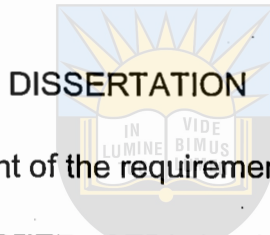


THE EDUCATOR'S RIGHT TO DIGNITY: AN EXAMINATION FROM THE PERSPECTIVE OF EDUCATION LAW AND SCHOOL-BASED PRACTICE

By

Johan Daniel Rich



Submitted in fulfilment of the requirements for the degree of

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Together in Excellence

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Supervisors: Mr. M. Adendorff
Dr K. Alston

DECLARATION

I, Johan Daniel Rich, hereby declare that this research project is original (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been or shall be submitted for another degree at this or any other university, institution for tertiary education or examining body.

Researcher's signature



Mr. Johan Rich Date 7 January 2010

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KEYWORDS

Human rights

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Eastern Cape, South Africa

Professionalism

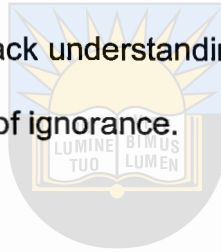
Education law



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ABSTRACT

The right to human dignity is enshrined in Section 10 of the Constitution of South Africa Act 108 of 1996, but, educators' rights, particularly the right to dignity, have seldom been mentioned in the literature compared to the attention given to learners' and parents' rights. Most people, including educators, often lack understanding of, and fail to exercise their rights legitimately because of ignorance.

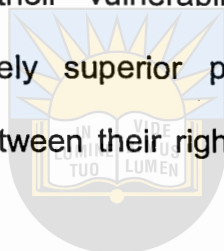


This study examined how the professional educator's right to dignity is, and should be, interpreted and applied using a theoretical and legal analysis, and a field study involving structured interviews with 19 educators from 5 schools.

A relatively recent, but prominent aspect of human Rights discourse, dignity features in Jewish, Christian and Muslim thought and overlaps with African notions of ubuntu and Africanisation. The study clarifies how religions and culture support and sometimes threaten educators' obligations and right to dignity.

Examining how the philosophies of Kant, Rand, Arendt, Existentialists, and Post-modernists treat human dignity links it to dignified conduct, freedom of choice, and empowerment.

Legal analysis of international charters, foreign constitutions and cases o clarified salient features of human dignity. In South African law educators can address dignity violations by prosecution, civil litigation, or appeals to constitutional structures, their vulnerability to dignity violations is balanced by their relatively superior position of authority in the classroom, and the link between their right to dignity and their duty of care is discussed.



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The study explores interaction between the educator's right to dignity and curriculum design, school management and organization, work load and environment, availability of support structures, policy framework, technological development, the HIV/ AIDS pandemic, and educational research.

Educators questioned displayed wide-ranging ideas about rights and dignity, but generally felt their own rights were undermined and not supported. They appeared poorly informed about rights, but had a sense of what to do if these were infringed. Superiors, colleagues, parents, learners, and the wider community may violate rights, but colleagues also provided the strongest support.

Several practical strategies for promoting or protecting the educator's right to dignity, for preventing or addressing violations, and proposals for further investigation are discussed.

By clarifying the law regarding the educator's right to dignity this study adds to education law, and concludes that adequate legal safeguards exist, but that educator ignorance about rights may hamper access to them.



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CHAPTER 1 - INTRODUCTION

1.1 INTRODUCTORY REMARKS

From the very start of the Union of South Africa in 1910, race has always played a significant role in most government policies. The “Native question” shaped political, economic and administrative planning at government level. After the victory of the National Party in 1948 there was a sharp increase in the polarisation of South African society along racial lines, and progressive oppression of all other race groups except whites through the systematic introduction of legislation and policy that was intended to centralize all power and economic supremacy in the hands of the whites, and to effectively separate ethnic groups. The Eiselen Commission (1949-1951) paved the way for the passing of the Bantu Education Act in 1953 that created a separate and distinct system of education for blacks that was different (and inferior) to that of whites (Nasson and Samuel, 1990:18). By 1976 blacks outside of the so-called homelands had been deprived of all meaningful political rights and were subjected to a plethora of dehumanising laws and regulations. Inside the homelands blacks enjoyed a measure of limited self-determination, but usually under draconian puppet “governments” that perpetuated similar human rights abuses and limitations to those found in the rest of South Africa. Other “non-white” South Africans were also deprived of full participation in government, and restricted in terms of most normal human rights such as a free choice of where to live or attend school.

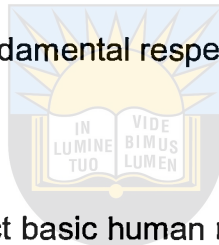
In 1976 this repressive regime was fiercely challenged by students when the government made the use of Afrikaans as a language of instruction compulsory in township schools. The response of the government to student unrest was immediate and harshly brutal. The Soweto uprising ensured that “the silenced multitudes had found their voice, and the voice proved angry and unafraid” (Davidson, 1978:371). Ten years later, similar unrest gave the Nationalist government a justification for imposing a lengthy state of emergency in 36 magisterial districts on 21 July 1985, during which the abuse of human rights reached atrocious levels under the cloak of restrictions on information and movement.



This long history of oppression, characterized by gross human rights abuses and institutionalized discrimination, contrasts sharply with the intentions of developing a unified, non-racial South African society as described in the preamble to the Constitution (Constitution of the Republic of South Africa Act, Act 108 of 1996). Accordingly, South Africa can be aptly described as a transitional society, one emerging from a past repressive regime (Mubangizi, 2004:63).

Since the passing of a new interim constitution in 1994, South African society has undergone a process of ongoing transformation from a largely authoritarian state based on parliamentary sovereignty and very limited franchise to a more democratic society in which the protection of human

rights is a fundamental value enshrined in a constitution (De Waal, Currie and Erasmus, 2001:2). This ongoing transformation has impacted strongly on education and, understandably, much has been said and written about promoting the rights of learners and parents in education. However, there has been very little published about the rights of educators. This is significant because as Mubangizi (2004:64) cautions, "One cannot enjoy or enforce rights that one is not aware of." Understandably, however, given our history, the pre-eminent concern of educators in the area of human rights must surely be to instil in their learners a fundamental respect for human rights.



The need for educators to reflect basic human rights values in their teaching, whilst adding to the pressures of their job, remains a "very necessary endeavour indeed" (Coutts, 1996:62). Green (2004:108) cites several authorities in support of the important role that should be played by formal education in promoting and developing a culture of human rights and what she calls "civic virtues". Davidoff and Lazarus (1997:9) express the view that it was unrealistic to expect young people to promote dignity and self-respect if they are treated "in ways that are humiliating and cynical" in school.

Four fundamental rights underpin all the other rights enshrined in the South African Constitution (South African Constitution Act, Act 108 of 1996): these are the rights to life, freedom, equality and human dignity. Section 10 of the Constitution, which deals with the right to dignity, is noticeably succinct and

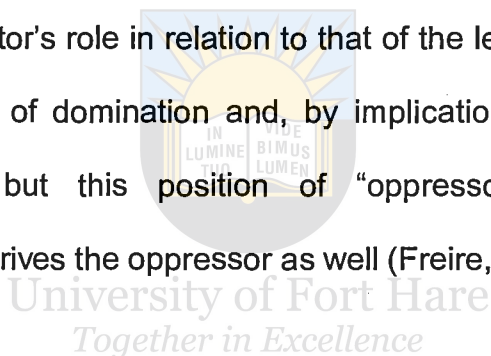
does not seek to define dignity. This then invites further examination in order to clarify the implications of this right in various contexts. It becomes clear, when other rights are examined, that the right to dignity impacts on many other rights and is a “pre-eminent value in the Constitution, even more so than the right to life” (Devenish, 1998:51).

Nicholls (in Coutts, 1998:32) stresses that the concept of professionalism recognizes respect for the individual and regards human judgment as a legitimate basis for action. He accordingly appeals for the recognition and empowerment of educators, who are constantly required to exercise human judgments in the interest of other human beings whom society has placed in their care, as professionals. This clearly implies recognition of the dignity of teachers as professionals, in addition to their basic right to dignity as human beings. However, even before one can explore this specialized application of the concept of dignity (professional dignity), it is necessary to establish whether educators do in fact enjoy adequate recognition of their basic right to dignity as human beings.

On the other hand, there are many factors, both within the education system and within the context of the educator’s work environment, that could potentially infringe the educator’s right to dignity (Nicholls in Coutts, 1998:32). These factors include issues of decision-making and control,

accountability, interpersonal relations, changes in role and status, working conditions, and classroom management.

Educators also find themselves in the unique situation of working primarily with children who are both more vulnerable and less accountable than other members of society. This automatically creates an unequal relationship in which the rights of both parties have to be especially carefully regulated. In some ways the educator's role in relation to that of the learner can easily be characterised as one of domination and, by implication, restriction of the rights of learners, but this position of "oppressor" inevitably also dehumanizes and deprives the oppressor as well (Freire, 1993:49).



If educators are frequently required to carry out policies and procedures that they have little say in developing, and have to implement decisions into which they have not been able to make an input, their autonomy and dignity will be threatened. If they are exposed to insulting and threatening behaviour without adequate recourse to protection or remedy, they will also be deprived of the normal dignity rights enjoyed by most professionals. If this is also compounded by unsatisfactory or debasing working conditions (for example, schools without toilets, unsafe buildings, intimidation by learners and similar challenges), it can be argued that educators would be deprived of the right to dignity. Whilst it is sometimes claimed that these are threats faced by educators, it is not clear to what extent this is the case nor to what

extent these conditions would actually constitute an infringement of educators' legal right to dignity.

It is against the background of these issues that this study will seek to clarify the nature of the right to human dignity as it applies to the educator as a professional engaged in the core business of education.

1.2 STATEMENT OF THE PROBLEM



This study concerns itself with the problem of understanding the meaning and application of the right to human dignity as enshrined in Chapter 2 Section 10 of the South African Constitution with regard to educators in the educational situation. It seeks to address the question:

“How is the educator’s right to dignity protected and promoted in the workplace?”

and hence also the following questions:

- (a) What is the meaning of human dignity when applied to the role of the educator in the educational situation? How can it be defined in terms of historical, philosophical and legal antecedents?

- (b) What needs to be done to ensure that the educator's right to dignity is upheld? How is this right enshrined and provided for in common law, legislation and case law?
- (c) What is the actual current situation in schools regarding the upholding of this fundamental right for educators? What sorts of infringement of this right are currently taking place in schools?

In order to achieve clarity and focus, the research problem can be rephrased as a single question:

In the light of prevailing conditions regarding the educators' right to human dignity, how can this right be actualized in their professional context?

1.3 PURPOSE AND OBJECTIVES

The purpose of this study is to clarify the constitutional right to human dignity as applied to the professional educator in practice. The study uses an analysis of legal and related literature and interview data gathered from practising educators by means of structured interviews in order to arrive at a comprehensive understanding of the problem. The intended outcome of this study is a clearer understanding of the factors that lead to infringements of educators' right to dignity and those that promote and protect the basic dignity of educators, resulting in a concise set of guidelines for best practice.

Although the concept is examined elsewhere in this study in greater detail, the right to human dignity is defined in this study as the fundamental human right enshrined in Chapter 2 Section 10 of the Constitution of the Republic of South Africa Act (Act 108 of 1996).

An educator is tentatively defined as any person that educates, trains or provides professional educational services at an institution. This definition is consistent with those used in various pieces of legislation affecting educators in South Africa. This study will seek to clarify a number of key concepts:

- (a) Rights
- (b) Human dignity
- (c) The right to dignity
- (d) The educator's specific right to dignity
- (e) The educational situation.

It will also seek to identify and describe:

- (a) Specific ways in which the right to dignity manifests in the particular circumstances of the educator's professional activities,
- (b) How this right can be infringed in the context in which educators work,
and
- (c) What can be done to promote and protect this right.

1.4 RATIONALE AND SIGNIFICANCE

The impact of this study is especially significant because of the central role of human dignity in all other rights (Davis, Cheadle and Haysom, 1997:70). Since the right to dignity is fundamental to all other personal rights, if this right is undermined or violated with regard to educators, then all their rights are vulnerable to violation. Conversely, the promotion and protection of their right to dignity is a logical starting point for any programme aimed at protecting and promoting the rights of educators (Alston, 2004: 4).

Unfortunately there is ample evidence that public awareness of the Bill of Rights amongst South Africans is at a very low level (Mubangizi, 2004:62). Clearly this lack of awareness contributes to a climate in which rights can easily be violated or abused. This study will contribute to the growing body of literature that seeks to propose ways to make knowledge of human rights more accessible to the average citizen.

In order for educators to function most effectively as custodians of culture and facilitators of learning, they need to be able to exercise appropriate disciplinary control which implies recognition of a measure of authority (Shin and Koh, 2007:289). According to Van der Westhuizen et al (2008:211), discipline in the educational context assumes "the voluntary obedience of the child to the influence and leadership of the mature adult educator",

thereby implying recognition of and respect for the dignity and authority of the educator.

If the rights of educators are violated or not respected, then they are more likely to undermine or violate the rights of the parents or learners with whom they work. As Budlender (1996:2) points out, "Nothing teaches us about rights as effectively as the opportunity to enforce our own rights. Once I have been able to enforce my own rights effectively, I will better understand the need for all to have rights." If symbolic rights are not effectively implemented in terms of clear programmes and actions, the real danger arises that rights can lose their significance as standards of justice, and people will no longer have any confidence in making rights claims. This could in turn lead to the tendency to resort to other less satisfactory ways of meeting their demands (Meyer, 1998:211).

There is a growing body of research that explores the role of human rights in education. The particular significance of this study lies in its focus primarily on the rights of the educator, which is important, because of the critical role educators play in shaping and transmitting a culture of respect for human rights.

Although it must be recognized that the human rights of the different role players in education are inter-dependent and difficult to isolate, it is possible

to examine the way in which each group of role players has been treated in the literature. There has been considerable focus on the rights of learners, and Prinsloo (2005:7) has developed an extensive analysis of the legal framework of learner rights in relation to the issue of school safety. The rights of parents have less frequently the focus of studies but there is considerable case law on the rights of parents especially in relation to the payment of school fees. However, a review of the literature revealed no study that focused specifically on the rights of educators, and especially on the educator's right to dignity.



Prinsloo and Beckmann (1988:32) point out that any analysis of rights and duties in education has an inevitable impact on the task description of the parties involved in education. Clearly this is one of the expected outcomes of this study as well. A better understanding of the educator's right to dignity must necessarily influence what we will expect of educators, learners and parents.

Because this research attempts to place a legal issue in perspective, it is expected that it will not only "inform policymakers and practitioners of the meaning and status of the law, but [will] also seek to raise questions for future research" (Russo, 2005:42).

It is also assumed that the findings of this study will contribute significantly to the formulation of guidelines for teacher training and the management of best practice in respect of educators' rights.

1.5 SCOPE AND LIMITATIONS

This study focuses specifically on the educator whilst he or she is fulfilling the role of professional educator and performing educational activities. It will therefore not deal with the rights of the educator as worker or employee in terms of general labour legislation, but will only deal with labour-related issues as they directly impact on the task of educating, teaching or training.

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Whilst it is essential to obtain an international or comparative perspective, this study will be focused specifically on educators in practice in South Africa, and especially in the East London district in the Eastern Cape.

This study is also limited in respect of the size of the sample used for the field interviews. A maximum of five educators was interviewed at each school, and only six schools were used in the study.

Since it only deals with a single right in the Bill of Rights, this study is clearly limited in scope, but it will become apparent that this particular right underpins and finds specific expression in most of the other socio-economic and personal rights listed in the Bill of Rights. The right to dignity is one of the non-derogable rights around which other rights revolve.

The underlying empirical question of the extent to which educators are aware of their rights is not addressed rigorously in this study. However, it moves from an assumption, based on anecdotal observation, that such awareness is relatively limited. This untested view is also supported by other commentators (Alston, 2004:2).

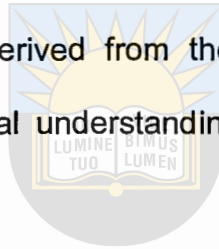


1.6 METHODOLOGY

1.6.1 The approaches used

This study uses two methods of gathering information. Relevant literature was extensively reviewed and examined from a legal analytical perspective in order to hermeneutically address the core question. Thereafter a structured interview was administered to a sample of practising educators at selected schools in order to clarify the perceptions and experiences of educators regarding their right to dignity as it manifests in their workplace. The legal

analytical approach was used in order to clarify the concept of human dignity as it is expressed in the laws governing educators at work, and as it is applied and interpreted by the courts. The literary analysis helped to broaden the philosophical and cultural understanding of the concept in order to shed light on possible ways that human dignity could be understood and applied to and by educators. Structured interviews of teachers in the school situation were used as a form of triangulation to provide a practical perspective on the issues examined in the legal and literary analyses. In other words, it was intended that the field data derived from the interviews would serve to validate or refute the theoretical understanding derived from the literature study.



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The interview method used is best described as “standardized open-ended interviews” (Patton quoted in Cohen, Manion and Morrison, 2000:271).

Standardisation has the advantages of:

- (a) increasing the comparability of responses,
- (b) providing comprehensive response data for each participant,
- (c) reducing interviewer effects and bias,
- (d) allowing for review of the instrumentation used in the interviews, and
- (e) facilitating organization and analysis of data.

The results from the interviews are subjected to both a quantitative and a qualitative analysis. The quantitative analysis comprises a brief

quantification of findings in which the findings are compared numerically or statistically to expected probabilities in some instances. Whilst it is unusual to subject interview data to quantitative analysis in the case of small samples, the structured nature of the interviews did allow, in this instance, for some of the responses to be quantified and compared numerically.

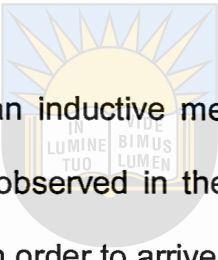
The qualitative analysis consists of a content analysis of the respondents' remarks. Content analysis is the term used to describe a number of different approaches to analyzing textual material for the presence of pre-selected terms or markers in order to assess any particular dominant themes or biases (Leedy and Ormrod, 2001:155).



The findings that emerge from this analysis are also synthesized into several themes or patterns, leading to a statement of practical guidelines for ways in which the educator's right to dignity can be promoted and protected in practice. In other words, this study is concerned both with understanding meaning and with delivering change.

It is in the nature of legal research that the findings will be prescriptive rather than purely descriptive, and it is therefore expected that the result of this study will tend to describe what *should* be done in educational institutions rather than merely identifying what *is* done.

Legal research is a legitimate form of historical-legal research that “is neither qualitative nor quantitative. In other words, it is a systematic investigation involving the interpretation and explanation of the law” (Russo, 2005:42). Legal analysis is a process of identifying the relevant issues involved in a set of facts, determining what laws or rules are applicable to the underlying issue, analysing the application and drawing a conclusion (Putman, 2004: 26).



The hermeneutic approach is an inductive method of allowing the text to speak for itself. Passages are observed in their context and compared to equivalent or similar passages in order to arrive at a clear interpretation. The researcher seeks to understand the text by constantly relating the text to practice and to similar texts, and then returning to the text in a circular process that promotes increasing understanding that is never final but is suitably rigorous (Van Niekerk, 2002:42).

The principles involved in the legal interpretation of statutes apply. Edwards (in Hosten, Edwards, Bosman and Church, 1995:445ff) discusses these extensively. In interpreting any piece of legislation, it must be considered in the light of four important guidelines:

- (a) The law must be interpreted in such a way that it does not conflict with or deviate from the **provisions of the Constitution.**

(b) The law must be interpreted consistently with **prior interpretations** given in higher courts (the so-called *stare decisis* rule).

(c) The **intention of the legislature**, as indicated by the plain meaning of their words, is to be respected, and

(d) The words are to be given their **ordinary, grammatical meaning** within their context unless such an interpretation would lead to an absurdity (the literal construction approach), or unless the legislation provides a specific definition of the term indicating the way in which it is used in that particular piece of legislation. (An example of this is the way in which the South African Schools Act, Act 84 of 1996 defines the term “parent” to include, legal guardians, persons having legal custody of a child and persons undertaking to fulfil the responsibilities of parents, guardians, and those with legal custody.)

1.6.2 Literature reviewed

A separate literature review is not included as part of this study since the bulk of the study is in fact a detailed literature review because of the methodology used.

The literature reviewed in this study falls into three broad categories:

(a) **Educational sources** that will help to shed light on and clarify the essential characteristics of educational practice. In this regard the comments of Schroeder in his foreword to Prinsloo and Beckmann (1988) are typical. He identifies four factors that have had a marked impact on professional practice, referring to professional accountability, mobilization of parents, increased critical awareness and more sophisticated teacher organizations. Each of these has implications for the educator's right to dignity.



(b) **Original legal sources**, starting with the Bill of Rights in the South African Constitution, and including legislation and cases, can help to clarify how the right to dignity is expressed in particular legal contexts. In this regard, for example, the National Education Policy Act (Act 27 of 1996) obliges the Minister to consult with educator organizations about proposed education policy, thus promoting the dignity of educators collectively as partners in education. The Employment of Educators Act (Act 76 of 1998) regulates conditions of appointment, termination and discipline that all impact on the educator's right to dignity. A typical example of relevant case law is *Larbi Odam v MEC for Education (North West Province)* 1998(1) SA 745 (CC), in which the right of non-South African educators to protection of their labour rights was confirmed, and hence the right to dignity was applied to all educators, including non-South Africans.

(c) **Legal commentary** is particularly important as it summarizes how law has been interpreted and applied. For example, Alston (2002, Unpublished thesis) deals with the dilemma of limiting the right to freedom of expression in order to protect individuals' dignity from being offended, and concludes that in "...sensitive areas, limitations cannot be used with justification merely to protect against oversensitive reactions from some."

