The response indicated that some learners are not treated fairly because of the different races and home languages (par 2.4.7). This also included the religion of the learners, as cases are mentioned where tolerance of diverse religions is not observed. Attitudes of this kind are also in contradiction with the equality clause in terms of Section 9(3), which challenges the unfair discrimination on the basis of religion, belief, culture, race and the others.

The following responses by participant 6 from schedule B sum up the violations stated in the paragraph above.

*“We still have educators who are not treating learners fairly because of different race and different home languages. Religious tolerance is a problem and traditional customs are mostly violated.”*

The interviews also indicated that teachers do not apply the equality principle as a special rule for the promotion of the Bill of Rights. This includes the right to equal protection and benefit from the law, which is provided for by Section 9 of the Constitution. The focus group 2 indicated that *“sometimes learners are unfairly discriminated against on the basis of their performance”*. Slow learners are not favoured and supported, especially in the main stream normal schools. Such learners are called

names and finally feel unwelcome. Participant 5 from focus group 4 remarked on the kind of treatment given to the under-performing learners:

*"Sometimes learners who are performing academically well are favoured by the teachers. The ones under-performing not."*

Another violation of children's rights that emerged from the interviews is that there are still male teachers who are engaged in love affairs with girl learners. Participant 3 from focus group interview 4 said:

*"Other ways of violating children's rights is when teachers fall in love with learners."*

Falling in love with girl learners has been condemned and outlawed by statutes, but it does not come to an end. SACE has disciplined a number of teachers for this bad conduct, but there are still male teachers who are mischievous. This is viewed as a serious misconduct and is a dismissible offence. Section 17(c) of EEA calls for the dismissal of any educator who is engaged in a sexual relationship with a learner of the school where he or she is employed. This finding is confirmed by the literature study findings on sexual scandals in schools in SA (par 2.5.2).

Another way of violating children's rights is the non-adherence to the non-negotiables of teaching and learning in the school system. The non-negotiables were introduced by President Jacob Zuma in 2009 and maintain that teachers should be in class on time teaching and no bunking of classes to be tolerated. The analysis revealed that there are still teachers in the system who do bunk classes. These are indolent teachers who do not want to ensure that the right of every child to education is realised. Teachers are required to attend classes regularly, provide the curriculum and assess the learners accordingly. This is a condition of service that cannot be compromised. It is stressed and defended by statutes such as the Personnel Administrative Measures

(PAM) housed in EEA, 76 of 1998, which emphasises teaching as one of the core duties and responsibilities of the job.

Participant 8 from schedule B of the in-depth interviews made this input on the non adherence to non-negotiables of teaching and learning:

*"Teaching and learning time of learners is not adhered to by some of the colleagues, for example they are sending learners for errands during lessons."*

The act of violation also includes non-attendance of classes by teachers and merely sitting in the staffroom. In some instances teachers are always late for their classes. Failure to give learners quality work for assessment is also a transgression, as is the failure to give the required number of assessment tasks. In this way, children progress to the next grade with serious curriculum gaps as a result of indolent teachers. The responses on the latter paragraphs were uttered by participant 7 from schedule B in-depth interviews of this study:

*"Some teachers attend classes late. Others fail to give the required number of assessment tasks to kids."*

The responses also mentioned common cases which related to the infringements of children's rights in schools. Only two recent serious cases were mentioned during the interviews with the functionary, involving learner expulsions and safety of learners. The names of the affected schools were also mentioned by the interviewees, but these names cannot be mentioned in this analysis for ethical reasons.

In the first case of learner expulsion the schools involved did not follow the prescriptions of the law in terms of section 9 of SASA. The proper due processes of the law were not properly followed. The learners were not granted enough opportunity to make a case according to section 9(1) of SASA. In addition, the role of the SGBs was not clear enough in terms

of section 9(1A). The educators played a dominant role instead of giving the SGBs a chance as the structure responsible for discipline.

The schools in question contravened section 9(2) of SASA, although this was not mentioned explicitly in the response. The SGBs do not have the right to expel a learner from a school. It is only the Head of Department who can do so. This has happened in cases of serious misconduct. It is vital to see whether proper disciplinary proceedings have taken place in terms of section 8 of SASA. Parental involvement or consent is key in such cases in terms of section 8(6) of SASA. In the case described by the analysis, the school's actions were quite illegal since parents were not involved. The teachers became referees and players.

The second case revealed by the analysis was a case related to the safety of learners. The school in question was without a policy for the safety of learners. Neither the learners nor the educators were knowledgeable on safety policies. As a result of the school's failure to follow safety measures a case of negligence with regard to safety was reported. For ethical reasons this case cannot be divulged since loss of life was reported. The responses on this matter were stated as follows by the District functionary under schedule C in-depth interviews:

*"It is a case of learner expulsions. ... in terms of the law, disciplinary procedures must be followed first. Learners must be given a fair chance in terms of the Common law. The complaining teachers sat in the hearings and in this way not being neutral. Learners should be represented in the hearings to have representation."*

Summary of findings on this theme may be stated as follows:

- The prohibition on the use of corporal punishment has been substituted by verbal abuse and tongue-lashing instead of the use of alternative ways of dealing misconduct of learners.

- Discrimination still occurs, for instance slow learners are treated unfairly by teachers and different races and different languages are used as discriminatory levers in the classrooms.
- The spectacle of teachers who fall in love with school children still occurs in schools, although it is prohibited by SACE and the teachers' code of conduct. Teachers who are guilty of this offence face dismissal.
- In cases of misconduct by learners proper disciplinary procedure is not followed, leading to biased decisions taken against the learners.
- Teachers violate the right of learners to quality education by not attending classes, not doing lesson preparation and not assessing learners according to prescriptions of assessment.

#### **5.3.4 CHALLENGES EXPERIENCED IN THE IMPLEMENTATION OF CHILDREN'S RIGHTS**

It emerged from the interviews that teachers experience challenges in protecting and advancing children's rights in schools. Just like the other themes of this study mentioned above, categories were first identified. The identified categories on this theme of challenges included the following: Barriers and obstacles. The different challenges revealed during the analysis of the three sets of interviews will be accounted for in the subsequent paragraphs.

It emerged that the learners do not balance their rights with responsibilities. Learners are not capable of linking each right with a responsibility. Singh, Naidoo and Usdin (2000:13-14) explained how rights and responsibilities can be jointly exercised. The two must be operated jointly. For every right bestowed on a child, there is a corresponding responsibility on the part of the child. For instance, children have the right to a good education and the responsibility to study

and respect their teachers. There are a number of benefits for children if they have the knowledge of balancing the two. These benefits were discussed in the literature review (cf. par 3.2).

The different participants indicated that learners have not yet reached the stage whereby they are able to interpret their rights properly. The learners view themselves only as people in possession of rights. They do not think and believe that teachers also have the rights as human beings. This kind of attitude is usually seen when discipline problems are encountered, especially when learners fail to abide by the Code of Conduct.

In response to a lack of balance between rights and responsibilities, participant 5 from schedule B in-depth interviews uttered the following statements:

*"Children only focus on rights and forget that rights are accompanied by responsibilities. Learners tend to forget that teachers are also entitled to human rights, just like children. Teachers on the other hand tend to think that learners are still minors and they don't have to respect learners."*

Similar responses on the clash between rights and responsibilities were extended by participant 8 with the following input:

*"Children are rights orientated and not responsibility orientated. Children are able to cite off rights as stipulated in legal fronts. They are not aware that there is a close link between rights and respect."*

The above finding concurs with the literature study (par 3.3.1, 3.4 and 3.6) where it was stated that children misunderstand what the constitution says about their legal rights. The UNCRC explicitly links rights with responsibilities. Children have the right to make mistakes and the responsibility to learn from the mistakes. They have the right to be taken

seriously and the responsibility to listen to others. They also have the right to a good education and the responsibility to study and respect their teachers (par 3.6). Lack of respect by the learners was a challenge viewed very seriously by the respondents. The teachers are expected to prepare learners adequately for the future even if they are not respected by these learners.

The analysis on the other hand indicated that schools expect children to master their rights and responsibilities but has failed to train them. Some of the children do not even know the sets of rights given to them by the law. There are no opportunities created to stress the importance of children's rights in schools. Participant 4 in focus group 2 interviews commented that "*there are no sessions to update learners about their rights*". Some of the schools in some instances do not involve children in the drawing up of class rules. However, in some instances training is offered to learners on a need-for-basis.

One participant from focus group 2 had this to say:

*"We sometimes have meetings with learners and invite teachers to listen to the views of learners. Even in the staff meeting agenda. We can include children's rights and discuss how to deal with them."*

Another participant from the same group said:

*"The chosen learners [of the RCL] then undergo training on matters defined in the SA's School Act, to assert them of their democratic right. They in turn will carry this information to the rest of the students' body."*

The balancing of rights and responsibilities also had a negative effect on schooling whereby children misuse their rights or interpret their rights wrongly thereby making it difficult for teachers to protect and advance children's rights. It would appear that lack of commitment of the side of the children is frustrating teachers. Such frustrations are encapsulated in

the following responses participant 7 in the Schedule B in-depth interviews:

*"Some are addicted to drugs. They come to class being drunk. Others failed to attend extra classes. Some don't do or complete assignments. Also absenteeism on the part of the learners is a serious challenge."*

Misbehaviour among learners under the guise of exercising their rights makes it difficult for teachers to uphold children's rights. Misbehaviour demoralises teachers who fail to see why they should accord respect to children who do not show respect to them.

Such frustrations are captured in the responses that follow made by participant 1 in schedule B:

*"Sometimes it is difficult. Learners can be very arrogant towards teachers, which makes it difficult to treat them with respect. They are often disrespectful towards teachers as well as disobedient. Some learners have no manners and behave rudely and disrespectfully towards teachers."*

Another aspect revealed by the interviews was the work of structures in the schools in upholding children's rights. All school based structures are supposed to join hands to promote and protect children's rights. One of the important structures in this regard is the TLO's. TLO's can become agents of the human rights culture in the schooling system. They are better placed to promote and defend the rights of children in schools because they work closely with the RCLs, which is the leadership structure of all learners in schools (par 3.2). They are the agency to impart information to the RCLs. Their teaching experience is also crucial. They can teach RCLs about their constitutional rights as people. The RCLs will then share the information with the rest of the learners. TLO's

have to be able to communicate learner related matters to all school based structures.

The analysis indicated a negative attitude towards the TLO's among teachers. The respondents within the TLO's maintain that they do not get the support of other teachers in the promotion of children's rights at school. In some instances they do not even have the support of the school management teams. They are viewed as sell-outs. They are seen as structures inciting learners to act against the teachers. They become unpopular with other colleagues when they condemn the bad ways of handling the rights of children.

Negative expressions on the work of the TLO's were also detected from the following statements by participant 4 from focus group 2.

*"Always and always there is a lack of support from other teachers. We sometimes feel as if we are alone. When you defend the rights of children you are called a sell out. We are viewed as people without enough work. They say our allocated periods for teaching are less that is why we have been declared TLO's."*

In the same vein a participant from focus group 2 said:

*"There is lack of recognition of their [TLO's] work by other teachers and the school's SGB. TLO's seem only to perform RCL's election and arrange matric dances, other than that, they are toothless dogs."*

The same expressions were made by participant 4 in Schedule B in-depth interviews:

*"TLO's even when consent about their responsibilities still lacks the power to confront stereotypes; this may be due to them being overwhelmed by school work and the responsibility of being a TLO."*

The interviewees revealed that negative attitudes from other teachers are displayed mostly when compliance is not met. Teachers mostly display negativity when they are found wanting in the proper implementation of laws. For instance, when they are cautioned about the use of corporal punishment they are offended and display unacceptable attitudes towards the TLO's. Their resistance to policy changes makes them target the TLO's.

The negative attitudes of other teachers regarding the work of the TLO's are further explained by the following responses by participant 3 from focus group 3:

*"Mostly the attitude of teachers is negative. Most do not implement what the constitution says. Most of them are against changes. They are against the new laws. When reminded about corporal punishment such as slapping a learner, such educator will feel offended."*

Another negative experience was that family background has a negative bearing in the implementation of children's rights at school. The style of upbringing and leadership has a great influence on the social life of the child at school. Children from autocratic, permissive and democratic types of families will always display different patterns of behaviour. It, therefore, becomes the responsibility of the parents to prepare children adequately for the new milieu. This was seen as a challenge because some parents are not well-educated so that they cannot understand these dynamics. The challenge mentioned was responded to by participant 6 in focus group 1 with the following remarks:

*"Learners are coming from different backgrounds and environments with different laws and policies. It is difficult for them to abide by the school rules 'They want to behave like they do at home and forgetting that a school is a different environment with its own set of rules that must be adhered to.'"*

Children spend most of their time at school and, therefore, there must be a close relationship between teachers and children. The success of learning and teaching is depended upon the element of trust between the child and the teacher. The focus group interviews revealed that the learners at schools sometimes do not trust their teachers. Thus children fail to confide in teachers when treated incorrectly by teachers. The seriousness of this challenge was raised by the response which follows made by participant 4 in focus group 1 interviews:

*“Also, the question of trust. Some learners cannot trust educators. If children do not trust you as an educator they will not find it easy to confide in you about their serious problems.”*

Lack of adequate knowledge about legislation and its practical application was noted in the interviews. Knowledge of legislature is also important for their work, especially those laws related to the fundamental constitutional rights of learners. The assumption is that all teachers have learned about these laws during training at a college of education or at a university (par 2.4.4). The opposite is the case according to the analysis because there are still teachers who lack the knowledge of legislations. This was alluded to in the responses of the functionary with the following inputs:

*"It is lack of knowledge especially on the statutes and also in the interpretation of the law. When learners are dealt with in our institutions some educators are not really fully capacitated in that area."*

It is not only the lack of knowledge of the different children's rights laws which is a challenge but a lack of knowledge on how to interpret such laws. This implies failure to apply laws properly. It also means application without first thinking of the implications. It also means applying laws without consulting a specialist in this field.

It is possible that lack of knowledge among teachers can be attributed to lack of proper training. The responses from the interviews indicated that not much has been done to train teachers on the implementation of children's rights in schools. The functionary during the Schedule C in-depth interviews indicated that:

*"One (1) it will be the 'Code of Conduct for learners because most of them are not in line with law prescripts, the Constitution and international laws on children's rights. They are not embedded in the Bill of Rights."*

The analysis indicated that it is the responsibility of the Department of Education and Training to provide capacity training. The different SMTs can also coach their educators on children's rights related laws. Teacher unions can also be of assistance in this matter.

The training of all teachers will assist schools to establish school rules and codes which are within the confines of the laws. This is another challenge because most of the school codes of conduct are not drawn in line with the international and national children's right laws. The safety policies for learners are also full of loopholes. In such policies the protection and safety of learners are not emphasised. In some instances such policies were drawn without taking all school community members on board. All these abnormalities are discovered during the support and monitoring visits by officials from the Department of Education and Training.

