

**LEARNERS' RIGHT TO EDUCATION
AND THE ROLE OF THE PUBLIC SCHOOL
IN ASSISTING LEARNERS TO REALISE THIS RIGHT**

by

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DECLARATION

I declare that *Learners' right to education and the role of the public school in assisting learners to realise this right* is my own work and that the sources I have used or quoted have been indicated and acknowledged by means of complete references.

.....
Mr U J Mavimbela

ABSTRACT

The history of South African education should not be swept under the carpet when contemporary matters on education are discussed. Public education was brought to life in order to perpetuate the ideals of separate education and apartheid. The school manager was essentially an extension of the ruling party. He or she had to inform his or her subordinates what the authorities demanded to be done in educational circles.

The 1996 Constitution (Act 108 of 1996) effectively assured a democratic order which would guarantee the removal of Acts which were discriminatory in nature. The 1996 Constitution lay the foundation for a democratic and open society which has high regard for human rights, childrens' rights and in particular the right of learners to education.

The public school must implement the stipulations of the Constitution and of the South African Schools Act (Act 84 of 1996) which aspire to be in line with international human rights documents like the 1948 Declaration of Human Rights and the 1989 Convention on the Rights of the Child.

This study is essentially about learners' right to education and the role of the public school in assisting learners to realise this right. All considerations are based on the democratic constitutional dispensation in South Africa after 1994.

The study finally illuminates the level of preparedness of the parent community in forming a partnership with the public school so that learners can be assisted in realising their rights to education.

Key Terms

public education

educators

parents

children

human rights

children's rights

learners

school manager

management

constitution

discipline

DEDICATION

To
my late mother, Elizabeth Margaret
and
my wife, Kefilwe Christina.

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This dissertation is dedicated to my late mother who tirelessly encouraged me from an early age to continue with my studies and to my loving wife who provided the much needed love, patience, support and encouragement which enabled me to complete this study.

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CHAPTER 1

INTRODUCTION, AIMS AND STRUCTURE

1.1 INTRODUCTION

The 19th century saw a move towards children's rights to protection being strengthened. The United Nations, for example, produced the Universal Declaration of Human Rights in 1948. States which are signatories to this charter must promote human rights. In this regard, Pappas (in Hart & Pavlovic 1991: 345) says that a child cannot be "abused, sold into slavery and even killed with impunity", as it was done in the past. The desires and perspectives of children were not respected (Hart & Pavlovic 1991: 70). The views of Brody and Vardin (1979: xv) also indicate that children were vulnerable to abuse and exploitation.

In order to address the problem of the abuse and exploitation of children, the school came into existence. The overriding purpose of the school is to mould learners. During the educative teaching process at school, the rights of learners, and particularly their right to education, should be acknowledged and respected. The ignored learners' rights had to be addressed through the human rights movement.

Ellen Key, a Swedish teacher indicated that the 20th century would be the century of the child (Lerner 1996: 89). The notion of children as beings who also have rights led to a number of conferences which focussed on the rights of children, for example, the 1948 United Nations Declaration of Human Rights and the United Nations Convention on the Rights of the Child which came into existence in 1991.

It is important to establish the manner in which the public school could assist learners to realise that, as human beings, they have fundamental rights, including the right to education. Learners would benefit from the promotion of human rights (Eide et al 1995: 29), because the learners' rights to education would also be promoted. The Convention on the Rights of the

Child also stipulates the promotion of learners' right to education.

The United Nations (1991: 3) also requires, among other things, that a child develops his or her intellectual capacities in an environment that does not violate human rights. How then can a public school establish such an environment? Tomayersk (in Eide *et al* 1995: 201) says that non-discrimination, the overriding international human rights principle, is the starting point of operationalising, for example, cultural rights and the right to education. In which way can a public school assist learners to realise the right to education in an environment where there is, for example, no discrimination according to race or sexual orientation?

Other writers, for example, Wringe (1981: 11), also expressed their views on learners' rights to education. The author maintains that the school should consider the moral rights of pupils in the same way it would consider the moral rights of anyone else. Learners should receive similar respect from educators as clients of any other professional body.

Clarke (1987: 53) says that the school should respect the constitutional guarantee of learners' rights to attend school without regard to religious instruction. Clarke's view is rightfully within the context of international law and practice. The question is: How then can the school simultaneously assist, for example, both a Christian learner and a Muslim learner realise their right to education?

In the South African context, the right to education is enshrined in the Bill of Rights (section 29 of the 1996 Constitution). Learners must know that these rights exist, so that they would be able to discern if, for example, the right to freedom of expression (section 16 of the Constitution) is being provided for or violated.

In this context, how can the public school assist the learning child to realise that he or she has a right to basic education? Should the information be transmitted directly to the learner or should the public school carry out its activities in a manner that would enable the learner realise the right to education through its educative-teaching activities by, for example, encouraging freedom of association and freedom of responsible choice?

All human beings need respect and protection (Eide et al 1995). Learners must receive education in order to be able to demand this respect and protection. Parents act in the best interests of their children and provide the initial protection and education. Hence parents choose the type of school the learner may attend. This is done on behalf of the learner. How then should the school assist the parents in guiding the learner to choose between, for example, history and mathematics? Would, for example, the slow learner be discriminated against if advised to study history instead of mathematics? Perhaps all relevant factors, for example, the learner's aptitude, the learner's interests and the financial position of the parents should be considered by the school, the parents and the learner. The learner would then be able to make a guided, responsible choice.

All human beings are entitled to education. According to De Groof and Bray (1996: 77), education must be received by learners on equal terms. A learner who studies history, for example, must receive education like a learner who studies mathematics. The right to education enables the learner to appeal to others for support (Howard 1980: 22). These 'others' are then obliged to provide education.

With all these views and other considerations which deal with learners' rights to education related to the role of the public school's endeavour to facilitate the provision and realisation of education in mind, the formulation of the research problem and sub-problems will now be explored.

1.2 FORMULATION OF THE RESEARCH PROBLEM AND SUB-PROBLEMS

1.2.1 The Research Problem

How can a public school assist learners to realise their right to education?

This problem is further divided into the following sub-problems:-

1.2.2 Sub-Problems

1.2.2.1 How is the education of learners in South African public schools influenced by certain international human rights agreements?

1.2.2.2 How does the public school utilise South African policy documents in order to assist learners to realise their rights to education?

1.2.2.3 What strategies would enable public schools to assist learners to realise their right to education?

These and other pertinent concerns lead to the aims of the research.

1.3 AIMS OF THE STUDY

This study aims to:

- establish the manner in which some international human rights documents influence the provision of education to learners in South African public schools;
- determine the manner in which the South African public school utilises local policy documents in order to assist learners to realise their rights to education; and
- make recommendations regarding the role of the public school in assisting learners to realise their rights to education.

What follows is a clarification of concepts in order to bring out the exact context of this study.

1.4 DEFINITION OF CONCEPTS

1.4.1 Learners

The concept “learners” refers to children who are under the age of 18 years (section 28 (3) of Act 108 of 1996).

1.4.2 Public school

A public school may be either an ordinary school or a school for learners with special education needs, normally referred to as a special school (section 12 (3) of Act 84 of 1996).

Next is a description of the methodology employed in this research.

1.5 RESEARCH METHODS AND DESIGN

This study will rely on qualitative approaches to data gathering, for example, document analysis and interviews, in order to provide a detailed understanding of the study. A detailed explanation of the methodology, the rationale for the choice of methodology and the research design are dealt with in Chapter 3. This chapter will, however, present only a basic overview concerning research methods and design.

1.5.1 Document analysis

This study relies primarily on an analysis of documents related to learners’ rights to education. From an intensive literature review, the researcher made use of primary documents as much as possible. These documents include the following:

- international instruments/documents which are relevant to learners’ rights to education. These include the United Nations Declaration of Human Rights, the 1989 Convention on the Rights of the Child, the International Covenant on

Economic, Social and Cultural Rights, the International Covenant on civil and Cultural Rights and the Bajul Charter;

- applicable national laws, for example, the South African Schools Act (SASA) and the National Education Policy Act (NEPA) (Act No. 27 of 1996).

Given the present political debates in South Africa, which includes human rights issues and particularly learners' rights and their right to education, articles which were relevant to this study were also analysed.

1.5.2 Interviews

Document analysis was mainly employed to obtain data. In order to obtain additional information, the researcher conducted interviews with several informants. Wiersma (in Mothata 2001: 22) describes an informant as an individual in whom a researcher invests a disproportionate amount of time because that individual appears to be particularly well informed, approachable or available. The aim was to expand on the analysis of the documents. The key informants were an educator, a deputy principal and a principal at three different schools.

1.6 RATIONALE FOR THE STUDY

The present political dispensation in South Africa is concerned with the building of a human rights culture. The Constitution of the Republic of South Africa has a high regard for human rights, which is the cornerstone of democracy (Rautenbach & Malherbe 1997:10). The tensions which arose because of the integration of schools in order to provide education to all learners regardless of race, sexual orientation or any other form of unlawful discrimination, made it necessary to study the learners' rights to education. It is hoped that this study would assist public schools to solve problems they face, for example, racial conflicts between learners, the use of corporal punishment by some educators on learners and the provision of basic infrastructure, such as classrooms, which all impact on learners' rights to education.

1.7 LIMITATIONS OF THE STUDY

The study is limited to Black learners in the North West Province who attend ordinary public schools (section 12 (3) of Act 84 of 1996), which offer Grade 1 to 12 only.

The focus of the study is also limited to legislation after the adoption of the Constitution, Act 108 of 1996.