1.6.3 The research instrument



The interview protocol consists of 9 demographic items in which respondents simply have to indicate their gender, their rank, their years of experience, the type of school and the type of locality it is situated in, their area of instructional specialization, their home language, their level of qualification, and whether they have had any training in educational law. It also includes open-ended items that ask respondents to identify or describe actions and events on the part of various role players that:

- (a) Left them with a sense that their dignity was particularly respected and upheld, and
- (b) Left them with a sense that their dignity as human beings had been violated or disrespected.

They were also asked to explain why these events or actions had that particular effect. Items are deliberately open-ended in order to avoid posing “leading questions” that would pre-empt results.

A concern in interview research is the difficulty of ensuring honest answers from respondents. This honesty can be significantly improved if the respondents are assured of confidentiality and are afforded the opportunity to withdraw from the research, as was done in this study (see 1.6.5 below).



1.6.4 Selection of respondents

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Schools were drawn from the Education Management Information Service (EMIS) database for the East London district. Only ordinary public schools were considered and the sample was pre-determined to include only six schools comprising one combined, two secondary and three primary schools in order to cover a broad spectrum of school types. It was also decided that the selection should include only schools with an enrolment greater than 200 learners to ensure that the school would have a large enough staff and infrastructure to allow for the possibility of the sought-after data being available. It is feasible that there could be differences between larger and smaller schools regarding the promotion and protection of human rights, because smaller schools may display higher levels of intimacy and team

cohesiveness, and shorter lines of communication. However, in terms of the more formal organizational aspects of promoting and protecting staff rights, it is assumed that larger schools have more resources and fewer pressures on individual staff members. Consequently the study focused on larger schools. The selection was also expected to include at least one rural school, one urban school and one township school to cover the full range of school environments within the district. The abovementioned criteria were used to allocate schools into appropriate strata. For example, all the township schools with an enrolment of over two hundred were listed alphabetically and a colleague was asked to pick a number within the range covered by the number of schools. The corresponding school was then selected. Where that school was not available a second selection was made in the same way. This model is referred to as stratified simple random sampling (Blalock and Blalock, 1968: 288).

Five educators other than the principal were drawn at random from the staff list (starting at any point on the staff list and selecting every fifth name) at each of the sample schools to complete the interviews. In schools with a staff complement of less than seven, only four educators were drawn.

1.6.5 Ethical considerations

In any research using human subjects it is vital that the well-being and dignity of those subjects (persons) should be scrupulously protected. At no stage should participants in the research be exposed to any avoidable or unnecessary harm, or risk, or be prejudiced in any way. It is also expected that participants will be fully informed of the nature and purpose of the research so that their voluntary decision to participate is as fully informed as possible.

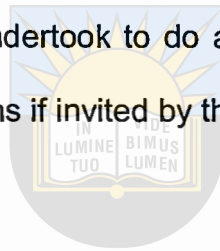


When using interviews in research, respondents are expected to take the risk of compromising their privacy. In this particular instance respondents were required to sign a declaration indicating that they participated in the research of their own free will, and allowing the researcher to use their responses subject to respecting their anonymity. In turn they were given a pre-interview briefing in which:

- (a) the objectives of the research were explained,
- (b) the interview procedure was clarified,
- (c) they were assured of their anonymity and the confidentiality of their utterances being respected,
- (d) they were assured that they can withdraw without penalty at any stage from the interview, and
- (e) they were told how the findings would be summarized and reported.

Respondents were each given the opportunity to avail themselves of a confidential debriefing counselling session conducted by the researcher if they felt that they wished to report any serious infringement of their human rights. None of the respondents requested such a session.

An undertaking was made with each school that on conclusion of the research the school would be supplied with a summary of the overall findings, and the researcher undertook to do a presentation to the staff on the findings and their implications if invited by the school.



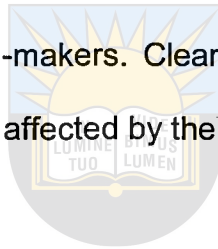
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1.7 CLARIFICATION OF TERMS

1.7.1 Educator

The term “educator” is defined slightly differently in each piece of relevant legislation, but all the pertinent definitions contain common elements of teaching, training or rendering professional educational services in an institution. An educator is tentatively defined in terms of legislation as any person who educates, trains or provides professional educational services at an institution.

Education theory uses the terms “educator” and “teacher” interchangeably, but this study will use the former term, except in direct quotations. In such sources educators are seen as possessed of specialized and up to date knowledge, particular skills and to be operating from a specific value base (Dachs in Coutts, 1995:96-7). Lyons (in Coutts, 1995:116) points out that educators play a diversity of roles, being simultaneously the managers or facilitators of the learning environment and the instructors within that environment, as well as motivators, disciplinarians, administrators, resource guides, evaluators and decision-makers. Clearly these roles impact on the dignity of the role player and are affected by the role-player’s dignity.



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A synthesis of legal and educational views of the educator leads to a working definition ***of someone who has been specifically trained and is formally qualified to use their knowledge of learning theory and of a specific subject in order to assist and support others in a planned and systematic manner to learn within a formal or regulated setting.***

1.7.2 Professionalism

Nicholls (in Coutts, 1995: 31) points out that political and administrative aspects of the way in which education is provided can either empower educators as professionals or restrict their effectiveness as practitioners. He

then proceeds to expand on the concept of professionalism, stressing that it is particularly as professionals that educators are often disempowered.

According to Nicholls, professionals are committed to shared professional commitment to professional ideals that include:

- (a) acquiring a high level of practical and theoretical knowledge and skills to enable them to make their own judgments about appropriate practice,
- (b) self-regulation according to standards and an ethical code developed by the profession itself,
- (c) a strong ethos of service rooted in the interests of the client, and
- (d) a strong sense of professional autonomy.

It is clear that these attributes both require and maintain a high level of dignity.

Prinsloo and Beckmann (1988:i) describe the teacher as “a professional educator (i.e. a person who educates for gain)”. Although this may be a narrow view of professionalism it does imply that, like all professionals, educators bear a particular onus to be aware of the legal rights and responsibilities associated with their field. This is clear from *S v de Blom* 1977(3) SA 513 (A), which clearly establishes the principle that practitioners within a particular field are reasonably expected to be fully conversant with the law applicable in that field.

A broader view of professionalism in the field of education is that captured in the South African Council of Educators' (SACE) Code of Professional Ethics which is cited as an example of typifying education as a profession in terms of adherence to ethical standards (Rossouw and De Waal, 2004: 285). The code fulfils four important functions with regard to establishing professionalism:

- it acts as a benchmark laying down common standards of professional and moral behaviour;
- it encourages consistent conduct by members of the profession;
- it undertakes to discipline non-compliance; and
- it protects the reputation and image of the profession by enabling educators to conduct themselves “in a proper and becoming way” so that they do “not bring the teaching profession into disrepute.”

1.7.3 Dignity

In the South African Constitution the right to dignity is not elaborated on, but O' Regan J in *S v Makwanyane* 1995 (3) SA 391 (CC) equates dignity to “an acknowledgement of the intrinsic worth of human beings.” In *Ferreira v Levin* NO 1996(1) SA 984 (CC) Ackermann J also pointed out that dignity included “the fact and awareness of” the uniqueness of each human being, especially in terms of their unique talents.

In terms of delictual law an *actio iniuriarum* allows for the awarding of damages for injury to feelings, including injury to one's dignity (*dignitas*) and one's reputation (*fama*) in the case of defamation. Dignity in common law is identified in terms of a two-fold test (Burchell, 1998:329): the actual (subjective) impairment of the plaintiff's self-esteem, and the act should have been offensive in terms of objective reasonableness.

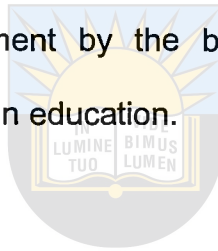
In African philosophy, dignity is rooted in the concept of *ubuntu*. This is not a fixed dogma but rather a state of being (Ramose in Coetzee and Roux, 2002:643). Ubuntu gives rise to the widespread aphorism *umntu ngumntu ngabantu / motho ke motho ka batho* (A person is a person through other people). This expresses the fundamental perception that one's worth and human identity are only evident in relation to a relationship that recognizes the worth and identity of others. Denigration and disrespect of others is denigration and disrespect of oneself. "Thus the concept of human dignity is far from alien in traditional African philosophy" (Ramose, in Coetzee and Roux, 2002:644).

1.7.4 Law

Oosthuizen (2003:4-7) notes that several theorists have attempted to typify the essential nature of law and have variously concluded that it is rooted in:

- (a) Retribution (Dooyeweerd)
- (b) The creation of order (Van Zyl and Van der Vyver)
- (c) The maintenance of harmony (Van Wyk)
- (d) Official service (Stoker)
- (e) Security in office (Du Plessis).

Based on this, Oosthuizen (2003:9) typifies the law of education as the creation of a secure environment by the bearers of authority for the protection of all parties involved in education.

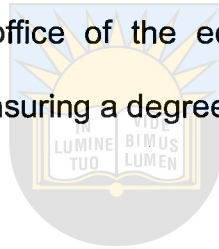


With regard to the educator's right to dignity, there needs to be a means to protect that dignity and an appropriate means to remedy violations of dignity, which is in keeping with Dooyeweerd's concept of retribution.

It is also essential for the effective promotion of teaching and learning in schools that there be order and harmony, and infringements on the dignity rights of either educators or learners will inevitably disturb such order and harmony. Freire (1993:55) goes so far as to equate a pattern of schooling or education in which learners are dominated (and, by implication, deprived of a measure of dignity) to "violence".

Within public schools educators render an official service, and this clearly needs to be regulated, both in terms of the conduct of the educators and the conduct of others towards them. In terms of Stoker's view, law would be necessary to regulate the dignified behaviour of educators and to protect their dignity.

In a similar manner the notion of law as providing security in office is necessary for protecting the office of the educator and providing clear parameters of operation, thus ensuring a degree of security.



Putman (2004:3) adopts a more pragmatic view and defines law as “the enforceable rules that govern individual and group conduct in society.” In this sense he sees the function of law as being threefold:

- (a) to establish standards of conduct
- (b) to set procedures for governing conduct, and
- (c) to determine remedies when rules of conduct are not upheld.

Clearly-established standards of conduct for educators ensure that they can be entrusted with a measure of authority that further enhances their dignity. At the same time rules of conduct protect dignity by preventing people from acting in ways that would infringe the rights of others.

Waliggo (2005:1) draws a useful distinction between law and morality. Law he defines as “the written or unwritten body of rules largely derived from custom and formal enactment which are recognized as binding among those persons who constitute a community or state, so that they shall be imposed upon and enforced among those persons as appropriate sanctions.” Public morality on the other hand is seen as, “the total set of ethical-moral, legal-human rights values, customs or traditions which define, describe, promote and defend a given society’s or community’s common good, shared values and vision, their public ethos and the common pursuit of the good in order to achieve their full potential and civilization.” It would appear that although the right to dignity is legislated within law, it is also clearly an element of public morality.



This study will examine the ways in which law in its various forms operates in terms of Putman's threefold characterization with regard to educators' dignity rights. It will also seek to analyze the contribution of law to the promotion of educators' right to dignity in relation to the various theoretical perspectives identified by Oosthuizen.

1.7.5 Rights

In formal, codified law rights are stated in the form of norms or rules (Prinsloo and Beckmann, 1988:26). For example, Section 5 of the South African Schools Act (Act 84 of 1996), in setting out the rules and obligations of schools and parents relating to the admission of learners to public schools, also implicitly outlines various rights relating to admission to school, such as the right not to have to undergo any form of admission testing. In subjective law (the practice and interpretation of law on the basis of common law and legal principles), the term refers to the relationship according to which a legal subject interacts with legal objects or other legal subjects. Thus I, as legal subject, have a right to information about myself (legal object) and the right to expect that this right of access will be respected and upheld by others (legal subjects).

Van der Vyver (1973:266) identifies five ways in which the concept “right” is used in law:

- (a) The competence to be a legal subject and bear the attendant rights and duties associated with a given office e.g. the right to be an educator once appropriately qualified and appointed, and the right to be allowed to practice one’s profession without undue restriction or interference.
- (b) Contractual capacity, or the ability to conduct legal business e.g. the right to buy and sell property, or in the case of the educator the right to be

remunerated and to have one's reasonable instructions followed by learners when one has met one's obligations in terms of preparation, marking and other expectations.

- (c) The ability of a subject to engage in litigation as complainant or defendant (*locus standi in iudico*). In the case of educators this could for example extend to the right to lay a charge of defamation or *crimen injuria* if treated with gross disrespect in the classroom.
- (d) The claim of a legal subject to enjoy or use a legal object, the subjective right to an object e.g. the right to education for learners, or the right of an educator to be treated with dignity.
- (e) A lawful action by a legal subject with a legal object e.g. the right to drive a car, or the right of an educator to exercise disciplinary steps.

Rights can also be either positive and active (the right to do or have something) or negative (the right to be left alone and not hindered) (Prinsloo and Beckmann, 1988:32). Thus educators have the right to be actively treated with dignity, and the passive right to not be insulted or demeaned.

1.7.6 Human rights

Human rights as a specific concept have developed in reaction to instances of abuse and domination by totalitarian states, and as Neethling (1971:240) states, they arise from a philosophical assumption that there are certain innate or God-given characteristics that are inalienable and constitute part of

every person's essential nature. Hence the right to dignity tends to be linked to the very essence of being human, and is regarded in most instances as being due to all people, simply by virtue of their being human.

The concept of human rights has developed gradually since the Renaissance and has been characterized by different emphases at different times. In its earliest form it emerged as a plea for the right to justice and fairness. This was later eclipsed by a focus on the right to freedom when the absolute autocracy of monarchs became widely questioned. Subsequently, after the French Revolution in particular, the rise of democratic ideals in contrast to rigid class barriers led to an emphasis on the right to equality. More recently, in the late nineteenth and especially in the twentieth centuries, the widespread awareness of genocide, slavery and other forms of inhumanity has given rise to an emphasis on the right to dignity.

It is therefore not surprising that human rights are firstly defined as claims by the individual, as a subject of the state, against the authority of the state requiring that the state should do, or not do or allow or not allow something (Prinsloo and Beckmann, 1988:30). This also applies to the right to dignity. In the first instance the individual has the right to be treated with dignity by the state and its various agencies.

It is clear, however, that human rights violations and claims are not only restricted to the relationship between an individual and the state, but that human rights claims can also be directed at other individuals (Moosa, 2002:37).

Beckmann and Nieuwenhuis (2004:59) argue that rights arise out of the essential responsibilities and obligations that rest on all humans. These include obligations towards the transcendent (God, according to them), the self, and others. They point out that the assumption that there are rights that are automatically part of the human condition implies certain things about human rights. If human rights are a consequence of our being human, it means that they are:

- **Natural** in that they are not human or cultural inventions, but inherent;
- **Universal** in that they will be the same in every culture or nation;
- **Equally applicable** to all people, irrespective of their differences;
- **Inalienable** in the sense that nobody can consciously separate themselves from their rights and no state can remove them from any person.

Rights are also seen as the link between the principles that guide individual conduct and the principles that guide an individual's relationships with others because rights are what allow individual freedom within the social context of interacting with other people, according to the Objectivist philosophy of Ayn

Rand (Rand, 1964:92). As such, acting by right is the opposite of acting by permission because acting by right is free of externally imposed terms and conditions. This sphere of freedom for each individual must be defined if there is to be any form of social interaction; and if the society is to be moral (the only practical option for a society to survive), the definition of rights must be based on moral principles (Peikoff, 1991:351-2).

This study will examine the right to dignity in the light of philosophical and religious views on the nature of man, and of international and comparative law in order to determine the natural, universal and inalienable nature of the right. If these characteristics are accepted it implies that:

- educators as human beings have as much right to dignity as any other role players in education;
- that the right to dignity applies to educators in all settings and societies;
- that all educators, irrespective of rank or status, have an equal right to dignity; and
- no organization, regulation or circumstance can be used to deny educators' access to this right.

CHAPTER 2 – THE BACKGROUND AND CONTEXT IN WHICH EDUCATORS EXERCISE THEIR RIGHTS

2.1 THE SIGNIFICANCE OF CONTEXT IN RELATION TO THE EXERCISE OF RIGHTS

The educational situation is not isolated but is always embedded in a social, philosophical and cultural context. It is also clear that human rights operate specifically in relation to the interactions between individuals, and between individuals and the state. Thus, in order to examine how educators are able to freely exercise their right to dignity, it is essential that we understand the particular nature of the context in which they seek to exercise that right. This context has several dimensions that can impact either positively or negatively on the right to dignity of educators.

Firstly, educators operate within a social context, the rapidly transforming South African society in which multi-culturalism and economic challenges are dominant features.

They also operate within a particular politico-legal environment characterized by constitutionalism and the rule of law on the one hand, and emerging trends in case law on the other.

Educators cannot ignore philosophical trends and specific values, and in the present context the conflict between divergent philosophical approaches and the potential impact of post-modernist thinking are especially important.



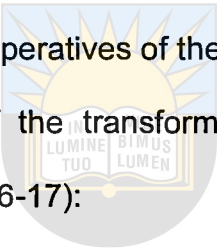
There are furthermore a set of factors that are particularly linked to education that can exercise an influence on the rights of educators such as the job description of educators, patterns of education management, curriculum change and specific job pressures.

2.2 CONTEXT OF CHANGING SOCIAL PARADIGMS

2.2.1 Social transformation in a post-apartheid state

The right to human dignity has not always been generally upheld and recognized in South Africa, where it has had a “checkered past” because of the oppressive political and constitutional system that allowed a ruling

minority to deny the majority of the population basic human rights (Bray, 2004:37). It is against this backdrop of a recent “legacy of human rights abuses” (Mubangizi, 2004:63) that South Africa can be described as a transformational society, one that is emerging from past repression. This is the key to understanding the need to protect human rights (Mubangizi, 2004:64). The preamble to the Constitution sets out the intention of changing the country into an open and democratic nation, and it therefore “demands” that our society be transformed (Chaskalson, 2000:199). In particular, the four central imperatives of the preamble to the Constitution have been at the heart of the transformation process (Muthayan in Lawrence and Moyo, 2006:16-17):

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- The logo of the University of Fort Hare is a circular emblem. It features a central sun with rays emanating from it. Below the sun, there is a banner with the Latin motto 'LUMINE DIUMUS TUO LUMEN'. The entire emblem is set against a light blue background with a subtle grid pattern.
- (a) healing past injustices
 - (b) reconstructing a divided nation into a unified democracy
 - (c) cultivating a human rights-oriented culture, and
 - (d) nurturing pluralistic unity in a diverse country.

This has given rise to an unprecedented flurry of legislative and policy changes in many arenas, and particularly in education. In the words of one commentator, “We are aware that the emergence of new educational policies in recent years has led to a situation where principals and school management teams struggle to stay abreast of developments” (Sizani, 2001, in Eastern Cape Department of Education: Manual for School Management).

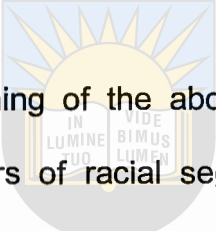
The many changes in legislation and policy have also been accompanied by related structural and organizational changes as the old institutions created to implement and maintain apartheid have been systematically replaced by new institutions designed to protect and implement the desired changes. In many instances this has also meant amalgamating formerly segregated structures into single non-racial entities. In the case of education in the Eastern Cape, this has been an extreme case where elements from seven former Departments of Education have had to be absorbed into a single Education Department.



Transformation has not only focused on complex political and administrative changes, but has dealt "largely with much deeper fundamental social and cultural change" (Bray, 2004:38). In fact, Malan (1995:5) goes so far as to say that the "realm of attitudinal modification" is the most significant challenge. He was speaking specifically in the context of transformation within the military, but this is almost certainly true of all spheres of society. He also rightly points out that the issue of attitudinal change is easily overshadowed by the "administrative burden of amalgamation".

At a formal level transformation has operated in the realm of policy, legislation and institutional reorganization, but it has also been understood to operate at the individual level with each individual being a

potential agent of change and the transformation of individuals being “an integral part of institutional and structural change” (Muthayan in Lawrence and Moyo, 2006:12). At times this has placed particular demands on educators, and has impacted both negatively and positively on their right to dignity. “It is especially in education that these challenges are most urgent, but also offer the most rewarding and lasting opportunities” (Bray, 2004:38).



Amongst the most far-reaching of the above-mentioned changes has been the removal of barriers of racial segregation and the resultant increase in cross-cultural contact. South African society has changed from a plurality of parallel monocultures to a vibrant hetero-culture in a very short space of time. In a school setting this can give rise to clashes between the normative expectations of different groups. Racism is frequently encountered in schools and is perpetrated by educators, school management, learners and parents as reported by educators (De Wet, 2004:32-34).

The process of desegregation and amalgamation has often given rise to high levels of frustration. For previously disenfranchised and deprived non-white South Africans, the persistence of inequalities of opportunity well after the transition to democracy is a source of frustration. At the same time the new democratic dispensation seems to offer fewer

benefits and opportunities for white males, particularly as far as employment is concerned, especially in the public sector (Malan, 2005:5). In divided societies there is typically a poor response to government appeals for cooperation towards common goals.

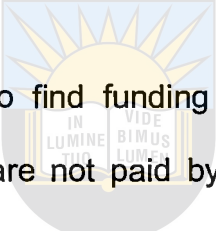
This is also compounded by the uncertain nature of policy implementation that can lead to the paradoxical situation of policies being used to entrench the very situations they are aimed at changing. In addressing this phenomenon, Stone (in De Groof and Malherbe, 1997:178) cites the example of the former Model C schools often becoming the bastion of white supremacy when in fact they were intended to be the vehicle for desegregation.

There are still stark inequalities within South Africa's heterogeneous society. This is particularly evident in the gulf between rural and urban school communities. One study found that whilst the national average learner: teacher ratio in 2003 was 33:1, in rural Limpopo and Eastern Cape it was 39:1, and as high as 41:1 in rural KwaZulu-Natal (Nelson Mandela Foundation, 2005:49). The same study also highlighted stark differences between rural schools and the national norm in respect of curriculum provision, school infrastructure, nutrition, parental literacy, distances from school, school attendance, teacher qualification, class size, drop-out and attrition rates and HIV-AIDS.