The necessity for training of teachers in upholding children's rights is highlighted in several places in the literature study (par 1.3, 2.4.4 and 2.5.5). The above findings are, therefore, consistent with the literature study. Not only should teachers be trained in upholding children's rights, but also the learners in the exercise of their rights balanced with responsibilities.

The findings from this theme may be summarised as follows:

- Lack of training of both the learners and the teachers. Training is offered to learners and teachers on a need-for-basis.
- Lack of adequate knowledge about legislation and its practical application was noted in the interviews.
- Lack of commitment of the side of the children is frustrating teachers and makes it difficult for teachers to uphold and protect children's rights. Misbehaviours among learners under the guise of exercising their rights make it difficult for teachers to uphold children's rights.
- The analysis indicated a negative attitude towards the TLO's among teachers.
- Family background has a negative bearing in the implementation of children's rights at school.
- Children fail to confide in teachers when treated incorrectly by other teachers.

### **5.3.5 HINTS FOR THE CREATION OF A HEALTHY HUMAN RIGHTS CULTURE IN SCHOOLS**

The theme is guided by the following categories: Quality assurance strategies and recommendations for improvement. The three sets of interviews were able to provide a number of hints for improvement.

School meetings such as the school's staff meetings were viewed as ideal. During such sessions children's rights education is emphasised. A number of tips are gained, in particular when classroom rules are discussed. From the discussions other colleagues will be able to take audit of themselves to see whether they are managing children's rights

properly or badly in conflict with the laws. In other words, during staff meetings teachers learn from one another.

Participant 6 from focus group 4 commented in this way:

*"During the staff meetings children's rights are discussed. The issues of compliance are tabled and discussed. Best practices are shared with one another. Classroom rules are also discussed and adopted. Learners are also engaged in the drawing up of class rules."*

The respondents further indicated that they have the responsibility as TLO's to give other colleagues feedback regarding the affairs and functionality of the LRCs. It is during such feedback meetings where awareness of children's rights can be raised. During the feedback sessions different policies on learner affairs are touched. One such policy is the Code of Conduct, which has many rights related matters. The application of the Code of Conduct is, therefore, discussed. The TLO's inputs will be viewed as superior, but contributions from other colleagues are also considered. The guidance of the principal and the SMT play a leading role here. On the point of the Code of Conduct the functionary said:

*"We are moving in to give guidance to schools on how to draw them [codes of conduct]. Some are not in line with the Code of Conduct... but they were not properly advocated. There must be advocacy on children's rights. We want schools to have 'Flyers' to give clear guidance to everybody on safety measures."*

The findings on the importance of the LRCs feedback meetings are affirmed by the following statements by participant 4 from focus group 3:

*"After meetings with the LRCs feedback is given to teachers. Here feedback on application of rights is given. The contributions of teachers are accepted."*

Not only were staff meetings mentioned as strategies to promote the human rights culture in schools, but also regular meetings with the learners to address their social challenges. Such meetings should be held frequently with the RCLs to discuss policy matters. The next meetings will then be conducted with the learner population during which they are encouraged to report incidents of violation of their rights. In these meetings learners are given the opportunity to raise their grievances and they are responded to accordingly. In this way learners will feel recognised.

The analysis revealed that other teachers can learn from the investigation of reported cases of violation of children's rights. This means that teachers should know the nature of the case reported, and they should be informed regarding all developments in the case. The outcome of the investigations is revealed to them and then discussed at the staff meetings. Elements that might indicate infringements on the rights of the children are dealt with before a conclusion is reached regarding what the law says about such infringements.

In support of the above views focus group 4 interviews made the following inputs:

*"When we realize that the teacher's actions are contravening the rights of the learners, acts are quoted to advice the teachers. If the learner reports an incident about the educator it is always investigated to protect the children's rights. The child has a voice."*

The interviews offered good suggestions for improvement. One such suggestion is the creation of a conducive environment that will enable all learners to receive their education without a burden. This means an environment in which all learners' constitutional rights to education are highly prioritised. In such a milieu every child understands his or her rights properly and is able to balance them with responsibilities.

Participant 3 from the focus group 3 interviews made the following suggestions for improvements

*“TLO’s should create a conducive environment which is inviting to learners is an important point of departure. The learners should be treated with respect to enable them to come to teachers when they have problems.”*

Participant 3 from schedule B in-depth interviews responded that *“you must always do something good to the child so that the child can do good things back to you”*.

The question of safety of children at school surfaced in most of the responses. The respondents affirmed that a school is a place or a haven of safety in line with literature findings (cf. par 2.4.4). They affirmed that it is the responsibility of the teachers to assist in ensuring that all children are safe at school. Children should be protected from any form of danger, such as school-based violence. Also it is important that teaching should take place in a conducive environment where learners can learn with ease.

Provision of safety is one of the features of a healthy school. Teachers need to act as protectors of children. Schools must be free from sexual exploitation and violence. Schools must be supportive and nurturing places for children with special needs, including those with disabilities or with HIV/AIDS (Bellamy, 1999:30).

Participant 6 from schedule B in-depth interviews commented in this way on the above-mentioned views:

*“School environment is taken care of. Safety is maintained, no guns, knives weapons and drugs in school premises. If need arises interventions of SAPS are summoned.”*

Both the question of respect for learners' dignity and safety are mandatory responsibilities of teachers. This is in terms of SACE, Code of Professional Ethics. Section 3.1 of the Code emphasises respect for the dignity, beliefs, etc. of the learners. Section 3.11 speaks to the safety of children at school. The section maintains that the teacher must take reasonable steps to ensure the safety of the learners.

The analysis also noted the point of policy compliance as one of the strategies. The policies referred to included both national and international laws on children's rights. In complying with such laws the other teachers will also take all children's rights and laws seriously. In other words, the TLO's must practice what they preach.

The responses also suggested workshops as a tool to improve the current state of affairs of human rights standards in schools. The target group in these workshops will be teachers. The teachers referred to here are those who are not TLO's. They will be work shopped by the TLO's on the application of children's rights. The workshops will cover the "do's and don'ts" of the management of children's rights. Such workshops will reduce the scale of violations, abuse, ignorance, bad attitudes, etc. on this matter. It will also improve the level of communication between learners, teachers and TLO's. There will be a common understanding about human rights among school children.

The input on the use of workshops was endorsed by participant 2 in schedule B in-depth interviews with the following phrase:

*“Teachers must be work shopped so that they can handle children rights issues. It is important that the Department implement clauses of the Children Rights charter to teach educators to relate and treat children well. Relationships with learners should be emphasized so that teachers are taught how to treat children.”*

Participants in focus group 4 stressed the importance of the workshops by remarking as follows:

*"I think I align myself with the issue of the workshops. But is it not the responsibility of the teacher to keep himself abreast with policies? Perhaps the SMT should arrange an afternoon workshop on policies."*

The usages of workshops to teach human rights were also seen as ideal for all school children and not only teachers. A suggestion was given that children should be assessed on the knowledge of their rights. Their leadership structure, the RCL should not be exonerated. The RCLs must be made to play a role in the promotion of rights. Their inputs should be taken very seriously. They must not be underestimated because they are children.

The question of capacity building workshops for the TLO's is also covered by the responses of the focus groups in this way:

*"We need knowledgeable and selfless TLO's. We need continuous advocacy on children's rights education. We need TLO's again who are highly involved in the affairs of learners. We also require them to be open to us in everything they do with learners."*

Capacity building workshops were not only suggested for children, but also for the TLO's. The focus of such workshop should be aimed at strengthening and affirming the work of the TLO's. The workshops should address strategies to be used by the TLO's to take the offenders of children's rights to task. Guidelines on the entire work of the TLO's will be addressed in such workshops. In this way this practice on the work of the TLO's will be same in all the schools.

The analysis presented good points on the value of workshops. The children, after having received information on children rights, will be able

to explain them with ease. Their understanding will include in-depth knowledge of implications of different sections of children's rights' laws. In this way they will be able to assist others when their rights are violated. They will emerge as human rights activists. For some learners this might be the beginning of their careers.

The analysis also explained how the learners will benefit from the teaching. Not only will learners benefit from the teaching of rights, but also the country. The first benefit is better citizenry. The learners will emerge from schools as credited citizens who are highly accountable and reasonable.

The above-mentioned views were expressed by the Functionary during the in-depth interviews. The Functionary remarked in this way:

*“Yes indeed when children’s rights are upheld we will have better citizens who are accountable. We will have citizens who will be able to interpret and promote the human rights culture. All children will know their rights and responsibilities. The culture of rights in our society will be known to all.”*

The latter opinions are validated by De Mello (2003:50-61). He avers that the teaching of rights in schools is important because children should know the importance of being a responsible citizen. They should have an understanding of why at some stage they are called future leaders. They have to learn why human rights are rights inherent in every human being. In this process they start to know the importance of laws, who makes laws and why we should issue laws. Such teaching assists in the adequate preparation of children to be responsible citizens (cf. par 3.5.6).

The analysis also indicated that one of the benefits of teaching human rights is the promotion of human rights in future, made possible by all the activities on human rights education at school. Children will learn about

the ills of a violent society. They will learn about the social problems of abused people. They will know about the strategies to report a case of violation of children's rights. The children will face the adult world with knowledge of international, regional, national and local law codes such as gazettes on human rights.

The usages of posters were also thrown in to promote the human rights culture. The interviewees suggested that children's rights' posters be displayed in each and every classroom. The letters of the posters should be in bold letters and visible to all learners. The posters of the different laws will be ideal such as the UNCRC, UDHR, and Children's Rights Charter of South Africa. The learners will then be required to read all rights as they appear on the posters. The contents can also be infused in learning and teaching.

Some respondents suggested the commemorations of human rights events such as Human Rights Day, Youth Day, Children's Day, etc. Outside stakeholders should be invited to address teachers and learners on difficult topics. The first department to address learners should be SAPS, because they deal with cases of violence almost daily. Other sister departments can also be invited to address learners and teachers on the pros and cons.

The responses also reflected on what the relationship should be like between the child and the teacher at school. It became clear that it is important to treat children with respect. It is important to respect a child's dignity and integrity if one wants these "ubuntu" or humanity principles to be achieved. Teachers should not shout or ridicule them. They should be made aware of their mistakes in a proper way and be assisted to be responsible young people who learn quickly from their mistakes.

Participant 6 from Schedule B interviews commented this way:

*"All learners are encouraged to attend school even if when they are indigent. I make sure that the learners I teach have all the learning resources such as textbooks. No learner is treated unfairly on the basis of race."*

The teachers from the secondary schools indicated that democratic participation of children in the governance and management matters of their school is encouraged throughout (cf. par 2.4.1.1.4). This is done in the form of the RCL structures. Through the RCL elections learners choose their own leaders to represent them. In this way children get the opportunity and the right to express their own views freely in matters that affect them. They are better placed to question decisions affecting them. The RCLs are properly trained with regard to their role. They work closely with TLO's on matters in school related to them.

Participant 4 from schedule B in-depth interviews remarked as follows:

*"Basically we use RCL elections: learners have the right to choose by vote any learner to represent them in the RCL. The RCLs Liaise between teachers and learners in pursuit of resolving school-related grievances."*

The suggestions also called for the effective involvement of the SGBs in the promotion of rights. The SGBs were suggested since they are responsible for development of policies like the Code of Conduct. For them to be successful in the promotion of rights they need to be trained. The type of training suggested could include both national and international instruments. Once the SGB has been trained the parents will be easily orientated about the children's rights in the school system. These views were also expressed in the literature study analysis (cf. par 3.9).

The analysis also suggested the active involvement of the School Management Team (SMT) in the promotion of children's rights. The SMT

is expected to assist the TLO's in its work. The work of the TLO's must be closely monitored to be able to give advice regarding whether TLO's are implementing and interpreting policies correctly. Finally, the SMT must ensure that the TLO's give feedback to all teachers.

The role of the Department of Education and Training was also raised. The Department is expected to monitor compliance with the laws protecting children's rights. In all the departmental meetings human rights education should be a standing item. The different school based structures should be trained on children's rights education. All attendants such as the RCLs must be certified after having been assessed on knowledge of rights.

The external stakeholders also have a role to play in the promotion of children's rights. The analysis indicated that the police can greatly assist in teaching learners how to report abuse and violence against them. The social workers will also be handy on issues of support and counselling to the victims of abuse. The school must, therefore, open its doors for such outside departments for support. "Adopt a Cop" is one programme that can facilitate the process of teaching about children's rights.

The in-depth interviews revealed a number of ways to be used by SGD sub-unit in making schools aware of children's rights and in this way promoting the culture of human rights. The use of workshops took the lead. The workshops encapsulated both the SGBs and SMTs of schools. The Area Office principals' tone setting meetings at the beginning of the year are also used as a vehicle to promote the culture of human rights in schools. The number of school visits to monitor compliance has also been an effective strategy. During the visits support is given where there are grey areas such as non-compliance and underperformance of policies.

The ways and means of making schools aware of children's rights are represented by the following response from the Functionary:

*"Firstly, we have to hold workshops in schools wherein we invite school governing body members. In some instances we engage with some school SMTs. We also visit schools to monitor the implementation of policies and to check whether every stakeholder was taken on board when policies were drawn up at schools, we also support schools with governance problems."*

The analysis viewed monitoring and support to schools by the Departmental official as good in improving the human rights culture. The interviews indicated that during monitoring and support visits by Area Office officials' compliance to policies and proper application of section 8 of SASA is checked. Section 8 grants the SGB the power to adopt a Code of Conduct after having consulted with the learners, parents and educators of the schools. If all these stakeholders have not been taken on board, the Code of Conduct is illegal. Pockets of evidence such as the minutes and the attendance register will indicate to the SGD officer whether all stakeholders were indeed included. This is because schools are still found wanting in this regard as explained in the following responses:

The Functionary responded as follows on the drawing of Code of Conduct:

*"Firstly it is the Code of Conduct for learners. Most of them are not in line with the prescripts of the law. They are not in line with the fundamental rights of our Constitution. The international laws on children's rights have also not embedded within them. The Bill of Rights is also not incorporated in them."*

*Secondly it is the issue of discipline for corrective measures. They should also be in line with the Code of Conduct of learners. It is expected of educators to practice such measures within the guidelines of laws."*

The responses further indicated that the sections that the SGB's must include in Code of Conduct are also checked. The measures are expected to be in line with the prescripts of the law. The guidelines for a code of conduct for learners are vocal on what should be avoided. The Code of Conduct must reflect the constitutional democracy, human rights and transparent communication that underpin South African society. The Code of Conduct must not be punitive and punishment oriented, must facilitate constructive learning and must reflect the constitutional values. It must talk about the rights and responsibility of learners.

The response of the Functionary on the Code of Conduct guidelines indicated the following:

*"We look firstly because the Schools Act says the SGBs are responsible for adopting the Code of Conduct for learners. We are getting to schools to check whether the Code of Conduct was drawn by all stakeholders and was also advocated to every member and subsequently adopted by the school community of a particular school."*

It has also been recommended by the interviews that all departmental officials visiting schools and not only EMGD officials for monitoring and support, continuously make recommendations to improve the human rights culture in schools. These recommendations are either written into the monitoring instruments or entered into the school's logbooks. The entries will then be left for the school for action and implementation. In the next round of visits the application of the previous recommendations will be evaluated. Where there are serious challenges advocacy will be provided.

