

**EDUCATOR PERCEPTION OF LEARNERS' RIGHT TO EDUCATION IN
SECONDARY SCHOOLS IN MPUMALANGA**

By

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DECLARATION

I, Kgale Bethuel Mampane (Student Number: 31982042), declare that: “Educator Perception of Learners’ Right to Education in Secondary Schools in Mpumalanga” is my own work and has never been submitted for any degree or diploma at any higher institution before. All sources used have been quoted and acknowledged through references.

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Signature

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Date

DEDICATION

This dissertation is dedicated to the following men and women in recognition of the educational inspiration they instilled in me. Despite all the financial difficulties and hardships throughout my life up until now, their perseverance carried me through my studies:

- My late mother, Thoko Mampane, and my late maternal grandmother, Ivy Mokoena (Themba), who strongly believed in my success.
- Bongani Maria Mampane, my wife, for her outstanding support, care, love and encouragement and my lovely boys: Boikanyo and Tumisho, who always see me as their role model.
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- My entire family and friends who believed in me

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ABSTRACT

The objective of this study was to explore educators' understanding of learners' right to education. A sample of principals, HODs and educators from five different schools in one Education District in Mpumalanga Province, South Africa participated in this research study. The study was motivated by the increasing number of emerging cases of learners' right to education violation within schools which includes learner denial of access to basic education, lack of Learner Teacher Support Material and lack of proper school infrastructure within the South African schools. The study adopted a qualitative research approach in the collection and analysis of the data acquired through interviews and Document Analysis. The Rights-Based Approach to education as a theoretical framework was used a lens to view educators' understanding of learners' right to education. The study provided insight into how educators' view learners' right to education, how are learners' right to education infringed upon, and provided measures to curb the escalating violation of learners' right to education, within schools. The promotion and protection of learners' right to education became a focal point in viewing the understanding of the implementation of learners' right to education within the education system. The perceptual understanding of the concepts related to human rights in education is interpreted by most educators from the constitutional point of departure. However, knowledge of the constitution and the implementation processes that relate to learners' right to education are contradictory in nature. Although some educators lack knowledge with regards to learners' rights and contravene policies and procedures, a vast majority of educators have knowledge and experience but continue to violate learners' right to education. Some experiences captured by this research that directly form primary violation of learners' right to education include: learners sometimes not attended by educators due to educator absenteeism, some learners chased out of the class as a form of discipline, the atrocious administration of corporal punishment, and the dilapidated buildings in which learners attend their classes. The primary value of this research, therefore, lies in the inclination that educators must acquire knowledge and skills in the promotion and protection of learners' right to education based on the confines of the constitution. The culture of humanity and accountability, as promoted by the Rights-Based Approach in trying to transform the education system, needs to be adhered to. It is essential that suitable policy direction that seeks to augment the understanding of learners' right to education be shaped and aligned to proper interpretation to avoid misconceptions and misunderstanding.

KEY WORDS: Learners' Rights, Rights-Based Approach, Educators, Violation, Implementation, Understanding, Transformation, Perceptions, Promotion and Protection

ABSTRAK

Die doel van hierdie studie was om opvoeders se begrip van leerders se regte op onderwys te ondersoek. 'n Monster van skoolhoofde en HOD's en opvoeders van vyf verskillende skole in een Onderwys distrik in die provinsie Mpumalanga, Suid-Afrika het aan hierdie navorsingstudie deelgeneem. Die studie was gemotiveer deur die toenemende getal van gevalle wat na vore kom as gevolg van die oortreding van leerders se regte op onderwys in skole, dit sluit in die ontkenning van toegang tot basiese onderwys, tekort aan leerder opvoeder ondersteuning materiaal en tekort aan behoorlike skool infrastruktuur binne die Suid-Afrikaanse skole. Die studie het 'n kwalitatiewe navorsing benadering aangeneem. Die Regte-gebaseerd benadering vir opvoeders as teoreties raamwerk was gebruik as 'n lens om opvoeders se verstaan van leerders se reg op onderwys. Die studie voorsien insig in hoe opvoeders leerders se reg op onderwys sien, hoe leerders se regte geskend word, en die voorsiening van maatreëls om die stygende oortreding van leerders se regte op onderwys in skole te bedwing. Die bevordering en beskerming van leerders se regte op onderwys het 'n vokale punt in die siening en verstaan van die implementasie van leerders se regte op onderwys in die onderwys sisteem. Die perseptuele begrip van die konsepte verwant met menslike regte in onderwys word geïnterpreteer deur meeste opvoeders van 'n konstitusionele vertrekpunt. Hoewel, kennis van die konstitusie en die implementasie proses met verwant die leerders se regte op onderwys is van 'n teenstrydige aard. Alhoewel party opvoeders 'n tekort het aan kennis verwant met leerders se regte en oortree beleide en prosedure, 'n oorgrote meerderheid opvoeders het kennis en ondervinding maar hou aan om leerders se regte op onderwys te oortree. Enkele ervarings wat hierdie navorsing opgedoen het en wat die primêre skending van die leerder se regte op onderwys vorm, sluit in: leerders wat nie na toe gesien word nie weens opvoeder afwesigheid, sommige leerders word uit die klaskamer gejaag as 'n vorm van dissipline, die gruwelike administrasie van lyfstraf ,en die vervalte geboue waar leerders hulle klasse bywoon. Die primêre waarde van hierdie navorsing lê dus in die neiging dat opvoeders kennis en vaardighede moet verwerf in die bevordering en beskerming van leerders se reg op onderwys op grond van die grense van die konstitusie. Die kultuur van menslikheid en aanspreeklikheid, soos bevorder deur die regte-gebaseerde benadering in die poging om die onderwysstelsel te transformeer, moet nagekom word. Dit is noodsaaklik dat die gepaste beleidsrigting wat die begrip van die leerder se reg op opvoeding wil vergroot, gevorm en aangepas word by die regte interpretasie om wanopvattinge en misverstande te vermy.

SLEUTELWOORDE: Leerders se regte, regte-gebaseerde benadering, opvoeders, skending, implementering, begrip, transformasie, persepsies, bevordering en beskerming

ACRONYMS AND ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
CABE	Central Advisory Board of Education
CADE	Convention against Discrimination in Education
CAPS	Curriculum and Assessment Statement
CC	Constitutional Court
CDE	Centre for Development Enterprise
COVID-19	Corona Virus
CRC	Convention on the Rights of the Child
GET	General Education and Training
FET	Further Education and Training
GHS	General Household Survey
HOD	Head of Department
HRW	Human Rights Watch
ICESCR	International Covenant on Economic, Social and Cultural Rights
LRC	Learner Representative Council
LTSM	Learning and Teaching Support Material
NCS	National Curriculum Statement
NEEDU	National Education Evaluation and Development Unit
OBE	Outcome Based Education
RNCS	Revised National Curriculum Statement
RTE	Right to Education Act
SACE	South African Council of Educators
SAHRC	South African Human Rights Commission
SASA	South African School Act
SMT	School Management Team
TLO	Teacher Liaison Officer
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNESCO	United Nations Education, Science and Cultural Organisation
UNICEF	United Nations International Children's Emergency
URT	United Republic of Tanzania

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CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1. Introduction

Legislative provisioning in the South African Constitution, Chapter 2, section 26, safeguards and promotes learners' right to education. The *South African School Act* (RSA, 1996), that agrees in terms of the South Africa constitution (RSA, 1996), creates a platform for developing a culture of respect through human dignity and learners' right to education. Thus, according to Serame, Oosthuiszen, Wolhunter and Zulu (2013), learners' right to education has become part of the vocabulary in the education sector and recently became a concern in the education fraternity. De Waal and Serfontein (2014) indicate that learners' right to education at school implies equal respect for the right of learners' time to learn, showing a concern for the educational needs of learners and guarding against any form of transgression that may directly violate learners' right to education.

South African School Principals and SMT members face one of the most important and challenging predicaments when trying to create a learning environment where learners' right to education is adequately promoted, safeguarded and clearly understood by educators. Joubert, De Waal and Rossouw (2004) argue that legislation with regards to basic education layout guidelines on how to advance and protect learners' right to education, which needs educators to comprehend how to execute its contents within the learning institution. Some research inquiries have been carried out in the field of learners' right to education that gives a general notion of the concepts within human rights debate that directly and obliquely pertain to the right to education (Lindner, Hartling & Spalthoff 2011). However, a few studies have been able to precisely address the issue of rights within the education arena when considering human dignity within the school environment (Hammet & Staeheli 2011).

1.2. Background to Study

The knowledge and expertise on handling learners at school are important because schools must comply with the constitutional founding principles of human integrity, freedom, and impartiality regardless of learners' colour, creed, race, gender, and disability. The protection and promotion of learners' right to education must consider the natural diversity of the South African community, and the dissimilarities between rural township educational institutions and urban desegregated schools in terms of respecting their human dignity. Although this dignity

relates to differing environmental circumstances, it ensures an effective teaching and learning process. The current situation in the teaching fraternity raises a concern about educators' apprehension of learners' right to education within the specific educational institution circumstances. Serame, Oosthuiszen, Wolhunter and Zulu (2013) emphasise that South African schools are afflicted with a culture of lack of respect for human dignity, thus learners' right to education is not respected or practised by educators in South African schools.

Many educators hold the view that recognition of learners right to human dignity interferes with discipline (Mudzongo, 2003), while others pledge solidarity with the transgressor. While the application of learners' right to education established in the human rights culture creates problems and challenges for schools and society in general, it is imperative for schools and their educators to understand and realise learners' right to education is accompanied by respecting learners' human dignity (Serame et al. 2013).

1.2.1. The Rights-Based Approach to Human Dignity

The Rights-Based Approach to human dignity represents the theoretical foundation underlying the research study on educator perception of the rights of learners' in education in secondary schools. Applying human Rights-Based Approach to the study on educator perception of learners' right to education enshrines assessing, planning, monitoring, developing and empowering individuals with knowledge and skills to address situations respectively through claiming individual and collective rights (UNESCO, UNICEF 2007).

The investigative inquiry of a legal topic in South Africa occurs in line with the framework of the Constitution as the Principal Legislation of South Africa which directs all the laws of the country. *The Constitution of the Republic of South Africa* is dictatorial in expounding the human virtues that are promulgated by the Bill of Rights which directly dictates terms of learners' right to education (Bajaj, 2011). Therefore, this research on the rights of learners to education requires elucidation proceeding from the Bill of Rights as this chapter pertains to learners' right to education, taking reference from the Constitution of South Africa. In conformity with international principles on education, the Rights-Based Approach to human dignity is utilized as a theoretical framework to comprehend the educators' perceptions of learners' right to education (Becker 2013; Dembour 2010). The rights-based theory is a continual process of Rights-based learner education towards transforming individual actions

and its components consist of human rights literacy (Bajaj, 2011; Becker, De Wet & Parker 2014).

Human virtues and human dignity are embraced in international treaties such as the Convention on the Rights of the child of 1989 representing various publications in the United Nations Educational Scientific through Cultural Organization (Becker, De Wet & Van Vollenhoven 2015). These bodies emphasise the aims of education as to developing a person, strengthening admiration for human rights, enabling individuals to engage successfully in a liberated society, encouraging and preserving learners' right to education. The Rights-Based Approach to human dignity within education forms a theoretical lens in this research on learners' right to education resting on the Bill of Rights as embedded in the Constitution of South African.

The Rights-Based Approach to human dignity aims at contributing to constructive positive social alteration and social unity in and through the education system. The Rights-Based Approach to human dignity in education in a transformative democracy depends on the solicitation of the Bill of Rights, particularly as the Bill of Rights relates to learners' right to education and internalisation of human rights values as practised at schools (UNESCO, UNICEF 2007). Educators play a vital part to accelerate the Rights-Based Approach education towards cathartic steps, promised by human rights and democracy. It is obligatory upon educators to facilitate the evolution of perceptions of esteem and acknowledgement towards others, to stimulate learners to endorse human rights and therefore the human dignity of others and to promote and protect human dignity in schools. Being accountable for the dignity, equality and emancipation of learners at school and in the classroom needs an educator with a learner to always be one caring or the one cared for (Becker 2013). The nobility and equivalent worth of others are realised in the inception of others as equal subjects in a caring relationship within a specific context such as teaching and learning context (Nodding 2007).

The Rights-Based Approach to human dignity is relevant for this study because it recognises that human beings are to be valued to an end in themselves, namely, as human beings possessing dignity as an absolute inner worth in which respect is demanded for themselves and respect shown for all other human beings and things in the world. Humanity, therefore, is the object of respect which humans demand from themselves and other human beings (Schroeder 2012). As human beings, learners must be treated as individuals because they are endowed with freedom, equality and human dignity (Giesinger 2012). In this regard, and as argued by

Giesinger (2012), learners must be educated as ends in themselves, and not as mere means for the ends of others. This implies that the dignity of learners should always be respected as corresponding with the Rights-Based Approach to education emphasising an understanding of human dignity, namely, to always venerate a person and to view a person as a possessor of dignity making the person experiencing a sense of worthiness (Sensen 2009). Dignity as an absolute inner value that all human beings possess predisposes the reason for valuing and respecting others, which implies that to deny a person's dignity is equal to degrading that person (Giesinger 2012; Sensen 2009). Human beings, who are initially ennobled above animals, lose this elevated status when they act against their duty and thereby degenerate below animals. By neglecting their duties and responsibilities thereby losing their dignity, such individuals forfeit the respect of others and become objects of contempt (Murray 2010). Based on a vicious circle effect, this contempt results in both educators and learners not respecting one another and self-respect is crucial for symbiotic well-being.

1.2.2. Human Rights and the Right to Education

The rights of human beings are intrinsic to all human beings, irrespective of nationality, sex, national or ethnic origin, colour, religion, language, or any other status. The rights of human beings are the fundamentals for liberation, fairness, and tranquillity throughout the world. Human rights take place properly and invariably recognized by all nations based on the Universal Declaration on Human Rights (UDHR 1948). Since the assumption and adoption of the UDHR, a number of agreements have been embraced by Governments to assert and ensure human rights lawfully and legally (Becker, De Wet & Van Vollenhoven 2015). According to International Human Rights Law, it is the obligation of States to recognise, defend, and attain human rights for everyone outlined by the obligation to practise human rights as per dictates of the global human rights law, irrespective of individual political affiliation, economic status, race and cultural background (McConnichie, Skelton & McConnichie 2017).

Linked to human rights, worldwide law for human rights assures learners the right to education. The Universal Declaration on Human Rights, espoused in 1948, demonstrates in Article 26 that every individual possesses the right to education (UNESCO/UNICEF 2007). Since 1948, the right to education has been broadly acknowledged and advanced by a number of worldwide standardized value normative instruments yardstick emphasised by the United Nations, as well as the International Covenant on Economic, Social and Cultural Rights (CESCR 1966).

Singh (2015) confirms that the government is essentially responsible for respecting, executing and preserving the right to basic education. Consequently, the government's failure to ensure that institutions of learning adhere to education requirements constitutes a violation of the right to education, because only the government can coordinate institutions into a logical compliant system (UNESCO/UNICEF 2007). The government is, therefore, primarily responsible for the educational improvement of learners in terms of international legal commitment and must not divert itself from its basic public tasks (Singh 2015). The international court case of 1954 at the Supreme Court of the United States of America proved certainly to the effect that the government is responsible for the education of its people. As was confirmed with the historic judgement on *Brown vs. Board of Education*, the judge ruled that implementing public education is classified at a very pinnacle of the function of the State and education is regarded as the most crucial responsibility of the national government and regional or local government (*Brown vs. Board of Education 1954*).

The right to education has also been reiterated to include women, girls, and people with disabilities, which has been merged into mixed agreements and embodied as an entitlement throughout all countries Constitutions. It has internationally been established, for example, that a girl has the right to remain at school when she is pregnant and to be reintegrated into school after she has given birth. Breastfeeding rooms and counselling must be administered to pregnant girls within the school premises (Stamoulas 2006). Stigma and bullying by educators and other learners must be addressed to create a safe learning environment for pregnant learners. International studies on learners' right to education reveal that school choice violates learners' right to education which is promoted by poor funding of schools and centralised allocation of school admission that dictates the learners' placement within an area (Stamoulas 2006).

1.2.3. Violation of the Right to Education

Learners' violation of their respective educational right occurs through lineal activity such as failure by the government to act appropriately (Albisa, Baba, Iwata, Doza, Jaus & Sabonis 2013). Although a number of significant State governments approved global agreements conceding the right towards proper education, millions of learners around the world are still denied education because of insufficient amenities, resources and party political interference in the education system (McConnichie et al. 2017). This results in marginalized groups persistently remaining underprivileged with regard to the basic right to adequate education

system (Zwane 2017). Abusing learners' right to education is due to educators and principals' ignorance of fundamental human rights law (William, Obun, Akpan & Ayang 2012). The fundamental human rights law includes misunderstanding and misinterpretation of the execution of the alternative measures to corporal punishment, as it was banished by the *South African Schools Act* (SASA). Effects of violations with regards to human rights in education have a multidimensional impact on academic performance. Poor knowledge and lack of awareness of learners' right to education grossly undermine learners' ability to perform (Sofia, 2017).

Generally, education violation of learners' right to education is globally accepted to include the following factors: lack of funding for education, inadequate of classrooms, shortage of learning material, exclusion of learners with disabilities, an intolerance to the wrong gender, living in an unstable country with internal socio-political conflicts, travelling long distances from home to school, hunger, poor nutrition and the expensiveness of education (Coomans 2007; Kumar & Misra 2016; Singh 2010; Sofi 2017). The Human Rights Watch (2016) reveals that internationally about 124 million children are not at school, about 31 million girl children are always absent at secondary schools, and about 29 million school-going learners are not at school because of political rivalry and displacement (Becker et al. 2015). These shocking statistics motivate the researcher to explore learners' right to education within the school context through a qualitative study.

The High Court of the Eastern Cape Local Division, in South Africa, argued in 2014 that the State is compelled to supply elementary education, through its resources, as assured by the South African constitution. The realization of the right to education demands educational asserts and resources like schools, classrooms, educators and learner support materials, and providing pertinent facilities for learners (Ersoy 2012; Murray 2010; Reid 2007). It is, therefore, alarming that the Limpopo government is consistently violating learners' right to education by not supplying textbooks on time (John & Macfarland 2014). It is also alarming that for the 2018 academic year, 37 children in the Eastern Cape were undocumented and therefore denied the opportunity to attend school. For most of these learners, obtaining Birth Certificates is an impossible exercise due to their differing nationalities (Maistry 2019). The direct impact of denying learners the right to education due to a lack of documents creates a cycle of poverty amongst the South African people (Coomans 2007; Kumar & Misra 2016; Singh 2010; Sofi 2017).

Educator absenteeism has an unswerving impact on learner academic performance (Mampane 2013; Mudzongo, 2003). South African literature on educator absenteeism reveals that 40 schools out of a total of 90 schools, educator attendance is often or always a problem (Mthombeni 2010; Mampane 2013; Spaul 2012). Such excessive levels of educator absenteeism are consequential because some individual learners' can work on their own when an educator is absent. The worse impact with regards to educator absence at school is that lessons are not delivered according to work schedule and learners' precious time is compromised (Mampane 2013; Mkhwanazi 1997; Mthombeni 2010). Apart from the problem of absenteeism and late coming, in 2014 learning institution, in South Africa lost about 12,6 days of actual teaching time due to educators attending sports meetings, union meetings, memorial services, including educator in-service training (John & Macfarlane 2014). When learners' right to education is not respected and promoted by educators within the school environment, learners' human dignity is jeopardised with learners' right to education remaining a fallacy. There is, therefore, a need to explore how educators perceive learners' right to education, to deal with infringements and violation of learners' right to education. Wolhuter and Van Staden (2008) acknowledge a need for educators and learners to retrospectively vindicate respect for learners' right to education because a lack of respect hampers proper teaching and learning. The utilization of reactive and punitive strategies as forms of punishment, for example, raised international worry over South Africa's statistics of human rights exploits, which clearly shows disrespect for learners' right to education (Meier, Van Wyk & Lemmer 2007).

1.3. Motivation for Study

Many studies on learners' right to education concentrate on a general understanding of what learners' right to education implies (Coomans 2007; Kumar & Misra 2016; Sofi 2017; Singh 2010). Limited studies focus on educators' understanding of learners' right to education with a significant lack of studies done in Mpumalanga on how educators understand learners' right to education. Providing insight into educator perception regarding the concept of learners' right to education should engender changes in classroom practice to promote learners' human dignity pertaining to receiving quality education (Dayton & Dupre 2009). Learning and teaching should be free from any human rights infringement, in order to establish a conducive teaching atmosphere that is non-harmful between learners and educators. The researcher has been in the teaching fraternity for 26 years, since 1995, without any break of service. The curriculum changes, educational landscape changes and general changes experienced within

the teaching fraternity since the introduction of learners' right to education amalgamated with human right to education propelled the researcher to engage in this study on educators' understanding of the teaching environment in which learners' right to education features prominently.

Over the years and most recently, the researcher observed that teachers do not understand what learners' rights about education are, and they infringe on learners' right to education in different ways daily. For instance, learners are constantly denied opportunities to learn, such as teachers refusing learners to attend classes as a form of punishment, learners sent home during contact classes to call parents, and pregnant learners denied classroom attendance. Enough evidence is recently surfacing to the effect that teachers and School Managers fail to protect and promote a learner's contact teaching time in schools (Mampane 2013; Mkhwanazi 1997; Mthombeni 2010).

Therefore, the focal point of this inquiry is directed towards the exploration of educators' understanding and interpretation of learners' right to education, to elicit malpractices and to provide a model for respecting and accommodating learners' right to education. The insights with this study may contribute to improved teaching and learning based on understanding what learners' right to education pertains to and how to protect and promote the basic human entitlement of learners.

1.4 Problem Statement

Despite progressive constitutional reform in the African Continent and South Africa, there are still many incidents in schools about the misunderstanding of learners' right to education. Learners' right to education, which is encompassed in human dignity, remains unclear for many educators with schools treating learners in an unacceptable manner contradicting the values of a free society (Ersoy 2012; Murray 2010; Reid 2007). Cases infringing learners' right to education include learners being chased out of class as a form of punishment, learners denied school attendance due to the lack of having a school uniform, learner suspension from school for a few days because of learner lack of discipline, and learners denied class attendance due to pregnancy; all of which is an example of violating the right to education (Singh 2010). Other cases that relate to human dignity and that have an adverse bearing on learners' right to education by directly or indirectly propelling learners away from school include rape, any form of abuse, bullying and assault (De Wet 2006; Mawson 2004; Prinsloo 2005). Learners' right

to dignity in education needs to be respected, promoted and protected and through the inherent dignity of every learner to avoid malpractices and disciplinary policies that can cause harm, mistreatment and learner humiliation (Chur 2015).

A classic example of learner mistreatment pertains to the South African Human Rights Commission (SAHRC) receiving a complaint of a 12-year-old learner whose shoes were torn and the child had to wear informal shoes to school in January 2014. The parent wrote a letter to the class educator to explain the situation and the learner brought the torn shoes to school to show the educator, but the educator did not accept the learner's reason for wearing informal shoes to school and commanded the learner to return home. The gross human dignity violation of this incident raises concern within the education domain concerning the extent to which educators understand the right to the human dignity of learners because of the denial of learners' right to education by educators (UNESCO 2015).

Although the States are compelled by the Convention on the Rights of the Child (CRC) to provide for education, many countries are unable to supply for learners' right to education (UNESCO 2015). With the demand on the government to assure that no child complete matric level without being armed with relevant skills to face the world challenges that emanate from lack of literacy and numeracy. The retraction of learners' right to education, through the burning of schools, damaging infrastructure including the intimidation of learners from attending normal school classes constitute a gross violation of human rights (South African Government News Agency 2014; Tomasevki 2006).

Infrastructural problems at school, lack of proper sanitation, shortages of desks and chairs, government's failure to deal with violence related to sex, corporal punishment, and the lack of delivery of textbooks directly violates learners' right to education (William et al. 2012). The non-delivery of the above-stated services to district offices and schools have a negative bearing on poor and underprivileged school communities reaffirming inexorable marginalisation to deepen social inequality.

In order to answer to learners' right to education, educators must understand what learners' right to education entails. Flowing from this need for educators to understand learners' right to education, the following research questions are formulated to guide the research study:

Main question

- How can educators' perception of learners' right to education be positively affirmed?

Sub-questions

- What is the perception of educators on learners' educational rights?
- How is learners' right to education infringed upon?
- What are the measures to deal with the violation of learners' right to education?

1.5 The Aims of the Study

This research inquiry explores educators' comprehension of learners' right to education in the secondary school environment to contribute to a positive affirmation of learners' right to education.

Therefore, the following aims direct the research study:

- To explore educators' perception of learners' right to education;
- To investigate how learners' right to education is infringed upon; and
- To gain an understanding of the existing measures in dealing with the violation of learners' right to education.

Research methodology to be used to address the above objectives and aims of the investigation research study in responding to the formulated research questions are discussed next.

1.6 Research Methodology

The data for this study on educators' perception of learner's right to education were collected through an empirical investigation that followed the conducting of a literature study. The research methodology for the empirical investigation is discussed next.

1.6.1 Research Paradigm and Research Approach

- Research paradigm

The investigative inquiry research study on educator perception of learners' right to education departs from an Interpretive Research Paradigm to enable the researcher to make an interpretation through exploration on a profound comprehension of the occurrence under

inquiry. The Interpretive Inquiry Research Paradigm focuses on meanings, actions and actors in the social environment (Gall, Gall & Borg 2007:31). The Interpretive Paradigm is amalgamated with the post-positivism, qualitative inquiry, a naturalistic research paradigm, qualitative research and constructivism (Dean 2018). It forms an umbrella concept that includes distinct schools of thought, including phenomenology, critical theory, ethnomethodology, and recently feminist theory (Yanow 2006).

An Interpretive Research Paradigm enabled the researcher to understand information collected from interviews with participants as their autonomous interpretation of learners' right to education. An Interpretive Research Paradigm permits a researcher to acquire insight from the research participants' feedback to questions that answers the research question (Yanow 2006). According to Dean (2018), the interpretation of participants' responses, individual perceptions, and experiences of participants and the researcher's connotations of those perceptions would generate information and understanding on the evolution and growth of the right to education of learners. Specific situations relating to the concepts under discussion were interpreted and investigated to collect relevant data on educator perception of learners' right to education.

- Research approach

This research study uses basic qualitative research approach. With a qualitative research approach, an individual, event or program is carefully studied for a certain period of time (Leedy & Ormrod 2005:135). The basic qualitative research approach is used by constructionists through phenomenological symbolic interaction because this approach is applied in people's interpretation of their experiences (Merriam 2009:23). Qualitative research is relevant for this research study because it permits participants to convey their opinions in expressions that are captured and used to narrate how learners' right to education is understood by educators in the learning institution environment. Interaction between educators and learners continues to pose the challenge of understanding how educators handle the relations between them and their learners, prompted by the right of learners to basic education (Snauwaert 2013).

A qualitative research approach gives an extensive picture of a situation and can inform in an accessible way conveying richness and intensity of detail in a more convincing way than a quantitative research approach can convey (Lincoln, Lynham & Guba 2013). The detail of a qualitative research approach allows for a comprehensive inquiry of issues, namely, how

questions are answered and given meanings; which ones are affected by the matter and what factors are involved; and the reaction of individuals or responses to each other (Creswell 2009). With qualitative research, recognition is given to the individual in the research process, not just the distinct effect of a particular phenomenon under discussion. The vigour of empirical research is its capability to grant compound interpretive illustrations to show how participants perceive a particular research topic (Leedy & Ormrod 2005). Qualitative technique systems are, therefore, effectual in recognising impalpable elements, including social and communal norms, socioeconomic status, gender roles, ethnicity and religion, and – concerning this study on learners' right to education – genuine perceptions of stakeholders on the matter.

The Research Design is reiterative in that data gathering process and research study questions are calibrated in terms of what needs to be achieved (Creswell 2009). Open-ended questions and probing that are characteristic of qualitative research methods give participants a chance to respond in their own words, rather than choosing from fixed responses. The Research Design of a qualitative research approach includes, amongst other, Case Studies, Ethnographic Approach, Grounded Theory and Discourse Analysis.

In this study on educator perception of learners' right to education, the researcher engages in a Case Study. Cohen, Manion, and Morrison (2000) define a Case Study as a study that occurs in its usual natural setting. Creswell (2009) confirms this definition by indicating that a Case Study Research Design accords a clear descriptive explanation of the case under investigation to comprehend individual perceptions unlike presenting them only as rational beliefs. Therefore, a qualitative Case Study assists in the exploration and examination of a phenomenon in its natural setting utilizing different sources of data (Baxter & Jack 2008).

- Research Design

This research study on learners' right to education is based on a Case Study Design using a qualitative research approach. A Case Study Design is considered when the focal point of the inquiry is to respond to "how" and "why" type of questions; particularly when the behavioural conduct of those intricate in the study are unable to be controlled and manipulated; albeit circumstantial situations are addressed because these conditions are considered applicable to the aspect of study; and when borderlines are not transparent betwixt the occurrence of study with the background to which the phenomenon is studied (Yin 2009). The Case Study inquiry

can handle simple situations through compound situations in the process of conducting single and individual research (Merriam 2009).

The Case Study Design empowers the investigator to respond to "how" and "why" type of instigative research questions while considering how a phenomenon is affected by the conditions in which it is situated. With a Case Study Design, insight is gained from the study that enables the researcher to collect data from various original sources to illuminate the specific case (Merriam 2009). The research methods that are utilized in this research inquiry are, namely, individual interviews and Document Analysis.

1.6.2 Selection of Sites and Participants

With regards to a populace as the broader classification of individuals from where a sample is drawn, sampling pertains to the relationship between the population and the sample drawn from it (Maree 2013). The researcher used a Purposive Sampling technique wherein a researcher selected elements from the population that are illustrative and informative about the phenomenon under investigation (McMillan & Schumacher 2001; Porota 2012). The implication is that the researcher must be specific about the criteria for sampling to select applicable participants from the research population (Polit & Hungler 1999).

The research population for this study on learners' right to education comprises five secondary schools in Mpumalanga. From this research population, five secondary schools were selected as research sites representing a Quintile 1 school, a Quintile 2 school, a Quintile 3 school, a Quintile 4 school and a Quintile 5 school. The reason for selecting one school as a research site from each of the five quintiles depicting the Quintile Funding System is established on the estimated income, unemployment, and illiteracy within a school's catchment area about educators' perceptions of learners' right to education, in different spheres of socio-economic status in the Nkangala District, Mpumalanga Province. These reasons are related to the broader understanding of educator perception of learners' right to education from the different spheres of socio-economic status within the South African society.

The research sample from the selected schools consisted of five Post Level One educators with one educator selected from each research site, with an indicator that the total number of Post Level One educators must be representative of the GET band phase (Grades 8 and 9) and the FET band phase (Grades 10 to 12). These five educators must be holders of a Bachelor's degree

in education, with at least five consecutive years of teaching involvement in the specific school phase. The reason for this criterion for educator selection is based on teachers' experiences, understanding and knowledge of dealing with learners' right to education.

Apart from the five Post Level One educators, five Heads of Departments were selected from five research sites. The five HoDs were expected to be representative of the GET school phase and the FET school phase. The selected HoDs should have had at least five years' experience in their respective positions. The reason for this criterion for HoDs selection is to evaluate the skills and knowledge of how HODs promote and protect learners' right to education, as operational managers within their respective schools. The five School Principals of the selected research sites completed the research sample. It was anticipated that the School Principals would be holders of an Honours' Degree in Education with at least seven years' experience in the School Principal position. The School Manager is expected to have knowledge and skills of school policies that relate to learners' right to education. Furthermore, the School Principal who is an Accounting Officer of the learning institution, representing the Mpumalanga Head of Department, is required to act in loco parentis by protecting and promoting learners' right to education.

In this research inquiry study on educators' perceptions of learners' right to education, the researcher interviewed participants from five different schools composed of five School Principals, five HoDs (one from each school), and five Post Level One educator (one from each school). The HoDs and educator participants were purposively sampled. According to Chiromo (2009:18), Purposive Sampling enables the researcher to select participants based on the researcher's judgemental views of the typicality to the phenomenon under discussion. Therefore, Non-Probability Sampling, also known as Purposive Sampling, allowed the researcher to handpick the cases to be included in the sample based on the researcher's judgement of their typicality and capacity to share information-rich knowledge about the topic of learners' right to education. Purposive Sampling enables the researcher to select subject participants based on certain specific individual characteristics (Patton 1990).

1.6.3 Data Collection

Data collection methods in qualitative research incorporate interviews, observations and Document Analysis (Wubbels 2011). In this study, individual interviews were used to gather information. The rationale behind using individual interviews is because participants who are

purposefully selected are then able to explain themselves individually, having all the time available with the specific interview to share their information-rich knowledge.

1.6.3.1 Individual Interviews

In this study on learners' right to education, individual interviewing was the main data collection method. Two rounds of telephonic interview conversations were held during the third term of the year. Five school principals, five HODs from five identified schools, and five educators from various schools were interviewed, using a semi-structured interview. Individual interviewing is functional for collecting in-depth information about the perspectives of individuals (De Wet 2006). Interviewing encourages research interviewees to elaborate on their unique intimate personal occurrences, beliefs, affections, opinions, and feelings. Using individual interviewing enables the researcher the chance to gain acumen into how people comprehend and how they address sensitive topics to which they might be unwilling to relate in a group setting (Snauwaert 2013). Interviewing is functional to gather information for a comprehensive approach of the participant's point of perspective, or for a holistic understanding of a specific situation. Interviewing is also used to inquire and explore areas of interest for further investigation resulting in the generating of rich data (Kajournboon 2010). The researcher utilised tape recording equipment as agreed with the participants while making notes to record and construct occurrences, experiences, opinions, perspectives and feelings of interviewees about learners' right to education.

1.6.3.2 Document Analysis

In this research study, Document Analysis is used as a supplementary data collection technique. Document Analysis involves perusing written material with relevant enlightenment details as provenance of data (Creswell 2009). Documents are transactional records of activities that the researcher interacted with and directly observed in providing answers to questions that could have been asked during the interview discussion. Document Analysis is an expression of qualitative analysis that necessitates the researcher to locate, explicate, discover, interpret, analyse and produce a conclusion about the affirmation of evidence presented. Document Analysis is used effectively to verify and corroborate evidence collected through interviews and observation (Yin 2009).

The researcher asked for documents relating to the school's Code of Conduct for learners, the school's constitution, and school's policy on discipline, class rules and other documents that

may give information on learners' right to education. In the mentioned school documents, the researcher checked how these official school documents addresses learners' right to education, particularly the promotion and the protection of learners' right to education. The advantage of Document Analysis is that documents are produced and conserved as a record of operation at the specific school. These documents assisted the researcher in triangulating data from interviews, corroborating with findings from literature (Creswell 2009).

In this investigative study, the interviewer interacted with participants within their normal usual environment, based on the Phenomenological Approach directed towards understanding the views of participants of their day-to-day understanding of the concept under investigation, namely, learners' right to education (McMillan & Schumacher 2001).

1.6.4 Data Analysis

The analysis of data involves an interpretation of the collected data separating the comprehensive data into various parts to enhance comprehension, make the data collected clear and understandable to reply to the constructed investigative research questions. Therefore, the facts collected were processed through organizing using determining themes based on categorising collected data into understandable units (Bertram & Christiansen 2014). Processing of the accumulated data that gave detailed information about the topic assisted in recognizing themes to establish themes entails the coding of data and the clustering of coded data.

In this research study, Thematic Data Analysis is utilised to find the meaning of accumulated information found in the field through patterns and sequence. Burnard (2006) indicates that the thematic process involves analysing recorded interview transcripts to identify themes. The thematic analysis firstly involves familiarization with the data by re-examining the interview transcripts to acquire an initial apprehension of the data and to obtain a general overview of the data collected (Hancock, Ockleford & Windridge 2009). In the process of reading the transcripts, the researcher made notes to qualify and verify the data received prior.

The second step is to code the data by distinguishing and categorizing key ideas with data that leads to answering the research questions. Primary codes are produced in the process of reading and re-examining the transcripts. In the process of open coding, the researcher summarises the content of short segments of text as units of meaning in a few phrases, on a line-by-line basis

preceding the next step which involves searching for categories (Hancock et al. 2009). Finally, the researcher clusters codes by grouping them to represent related ideas to eventually form classifications and categories. The researcher then groups the categories to form major themes as research findings to provide a solution to the research questions.

1.6.5 Trustworthiness and Transferability

Credibility is interpreted as the belief and trust that is positioned in the truthfulness of the outcomes of the research (Holloway & Wheeler 2002; Macne & Macbe 2008). Credibility demonstrates the extent to which research outcomes constitute credible information drawn out from participants' original data as an exact explication of participants' authentic perspectives (Lincoln et al. 2013; Lundman 2004). In qualitative research, credibility is understood as trustworthiness, which is a major criterion in evaluating a Case Study (Yin 2011).

Trustworthiness interrogates the soundness of validity and reliability of data gathered in the field. Trustworthiness establishes transferability, credibility, conformability, and dependability in finding the truth in the research study (Golafshani 2003; Leedy & Ormrod 2005). The researcher pursued trustworthiness by considering the guidelines by Lincoln, Lynham and Guba (2013) pertaining to the extended duration of the process of adequate data collection, manoeuvring data, participants follow-up, triangulation and peer-reviewing. The conformability of the research outcome is established on the researcher's essential introspection and self-reflection.

Lincoln and Guba's (1985) evaluative criteria of trustworthiness model, based on trustworthiness, which involves credibility, transferability, dependability, and conformability, are utilized in this investigative research study. The miniature model comprises four specifications, all are involved in this investigative research study. First, the truth value is considered by describing accurately the phenomenon of study, namely, the learners' right to an education at schools. This is realised by finding certainty in the accuracy of the truth of the research outcomes obtained from interviewing process. The personal experiences and perceptions of all participants were pivotal for this interviewing process. Secondly, about an extended persistence approach strategy, enough duration was exhausted with the interviewee in the language they are comfortable with. This established unconfined, utmost collaboration and the revelation of facts that are important and confidential. Individual interviews took about 45 minutes with each interviewee. In addition, the interviewer took two days at each school to

collect data on how learners' right to education and was catered for after the normal activities of the school, trying to comprehend the school's traditional way of doing things and the ethos of the school as this culture and ethos pertain to accommodating learners' right to education. Thirdly, with reference to re-flexibility and the fact that the researcher was psychologically and emotionally entangled in the study, the researcher focuses on reflexivity through the use of field notes and the tape recorder. Lastly, triangulation is arranged through comparing recorded documents, accumulated notes and sketched reports from different specific interview responses to initiate congruity and precision of arguments (Mercer & Littleton 2007).

1.6.6 Ethical Considerations

The researcher subscribed to ethical considerations throughout the research in ensuring the protection and rights of the research participants by taking care to discern and carry out ample ethical measures throughout the research (Creswell 2009; Merriam 2009). The researcher made sure that participants remain anonymous, that collected data are kept safely out of reach of unofficial individual, and that an exact report of the interpreted data is provided. In ensuring participants' anonymity, the researcher upheld the confidentiality and the privacy of all participants by getting rid of all recognisable markers from the storylines and the description of the participants and secured the transcripts on a secret code-secured computer. Pseudonyms were used for both the names of the school and the names of the participants in the research study. All the research hard copy material including audio taped records are to be securely kept at the University of South Africa safety storage as recommended by the Ethics Review Committee and will only be accessible to the researcher and the supervisor. The researcher focuses on using unprejudiced language regarding race, gender, ethnic groups, sexual orientation, disability or age in drawing up the Interview Schedule and in conducting interviews and avoid deceitful operations such as repressing, fabricating or creating discoveries to meet the researchers' or readers' need (Cohen, Manion & Morrison 2000:51). Compliance with ethical considerations was submitted to the research committees of the College of Education at the University of South Africa and the Department of Education for approval.

Fieldwork commenced after obtaining ethical clearance and authorization to investigate schools from the Department of Basic Education and the University of South Africa. The investigator also requested authorization to conduct research from the institutions' headmasters of the chosen learning institution. The identification and selection of the participants were done through the Teacher Liaison Officer structure (TLO) since the TLOs are directly responsible

for working with Learner Representative Council (LRC) and they co-ordinate learner affairs, in secondary schools. The researcher obtained informed consent from the participants by explaining to them the purpose and the objectives of the research and what is envisaged from the participants. The participants were then asked to read and sign Informed Consent Forms. The Consent Form declares that involvement in research is on a voluntary basis and the participant has the right to pull out from the research at any time without dire results. The prescribed research approval request documents from the Nkangala District Office of the Mpumalanga Department of Basic Education were completed and submitted for approval to engage in research in the selected schools. The documents that were requested were not in any way utilized as an official order to influence participants to be interested in the research. The main ethical considerations to adhere to include the right to privacy, anonymity and confidentiality.

The interview process involved the researcher sending the interview questions a few days before the interview is conducted so that the participants can read and reflect on the questions before the day of the interview. Based on knowledge about what is known, what is not known and how to fill the gap, the questions included in the Interview Guide were obtained from the literature study to be explored further with the empirical investigation into educator perception of learners' right to education. Prior to visiting the selected schools and after confirmation of appointments, the recording equipment was checked and Consent Forms completed by participants after which interviewing commenced.

1.7 Concept Clarification

The important concepts relating to the study of educators' perceptions of learners' right to education are clarified next.

1.7.1 Educator

According to the Employment of Educators Act no.76 of 1998, an educator is a person who teaches, educates or trains other persons, provides professional educational services, including professional therapy and educational psychological services, at any public school, appointed in a post on any educator establishment under this Act. The *South African School Act no. 84* of 1996 confirms that an educator is any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates, and trains other persons. An educator provides professional educational services including professional therapy and

education psychological services at a school. Educators must be trained before they teach, and they must continuously undergo professional development for improved professional performance (Kelly 2018). The South African Council of Educators Act 31 of 2000 (SACE, 2000) defines an educator as an individual registered with the Council of Educators to acknowledge the following actions:

- the noble calling of their profession to educate and coach learners;
- to uphold and advance basic human rights, as embodied in the Constitution of South Africa;
- to keep abreast of educational trends and maturing;
- to promote the ongoing evolution of teaching as a profession;
- to commit themselves therefore to do all within their power, in the exercising of their professional duties, to act in accordance with the ideals of their profession, as expressed by the SACE Code of Conduct; and
- to act in a proper and becoming way such that their behaviour does not bring the teaching profession into disrepute.

1.7.2 Learner

A learner is a person who attends school, to obtain skills through learning and being taught by an educator (*The South African Concise Oxford Dictionary* 2006). However, as stated in the *South African School Act* (84 of 1996), a learner is a person who is required to obtain education through the activities of learning and teaching, at an institution of learning. As stipulated in the *South African Schools Act* 84 of 1996, all learners between the ages of 7 and 15 years are required to attend school. It, therefore, suggests that a learner is to be registered to Grade 1 if he or she becomes seven in that particular calendar year. A learner who is younger than this age may not be admitted to Grade 1.

1.7.3 Learners' Right to Education

The conceptualization of 'learners' right to education' is a widely spoken concept constantly used since the emergence of human rights in the system of education. The right to education is enshrined in section 29(1) (a) of *The Constitution of the Republic of South Africa* which dictates that education is not an entitlement, but a human right. Therefore, education as a human right means:

- The right to education is illicitly guaranteed for all without any prejudice;

- The State has the commitment to protect, respect, and fulfil the right to education; and
- There are ways to hold states responsible for violations and deprivations of the right to education (RSA, South African Constitution 1996).

Therefore, according to *The Constitution of the Republic of South Africa, 1996*, the content of the right to education implies:

- The right to education incorporates both entitlements and freedoms, including the right to free and compulsory primary education;
- The right to available and accessible secondary education (including technical and vocational education and training), made progressively free;
- The right to equal access to higher education on the basis of capacity made progressively free;
- The right to fundamental education for those who have not given access or completed primary education;
- The right to excellent quality education both in public and private schools;
- Democratic rights of parents to choose schools for their children which conform with their religious and moral convictions; and
- Democratic rights of individuals and bodies to establish and direct educational institutions in line with minimum standards established by the State.

1.7.4 Basic Education

The concept 'basic education' involves imparting knowledge and skills from one generation to the other in both a formal and informal setting, with a whole range of educational activities, to meet basic learning needs (Chur 2015). Therefore, basic education focuses on "stages" of basic learning which involves the basic needs of learners and the overall transmission of human values which learners should not be denied in life (Chur 2015). The South African Constitution indicates in section 29(1) that basic education should satisfy the learning requirements appropriate to the learning age and experience of all learners aged 7 to 15 year -olds. Therefore, *The Constitution of the Republic of South Africa* makes conditions favourable for the educational rights of all learners aged 7 to 15 years, including the impoverished learners without precluding a sliding scale of fees in relation to the parents of the learners who are enrolled within a public school.

1.7.5 Infringement of Learners' Right to Education

Government's failure to provide, protect and promote learners' right to education undermines human right principles to education with consequences for local and global development (Tomasevski 2006). Singh (2015) indicates that the prerogative to education in terms of comprehensive access is an indispensable precondition to exercise the right to education and thus privatisation of education procreates disbaring to those who are disadvantaged financially. It marginalizes the poor and denies them the right to education since education is not an entitlement for certain individuals but it is an absolute right of every individual.

Developing learners' full capability depends on the accessibility of education and the fairness of opportunities within context (Tomasevski 2006). The calibre of education depends on the facilitation of the content curriculum and on the material circumstances where learners receive an education (Woolman & Bishop 2008). Therefore, there are factors determining the adequacy of a school system and aspects compelling learners to attend school such as teaching received, the condition of school facilities and classrooms, and the tools of learning within the school (Mthombeni 2010; Mweni 2017; Singh 2015; Tomasevski 2006). Proper school facilities pertain to structures that protect learners within the school environment such as proper buildings, and proper sanitary infrastructure. The South African Department of Basic Education acknowledges that many schools lack basic resources such as water, sanitation, electricity, basic learning material and good quality educators, all of which infringe on learners' right to education (Mampane 2013; Mthombeni 2010; Zwane 2017).

1.8 The Organisation of the Thesis

This study on educators' perceptions of learners' right to education is organised according to the following outline:

Chapter One (Orientation)

This chapter serves as an orientation to the study by including discussions on the statement of the problem, the rationale for the study, the preliminary literature review and the research methodology used to gather pertinent information to respond to the formulated research questions. Ethical considerations and the elucidation of key concepts are also treated in this chapter.

Chapter Two (Theoretical Framework)

This chapter focuses on a relevant theoretical framework that relates to teachers' understanding of learners' right to education. The theory that serves as a theoretical lens for this study on educator perception of learners' right to education in secondary schools is the Rights-Based Approach to human dignity.

Chapter Three (Literature Review/ International Perspective)

This chapter reviews the literature relating to learners' right to education as understood by international scholars, through international studies.

Chapter Four (Literature review/ South African perspective)

This chapter reviews the literature relating to the right of learners to education at school and the impact thereof on child development and progress. It includes discussions on teachers' perceptions of the right of learners with regards to education within the South Africa context.

Chapter Five (Research Methodology and Research Design)

The research methodology chapter contains description of the empirical research processes in terms of the research paradigm and research approach. The selection of research sites, participants, data gathering methods, data analysis techniques and accounting for the trustworthiness of the research findings are discussed. This chapter also details how ethical principles are adhered to during the empirical investigation.

Chapter Six (Research Findings)

This chapter contains the demonstration of outcomes from the investigative research study focusing on interviews done in the field and it also revolves around interpretation and analysis of data to represent the research outcomes from Document Analysis.

Chapter Seven (Summary, Conclusions and Recommendations)

This chapter sums up the main research outcomes of the research as evident from the review of the literature and the empirical investigation. From this summary, concluding interpretations are deduced, which in turn lead to recommendations and suggestions for further study. The recommendations are considered as the study's contribution to the existing body of knowledge on teachers' perceptions about learners' right to education.

1.9 Summary

Learners' right to education is a fundamental human right and a core obligation of the State. The right to education is not a privilege of the rich but should be provided for all children regardless of parents' financial capacities. Education has, since the inception of time, been considered as a formal process by which the community imparts its cultural values, knowledge, customs, and skills from one generation to another. Currently, education has become a human right, depicting the right to basic education as acknowledged and emphasised in *The Constitution of the Republic of South Africa* (South African Constitution 1999) and regarded as the most important constitutional right due to its promotion of social and economic wellbeing. However, the South African school structure is shadowed by a multitude of unbearable conditions that are discussed in this thesis. Many of these challenges, conditions and circumstances are frustrating, warranting solutions for the sake of the common good.