Godden (2005:5) points out that the Eastern Cape has been consistently underfunded in respect of education provisioning since 1994, and only achieved broadly equitable funding as recently as the 2001-2002 financial year. This was notwithstanding the fact that the Eastern Cape inherited the greatest backlog in terms of apartheid era inequalities in education because more than two-thirds of its schools and learners are in the former Transkei. Ocampo (2004:2) explains that despite the introduction of several policies intended to reduce past inequalities, there are still large disparities largely due to the “cross between race and socio-economic status” and the lingering effects of apartheid era economic inequalities. Tamer (2005:1) cites research conducted by Ladd and Fiske, who conclude that although there have been many positive strides towards the elimination of inequality, the disparities are still extensive in respect of teacher qualification, pupil-teacher ratios, infrastructure and funding. Persistence of such inequalities makes a system of rights an important part of the judicial system in order to promote a functional democracy (Meyer, 1998:207).

Another effect of the imperative to transform South African society has seen a drastic realignment of the allocation of state resources and funding in order to redress past imbalances (South African Schools Act, Act 84 of 1996, Section 34(1)). Motala (2005:1) concludes that “it is unclear whether or to what degree these policy intentions have resulted in significant equalization of access to education.” She also argues that

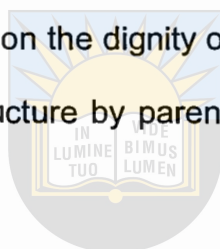
the redistribution of resources brought about by policy changes assumed that spending would be more effective and efficient than it has actually been, and suggests that issues such as private input into public schooling and self-managing schools need to be reviewed. Chaka (2005:8-9) is also of the opinion that many schools fail to benefit from policies aimed at redressing imbalances because the governing bodies lack the skills and knowledge to operate effectively.



The greatest challenge is to find funding to make up the exempted portion of school fees that are not paid by parents who qualify for an exemption. Lubisi (2008:10) points out that in affluent communities this is effected by a system of cross-subsidization that constantly pushes up the fee level and reduces the base of paying parents, whilst in poorer communities the amount is simply lost to the school, resulting in deprivation. It can be concluded that the charging of schools fees, even after application of fee exemption policies, remains unconstitutional and leads to violations of rights (Roithmayr, 2002:1). A case such as the matter between the *Centre for Applied Legal Studies and Others v Hunt Road Secondary School*, which was brought to the Human Rights Commission in 2007, is typical of the frequent polarization between parents and school that has arisen around school funding and governance. In this particular case two indigent parents objected to being sued by the school for non-payment of school fees on the grounds that

they had not been informed of their right to apply for an exemption, and the school was ordered not to proceed with civil action against them.

Whilst both parents and educators may express views about school governance that reflect the view of the official policies, in practice there are frequently tensions between educators and parents (Grant-Lewis and Naidoo, 2004:106). Such conflict easily degenerates into open animosity, which can impact negatively on the dignity of educators who are seen as being part of the school structure by parents who are struggling to pay fees.



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2.2.2 The broader African context

Educators in South Africa are not insulated from the rest of the continent. They share experiences of common problems and challenges that face all educators in Africa, where there is an exceptionally high demand for education, coupled with problems of access to it because of the demographic profile of most African countries. The majority of the population in most countries in Africa is of school-going age and exposed to severe poverty. This is the result of inherited developmental backlogs from colonialism, natural disasters such as severe droughts, ongoing economic decline, widespread unemployment, and the scourge of

HIV/AIDS and other diseases like malaria and tuberculosis (Richter, Van der Walt and Visser, 2004:10-11). This not only calls for educators to play a leading role in promoting and protecting human rights by striving to provide education for all; it also exposes them to conditions and circumstances that could infringe their own rights.

Du Plessis (2001:76) stresses that development, which includes education, must be linked to the promotion of human rights where the goal is the self-actualisation of all people. The transition experienced by the majority of South Africans from subjugation to dominance is typical of most formerly colonial states in Africa. However, those who have actually managed to “cross over to the privileged side of the huge class divide” (Van Binsbergen, 2002:16) remain a minority in all of these countries. In the “Africanisation” of the economy of formerly minority rule colonial states, the stage is ripe for rights abuses through the manipulation of popular concepts, warns Van Binsbergen (2002:16).

Educators are not immune to the impact of globalization on Africa. As the African Union evolves, they are frequently expected to perform new tasks. They often find themselves struggling to make sense of a barrage of (largely international) school reform literature and policies. They are caught up in politically charged public debate about educational issues, and they are expected to find a conscious balance between including

both global and ethnic perspectives in their teaching (Richter, Van der Walt and Visser, 2004:7-8).

One example of the impact of global trends on education is the increasing need to integrate computers and other information and communication technology into the classroom. This has led, for example, to the Kenya Ministry of Education developing an innovative system for linking all of its schools via cellular telephones (Sankale, 2007). The extent to which educators have access to and are skilled in the use of various forms of technology can have a direct impact on their own levels of confidence and the relative esteem in which their community holds them. Demchenko (1998:2) explains how access to the Internet's vast store of knowledge has changed the role of educators from being a source of knowledge able to teach from own experience to being a manager of the learning process and a curriculum adviser. Teachers who succeed in making this paradigm shift will retain relevance and credibility with their learners, but those who do not will suffer rejection. On the other hand the tendency to emphasize technological expertise at the expense of more basic skills such as sound inter-personal relations, effective classroom management and mastery of core academic skills such as literacy and numeracy may undermine the unique expertise and dignity of educators.

Another notable example of international influence on schooling in Africa is the Millennium Development Goals, which have placed an imperative on most African countries to increase access to schooling and to bring about gender parity in school enrolment. During the 1980s and into the 1990s, African government financing for basic education declined and the quality of education suffered. Sub-Saharan Africa lags furthest behind of any region in progress towards meeting these development goals (World Bank, 2004:1; Power, 2000:155; Irfan, 2008:6). It is likely that the status and dignity of educators may also have been negatively affected in many instances. This is especially pertinent in South Africa which lags behind other African countries such as Botswana, Cameroon, Ghana and Kenya on international performance measures such as the Trends in Mathematics and Science Survey (TIMSS). This poor profile has been widely publicized and may potentially have a negative effect on the public image of educators.

2.3 THE POLITICO-LEGAL CONTEXT

2.3.1 Parliamentary sovereignty versus constitutional democracy

South Africa is a constitutional democracy founded upon certain values, one of which is the supremacy of the Constitution and the rule of law (Constitution of the Republic of South Africa, Act 108 of 1996, Section 1).

This is in contrast to the former regime, where a ruling minority was able to manipulate the Constitution, using parliament, for the abuse of power. The notion of a constitutional democracy is also in contrast to the experience of many South Africans at grassroots who learned to use mass action and popular mobilization through trade unions and other democratic organizations to bring about change. Alston (2004:1) rightly points out that the supremacy and independence of the constitution is not well understood by many.



Constitutionalism makes all other organs of state, including the legislature, subject to the provisions of the constitution (Chaskalson, 2000:200). The subservience of all organs of state, including parliament, to the rule of law is strikingly demonstrated in *Speaker of the National Assembly vs. De Lille 1998 (3) SA 430 (CC)*. In judgment on this case, in which Ms De Lille succeeded in overturning a parliamentary censure on the grounds that it infringed her right to free speech, it was pertinently stated that the case enforces the principle that the Constitution, and not parliament, is supreme, and parliament may not make laws or rules that contradict the Constitution.

The South African Constitution is a framework designed to protect human dignity, equality and freedom, and the implication is that public power must be exercised within this framework. This, of necessity, raises

a number of potential tensions between popular desire or opinion and the rights of the individual or a dissident minority. Sometimes, too, there may be a tension between the legitimate interests of the individual and those of the general community, but respect for human dignity is crucial to accommodating conflicting interests and resolving potential tensions (Chaskalson, 2000:201).

This is also frequently the case in schools. The rights of an individual learner may have to be weighed against those of the rest of the school community. Often students commit acts that are felt to undermine the authority and discipline of the school, and there will be a strong lobby for such learners to be removed from the school, but this is in conflict with their rights to education. This may result in a tendency in many schools to violate human rights and resort to disciplinary measures and rules that are draconian and lacking in educational necessity (Visser, 2006:363). Alternatively it may give rise to an exaggerated climate of individualism and entitlement in the school and a pattern of passivity on the part of educators where they will argue that they are “not allowed to do anything about misconduct.”

As one educator union claimed, “Increasingly teachers are being disciplined in ways which are contrary to the letter and, especially the spirit, of labour law. Also, parents or pupils who have gripes against the

school or a teacher are being allowed (encouraged?) to lodge complaints against teachers without any real substance” (NUE, 2005:16). The same source also claims that “pupils’ rights are paraded while teachers’ rights are either, at best, not mentioned and, at worst, constrained.” This anecdotal comment is borne out by a careful qualitative study that indicates that the common perception that learners’ rights are overemphasized at the expense of any attendant responsibilities lies at the root of many disciplinary problems (Rossouw, 2003:423). This is clearly not the intention of the Constitution.



A recent judgment (*Queens wins court battle to expel learners* quoted in Daily Dispatch, 6 October 2008) highlighted the extent to which even the head of the Education Department was apparently reluctant to support strong disciplinary measures such as expulsion. In this case the courts upheld a public school’s application to expel a group of learners and went so far as to label the reasons offered by the head of the Education Department for not doing so as “irrational and irresponsible”. The basis for this description was rooted in the notion that the rights of other learners and educators were disregarded when the learners found guilty of misconduct (intoxication and possession of alcohol) were shielded from sanctions for misconduct and no sound reason could be furnished for not upholding the disciplinary sanctions imposed by the school.

2. 3. 2 Legal actions against educators

Much of the legal action against educators in South Africa either takes the form of internal disciplinary measures or criminal charges, or civil suits that are resolved without coming to court. This means that a survey of case law will not give a true reflection of claims and actions against educators, and will certainly not reveal the levels of stress and conflict experienced within the profession.



Some trends do, however, stand out that have implications for the dignity of educators. There have been a number of delict actions brought against schools or educators that deal with the educator's duty to care. The standard of such care was established as being that of a *bonus et diligens paterfamilias* who would give due consideration not just to the imminent hazards (the reasonable man test as established in *Kruger v Coetzee* 1966 (2) SA (A) 430), but also to the age and maturity of the child, as per *Rusere v The Jesuit Fathers* 1970 (4) SA 537 (R). In this case a boy was part of a group of pupils playing when he was injured during a game involving home-made bows and arrows. The school denied liability but the court held that the young age and relative immaturity of the pupils made it inappropriate for them to be left to play without adult supervision. It was also established that such a duty of care included the responsibility to take steps to remove potential hazards

in the environment, as in *Broom and Another v The Administrator, Natal* 1966 (3) SA 505 (D). The duty of care was made particularly onerous in the judgment of *Wynkwart NO v Minister of Education and Another* 2002 (6) SA 564, where it was established that a simple prohibitory instruction to young children was not satisfactory defence and that the educator's duty of care actually exceeded that of the parent. In this particular case a young child disobeyed the instructions of a teacher and tried to exit the school grounds by climbing over a locked school gate. In so doing he fell and severely injured himself. Clearly this invests the educator with a great burden of responsibility that implies a high measure of expertise and dignity on the one hand, but potentially reduces the educator to the role of child minder on the other. The judgment was subsequently overturned on appeal in *Minister of Education and another v Wynkwart N O* 2004 (3) SA 577 (C), but the vulnerability of educators to litigation in relation to the duty of care has been firmly established.

A similar trend is actions that emphasize the expert knowledge of the educator, which both elevates the status and inherent dignity of the office and simultaneously imposes on the incumbent a greater onus. Kruger and Calitz (1992:154) are of the opinion that educators would be regarded as professionals and be judged by the same standards as, say, medical practitioners. In other words, individual educators should demonstrate a level of knowledge and expertise regarding educational matters similar in standard to the knowledge and expertise regarding

medical matters required from a medical practitioner (as established in *Van Wyk v Lewis* 1924 AD 444). This is also supported by the ruling in *S v De Blom* 1977 (3) SA 513 (A), which established that professionals, including educators, have an obligation to know the law pertaining to their field of expertise. It is therefore clearly incumbent on educators to respect the right to dignity of learners and parents by adhering to professional standards of conduct, being well prepared and able to teach effectively in the same way that members of other professions are also expected to serve their clients.



2.3.3. Cases of the educator as plaintiff or victim

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There is as yet not a significant body of case law in which the dignity of the educator is directly in question. However, educational research indicates that there are clearly situations in which educators are the victims of actions that would be a violation of their dignity. In a study of 288 learners from 16 high schools in the vicinity of Kwa-Mashu in KwaZulu-Natal, it was found that 38 percent had witnessed violent physical attacks on educators; 46 percent had witnessed abusive verbal attacks on educators; and 67 per cent felt that learners were ill disciplined (Zulu et al., 2004:174). Rossouw (2003) studied fourteen schools in four different provinces and identified a wide range of learner misconduct that was prevalent. His research highlighted disrespect for

authority, related acts of insolence and verbal attacks on educators as the most frequently cited disciplinary problems.

2.3.4 Ignorance or misunderstanding about human rights

In a survey commissioned by the South African Human Rights Commission and conducted by the Community Agency for Social Enquiry (CASE) in 1998 (Mubangizi, 2004:64), it was found that only 38 percent of men and 23 per cent of women surveyed were aware of the Bill of Rights. A subsequent study conducted by CASE in 2000 found that there were still 36 percent of respondents who had never heard of the Bill of Rights, and a further 20 percent who had heard of it but did not know what its purpose was. Mubangizi's (2004:65) own study of 1512 respondents in 2003 found that 33.2 percent had never heard of the Bill of Rights. It is also revealing that widely held attitudes regarding fundamental rights are largely at odds with the Constitution. The right to life implies that the death penalty is unacceptable (a principle firmly established in *S v Makwanyane and another* 1995 (3) SA 391 (CC)), but surveys have found that support for the reinstatement of the death penalty is consistently high. A Markinor survey in 1995 found support was at 62 percent of respondents. In 1996 an HSRC survey yielded positive support from 71.4 per cent of respondents, and in 2003 Mubangizi found that 57 percent of respondents were in favour

(Mubangizi, 2004:79-80). Mubangizi also found that whilst 54 percent of respondents said that prisoners should not be treated with dignity, only 33.6 per cent felt that they should (2004:72). This clearly does not suggest a climate conducive to the unconditional protection and enjoyment of an individual's rights.

2.4 THE PHILOSOPHICAL CONTEXT



2.4.1 The impact of secular humanism and post-modernism

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At the close of the twentieth century there has been a far-reaching shift in Western thinking arising from the pessimism stemming from two world wars. It is a reaction against the empirical mindset of modernism and enlightenment thinking, as well as the dogmatism of some of the major political movements of the nineteenth and twentieth centuries such as fascism and communism. This trend has come to be known as post-modernism, and its influence is also clearly evident in education. Post-modernism holds that objective truth does not exist; everything is relative to its circumstances and the interpretations of the perceiver (*relativism*). This implies that nothing in the social sciences can ever be ultimately proven by any form of scientific enquiry. All “knowledge” is merely a

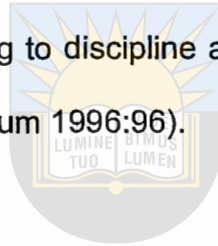
social construct based on the power needs of a dominant group, and must be “deconstructed” or reinterpreted in terms of the underlying “power discourse” (*deconstructionism*). Independent thought does not exist because people are defined or “scripted” by their culture. Any form of transcultural objectivity is impossible because the differences between cultures invalidate any attempt to judge elements of a different culture (*pluralism*). Consequently the notion of progress is rejected and replaced with a critical scepticism that sees only the destructive domination of nature and the subjugation of cultures (Van der Walt, 2006:3; McCallum, 1996: 50).



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Post-modernism has not merely revolutionized the content of contemporary theory and scientific thinking; it has also revolutionized the methodology. This is probably best illustrated by one of the foremost proponents of this way of thinking, Michel Foucault. He refuses to accept the possibility of any external position of certainty beyond history and society, and historicizes any supposed universal categories with the aim of understanding the many different roles that category or concept has played in society in the past (Rabinow, 1984:5) He typically avoids the questions of definition and uncovering purpose behind phenomena, and focuses on the question of how the phenomena have been manifested in different contexts as part of a power struggle. (This emphasis on the role of power has given rise to the concept of “empowerment” which is dealt with in greater depth in section 2.4.2 of this study..

Another French thinker who has influenced this debate strongly is Jacques Derrida, who established a forceful body of argument to support the notion that the meaning of words or symbols is not and can never be fixed or absolute, hence opening the way to a climate of scepticism and relativism that has also infused educational thinking (Higgs, 2002:171). The basic tenets of post modern thinking have gained broad social acceptance. The effect of post modernism has been to plunge schools into a maze of confusion about values and standards, and to profoundly complicate questions relating to discipline and the inculcation of socially appropriate conduct (McCallum 1996:96).



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McCallum points out that post-modernism departs from the more familiar modernist paradigm on four broad fronts with regard to education.

(a) In terms of **knowledge** post-modernism portrays the educator as a necessarily biased facilitator and co-constructor of knowledge rather than an authoritative transmitter of objective knowledge. One typical result of this is that educators' professional authority to assess, evaluate and correct learners' work is called into question by learners and parents, thereby undermining the dignity of educators. It is true that educators may well be subject to bias and subjective prejudice in their interpretation of learners' conduct and performance. It is also helpful to shift from a rigidly authoritarian view of the educators to seeing them more as guides and facilitators of learning,

but at some point they must be allowed the authority to make some form of reasonable assessment against supposedly objective or at least broadly agreed-upon criteria.

(b) Modernism has viewed **culture** as both an object of study and a barrier to learning requiring that learners must be trained in a shared language to allow the transmission of knowledge, but post-modernists see enculturation as a form of oppressive domination that denies the equal value of minority cultures and ignores the coexistence of multiple realities. Alston et al. (2003:165) report incidents where schools have had to adapt their disciplinary procedures to accommodate cultural diversity. The conflict between cherished elements of cultures that conflict with fundamental rights is also highlighted by Wessels (2002:11). A typical potential area of conflict and violation of educators' right to dignity would be the attitude and conduct towards female educators displayed by male learners from traditional African settings who are recent initiates. It is clear that the issue of cultural diversity will continue to be an issue on which the authority and potentially the dignity of educators will come under frequent challenge.

(c) Liberal modernists have held that **values** can and should be separated from facts and that value-neutral educators should help learners with values clarification, but that certain universal values such as dignity, responsibility, rationality, freedom and progress are to be pursued. Post-modernism espouses values such as diversity,

tolerance, freedom, creativity, and expressiveness, but asserts that values are neither inherently true nor intrinsically right. Values are merely useful within a particular cultural context, according to this perspective, and the task of educators is to help learners construct their own diverse and personally useful values, but at the same time there is no reason why educators should not promote their own values or agendas since true objectivity or neutrality is not possible. However, in practice there is usually a strong, and totally inconsistent, resistance to the promotion of values that are seen as “fundamentalist” or “totalistic” (McCallum, 1996:101).

(d) Post-modernism rejects the modernist notion of a stable, inherent and objectively knowable **self**. Selves are seen as mere social constructs, but self-esteem is still considered a necessary condition for learning. Education therefore becomes a type of therapy aimed at helping learners appreciate their identities and empowering them to attain their chosen goals (McCallum, 1996:102).

Post-modernist thinking *does* make a valuable contribution to educational thinking, especially in that it calls on educators (and others) to view their practice critically. It rightly emphasizes the fact that all educators *do* act from an individual frame of reference and that situations may be open to possible alternative interpretations. Whilst this may mean that educators are no longer invested with the aura of authority and expertise that more

authoritarian approaches allow, it does allow for a greater expression of the humanness of educators which can still underscore their basic right to dignity. However, if post-modernist thinking becomes a basis for rejecting the role of the educator as being in any way authoritative (rather than authoritarian), then the dignity of the educator could easily be compromised through persistent rejection of their attempts to teach or direct learning activities in any way.

2.4.2 The concept of empowerment



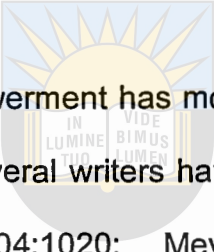
The term “empowerment” enjoys a wide range of applications and embraces a large range of meaning. It relates directly to reversing the effects of social exclusion and marginalization and to allowing for difference. The following definition is offered by the World Bank (2009:1):

“Empowerment is the process of increasing the capacity of individuals or groups to make choices and to transform those choices into desired actions and outcomes. Central to this process are actions which both build individual and collective assets, and improve the efficiency and fairness of the organizational and institutional context which govern the use of these assets.”

This definition is particularly interesting in that it does not stipulate the prerequisite of a lack of power or a state of exclusion, and therefore it implies the possibility that any individuals or groups can become more empowered than they might already be.

The notion of power which is embedded in the concept of empowerment is often interpreted in the sense of domination along the lines of theorists like Foucault, but this may be a particularly limited way to construe the concept. Hannah Arendt emphasized the capacity of people to act together ("in concert") to create something new or to make a change (Helis, 2008:74). Arendt stressed that the common trait that binds all human beings is the very fact that no human is ever like any other human, a concept she called *plurality*. As educators recognize and are allowed to respect their individual differences, including differences in the way they teach, they are empowered. A second important concept in Arendt's thinking is *natality*. This refers to the act of giving meaning to one's existence (or birth) by acting on the world in ways that bring about something new (Helis, 2008:74). Arendt distinguishes between *labour* (action forced upon one out of necessity), *work* (action based on utility or usefulness), and *action* (which is free and "gratuitous") (Helis, 2008:75). Educators who carry out their duties simply because it is a means to drawing a salary are doing mere labour, whilst teaching as a means to some other, possibly ulterior, end such as political indoctrination or religious proselytizing, is work. In Arendt's terms education can become

an example of action when it is a collaborative and creative activity between teacher and learner intended to create or develop new understanding. Such action becomes empowering to both educator and learner, and imparts dignity through the process of natality. Arendt also points out that giving expression to one's plurality and natality can only happen in a public context, and she therefore identifies *publicity* as a third defining category of being human (Bay, 2008: 2)



It is evident then that empowerment has more to do with the freedom of choice, something which several writers have also linked to the concept of dignity (Marmot, 2004:1020; Meyer, 1989:526). However, empowerment goes beyond mere choosing and includes acting to effectively realize the choices made. This is what Block (quoted in Mitstifer, 1995:3) refers to as "enacting the vision". In other words, empowerment presumes the possibility of changing or expanding power (Page and Czuba, 1999:2). This then leads to an understanding that power, influence or control can be acquired without necessarily depriving others of power. Mitstifer (1995:4) quotes Kouzes and Posner as saying that, "Credible leaders choose to give power away in service of others and for a purpose larger than themselves." As Page and Czuba (1999:3) put it, "Understanding power as zero-sum, as something that you get at my expense, cuts most of us off from power." The parallels to dignity are striking when one considers that dignity is best reflected in the manner in which one treats others with dignity.