In summarising the findings in this theme it must be noted, firstly, that workshops are advocated as the tool to enhance the awareness and practical implementation of children's rights. It is important to note that this is accompanied by report-back to the main constituencies in the school. Secondly, views expressed by participants advocated that a school should be a safe environment with no guns, knives weapons and drugs. In this way a conducive environment is created which is inviting to learners. Thirdly, participation of learners is encouraged through meetings where learners raise their grievances and are taught about human rights. Fourthly, school meetings such as staff meetings are viewed as ideal for discussing children's rights and learning about how to uphold them.

#### **5.3.6 SCHOOL SYSTEM STRUCTURES TO PROMOTE CHILDREN'S RIGHTS**

The school system has a number of structures but not all of them can handle the issue of human rights to the highest expectations. The categories for this theme included the following: Structures for support and promotion of children's rights, conduct of office bearers, the suitability of structures, monitoring and support. The analysis revealed a number of structures such as the SMTs, SGBs and RCLs. However it became evident that the TLO'S and the Functionary are better placed structures to promote human rights in schools.

The responses in this section of the analysis demonstrated that the TLO's have a significant role to play to promote children's rights. The TLO's are well placed to deal with learners affairs and they have the opportunity to listen to the RCLs, which represent the learners. Such opportunities allow them to influence and to advise the learners. The roles that the TLO's can play are explained by the following responses:

Participant 1 from schedule B in-depth interviews remarked as follows:

*"We are working well together with the TLO's. We are supporting each other. We support their work. The TLO's work well with the SMT and the process is well managed. Normally the process runs smoothly."*

Participant 2 from schedule B in-depth interviews remarked as follows:

*"TLO's are actually liaising with learners especially on matters affecting learners and educators or the running of the school. They have to teach them their responsibilities. Generally they do their work and there is a good relationship."*

Participant 5 from schedule B in-depth interviews commented as follows:

*"TLO forms a link between the learners, RCL, teachers and SMT of a school. It is their duty to report incidents violating the rights of learners to the SMT. It is a very important position or tool to ensure the day to day running of a school. A good TLO will be in touch with the feelings of learners and teachers, and in a position to make recommendations."*

Participant 6 from schedule B in-depth interviews indicated the following:

*"I have seen TLO's trying to uphold children's right at all cost. They have always made sure that all learners are treated equally and fairly even in extreme cases.*

*They have protected religions of learners. They have all the time implemented strategies that maintain rights of children."*

Participant 7 from schedule B in-depth interviews summed up the views as follows:

*“They play a motivational role which is very positive in developing learner’s mental attitude. They encourage learners to participate in field trips, and also to respond to requests made by the authorities.”*

In terms of the National Guidelines from the National Department of Education (Anon, 2005:29-30), a TLO is a teacher nominated or elected by the learners or teachers of a particular school to assist and guide the Representative Council of Learners (RCLs). Such teachers serve as electoral officers during the RCL elections into office. They are appointed by the district offices to perform such functions. Such teachers are expected to be reliable and sympathetic. They are expected to create a sincere and trusting relationship with the RCL. They are expected to promote spontaneous communication between themselves, the principal, staff, SGB and the RCL while helping the learners to organise the RCL and inculcating a sense of leadership amongst the members of the RCLs.

The following response by participant 3 in focus group 1, covers the analysis of the latter paragraph:

*“I was democratically elected to serve as a TLO because of the trust the learners and educators had in me because of my enthusiasm in dealing with school related issues, like resolving conflict, sports, community, etc.”*

Participant 6 from focus group 3 interviews remarked as follows on the above-mentioned views:

*“We were elected by the learners because of us being approachable all the time. It is a contribution by learners by voting us in. The learners elected us because they have trust in us. We are approachable. They can freely talk to us.”*

The complementary remarks on the work of the TLO’s are informed by a number of observations. The analysis revealed that such TLO’s are

committed to the course of their duties. They indeed link the learners, RCL, teachers and the SMT well. There is a good flow of communication from the top to the bottom and vice versa. When colleagues have violated the rights of children or any rule of the law, they are professionally informed. In this way TLO's earn respect from the colleagues. Not only are the TLO's earning respect, but their activities are also supported by their colleagues. In this way they are well placed to handle children's rights issues in schools.

In responding to this matter on the important roles that can be played by the TLO's, the Functionary concurred and made the following input:

*"Yes indeed, we believe so. By using the TLO's we expect them to advocate to our RCLs the culture of learning which is in line with the rights of all learners in a school. They will be able to provide guidance and build capacity to RCLs. Not all learners are aware of their rights."*

The in-depth analysis of this study also reflected on the important role to be played by the Functionary of the Department of Education in the promotion of human rights in schools. Every area office of the Department of Education and Training in the North West Province has a division called Education Management and Governance Division. The division has three officials responsible for its activities. The first official is the coordinator who is responsible for the general management and administration of the division. The second official is responsible for education management matters of the schools such as school management and curriculum management. The sub-division is called Education Management Division (EMD). The third official is responsible for the governance activities of the schools. School governance and RCLs issues are located in this sub-division. An in-depth interview was conducted with the official in this sub-division called School Governance

Development (SGD). The interviews related clearly that this functionary can contribute much in improving the human rights culture in schools.

The senior education specialist for SGD has clearly stipulated roles and responsibilities in terms of the job profile of the unit. The official ensures the implementation; monitoring and support of RCLs and TLO's training programmes take place. The official is also responsible for governance and learner leadership development programmes. The issues of children's rights fall within the generic functions to be performed by every SGD official. Knowledge and interpretation of policies and statutes is one of the inherent requirements of this post. This key competency is highly prioritised since it is listed numerical in the list of key competencies (NWED-SGD).

The responses from the Functionary who is the SGD official included the following:

*"I am also responsible to monitor the implementation of the law, the prescripts that are coming from the Department, the guidelines that are giving to schools in order to make a school where learning and teaching will be effective."*

The work of the SGD office based educator has been simplified by the availability of the user friendly Training Manual for the RCLs (Naidoo, Westraad & Bradfield, 2007:1-135). The goals and objectives of the RCLs are well stated. One of the goals explains the existence of the RCLs as the voice of democracy in all the schools. The RCLs are expressed as a structure for the provision of a platform of learners' voices to find expression in a school. The goals also emphasise the principle of expression of views as expressed in article 12 of UNCRC "The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child". This is

possible since RCLs participate in the SGB activities where collective decisions are taken regarding the functionality of the school.

In summary all the structures of the school must work together to promote children's rights. Other findings from this theme include the following:

- There is cooperation between the TLO and other structures in the school, such as the SMT.
- TL Officers form a link between the learners, RCL, teachers and SMT of a school.
- TLO's work well as they play a motivational role which is very positive in developing learner's mental attitude.
- The functionary of the Department of Education plays a vital role in the promotion of children's rights.

#### **5.4 SUMMARY OF THE CHAPTER**

This chapter discussed the methodology and the design of the research. The study employed several qualitative methods such as focus group and in-depth interviews. The findings discussed emerged from the analysis of interview data. The collected data were coded to categorise data into themes. A total of six themes were identified and discussed in this chapter. The intention was to gather credible data to craft a model to assist teachers in implementing children's rights in schools. The next chapter will present the envisaged model.

## **CHAPTER 6**

### **THE DEVELOPMENT OF A MANAGEMENT MODEL TO ASSIST TEACHERS IN THE IMPLEMENTATION OF CHILDREN'S RIGHTS**

The literature review (Chapters 2 and 3) indicated that the management of children's rights in the school system remains a matter of grave concern. It became evident that there is need to change the present practices on management of children's rights. The school milieu has always been hostile towards human rights practices amidst the best Constitution, Act 108 of 1996. The goal of education that furthers respect for all human rights has always been a standard difficult to achieve. Teachers' efforts to promote and protect children's rights in schools remain a challenge (Mabovula, 2003:2). In many instances teachers emerge as violators of human rights in schools (Robertson, 2008:1-3; Hart *et al.*, 2001:184).

Wright and Jatta (2007:93-97) and Jerome (2011:8) identify teachers as vital in the transformation of schools. Teachers have the most impact on the day-to-day experience of children in schools and their task is to translate both national and international policies on human rights education into practical actions in each school. They are the ones that have to ensure that children's rights are respected by society, home and school. In order for this to happen, teachers must acknowledge fully and respect the rights of all children under their care at school.

It is in view of the above that teachers should be assisted to implement children's rights in schools. However, without the necessary knowledge, guidance and coaching, teachers may find it difficult to give expression to international and national policies on children's rights. Hence a model is necessary to guide them in implementing children's rights.

## 6.1 THE CONCEPT “MODEL”

Zuber-Skerritt (2002:143-144) defines a model as the representation of a concept or a system in a two or three dimensional diagram. The representation is expected to be as clear to others as it is to the constructor. Model building is a process of establishing patterns and relationships. It is a simple representation of a theory or message in the form of a concept map or diagram. Fourie (2000:249-250) and De Vos, Strydom and Fouché (2011:36-37) explain a model as a representation of the reality of those who have developed it and who use it to facilitate understanding of a real object or situation. A model attempts to represent the dynamics of a phenomenon in that it provides a simplified indication of relations between the main elements in a process. Models are helpful for understanding the essence and or processes of a complex phenomenon in a particular field (Rossouw, 2009:8-9).

A model identifies certain problems or questions regarding the phenomenon to be investigated. They are but representations and should not be confused with reality, although they have many benefits for the user. According to Nojaja (2009:183) and Fourie (2000:250), models identify problems and questions regarding the appearance of what must be investigated and it limits, isolates and simplifies reality.

There are many types of models, including (Nojaja, 2009:184-185):

- Physical models: Such models are three dimensional in nature. They are concrete and highly specific.
- Verbal models: They are written or verbal, abstract information regarding reality and leave no room for incorrect interpretations.

- Graphic models: They are concrete presentations consisting of lines, symbols and shapes and are supported by verbal explanations.
- Mathematical models: In these models reality is expressed as mathematical comparisons or expressions. The model is ideal to solve a problem that is interdependent and changing.
- Conceptual models: They represent reality and show what something in general should look and how it should work. Such models have few details because they are generalised.

The above models partly explain the envisaged model of this research. The model that seems applicable is the graphic model, because the envisaged model is in the form of a diagram that shows the flow of action in the implementation of children's rights. Thus lines, symbols and shapes will be used accompanied by verbal explanations.

There are a number of models in educational law and school management that have relevance to the implementation of children's rights. Some of the models are concerned with change and organisational development in the school, while others deal with the implementation of children's rights. The following discussion follows the above categories of models.

## **6.2 CHANGE MODELS FOR THE IMPLEMENTATION OF CHILDREN'S RIGHTS**

Change models seem relevant in this study because implementation of children's rights presupposes a change in a human rights culture in schools. The pre-1994 culture did not embrace human rights. Teachers are expected to change their culture in schools to be consistent with the new human rights culture. Two models of change are discussed in this

section: Fullan’s change model and Mabasa’s model of organisational change.

### 6.2.1 FULLAN EDUCATIONAL CHANGE MODEL

Fullan’s (2001:4) educational change model is closely related to this study. The model regards every stakeholder in the educational system as a change agent. The educational change model has four broad phases: Initiation, Implementation, Continuation and Outcome.

- **Initiation:** Initiation is affected by the existence, quality and access to innovation in the school. The change process must be accompanied by advocacy of the envisaged changes. In a school the implementation of children’s rights need to be advocated by the central administration and external agents.
- **Implementation:** Three major factors affect implementation. The characteristics of the three major factors are schematically represented as follows in Table 6.1.

**Table 6.1: Characteristics of change, local factors and external factors**

Characteristics of change	Local factors	External factors
○ Need for change	○ The school district	○ Government and other agencies
○ Clarity about goals and needs	○ Board of Community	
○ Complexity: the extent of change required by those responsible for implementation	○ Principal	
○ Quality and practicality of the programme	○ Teacher	

From the above it is clear that change from the erstwhile situation of neglecting children’s rights must change to a situation of respecting and

promoting children's rights. There is a need to change if the varied and many laws that promote children's rights are to be adhered to.

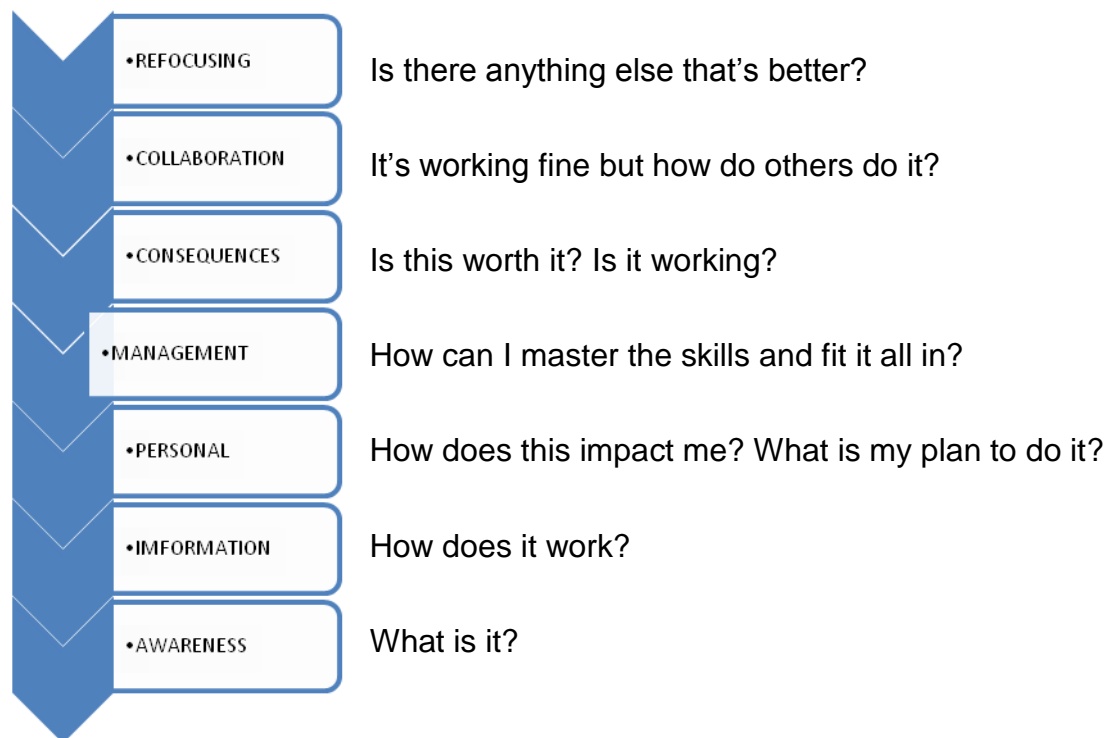
- **Continuation:** It is a decision about institutionalization of an innovation based on the reaction to the change, which may be negative or positive. The envisaged model in this study must be sustainable to effect the required change.
- **Outcome:** The following perspectives on the change process may support the achievement of a positive or successful change outcome. For change to occur there must be participation, pressure, support and negotiation among the implementers of change. The teachers and administrators must possess skills and thinking capacity to effect change and must be committed in their action.