CHAPTER 2

THEORETICAL FRAMEWORK ON LEARNERS' RIGHT TO EDUCATION

2.1 Introduction

In Chapter 1, a foundation was clearly tabulated followed by the problem statement; aims of the study, Research Design and research methodology were explained. In this chapter, an evaluation of the theoretical viewpoint that informs the comprehension and the perceptions of learners' right to education by educators is examined. Therefore, the impetus of this chapter is to define, outline and interpret learners' right to education through the lens of Right-Based theories to facilitate a profound understanding of educators' perceptions of learners' right to education.

A theoretical framework is a basic structure that is well-developed and logical sequence of events explained throughout the research undertaking showing where the research emanates from (Vital & Jansen 2001; De Waal & Serfontein 2014). The theoretical framework further depicts boundaries; gives strong reasons for doing the research study; and gives a structure to guide data gathering and data interpretation (Liehr & Smith 1999). The theoretical framework makes a provision to be used as a lens throughout the process of data interpretation ensuring firmness between the research questions and the research findings (Imenda 2014). Creswell (2009) argues that the theoretical framework should, therefore, be used to provide a structure for a research investigation. The theoretical framework also serves as a framework for the interpretation of research findings.

This research on educator perception of learners' right to education in secondary schools focuses on examining how secondary school educators discern learners' right to education within the school context. Furthermore, the lens through which the research investigation takes place is through the Rights-Based Approach to learners' right to education.

The Rights-Based Approach to human dignity represents the theoretical framework underlying the research study on educator perception of learners' right to education in secondary schools. Applying the Rights-Based Approach to the study helps unpack clear perceptions of educators' views. The educator perceptions of the learners' right to education cherish the benefits of assessing, planning, monitoring, developing and empowering individuals with knowledge and skills to address situations respectively, though claiming individual and collective rights

(UNESCO; UNICEF 2015). In empirical terms, a Rights-Based Approach can be used to guide policies, practically measure development, and the level of education (Kaltenborn, Krajewski & Kuhn 2019). Therefore, it informs assessment procedures and a mechanism through which essential information is ensured, allowing effective participation of individuals within the justice system (UNICEF 2012; UNICEF 2015).

Therefore, a Rights-Based Approach is appropriate for this research study because universal human rights are bestowed to everybody, in all organisations and centres such learning institutions and learners are no exceptions (Maboe 2013). However, human rights literature acknowledges that learners rights to education involves a number of theories including Right-based approach to human dignity and Rights-based approach to education directly related to Rights-Based approach (Becker, de Wet & Van Vollenhoven 2015).

2.2 Rights-Based Approach to Learners' Right to Education

The concept of Rights-Based Approaches to education find its original meaning from human rights struggles and the struggle against gender inequalities within societies (Bourefijn, Brower & Fakhreddin 2001). Although on the one hand Sen (1999) believes that the concept of Rights-Based Approach to education find its fundamental meaning and origin from the broader spectrum of the entire human struggle, Hurst (2001) on the other hand strongly holds the view that it emanates from the endeavour for acknowledgement of the integrity and the virtues of the disabled individuals.

The interpretation of the Rights-Based Approach progressed throughout the years from the struggle for political rights within the civil society, aiming to achieve economic, cultural, environmental and societal emancipation (UNHCR 2001). Therefore, the concept of the Rights-Based Approach illustrates that there are rights within the human rights domain that all human beings have, natural or conventional, which are an entitlement, due to the fact that they are human (Jonsson 2003).

Rights-Based Approach to education is defined by UNICEF (2007) as a construct of reference for the awareness and recognition of learners' right to education and rights within the teaching fraternity, which seeks to empower and educate. It states that education must be holistic, encompassing, and accessible and should be construed based on human rights and human values. It exists based on international global human rights levels and promotes the defence of

human rights. It seeks to interpret obligations, imbalances, inequalities and vulnerabilities in trying to tackle discriminatory applications (Carnovalli 2017). Human rights in education encompass a human Rights-Based Approach to developmental perspective, social interaction, security, governance and integrating children’s rights within the global education system (UNICEF 2012), taking into account six aspects of learner well-being:

- Material welfare and well-being;
- Health, protection and safety;
- Educational well-being and security;
- Family and peer relationship;
- Behaviours and risks; and
- Subjective well-being (UNICEF 2012).

The holistic approach to the Rights-Based Approach theory to education reflects leading central sections that need to be addressed to clearly understand the rights within the education domain. The following Table 2.1 explains the rights learners have in schools that need to be observed.

Table 2.1: Explanation of the Rights-Based Approach to Learners’ Right to Education

No	Right	Explanation
1	The right to access education	<ul style="list-style-type: none"> • Education throughout all phases of developmental youth and beyond. • Availability and accessibility of education • Equality of opportunity
2	The right to quality in education	<ul style="list-style-type: none"> • A broad, applicable and inclusive curriculum • Rights-based tuition and evaluation • Child-friendly, safe and healthy surroundings
3	The right to respect and to be respected in the learning environment	<ul style="list-style-type: none"> • Respect for identity • Respect for participation rights • Respect for integrity

Source: Adapted from Brown & Johnson (2019)

The Rights-Based Approach emerges from the human rights domain indicating that education has been conventionally recognised as a human right since the assumption of the Universal Declaration of Human Rights in 1948. This is illuminated by the following aspects and principles:

1. Universality and inalienability;
2. Indivisibility;

3. Interdependence and interrelatedness;
4. Equality and non-discrimination;
5. Participation and inclusion;
6. Empowerment; and
7. Accountability and respect for the rule of law.

(UDHR 1948)

2.3 Three-Step Cycle in Applying Rights-Based Approach

In the global education system, learners' right to education can be classified in a three-step cycle stage, as demonstrated in Figure 2.1.

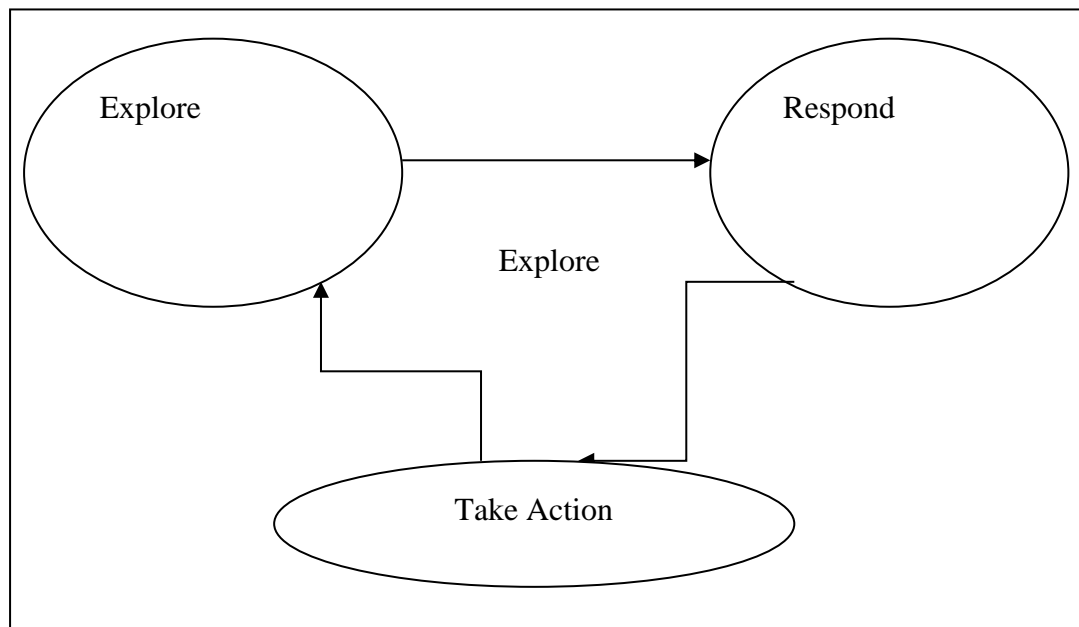


Figure 2.1. The Three-Cycle Phase in Applying Right-Base Approach to Learners' Right to Education

Source: Adapted from Brown & Johnson (2019)

As is depicted in Figure 2.1, the three-phase dimension explains the interaction of role players within the education sphere in the advancement and protection of learners' right to education. The three-cycle phase involves exploration of the rights, response in terms of application and direct action that emanates from the role players interaction within a particular environment.

1. **Exploration phase:** In the exploration phase, the educator makes a deeper inquiry into apprehension of the learners' right to education, searching for details through the collection, analysis and synthesis of data on a particular right that has to be implemented within the education system. The issue or a particular right relates to child poverty within a school a comparison of information gathered in another

school or a town. In this phase, an undertaking of a concept is developed to make an awareness that forms the foundation for the responding phase.

2. **Responding phase:** In the responding phase, the educator develops a personal response to the situation and the material that was experienced in the process of the study of the environment. The response involves the familiarization of human dimension experienced through the engagement of a range of perspectives on the learners' immense experiences that relates to well-being and socio-cultural background. Therefore, a critical reflection on a clear distinction between learners' wants and learners' needs is of vital importance in realising learners' right to education. The role players' personal attributes and their interaction within the educational domain, involving learners' right to education, need to be observed to satisfy the needs and the wants of the learners.
3. **Action phase:** In the action phase, the educator decides on a range of practical actions to be taken on issues that affect learners which tempers on rights of the learners within the school. The educator engages in meaningful actions to embark on in dealing with learners' rights within the school system.

Attributes of certain important particular forms of actions are considered, looking into options which can influence either negative or positive in the life span of a learner at school. The impact of actions that concerns the learners' right to education, the impact of the environmental factors and the people involved are considered prior to the learners' engagement. The situation and the environment is promoted the action phase where the policy that guides the interaction of role players are always in force to produce a conducive atmosphere for interaction. Therefore, the actions phase, allows the educator to engage, through various opportunities, with practical experiences of learners while creating reinforcement of new skills, knowledge and attitude (UNICEF 2012).

The three-step phase cycle discussed above provides an opportunity to see how educators connect to learners, thus allowing educators to embark on influencing learners about their aspect of personal social changes. On the contrary, educators learn as well to be reflexive about their assumptions and behaviour that violates learners' right to education (UNICEF 2012).

In this study, the researcher is attempting to understand the learners' right to education in relation to the school environment and more role actors involved in the process of teaching and

learning. Basically, this theory on a three-step cycle in a Rights-Based Approach to learners' education, expresses its concentration predominantly on challenges emanating from public policy and perceptions (Mapp & Rice 2018). In this study, the phases are applied as to show how change occurs from essentials to rights and from charity to obligations, as suggested by Urvin (2007) when affirming that the approach augments focuses on answerability.

Rights-Based Approach within the education structure can simply be explained in terms of the relationship between Right-holder and the Duty-bearers. The right holder is an individual who is entitled to a right and the duty-bearer is duty bond to supply or perform and can be legally held liable (Slente & Winkler 2013). Kyser and Osterhaus (2014) provide a clear picture in an attempt to illustrate the model of Rights-Based Approach taking into cognisance the interaction between the Right-holders and the Duty-bearers. In the Rights-Based Approach and the attainment of learners' right to education, there is an existence of a chain of relationship between the Right-holder and the Duty-bearer. The cycle chain relationship can be explained by the following figure below:

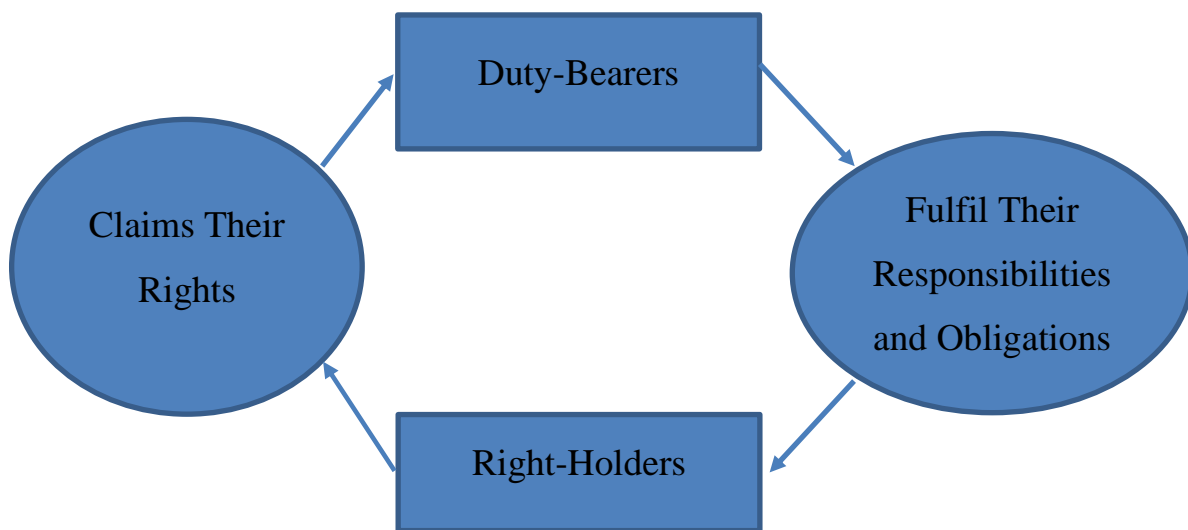


Figure 2.2: Cycle Relationship between the Right-Holder and the Duty-Bearer
Adopted from: Federal Ministry for Economic Cooperation and Development (2014)

Further explanation of the above concepts shown in Figure 2.2. below demonstrating and clarifying the relationship that exists in each role player in the human rights domain.

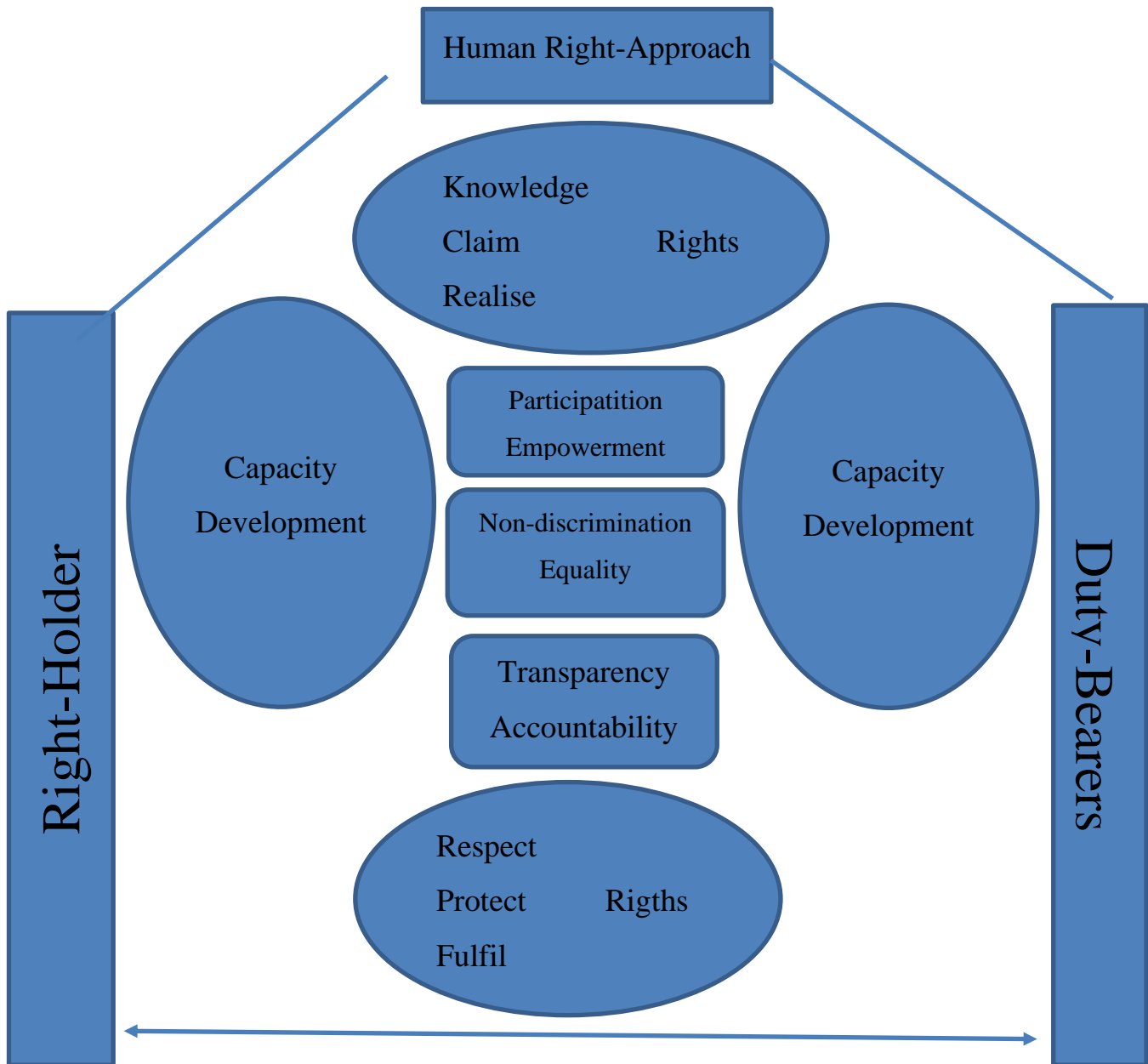


Figure 2.3: Model of the Human Rights-Based Approach
 Adopted from: Federal Ministry for Economic Cooperation and Development (2014)

The human right discourse is incomplete without the understanding that individuals are right-holders and the state is the duty-bearer. Both the State and the individuals have rights and subsequently duties to perform. According to Kayser and Osterhaus (2014), educators are human right-holders and the State is the duty-bearer because the State provides all types of resources as propelled by the legislation. Educators receive their monthly salaries on the basis of their entitlement in terms of the right-holder's concept, while learners receive their education as an entitlement based on the right-holders understanding.

2.4 Transformation of Education System through a Rights-Based Approach to Learners'

Right to Education

The changes in the education system depend on the impact of the Rights-Based Approach to the educational system to change for the better (UNICEF 2012). The learners' right to education intends to transform and change the societal malpractices that manifest through denying learners their human right to education. Transformative rights are based on the right values in schools which ultimately promote a good learning atmosphere (Becker, de Wet & Van Vollenhoven 2015). The transformation in the education system through the Rights-Based Approach promotes principles of dignity, equality and emancipation for all individuals within the system and forms the primary framework of interaction within the school.

The transformation process action within schools is not static but depends on the environmental factors and the communal needs (Becker et al. 2015) within a particular school system. Educators play a major role in bringing a positive transformation mandatory by policies furnished through a Rights-Based Approach. The application of this approach brings forth the realization of democracy in schools necessitating acknowledgement of every person as an equivalent and possessing innate respect, and stresses on the opinion that persons are assured definite human rights concluded through international human rights endorsed documents (Mapp et al. 2018).

The Rights-Based Approach to education can be attained through inferring to the population within the community in which the study occurs is placed at the centre of development efforts and that the community is familiar determining what happens developmentally (Becker et al. 2015). Therefore, the internalization process of implementing rights on a daily basis transforms and changes school's atmosphere and ultimately yields democracy within the society (Broberg & Sano 2018). Various concepts leading to transformative action in a democratic society are displayed below in figure 2.4.

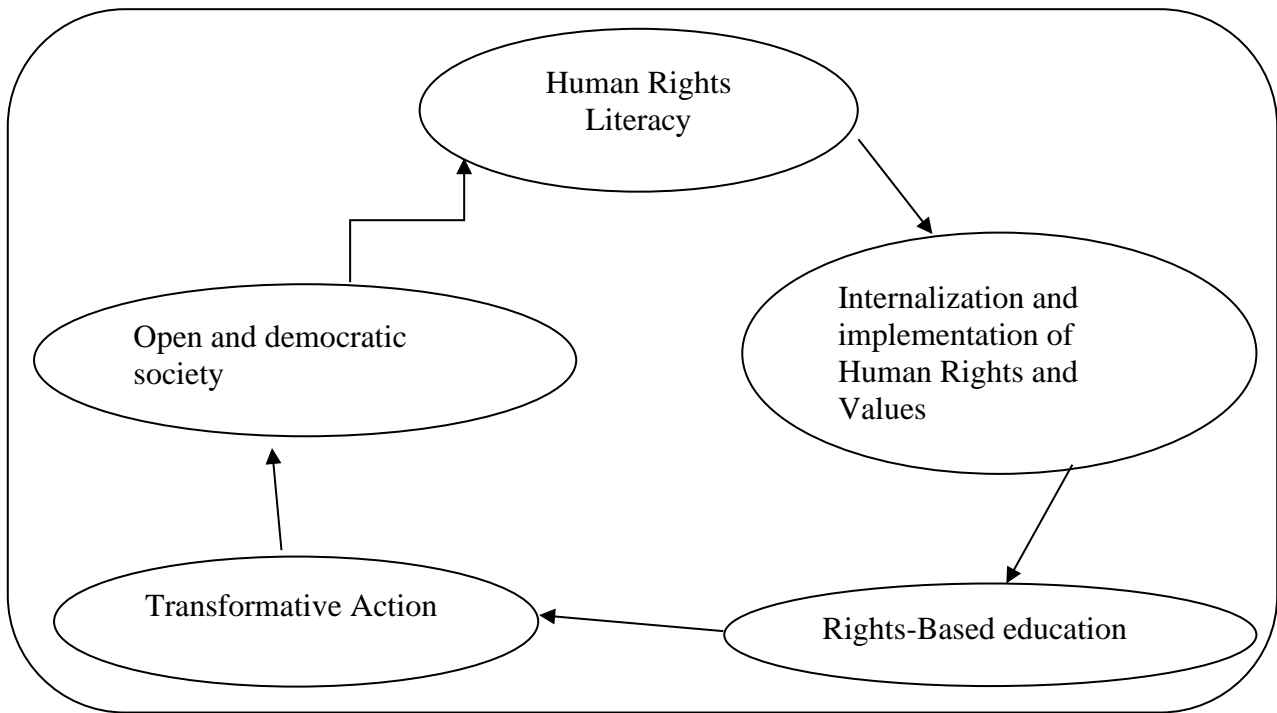


Figure 2.4: Illustration of Transformative Action in a Democratic Society
 Source: Adapted from: Mapp & Rice, 2018

The cycle illustrated above demonstrates the point that the Rights-Based Approach to education begins with human rights literacy which informs directly the implementation through internalization of basic human rights. The attainment of transformative action which yields democratic dispensation is sought out proper implementation of human rights literacy within the education system (Becker et al. 2015; Bajaj, Cislighi & Mackie 2016).

In this study, the researcher illuminates the issue of human rights literacy at school, how this directly enlightens implementation of human rights through internal processes at school (Mapp et al. 2018).

2.5 Translation of Human Rights in the Education System

The learners' right to education is translated into three core elements that need to be addressed within the education domain. The translation of human rights into the education system depends on the educators' understanding of their responsibilities. To translate human rights into the school system needs a clear understanding of the fundamental originality of the existing framework of human rights. The basic premises that enable human rights translation into the education system are values and awareness, accountability and they are transformational in nature (Robinson, Phillips & Quenneerstedt 2020). This translation (Smith & Young 2017; UNICEF 2015) involves:

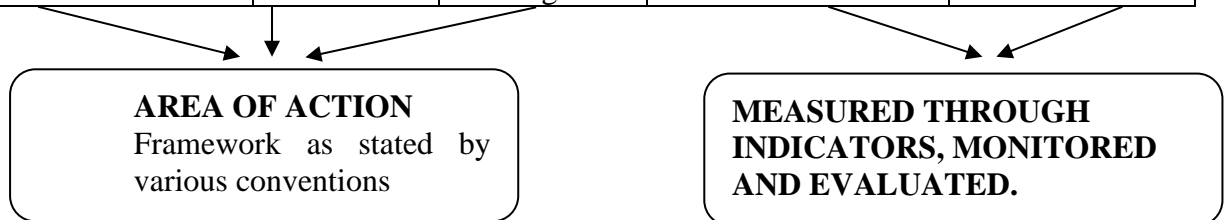
1. Right to education and skills developmental growth should be guaranteed directly to everyone, without iniquities and discrimination.
2. Rights in- (frames): structure, governance, curricula, educators, resources.
 - (process): pedagogy, methods of teaching and learning. Content of learning.
 - (results): deviated attitudes and values. Skills acquisition and competencies.
3. Rights through - results for society: Shared democratic values and commitment (UNICEF 2015).

The shared democratic vision is attained through the framework of Rights-Based Approaches provided by various conventions pertaining to global educational rights and can be measured through indicators that are monitored and evaluated through systems and procedures (Mapp et al. 2018). The above-mentioned rights guarantee and allay learners' fears on the promotion and protection of their respective privileges within a school environment. These systems and procedures pertain to communicating explored experiences and raising awareness of the learners' right to education at school (McCall & Juffer 2011).

This research, therefore, seeks to enable the educators to translate rights into practice, which will eventually create a cornerstone for the Rights-Based Approach to flow within the process of teaching and learning at school.

Table 2.2. Translation of Human Rights-Based Approach into Education System

No	TO	IN			THROUGH
		FRAMES	PROCESS	RESULTS	
1.	Education and skills development should be assured directly to everyone without iniquities and discrimination	Structure, governance, curricula, educators, resources.	Pedagogy, methods and techniques of teaching and learning. Content of learning.	Effects for individual: deviated attitudes and values. Acquisition of skills, competencies and abilities.	Results for society: Shared democratic values and commitment.



Source: Adopted from Mapp & Rice, 2018

In essence, as depicted by Table 2.3, the translation of human rights in education involves the right *to*, the rights *in* and the rights *through* education systems with regards to the application of the human Rights-Based Approach. In essence, educators, through the education system, are to guarantee that learners are fairly treated by avoiding discrimination, providing a conducive environment for teaching and learning, use correct teaching methods and share democratic principles at school (Mapp & Rice 2018).

In this study, the application of the translation processes of the Rights-Based Approach is essentially important to show understanding and perceptions of learners' right to education. The educators' experiences are extrapolated to establish their respective understanding of what learners' right means in terms of their scope of reference in their workplace.

2.6. The Application of Rights-Based Approach in the Education System

The application of a Rights-Based Approach to the education system entails planning and monitoring of values, developing individual capacities, and empowering all individuals (UNICEF 2015). These three aspects promote learners' right to education whilst it guards against any form of discrimination. The provision of quality education is brought upon by application of Rights-Based Approach in the procedure of teaching and learning. The process of the application of the Rights-Based Approach is a direct responsibility of educators.

Educators guide, direct and provide information on the utilisation of Rights-Based Approach within schools and ultimately learners become recipients of information that should be put into practice. UNICEF (2012) provides a fundamental framework that emphasises the idea that learners perceive and comprehend their own rights as a direct influence of the school and the educators. The practical realization of learners' right to education is shaped by educational well-being; material well-being; and behavioural aspects of individual role players (UNICEF 2012). Therefore, educators must be familiar with the rights of learners and emphasize the learners' rights within their actual teaching in their respective classroom. Based on the non-discrimination, best learners' interest, through the respect of learners' views; and the right of life and development, the application of Rights-Based Approach is to be achieved.

Some educators have a misconception and practically misunderstanding that if learners are enlightened about their individual respective rights, learners will be rebellious and chaotic, thus eventually educators will lose the sense of authority and control over the learners (Covell & Howe 2005). Richards (1988) argues that authority in monitoring systems and procedures

within a school set up rests on the intrinsic and extrinsic motivation of educators, which reveals interest in self-improvement and development in the understanding of learners' right to education. The application of a Rights-Based Approach will not be achieved if educators lack apprehension of learners' right to education. The Rights-Based Approach to education is extremely important because of the provision of a clear framework that provides understanding and assists in enacting legal and moral responsibility to all learners in a classroom situation. The framework assists in learning of working against structural barriers that contribute to human rights violations (Covell & Howe 2005).

There is an existence of basic principles in the applications of Rights-Based Approaches. These principles emanate from Human Rights Based Approach, and are of paramount importance in the application of Rights-Based Approach. These underlying principles are known as PANEL. According to the Equality and Human Rights Impact Assessment by the Equality and Human Rights Commission in Scotland, the following are the basic principles of human Rights-Based Approach:

1. Participation: Every child/ learner has a right to participate freely and meaningful in resolution making which affects and influences their basic human rights. Learners must have access to any information that relates to any decision that hampers their human rights;
2. Accountability: Effective accountability is brought upon by correct and appropriate policies, laws and administrative procedures to remedy human rights breaches;
3. Non-discrimination and equality: Emphasise that all forms of discriminations, whether through age, gender, sexual orientation and/or ethnicity, be prohibited, within the school environment;
4. Empowerment of rights holders: Individual learners and the community must be developed through the participation and engagement in developing policies aligned to human rights and be able to put into practice policies that relate to human rights; and
5. Legal rights: The Human Rights Approach requires the recognition of human rights enforced by entitlement and linked to national and international human rights, (Equality and Human Rights Impact Assessment).

The above-mentioned underlying principles in the human Rights-Based Approach to education will enable the implementation of Rights-Based Approach in schools.

2.7. Provision of Quality Education through Rights-Based Approach

Quality education is safeguarded through the application of policies that relates directly to the rights learners are to enjoy within the school. These ‘school policies’ that relates to learners’ right to education include: Admission Policy; Religious Observance Policy; Learner Code of Conduct; Health and Safety Policy; and Assessment Policies.

2.7.1. Assessing

The framework assesses the correct realization of human rights as promoted by UN Human Rights Convention, ensuring less harm to the learners. During the assessment process, systems and procedures must align to the policy that takes from the Human Rights Conventions. Assessing comes as a result of proper planning and monitoring of systems that regulates Rights-Based Approach to education. Plomp, Huijsman and Kluyfhout (1992) assert that evaluation of the impact of the implementation of Rights-Based Approach centres on the assessment of the investigation of the understanding of the human rights and the reasons for non-compliance of systems and procedures.

2.7.2 Planning and Monitoring

Values and principles are applied through systems and procedures that must show non-discrimination within the school atmospheric context. Monitoring and planning directly link to the management of the implementation processes that deal with the Rights-Based Approach. It provides feedback with regards to the collected information, the violation of human rights and the progress (Plomp, Huijsman & Kluyfhout 1992), in implementing Rights-Based Approach within schools. In designing programmes and processes, participation is encouraged which builds on accountability and transparency amongst the role-players within an institution of learning.

2.7.3 Developing Capacity

A role player promotes human rights needs development in terms of how to protect learners’ right to education through respect (Uvin 2010; UNICEF 2015). Individual capacity building is necessary for the promotion of learners’ right to education. It builds lasting improvement,

and it is more generic in nature (Stoll 2009). In the development of capacity among all the role players within a school, internal and external support is needed. Thus, Stoll and Bolam (2005) emphasise the role of policymakers in achieving the following aspect, which shows that individual development is an extremely complex phenomenon:

- a. Creating and maintaining the culture and the structure of an institution;
- b. Facilitating learning, experiences and opportunities; and
- c. Ensuring good relationship and synergy within all the stakeholders.

(Stoll & Bolam, 2005)

Therefore, Rights-Based Approach equips educators with knowledge and proper skills during the growth and implementation processes of human rights.

2.7.4 Empowerment

Empowerment, in the Rights-Based Approach, involves giving correct skills to address rights within the education system which brings hope and trust amongst the role players in applying policies that relate to human rights (Uvin 2010). It involves the affordance of opportunities that lead to autonomy, responsibilities, choices and authority. In the education domain, it enshrines motivating, supporting, freeing and enabling learners (Zimmerman 1995; Lightfoot 1986), which eventually leads to Rights-Based Approach implementation. Empowerment through Rights-Based Approach affords learners a chance to reconstruct and deeply engage systems and procedures within a school (Ashcraft 1987). Mark and Louis (1997) argue that educator and learner empowerment encourages and improves the process teaching and learning, but also, promotes communication and collaboration amongst stakeholders involved at school. Better communication is achieved when engaging through communication that enhances skills and knowledge that involves legal aspects emanating from human rights (UNICEF 2015). Tahamata, Ashri, Riza and Salle (2019) argue empowerment on a basis of four pillars that builds good human relations between learners and educators as, namely: acquisition of knowledge, skills, lifelong learning and self-actualization (Uvin 2010).

In this study on educator perceptions of learners' right to education, the Rights-Based Approach becomes relevant to achieve the practicability of educators' understanding of their specific role concerning the implementation of the learners' right to education.

2.8. Rights-Based Approach in Promoting Learners' Right to Educational Development

Human rights and development cannot be separated (UNICEF 2015). Social development and self-development are a direct bi-product of the acquisition of skills, and self-actualization, as advocated by Jonnson (2000) and UNICEF (2015), emphasising that, development and human rights are connected. Rights-Based Approach facilitates the smooth implementation of human rights which ultimately leads to freedom of expression, through learners' choices and learner participation in decision making.

Developmental procedure and processes in the educational organisational structure system are facilitated by policies emanating from Rights-Based Approach. The educational development vindicates itself through correct value implementation, active learning engagements, policy awareness, and the understanding of individual rights within the school system (Collins 2018). Development that is brought by human rights leads to change which produces a better world (Hanbal & Prakash 2019, Broberg & Sano 2018). Figure 2.5 clearly exemplifies the impact of Rights-Based Approach in the education system of individual learners in order to attain a better world.

Source: Adopted from: Mapp & Rice, 2018

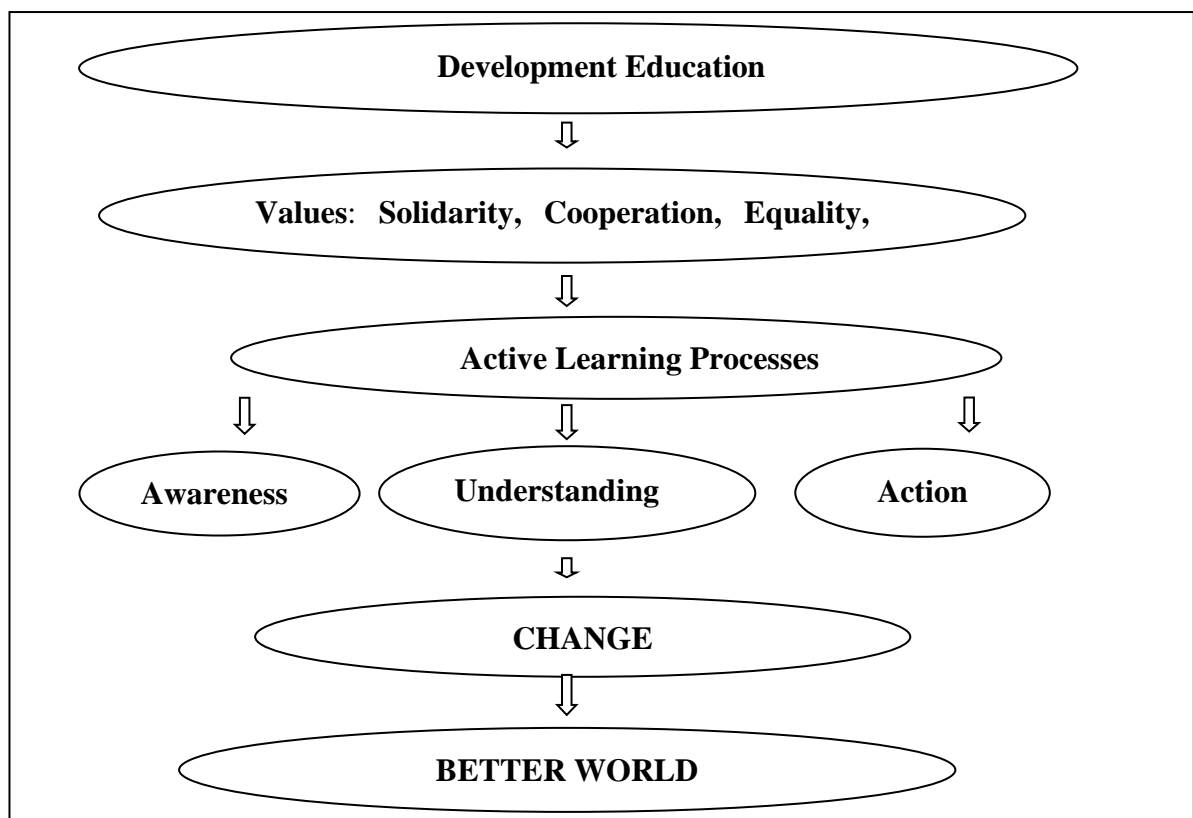


Figure 2.5: Educational Development through Rights-Based Approach

Figure 2.5 displays the development of Rights-Based Approach throughout stages with regards to changes in the formation of a better world for everyone. Since human rights are a cornerstone of Rights-Based Approach, education becomes a vehicle that brings changes within the school environment. In the active learning process, the awareness of correct policies and procedures at school should eventually lead to appropriate action by educators when faced with challenges of implementing Rights-Based Approach at school. An educator's understanding of values enshrined in the international law and national laws, which takes from various constitutions in respective countries, creates a conducive active and vigorous learning environment in which learners are free to interact.

Mapp and Rice (2018) assert that respect for learners' rights, understanding their individual backgrounds, and their individual uniqueness leads to change in attitude and it creates a better school atmosphere that promotes values. Although this investigative study on educators' understanding of learners' right to education focuses on the comprehension and the implementation of learners' right to education, Mapp and Rice (2018) accentuate that the collection of data and the interpretation thereof should be based on data disaggregation, self-identification, transparency, participation, privacy and accountability.

2.9. The Importance of Rights-Based Approach in the Process of Teaching and Learning

Franklin and McLaren (2015) identify the importance of Rights-Based Approach to be based on the major principles of Human Rights-Based Approach which assist in:

- Instrumental in human development,
- Sharpening of development by focusing on discrimination,
- Verification and checking vulnerability and weaknesses within a system,
- Evaluation of accountability.

(Franklin & McLaren 2015)

The process of teaching and learning is guided by a clear understanding of human development, learners' right to education without discrimination and total accountability by educators who have to provide tuition to learners. Therefore, the understanding of the above four principles discussed are instrumental in shaping Rights-Based Approach towards effective learning and teaching.

Franklin and McLaren (2015) identify four major principles that promote Rights-Based Approach to find direct meaning and interpretation assisted by the following four pillars:

- a. **Learning to know:** in this instance the educator learns to know learners' right to education through the implementation thereof;
- b. **Learning to be:** the educator learns to be able to negotiate changes brought upon by various policies that relates to learners' right to education and how learners are to be treated;
- c. **Learning to live together:** the educator learns to involve learners in decision making to develop them; and
- d. **Learning to do:** the educator learns through the implementation processes, during the interaction with the learners, in order to achieve the total eradication of discrimination.

(Franklin & McLaren 2015)

Franklin and McLaren (2015) argue that the application of Rights-Based Approach to education is based on the following aspects:

- a. Rights-Based Approach builds on partnership within the stakeholders;
- b. Identifies root causes in problem analysis;
- c. Advocates for evidence-based argument;
- d. Accurate indicators are used in planning, planning, implementation, monitoring and evaluation;
- e. Evaluates individuals past and present situations to plan for the future; and
- f. It addresses the imbalances and the vulnerable individuals within the power relations and removes obstacles for further developments. (UNICEF 2015)

In this study on educators' perception of learners' right to education, the framework on Rights-Based Approach to education becomes relevant due to its frame of reference based on human rights domain. The importance of the applicability of Rights-Based Approach emanates from its core values and its major principles which shape and redirect the school community against any form of discrimination.

2.10. The Government's Role in the Implementation of Rights-Based Approach in Correcting, and Promoting Democratic Principles in Schools

The education system is a direct responsibility of the government (Tahamtu, Ashiri, Riza & Salle 2019; Maboe 2013; Hanbal & Prakash 2019). Therefore, the government is obliged to play a very vital part in the promotion of learners' right to education. The right to education must be managed by the government. The government through the Basic Department of Education needs to secure certain standards and excellent education for all learners by producing indicators for the monitoring of human-rights based education. Then, the benchmark for monitoring and observing the implementation and application of human rights in education include availability, accessibility, affordability, and adaptability (UNESCO and UNICEF 2009).

A. Availability

The government is to build schools and provide resources to allow learners to attend school regularly without impediments. The provision by the government is an obligation and the failure thereof lead to the violation of learners' right to education.

B. Accessibility

Individual learners must always be able to have access to and or entrance to educational institutions without discrimination in terms of colour, gender or race. Accessibility to basic education includes free primary education to all individual learners within reasonable years. The school infrastructural facility must cater for all learners, including the impaired learners in terms of disabilities. Accessibility caters for learners who are economically challenged.

C. Affordability

The institutions of learning must be affordable in terms of school fees to ensure the attainment of learner achievement of goals and setting affordable standards.

D. Adaptability

Learners to be provided with an opportunity to adapt to situations and the environmental changes must be made to allow adaptation in which learners may probably experience or encounter throughout their learning in the school environment. Special arrangements for a certain or a particular learner who has a special need, or cultural background or deficiencies must be taken into consideration for a special type of education (Salle 2019).

2.11. Differences between Rights-Based Approach and the Needs-Based Approach to Learners' Right to Education

Although the Rights-Based Approach focuses on development in the education sector, the Needs-Based Approach has a direct bearing on the school achievements, impacting directly on learner achievements. If certain needs of learners are not serviced, then the implementation of rights will not be attained.

For the purpose of clearly explaining the Rights-Based Approach differentiation between Needs-Based Approach and the Rights-Based Approach is necessary. The Rights-Based Approach invest in satisfying the Needs-Based Approach, which rebuilds on development in the education sector, provides support services leading to appropriate action to be taken. While the Needs-Based Approach looks at individual needs of learners and the outcome goals, the Rights-Based Approach emphasises systems and processes within the education domain. Empowerment is not important for the Needs-Based Approach but the Rights-Based Approach sees the importance of empowerment as central issue in the learner development.

The Table 2.3 below demonstrates the differences between the Rights-Based Approach and the Needs-Based Approach to learners' right to education.

Table 2.3: The difference between Rights-Based Approach and the Need-Base Approach

Rights-Based Approach	Needs-Based Approach
Work towards results and processes goals.	➤ Works towards outcome goals
Highlights realizing rights	➤ Emphasizing meeting goals
Acknowledges that rights always suggest obligations of the State.	➤ Recognizes needs as valid claims
Acknowledges that rights can only be registered with empowerments.	➤ Meets needs without empowerment
Charity is insufficient motivation and stimulus for meeting needs	➤ Accept charity as a driving motivation for meeting needs
Focuses on manifestations of problems and immediate causes of problems	➤ Focuses on manifestations problems and immediate causes of problems
Requires the Involvement of intersectional, holistic projects, plans and programmes.	➤ Involves narrow sector projects
Rights-Based Approach focuses on social, economic, cultural, civil and political context, and it is policy-oriented.	➤ Needs-Based Approach focuses on social context with little emphasis on policy.

Source: UNFPA, 2012 E-Learning Companion Guide Page 90

There great similarities between the basic needs as advocated by the Needs-Based Approach, as opposed to Rights-Based Approach within the human rights domain. These huge differences

and similarities are found within the gradual emergence of the human rights and the human needs dialogue. Harris-Curtis (2003) argues that Rights-Based Approach act as a direct satisfaction of individual needs, which primarily emphasises empowerment, meeting goals and outcomes. On the contrary, the shift from basic needs, as accentuated by the Needs-Based Approach, is explained through historical human rights development. The Rights-Based Approach evolved through human rights discourse and asserts working towards outcomes while emphasising the realization of rights, through empowerment (Slim 2001).

The Rights-Based Approach to development gives five areas of good results which should confirm the correct and proper implementation of policies that fosters smooth interactions of actors within the school atmosphere:

- A. The weakest and poor citizens have entry into basic essential services: for instance, water, sanitation, health care and basic education;
- B. It strengthens the idea of good citizenship, without discrimination between poor and the rich people;
- C. It ensures that focus is on the usage of legal mechanisms in policy development, protecting individuals and/or groups, to improve their respective conditions;
- D. It limits transgression caused by dictatorship through complying with international obligations and therefore, reducing cruelty, degrading treatment and any form of punishment against human beings; and
- E. Legislation is promoted which eventually benefits poor people who are mostly vulnerable and discriminated against.

(Broberg & Sano 2017)

This research study, intends to constructively view expansion and the implementation of Rights-Based Approach, in the light of how actors adopt policies and programmes within the school, particularly during the actual teaching and learning processes.

2.12 Basic Threats to the Fostering of a Rights-Based Approach to Teaching and Learning

There are numerous indicators revealing threats to the quality of education systems as a direct opposition of failure to implement policies that promotes learners' right to education within the education domain (Alert 2019 & Starkey 2020). The threats in education systems mostly are evident through major school disruptions which involve lack of learners' right to education

implantation, and direct violation of learners' right to education, either by the government and/or individual actors. It involves discrimination of all kinds at school, high cost of going to school, brutality, violence and abuse within the school premises (Jimenez 2016). In order to avoid the existing threats to emerge within the schooling systems, support is needed for every learner who attends school. Therefore, measures were formulated to deal with threats and disruptions within the schooling system by UNICEF (2019) as follows:

- a. The government must protect education and endorse safety measures that call for stopping violence in schools, in the educational facilities and amongst personnel and the learners;
- b. Teaching and learning must be formulated to build peace within and amongst all stakeholders;
- c. The departmental officials, including principals, must build the capacity of educators in order to implement proper procedures that promote learners' right to education;
- d. All school-aged learners, including children of migrants and displaced children, must be able to resume and continue learning through access to quality education;
- e. Parents and communities must be indispensable and essential partners in securing access to quality education; and
- f. Governmental States and their international partners must work to diversify available options for quality education and formalize culturally sustainable alternative models, such as integrated schools while maintaining learning standards (UNICEF 2019).

Generally, poverty, low literacy levels in various children's family households, lack of water and proper sanitation, insufficient school infrastructure which includes electricity and lack of learning resources are to blame for the threats in the application of the Rights-Based Approach, in various schools. The South African Human Rights Commission (SAHRC 2012) further includes a lack of laboratories, textbooks, poorly trained educators and the lack of access to early childhood development.

2.13 The Interpretation and the Translation of the Learners' Right to Education

The interpretation and translation of the learners' right to education rest within the human rights domain, brought upon by atrocities of world wars and colonial emancipation, which led to the individual determination to human rights (Dugard 1994:12). These factors promoted human rights agreement (Mavimbela 2001:8), and the establishment of international human rights produced the following proclamations:

1. United Nations Declaration of Human Rights in 1948;
2. The Convention on the Rights of the Child;
3. Global Convention on Economic, Social and Cultural Rights;
4. Global Convention on Civil and Political Rights;
5. Proclamation of Teheran;
6. American Declaration of the Duties of Man; and
7. The 1981 Banjul Charter on Human and People's Rights.

Ultimately, Brinks, Guari and Shenk (2015) argue that the above international proclamations lead to the constitutional provision of learners' right to education, which in the South African circumstances and conditions are specified in terms of *The Constitution of the Republic of South Africa, 1996* and the *South African Schools Act number 84 of 1996*.

South African Constitution Act 108 of 1996 upholds human rights and is established on the merits of human respectability promoting liberty of expression and learners' right to education. Marishane (2013) asserts that a learner's right to basic education is at the central focus of international discourse within the Rights-Based Approach to expansion in support of correct interpretation of learner human rights and the implementation of the Rights-Based Approach.

Learners' right to education can only be realized when educators comprehend their role in terms of interpretation and their ability to translate correct human rights policies into fruition, (Mavimbela 2001). In this investigative research study on the educator perception of learners' right to education in secondary schools, investigation is on a deeper understanding of how educators interpret and implement learners' right to education.

2.14. Summary

This chapter gave a theoretical framework on learners' right to education taking from the international law perspectives of human rights. According to Mavimbela (2001:20), the advancement and preservation of human rights, particularly in education, is a global alarming perturbs, and eventually became a national issue within the sub-regional countries. The introduction of international laws and national laws, aligned with human rights, brought to the surface, constitutionally the acknowledgement of Rights-Based Approach in the promotional advancement and preservation of human rights (Al-Daraweesh, 2013).

The Rights-Based Approach as derived from Human-Rights Approach that largely promotes human dignity forms a lens through which educators' perceptions of learners' right to education can be viewed. Human dignity emerged throughout the years as a status, honour and respect accorded to worthy individuals in a form of respect (McCrudden 2008; Kruss 2001). Although Dayton and Dupree (2009) affirm human dignity as a constitutional value, McCrudden (2008) asserts that integrity is not the only constitutional central underlying principles but it is a judiciable and legally executable right to be respected and promoted. Therefore, learners' right to education is promoted and protected by legislative provisioning to safeguard the interaction of both learners and educators. In conclusion, the legislative framework serves as a requirement for educators to understand how to use and implement Rights-Based Approach in a school context. However, the knowledge and skills in handling learners are of paramount importance because schools must comply with the constitutional values, namely: human dignity, equality, and freedom.