Empowerment is a multi-dimensional process (Page and Czuba, 1999:2; Chamberlin, 2009:2). It operates at individual, interpersonal and group level and has elements of psychological, social, political and economic change. It is also not a single event but something which is gradually developed. Similarly human dignity can be violated or upheld at individual, interpersonal or group level (for example racism). Dignity is also something which is upheld or violated on an ongoing basis as more of a process than an event. For example, sexual harassment, as a typical example of dignity violation, is seldom linked to a single remark or action but to a series of actions and events that have a cumulative demeaning effect. Even when it would appear that dignity has been violated by a single action or event, there are usually a range of contextual and other factors that are important for understanding the meaning of that action or event. Hence it is often considered acceptable for members of racial minorities to use derogatory terms towards each other which would be considered offensive if used by members of other ethnic groups (as, for example, the popular habit in rap culture of Afro-Americans referring to themselves and each other as “niggas/ niggers”).

In order to concretize the concept of empowerment, Chamberlin (2009:2) identifies fifteen specific indicators of empowerment that include situational conditions (such as “having decision-making power”), subjective feelings (“a feeling that the individual can make a difference”), learning (“learning to think critically”), insights (“understanding that people

have rights”), gaining skills (such as communication), actions (“expressing anger”, “effecting change”) and changes of status (“coming out of the closet”, “overcoming stigma”). These elements are helpful in providing a clearer working definition of empowerment, and again they strongly echo elements of human dignity. Obviously situations or events that promote empowerment would also promote human dignity, and when there is a lack of empowerment there is also a threat to dignity.



2.5 THE CONTEXT OF CHANGING EDUCATIONAL PARADIGMS

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2.5.1 Pressures that threaten the empowerment of educators

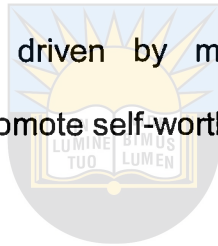
Educators operate in a strongly rule-driven and hierarchical bureaucracy as state employees. This has the effect of potentially compromising their professional autonomy. Depending on how they are managed, a number of factors can ensure that either educators are still able to retain a high degree of empowerment and autonomy, or that they are limited in their ability to operate as professionals (Nicholls in Coutts, 1996:33). Clearly the dignity of educators as professionals is impaired in circumstances where they are not adequately empowered or autonomous. Nicholls lists

the following as factors that are frequently present and which could impact negatively on the empowerment of educators:

(a) **Decision-making and control.** Educators have experienced a progressive increase in prescription about when, how and how often work must be assessed and about the content of what must be taught. Since 1996 in the Eastern Cape alone, compulsory common examination papers in grades 10-12 were introduced initially only in grade 12, then later in all three years initially only in September, but now every quarter. Pace setters dictating what should be taught by when, prescribed content (not a feature of Curriculum 2005, but part of the Revised National Curriculum Statement), a reduction in the choice of approved textbooks, and currently sample lesson plans have eroded the academic freedom of educators in the interests of uniformity, accountability, cost-effectiveness and centralised managerialism. The resultant erosion of educators' academic freedom and autonomy has also reduced the role of educators to that of mere delivery agents of a pre-designed curricular package, rather than skilled professionals deserving of dignity.

(b) **Accountability.** Lolwana (2007) argues that interventions by outside agencies, external examinations and the systemic evaluation system have all failed to provide meaningful measures of accountability that

translate into improvements to the system. However, she points out that each of these approaches adds stress and disruption to schools. The plethora of documentation and control sheets to be completed by educators appear to be designed primarily to ensure that educators are actually doing some work and complying with policy directives rather than to assist in promoting authentic assessment. An approach to accountability that is based on such an adversarial point of departure tends to become demeaning, whilst an accountability system that is largely driven by members of the profession themselves will help to promote self-worth and dignity.



(c) Interpersonal relations. The greater part of an educator's working day is taken up interacting with other people. If these interactions frequently include high levels of conflict such as incidents of violence (De Wet, 2003: 94; 2004:34), the empowerment of educators becomes threatened.

(d) Changes in role and status. Positive measures such as the establishment of a self-regulating professional council and a set of professional ethical standards have done much to elevate the status of education as a profession, but these gains could potentially be offset by the tendency of the organized profession to become more unionised and to align itself with non-professional workers'

organizations, resulting in several (professional) teacher associations re-branding themselves as trade unions.

(e) **Working conditions.** Increased and more equitable funding has led to overall improvement in the working conditions of educators, but there are still areas of marked deprivation and disparity.

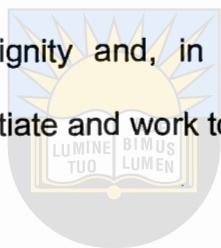
(f) **Classroom management.** “Effective classroom management plays a significant role for constructive educational environments for both learners and educators” (Shin and Koh, 2007:290). If educators spend a disproportionate amount of time trying to regulate the misconduct of disruptive learners, they end up depriving other learners of instructional attention. Learners who frequently misbehave often lack adequate social and communication skills, and easily then infringe on the right to dignity of educators and other learners.

Shin and Koh (2007:289-292) contrast two models of classroom management that have dominated public schools: the teacher-directed behaviourist model that has been the traditional approach, and the more child-centred cognitive approach.

In its most extreme form the former approach tended towards being frequently punitive, even including harsh corporal punishment, subsequently specifically prohibited in South African schools in terms of the South African Schools Act (Act 84 of 1996) in Section 10. The enactment of this legislation led to considerable resistance on the part of many educators, even on the basis of deeply-held religious and moral convictions, as seen in the case of *Christian Education South Africa v Minister of Education* 1999 (2) SA 83 (CC); 1998 (12) BCLR 1449 (CC). Le Mottee (2005:5) sums up much of the frustration of educators deprived of recourse to corporal punishment. It rests, she claims, on their lack of effective alternatives, the sense that the disciplinary environment has become increasingly unmanageable, a sense of disempowerment and a belief that parents actually favour the retention of corporal punishment.

The latter, child-centred approach sees learning as an approach in which the learner and the environment interactively play as much of a role as the teacher and the learning material. This approach is fundamental to the curricular changes that have taken place recently in South African education (Beets and Van Louw, 2005:177). Consequently, by seeking to understand how individual learners differ in their approaches to learning tasks, and by adjusting the presentation of learning activities accordingly, this approach allows for more effective management of learner behaviour. Successfully

mastering a more child-centred approach to classroom management requires educators to clearly differentiate between *discipline*, which is intrinsic, educative and aimed at fostering self-control and self-actualization; and *punishment*, which is external, retributive and emphasizes educator control and learner compliance (Le Mottee, 2005: 2). The learner-centred, cognitive approach is more collaborative and stresses greater learner responsibility for performance. In many ways this then obliges educators to treat learners with greater dignity and, in turn, to be more dignified themselves as they negotiate and work together.



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Schroeder (in Prinsloo and Beckman, 1988: Foreword) identified four changes that have impacted significantly on educational practice. These have all contributed to potentially restricting the rights of educators, and to making the work of the educator more emotionally demanding and stressful. These factors not only potentially limit the freedom educators would enjoy to perform their work as they see fit, but could also expose educators to possible situations where they may become the target of insults or demeaning treatment. The factors Schroeder identifies are:

- (a) **“Establishment of an organized parent movement”** which finds expression in the various associations of school governing bodies. Since parents have organized themselves they have become more

vocal in lobbying for their rights as stakeholders in education and for the rights of learners. At times these may seem to be in conflict with the rights of educators. Ozumba (2004:5) argues that the duty to provide education, which is a child's right, is shared by both parents and the state. However, educators in public schools are functionaries of the state as far as parents are concerned. As the Manual for School Management (East Cape Department of Education, 2001: L-10) states: "Parents play an important role in the education of their children and have a responsibility to support the efforts of school staff in maintaining a safe and respectful learning environment for all students." However, this ideal is often far from reality because parent involvement is hampered either by a lack of capacity, or by barriers such as illiteracy or language (Van Wyk, 2004: 53; Chaka, 2005:7-8) or it is sporadic or even antagonistic (Grant-Lewis and Naidoo, 2004:106-108; Heystek, 2004: 310).

- (b) **"Increased critical awareness amongst the users of education"** to the extent that both private schooling and home education have increased significantly as parents and learners seek for alternatives to conventional schooling. Learners are the primary "users of education", and as stakeholders become more critically aware of their rights, it is important that the rights of those delivering education are also protected. At the same time this increased critical evaluation can also contribute constructively to a greater appreciation of the role of

the professional educator, to the extent that their conduct is truly professional.

- (c) **“Greater sophistication of the organized teaching profession”** As educator unions become more sophisticated, it is natural that they will begin to lobby more assertively for the protection of educators’ rights, but their increasing sophistication has brought other challenges. Unions no longer just negotiate for better educator benefits, but they use highly developed marketing strategies to attract and retain members, to deliver information to their members, and to source a wide range of additional benefits such as beneficial insurances or lower financing rates. Members are strongly supported and protected by their unions, whilst the employer often appears cold and uncaring because of the cold and impersonal way in which employees are treated. This can easily engender a conflict of loyalty facing many educators between loyalty to the employer and even, sometimes, to learners, and loyalty to the union, because of the obvious benefits and protection provided by the latter. De Wet (2003b:269) provides empirical findings that show that educators regard their right to strike very highly even if it potentially infringes learners’ right to education. It is especially important that when educators face disciplinary action for misconduct or incapacity, the protection of their rights to fairness, justice and dignity do not compromise the rights of learners to quality education (Rossouw and de Waal, 2004:285). In this regard the

South African Council of Educators' Code of Professional Ethics focuses on making it possible for educators to conduct themselves in a fit and proper manner that upholds the reputation of the profession (De Villiers, Wethmar and Van der Bank, 2000:13). It would appear therefore that a determination by educators themselves to maintain and demand high standards of professional behaviour would contribute to the dignity of members of the profession.

2.5.2 Curriculum innovation and revision

Since 1997 South African education has been engaged in a long and sometimes problematic process of curriculum change. Key challenges have revolved around lack of clarity or agreement on the interpretation of outcomes; difficulties in designing effective assessment standards and procedures; lack of resources and teacher capacity in schools, and the ongoing obstacles to building such capacity (O'Neil 1994: 8-10). Unfortunately, despite problems of design, initial teacher training, guideline materials and inadequate resources that initially impeded the implementation of curricular transformation, a climate was developed in which any form of questioning or criticism by educators was often treated as "disloyalty or ignorance" and ironically the initial training tended to be "a top-down prescriptive approach" that undermined educator dignity (Cole, Godden, Lawrence and England in Lawrence and Moyo, 2006: 37). Venter (2004:22-23) points out that the continuous assessment system (just one part of the change) is progressively eroding teachers'

time to focus on quality teaching and is contributing significantly to increased stress and poorer relationships amongst both teachers and learners.

The nature of the change in curriculum has been a shift from a system that is largely teacher-driven, and focusing on the transmission of knowledge based predominantly on Euro-American paradigms, to one which purports to be more learner-centred and skills-based. The current curriculum is constructivist and transformational in its foundations and draws on the outcomes-based model. It replaces the past mechanistic ways of regarding knowledge acquisition with the notion that learning is a process of making sense and constructing an understanding of how things are through problem-solving, active involvement and reflection. Learning is therefore seen as a social and culturally determined process that must relate to the demands of the real world (Beets and Van Louw, 2005:178).

In a study commissioned by the Education Labour Relations Council on the workload of educators (Chisholm et al., 2005:15), it was found that the new curriculum made a significant impact on increased educator workload by introducing new learning areas for which there were insufficient support materials, and that continuous assessment placed excessive strain on educators. Chisholm et al. (2005:19) specifically identified the following factors in the new curriculum that educators found most onerous:

- Administration, record-keeping, reporting, management and supervision associated with outcomes based education.
- An overcrowded curriculum with too many learning areas to be taught across too many grades.
- The requirement to teach new learning areas without the necessary resources.
- Preparation of learning programmes, work schedules and plans.
- Preparation of learner and educator portfolios, learner profiles, progressions and progress schedules.
- Repetitious and unnecessary marking, reporting and recording requirements.
- On top of this the demands of the Integrated Quality Management System (IQMS), adding further to the intensification of work.

One of the foremost critics of recent curricular change, Jansen (1998:321-330), identified several important challenges to the success of the new curriculum. Some of these impact directly on the dignity of the educator as well. Jansen argues that the new curriculum was primarily driven by political objectives rather than educational realities, and that it was couched in complex and intimidating terminology that was constantly shifting in meaning (Jansen, 1998:323). The resultant inability to actually “give these policies meaning through their classroom practices” would leave most educators with a high level of frustration and a vague sense of failing to do what was expected, thus impacting negatively on their

self-worth and exposing them to negative feedback from supervisors and “experts”. Added to this is the way in which educators tended to have only limited opportunities for participation in developing the curriculum. Jansen states that, “a small elite of teachers, often expert and white, has driven the Learning Area Committees and other structures” (1998:326). In the past the values and beliefs of the majority of educators tended to be ignored in the way the curriculum was packaged, but in the new dispensation “the voices of the masses that were silenced in the past are still silent” (Beets and Van Louw, 2005:181). Most educators lack information and clear understanding, and are consequently reduced to mere “implementers” (Jansen, 1998:326). The lack of meaningful opportunity to contribute to the educational debate has direct implications for the dignity of educators.

Jansen also questions the extravagant claims made about the relationship between curriculum change and social change. He shows (1998:324) that there is no evidence to support the notion that curriculum change can contribute to any change in the national economy or in the prevailing pedagogical practices. The resultant disappointment when the new curriculum fails to deliver the promised changes can lead to a rejection of either the curriculum, or the teachers who are implementing it. The political investment in the curriculum as a policy may be so high that it may be easier and less costly to blame teachers for failing to implement the policy than it would be to admit that the policy itself does

not work as intended. Such a course of scape-goating action against educators would hardly be fair, even if partially valid, since educators are obliged to teach the curriculum. It places educators in such an unfavourable light that it becomes an infringement of their dignity.

The new curriculum significantly increases the administrative load of educators by requiring more detailed and rigorous record-keeping and planning documentation (Jansen, 1998:327), a view that is supported by Chisholm et al. (2005:19). The resultant burden of paper work appears to impact negatively on the time actually spent teaching. In a similar fashion the conflict between the authentic and diagnostic continuous assessment demanded by an outcomes based curriculum and the high stakes assessment system centred on a final exit examination that still dominates in South Africa, results in the requirement for educators to assemble extensive portfolios of evidence for each learner, and can reduce educators to being primarily assessors. This apparent reduction in educators' primary function can have a negative effect on educators' own self-worth and on the public perception of the breadth, importance and dignity of their role.

2.5.3 New leadership and management paradigms

At least three models of education management have been identified as operating in South African schools, and these represent a progression in respect of the role of the school manager (Department of Education: Task Team on Education Management Development, 1996:15).

The first of these is a traditional approach that focuses on the technicalities of administration. It emphasises structure and control. This approach poses the most direct potential threat to the rights of educators in that it can easily become impersonal, autocratic and restrictive. In this paradigm principals are used to being in charge of their schools and holding virtually all the power (Heystek, 2004:310).

The second model in contrast emphasizes management and leadership functions, and is concerned with human resource development and with management systems. There is a strong focus on performance and quality assurance. The model includes a high level of surveillance through self appraisal, peer appraisal and supervisory appraisal. This model poses potential threats to educators' rights in that a narrow definition of quality performance may restrict educators' professional autonomy and freedom rights.

The third model focuses on governance and policy formulation and implementation. This is the model that potentially can provide the best safeguards for educators' rights, but such safeguards depend on the policy decisions that are made and on a measure of professional autonomy. The danger to educators' rights lies in the need for transparency and accountability (in terms of use of public resources and delivery of professional services) having to be balanced against the educators' right to privacy. In this regard issues such as the extent to which educators should be directly observed at work in the classroom have remained a matter of contention.



Clearly there is a shift from a management approach that involved operating effectively according to a set of fairly rigid rules and procedures to one that involved highly flexible situational responses by a team of leaders to a more integrated model that emphasizes adherence to principles rather than rules and accountability to external governance structures. The fact that all three of these approaches operate concurrently in South African schools poses a set of stressful demands on educators, who have to adjust frequently from style to style.

These changes in the role expectations of school principals are not unique to South Africa. Pierce (in Pierce and Stapleton, 2003:93) claims that, "Expectations for school principals have changed along with demands on K-

12 faculty.” She stresses that principals have moved from being primarily managers to providing leadership of instruction, and that this demands being able to identify, enlist and develop leadership within other educators and the broader community. Principals, she says, need to stay abreast of curricular developments and to analyze and use data about learners effectively. Pierce also highlights the role of principals as “child advocates”.

These new approaches to leadership and management have both positive and negative implications for the dignity of educators. The shift towards a more consultative, partnership style of leadership implies a greater recognition of the dignity and worth of each member of the staff team, but at the same time there is often a relaxing of formal boundaries and a greater informality. In times of stress, conflict or pressure, leadership may revert to a more authoritarian and formal approach simply because it is easier to define expectations and is more familiar. Such unexpected outbursts of domineering leadership behaviour can be particularly disconcerting and disempowering to educators because they are unpredictable.

2.5.4 New norms and standards of professional practice

Prior to 1996 there were a variety of qualifications and training routes by which educators could enter the profession, and this resulted in a wide disparity of standards. This was standardized by means of the Norms

and Standards for Educators (Government Notice 82, Government Gazette 20844, 4 February 2000). According to this policy, educators are expected to fulfil seven core roles:

- (a) Learning mediator
- (b) Interpreter and designer of learning programmes and materials
- (c) Leader, administrator and manager
- (d) Scholar, researcher and lifelong learner
- (e) Community, citizenship and pastoral role
- (f) Assessor
- (g) Learning area/subject/discipline/phase specialist.



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The first two of these describe the familiar task of classroom teaching, although they introduce new emphases. The role of the educator as a “mediator” rather than an “instructor” implies a shift of focus to a more collaborative and learner-centred approach. It suggests that the educator is not merely a well-informed transmitter of content, but is a highly skilled individual who is able to influence learners’ ability to construct knowledge and make sense of information. These first two roles imply that educators should be trusted as professionals to be able to design learning materials and activities of a high standard.

Acknowledging that educators do not just perform administrative work related to their teaching, but that they also have leadership and

management roles, would appear to enhance their status and afford them an increased measure of dignity in the workplace.

This description clearly lends dignity and authority to the position of educator, and has significant implications for the rights of educators in the practice of their profession. “De facto it replaces the idea of teachers as technicians or technical workers transmitting a set syllabus with a visionary notion of effective professional educators, working on the basis of democratic principles and values in their practices” (ELRC, 2009:55). However, it is questionable whether this idealistic portrayal of the educator’s job is an accurate reflection of reality. In fact it has been found that beginner teachers entering the profession experience a reality shock when confronted with the significant gap between ideals and the unfamiliar reality of the task (Steyn, 2004:84). Factors such as large classes, the demands of the new curriculum, and the inclusion of learners with barriers to learning have also prevented educators from meeting the expectations of their role (Chisholm et al., 2005:22). Thus it is often true that educators do not work reflectively or do any form of research, may play limited roles in their communities, do not regularly read about their profession and develop themselves professionally, become out of date with developments within their own subject or discipline, and may employ a very limited range of assessment practices.

2.5.5 Occupational specific dispensation

The occupational specific dispensation for educators (OSD) was the result of a lengthy period of negotiation between educator unions and state education departments, culminating in Education Labour Relations Council Resolutions (Resolutions 1 and 2 of 2008) which created new categories of educator ranking. This enables educators to remain in classrooms whilst advancing in salary and rank, thus allowing for a more diversified career path and thereby enhancing the professional dignity of classroom-based educators. The OSD also makes provision for a pay progression every second year for all educators who meet certain minimum performance standards, and a more generous, accelerated pay progression for those who perform at an above-average level. Although not all aspects of the resolution have been finalized and implemented, the ranks of senior and master educator which allow for educators to be recognized as classroom-based teaching (as opposed to management) specialists have been implemented already.

2.5.6 Integrated quality management system

The integrated quality management system (IQMS) introduced by means of Education Labour Relations Council Resolution 8 of 2003 sought to

place the onus for accountability and performance management under the control of educators. It introduced seven performance standards for educators, with a further three for heads of department and five for principals and deputies. The system requires that every educator develops a professional growth plan annually, meets with a developmental support group of two colleagues, is observed in practice in the classroom, and participates in staff development activities. In addition each school is required to have a staff development team that develops a school development plan and organizes staff development and assessment activities. Theoretically this has the potential to greatly improve the dignity of educators as professionals, but practical experience has shown that the complexities of the system and the administrative demands have led to it being poorly implemented, and greatly adding to the stress and work load of educators (Chisholm et al., 2005:12).

2.5.7 Inclusive education policies

White Paper 6 on Inclusive Education led to the reduction in specialized services for learners with special educational needs, based on the idea that these specialized services would be provided in the mainstream classroom in every school.