CHAPTER 2

REVIEW OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS WITH REGARD TO LEARNERS' RIGHT TO EDUCATION

2.1 INTRODUCTION

Several factors have contributed to the development of human rights worldwide. These factors include the atrocities of the two world wars, the emancipation of colonial territories and the urge of the individual and group to the acknowledgement of human rights and the right to self determination (Dugard 1994:12). These factors led to the agreements that promote human rights.

The United Nations, for example, produced the Universal Declaration of Human Rights (UDHR) in 1948. States which are signatories to this charter are bound to promote fundamental human rights. These general issues on human rights had to be particularised, as, for example, women's rights, children's rights and learners' right to education.

A declaration that emphasised children's material needs was adopted by the Fifth Assembly of the League of Nations in 1924 (Freeman & Veerman 1992: 4). A move was taken to remove the somewhat outdated views about the child. The 1959 Declaration of the Rights of the Child stated children's rights in broad, vague terms. It is little more than a proclamation of general principles.

Regional Charters and Treaties, for example, the American Declaration of the Duties of Man, were also produced in line with international agreements. The Organisation of African Unity (OAU) also accepted the principles of the United Nations Declaration of Human Rights and also came up with several agreements, including the Banjul Charter on Human and People's Rights of 1981. Member states had to particularise these international and regional agreements.

The struggle towards a democratic order in South Africa offered many challenges and implications for a positive development of human rights, children's rights and learners' rights to education in particular.

In this chapter, however, the focus is on the international perspective on human rights with particular reference to children's rights and learners' right to education, later examining the provision of education in some sections of the South African Constitution (Act 108 of 1996). The extent to which the South African Constitution meets the universal requirement on human rights, particularly the right of learners to education, is examined. Measures which are taken in order to redress the results of past racially discriminatory laws and practices are also discussed.

2.2 AN INTERNATIONAL PERSPECTIVE ON THE DEVELOPMENT OF HUMAN RIGHTS

Criteria have been suggested in order to determine whether a right is a human right or not. Claude and Weston (1989:16) maintain that a human right is that which is possessed by human beings, hence the usage of modern human rights terminology in the development of human rights.

Modern human rights terminology distinguishes three generations of human rights. The first generation of civil and political rights, the second generation of economic, social and cultural rights, and the third generation of solidarity or group rights (Eide et al 1995:195; Vincent 1986: 8).

The right to education is probably the only right that reveals aspects of all three generations. This is indicated by Article 2 of Protocol No. 1 of the European Convention of Human Rights (ECHR), which states that no person shall be denied the right to education (Eide et al 1995:179). Further, it may be said that education is a first generation right because educational institutions that provide education should enjoy a certain degree of autonomy by means of self-governance. Eide et al call this a 'participatory right' (1995:198), that is directly

related to the right to take part in cultural activities and political expression.

The right to education is also clearly a second generation right, an outstanding example of the 'cultural rights' category (Eide et al 195: 196). The right to education is based on the socialist philosophy that holds that human rights can only be guaranteed by positive state action, like the right to work and the right to an adequate standard of living. The right to education is regarded as one of the bases needed by a human being to develop his or her personality.

Education also has links with the so-called solidarity rights of the third generation of human rights. States are required to recognise 'the benefits to be derived from the encouragement and development of international contact and cooperation in the scientific and cultural fields' (Eide et al 1995: 198). States should encourage international cooperation and facilitate access to the acquisition of education because both the right to education and the right to development are aimed at one ultimate goal, and that is the full respect for and protection of all human rights (Eide et al 1995: 198).

The international debate on human rights and other related issues like children's rights and the right to education led to the adoption of documents which promote the development of human rights, as indicated by the 1948 United Nations Declaration of Human Rights.

2.2.1 The 1948 United Nations Declaration of Human Rights

The international stage was long set for the development of human rights. In 1945 the United Nations was established. This led to the dissolution of the League of Nations in 1946. The United Nations' Declaration on Human Rights came into existence in 1948.

General Smuts, the South African Prime Minister at the time, was largely responsible for the drafting of the preamble of this charter that reaffirms "faith in fundamental human rights, the equal rights of men and women and of nations large and small" (Dugard 1994: 18). In order to achieve this, the United Nations needed a mandate.

The mandate of the United Nations is that of the International Protection of Human Rights,

the first step towards an International Bill of Rights (De Villiers, Van Vuuren & Wiechers 1992:1). The Universal Declaration of Human Rights has become part of international customary law, providing a firm moral, political and quasi-legal framework to which member states have to adhere (De Villiers et al 1992:1), hence it is labelled the “Magna Carta of the world”.

Members of the United Nations are bound by principles of racial non-discrimination on the basis of this Charter, even if they do not adhere to other international instruments (Vasak 1982: 45). These principles are accepted as norms to provide the basis for co-operation among states (De Villiers et al 1992:146) and the promotion, respect and recognition of human rights (Dugard 1994:12).

Since the adoption of the Universal Declaration on Human Rights, several other important international agreements have been approved and ratified by member states in order to promote human rights. One may mention the International Covenant on Economic, Social and Cultural Rights, the 1959 Declaration of the Rights of the Child and the 1989 Convention on the Rights of the Child. Since the focus of this research is on the right of learners to education, the 1989 Convention on the Rights of the Child is discussed in more detail.

2.2.2 The 1989 Convention on the Rights of the Child

Various professionals expressed their thoughts about children’s rights, focussing on different perspectives. They attached different values to children at particular historical moments (Freeman & Veerman 1992: 3).

According to Freeman and Veerman (1992: 5), Janusz Korezak formulated a declaration on children long before the Geneva Convention of 1924. Korezak advocated the right to resist educational influence that conflicts with the child’s own beliefs (Freeman & Veerman 1992: 5).

The Fifth Assembly of the League of Nations adopted a declaration in 1924. This declaration reflected a concern with the rights of children afflicted by the devastating ‘Great War’ and its

aftermath (Freeman & Veerman 1992: 5).

The discourse about children and their rights has progressed rapidly since the 1960's. The emphasis shifted from protection to autonomy, from nurturance to self-determination, from welfare to justice (Freeman & Veerman 1992: 3). These and other issues on the plight of the child led to the declaration that 1979 be the International Year of the Child.

The aim of the 1979 International Year of the Child was to promote the application of Resolution 1386 (xiv) of the Declaration of the Child adopted by the United Nations' General Assembly on 20 November 1959. This event then led to the 1989 Convention on the Rights of the Child.

The Convention on the Rights of the Child was adopted in November 1989 and entered into force on 2 September 1990 after its twentieth ratification (Eide et al 1995: 289). According to Freeman and Veerman, the Convention of 1989 and the World Summit of 1990 are watersheds in the history of children (1992: 5).

During the pre-United Nations era, the rights of children were seen primarily in the context of measures taken against slavery, child labour, traffic and prostitution of minors. Eide et al (1995: 29) say that the Convention on the Rights of the Child regards children as beneficiaries of human rights. The enjoyment of one right leads to the demand for the enjoyment of other rights. The freedom a child needs to develop his/her intellectual, moral and spiritual capacities calls for, among others, a healthy environment (UN 1991: 3) without discrimination (Eide et al 1995: 293).

Article 2 of the Convention, that is, the non-discrimination clause, is concerned with the obligation to provide for equal opportunities among children.

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

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted and opened for signature, ratification and accession by the United Nations General Assembly

resolution 2200 A (XXI) of 16 December 1966 (United Nations 1988). In accordance with article 27, this instrument came into force on January 2, 1976.

The right to education is guaranteed under article 13 of the Covenant (Mothata 2000: 62). Article 13 (1) reads as follows:

The states parties to the present Covenant recognise the right of everyone to education.

According to this article, education shall be used to develop the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. In order to achieve this, article 13 (2) stipulates that:

The states parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

Article 13 (3) gives parents and legal guardians the right to choose educational institutions for their children other than those provided by the state in order to "... ensure the religious and moral education of their children in conformity with their own convictions" (United Nations 1988:13).

2.2.4 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) on 16 December 1966 (United Nations 1988: 21). Articles 7, 18, 19 and 22 are relevant with regard to learners' right to education. Article 7 states that:

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

In the past, learners have been subjected to severe forms of punishment, including corporal punishment. Corporal punishment may be viewed as a form of torture which interferes with the learners' right to education.

Article 18(4) of the ICCPR reads thus:

The states parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 18(4) of the ICCPR is in line with article 13(3) of the ICESCR discussed in 2.2.3 (above). Freedom of thought, conscience and religion are guaranteed.

Article 19(2) provides for the freedom of expression which is necessary for the realisation of education. The right to freedom of association is provided for by article 22(1).

2.2.5 The Proclamation of Teheran

This instrument was proclaimed by the International Conference on Human Rights at Teheran on 13 May 1968. Proclamation number 14 is relevant to education and it reads as follows:

The existence of over seven hundred million illiterates throughout the world is an enormous obstacle to all efforts at realising the aim and purposes of the Charter of the United Nations and the provisions of the Universal Declaration of Human Rights. International action aimed at eradicating illiteracy from the face of the earth and promoting education at all levels requires urgent attention.

“Promoting education at all levels” includes promoting learners' right to education.

2.2.6 The American Declaration of the Duties of Man: 1948

Article 12 of this declaration states that the right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and desire to utilise the resources that the state or the community is in a position to provide (Andrew & Hines 1987:

35). This article also guarantees the right of learners to education.

2.2.7 The Banjul Charter on Human and People's Rights of 1981

The Banjul Charter makes provision for extensive duties of the individual towards the family, society, the state and international community, reaffirming that these rights are of international importance.