The next chapter focuses on literature review on international perspective on learners' right to education.

CHAPTER 3

LITERATURE REVIEW ON LEARNERS' RIGHT TO EDUCATION, THE INTERNATIONAL PERSPECTIVE

3.1 Introduction

The origin and development of human rights worldwide contributed to the emergence of learners' right to education. There are various factors that led to the development of learners' right to education which started during the two world wars, colonial emancipation and during the people's rights for self-freedom and self-emancipation (Dugard 1994:12; Bajaj, Canlas & Argenal 2017). Throughout the development of human rights, there emerged various agreements which lead to the progress of further development of human rights, particularly learners' right to education.

Internationally, the Universal Declaration of Human Rights (UDHR) surfaced in 1948, as a product of the United Nations in which states signed a charter to promote fundamental human rights which bound all the States that participated in it. The charter on human rights, included: children's rights, women's rights together with learners' right to education. In this chapter, the focal point relates to the learners' right to education within the international perspective, examining the international countries understanding of learners' right to education. This chapter also looks into how educators promote and implement learners' right to education, while checking on all forms of violations of learners' right to education by the educators and the schooling system.

3.1.1 Definition of a Constitution

Strong (1972) views the constitution as an essential referential framework for political structure with certain functions, to satisfy human demands based on the protection of rights. It guarantees political order, distinguishes between individual rights and corresponding responsibilities. Demands and political individual expectations within communities and their interest are construed in the establishment of the legal aspect of the legitimacy of played by the constitution (Roberts 1971; Coomans 1992; Ndumbalo 2003; Omar 2010). The constitutional aspects must be practically valid and be of acceptable standards within the communities in which role players are able to identify with (Strong 1972). Omar (2010) and Peter (1990) argue that individuals and collective political interactions must be guided by the clauses that are enshrined in the constitution to objectively attain the life improvement of the well-being of its

citizens, particularly economic development. The constitution relates directly to the education system because it is regulated through the Bill of Rights, in all the international States (Bajaj, 2011; Bajaj, Canlas & Argenal 2017).

3.1.2 Definition of Education

Omar (2010) defines education as a process that changes minds through the transmission of skills, knowledge, values from one generation to another. It is a process that assists in an individual's physical, mental, moral, spiritual development (Rosado 2000). It can take both the formal structured system and/or informal unstructured system of the impartation of knowledge and skills. The formal structured institution is provided through the three layers of the State: namely, local, provincial and national. Although Carnoy (1975) sees education in the light of manumit objectives based on transformation and primarily the guidance to performance, Ostler and Starkey (2010) stress the point that education must not only be viewed as taking place in the political and economic structural institutions, which are imposed on people.

The role of education is destined to the development of individual character traits building on learners' right to education fostering forbearance amongst nationality (UDHR Article 26). The Convention on the Right of a Child (CRC) declares that States should develop learners' talents to their respective utmost abilities (CRC Article 29). Basically, the focus of education, according to CRC general comment no 1, paragraph 3 (CRC 2001), is to promote life skills through literacy and numeracy to attain the stimulation of life- long interest and positive future decision making, out of learners.

3.1.3 Definition of a Right

A *Right* is an entitlement. It primarily includes justice, due processes, ownership of a property, and interest. *Rights* are justifiably connoted to freedom, protection from terror or even torture of any kind. Practically, it refers to adequate and proper justice, fairness, and corrective measures to rectify procedures within a system (Omar 2010).

3.2 The International Development of Human Rights

Human right is conceptualised as anything owned by human beings for survival purpose or that which is owned by human beings. Claude and Weston (1998:16) confirm the view that human beings must not be debunked the opportunity to possess that which they have and want.

Literature reveals a vast range of concepts and terminology that illustrates the gradual development and emancipation of human individual in their respective comprehension of human rights generation (Bellino 2014; Mejias 2013 & Wahl 2013). For instance, the first generational development of human rights was the understanding of the diplomatic political virtues, followed by the generational age group of social, economic, and cultural racial ethnical integrity, and, lastly, the cohort of classification rights through political solidarity (Eide, Krause, Rosas 1995). International agreements produced other regional charters like the American Declaration of the Duties of Man and the Organisation of African Unity which both ascribe to the United Nations Declaration of Human Rights and produced the Banjul Charter on Human and Peoples' Rights of 1981. Thus Mavimbela (2001:8); Omar (2010) emphasise that rights to human beings in the teaching fraternity is better than the proclamation of general principles of what rights are in the education sphere. Furthermore, Better (2018) argues that the global interaction of learners' right to education within the human rights domain follows initiatives based on international human rights treaties and less focus is prioritised by countries on following the human Rights-Based Approach.

The international discourse on learners' right to education emerged from concept of human rights in relation to learners' rights, focusing on the right to education and eventually leading to the adoption of human rights as stipulated in the 1948 United Nations Declaration of Human Rights.

3.2.1 The 1948 United Nations Declaration of Human Rights

The United Nations Declaration of Human Rights was established in 1948 with the view of promoting and developing human rights within the societies. De Villiers, Van Vuuren and Wiechers (1992:1) argue that UNDHR gave a mandate for safeguarding and the advancement of the International Protection of the Human Rights which became the first cornerstone of the International Bill of Rights. UNDHR provided a political firm moral framework from which international countries could base their customary law and became bound by the law that governs human rights in education. The adoption of the Universal Declaration on Human Rights leads to the development of several agreements in view of safeguarding and advancing human rights, including learners' right to education. For instance, the adoption includes the International Covenant of Economics, Social and Cultural Rights, Declaration of the Rights of a Child in 1959, and the Convention on the Rights of the Child in 1989.

3.2.2 The 1989 Convention on the Right of a Child

In 1989 Convention on the Right of a Child resulted in strategy to protect children from any maltreat that may come their way emphasising fairness treatment more than children's welfare (Freeman & Veerman 1992:3). The promotion of autonomy and self-determination was re-introduced as opposed to the concept of only protection and nurturance within the education domain.

- The 1979 International Year of the Child: Resulted in the promotion and awareness towards the rights of learners;
- The 1989 convention on the Rights of a Child: Indicates that learners are beneficiary of human rights and benefits of a right directly leading to other rights; and
- World Summit of 1990 exposed atrocities learners faced daily which included child slavery, child labour, child trafficking and child prostitution.

(Freeman & Veerman 1992).

The above incidents became the cornerstone in the development of the history of history of children (Eide et al. 1995:289), and subsequently producing learners' right to education.

3.2.3 The American Declaration of the Duties of Man

Learners' right to education is assured through the American Declaration of the duties of man in which fairness to education includes the right to equality (Mavimbela 2001), where participatory opportunities were to be made available for all individuals, notwithstanding their race, colour, creed, community-based upbringing and ethnicity. Andrew and Hines (1987) argue that resources that the State provides must be accessible to all learners in respect of their natural abilities, within the community in providing an equitable education to all.

3.3 The International Perspective to Learners' Right to Education

The global concordat on human rights ensures learners' right to education through United National Declaration on Human Rights and provides for

- *Access to basic, equal, free and obligatory education:*
Internationally, members of the various states should protect, promote the learners' right to education and should be responsible for the provision of necessary material. Primarily, education is viewed as compulsory free for all citizens who wish or want to continue to further their education. Eide et al. (1995:201) point out an international corresponding duty by law, to the learners' right to education, which

is the emphasis on compulsory primary education. In the process of learners' access to education, the State is liable to promote morals and traditional values enshrined within the societies.

- *The right to select education in keeping with spiritual, religious, moral, virtuous, cultural and philosophical considerations:*
Choice goes with responsibility (Mavimbela 2001). Learners are unable to make a correct choice with regards to their education (Eide et al. 1995:205). Therefore, parents make choices for their respective children guided by “the best interest of a child,” through the knowledge of their specific culture, philosophy, religious dimension and the consideration of community moral and ethics.
- *The right to education and human dignity:*
Conde (1999:57) views human dignity as an innate value of an individual. Every human being is entitled to human dignity, of which Mavimbela (2010) argues that human dignity may be affected by the application of corporal punishment to a learner, discipline and/or any form of discrimination by an educator (UNDHR).

3.4 International Perspective on Learners' Right to Education in Various International Countries

Learners' rights are universal concepts, countries differ on interpretation and emphases. Basically, the right to education includes various types of entitlements and all types of freedoms. In various international countries the right to education is guaranteed by the Universal Declaration on Human rights that was adopted in 1948. In various countries, a number of instruments are utilised to guard against any form of violation of learners' right to education. Amongst other instruments used in various countries to promote and protect learners' right to education are, namely: International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the UNESCO Convention against Discrimination in Education (CADE).

The rationale for the in-depth discussion of the countries below is to focus on their application of the learners' right to education and the identification of various forms of violation of learners' right to education. The main aim and the motive on focusing on the different international countries is to further discover similarities and dissimilarities in various countries

approach, while taking into cognisance good practices in various schools within the international community.

3.4.1 India

The development of learners' right to education in India, emerged through the evolution of human rights concepts. Viswanath (2014) argues that the realization of the right to education implementation came through the conceptualization of the Rights-Based Approach within the Indians education system. Although it took India sixty years to implement and develop their education system in the attainment of learners' right to education, India's policy on learners' rights transformation is directionless. Thus, it automatically produces poor learner performance, high level of unemployment and still has tremendous discriminatory inclinations against the girl child (Tomasevski 2005; Viswanath 2014; Viswanath 2021). Initially education, in India, was used primarily as a tool to transform and reform individuals and poor families using financial incentives to girl children who regularly attends school. According to Kuenningand and Amin (2005), giving incentives for school attendance in a form of cash to learners who are always at school, at least to a greater extent, gradually reduced child labour.

The Act to right to education, in India, is also known as the Right of children to Freedom and Compulsory Education Act which was enacted in 2009, and it states that all children between the age of 6-14 years have a right to elementary education which is supported by the state. The interpretation of the Act is that the right to education in the elementary basic education focuses on learners between the ages 6-14 years neglecting learners above the age of 14 years and the further education system. However, throughout the application of learners' right to education, through the Rights-Based Approach, the Indian State assumed full responsibility, although there is far less impact experienced within their education system until the introduction non-formal education (Aradhya & Kashyap 2006; Rani 2017).

The Right to Education Act (RTE), which was enacted in 2009, was imposed to all poor schools and non-compliance of schools was threatened with permanent closure (Iyer 2018; Kingdom 2017). This Act is providing guideline procedures including in terms of dealing with infringements and the violation of learners' right to education. One typical example of the violation of learners' right to education is learners not attended by educators. The infringement of learners' right to education in India come through lack of educators in both primary and secondary education schooling. Learners are mostly without an educator and without tuition.

In a case between the State of U.P. vs Blupendra Nath Tripath in 2010, India had a shortage of 60 000 vacant educator posts and the court ordered through the Right to Education Act that there must be a training of about 33 000 B.Ed. graduates within six months just to cater for the learners who were without educators.

In order to provide a free and obligatory education to every learner in India, a revised Bill of Rights had to be introduced entitled the “Free and Compulsory Education for Children Bill 2004,” which was ratified by parliament in the Fifty Fifth Year of the Republic of India. Then, a need to form a Central Advisory Board of Education (CABE) emerged to look into:

- (A). Suggest draft of legislation in Article 21-A in the Constitution; and
- (B). Examine other elementary related issues to achieve free and compulsory basic education.

Therefore, the learners’ right to education has been made free and compulsory in India and promulgated as a fundamental right that is promoted by the Constitution of India under Article 21A. Currently, every child learner in India who is six to fourteen years of age is entitled to have free education until elementary education (Bhat 2017; Sofi 2017; Bajaj, 2017). Rani (2017) identifies and summarises challenges faced by the education system of the State of India, although acknowledging that education built knowledge, skills and learner abilities to cope, as follows:

- Lack of the governments’ State resources;
- Unstable curriculum;
- Unstable teaching learning conditions;
- Problems of girl’s education;
- The governments’ lack of financial resources; and
- Unstable pupil teacher ratio (Rani 2017).

3.4.1.1 Indian Court Case

The case that proved the importance of the Right to Education was demonstrated in a case between Avinash Mehrotra vs Union of India in 2002, where the judge pronounced that the entitlement to education is a basic necessity and the State’s duty cannot be emitted by the allocation of the perilous school. Therefore, the State must provide a safe environment so that

learners must not suffer any harm. This case laid a foundation for proper recognition of the Indian Constitution in 2002, Article 21A.

Research reveals that the learners' right to education, particularly the Right of the learners to a fair and obligatory education has a far long history dating back from the human struggle against oppression (Barman 2015; Bhat 2017). Generally, literature reveals that learners in India are experiencing all form of learners' right to education violation, including lack of free speech, lack of free association and learners undergo random and unwarranted search and seizures (Tomasevski 2001; Viawanath 2021). Furthermore, the Indian social reform in trying to alleviate inequities and social poverty has not been successful due to contrasting ideological perspective of free education and fee-paying type of education (Viswanathi 2021). Singh (2010) makes recommendations to improve the existing learners' rights violation after identifying that lack of proper school infrastructure, lack of qualified educators and lack of adequate improvement of curriculum delivery are seriously contradicting what the Act stipulates. Furthermore, Viswanathi (2014) concludes that the successful implementation of learners' right to education within the human rights realm can be achieved through the Rights-Based Approach in the Indian system of education.

3.4.2 Germany

The international treaties on global educational transformational reforms on human rights in education have ostentatiously affected the global education system, including Germany. The German education system is regulated by the Basic Law utilised by the State to formulate and adopt laws.

Literature reveals that Germany is obligated by various global pacts with inexplicable treaties that subscribe to learners' right to education, which includes International Covenant on Economic, Social and Cultural Rights, Convention on the Right of the Child, the treaty to the European Convention on Human Rights and the European Union Charter of Fundamental Rights (Churr 2015).

Germany's Constitution bestows that the whole school education structure of Germany is placed under the auspices of their national government guaranteeing the school as an organised institutional system. The German's Constitutional Article 7 protects certain learning educational goals although it does not neglect an individual's right to education. The German

State Constitution places education in the sixteen German states, which gives latitudes to the various states to have variation in terms of the recognition of educational rights. Some States opted to codify learners’ right to education in the German Constitution, while other States arranged their learners’ right to education within the German statutes. While some states opted for the German Constitution and others statutes, most States codified norms and practices through slight changes in using different wording from the Constitution, thus guaranteeing learners’ right to education to few individuals who are adolescents and talented. Germany has a high standard of education system as compared to other international countries due to its educational school structure that is divided into five levels as indicated in the figure 3.1. below:

Adopted from: Education Blog (May 2018/Germany NCEE)

Continuing education: University			
Levels	Grades	Institution	Ages
Secondary level II	5-13	Vocational School Technical college	10-19 years
Secondary level I	5-13	Secondary General School: Hauptschule Secondary School: Realschule Comprehensive School: Gesamtschule Secondary School: Gymnasium Academy	10-19 years
Primary sector	5-13	Primary School	6-9 years
Elementary level sector	1-4	Early Childhood Development	1-5 years

Figure 3.1 Germans Education System

The successful implementation of learners’ right to education is attributed and ascribed to the well-structured or developed system of education. The protection and promotion of learners’ right to education, as well, finds its root cause from the same German educational system structure which caters for all learners of different ages including formal education and vocational education. The above figure 3.1., demonstrates the availability of all types of resources in ensuring that learners in Germany are well taken care of in terms of curriculum through the Rights-Based Approach (Kayser & Osterhaus 2014; Bulsher 2015). Niemeyer (2014) confirms that Rights-Based Approach became an effective tool to achieve and realise inclusive education through special needs analysis. It therefore realised the social inclusion within the education system. Bulsher (2015) gives evidence that the right to education is promoted and protected through the following factors:

- Continuous promotion of inclusive stakeholder dialogue;
- Maintaining relevant human rights standards for learners, women and indigenous people;
- Support and promote transparency in dealing with human rights matters;
- Support measures to eradicate child labour; and
- Promote the application of the rule of Law within the society and at the workplace (Bulscher 2015).

The violation of learners’ right to education is a direct outcome of the systemic complication as opposed to personal individual exploits, and the treatment needs policy legislative amendments (Kayser & Osterhaus 2014). The interpretation and the concretisation of the learners’ right to education, in Germany finds its root foundation form the nine UN Human rights treaties as shown in the table below:

Table 3.1 Nine Core UN Human Rights Treaties in Germany

No	Human Right Treaty	Abbreviation	Year of adoption
1.	International Covenant Civil and Political Rights	ICCPR	1966
2.	International Covenant on Economic, Social and Cultural Rights	ICESCR	1966
3.	International Convention on the Elimination of All Forms of Racial Discrimination	ICERD	1965
4.	Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW	1979
5.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	1984
6.	Convention on the Right of the Child	CRC	1989
7.	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	ICMW	1990
8.	Convention on the Rights of Persons with Disabilities	CRPD	2006
9.	International Convention for the Protection of All Persons from Enforced Disappearance	ICPED	2006

Source: *United Nation Treaty Collection website (2014)*

The emphasis of learners’ right to education is constructed on the correct interpretation of the above United Nations Human Rights treaties and it produces good practices within a school.

3.4.3 Greece

Greece totally subscribes and is bound by international agreements to attain learners' right to education. These incorporate the following: the European Convention on the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. These treaties became the framework to legal operation in terms of procedures on the internal conflicting legislation (Stamelos 2002; Stamoula 2005). The structure of the Greek education system consists of three categories, namely: primary, secondary and tertiary. The following figure reflects the ages per grade, years in a grade and the total number of learner enrolment.

Source: Greece Education System (2012)

No.	Level	Ages	Years in a grade	Total enrolment per grade Total enrolment (1426 175)	Compulsory/ non-compulsory
1.	Primary School	4-12	6 years	756 025	Compulsory
2.	Secondary School	12-18	6 years	360 248	Compulsory
3.	Tertiary or Higher Education	18-24	4 years	276 902	Non-compulsory

Figure 3.2: The Structure of the Greek Education System

Although the system of the education system in Greece is well structured, it has a series of learners' right to education violations (Stamoulas 2006). The major violation of learners' right to education in Greece is through refugee denial to attend school, classroom space shortage and COVID-19 pandemic halting of schools.

- Refugees denial to attend school

Refugees living in Greece are practically refused an opportunity to attend school. The violation of learners' right to education in Greece is basically through the failure of the State to respect learners' right to education by not allowing the refugee children to attend school. The Human Rights Watch (2021) reveals a shocking narration of a number of children living in the Refugee Camps who are denied the right to education directly violating the international Human Rights treaties that binds countries worldwide. It is equally uphauling that the Greece State does not literally have contingency measures in place to promote and protect learners' access to education. Therefore, Greece is not protecting and promoting learners' right to education.

- Classroom shortage space

Lack of classroom space is also cited as a major reason of the violation of learners' right to education. A striking number of learners could not attend school in 2021 due to unavailability of enough classroom space in Malakasa Camp in Greece. The Human Rights Watch (2021) indicates that the departmental officials blame the dire situation on lack of financial resources that is needed for heating the classrooms. In order for the learners to attend school, the State needs to provide adequate infrastructure that suits the process of learning and teaching (*City Press* 2020; SAHRC 2012; CDE 2011; UNICEF 2012; GHS 2018 & Singh 2015).

- COVID-19 pandemic school halt

Recently, UNICEF (2020) reported that the school closure due to COVID-19 left learners' access to school compromised over an academic period of more than six months. The COVID-19 pandemic exacerbated the barrier to access education through the imposed restrictions that intended to eradicate the spread of the virus. The Human Rights Watch (2021) reports that the decision to halt school, particularly in March 2020 until May 2020 resulted in direct contravention and violation of learners' right to education and created a huge learning gap. UNICEF (2021: Human Rights Watch 2021) indicates that when the schools were closed during the lockdown level 5 of the COVID-19 pandemic, learners were not attended, mostly they did not have access to the WIFI and worse a considerable number of learners do not have computer gadgets.

The implementation of the above-mentioned legislation on learners' right to education was adopted to ensure law enforcement in the protection and promotion of learners' right to education. Although the implementation was effective, a number of legal issues ensued bringing fourth court cases that were adjudicated in the European Court of Human Rights with regards to the rights of children:

3.4.3.1 The Case of Sampanis vs Greece

The case involved Roma children who were denied access to school. Learners in this instance were accommodated in other special classes, apart from the main primary school buildings. The separation of these learners from the main classes constituted discrimination which is prohibited in term of Article 14 and Article 2 which spells out and promote right to education

in the Greece Constitution. Therefore, the judge ruled that the Greek government failed to supply proper schooling for the learners by placing learners in different classes which were not meant to be utilised as classrooms.

3.4.3.2 *The Case of Lavidia and Others v. Greece*

The case involved children who were constricted to attend a primary school in which the Roma children were attending. This case viewed the practice as a segregation which amounts to discrimination. In view of the judgement, the court held that anti-segregation and discrimination is a breach of right to education. According to Stamoulas (2006), the Greek education system rests on the distinction between the positive and negative rights to the infringement to basic right to education. These concepts involve financial obligations, and people’s free choices to the education they are to receive within the education system.

3.4.4 Israel

Israel has a multi-document constitution, thus the right to education in Israel is constructed on a statutory and legal ratification. It has separate basic law and different chapters form a constitution. The twelve basic laws were formed as chapters, as a result of Harari Proposal, taken in an Israeli Parliament resolving chapters be adopted, to cater for the laws of the Israel, on in June 13, 1950 (Kassis 2009: Krishan, Loader & Steimann 2020).

Although the basic laws were formed, the Israeli Basic Laws did not include special basic law on education, except for Compulsory Education Law, which stated that all children and youth starting from age of three to seventeen years are subjected to mandatory education in which the State freely provides. The Israel system of education has its own structure similar to other international countries that focuses on pre-primary education, primary education and secondary education. The figure below illustrates a clear picture of the structure and the system of education used in Israel.

Table 3.3 (a): The Structure of Education System in Israel

Level of education	Pre-primary Education	Primary Education	Secondary Education	
Years in the grade	3-6 years	6-12 years	12-15 years	15-18 years
Grade	Pre-school	Grade 1-6	Grade 7-9	Grade 9-12
Funding		Free Education Compulsory	Free Education Compulsory	Free Education Compulsory

Source: Adopted from UNESCO 2007: *World Data on Education*

The above picture paints a well-balanced type of education system from the onset although Israel is ravaged by political instability that hinders adequate promotion and protection of learners' right to education. Currently, Israel is identified as a country that violates human rights and statistics shows that about 46512 children have been arrested since 1967 by the military security (UN Global Study 2019). Taha (2019) confirms that the military security detained about 5000 Palestinian children who are supposed to be at school. Atrocious activities happen to the detained children while in prison. Amongst other atrocities taking place is denial of fair trial and exposure to ill-treatment (UNICEF 2013). This directly violates learners' right to education. According to Taha (2020), there are both common challenges and common good practices within the education system of Israel. The table below depicts the challenges and the good practices within the Israel education system.

Table 3.2: Common Challenges and Common Good Practices in Israel

<p>Common Problems:</p> <ul style="list-style-type: none"> • Constant political wars between the States. • Constant migration flows • High level of terrorism • Child degrading and inhuman treatment • Criminal activities by children
<p>Common Good Practices:</p> <ul style="list-style-type: none"> • Prioritising child's best interest is at the centre of laws and policies • Juvenile Justice created and implemented special juvenile courts.

Source: Adopted from UN Global Study 2019

Based on the table above, it is clearly evident that the Israel government has more serious challenges as compared to the good practices that can be copied by other international countries. Therefore, the political, social and economic instability creates more harm to the human rights developmental growth than it is expected to promote and protect learners' right to education.

Kassis (2009) reveals in his report on human rights in Palestine an inhuman incidence of children who are detained in prisons in the Palestinian Territory which infringes on various articles in the Israel Constitution. Although there is a huge percentage of children who are detained, the legislation unequivocally boasts about creating a community that is free and independent that built on social justice, advocates for equality and respect for human dignity.

The Palestinian made the Human Rights Committee aware of the atrocities that touches on certain articles within the constitution. Therefore, a comprehensive thematic programme became necessary to circumvent atrocious activities that leads to the learner denial of the basic education. The comprehensive protective school environment was introduced through the following means:

- Protection of learners who are victims of domestic violence within the community;
- Protection of learners who are in conflict with the Law;
- Protection of Child Political Detainees;
- Promotion of child community participation; and
- Creating of a sense of accountability (Kassis 2009).

3.4.5 Turkey

The Constitutional provisioning of learners' right to education in Turkey is executed through Article 42 of the Constitution of the Republic of Turkey, indicating that: "*no one shall be deprived of the right of education,*" and the "*the scope of the right to education shall be defined and regulated by law,*" although "*the freedom of education does not relieve the individual from loyalty to the Constitution.*" The State is further obliged by the law through the Constitution to provide scholarship to learners who lack financial assistance.

The Article 42 insists that education must be based on contemporary scientific education principles which must be supervised and controlled by the State. The free primary education is deemed to be mandatory for all citizens, both female and males, of age going children. The only restriction on the constitutional provision in Turkey is that the Turkish language is taught to Turkish inhabitants at any educational establishment, and then foreign and external language rules are to be decided by the Law, on a regular basis.

The general structure of the education system includes pre-primary school education, primary education, general and vocational technical secondary education and higher education. The following structure depicts the levels of education in Turkey.

Table 3.3(b) Turkish National Education System

No.	Levels of education	Years
1.	Pre-primary School Education	3-5 years
2.	Primary School Education	6-13 years
3.	Secondary: General and Vocational/Technical Education	14-16 years
4.	Higher Education	17-24 years

Source: Ministry of National Education (2005)

The above structure indicates a well-balanced composition of the education system that provides adequate and proper education to learners in Turkey (Yazicioglu 2020). Basically, all learners in Turkey, including foreign learners are to receive basic education as per the constitution for about 17 years (Ussar 2010). However, Turkey just like other countries captured in this literature review, is as well ravaged by a series of challenges that hampers on the learners' right to education. Generally, recent challenges include:

- Learners enrol and start their primary school late in their lives thus children struggle to cope with the lost time, and no special attention given to them;
- There is a high percentage of rural children coming from poor background, they are primarily neglected and marginalised by the education system;
- There is a high percentage of refugee children who are unable to cope within the Turkey system of education;
- High levels of drop out in secondary schools contributes to unemployment and low output in Grade 12, primarily because this high dropout rate is marginalised and neglected by the Turkey education system; and
- A number of learners experiences trauma due to language challenges and discrimination, thus they are unable to access basic education (UNICEF 2019).

Turkey, unlike other European countries, has a high increasing population of young boys and girls of school going age who are migrating from rural to urban. According to the review of National Policies for Education (2005), the constant learner migration to urban areas creates an obstacle in the realisation of quality basic education. This increasing learner migration to urban schools puts a strain on proper planning for infrastructural development and the actual supply of all types of resources (UNICEF 2018; Ussar 2010; Yazicioglu 2020). Just like New Zealand, Turkey finds its operational systems and procedure from the Rights-Based Approach in the implementation of learners' right to education. Ussar (2010) argues that, amidst the

challenges experienced by Turkey's system of education, Rights-Based Approach is appropriate to restructure in view of fulfilling the outcomes desired by the human rights directives.

According to the Education Policy Outlook (2020), the education system in Turkey is highly centralised, recruiting enough qualified educators and considerable efforts made to continuously transform the rights of learners throughout the years. Although challenges indicated above continue to exist, strides are made to continue to ensure learners' access to education and clear provisions are made to support vulnerable learners with their respective families (Yazicioglu 2020; Ussar 2010; OECD 2020).

A number of court cases emerged in Turkey influenced the understanding of learners' right to education and are reflected below.

3.4.5.1 Justice System in Turkey

The Highest Constitutional Court in Turkey rendered some decisions involving the right to education under Article 42 to be unconstitutional in nature. For instance, in July 13, the court ruled that definite regulations in the Law of Private Teaching Institutions were contradicting Article 42 of the Constitution due to restrictions of fundamental rights and freedom of enterprise. Then, an annulment was inevitable in addressing the discrepancy.

The unreasonable diminution of the right to education and learning emerged through the court realising that the disbarring of privatized tutoring centres from the education system denies learners the opportunity to prepare for the examinations, particularly if there is no provision for opportunities for out-of-school learning. Therefore, the private centres were granted legal status to operate (Ozturk & Dogan 2017; Covell 2007; Hodgkin & Newell 1998; Shumba 2003).

Further court cases revealed that in 1998, a decision was taken to affirm that "*compulsory education and uninterrupted education for 8 years,*" under the Article 42, is not contrary to the Turkish Constitution and the entire system of education. Then the amendment to the constitution was to contemplate for the addition of more extra years to the 8 years which were promulgated by the Turkish Constitution.

3.4.6 New Zealand

New Zealand does not have one solid document as a constitution but has its constitutional arrangements in sources, statutes, court decisions and in un-codified constitutional features. New Zealand does not have One Composite Constitutional document but it subscribes to international treaties that promotes access to free education, as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR). For instance, New Zealand Bill of Rights Act 1990 gives operations under domestic law, linking the rights enshrined in the International Covenant on Civil and Political Rights. Nothing is mentioned by the New Zealand Bill of Rights on social, cultural, and economic rights, particularly the right to education; however, the right to acquire free education is reverberated in the Education Act 1989, section 3: “Right to free primary and secondary education” (ICESCR).

The New Zealand court case revealed that *“the right or dispensational entitlement to free enrolment and free education”* had its origin and development dating back from its inception in 125 years ago, since its ratification of the Education Act 1877. Therefore, a further addition was to add Section 8, in the New Zealand Bill of Rights, for provision of special education for learners with special needs, in terms of, *“equal rights to primary and secondary education.”* It explains that learners with disability have similar right to register and acquire education provided by the State, in any school, in New Zealand.

The structure of education, in New Zealand is divided into three categories: primary, secondary and higher education and is reflected in the diagram below.

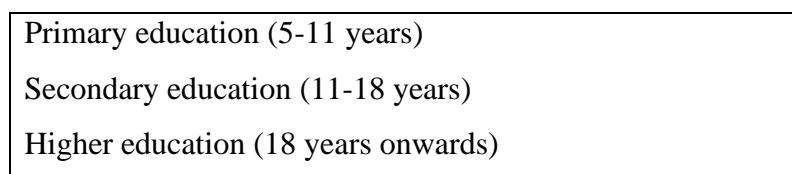


Figure 3.3: Structure of Education System in New Zealand
Source: Adopted from Statistics New Zealand (2006)

The expounding of the right to education in New Zealand is viewed as an indispensable expression to attain other basic human rights. The interpretation and the implementation of the right to education is essential to human development (Human Rights Watch 2016). According to Clark-Howard (2019), New Zealand’s interpretation of learners’ right to education emanates from the participatory involvement in the process of learning about human rights and

their corresponding responsibilities. The gradual development and the understanding of concepts related to other human rights creates high quality teaching and learning environment free from bullying activities, free from violence and free from any form of harassment. The understanding of learners’ right to education finds its root base from political, civil and economic, social and cultural rights (National Equality Opportunities Network 2009; Statistics New Zealand 2006). The approach to the interpretation of the learners’ right to education find its primary view point within the Rights-Based Approach in the education system of New Zealand.

New Zealand’s’ framework of bringing changes within the education system is based on Rights-Based Approach to education. Becker et al. (2015) indicate that Rights-Based Approach is primarily used as a lens to view the attainment of the application of the right to education. The Human Rights in New Zealand (2010) paints a clear picture that New Zealand is practically involving concepts taken from Rights-Based Approach: availability, accessibility, adaptability, and accessibility to achieve and attain effective education system. Further demonstration of the concepts is depicted in figure 3.4 below.

(Section Three-Economic, Social and Cultural Rights)

<p><u>Availability:</u> Available of education to all learners. Available of qualified educators. Availability of opportunities to meet learners needs.</p>	<p><u>Accessibility:</u> Barriers to education limited Obstacle preventing learners to access education removed</p>
<p><u>Adaptability:</u> Educational experiences build on personal achievements through human potential. Provision of education promotes equitable achievements.</p>	<p><u>Acceptability:</u> Quality standards assured through proper and adequate education provision. Education content reflects human rights standards. Conducive working and learning school environment</p>

Figure 3.4: New Zealand’s framework of the Right to Education
 Source: *Human Rights in New Zealand (2010)*

The utilisation of the Rights-Based Approach in the protection and promotion of learners’ right to education creates a conducive learning atmosphere within schools in New Zealand. The figure above demonstrates a reasonable conceptual relation between Rights-Based Approach and the learners’ right to education based on availability, accessibility, adaptability and accessibility. Although New Zealand portrays a better understanding of human rights in education and effectively implement learners’ right to education, it is as well ravaged by

numerous challenges in fostering the protection and promotion of learners' right to education. Clark-Horward (2019) reflects on a range of these challenges that hinder the implementation of human rights in education. The following table demonstrates a vast range of challenges faced by the education system.

- Disabled learners are made to feel unwelcome when seeking learner enrolment.
- Some schools illegally prevent local students to enrol in various schools
- Some students compete rather than collaborates
- Poor provision of school infrastructure
- Underutilisation of resources and inefficient school management
- Poor governance decisions on matters that directly affects learners
- Current funding disadvantages small schools, in small communities.
- Large classes that hampers on teaching and learning opportunities and learner space allocation is not addressed by the educational officials.
- Shortage of educators to teach special learners with special learning needs
- Youth suicidal rate
- Early childhood development education still not accessible by all learners.
- Vulnerable children from poor communities are academically left behind and neglected.

Figure 3.5: New Zealand's Challenges in the Implementation of Learners' Right to Education
Source: *Karinga Weaving Education Threats (2019)*

Generally, it is acknowledged by Clark-Horward (2019) that the education system looks bleak because of overcrowding in schools, increasing rate of bullying, discrimination based on disability and ethnicity, learners declining sense of belonging to a school, increase level of disorder in schools, inadequate educational facilities, and high levels of community poverty. Munoz (2007) argues that New Zealand lacks a nationwide human rights education provision and the right to education is not explicit within the countries *Law* and the school funding creates discrepancies in terms of attaining accessibility to school institutions.

The above-mentioned international counties represent a variety of countries that attempts to correctly implement learners' right to education, showing both a significant strides and experiences challenges, as well. Briefly, international countries subscribe to international treaties and currently focusing on improving the disadvantaged young learners in trying to improve learner accessibility to school within their diverse communities (OECD 2009; Baragwanath 2009; Human Rights Commission 2006; Munoz 2007; Ministry of Social Development 2009).

3.5 The Learners' Right to Education within the African Continent

The African Continent is ravaged by a series of infringements in the execution of learners' right to education. The Economic and Political challenge which differs from one country to the other creates different outcomes relating to the implementation of learners' right to education. UNESCO in its Convention against Discrimination reveals that there is huge number of learners within the continent who are "left behind" or the "hardest to reach," due to discrimination practices in terms of disability, religion, ethnicity, race, gender, including sexual status and health. It is the cohort of learners who are repudiated from the right to education opportunities as compared to those who are privileged.

The Right to Education in the regional continent is provided through the African Charter on Peoples Human Rights under Article 17 that specifies that "*every individual shall have the right to education,*" then Article 11 indicates that child's education is to be made comprehensively, free and compulsory. The World Education Forum that took place in Dakar in 2000 confirmed that free and obligatory basic education system was also promoted by African Charter on the Rights and Welfare of the Child (ACRWC). These instrumental bodies enforced the concepts of learners' right to education through the Ministers of Education in African Member States held in Durban in 1998. Therefore, a Sub-Saharan framework of Action was formulated: Education for African Renaissance in the Twenty-first century, in Johannesburg re-affirming learners' basic right to education for all African children.

The United Nations Girls' Education Initiative (2014) reveals that various forms of school violence, including bullying, forms of harassment, corporal punishment, violence outside the school creates child's inability to learn and tempers with the psychological and physical wellbeing of the children. In the African continent, sexual violence and abuse in and around the school, either perpetrated by educators and learners or against learners and educators, form part of the daily occurrence without being addressed amicably by the authorities.

3.5.1 Nigeria

In Nigeria, there are many incidents of educational atrocities that make learners' right to education not plausible. The UNICEF (2015), in "*Missing Childhoods,*" gives a case in Nigeria of 2000 girls in Northern Nigeria who were abducted since 2009 and 276 school-going girls kidnapped in Chibok in 2014.

Research shows that, in many cases, boys and girls in Nigeria are targeted by armed groups for political attack against the government institutions (Human Rights Watch 2016). Nigeria has a Bill which operates in both the State and the Federal legislative wings of government which provides for and promotes learners' education. The Bill was to show alignment of Nigeria's devotion to the international human rights obligations.

The "*Child's Rights Act*," enacted in 2003.

The Bill safeguards and protect the right of a child by giving the child protection and care for his/her well-being. The Right of children in Nigeria involves the right to acceptable upbringing, the right to education, the right to affectionately caring, the right to indistinguishable treatment, the right to fondness, the right to life and equivalent life chances.

3.5.1.1 "*The Right to Education*"

The Nigerian situation calls for guidance, caregivers, biological parents to take part in their children's tuition, giving them a sense of working mutually with them through caring and loving, although the government has to promote and provide for the necessary needs of the individual learner who enrolls at a school (Kawu 2013).

3.5.1.2. *Infringement of Learners' Right to Education in Nigeria*

Research reveals that there is a significant human rights violation in schools in Nigeria (Williams, Obun, Akpan & Ayang 2012). Criminals are highly engaged in criminal activities and culprits are not arrested. In rural areas, there is a lack of physical facilities and social security, bringing safety to almost nothing. The situation in Nigeria makes reporting crime and criminal activities difficult due to poor network of roads and inaccessibility to the police station. Schools are not safe, human dignity is disregarded by school administrators, thus creating learners/school maladjustment. Kimbrough and Nunnery (1983) confirm school culture alienation, and a serious indirect promotion of lawlessness amongst school role players.

Learners' right to choose in terms of boarding facilities is limited because most schools have little boarding facilities, as a result, learners opt for schools that they do not prefer. Mbipom (2000) vehemently concludes that learners' abuse is a direct result of school educators' ignorance of the learners' fundamental human rights law. Education legislation knowledge and skills in terms of learners' right to education is not practised and even not known by the educators who are supposed to implement. Williams, Obun, Akpan and Ayang (2012)

conclude that there is a need for educators to master the subject content to drive the curriculum delivery in each subject, and educators must do in-service training to acquire skills and knowledge of education law.

3.5.2. Tanzania

In Tanzania, the international Bill of Rights was embraced in the Constitution of Tanzania since 1984 (The 1977 United Republic of Tanzania constitution). Omar (2010:2) vehemently spells out that the right to education cannot be adjudicated in the court of law within the Tanzanian constitution. Therefore, learners' right to education is not legally binding in the court of law because, primarily that the application of the right to education is poorly understood and their Bill of Rights is divided into two parts:

- Part 1: unenforceable rights- these rights are not legally enforceable through the courts.
- Part 2: enforceable rights- these rights can be enforced by the court systems.

Although, in accordance with Article 9(c) of the 1997 URT Constitution, the State is responsible for developing, protecting and using the national wealth for the citizen's interest, the government interest is to alleviate poverty and disease. The 1997 URT Constitution protects against misappropriation of public funds, thus the effectuation of the right to education is neglected. The Tanzanian authorities claim to the United Agencies (UN) to have adopted legislative measures in the execution of the right to education through the 1997 URT Constitution (Omar 2010).

The right to education grants rises to the understanding and realisation of other important rights and freedoms. The case between *Brown vs Board of Education of Topeka* in US in 1954 established an important function a state must do in the supply of basic education to its inhabitants:

- provision of education is a primary responsibility of the State, including budgetary resources,
- the State must provide personnel to teach the learners;
- educational provision leads to cultural value development in the creation of good citizens; and
- the non-discriminatory activities must be dealt away with.

3.5.2.1. Learners' Right to Education in Tanzania

International human rights organisation laid a point of departure to the development of learners' right to education. These organisations incorporated the Universal Declaration on Human Rights (UDHR), citing very clear that countries must acknowledge the imminent human dignity, and equal rights of all citizens throughout the nations. The International Covenant on Economics, Social and Cultural Rights (ICESCR) places great emphasis with regards to the close connection between education and human dignity, saying that without education it is imponderable to ensure humans dignified life. Omar (2010) stresses the point that lack of access to education deprives learners of their right to education, thus resulting in lack of dignity. Just like any other right, educational right empowers individuals; liberates; fosters autonomy; promotes personal liberty; and develops critical thinkers, of which most learners in Tanzania are deprived of (Donnelly & Howard 1988).

Literature reveals that learners' attainment of certain skills and knowledge standard enables them to participate effectively in societal political decision making and, accordingly, Tanzania promotes a certain level of education in political participation (1977 URT Constitution). A minimum level of education also permits learners to effectively engage in the socio-economic activities. Level of literacy and numeracy make individuals to read and calculate which enables citizens to secure houses, food, and to be understood in their daily communication. Omar (2010:12) claims that in Tanzania education is used a road to attain a desirable satisfactory life, showing an adjacent link connecting education and cultural rights. This plan is confirmed by ICESCR with respect to education right thus: *"Education is a human right...an indispensable means of realising other human rights. Is an empowering right... children can lift themselves out of poverty, empowering women, safeguard children from exploitation?"*

Basically, in Tanzania, learners' right to education is not implemented and adhered to. There government must provide proper education system through establishing schools, employ proper qualified educators, establish academic freedom, make education accessible to all and affordable to all. These conclusions about Tanzania are based on the fact that the Article 11 of the 1977 URT Constitution does not agree with the global and territorial regional human rights appurtenances. More badly, the build-up and the development of the Tanzanian constitution were without the involvement of the people consultative forums (Omar 2010).

3.6 Infringements of Learners' Right to Education

The Education Deficit throughout the document on Failures to Protect and Fulfil the Right to Education in Global Development Agenda, reveals thirteen exhortations which must protect in order to produce learners' right to education. It indicates that all States ought to:

- a. Produce and publish reliable and disaggregated primary and secondary enrolment, attendance, and completion statistics by age, gender, disability at a minimum, as well as ethnicity, religion, language, and other categories, where minorities have been traditionally discriminated against;
- b. Ensure national legislation includes protection for the right to education, including secondary education, consistent with international law;
- c. Take steps, including through policy and monitoring, to ensure non-discrimination, and guarantee the reasonable accommodation of learners with disabilities;
- d. Ensure primary education is free and ensure indirect costs do not become a barrier to access. Promptly investigate cases of children being denied access to school or being expelled from school due to an inability to pay fees or for school supplies, including uniforms;
- e. Ensure national legislation protects the compulsory nature of primary education. Adopt mechanisms to monitor the enforcement of compulsory education at a local level, including actions by school officials, parents or community leaders that could jeopardize learners' access to education;
- f. Make time-bound plans, including with international assistance, to ensure secondary education is free;
- g. Outlaw all forms of corporal punishment in schools and introduce stronger guidelines to stop bullying in schools;
- h. Strengthen child protection mechanisms in schools and local communities to ensure any allegations of sexual abuse, corporal punishment, or discrimination against students are promptly investigated, redressed, or prosecuted;
- i. Make comprehensive Sex Education part of the school curriculum, ensure that teachers are trained in its content, and allocate time to teach it;
- j. Increase the legal age of marriage to 18 years for both men and women and monitor local compliance with this age requirement by judge, local government officials, or traditional leaders who are involved in performing or registering marriages, and enforcement by police of laws criminalizing child marriage;

- k. Ensure the provision of education in crises and displacement, and adopt special measures to ensure child can continue to go to school in highly insecure areas, including by reducing the distance to school, offering distance learning programs, and setting up protective spaces for girls and teachers;
- l. Endorse Safe School Declaration and implement the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict; and
- m. Ratify key treaties, including the United Nations Educational, Scientific and Cultural Organization on the Rights of Persons with disabilities, and the International Labour Organization 1973 Minimum Age Convention (No. 138) and 1999 Worst Forms of Child Labour Convention (No. 182).

According to the Human Rights Watch (2016), if any country does not subscribe and practise the above safety measures in the promotion of learners' right to education according to the international standard, then it creates Education deficit. The failure of the countries and states to adhere to the international standards and procedures laid out by the Global Development Agenda constitutes infringements with regards to the application of learners' right to education. The "*Education Deficit*" was brought upon by the results in a shortfall between educational realities that learners go through internationally in view of what the governments are committed to do and what government and states are precisely doing learners.

Clearly, internationally, nationally and locally there are a number of learners' right to education violations. The Human Rights Watch (2016) reflects on the international outcry on learners' right to education, as follows:

- a. Around 124 million school going children between ages of 6-15 years have either never started schooling and some have dropped out of school in 2011;
- b. About 31 million girl children in the world never attended primary school;
 - c. About 43 million girls are always absent from secondary schools;
- d. Estimation of about 24 million girls may probably never go to school, in their life time;
- e. 29 million learners who are expected to be at school, are not at school due to political conflicts, and displacement, in various countries, while other children will seek refuge in other politically stable countries;
- f. Millions of other children are in politically unstable countries and are drawn into fighting as soldiers. They are found in countries like: Nigeria, South Sudan, and Central

African Republic. In the meantime, these learners were never at school and may probably be not at school for their entire lives; and

- g. About 93 million of children are regarded to be in some disadvantaged countries and were declared by the World Health Organisation as having disabilities, thus they are excluded in educational mainstream (Human Rights Watch 2016).

Ending the education infringement would mean that all the States and countries must ensure that every learner child must have quality primary and secondary education, whether with or without any financial assistance. The Human Rights Watch (2016) emphasises that each government must deal with internal issues that pertains to violations, abuses and any other form of force that keeps children out of school. The United Nations must ensure global adherence to international human rights standards through measures that would always make account for any form of infringements of the right to education.

The Human Rights Watch (2001) received a report in relation to the infringements of human rights, including learners' right to education by USA, although it claims authority over international rights promotion. Research on human rights abuse confirms an existence of high level of discrimination, violence, any form of abuse, homelessness, poverty, racism, deportation and social class promotion. These violations of learners' right to education create fear, anxiety and eventually disruption in the formal schooling system (Schiller 2013; Osler & Starkey 2006). International research on learners' right to education shows a huge struggle of the undocumented learners whose right to freely attain education has been reduced. These undocumented learners plied and an opportunity to further their personal study endeavours is denied by the State and other related role players (Schiller 2013). Although the United Nations (UN), through its international Human Rights system, engages with students using curriculum specifics to challenge international human rights violation that shows itself through torture, and students' disappearance, the ongoing challenges of learner denial to education is given less attention (Gaudelli & Fernekes 2004). A huge number of marginalised international learners in USA whose interest in academic development has been frustrated due to the denial and the infringement of the learners' right to education. Their individual attempts in trying to raise awareness of social and political attention falls on deaf ears (Fine, Futch, Jaff-Walter, Pedraza & Stoudt 2007).

Unlike USA, Australia has a clear evidence of development and support of learners’ right to education through its systems and well-structured framework, in championing curriculum inclusion of the practicality of the right to education, especially in the early stages of the child’s learning (Phillips 2016). A very clear illustration is provided below showing distinction within the forms of rights that have a direct bearing on learners’ right to education: categorised in three phases as civil rights, cultural rights, social rights, and political rights demonstrating a proper structured and followed pattern of rights.