This research intends to portray teachers as the catalysts of change. Firstly, teachers must develop mastery or technical competencies in their work. They must be prepared to be able to inquire into practice and to generate new ideas. The model provides guidelines for resisting, coping or leading change efforts from perspectives ranging from the student to the national government (Fullan, 1993:1-11). The teachers are compelled to become human rights education activists in all schools. They are compelled to change their unwarranted ways of violating children's rights in schools. It is, therefore, necessary to develop a model that will assist teachers in implementing children's rights properly in all schools. The model must embrace all children's rights legislation and human right guidelines. This model must be versatile and dynamic enough to be able to accommodate most of the children's rights related matters in the school system. The tool must also be user-friendly for teachers.

## 6.2.2 MABASA'S ORGANISATIONAL DEVELOPMENT MODEL

Mabasa (2006:42) presents the organisational development model with techniques to assist teachers in managing and implementing children's rights properly. The Organisational Development (OD) Model targets interpersonal skills necessary for subsystem effectiveness such as: Clarifying communication, establishing goals, uncovering and working with conflict, improving group procedures in meetings, solving problems, making decisions and assessing change. The OD model aims at organisational adaptability and the effectiveness of its subsystems. Its other aim is to improve the effectiveness of the organisation and the well-being of the members through planned interventions in the organisation's human processes, structures and systems, using knowledge from behavioural sciences and its intervention methods to implement change.

Mabasa (2006:42) presents a model called the concern-based adoption model for the implementation of change as follows:



**Figure 6.1: Concern-Based Adoption Model (CBAM)**

The Concern-Based Adoption Model (CBAM) has good strategies for school effectiveness. The CBAM asserts that for change to be successful in an organisation or school it is critical to have insight into educators' perceptions about the change. Change is viewed as a process and not an event. This means that change requires time and there are phases and steps in managing the implementation of change (Mabasa, 2006:43-44; Lim, 2009:13-16).

One of the critical assumptions of the CBAM is that to change something, someone has to change first (Mabasa, 2006:44). This means that teachers must change first before they can incorporate new practices and innovations. This also means that learners must first accept new policy innovations on human rights before they can start to implement them. The teachers must first accept that the old practice of human rights developments in schools was barbaric.

### **6.2.3 COMMENT**

The implementation of children's rights represents a change that must be effected in the culture of schools. The culture in schools was dominated by authoritarianism, top-down management and non-participation (Mabasa & Themane, 2002:111). It is authoritarianism that led to the violation of children's rights and that developed a culture where children were to be seen and not heard. Teachers who are accustomed to this culture need to change and embrace a culture of human rights and should implement it in schools.

While the models above are tailor-made for implementation change, the envisaged model on implementation of children's rights can benefit by adopting some elements of their structures.

## **6.3 MODELS FOR IMPLEMENTATION OF CHILDREN'S RIGHTS**

As alluded to previously (par 1.2), models that specifically deal with implementation of children's rights are few and far between. Those dealing with children's rights in schools are almost non-existent. Two models dealing with implementation of children's rights are discussed in this section: Murray's parallel and hierarchical model and Mudzongo's model of incorporating human rights education in police training.

### **6.3.1 HIERARCHICAL AND PARALLEL MODELS**

The United Nations Convention on Children's Rights (UNCRC) of November 1989 presents three key rights in the implementation of children's rights, viz., protection, provision and participation (Osler & Starkey, 1998:313). Protection includes the satisfaction of basic needs such as food and shelter, while protection focuses on abuse and neglect of children, and participation centres on the right to participate in decision making (Murray, 2010:391; see also Table 2.2).

From the above features of the UNCRC, Murray (2010) derives the hierarchical and parallel models. In a hierarchical model the rights of the child are implemented in turns: first provision, then protection and then participation. When the rights of the child are addressed simultaneously (Murray, 2010:392), this may be called a parallel model. The hierarchical and parallel models are useful in evaluating the implementation of children's rights in a country. They are used to identify areas that are still lacking in implementation.

The hierarchical and parallel models are applicable to the school to identify areas that need attention of teachers. It is an instrument for investigation in order to improve the situation of the rights of children. For example, in Murray's research (2010) in Rwanda, the findings are that participation still poses a problem due to various reasons. Thus it may be

said that this is the area needing attention. However, these models do not present a suitable instrument for implementing children's rights. They do not present a step-wise process for actual implementation of children's rights in schools. The models answer the question of what should be implemented and lack the question of how to implement children's rights.

### **6.3.2 MUDZONGO'S MODEL OF INCORPORATING HUMAN RIGHTS EDUCATION IN POLICE TRAINING**

Mudzongo's model (2003) deals with the introduction of human rights education in the Zimbabwean police force. The aim of the model is to address the many challenges police face in implementing human rights in the public due to their unique duties and obligations. The rationale of the model is that successful training of police will result in successful practical implementation of human rights.

The main features of the model are as follows:

- Needs assessment study: It aims at identifying the needs of beneficiaries and to encourage participation in the programme, thus enhancing ownership. This will result in the programme being sustainable.
- Methodology workshop: The findings of the needs assessment task team are reported to the target group. It involves formulation of strategies that will be used in implementing the programme.
- Sensitisation workshop: This part of the model involves clarifying the basic concepts of human rights and policing to police officers.
- Curriculum development: The curriculum should focus on both the theoretical as well as the practical aspects of a human rights and policing course.

- **Material development:** The development of materials should be a highly participatory process. Police officers should take an active role by coming up with their experiences, challenges and problems they face in their duties. The materials include resource book, trainer's guide, pocket book, pamphlets and brochures.
- **Training:** Training should be designed for hands-on experience for various groups.
- **Evaluation:** Evaluation includes both the evaluation of individual participants and the evaluation of the programme itself. Individual evaluation should be in the form of participant evaluation, which includes a written examination. The workshop programme should also be evaluated. Participants should be allowed to give recommendations for future training courses.

The model was developed for a different context than the present study. The work of teachers is not similar to the duties of the police and the challenges and constraints experienced by police officers differ from those experienced by teachers. However, the model is useful for the present context as a pre-implementation phase. The actions incorporated in the model should be implemented as an introduction to the implementation of children's rights. The envisaged model in this study should obviously take cognisance of this introductory aspect.

#### **6.4 THE HUMAN RIGHTS EDUCATION MODEL**

The Human Rights Education Model aims to assist teachers in the management of children's rights in the school system. The main aim is to strengthen the respect for children's rights. The second aim is to prevent and reduce the number of violations of children's rights in schools. The model will, therefore, suggest strategies to assist teachers to realise a human rights culture in schools. The model also addresses the

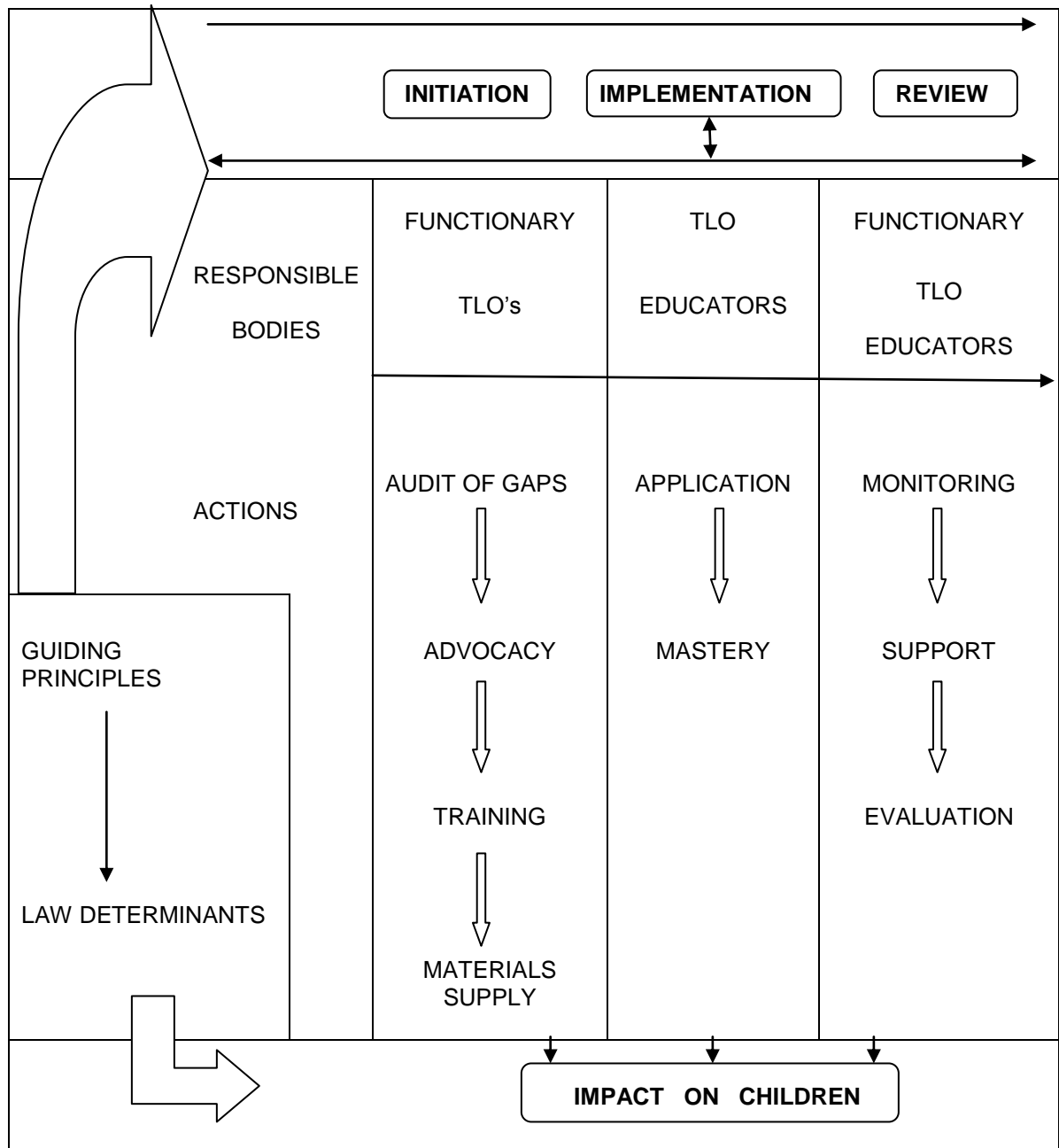
educational context in which children's rights education should take place. There are many educational contexts in the form of formal, non-formal and informal learning contexts. The model maintains that the ideal way of assisting teachers in the implementing of children rights is through the school curriculum (Reynaert, De Bie & Van de Velde, 2010:445-446).

The model presents the school curriculum as a strategy to realize the human rights culture in school. The strategy will bring along rights respecting attitudes and behaviours. The use of the school curriculum in the model emanates from the fact that curriculum implementation is the core business of every teacher. Every teacher has received training on the transmission of new innovations. Even though teachers have not received training at colleges on new matters and concepts, they just read and adjust quickly.

The model also has other stakeholders in terms of the analysis in the previous chapter. The analysis revealed that children's rights' education is the business of a number of stakeholders and structures within the school. The TLO's are distinct role players in children's rights education. The functionary from the Area Office is also a professional working with children's rights' issues in schools. Therefore, the model will encapsulate the important roles these officials play in the management of children's rights. What is pleasing is that the above-mentioned officials are qualified teachers.

The model to assist teachers in the implementation of children's rights uses human rights education concepts, principles, and national and international determinants to achieve its aims. This approach will prevent teachers from transgressing children's rights laws and will help them to start to treat all children with dignity and respect. The model is presented in Diagram 6.1.

**Diagram 6.1: Human Rights Education Model**



The HRE Model is divided into categories which include three broad phases on initiation, implementation and review. The model is informed by law determinants and guiding principles. The model is also informed

by the findings study emanating from the interviews conducted at schools. Then a section deals with the actions of different functionaries in implementing children's rights in schools. It ends with the impact of the model on children's rights.

Each section will now be discussed separately.

#### **6.4.1 THE THREE BROAD PHASES OF THE HUMAN RIGHTS EDUCATION MODEL**



**Figure 6.2: Three broad phases of the HRE Model**

The Human Rights Education Model presents three broad phases that are linked to the roles of the three responsible bodies, viz, Teachers, TLO's and the functionary. The three phases in the model are integrated into all features of the model, as indicated by the arrows from the top to the left, down and to the right as presented by Figure 6.1.

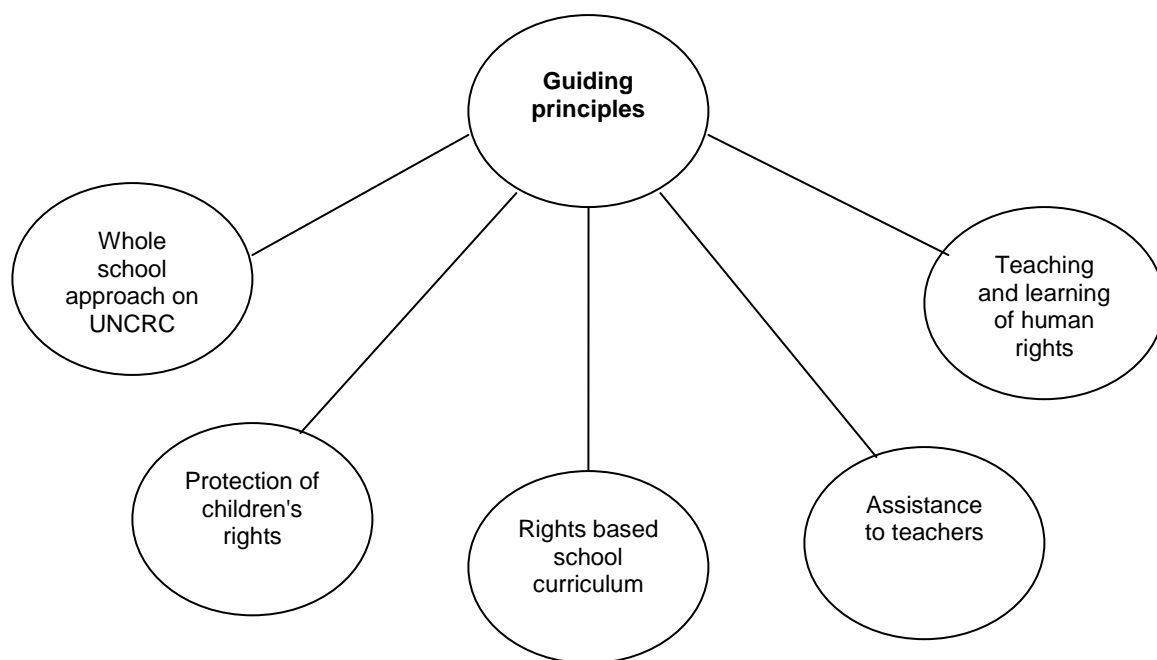
The first phase is the initiation stage. The concept of initiation is derived from Fullan's model (par 6.2.1) and Mabasa's concept of "refocusing" (par 6.2.2) because the implementation of children's rights involves change. Initiation begins with the process of making decisions to proceed with changes or to adopt an innovation. Innovation has been informed by the identified challenges during the evaluation and analysis of data. The findings of the interview indicate that serious transgressions against the rights of children continue to occur in schools in spite of the prohibition by legislation (par 5.3.3). This phase is a description phase: it is a searching process leading to awareness building.