Among the special provisions that should be provided in ordinary classrooms to make the policy work are: assistive devices to compensate for barriers to learning such as ramps, handrails, and earphones. In some instances it would also be necessary for educators to have an assistant who can work with particular learners individually, as is the practice in countries such as Italy and Sweden, where similar policies operate. Educators need exposure to and training in methods of adapting teaching practice and materials to the needs of learners with barriers to learning. Schools also need access to the services of remedial and therapeutic specialists. If all these provisions were in place and there was a more favourable learner-to-educator ratio, it is likely that inclusive education would work well to the advantage of all learners, and this would certainly add to the esteem and professional dignity of the educator.

These provisions have not generally happened, and the end result has been an increase in workload for, and emotional pressure on, already overloaded educators (Chisholm et al., 20021). Clearly this has impacted very negatively on the right to dignity of educators, who are expected to perform duties for which, in many instances, they were not trained. Alston (Daily Dispatch, 2008) argues that this is essentially unfair and a violation of the basic rights of both learners and educators.

2.5.8 Concluding remarks

The most striking feature of the context in which educators currently operate is the rate and volume of change. Many of these changes threaten to infringe educators' right to dignity. Others have the potential to improve respect for the dignity of educators, but as they are currently being implemented, many of these changes tend to have the opposite effect. Amongst these are the educator-driven accountability system of the integrated quality management system; the approach to catering for learners with barriers to learning through inclusive education; the shift to a more constructivist, child-centred and outcomes based curriculum; changes in the expected norms and standards for educators; and a shift in policy expectations from school leadership and management.

At the same time the more positive shift towards increased recognition of the professional autonomy of educators as recognized by new job descriptions; occupational specific dispensations; new management styles; and increased collaboration with teacher organizations has certainly had a positive influence on the dignity of educators.

The most significant source of contextual change has been changes in legislation and policy, but practice has not always kept pace with

intention because the education system is inevitably subject to “wide margins of indeterminacy” (Stone in De Groof and Malherbe, 1997:176) that can compound the discrepancy between policy intention and practical outcome.



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CHAPTER 3 - THE RIGHT TO DIGNITY

3.1 NOT DEFINED IN LEGISLATION

Despite several references to “dignity” in the Constitution of the Republic of South Africa Act (Act 108 of 1996), there is no attempt anywhere to define the concept, which “remains imprecise and subjective in content” (Bray, 2004:41).



This chapter seeks to trace the development of the concept from the perspectives of religion, philosophy, and history. From this analysis an attempt is made to isolate some definitive features of the term in order to characterize more clearly the concept of dignity. This will allow for a clearer understanding of what the educator's right to dignity encompasses.

The concept of dignity is also examined from the perspectives of international law and comparative law, in keeping with the principles stated in Section 39 (1) of the Constitution of the Republic of South Africa, which outlines three keys to interpreting the rights in the Bill of Rights:

- (a) [It] must promote the values that underlie an open and democratic society based on human dignity, equality and freedom (hence the religious-cultural analysis)
- (b) [It] must consider international law (hence the historical analysis)
- (c) [It] may consider foreign law (hence a comparative analysis).

This chapter also briefly examines how the term is used in various areas of South African law, including case law in keeping with the *stare decisis* rule.



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3.2 DIGNITY VIEWED FROM RELIGIOUS-CULTURAL PERSPECTIVES

Alston (2002, quoting Sieghart, 1985:3) points out that the concept of human rights has had a lengthy genesis, drawing on ideas and movements over many centuries.

The concept of dignity tends to be seen in much contemporary Western thought from a very individualistic perspective, but it can be argued that it only has meaning if rooted in some form of transcendental reality. This is expressed by Muzaffar (1993:182) who says,

“Whether one articulates rights or upholds responsibilities, shouldn’t they be guided by universal moral and spiritual values which would determine the sort of rights we pursue and type of responsibilities we fulfil? Without a larger moral and spiritual framework which endows human endeavour with meaning and purpose, with coherence and unity, wouldn’t the emphasis on rights *per se* lead to moral chaos?”



Whilst Muzaffar is referring above to rights in general, the principle can be directly applied to the right to human dignity as well. Dignity can only be elevated from a very subjective notion when it is viewed within this very same “larger moral and spiritual framework”. The potential for “moral chaos” is as real in respect to dignity as to any other rights, because the pursuit of individual dignity at the expense of the dignity of others would be clearly immoral.

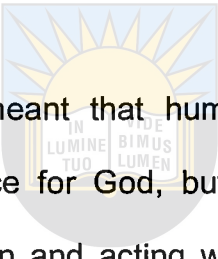
Dignity has obvious value-based connotations and is therefore also a moral concept. It is what one writer calls “a special case of a morally relevant value” (Taboada, 2003). This implies that violating another’s dignity is immoral.

3.2.1 Human dignity and the religious and legal perspective of Judaism

Judaism's primary frame of reference for all moral and ethical principles is the Torah, a term applied to both the entire Jewish Bible (Old Testament) and more particularly to the Tanakh, the first five books of Moses, which are regarded with particular reverence as the source of divine law (Hinnells, 1984:335). The Torah is further elucidated in and supplemented by the Mishnah, a collection of oral rabbinic traditions from the second century CE (Hinnells, 1984:215), and the Talmud, collections of commentaries and discussions compiled between 400 and 500 CE. The Mishnah and Talmud consist of liturgical and theological matters (*Aggadah*) and legal and regulatory matters (*Halakah*) (Hinnells, 1984:320).

Within the context of the Torah, Mishnah and Talmud the most important single source of Jewish law and ethics is undoubtedly the Ten Commandments or Decalogue (Bible: Exodus 20 v.1-12). All other Judaic law is an elaboration and expansion of the core framework laid out in the Ten Commandments. The various core issues focused on in the Decalogue are the basis of all subsequent Jewish law and underscore the dignity of people.

Jewish understanding of rights begins with an appreciation of the supremacy and uniqueness of God. People are commanded to worship God alone and not to honour any other Gods, to avoid any form of idolatry and to respect God's name as holy. Consequently irreverence, desecration and blasphemy were treated as serious crimes against the common good, and disrespect towards human life was regarded as disrespect to God who commanded it (Rosen, s.a.:3; Friedman, 2008:2).



Reverence towards God meant that human dignity could never be allowed to eclipse reverence for God, but, according to the Talmud, upholding the dignity of man and acting with compassion is an act of reverence and emulates the nature of God (Friedman, 2008:3). For this reason Talmudic tradition identifies scores of cases where a sacred obligation could be overlooked for the sake of dignity (Freidman, 2008:9). For example, one could be allowed to become unclean and thereby fail to participate in the Passover if it was as a result of having to help to bury an unattended corpse on the eve of Passover, because the obligation of dignity to the deceased was of greater importance.

The Mishnah and the Talmud draw on verses such as Genesis 1:26-28 and Genesis 9:6 which speak of humankind being created in the image of God as the foundation for recognizing the common dignity (*kvod habriot* in Hebrew) of all humans and human's right to life and

freedom (Rosen, s.a.:1; Anti-Defamation League, 2003). It is clear therefore that in Hebrew thought humankind was a special category of life, different from and superior to everything else, but humankind was never regarded as self-sufficient or able to exist independently of God's approval. It also implies that respect must be accorded not only to others but also to oneself as a created being. The notion of all humankind being created in God's image further implies that dignity applies to people, whether they behave in a dignified manner or not (Rosen, s.a.:3; Friedman, 2008:2). In the Mishnah and the Torah this notion also provides the basis for recognizing the uniqueness of each individual and an appreciation of diversity within our common humanity (World Congress of Imams and Rabbis for Peace, 2007:1). The right to dignity therefore applies equally to all people, and this implies that all have equality before the law, regardless of rank, wealth or status according to Leviticus 19:15. The right to dignity also extends even to those who have been convicted of a crime (Rosen, s.a.:4); to the dead in the sense of treating the remains and reputation of the deceased with dignity (Friedman, 2008:1); and to Jews and non-Jews alike.

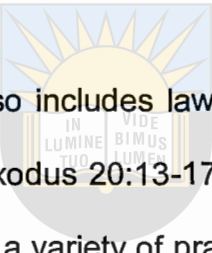
The Jewish people also based their sense of worth on the concept of a binding covenant relationship between God and humankind and a particular covenant with the Jewish people. This gives all people an inherent value above the rest of creation, and the Jewish people a special status characterized by both obligation and privilege. Such

obligations were frequently the basis for an understanding of rights, because obligations implied the existence of rights for those who are the object of the obligations (Rosen, 2008:1). For example, the command not to steal presupposes the right to private ownership of property.

In Jewish tradition and thinking, dignity is also closely linked to family and ethnic heritage. The Jewish people have always maintained a measure of exclusivity rooted not only in the need to preserve themselves from idolatry, but also in a sense of being called by God in a particular way for a specific purpose. The importance of being born into a specific group is also extended to family and kinship relations, and the Ten Commandments place a special emphasis on respect towards parents as a reflection of devotion to God (Bible: Exodus 20:12). This obligation was regarded as so important that cursing one's parents was deemed a capital offence (Bible: Exodus 21:17). People have worth and identity because they are not isolated but are part of a lineage. Heritage imparts dignity.

The implications for educators of such an approach include: the importance of emphasizing respect for parents and other adults; inculcating a healthy pride in, and respect for one's heritage; and upholding the obligation to educate and protect children.

The Jewish concept of Sabbath is not only an obligation to God but also to other people. As an act of reverence it also serves an important social purpose by ensuring that people are able to rest and recover from the demands of the working week, and it was even extended to slavery contracts in that slaves were to be freed after six years of servitude (Bible: Exodus 21:2), a revolutionary development at that time in the Middle East.

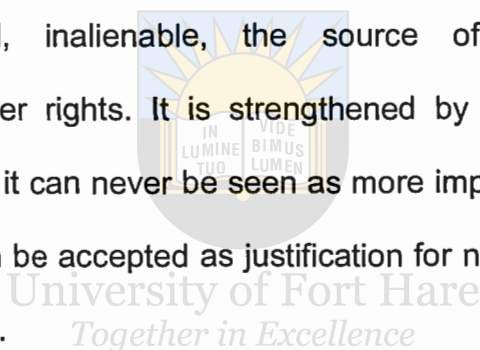


The Ten Commandments also includes laws governing interpersonal or social relationships (Bible: Exodus 20:13-17). These require that people must love their neighbours in a variety of practical and life-affirming ways such as: respecting their right to life; respecting their property ownership; respecting marital contracts and commitments; and ensuring access to fair and honest testimony. Each of these basic principles is expanded at some length in the Torah. Dignity thus finds expression in social justice and respect for a wide range of other rights.

Contemporary Judaism has a strong tradition of activism for human rights. The Declaration on Judaism and Human Rights commits signatories to "Seek to promote human rights, fundamental freedoms and human dignity for all humankind in partnership with all those who wish to do so." It also acknowledges the Universal Declaration of Human Rights, affirms that the ideals underlying the framework of human rights

are an essential part of the core values and traditions of Judaism, and singles out an appreciation for human dignity (Jewish Human Rights Network, s.a.:1).

To sum up, in Judaism dignity stems from the sovereignty of God, a supreme creator, choosing to create man in his image. Respecting the dignity of others is an act of reverence to God and the right to dignity is inherent, universal, inalienable, the source of obligations and fundamental to other rights. It is strengthened by one's identity and heritage, and whilst it can never be seen as more important than respect for God, it can even be accepted as justification for not meeting outward religious obligations.



3.2.2 The Christian approach to the right to dignity

Whilst Christianity is sometimes caricatured as antagonistic to human rights and human dignity (Counterblast, 2006:1-11), there is a solid tradition of sincere, committed Christians leading calls for social reform and protecting human rights, often at great personal cost. Yet, the way orthodox Christian theology views concepts such as rights and dignity differs fundamentally from how these terms tend to be used in secular discourse (Goodloe, s.a.:4).

As in Judaism and Islam, the Christian conception of human dignity starts with man's special creation by God as outlined in Genesis 1:26-28. According to Stott (1999:173-175), this highlights three critical attributes of humankind that are the basis of human rights:

(a) Firstly, as a being created by God in God's image, humankind is distinct from all other life forms, being endowed with reason and conscience and the ability to relate to God. This is the foundation for freedoms such as the freedom of expression, freedom of worship and similar rights. In terms of educators' rights, any attempt to constrain or limit educators' creativity, academic freedom or religious liberty would clearly be a potential threat to their fundamental dignity.

(b) Secondly, being created both male and female highlights the capacity and necessity of man to relate to others, and forms the foundation for interactive rights such as freedom of association, the sanctity of marriage and the right to raise a family. In this regard any measure imposed on educators that obliges them to join or not join any organization or group, or that in any way controls or limits their social interaction, is a direct threat to their right to dignity

(c) Finally, the injunction to subdue and have dominion over the earth elevates man to a position of special privilege and responsibility as the steward of creation, and is the foundation for such rights as the right to work and to own property. It also serves as the basis for the authority and goal of the educator's work.

Thus Stott sums up human dignity in terms of the right and responsibility to worship in relation to God, the right and responsibility of fellowship in relation to others, and the right and responsibility of stewardship in relation to the world (Stott, 1999:174)

In Christian tradition human value and dignity stem not only from being created in God's image, but also from being redeemed from a fallen state through the sacrificial death of Christ as an atoning substitute to restore the relationship between man and God, what Cox (2005:10) calls the "great exchange". Moltmann (s.a.:3) stresses that the coming, death and resurrection of Christ reflects human liberation. Man thus acquires dignity and worth because of the inestimable value imparted by the act of Christ's death. Post-Reformation Christianity also stresses that the worth of humankind depends totally on divine grace and not, in any measure, on humankind's efforts (Kiyohiro, 2003:2). In this sense there can never be any justification for treating any educators or group of educators with greater dignity than any others, because the worth of the educators is not based on their performance or personal effort. This does not, however, mean that recognition of special effort through awards or bonuses are an infringement of dignity, it simply means that such measures must always be applied in a manner that does not detract from the essential dignity of other educators.

Goodloe (s.a.:4) highlights several implications of the Christian view of dignity which have particular implications for the dignity of educators as explained below:

- (a) Humans are created by God and are therefore finite and limited. This implies that allowance must be made for individual limitations in the way we treat people. Even educators have their limitations! It also implies that people will not automatically know how to behave appropriately towards others, and may need guidance and education.
- (b) Humans are created in the image of God and are therefore self-conscious and transcendent. One can expect people to reflect on the way they respond to each other, and to make choices that are considerate and respectful. It also implies that people are capable of learning how to treat one another with dignity.
- (c) Humans are fallen and therefore self-interested and flawed, which means that safeguards need to be put in place to protect people's rights, and that people may wilfully choose to violate the rights of others. It also emphasizes the need to educate people about the reciprocal value of upholding others' rights.
- (d) Humans are redeemed by Christ and therefore have good hope for the future. This implies that a cynical view of the basic self-centredness of people (for example as is suggested by Freudian psychology) is unacceptable. It implies rather the inestimable value of each individual as someone who is potentially chosen and called by God.

From a Christian perspective then, all people are equal (as sinners before God in need of, and able to receive, grace) (Toon, 1998:5), and this makes any form of arbitrary discrimination completely unacceptable. The equality of all people is especially that of equality before the law, which is equally applicable to both the ruler and the ruled (Moltmann, n.d.:5). This notion is perhaps most clearly articulated in Paul's rejection of ritual, class and ethnic divisions in Colossians 3:11 (Bible).

Cobb (1990:4), whilst writing from an openly critical stance in which he argues that the contemporary understanding of human rights and human dignity has its roots in the Enlightenment, posits six elements that have operated in Christianity, and that have supported the understanding that all humans have dignity. These elements, he says, are:

- The doctrine that man was created in the image of God, as discussed above.
- The commandment to love our neighbours as ourselves and the very clear teaching of Christ that "neighbours" is to be understood in a universalistic sense. This is the root of the emphasis on a lifestyle of service.
- The clear teaching that "loving" our neighbour is expressed in the way we treat others.
- The doctrine that Jesus' incarnation and death was for all people in the broadest sense.

- The recurrent imagery of God as the Father of all humankind stresses the relatedness and equality of all people.
- The teachings of the early church fathers regarding the soul of man stress that human worth is dependent on more than the outward condition of man.

The concept of sacrificial service or selfless love as a fundamental element of the Christian lifestyle is well established through the incarnation of Christ (McCloughry, 2003:5). McCloughry (2003: 5) explains that sometimes the voluntary decision not to exercise a right one has may be the most effective way of “showing that there is another way of living”, and does not preclude fighting for the rights of others. In keeping with the widely held view of education as a profession characterised by service, it may at times be appropriate for educators to suspend their rights claims in order to achieve other ends such as the best interests of the child.

The traditional Christian view holds that rights cannot be considered in isolation from community, and that they are inextricably linked to responsibilities (Toon, 1998:6). Christianity argues that the link between people is by virtue of their common created identity, not because of contractual agreement of common rights claims (McCloughry, 2003:3). For that reason rights are upheld in the context of relationship, and out of love. Thus McCloughry (2003:5) argues that to “claim rights without

acknowledging responsibilities fractures community". A typical example of this would be the insistence on receiving government services, but a refusal to pay taxes to fund such services. However, Christianity still acknowledges the essential dignity of each individual.

It is therefore clear that the modern concepts of human rights and the right to dignity have strong roots in Judaeo-Christian thought and practice (McLeay and McLeay, 2009:2). Rice (1970:78) specifically cites Pico della Mirandola's *Oration on the Dignity of Man* (1498) as a seminal work in this regard. Morpew (1989:56) points out how the centrality of human dignity can also be traced to the reformation, when there was a fresh emphasis on the freedom and dignity of the individual in the work of many of the reformers. What emerges is the strong link between dignity and the freedom or ability to make moral decisions.

In summary, the Christian view of human dignity is based on both humankind's inherent worth, having been created in the image of God, and humankind's ascribed worth, having been redeemed from a flawed state by the vicarious sacrifice of Christ. Dignity is linked to man's communal or social condition, but is applicable equally to every individual, and it is directly linked to responsibility. Loving, self-sacrificial service of others and exercising the freedom to make moral decisions are the clearest expressions of human dignity. Human dignity is the

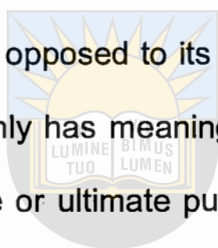
foundation of other rights and freedoms, and since it is not earned, it is applicable to all people and can never be withdrawn.

3.2.3 Dignity in Islam and Shari'ah law

Muslims consider themselves, Jews, and Christians, to be “people of the Scriptures” (ahl al-kita'b), but see Islam as the completion and fulfilment of a process of revelation started with Adam (Newby, 2002: 3-5). In this sense then the other monotheistic faiths are incomplete or flawed pointers towards the truth revealed by the prophet Muhammad, the Qur'an, which along with the Sunnah, the traditional biography of Muhammad, serves as primary frame of reference for teaching and practice in Islam. The Qur'an consists of 114 surahs (chapters), each with a number of a'yahs (verses) (Newby, 2002: 3-5).

Arising from the Qur'an and the sunnah is a system of traditional laws governing many areas of life commonly called shari'ah, a term (literally meaning “the way to the watering hole”) that occurs only once in the Qur'an with the sense of “right way of religion” (Qur'an – Sura 45:18). It is therefore more a moral or spiritual concept than a legal one (Kamali, 2008:2) It is probably best described as the broad value system and lifestyle based on application of the principles of Islam and the specific

legal system that has been developed over time to guide Muslims in the expression of their faith (Farooq, 2006: 5; Kamali, 1991:12; Kamali, 2008:2). Actual laws and regulations that have been derived from the Qur'an and Sunnah are called *fiqh* and the system of jurisprudence that has developed to interpret and apply *fiqh* is known as *usul al-fiqh*. Shari'ah should not be regarded as a single clear legal code because the Qur'anic revelation did not "come to us as a codified manual of laws" (Farooq, 2006:6). In shari'ah law the principle *maqasid*, the underlying purpose or intent of a law as opposed to its mere form, is central (Auda, 2008:1). Any ruling in *fiqh* only has meaning in relation to the extent to which its underlying rationale or ultimate purpose is understood (Crane, s.a.:2).



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The concept of obligation or duty (*haqq*) is fundamental in Islamic morality. "To be a Muslim is to have an individual responsibility to God and a social responsibility to Muslims and other human beings in the world" (Newby, 2002:5). The concept of rights in Islamic thinking is very strongly linked to the concept of responsibility or obligation to the extent that the same term (*haqq*) is also used in shari'ah discourse to describe rights. Rights are essentially the expectation that others will fulfil certain obligations; in other words, obligations give rise to rights. This contrasts with typical contemporary Western thinking regarding rights where the existence of rights imposes obligations. Thus in most contemporary human rights documents the existence of a right is regarded as inviolable

or axiomatic and such rights then imply specific obligations (for example the learner's right to dignity automatically implies the obligation for teachers to treat learners with dignity.) In Islamic thinking the tendency is to state the obligation or duty first and then to deduce the existence of expected rights from that obligation (for example, the obligation to honour or respect all people as created beings implies the legitimate expectation to be treated with dignity). The duty to respect all human beings and honour their dignity (*haqq al karama*) is a fundamental Islamic value (Crane, s.a.:3; Farooq, 2006:33).



Islam (which means “obedience”) rests on five basic activities that are an outward expression of an internal belief or spiritual commitment (Newby, 2002:6). These are called the Pillars of Obedience (*arkan al islam*). They all arise from a starting point of belief in one God (Allah) who is the source and creator of all things. This implies an obligation on Muslims to honour God and to care for others as his creation. The Muslim doctrine of dignity is based on this. “The dignity of man derives from his acceptance, before the Creator of the Universe, of the responsibility to know right from wrong and to be a steward of the universe charged with caring for it and guiding it in accordance with the divine will” (Crane, s.a.:2).