Article 18 (3) of the Banjul Charter is concerned with the elimination of discrimination against women and also ensures the protection of the rights of the woman and the child. In this regard, the right of the child as a learner are of particular concern.

From the international perspective on human rights, follows a discussion on the international perspective on children's rights – particularly as learners, and their right to education.

2.3 THE INTERNATIONAL PERSPECTIVE ON CHILDREN'S RIGHT TO EDUCATION

International treaties on human rights guarantee the right to exercise and enjoy undisputed freedom by everyone (section 2 of the Declaration of Human Rights; section 27 of the Covenant on Civil and Political Rights). Each individual is acknowledged to have an equal right to education.

The United Nations Declaration on Human Rights proclaimed in section 26 (2) that

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

With regard to the aims and objectives of the right to education, section 29 of the Convention on the Rights of the Child (1989), states that:

Primary education shall be free and compulsory, discipline in schools should respect the child's dignity. Education should prepare the child for life in a spirit of understanding, peace and tolerance.

2.3.1 Access to basic, equal, free and compulsory education

From an international point of view, it cannot be overstated that member states of the United Nations, should be responsible for learners' education. Education should be entrenched in their Bills of Rights. Equal access to higher education is guaranteed in Article 26 of the United Nations' Declaration on Human Rights and also in Article 28 (2) of the 1989 Convention on the Rights of the Child. The state must provide the means to education and, in turn, its populace must attend at the state-provided learning institutions.

Primary education should be compulsory and available free to all (Article 28 of the United Nations Declaration on Human Rights). It would appear that the right to education is the only right for which international law stipulates a corresponding duty, that is, compulsory education until the end of primary education (Article 26 (11)), without restriction on this right (Eide et al 1995: 201).

The Banjul Charter in Article 17 (1), says that the states shall promote morals and traditional values recognised by the community. Learners can be taught these morals and traditional values at state provided educational institutions.

Access to public service and public property are guaranteed by Article 13 (2), hence parents have the right to choose the type of education for their children as learners.

2.3.2 The right to choose education in line with religious, moral, cultural and philosophical considerations

Choice is an act of will which involves responsibility. At some point in time, a person is faced with many conflicting aspirations. This is the moment of choice. Choice demands an immediate decision. It seems that children do not have the right to choose their own education

or the right to choose not to receive education at all under present international law (Eide et al 1995: 205). However, parents of learners have the right to choose the type of education they prefer for their children. According to section 26 (3) of the United Nations Declaration on Human Rights, this right is only possessed by parents and not by learners. Parental choice should be guided by the principle that ‘everything concerning the child should be done in the best interest of the child’.

Parental liberty to choose the education for their children according to their own (the parents’) religious or philosophical convictions is regulated in international law as a component of freedom of religion (Eide et al 1995: 206). According to the United Nations (1991: 7), children of minority and indigenous populations should freely enjoy their own culture, religion and language.

2.3.3 The right to education and human dignity

Human dignity is the innate value of a human being, existing by the very nature of humanity and recognised as the juridical philosophical basis of all human rights (Condé 1999: 57). Central to a human rights culture, is the upholding of the human dignity of the individual and society in general through education.

During the education process, factors such as discipline, discrimination and corporal punishment may affect the learner’s human dignity. A corporally punished learner, for example, may not concentrate during lessons because of the pain inflicted on his body. In this regard Article 28 (2) of the Convention on the Rights of the Child reads:

States are obliged to take all appropriate measure to ensure that discipline is consistent with the child’s human dignity.

The theory of the rod as a “desirable and necessary instrument of restraint upon sin and immorality and as an aide to learning” was in accord with the orthodox views and practices of the past (Falk 1996: 48). The international view on corporal punishment is that it should not be allowed. The child should be educated in order to acquire respect for human rights and

the natural environment. Children and adults have equal value and, at the same time, children are vulnerable and need support. What follows next is a consideration on case law and the right to education.

2.4 CASE LAW AND THE RIGHT TO EDUCATION

A discussion of case law and the right to education in South Africa will be supplemented with foreign case law in order to illustrate legal issues. Section 39 (1) of the Constitution allows for the consideration of international and foreign law.

The Supreme Court of the United States of America (USA) stated in the Gault case in 1967 that children had rights (Brody & Vardin 1979: 28). These rights would include the right to education. The court further stated in *Tinker vs Des Moines Independent School District* that children “are persons under the Constitution who are entitled to the protection of that right” (Brody & Vardin 1979: 29).

Prior to the Gault and *Tinker vs Des Moines* cases cited above, children did not have expressly delineated constitutional guarantees. Since 1787 children were only treated as “persons”. Howard (1980: vii) puts it as follows: “they [children] have been the objects of their parents”.

The first major case protecting a child occurred in 1838 in *Ex parte Crouse* (Sametz & Thomas 1985:22). The court held that the right of the parent was not inalienable under the doctrine of *parens patriae*. According to Sametz and Thomas (1985: 22) the court assumed a mandate to promote the well-being of the child.

Since 1967 the United States Supreme Court has held that, like adults, children have rights prescribed under the First, Fifth, Sixth and Fourteenth Amendments. In the *Tinker* case (Sametz & Thomas 1985: 24), the Supreme Court concluded that school officials could not punish students for expressing an opinion when no disorderly conduct ensued.

Learners are therefore guaranteed freedom of speech, freedom of expression, freedom of

association and other fundamental freedoms only as long as their behaviour does not “materially disrupt class-work or invade the rights of others” (Samertz & Thomas 1985: 25). This case demonstrates the limitations of these freedoms.

The present day situation in South Africa is that everybody has constitutional rights. Various issues concerning learners’ right to education are being tested in court. In the case of *The School Education Bill (Gauteng) 1996: (4) BCLR 537 (cc)*, it was held that section 32 (c) (now section 29 (3)) of the Constitution does not oblige the state to establish schools based on a common culture, language or religion. It merely guarantees the freedom to those persons who wish to establish such schools to do so, where practicable, without interference from the state provided that there shall be no discrimination on the grounds of race.

The issue of discrimination, that is unfair discrimination, was addressed in the *Matukane and others vs Laerskool Potgietersrus, 1996 (3) SA 223 (TPD)*. The facts of the case pointed out that black children were discriminated against.

The court order declared that the school was not entitled to refuse to admit any child on grounds of race, ethnic or social origins, culture, colour or language. It was also stated that the Constitution was not outlawing discrimination as such, only prohibiting unfair discrimination. In this case it was also pointed out that local or municipal law should be interpreted in accordance with the principles of international law and certain international treaties and agreements which the Government has become a party to.

These and other cases (not discussed here) indicate that the issue of learners’ right to education will mature as the South African constitutional democracy matures. The Constitutional court, shall make the final legal decision on human rights issues.

2.5 SUMMARY

This chapter gave a review of international human rights instruments with regard to learners’ right to education.

The promotion of human rights, particularly in education, is an international concern. No wonder the United Nations, through consultations and discussions, developed a number of human right instruments. Such instruments were discussed in Chapter 2.

These international agreements brought to light that there exists a right to choose education in line with religious, moral, cultural and philosophical considerations.

The next chapter will focus on the research design.

CHAPTER 3

RESEARCH DESIGN

3.1 INTRODUCTION

The discussion in Chapter 2 focussed on the review of international human rights instruments with regard to learners' right to education. The qualitative method was utilised. In this chapter, the methodology and design which were followed to explore learners' right to education in South Africa is given. A theoretical basis of qualitative method and the rationale for the choice of methodology will also be discussed. Also included is the description of the design of the study, which includes procedures used in locating and interviewing the informants, data collection and analysis, as well as issues on validity and reliability.

3.2 RESEARCH QUESTIONS

The aim of this research was to investigate learners' right to education and the role of the public school in assisting learners to realise this right, with particular reference to South African public schools. This was done against the background of the provisions in international human rights documents on matters which specifically relate to the right to education.

These concerns enabled the researcher to construct an interview guide (see Appendix A). The interview guide was used when interviews were conducted. Other concerns are discussed in section 1.2 (above).

3.3 RESEARCH APPROACH

Educational research involves both the qualitative as well as the quantitative approaches. The nature of the data and the problem for research dictate the research methodology (Leedy 1989: 138). These two approaches can only be distinguished in the form of their presentation.

Quantitative methodology deals with numerical data, whereas qualitative methodology is concerned with the presentation of facts in narration of words (Schumacher & McMillan 1993: 14). In this study, the qualitative technique was used.

3.3.1 The qualitative method

Qualitative research can be described as an idea-driven research (Le Compte, Milroy & Preissle 1992: 7-18). According to Mothata (2000: 112), all research begins with a totally subjective, hopeless human decision about what to study. This is what happens in a qualitative orientated study. Data were collected from relevant documentation, for example the Constitution, and also by interacting with selected educators and school managers. The researcher, as an educator himself, had to adopt a particular stance.

3.3.2 The researcher's stance

The researcher is a deputy principal at one of the schools where data were gathered. As a key instrument in data gathering, the researcher's stance needs to be explained.

The task of a researcher is to gather data and to make an analysis and synthesis of the data. In this study, the researcher made an effort to bracket his beliefs and opinions concerning learners' right to education. This was not an easy task, particularly, when interviews were conducted. The views of Schumacher and McMillan (1993: 373) are that qualitative research is concerned with understanding the phenomenon from the participant's perspective. An attempt was made to become immersed in the situation and the phenomenon studied (Mothata 2000: 115).

3.4 DATA COLLECTION

The two data collection techniques which were deemed appropriate for this study are document analysis and interviews. This study is based mainly on document analysis. The data collected during the semi-structured interviews provided additional information on the topic studied.