The second phase is implementation again based on Fullan's model (par 6.2.1). It focuses on putting ideas or innovations into practice. There must be a realisation in the initiation stage that there is a need for change. Goals and needs must be clarified. The extent of change required must be gauged and responsible persons must be appointed. The implementation stage should identify responsible bodies to carry out the enhancement of children's rights. The findings of the interview indicate that several bodies should work together to enhance children's rights, *inter alia*, the TLO, SMT and the SGB (par 5.3.6).

The third phase is the review stage. In this stage the process and the programme as well as the implementation are assessed. This is called continuation by Fullan (par 6.2.1). Continuation encompasses the decision about institutionalization of an innovation based on the reaction to the change, which may be negative or positive. The envisaged model in this study must be sustainable to effect the required change. The phase is intended to polish performance. All the ideas identified during the implementation phase are examined to determine whether the objectives have been met.

#### **6.4.2 THE GUIDING PRINCIPLES OF THE HRE MODEL**

The principles of the envisaged model are based on the problem statement of this study. Diagram 6.2 schematically presents the guiding principles.



**Diagram 6.2: Guiding principles of the Human Rights Education Model**

The principles are a mixture of statements intended to provide solutions to the challenges experienced by the current teaching practices. The principles are, *inter alia*, the following:

- To establish a whole school approach based on UNCRC;
- To produce mechanisms and strategies to protect the rights of all children;
- To provide a framework for teaching and learning about human rights in schools;
- To assist teachers to recognise fundamental human rights of all children they are teaching;
- To promote essential values in children to become future responsible citizens;
- To infuse a rights perspective into the school curriculum;

- To develop rights based vocabulary through the curriculum for all children;
- To incorporate the values of UNCRC into the management and government of the school;
- To incorporate the Bill of Rights and other national determinants into the life of the school;
- To promote the active participation of all children in the decision making processes throughout the school.

### **6.4.3 LAW DETERMINANTS IN THE MODEL**

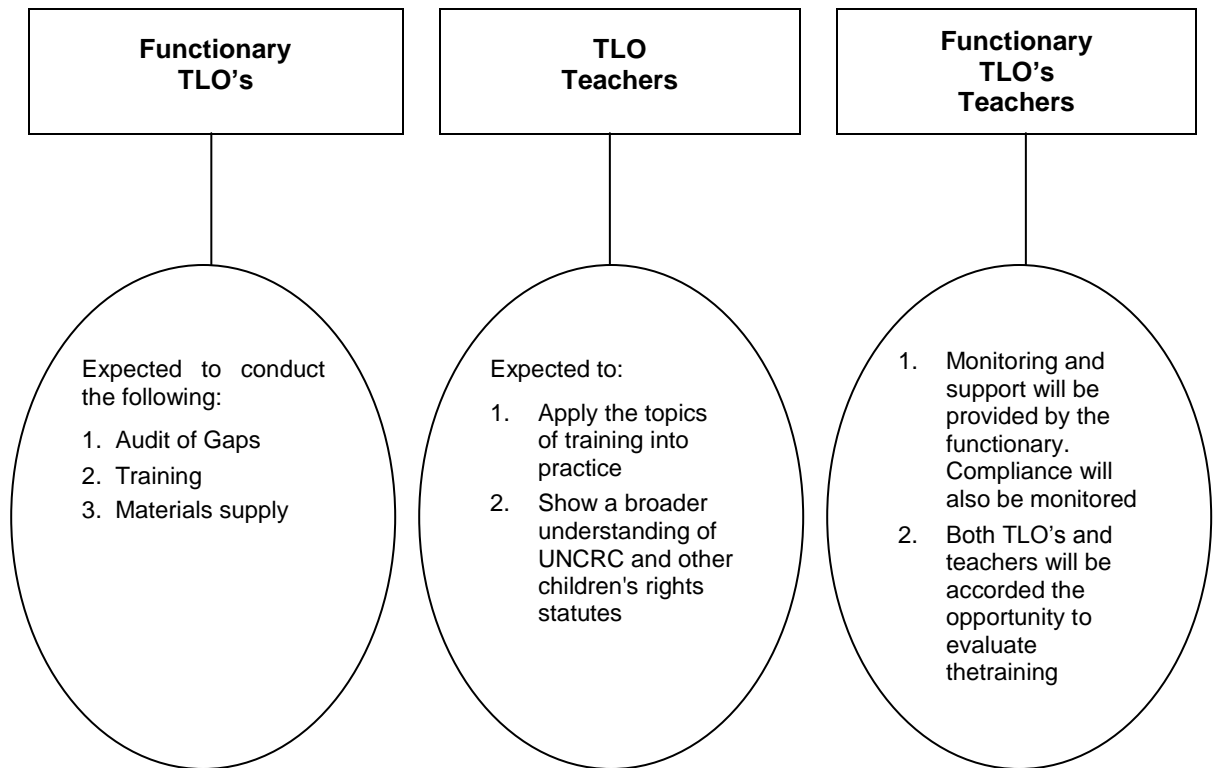
The law determinants are closely related with the guiding principles of the HRE Model (cf. par 6.6.2). A number of determinants have been mentioned in the earlier chapters of this research (cf. par 2.3.5, 2.4 and 3.3). The law determinants are the essential components of the HRE model. They form the basis of teachers and TLO's training on HRE. Their understanding will lead to proper implementation of children's rights by schools.

All law determinants on children rights are important. However, UNCRC is a very special treaty. The treaty calls for a commitment to children's rights by all people and organisations working with children. It advocates for the important human rights principles of children such as participation, protection, provision and the best interest of the child. These principles have to be inculcated into the minds of all teachers through training (Koren, 2001:56).

Intensive teacher training on law determinants will enhance the knowledge of teachers on the range of constitutionally protected human rights of children. The teacher will develop a critical understanding of the violation of rights. The training will bring along attitudinal changes and behavioural change in respecting all people's human rights. The best

human right values will also develop amongst teachers such as fairness, equality and justice (Claude, 2000:21-23).

#### 6.4.4 THE RESPONSIBLE BODIES IN THE MODEL



**Diagram 6.3: The responsible bodies**

The literature study, empirical and qualitative findings of this study have identified the responsible bodies for the model (par 5.3.6). The total number of the responsible bodies for this model is three, namely the teachers, TLO's and the functionary from the area office of the Department of Education responsible for support and monitoring of the proper implementation of children's rights. The three responsible bodies are schematically represented in Diagram 6.3.

#### **6.4.4.1 TEACHERS**

The teachers are expected to have a broader knowledge of children's rights to be able to protect and uphold them. The most successful way of teaching children's rights is to make use of the curriculum. Teachers are expected to have a sound positive attitude towards all school based structures working towards the promotion of children's rights such as TLO's. They are expected to refrain from all activities that may violate the rights of children in schools.

#### **6.4.4.2 THE TLO'S**

The TLO's are also teachers. They are quite special because they were chosen by learners on the basis of trust. They are expected to demonstrate a broad knowledge of children's rights and to employ different strategies to promote and defend children's rights. They are also expected to join hands with other teachers in this regard. The TLO's must operate as ombudsmen of children's rights at school. They should always engage other teachers in children rights matters so as to give advocacy.

#### **6.4.4.3 THE AREA OFFICE FUNCTIONARY**

The functionary is the departmental official responsible for offering monitoring and support to schools on school governance matters. One of the core duties is to monitor school compliance to children's rights' laws. The functionary has a role of giving advocacy workshops to schools on children's rights' laws. He or she is expected to work closely with teachers, TLO's, SGBs and SMTs in the promotion of children's rights. All cases of violations by schools are investigated and handled by them. The serious cases of misconduct are referred to the labour unit at the district office.

## **6.4.5 THE STEPS IN IMPLEMENTING THE HUMAN RIGHTS EDUCATION MODEL**

The Human Rights Education (HRE) Model has eight stages to assist teachers to implement children's rights correctly. The eight stages will now be explained.

### **6.4.5.1 AUDIT OF GAPS**

The barriers in the implementation of children's rights in schools have been identified through the literature study and the empirical investigation (par 5.3.4). The needs of the beneficiaries are, therefore, known and should be addressed. According to par 5.3.4, these needs include but are not limited to, need to eradicate corporal punishment, need to end love affairs between teachers and learners, and the need to treat all learners whether fast or slow learners equally. The beneficiaries need to be taught how to promote children's rights through the use of the curriculum. Also, the beneficiaries need to be helped to refrain from committing acts of children's rights violations. Finally, they need to be assisted to master national and international instruments on children's rights with their implications.

### **6.4.5.2 ADVOCACY WORKSHOP**

In the workshop the identified gaps are reported and discussed with the teachers. This is done per school to target all teachers, TLO's and SMTs. The aim again is to sensitise teachers about human rights concepts. The sensitisation (par 6.2.2.) is aimed at changing the mindset of teachers. The advocacy action is derived from the findings that the functionary of the Department of Education is responsible for creating an awareness whereby he recommends the use of flyers in the school (par 5.3.5). The entire advocacy workshop will address the importance of

national, regional and international statutes on children's rights laws: This will serve as a basis for the coming training.

### **6.4.5.3 TRAINING**

Training is indicated by the finding that there is a lack of training for teachers and learners (par 5.3.2.). Training is meant to include teachers, TLO's and the SMTs. The three groups will receive the same type of training. The training will be based on the mastery and sustenance of human rights education. The three groups will be trained on how to advance and master the principles set forth in the following instruments.

- Convention on the Rights of the Child (cf. par 2.4.1);
- Universal Declaration of Human Rights (cf. Table 2.1);
- Constitution of the Republic of South Africa, 108 of 1996 (cf. par 2.4.4);
- South African Schools Act, 84 of 1996;
- Children's Act, 38 of 2005;
- South African Children's Charter.

The training content will also provide the three groups with a number of strategies, such as the following (cf. Annexures 1 and 2):

- The use of the curriculum to promote children's rights;
- Being a role model for respecting the dignity and integrity of children;
- The establishment of complaint mechanisms for all forms of violence against children;
- The creation of child friendly schools with quality education, equal treatment for all children and freedom from violence;
- The teaching of children about their rights so that they are in a position to claim them.

#### **6.4.5.4 MATERIAL DISTRIBUTION**

The aspect of material distribution is taken from Mudzongo's model (par 6.3.2). The different resource materials on HRE will be made available to all schools, teachers, TLO's, SMTs and even to the learners. The resource material will include posters, flyers, brochures and legislation (cf. par 2.1, 2.4.6, 2.4.4 and 2.4.8). It has to be user friendly and time saving, since teachers' hands are always full. This will counteract the finding that teachers and learners lack adequate knowledge about legislation and its practical application (par 5.3.4). Evaluation forms will also be supplied to assess the results or outcomes of the training programme given. This would assist in pointing out gaps in the training programmes.

#### **6.4.5.5 APPLICATION**

Application is the most important stage where teachers are expected to put the topics of training into practice. At this stage teachers will show whether they are using the curriculum as a vehicle to promote HRE (cf. par 3.4, 3.5.1, 3.5.2, 3.5.4 and 3.5.5). The different school subjects will be utilised to promote HRE (cf. Annexure 3). The relevant subject work schedule on HRE will also be considered. In all school based meetings children's rights will be standing items. The TLO's will be accorded an opportunity to raise children's rights' matters with the staff. This is the stage again where all teachers demonstrate respect for the laws on children's rights. The three forms of teaching can be used as suggested by Massey (2003:4-6) in refining the work of Covell and Howe (2003):

1. Democratic teaching: The classroom management style of the teacher respects the rights and dignity of each child. He or she is supportive, recognizes accomplishments and encourages participation. The teacher models the rights as contained in the convention.

2. Cooperative learning: Small groups are formed to communicate ideas, listen to and respect other views, resolve conflict and share in a final outcome. In this way critical thinking is fostered and is used in the discussion of articles of UNCRC.
3. Rights reflection: Rights are taught to children. The teacher encourages children to reflect on the rights mentioned in the Convention.

#### **6.4.5.6 MASTERY**

This is the golden stage where all teachers show a broader understanding of UNCRC and other children's rights statutes, such as the Bill of Rights in the Constitution of the Republic of South Africa, 108 of 1996, the South African Children's Rights Charter and the ACRWAC. It is the stage where all teachers are able to model principles of UNCRCs such as provision, protection and participation rights of children as bearers of rights. This stage requires of every teacher to apply the four principles of the UNCRC, which are: No discrimination, the best interest of the child, the right to life, survival and development and respect for the views of the child.

The rights, respect and responsibility approach is practiced at this stage. All implications of violating the rights of children are mastered and avoided. Teachers know all the channels for reporting abuse cases. At this stage the human rights topics in the work schedule of different subjects are strongly emphasized. The curriculum is used as a vehicle for teaching children about their rights and also fundamental human rights. The work schedule topics of Life Orientation, English and Human Science studies are mastered and shared with the rest of the colleagues.

#### **6.4.5.7 MONITORING AND SUPPORT**

Monitoring and support in terms of the model will be the responsibilities of both the SMTs and the functionary. The two structures will monitor compliance with children's rights laws. All actions viewed as contravening the principles of the promotion of children's rights in schools will be dealt with seriously. Serious cases of misconduct such as sexual molestation of girl learners will be investigated and referred to relevant offices of misconduct management.

Teachers will be supported in different ways. This need for support emanates from the finding that there is a negative attitude among teachers against the TLO's (par 5.3.4). Support includes assisting teachers with the drawing of policies such as classroom rules and Codes of Conducts that are child rights friendly. It also refers to providing schools with children's rights' literature such as Constitutions and international laws. It also means continuously motivating teachers to implement and promote children's rights as they are required by the law.

#### **6.4.5.8 EVALUATION**

Evaluation is the last stage of this model. Its main purpose is to assess the success of the training programme. Evaluation assists in examining the gaps that should be addressed. Evaluation in this model will be conducted continuously since the issue of children rights' implementation is a challenge. The objective again of this stage is to determine whether all teachers are committed to the process of human rights education in their practice. The other objective is to encourage all teachers to change their attitude and embrace the human rights culture in their hearts.

The model suggests that evaluation can be conducted on a quarterly basis for all teachers. The evaluation will be conducted by the functionary from the Department of Education.

A structured questionnaire will be given to all teachers to assess whether there are improvements in the efforts to promote and respect children's rights in schools. The questionnaire will also assess whether there is still a need for training on human rights education. It also accommodates recommendations for improvement in the work of teachers with regard to the teaching of children's rights.