This suggests that the core values of Islam not only support human rights in general, but also the right to dignity in particular; however, many

Muslim groups and nations have been reluctant to accept the Universal Declaration of Human Rights (Ohmyrus,s.a.:1). Eventually a meeting of leading Islamic scholars and politicians in Cairo resulted in the Cairo Declaration of Human Rights (Organization of the Islamic Conference, 1990:1-4), which differs from other declarations and bills of rights chiefly in the fact that it focuses on the rights of Muslims in particular, declaring that the “Islamic Ummah is the best nation”, a significant departure from the typical universal applicability stressed in most other declarations.

To sum up, Islam places a high value on human dignity based on the same principle of man as God’s special creation as espoused in Judaism and Christianity. The concept of rights, however, tends to be secondary to and emanates from duty or obligation in Islamic thinking, and human dignity is primarily the result of an obligation to show respect.

3.2.4 Human dignity from the perspective of African philosophy and *Ubuntu*

Although “African philosophy”, is sometimes loosely defined as “the spoken tradition and body of literature referred to as African philosophy” (Higgs, 2003:6) or the “set of texts ...written by Africans and described by their authors as philosophical” (Hountondji, in Coetzee and Roux, 2002:125), attempts have been made to define it more precisely. It is

African philosophy in the sense that “there is a profound cultural unity still alive beneath the deceptive appearance of cultural heterogeneity present in Africa which gives rise to the contents of an indigenous African knowledge system” (Diop, 1962 quoted in Higgs, 2003:11), and it attempts to articulate an African voice and to assert the right of Africa to define itself in its own terms and context (Higgs, 2003:8). What makes it *African philosophy* is a more contentious matter. Hountondji (in Coetzee and Roux, 2002:125) is of the opinion that the mere intention of the author to write philosophically is sufficient to qualify a text as African philosophy and that any further attempt at definition is irrelevant. On the other hand, Oruka (1978 in Coetzee and Roux, 2002:120-124) has postulated four different categories of “philosophy” in Africa:

- *Ethnophilosophy* - works from a largely anthropological perspective that attempt to describe a general African world view based on traditions and culture.
- *Philosophical sagacity* - the largely unsystematic collection of insights from wise individuals which may either challenge or reinforce traditional wisdom.
- *Nationalist-ideological philosophy* – focuses on the issues emanating from the problems encountered in African contexts that have their roots in colonialism and the struggle for freedom and self-assertion.
- *Professional philosophy* – rigorous and systematic examination of conceptual issues.

What is most important, however, in understanding the African concept of dignity is to consider the dominant themes and content of African philosophy, whether it is ethnophilosophy or more rigorous professional philosophy.

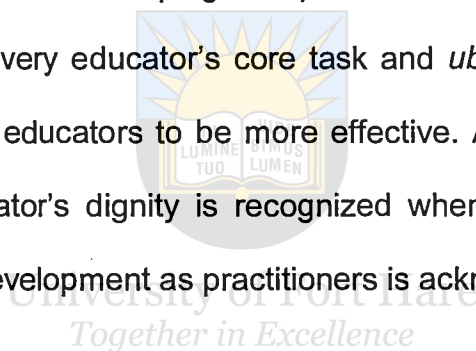
Characteristically all forms of African philosophy attempt to recover or examine past cultural knowledge and refocus attention on Africa and African indigenous knowledge, and in so doing to arrest or reverse the influence of Western Eurocentric culture on Africans (Higgs, 2003:7). Letseka (2000 quoted in Higgs, 2003:12) identifies two dominant themes in African philosophy: communalism and *ubuntu* in the sense of traditional African morality and concern for human welfare and fair treatment of people. To this could be added a third recurrent theme, that of Africanisation in the sense of exploring the meaning and identity of what it means to be authentically African and how to overcome the effects of colonization. Africanisation does not imply a total rejection of everything that is western and Eurocentric, but is rather a call to make Africa the “focal point from which all other cultures are studied” (Beets and Van Louw, 2000:176).

Nafukho (2006:409) postulates that the concept of *ubuntu* is the most distinct common thread in almost all African cultures, and speaks of an African worldview that he calls *ubuntuism*. The concept of *ubuntu*

appears in a great many African languages, as does the dictum *umntu ngumntu ngabantu* (Van Binsbergen, 2002: 1; Nafukho, 2006:409; Broodryk, 2006:3-4). This maxim has been translated as meaning, “a person or an individual is a person, or acquires their humanity, through or because of, or in relationship with, other persons”. *Ubuntu* is seen as the “art of being human” (Broodryk, 2006:1), and is regarded as being both descriptive and prescriptive in that it not only describes the human condition as one of relatedness to others, but also indicates how one should “be with others” (Louw,s.a.:1). It is part of long-held traditions giving rise to a world view based on “values of intense humanness, caring, sharing, respect, compassion and associated values, ensuring a happy and qualitative human community life in the spirit of family” (Broodryk, 2006:1)”. These are clearly the sorts of values and attitudes that can be expected from professional educators and would contribute to promoting the dignity of educators. Louw (s.a.:1) notes that the 1997 South African Governmental White Paper on Social Welfare officially recognises *Ubuntu* as:

“...the principle of caring for each other’s well-being and a spirit of mutual support. Each individual’s humanity is ideally expressed through his or her relationship with others and theirs in turn through a recognition of the individual’s humanity. Ubuntu means that people are people through other people. It also acknowledges both the rights and the responsibilities of every citizen in promoting individual and societal well-being.”

However, *ubuntu* is seen as extending beyond merely interpersonal or social agreement, to being the “principle of transcendence through which an individual is pulled out of himself or herself back towards the ancestors, forward towards the community, and, towards the potential each one of us has” (Cornell, 2008:5-6). It is therefore not just about relating to people as they are, but also as they are able to become, or as Ramose expresses it, “be-ing as be-coming” (Coetzee and Roux, 2002: 231). Recognizing and developing the potential of every learner is a crucial element of every educator’s core task and *ubuntu* is therefore a value that can help educators to be more effective. At the same time it suggests that educator’s dignity is recognized when their potential for improvement and development as practitioners is acknowledged.



Ubuntu is as much an experienced notion as an abstract intellectual concept, and is therefore more clearly understood through examining the ways in which it is expressed, an approach followed by Teffo (in Makgoba, 1999:154).

Ubuntu expresses certain core human attributes, and Van Binsbergen (2002:10-14) identifies four of these:

- (a) **Human dignity and equality.** *Umntu ngumntu ngabantu* implies that as an individual treats another with dignity and humanity, the individual expresses his or her own human dignity and oneness with

the other. When educators treat learners, colleagues or parents in a way that lives up to *ubuntu*, or when educators are treated in this fashion, it brings into existence an ethical relationship between the two parties (Cornell, 2008:7).

(b) Universal brotherhood. Just as the individual is dependent on others to become a person, so the others are mutually and reciprocally dependent on that individual for their own humanness or personhood. *Ubuntu* expresses human solidarity (Pityana in Makgoba, 2002:144). It stresses the interdependence and mutual value of each person's actions for others (Nafukho, 2006:410). Just as educators depend on the approval and appreciation of parents, colleagues, and learners to uphold their dignity, so these other role players depend on educators to acknowledge their worth.

(c) The sacredness of life. The fact that people live and become human through the help of others includes both sustenance as well as respect. The debate as to whether care or justice should be the primary value becomes resolved. "We can only act caringly towards an individual, in terms of *uBuntu*, if we also treat them with dignity and aspire to a just relationship with them" (Cornell, 2008:7).

(d) "Being" (being in community) as the most desirable state. It is more important to invest time and energy in relationships and community activities than in pursuing one's individual objectives or in task-oriented activities.

Examining some key characteristics of *ubuntu* will provide insight into how it contributes to an understanding of human dignity. Nafukho (2006:409-412) identifies religiosity, consensus-building and dialogue as critical aspects. *Ubuntu* is distinct from Western humanism in that it is fundamentally spiritual (Louw, s.a.: 2; Nafukho, 2006: 409). People become people through other people, but those others include the ancestors and the not-yet born. Interdependence extends beyond the grave and all of life, including learning and work, are invested with a sense of the religious. One is respected as a worker even when the work one does is not paid work because work contributes to the well-being of the community and has spiritual significance (Teffo in Makgoba, 1999:162). Personhood is not inherent, but is acquired and therefore by implication not all persons are persons. An important part of acquiring personhood through others is by participation in the rites and ceremonies of the community, and through respect for the religiosity of others (Louw, s.a.: 2). In this regard Yum (2007:18-20) compares *ubuntu* to the Confucian principles of *jen* (humanism) and *li* (propriety), explaining that in Oriental culture humanism or human worth (*jen*) is attained through observance of respectful rituals and manners, and through appropriate deference to others' rank and status (*li*). The implication of this for the dignity of educators is that their dignity can be promoted through the establishment of rituals and traditions around school. When educators are actively integrated into the spiritual life of the community, their dignity will be promoted, but when the educator and the school remain isolated

and alienated, or aloof from the community, the educator's dignity is at risk. Frequently in the most traditional rural communities, educators are not local residents but commute from the nearest large city and therefore fail to connect, or integrate into the life of the community.

Another very important aspect of *ubuntu* is the quest for consensus (Nafukho, 2006: 410). Traditionally in African society decisions are reached after lengthy discussions in which all members of the community are free to participate. The practice of agreement by majority vote was not used (Anderson, s.a.:10). A matter was only settled when there was a measure of unanimity (*simunye*) and "peace" (*omulembe / sinoxolo*). Nafukho (2006: 410) argues that this process safeguards the rights and opinions of individuals and minorities, and fosters genuine appreciation of individual differences. On the other hand, there could be the tendency to stifle innovation and healthy dissent by placing too high a premium on agreement and conformity to the point of "oppressive conformity and loyalty" (Louw, s.a.; 4). The challenge is therefore to affirm unity while valuing diversity.

Nafukho (2006:411) points out that *ubuntu* is also characterised by dialogue in the sense of a willingness to learn from others in order to build one's own knowledge base. This serves to emphasize the importance of the individual in society. Through recognizing the unique

otherness of the other and accepting it, one's own individual identity is affirmed (Louw, s.a.:5). It is only possible to be an individual in the context of community relationships, and independence therefore becomes replaced with interdependence. Individualism is never allowed to take precedence over group solidarity, and this can be potentially restrictive, but at the same time *ubuntu* discourages depersonalizing the identity of people. This suggests that *ubuntu* should be stressed as a value underpinning efforts to promote a more collaborative and collegial approach amongst educators in a school. On the other hand, the approach of interdependence and collective wisdom is often misinterpreted as, or can be abused to become, a pattern of some educators constantly relying on the efforts of other team members without making any contribution themselves. When this happens it undermines the dignity of all parties involved by creating a division between exploited experts and disempowered dependents.

Ubuntu becomes the foundation for a range of values such as togetherness, equality, empathy, compassion, respect, tolerance, humanness, harmony and wisdom that promote human dignity (Broodryk, 2006:27). Mokgoro (1998:6-7) argues that it is a core value of the South African Constitution and guides the application of rights claims.

Africanisation as a drive to restoring the dignity of Africans cannot be separated from the concept of *ubuntu*. Consequently *ubuntu* features prominently on several political and social initiatives linked to Africanisation such as the African Renaissance, the New Partnership for Africa's Development (NEPAD) and the Millennium Action Plan. The objectives of such programmes clearly demonstrate a commitment to improving the status of Africa and consequently the dignity of African people. They also include specific objectives aimed at improving the quality of life and the rights of groups such as the poor and women who have been marginalised and have experienced dignity violations (Ozoemena, 2006:83). *Ubuntu* is considered a serious ideological model and framework for addressing the social ills in Africa and building a new African society, for resolving conflict and enabling reconciliation, and for providing a serious political alternative to the extractive capitalism that characterised colonialism (Ollinger, Britz and Olivier, 2007:4).

It can be concluded that in African philosophy and value systems, in which the concept of *ubuntu* plays a central role, there is a deeply rooted tradition of respect for others based on common humanity, but that this element of dignity is embedded in the person's relatedness to the group or community of which they are part. Individual dignity is not inherent in African thinking because people acquire their significance and value through others and interdependence is the source of people's worth. *Ubuntu* also guides the sorts of values and practices that foster mutual

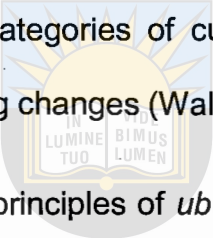
respect and dignity. The philosophy of Africanisation seeks to restore the dignity of African people in the light of the harm suffered from colonialism.

3.2.5 Human dignity in African customary law

African customary law, described as “a set of norms which the actors in a social situation abstract from practice and which they invest with binding authority (Bennett, 1989:7), or “an established system of immemorial rules which had evolved from the way of life and the natural wants of the people” (Bekker, 1989:11) has been strongly influenced by the values associated with *ubuntu* (Kuruk, 2002:6). Attempts have also been made in The Law of Evidence Amendment Act 45 of 1988 and The Recognition of Customary Marriages Act 120 of 1998 to define what is respectively called *Indigenous law* and *customary law*. Mokgoro (1998:8) points out that now, for the first time, customary law has recognition and status at a constitutional level. Section 211(1) of the Constitution of South Africa recognizes and protects the institution, status and role of traditional leadership and section 211 (3) requires the courts to apply and recognize customary law when it is applicable. Section 39(2) requires the state to develop customary and common law in line with the Constitution. It therefore becomes important from the perspective of education law to examine how African customary law treats the issue of human dignity

and how this impacts on educators, especially educators who work in more traditional rural communities where African customary law is still applied.

Because customary law is not formalized or codified, but is largely oral, it is highly dynamic and flexible in nature. Educators have an important role to play as change agents in influencing appropriate changes in custom. Waliggo recommends four categories of customary law practices that can be identified when making changes (Waliggo, 2000:7):

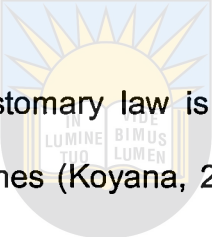
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- (a) Core values such as the principles of *ubuntu* which have clear moral value and which should be strongly retained.
- (b) Traditional values and practices which should be purified or modified in the face of modern social changes, for example instead of enforcing certain taboos and prohibitions that make good sense on the basis of superstition and fear, they should be enforced on the basis of rational explanation.
- (c) Some customs which formerly served a purpose but are no longer relevant or appropriate should be substituted, such as polygamy and levirate marriages (*ukungena*) which should be substituted in contemporary society with monogamy and social protection for widows to inherit in their own right.
- (d) A few traditional practices were based on unfounded fears or ignorance, and are so inappropriate or repugnant that they should be

abolished without substitution, such as the abandonment of twins (particularly common in West African societies), killing of suspected witches, and the abduction and forced marriage (*ukuthwala*) of women.

Customary law tends to be restorative rather than retributive in nature, and makes no specialized distinction between criminal and civil law (Koyana, 2009:5). The primary purpose is to restore harmonious relationships within the community and between nature, the ancestors and the living, rather than to punish offence (Koyana, 2009: 2; Mqoke, 2003: 17-20). Many of the sanctions imposed are therefore of a compensatory nature rather than a deterrent. Anderson (s.a.: 7) points out the parallels between restorative justice, which “attempts to repair the damage, re-establish dignity and reintegrate those who were harmed or alienated by the offence” since, like customary law it rests on an assumption of balance and respect in society that is disturbed by misconduct. Such a restorative approach to remedying misconduct upholds the dignity of both victim and offender when properly applied, and should be strongly encouraged in school discipline.

African customary law is rooted in traditional religion (Nabudere, s.a.: 4; Koyana, 2009: 2), and has a moral and a judicial aspect in that the rules of African customary law are designed to uphold and maintain

community values (Waliggo, 2005: 2-3). The meaning of actions is evaluated in terms, primarily, of their impact on the group rather than the individual. African customary law places a higher premium on social cohesion and individual obligations to the community than on individual identity and rights (Koyana, 2009:2), which can clearly lead to situations where individual dignity is sacrificed for the sake of community expectations or demands.



Another characteristic of customary law is the emphasis on concrete rather than abstract approaches (Koyana, 2009:6). This may, however, sometimes lead to practices, especially in regard to evidence, that can be especially demeaning, such as virginity testing and the requirement for a women to present her belly for examination by the family of the purported father-to-be in claims of impregnation linked to seduction or adultery (Bekker, 1989:357). As change agents and promoters of literacy, educators should be prepared to challenge practices that undermine human dignity in this way, respectfully but critically. They may also find that, at times, their authority and credibility are challenged in the absence of concrete evidence when making assessments of learner performance or disciplinary rulings.

The role of kinship and social position in customary law are also significant in terms of dignity. Most actions are between kinship groups

rather than individuals (Koyana, 2009: 6). In *Mthembu v Letsela and Another* 1997 (2) SA 936 (TPD) the court found that an heir does not only inherit the property of the deceased but also his obligations towards the family. Social rank is also an important factor. Bekker (1989:354) cites for example that plaintiffs of royal blood are entitled to higher damages than usual in cases of seduction or adultery. Van der Walt (2003:75) points out that position within the tribe or community and even factors such as gender can lead to an individual having greater or lesser worth, and concludes that African traditional law is by no means egalitarian, and is selective in terms of dignity. He stresses (2003:225) that only when dignity is “grounded in truth which transcends humanity” will universal human dignity prevail in African societies that are traditionally dominated by factionalism and tribalism. In the case of *Bhe and Others v Magistrate Khayelitsha and Others* 2005 (1) BCLR 1 (CC) Langa DCJ stated that, “The exclusion of women from inheritance on the grounds of gender is a clear violation of Section 9 (3) of the Constitution ... The principle of primogeniture also violates the right of women to human dignity as guaranteed in section 10 of the Constitution as, in one sense, it implies that women are not fit or competent to own and administer property”. It is argued (Ozoemena, 2006:2-3) that some customary practices place women in a position of dependency in relation to their male counterparts, and therefore in a position of subordination. Most African societies are still male-dominated, and customary law reinforces a predominantly

patriarchal system (Koyana, 2009:15). This is reflected in the sphere of family law and succession (Ozoemena, 2006:2-3).

For educators, especially in rural communities where customary law is still applied, these aspects could potentially pose a threat to their individual right to dignity. Educators may be overlooked for appointment, especially into promotion posts, when the school governing body prefers to appoint a less suitable candidate on the basis of kinship bonds, a practice colloquially known as appointing a “son of the soil”. Female educators are also vulnerable to being disregarded or treated in a demeaning fashion by male colleagues, school governors and parents purely on the basis of gender.

African customary law still plays a vital role in the lives of most South Africans, and cannot be summarily disregarded. It is also an important vehicle for giving expression to many of the values and principles embodied in the philosophy of *ubuntu*. In this regard the value of respect for elders and those in certain positions is important for upholding the dignity of educators. However, African customary law is also often in conflict with constitutional principles of dignity and equality, and may potentially become a source of violations of the dignity of educators, especially female educators.

3.2.6 Consolidation and application

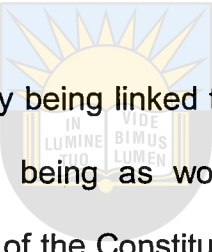
Educators have a moral duty to recognize and respect the dignity of others with whom they work, but they also have a spiritual and moral basis for claiming the right to be treated and respected with dignity. The extent to which educators demonstrate respect for the dignity of parents and learners will impact on the extent to which they enjoy sincere respect in return, especially in African culture where the principle of *ubuntu* holds that people acquire their worth and humanness through relating to other people. However, Judaeo-Christian and Islamic thinking hold that the educator's claim to dignity is valid regardless of the educator's conduct, because it is rooted in the educator's identity as a created being in the image of God. This applies equally to all educators regardless of rank, race, gender or other factors, although it is a distinct possibility that educators may find their right to dignity challenged regarding gender, religious affiliation or community status in particular contexts.

3.3 PHILOSOPHICAL PERSPECTIVES ON DIGNITY

3.3.1 Immanuel Kant – Inherent worth, pre-eminence and links to equality

The basis of Kant's ethics, his "categorical imperative", calls on people to act in such a way that they would be prepared for their actions to be a universal principle, in other words to treat all humanity as they themselves would want to be treated, not as a means but as an end in themselves. The parallels between this view and the ideas embodied in the African concept of *ubuntu* are striking (Cornell, 2008:14). Kant argued that dignity was a logical implication of our basic nature as human beings. He spoke of the "dignity of humanity in us" and stressed that dignity is "above all price and admits of no equivalent" (Jones, 1971:127). This sets dignity apart as a pre-eminent right around which other rights are organized, and imposes on all people an inherent duty not to allow anyone to trample rights underfoot with impunity (Meyer, 1989:520). The implication of this is that claiming rights as a specific human activity may sometimes be a particularly appropriate way for people to express their dignity (Meyer, 1989:522). The manner in which such a rights claim is exercised is important because claiming rights is a public or presentational activity, and dignity as a right has a particularly public or presentational element. Thus how people claim their rights can either

promote or detract from their dignity, depending on the level of self-control exercised during such a rights claim (Meyer, 1989:524). One can contrast the dignified restraint of non-violent civil disobedience protestors such as the Women's pass law protests of 1956, the civil rights marches led by Martin Luther King or the protests led by Gandhi in India with the acts of vandalism, littering, violence and obscenity that sometimes accompany protest marches or strikes.



A second implication of dignity being linked to peoples' inherent worth is that the worth of others as being as worthy of respect as oneself becomes significant. In terms of the Constitutional right to equality, Maile (2004:202) argues that it is essentially:

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(a) equality of rights and

(b) equality of worth (dignity).

In this sense then, human dignity is not an "individualized abstract concern, it is at the foundation of equality" (Pityana, 2003:4) because it is only when the inherent humanity and dignity of others is acknowledged that one recognizes that inequality in any form is actually a denial of other people's basic dignity and their right to equal treatment because they have equal worth.

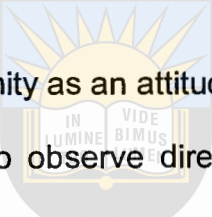
3.3.2 An attitude of mind

Although it is part of one's unique condition as a human being to possess rights, it is clear that this alone does not "capture everything that is significant about human dignity" (Meyer, 1989:521). It is not only individual humans that have and exercise rights. Groups of humans and institutions or organizations, when identified as juristic persons, also bear rights and responsibilities, but it is significant that such juristic persons are unlikely to have the right to dignity. This seems to be exclusive to natural persons. This would suggest that dignity is rooted not only in actions but also in attitudes or inherent qualities, since juristic persons are able to carry out many of the actions that natural persons perform, but it does not make sense to speak of organizations having attitudes.