3.4.1 Document analysis

Document analysis, also referred to as content analysis, is a common term for different types of textual analyses (Birley & Moreland 1998: 53). Document analysis emphasises either qualitative and/or quantitative descriptions and analysis of documents of various types. These documents may be official, semi-official or unofficial. Schumacher and McMillan (1993: 433) refer to these documents as another form of artifacts. These include both personal and official documents. Personal documents include diaries, personal letters and anecdotal records, while official documents include minutes of meetings, working papers and draft proposals. The official documents suggest the official perspective on a topic, issue or process and such sources may either be historic or contemporary. Ary, Jacobs and Razavich (1990: 385) maintain that although the discipline of education is primarily concerned with people, many interesting and useful research projects in education have been concerned with information obtained by examining records and documents.

Berg (1995: 145) wrote that documentary records may offer particularly interesting sources of data. In this study, documents formed a crucial part of this investigation and were analysed as they shed light on the study. On the other hand, Delmont (1992: 104) cautioned that whatever type of document the qualitative researcher uses, the golden rule to remember is that all written records are socially produced. All documents are written in a social context, with some audience in mind, even if the audience is only the author (Mothata 2000: 117).

The following types of documents were used in this study:

3.4.1.1 *Primary sources*

Primary sources are documents written at the time of the event. They may be official communications, journals, newspaper articles, minutes of meetings, reports, letters and commentaries. In this study, the researcher used documents as far as possible. The findings of the analysis are presented in Chapter 4.

- The Constitution Act, No. 108 of 1996

The first primary document examined by the researcher is the Constitution of South Africa, Act No. 108 of 1996. It was adopted by the National Assembly on 8 May 1996. The Constitution is the supreme law of the Republic of South Africa. It provides a framework of the topic under investigation. Relevant sections with implications to learners' right to education were identified. These include sections 6, 16, 28, 29, 33 and 36 (see Appendix C).

- Legislation on education and policy documents

In addition to the Constitution, various Acts and other policy documents with implications for education were also identified. These include the South African Schools Act (SASA), Act No. 84 of 1996, and the National Education Policy Act (NEPA), Act No. 27 of 1996.

The South African Schools Act is based on the Constitution. It is the most relevant legislation regarding school practice. Relevant sections of SASA include sections 5, 6, 7, 9, 10 and 29.

3.4.1.2 *Secondary sources*

Secondary sources used in this study are documents which deal with education in general and the learners' right to education in particular. Secondary sources explain, locate or update primary documents. They are not authoritative records (Jacobstein & Merky 1990: 10). These documents are written some time after the event and they include commentaries on situations and events, such as newspaper editorials, textbooks and periodicals (La Moute 1993: 417).

Statements made in both the print and audio-visual media were very important to this research, for example, media coverage of the situation at Potgietersrus Primary School where white parents vowed to keep the school white, denying learners of colour the right to education. Another incident highlighted in the media, was one where an Indian female learner was barred from her school because of her religious beliefs as reflected in her clothing. These incidents are good examples of the violation of learners' right to education in South African public schools. The public school is legally and morally obliged to play a particular role for learners to realise their right to education.

3.4.2 Interviews

In addition to document analysis, semi-structured interviews were conducted during May 2001 at three schools. Before the interviews were conducted, each participant completed a brief questionnaire on which basic biographical information was recorded as well as a declaration of consent (cf Appendix B). Brief notes were made during the interviews.

All the interviews began with a brief explanation of the purpose of the project, assurance about confidentiality of information and in terms of using the information specifically for this study as well as some general guidelines for the interview process. The researcher then conducted the semi-structured interviews with the help of the interview guidelines, focussing around some core questions that included the following:

- definition of learners;
- how are school buildings maintained?
- are pregnant learners allowed to proceed with their education?

Although the researcher had an interview guide (cf Appendix B), the interviews were conducted as a general conversation during which the researcher listened carefully and occasionally asked further questions for clarity. Control of the interview was not rigid. This enabled the participants to tell their stories, so that the interview did not lose track of the qualitative range (Boydan & Biklen 1992: 97). Mothata (2000: 122) points out that good interviews are those in which the subjects are at ease and talk freely about their points of view. The purpose of these particular interviews was to listen, understand and learn about other

people's perspectives on the topic under discussion.

Although the researcher had his own views, the researcher encouraged the participants to give their views regarding learners' right to education. The researcher constantly reminded himself that he was there not to change views, but to record the subjects' views and reasons for them holding such views.

3.5 SAMPLING

There are different forms of sampling that can be applied in any research of this nature. The following sampling procedures and techniques were applied in this particular study:

3.5.1 Selection of participants

Purposeful sampling was used. According to Schumacher and McMillan (1993: 378), purposeful sampling means that the researcher searches for information-rich subjects, groups, places and events of study. These samples are chosen because they are likely to be knowledgeable and informative about the phenomenon the researcher is investigating (Mothata 2000: 123).

Bogden and Biklem (1998: 71) maintain that in purposeful sampling, the researcher chooses particular subjects because they are believed to facilitate the expansion of the developing theory. In this study the participants were chosen because of their involvement in public schools. All the participants are part of their respective school management teams, and play significant roles within the school community.

3.5.1.1 Locating the participants

At the school where the researcher serves as a deputy principal, a senior educator was involved in the process. The school manager was not interviewed, because the researcher was already privy to his views regarding learners' right to education. At the second school (a secondary

school consisting of Grades 5 to 7), the school manager was interviewed. At the third school, the deputy principal was interviewed.

3.5.1.2 *Size of sample*

A small sample of three participants was chosen. This may seem too small a sampling, but it is in accordance with the views of Patton (1990: 14), who believes that the power and logic of purposeful sampling, which is being used here, lies in a few cases being studied in-depth and yielding many insights about the topic. In addition to content analysis, the three subjects interviewed, contributed significantly to the topic under investigation as they were extremely knowledgeable regarding learners' right to education and the role of the public school to enable learners to realise this right.

3.6 FIELD NOTES

Field notes are the written accounts of what the researcher hears, sees, experiences and thinks in the process of collecting and reflecting on the data in a qualitative research (Bogden & Biklem 1998: 74). During the interview process, the writing of notes was very limited in order to allow the conversation to flow.

In this investigation, after returning from the interview, the research wrote out what had happened in the field, particularly remarks made before, during and after the formal interview session.

3.7 DATA ANALYSIS

Bogden and Biklen (1992: 153) describe data analysis as the process of systematically searching and arranging the interview transcripts, field notes and the materials that one accumulates to increase one's understanding of them and to enable one to present to others what one has discovered. From this description, analysis involves working with data,

organising it, breaking it into manageable units, synthesising it, searching for patterns, discovering what is important and deciding what to tell others. In this study, analysis of data began during document analysis through to the different interviews with subjects who were identified. Data was organised around key themes (see Chapter 4).

3.8 VALIDITY AND RELIABILITY

3.8.1 Validity

Validity refers to how well an instrument measures what it is supposed to measure. It is the trustworthiness of inferences drawn from the data (Le Compte, Millroy & Preissle 1992: 644). In qualitative research, various methods distinguish between two types of validity, that is, internal validity and external validity (Schumacher & McMillan 1993: 391; Huysamen 1994: 112-116).

Internal validity refers to the degree to which the explanations of the phenomenon match the realities of the world. It addresses questions like: do researchers actually observe what they think they are observing; do researchers actually hear the meanings that they think they hear? (Mothata 2000: 126).

Internal validity rests on the data collection and analysis techniques. The strategies which authors believe will increase internal validity were applied in this investigation. These strategies are the following:

- Lengthy data collection period: the lengthy data collection period provides opportunities for continual data analysis, comparison and corroboration to refine ideas and to ensure the match between research-based categories and participants realities (Mothata 2000: 127)..
- Participants' language: subjects were encouraged to express their views in their own words. The schools were in a predominantly Setswana-speaking area, hence some

Setswana words were used. Translations are provided.

- Field research: the semi-structured interviews were conducted in natural settings, all taking place in the participants offices, where there were no restrictions or disturbances and the situation was controlled.

On the other hand, external validity refers to the degree to which findings can be generalised to the population from which the participants were selected (Mothata 2000: 127). In this regard, Le Compte et al (1992: 644-655) say that generally, validity in qualitative research is largely determined by the extent to which the data represents the actual subjective experience of the participants.

The validity of information is primarily determined by the participants' willingness to freely communicate his/her experiences to the researcher in an atmosphere of trust and comprehension (Benny & Hughes in Lemmer 1989: 156). In this study, and in terms of the criterion of validity, all participants voluntarily shared information and their views regarding learners' right to education and the role fo the public school in assisting learners to realise this right. All participants were under no pressure to share their views about the topic. They supported and endorsed the study with the hope that it would help in clarifying issues on learners' right to education.

3.8.2 Reliability

In qualitative research, reliability refers to the consistency of the researcher's interactive style, data recording, data analysis and interpretation of participants' meaning from the data (Schumacher & McMillan 1993: 385). According to Bogden and Biklem (1982: 44), reliability in qualitative research is viewed as the fit between what is recorded as data and what has actually occurred during the setting under study, rather than literal consistency across different observations. Two researchers studying a single setting may come up with different end data and produce different results (Mothata 2000: 129). In this study, only the researcher collected data, analysed and interpreted the collected data in a uniform manner during this investigation. The researcher encouraged the natural flow of information from participants

as much as possible.

3.8.2.1 Reliability of design

The following six factors enhanced the reliability of design in this study:

1. The researcher's role

The researcher of this study frequently interacts with other school managers and educators in the area.