Table 3.4: Type of Rights Entitlement

No	Rights	Reference to Human Rights in Early Years Learning in Australia
1. Civil Rights	Right to life and development (Art 3 UDHR; Art 6, 29 CRC).	“The five Learning outcomes are used to capture the unified and complex learning and growth of all children across birth to five age range.”
	Right to equal value and non-discrimination (Art 7 UDHR; Art 26 ICCPR; Art 2 CRC)	Principle 3 – High expectations and equity - “Educators ... challenge policy procedures that contribute to injustice and make curriculum resolutions that promote inclusion and participation of all learners” (p.13)
	Right to freedom of opinion (Art 19 ICCPR, UDHR) Right to freedom of thought, conscience & religion (Art 18 UDHR; ICCPR; Art 14 CRC)	Example of proof of Outcome 2a learners develop a sense of belonging to groups and communities and an apprehension of the reciprocal rights and responsibilities required for active community engagement “children - express their judgemental thinking in matters that affect them” (p. 26) Outcome 3 – Children have an indestructible sense of wellbeing - “educators attend to children’s wellbeing by providing...respect for all features of their physical, emotional, social, cognitive, linguistic, creative and spiritual being” (p. 30) and “welcome children and families sharing aspects of their culture and spiritual lives” (p. 31).
2. Political Rights	Right to freedom of expression (Art 19 ICCPR; Art 19 UDHR; Art 13 CRC)	Learners’ learning is described as - “Play is an activity for learning that allows for the expression of personality and uniqueness” (p. 9)

	<p>Right to take part in the conduct of affaires (Art 25 ICCPR; Art 12 CRC)</p> <p>Right of peaceful assembly (Art 21 ICCPR)</p> <p>Right to freedom of association with others (Art 22 ICCPR)</p>	<p>Learners’ learning is described as – “They acknowledge their agency, capacity to commence and lead learning and their rights to engage in decision that affect them including their learning.” (p. 9)</p> <p>Outcome 2a - “A learner develops a sense of attachment to groups and communities and a comprehension of the reciprocal rights and responsibilities necessary for active community participation” (p. 26)</p> <p>Outcome 2a “learners develop a sense of attachment to groups and communities” Example of evidence of Outcome 2a “begin to recognise that they have a right to belong to many communities” (p. 26)</p>
3. Social and Cultural Right	<p>Right to education (Art 26 UDHR; Art 28 UNCRC; Art 13 ICESCR)</p> <p>Right to take part in and enjoy own culture (Art 30 CRC; Art 15 ICESCR)</p>	<p>“Early childhood educators guided by the Framework will establish in their daily practice the principles established out in the United Nations Convention on the Rights of the Child (the Convention). The Convention indicates that all learners have the right to an education that establishes a base for the rest of their lives, maximizes their ability, and respects their family, cultural and other identities and languages” (p.5)</p> <p>Principle 4 – respect for diversity - “endorses that all learners’ rights to have their cultures, identities, abilities and strengths acknowledged and valued, and respond to the convolution of learners and families’ lives” (p.13)</p>

Source: Adopted from Phillips 2016

Learners in Australia enjoy and fully exercise the above demonstrated rights because learners are made aware of in their respective earlier years of schooling. Therefore, the execution of learners’ right to education is not questionable in terms of the explicit acknowledgement of the role of learners as beneficiary of the rights entitled to them. Concept of learners’ right to education is highly respected and practised by educators due to its proper guidelines, expectations, equity and respect for diversity (Phillips 2016).

3.7 Educators' Role in the Promotion and the Implementation of Learners' Right to Education

The United Nation (2006:6-7) asserts that Human Rights in education must be integrated as part of the education system through correct content syllabus, and should produce practical experience in the promotion and protection of learners' right to education. To achieve the integration of human rights in education into various school content syllabuses, the following aspects are to be demonstrated by educators in various countries that subscribe to human rights:

1. Knowledge and Skills

There must be a process of learning, in order to impart knowledge and relevant skills, which will eventually usher the attainment of skills and knowledge to be used every day by the learners.

2. Value Attitude and Behaviour

The primary values attached to learners' right to education must be developed by the educators in trying to change both the educators and the learners' attitude and behavioural conduct, to be according to the required standards of human rights.

3. Capacity for Action

Educators are to be capacitated in terms of human rights in education so as to deal with the execution of learners' right to education. All role players in the education system require capacitating to enable them to safeguard and expand human rights (United Nations 2006:12).

Educators are to safeguard and promote the value and awareness, accountability, and the transformation process within the schools and the education systems (Tibbitts 2002: 163-167). Although there needs to be a vigorous change in the systematic execution of the human right to education (Robinson, Phillips & Quennerstedt 2020), educators are to support, provide information and educate learners about human rights in education (UN 2006). According to Osler and Yahya (2013), educators' practical role is to stimulate interest and encourage debates on school's performance and practices of human rights at school. The school curriculum and the actual teaching content needs to be incorporated by human rights concepts and definitions to enable the learners to comprehend human rights in education (Quennerstedt 2015). A clear role of what educators need to do to understand and promote human rights in education is demonstrated in a model that was researched in three international countries, namely: Sweden,

England and Australia (Robinson, Phillips & Quennerstedt 2020; Tibbitts 2006). Common findings emerged as follows:

- Educators are to educate learners about the human rights;
- Develop learners understanding of inherent human rights;
- Educators are to promote the right to invariable value and non-discriminatory attitudes;
- Educators are to promote moral concepts such as fairness or impartiality and respect; and
- Educators are obliged to promote freedom of expression, conscience and religion.

(Robinson, Phillips & Quennerstedt 2020)

The above illustration points are demonstrated in a table form below.

Table 3.5: Examples of Rights

No	Country	Right to:	Examples of educators' responsibilities
1.	Australia	Equal value and non-discrimination.	Educators are expected to support learners to: "identify ethical concepts, such as equality, respect and connectedness, and narrate some of their attributes"
		Freedom of thought, conscience and religion.	Civics and Citizenship curriculum aims to guarantees learners development: "a lifelong sense of belonging to and commitment with civic life as an active and informed citizen in the context of Australia as a secular democratic nation with a dynamic, multicultural and multi-faith society and a Christian heritage"
		Take part in the conduct of affairs in matters affecting them.	In the General Capability of Ethical Understanding, reasoning in decision-making and actions is a central organising element. This emphasises the consideration of others, and states students will: "Learn to be explicable as members of a democratic community"
2.	England	Equal value and non-discrimination.	Educators are expected to teach pupils to: "identify and respect the dissimilarities and similarities and diversity among individuals of different race, cultures, ability, disability, gender, age and sexual orientation and the impact of prejudice, bullying, discrimination and racism on individuals and communities."
3.	Sweden	Equal value and non-discrimination.	Educators are to transfer human rights principles as basic values in Swedish society: "the equal value of all people, equality between women and men" and to teach learners: "what

			constitutes discrimination as laid down in Swedish law”
		Freedom of thought, conscience and religion.	Educators are to transfer knowledge about freedom of religion and “should openly communicate and debate different values, views and problems”
		Freedom of expression.	Educators are required to supply chances for pupils to develop: “knowledge of how they can express their own perspectives and rational thinking”
		Take part in the conduct of affairs in matters affecting them.	Educators are expected to aim at each learner having: “knowledge of democratic principles and . . . the ability to work in democratic forms”

Source: Adopted from Robinson. C, Phillips. L. & Quennerstedt 2020 (Page 233)

The table above explains educators’ responsibilities with regards to the execution of learners’ right to education within the international community. The above three countries’ educators show a slight difference in the comprehension of what educators must do to implement learners’ right to education. According to Yuen, Leung and Lo (2013), learners’ right to education is also promoted through various school ethos that includes secure school environment; friendly school; upholding learners’ study rights; equal and fair treatment of learners; respect for diversity and personal differences; learner democratic participation at school; and basically, educators’ professional autonomy.

3.8 An Analysis of International Court Cases That Relates to Learners’ Right to Education

Recently human rights education, basically, learners’ right to education, has become a central focus of the international policy discourse within the international communities. Thus, the human right to education is viewed radically under the auspices of human rights law. The international court cases intend to ratify and standardize practices during the implementation of learners’ right to education through post-conflict educational strategies and provides clarity on human rights in education (Bajaj, 2011). The International Justice Resource Centre reveals that court cases enforces international laws to all states, through states obligation and provides legal protection to all States citizens.

There are a number of global human rights appurtenances that promotes, protects and provides for legal framework in dealing with learners' right to education. These instrumental referential frameworks are specified below:

- American Convention on Human Rights (Article 26);
- American Declaration on the Rights and Duties of Man (Article XII);
- African Charter on Human Rights and Peoples' Rights (Article 17);
- African charter and the Rights and Welfare of the Child (Article 11);
- African Youth Charter (Article 13);
- Charter of the Organization of American States (Article 49);
- Charter of Fundamental Rights of the European Union (Article 14);
- Convention on the Elimination of all forms of Discrimination against Women (Article 10);
- Convention on the Rights of the Child (Articles 29-29);
- Convention on the Rights of Persons' with Disabilities (Article 24);
- Convention Relating to the State of Refugees (Article 22);
- European Social Charter (Article 7);
- First Protocol to the European Convention for Protection of Human Rights and Fundamental freedoms (Article 2);
- International Covenant on Economics, Social, and Cultural Rights (Articles 13-14);
and
- UNESCO Convention against Discrimination in Education (UNESCO 2007).

The above legal instruments are of vital importance treating and dealing with various international cases on learners' right to education. Although individual legal claims to learners' right to education depend on an individual ratified State treaty agreement with the international community, the individual State ratification brings along legal States obligation, in terms of respect, preservation and realization of human rights (UNESCO 2007).

The following few cases and complaints were registered internationally to proof the existence of the violations of learners' right to education and attempts to rectify violations were enacted. The cases are based on discrimination; equal access to education; academic freedom; parents and legal guidance to rights; instruction to minority languages; and issues related to health education.

3.8.1 Equal Access to Education

3.8.1.1 Citation: *Timish v. Russia, nos 55762/00*

- Date of judgement: 13 December 2005
- Facts: The seven-year-old and a nine-year old school-going learner were denied admission to a school due to the fact that their biological father was not a registered resident within a particular community.
- Issue: The European Court of Human Rights found that the learner's denial to be admitted at school is a violation of learners' right to education.
- Holdings: The magistrate made an order that the applicants' children be admitted due to the fact that, under the First Protocol of the European Convention, States must assure any learner within their auspices the right of access to basic education, stating that citizens and residents must not be prevented from such an undertaking.

3.8.1.2 Citation: *Case of the Girls Yean and Bosico v. Dominican Republic*

- Date of judgement: 18 September 2005
- Facts: The school-going learners were prevented from attending school due to lack of Birth Certificate. The undocumented girls' parents were migrant labourers who did not have ways and means of obtaining Birth Certificates for their respective children.
- Issue: These girls who were undocumented were denied an opportunity to attend school due to the fact that their migrant parents were unable to attain valid Birth Certificates and failed to present Birth Certificates, and/or including relevant national documentation at the prospective school.

Holdings: The found that the State Law that requires valid Birth Certificates violates American Convention (Article paragraph 186). The judge agreed that the immigrant parents do not have ways to acquire Birth Certificates for their children. Therefore, the court concluded that the State must render special consideration to the demands and the rights of the vulnerable girl children.

3.8.1.3 Citation: *International Association Autism-Europe v. France, Complain no 13/2002*

- Date of complain: 11 April 2005
- Facts: Learners' right to education not provided to learners with disabilities, particularly learners with Autism. Autism learners were denied an opportunity to

an effective education that the State is compelled to administer. The level of education received among Autistic learners was of lower standards and inferior as compared to that of learners without Autism.

- Issue: the agreement to the complaint was that the learners with Autism must be provided with an education system which is of equal standards with the learners who do not have Autism. This issue was also viewed as unfair discriminatory injustices on the basis of a disability which raises elements of equality in terms of treatment of learners. Learners with disabilities, including Autism learners, are also entitled to effective education with maximum availability of resources relevant for their utilization.
- Holdings: The committee dissolved that the State infringed on the Revised European Social Charter due to its failure to assure effectual education for learners leaving with Autism. Therefore, the State must provide effective education equivalent to other learners who are without Autism.

3.8.2 Academic Freedom

3.8.2.1 Citation: *Sorgue v. Turkey. No 17089/03*

- Date of judgement: 25 June 2009
- Facts: The freedom of expression denied to professors who were to freely express themselves in the process of distributing knowledge and truth. The restriction of academic expression denies learners an opportunity to learn and receive adequate knowledge and skills needed in their respective journey of life.
- Issue: The freedom of expression made a professor to criticise the university appointment system and subsequently sued by a colleague for pouncing on his good character.
- Holdings: The distribution of knowledge and the impartation of skills must be without restrictions. The State upholds, through Domestic Court that the utterances by the professor constituted an ambush on his colleague's character. On the contrary, the State infringed on Article 10 of the European Convention because the National Court connected greater significance to the reputation of an unnamed person to freedom of utterance, within the academic public debate.

3.8.2.2 Citation: *Good v. Republic of Botswana Communication no. 313/05*

- Date of communication: 26 May 2010
- Facts: The facts relate to the expulsion and the deportation of a University professor for criticizing the Botswana presidential succession process. Freedom of expression has been violated by the State by acting unlawful and out of legal framework.
- Issue: The issue relates to the violation of freedom of expression by the State. The professor lodged a complaint that the deportation without judicial involvement was extremely unfair. The complainant holds a contrary view to the State, thus arguing that he was unfairly discriminated based on his entitlement of freedom of expression.
- Holdings: The commission argued that the professor's article which he presented contained critical arguments revealing great standards of academician, although the State holds the view that the article is offensive, but it should have been tolerated by the State.

3.8.3 Parents and Legal Guardians' Rights

3.8.3.1. Citation: *Catan and Others v. The Republic of Moldova and Russia no. 43370/04*

- Date of judgement: 19 October 2012
- Facts: The parental rights were violated when they were told by the school that their school-going children must be withdrawn from Moldovan Language and, if not, parents will lose or be deprived of their parental rights.
- Issue: The children of the mentioned parents were supposed to withdraw their children from the Moldovan language or otherwise be deprived their respective parental and legal guardians' rights. Learners were supposed to use either Russian language or Ukrainian language. The usage of other languages accepts Moldovan language would have disadvantaged learners in terms of self-expression in their language of choice. It would have been unfair for the parents to impose a different language to their school-going children.
- Holdings: The court discovered serious learners' right to education violation, stressing the point that it was prohibited to interrupt learners schooling system by enforcing to both parents and learners their language usage. The understanding that language is a cultural vehicle, therefore using a different language would

disadvantage their cultural set up. According to the Court outcome, language choice introduction was uncalled for, particularly when establishing a separatist ideology within the school system.

3.8.3.2. *Citation: Campbell and Cosans v. The United Kingdom, no 48*

- Date of judgement: 25 February 1982
- Facts: The school suspended a student at school because his parents refused that corporal punishment be administered to him. Due processes were not followed by the school, including *altravires doctrine*.
- Issue: The boy suffered unfairly, the discrimination imposed to him as a direct action from his parents: that of his parents refusing that their school-going child be punished through corporal punishment. The argument indicates that corporal punishment cannot be a condition to improve learners' right to education, instead it will inflict pain.
- Holdings: The European Court of Human Rights established that infringement of learners' right to education was experienced by the school-going young man who was suspended due to his parents' retaliation against corporal punishment. Therefore, the court ruled in favour of the complainant by insisting that the corporal punishment cannot be a precondition to access the right to education.

3.8.4. Discrimination

3.8.4.1. *Citation: Orsus and Others v. Croatia no 15766/03*

- Date of judgement: 16 March 2010
- Facts: Roma children were placed in separate classrooms and the State failed to ensure that they were not discriminated upon. Unfair discrimination was experienced by the Roma children.
- Issue: The State strongly argued that the separation of Roma children was a fair discrimination based on the learner's weak usage of the Croatian language. On the contrary, the separation based on the language utilization by Roma learners was purely unfairly presented to the Roma children because there was no adequate planning before to avoid discriminatory elements based on ethnicity and cultural language.

- Holdings: The Court poor planning by the State. It, therefore, vehemently opposed the State for not planning for the transfer of Roma children to a mix classroom after they shall have mastered the Croatian language.

3.8.4.2. Citation: *INTERIGHTS v. Croatia Complain, no 45/2007*

- Date of complain: 30 March 2009
- Facts: Teaching material used to provide health holds discriminatory affirmation statements in opposition to non-heterosexuals.
- Issue: There is a serious violation of European Social Charter identified by the European Committee of Social Rights, that teaching material for health education showed statements against non-heterosexuals.
- Holdings: The Committee hold the view that the State is prohibited to discriminate in terms of the health education content material. Therefore, the State must not discriminate in terms of how the health education material is delivered and it must not promote stereotypes inclination. The committee further rebuked the States elements of the perpetuation of prejudice that contributes to sexual exclusion of the marginalised individual groupings.

3.8.5 Secondary and Higher Education

3.8.5.1 Citation: *Escue Zapata v. Colombia*

- Date of judgement: 4 July 2007
- Facts: A girl's educational opportunities were grossly affected and impacted due to the fact that her father was illegally executed by the State through the Colombia National Army.
- Issue: The girl filled for reparation as a form of compensation for the loss of her father who was, if alive, supposed to have taken financial responsibility for her studies. The State violated the man's human dignity which, as a direct impact, it affected all those around him, including his daughter's educational developmental opportunities.
- Holdings: The Court viewed the girls suffering as a direct result of her father's illegal execution by the Colombia National Army. Therefore, the Court ordered the State to grant her scholarship to further scholarship to continue with her

studies. The Inter-American Court decided to support the idea of reparation in a form of granting the girl a scholarship to compensate for her loss.

3.8.5.2 Citation: Free Legal assistance Group and Others v. Zaire

- Date of communication: 4 April 1996
- Facts: The State failed to provide necessary basic services to various learning institutions in Zaire, which led to the shutdown of all schools and universities for an interval period of two consecutive years. In this two-year period, learners and students were not attending classes, which attests to violation of learners' right to education throughout Zaire.
- Issue: Basically, the issue of closure of schools and university grossly affected the school-going learners by denying them the opportunity to learn and study, as it was to be provided by the State through proper services and relevant funding. According to the African Commission, the State has demonstrated the violation of learners' right to education.
- Holdings: The complainants hold a view that the State was supposed to render the provision of adequate services towards the maintenance of the continuation of teaching and learning. The failure to provide such services was identified to be due to financial resource mismanagement by the State.

3.8.6 Health and Education

3.8.6.1. Citation: INTERIGHTS v. Croatia

- Date of complain: 30 March 2009
- Facts: The Croatian State uses a learner curriculum content that stigmatizes homosexuality and enforces negative gender stereotypes in the process of promoting health education within the country.
- Issue: The Croatian health curriculum is not gender sensitive and discriminates on the basis of sexuality.
- Holdings: The Committee concluded that sexuality and reproductive health issues must continue to be part of the school curriculum. The Committee holds the view that this part of the syllabus is essential to the academic growth and development of the learners but it must not be biased in terms of gender and sexual orientation. The European Committee on Social Rights confirmed an

infringement of Article 11(2), in terms of non-discrimination sectional clause of the European Social Charter, which determines that health education classes in Croatia discriminated on the basis of homosexuality and gender stereotypes.

3.8.6.2. Citation: Kjeldsen, Bush Madsen and Pedersen v. Denmark no. 5095/71

- Date of judgement: 7 December 1976
- Facts: Parents refused that their children attend a mandatory sex classes which were promoted by the school, for the purpose of assisting and educating learners on issue that relates to Sex Education.
- Issue: Although the parents were refusing that their children be taught Sex Education at school then, the State was obliged to respect the parents' decision in refusing that their children should attend mandatory Sex Education classes.
- Holdings: The Court renowned between religious teaching and from the compulsory Sex Education, emphasising that the State does not have to interfere with the philosophical and religious people's background. Therefore, parents had a right to complain about what their children are forced to learn at school, although the Court ruled that mandatory Sex Education aims to provide correct, precise, objective and scientific knowledge and skills the children need.

Learners' right to education, just like any other right falls within the human rights domain, can be respected and promoted by the educators provided there is compliance to the constitutional principles that guides human rights (Ndumbalo 2003; Omar 2010). This chapter gave a clear illustration of the importance of the definition of the role of proper education and constitution in relation to learners' right to education considering the role played by the educators, internationally.

The next chapter concentrated on learners' right to education within the South African perspective and how educators understand learners' right to education.

CHAPTER 4

LITERATURE REVIEW ON LEARNERS' RIGHT TO EDUCATION, THE SOUTH AFRICAN PERSPECTIVE

4.1 Introduction

Chapter 3 of this research investigation illustrated and established that education is a rudimentary human right acknowledged internationally, that is implemented throughout various countries through regional human right instruments. Education is vital for individual's welfare development within the public domain. It elevates individual dignity leading to the attainment of socio-economic political rights and fosters societal participation (Omar 2010), within the communities. The Rights-Based Approach to human rights education becomes relevant in transforming the school and the teachers' understanding of learners' right to education.

This chapter is focusing on learners' right to education as perceived by educators in the South African context. Educators' comprehension of learners' right to education is viewed in relation to policy application and the understanding of legal framework concepts related to human rights in education. This chapter further looks at the application and the comprehension of the practical implementation of learners' right to education in light of the Rights-Based Approach to human rights while identifying violation of human rights in education as depicted by various case laws.

4.2 Concept Definition

4.2.1 Educators

The *South African Schools Act 84* of 1996, Chapter 1, section 1, defines an educator as any individual, appointed to solely execute extracurricular tasks: particularly to teaches, to educates, to trains other people or a person who imparts professional educational services, as well as educational therapy and education professional services, in a learning institution.

4.2.2 Learners

The *South African Schools Act 84* of 1996, in Chapter 1, section 1, defines a learner as any individual who is acquiring tuition or a person required to receive education. For the purpose of the study, a learner is a child who attends school and of a particular age, as determined by various countries.

4.2.3 Rights

The Bill of Rights, Chapter 2, in the Constitution of South Africa, section 7 (1)(2)(3), indicates that the rights are the foundation of democracy and involve the rights of every person within the State. These Rights, outlined in Chapter 2 of the Bill of Rights promotes values of human dignity, equality and freedom. Therefore, the State is compelled to:

- 7(2) ...respect, protect and promote and fulfil the rights in the Bill of Rights; and
- (3). The rights in the Bill of Rights are subject to the limitation contained in or referred to in section 36, or elsewhere in the Bill.

4.2.4 Education

Education involves a process of imparting knowledge and skills to others.

4.3 The Legal Perspective to Learners' Right to Education

The legal perspective to learners' right to education finds its core meaning and interpretation from *The Constitution of the Republic of South Africa* and the *South African Schools Act* which gives rise to provincial promulgations to be implemented at various schools, within the country. According to *The South African Concise Oxford Dictionary* (2000), 'legal' suggests a requirement by *Law* and perspective insinuates a prospective view to a phenomenon. Therefore, legal perspective concerns itself with the view at which educators operate using the available laws that pertain to learners' right to education. It rests on laws, acts and directives that regulate the entire education operational system through all the spheres of the education, within the country.

At the school level, Squelch (2001:139) asserts that a communal school is considered as a jurisdiction person with the scope of operation to sue and to be sued given the powers in section 15 of the *South African Schools Act*. This jurisdiction person power recognition propels to defend and to be taken to court on various violations of learners' right to education. However, this makes education system to fall within the legal protection and promotion through legal principles that are outlined and defined in the South African Constitution.

For the purpose of the study, the educational domain particularly teaching and learning is viewed through the regulatory principles that govern, promote and protect the interaction of the role players in the teaching fraternity. Therefore, the educators' understanding and the

implementation of legal principles are of utmost importance in the development of human rights in education. Then, the Rights-Based Approach becomes the necessary and a relevant tool at taking a glance view in order to comprehend the role played by educators with regards to the learners' right to education, through the South African Constitution.

4.3.1. *The Constitution of the Republic of South Africa, 1996*

The South African Constitution, Act 108 of 1996, Case Law, Common Law, and Legislations underpin the study on educators' perceptions of learners' right to education. The Constitution is the cardinal fundamental principle used by the State to govern and control the country, whereas legislations lay down regulations and principles that govern procedures that promote learners' interest, as stipulated by the *South African School Act 84* of 1996, the Children's Act 38 of 2005 and various acts promulgated by provinces, on a regular basis. The main significance of Common Law principle is that it controls and regulates educators' actions and behavioural conduct through the rule of natural justice, encapsulated in section 33 of the constitution and the case law through court pronouncements documented in law journal reports (Joubert & Prinsloo 2009:110).

In accordance to Children's Act 38 of 2005, the learner is supposed must be taken care of, provided with a suitable place to live in, given financial support, safeguarded, protected from maltreatment, abuse, exploitation, and any form of discrimination. Therefore, a child who is a learner, must be respected and protected from any harm be it physically or psychologically. The legal principle that applies to this research study includes: *in loco parentis*, *rules of natural justice*, *diligent pater familias*, *ultra vires doctrine* and *audi alteram partem*. Relevant section in the Bill of Rights that pertains to learners' right to education includes: Children section 28, Education section 29, Language and Culture section 30, Cultural Religion and Linguistic community section 31, and Access to Information section 32.

The Right to education finds its legal framework from section 2 of the Bill of Rights enshrined in the South African Constitution that states that:

4.3.1.1. *Section 29 of the Bill of Rights states that*

- 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.

- Everybody has a right to receive education in the official language or language of their choice in public education 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 the past racially discriminatory laws and practices.

The right to education is restricted in relation to extensive application and the limitation thereof is reasonable and justifiable in a democratic societal dispensation based on human dignity, equality and freedom, when applying Rights-Based Approach in enforcing human rights. Section 10 of the South African constitution stipulates that “everyone has inherent dignity and the right to have their dignity respected and protected.” Recognizing the right to dignity is an admission of the inherent value of human beings as they are qualified to be managed as worthy of esteem and of importance. The right to dignity is an under structure of other rights that are ingrained in Chapter 2, the Bill of Rights in the Constitution. The principle of human dignity makes normative demands to inform the scope and connotations of all the rights and ensures the basic *Law*. It forms the origin of basic value to human beings and the Constitutional Court infers from this *Law* basic principle in taking decisions on matters of violation of learners’ right to education (Bhembe 2015). Freedom of expression, equity, and justice should be correctly applied to ensure that human dignity is upheld and promoted within a school.

The right to freedom of expression is enshrined in section 16 of the Bill of Rights in the South African Constitution which indicates that “everyone has a right to freedom of expression.” According to this act, entails freedom to obtain and/or convey information and beliefs through interpretation of concepts. This includes creative artistic displays, academic liberation and freedom of scientific research. Van (2015) affirms that the legal principles of freedom of expression are an essential prerequisite to protect and promote democracy which advances citizens’ right to engage in decision-making.

The purpose of the right to education serves as means to transform the societal imbalances of the past injustices which were perpetrated by the apartheid government of separate development. Children and learners, of school-going age must be taken care of and preparation done to them to make them responsible citizens of the country.

4.3.1.2. Section 28 of the Bill of Rights states that

- Children
 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 a 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 interests are of paramount importance in every matter concerning the child.

(3) In this section, “child” means a person under the age of 18 years.

The best interest of a child is promoted and protected by this section and it is the educator’s duty to demonstrate the understanding of this section and to implement as required by the law.

4.3.1.3. Section 30 of the Bill of Rights indicates that:

- Language and culture.

Everyone has the right to use the language and to 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.

4.3.1.4. Section 31 of the Bill of Rights says:

- Cultural, religious and linguistic communities

(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 any provision of the Bill of Rights.

4.3.1.5. Section 32 of the Bill of Rights deals with

- Access to information

(1) Everyone has the right of access to—

- (a) any information held by the State; and
- (b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State.

The above section in the Bill of Rights shaped and swayed the *South African Schools Act 84* of 1996. The Bill of Rights forms the cornerstone of the South African Constitution and without it the *South African School Act no. 84* of 1996 would have not materialised. Learners' right to education is located in the Bill of Rights, Chapter 2 in the South African Constitution, is confined to the law of generic operation but limited in terms of reasonability and justifiability in a democratic dispensation found on human dignity, equality and freedom.

The realization of learners' right to education and the conceptualization of basic education were enacted through the *South African School Act no. 84* of 1996, mandating school to implement and promote learners' right to education. Generally, public schools are to admit all learners from age 7 until age 15 years, the provincial departments are to make certain that there are ample schools and the State must provide funding all public schools, so as to enable the learners to realise their right to education.

4.3.2. The *South African Schools Act no. 84* of 1996

The realization of basic education in the South African context was enacted through the *South African Schools Act* in 1996, giving mandate to all school-going learners to be at school until at the age of fifteen or at their ninth grade. The *South African School Act 84* of 1996 ensures that the State must supply funding, and enough school infrastructural facilities to cater for all learners who are school going, in order to realize their right to education.

4.3.2.1. *Learners Admission to Public Schools*

The *South African Schools Act no. 84* of 1996 section 5 states that:

- A public school must admit learners and serve their educational requirements without unfairly discriminating in any way,
- The governing body of a public school may not administer any test related to the admission of a learner to a public school
- No learner may be refused admission to a public school on the grounds that his/her parents are unable to pay school fees or do not subscribe to the admission statement of the school.

This *South African School Act* is administered to all schools in the Republic of South Africa and it enables a learner to be permitted to any public school of their respective choice as guided

by the admission policies which are commensurate with the South African Constitution and the departmental provincial policies. It provides clear guidance on learners' suspension and dismissal from public learning institution, banning of corporal punishment, banning of initiation practices and Code of Conduct for learners at school. This Act is in line with the section 9 of the South African Constitution that deals with proper implementation of equality within schools. This act promotes equal protection before the *Law*. For instance, in conformity with section 9(1) of the constitution, when a learner commits misconduct, he/she must be subjected to a fair hearing. The idea of a fair hearing is supported by section 33(1) of the Constitution indicating that "everyone has a right to administrative action that is lawful, reasonable, and procedurally fair." The learner's right to education is protected and promoted by school through guarding against any form of discrimination in a form of refusal of admission based on race, gender, sex, pregnancy, religious beliefs, culture and language.

4.3.2.2. Language

The *South African Schools Act no. 84* of 1996 section 6, (2) (3) and (4) states that:

- The governing Body of a public school may determine the Language Policy of a school subject to the Constitution, and any provincial laws;
- No form of racial discrimination may be practised in implementing policy determining under this section; and
- A recognised sign language has a status of an official language for the purpose of learning at a public school.

Therefore, in accordance with the *South African School Act 84* of 1996, section 6, a learner may not be denied to registration at a public school due to language used at school and may not be discriminated upon based on Language Policy and cultural background.

4.3.2.3. Freedom of Conscience and Religion at Public School

The *South African Schools Act no. 84* of 1996 section 7 states that:

- In line with the South African Constitution and any appropriate provincial regulation, religious observances may be coordinated at a public school under directives provided by the governing body if such observances are controlled on an impartial basis and attendance by educators and learners are free and voluntary.

Religious practices are imperatively exceptional norms of mankind. It forms features that separate individual's characters, traits and rituals from their respective practices. It forms cultural inclination societal groupings (Seller 1998:4). Therefore, it is imperative that attendance to various religious observances be free and voluntary, as indicated by section 15 (2)(a)(b)(c) of the Bill of Rights in the South African Constitution.

4.3.2.4. *Suspension and Expulsion of Learner from a Public School*

The *South African Schools Act no. 84* of 1996 section 9, (1) (2) (4) and (5) states that:

- The School Governing Body of a public school may after a fair hearing, suspend a learner from attending school: as a correctional measure for a period not exceeding one week, and that must be done in deliberation with the Head of Department;
- A learner at a public school may be expelled only by the Head of Department and only when found guilty of a serious misconduct, and after a fair hearing;
- A learner or a parent of a learner, who might have been expelled from a public school, may appeal the decision of the HOD to the member of the Executive Council; and
- If the learner is subjected to compulsory attendance, is expelled from a public school, the HOD must arrange placement alternative at any public school.

It is therefore advisable, according to SASA no 84 of 1996 section 9, that the SGB of a public school must only suspend a learner, after going through the principle of *audi alteram partem*, in consultation with the provincial HOD, and only when a learner has committed a serious misconduct.

4.3.2.5. *Prohibition of Corporal Punishment*

The *South African Schools Act no. 84* of 1996 section 10, (1) and (2) states that:

- No person may administer corporal punishment to a learner in a public school; and
- Any individual who violates subsection 1 is guilty of an offence which could be a conviction of a sentence equal to an assault.

The SASA Act no 84 of 1996 section 10 insinuates that any person or any educator who administers corporal punishment to a learner may be charged with misconduct and is guilty of offence, liable for conviction and assault charges may be imposed on him/her.

4.3.2.6. Prohibition of Initiation Practices

The *South African Schools Act no. 84* of 1996 section 10 (A), (1) and (2) states that:

- A person may not conduct or participate in any initiation practices against a learner at a public school or in a school hostel accommodating learners of a school; and
- Any individual practicing initiation is culpable of wrongdoing and punitive actions must be set in motion against such an individual; and a learner may institute civil steps against any individual that has compelled a learner to engage in initiation practices.

According to SASA Act no 84 of 1996 section 10 A, subsections 1 and 2, initiation practices are abolished at a public school because they may cause humiliation and assaults to other learners at school. Clearly, a person practicing initiation or forcing other learners to engage in initiation practices may be charged with assault and/or causing grievous bodily harm to other learners who are eager to attend school.

The table below summarises the obligations and the responsibilities of the government in terms of the recognition of learners' right to education, showing commitment through regulations and the role players.

Table 4.1: SAHRC Charter of Children's Basic Education Rights (2012)

No.	Items	States obligation	Indicators	Legislation for the realisation of the right	Role players
1.	National recognition of the right to education	Legally recognise, respect, protect and promote the right to education	National and provincial policies and laws are enacted that guarantee respect, protect and fulfils the right to basic education.	Section 29 of the South African Constitution	National assembly. National Council of Province. National and provincial departments of Basic Education
2.	Provide early childhood education	Make early childhood education compulsory	National policies that makes pre-school at least two years:	SASA and ECD legislation to be amended	National and provincial department.

			Grade R plus one more year compulsory.		Department of Social Development. National assembly and the National Council of Provinces.
3.	Make primary education available and compulsory	Make primary education compulsory for all the children. Legislate the ages of compulsory school attendance for learners with disabilities.	Laws that enforce compliance enacted to monitor compliance. National law stipulating that ages of compulsory attendance for learners with disabilities.	Section 3(1) of SASA. Section 3(2) of SASA. The Constitution Article 24(2)(a).	The Minister of Basic Education. The National and Provincial departments of Basic Education. The Department of Social Development Schools and principals
4.	Make secondary education available to all children	The State is obliged to make general secondary education available to all learners including vocational education	Public education system makes available all forms of secondary education available, including vocational education. Secondary education is available for all learners with disabilities.	All academic policies that regulate GET/FET and DHET as guaranteed by Article 24(2)(b) of the constitution.	National Department of Basic Education. The Department of Higher Education and Training.
5.	Provide sufficient, safe, functional educational institutions	The State is obliged provide to sufficient schools and classrooms to enable teaching and learning to take place in a conducive environment.	All learners from Grades R to 12 accommodated in schools from the beginning of the year. Classes available	Constitution SASA Education White Paper 6 (2001). National Policy for Equitable Provision of an Enabling School	National and Provincial departments of Basic Education. Schools. Department of Public Works and Administration.

			Learner teacher ratio adhered to.	Physical Teaching and Learning Environment (2010).	
6.	Provide sufficient teachers that are qualified and available to teach	The State is required to supply enough number of teachers. Ensure teachers are in class teaching.	All allocated educator posts are filed. All learners attend classes for seven hours uninterrupted and curriculum is completed. Managers monitor classroom attendance by learners and teachers.	Constitution. SASA EEA SACE Strategic Planning framework for educator Education and Development in South Africa (2011).	National And provincial Department of Basic Education. Organised labour unions. Schools principals and teachers.
7.	Provide sufficient teaching and learning support materials and equipment	The State is obliged to provide basic learning and teaching support material on time: Textbooks and stationary for all learners including learners with disabilities.	All learners from Grades R to 12 have packages of learning material appropriate for the grade. All blind learners have appropriate workbooks and textbooks in Braille.	The South African Constitution. SASA.	The National and provincial Department of Basic Education.

Source: Adopted SAHRC Charter of Children's Basic Education Rights (2012)

Emerging from the table above, the Department of Basic Education made commitments with regards to the fulfilment of learners' right to education through legislative and administrative means to achieve the following:

- Recognise learners' right to education;
- Make provision for early childhood development education possible;
- Make fundamental education mandatory;

- Make secondary tuition education obtainable to every learner;
- Ensuring that the delivery of effective education institution is adequate;
- Ensuring that there are enough qualified teaching personnel;
- Ensuring that there is enough teaching and learning material; and
- Make funds available to sustain the availability of schools (SAHRC 2012).

4.4 The Role of Educators and Education in the Protection and Promotion of Learners' Right to Education

The research reveals that educators are to be capacitated and correctly guided on how to deal with the emerging culture of learners' rights in education during the process of actual interaction with learners (Eksteen 2009:59). However, Mollo (2015:2) emphasises the role of educators around the fulfilment of legal roles through correct guidance of principles and procedures within the school set up. In essence, the role of an educator is to make correct judgement about how best their learners understand their environment, their content knowledge and reflect on their daily practices, within the education system. Generally, Beliner (2004) indicates that educators must be caring, loving, knowledgeable, situational and skilful.

Although research reveals that there is considerable evidence pointing at the lack of application of learners' right to education, in South Africa, just like in Lesotho, educators encourages and preserve learners' right to education through the following means:

- Making follow-ups on learners who regularly absent themselves at school: educators show concern for an absent learner which is basically a *duty to care* principle;
- Educators would always engage parents and learners on learner absenteeism;
- Educators do explain to parents the impact of withdrawing a learner from school which is equivalent to learner infringement of right to education;
- Educators engage parents in meetings raising awareness of learners' right to education;
- Educators promote the campaign on "Education for All day";
- Educators support learners who have social challenges, including child headed families;

- Learners who are rape victims and who have psychosocial traumas are highly supported and referred to relevant institutions for counselling and relevant assistance;
- Good practices of learners' right to education awareness are continuous;
- Learners leaving with various forms of disabilities are included in the education system through inclusive education.

(Mathealane & Makura 2014)

In line with the educators' understanding of learners' right to education, Pillay (2014) emphasises that educators' knowledge of legislation and South African Education Law is of vital importance in their respective daily practices. This knowledge and skills of education law creates a positive platform in the promotion, protection and the implementation of learners' right to education. Clearly, the responsibilities and the role of educators within the human rights education is to progressively impart knowledge through facilitation, mentoring, guiding, and the acquisition of skills that is critical for the learner development. Educators are guided by guidelines of operational procedure as demonstrated in the norms and standards for educators that redresses atrocities that were perpetrated by the apartheid regime (South African Council of Educators Act 31 of 2000).

In addressing the scars of educational separate development advocated by the out gone apartheid regime, the seven roles of an educator as indicated below are of paramount importance:

- Educators are learning mediators;
- Educators are translators, interpreters and creators of learning initiatives and materials documents;
- Educators are leaders, administrators and managers;
- Educators are intellectual scholars, researchers and lifelong learners;
- Educators play a community citizenship and pastoral role;
- Educators are assessors; and
- Educators are learning area/specialist/ discipline/ phase specialist. (*Handbook for Teachers*)

The above policy clearly vindicates role and responsibilities of educators but also shows competencies and the qualification educators must be armed with in changing and the implementation of learners' right to education.

Educators have a mammoth task to implement and promote policies that regulates learners' right to education with their background and experience of shortage of skills and information of human rights in education. Mubangizi (2015) argues that learners' right to education depends on the educators' extent of awareness of right to education in order to enforce them. Therefore, educators need empowerment of policies that regulate learners' right to education to appreciate the entitlement and implement accordingly. The South African human right in education level of awareness, in general, is inadequate. The role players, particularly educators, need empowerment. Thus, the current perceptions and the application of learners' right to education by educators are remote concepts, way after 23 years of democracy.

The government provides policy changes which tremendously affect curriculum impacting on subjects content aligned to human rights improvement (Lundy & Sainz 2018). The content curriculum changes were grossly affected in Life Orientation and Social Sciences and directed the teaching of learners' rights within the education system in schools. Since the introduction of democratic dispensation, the South African curriculum content landscape changed the course of learners' right to education while trying to deal with the atrocities created by the apartheid regime. Mutua (2002) argues that the reformed education laws influenced by the Rights-Based Approach brought upon certain curricular transformation based on values emanating from the constitution. Staeheli and Hammett (2013) acknowledge the impact of stages of which the curriculum development emerged throughout the years after 1994: from OBE, Revised National Curriculum Statement in 2002, and National Curriculum Statement in 2011 which is commonly known as CAPS.

Although there is a vast existence of transitional impact exposing the superior level of education offered by former 'Model C' schools as juxtaposed to the inferior township schools serving predominantly Black learners (Mutua 2002), the South African school system needs total overhaul. It vindicates that learners' right to education is not adequately applied in the current educational dispensation as seen from the discrepancies that exist in the amalgamated Department of Basic Education. The racial disparities in learners' performances and the inequality between Black and White schools still exists (Badat & Sayed 2014), and it hampers

the exertion of the Rights-Based Approach in the implementation of learners’ right to education. Therefore, Carrim and Keet (2005) affirm that human rights principles were infused in various content subjects confirming that curriculum is inspired by the South African constitutional values but lacks implementation (Department of Basic Education 2011).

However, proper education provided to learners about their individual learners’ rights produces awareness of educators’ duties; it inculcates human values that can be put to fruition since human rights is inherent in each person. While educating learners about their respective human rights within the education system, certain standards of human dignity, equality and non-discrimination is created within the learners and educators. If educators deny learners their right to basic education, then political and social instability may emerge (Musheer & Shakir 2017). Clear illustration of characteristics of human rights in the promotion of learners’ right to education is demonstrated in the drawing below:

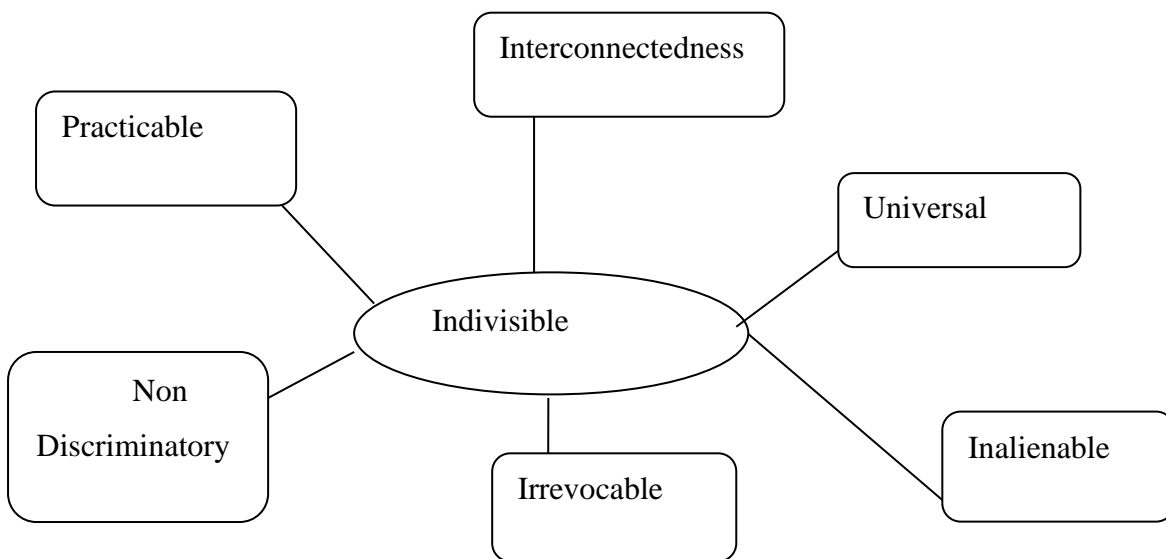


Figure 4.1: Characteristics of Concepts Related to Human Rights
 Source: Adopted from Musheer & Shakir (2017)

The above structure demonstrates the interconnectedness of concepts relating to learners’ right to education within the human rights domain, and without relatedness of the concepts, the education will not create a democratic global reality (Musheer & Shakir 2017). The peaceful existence of democracy is realised in sharing the amalgamated human right values of human race, human dignity and religious inclination. The understanding and the implementation of learners’ right to education, as part of the rights of human beings in education is a mechanism

that creates peace and stability within the school and the education system (Davies 2010; Bajaj, 2011; Holland & Martin 2014). Educators and the education system are relevant tools that can eventually put a stop to the violation of learners’ right to education by making learners aware of their rights as to allow them to claim if there is an existence of violations (Musheer & Shakir 2017).

4.5 The Violations of Learners’ Right to Education

The violation of learners’ right to education primarily came as a direct result of apartheid policies prior 1994 (Pillay 2014). Netshitahame (2008) states that the education system prior 1994 was designed to perpetuate inequalities than promoting human rights, particularly learners’ right to education. These inequalities as juxtaposed to human rights in education was understood and practised differently without involving the elements of practising respect for diversity, freedom of expression, equality and human dignity within the school system. Educators’ understanding of learners’ right to education leads to the implementation of human rights within the education system, but lack of comprehension of learners’ right to education directly causes infringement of human rights in the education system (Zwane 2017: Cotzee & Mienie 2013).

Source: Adopted from Zwane 2017.

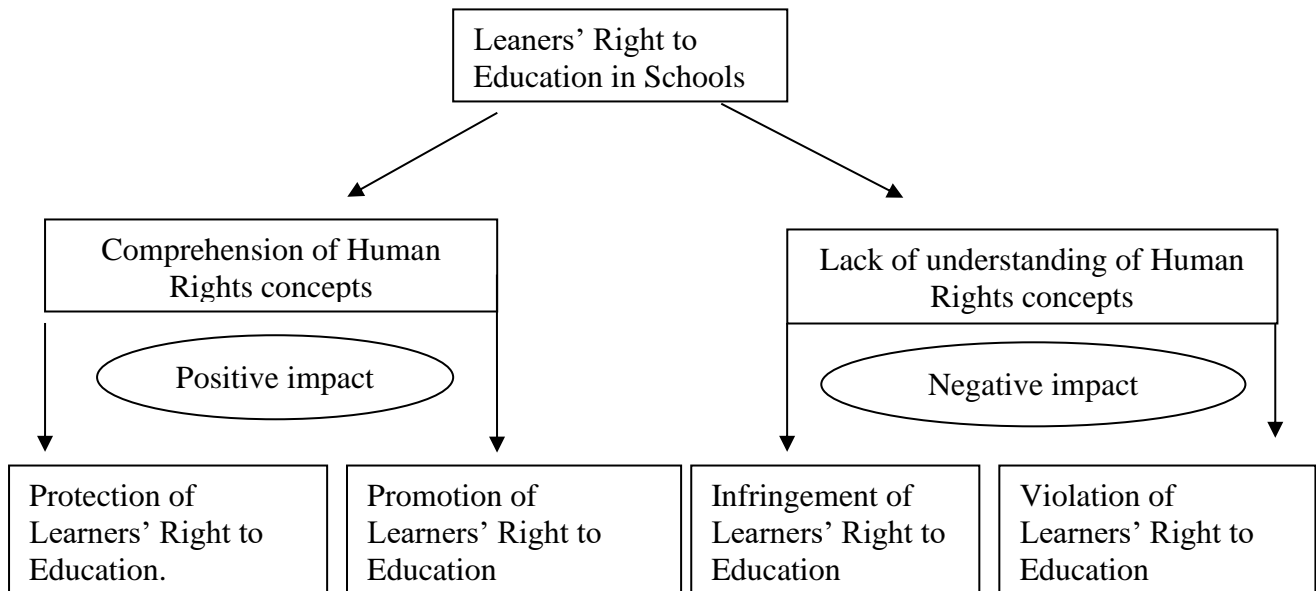


Figure 4.2. Learners’ Right to Human Dignity in Schools

The structure and the system of education in South African is ravaged by a series of human rights abuse. The human rights abuse within the education system has a direct negative posture

with regards to the implementation and the development of learners' right to education (Cotzee & Mienie 2013). Naicker, Myburg and Poggenpoel (2014) hold the view that there is an existence of discrepancies in educators' handling of social issues at school level as opposed to treating aspects that relate to shame and humiliation. Maphosa and Mammen (2011) confirm the inconsistencies in the process of learners' right to education implementation by educators; which is something that creates infringements of learners' right to education.

The incompetency to apply learners' right to education has been identified by the Centre for Development Enterprise (CDE 2011) as amongst others: poverty, low literacy standard levels of formal education in learner's households, poor school infrastructure and poor supply of water and sanitation within the South African schools. The *City Press* (2020) confirms the shortage of water and sanitation infrastructure needed to be addressed. SAHRC (2012) further indicates that learners' right to education is not implemented due to lack of electricity in some schools, lack of libraries, lack of school laboratories and learner textbooks shortage. In some instances, researchers identified shortage of qualified educators and lack of early childhood development attendance by children as a major contributory factor to learner's right to education (CDE 2011, UNICEF 2012).

In one of the National Summary Report by the national Education Evaluation and Development Unit (NEEDU Report 2012), the following aspects were highlighted as major findings that violate learners' right to education in the South African education system:

4.5.1 Unattended Learners due to Educator Absenteeism

Mothibeli (2017) indicates that educator absenteeism is directly connected to the violation of learners' right to education and subsequently creates lack of discipline amongst the learners. It is argued by researchers that an absent educator either in class or at school leaves a vacuum in class, at school and ultimately a room for chaos and disruption. The chaos and disruption affect the school moral and discipline (Mampane 2013; Mthombeni 2010; Brown & Arnell 2012). Various learner and educator conflicts and misunderstanding arises due to learners who have enough time for truancy because of educator lack of attendance to their classes (Mothibeli 2017 & Mampane 2013). In this instance, Zwane (2013) confirms that learners' right to education is tremendously affected.