In this regard Marmot (2004:1020) proposes that dignity is primarily an "attitude of mind". He argues that it is directly linked to the capacity of the individual to exercise control over one's own life and to engage socially. When these conditions are removed, dignity is impaired. This capacity for social engagement and volitional control would also explain why individuals are able to display dignity despite appalling external circumstances that would appear to violate their basic right to dignity. Dignity is therefore linked to the ability to exercise one's will and make choices. Lawrence and Moyo (2006:2) speak in this regard of "spirit", a

“quality that drives individuals to action even when surrounded by the seemingly insurmountable and adverse conditions”. As an attitude of mind, dignity is an attitude that should dictate how we treat other people, and it should directly affect our social policies (Marmot, 2004:1021).

3.3.3 Freedom to choose



The problem with viewing dignity as an attitude of mind is that it becomes difficult or even impossible to observe directly. This, in turn, makes it difficult to determine when dignity is being violated. It is probably more helpful to consider dignity in terms of more observable behaviour such as making free choices. Marmot (2004:1020) suggests that there is a strong link between dignity and the freedom to choose. This is why depriving individuals of various enabling factors such as health care, education or housing can potentially violate their dignity.

Sen (1999:15) has coined the term “unfreedoms” to describe the absence of certain basic conditions which are so necessary for achieving a reasonable quality of life that their absence severely limits people’s range of choices and opportunities. He argues that development should not be measured in monetary terms such as gross domestic product or average per capita income, since wealth is not a sufficient end in itself.

Instead the end of development is determined by the freedom people have to choose a quality of life that is adequate (1999:37). Wealth is instrumental in bringing about freedom, but at the same time freedom is equally important in enabling people to produce wealth. Sen (1999:246) concludes that basic freedoms should be upheld and can legitimately be formulated in terms of rights because:

- (a) Basic freedoms are intrinsically important. In other words, being free from humiliation and degradation is important in its own right.
- (b) Basic freedoms provide political incentives for economic security and lead to important consequences. In other words, ensuring that everyone is able to enjoy a measure of dignity is a powerful motive for societies and governments to address the sort of poverty-related problems that cause degradation.
- (c) Basic freedoms have a constructive role in producing values and priorities for society. In other words, being free from humiliation and degradation makes it more likely that people will uphold values such as equality, democracy and transparency.

In discussing the link between freedom and dignity, Maile (2004:204) points out that the right to freedom does not imply unlimited license, but refers to freedom that has due regard for the dignity and equality of others, and that operates within the imperatives of good government.

3.3.4 Dignity and destiny

Drawing on the existentialist tradition, Pannenberg (1970:97) argues that it is an intrinsic feature of being human to be caught in tension between openness to oneself (I) and to the world, especially the world of human relationships with others (Thou). He argues that recognition of the other person (as being of as much worth as oneself) plays a unique part in creating rights. One only has rights in relation to others from whom such rights are claimed and one is only able to claim rights when one recognizes other's rights. Recognition is expressed in terms of acceptance of the other as having a place and role to play in society. Pannenberg equates such recognition and acceptance to love. "Thus love creates rights [*Recht*] through the act of recognition." (Pannenberg, 1970:99). The right to dignity can therefore be linked to the right to be accepted and accorded a meaningful role or place in society, and the right to engage in relationships and to express and receive love.

3.3.5 Consolidation and application

If we are to accept Kant's argument that dignity is a logical implication of human nature, then all role players in the educational situation have inherent worth and dignity. This also includes educators who may claim

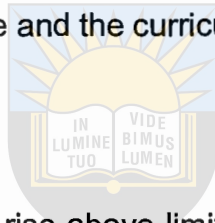
the right to be treated with dignity by virtue of their basic humanity. In claiming the right to dignity in a dignified manner, they will contribute significantly to their own dignity and status.

The educator's dignity begins with a mental attitude that leads to appropriate dignified conduct. This implies that educators should consider themselves as being worthy of dignity and should desist from seeing themselves as being deprived of dignity. It becomes important that educators assert their right to be treated in a suitably dignified manner and that they demonstrate that right by dignified conduct. The term "professional" is used sometimes by educators to describe themselves as being worthy of some special esteem because they are part of a particular group of specially trained "professionals". This suggests a particular mental attitude. The term is also used sometimes to describe desired standards of conduct or observable behaviour that is professional. This implies that educators should not only see themselves as worthy of respect and dignity and insist on being treated in that way, but they should also conduct themselves in a professional and dignified manner that engenders such respect from others.

In as much as educators are able to relate to others in the educational situation in a way that expresses acceptance and love, they will be increasing their own dignity and upholding the dignity of others. In

particular they will be promoting acceptance and appreciation for the role they are fulfilling as educators, and in that way will be strengthening their right to be accepted in that particular role.

An integral aspect of educators' dignity is their freedom to exercise choice, for instance about where to apply for work, what and how to teach, and their ability to make inputs into their conditions of service, policies affecting their practice and the curriculum.



In this sense, educators who rise above limitations in the workplace and seek to “make a difference” through the way in which they exercise their profession demonstrate a particularly noticeable expression of dignity.

3.4 HISTORICAL DEVELOPMENT OF THE CONCEPT OF HUMAN DIGNITY

3.4.1 Rejection of unjust laws

For the most part the first millennium after Christ was a period characterized by a general acceptance of autocratic rule and very little

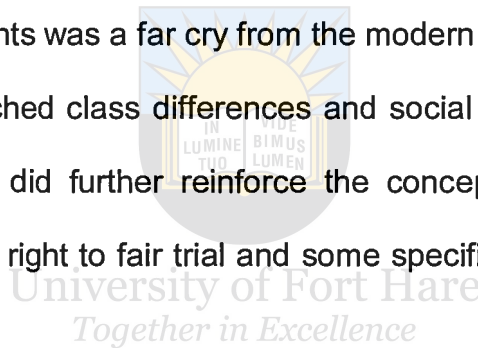
regard for the dignity of the individual, but during the 11th and 12th centuries at the Universities of Paris and Bologna, the canon lawyers began to postulate and teach an interesting legal maxim, "*lex injusta non est lex*" (an unjust law is not a law) (Alston, 2002). This was the first challenge to arbitrary and absolute decrees by rulers who regarded their status as divinely given. It introduced the notion of a higher absolute principle against which law was to be measured, namely the notion of justice. In respect of the development of the concept of human dignity this made no direct contribution, but it did lay the foundation for the concept of the rule of law and for the subsequent notion that everyone should enjoy equality before the law, which underscores the belief in the equal worth of all persons. However, it must be noted that this dictum was as often honoured in the breach as in the observance.

3.4.2 From Magna Carta to the Long Parliament – Dismantling the divine right of kings

In 1215 his barons challenged the autocratic rule of King John of England and this led to one of the earliest constitutional documents, the Magna Carta. The Magna Carta was by no means an introduction of democracy or a bill of rights, but it did commit the sovereign to ensuring that no man would be denied justice or rights (Alston, 2002), thereby again reinforcing the notion that all people shared a measure of equal

worth before the law, and access to fair trial rather than arbitrary judgment (Lewis, 2003:144). It did not introduce any new rights but served to consolidate existing privileges and to subject the king to a written statute (Fisher, 1935:317). This also initiated a slow erosion of the divine right of royalty in British law that culminated in the passage of a Bill of Rights in Parliament in 1689.

The 1689 Bill of Rights was a far cry from the modern equivalents since it still strongly entrenched class differences and social barriers, but it was important in that it did further reinforce the concept of parliamentary sovereignty and the right to fair trial and some specific freedoms (Lewis, 2003:275).



3.4.3 The eighteenth century – revolutionary constitutions

A century later the American colonists who were largely direct descendants of many of the English parliamentarians who had established the 1689 Bill of Rights, declared independence from Britain and in doing so stated that all men were created equal and were endowed with inalienable rights including “Life, Liberty and the Pursuit of Happiness”. This was a significant statement in terms of establishing the concept of human rights and the common humanity of all persons.

However, the absence of any direct reference to human dignity is also significant. There is also no direct mention of dignity in the American Constitution of 1787 (Lewis, 2003:333). The French Constitution of 1789 bears striking similarities to the American constitution and also places emphasis on liberty and equality, but omits direct mention of dignity, although it does speak of the "natural and imperceptible rights of man" (Lewis, 2003:349). It is significant that both of these early constitutions (the first ever constitutions in the modern sense, and the pattern on which all subsequent modern constitutions are modelled) introduced a range of specific civil liberties that underscore the notion of individual worth and freedom as embodied in the concept of human dignity. Both of these documents also introduce the idea that certain rights are inviolable or inalienable, which resonates with the Kantian concept of inherent worth or freedom (*innere Freiheit und Wurde*).

3.4.4 Nineteenth century – the abolitionist struggle

A very significant development during the nineteenth century in the field of human rights that did much for developing an appreciation for human dignity was the abolition of slavery. This began in Britain and the British Empire, largely as a religious conviction, and was led politically by Wilberforce in Parliament. Subsequently the cry was taken up in the United States, especially after the publication of Douglass's *Open Letter*

against Slavery in 1848 and Stowe's novel, *Uncle Tom's Cabin*, and culminated in the Civil War. Douglass tellingly ends his letter to his former master by saying, "I would esteem it a privilege to set you an example as to how humankind ought to treat each other." (Lewis, 2003:390). This is surely a powerful demonstration of dignity in practice. In many ways this movement served as bridge between the focus on liberty in the eighteenth century, and dignity in the twentieth century writings on human rights. It also served to challenge the gap between the idealism of the early constitutions and the reality of gross inequalities and injustices that abounded.



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3.4.5 Early twentieth century attempts to propose universal rights

The early twentieth century saw increasing patterns of totalitarianism emerging in several nations and culminating in the Second World War, but even before this there were several documents published that sought to propose a scheme of basic human rights applicable to all persons. Alston (2002) summarizes several of these initiatives. An Italian jurist, del Vecchio, published a brief outline for a scheme for human rights in 1924. The Institute for International Law adopted "An International Declaration of the Rights of Man" in 1929. This declaration consisted of only six articles but was important in that it firmly established that individual rights should be free from "infringement on the part of the State". A German

publication by Rommen in 1936 proposed a doctrine of *Naturrecht* and put forward a number of natural rights for all citizens, despite the hostile climate prevailing under Nazi rule at the time. This was an important document in that it supports the notion of rights that are inherent or transcendent, a quality ascribed to human dignity.

At the height of the Second World War in 1941, Roosevelt delivered his “Four Freedoms” speech to Congress in which he articulated the idea that certain freedoms were fundamental to peace and progress, namely freedom of expression, freedom of worship, freedom from want, and freedom from fear. He also declared that these conditions should be universally applicable. This list specifically dealt with “freedoms” rather than rights and therefore it did not mention the right to dignity, but it did clearly emphasize the universality of basic freedom rights.

In 1944 the French philosopher, Maritain, published an essay entitled *The Rights of Man* that set forth the foundations of most modern lists of human rights. Building on this, Lauterpacht published a draft for an International Bill of the Rights of Man in 1945. Documents such as these paved the way for the Universal Declaration of Human Rights (UDHR) after the Second World War (Alston, 2002), which states in Article 1 that “recognition of the inherent dignity and of the equal and inalienable rights

of all members of the human family is the foundation of freedom, justice and peace in the world”.

3.4.6 Consolidation and application

Historically, the recognition and significance of human dignity as a basic right has been a fairly recent development in a process formerly dominated by concerns for justice, freedom and equality. This would suggest that in striving to establish their right to dignity, educators should not neglect working towards just and fair conditions for themselves and for those with whom they work. They should protect the right to basic freedoms, and should oppose any forms of inequality or discrimination.

Since the universal right to dignity has not always been recognized, it is likely that patterns of thought and behaviour will persist which threaten to undermine or violate educators' right to dignity. These may include:

- subtle forms of racial, ethnic and gender discrimination,
- unjustifiable limitations of the right to freedom of expression, opinion or association,
- the requirement to uphold and enforce unjust school rules, and
- being pressurized to support exclusivist admission policies based on parents' financial means.

3.5 THE PERSPECTIVE OF INTERNATIONAL LAW

Following the rise of Nationalism in the nineteenth century and the establishment of national states with firm boundaries, the doctrine of non-interference by one state in the domestic affairs of another state dominated international politics. As a result the development of international law was relatively slow (Alston, 2002) until after the Second World War and the subsequent Nuremberg Trials. This event not only served to establish the idea of an international tribunal to act against war crimes, but also distinguished between acceptable military action and crimes against humanity. This made the notion of human dignity a significant subject of debate.

This section examines how several international charters have addressed the concept of dignity. Section 39 of the Constitution of South Africa requires that the courts must consider international law when interpreting the rights in the Bill of Rights.

3.5.1 The United Nations Charter

The Preamble to the United Nations Charter states that:

“We the people of the United Nations...reaffirm faith in fundamental rights, in dignity and the worth of the human person, in the equal rights of men and women of nations large and small...” (Lewis, 2003:448)

In this passage both dignity and worth are explicitly mentioned, suggesting both a subtle distinction and a close relationship between the two concepts. The passage also strongly suggests the fundamental nature of dignity and equality as rights, and emphasizes a link between these concepts.



3.5.2 The Universal Declaration of Human Rights (UDHR)

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The preamble to this document, ratified on 10 December 1948, states:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ...”

Thus dignity is established as being:

- Inherent in all persons
- Universally applicable, regardless of political acceptance or not
- Pre-eminent among rights
- Fundamental (with equality) to the provision of all other rights.

Unfortunately the UDHR remained initially mired in controversy, lacking in force and largely an idealistic guideline (Wessels, 2002:3-4).

The **Teheran Declaration of 1966** explicitly stated that the UDHR “constitutes an obligation for the members of the international community”, thus adding some measure of force (Wessels, 2002: 4). The Teheran Conference gave rise to the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** developed by the United Nations. The ICCPR reiterates “recognition that these rights derive from the inherent dignity of the human person”, and Article 10.1 states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The ICESCR also acknowledges that the rights it deals with derive from the inherent dignity of the human person (European Parliament, 2006: 2)

Subsequently the **Vienna Conference Declaration of 1993** led to the conclusions that:

- Human dignity is the common basis of all human rights,
- Human rights are universal, and
- There is room for national, cultural and regional particularities in the application of human rights (Wessels, 2002: 5).

3.5.3 The Convention on the Rights of the Child (1989)

This document establishes the legal status of children in terms of international law and establishes their special rights in terms of fundamental, civil, personal and social rights. It states that every child has the right to these basic rights. In other words, it is also seen as universally applicable. One of the rights it claims for children is that children who are “deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age” (Convention on the Rights of the Child, 1989:Section 37(c)). It also recognizes the right of “every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society” (Section 40(1)).

No attempt is made here to define the concept of dignity other than to imply that it cannot be curtailed, even under extreme circumstances. It is, however, strongly associated with the child's best interests.

3.5.4 The Charter of Fundamental Rights of the European Union

Article 1 of this charter states that:

“Human dignity is inviolable. It must be respected and protected.”

This is significant because it lifts human dignity from a general guiding principle in the preamble to being the primary right from which all other rights emanate. It also emphasizes the non-negotiable status of dignity, and it places an imperative condition on all parties to both respect and protect dignity.



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The European Union, through the office of the European court, has given rise to several insightful cases that deal with dignity. The earliest reference was in the grouped applications in 1973 by United Kingdom nationals of East African Asian origin, who were refused entry into the United Kingdom despite holding British passports. The commission found that “the racial discrimination publicly suffered by the applicants...constitutes an infringement of their human dignity...”

In **Tyrer v. UK 25 April 1978** the applicant claimed that the corporal punishment provided for under the law applicable on the Isle of Man where he was convicted was an assault on his dignity and physical

integrity. The commission found in his favour. This is significant in that it shows the superior jurisdiction of the European human rights law over the local penal code.

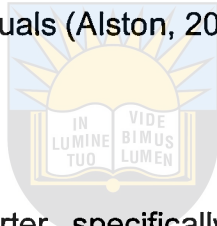
In the case of **Abdulaziz, Cabales and Balkandali v UK** 28 May 1985 it is interesting to note that although the court found in favour of the applicants in respect of complaints of sexual and racial discrimination, it dismissed allegations of violation of the right to dignity on the grounds that the unfair discrimination suffered did not denote any contempt or lack of respect for the personality of the applicants, and was not designed or intended and did not humiliate or debase them. The implication here is that for a charge of violation of human dignity to be upheld, it would be necessary to prove that the *actus* was intended to, or did in fact, debase or humiliate the victim.

3.5.5 The Freedom Charter

The Freedom Charter promulgated in 1956 did not specifically mention human dignity, but in its appeal for the equality of all South Africans, and in its call for universal access to democracy, and personal, civil and social rights, it strongly implied recognition of fundamental dignity (Saunders, 1994:388).

3.5.6 The African Charter of Human and Peoples' Rights

The African Charter of Human and Peoples' Rights (ACHPR), adopted in 1981, has proved to be largely ineffectual in curbing human rights violations on the continent because it lacked binding powers and was not readily enforceable (Alston, 2002). Even after the establishment of an African Human Rights Court in 1998, there has been scant success in protecting the rights of individuals (Alston, 2002).



The preamble to the Charter specifically sees the eradication of colonialism as contributing to the restoration of dignity. This supports the philosophical link between dignity and freedom of choice.

Article 5 of the Charter specifically guarantees that every human being is entitled to “the respect of the dignity inherent in a human being” and links this to “recognition of his legal status”. The right to dignity is also equated to protection against exploitation, slavery, and cruel, inhuman or degrading punishment or treatment.

3.5.7 Consolidation and application

The concept of human dignity has slowly emerged in international law as a central, foundational principle, supplanting first liberty and then equality as the single most important principle on which to build an understanding of justice and humane treatment of persons. Human dignity finds universal expression and acceptance across religious and cultural differences, since it speaks to the common value of each and every human being.



The educator's claim to right to dignity is now firmly established in terms of international charters and international case law. It is abundantly clear that this right is widely recognized as being equally applicable to all persons, including educators, and is not negotiable or subject to any other right.

3.6 COMPARATIVE PERSPECTIVE

3.6.1 The need to consider non-South African law

When interpreting the rights contained in the Bill of Rights the courts *may*, according to Section 39 of the Constitution of South Africa, consider “foreign law”. An examination of the extent to which human dignity is featured in the laws of other states, and of the concepts and conditions with which it is associated, can provide valuable insight into how to interpret the concept of dignity.

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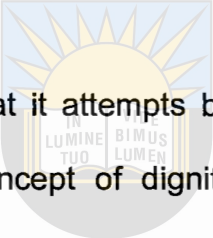
3.6.2 European Constitutions

The Constitution of the Kingdom of Belgium guarantees everyone the right to “lead a life in *conformity* with human dignity” and the Constitution of Estonia also uses the term “*conform* with the principle[s] of human dignity” (Article 10) as one of the guiding values underpinning its laws (European Parliament, 2006:12-14). This suggests that dignity is an abstract guiding principle that can be used to evaluate the appropriateness of other rights.

The Spanish Constitution echoes a similar sentiment to the Belgian constitution in its preamble by referring to a “dignified quality of life for all” as one of its objectives. It goes on to elaborate in some detail in Article 10(1) by stating,

“The dignity of the person, the inviolable rights which are inherent, the free development of personality, the respect for the law and for the rights of others are the foundations of political order and social peace.”

This is particularly rich in that it attempts by association to give some form of definition to the concept of dignity. It isolates the following characteristics:

- 
- The logo of the University of Fort Hare is a circular emblem. It features a central sun with rays emanating from it. Below the sun, there is a banner with the Latin motto 'IN LUMINE TUO DOMINE BIVMUS LUMEN'. The entire emblem is set against a light blue background.
- Inviolability
 - Inherent quality
 - Applicable to the individual
 - Allowing for unrestricted personal development
 - Linked to the rule of law
 - Linked to the obligation of mutual respect
 - Fundamental to harmony and order

Dignity or human dignity is also described as being inviolable or inalienable in the constitutions of: Germany (Article 1.1); Lithuania

(Article 21); Poland (Article 30); and Finland (Article 1). The Constitution of the Slovak Republic groups dignity with other freedoms and fundamental rights, and describes these as “sanctioned, inalienable, imprescriptible and irreversible”.

The onus or obligation to protect or promote dignity is ascribed to:

(a) the state, in the constitutions of:

- Germany (Article 1.1) – “all state authority”;
- Latvia (Article 95) – “the State shall protect”;
- Poland (article 30) – “public authorities”

(b) the law, in the constitutions of:

- Lithuania (article 25) – “protected by law”
- Finland (Article 1) – “the constitution shall guarantee the inviolability of human dignity...”

(c) the nation or people, in the constitutions of:

- Spain (Preamble) – “the Spanish nation”;
- Ireland (Preamble) – “the people of Eire”
- Poland (Preamble) – “the polish nation, all citizens of the Republic”

(d) the individual citizen, in the constitution of:

- The Slovak Republic (Article 19) – “Everyone shall have the right to protect and maintain his or her dignity”.

The obligation to protect human dignity is variously portrayed as:

- (a) A right to be exercised, e.g. : Belgium; Hungary; Slovak Republic;
- (b) An ideal that is being striven for, e.g.: Spain; Ireland; Poland; Portugal
- (c) A pledged guarantee, e.g. : Belgium; Portugal; Slovenia; Finland
- (d) An imperative duty, e.g.: Germany; Latvia; Poland.