2. Information selection

Information selection was handled by careful description of the data and the decision process in the selection.

3. Social context

During this research, a description of people, time and place where events and interviews took place are included.

4. Data collection process

The methods employed in this case are document analysis and semi-structured interviews, as well as the way data was recorded and under what circumstances.

5. Data analysis strategy

Through retrospection, accounts are provided of how data was synthesised, analysed and interpreted.

6. Analytical premises

In order to safeguard against unreliability, the conceptual framework, which informs the study and from which the findings from prior research can be integrated or construed, was given in Chapter 1.

3.8.2.2 Reliability in data collection

Qualitative researchers commonly use a combination of possible strategies to reduce threats to reliability. The following were adopted in this study:

1. Verbatim accounts

Verbatim accounts of conversations, transcripts and direct quotes from documents were used to illustrate particular meanings.

2. Low-inference description

Concrete, precise descriptions from field notes and interview elaborations were made when data were analysed.

3.9 SUMMARY

This chapter dealt with the research design. The issues outlined include the qualitative approach, which this investigation employed, the theoretical basis of qualitative research and issues of validity and reliability.

The two data collection techniques employed in this study, namely document analysis and unstructured interviews, were described. This study is based mainly on document analysis. Interviews provided additional information about the topic under investigation. The next chapter will give the discussion of findings.

CHAPTER 4

DISCUSSION OF FINDINGS

4.1 INTRODUCTION

Chapter 3 presented a description of the methodology employed in this study. In this chapter, the findings by means of an analysis of the primary documents addressing learners' right to education is discussed. The Constitutional provisions of learners' right to education are spelt out in terms of the Constitution and the South African Schools Act (No. 84 of 1996) and these are the documents under discussion.

In addition to the presentation of the findings on document analysis, a presentation of the interviews is also given in this chapter. These interviews were held during the second week of May 2001 with identified participants. During this presentation, the researcher will discuss background data which includes the settings and the characteristics of the participants, observations and the interview process.

Later in this chapter, responses to questions regarding learners' right to education will be discussed. These questions centre around legal provisions for learners to realise their right to education, the resources needed and social issues (including pregnancy), among others.

4.2 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA (ACT NO. 108 OF 1996)

The Constitution has a high regard for human rights and is founded on the following values which advance the realisation of human rights: human dignity and the achievement of equality. The advancement of human rights and freedoms underpin, for example, learners' right to education.

4.2.1 The Constitution and international law

After the 1994 democratic elections, post-apartheid South Africa was welcomed into the international scene, which is governed by international law and treaties. International law is made up of customary and treaty laws (Mothata 2000: 151). Customary law is not written law, but grows out of customs and practices. A covenant, treaty or convention, on the other hand, is an agreement negotiated by states between themselves or via a body, for example, the United Nations, and formally adopted (Mothata 2000: 151).

South Africa, in order to become a member or a party to several treaties, had to sign these treaties. The Constitution gave the national executive the responsibility to negotiate and sign all international agreements (section 231), hence becoming a party to international law. Such ratified agreements are then binding and South Africa is obliged to comply with the stipulations of these agreements, for example, those of the 1989 Convention on the Rights of the Child. Article 28(2) of the Convention on the Rights of the Child declares that:

States are obliged to take all appropriate measures to ensure that discipline is consistent with the child's human dignity.

Again, the South African organs of state can apply international law. This provision is made by section 233 of the Constitution which states:

When interpreting any legislation, any court must prefer any reasonable interpretation of the legislation that is consistent with international law.

South Africa is bound to consider international law when interpreting the Bill of Rights (Mothata 2000: 153). In this particular study, such international laws guarantee learners the right to education and to be assisted and guided in order to realise the right to education.

4.2.2 The Constitution and learners' right to education

Section 29 of the Constitution is directly concerned with education and the right to education. (See Appendix B for those sections which are relevant to the right to education.)

The focus of this study is on learners' right to education. In this section of the study, attention is on the Constitution and this particular right.

4.2.2.1 Children

The South African Constitution defines a child as a person under the age of 18 years (section 28 (3)). This is in line with international standards (United Nations 1991: 2). Cox (1985: 16) also says that the term "child" includes any person who has not attained the age of 19 years and is registered as a learner at a school.

In South African schools, there are individuals who are above the legally recognised age for schoolgoers. The fact that they are registered at schools would have them classified as "learners" for the purposes of this study. In addition, section 29(1)(a) states that

everyone has the right —
(a) to a basic education, including adult basic education.

4.2.2.2 The right to education

Education, as a fundamental human right, is guaranteed in international and foreign documents (section 26(2) of the Universal Declaration on Human Rights and section 29 of the Convention on the Rights of the Child). Education must, then, be made available to all on equal terms (De Groof & Bray 1996: 177). The government has to respect the rights of all kinds of religions, languages, ethnic or national minority groups to exercise basic rights, including the right to education.

The South African Constitution responded to this responsibility in section 29. This implies

that for the acquisition of the right to education, there must be equity and equality among the citizens of South Africa.

4.2.2.3 *Equality and equity in education*

The definition of equality seems to invite ready acceptance of the idea that different types of education should be provided for in different types of schools (Robertson 1982: 12). Equality and human dignity are also founding values. In this regard, section 9(2) states that:

Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

The term equity denotes “fairness”. It is concerned with what is just. Weaver (1982: 3) says that equity implies an arithmetic contrast, where x “equals” y .

There must be a process of correcting the inequalities of the past, by, for example, eliminating poverty, enhancing cognitive skills among the poor, and a host of other measures. This raises a number of pertinent questions, such as: How does our system of political and economic values impinge upon efforts to redress educational inequalities? Is the failure rate being adequately addressed? If yes, then to what extent? What is being done to uplift the achievement of learners who are from economically disadvantaged backgrounds? Equity should, however, be met without discrimination (section 9(3)).

The state may not unfairly discriminate directly or indirectly against anyone. National legislation must be enacted to prevent or prohibit unfair discrimination (section 9(4)) and also to redress the results of past racially discriminatory laws and practices (section 29(2)(c)).

In order to attain equity and equality in education, there must be equal access to basic education.

4.2.2.4 *Equal access to basic education*

Basic education is that minimum level of education an individual can demand. It is internationally accepted that education be compulsory and available free of charge to all up to the ninth grade.

Schools in disadvantaged societies require special consideration. In the past, education for blacks in South Africa has been less expensive than average and, therefore, pitifully inadequate. In order to address this, section 9(2) of the Constitution states:

Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

Rectifying educational disadvantage will take a long time and will require sustained action by powerful administrative agencies. In the United States of America, the meaning of “equal opportunities” has been modified as a result of the *Brown vs Board of Education* Supreme Court decision (Von Scotter 1991: 25). The court ruled that separate-but-equal facilities were not enough. There is a need to assess the effect of schooling on the learner. Equal school resources are not guarantees for school effectiveness.

The South African Constitution addresses the inequalities of the past. This is stated in section 9(2). Equality now includes the full and equal enjoyment of all rights and freedoms. Equal educational opportunities should be defined to include, not only the inputs or resources, but also outputs or student achievement (Von Scotter 1991: 28). Equal education should be fair and just to everyone.

The issue of how language preference in education is being addressed by the Constitution is also considered.

4.2.2.5 *Language preference for receiving education*

Section 29(2) deals with language preference in education. This section reads as follows:

Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable.

South Africa, with its eleven official languages, should take the demographics of different language groups into consideration. It would not be reasonably practicable to demand the introduction of, for instance, Setswana as a medium of instruction for a single Motswana learner who lives in Kwazulu-Natal, where the majority speak Zulu.

The provision of section 29(2) also implies that schools should nurture the rich linguistic resources that the community provides by affirming learners the right to maintain their home language. More value can be placed on the school community's language and culture in elementary schools. This will enhance linguistic rights.

Placement at school must also be considered. The learner's ethnic surname or conversational language proficiency should not determine the school's decision in placing the learner. Single medium instruction and dual medium instruction would address the concerns of section 29(2), depending on the language preferred by the greater community.

English as a medium of instruction appears to be favoured by the majority of Blacks. Perhaps this is so because of the level of development of English as an academic language and the fact that it is also internationally accepted. This, however, is another issue centring around the debate of mother-tongue instruction. The next discussion is about the right to education and human dignity.

4.2.2.6 *The right to education and human dignity*

Central to a human rights culture, is the upholding of the human dignity of the individual and society in general. In this regard, section 1(a) of the Constitution states that

Human dignity, the achievement of equality and the advancement of human rights and freedoms.

Discipline should always be consistent with the learner's dignity. This is what is promoted by Article 28(2) of the Rights of the Child. Although punishment may be considered as a measure for a disciplined school climate, it should not be equated to oppression (Bruce et al 1983: 25).

Corporal punishment is no longer allowed in South African schools. Section 10 of the SASA prohibits corporal punishment. This section reads:

No person may administer corporal punishment at a school to a learner.

According to Faber and Faber (1981: 31), corporal punishment fosters bullying and sadism. It is degrading and a direct violation of section 10 of the Constitution, which states that:

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

The public school's reason for existence is to educate the learner. This education is supposed to enable the learner to acquire respect for human rights and the natural environment. Children, as learners, have equal value and at the same time, they are vulnerable and need special support without discrimination.

The right to education is not an absolute right. There are limitations, which should also be addressed.

4.2.2.7 Limitation of rights

Guidelines for the limitation of rights are provided for by section 36 of the Constitution. Subsection (1) of this section states that:

The rights in the Bill of Rights may be limited only in terms of law of general

application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

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

However, situations arise at schools where limitations of rights may be considered with due regard to rules which deal with the limitations of rights. No rule or law may single out an individual or a group, so that person or group is denied an education.