The second evaluation technique will be in the form of report writing. The school principals will be expected to write reports on a quarterly basis on the *status quo* of the implementation of children rights in their schools. The reporting template will also be designed by the functionary from the Department of Education. The template will be called the "Human Rights Temperature of my School". The template will be discussed first with all principals in the principals meetings. See Annexure 4 for an example of the reporting template.

#### **6.4.6 THE PURPOSE OF THE HRE MODEL**

The HRE Model is determined to assist all teachers to translate their commitment to children's rights into action. The model wants to bring along a massive awareness campaign to teachers on the rights of children. In advocating children rights to all teachers in all schools children will be treated as bearer of rights and not as objects. The various forms of violation of children's rights in schools will cease to exist, including corporal punishment, sexual assault, diverse unfair discriminations, etc. The model will serve as a tool to promote respect for human rights in schools. It shares its objectives with article (2) of the UDHR, which clearly states that: "Education shall be directed to the full development of the human personality and to strengthening the respect for human rights and fundamental freedoms".

The model, therefore, wants to promote the standard of the above mentioned UDHR article by encouraging all teachers to promote and protect children's rights.

#### **6.4.7 THE ANTICIPATED OUTCOMES OF THE HRE MODEL**

When taught about their rights, children will be able to master them and claim them. Children's minds will be widened. They would be able to know what is wrong and right, what is fair and unfair. They will have the desire to accept and tolerate others. Their values will be taken from a classroom level to a global level. These values will also contribute towards the creation a global culture of human rights (Stockmann, 2010:30-33; Tibbits, 2007:4-6).

The values associated with the teaching of rights in schools include accepting differences, respecting the rights of others, defending of own rights and the rights of others. Through this education children will develop empathy, which is an important interpersonal skill. They will learn to be considerate of others. Through the exposure to case studies on human rights abuses they tend to master different statutes on their rights. In this way they become human rights activists in their efforts to fight for their rights (Tibbits, 2007:4-6).

The model will assist also in broadening the learners' knowledge about their rights and responsibilities. The school curriculum will be used to provide a list of rights and their implications. Learners will have a greater understanding of responsibilities as well. Through various activities given to the learners an understanding of the connection between rights and responsibilities will develop.

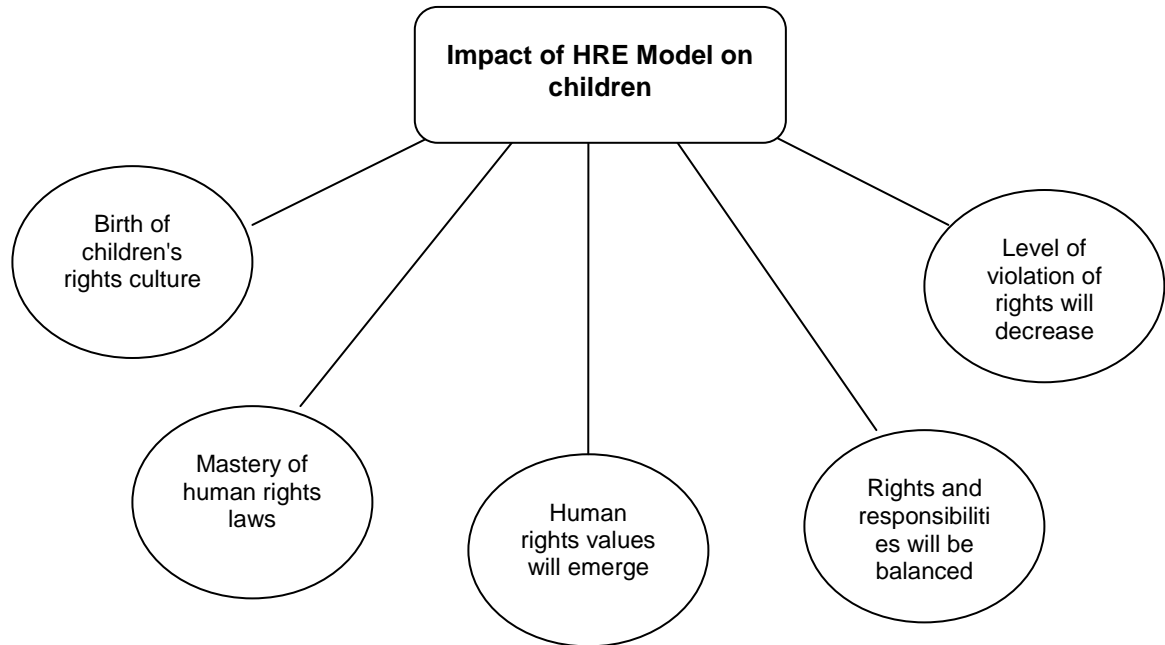
The model presents the teacher as a catalyst of human rights education who will make the following possible:

- Ensure that children’s rights are promoted and that learners are given the opportunity to express their views.
- Establish and encourage learners participation at all levels.
- Prohibit all forms of violence against learners.
- Train learners about their rights.
- Conduct advocacy continuously on children’s rights.
- Create a platform for learners to report all forms of violence against them.
- Be a role model for respecting the dignity and integrity of children.

#### **6.4.8 BENEFITS OF THE MODEL**

The HRE Model has a number of benefits for all the stakeholders already mentioned. The UNCRC, UDHR and the Bill of Rights will be promoted through the school curriculum. A rights perspective will be built into a range of school subjects. The universality and internationalism of the rights in the Convention provides a context for rights promotion and exploring rights violations both near and far. A rights based vocabulary will also develop in both the teachers and children at school (Massey, 2003:1-4).

#### 6.4.9 IMPACT ON CHILDREN



**Diagram 6.4: Impact of the HRE Model on children**

The model is a tool to create a culture of valuing and of respecting the voice of children in all aspects of the life of the school. The impact of the HRE model is shown in Diagram 6.4 above. Children will stand up against the violations of their rights. Teachers will also refrain from abusing learners and instead they will promote and protect them. Teachers will master the consequences for violating children's rights. They will master all the sanctions that the teachers receive after having violated the rights of children. All the following three categories of children's rights in terms of UNCRC will be mastered (Covell, 2004:1-7):

- Provision: Children have a right to basic health and education.
- Protection: Children must be protected against abuse, neglect and sexual exploitation.
- Participation: Children have the right to be heard in all matters that affect them.

## **6.5 SUMMARY OF THE CHAPTER**

The chapter presented a model that addresses human rights ills in the school system. The model intends to make all teachers aware of the value of children's rights in schools and in the society at large. The language of rights, respect and responsibilities will be illustrated in the minds of all teachers to be able to treat all children with respect and dignity. The model intends to create rights respecting schools with excellent teachers determined to develop the social skills of all children.

The chapter started by presenting teachers as agents of transformation in any school based area of development or improvement. Different definitions were offered for the concept "Model". The chapter also outlined the characteristics and types of Models in educational research. All other details involved in formulating a model were addressed, such as the advantages, disadvantages, principles, construction procedures and role players. The next chapter will focus on the summary, findings and recommendations of this study.

## **CHAPTER 7**

### **SUMMARY, FINDINGS AND RECOMMENDATIONS**

#### **7.1 INTRODUCTION**

The content of this chapter is divided into six sub-topics. The chapter will firstly present a summary of the research. The findings of the study are thereafter presented based on the research aims in Chapter 1 of this study. Thirdly, the recommendations of the study will be presented. The chapter will provide recommendations for further research. Finally, the chapter will conclude with a summary.

#### **7.2 SUMMARY OF THE STUDY**

**Chapter 1** presented the rationale of the study. The problem statement is related to the problems that South African schools experience with regard to continuous violation of children's rights (cf. par 1.3). It was pointed out that teachers continue to treat children in schools in ways that are unacceptable in terms of the principles of a democratic country. These challenges highlighted that there is a need for a management model to assist teachers with the proper implementation of children's rights in schools. The chapter presented the framework of the entire study, which included research questions, aims of the study, research methodology and design and the chapters of the study.

**Chapter 2** was the first chapter of the literature study. The chapter gave an extensive discussion of the nature of children's rights from an educational law and an educational management perspective. A thorough presentation was offered on the concepts closely related to the topic (cf. par 2.2). The closeness of children's rights to human rights was demonstrated with a brief history of human rights in terms of a time line

(cf. par 2.3). The determinants regulating children's rights were also presented (cf. par 2.4). The chapter finally provided the readers with a series of examples of gross violations of children's rights in schools (cf. par 2.5).

**Chapter 3** focused on the role of teachers in the implementation of children's rights. Teachers are presented as the catalyst in the promotion of children's rights. Their contributions are linked to a number of laws such as the principles of the UNCRC (cf. par 3.2) and the Bill of Rights of the Constitution of the Republic of South Africa, Act 108 of 1996 (cf. par 3.3). The chapter also demonstrated how to use the school curriculum to promote children's rights (cf. par 3.4). A comparative study on the teaching of children's rights is also provided in the chapter (cf. par 3.5). Finally the chapter reflects on how the TLO's (cf. par 3.8), the SGBs (cf. par 3.9), sport (cf. par 3.11) and the UN (cf. par 3.13) can contribute in the teaching of human rights.

**Chapter 4** presented the empirical research design. The rationale behind the use of the methodology is presented. Detailed discussions on the research aims, instruments and the entire research process of the research were presented.

**Chapter 5** presented the data analysis and interpretation of the research results. Focus group and in-depth interviews were conducted with selected schools (cf. Tables 5.1 and 5.2). The interviews were recorded and transcribed. The participants in all the interviews are clearly explained. The useful techniques in analysing interviews are also provided in this chapter.

**Chapter 6** presented a management model to assist teachers in implementing children's rights in schools. The concept "model" was firstly unpacked (cf. par 6.2). A number of examples of models were also discussed (cf. par 6.4). The advantages and disadvantages were also

accounted for (cf. par 6.5). The roles of different role players were also related in the chapter.

Finally the HRE model to assist teachers in implementing children's rights was designed and presented (cf. par 6.6.3).

The next section presents the findings of the study.

### **7.3 FINDINGS FROM THE RESEARCH**

The discussions will indicate how the findings relate to the research aims as stated in Chapter 1 (cf. par 1.4). It also offers a reflection on both the literature study and the findings of the data analysis.

#### **7.3.1 FINDINGS FROM RESEARCH AIM 1: WHAT CHILDREN'S RIGHTS ENTAIL IN SCHOOLS**

- Children's rights in schools are a pocket of claims that all children are entitled to so that they can have free access to receive education without hindrances. Such rights are geared for the proper development, survival and protection of children at school to prepare them to participate meaningfully in the society. Education provision is an indispensable right that will enable children to enjoy other rights. Therefore, during the period of providing children with education, teachers must treat them with dignity and respect. All forms of human rights' violations against the children such as the following must be avoided: the use of corporal punishment, sexual abuse of girl learners and other discriminatory laws against school children (cf. par 2.2.3).
- The understanding of children's rights is incomplete without the inclusion of the concept "human rights" to it. Human rights are rights necessary for freedom and the provision of a reasonable quality of life. Such fundamental rights are supported by UDHR of

1948 with a package of cultural, economic and political rights that includes the right to life, liberty, education, equality before the law, right of free association, belief and free speech. Human rights ensure that the dignity of every person is promoted and protected. They are rights attached to everyone regardless of ethnicity, race, gender, sexuality, age, etc. Children can, therefore, not be denied these human rights (cf. par 2.2.1).

- The protection and promotion of children's rights in schools depend on the culture that recognises, respects and protects all human beings as free and equal in dignity and right. This practice is called the human rights culture. The human rights culture propagates for a way of life in which personal and social human relations are based on respect of human dignity free from any form of unfair discrimination. It is an environment in which everyone respects the principles, norms and values of human rights (cf. par 2.2.2).
- It is through human rights education that the subject of children's rights promotion and protection could be well understood. Human rights education assists in making children's rights the focus of attention. It contributes to the long term prevention of human rights abuses. Knowledge, skills and values of human rights are developed. Human rights education can be easily infused within the school curricular (cf. par 2.2.5).
- A number of treaties, declarations and laws call for the best care of all children. Such determinants have referred to different institutions that deal with daily care of children. The following are some of such determinants:
  - Declaration of the Rights of the Child in 1924 (cf. par 2.3.4)
  - Universal Declaration of Human Rights in 1948 (cf. par 2.3.5)
  - Declaration of 1959 (cf. par 2.3.6)

- UNCRC 20 November 1989 (cf. par 2.4.1)
  - African Charter on the Rights and Welfare of the Child (cf. par 2.4.2)
  - ICESCR 1966 (cf. par 2.4.3)
  - Constitution of the Republic of South Africa, 108 of 1996 (cf. par 2.4.4)
  - Children's Act, 38 of 2005 (cf. par 2.4.5)
  - Sexual Offences Act, 32 of 2007 (cf. par 2.4.6)
  - Children's Charter of South Africa (cf. par 2.4.7)
  - South African Schools Act, 84 of 1996 (cf. par 2.4.8)
  - Employment of Educators Act, 76 of 1996 (cf. par 2.4.9).
- The proper realisation and implementation of children's rights depends on the character of a sensible teacher, a teacher who respects the dignity, beliefs and constitutional rights of children at school. Such a teacher avoids any form of humiliation and refrains from any form of abuse, physical or psychological harm against the children. He or she has a high level of dignity who refrains from any form of sexual relationship with children at school. Finally, this teacher is the one who recognises children as partners in education.
  - The findings from the qualitative data analysis agree with the findings of the literature study on what children's rights entail. Respondents to the qualitative study gave related meanings of children's rights similar to that of the literature study. Education was explained as a constitutional right for all children globally. Most of the inputs were based on the ideals of the Constitution of the Republic of SA: Accessible, free, equitable and quality education for all children. The findings indicated that education must not humiliate children by subjecting them to torture and other forms of abuses mentioned already in this study (cf. par 5.3.1).

### **7.3.2 FINDINGS FROM RESEARCH AIM 2: EXPLORING HOW TEACHERS IMPLEMENT CHILDREN'S RIGHTS IN SCHOOLS**

All teachers in South Africa and globally are expected to implement children's rights in schools according to the prescripts of the statutes. A number of national and international laws condemn the violation of children's rights in schools. Amidst all these laws, teachers do not refrain from improper conduct.

The use of corporal punishment is still a common practice in some schools:

- Sections 10(1) and (2) of the Schools Act condemns its use very strongly (cf. par 2.4.8)
- Section 3(4)(n) of the National Education Policy Act, 27 of 1996 also ridicules corporal punishment (cf. par 2.4.8)
- Section 17 of the Employment of Educators Act, 53 of 2000 as amended, regards corporal punishment as inhuman and as a dismissible offence (cf. par 2.4.9)
- The Children's Act, 38 of 2005 promotes the protection of children from maltreatment, neglect, abuse or degradation (cf. par 2.4.5)
- Section 10 of the Constitution, Act 108 of 1996 grants every individual the right to human dignity. This section is complemented by section 28(1) which demands that children must be provided with the right to protection from maltreatment, abuse, etc. (cf. par 2.4.4)
- Article 5 of the Children's Rights Charter of South Africa, 1 June 1992 also condemns the use of corporal punishment in schools (cf. par 2.4.7)

The use of corporal punishment was raised during the qualitative data analysis as a common practice in some schools. The implications of this

on the learners were also indicated (cf. par 5.3.3). The responses concur with the literature study findings. This is confirmed by the following newspaper reports and court cases:

Khutso Mathega's case of corporal punishment applied to him in Limpopo province was globalised by "City Press Newspaper" in 2007.