UNICEF (2015) indicates that every vulnerable South African learner has an innate curiosity to learn in a conducive atmosphere and they desperately look upon educators to guide, teach and correct them. In their absence, nothing is happening. Mothibeli (2017) and Mthombeni (2010) confirm that learners' right to education suffers at the hands of educators who miss going to class unexcused and excused educator absence (Mampane 2013). Literature reveals that the gross effect of learners unattended amounts to:

- Learners lack of discipline;
- Disruption and disorder at school;
- Educator negligence;
- Chaos and lack of moral amongst stakeholders; and
- Financially costly.

(Mthombeni 2010 & Mothibeli 2017)

In order to realise learners' right to education that is not compromised by educator absenteeism, Mothibeli (2017) suggests that School Managers must effectively control, lead and manage educator absenteeism in their respective schools through a supervision plan. Brown and Arnell (2012) provide means to deal with educator absence within the work place while trying to promote learners' classroom attendance through the promotion of job satisfaction, reduction of educator burnout and the improvement of educator morale by the government.

4.6 Learners' Access to School

The South African Constitution, Act 108 of 1996 makes a provision that all learners have a right to education, thus any contradiction creates impediments to learners' right to education. For instance, COVID-19, undocumented learners, infrastructural negligence, and lack of school furniture impedes on learners' right to education.

4.6.1 The COVID-19 Impacts

Recently UNICEF (2020) reported that the school closure due to COVID-19 left learners' access to school compromised over an academic period of more than six months. The closure of schools in 2020 due to COVID-19 severely impacted negatively to South African learners' right to basic education and created the following inclination:

- Innumerate learners were left behind with their academic school work;

- Many learners could not access online lessons and no extra lessons were provided after the closure of schools; and
- Systematic challenges emerged due to covid-19 restrictions across the education landscape and directly impacted on the long-term future of South African learners.

The closure of schools during the COVID-19 pandemic caused numerous court battles that resulted in uncertainties in terms of whether schooling will eventually be normalised. The *City Press* (2020) reflected on the court battles on the dates of school reopening during lockdown level 4 as opposed to health safety measures considered by the unions. The challenge was to reach 13 million learners at home through online learning to 75 education districts, in nine provinces to 25 000 schools (*City Press* 2020) to enable learning to continue despite the pandemic. Research reveals that there has been an alarming outcry of huge learning gap created by the COVID-19 lockdown in terms of curriculum delivery in various learning institution. Bonal and Gonzalez (2020) argue that learner's opportunity to continue learning came to a standstill and worsened by lack of relevant resources to access learning material through the internet. Family background has been blamed for lack of access to internet connection (Vallespin 2020). Coe, Weidmann, Coleman and Kay (2020) speculate that real impact of COVID-19 will emerge in few years to come and schools in various countries may probably have difficulty to recover the academic loss of time.

4.6.2 Undocumented Learners

The South African Constitution, Act 108 of 1996, through Chapter 2, the Bill of Rights, and section 29 affords learners who are in South Africa the opportunity to attend school of their choice, within the Republic of South African borders, regardless of learner's immigration status. The decision to stop funding undocumented learners is unconstitutional and violates learners' right to education. The South African National Planning Commission (2011) reiterates the idea that all learners must access and benefit from high quality education supplied by the government according to the basic needs of the children, and specific consideration was promised to be given to the most vulnerable learners who are disabled and poverty stricken (Statistics South Africa 2015). Although South Africa made tremendous improvement with regards to provision of formal admission to education, a significant number of educators have negative perceptions towards access to education with regards inclusivity (Dreyer 2017). This confirms that learners' educational needs are grossly violated through the government's failure

to admit undocumented learners and, on the contrary, educators are unable to give the necessary support needed.

4.6.3 Infrastructural Negligence

UNICEF South Africa (2020) reveals that the apartheid legacy of education system left many schools in the South African rural area with collapsing and unsafe for learners and educators to utilise. *City Press* (2010) confirms that the department delay in providing learners with safe schools constitutes human rights violation and results in denial of learners' right to education. Most of these schools' buildings are made with mud structure, some constructed with corrugated iron. Basically, these dilapidated structures are unsafe for teaching and learning and learner's access to these buildings may cause bodily harm. The learner's right to education is affected by unsafe infrastructural buildings.

Equally so, is the existence of pit toilets, lack of water and proper sanitation that directly violates learners' right to education within the South African education system. According to Norms and Standards for school infrastructure by the Department of Basic Education, all school within the Republic of South Africa must be furnished with proper and adequate infrastructure to be used by all the stakeholders at school. The infrastructure set up includes: proper and well-maintained buildings, electricity, water and sanitation. In the report supplied by the Department of Basic Education (2011), the following revelation transpired with regards to school infrastructure:

- 3 500 learning institutions in South Africa were without electricity;
- 900 learning institutions in South Africa had insufficient proper sanitation facilities; and
- 2 400 learning institutions in South Africa did had insufficient water.

(DBE 2011)

Recently, *City Press* (2020) indicated that school's infrastructure negligent by the department has been worsened by the emergent of COVID-19, particularly lack of supply of water and proper sanitation.

4.6.4 School Furniture

It has been identified by the UNICEF (2020) that learners in various schools are forced to share desks and table due to shortage of the departmental provisioning. The South African public schools have a severe shortage of furniture and the challenge is worse in the rural neglected schools which buildings are of mud structure. The non-fee-paying schools are deprived of all necessary resources to ensure proper and adequate effective teaching and learning to take place. Therefore, learners are compelled to share tables, desks and chairs and automatically they struggle to concentrate on their school work. Learners' squashed together or attending classes stand the whole day and some squatting on their knees makes concentration impossible resulting in high failure rate.

Overcrowded classes without desks and chairs causes disciplinary challenges of learners who fight over desks and chairs the whole day. Obviously, the environment is not conducive for teaching and learning in an atmosphere where most of the learners are standing or squashed on a desk, others squatting on the floor in an overcrowded class.

4.7 Learning and Teaching Support Material (LTSM)

The National Education Evaluation and Development Unit report (NEEDU 2016) reveals that there is a lack of, and in most cases not enough, textbooks for learners across the grades in South Africa. To be specific in term of subjects, Mathematics and language textbooks are not sufficient to be given to all the learners within the schools. The shortage was primarily blamed on the textbook retrieval system used by educators to collect the study material from learners, at the end of the year. The NEEDU (2016) reports that learner's performance is directly affected by the lack of textbooks. Learners reading and writing skills are poorly performed during the learner assessment and learners are condoned to other grades without mastering their content syllabus in their previous grade.

4.8 Learners' Out of the Class and Out of the School

There are a number of learners who are chased out of the class as educators' alternative corrective disciplinary means within the schools. Learners who are dispatched back home to fetch a parent or a guardian due to any disciplinary transgression, miss classes, tests and exams. In a recent constitutional case between a 23-year-old learner at Malusi Secondary School in Marobjane Village in Limpopo and the acting principal, a judge found that the learner's right to education was violated by the acting principal. The fact that the learner was send home to

fetch the parent made him to miss the Business Studies Paper 2 Grade 12 final exam for 2020, written on that particular day.

Some strategies of dealing with learner discipline violates learners' right to education, particularly sending a learner home or outside the class because he/she misbehaved or did not submit work or came late to school or is not wearing proper school uniform, amounts to denial of learners' right to education by educators. In his research, Zwane (2017) outlines a traumatic story of a 12-year-old learner who brought to school his damaged school shoes as evidence of why he was wearing running sneakers and a note from the parent giving possible cases for not obeying the School Uniform Policy guidelines to avoid that the learner be punished by the educator. The South African Human Research Council (SAHRC) confirms that the learner was punished and humiliated by the educator and he eventually suffered hearing loss. Although, the educator was struck off the system, the learner bears the scars of humiliation and his right to education was violated (*City Press* 2011).

4.9 Learners' with Special Needs

NEEDU (2016) indicates that the needs for learners living with disabilities are not well taken care of by the Department of Basic Education and the educators at school level. Funding for these learners' institution is not adequately provided. UNESCO (2015) confirms that learners with special educational requirements are neglected in South African schools, although there is a policy on Inclusive Education. These learners are vulnerable and most of their centres or institutions are funded by the non-governmental organisations (Dreyer 2017). There is limited quota of the learners with special needs schools which reveals that most of these disabled learners do not benefit academically leading to the violation of their respective right to education, impartiality and human dignity.

The gross infringement of learners' right to education raises serious concern within the academic domain and shows that educators do not understand learners' right to education, let alone to advance and preserve the rights of learners in realising proper education (SAHRC Annual Report, 2015). *City Press* (2011) captured a typical example where a learner was bitten by an educator breaking his jaws for merely asking a question on why another learner was bitten for not wearing proper school shoes. All forms of bullying, sexual harassment, learner assaults, rape and abuse of any nature infringes on learners' right to education (Mawson, 2004; Prinsloo, 2005; De Wet 2006 & Mollo 2009).

In general, the Education Statistics based on General Household Survey (GHS 2018), provides challenges that are experienced by learners at school that violates learners' right to education, as follows:

- Large classes that are extremely overcrowded;
- Lack of textbooks (LTSM);
- Lack of scholar transport particularly for learners in the rural area;
- High fees needed by schools;
- Bad and inappropriate school facilities and infrastructural decay;
- Shortage of school human and financial resources for schools;
- Lack of educators (educator absenteeism);
- Poor quality of teaching; and
- Teachers industrial strike actions.

(GHS 2018)

The responsibility of the Department of Basic Education and the educators' position in the learners' right to education are to encourage and protect basic human rights in the education system. Emmert (2011) argues that inclusive human rights education needs relevant educator training development to manage the human rights changes while implementing learners' right to education. The National Planning Commission, Republic of South Africa (2011) argues that inclusivity in education embraces human rights values producing an equal and a just society.

4.10 Case Law that Relates to Learners' Right to Education

4.10.1 Citation: *Moko vs Acting Principal of Malusi Secondary School and Other* [2020]

- Date of judgement: 28 December 2020
- Dates of hearing :
- Presiding judge : Khampepe J
- **Issues to be decided:**

The applicant wanted vindication of his constitutional right to education. The Court had to determine the respondents' infringement or violation of the learners' right to education as stipulated by Chapter 2 Bill of Rights, section 29 (1)(a)(b) of the South African Constitution. The applicant requested to be afforded a chance to write Business

Studies Paper 2 examination before the actual marking of other learners' examination scripts, so as to receive his results simultaneously with other learners' results.

- **Applicable legislations:**

The applicant asked the High Court to declare that his Constitutional rights were infringed upon: particularly the Bill of Rights, Chapter 2, section 29(1)(a) and (b) because the High Court based on Chapter 8, section 167(3)(b)(1) of the constitution is given a mandate to mediate matters on constitutional violations and human rights issues.

- **Facts of the case and court ruling:**

The facts that precipitated to the expansion of this case was that on the 25th of November 2020, Mr Moko, a 23-year-old learner at Malusi Secondary School in Limpopo, was unable to write a Business Studies Paper 2, set for National Senior Certificate, Grade 12 examination due to late arrival at the school exam centre. The matter was that when the applicant arrived at school to write the exam on the said date he was prevented from entering the school and returned home to call guardian to account for not attending extra scheduled classes prior to the mentioned exam subject. Unfortunately, the applicant grandmother (guardian) was at the hospital collecting his uncle's medication and therefore the applicant returned to school without a guardian and the examination for that day was in progress. He was unable to write the said examination paper due to time delay in calling a guardian. The ruling of the court found that the Acting Principal acted unprofessionally and out of the Constitutional boundaries delaying and denying the learner the opportunity to write the examination paper for that particular day.

- **Reasons for the judgement:**

The reason for the judgement was solely established on the violation of the learner's right to education because of the acting principal's conduct who instructed the learner to go and fetch a guardian to mediate on the learner's absence during the school schedule extra lessons prior the examination paper to be written. Therefore, the Constitutional Court viewed and regarded the learner's inability to sit for his final examination for Business Studies Paper 2 as a violation of learners' right to education.

- **The remedy the court decided:**

The relief the Constitutional Court sought was to decide whether the complainant should be given a chance to sit for the Business Studies Paper 2 examination which he missed due to the acting principals' orders, before the examination scripts for other learners are marked. The Department of Basic Education offered the applicant a chance to sit for the missed subject in January 2021 before the marking of other learner's examination scripts.

- **The implication of the ruling on the education practices:**

The judge concludes by saying no educator should react in an attitude that reverberates in a learner losing the opportunity to write an examination paper for no apparent reason. Therefore, the implication within the education system is that educators must act in line with the South African Constitution, *South African Schools Act* and other promulgated legislations that guide their daily operations.

- **General remarks on learners' right to education:**

Learners' right to education must be appreciated, advanced and secured in order to curb violations of learners' right to education. It, therefore, insinuates that most educators do not adhere to the legislative principles and guidelines that regulate the daily educator's interaction with the learners during their fraternal operation.

4.10.2 Citation: *Komape and Others vs Minister of Basic Education (1416/2015) 2015*

- Date of judgement : 23 April 2018
- Dates of hearing :13 to 17 November 2017
20 to 23 November 2017
27 to 28 November 2017
1 to 2 February 2018
- Presiding judge : Gerrit Muller

- **Issues to be decided:**

The issue to be decided upon was checking whether the Department of Basic Education is responsible for damages incurred during the death of a five-year-old boy Michael Komape in Grade R who submerged into a pit latrine in 2014 at Mahlodumela Primary

School in Limpopo Province. The court was to decide upon the claim of emotional shock, bereavement and trauma, including grief. Decision was to be taken with regards the future medical expenses of the deceased two younger siblings when attending psychological treatment. The applicant was pursuing an order commanding the government to eradicate pit toilets in rural schools in Limpopo.

- **Applicable legislations:**

The applicable legislation included the Constitution of the Republic of South Africa Act of Chapter 2 Bill of Rights, section 9 “Equality,” section 10 “Human Dignity,” section 11 “Life,” section 24 “Environment,” section 27 “Health Care, Food Water and Social Security,” section 28 “Children,” and section 29 “Education.”

- **Facts of the case and court ruling:**

The court case is about a five-year-old boy Michael Komape who was then doing Grade R at Mahlodumela Lower Primary School in 2014, who drowned in a pit toilet due to the negligence of the Department of Basic Education. The Komape family was seeking for the remedy on emotional shock and trauma experienced during the death of their loved one Michael, including the funeral expenditures incurred during the funeral. The family also wanted to claim for future medical expenses of the younger siblings of the deceased when attending the psychological treatment.

- **Reasons for the judgement:**

The fact that Michael died within the school premises, particularly in the school pit toilet which was supposed to have been long refurbished and acting based on the South African Constitution Chapter 2, gave the judge the authority to rule in favour of the applicant. The judge found that the Department of Basic Education failure to provide decent and safe toilets violated learner’s right to dignity, right to clean environment, right to basic education, which is equivalent to the denial of learners’ right to education. Surely, the State did not act in the best interest of the child. Furthermore, the Department of Basic Education in Limpopo failed to utilise funds given by the treasury to build proper sanitation infrastructure in rural schools. Although the judge ruled against the grief claim but future medical expenses were granted.

- **The remedy the court decided:**

The relief on structural interdict to force the State, particularly the Department of Basic Education to erect acceptable, prudent and germ-free toilets in rural schools in Limpopo was granted. The declaratory order requested by the Komape family was granted that stated that it was unlawful that the State violates on the constitutional learners' right to education that primarily included right to equality, right to human dignity, right to life, and right to basic education. Although the relief on grief and trauma was not granted but the remedy on future medical expenses granted.

- **The implication of the ruling on the education practices:**

The fundamental implication on the ruling was that the Department of Basic Education in Limpopo must upgrade all toilets in rural schools with proper hygienic infrastructural uplift to reinstate the dignity and the decency of learners in rural area. Furthermore, there must be a total eradication of pit toilets in rural schools in Limpopo Province. The applicable legislation is to be followed precisely when promoting and protecting learners' right to education: constitution, particularly Chapter 2 of the Bill of Rights, section 9, section 10, section 11, section 11, section 24, section 27, section 28 and section 29.

- **General remarks on learners' right to education:**

Basically, the Department of Basic Education's failure to supply clean, sufficient and adequate proper sanitation amounts to the violation of human rights and contravenes on learners' right to education because the right to education encompasses safe, hygienic and dignified sanitation facilities.

4.10.3 Citation: *Equal Education and Others vs Minister of Basic Education (22588/2020)* 2020

- Date of judgement : 17 July 2020
- Dates of hearing : 02 July 2020
- Presiding judge : Potterill S

- **Issues to be decided:**

The court was to decide on compelling the Department of Basic Education to continue providing daily meals, whether learners were attending classes or were away from the school premises due to COVID-19 pandemic. The applicant was seeking an order to enforce the government to recommence the National School Nutrition Programme (NSNP) and the court to institute a structural proscription to ensure adherence.

- **Applicable legislations:**

The applicants proved their case based on the Constitution, Chapter 2 Bill of Rights section 27(1)(b) which states that “the right to have access to food,” section 28(1)(c) “children’s rights to basic nutrition” and section 29 (1)(a) “the right to basic education.”

- **Facts of the case and court ruling:**

The Department of Basic Education’s transgression of constitutional and lawful duties in ensuring that the National School Nutrition Programme (NSNP) is daily provided to all authorised and deserving children whether they attend school or studying away from school premises due to COVID-19 rampant pandemic. Therefore, the court ruled that the NSNP be continued to be provided to deserving learners through daily meals whether learners are at school or studying away from school premises.

- **Reasons for the judgement:**

The reason that necessitated the judgement by the judge is the fact that the right to education embraces the delivery of NSNP by the government and it constitutes the Department of Basic Education’s constitutional duties. Suspension of NSNP violates learners’ right to education because the right to education and the right to nutrition are unconditional in the South African Constitution. The right to education and the right to nutrition can only be restricted with regards to the general limitation in section 36 of the South African Constitution.

- **The remedy the court decided:**

The court gave a declaratory order instructing the government to supply the NSNP to entitled qualifying learners whether school were reopened or not, because the State is

obliged and compelled by the constitution to make sure that children obtain access to NSNP.

- **The implication of the ruling on the education practices:**

Basically, the implication would be that NSNP must be provided daily ensuring that learner's right to education is respected, promoted and not violated by the government. The learners' right to nutrition must not be neglected by the Department of Basic Education. Therefore, the court's ruling enforces the practice that during any pandemic, including COVID-19 pandemic, learners' right to basic nutrition must not be neglected by the Department of Basic Education.

- **General remarks on learners' right to education:**

It has been established by the court that NSNP is of vital importance in the education system because it serves 9, 6 million poorest learners within the country. The lack of supply of NSNP by the government leads to hunger and starvation in the country confirming that access to school meals daily ensures that learners' right to education is guaranteed.

4.10.4 Citation: *Head of Department: Mpumalanga Department of Basic Education and Another vs Hoerskool Ermelo and Another (CCT 40/09) 2009*

- Date of judgement : 14 October 2009
- Dates of hearing : 20 August 2009
- Presiding judge : Moseneke DCJ

- **Issues to be decided:**

The applicant wanted the Constitutional Court to reverse the lower court's pronouncement that endorsed the Language Instruction Policy of a School Governing Body of the public high school Hoerskool Ermelo to establish Afrikaans as a single language medium of instruction at that school, because the school Language Admission Policy violates English-speaking learners' right to education. The applicants wanted to accommodate new Grade 8 English medium learners at Hoerskool Ermelo of which the School Governing Body rejected to accommodate them on the basis of the Afrikaans as the only medium of language of learning. The refusal to accommodate English-

speaking learners at Ermelo Hoerskool by the SGB is tantamount to the violation of learners' right to education.

- **Applicable legislations:**

In the constitution of the Republic of South Africa, Chapter 2, section 29(2), an acknowledgement of learners' constitutional right to acquire education in their own official language is alluded to, where it is reasonably practicable. The judge, in this case, is empowered by the Chapter 8 on "Courts and Administration of Justice," to consider section 172(1) of *The Constitution of the Republic of South Africa* in the process of adjudication of the case. The defendant submitted in the argument that the case is not about Language Policy but about the procedural fairness.

- **Facts of the case and court ruling:**

This Court case has to deal with the Hoerskool Ermelo SGB's refusal for admission of Grade 8 English medium class learners based on Afrikaans as the only medium of instruction. The SGB of Hoerskool Ermelo refused to admit Grade 8 English medium learners even after the Head of Department of Mpumalanga Department of Basic Education has provided the school with relevant educators for the English medium class. The school SGB insisted that the matter brought to court was about procedural fairness not Language Policy. Then the HOD intervened after the school SGB refused to accommodate Grade 8 English-speaking learners by withdrawing the school SGB's function and replacing it with an interim board that changed the School Language Policy. Then, eventually, the Grade 8 English learners were easily accommodated at Hoerskool Ermelo. That led the case to the Constitutional Court to prove whether the HOD acted within his jurisdiction.

- **Reasons for the judgement:**

The judge acknowledged that the learners' constitutional right to education is that learners should be educated in an official language of their choice. The promotion and protection of learners' choice of language is of paramount importance in a democratic society. Consideration of Chapter 2 of the South African Constitution section 29(1) must be upheld in determining School Language Policy because not doing so, violates learners' right to education. The HODs authority and power of operational jurisdiction

emanates from Schools Act section 22, and section 25, in advocating for an interim council to change the Language Policy that eventually accommodated the Grade 8 English medium class. Hoerskool Ermelo is to revisit their Language Policy guidelines in compliance with the constitution and to be in the best amusement of the learner.

- **The remedy the court decided:**

The relief sought was that the Court should enforce the school to continue to accommodate English medium learners at Hoerskool Ermelo.

- **The implication of the ruling on the education practices:**

The schools SGB's and the School Principals should consider applicable and relevant legislations when admitting at an ordinary public school. Language policies must not be used to circumvent the admission process to favour certain language over other languages and learners who wants to acquire education. Clearly, that is discrimination beyond language but discrimination in terms of cultural background.

- **General remarks on learners' right to education:**

Generally, the determination of the language of medium of instruction can easily be manipulated by SGB's to discriminate and to close doors for the poor English-speaking learners.

4.10.5 Citation: *Teddybear Clinic for abused Children vs Minister of Justice (CCT 12/13)* 2013

- Date of judgement : 03 October 2013
- Dates of hearing : 30 May 2013
- Presiding judge : Khampepe J

- **Issues to be decided:**

Whether it is constitutionally permissible for children to be subject to criminal sanctions in order to deter early sexual intimacy and combat the risks associated thereto.

- **Applicable legislations:**

Section 15(1) speaks to the misdemeanour of discretionary statutory rape with regards to the commission of "sexual penetration".

According to the Act, statutory rape occurs when an adult or a learner at an age of 16 years or older takes part in consensual sexual penetration with an adolescent OR adolescents engage in consensual sexual penetration with each other. If two adolescents engage in sexual penetration with one another, each will be blameworthy of having statutorily raped the other.

Section 16(1) generates the misdemeanour of discretionary statutory sexual assault with regards to the commission of “sexual violation”.

In terms of the Act, statutory sexual grievous bodily harm is performed if an adult or a child who is 16 years or older engages in consensual sexual violation with an adolescent OR adolescents participate in consensual sexual violation with each other. Where adolescents engage in agreed sexual violation with each other, each will be guilty of having committing lawful sexual grievous bodily harm and both children must be charged.

- **Facts of the case and court ruling:**

Applicants pursued a declaratory order that the Sexual Offences Act violates on a learner’s constitutional entitlement to dignity; privacy; and bodily and psychological uprightness; including their right in terms of section 28(2) of the Constitution, to have their best interests regarded as of vital significant in all proceedings about them [Para 25].

The High Court accorded the declaratory order solicited by the Applicants and held that section 15 of the Act and the definition of “sexual penetration” are invalid and contrary to the Constitution in that the section criminalises a learner, who is between twelve and sixteen years of age, for participating in an act of consensual sexual activity with another child of the same age, and it criminalises a child who is between sixteen and eighteen years of age for taking part in an act of consensual sexual activity with a child younger child who is less younger than the other child.

The court further declared section 16 of the Act is invalid and contrary to the Constitution in that it criminalises a learner between twelve years of age and sixteen

years of age for participating in an act of agreed sexual infringement with another learner between the ages of twelve and sixteen years, where there is more than a two-year age difference between both children.

The Applicants argued that while the provisions aim to protect children the wide formulation have harmful effects as they expose children to the severity of the criminal justice system which in turn has an undesirable effect on the evolution of a proper comprehension of, and healthy inclinations to, sexual conduct.

The Appellants further argued that learners' constitutional rights, namely, their rights to human dignity, privacy and bodily and psychological integrity, as well as the best-interests principle have been infringed upon. The Applicants capitulated that there are less prohibitive means obtainable to attain the impetus which the provisions seek to address.

The Respondents declared that the proviso does not violate on any rights and instead protects those rights by procrastinating the choice to participate in coercive sexual engagement. The Respondents argued further that if the court finds that there has been a violation on the rights, the infringement is legitimate with regards to section 36 of the Constitution.

JASA (the *amicus curiae*) supported the Appellants in that section 16 is unconstitutional but argued that section 15 of the Act is constitutionally sound. Both amici argued that the second and third amici disagreed that the right to uniformity ensured in section 9 of the Constitution is violated upon, as the impugned provisions unreasonably affluence girl children. The amici both contend that right of girls to acquire health protection services with regards to section 27 of the Constitution, and reproductive health care (in the form of terminations of pregnancy) in particular, is distinctly infringed upon.

The court found that the proviso infringes on a learner's rights with regards to sections 10, 14 and 28(2) of the RSA Constitution.

- **Reasons for the judgement:**

The CC held that Parliament has clearly decided that a particular group of learners, particularly adolescent learners, are vulnerable and needs special guardianship from sexual offenders.

The court found that the provisions infringe on the right to dignity as criminalisation of consensual sexual behaviour is a model of stigmatisation which is demeaning and encroaching. It was further held that it cannot be denied that the provisions lead to the shaming and stigmatisation of learners. The dignity of an adolescent is further infringed upon as the Act requires anyone who performs a crime with regards to section 15 and 16 to be recorded on a Register.

The court further found that the provisions permits law officers, prosecuting attorneys and the judiciary officers to inspect and undertake authority of the confidential relationships of adolescent learners, thus encroaching a deeply individual area of their lives. Therefore, the provisions violate on the right to privacy.

In terms of section 28 (2) of the Constitution, the CC held that section 28(2) satisfies two separate parts, namely, as a leading truth principle in each case that deals with a particular learner. The second is as a standard against which to test provisions and behaviour which affect learners in general. The court proclaimed that the evidence furnished by the Appellant (the expert report by Flisher and Gevers) reveals that the existence and imposition of the wrongdoing created by sections 15 and 16 of the Act amplify the harm and risk to adolescents by undermining support structures, preventing adolescents from seeking help and potentially driving adolescent sexual activities underground. Furthermore, the court held that the expert report indicated that the reporting provisions are likely to generate an atmosphere in which learners' adolescent children will not candidly talk about sexual activities with their respective parents and counsellors.

The court established that the introduction of criminal liability under the impugned provisions may, be equivalent to incarceration and deviation of procedures. The court held that even diversion proceedings cannot save the provisions. It was held that any such prosecution (whether in terms of normal criminal proceedings or diversion

proceedings) will violate on the best-interests principle, and the affected learners' rights to privacy and human dignity.

The court found that there lack of evidence to elucidate that adolescents may be deterred by sections 15 and 16 from participating in sexual behaviour to avoid the risks related to participating in sexual activity at an earlier age. Instead, the court held that sections 15 and 16 of the Act recently escalate learners' risk of being convoluted in unhealthy, risky sexual activities.

The court found that there is no limiting means available for attain the mentioned impetus of the impugned provision. It was held that there are various methods that could be used which do not require criminalisation of consensual sexual behaviour between adolescents' learners in order to inspire them to live healthy and accountable sexual lives.

The court held that High Court's pronouncement of constitutional nullification should be adhered to.

- **The remedy the court decided:**

The CC applied section 172(1)(a) of the Constitution to proclaim sections 15 and 16 of the Sexual Offences Act is contrary to the Constitution to the degree that they criminalise the consensual sexual behaviour of learner adolescent and thus invalid;

The court directed that the nullification should be dangled for about 18 months in order to allow Parliament to treat the flaws in the enactment. The court further ordered an embargo on all investigations into, arrests of, and criminal and ancillary proceedings against adolescent learners with reference to sections 15 and 16 of the Sexual Offences Act, awaiting Parliament's corrections of the flaws in the statute law. This prohibition will put in suspension any relevant reporting commitment that may otherwise have arisen from the operation of section 54 of the Act.

The Minister of Justice was further ordered to take the suitable strides in ensuring that the judgement and sentence of any adolescent learner agreeable to sections 15 or 16 of the Sexual Offences Act be expunged.

The court further ordered the Minister to take whatever strides are enforced to have the particulars of any adolescent sentenced under the impugned provisions detached from the Register.

- **The implication of the ruling on the education practices:**

The court found that adolescent learners who talks about sex and sexual health with their parents freely may probably not partake in sexual risk behaviour. Therefore, the education curriculum should be structured in a manner that encourages open dialogue on sexual behaviour and sexual health.

- **General remarks on learners' right to education:**

Children are to be taken care of by educators and parents.

4.10.6 Citation: *Member of the Executive Council for Education in Gauteng Province and Others vs Governing Body of the Revonia Primary school and others (CCT 135/12) (2013).*

- Date of judgement : 03 October 2013
- Dates of hearing : 09 May 2013
- Presiding judge : Mhlantla A.J

- **Issues to be decided:**

What the authority and responsibilities of provincial education departments and School Governing Bodies are, alternatively the ascertainment of the duties and powers of different participants in the governance of schools and the legitimate execution of powers.

- **Applicable legislations:**

South African Schools Act 84 of 1996 – Section 5(5) confers on the governing body the authority to regulate the Admissions Policy of a learning institution.

- **Facts of the case and court ruling:**

A potential imminent Grade 1 learner staying in the feeder-area 6 of Rivonia Primary was not successful in gaining a space for admission at the school during the year 2011. The school alleged that it had gone passed its 120 capacity with regards to its Admission

Policy. Then the child was recorded on the waiting list for future intake. The child's parent was unhappy with the unsuccessful application and submitted a complaint to the department. The school and the department agreed that the child had been correctly recorded on the waiting list. The matter was later appealed to the Gauteng MEC in 2011.

The MEC referred the matter to the Gauteng HOD who decided that despite the restriction of 120 learners in terms of the Admissions Policy, the school could admit one more learner. The Gauteng HOD made this decision based on his authority with regards to the provincial directives. The Gauteng HOD continued to revoke and rescind the unsuccessful admission application and instructed the school to be admitted immediately.

The learner accordingly arrived at the school in February 2011, however, the principal declined and indicated that a dire critical meeting of the School Governing Body was planned to debate the matter. The Gauteng HOD subsequently claimed to remove the admission duties of the principal and entrusted the function to another office-bearer. The official proceeded to physically place the learner in a classroom. The principal was called to account to a disciplinary legal proceeding meeting for defying the instruction of the Gauteng HOD and was served with a final warning.

High Court proceedings:

The school approached the high court on an urgent basis seeking a proclamation order and a prohibition against the decision of the Department to overrule the school's Admission Policy, forcing the school to admit the child and withdrawing the principal's admissions duties.

The governing body and the school contended that deciding the dimension of the school is an intrinsic aspect of the Admission Policy and that the MEC and the Gauteng HOD had no legal authority to decide the capacity of a public school.

The school alleged that the School Governing Bodies have the only say on the maximum learner-intake capacity of a school. The High court insinuated that section 5(5) of the Schools Act fails to confer exclusive authority on a

Governing Body to decide on a school's maximum capacity. The court instead held that the authority to decide the maximum highest capacity of a public school in the Gauteng Province rests with the department. The court further held that the Gauteng MEC is the primary decision maker as to whether a child should be enrolled to a school and the department is authorised to intercede where a child is being denied registration at a learning institution.

The court found that the department took a fair and reasonable decision. In relation to the Gauteng HOD withdrawing the principal's admission duties, the court concluded that the conduct of the Gauteng HOD was erratic.

SCA proceedings:

The school took the high court's decision on appeal. The SCA endorsed the appeal and proclaimed that the order by the Gauteng HOD for the school to register the learner was inconsistent in terms of Admission Policy and that the conduct was illegitimate.

The court concluded that section 5(5) of the Schools Act dispenses that the Admission Policy is determined by a School Governing Body, this includes the determination of a school's capacity.

The SCA found that section 5(9) of the Schools Act read with Regulation 14 of the Gauteng Regulations allows a plea to the MEC where admission is rejected by a principal, Regulation 13(1)(a) gives the Gauteng HOD the jurisdiction to put aside the conclusion of a principal before an appeal.

The court rejected the department's argument that the provincial government makes the ultimate conclusion on the capacity on a school.

CC proceedings:

The MEC took the SCA's decision on appeal to the CC and argued that the SCA erred in its elucidation of the School's Act. The Applicant's conceded that the Governing Body does have an entitlement to decide on the capacity as part of

its Admission Policy, they complied that the authority endowed in Governing Bodies by section 5(5) should not be overstated.

The Applicants further argued that Schools Act and provincial legislation provide that a conclusion to refute a learner taken at school level is never conclusive and is subject to verification and corroboration by the Department.

The Applicants contended that Department is under a constitutional and statutory duty to guarantee that the prevailing public-school infrastructure in the province is utilised as effectively as possible.

The Respondents argued that the Schools Act confers the authority to decide the capacity of a school in the School Governing Body. The Respondents further argued that on the facts, the Gauteng HOD did not have the right solely to disregard the Admission Policy and order the principal to admit the learner.

The CC was thus required to determine whether the Gauteng HOD had the authority to make decisions in connection with the admission of learners in public schools and, if so, whether the Gauteng HOD had the authority to forgo the Admission Policy insofar as it connects to the capacity of the school to admit learners.

In its analysis of the legislation, the CC held that the Schools Act envisages that schools be controlled by national government; provincial government; and the parents of the learners and the community members in which the learning institution is found. Therefore, when the Schools Act inscribes the matter of admission of learners it does so in recommendation to all three spheres of school governance.

Section 58C (6), the Head of Department is under duress to determine the minimum and maximum carrying capacity of a public school. Section 5 of the Act the Governing Body is responsible for determining the Admission Policy of that school; this may incorporate an ascertainment as to the assessment of capacity.

The Governing Body is conferred the role set out in section 5(5) as the Governing Body is in a position to have regard, in an Admission Policy, to a range of interrelated factors connected to the planning programmes and governance of the school.

The CC concluded that section 5(5) is, however, subject to the provisions of the Schools Act and provincial law. Therefore, the court held that this is that the decision of admissions may be subject to provincial government's intervention in terms of the Schools Act, or applicable provincial law

The court concluded that the Schools Act acknowledges the part played by the Department of Basic Education in the registration process of learners. In terms of section 5(7) and 5(9), the application for admission is made to the department, thereafter it is the responsibility of the HOD who is in charge for notifying a parent of a denial of an application request and the rationale for it.

The Act provides that it is the role of the principal to apply the Admissions Policy. Accordingly, the School Governing Body regulates Admission Policy; however, individual resolutions on registrations are taken only temporarily at a learning institution level, by the School Manager performing under the auspices of the HOD. Section 5(9) of the Act provides a safeguard authorising the MEC to examine admission denial and revoke an admission pronouncement taken at the learning institution level.

The court further made reference to directive 13(1) of the Gauteng Regulations that stipulated that, the case wherein a School Manager refuses a learner admission to a school, written reasons were to be provided to the HOD and the parent. The aforementioned regulation required the HOD to either affirm or put aside the decision of the principal.

In addressing the question either a Head of Department is designated to revoke or diverge from a policy embraced by a School Governing Body, the CC has held in previous judgements that a Head of Department or other government functionary cannot just overrule the policy embraced by acting contrary to it.

This is the case even where the functionary is of the view that the policies exasperate the Schools Act or the Constitution. It does not, however, mean that the power of the Governing Body is unrestrained.

The CC has previously held that a functionary may intercede in a School Governing Body's policy-making role or diverge from a School Governing Body's policy, where that functionary is designated to do so in terms of authority allowed to it by the Schools Act and other appropriate legislation.

The CC held in the current matter that the Department maintains ultimate control over the implementation of admission decisions. And the Gauteng Regulations afforded the Gauteng HOD the specific power to overturn a principal's rejection of a learner's application for admission.

On that fact the court held that it had been established that Gauteng HOD was legitimately authorised to register learners to Rivonia Primary, the proposal that the Gauteng HOD was rigorously bound by a school's Admission Policy was incorrect. The court further held that a policy assists as a guide to decision-taking and unable to tie the decision-maker intractable.

The CC found that the SCA made a mistake when it finalised that the Schools Act placed admission determination directly in the hands of the Rivonia Governing Body and that the Gauteng HOD could not overrule the Admission Policy.

The court held, however, that where the decision of a principal is overturned or where there is departure from a policy, it must be done in a sensible and procedurally equitable and honest manner.

- **Reasons for the judgement:**

The CC found that a policy (such as the Governing Body's Admissions Policy) is set out as a yardstick to decision-making and is unable to hold together the decision-maker immutably.

- **The remedy the court decided:**

The appeal by the Applicants was upheld;

It was concluded that the Head of Department of Education in the province of Gauteng was authorised to discharge an order to the School Manager of Rivonia Primary School to admit the learner in edition of the limit in its Admission Policy.

In executing the authority to order a School Manager of a public school to enrol a learner in excess of the limit in its Admission Policy, the Head of Department of Education in the Province of Gauteng must take an action in a fair and procedural manner;

- **The implication of the ruling on the education practices:**

School Governing Bodies will skills and be educated about the extent of their authority and that it is not unfettered.

The Head of Department or other government functionary must ensure that they are aware that they cannot just overrule a policy endorsed. This is the case even where the functionary is of the view that the policies offend the Schools Act or the Constitution.

- **General remarks on learners' right to education:**

Generally, learners possess a right to be registered and be admitted to any school of their choice.

4.10.7 Citation: *Centre for Child Law and Others vs Minister of Basic Education and Others* (2840/2017) 2017

- Date of judgement : 12 December 2019
- Date of hearing : 18 September 2019
- Presiding judge : Mbenenge S.M

- **Issues to be decided:**

The matter to be pronounced by the court was the re-admission of 37 undocumented learners who did not have Birth Certificates, permits and/or Identity Documents proofing legal Registration in the State of South Africa.

- **Applicable legislations:**

The applicants argued the case based on the South African Constitution, Chapter 2 “Bill of Rights” section 29 ‘the right to education,’ indicating that the constitution does not discriminate in terms of citizenship with regards to learners’ right to education. The National Policy for Ordinary Public School as depicted in the National Education Policy Act of 1996 allows all learners to be enrolled to any public school and exclude foreigners living in South Africa. Circular number 6 of 2016 provided by the Acting Superintendent-General on the 6 June, indicating that funding learners with no Identity Document will be withheld until corrected, failure thereof, by the 17th of June, the affected learner will be removed from the school enrolment.

- **Facts of the case and court ruling:**

The case relates to 37 undocumented learners at Phakamisa High School who were not funded by the Department of Basic Education due to lack of proper documentation: these 37 learners failed to provide the school for admission purpose with the Identity Documents, Birth Certificates and/or passports. According to the Department of Basic Education, undocumented learners are deemed to be unregistered if they do not have proper relevant documents and the South African Admission and Management System (SAMS) is able to detect them as unregistered.

- **Reasons for the judgement:**

The reason the judge based his argument for ruling was that the *South African School Act 84* of 1996 states that public school must enrol learners and service their educational needs without discrimination. Furthermore, the Bill of Rights, section 10 “human dignity,” is of vital significance in the consideration of learners’ right to education. The Admission Policy clauses 15 and 21, and section 39(1) and (42) of the Immigration Act are unlawful in nature.

- **The remedy the court decided:**

The relief provided by the court is that the Department of Basic Education is to take actions to deal with the post establishment, paper budget, and the National School Nutrition Programme. The Admission Policy for Ordinary Public School declared in Government Gazette 19377 under Government Notice no 2432 of 1998 furnished in terms of section 3(4)(1) of the National Education Policy Act of 1996 (mentioned as

Admission), be reviewed to cater for undocumented learners, conditionally. The court considered that NEPA provides that undocumented learners must remain conditionally registered at a school until proof of Birth Certificate or passport is supplied to the school. This makes a learner to be debarred from attending school on the basis that a learner lacks a passport or a Birth Certificate. Therefore, the applicants seek an order that the 37 undocumented learners from Phakamisa High School in Port Elizabeth be re-enrolled into public school awaiting the final application outcome.

- **The implication of the ruling on the education practices:**

The implication with regards to the admission system is that the Department of Basic Education must understand and correctly implement section 29(1)(a) and section 28(2)(a) of the South African Constitution taking into account concepts like “everyone,” has a right to education without conditions attached, while the “child’s” best interest is important in every situation that concerns the learner, without discrimination. All learners deserve to be registered or admitted to any public school of their choice, regardless of lack of proper Birth Certificate and passport.

- **General remarks on learners’ right to education:**

Generally, learners’ right to education starts with learner registration or admission at a particular public school and is regulated by the South African Constitution, precisely Chapter 2 of the Bill of Rights. In this case of 37 undocumented learners who were denied their right to education, Section 9 Equality, Section 10 Human Dignity, Section 28 Children, and Section 29 Education of the South African Constitution played a vital role showing the importance of the advancement and protection of learners’ right to education.

4.11 The Importance of Rights-Based Approach in Realising Learners’ Right to Education

The role of law based on legal knowledge and skills is of vital importance in transforming the education through the Rights-Based Approach to education. Lundy and Sainz (2018) argue that legal expertise and knowledge of education law assist in transforming the education system and avoiding learners’ right to education violation becomes impossible. Learners’ right to education is realised through the implementation of Rights-Based education in transforming

the education system. The process is illustrated through a cylindrical system that involves the comprehension of human rights literacy understanding, international application of human rights and values, rights-based education, transformative action in a democratic and an open society (Becker, de Wet & van Vollenhoven 2015). In trying to promote a comprehensive culture of learners' right to education through human rights instruments, Bajaj, Cislighi and Mackie (2016) argue for the Transformative Approach that includes doing what is *right* as dictated by the Rights-Based Approach to education. The build-up to extensive application of learners' right to education needs extensive translation of policy into practice and the knowledge of various cases to avoid violation of human rights in education. Sintz (2018) argues that education is considered to be a vehicle to fulfil human rights although teaching human rights is a complex phenomenon.

The next chapter concentrates on the research methodology used to gather and process data.

CHAPTER 5

RESEARCH DESIGN AND METHODOLOGY FOR THE EMPIRICAL INVESTIGATION

5.1 Introduction

This chapter renders an extensive in-depth of clarification of the Research Design and methodology that were applied so as to attain the purpose of this study. The study is focused on how educators understand learners' right to education. In Chapter Three, educators' understanding of learners' right to education was discussed, internationally: in Italy, Germany, Greece, Israel, and Turkey; and in the African continent countries like Nigeria and Tanzania, respectively. Chapter 4 established how educators in South Africa perceived and comprehend learners' right to education with regards to the legislation provided through the State Government and the violation of learners' right to education demonstrated by South African court cases.

It is significant that Chapter Five outlines and describes clear reasons for the Research Design and methodology that were applied for gathering data to accomplish the main objective the study. The Research Design was denoted to give a clear constructed outline and strategy, which sought to investigate and reveal answers to the research question that emerges from the discussion interviews, field note and Document Analysis. To fulfil and realise the objective of the research study, the researcher selected a qualitative research approach that seeks to generate knowledge and skills based on the Rights-Based Approach to education. Furthermore, the researcher purposefully selected participants and collected data through in-depth interviews in trying to answer the questions posed by the research. The grounds for choosing the qualitative approach based on the Rights-Based Approach theory is that the Rights-Based Approach to human dignity is relevant for this study because it recognises that human beings are to be valued to an end in themselves, namely, as human beings possessing dignity as an absolute inner worth in which respect is demanded for themselves and respect shown for all other human beings and things in the world (Schroeder 2012). This implies that the dignity of learners should always be respected as corresponding with the Rights-Based Approach to education emphasising an understanding of human dignity, namely, to always respect a person and to think of a person as a possessor of dignity making the person experiencing a sense of worthiness (Sensen 2009).

The researcher has reviewed critically from selected literature how Rights-Based Approach theorists reflect on reality in an effort to drive the rationale on learners’ right to education as perceived by the educators. The rationale behind the critical review was to locate possible good educator practices educators should engage in while promoting and protecting learners’ right to education. In view of the educator perception of learners’ right to education, the researcher discussed below, and the research paradigm based on the Rights-Based Approach that underpins the study, research approach and the Research Design.

5.2 Knowledge Application

Knowledge application is familiarity, awareness and/or understanding of facts and information which is attained through daily practice by learning (Qvortrup 2006). Although it can be explicit and/or implicit in nature, Devenport and Prusak (1998) see knowledge as a justified truth acquired complex cognitive process that engages perceptions, communication and reasoning which should be acknowledged by human beings. The application of knowledge in the educator perception of learners’ right to education is explained with reference to ontological and epistemological stance, in terms of knowledge application.

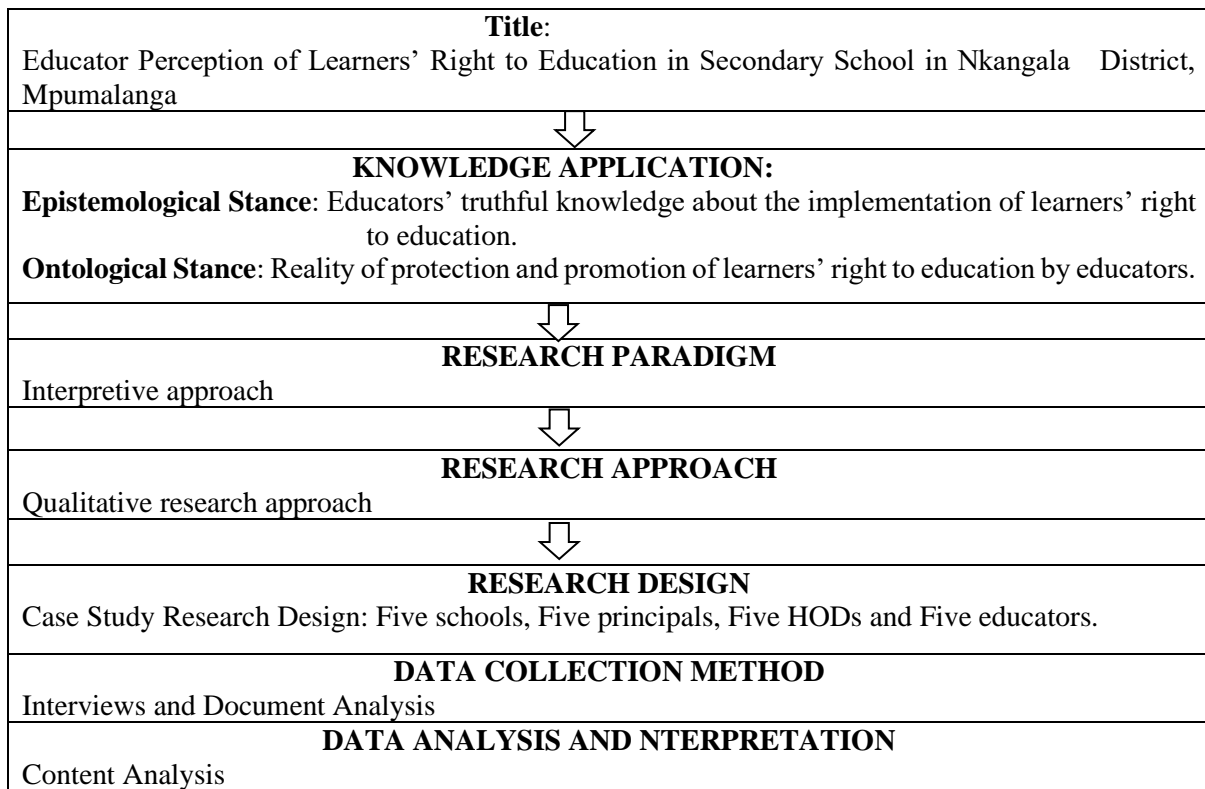


Figure 5.1. Illustrative Demonstration for Design of Conducting Empirical Research
Source: Adopted from Van Den Berg DN (2008)

Van den Berg (2008) indicates that 'epistemic' is acquired from a Greek term 'episteme' implying sincere knowledge. Therefore, epistemology is concerned with the generation of knowledge, particularly how knowledge is acquired in relation to others (Cohen, Manson & Morrison 2000; Scott & Asher 1999; Smith 1993). Thus, the fundamental goal of epistemological perspective in research is to explore 'truthful knowledge' (Van den Berg 2008:100). All human social interaction is monitored daily through knowledge of reality including common sense in maintaining the epistemology focal point on what human beings 'know' about the reality of knowledge existence (Huff 2009:108-113). Therefore, epistemology insinuates making perceptions and awareness of people's experiences by interconnecting and listening to the views of participants during the research process (TerreBlanche, Durrheim & Painter 2006:275). The epistemological stand point of this research involves how educators perceive and understand learners' right to education. The needed knowledge was acquired through Interviews and Document Analysis. Nieuwenhuis (2010a:55) argues that experiences of the research respondents are a medium to explore reality, within the research sites.