If there is a need to limit the right to education, the nature of the limitation (see section 36(1)(c)) must be taken into consideration – less restrictive (36(1)(e)) means in relation to its purpose of restriction. All other stipulations, including human dignity and equality, must be taken into account. This demands a flexible way of interpretation in an open and democratic society based on human dignity, equality and freedom.

Here follows an interpretation of the Bill of Rights.

4.2.2.8 Interpretation of the Bill of Rights

Educational legal disputes should be interpreted in the context and setting existing at the time when a case is heard. This will give room for democratic growth to take into account the fundamental human rights contained in the Constitution. The acknowledgement of the evolving human rights consciousness in a maturing democratic society shall promote the international aim of education which is concerned with the strengthening of human rights.

South Africa is bound by various international agreements concerning human rights. These include the African Charter on Human Rights. The interpretation of the Bill of Rights must be in accordance with international agreements. Section 39 states that the process of interpretation must promote the values that underlie an open and democratic society based on human dignity, equality and freedom (section 29(1)(a)).

It is important that during the interpretation process, international law must be considered (section 39(1)(b) of the Constitution) and foreign law may be considered (section 39(1)(c)). The courts no longer cling to the “literal interpretation principle”. Courts are required to adopt a more purposeful and flexible interpretative methodology, hence the requirement of international human rights law and public international law.

Education, and the public school in particular, should assist in the upliftment of human dignity. If a dispute exists and the right to education is in question, it must be established whether the human dignity of the aggrieved party is being violated. For the actualisation of these issues on the right to education in practice, the South African Schools Act was enacted.

4.3 THE SOUTH AFRICAN SCHOOLS ACT (SASA), ACT NO. 84 OF 1996

The implementation of education in all public schools in South Africa must abide by the provisions contained in the SASA.

4.3.1 Admission to public schools

Section 5(1) of the SASA enables learners to be admitted to any public school. Admission is, however, guided by an admission policy which must be consistent with applicable provincial law, the SASA and the Constitution. Section 5(1) reads as follows:

A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.

Section 5(1) is consistent with section 9 of the Constitution which is concerned with equality. The right to education is guaranteed because schools cannot discriminate against a learner and refuse admission on the grounds of, for example, race, gender, sex, pregnancy, religious belief, culture, language, birth or any other ground, as indicated under section 9 of the Constitution.

The Constitution is not against discrimination (Mothata 2000: 193), but against unfair discrimination. The onus is on the public school that refuses to admit a learner to prove that the discrimination is fair. An example of unfair discrimination which was based on race is demonstrated in *Matukane vs Laerskool Potgietersrus* (case no. 243/96). Discrimination on the grounds of race violates the provision in section 29(3) of the Constitution. De Groof and Bray (1996: 354) also point out that denying a child admission to a school on the grounds of race is not allowed and, therefore, unconstitutional.

4.3.2 Language

Language should not be used as an excuse to refuse admission of any learner to South African public schools. Section 6 of the SASA stipulates how the issue of language may be treated. Section 6 (1) indicates that:

Subject to the Constitution and the Act, the Minister may, by notice in the Government Gazette, after consultation with the Council of Education Ministers (CEM), determine norms and standards for language policy in public schools.

This is important because certain schools may use language in order to deny learners the right to enrol at their schools.

As indicated earlier, the governing body of a public school may determine the language policy of the school. Such a policy must be in line with the Constitution, SASA and any applicable law. When drawing up a policy, section 29(2) of the Constitution must be considered. This section is concerned with equity, practicability and the need to redress the results of past discriminatory laws and practices. The public school must ensure that learners receive education in the language of their choice where practically possible. In order to accommodate English speaking learners, many former Afrikaans-medium Model C schools introduced the parallel medium model (Mothata 2000: 195). This shows an attempt to avoid being perceived as discriminatory on the grounds of language.

4.3.3 Freedom of conscience and religion at public schools

No learner may be refused admission to any public school on the grounds of conscience and religion. In this regard, section 7 of SASA reads:

Subject to the Constitution and any applicable law, religious observances may be conducted at any public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary.

4.3.4 Code of conduct

For discipline to be maintained at a public school, a code of conduct is a necessity. Section 8 of SASA provides the guidelines which must be followed when such a code is drawn up and implemented. Learners are obliged to comply with the code of conduct of the school attended by such learners (section 8(4)).

4.3.5 Suspension and expulsion from public schools

Suspension and expulsion of learners obviously affects the learners' right to education. In this connection, section 9 of SASA deals with the procedure which must be followed if such a situation occurs. In order to safeguard the learners' right to education, section 9(5) states:

If a learner who is subject to compulsory attendance in terms of Section 3(1) is expelled from a public school, the Head of Department must make an alternative arrangement for his or her placement at a public school.

4.3.6 Prohibition of corporal punishment

Corporal punishment is a direct violation of human dignity, as discussed in 4.2.2.6. In order to demonstrate the seriousness of the banning of corporal punishment, section 10(2) of SASA states that:

Any person who contravenes subsection (1) (sec. 4.2.2.6) is guilty of an

offence and liable on conviction to a sentence which could be imposed for assault.

Section 10 of the SASA effectively orders educators to “spare the rod and educate the learner”.

4.4 INTERVIEWS

From a presentation of the findings of an analysis of the documents follows the presentation of findings during interviews. The documents analysed included the Constitution of South Africa and the South African Schools Act. Interviews serve as additional data to the document analysis.

4.4.1 Background data

The interviews were held during the second week of May 2001 at three different schools. These schools included primary, intermediate or middle, and high schools. The sample used is small and does not cover all the different types of schools in South Africa. The sample, for example, only dealt with black African learners in the North West Province, as already indicated in 1.7 above.

4.4.2 Setting and characteristics of participants

Three participants were interviewed. The first participant is a deputy principal at “A” primary school. During the time of the interview there were 486 learners and 17 educators at the school. “Mrs S” has 11 years teaching experience and has also served on various teachers bodies, for example, she was on the Board of Executives of the South African Democratic Teachers’ Union (SADTU) at a branch level. The school buildings consist of 13 classrooms and an administration block. The grades range from 1 to 6.

The second participant, “Mrs M” is the principal of “B” intermediate school. She has taught for the past 31 years. During the time of the interview there were 258 learners, with 11

educators teaching in a school with eight classrooms. The ninth classroom serves as an administrative office as there is no administrative complex. The grades range from 7 to 9.

The third participant, a senior educator at “C” high school, “Mr R” has taught for the past 9 years at this school. He holds a B.Iuris degree from Unisa. Mr R is actively involved in SADTU. Learners at this high school number 734, with 26 educators, including the principal and deputy principal.

These schools are situated in the Makapanstad North Circuit in the Temba District. The buildings were provided by the community.

4.4.3 Observation and discussion of the interview process

Observations form an integral part of qualitative research. They provide a rich source of additional data. The three interviews which resembled a personal conversation, were warm and friendly. The offices in which they were held were inviting and conducive to constructive discussion.

4.5 PRESENTATION AND DISCUSSION OF KEY THEMES

What follows is a presentation and discussion of the key themes discussed during the informal interviews. The researcher had a prepared interview guide. The three participants had to answer some core questions, which were written on the interview guide. The responses of the participants are arranged as follows: legal provisions for learners to realise their right to education, which includes the definition of learners, religion, discipline, transport and other social issues, for example, pregnancy.

4.5.1 Legal provisions

Part of the interview was devoted to the legal provisions in the Constitution and in the SASA. Participants were asked to comment on, among other things, the definition of “learner”, to

express their views on the banning of corporal punishment, admission of learners, the treatment of pregnant learners, learners who have children and married learners, resources and transport.

4.5.1.1 Definition of “learner”

The Constitution defines a child as a person under the age of 18 (section 28(3)). SASA states that the age of compulsory attendance at a school is from 7 years to 15 years (section 3(1)). In South African public schools there are individuals who are above the legal age. Then, a learner can safely be defined as an individual who is registered and attends a primary, middle or high school. In this regard, “Mr R” of “C” high school had this to say:

“About 10% of our learners are 20 years and above. Most of these learners are from white-owned farms.”

From this statement, it became clear that learners from formerly disadvantaged communities attended school late or had to repeat grades. Extra classes and bridging classes could be organised to assist these learners. Sending these “over age” learners to adult centres would not solve the problem.

The views of “Mrs M” at “B” intermediate school were that:

“Everyone who learns should be considered as a learner ‘*age ga e tlhokege*’ (‘age should not be the deciding factor’).”

These sentiments are in line with section 29(1) of the Constitution which states that everyone has the right to basic education, including adult basic education.

“Mrs S” at “A” primary school defined a learner as someone who needs education. She stressed that although there were no learners above 18 years at the primary school, several learners were over age for their grades at primary level, for instance, they once registered a female learner aged 15 years in Grade 4.

The public school should motivate, encourage and guide such ‘over age’ learners so that they do not become discouraged and drop out of school. Extra lessons are invaluable in this regard.

4.5.1.2 *Issues around discipline — corporal punishment*

Section 10 of the SASA effectively bans corporal punishment at schools. Asked if the banning of corporal punishment caused disciplinary problems, “Mr R” responded:

“At the beginning, ‘yes’. As educators we regarded corporal punishment as a quick fix. Give a learner two or three lashes and the problem is solved. A commitment to a democratic order taught us that there can be discipline without corporal punishment. It only becomes problematic, as in our own case, where the school policy is not clear. The school manager acts inconsistently in matters of, for example, late coming.”