- The Legal Resource Centre assisted a young girl in 2007 who lost an eye as a result of corporal punishment.
- Phahlaphahla High School corporal punishment case as globalised by "Sowetan Newspaper" in 2010.
- Glenhills Primary School case reported by the "Sunday Times Newspaper" in 2010.
- Glenbrack High School case in Alberton reported by "Sowetan" on 22 March 2011.

Remarkable court cases on corporal punishment cannot be left unnoticed:

- Christian Education South Africa v/s Minister of Education 1999 (4) SA 1092 (SE)
- S v/s Williams 1995 (3) SA 632 (CC), 1995 7 BCLR 861 (CC)
- Tyrer v/s The United Kingdom 1978 5856/72
- Phillip Williamson and Others v/s UK 55211/00
- Campbell and Cosans v/s UK 2001.

The best domestic and international laws at our disposal are unable to bring sexual violence against school girls to an end. There is sometimes under reporting, no reporting or delayed disciplinary action against school based cases of sexual violence against girls. Perpetrators of sexual violence are mostly male teachers and boy learners (cf. par 2.5.2). Sexual violence manifests itself in different forms such as the following:

- Rape and sexual coercion
- Sexual harassment
- Sexual assault
- Intimidation
- Sexual touching
- Emotional abuse.

Evidence that implicates some male educators' involvement in this serious sexual misconduct can be found in a number of newspaper reports such as the following:

- "News 24" story dated 09 May 2007 on a sex scandal by two teachers at Bushbuckridge in Mpumalanga who had sex with under aged school girls.
- The "Times newspaper" dated 24 February 2010 report on a story of the girl learner who was allegedly raped in the store room at Kopanang High School in the Free State Province of South Africa during school hours.
- The "Herald newspaper" in 2010 reported about a sex scandal at Victoria Park High School in which a male teacher was involved.
- The "Sowetan newspaper" in 2010 reported a rape case of special school learners by their teachers.

SACE is waging war against sex predator teachers. Sanctions against such educators include total dismissals and being struck off the roll. Such teachers will not be allowed to teach again. Since the year 2000, SACE has handled 1 000 cases of teachers charged with sexual misconduct (cf. par 2.5.2).

The rights of pregnant girls in schools must not be violated according to section 9(1) of the Constitution, 108 of 1996. These girls have the right to equal protection and benefit of the law. They cannot be unfairly

discriminated against in terms of section 9(3) of the Constitution. A number of schools have been in conflict with the law with regard to the management of pregnant girls. The unconstitutional conduct of school principals has been reported by different domestic newspapers. The unconstitutional banning of pregnant girls from school is also an international problem (cf. par 2.5.3).

Mishandling of poor learners by denying them access for having failed to pay school fees has been a problem in South African schools (cf. par 2.5.4). The payment of school fees is the responsibility of the parents. Many children have suffered total humiliation because of the withholding of reports cards, matriculation certificates, transfer cards, stationery, etc. In some instances children are denied entry into the school premises. This is also an international problem according to "Herald Sun" Australian newspaper report of 2007. The humiliation children suffered in terms of the newspaper reports were touching:

- These learners were excluded from taking part in extra-curricular activities.
- Children were forbidden to take their finished artwork or cooking home because of non-payment of school fees.
- Access denied to workbooks needed in class.

### **7.3.3 FINDINGS FROM RESEARCH AIM 3: CHALLENGES ENCOUNTERED BY TEACHERS IN THE IMPLEMENTATION OF CHILDREN'S RIGHTS**

The curriculum changes in South Africa do not incorporate human rights education. Teachers, therefore, do not take the implementation of children's rights seriously. A subject like Civics would have been ideal. Children's rights issues are briefly addressed in subjects like Life Orientation and History (cf. par 3.4).

Children at school are unable to strike a balance between rights and responsibilities. Every right that a child has must correlate with a responsibility. A constitutional right to education must correspond with the responsibility to study very well. This right to education must also correspond with the responsibility to respect and love others. The qualitative study analysis revealed that children at school view themselves as the only ones with rights and do not see the rights of the teachers. The serious challenge is that children sometimes do not show respect for their teachers (cf. par 5.3.4).

Teachers lack a sound knowledge of statutes dealing with the fundamental constitutional rights of learners (cf. par 5.3.4). The qualitative data analysis shows that some are not able to interpret statutes properly. Procedures in dealing with progressive discipline are sometimes flawed by the teachers. The codes of conducts are sometimes not according to the prescripts of the school laws. All the above-mentioned identified gaps are linked with the lack in capacity training on human rights.

#### **7.3.4 FINDINGS FROM RESEARCH AIM 4: TEACHERS' EXPERIENCES AND PERCEPTIONS WITH REGARD TO IMPLEMENTATION OF CHILDREN'S RIGHTS**

Teachers in schools are aware that children possess fundamental constitutional rights. This is affirmed by the different responses during the interpretation and analysis of data processes (cf. par 5.3.1). However, not all teachers master all the statutory provisions that can assist in the implementation of children's rights (cf. par 5.3.4). The Bill of Rights in our Constitution is referred to as a blue print of all fundamental rights. It is difficult for teachers to link the Bill of Rights with international laws such as UNCRC and UDHR.

The experience possessed by many teachers in the noble profession can inform them that the following actions against children at school are inhumane and barbaric.

- The use of corporal punishment (cf. par 5.3.3).
- Denying learners the right to participate in matters affecting them, the right to express their views and the right to information.
- A series of unfair discriminations e.g. pregnancy, religion, home language, poverty, performance, etc. (cf. par 5.3.3).
- Verbally abusing learners (cf. par 5.3.3).
- Having a sexual relationship with a learner (cf. par 5.3.3).
- Bunking of classes (cf. par 5.3.3).
- Failure to recognise the individuality of every child (cf. par 5.3.3).

The idea of regarding children as bearers of rights like adults is prevalent in the minds of teachers. The challenge is a lack of knowledge among some teachers. These teachers deliberately ignore the rule of the law. Even if SACE has set the example by dismissing other colleagues for unacceptable conduct, they remain unconverted Teachers from time to time need workshops or training on the implementation of children's rights. The TLO's must be highly prioritised in the training workshops since they deal directly with the RCL structures. The SMTs must monitor compliance by all teachers. The Department of Education and Training must provide monitoring and support (cf. par 5.3.5).

The qualitative data analysis revealed that some teachers regard the use of certain school subjects as vehicles to promote children's rights. The subject mostly mentioned was Life Orientation. However, other school subjects like Social Studies and the languages were also mentioned. The integration of human rights into school subjects was seen as the best and ideal method of promoting children's rights (cf. par 5.3.2). The use of

different school based meetings was suggested as a strategy to promote human rights (cf. par 5.3.5).

The use of workshops to introduce new trends and practices has been a common practice in the school system for a number of years. The qualitative data analysis suggested them as strategies to promote human rights practices in schools (cf. par 5.3.5). The different human rights laws relating to children will be addressed at these workshops. The workshops were recommended for the learners, teachers and TLO's. The Department of Education was charged with the responsibility of organising such workshops.

### **7.3.5 FINDINGS FROM RESEARCH AIM 5: HOW TO ASSIST TEACHERS TO IMPLEMENT CHILDREN'S RIGHTS IN SCHOOLS**

It is important for all teachers to have a broader knowledge of children's rights laws, to promote and uphold the rights of children and to unite and fight against all forms of violations of children's rights. All these ideals find expression in the HRE model proposed in this study (cf. par 6.4 and Diagram 6.1). The principles of the HRE model for teachers propagate, *inter alia*, the following:

- To establish a whole school approach based on UNCRC;
- To produce mechanisms and strategies to promote and protect the rights of all children;
- To assist teachers to recognise fundamental human rights of all children they are teaching;
- To infuse a rights perspective into the school curriculum.

The HRE model to assist teachers depends on three role players (cf. par 6.4.4):

- The teachers, who are regarded as catalysts of change;

- The TLO's, who are ombudsmen of children's rights at school;
- The area office functionary, who offers guidance and conducts monitoring to ensure compliance on behalf of the Department of Education and Training.

The birth of the HRE model for teachers will bring a new human rights culture era wherein (cf. par 6.4.8):

- All teachers will be highly knowledgeable about children's rights laws;
- All forms of violations against children will cease to exist;
- Learners will have a platform to complain about forms of violence meted out to them;
- All schools will emerge as rights respecting schools.

The above-mentioned findings culminated in the recommendations of this research study.

## **7.4 RECOMMENDATIONS**

### **Recommendation 1**

All tertiary institutions responsible for preparing and producing teachers for the nation must include children's rights education in their training courses.

- **Motivation**

To avoid transgression of the laws relating to the proper implementation of children's rights in schools, all teachers must be properly trained before they can start teaching. Through training, teachers will do the proper applications. At the same time all implementations will be mastered. If teachers are well-equipped with ways of teaching human rights, there will be proper implementation.

Training teachers in HRE and also providing materials and showing them where to find materials on HRE literature will be a milestone towards proper implementation.

### **Recommendation 2**

The induction programme of newly appointed teachers must incorporate children rights laws.

- **Motivation**

Induction programmes are essential to sensitise new employees towards their conditions of service and code of good practice as enshrined in the SACE code of conduct. The imparting of subject matter to children is not they only core business of learning and teaching. The new employees must be reminded that every child deserves a fair life with respect to all their rights. Teaching children with these values in mind will create a culture of human rights in schools.

### **Recommendation 3**

The Department of Education and Training must conduct capacity training workshops annually for all teachers on children's rights laws, and the HRE model proposed in this study must used by a blueprint for effective implementation.

- **Motivation**

Professional support forums for teachers are continuously conducted for effective teaching in schools. Capacity training will be good to check whether all teachers are still abreast with children's right laws. Such training will help all teachers with the interpretation and the application of children's rights laws. Statutes are also amended from time to time. Therefore, annual capacity training will provide teachers with the new

changes. The training will also advocate for HRE on a larger scale in all schools.

The HRE model for teachers will provide teachers with the broader knowledge of children's rights laws and their proper applications.

#### **Recommendation 4**

The training programmes of TLO's must incorporate HRE.

- **Motivation**

The TLO's are essential in ensuring that the voice of all children is respected in all aspects of the life of the school. They are expected to demonstrate strong commitment to the rights of all children at school. They are continuously in an open dialogue with children about their teaching and rights related matters, since they are preferred by children. They, therefore, deserve to be trained on the values of UNCRC, UDHR and the Bill of Rights of our Constitution.

#### **Recommendation 5**

The training programmes of RCLs must incorporate all children's rights laws to assist in the reporting of cases of violation.

- **Motivation**

The RCLs do not know much about the UNCRC. They must be assisted through training to engage with the UNCRC. They will be able to spread its relevance to their lives at school and at home. The RCLs must be sensitised about the universality of the rights of all children. The language of rights, respect and responsibilities will shape the entire life of children to be able to make it in future. In this way the RCLs will be able to report all forms of abuse they encounter at school to the authorities.

### **Recommendation 6**

All SMTs must conduct effective in-school monitoring on compliance with children's rights laws.

- **Motivation**

All teachers must be encouraged to promote the human rights culture in their classrooms. A monitoring tool for compliance must determine whether teachers are up to scratch on issues of implementation of children's rights. The tool must determine whether learning and teaching emphasise rights respecting for learners. The benefit again is to inculcate rights respecting behaviour in all teachers.

### **Recommendation 7**

All school principals must compile and submit quarterly progress reports on the implementation of children's rights in their schools.

- **Motivation**

School principals must continuously conduct audits of implementation of children rights laws in their schools. School principals must ensure that all forms of violations of children's rights are reported to the Department. Children's rights implementation must be an item of all the quarterly reports submitted to the Department. The reports are a yardstick determining whether rights based approaches are embedded as a whole school philosophy.

### **Recommendation 8**

Department officials relevant for RCLs matters must from time to time monitor compliance of children's rights implementation in schools.

- **Motivation**

When schools are externally monitored by departmental officials, recommendations for improvement will be provided. The gaps will also be identified for further coaching. Non-compliance tendencies such as underreporting and delayed reporting will be addressed robustly by the external monitors. External monitoring is also meant to raise the standard of implementation in the entire school system.

### **Recommendation 9**

SACE annual reports on sanctions given to the children's rights law violators in schools must be made available to all schools.

- **Motivation**

The reports on the different concluded cases on the misconduct of teachers will improve the practice. The teachers will be highly sensitised and will perform their actions within the orbit of the laws. This will lead to the reduction of abuse cases on children at school.

## **7.5 RECOMMENDATIONS FOR FURTHER RESEARCH**

To acknowledge possible limitations of the present research, the following recommendations for further research are proposed:

- Research should be conducted to develop a model on initial teacher training at colleges and universities on HRE.
- Research may be undertaken to develop a model of a human rights orientated school.
- There is a need to conduct research to evaluate the effectiveness of the training programmes used by the Department of Education on human rights education.

- Research may be conducted to determine the possibilities of enforcing human rights education on a national scale as a constitutional mandate.
- Research may be conducted on the interpretations of articles of UNCRC and UDHR to be able to propose effective programmes of human rights education consistent with the goals of world peace, democracy and respect for human rights everywhere.

## **7.6 SUMMARY OF THE CHAPTER**

The chapter presented a synopsis of the entire study. Thereafter, the findings and recommendations of the study were provided. The chapter also gave an account of recommendations for further research.

It is clear that the HRE Model has an important role to play in the development of human rights in schools in South Africa. The success of the model depends on a number of factors including initial teacher college training, continuous teacher training, rigorous support and monitoring by external structures, etc. Evaluation of the model will also foster respect and proper implementation of children's rights in schools. SACE must continuously expose the perpetrators of human rights within the noble profession.

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## **ANNEXURE 1: CHILDREN'S RIGHTS TRAINING MANUAL FOR SA TEACHERS (I)**

(Adopted from the Canadian Human Rights Training Manual, Bekmambetova, 2005)

**Purpose:** To equip teachers with skills to raise the standards of human rights education in schools.

**SESSION 1:** Time - 30 minutes

### **1.1 Objectives of the training programme**

1. To sensitise teachers about the understanding of human rights and demonstrate their relationship with the children rights in schools.
2. To provide teachers with content of human rights education in schools.
3. To craft lesson plans on human rights education for schools.
4. To introduce international human rights law to teachers.

### **1.2 Outlining expectations**

Attendants are accorded the opportunity to present the topics they expect to be tackled in the training workshop.

Overview of participants' expectations is presented by the facilitators.

The goals, objectives and content of the training programme are related and matched with the participants' expectations.

## **SESSION 2:** Time - 1h30

### **2.1 What are human rights?**

#### **Group work activity**

Participants reflect on their own understanding of human rights.

What are human rights?

Give ten examples and write them down.

The facilitator provides the group with definitions.