The ontological posture embraced by this investigative research study is that individual consciousness reflects the truth through individual respective minds (Cohen et al. 2000:5-6). TerreBlanche et al. (2006:275) argues that ontology involves valuing peoples' experiences as part of reality to them as individuals. Thus Huff (2009:109) considers ontology as an existence of reality. Participants engages in the creation of their perceived reality through their understanding of what learners' right to education mean within their environment as depicted by legislative policy outline.

In this study the research assumption is that policy framework should capacitate educators to be able to promote and protect learners' right to education. Therefore, the educators' engagement with learners should be facilitated by policy guidelines and proper education provisioning by the government should be in accordance with the constitutional guidelines.

5.3 The Research Process

The research process is explained through the research process flow below:

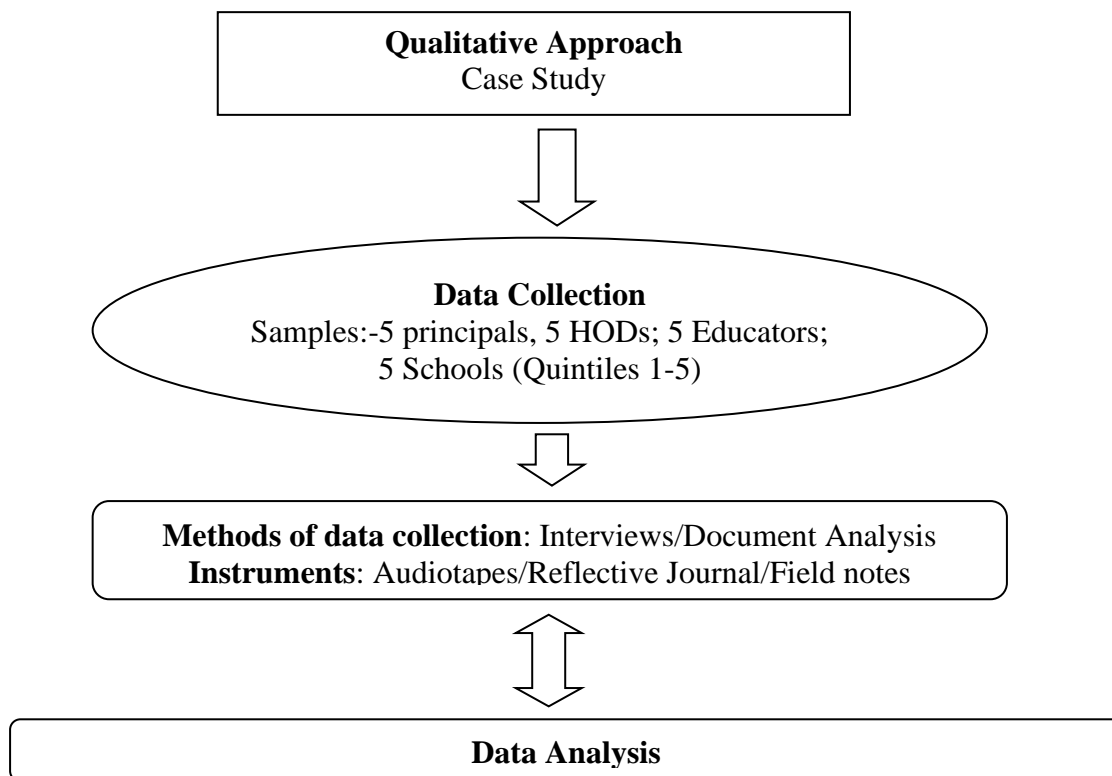


Figure 5.2. Research Process Flow Chart
 Source: Adopted from Kgwete EM (2014)

5.4. Research Paradigm and Assumptions

The researcher critically reviewed selected literature on Rights-Based Approach theorists on learner's' right to education with regards to educators' understanding of the concept, by reflecting on the reality in an effort to mirror and reflect on what is to be practised in schools. The rationale behind the critical review was to locate possible malpractices and the separation of good practices with reference to the implementation of Rights-Based Approach with regards to learners' right to education.

In this regard, the researcher discusses firstly, the research paradigm used in education research in general and followed by the research approach that underpins the studies on Rights-Based Approach to education.

5.4.1 Research Paradigm

The word 'paradigm' is derived from a Greek term meaning 'patterns' (Kivunja & Kuyini 2017). Durrheim (2009) views a paradigm as an instrument that supports a researcher in selecting appropriate technique and research path when exploring a certain phenomenon under investigation. According to Bassey (2012), a philosophical belief system is an initial

establishment that decides what the researcher is exploring and how the research must be conducted. Miles, Huberman and Saldana (2013) regard paradigm as a model or design comprising a cluster of authentic premises and a pattern for gathering and elucidating data. On the contrary, Cohen, Manion and Morrison (2011) see research paradigm as framework which functions as map that directs a scientific inquiry that determines community's main concerns to be addressed, in view of defining suitable models and procedures to unravel the identified challenges. Creswell (2009) regards research paradigm as an approach for observing the natural world while embracing philosophical assumptions that focuses on thinking linking it to specific phenomenon's solution.

It is understood to mean a phenomenon that which organizes how a researcher comprehends reality which is ontology, the essence of knowledge, the connection between the knower and what is to be known, which is epistemology (Durrheim 2009). Durrheim (2009) further accentuates that the methodology is how the knower obtains the knowledge is essential in observing the ethical behaviour which is regarded as axiology.

Thus, in this study, it is essential to reflect on the paradigms as they influence the answer to the research questions. Whereas varieties of philosophical and theoretical perspectives are presented in educational research and Durrheim (2009) groups them according to the following four main paradigms:

- *Positivism/post-positivism* (which is linked to experimental, quasi-experimental, quantitative research);
- *Constructivism* (which is also referred to as *interpretivism*, and is linked to naturalistic, phenomenological, ethnographic and broad qualitative research processes);
- The *transformative* paradigm (which is also referred to as *emancipatory* and linked to viewpoint theories for example, Critical Theories and Disability theory, which targets at supporting participants through the research, for instance, in participatory action research); and
- The *pragmatic research paradigm* (which embraces mixed representations and mixed approaches to research).

In this investigative research study, the researcher adopted the constructivist paradigm also referred as Interpretive Paradigm (Creswell & Poth 2016). In the next section, the researcher dwells more on the Interpretive Research Paradigm, as it is the lens through which the researcher explores and specifically analyses the study phenomenon.

5.4.2 Interpretive Research Paradigm

This research on educator perception of learners' right to education departed from an Interpretive Research Paradigm that enabled the researcher to make an interpretation through exploration for a profound apprehension of the phenomenon under investigation. The Interpretive Research Paradigm focuses on meanings, actions, and actors in the social environment (Gall, Gall & Borg 2007:31). The Interpretive Paradigm is amalgamated with the post-positivism, qualitative inquiry, a naturalistic research paradigm, qualitative research and constructivism (Dean 2018). It forms an umbrella concept that includes non-identical schools of thought, as well as phenomenology, critical theory, ethno methodology, and recently feminist theory (Yanow, 2006).

An Interpretive Research Paradigm enabled the researcher to understand information collected from interviews with participants as their autonomous interpretation of learners' right to education. An Interpretive Research Paradigm allowed the researcher to acquire insight from participants' feedback to questions that were answered from the research questions (Yanow, 2006). With reference to Dean (2018), the interpretation of participant responses, individual perceptions, and experiences of participants and the researcher's connotations of those perceptions generated information and understanding on the evolution and growth of the right to education for learners. Specific situations relating to the concepts under discussion were interpreted, investigated and, subsequently, relevant data on educator perception of learners' right to education, collected.

5.5 Research Approach

This investigative research examination used a basic qualitative research approach. In a qualitative research approach, an individual, event or program is carefully studied for a certain period of time (Austin & Sutton 2014; Leedy & Ormrod 2005:135). The basic qualitative research approach is used by constructionists through phenomenological symbolic interaction because this approach is applied in people's interpretation of their experiences (Merriam 2009:23; Rashid, Rashid, Warraich, Sabir & Waseem 2019).

5.5.1 Qualitative Research

Qualitative research is applicable for this research study due to the fact that it allowed participants to convey their opinions in expressions that were captured and used to describe how learners' right to education is understood by educators in the learning institution environment. Interaction between educators and learners continue to pose the challenge of understanding how educators handle the relations between them and their learners prompted by the right of learners to basic education (Snauwaert, 2013).

A qualitative research approach provided an in-depth picture of a situation and informed the researcher in an accessible way conveying richness and intensity of detail in a more convincing way than a quantitative research approach can convey (Lincoln, Lynham & Guba 2013). The detail of a qualitative research approach allowed for a comprehensive inquiry of issues, namely, how questions are answered and given meanings, which are affected by the matter and what factors are involved, and the reaction of individuals or responses to each other (Creswell 2009). In this qualitative research, recognition was given to the individual in the research process, not just the distinct effect of a particular phenomenon under discussion. The robustness of qualitative research is its potentiality to supply complicated written narrative account of how research participants encounter a specific research investigative matter (Austin & Sutton 2014; Leedy & Armrod 2013; Brink, van der Walt & van Rensburg 2018). Qualitative methods are, therefore, effectual in recognising inviolable elements, such as societal typical standards, socio-economic ranking, gender responsibilities, ethnicity and faith and, in connection to this study on learners' right to education, genuine perceptions of stakeholders on the matter.

The comprehension of the qualitative research was obtained by examining the participants' content and the context in their respective narrative reflecting on their actions and events. McMillan and Schumacher (2001:397) stress the point that qualitative research is engrossed in the situational environment and the phenomenon under investigation. Taking from the above discussion the essence of qualitative research can be summarised as follows:

Table 5.1. Characteristics of Qualitative Research

No.	Characteristics	Description
1	Natural settings	Study of behavioural conduct as it happens spontaneously and naturally.
2	Context sensitivity	Reflections and deliberations of circumstantial aspects.
3	Direct data collection	The researcher gathers data in person and directly from the source.
4	Rich narrative description	Comprehensive narrative that brings forth accelerated apprehension of behaviour.
5	Process orientation	Focuses on why and how behaviour happens.
6	Inductive data analysis	Generalisations are produced from synthesising accumulated information.
7	Participants perspectives	The focal point on participants' comprehension, descriptions, labels and denotations.
8	Emergent design	The designs develops and changes as the study progresses.
9	Complexity of understanding and explanation	Understandings and clarifications are complex, with multiple perspectives
10	Research	Constructivist and interpretivist

Source: Adapted from McMillan and Schumacher (2010)

The qualitative research characteristics are almost present in any qualitative study, to some degree (McMillan & Schumacher 2010:322). The table above demonstrates that the clear characteristic of qualitative research is its uniqueness in terms of natural settings, which shows that there is no manipulation in findings and there are no external constraints. Furthermore, the table above shows that, in a qualitative study, the researcher acts as a collector of data or an interviewer in a natural environment that provides comfort for the participants.

The Research Design is reiterative in that data gathering process and research study questions are calibrated confirming to what needs to be achieved (Creswell 2009). Open-ended questions and probing by the researcher gave participants a chance to react and respond in their own words, unlike choosing from fixed responses. The Research Design of a qualitative research approach includes, amongst other, Case Studies, Ethnographic Approach, Grounded Theory and Discourse Analysis.

In this study on educator perception of learners' right to education, the researcher engaged in a Case Study. Cohen, Manion and Morrison (2000) elucidate a Case Study as a study that occurs in its natural environment. Creswell (2009) clarifies this definition by indicating that a Case Study Research Design accords a clear explanation of the case under investigation to

comprehend every individual participant's perceptions unlike only introducing them as rational beliefs. Therefore, a qualitative Case Study assists in the investigation of a phenomenon in its natural setting utilising different sources of information (Baxter & Jack 2008).

5.6 Research Design

This research study on learners' right to education is based on a Case Study Design using a qualitative research approach. A Case Study Design is to be taken into consideration when the focal point of the investigative inquiry study is to reply on "how" and "why" questions; when the behavioural conduct of participants in the study is unable to be handled or controlled; when dependable circumstances are addressed because these conditions are considered applicable to the phenomenon of study; and when barriers are not understandable between the occurrence of the study and the circumstances in which this phenomenon is studied (Rashid, Rashid, Warraich, Sabir & Waseem 2019). Case Study research contains an excess of purely managing and leading a research on exclusive individual's circumstances because it possesses prospects to tackle simple examination through compounded situations (Yin 2014).

The Case Study Design enabled the research investigator to answer "how" and "why" kind of questions while taking into cognisance how a phenomenon is controlled by the context in which it is based. In this Case Study Design, insight was gained from the study, thus enabling the researcher to collect data from distinct sources to illuminate the specific case (Rashid, Rashid, Warraich, Sabir & Waseem 2019). The research methods used in this study are, namely, individual interviews and Document Analysis.

5.7 Selection of Site and Participants

Sampling pertains to the connection between the population and the sample extracted from it (Maree, 2013). According to Taherdoost (2016), sampling involves population, and population is the first thing a researcher must deal with when treating the aspect of sampling. Therefore, van Hoeven, Janssen, Roes and Koffijberg (2015) indicate that representative sampling is a selection of research participants from a population in an area under investigation and it includes choices on people, circumstances, environment, events, behaviour and processes. The researcher used a Purposive Sampling technique where a researcher selected elements and components from the sampled population that were typical and enlightening about the phenomenon under investigation (Etikan, Musa & Alkassim 2016; Porota 2012). The logic for using Purposive Sampling is its emphases on the richness on the information or data

generalised not generalising on the wider and larger population (Strung & Stead 2001:124). The implication was that the researcher became specific about the criteria for sampling to select applicable participants from the research population (Polit & Hungler 1999).

The research population for this investigative inquiry study on learners' right to education comprised of secondary schools in the Nkangala District, Mpumalanga. From this research population, five secondary schools were selected as research sites representing a Quintile 1 school, a Quintile 2 school, a Quintile 3 school, a Quintile 4 school and a Quintile 5 school. The reason for selecting one school as a research site from each of the five quintiles depicting the Quintile Funding System is established on the costs of earnings, joblessness, and lack of education within the learning institution's surrounding area in relation to educators' perceptions of learners' right to education in different spheres of socio-economic status in the Nkangala District, Mpumalanga Province. These reasons are related to the broader understanding of educator perception of learners' right to education in the different spheres of socio-economic status within the South African society.

The research sample from the selected schools consisted of five Post Level One educators, with one educator selected from each research site, with an indicator that the total number of Post Level One educators are representative of the GET band phase (Grades 8 and 9) and the FET band phase (Grades 10 to 12). These five educators are holders of a Bachelor's degree in education, with minimum of five years of teaching experience in the specific school phase. The reason for this criterion for educator selection is based on teachers' experiences, understanding and knowledge of dealing with learners' right to education, as TLO's at school.

Apart from the five Post Level One educators, five Heads of Departments were selected from five research sites. The five HoDs are representatives of the GET school phase and the FET school phase, respectively. The selected HoDs have five years' experience in their respective positions. The reason for this criterion for HoDs selection was to evaluate the skills and knowledge of how HODs promote and protect learners' right to education, as operational managers, in the schools. The five School Principals of the selected research sites completed the research sample. As anticipated, the School Principals are holders of honours' degree in education with more than seven years' experience in the School Principal position. The School Principals were expected to have knowledge and skills of school policies that relate to learners' right to education. Furthermore, the School Principal who is an Accounting Officer of the

learning institution, representing at school level, the Mpumalanga Head of Department, is required to act in loco parentis by protecting and promoting learners' right to education.

In this investigative research study on educators' perceptions of learners' right to education, the researcher interviewed participants from five different schools composed of five School Principals, five HoDs (one from each school), and five Post Level One Educator (one from each school). The HoDs and educator participants were purposively sampled. According to Chiromo (2009:18), Purposive Sampling enables the researcher to select participants constructed on the researcher's judgemental views of the typicality to the phenomenon under discussion. Therefore, Non-Probability Sampling, also known as Purposive Sampling, allowed the researcher to handpick the cases to be incorporated in the sample on the grounds of the researcher's opinion of their typicality and capacity to share information-rich knowledge on the topic of learners' right to education. Purposive Sampling enabled the researcher to select subject participants based on certain specific individual characteristics (Sutton & Austin 2015; Patton 1990).

5.8 Data Collection Methods

Data collection technique in qualitative research incorporates interviews, observations and Document Analysis (Sutton & Austin 2015). In this study, individual interviews were used to gather information. The rationale behind using individual interviews is because participants who are purposefully selected are then able to explain themselves individually, having all the time available with the specific interview to share their information-rich knowledge.

5.8.1 Interviews

In this study on educators' perceptions of learners' right to education, individual interviews became the main data collection method. Two rounds of telephonic interview conversations were held during the third term of the year. Five school principals, five HODs from five identified schools, and five educators from various schools were interviewed, using a semi-structured interview. Individual interviewing is functional for collecting in-depth information about the perspectives of individuals (Adhabi & Anozie 2017; Alshengeeti 2014). Individual interviews encouraged research participants to relate their unique individual experiences, opinions, and feelings. Using individual interviews enabled the researcher the chance to obtain insight into how people comprehend and how they address sensitive topics which they might be unwilling to talk about in a group setting (Snauwaert 2013). Interviewing is functional to

gather information for an expansive approach of the interviewee's essence of view, or for a holistic understanding of a specific situation. Interviewing is also used to inquire and explore areas of interest for further investigation, resulting in the generating of rich data (Kajournboon 2010).

The researcher used a tape recorder with an agreement of research participants and drafted minutes to record and construct the experiences, beliefs, views, and feelings of participants about learners' right to education. Each tape-recorded research telephonic interview lasted for 45 minutes to ensure precision and perfection after obtaining participants informed consent to record them. Participants do not mind to be tape recorded, but TerreBlanche et al., (2006:298) argue that informed consent must come prior to the process of tape recording.

Interviews ensured how educators understood the learners' right to education in secondary schools in the current human rights era.

5.8.2 Document Analysis

In this investigative research study, Document Analysis was used as a supplementary data collection method. Document Analysis involves perusing written material with relevant information as an origin of data (Creswell 2009). Documents are records of activities that the researcher observed directly to provide response to questions that could have been asked in the course of the interview. McMillan and Schumacher (2001:42) concur by stating that a document is any document, anecdotal notes, letters and diaries. Document Analysis is an expression of qualitative analysis that necessitates the researcher to discover, locate, interpret, analyse and produce a conclusion about the confirmation presented. Document Analysis is used effectively to verify and corroborate evidence collected through interviews and observation (Yin 2009).

The researcher solicited documents relating to the school's Code of Conduct for learners, the school's constitution, the school's policy on discipline, class rules and the constitution for Learner Representative Council, and all these relevant documents gave information on learners' right to education. In the mentioned school documents, the researcher checked how these official school documents address learners' right to education, particularly the promotion and the protection of learners' right to education.

The advantage of Document Analysis is that documents were produced and preserved as a record of operation at specific schools. Manyaka (2006:44) argues that Document Analysis involves going through policy documents, minutes of meetings and any past event records. These documents aided the researcher in triangulating data from interviewing, corroborating with findings from literature (Creswell 2009).

In this investigative qualitative research study, the researcher interacted with participants in their normal environment, based on the Phenomenological Approach directed towards understanding participants' views of their day-to-day understanding of the concept under investigation, namely, learners' right to education (McMillan & Schumacher 2001).

5.9 Data Analysis and Interpretation

The analysis of data involves an interpretation of the collected data through separating the comprehensive data into various parts for the purpose of enhancing comprehension, making the data collected clear and understandable to answer the formulated research questions. Qualitative data analysis is based on interpretive ideology aiming to inspect significant and relevant qualitative research data content (Nieuwenhuis 2007b:99). The researcher used qualitative data analysis to interrogate how educators view and understand their role in promoting and protecting learners' right to education within the current human rights era in the education system. Therefore, the data collected were processed through organizing by means of determining themes based on categorising collected data into understandable units. Processing of the collected data to identify themes entailed the coding of data and the clustering of coded data.

In this research study, Thematic Data Analysis was utilised in order to find the meaning of data found in the research field through patterns and sequence. Burnard (2006) indicates that the thematic process involves analysing recorded interview transcripts to identify themes. The thematic analysis, firstly, involves familiarization with the data by going through the interview transcripts to secure the initial comprehension of the data and to obtain an overall overview of the data collected (Hancock, Ockleford & Windridge 2009). In the process of reading the transcripts, the researcher made notes to qualify and verify the data received prior.

The second step, the researcher coded the data by distinguishing and tagging central points with data that guided the answering of research questions. Elementary codes were produced

in the exercise of perusal and re-reading the transcript records. In the process of open coding, the researcher summarised the content of short segments of text as components of denotation in a few words, on a line-by-line basis preceding the next step which involves searching for categories (Hancock et al. 2009). Finally, the researcher cluster coded data by grouping them to represent related ideas to eventually form classifications and categories. The researcher then grouped the categories to form major themes as research findings to provide a solution to the research questions.

5.10 Credibility and Trustworthiness of the Study

Credibility is defined as the confidence that emanates from belief and trust that can be positioned in the honesty of the research outcomes (Holloway & Wheeler 2002; Macne & Macbe 2008). Trochim and Donnell (2006) argue that credibility is a process that demonstrates whether the results of the researcher are true from the participants' point of view through member checking. Member checking is done through giving research participants their respective drafts of research findings to view their reactions to establish their individual approval or disapproval of the data collected (Seale 2000 & Patton 2002). Credibility establishes the extent to which research findings represent reasonable and feasible information extracted from participants' authentic data as an accurate elucidation of participants' original views (Lincoln et al. 2013; Lundman 2004). In qualitative research, credibility is understood as trustworthiness, which is a major criterion in evaluating a Case Study (Yin 2011).

5.10.1 Trustworthiness

Trustworthiness is utilised to interrogate the reasonableness and sincerity of information gathered in the field. Trustworthiness establishes transferability, credibility, conformability, and dependability in finding the truth in the research study (Golafshani 2003; Leedy & Ormrod 2005). The researcher pursued trustworthiness by considering the guidelines by Lincoln, Lynham and Guba (2013) pertaining to the extended duration of interviews in the field, in the process of adequate data collection, triangulation, member checking, and peer reviewing. The conformability of the research outcome is constructed on the researcher's crucial introspection and self-examination.

Lincoln and Guba's (1985) evaluative criteria of trustworthiness model which involves credibility, transferability, dependability, and conformability was utilised in this investigative study. The model has four criteria, all of which was applied in the study. First, truth value was

considered by describing accurately the phenomenon of study, namely, the learners' right to an education at schools. This was achieved by establishing trust in the truth of the outcomes obtained from interviewing. The personal encounters and perceptions of all interviewee participants became important for this procedure. Secondly, with regard to an extended strategy, enough time was exhausted with interviewee participants in their own language to make them comfortable. This intensified free, utmost participation and the revelation of data that is important and confidential, was received. Each single interview continued for about 45 minutes. In addition, the investigator spent the whole day at each learning institution to gather information on how learners' right to education is catered for in the non-contact time of the learning institution in trying to understand the culture and ethos of a school as this culture and ethos pertain to accommodating learners' right to education. Thirdly, in relation to reflexivity and the reality that the researcher was psychologically and emotionally tangled in the study, the researcher focused on reflexivity through the use of field notes and the tape recorder. Lastly, triangulation was arranged by means of comparing records of transcripts, summary of notes taken in the field and draft reports from individual interview responses to establish consistency and accuracy of statements (Mercer & Littleton 2007). The concurrent document and interview analysis provided a confirmation of reliability and validity of data during the process of triangulation.

5.10.2 Dependability

Dependability is defined as a process of determining whether the research findings can be repeated using the same participants in the same environmental conditions and under the same situation (Roulston 2016). Determining the dependability, the researcher used an audit trail through the provisioning of documentation of data, methods, decision made during the process of collecting data and provided verbatim report of the participants' views (Trochim & Donnelly 2006). In this research study, participants' verbatim transcripts were utilised during data inspection.

5.10.3 Triangulation

Triangulation is a procedure to measure validity through using different sources of data to find convergence while the researcher forms themes and categories in the research investigation (Creswell & Miller 2000:124-130). Triangulation strengthens the research study and it is confirmed through the combination of different methods (Patton 2002:247). Therefore, the

researcher compared the transcript records, field notes and document analysis reviews to confirm the interpretation of the research outcome.

5.11 Ethical Consideration

The interviewer was bound by the ethical considerations throughout the research ensuring the safety, protection and the rights of the research interviewee by taking care to discern, detect and bear out sufficient ethical measures throughout the research (Creswell 2009; Merriam 2009). The interviewer made sure that the interviewees remain anonymous, that collected data is kept safely out of reach of unauthorised persons, and that a precise account of the interpreted data is provided. In ensuring participants' anonymity, the researcher upheld the confidentiality and the privacy of all participants by getting rid of all recognisable markers from the storylines and the description of the participants and secured the transcripts on a secret code-secured computer. Pseudonyms were used for both the names of the school and the names of the participants in the research study. All the research hard copy material, including audio taped records, are to be securely kept at the University of South Africa safety storage as recommended by the Ethics Review Committee and will only be accessible by the researcher and the supervisor. The researcher focused on using impartial language regarding race, gender, ethnic groups, sexual orientation, disability or age in drawing up the Interview Schedule and in conducting interviews and avoided fraudulent practices such as suppressing, falsifying or creating outcomes to meet the researchers' or audiences' need (Cohen, Manion & Morrison 2000:51). Compliance with ethical considerations was submitted to the research committees of the College of Education at the University of South Africa and to the Department of Education for approval.

Fieldwork commenced after obtaining both ethical clearance and authorization to conduct an investigation in schools from the Department of Basic Education and the University of South Africa. The investigator further requested permission to conduct research from the school headmasters of the chosen learning institution. The identification and selection of the participants was done through the Teacher Liaison Officer structure (TLO) since the TLOs are directly responsible for working with Learner Representative Council (LRC) and they co-ordinate learner affairs in secondary schools. The interviewer received an informed consent from the participants by explaining to them the purpose of the research and what is anticipated from the participants. The participants were asked to read and sign Informed Consent Forms. The Consent Form declared that involvement in research is on a voluntary basis and the

participant has the right to pull out from the research engagement at any time without unpropitious results. The formulated research request document from the Nkangala District Office of the Mpumalanga Department of Basic Education was concluded and given for acceptance to engage in research in the chosen learning institutions. The documents requested were not in any way utilized as an official directive to influence the interviewees to take part in the investigative research. Main ethical considerations adhered to include the right to privacy, anonymity, and confidentiality.

The interview process involved the researcher sending the interview questions a few days before the interview was conducted telephonically, so that the participant can read and reflect on the questions before the day of the interview. Telephonic interviews continued during the participants' convenient time. Based on knowledge about what is known, what is not known and how to fill the gap, the questions included in the Interview Guide were derived from a literature study to be explored further with the empirical investigation into educator perception of learners' right to education. Prior to visiting the selected schools and after confirmation of appointments, recording equipment was checked and Consent Forms completed by participants after which interviewing commenced.

5.12 Summary

In Chapter 5, the researcher illustrated the major aspects of qualitative research including research Processes, research paradigm and research presupposition, research approach, Research Designs, site selection and participants, data collection, trustworthiness and the ethical consideration. The chapter explained the qualitative approach based on interpretative paradigm. The research study used a Case Study Design to explore how educators view learners' right to education. Fifteen participants from five schools were selected by Purposive Sampling through interview and data analysed through Content Analysis method. School documents were perused and analysed through content analysis method.

The next chapter presents the discoveries and findings of data analysis acquired from the research site, through Interviews and Document Analysis during the communication interplay between the interviewer and the interviewees in the exploration and explanation of how educators view and understand learners' right to education.

CHAPTER 6

RESEARCH FINDINGS

6.1. Introduction

This chapter on data analysis and the interpretation begins with a thick explanation of the five schools that the researcher visited, reflecting on the understanding of learners' right to education. This chapter presents findings on educator perceptions of learners' right to education in secondary schools in Mpumalanga based on data analysis on relevant documents and in-depth interviews with educators, HODs and principals. The main aims that directs this research study, as reflected in Chapter 1, stand as follows:

- To explore educators' perception of learners' right to education;
- To investigate how learners' right to education is infringed upon; and
- To gain an understanding of the existing measures in dealing with the violation of learners' right to education.

In Chapter 5 an extensive in-depth of clarification of the research designs, data collection methods, data analysis were explored and tabulated regarding the educators' perceptions of learners' right to education. Therefore, the researcher's role was to gather data, record them, analyse them and interpret participants' narratives (Niewenhuis, 2007) of the hidden meanings of the understanding of the learners' rights.

The presentation of this research findings is based on the narrative that focuses on answering the following research questions:

6.1.1. Main question

How can educators' perception of learners' right to education be positively affirmed?

6.1.2. Sub-questions

6.1.2.1. What is the perception of educators on learners' educational rights?

6.1.2.2. How is learners' right to education infringed upon?

6.1.2.3. What are the measures to deal with the violation of learners' right to education?

6.2. The Research Processes

Data analysis were accumulated through Document Analysis and interviews concurrently to provide greater understanding of the phenomenon. All the interviews transcripts were typed and coded. Merriam and Tisdell (2016) point out that qualitative data are open to vagueness and basically requires themes for clarity and effective interpretation. Patton (2015) confirms that the data analysis process focuses on arranging and classifying data for analysis purpose, by reducing findings into themes through coding data for discussion. The data collected in research field were examined in details, accordingly to create clear understanding of the accumulated data and segmented into various themes and sub-themes (Creswell 2015). Although McMillan and Schumacher (2015) recommend that the process of analysing and presenting data should be a holistic approach, Creswell (2014) indicates that data analysis considers the explorative questions related to literature concepts. Consequently, Ryan-Nicholls and Wills (2009) confirm that data obtained from qualitative research inquiry clarify experiences and refine comprehension of intricate occurrences, which enable participants to share their respective views. Basically, the above research questions sought to answer the main research question: How can educators' perception of learners' right to education be positively affirmed?

Therefore, the research study follows a holistic outlook through data analysis, data interpretation and subsequently presenting information (Creswell 2014). Based on the research aims and research questions above, and as a direct consequence of interviews conducted in the process of data collection, the following themes and sub-themes emerged.

Table 6.1: Themes

No	Themes	Sub-themes
1.	The understanding of learners' right to education.	Protection and promotion of learners' right to education. (Educators) Entitlement of learners' right to education. (Educators) Learners' right to education apply irrespective to financial status or background (HODs). Learners' right to education constitutionally (P)
2.	The violations of learners' right to education.	Lack of knowledge of policies (HODs). The prevalence of the violation of learners' right to education (P)
3.	Measures to deal with the violations of	The role of the Department of Basic Education in trying to curb the violation of learners' right to education (Educators)

learners' right to education.	Management of the promotion of learners' right to education (HODs) Management of the violation of learners' right to education (HODs) Measures to deal with the violation of learners' right to education (P).
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The researcher continued to examine documents at each school exploring the following aspects related to learners' right to education:

- Acts and policies available at school;
- The implementation of various policies relating to learners' right to education; and
- Available measures dealing with the learners' right to education.

6.3. Participants Analysis

The five schools visited by the researcher to collect data were ranked according to Quintile One to Quintile Five and the following pseudonyms were developed:

School A, School B, School C, School D and School E and the case of each school was established through the inspection and examination of each school documents that relates to learners' right to education, to analyse and investigate the promotion and protection of learners' right to education. The principals were identified as Principal 1, Principal 2, Principal 3, Principal 4 and Principal 5. The Head of Department were identified as HOD 1, HOD 2, HOD 3, HOD 4 and HOD 5. Educator participants were identified as E 1, E 2, E 3, E 4 and E 5.

Therefore, the data from each school were compiled using data from interviews and Document Analysis. The following table represents a summary of participants per school and the documents analysed.

Table 6.2. Participants and Documents

School	Principal (P)	Head of Department (HOD)	Educators (E)	Documents
A	1	1	1	Admission policy
B	1	1	1	Code of Conduct for learners
C	1	1	1	School constitution
D	1	1	1	Policy on Discipline
E	1	1	1	Class rules
Total	5	5	5	Class rules

For the purpose of understanding the participants' codes and the data analysis, the participants' codes are provided below:

Table 6.3. Participants' Coding

No	Participants	Coding	Number of participants
1.	Principals	P	5
2.	Head of Departments	HOD	5
3.	Educators	E	5

In almost all the schools visited by the researcher, participants had experiences and qualification relevant to the teaching fraternity, across gender and race.

The following table reflects the participants' experiences, qualifications, gender and race.

Table 6.4. Participants' Experience and Qualifications

Category	Pseudonym	Experience	Qualifications	Race	Gender
Principals	P1	27 years as an educator 6 years as a principal	Bed Hons	Black	Male
	P2	37 years as an educator 12 years as a principal	Med	Black	Female
	P3	23 years as an educator 11 years as principal	MBA	Black	Male
	P4	42 years as an educator 9 years as principal	Bed Hons	White	Female
	P5	33 years as an educator 5 years as a principal	Bed Hons	Indian	Female
HODs	HOD1	23 years as an educator 6 years as an HOD	Bed Hons	Black	Male
	HOD2	21 years as an educator 13 years as an HOD	ACT	Black	Male
	HOD3	22 as an educator 10 years as an HOD	Bed Hons	Black	Male
	HOD4	39 years as an educator 6 years as an HOD	Bed Hons	White	Female
	HOD5	14 years as an educator 3 years as an HOD	PGCE	Coloured	Female
Educators	E1	7 years as an educator	Bed Hons	Black	Female
	E2	8 years as an educator	PGCE	Black	Female
	E3	22 years as an educator	ACE	Black	Female
	E4	25 years as an educator	BA Ed	White	Female
	E5	18 years as an educator	Bed Hons	Black	Female

It is important to note that this research study reflected on gender and race with regards the participants' population sampling. The following column chart and the pie chart reflect the race and gender of participants, throughout the study.

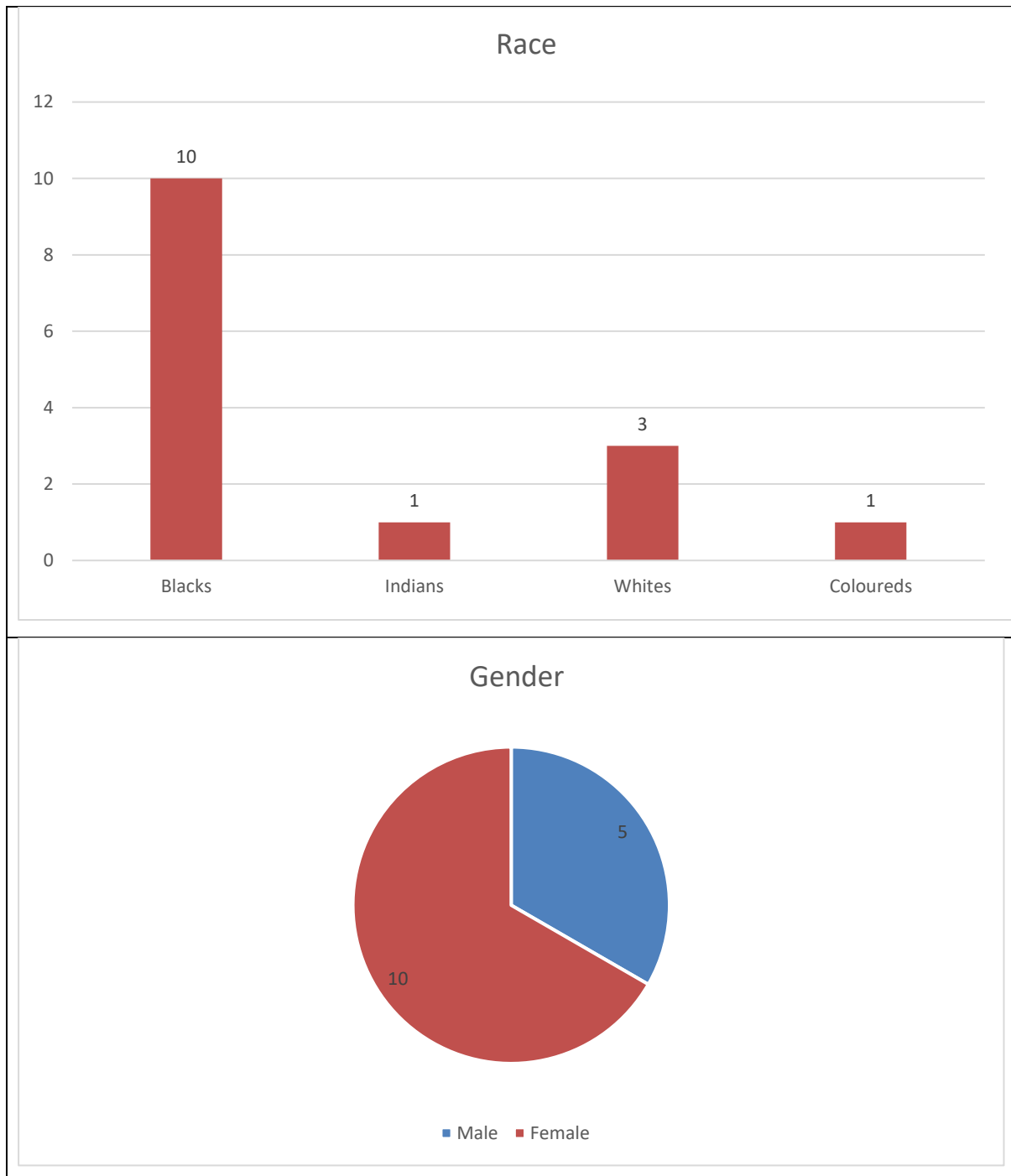


Figure 6.1. The Number of Participants through Race and Gender

The most predominant race that participated in the research study Black individuals and the least participants were coloured and White individuals' participants, while the gender that dominated the study was female participants.

6.4. Description of the Schools Visited

6.4.1. The Schools

The thick description of each school follows below:

6.4.1.1. School A

School A is a Quintile 1 school. In Quintile 1, schools are regarded as the poor schools in terms of finance allocation in the poverty ranking based on the community around the school and the infrastructural factors. Schools in this bracket receive more funding in terms of departmental paper budget and receive National School Nutrition Programme, they are declared no-fee schools. School A is a township school characterised by recently good results for Grade 12 after a long period of underperformance. The school has 736 learners with about 21 educators and it is classified as an urban school. It is situated in the middle of predominantly Black community. It has an old building structure which is constantly refurbished by the Department of Basic Education and the School Governing Body.

6.4.1.2. School B

School A is a Quintile 2 school. In Quintile 2, schools are regarded as the poor schools in terms of finance allocation in the poverty ranking based on the community around the school and the infrastructural factors. Schools in this bracket receive more funding in terms of departmental paper budget and receive National School Nutrition Programme, they are declared no-fee schools. It is a rural agricultural school located and established in a farm with 301 learners and 13 educators, located 40 kilometres away from the central business district. It lacks educators due to lack of resources and dilapidated school infrastructure. Thus, educators are attracted to urban schools because of better working environment. Most educators are propelled to relocate to town for personal improvement and development.

6.4.1.3. School C

School A is a Quintile 3 school. In Quintile 3, schools are regarded as the poor schools in terms of finance allocation in the poverty ranking based on the community around the school and the

infrastructural factors. Schools in this bracket receives more funding in terms of departmental paper budget and receive National School Nutrition Programme, they are declared no-fee schools. This school is a township school characterised by poor Grade 12 result for the past seven years which was brought upon by change in curriculum to Maths, Science and Technology Academy. Most of the learners are not Mathematics and Science material and have challenges to master content subjects. The school has 734 learners with 33 educators whom mostly are misplaced due to curriculum streaming to MSTA.

6.4.1.4. School D

School D is a Quintile 4 school. In Quintile 4, school are regarded as less poor and they are fee paying school without the provision of School Nutritional Programme. This school is an urban school situated 5 kilometres in outskirts of the central business district. It is accessible and it is in a close proximity to all activities of interest to the school and the community. Although the school is in town, it has predominantly Black students from the township. The school has sufficient financial muscles with enough human resources, yielding very good results in Grade 12, every year. It has 47 educators, who are mostly White and few Indians, with 787 learners who are mostly from the Black community.

6.4.1.5. School E

School E is a Quintile 5 school. In Quintile 5, school are regarded as less poor and they are fee paying school without the provision of School Nutritional Programme. This school is a multiracial school within the Indian community but with predominantly Black learners who are from the township. The cultural dominance of the Indian culture plays a vital role within the school set up. It has 1563 learners, with 55 educators who are predominantly from the Black community. The school is situated 6 kilometres out of the central business district and it pride itself with good results. The medium of instruction is English.

6.5. Document Analysis

Documents are valuable and relevant wellspring of information due to its significance in offering text data in qualitative research study (Creswell 2015). According to Merriam (2016), documents serve as an advantage, more than participants' diction that, in most cases, gets rehearsed for the purpose of an interview. The only challenge with documents is that

documents may be difficult to secure, and difficult to interpret (Creswell 2015). The schools visited by the researcher provided the following documents for perusal and scrutiny in terms of learners’ right to education:

Table 6.5. Availability of Documents and the Implementation

	Document	School A	School B	School C	School D	School E
1	Admission Policy	✓	✓	✓	✓	✓
2	Code of Conduct for learners	✓	✓	✓	✓	✓
3	School constitution	•	•	•	✓	✓
4	Policy on Discipline	✓	✓	✓	✓	✓
5	Class rules	✓	•	✓	✓	✓
6	Anti-Bullying Policy	✓	•	✓	•	✓
7	School Uniform Policy	✓	•	✓	✓	✓
8	Learner Attendance Policy	✓	✓	✓	✓	✓
9	Implementation	➤	▪	▪	✓	✓
	<ul style="list-style-type: none"> • Not available: ✓ Available: ➤ Implemented ▪ Poorly implemented 					

A variety of findings emerged from Document Analysis. Some schools, as indicated above, have all the relevant documents but poorly not followed and not implemented while most schools have documents properly filed and followed precisely. Except for the few documents needed by the researcher, as stipulated in Table 6.1, some schools provided more than what was requested, as reflected included in Table 6.5, and some schools have one consolidated document that enshrines all the mentioned policies. The following school policy documents were available in almost all the schools visited by the researcher:

- Admission Policy;
- Code of Conduct for learners;
- Policy on discipline;
- School Uniform Policy; and
- Learner attendance policy.

A description of each schools Document Analysis is as follows.

6.5.1. School A: (A township School)

The school Admission Policy is available and utilised during the admission process and it guides the admission procedure of the entire school dictating on documents needed on

registration and the age prescripts. The school policy on admission directly takes from the Mpumalanga Department of Education Admission Policy for Ordinary Public Schools. A clear Code of Conduct for learners provides for promotion and protection of learners' right to education through the involvement of all stakeholders, including learners in the development of this policy. School constitution is not available, at this school, but all the important school policies are available separate in a school policy file. The policy on school discipline is available showing the operationalisation of the school rules with distinct levels of misconducts and the disciplinary hearing actions and processes. Class rules are utilised in classes for creating discipline and are direct product of educator and learner engagement. Clearly showing the importance of Learner Representative Councils' involvement in the school discipline and growth, and it results in the protection and promotion of learners' right to education. Anti-Bullying Policy, School Uniform Policy and Learner Attendance Policy are implemented and consulted on regular basis. It is a properly managed school through the availability of relevant documents.

6.5.2. School B: (Rural Agricultural School)

The school Admission Policy, Code of Conduct for learners, Policy on Discipline and Learner Attendance Policy are available but poorly implemented. Learner discipline cases not recorded for future reference and available policies seems not to be followed. Learner Representative Council documents and policies are not available although there is a structure recognised by the school. Therefore, learners are not engaged properly showing a lack of protection and promotion of learners' right to education. This idea is exacerbated by the lack of school constitution, class rules, Anti-Bullying Policy and School Uniform Policy, which by law a school must have.

The lack of the above-mentioned policies and the lack of implementation thereof, is seen in unruly, ill-discipline learners who are not wearing proper school uniform. Therefore, the school is not properly managed by the SMT and the SGB is not playing its part in terms of governance.

6.5.3. School C: (Maths, Science and Technology Academy)

The Maths, Science and Technology Academy School seems to have almost all policies that relates to learners' right to education, except for the point that these policies are not adhered to, by the school. The only policy that is not available is the constitution of the school, however,

the constitution of the school is augmented by other relevant school policies. The failure to implement is due to the recent change in the school curriculum from the mainstream curriculum to specialization in terms of Maths, Science and Technology streaming. The current curriculum streaming change necessitated the SMT focus direction from policy orientation to focus on trying to improve the demanding and challenging subject like Mathematics, Physical Sciences including Accounting.

6.5.4. School D: (Urban School)

School D has almost all the policy documents that are essential in the date-to-day administration of the learning institution except for the Anti-Bullying Policy, primarily because the anti-bullying clauses are enshrined in the Code of Conduct for learners. Due to the school financially strong muscle, the school is able to communicate and cascade policy information to parents and students regularly on internet and on their mass communication platforms.

Documents like minute books reflects that they have systematically planned Learner Representative Councils chaired by learners and supervised by the Deputy Principals, as dictated by the policy of the school LRC. Learners re highly engaged in other substructures of learner welfare identification and disciplinary processes, both in class and outside the classroom. Leaners representative council continue to communicate daily with learners and educators for the advancement of the creation of favourable and a beneficial atmosphere of effective teaching and learning at school. This ideal conducive learning environment is created by the impact of the availability of school policies that are in line with the provincial and national school policies.

6.5.5. School E: (Multiracial School)

School E has all policies needed at school and are effectively utilised for the benefit of the school development. Learner are not only engaged but they are respected as human beings. Documents reflects that learners are admitted through correct channels and policy procedures and are guided throughout the relevant policies that are crucial in their daily operation at school. Policies like Code of Conduct, school uniform, discipline policy, class rules and school uniform are regularly emphasised at the learner assembly points and through Learner Representative Council structures.

Comparatively, schools in Quintiles 1-3 lack clear line of communication of school policies and policies are not emphasised as it is the case with the schools in Quintiles 4 and 5. Primarily due to lack of financial strength and lack of empowerment that is enjoyed by the Quintiles 4 and 5 schools, respectively. Generally, although, policies are available in Quintiles 1-3 schools, educators are unable to translate them into fruition within their schools, unlike Quintiles 4 and 5 schools that have even the proper support structure from the School Governing Body.

6.6. Key Themes as Extracted from Interviews

In this study semi-structured interviews were utilized. See attached Appendix F for principals (P) interviews, Appendix G for Heads of Departments' (HODs') interviews and Appendix H for Educators' (E) interview, for the questions used in this research on educators' perceptions on learners' right to education. The following question were posed to educators, HODs and principals in accordance to their unique interview schedules.

6.6.1. Themes as Extracted from Interviewing Educators

Question: What do you understand by learners' right to education?

With regard to this question, the findings were that educators' regard the learners' right to education as what learners have, which must be protected and respected. Furthermore, educators revealed that learners must be encouraged to participate and take responsibility in the exercising of their rights. The following were the two key themes that emerged from interviewing educators.

6.6.1.1. Protecting and promoting learners' right to education

Most educator participants revealed that the protection and promotion of the learners' right to education was key for a harmonious relation amongst the school members including learners, parents and educators. Such sentiments were aired by ED1 and ED2.

ED1: I understand that as a teacher, every learner has the rights and these rights have to go with responsibility. I understand that every learner got rights and these rights have to be protected and respected.

ED4: All children have the right to education for them to become productive members of the society, everybody should have access to education and it should be equal and good quality.

6.6.1.1.2. Responsibility as the key aspect of exercising a right

Most educators put forth the responsibility aspect of the exercising of the learners' right to education, as a basic requirement on the part of the learners. The following sentiment by one educator was presented

ED2: *Learners must participate and must take responsibility of their actions.*

Discussion 1

The response given by the participants indicates that educators understand that learners have basic rights. Most of the participants indicated the importance of responsibility as key when learners exercise their rights. According to *The Constitution of the Republic of South Africa, 1996*, Chapter 2, section 29, educators have a burden to respect learners' right to education and maintain a conducive environment that protects and promote the learners' right to education. Mollo (2015) and Eksteen (2009) confirm the role of educators to be the promotion and protection of learners' right to education through the legal principles and procedures, as laid out in the South African Schools Act 84 of 1996. Beliner (2004) attests to the fact that the protection and promotion of learners' right to education is through caring, loving, knowledge and skilful practice.