“Mr R” was of the opinion that if management could get their act together, convening all the organs of governance and adopt a school policy which should include a code of conduct for learners, many discipline problems would be resolved.

It became clear that the public school, through the various structures — parents, educators and learners — could create an orderly environment. This can be done through negotiations, and once adopted, the rules should be binding. The public school would be able to enforce, for example, dress codes, late coming, and hairstyles, if necessary. In this way the public school would be inculcating in learners a sense of the importance, for instance, of punctuality, that would stand them in good stead in later life.

When the researcher visited “B” intermediate school to make an appointment for the interview, the gates were locked. Similarly on the day of the interview. The researcher inquired about the locked gates. “Mrs M” laughed and responded as follows:

“Locking learners out is not practiced here. We only lock the gates so that intruders cannot just get into the school yard.”

“Mrs M” continued to say that the Learners’ Representative Council (LRC) is always in charge of latecomers.

“They go to the gate after the bell has rung for morning devotions and close the gates. All parties agreed that latecomers would perform some activity as punishment, for example, picking up papers. Learners who repeatedly commit offences are brought to the disciplinary committee. Various forms of punishment are considered, except corporal punishment. At times, parents are also called.”

With regard to corporal punishment, “Mrs S” at “A” primary school had this to say:

“I hate corporal punishment. *Ngwana o tshwanetse go tlhalogangwa jaaka ngwana* (learners need to be understood as they are). The learners need to be taught to identify between wrong and right.”

4.5.1.3 *Religious beliefs*

Religion at the three schools is dominantly Christian. All the schools start the school day with a Christian prayer in the morning. The participants maintain that attendance at the prayer meeting is free and voluntary. Together with Christianity, there are families that still take their children to initiation centres. This initiation is, however, gradually losing popularity. The participants were of the opinion that initiation affects learners’ rights to education negatively. Lessons at school continue while some learners are at initiation centres.

The issue of initiation was brought to the attention of the researcher in his capacity as a deputy principal by a class teacher on 14 May 2001. One Grade 12 pupil reported to his class teacher that he was going to an initiation centre. The learner was made aware of the fact that he was due to write a public examination at the time that he would be away from school. A letter was written to his parents requesting them to come to school so that the situation could be discussed. The learner emphasised that though he was circumcised at hospital, he had to go to the initiation centre as it was their custom. At the time of writing, this learner is absent from school and the parents have failed to respond to the letter.

The public school should, from time to time interact with the communities and discuss issues

that interfere with learners' education. Perhaps agreements could be reached where initiation schools could be organised during the school holidays. Learners should be assisted in making decisions regarding their education. Some learners escape to these initiation centres without parental concern. The researcher believes that these centres should be registered, inspected and instructed to operate within certain acceptable timeframes.

The view of "Mrs S" was that initiation should be abolished:

"People hide behind culture and say '*Ba ile go ithuta bonna kgotsa bosadi*' (they went to learn about womanhood or manhood)."

Perhaps issues which deal with initiation could be included in some learning areas such as Life Orientation. Attendance of such programmes could be voluntary.

4.5.2 Resources

The availability of resources affect the learners' rights to education. The resources that are briefly discussed below include physical, human and financial resources.

4.5.2.1 Human resources

Human resources at schools include educators, non-educator staff and workers. With regard to the educators, it is the responsibility of the state to subsidise their remunerations in the form of salaries. At these schools, according to the participants, the number of educators matched the approved educator-learner ratio.

As far as the non-teaching staff is concerned, it is only "C" high school that has a clerk who is being paid by the school. Other than this administrative staff member, there are no workers allocated to the schools. The learners are requested to do all the manual labour of sweeping, removal of weeds, etc. These types of activities interfere with educative teaching, for example, due to an insufficient number of brooms for classrooms to be swept simultaneously.

4.5.2.2 *Physical resources*

The school buildings were built using money collected by the community. The buildings at the “C” high school are in a state of disrepair. Windows are broken and doors do not have keys. Fortunately, the community is gradually becoming involved in school matters. With the active involvement of some community members, the Department of Public Works constructed two classrooms and completed a third classroom that had previously been left unfinished. Programs are underway that will make the community aware of the fact that the school actually belongs to them. Ownership will encourage them to keep the school buildings in a good condition.

The primary school and the intermediate school are rural schools, lacking the basic infrastructure common to urban and former Model C schools. The state is obliged to assist these rural schools in improving their physical resources.

4.5.2.3 *Financial resources*

The SASA prohibits the exclusion of any learner from attending a public school on the grounds that his or her parents are unable to pay or have not paid the school fees determined by the governing body under section 39 (section 5(3)). The payment of school fees is a general problem in the rural areas. “Mrs S” at “A” primary school said the following in this regard:

“We always speak about the need of paying school fees at social gatherings. The non-payment of fees deprives learners from attending to important events like career exhibitions.”

The fees were very low at the three schools. At “A” primary, they were charged R40-00, at “M” intermediate R65-00, and at “C” high school, R110-00 per annum. In this regard “Mrs M” had this to say:

“It would be a waste of time to take legal action in order to recover R65-00. We are forced to withhold learners’ reports and demand that parents collect them personally after paying the money.”

The public school needs to motivate and educate the parent community about the importance of school fees. The majority of learners live with their grandparents. In the absence of the learners' biological parents, the grandparents (according to "Mr R"):

“... pay the school fees in two or three instalments. This would be much better.”

4.5.3 Transport

The schools do not have a form of organised transport for learners. Learners use the public transport, which is very unreliable. There are learners, particularly at “C” high school, who travel from Temba — some 50km away. The buses they use are very old and break down from time to time. The learners who make use of public transport almost always miss the first teaching period. This, obviously, impacts negatively on their education.

The school community needs to pay urgent attention to this problem. Some learners leave schools in their villages and choose to commute to other schools. A form of organised transport, run by parents and the school could help in this regard. Parents must be made aware of the fact that the state, though willing, cannot subsidise learners' transport at this stage.

4.5.4 Handling of learners who are pregnant, have children and those who are married

Over the past few years, the rate of learners becoming pregnant at “C” high school has fallen dramatically. The few cases that still occur, are usually girls whose parents work and live away from home, thus, the girls are either living alone or with their elderly grandparents.

The school plays a major role by offering sex education during guidance and counselling lessons. The staff at the local clinic also responds positively to invitations where social issues, including pregnancy and HIV/AIDS, are discussed.

At “B” intermediate school there is a tradition of parents keeping pregnant learners at home. The school does not interfere. Here, considerations of morality affect the learners' rights to

education. In this regard “Mrs M” had this to say:

“A 14 year-old female learner in Grade 4 became pregnant in 1998. Her parents removed her from school. The following year a similar incident occurred. A 15 year-old Grade 5 learner became sick at school. Her mother was called and we accompanied them to the village clinic. The sister at the clinic diagnosed her as four months pregnant. Her parents withdrew her from school too.”

At the three schools, married learners and those who have children are treated like any other learner. At one stage, the wife of the pastor at the local Evangelical Lutheran Church attended the “C” high school. All learners are given the choice of participating in athletics and other extra-curricular activities. Nothing is either forced on them or denied them on the grounds of their marital/parental status.

4.5.5 The promotion of human rights education in South African public schools

A human rights culture, according to “Mr R”, can only be promoted if all stakeholders understand their rights and their responsibilities. He said:

“The state should make it compulsory for all institutions, public schools included, to have a programme which aims at educating the community about human rights. This can be done once a month.”

The views of the other participants were that if the school preaches about responsibilities, a politician could, for example, talk about free education. What a contrast. However, the common opinion is that those who know and understand human rights, should always be invited to talk about it. The only thing which remains is for the public school, particularly its top management, to make human rights education live by implementing democratic principles.

4.6 SUMMARY

This chapter presented the findings on document analysis addressing learners’ right to education. The Constitution of South Africa as the supreme law of the country was discussed.

The relationship between the Constitution and international law was touched on. As a member of the international community, South Africa is bound by some international agreements.

An in-depth discussion was given on the Constitution and learners' right to education, followed by an intensive analysis of the SASA. In order to strengthen and expand on the data gathered from document analysis, interviews were conducted.

As indicated in Chapter 3, the interviews took place in an informal manner and resembled a personal conversation.

CHAPTER 5

SUMMARY OF KEY ISSUES, RECOMMENDATIONS AND CONCLUSIONS

5.1 INTRODUCTION

The current debate on human rights in South Africa centres around issues which include racism and the ability of the South African Human Rights Commission to address racism in schools. According to a report in the City Press (1 April 2001:8), it is alleged that the SAHRC does not have the power to deal with people who are allegedly racist.

Whether or not issues like racism could be tackled head on, the debate will take considerable time as South Africa is made up of nationals who belong to different cultures and religions and who speak different languages (Mothata 2000:239). Each group claims a constitutional right that would, for example, support the development of its language, which is one of the rights entrenched in the South African Constitution.

This study was designed to investigate learners' rights to education and the role of the public school in assisting learners to realise this right, specifically after the 1994 political dispensation.

Despite the provisions in South Africa's Constitution, which has a high regard for human rights, the South African Schools Act and other human rights documents available, anti-human rights activists still abound as demonstrated by the Potgietersrus case (Case No 2436/96).

The provision of learners' right to education and the role of the public school in assisting learners to realise this right is based on international human rights documents which include the 1948 United Nations Declaration on Human Rights and the 1989 Convention on the Rights of the Child. These international provisions are particularised by examining the South African

Constitution and the South African Schools Act.