They compare their answers with the one provided.

The following questions can be asked:

1. Have you changed your understanding of human rights?
2. Are human rights universal?

### **2.2 Basic concepts of human rights**

Key concepts of human rights from UDHR are provided:

1. Equality
2. Universality
3. Non-discrimination
4. Indivisibility
5. Interdependence
6. Responsibility
7. The history of UDHR is also presented.

All articles are presented and discussed.

### **2.3 Current human Rights in the country**

Participants are familiarised with the current human rights situation in South Africa.

Newspaper reports and case law are used.

The domestic laws are used to demonstrate muscles in promoting children's rights and in discontinuing abuse of children.

## **2.4 Worksheet on human rights situation**

Participants complete the worksheet with the following headings:

1. Victims of human rights violations: .....
2. Violators: .....
3. Problems related to children: .....
4. Contributing factors: .....
5. What has been done to solve human rights problems? .....

## **2.5 Discussion of implication to both children and teachers**

Children: drop-out of school, depression, HIV/AIDS, injuries, etc.

Teachers: suspensions, expulsions, arrests, etc.

## **SESSION 3: Time - 1h30**

### **3.1 Understanding the rights of the child**

Participants clarify their personal understanding of children's rights in groups.

The hints for promoting children's rights are provided.

The following questions are asked by the presenter:

1. What are children rights?
2. Are children's rights recognised at school?
3. How could children be assisted to understand their rights?
4. How could the concept responsibility be incorporated into children's rights?

### **3.2 Convention on the rights of the child**

Participants are introduced to the different categories of rights in UNCRC viz, survival rights, developmental right, rights for participation and rights for protection.

Every participant is provided with a copy of UNCRC.

### **3.3 Linking UNCRC with domestic laws**

The following domestic laws are linked with UNCRC: SASA, EEA, NEPA and SACE act.

The implications for both teachers and learners are discussed.

## **ANNEXURE 2: TRAINING MANUAL FOR SA TEACHERS ON CHILDREN'S RIGHTS (II)**

(Adapted from US Agency for International Development - Doorways III)

### **Objectives:**

1. Identify violations of children's rights and show their relations to schools and education provision.
2. Explain the roles and responsibilities of teachers in honouring the rights of children.
3. Discuss the implications of violation of children's rights for both children and teachers at school.

### **Methods used:**

1. Small group activity
2. Discussion

### **Materials:**

Flip chart

Teacher reference materials: (1) Scenarios on violation of children's rights (2) Common stories on violation of rights such as corporal punishment.

Activity 1: Violation of children's rights (1 Hour)

1. Four scenarios on violation of children's rights are presented.
2. They are given copies of the summary of the UNCRC.
3. Chapter 2 of the Constitution "Bill of Rights" is availed to participants.
4. Section 17 and 18 of EEA and SACE Act are availed to participants.
5. Each group is assigned with a scenario.

6. The groups discuss the scenarios and answer the following questions: Feedback is now given to the whole group:
- (a) Have children's rights been violated?
  - (b) Which UNCRC rights have been violated (Article numbers to be stated).
  - (c) Which sections of the Bill of Rights have been violated?
  - (d) How does this violation affect the learners?
  - (e) What should learners do in this situation?
  - (f) What do domestic laws say when the teacher transgresses children's rights?

## **SCENARIOS**

### **Scenario 1**

*Richard is a student in grade 5. He seems to enjoy school, but he is not doing very well in most subjects. He is very quiet and sits at the back of the classroom. The teacher thinks he is not very smart, so when the other students are playing during break and sometimes even during class, the teacher sends Richard out to the schoolyard to dig a pit for a latrine. Sometimes it is very hot outside, and Richard does not have protection from the sun or any water to drink. When someone asks the teacher why he always sends Richard out of the classroom, the teacher replies: "Oh, he is a stupid boy, he shouldn't be in school anyway."*

### **Scenario 2**

*Gloria is 12 years old and really enjoys school. Lately, she has been having trouble in maths and her teacher has offered to give her extra help. One day she stays after school and the teacher grabs her breast and tells her she is turning into a beautiful young woman. Gloria feels very uncomfortable, but is afraid to speak up against the teacher. She*

*decides she will fail maths rather than ask this teacher or any other teacher for help again.*

### **Scenario 3**

Mary and her twin brother, Larry, are both due to start grade 2 next year. Their mother has been ill and needs one of the children to stay at home and help with household chores. The family can only afford to send one child to school and must choose whom to send. They decide to let Larry continue on to Grade 2 and to let Mary stay home. Her parents decide it is better for Mary to learn to be a good wife and mother, because that is her role in life.

### **Scenario 4**

Thomas is always late for class. He works late at night, sometimes until 1 or 2 a.m., making bricks in a factory to help support his family and pay for his school fees. Sometimes when Thomas gets home from work, he is too tired to do his homework. As soon as school is over, he goes straight to his job and never has the opportunity to play sport with the other children in his village. Sometimes he doesn't want to go to school because the punishment he receives from his teacher is so harsh. She makes him stand in front of the class, and she twists his ear until it makes him cry. The teacher does this to most of the boys and says it will make them men.

## **RESPONSES TO SCENARIOS**

### **Scenario 1**

1. Richard has been deprived of his right to an education (Article 28), his right to play (Article 31) and his right to freedom from harmful work.

2. His constitutional right has been violated in terms of section 9(1) unfair discriminations, section 10, the right to human dignity and section 29 the right to a basic education.
3. Employment of Educators Act, 76 of 1998 in section 18(k) condemns this behaviour.
4. SACE condemns the character of such teachers as not fit for the profession (responses to the other scenarios will be different).

### **ANNEXURE 3: A LESSON PLAN ON THE RIGHT TO EDUCATION**

(Belisle & Davison, 2007:1-140)

#### **Objectives**

1. To introduce learners to the importance of human rights in education and barriers to education that exist.
2. To improve the analytical and research skills of learners.

#### **Curriculum link**

The lesson can be integrated in the following subjects: History, Mathematics, English and Life Orientation.

#### **Materials**

Copies of UNCRC, flip charts, markers and chalk board.

Time: 90 minutes

#### **Procedures**

1. Learners are requested to provide reasons why it is important to get an education. Learner responses are written down on the chalk board.
2. Learners are requested to list things that will make them receive a quality education.
3. Learners are asked to read articles 28 and 29 of UNCRC on the rights to education.
4. Learners compare their list of needs with the UNCRC articles.
5. Learners go through their lists and all the rights in the UNCRC. They list things that they have in their school and those they don't have. They list all barriers they face at school in order to receive quality education, e.g. lack of textbooks, lack of teachers, lazy teachers, etc.

6. The teacher wraps up by emphasising the right that every child has to education.

## ANNEXURE 4: HUMAN RIGHTS TEMPERATURE OF MY SCHOOL

Name of School: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Principal: \_\_\_\_\_ Circuit: \_\_\_\_\_

Kindly respond to the following questions sincerely to promote a children's rights culture in your school. Indicate by saying **YES** or **NO**.

1. Children rights education is a standing item in all the staff meetings.	
2. TLO's are accorded the opportunity in all staff meetings to report on the schools human rights climate.	
3. All teachers have embraced the human rights education in their hearts.	
4. All teachers understand what the UNCRC objectives are all about.	
5. Unfair discrimination against learners on the basis of sex, disabilities, pregnancy, religion, race, etc. is not tolerated.	
6. The Code of Conduct of learners is geared to promote the fundamental human rights of all learners in my school.	

B. Kindly indicate the following case of violation of children's rights e.g.

1. The use of corporal punishment:

When? \_\_\_\_\_

Actions taken against the teacher? \_\_\_\_\_

2. Sexual relationship with a girl learner:

When? \_\_\_\_\_

Actions taken against the teacher? \_\_\_\_\_

3. Other cases of misconduct:

\_\_\_\_\_  
\_\_\_\_\_

Recommendation:

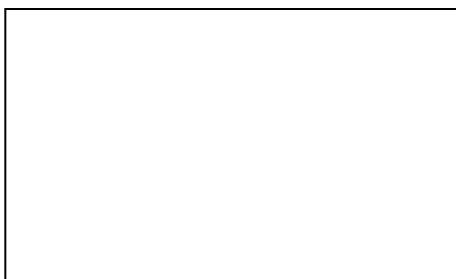
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Signature: \_\_\_\_\_

School stamp:



## ANNEXURE 5: LETTER OF APPROVAL



### education and training

Letapha la Thuto le Katiso  
Departement van Onderwys en Opleiding  
Department of Education and Training  
NORTH WEST PROVINCE

Corner Nelson Mandela and  
Bantjes Street,  
Lichtenburg  
2740  
Tel.: (018) 632-7091  
Tel.: (018) 632-0800  
e-mail: fmatabane@nwppg.gov.za

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#### OFFICE OF THE AREA MANAGER: LICHTENBURG AREA OFFICE NGAKA MODIRI MOLEMA DISTRICT

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To : All Principals of schools  
All Circuit managers in Lichtenburg Area Office

From : The Area Manager

Subject : **Permission granted to Mr. TP Maboe to conduct research in Lichtenburg Area Schools**

Date : 05 December 2011

Permission is hereby granted to Mr. TP Maboe to conduct research project for PhD studies at all schools in Lichtenburg Area. All principals of schools, teachers and circuit managers are kindly requested to assist him in any manner possible to enable him to complete his research project in time.

Hope and trust that you will find the above in order.

Yours sincerely

Mr. CF Matabane  
Area Manager

## ANNEXURE 6: LETTER TO RESPONDENTS



Private Bag X6001, Potchefstroom  
South Africa 2520

Tel: 018 299-1111/2222  
Web: <http://www.nwu.ac.za>

Area manager  
Lichtenburg Area Office  
Lichtenburg  
2740

School of Education  
Tel: 018 299-4752  
Fax: 018 299-4712  
Email: [16477918@nwu.ac.za](mailto:16477918@nwu.ac.za)

29 November 2011

Dear Area manager

### Request for permission to conduct research

I, Maboe, T.P., (student number 11698667), hereby request permission to conduct interviews in Lichtenburg area primary schools and secondary schools with effect from 01 December 2011. My research topic is based on "A model to assist teachers in the implementation of children's rights". This is done as a research project for Ph.D. registered at NWU (Potchefstroom campus). Would you please extend this request to our ISC.

Thanking you in advance.

Yours faithfully



Maboe, T.P.

Yours sincerely



Prof M.J. Mosoge  
Professor

Original details: Prof M.J. Mosoge(16477918) C:\Documents and Settings\Administrator\My Documents\Maboe ineshi\Maboe Request for permission to conduct research.docm  
29 November 2011  
File reference: 12011

## **ANNEXURE 7: INFORMED CONSENT FORM**

**RESEARCHER:** Maboe, T.P.

**TITLE OF RESEARCH PROJECT:** A management model to assist teachers in implementing children's rights in schools

**PURPOSE OF THE RESEARCH** is to investigate the experiences and perceptions of participants in implementing children's rights in schools and to develop a model for enabling teachers to promote children's rights

**DURATION:** The duration of each interview session will be approximately 20-30 minutes.

**PROCEDURES:** Interviews will be one-to-one and focus group discussions after school hours.

**POSSIBLE RISKS:** No possible risks to participants are envisaged. However, in the event of questions that may be perceived as threatening or causing discomfort, you may decline to answer such questions without providing any reason for doing so.

**BENEFITS:** No direct benefits or compensation will be due to any participant.

**VOLUNTARY PARTICIPATION:** Participation in this research is completely voluntary. You may at any stage, refuse to participate and or withdraw at any time.

**CONFIDENTIALITY:** Data in this study will be confidential. As such all data collected will be kept at the North-West University and no parties will be allowed access to the data. No names of individuals and schools will be used. Audio tapes will be kept confidential until they are erased after a period of seven years.

**CONTACT:** The research is conducted by a Ph.D student, T.P. Maboe under the supervision of Prof M.J. Mosoge from the School of Educational Sciences: North-West University – Potchefstroom Campus. Prof Mosoge can be reached at 018 299 4752 (o/h) for questions regarding this research project.

This research has been ethically approved by the North-West University Ethics Committee.

**CONSENT:**

I, ..... have read and understand the nature of my participation in this research project and agree to participate.

.....  
Name

.....  
Signature

.....  
Date

## **ANNEXURE 8: FOCUS GROUP INTERVIEWS WITH TLO'S**

### **Discussion guide for teacher liaison officers**

1. How did it come about that you serve on the TLO?
2. What is your understanding of children's rights in the school?
3. What strategies do you use to promote and defend children's rights in your school?
4. What are the most common ways in which teachers violate children's rights?
5. What challenges are you experiencing in the implementation of children's rights?
6. Which strategies do you use as TLO's to promote and defend children's rights in your school?
7. How do you make teachers aware of children's rights in schools?
8. Suggest ways in which the TLO can improve its work on protecting children's rights in schools.

## **ANNEXURE 9: INDIVIDUAL INTERVIEWS WITH TEACHERS**

### **Discussion guide for teachers**

1. What is your understanding of children's rights in schools?
2. How do you uphold and protect children's rights at your school?
3. How do you teach children's rights within the curriculum of your subject area?
4. Explain the challenges you experience in upholding children's rights.
5. Explain your attitude towards the work done by the TLO in the school.
6. What are the common ways in which teachers violate children's rights?
7. Tell us about your experiences in working with the TLO in upholding children's rights.
8. Suggest ways in which children's rights should be implemented in schools to improve the present practice.

## **ANNEXURE 10: INDIVIDUAL INTERVIEW WITH OFFICE FUNCTIONARY**

### **Discussion guide for the area office functionary**

1. Tell us about your duties and responsibilities as a functionary charged with children's rights.
2. Explain the ways in which you make schools aware of laws governing children's rights.
3. How do you monitor compliance with children's laws in the schools of your area?
4. Explain how you work with the TLO's in schools.
5. Do you think the TLO's are effective vehicles for promoting children's rights in your area? Explain your answer.
6. What are the common cases you dealt with concerning violation of children's rights?
7. What do you think are the challenges facing schools in your area in the implementation of children's rights?
8. If implementation of children's rights at schools was to be improved, which specific aspects would you change?
9. Do you think children's rights have a role to play in schools in future?

## ANNEXURE 11: ETHICS DECLARATION



NORTH-WEST UNIVERSITY<sup>®</sup>  
YUNIBESITHI YA BOKONE-BOPHIRIMA  
NOORDWES-UNIVERSITEIT  
POTCHEFSTROOM CAMPUS

Fakulteit Opvoedingswetenskappe  
Faculty of Education Sciences

Verwysingsnr: / Reference nr:

<b>1.1.3 Projekhoof</b>	Prof J Mosoge (Notule van 22 September 2011)	
<b>Studente/Span</b>	TP Maboe	
<b>Etieknommer</b>	NWU-00118-11-S2	
<b>Titel</b>	A model to assist teachers in implementing children's rights in schools	
<b>Werkverdeling</b>	Me Mari van Reenen Dr Julialet Rens Me Betty Breed	
<b>Besluit</b>	<b>Magtiging</b>	