Question: How do other educators understand by learners' right to education?

With regard to Question 2, the findings are presented in relation to how educators think their colleagues interpret the learners' right to education. Two themes emerged from asking Question 2 as stated below:

6.6.1.1.3. Learners' right to education must be taught in class

A common perception was summarized and presented as follows:

ED1: *Educators are very much aware every learner at this school has got right, every educators is educated enough to know that according to South African school act that is SASA, every learner is entitled to the right and that every educator has to make sure that they respect these rights and protects these rights, because at the end of the day it's the learner that needs to be educated, us as adults need to know that learners have rights and we need to respect that no matter what. This is a democratic country and that every human has got rights that apply to them that includes learners.*

ED3: *Most of the time educators do understand that learners need to get an education, they are entitled to getting an education although you may experience challenges here and there, especially if there is no support, but mostly educators do understand that learners are able to make a good future out of school.*

Discussion 2

There is no evidence connecting colleague-to-colleague interaction in the initiative for understanding one another's perceptions in getting to know rights better. According to Lundy and Sainz (2018), governmental curriculum changes content lead to the introduction of teaching learners' rights as part of the Life Orientation subject and the Social Sciences subject, in schools. The educator participants are aware of the curriculum changes and acknowledges the introduction of curriculum changes to better enhance learners' lives in future. Mutual (2002) confirms that the curriculum reform that brought upon the inclusion of learners' right to education as part of the curriculum are influenced by rights-based approach on curriculum transitional changes.

Question: How do you promote learners' right to education in class?

This question sought to answer how educators practically apply the aspect of teaching learners' rights in class. Most participants indicated that they do slot in in their lesson's key elements of basic rights in class. Furthermore, it was eminent that learners' rights are not taught as a separate subject at school. The following key findings emerged from the participants' responses:

6.6.1.1.4. Learners' rights are not taught as a separate subject but are incorporated in lessons

The following sentiments support this finding and are put forth:

ED 2: *We speak about rights and also teach them in the Life Orientation learning area.*

ED 1: *Personally, because I teach Life Orientation. There's a section that talks about constitution of South Africa, violation of human rights, children's rights. We go through all those chapters. I try to detail it enough and go through it especially the section that talks about constitution, violation of human rights. I can only speak for myself at this point, this is how I promote it.*

Discussion 3

The finding above indicates that there is a gap in the curriculum with regard to teaching of basic learners' rights at school. According to Lundy and Sainz (2018), Life Orientation and Social Sciences are the only subjects that have human rights content material. Basic learners' rights need to be taught as a subject not to be infused in various content subjects (Carrim & Keet 2005). Although, there has been a curricular infrastructural change throughout the years

since 1994, Staeheli and Hammett (2013) reveal and confirm that the curriculum that is inspired by the South African constitutional values lack proper implementation (Department of Basic Education 2011).

Question: How do you protect learners' right to education in class?

With regard to this question, it was sought to establish ways through which participant educators applied for protecting the learners' right to education. Two key themes emerged.

6.6.1.1.5. The emphasis on the importance of the learners' right to education

Highlighting the significance of learners' right to education came as a major narration from most participants. This sentiment was echoed in most responses of participants. The following was said:

ED 1: *Firstly, you need to make sure that every learner knows their rights. You also need to make sure you remind them what they are entitled to. You also need to remind them to be responsible. These rights go with being responsible, you cannot come to school and not do the work, bunk classes. Emphasis on rights going with responsibility.*

ED 2: *Stakeholders, the RCL's, making sure the rights of the learners are taken care of in class, drafting of the Code of Conduct of learners, to make sure learners attend class free, environment that is free from hate speech, an environment that is free of movement for them and also them being able to express themselves in class.*

6.6.1.1.6. Awareness of the learners' right to education

Most participants essentially concurred on the issue of campaigns to raise awareness on the learners' right to education. This were confirmed on following narrations of some participants:

ED3: *Awareness of learners' right to education cannot be overemphasized. Sometimes if learners feel this right is being violated they must be free and be encouraged to report.*

Discussion 4

From the responses, it was clear that maintaining an awareness posture will drastically improve the situation at school. Musheer and Shakir (2017) confirm that, if educators' duties are put effectively into fruition, it produces awareness of learners' right to education. Mathealane and Makura (2014) emphasise the role of parental engagement in the arousal of awareness of learners' right to education. It is further noted that addressing the issue of rights in general is done however, there is no specific programme followed to instil the value of the learners' right

to education from the point of view of educators. Although there is no specific programme in place to instil the values of learners' right to education, educators are guided by operational procedural guidelines laid down in the norms and standards for educators in addressing atrocities that were perpetrated by the apartheid regime (South Africa Council of Educators Act 31 of 2000).

Question: What rights are learners entitled to?

With regards to the above question, a theme on learner entitlement to their respective rights emerged. Major aspects of entitlement are captured in the following themes.

6.6.1.2. Entitlement of learners' right to education

Most of the educators understand and know that learners are entitled to education and they acknowledge that learners are entitled to other rights except for the right to education

- ED1: *They are entitled to be educated so they can develop mentally and physically They've got the right to access accurate information, they've got the right to develop at their own pace that's why as an educator you need to know that there are going to be learner's who are slower than others, learner diversity, you need to be aware that every learner is different and unique. The learners are entitled to education, because we need people who are educated in the society, we need less crime, more people will have better jobs, people who are civilized.*
- ED 2: *Basic education, human rights, basic nutrition, protection. Learners know they're rights, they report any violation. In LO we have these topics on rights.*
- ED 3: *Learners are entitled to tuition, they are entitled to the environment of the class and the school itself, nutrition programs, infrastructure, resources and free education.*
- ED 4: *Learners are entitled to a constructive and comfortable work environment.*
- ED 5: *Learners are entitled to Basic education, and they must not be excluded from learning.*

Discussion 5

Based on the responses from the educator participants, learners have other rights that relate to basic education, which includes basic nutrition programmes; tuition; proper and adequate infrastructure; comfortable work environment to access accurate information; and personal protection from any emotional and physical harm. Basically, since learners know their entitlement, they are ready to report any form of violation. Internationally, learners' right to education is recognized as entitlement and connoted to freedom, justice and fairness (Omar 2010). Mubangizi (2015) confirms that the educator's level of awareness and empowerment

on the importance of learners' right to education directly promotes learners' entitlement to their respective rights to education.

6.6.1.2.1. The importance of learner entitlement with regards to their rights at school

Educators view learners' right entitlement as an essential component aspect in the delivery of teaching and learning, and subsequently creates a conducive environment within the school community. The participants' views were echoed as follows:

- ED 1: *It important so that we create a free environment for them, to learn with without fear. At some point, they will have to realise that these rights go with responsibility so let me just learn to follow instructions. Some learners end up dropping out, because of what was said to them.*
- ED 2: *We teach them they're rights so that their rights are not violated even when they are not in class.*
- ED 3: *It allows feedback, interaction, you are able to engage with learners, because they are part of an important stakeholder of the school. Learners must also feel free to belong at a particular school, learners must also be allowed to play/have other activities at school. It will be important for them to be heard, because it may be easier for other learners to execute their talents more than others.*
- ED 4: *They have a right to a quality education. They are entitled to it, but they've got to work for it shouldn't necessarily be given to them, rights go with responsibilities.*
- ED 5: *When learners know their rights, they can take advantage of them, while not violating other learners' rights, graffiti on the walls, bullying is another factor also bullying of educators.*

Discussion 5

According to the educator participants, there is great significance in the importance in the learner entitlement to various rights in education. It is clear from the participants that the importance of learner entitlement serves in the creation a conducive learning environment and eradicates fear amongst the learners at school. If learners know their entitlement in terms of their rights, learner drop out becomes reduced and creates a sense of belonging in learners at school. However, it is notable that the sense of entitlement, enhances responsibility amongst learners at school. According to Goldstone (2017), learner entitlement to their respective rights seems to be stressed by the Department of Basic Education and less attention is given on learners' responsibilities which creates a disturbing outcry from educators.

Question: How are learners' right to education violated?

This question on the violation of learners' right to education intended to establish the educators understanding of learners' right to education and the implementation of the policy on learners'

right to education. The educator's reflections that there is a discrepancy between the policy and the implementation of learners' right to education, as captured in the following theme.

6.6.1.2.2. Policy on learners' right to education and the implementation

Educator participants indicate that educators understand exactly what violation of learners' right to education is but they still violate the policy that intends to protect and promote learners' rights. Most of the educators violates learners' rights because they do not have a choice when dealing with learner discipline. The following sentiments supports the findings:

- ED 1: *We do it all the time as teachers consciously and unconsciously. If you administer corporal punishment, it is one of the learners' rights that are violated. There are so many forms of corporal punishment, subjecting a learner to pain such as pinching them, emotionally by calling them names in front of learners, making them sit in discomfort position, manhandling them. We don't mean harm, we just want them to wake up and start to smell the coffee of being in school, but it somehow does violate their rights as learners.*
- ED 2: *When they have not done their work, they get chased out of the class sometimes, swearing at the learners*
- ED 3: *Disruptions, fights at school, dirty environment, when it is not clear as to why learners are found outside, sent home without a proper investigation, locking them outside the school without adhered reasoning.*
- ED 4: *Social injustice, children waking up at the crack of dawn just to get to school, hungry kids cannot concentrate at school. Economically and covid-19 has just made matters worse with parents losing jobs.*
- ED 5: *When the parents are unable to produce required documentation, study permits, none affordability. Grade 12's expected to have ID cards. No chasing learners out of the class, because should they fail, I am accountable also I value learners time.*

Discussion 6

The sentiments echoed above clearly shows that educators know the policy but they are unable to implement what the policy on learners' right to education dictates. Educators acknowledge that learners' right to education is violated through various forms of corporal punishment administration, namely: inflicting pain to a learner; name calling, which is emotionally disturbing; pinching learners; chasing learners out of the class; learners sent home to call parent; locking learners outside the school gate because they are late to school; and a learner whose parents are unable to produce study permits and Identity Documents. Goldstone (2017) indicates that educators' professional conduct and behaviour towards learners must be free from all types of harassment offence language because it amounts to violation of learners' right to education. Zwane (2017) affirms the correlation between human rights and learners' right

to education and attests to the fact that educators neglect learners' rights when handling learner discipline.

Question: How must learners exercise their individual rights to education at school?

This question sought to answer educator's knowledge of how learners must exercise their individual rights to education within the school premises.

6.6.1.2.3. Individual learners' right to education

There emerged mixed feeling about learners knowing and exercising their respective rights to education at school, as follows:

ED 1: *I'm not sure if learners are aware of their rights, not following instructions and so forth. If they knew their rights they would go to the circuit office, report and you could be sued and have your licence taken away. If they knew they would be exercising those rights, they wouldn't be abusing their rights.*

ED 2: *They must have rules and regulations and have structure, communicate with the RCL. Learners take advantage of their rights sometimes.*

ED 3: *Allowing freedom of expression. Learners with individual problems should be able to air out whatever is troubling them or whatever they are concerned about.*

ED 4: *They should be respectful of each other, if a child is disruptive they are robbing other learners' rights. Different backgrounds, diversity, some kids are faster learners than others, people have different abilities and be kind. Sharing a sandwich to a mate that cannot afford one.*

ED 5: *Taking the given opportunity to learn with recourses presented to them.*

Discussion 7

Educators feels that learners do not know their rights or if they do know them, they abuse and confuse them. Although, learners have an RCL structure, they seldom participate in their various recognised school structures, to exercise their respective rights. Thus, learners are in most cases disruptive and chaotic. The educator's outcry on the misuse of learners' right to education is directly created and motivated by the Department of Basic Education through emphasising learners' rights and less responsibilities and duties learners have to perform at school (Goldstone 2017).

Question: What must the Department of Basic Education do to curb the violation of learners' right to education within the schools?

The question above seeks to establish practical solutions to the violation of learners' right to education. According to the educators, the solutions to learners' right to education can be done

in two phases: what the Department of Basic Education can do and what the schools can do. Therefore, two themes emerged, as follows:

6.6.1.2.4. *The role of the Department of Basic Education in trying to curb the violation of escalating learners' right to education*

- ED 1: *The department can maybe come up with an awareness campaign, send peer educators to address the kids, learners love it when young people talk to them, they role play, they give them the toll-free numbers they can call whenever they feel they're rights are violated. Teachers also need to remind learners of these rights.*
- ED 2: *Workshops, police would come talk to learners about behaviour.*
- ED 3: *The Department of Education must be able to come up with mechanisms' to try and attack some of the challenges that we face in the schools, they should be able to deal with violations as quick as possible, because sometimes when these violations happen they may disadvantage learners' and even educators, they must come up with clear documentation that deals with rights in schools such as intervention workshops, bringing stakeholders together and outline what is expected of them in terms of the rights and also make sure you regularly check where there are loopholes, what concerns are there and also try to consult. The department is not necessarily doing anything, they leave matters in the schools' hands and it will only happen there are violations when the department steps in*
- ED 4: *Transport to and from school, economically, feeding schemes at schools. Schools with pit toilets that need to be fixed, sanitation, running water, infrastructure.*
- ED 5: *Build enough schools to accommodate more children, Relocation on learners, policies must be put in place, there should be enough educators, resources must be allocated correctly, Code of Conduct in place, effective disciplinary processes in place.*

Discussion 8

Although educators acknowledge that the department of Basic Education is providing solutions through policies to eradicate the violation of learners rights to education it is not enough. More efforts by the Department of Basic Education must be channelled to the elimination of pit toilet, fixing existing school infrastructural decay, building enough schools, provide enough educators and other valuable resources, improve learner transport, and improve water and sanitary infrastructure. The General Household Survey (GHS 2018) confirms challenges experienced by learners that directly violates learners' right to education; that includes, extremely over crowded classes, lack of textbooks, lack of scholar transport, infrastructural decay, lack of teachers, industrial strike actions.

Awareness campaigns are necessary, to inform and remind all stakeholders about learners' right to education, from time to time. Educators feel that this information campaigns can be through educator and learner workshops, distribution of fliers to the school community members, learner dramatization and role paly.

6.6.1.2.5. The role of the school in trying to curb the violation of learners' right to education

Educators are aware of the violations of learners' right to education, thus they provide solutions that can be exercised at school level to deal with the escalating violation of learners' right to education, as follows:

ED 1: *I've seen a learner's rights being violated by a certain teacher. The learner came to me and reported what happened, so as a teacher I went to ask the teacher that violated the student, the teacher was furious. There are teachers who are stoned headed. We should talk to each other as teachers, the management needs to do the same in briefings, the principal needs to remind us, just like our principal reminds us to avoid corporal punishment. We need to educate learners, teachers even the none teaching staff.*

ED 2: *Awareness, reprimand any act to make sure others don't repeat the same thing such as bullying. Preventing it before it happens.*

ED 3: *Bringing all the stakeholders together, SGB, days where we will specifically talk about the rights especially beginning of the year where learners and parents are there, another mechanism that can be used is to make sure that even people in the communities are aware, social workers too. It does happen that learners' rights are violated such as corporal punishment, learners being chased out of the class. Teachers not attending to classes.*

ED 4: *Verbal abuse, corporal punishment such things that need to be dealt with.*

ED 5: *Monitoring learners when they arrive, break ground duty, afterschool gate duty.*

Discussion 9

Educators strongly feel that educating learners, educators and the non-teaching staff about learners' right to education, is of vital importance in trying to curb the continuous violation of learners' right to education within a school. Generally, educating all stakeholder, would include constant monitoring of policy implementation by the principal working with all the stakeholders involved, including the SGB members. The constant reminder through proper communication channels, by the principal and the SMT members will reduce learners being chased out of the class, verbal abuse and the use of corporal punishment. Mollo (2015) provides major solutions in trying to curb the violation of learners' right to education that must be achieved through proper guidance in line with the utilization of legal principles fulfilment within a school's systems and procedures. Therefore, the knowledge of legal principles and the proper implementation thereof is of paramount importance.

6.6.2. Themes as Extracted from Interviewing Heads of School Departments (HODs)

Heads of school departments were separately interviewed but the same interview questions were posed to them. Themes were extracted and summaries made. The first question below was posed to HODs of the study schools.

Question: What do you understand by learners' right to education?

Most of the HODs perceived the learners' right to education as the right to be educated, having access to quality education and allowing learners to develop at their own pace. The following themes emerged:

6.6.2.1. *Learners' right to education apply irrespective of financial status or background*

Most HODs expressed the importance of following the requirements of the constitution which requires and states through other legal statutes the necessity of the learners' right to education and the need to inculcate it at schools. The HOD participants reiterated:

HOD1: *Learners have the right to education, the right to be educated. Every learner in South Africa must go to school regardless of whether they're parents have money or not, regardless of the financial status, they also have the right to be taught by qualified educators therefore it is important for the department to ensure that they hire qualified teachers for learners. They've got the right to be taught as an individual, and allowed to develop at their own pace.*

HOD2: *Learners have a right to education means that it has got to do with opening up any channels for a learner to access education without hindrances.*

6.6.2.1.1. *Learners must be afforded this right without discrimination*

Most HOD participants expressed the view that learners must be allowed to choose democratically the channels they want to follow in the pursuit of their education paths. They narrated educators must provide such channels to learners. They said:

HOD 2: *Learners' right to education has got to do with opening up any channels for a learner to access education. It is very much lucrative that learners go to school, democratically it is their right to get quality education.*

HOD 5: *Learners' rights to learn and to be educated also having the right to choose they're institution. To recognise diversity and equality also unlock they're potential. They have the right to privacy, religious freedom, dignity, freedom of speech and right to admission.*

Discussion 1

With regard to this question, all the HODs indicated a better level of understanding of the learners' right to education compared to what was compiled and said about educator

participants. To recognize the importance of guiding learners on the correct channels to take takes an educator who is deeply involved in curriculum issues. According to *The Constitution of the Republic of South Africa* No.108 of 1996, learners must be offered education without discrimination in terms of financial status. The South African Schools Act 84 of 1996 further accentuates sentiment echoed by the participants in terms of the application of the legislation.

The second question below was posed to HODs of the study schools.

Question: How do educators in your department understand by learners' right to education?

The following themes emerged:

6.6.2.1.2. Generally, lack of understanding of the learners' right to education

Most HODs explained and gave a gloomy picture concerning the level of understanding of the right to education by their educators. They stated:

HOD 1: *They do understand to some extent, but due to the frustrations that the educators have they end up doing things that will go against the rights of learners like chasing learners out of class and by so doing they are infringing with learners' rights, sometimes they encourage using ancestral spirits.*

HOD 4: *They understand that they need to deliver the education, they must be in the classroom, and they must be accessible to the learner such as having online learning during Covid. Not every educator understands rights to education to some it could be viewed as just finishing the syllabus.*

6.6.2.1.3. Accessing quality education

HOD participants articulated a level of discouragement in relation to access to and opportunities open to learners concerning imparting the value of rights at school. They stated:

HOD 4: *They understand that they need to deliver the education, they must be in the classroom, and they must be accessible to the learner such as having online learning during Covid. Not every educator understands rights to education to some it could be viewed as just finishing the syllabus.*

HOD 2: *Access to quality education remains a challenge and the opportunity to learn and also uplifting the standard and level education in general is questionable from the government's side.*

Discussion 2

The sentiments expressed by the participants indicate some level of understanding of the learners' right to education. However, it is noted that the educators seem not understand what the right entails and what their role is in making ease of applicability at school. According to

section 29 of the Bill of Rights, in the South African Constitutional, it very clear that, “Everyone has the right to basic education” and the state must provide, make it possible and accessible. However, the lack of understanding of learners’ right to education is brought upon by the emphasis of learners’ rights over learners’ responsibilities and duties (Goldstone 2017).

Question: What do you think are the causes of the violation of learners’ right to education within the school?

The following themes emerged:

6.6.2.2. Lack of knowledge of policies

Most HOD participants indicated a lack of knowledge of policies which has an impact on the ultimate violation of basic rights including the learners’ right to education with some educators encroaching their boundaries in relation to their conduct. They said;

HOD 1: *Lack of knowledge when it comes to the policies together with the act. Some of them are not aware that the Bill of Rights says the learners have the right to education so if you are an educator you can end up violating learners’ rights while unaware. Most educators are very lazy, even the Department of Education is so ignorant.*

HOD 2: *Let’s look at education as a structure made up by stakeholders, three-legged port where the parents, the child and educator are involved and these three legs are lacking in input which is a violation in the learners’ rights. In most cases the parents themselves have not received a quality education which makes them lack/supporting in helping in child. The learner lacking in motivation, it’s very rare to find a learner who genuinely wants to be in a classroom. The educator cannot give individual attention to an overcrowded classroom.*

6.6.2.2.1. Inexperienced educators entering the system

Participants’ revealed new educators entering the system are overwhelmed by the volume of work they need to cover and also managing learners at the same time. They stated and said:

HOD 3: *Inexperienced teachers, chase learners out of class and puts pressure on the HOD who now has to deal with these learners. This end up some educators applying favouritism by denying certain learners taking their subject offering.*

HOD 5: *Intimidation from both sides of the learners and educators. For example, currently some Positive learners from Covid-19 coming to school will be violated against by other learners. Fighting in class, bullying, teacher-favouritism, and gender-based inequality. Now, all these issues require an experienced educator to deal with them.*

Discussion 3

The answers given above suggest that HODs seem to work in isolation without involving their educators in their departments. The sentiments narrated above gives an impression that HODs manage by crisis. Pillay (2014) reiterates the notion that knowledge and skills of implementation polices and legislation of South African Education Law system is of paramount importance, therefore, newly employed educators needs the necessary skills and knowledge of legislation and policies to freely operate within the education system. The South African Council of Educators Act 31 of 2000 emphasizes that educators must remain learning mediators who are able to interpret learner programme material to enable them to lead and manage systems and procedures within the teaching fraternity (*South African Handbook for Teachers*).

Question: A learner who is out of the class or not attended by an educator misses an opportunity to receive proper tuition, explain how is it related to the violation of learners' right to education?

HODs seems to be unclear about the question above although they know that a learner who is not in class or a learner who misses a class is denied an opportunity to exercise his/her right to education. However, there emerged the following themes:

6.6.2.2.2. *The importance of learners being attended and being in class*

HOD 1: *Every learner must be in class learning no matter what caused the learner to be outside. If an educator brings a learner to me during a lesson because of troublesome behaviour, I would normally say keep the learner in class and come to me later so we can deal with this later.*

HOD 2: *UNICEF plays a big part in the policies especially those in the common wealth. The national policy of South Africa stipulates that an individual's rights to education are of paramount importance irrespective of the race etc., so therefore, a learner must not be denied an opportunity to be in class receiving education.*

HOD 3: *I don't believe in that kind of discipline it denies that child education.*

HOD 4: *It violates the learners' right to education, although you have to consider why they were removed from the classroom.*

6.6.2.2.3. *Disciplining learners without violating learners' right to education*

HOD 1: *If an educator comes to me with a troublesome learner, I always suggest that the learner is kept inside the classroom during the lesson and not chased out then the matter will be attended to later during the course of the day, maybe during breaks or making ends meet with the educator to say let's figure out what to do without infringing the learners' rights. It's just unfortunate that sometimes when you discipline the learner you end*

up being disciplined yourself, because you must stay back and monitor the learner.

HOD 2: *Schools need to draw their own Code of Conduct in line with the policy, every school is unique.*

HOD 3: *I will have the child removed and brought to me and hear the story them have the child work in my classroom.*

HOD 4: *All learners have to be in class to listen, they have the right to be taught they also have the right to education, no learner should be excluded nor discrimination there should be equal treatment.*

6.6.2.2.3.1. The effectiveness of methods of disciplining learners without violating learners' right to education

HOD 1: *Unfortunately, it's not easy dealing with ill-discipline while not infringing with their rights. Our schools generally have many learners who are ill disciplined therefore disciplining the according to the book will take everyone's teaching time, which becomes very difficult.*

HOD 2: *Sometimes you have to go overboard with extraordinary situations. Policies are limited.*

HOD 3: *We normally give them a lot of work to do, mostly homework and it is very effective.*

HOD 4: *Removing a child from the situation by having them working in a different classroom just until the problem has been dealt with*

HOD 5: *The aim is to instil knowledge, we give them a topic that they have to present to me so I am instilling knowledge, or writing an apology letter by explaining what transpired. It is effective it's like demerits.*

Discussion 4

According to SAHRC Annual Report (2012), there is a serious concern of educators who do not understand learners' right to education and fail to protect and promote these basic rights. There are still educators who do not attend to their classes and sometimes chance learners out of the classroom.

Question: What policy guideline do you use do you use to implement learners' right to education?

HODs cited policies that they are using to implement learners' right to education and further indicated how they implement and how they use subjects to implement learners' right to education. The following themes emerged:

6.6.2.2.4. Confirmation of the existence of other pieces of legislation and Policies that guides learners' right to education

HOD 1: *SASA, Childs Act 38 of 2005*

- HOD 2: *There are many: Child Justice Act, SASA, National Education Policy.*
 HOD 3: *SASA, NEPA, African Charter on the Rights of the Child.*
 HOD 4: *Constitution, SASA, school policies, Sexual offence Act and PEDSAS*
 HOD 5: *Constitution, Bill of Rights, Language Policy, school Code of Conduct.*

6.6.2.2.5. The implementation of learners' right to education by educators

- HOD 1: *Making sure all the learners are in class, making sure there is quality education.*
 HOD 2: *as educators we are individuals and we've got our differences and our own imitations of what is wrong and what is right. There are times where I find it absolutely necessary to send learners out my class for me to continue with my lesson, not allowing late comers in my classroom.*
 HOD 3: *Enforce the learners to come to school, motivate learners. Making them understand that they've got a right to education.*
 HOD 4: *WhatsApp groups to communicate, teachers will send the homework on the groups.*
 HOD 5: *Debates about learners' rights, comprehensions, Case Studies in LO.*

6.6.2.2.6 Implementation of learners' right to education using subject content by educators

- HOD 1: *Rights comes with responsibilities, Bill of Rights. They are taught about rights yet also how to be responsible.*
 HOD 2: *In Life Orientation covers that department. Teachers make awareness by talking in class, they are also part of the committee that draws the rules, notices put up around the school. Learners do know their rights, but they slightly lack in taking responsibility.*
 HOD 3: *Subjects like history and Life Orientation, they open up and indicate the future of the child regarding rights.*
 HOD 4: *It's more of an informal discussion to make learners aware.*
 HOD 5: *Intertwine language together with the rights through comprehensions and novels. Life Orientation.*

Discussion 5

The participants indicate that the application of the learners' right to education is done through the teaching of Life Orientation and sometimes in informal discussions to stimulate awareness, comprehension passages, reading novels. Educators engage learners in class, motivate learners to attend class regularly to exercise their specific right to education. Legislation and policies enable and guides educators in the process of implementation of the promotion and protection of learners' right to education.

The participants' responses are in consistent with that of Becker et al., (2015) who indicate that educational transformation, in human rights literacy, in the education system, is a cylindrical process of various aspects of rights-based approach. According to Sainz (2018), education is

a vehicle to fulfil human rights, therefore, the application and the implementation of learners' right to education needs extensive policy translation into practice. The participants' responses are consistent with the literature showing evidence and reporting numerous acts of learners' rights violation through their incompetency in implementing the policy on learners' right to education.

Question: How do you promote learners' right to education?

The above question intended to seek practical ways and means of managing the promoting of learners' right to education, while on the contrary protecting the very same rights learners have, within a school. The following themes emerged:

6.6.2.3. Management of the promotion of learners' right to education

- HOD 1: *During meetings educators are made aware of these rights, briefings. Democracy and Human rights chapter.*
- HOD 2: *Learner, parent and educator involvement are paramount importance. Committees, learners are also participating such as the RCL.*
- HOD 3: *By discussion, creating awareness, LO teachings also responsibility and accountability involved. Creating opportunities to talk to them.*
- HOD 4: *Uplifting, educating them, taking them to excursions, motivational speakers. Discussions, Case Studies using magazines*
- HOD 5: *Respecting on another, be loyal, be honest, do not take or tamper with someone else's stuff, treat each other equally and accommodate one another. Respecting one another, respecting class rules and adhering to the Code of Conduct.*

6.6.2.3.1. Management of the protection of learners' right to education

- HOD 1: *Managing the work of every educator, the book audit. Enough books given for each particular subject and a management plan for learners not to move astray. Monitoring of the curriculum, no educator will dismiss a learner from class for whatever reason. If I see a learner outside I need to make sure I find out what the matter is.*
- HOD 2: *There cannot be any management without monitoring. You get feedback from stakeholders. Involvement of the relevant stakeholders, the police involvement sometimes to deal with learner matters.*
- HOD 3: *We create structures within the school such as the RCL, Deputy Principal who is working with learners regarding their rights. Policy guides where one is infringing.*
- HOD 4: *Investigate, talk to all parties involved then come to the most equitable conclusion. If I see a teacher that is being unfair I will talk to them and make them aware.*
- HOD 5: *Communicate through meetings when we meet as educators; the learners are aware of these rights through teachings. Through awareness*

campaigns, handouts of flyers also the Code of Conduct that is available in they're books.

Discussion 6

The response given by the participants indicates that the management of the promotion and protection of learners' right to education is tedious and daunting in nature due to the monitoring process. Participants need more skills and knowledge for the implementation of learners' right to education. The most obvious findings that emerges from the participants, in relation to the management of learners' right to education, is the engagement of the SGB members and the RCL members in creating and crafting awareness of the importance of various learners' *rights* at school. Another important finding was that awareness can be linked to the process of promotion and protection by educating all stakeholders involved within the school community. And this can be achieved through the distribution of fliers and the regular reading of the School Code of Conduct.

Question: How do you manage the violation of learners' right to education within the school?

The above question wanted HODs to express their views on the management of learners' right to education. There emerged three themes:

6.6.2.4. Management of the violation of learners' right to education

- HOD 1: *Normally I would address the matter with the educator/individual. If I cannot intervene I take the matter straight to the principal.*
- HOD 2: *Policies used as far as they can go, sometimes systems are not enough so you resent to unorthodox measures. Every school as an institution is built on policies, in collaboration with other stakeholders in the school.*
- HOD 3: *We control the absenteeism, we follow up with the parents. We engage parents and also call social workers.*
- HOD 4: *Policies, demerit system, hearings, written warnings for the learners, dishonesty policy. Addressing the teachers, offer the best alternative to dealing with situations.*
- HOD 5: *Incident book, reports for learners regarding they're behaviour. Recording all incidents that happened in the school inside the book and the protocol is given to the Deputy Principal the it's taken from there. Also, the involvement of parents then the SGB will be involved in that case.*

6.6.2.4.1. The eradication of the violation of learners' right to education

- HOD 1: *It is important that we talk about this in our meetings, such as talking about the issue of corporal punishment. Make learners aware of their*

rights, because some of the learners are not aware of their rights, enough learners to report any violation to the principal of the school, follow up on any type of violation case and if it happens that it keeps taking place then escalate the matter to the circuit office or where the matter can receive the necessary attendance.

HOD 2: *Copy good practices from schools that are winning the battle. Regular workshops and regular meetings between institutions where the matter can be ironed out, enrichment from within structures of the Department of Education.*

HOD 3: *They need to be educated about their rights and also know the policy, interpretation of their rights correctly.*

HOD 4: *Teacher training and experience, schools should have e-service training.*

HOD 5: *Reprimanding learners, level of respect between the educators and learners, awareness, speech and debates or copies given to all the learners.*

6.6.2.4.2. The role of the Department of Basic Education in the eradication of learners' right to education

HOD 1: *They must introduce different structures to teach students about certain things such as sexuality. Strengthen the LO curriculum.*

HOD 2: *The department can help be conducting enrichment programs, not only for educators and learners, but for all stakeholders such as the SGB.*

HOD 3: *SBST which links the school directly with the department, the department has to strengthen the functioning of the SBST within the school.*

HOD 4: *The department need to get schools of equal standard, help with the lack of resources and facilities.*

HOD 5: *The department must always be able to listen of the rights of these learners. They must go to school and question learners, because they only question the principle because they trying to protect the image of the school. The department has given the learners a lot of right which are not helping them at all, learners are also afraid to be victimized.*

Discussion 7

The response from the participants indicates that there is still evidence of the violation of learners' right to education that needs to be managed and eradicated. Possible managerial strategies were provided by the participants that includes utilization of legislation and policies, parental engagement and learner demerit system. Although, educators have knowledge of operational policies, corporal punishment is still in force, and educators feel it needs to be substituted by the alternatives to corporal punishment. The most striking finding from the participants is the idea of copying good practices from other school that excel in policy interpretation and implementation. Therefore, intensifying in-service training and educator workshops is necessary to equip and upskill educators to deal with policy interpretation and

policy implementation to create broader awareness of the concept of learners' right to education.

6.6.3. Themes as extracted from interviewing principals

School principals were asked questions and separately interviewed. Themes were extracted and summaries made. The first question below was posed to principals of the study schools.

Question: What do you understand by learners' rights?

Most of the principals explained and understood the learners' right to education from a constitutional perspective. The following themes emerged:

6.6.3.1. Learners' right to education constitutionally

The sentiments from principals indicated that no right can be best explained without using the background of the country's supreme law, the constitution. All the participating principals expressed in one way or another from the basis of the constitution. They explained:

- P1: *Constitutionally it's the right to learners having the right to education, although the rights are sometimes abused by learners, those rights have to be imitative according to the constitution, for example, you can work in a class with a learner that is unnecessarily noisy and you have to try and reprimand maybe by telling the learner to go out of the class and the learners response will be that they have the right if education, so in most cases the rights are abused they are not being used correctly.*
- P2: *According to the constitution, I understand that learners have the right to learn, they have the right to be the school of their choice.*
- P3: *A learner is a human being entitled to a right to a name, a right to be protected. All these rights are contained in our constitution.*

6.6.3.1.1. Learners' access to education

Both the learners' right to education and the learners' access to education are explained through constitutional inclination and understanding by the principals who participated showing their clear understanding of the policies that they are using on a daily basis. They explained as follows:

- P1: *Still I will refer to the constitution, every learner born in South Africa has the right to education although sometime last year there was an extension that even the foreign learners in South Africa have also got the right to education.*
- P2: *Learner must be allowed to be taught in classes during teaching periods, they should not be chased out of classes.*
- P3: *Every child of school age should be at school. Parent should be taken to task if they don't send a child of school age to a school. The government can be taken to a task if they deny a child of school going age admission to a school.*

Parents have to make sure that kids go to school and as government must ensure that kids are at the school

P4: *All learners should have access to education.*

P5: *Learners should have access to free education and that it is the responsibility of the government to ensure that every learner has access to a school*

6.6.3.1.2. Educators general understanding of learners' right to education

Generally, principals view educators as protectors and promoters of learners' right to education and their sentiments are compiled as follows:

P1: *I think they are applying to it correctly, because you can minimally find a learner that has violated some of the rights given in class by the educator so one can say the educators are able to implement the use of rights correctly.*

P2: *They understand that they should be in their classes, write their homework, there should be a level of communication between teachers and parent.*

P3: *Educators are parents in absentia, they are in loco parentis. Meaning they view learners' rights in a positive way because they are parents in the absentia of parents, because from 7 o'clock until 2 o'clock they are with the kids, they are parents and they have to take of the kids.*

P4: *They understand that every child has the right to be educated.*

P5: *I think we have a very professionally qualified staff, they are very aware of the Bill of Rights as enshrined in the constitution for learners, understanding that learners have the right to an education, that learners have the right to attend school and to participate in our motto which says, "Active learning and quality teaching".*

Discussion 1

The responses given above by participants suggest that principals are well conversant with the fact that the constitution is the supreme law of the country. Their views are consistent with the literature of this study that, any right must be balanced against the requirements of the constitutions and must be the basis of any discussion whenever rights are articulated. However, literature revealed that educators' lack of understanding of human rights within the school context, leads to the violation of learners' right to education and eventually negative effects on teaching and learning in class (Zwane, 2017; SAHRC Annual Report, 2012).

This observation accounts for the gap and inadequacy as relating to the need for better enlightenment of rights education to both educators and learners at school level. Learners' right to education, learners' access to education and the general understanding of the concept of human rights in education, takes from the African chapter on the rights and welfare of the child, 1999. This also infers that the rationalization and comprehension of the learners' right to education within the human rights domain is solely based on the South African Constitution

supremacy (Zwane 2017). On these bases, the education planners must consider a worldwide view so as to better locate the context of the learners' right to education.

Question: How prevalent is the violation of learners' right to education within schools?

The question sought to establish the existence of the violation of learners' right to education. Most of the principal participants maintained that there was a high prevalence of the violation of learners' right to education within the schools. The following themes emerged:

6.6.3.2. The prevalence of the violation of learners' right to education

Participants acknowledged that there is a certain level of learners' right to education violation. Alluding to this finding, some responses indicated a different view that there was not much widespread violation due to the level of education awareness of policies and legislation. These mixed views of participants in view of the prevailing violations of learners' right to education are indicated below.

- P1: *It's not much, only had one case. The teacher assaulted the learner and the teacher was charged.*
- P2: *It's moderate. It can take 2 weeks or even a month. It is moderate because you talk about this during morning briefings a teacher are aware. Some of the parents are not responsible. To wrap it up most of the schools there are learners that are not well taken care of, but here the kids are well off to say no you are violating my rights. This topic is being undermined.*
- P3: *It is not so much because our teachers are aware of learners' right to education*
- P4: *Too much, to less or is there nothing? I can't speak for other schools, I don't think it's violated at my school. So, it is less prevalent*
- P5: *Sexual abuse, bullying, rape. We do know of certain institutions with poor attendance. We are defiantly in policy with making sure we are not violating learners' rights.*

6.6.3.2.1. The impact of COVID-19 on teaching and learning on the articulation of learners' right to education

Amidst the frightening scars of the Covid-19 pandemic, participants expressed fears of stakeholder's safety within schools which was seen to frustrate and caused delay and derailment to what has already started before the pandemic pertaining to articulation of learners' right to education. These frustrations of the COVID-19 were echoed as follows:

- P1: *Most parents are afraid to bring their children to school. When Covid-19 started everyone was just shivering even when they said you can have the Grade 7 and Grade 12's it was just not okay. The way we are structuring the teaching it's creating a problem. The department not supplying sufficient teachers to the school, classes are supposed to be small and put extra strain*

on the teachers. The timetable that is used is also not healthy. Look into the question of some learners attending once a week the next week they don't attend, when the learner comes back they won't even recall so you can simply say it has drastically affected the education system

- P2: Learners are not coming to school on a daily basis, learners don't have food to eat, because they get food at school, the learners engage in drugs.*
- P3: The school was temporarily closed by the president and our kids are rotating except for Grade 12, it means when learners are at home one week we are denying them the right to education.*
- P4: It makes it very difficult. The teaching plan is very long, because we only have a few learners for the first 2 months so it really made it a real challenge on that I haven't seen before.*
- P5: We are following the alternate day timetable. We have online classes for Grade 12, we had about 7 cases of Covid in 2020, in 2021 we currently on our first case, we also have an admin clerk that tested positive over the weekend, we are very strict in terms of the Covid-19 measures and even when we try our level best cooperation from learners is limited.*

6.6.3.2.2. The lack of infrastructure on teaching and learning

There is a surfacing significance outcry from participants about infrastructural decay, lack of provision of facilities needed within the education system to cater for the learners needs. The participants echoed the following sentiments.

- P1: Lets go to sanitation the I can give an example of the teacher in Eastern Cape who said the learner go inside the toilet, that teachers violated the rights of a learner you cannot do something that you wouldn't want done to you. The building will also affect the rights of learners, because if I'm in Class A and Class B is next to me and there's no ceiling whatever is taught in Class A will affect the learners in B so that factor is also affecting they're rights. Shortage of material if I don't have enough textbooks how will I learn, I'll only theorise and sometimes if schools don't have photocopies then the learners will never access some of the things*
- P2: If the teacher is absent then there's no learning, if the learners are learning under the tree there is nothing much happening there, decaying buildings are not healthy for the learners it can fall over the learners, learners chased out of class miss out on the lesson.*
- P3: Lack of classroom: Shortage of learning material: Poor sanitary infrastructure: Decaying buildings: Teacher absenteeism: Learner's chased out of the class:*
- P4: I wouldn't know, because it doesn't happen. We have enough classrooms and desks, everything.*
- P5: Let's start with the lack of classrooms, this is a high demand school because it is an English, Afrikaans medium school and because of that we've have a shortage of classrooms which has resulted in overcrowding. Thanks to Covid the government provided 6 mobile classrooms, but when we revert to normal we go back to a shortage of classrooms, this seriously disadvantages my teachers. Every available space in this school has been converted to a class or office. We do experience a shortage in learning materials, we have to photocopy at our own cost and sometimes we have to appeal to parents to buy*

certain recourses which is not fair. We do currently have a reasonable sanitary infrastructure fortunately from sponsors. With the decaying buildings we had to pay for our own infrastructure to ensure learners safety it is although a sad thing that the department delays in terms of maintaining infrastructure. Teacher's absenteeism it is a chronic problem in most schools however we have substitute teachers that we pay for, we have student teachers and we have SGB paying additional staff that stand in for us when a teacher is absent. Work is left and prepared for learners and substitute teachers and have it controlled and supervised. Learners chased out of the class definitely violate the learners' rights and it is totally not allowed in my school, it is not a common practise.

6.6.3.2.3. The undocumented learners' plight as a denial of learners' right to education

An alarming outcry was ventilated by participants on the experienced frustrations of the processes of registering learners without proper documentation. Although the constitution indicates that all learners have a right to education, it is time consuming communicating with the parents who ultimately do not accede to the submission of relevant documents within three months. The participants are torn between the understanding of the policy translation and the policy implementation and gave the following sentiments.

- P1: According to the constitution the right to education also includes the foreign learners. In the past we were very sceptical about accepting them, first we'd need a study permit, once you have the study permit then you are legal in South Africa, now the department used to say give them 3 months and after 3 months deregister them, but once you register you must just keep the learner for good, because if you deregister you are now violating the rights.*
- P2: We admit the learner for 3 months while the parents are applying for the study permits. Still waiting for the parents to provide the documents. There's a possibility she may not write her final exam, because she does not have documents.*
- P3: It is a challenge. We admit the learner. We call the parent*
- P4: We don't take them, we don't accept them at all.*
- P5: It is a crisis for us, this school is situated in town so we do have a lot of foreign learners seeking admission. If the parent has an affidavit to say they are in process of the document then they may be admitted. Foreign learners previously were placed on a waiting list. The current policy reads that they shouldn't be treated that way, where possible we do accommodate them. The school should be remunerated for accepting undocumented learners.*

6.6.3.2.4. The impact of the violation of learners' right to education within the education system

Participants indicates that the violation of learners' right to education is equivalent to the human rights violation results in learners dropping out of school and poor learner performance.

Although some participants strongly felt that it is not taking place in their respective schools, but they indicated a certain level of readiness if it does happen in their schools in future.

P1: *If you violate their rights they may not come to school as often as you think, for example, last week or so we had a case of a learner who is went for traditional training, and when these things come they just attack and that on its own is a violation of others*

P2: *The learners will say they no longer attending, because they're rights are violated.*

P3: *Learners performance will not be good*

P4: *Either learners violating other learners' rights or teachers violating learners' rights vice versa. It doesn't happen.*

P5: *I defiantly do not have this as a problem. When it does become a problem, a rare incident it is dealt with immediately. Learners have the right to education and it is their responsibility to respect they're educators to be on time for classes, to cooperate in terms of they're work. There are consequences when you are not meeting those responsibilities.*

Discussion 2

The impact of the Covid-19 challenge has resulted in the delay of processes that were introduced by some schools in addressing the learners' right to education campaign. Prior to the pandemic, there was already a campaign initiated by the education provincial structure meant to address the concept of understanding the learners' right to education. This stresses for a different approach to the education of this fundamental right. Participants' feedback also alluded to and confirmed findings by Bhembe (2015) who related violation of learners' rights to lack of understanding of learners' rights within the school system. The practice of values, respect and care for learners' right to education needs to be looked into from a different perspective. At this stage, the researcher's observation, based on the principals' views, is that, the violation of learners' right to education seems to be propelled by the governments' failure to ensure that learning institutions adhere to certain standards of educational requirements. This was revealed in literature that proper school infrastructure; supply of water and electricity; adequate supply of Learner Educator Support Material; and provision of educators are some of the cited issues that need attention to holistically address the learners' right to education at schools (UNESCO/UNICEF 2007). Singh (2015) indicated that the government is basically responsible for the educational improvement in terms of both the South African Constitution and the international commitment. Participants echoed sentiments documented by Albisa, Baba, Iwata, Isoza, Jaus and Saonis (2013) indicating that learners' right to education were violated through the occurrence of the government's failure to act appropriate in terms of

educational demands. This discussion formed an important basis for the debate on critical elements for better outlook of learners' rights at schools.

Question: What are the departmental measures that are in place to deal with learners' right to education?

With regards to this question, the researcher sought to establish the practical solutions in trying to curb the violations of learners' right to education through the promotion and protection learners' right to education. The following two themes emerged.

6.6.3.3. Measures to deal with the violation of learners' right to education

Participants seem to be aware of how to deal with the violation of learners' right to education through policies. Participants echoed the following views as captured below:

- P1: *Through more awareness a lot can be achieved in the quest for learners' rights education.*
- P2: *Implement the correct policy, all the stakeholders, everyone has knowledge towards these policies.*
- P3: *Containerising all the stakeholders: teachers, parents, department of basic education, political parties, and business people about the right of learners. It can be done through TV programmes, radio programmes and social media*
- P4: *I don't see that the learners' rights are violated. I don't see it in my environment; I'm not saying it's not. I wouldn't know how to curb it, because i don't know how it's happening. If I have a case of a girl that's being bullied then I can stop it because I know how it happened, but I don't see learners' right to education is violated in my environment. I know in the back of my head there are children in South Africa that can't go to school, there's girls that can't afford to go to school. How is a girl rights violated if she can't afford sanitary towels to go to school? Feeding schemes.*
- P5: *I strongly disagree is saying learners should attend they're local schools. We have a system of apartheid that left a legacy behind of schools in locations being under resourced, parents have every right to want to enrol their children in better resourced schools.*

6.6.3.3.1. Departmental measures in place to deal with the violation of learners' right to education

A culminating view from principal participants was that, there seems to be less action done by the department of basic education, at school level, in dealing with the violation of learners' right to education, except for introducing policies to deal with the violation of learners' rights. The following sentiments were echoed.

- P1: *The teachers are controlled through EEA, and they'll be dealt with through the EEA. SASSA also has a section where learners must not be beaten we also have the constitution so they are protected in so many ways*

P2: SASA, Constitution.

P3: *School policies are used to protect and promote learners' right to education.*

P4: *I don't know if the department has measures in place.*

P5: *Admission Policy in place, SASA, constitution, I, however, believe that the department needs to take a closer look in over aged learners, they need to reinforce the discipline measures that need to be taken.*

Discussion 3

Participants recommended tentative solutions to the challenge of violation of learners' right to education. The researcher enunciates from the participants' views that they watchfully know the solution to the current approaches of learners' rights neglect as perpetrated by educators. In a recent case, of *Moko vs Acting Principal of Malusi Secondary School and Others* (2020), Judge Khampepe gave a notion that the learners' right to education must be appreciated, secured, protected and promoted in order to curb the violation of learners' right to education. This evidently shows that most educators do not adhere to the legislation principles and guidelines regulating educator's daily interactions with their learners. UNICEF (2019) provides measures to be used by the government to deal with the violation of learners' right to education which most of the participants alluded to, which includes safety measures, formulation of peace through teaching and learning, capacity building, allowing migrants and displaced learners to continue schooling, and involvement of parents and communities as partners in securing quality and proper education. Further discussions will be given under the section on recommendations.

6.7. Summary

In Chapter 6, participants' analysis, description of schools visited, Document Analysis and extracts from interviews including various emerging themes were clearly analysed, presented and documented, taking from the literature on learners' right to education. These detailed descriptions and analyses of each participating groups namely educators, HODs and principals were strategically presented in order to dispense an extensive comprehension of the research question.

The next chapter summarises and reports on the main findings by presenting the research findings and conclusions which were analysed from the interviews, Documents Analysis and literature review. This assists the researcher to come to make an informed extrapolation pertaining to answering the main research question, which is 'How can educators' perception of learners' right to education be positively affirmed?' Based on the findings, this chapter ends

by outline recommendations to the National Department of Education, the Mpumalanga Provincial Department of Education, School Governing Bodies, education circuits and education districts. The unique contribution of this study to the Department of Education is also be outlined. Limitations of the study are unpacked in this chapter and the researcher concludes by categorizing concerns for further investigation by other researchers.