5.2 OVERVIEW OF THE DISSERTATION

The debate on human rights and learners' rights in particular are mainly political in South Africa, particularly since 1994. This study focussed on learners' right to education and the role of the public school in assisting learners to realise this right.

Chapter 1 described the research problem, aims and methodology of the study. A brief explanation was also given on the human rights approach within which this research was conducted.

Chapter 2 reviewed international human rights instruments with regard to learners' right to education. The international guidelines with regard to the learners' rights to education served as an important background for contextualising the right to education in South Africa.

Chapter 3 presented the description of the methodology employed in this study. A theoretical basis of qualitative methodology and the rationale for the choice of method and design were discussed. The two data collection techniques, namely document analysis and unstructured interviews were discussed.

The data gathered were analysed in Chapter 4 against the South African Constitution and the South African Schools Act on matters that impacted on learners' right to education in South African public schools. This analysis assisted in determining the role of the public school in assisting learners to realise their right to education. The role of the public school is discussed below, as a summary of key issues.

5.3 SUMMARY OF KEY ISSUES

This section summarises key issues regarding learners' right to education and the role of the public school in assisting learners to realise this right.

5.3.1 Classification and range of grades according to age at public schools

Learners of different age groups are classified in one classroom which is meant for a particular grade. A 15 year-old learner, for example, attends the Grade 4 class. According to the norm, Grade 4 is meant for learners who are approximately 10 years of age.

The age difference affects the learners themselves, the pace of teaching and the learning process in general. The actual grading of learners at public schools should receive attention. Learners who are above the age level of a particular grade need to be placed in special classes. This would enable the public school to provide effective educative teaching to all its learners.

5.3.2 The situation of schools, the provision and maintenance of buildings

The schools visited are more like prisons than centres of learning, because they are situated outside the residential areas they serve.

The study also found that some poorly constructed school buildings are underutilised. There is evidence of a lack of ownership of the school buildings. The communities do not regard the schools as their own. They are regarded as "border factories" and not as part of the communities. This impacts negatively on the learners' realisation of their right to education.

Some learners commute from villages to towns and cities in search of the so-called "better" schools, which are well-built and education friendly. The mode of transport is often unreliable. Buses are often either late or break down, resulting in a loss of learning time.

The public school should engage the different stakeholders who have an interest in education when addressing issues such as transporting learners to and from school.

5.3.3 Communities in which the schools are situated

Parental support and parental involvement is lacking at these schools. This may be attributed to the fact that many parents work far away from the villages in which their families live. Other families in the communities are extended families living in small dwellings. Learners do not have the space and privacy to concentrate on their school work at home. Some families live in “informal” houses and are often extremely poor. Often the grandparents are illiterate and simply cannot assist the learners with homework problems or help them by listening to their reading or by checking spelling.

5.3.4 Implications of the South African Bill of Rights on the provision of education at public schools

The present legal system regards education as a basic human right (section 29(1) of the Constitution). Corporal punishment may affect the human dignity of learners during the education process. Corporal punishment is degrading and has been abolished by section 10 of the South African Schools Act (discussed in 4.4.8). However, this regulation is often not observed. There have been several reported incidents, including one in which a learner has been left partially blinded (City Press: 8 April 2001). This, obviously, affects the realisation of learners’ right to education, as promulgated by the Bill of Rights.

It is important to consider practical ways and means which the public school can implement in order to assist learners to realise their right to education. School managers and educators should be adequately workshopped in order for them to implement a human rights approach towards educating learners in an open and transparent democratic system. The recommendations below may assist public schools towards the execution of this very important task.

5.4 RECOMMENDATIONS

It becomes clear, after discussing the key issues (above), that the public school has an obligation to assist in the realisation of learners' right to education.

Firstly, the merging of some schools (as provided for in the South African Schools Act, section 12A(1)), should be considered in some areas. This would result in a proper utilisation of human resources, maintenance of plant and property and enhance cost-effectiveness. The merging of certain schools should, however, be approached with caution as it would affect many people, including the educators, whose posts may be made redundant.

Secondly, this researcher proposes the maintenance of a strong partnership among all the stakeholders of the school community. This partnership would encourage and strengthen, for example, parental involvement. An established parental involvement programme would greatly assist the learners in realising their right to education. Some important community events could be held at the school during weekends or after hours. Parents would be able to meet the educators on a more informal basis. This could also be seen as an opportunity to share ideas about improving the provision of education. This partnership would have to be initiated by the school.

Thirdly, a life-long teaching and learning approach is essential. The school manager, together with other members of the school management team, should workshop parents on issues such as HIV-AIDS awareness as well as aspects of school governance, for example. All parties would then be able to keep abreast of current approaches in education. The school manager who acts as an educational catalyst would influence and motivate the teaching staff and other parties, including the learners themselves, to make the realisation of the right to education possible. The manager may, for example, address parents and other interested parties on educational matters at social gatherings.

The involvement of the learners in the responsible realisation of their right to education would help in the reduction of incidents such as the one that occurred at Mpunalinga High School. Certain learners brought liquor to school and in their drunken state, disrupted lessons (City

Press 1 April 2001:5).

It is important to meet parents of learners on a regular basis. At these meetings, the learners' progress can be communicated to their parents. Other educational matters may also be discussed and clarified.

Fourthly, the education authorities play a vital role in organising workshops for school managers, educators and other members of the school governing body. These individuals and groups, for example, school managers and subject heads who receive information at these important workshops should be encouraged to disseminate the acquired information to others who were not able to attend a particular workshop. The workshop attendees should not keep the information to themselves, as so often happens. The school manager could ensure that, where an educator attended a workshop on, for instance, counselling skills, the information is passed onto other educators, who did not attend the specific workshop.

Lastly, the establishment of a support service could coordinate the realisation of learners' right to education in public schools.

All the good intentions provided for by the present Constitution and other legal documents will only benefit the learners on their way to realising their right to education, if the stipulations found in the Constitution are actually put into practise.

5.5 CONCLUDING REMARKS

The research problem was stated as follows: "How can a public school assist learners to realise their right to education?"

In addressing this question, it became clear that the public school, as an institution of learning, consists of various components which include the school manager, educators, non-educator staff, parents of learners, learners and other interested individuals and groups.

Learners hope to become responsible adults in the future. This hope can only become a reality through education. During the educative process, the public school assists the learner to convert the hope of becoming a responsible adult into reality. The public school is actually helping learners to realise education. During the educative process, there are other competing rights which also have an influence on the realisation of learners' right to education.

5.6 FURTHER RESEARCH

During this study on learners' right to education and the role of the public school in assisting learners to realise this right, a number of other important aspects which relate to learners' right to education were observed. This researcher believes that several of these need further investigation. They are:

- educators' right to strike versus learners' right to education;
- the provision of the right of language preference for receiving education in South African public schools;
- the provision of adult basic education to the formerly disadvantaged majority in South Africa;
- equality and equity in education with particular emphasis on South African public school.

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APPENDIX A

INTERVIEW GUIDE

1. Definition of learners
2. Provision and maintenance of buildings
3. Resources – Finances: School fees
4. Transport
5. Social Issues: pregnancy
learners who have children
married learners

APPENDIX B

DECLARATION OF CONFIDENTIALITY

I, Uvusimuzi Johannes Mavimbela, hereby declare that the information given to me will be treated confidentially and will only be used for the purpose of this particular research.

Thank you

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(signed and dated)

APPENDIX C

EXTRACTS FROM THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

Founding provisions

1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:
 - (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
 - (b) Non-racialism and non-sexism.
 - (c) Supremacy of the constitution and the rule of law.

2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

6.
 - (1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.
 - (2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.
 - (3)
 - (a) The national government and provincial governments may use any particular language for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.
 - (b) Municipalities must take into account the language usage and preferences of their residents.
 - (4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without

detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

- (5) A Pan South African Language Board established by national legislation must –
 - (a) promote and create conditions for, the development and use of –
 - (i) all official languages;
 - (ii) the Khoi, Nama and San languages; and
 - (iii) sign language; and
 - (b) promote and ensure respect for –
 - (i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and
 - (ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

Bill of Rights

7.
 - (1) This Bill of rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
 - (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
 - (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.
8.
 - (2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
9.
 - (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
 - (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair

discrimination may be taken.

- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
 - (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
 - (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

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

12. (1) Everyone has the right to freedom and security of the person, which includes the right –
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.

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

15. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
 - (2) Religious observances may be conducted at state or state-aided institutions, provided that –

- (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising –
- (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.
16. (1) Everyone has the right to freedom of expression, which includes –
- (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to –
- (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.
17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.
18. Everyone has the right to freedom of association.
19. (1) Every citizen is free to make political choices, which includes the right –
- (a) to form a political party;
 - (b) to participate in the activities of, or recruit members for, a political party; and
 - (c) to campaign for a political party or cause.

21. (1) Everyone has the right to freedom of movement.

27. (1) Everyone has the right to have access to –
 - (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and
 - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.(2) The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of each of these rights.
(3) No one may be refused emergency medical treatment.

28. (1) Every child has the right –
 - (a) to a name and a nationality from birth;
 - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to basic nutrition, shelter, basic health care services and social services;
 - (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that –
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights the child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
 - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
 - (2) A child's best interest are of paramount importance in every matter concerning the child.
 - (3) In this section "child" means a person under the age of 18 years.
29. (1) Everyone has the right –
- (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –
- (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that –
- (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.
30. Everyone has the right to use the language and participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights

31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –
- (a) to enjoy their culture, practise their religion and use their language; and
 - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with the Bill of Rights.
33. (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights, and must –
- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
 - (c) promote an efficient administration.
36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –
- (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.