CHAPTER 7

FINDINGS, CONCLUSION AND THE RECOMMENDATIONS OF THE STUDY

7.1. Introduction

Chapter 6 of this research investigation dealt with data analysis, provided thick description of schools visited and documents analysed relating and reflecting on educators' understanding of learners' right to education.

Chapter 7 is the closing of this study and starts by reiteration of research question. Thereafter, the presentation of the summary, research findings and the recommendations of the study on educator perceptions of learners' right to education in secondary schools in Mpumalanga as directed by the following aims of the study:

- To explore educators' perception of learners' right to education;
- To investigate how learners' right to education is infringed upon; and
- To gain an understanding of the existing measures in dealing with the violation of learners' right to education.

7.2. Research Questions

The study is driven by the quest to respond to: How can educators' perception of learners' right to education be positively affirmed? Subsequently, affirming the prevalence of the violation of learners' right to education through the following three sub-questions:

- What is the perception of educators on learners' educational rights?
- How is learners' right to education infringed upon?
- What are the measures to deal with the violation of learners' right to education?

7.3. Overview of the Thesis

This study on educators' perceptions of learners' right to education is organised according to the following outline:

Chapter One: Orientation

This chapter served as an orientation to the study and included discussions on the statement of the problem, the rationale for the study, the preliminary literature review and the research methodology used to accumulate pertinent information to respond to the formulated research

questions. Ethical considerations and the clarification of key concepts were also treated in this chapter.

Chapter Two: Theoretical Framework

This chapter focused on a relevant theoretical framework that relates to teachers' understanding of learners' right to education. The theory that served as a theoretical lens for this study on educator perception of learners' right to education in secondary schools is the Rights-Based Approach to human dignity.

Chapter Three: Literature Review/ International Perspective

This chapter reviewed the literature relating to learners' right to education as understood by international scholars, through international studies.

Chapter Four: Literature review/ South African perspective

This chapter reviewed the literature relating to the right of learners to education at school and the impact thereof on child development and progress. It included discussions on teachers' perceptions of the right of learners with regards to education within the South Africa context.

Chapter Five: Research Methodology and Research Design

The research methodology chapter contained clarification of the empirical research processes in terms of the research paradigm and research approach. The selection of research sites, participants, data gathering methods, data analysis techniques and accounting for the trustworthiness of the research findings were discussed. This chapter also details how ethical principles were adhered to during the empirical investigation.

Chapter Six: Research Findings

This chapter contained the presentation of outcomes from the investigative research study focusing on interviews done in the field and it also revolves around interpretation and analysis of data to represent the research outcomes from Document Analysis.

Chapter Seven: Summary, Conclusions and Recommendations

This chapter sums up the main research outcomes of the research as evident from the review of the literature and the empirical investigation. From this summary, concluding interpretations are deduced, which in turn lead to recommendations and suggestions for further study. The

recommendations are considered as the study's contribution to the existing body of knowledge on teachers' perceptions about learners' right to education.

7.4. The Rationale of the Study

Many studies on learners' right to education concentrate on a general understanding of what learners' right to education implies (Coomans 2007; Kumar & Misra 2016; Sofi 2017; Singh 2010; Musheer & Shakir 2017). Limited studies focus on educators' understanding of learners' right to education with a significant lack of studies done in Mpumalanga on how educators understand learners' right to education. Providing insight into educator perception in respect of the concept of learners' right to education should engender changes in classroom practice to promote learners' human dignity pertaining to receiving quality education (Dayton & Dupre 2009). According to Zwane (2015); Bhembe (2015); and Mothibeli (2017), learning and teaching should be free from any human rights infringement, in order to establish a conducive teaching atmosphere that is non-harmful between learners and educators. The researcher has been in the teaching fraternity for 26 years, since 1995, without any break of service. The curriculum changes, educational landscape changes and general changes experienced within the teaching fraternity since the introduction of learners' right to education amalgamated with human right to education propelled the researcher to engage in this study on educators' understanding of the teaching environment in which learners' right to education features prominently.

Over the years and most recently, the researcher observed that teachers do not understand what learners' rights about education are, and they infringe on learners' right to education in different ways daily. For instance, learners are constantly denied opportunities to learn, such as teachers refusing learners to attend classes as a form of punishment, learners sent home during contact classes to call parents, and pregnant learners denied classroom attendance. Enough evidence is recently surfacing to the effect that teachers and School Managers fail to protect and promote a learner's contact teaching time in schools (Mampane 2013; Mkhwanazi 1997; Mthombeni 2010).

Therefore, the focal point of this inquiry was directed towards the exploration of educators' understanding and interpretation of learners' right to education, to elicit malpractices and to provide a model for respecting and accommodating learners' right to education. The insights with this study may contribute to improved teaching and learning based on understanding what

learners' right to education pertains to and how to protect and promote the basic human entitlement of learners.

7.5. Research Findings

This study proceeded from a qualitative research approach primarily located within the human rights domain. The Rights-Based Approach became the lens for philosophically viewing the world order and the outcomes of the findings. Findings of the study are discussed in relation to the three sub-questions of this research study. The response techniques are to tackle one sub-question at a time in order to allow for a free flow for readers of this thesis. The summary of findings is addressed to the following sub-questions concerning the study.

7.5.1. Findings Regarding Sub-Question 1:

What is the perception of educators on learners' educational rights?

7.5.1.1. Understanding of Learners' Right to Education

Educators view learners' right to education in terms of the constitutional prescripts. Educators understand that their role is to promote and protect learners' right to education through legislation and policy regulation. Most educators view learners' right to education as an entitlement and a fundamental basic necessity towards the attainment of effective teaching and learning. However, participants vehemently connote the protection and promotion of learners' right to education to learners' participatory responsibility in the attainment of a conducive learning atmosphere. Practically, the researcher found out that learners' right to education can be promoted and protected through the awareness that can be made through fliers, school symposiums, debates, dramatizations and continuous communication with parents. Basically, the researcher concluded through the data accumulated that learners' right to education must be taught in class, although acknowledging that Life Orientation content has the topic on human rights but it is not enough for the learners to master. Therefore, this research divulges that there is a gap in the curriculum in terms of teaching basic human rights including learners' rights at school. According to Carrim and Keet (2005), basic learners' rights need to be taught as a subject and not to be infused in the Life Orientation and Social Science content subjects. Lundy and Sainz (2018) concur with the findings of this research study from the participants when indicating that Life Orientation and the Social Sciences content seems to be amongst the few subjects with human rights subject content.

7.5.1.2. Learners' Right to Education Apply Irrespective of Financial Background and Must be Afforded without Discrimination

Most of the educators indicates that learners' right to education must be afforded to learners without discrimination in terms of financial status, gender, colour or creed. Most educators understand learners' right to education through notion brought upon by the constitution. The South African Constitution puts clear guidelines stipulating that all learners must receive adequate education suitable to their specific needs. Some participant articulated a sense of discouragement in learners accessing education; indicating that not all educators understand learners' right to education. However, sentiments echoed by some participants shows that some educator seems not know what learners' right entails and are not sure of their role and responsibilities in the application of learners' rights. Goldstone (2017) confirms that over emphasis on learners' right to education over learners' responsibilities creates uncertainties in the implementation of learners' right to education.

Generally, the perceptions of learners' right to education is primarily based on the Constitution of South Africa as a supreme law of the country and the educators seem to be well conversant with the supreme law of the country. This awareness of the constitutional obligation in the promotion and protection of learners' right to education, is in line with the literature studies specifying that any right must be balanced with the requirements of the constitutions and forms the basis of any discussion whenever rights are articulated.

7.5.2. Findings Regarding Sub-Question 2:

How is learners' right to education infringed upon?

Most participants indicate that the major contributory factor that leads to the violation of learners' right to education is: lack of school proper infrastructure, lack of sanitation, lack of supply of water and electricity, lack of Teacher Learner Support Material, learners not attended by educators and disciplining learners without the consideration of the alternative to corporal punishment.

7.5.2.1. The Prevalence of the Violation of Learners' Right to Education

Most participant acknowledged that there is a certain level of learner human rights violation within schools, although few participants alluded to the view that there is less learner human rights violation due to educator level of awareness of policies and legislations. Alarming,

most participants ventilated an outcry with regards to the following factors that violates learners' right to education:

- The impact of COVID-19 on teaching and learning;
- The lack of school infrastructure;
- Lack of proper sanitation;
- The undocumented learners;
- Lack of supply of water and electricity; and
- Lack of Learner Teacher Support Material provision.

The above sentiments by most of the participants confirms what literature review reveals in terms of lack of proper school infrastructure, lack of supply of water and electricity, lack of supply of Learner Teacher Support Material and lack of adequate provision of educators (UNESCO/UNICEF 2007). The General Household Survey (2018) confirms challenges experienced by learners that lead to non-attainment of learners' right to education as, amongst others, pit toilets, overcrowded classes, lack of textbooks, lack of scholar transport, lack of electricity and lack of water. Singh (2015) vehemently puts it that it is the responsibility of the government to improve educational institutions holistically and the South African Constitution including the international commitment propels the government to better the school's conditions. The government's failure to improve schools' dilapidated conditions and the failure to act appropriately in terms of educational demands, directly violate learners' right to education (Albisa, Bab, Iwata, Isoza, Jaus & Saonis 2013).

7.5.2.2. Lack of Knowledge of Policies and Inexperienced Educators

The literature review revealed that educators lack of understanding of human rights within the school context, leads to the violation of learners' human rights and consequently producing negative effects on teaching and learning (Zwane 2017; SAHRC Annual Report 2012). Bhembe (2015) reveals that learners' right to education violation is as a direct result of educator's lack of understanding of human rights practices within a school.

Lack of policy knowledge by inexperienced educators has been acknowledged as a major contributory factor in the violation of learners' right to education. It is evident through the following acts continuously perpetrated by educators:

- Disciplining learners disregarding policy measures on discipline;

- Learners out of class and not been positively reprimanded by educators;
- Learners not attended to by educators during contact time;
- Learners send to the shop buy items by the educators during contact time; and
- Learners send home to call a parent for discipline purpose.

SAHRC Annual Report (2012) reveals a serious concern about educators who do not understand learners' right to education. Their lack of understanding of learners' right to education creates failure to protect and promote human rights to education. This is evident through educator who do not attend to their classes and those who chase learners out of class for variety of reasons. Educators and School Managers are aware that learners who are missing classes and learners who are not attending miss an opportunity to exercise their personal human rights in education.

Although educators and School Managers are aware of the policy that regulates educators' duties and obligations, there is still an alarming existence of the violation of learners' right to education with regards to learner discipline and educator learner attendance in class. It is therefore, important that learners must be in class and be attended by the educators. It is evident from this research findings that School Managers manage school discipline through crisis. According to Pillay (2014), skills knowledge of policy and legislation implementation of South African education law, as a guideline process, is of paramount importance to all educators and other stakeholders within the schools. Therefore, legislation renders educators and School Managers to be continuously learning mediators who must always interpret learner programme material for the learners (South African Council of Educators Act 31 of 2000). The South African Council of Educators in the *South African Handbook for Teachers* reveals that educators must manage systems and procedures within the teaching fraternity to enable the implementation of learners' right to education within schools.

Sainz (2018) confirms that education must always remain a vehicle to fulfil human rights, therefore policy translation into practice needs knowledge and skills. The incompetency in the implementation of learners' right to education has been an outcry in this research as confirmed by the most participants, although educators know and understand the legislation.

7.5.2.3. *The Impact of the Violation of Learners' Right to Education*

Clearly the participants confirmed that the violation of learners' right to education is equivalent to the human rights violation. Zwane (2017) indicates that, worldwide, human rights violations impact negative on learners' right to education. For instance, COVID 19 pandemic makes learners not to attend school regularly; lack of proper infrastructure; and lack of supply of water and electricity leaves a dire situation for the learners to attain their basic right to education within schools. Participants echoed sentiments in support of the literature in terms of the vase impact of the violation of learners' right to education, as follows:

- *Learner performance will not be good thus poor performance will be experienced.*
- *If learners' right to education are violated, they may not come to school as often as it is required.*
- *Atrocious activities emanating from lack of safety will always be experienced, such as dilapidating buildings falling on learners, and learners falling into pit toilets.*
- *Learners will not receive proper tuition as expected due to learners chased out of the class during learner contact sessions for a variety of reasons or ill-discipline learners being punished inhumane.*

The effects of learners' right to education violation are extremely complex and intricate in nature. Literature reveals that the most lasting traumatic impact experienced by learners, when denied the right to education, is more psychological than physical in nature. It vindicates itself through humiliation and negative self-worth, when human rights are not considered within a school (Nicker, Myburgh & Poggonpoel 2014; Maphosa & Mammen 2011). Thus, Cotzee and Mienie (2013) emphasise the point that educators must always act *in loco parentis* bearing in mind that learners are exposed to vase human threats that can impact negative towards the promotion and protection of learners' right to education.

7.5.3. Findings Regarding Sub-Question 3:

What are the measures to deal with the violation of learners' right to education?

Participants provided a variety of measures to curb the learners' right to education within the schools and measures to be provided by the Department of Basic Education.

7.5.3.1. *Management of the Violation of Learners' Right to Education*

Most participants offered managerial skills in dealing with violation of learners' right to education as part of the solution to curb the escalating disregard of human rights in education. Communication and proper intervention through relevant policies and stakeholder involvement seems to be prioritised by participants as primary managerial skills that yields good results. For instance, *control of learner absenteeism, making follow-ups with parents and engagement of social workers* to provide relevant skills in dealing with learners. *Demerit system, formal hearings and recording of incidents* are currently practical solutions educators are engaged to curb the alarming scourge of the violation of learners' right to education.

7.5.3.2. *The Learners' Right to Education Seemingly Coming to Extinction*

The majority of the participants are aware of the impact of the violation of learners' right to education but have difficulty in dealing with the atrocious situation due to lack of adequate skills needed currently utilizing policies and lack of experience. However, indication is made by the participants that measures in dealing with the violation of learners' right to education can include the following points:

- Educator and learner *awareness through of human rights in education must be done using fliers, debates and dramatizations*
- *Consciousness-raising to all stakeholders of the importance of the promotion and protection of learners' right to education in the current democratic dispensation. It can be done through TV programmes, radio programmes and social media.*
- *Implementation of the correct policies is of vital importance within the school to safeguard the promotion and protection of learners' right to education.*
- There must be initiated talks about issues related to *corporal punishment as a direct violation of human rights within schools. Copying of good practices from other school and regular meetings in empowering educators* are of vital importance in trying to promote and protect learners' right to education. In these meetings, policy interpretation and implementation could be tackled. *Teacher training and in-service training* was accentuated by educators.

7.5.3.3. The Role of the Department of Basic Education in the Process of Trying to Curb the Violation of Learners' Rights to the Education.

Most participants viewed the role played by the Department of Basic Education as basically minimal in dealing with the violation of learners' right to education, worse in terms of promoting and protecting learners' right to education, except for the provision of the relevant policies. It is vehemently echoed by most participants' frustrations indicating availability of legislations and policies that direct and shape learners' rights within the schools but contradictory quiet about the role of learners in terms of their responsibilities that goes with the corresponding *right*.

According to Singh (2015), the government is responsible to provide and preserve the right to basic education through relevant legislation that promotes and protects learners' right to education. Participants agree that the government's failure to promote and protect learners' right to education amounts to the violation of learners' right to education. Literature reveals that that the education sector needs certain transformational standards of excellence through the production of indicators to monitor human-rights based educational changes. Participants concur with Tahamtu, Ashiri, Riza and Salle (2019); Maboe (2013); and Hanbal and Prakash (2019) that the government is obliged to play an indispensable role in the promotion and protection of learners' right to education and it is not currently effectively happening. Substantial evidence is brought forth by participants' interaction that the benchmark for monitoring and the observation of the human rights implementation in education is not adhered to, particularly availability, access, affordability and adaptation (UNESCO & UNICEF 2009).

Throughout the participants' engagement, confirmation has been attained that the government's failure to promote and protect learners' right to education is based on the following factors:

- Lack of availability of proper school infrastructure, human resources and financial resources;
- Denial of access or learner entrance into various learning institution due to discrimination in terms of colour, language, gender, or even race;
- Lack of financial affordability to pay high amount of school fees; and
- Learners unable to adapt to some institutional environment according to their specific individual physical needs.

The Rights-Based Approach intends to transform and promote values within the human rights domain. The Rights-Based Approach invest in satisfying learners needs, which rebuilds on development in the education sector, provides support services leading to appropriate action to be taken by relevant stakeholders. The Rights-Based Approach emphasises systems and processes within the education sector that eventually promotes the importance of empowerment as central issue in the learner development (Harris-Curtis 2003).

7.6. Recommendation of the Study

The main aim of this empirical study was to explore how educators' perception of learners' right to education can be positively affirmed. Thus, the critical objective was to draw from the participants' narratives information that could be used to give understanding of the concept learners' right to education. Stemming from this critical objective, the following are being recommended for the attention of education managers and key stakeholders in the education fraternity and other higher educational institutions and scholars.

7.6.1. Recommendation 1: Based on Research Findings of Sub-Question 1

To inform the improvement of current and future policy, a framework to establish a concrete and a continued awareness of the protection and promotion of the learners' right to education is recommended for all schools beginning from the early primary education. In this study pedagogy was not exposed to full scrutiny and analysis, thus future research is in this regard recommended in the area of learners' right to education.

7.6.2. Recommendation 2: Based on Research Findings of Sub-Question 2

This study showed that the violation of the learners' right to education could be directly linked to the decrepit school's infra-structure. Thus, the government must practically improve schools' decaying buildings and promptly act in addressing the condition of schools because this directly violates learners' right to education.

7.6.3. Recommendation 3: Based on Research Findings of Sub-Question 3

This study established that the current school programmes do not cater for well-coordinated activities. Thus, it is recommended that a far-reaching approach is introduced to improve and address the deteriorating level of respecting learners' rights at schools. Policy interpretation and thus its implementation could be better embarked upon through prioritising the revision of policies that guide educators on learners' right to education at schools.

7.7. Contribution and the Significance of the Study

This study has, to some extent, augmented interesting debates in the area of education rights especially on the literature content available. It has been able to contribute to the three critical facades of research, namely, knowledge, practice and policy. These are emphasized in the next paragraphs.

7.7.1. Contribution to Knowledge

The literature on school-based challenges of educational rights focus much on the misdemeanours by educators with less being put forth on providing an appropriate approach to the understanding of the learners' right to education. This study was primarily conducted to close such a gap by highlighting the following important aspects:

- Providing a separate subject with the content of human rights, especially pertaining to learners' right to education;
- A different perspective on the learners' right to education was offered specifically providing insight to alternative approach to exploring learners' rights; and
- The study confirmed important findings that basic education involves imparting skills and knowledge through the transmission of human values which learners are mostly denied, worldwide (Chur 2015). Learners' right to education, which is encompassed in human rights in education, remains unclear for most educators. Most educators treat learners in an unacceptable manner contradicting values of a free society (Ersoy 2012; Zwane 2017). The current study reveals that learners' right to education is not respected, promoted and protected due to educator malpractices, mistreatment and learner humiliation. According to Chur (2015), disciplinary policies that causes any form of harm, mistreatment and practical learner humiliation do not protect and promote human inherent dignity and directly violates learners' right to education.

7.7.2. Contribution to Practice

This study has, through educators' experiences, captured responsiveness of school policy practices for School Managers; which will, with anticipation, enlighten principals and education departments not only on challenges but also on better informed programmes for classroom practice pertaining to learners' right to education.

- Value driven educators who are primarily guided by respect for human rights are able to promote and protect learners' right to education;
- The researcher highlighted the major malpractice of educators who sends learners home to call parents to school as a rebuttal of learners' right to education because a learner will miss what is taught in class while going home to call a parent;
- It is noted by the researcher that learners who are left unattended by some educators they leave a room for curriculum gap that learners are unable to catch up on their own. It is of paramount importance that all learners must be attended by educators as enshrined in section 29 of the Bill of Rights in the South African Constitution; and
- The researcher found that learners' right to education needs continuous and constant engagement through classroom teaching and all stakeholder involvement by means of fliers, debates and media communication.

7.7.3. Contribution to Policy

This study has made an attempt to invoke robust debate informing policy issues. The effectiveness of learners' right advocacy and the learners' right to education depend on the fruitful engagements of all stakeholders in the education fraternity advising policy formulation and scoping. Thus, this study highlighted some pathways for curriculum developers informing policy crafting.

7.8. Limitations and Delimitations of the Study

No matter how accurate a researcher can attempt to eliminate study constraints, there is always some level of misjudgement due to the researcher's own background and role. These may include the researcher's adopted approach to study, the context and conditions of research environment and the study participants. In this study, the researcher's awareness of such limitations permitted him to put measures that eliminated or reduced the impact on the research findings and the path followed for reporting the study.

First, the choice of following a few study participants led to lack of diversity pertaining to examining patterns on the understanding of education rights across different broad spectrum of South Africa's races. It was important to gather deeper insights across the demographics of the South African diversified population concerning the learners' right to education. The

researcher's action might have excluded information-rich members. For this reason, follow-up studies could be carried out to yield more insightful perceptions across the races.

Second, the researcher is a novice in the research world. This could pose a challenge in the quality and analysis of the capacious data collected. A number of things could have crept in that affected the research findings, for example, causing discomfort to participants, compromised transparency and lack of enough rigour in the research process.

7.9. Future Research

Emanating from the study on educator perception of learners' right to education in secondary schools in Mpumalanga, the researcher opines that a quantity of crucial aspects that relate to learners' right to education still need to be studied further. Such include the following:

- How does the misuse of learners' right to education, by both learners and educators, impact on teaching and learning?
- What effective role must parents play in the promotion of learners' right to education?
- How does the misunderstanding of learners' right to education and the learners' responsibilities affect teaching and learning?

7.10. Conclusion

This chapter strived to respond to the formulated research questions in the first chapter of this study. The reiteration of the rationale of the study was emphasised; and findings of the study were summarised, guided by the literature study and informed by the Rights-Based Approach as a theoretical lens throughout the study. Numerous conclusions were done and integrated with findings from the field work. Recommendations were made and the significance of the study illustrated in this last chapter. The learners' right to education was presented as a global subject under constant check from country to country. Inherent challenges pertaining to its promotion and protection were unearthed and explored for development and fostering of a better outlook of the learners' right to education. The purpose of this study was to explore how educators' perception of learners' right to education can be positively affirmed. Thus, drawing from the participants' narratives, information that gave understanding of the concept learners' right to education illuminated.

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Ermelo and Another (CCT 40/09) 2009

Komape and Others vs Minister of Basic Education (1416/2015) 2015

Member of the Executive Council for Education in Gauteng Province and Others vs Governing
Body of the Revonia Primary school and others (CCT 135/12) (2013).

Moko vs Acting Principal of Malusi Secondary School and Other [2020]

Teddybear Clinic for abused Children vs Minister of Justice (CCT 12/13) 2013

APPENDIXES

Appendix A: A Letter of Request to the Mpumalanga Department of Basic Education

Enq: Mampane K.B
Cell: 082 821 8297

P.O. Box 7506
Kanonkop
Middelburg
1050

10 February 2021

The HOD
Mpumalanga Department of Education
Private Bag X11341
NELSPRUIT
1200

Dear Sir/Madam

RE: REQUEST FOR PERMISSION TO CONDUCT RESEARCH IN STEVE TSHWETE CIRCUITS

I humbly request your permission to conduct a research at five public schools in Steve Tshwete Circuit, in Mpumalanga Province.

I am currently a PhD student in the Department of Education Leadership and Management under the supervision of Dr RI Lumadi, at the University of South Africa.

My research topic is: Educator perception of learners' right to education in secondary schools in Mpumalanga.

My research project involves accessing certain administrative documents for analysis, which includes: School Code of Conduct for learners, school constitution, and school policy on learner discipline, class rules and a constitution for the LRC structure. In the mentioned school documents, I will be checking how these official school documents addresses learners' right to education, particularly the promotion and the protection of learners' right to education.

My interview plan involves five principals, one HOD per school and one educator per school in the Steve Tshwete circuit. During my interview, I will use a tape recorder which will help me to organise my data after the completion of the interview process. The exercise will last for



two weeks, at most, and will take 45 minutes per identified individual participant educator, telephonically.

The following aims directs this study on learners’ right to education:

- To explore educators’ understanding of learners’ right to education.
- To investigate how learners’ right to education is infringed.
- To gain understanding of the existing measures in dealing with the violation of learners’ right to education.

The identified participants will receive letters of notification for participation including time frames and they will be briefed about the fundamentals of the research project prior the commencement. The participants engagement will be voluntary and they can withdraw their participation in the research project at any time during the study, whenever they want. Should participants be willing to participate in the research study project, in an individual interview, confidentiality and anonymity are guaranteed.

The process of collecting data will start as soon as my ethical application has been approved by the ethical committee of the University of South Africa. After the completion of my research project, my research findings will be made available to the Department of Education. The research, in my opinion, will assist or help the principals and circuit inspectorate in understanding, promotion and protection of learners’ right to education. The interview process will not be disruptive to the seven-hour learner content learning at the five schools. There will be no reimbursement or any form of incentives to participants in this research study instead the benefit will be the feedback that will be provided on findings.

I hope that my request will receive your favourable consideration.

Yours sincerely

Mr Mampane K.B. (Researcher)
 Cell: 082 82 18297
 Student No: 25551371
 E-mail: kgale@webmail .co.za
31982042@mylife.unisa.ac.za

Dr R.I. Lumadi (Supervisor)
 0715322761
lumadri@unisa.ac.za



Appendix B: A Letter of Request to the Steve Tshwete Circuit

Enq: Mampane K.B
Cell: 082 821 8297

P.O.Box 7506
Kanonkop
Middelburg
1050

10 February 2021

The Circuit Manager
Mpumalanga Education Department
Steve Tshwete Circuit
Private Bag 1824
Middelburg
1050

Dear Sir/Madam

RE: REQUEST FOR PERMISSION TO CONDUCT RESEARCH IN STEVE TSHWETE CIRCUITS

I humbly request your permission to conduct a research in Steve Tshwete circuit schools.

I am currently a PhD student at the University of South Africa under the supervision of Dr RI Lumadi, in the Department of Educational Leadership and Management. My research topic is: Educator perception of learners' right to education in secondary schools in Mpumalanga.

My research project involves accessing certain administrative documents for analysis, which includes: School Code of Conduct for learners, school constitution, and school policy on learner discipline, class rules and a constitution for the LRC structure. In the mentioned school documents, I will be checking how these official school documents addresses learners' right to education, particularly the promotion and the protection of learners' right to education.

My interview plan involves five principals, one HOD per school and one educator per school in the Steve Tshwete circuit. During my interview, I will use a tape recorder which will help me to organise my data after the completion of the interview process. The exercise will last for two weeks, at most, and will take 45 minutes per identified individual participant educator, telephonically.

The following aims directs this study on learners' right to education:

- To explore educators' understanding of learners' right to education.
- To investigate how learners' right to education is infringed.
- To gain understanding of the existing measures in dealing with the violation of learners' right to education.

The identified participants will receive letters of notification for participation including time frames and they will be briefed about the fundamentals of the research project prior the commencement. The participants engagement will be voluntary and they can withdraw their participation in the research project at any time during the study, whenever they want. Should participants be willing to participate in the research study project, in an individual interview, confidentiality and anonymity are guaranteed.

The process of collecting data will start as soon as my ethical application has been approved by the ethical committee of the University of South Africa. After the completion of my research project, my research findings will be made available to the Department of Education. The research, in my opinion, will assist or help the principals and circuit inspectorate in understanding, promotion and protection of learners' right to education. The interview process will not be disruptive to the seven-hour learner content learning at the five schools. There will be no reimbursement or any form of incentives to participants in this research study instead the benefit will be the feedback that will be provided on findings.

I hope that my request will receive your favourable consideration.

Yours sincerely

Mr Mampane K.B. (Researcher)
Cell: 082 82 18297
Student No: 25551371

Dr RI Lumadi (Supervisor)
0715322761

E-mail: [kgale@webmail .co.za](mailto:kgale@webmail.co.za)
31982042@mylife.unisa.ac.za

lumadri@unisa.ac.za



Appendix C: A Letter of Request to the Principals



Enq: Mampane K.B
Cell: 082 821 8297

P.O.Box 7506
Kanonkop
Middelburg
1050

10 February 2021

The Principal

.....
.....
.....
.....

Dear Sir/Madam

RE: REQUEST FOR PERMISSION TO CONDUCT RESEARCH IN YOUR SCHOOL

I humbly request your permission to conduct a research in your school.

I am currently a PhD student at the University of South Africa, under the supervision of Dr RI Lumadi in the Department of Educational Leadership and Management.

My research topic is: Educator perception of learners’ right to education in secondary schools in Mpumalanga.

The purpose of this research study is to investigate the experiences and perceptions of educator’s with regards to their understanding of learners’ right to education. I intend to interview the principal, one HOD and one educator, at five different secondary school.

Data will be collected using interviews and document analysis. The interviews will last for about 45 minutes and will be conducted at any time and any date that suits you. The process of data collection should be completed on or before the 30 July 2021. The venue for the interviews will be through telephonic interview after learner contact time.

The following aims directs this study on learners’ right to education:

- To explore educators’ understanding of learners’ right to education.
- To investigate how learners’ right to education is infringed.
- To gain understanding of the existing measures in dealing with the violation of learners’ right to education.



The identified participants will receive letters of notification for participation including time frames and they will be briefed about fundamentals of research project prior the commencement of the interviews.

The participants engagement will be voluntary and they can withdraw their participation in the research project at any time during the study, whenever they want. Should participants be willing to participate in the research study project, in an individual interview, confidentiality and anonymity are guaranteed.

I subscribe to the following Ethical Principles:

- Voluntary participation in research, implying that the participants might withdraw from the research at any time.
- Informed consent, meaning that research participants must all times be informed about the research process and purposes, and must give consent for their participation in the research.
- Safety in participation, human respondents shall not be placed at risk or harm of any kind.
- Privacy means that confidentiality and anonymity of respondents should be protected at all times.
- Trust, which implies that respondents will not contribute to any acts of deception or betrayal in the research processes or its published outcome.

The benefits of this research study will enhance the understanding of learners' right to education. In this regard, the study aims to promote and protect learners' right to education. There will be no reimbursement or incentives for participating in this research study but the main benefit will be the feedback that will be provided which shall entail a written submission and presentation about some of the helpful and interesting findings in this study.

I hope and trust that my request will be considered as I am looking forward to receive a feedback from you.

Yours sincerely

Mr Mampane K.B. (Researcher)
Cell: 082 82 18297
Student No: 25551371

E-mail: kgale@webmail.co.za
31982042@mylife.unisa.ac.za

Dr R.I. Lumadi (Supervisor)
0715322761

lumadri@unisa.ac.za



Appendix D: A Letter of Consent to Participants in the Research Project

Enq: Mampane K.B
Cell: 082 821 8297

P.O.Box 7506
Kanonkop
Middelburg
1050

10 February 2021

Dear Participant

RE: REQUEST FOR YOUR CONSENT TO PARTICIPATE IN THE RESEARCH PROJECT

You are humbly requested to participate in the research project aimed at collecting data on educator perceptions on learners' right to education.

I am currently a PhD student at the University of South Africa, under the supervision of Dr RI Lumadi in the Department of Educational Leadership and Management.

My research topic is: Educator perception of learners' right to education in secondary schools in Mpumalanga.

Your participation in this research project remains voluntary. Confidentiality and anonymity are guaranteed and if you decide to withdraw from the project you may discontinue, at any stage. The purpose and the process will be fully explained and you will not be placed at risk or harm of any kind.

The aim of the research project

The aim of the study is to investigate experiences and perceptions of educator's with regards to learners' right to education.

The following aims directs this study on learners' right to education:

- To explore educators' understanding of learners' right to education.
- To investigate how learners' right to education is infringed.
- To gain understanding of the existing measures in dealing with the violation of learners' right to education.

My expectations from you as a participant

I will meet with you to explain the purpose and the aim of the study and I will as well give clear information about the following:

- The title of the research project
- The purpose of this study

- What is expected of you in this study?
- Your rights as a participant in this study

In the interaction, you will be given a chance to ask questions and clarity will be given to avoid misunderstanding. If you are willing to participate, then you will be requested to sign a declaration in a form of a consent form.

An arrangement of 45 minutes interview will be made for the individual participant.

Benefits

The research project is important because it will benefit School Management Teams, and educators in harmonising relationships and dealing with perceptions with regards to learners' right to education. The study will also contribute to the body of knowledge in the field of Education Management and Leadership. Recommendations will assist principals, SMT's and educators on how to deal with learners' right to education and by participating in this research project, you are given a chance to contribute to the policy development.

Declaration of your consent

If you are willing to participate in this research project, please sign the attached letter as a declaration of your consent. If you have any questions, misunderstanding or need clarity, do not hesitate to contact my supervisor or me at the numbers given below, or via the E-mail. You must know that your acknowledgement to participate in this study is out of your free will, knowing that you may withdraw from the research project at any time. Therefore, under no circumstances will your identity be made known to any party or organisation that may be involved in the research processes and or which has some form of power over you.

I hope and trust that my request will receive your favourable consideration as I will wait patiently to receive a positive feedback from you.

Yours sincerely

K.B. Mampane (Researcher)
Cell: 082 821 8297
E-mail: kgale@webmail.co.za
31982042@mylife.unisa.ac.za

Dr R.I. Lumadi (Supervisor)
0715322761
lumadri@unisa.ac.za



Appendix E: Consent Form

I, _____ (your name),

(Cross the relevant choice),

Agree	Do not agree
-------	--------------

To take part in the research project entitled: Educator perception of learners' right to education in secondary schools in Nkangala District, Mpumalanga.

I understand that I have to give information relevant to the study and I will be interviewed using an audio-digital tape recorder.

I understand that the researcher subscribes to the following principles that governs research:

- **Voluntary** participation in research, implying that the participants might withdraw from the research at any time.
- **Informed consent**, meaning that research participants must at all times be fully informed about the research process and purposes, and must give consent to their participation in the research.
- **Safety in the participation**, to be precise, human respondents should not be placed at risk or harm of any kind e.g., research with young children.
- **Privacy**, meaning that the confidentiality and anonymity of human respondents should be protected at all times.
- **Trust**, which implies that human respondents will not respond to any acts of deception or betrayal in the research process or its published outcomes.

Signature of a participant: _____

Date: _____

Signature of a researcher: _____

Date: _____



Appendix F: Interview Schedule for School Principals

Enquiries: KB Mampane
Mobile no: 0828218297
Email: 31982042@mylife.unisa.ac.za
kgale@webmail.co.za

Research Title: Educator Perception of Learners' Right to Education in Secondary Schools in Mpumalanga.

Opening the research to establish rapport.

My name is Kgale Bethuel Mampane. I am conducting this research under the auspices of my supervisor Dr R.I. Lumadi, in the Department of Educational Leadership and Management. I am a registered PhD student at the University of South Africa (UNISA). I am currently residing at number 1A Joubert Street Middelburg Mpumalanga and I am employed by the University of the North West as a Lecturer in the Department of Education Law.

I understand that you are the principal at this school. I would like to pose questions that I have prepared in relation to the educators understanding of learners' right to education. I personally value your participation in this study as it will help educational policy planners to take informed decisions for the wellbeing of learners through the promotion and protection of learners' rights within the schools. Information shared in this study will be converted into research findings without your identity mentioned neither your school to scholars worldwide, as a contribution to the body of knowledge pertaining learners' right to education.

The interview will take 45 minutes of your precious time and with your permission it will be type recorded. The data collected in this interview will strictly remain anonymous and confidential.

Biographical information

- May you kindly introduce yourself:
- How long have you been an educator?.....
- How long have you been a principal at this school?.....
- How many educators are at this school?.....
- How many learners are at this school?.....
- What are your highest qualification?.....
- What quintile ranking is the school? (Tick the block below)

1	2	3	4	5	
----------	----------	----------	----------	----------	--

Theme 1

1. What do you understand by learners' rights?
2. What do you understand by learner access to education?

3. How do educators understand learners' right to education?
 Probe: How do educators view learners' right to education?
 Probe: How do educators promote learners' right to education?
 Probe: How do educators protect learners' right to educators?

Theme 2

4. How does COVID-19 epidemic affect teaching and learning?
 Probe: How does COVID-19 deny learners their basic right to education?
5. How does lack of classrooms, shortage of learning material, poor sanitary infrastructure, decaying buildings, educator absenteeism and learners being chased out of the class directly violates learners' right to education?
6. How does the violation of learners' right to education have a bearing to teaching and learning at school?
 Probe: How do you manage the violation of learners' right to education?

Theme 3

7. How do you deal with undocumented learners at this school?
8. How do you promote learners' right to education?
 Probe: What policies do you use to promote and protect learners' right to education?
 Probe: How do you protect learners' right to education?
 Probe: How is the implementation of learners' right to education done?
 Probe: How do you use the school policy guidelines to promote and protect learners' right to education?
9. How can we curb the violation of learners' right to education within the education system?
10. How do the educators know the importance of promoting and protecting learners' right to education?
11. What are the departmental measures that are in place to deal with learners' right to education?
 Probe: How are those measures implemented?
 Probe: What are the challenges of implementing learners' right to education within the school?
12. How prevalent is the violation of learners' right to education within schools?



Appendix G: Interview Schedule for Head of Department

Enquiries: KB Mampane
 Mobile no: 0828218297
 Email: [31982042@mylife.unisa.ac.za/](mailto:31982042@mylife.unisa.ac.za)
kgale@webmail.co.za

Research title: Educator perception of learners’ right to education in secondary schools in Mpumalanga.

Opening the research to establish rapport

My name is Kgale Bethuel Mampane. I am conducting this research under the auspices of my supervisor Dr R.I. Lumadi, in the Department of Educational Leadership and Management. I am a registered PhD student at the University of South Africa (UNISA). I am currently residing at number 1A Joubert Street Middelburg Mpumalanga and I am employed by the University of the North West as a Lecturer in the Department of Education Law.

I understand that you are the Head of Department. I would like to pose questions that I have prepared in relation to the educators understanding of learners’ right to education. I personally value your participation in this study as it will help educational policy planners to take informed decisions for the wellbeing of learners through the promotion and protection of learners’ rights within the schools. Information shared in this study will be converted into research findings without your identity mentioned neither your school to scholars worldwide, as a contribution to the body of knowledge pertaining learners’ right to education.

The interview will take 45 minutes of your precious time and with your permission it will be type recorded. The data collected in this interview will strictly remain anonymous and confidential.

<p>Biographical information</p> <ul style="list-style-type: none"> • May you kindly introduce yourself: • How long have you been an educator?..... • How long have you been an HOD at this school?..... • How many educators are under your supervision?..... • What subjects are in your department?..... • What subject/s do you teach?..... • What grade/s do you teach?..... • What are your highest qualification?.....



Theme 1.

1. What do you understand by learners' right to education?
2. How do educators in your department understand by learners' right to education?

Theme2

3. What do you think are the causes of the violation of learners' right to education within the school?
4. A learner who is out of the class or not attended by an educator misses an opportunity to receive proper tuition, explain how is it related to the violation of learners' right to education?
Probe: How do you as an HOD in your department manage uncontrolled learners or ill-disciplined learners without infringing on learners' right to education?
Probe: How effective are measures to deal with problematic learners without infringing on learners' right to education?

Theme 3

5. What policy guideline do you use do you use to implement learners' right to education?
6. How do educators in your department implement learners' right to education?
7. How do educators in your department teach learners' right to education as subject content?
8. What subject/s has a content of learners' right to education?
9. How do you promote learners' right to education?
10. How do you manage the process of promoting learners' right to education?
11. How do you protect learners' right to education?
12. How do you manage the process of protecting learner' rights to education?
13. How do you manage the violation of learners' right to education within the school?
Probe: What systems or procedures are you using in dealing with the violation of learners' right to education?
14. How can we curb the violation of learners' right to education within our schools?
Probe: How must educators lead in the process of promoting and protecting learners' right to education within the school?

Probe: How must learners' right to education be promoted and protected by educators?
15. What must the Department of Basic Education do to curb the violation of learners' right to education within the schools?



Appendix H: Interview Schedule for Educators

Enquiries: KB Mampane
Mobile no: 0828218297
Email: [31982042@mylife.unisa.ac.za/](mailto:31982042@mylife.unisa.ac.za)
kgale@webmail.co.za

Research title: Educator perception of learners' right to education in secondary schools Mpumalanga.

Opening the research to establish rapport

My name is Kgale Bethuel Mampane. I am conducting this research under the auspices of my supervisor Dr R.I. Lumadi, in the Department of Educational Leadership and Management. I am a registered PhD student at the University of South Africa (UNISA). I am currently residing at number 1A Joubert Street Middelburg Mpumalanga and I am employed by the University of the North West as a Lecturer in the Department of Education Law.

I understand that you are an important member of the teaching staff at this school. I would like to pose questions that I have prepared in relation to the educators understanding of learners' right to education. I personally value your participation in this study as it will help educational policy planners to take informed decisions for the wellbeing of learners through the promotion and protection of learners' rights within the schools. Information shared in this study will be converted into research findings without your identity mentioned neither your school to scholars worldwide, as a contribution to the body of knowledge pertaining learners' right to education.

The interview will take 45 minutes of your precious time and with your permission it will be type recorded. The data collected in this interview will strictly remain anonymous and confidential.

Biographical information

- May you kindly introduce yourself:
- How long have you been teaching?.....
- How long have you been at this school?.....
- What subject/s do you teach?.....
- What grade/s do you teach?.....
- What are your highest qualification?.....

Theme 1.

1. What do you understand by learners' right to education?
2. How do other educators understand by learners' right to education?
3. How do you promote learners' right to education in class?
4. How do you protect learners' right to education in class?
5. What rights are learners entitled to?

Theme 2

6. How are learners' right to education violated?

Theme 3

7. How must learners exercise their individual rights to education at school?

Probe: What is the importance of learners' entitlement to their rights at school or in class?

Probe: How important is it to educate learners about their rights to education?

8. How can learners' right to education be taught at school?

9. What must the Department of Basic Education do to curb the violation of learners' right to education within the schools?

10. How can we deal with the violation of learners' right to education within the school?

Appendix I: Document Analysis Schedule



Enquiries: KB Mampane
 Mobile no: 0828218297
 Email: [31982042@mylife.unisa.ac.za/](mailto:31982042@mylife.unisa.ac.za)
kgale@webmail.co.za

Name of school:
 (Pseudonym):.....

1. Which documents are followed when implementing learners' right to education?

No.	Document	Available	How relevant is it to learners' right to education? How is it related to learners' right to education?
1.	Admission Policy		
2.	School's Code of Conduct for learners		
3.	School's Constitution		
4.	School's policy on discipline		
5.	Class rules		
6.	Constitution for Learner Representative Council		

2. Do the above documents relate to the following aspects of learners' right to education?

No.	Concept related to learners' right to education.	Yes/No	Related concepts	Yes/No	Name of a document	Role player
1	Right to information		e.g., are learners informed of their rights			
2	Right to representation in case of learner discipline		e.g., Lawyer/ parent/ RCL etc...			
3	Reason for any decision taken at school and learner involvement		e.g., informed decision for change at school			
4	Notices		e.g., letters to parents and learners			
5	Hearing during learner discipline		e.g., listening to both parties			

University of South Africa
 Pretorius Street, Muckleneuk Ridge, City of Tshwane
 PO Box 392 UNISA 0003 South Africa
 Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150
www.unisa.ac.za

Remarks/ Findings

3. Legislation/ school policies

3.1. Does the school have any proof of legislation/policy document that relates to learners' right to education?

4. Learner involvement documents

4.1. Availability of RCL committee minutes:

4.2. Content of the minutes of RCL

5. Learners' School Code of Conduct

5.1. Availability of learner's School Code of Conduct:

5.2. Content of learner's School Code of Conduct in relation to learners' right to education

6. School constitution

6.1. Availability of school constitution

6.2. Content of the school constitution in relation to learners' right to education



7. Class rules

7.1. Availability of class rules:

7.2. Content of the class rules in relation to learners' right to education



Appendix J: A letter from the Mpumalanga Department of Basic Education



education
MPUMALANGA PROVINCE
REPUBLIC OF SOUTH AFRICA

Ikhamaŋga Building, Government Boulevard, Riverside Park, Mpumalanga Province
Private Bag X11341, Mbombela, 1200.
Tel: 013 766 5552/5115, Toll Free Line: 0800 203 116

Litiko le Temfundvo, Umnyango we Fundo

Departement van Onderwys

Ndzawulo ya Dyondzo

Enquireis: DM Mtembu
Contact:013 -- 766 5148

Mampane KB
PO BOX 7506
KANOKOP
MIDDELBURG
1050
Cell: 082 821 8297
Email: kgale@webmail.co.za

RE: EDUCATOR PERCEPTION OF LEANERS' RIGHT TO EDUCATION IN SECONDARY SCHOOLS IN MPUMALANGA

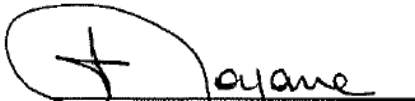
Your application to conduct research study was received and is therefore acknowledged. The title of your research project reads: **“Educator perception of leaners’ right to education in secondary schools in Mpumalanga”**. I trust that the aims and the objectives of the study will benefit the whole department especially the beneficiaries. Your request is approved subject to you observing the provisions of the departmental research policy which is available in the department website. You are requested to adhere to your university’s research ethics as spelt out in your research ethics.

In terms of the research policy, data or any research activity can be conducted after school hours as per appointment with affected participants and COVID -19 regulations to observed. You are also requested to share your findings with the relevant sections of the department so that we may consider implementing your findings if that will be in the best interest of the department. To this effect, your final approved research report (both soft and hard copy) should be submitted to the department so that your recommendations could be implemented. You may be required to prepare a presentation and present at the departments’ annual research dialogue.



For more information kindly liaise with the department's research unit @ 013 766 5124/5148 Or n.madhlaba@mpuedu.gov.za

The department wishes you well in this important project and pledges to give you the necessary support you may need.


MRS LH MOYANE
[A] HEAD: EDUCATION

29 / 04 / 2021
DATE

Appendix K: UNISA Ethical Clearance Certificate



UNISA COLLEGE OF EDUCATION ETHICS REVIEW COMMITTEE

Date: 2021/04/14

Ref: **2021/04/14/31982042/10/AM**

Name: Mr KB MAMPANE

Student No.: 31982042

Dear Mr KB MAMPANE

Decision: Ethics Approval from
2021/04/14 to 2026/04/14

Researcher(s): Name: Mr KB MAMPANE
E-mail address: 31982042@mylife.unisa.ac.za
Telephone: 0828218297

Supervisor(s): Name: Dr RI Lumadi
E-mail address: lumadri@unisa.ac.za
Telephone: 071 532 2761

Title of research:

Educator perception of learners' right to education in secondary schools in Mpumalanga

Qualification: PhD Education Management

Thank you for the application for research ethics clearance by the UNISA College of Education Ethics Review Committee for the above mentioned research. Ethics approval is granted for the period 2021/04/14 to 2026/04/14.

*The **medium risk** application was reviewed by the Ethics Review Committee on 2021/04/14 in compliance with the UNISA Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment.*

The proposed research may now commence with the provisions that:

1. The researcher will ensure that the research project adheres to the relevant guidelines set out in the Unisa Covid-19 position statement on research ethics attached.
2. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.



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3. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the UNISA College of Education Ethics Review Committee.
4. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
5. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing.
6. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
7. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data requires additional ethics clearance.
8. No field work activities may continue after the expiry date **2026/04/14**. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

Note:

*The reference number **2021/04/14/31982042/10/AM** should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.*

Kind regards,



Prof AT Motlhabane
CHAIRPERSON: CEDU RERC
motlhat@unisa.ac.za



Prof PM Sebato
EXECUTIVE DEAN
Sebatpm@unisa.ac.za



Appendix L: Certificate of Language Editing

Mr MM Mohlake
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Turfloop Campus
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Sovenga
0727

16 October 2021

To Whom It May Concern

EDITING CONFIRMATION: Mr KB MAMPANE's THESIS

This letter is meant to acknowledge that I, MM Mohlake, as a professional editor, have meticulously edited the main dissertation of Mr Kgale Bethuel Mampane (Student Number: 31982042) entitled "Educator Perception of Learners' Right to Education in Secondary Schools in Mpumalanga".

Thus I confirm that the readability of the work in question is of a high standard.

For any enquiries please contact me.

Regards



Mosimaneotsile M Mohlake

Freelance Professional Editor

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Disclaimer: Subsequent alterations remain the responsibility of the author.