Human dignity is specifically linked to the exercising of other rights, or is portrayed as conditional for or flowing from the exercising of other rights in various constitutions. These include:

- (a) The prohibition of torture, physical violation, psychological pressure, ill-treatment or excessive incarceration as violations of dignity (Greece; Lithuania; Austria; Slovenia; Finland; Poland)
- (b) Access to adequate economic opportunity and protection from economic restraints and exploitation as means to attaining dignity (Belgium; Greece; Italy; Portugal)
- (c) Provision of social care as a means to upholding dignity (Finland; Italy; Ireland; Belgium)
- (d) Use and transmission of information should not violate dignity (Portugal; Slovak Republic)
- (e) In respect of technology and medical experimentation (Portugal).

Human dignity is associated closely in several constitutions with:

- (a) Honour, e.g.: Latvia;
- (b) Personal development, e.g.: Spain; Slovenia
- (c) Freedom, e.g.: Ireland; Italy; Poland; Slovak Republic; Finland
- (d) Equality, e.g.: Slovak Republic.

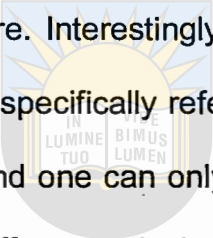
3.6.3 Basic Law of Israel

An interesting case of a modern state's approach to the issue of human dignity is Israel, because the modern state of Israel was founded largely as a refuge for displaced Jews who were the victims of profound human rights violations, especially in respect of their basic dignity. At the same time the modern state of Israel is often accused of perpetrating violations against the right to dignity of non-Jewish residents.

The basic law sets out its purpose (Article 1a) as being to protect human dignity and liberty. Article 2 goes on to prohibit "violation of the life, body or dignity of any person" and this is reinforced in Article 4 which states that all persons are entitled to protection of their life, body and dignity. Thus dignity is a paramount right linked integrally with the very right to life itself, and worthy of special protection.

3.6.4 The Constitution of the Republic of Uganda

Similarly to the South African Constitution, that of Uganda starts with a summarized account of the ills suffered in the past by the Ugandan peoples and sets out core national values. Within the context of the chapter on fundamental rights, Section 24 refers to respect for human dignity and specifically links it to protection from cruel, degrading or inhuman punishment or torture. Interestingly, the constitution earlier, in Section XVI of the preamble, specifically refers to respect for the dignity of persons with disabilities, and one can only assume that culturally this was a group that tended to suffer a particularly high level of rejection and negative discrimination.



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3.6.5 The Namibian Constitution

The constitution of Namibia predates the South African constitution briefly and was the product of a similar process of negotiated multiparty settlement to that of the South African Constitution. It also gives expression to a similar national intention to that of the South African Constitution because, like South Africa, the modern state of Namibia is the result of a liberation struggle against apartheid (Naldi, 1995:26). This historical similarity would lead one to expect that the respective

constitutions would be similar, and a comparison of how they deal with the concept of dignity will certainly prove illuminating.

In the Constitution of Namibia human dignity is recognized in the preamble as inherent equally in all persons, and as being fundamental to the exercising of other human rights. It is identified as a fundamental right in that everyone has inherent human dignity (Article 8), and such dignity is guaranteed to be inviolable. No further attempt is made to define or clarify the concept of dignity, except in so far as it is specifically linked to treatment before courts and organs of state which are obliged to treat people with dignity. Article 8 (2) also deals specifically with the prohibition of cruel, inhumane and degrading punishment and torture as implied violations of dignity.

Article 98 addresses the envisaged economic order of Namibia and identifies three goals for the economy:

- Economic growth,
- Prosperity, and
- A life of human dignity for all Namibians.

There is thus a clear recognition that dignity requires more than just respect and refraining from ill-treatment. The implication is that certain essential material elements of a basic lifestyle are necessary to ensure dignity.

Article 21(2) spells out that the freedoms enshrined in the constitution are exercised “subject to the Law of Namibia”, implying that fundamental rights would take precedence (Naldi, 1995:31).

3.6.6 Consolidation and application

In terms of foreign constitutions, dignity is both an ideal guiding the way people interact in society and a principle that demands certain forms of basic provision and protection. There is a strong tendency to demand of the state to actively promote and protect the dignity of individuals, but at the same time it is recognized that individuals have the right to act in their own interest to claim and to protect their right to dignity. It is not diminished in any way by the status of the person, extending even to those who are disabled. Human dignity, it is generally agreed, is inviolable and of a fundamental nature to the exercising of other rights.

In terms of the educator's right to dignity, foreign law would suggest that the state has an obligation both legally and as the employer to protect and uphold the educator's basic dignity. This would extend not merely to respectful treatment and the avoidance of degrading sanctions, but to the obligation to put in place conditions and resources that would allow educators to perform their work in a dignified manner. In terms of some

constitutions, it is also clear that the educator would be fully entitled to act in such a manner as to ensure the sanctity of his or her right to dignity.

3.7 THE USE OF THE TERM IN SOUTH AFRICAN LAW

3.7.1 The concept of dignity in Constitutional law



The concept of human dignity played a central role in the very first case before the Constitutional Court when the court ruled that capital punishment was unconstitutional, not only on the grounds that it violated the right to life, but that it constituted a “cruel, inhuman and degrading punishment” and was a violation of the person’s right to dignity (*S v Makwanyane and Another* 1995 (3) SA 391 (CC)).

The comments of O'Regan J. in *Dawood and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) are particularly instructive and merit quotation in full,

“The value of dignity in our constitutional framework cannot therefore be doubted. The Constitution asserts dignity to

contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights. This Court has already acknowledged the importance of the constitutional value of dignity in interpreting rights such as the right to equality, the right not to be punished in a cruel, inhuman or degrading way, and the right to life. Human dignity is also a constitutional value that is of central significance in the limitations analysis. Section 10, however, makes it plain that dignity is not only a value fundamental to our Constitution, it is a justiciable and enforceable right that must be respected and protected.”

Ackerman J points out in *S v Dodo* 2001 (3) SA 382 (CC) that dignity is both “an attribute and a right” which everyone has the right to have protected and respected.”

Although the case of *S v Williams and Others* 1995 (3) SA 632 (CC) dealt specifically with the notion of corporal punishment as a form of cruel, inhuman or degrading punishment, it inevitably also touched on the

constitutional right to dignity expressed in Section 10 of the Constitution, and the following key points were made regarding the right to dignity:

- (a) Its universal availability “*includes children and adults, women and men, prisoners and detainees*”.
- (b) The Constitution “*places a very high premium on human dignity*”.
- (c) The state should play a leading role in upholding the right to individual dignity.



The right to dignity has been directly linked to a wide range of other rights such as the right to equality, freedom from discrimination, and fair labour practices in *Hoffmann v South African Airways* (CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1235 in which Hoffman secured the right to be employed as a cabin attendant despite being HIV positive.

The right to dignity was also linked to the right to housing (*City of Johannesburg v Rand Properties (Pty) Ltd and Others* 2006 (6) BCLR 728 (W)), and water (*Mazibuko and Others v City of Johannesburg and Others (Centre on Housing Rights and Evictions as Amicus Curiae)* [2008] 4 All SA 471 (W)).

3.7.2 *Crimen injuria*

Crimen injuria (Criminal injury) is an offence unique to South African law and is defined as the unlawful and intentional serious impairment or invasion of the dignity of another person. In case law it has applied to such varied acts as indecent exposure, sexual molestation, soliciting, showing of pornographic material, voyeurism, making lewd or indecent suggestions, use of offensive language or making offensive caricatures. Invasion of a person's right to privacy has been regarded as tantamount to an impairment of their dignity, as in the case of *S v A* 1971 (2) SA 293 (T) where the mere placing of a bugging device, regardless of whether it was used to eavesdrop or not, and regardless of what the victim said, was sufficient grounds for a conviction of *crimen injuria*. A finding of *crimen injuria* depends on factors such as the seriousness of the invasion involved and the prevailing circumstances and social and moral attitudes (Kahn, 1982:109).

The test for an injury to dignity envisaged in the crime of *crimen injuria* is expressed in *Rex v Umfaan*, 1908 TS 62 as follows:

The act complained of must be wrongful, it must be intentional, it must violate one or other of those real rights, those rights in rem, related to personality, which every free man is entitled to enjoy. Chief Justice de Villiers *Laws of Injuries*, says (p27): 'With these

ingredients to hand it will be found that there are three essential requisites to establish an action of injury. They are as follows – (1) an intention on the part of the offender to produce the effect of his act; (2) an overt act which the person doing it is not legally competent to do; and which at the same time is (3) an aggression upon the right of another, by which aggression the other is aggrieved and which constitutes an impairment of the person, dignity or reputation of the other. Earlier peace of mind, secure against aggression upon his person, against the impairment of that character for moral and social worth to which he may rightly claim, and of that respect and esteem of his fellowmen of which he is deserving, and against degrading and humiliating treatment, and there is a corresponding obligation incumbent on all others to refrain from assailing that to which he has such right.’

S v Momberg 1970 (2) 68 (C) establishes principles regarding the degree of seriousness. *Crimen injuria* may overlap with acts of assault, indecent assault or criminal defamation, and in some instances the accused may be charged with either or both crimes, charges of *crimen injuria* arising when the dignity of the victim has been harmed. An essential requirement for a conviction of *ccrimen injuria* is the intention to degrade or humiliate, as established in S v S 1964 (3) SA 319 (T). Unlike defamation which requires that the insult must be published to a third party and that the insult or degradation must be in the eyes of another

party other than the victim, *crimen injuria* deals with the victim's subjective sense of being insulted or degraded, and the act of degradation need only be in the eyes of the victim. This is explained by Mokgoatlheng J, quoting Neethling, Potgieter and Visser in the case of *Maithufi v Minister of Safety and Security*.

Educators are particularly vulnerable to attacks on their dignity in the form of verbal insults. This can be grounds for a charge of *crimen injuria*, as in *R v Visagie* 1954 (4) SA 50 (O). The existence of the crime of *crimen injuria* implies that dignity is vulnerable to acts and utterances of other persons and is linked to prevailing social mores. It also implies that individual human dignity is of sufficient importance and worth that an attack on dignity should be regarded as a crime against the person.

3.7.3 Defamation

Defamation is the intentional publication of anything that is calculated to harm or damage the reputation or esteem of another person. An essential requirement of defamation is the element of publication, meaning that the information must be communicated to, or in the presence of, a third party. (If it were only communicated to the victim there would be no defamation, but there could still be a charge of *Crimen*

injuria.) In terms of South African law publication includes written, printed, oral or electronic communication. "The matter published must be understood to refer to the person defamed and must lower the esteem in which the person to whom it refers is held by society" (Kahn, 1982:111).

Defamation can lead to both criminal and civil actions, although it is by no means necessary for any defamatory act to be treated as both. In some instances the state may deem the action too trivial to prosecute, but the victim may still proceed with, and possibly even win, a civil action. At the same time a successful prosecution for defamation may not always lead to a civil suit because the victim may choose not to pursue that route, having derived satisfactory vindication from the conviction.

Typically defamatory material involves an attack on the moral character, trustworthiness, reputation or public record of a victim, and the test is whether a responsible and respectable member of society would regard the published material as likely to diminish the esteem of the victim or to bring the victim into contempt. In *Mohomed v Jassiem* 1996(1)SA 673 (A) at 702 A-B, a clear distinction was drawn between actions which lowered the esteem of the victim in the eyes of a limited community and actions which lowered the esteem of the victim in the eyes of the public at large, the latter being necessary for there to be a defamation. There are circumstances in which defamation or the protection of a person's

dignity are not upheld because the statements published are patently true, because it is in the public interest to publish the information, or because it can be shown that similar allegations were already common knowledge. All of these factors were held to be reasons for not upholding a charge of defamation of a cabinet minister by journalists in *Mthembi-Mahanyele v Mail and Guardian Ltd.* and another 2004 (6) SA (SCA) .

Defamation law recognizes two forms of defamatory effect, namely attacks on a person's *fama* or on a person's *dignitas*. *Fama* refers to the general good name or reputation of a person, whereas *dignitas* refers to the worth, rank or social standing of a person. In *The Minister of Safety and Security v Meyer and another* (A690/04) [2004] ZAWCHC 31 (8 November 2004), the judge found that hurtful remarks made about the physical appearance of a police officer for whom there was no subsequent loss of respect from his colleagues, did not constitute an attack on his *fama*, but because they were clearly hurtful and inappropriate, did constitute an *actio injuriarum*, and in this case were specifically linked to Section 10 of the Constitution as an attack on the victim's right to dignity. Similarly in the case of *Trident Security Services (Pty) Ltd v Bakana* (A10/07) [2007] ZAWCHC 79 the plaintiffs appealed against damages awarded to the respondent whose handbag was publicly searched by a male security officer. The appeal was unsuccessful and it was held that the search did constitute an unjustified attack on the respondent's right to dignity.

3.8 SALIENT FEATURES OF THE CONCEPT OF HUMAN DIGNITY

3.8.1 General comments

From the analysis above it is possible to isolate some salient defining features of the way in which the concept of human dignity is treated, both philosophically and legally. These features also apply when considering the educator's right to dignity, and when discussing each feature its implication with regard to the dignity of educators will be considered.



3.8.2 A fundamental right

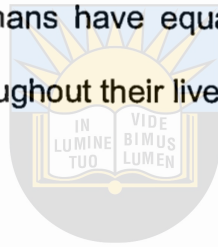
Dignity, life, equality and freedom are fundamental rights in the sense that other rights derive from them and depend on them for meaning and validity. In other words, people enjoy the right to education or freedom of expression because they have inherent worth and dignity as human beings.

When applied to educators it means that any additional or special rights that are accorded to educators will be derived from their basic worth as people first. It also implies, and this is probably more important, that any

additional duty imposed on educators or any limitation of their rights may not detract from their basic human dignity.

3.8.3 Universal applicability

It is clear that dignity of persons is independent of their individual identity or status in society. All humans have equal dignity, and their right to dignity remains constant throughout their lives.



This implies that the dignity of educators can never be more or less than that of any other role player in the educational situation. At the same time, any attempt to invest educators with more dignity than learners, parents or other role players, or to suggest that they have less worth than anyone else, would inevitably impact negatively on the relationships in the education situation.

3.8.4 Reciprocal nature

Human dignity is most apparent when people behave in a manner that upholds and respects the dignity of others, and conversely it is least evident when people violate the dignity of others. This further implies that

dignity is best promoted and protected by affording recognition and respect to the dignity of others.

In terms of the dignity of educators, this implies that educators have a clear responsibility to uphold and respect the dignity of learners, parents and other role players in order to promote their own dignity. It also implies that promoting and protecting the dignity of educators will enhance the dignity of others with whom they interact.



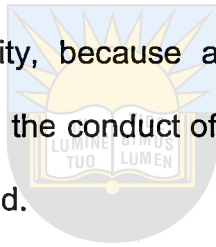
3.8.5 Scope of limitation

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It would appear that the right to basic human dignity can never be limited, although some of the freedoms that flow from and are linked to that right such as the freedom of choice, freedom of expression and freedom of association may be limited from time to time, or under particular circumstances. Even when sanctions are applied it should be done in a manner that upholds the dignity of all parties, and cruel and inhuman punishments and torture should never be permitted.

The implication is that although educators may expect that from time to time they may be subjected to some offensive and challenging incidents

simply because they are working with children who lack maturity and self-control, their own basic dignity should never be compromised, and by the same token they may never treat any learner or other person with less dignity than they would expect themselves. This means that educators obviously need to maintain a measure of good humour and tolerance that allows them to handle the immature and inappropriate outbursts of children in context, but that they should never permit learners to behave in a manner which amounts to a blatant violation of other people's right to dignity, because as educators they have an obligation to guide and mould the conduct of learners in order to prepare them for responsible adulthood.



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CHAPTER 4 - THE PROFESSIONAL EDUCATOR'S RIGHT TO DIGNITY

4.1 THE CONTEXT OF THE RIGHT TO DIGNITY

As with most human rights, the right to dignity is only evident in interactions between people. In other words, one only becomes concerned about one's dignity when relating with others. This chapter seeks to examine in greater detail how the educator's right to dignity manifests and is affected by some of the relationships and specific circumstances that arise in the course of the educator's work. Educators relate to learners, parents, other educators and the employer organization, and each of these parties can either uphold or violate the right to dignity of educators. This chapter identifies those particular aspects in each relationship that impact on the educator's dignity, and considers the legal significance of these. Educators also deal with several important issues in the course of their work that can have a potential impact on their right to dignity, including the curriculum and the phenomenon of educational research. This chapter also examines how these affect the educator's right to dignity and how they are affected legally.

4.2 IN RELATION TO PARENTS

4.2.1 Delegation of authority

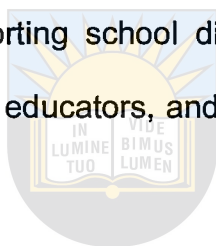
Parents have both a right and a duty to care for and educate their children, but they may transfer these rights and duties to a third party (Prinsloo and Beckman, 1988:113). On this basis parents delegate their authority over their children to educators while the children are under the supervision of the educators. This allows educators to act *in loco parentis*. However, parents do not waive their ultimate authority. At the same time, educators also enjoy inherent authority by virtue of their professional status.

The extent of educators' authority in common law is that it applies primarily at school and during school time, but may be extended to include other school activities on and off school premises and beyond the school day (Prinsloo and Beckman, 1988:119).

The implication of the authority of the educator is that educators have a reasonable expectation to be obeyed and respected by learners under their supervision or in their custody, and to be treated with the same

measure of respect as a parent. It also further implies that educators can reasonably expect that parents would respect their authority by supporting and upholding their decisions, or by discussing areas and issues on which they disagree in a respectful and dignified manner with educators (Prinsloo and Beckman, 1988:115).

Educator morale can be improved (and, by implication, educator dignity promoted) by parents supporting school discipline, displaying positive attitudes towards school and educators, and inculcating sound values at home (Hayward, 2003:9).

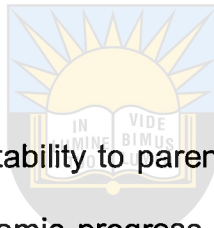


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The Preamble to the South African Schools Act (Act 84 of 1996) proposes a partnership between parents, educators, learners, and the state. It establishes the legislative framework for such a partnership by, amongst other things, creating the legal obligation for parents to ensure that their children are educated. The Act does so by setting the ages for compulsory education. It also creates the legal framework for shared governance with both parent and educator representation on all governing bodies. The Act also attempts to demarcate a separation between governance (where parents have the majority input) and professional management (a function of educators alone).

4.2.2 Professional accountability

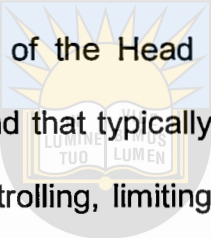
Educators not only have inherent authority in terms of their professional status, but they also have a special measure of accountability for their actions by virtue of their professional training and expertise. This places an onus on educators to maintain their professional knowledge at a current level through continuous professional development.



An important form of accountability to parents is the obligation to report to parents on learners' academic progress, general conduct and social and emotional adjustment. At the same time educators have a reasonable right to expect their professional judgment and considered opinion to be treated with the respect normally accorded to a professional evaluation. At the same time any educator who falsifies records or documentation such as school reports is guilty of a misconduct in terms of Section 18 (1) (aa) of the Employment of Educators Act (Act 76 of 1998).

It also implies that parents and other role players should recognize the special expertise of educators and allow them to exercise their professional duties without undue interference. A typical example of such undue interference is the tendency of some school governing bodies to

dictate to educators and supervise them in regard to their professional duties. Such actions are regarded as being *ultra vires* in that they encroach upon the terrain of professional management. Section 16(1) of the South African Schools Act (Act 84 of 1996 as amended by Act 31 of 2007) clearly states that a governing body “may perform only such functions and obligations and exercise only such rights as prescribed by the Act.” The same legislation goes on in Section 16 (3) to state that “The professional management of a public school must be undertaken by the principal under the authority of the Head of Department.” One study (Heystek, 2004:310-312) found that typically, the school governing body was seen as “interfering, controlling, limiting and frustrating” rather than as a support team.

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A particular area of accountability that frequently leads to conflict between parents and educators, especially the principal, is the area of financial accountability. *Schoombee and other v MEC of Education, Mpumalanga and Another* (unreported case no.33750/01 (T)) and Mestry (2004:129) both make it clear that final accountability for the financial status of the school resides with the school governing body, which may delegate specific tasks to the principal and others as per section 16A (2) (a) (iv) of the South African Schools Act (Act 84 of 1996). The same Act also requires in section 16A (1) (b) (ii) that principals must prepare and submit an annual report “in respect of the effective use of available resources.” It also stipulates that one of the duties of the principal is

(Section 16A (2) (a) (v)) “the safekeeping of all school records.” Unless it can be established by case law that public schools are trading entities as defined in the Public Finance Management Act (Act 1 of 1999), which is unlikely as the Act specifically excludes the use of school fees for other purposes, there are no other express fiscal responsibilities legislated for school principals. This is in contrast to the pressure that is frequently brought to bear on principals to answer for financial irregularities in schools, which sometimes results in violations of the principal’s dignity.



4.2.3 Duty of care

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In terms of common law in South Africa, educators have a special duty to care for the learners in their custody. They are expected to meet the standards of care expected from a *bonus paterfamilias diligens et prudens*, a concept interpreted as “the foresight and care required of...a reasonably careful parent in relation to his own children,” according to Harcourt J in *Broom and another v The Administrator, Natal* 1966 (3) SA 505 (D). However, this is a legal fiction that does not really help in many instances to guide educators as to the extent to which they are expected to exercise supervision over learners, because it is actually impossible for educators to be constantly watching over learners in their care.

As Beck J held in *Rusere v The Jesuit Fathers* 1970 (4) SA 537 (R)

“To contend, however, that children of this age should never be more than momentarily out of sight of a responsible person even when they are in normal and familiar surroundings which are devoid of features that could sensibly be regarded as hazardous, is, I think, to exact too high a duty of care from the *bonus paterfamilias*.”

In this particular case in which an eight year old child lost the sight in one eye as a result of a game involving homemade bows and arrows, the issue was the degree to which a potential danger to the child was foreseeable. The implication is clearly that educators are expected to have a high level of foresight and skill at recognizing potential hazards.

Foreseeability is an element of the legal test of liability that is applied in instances of duty of care, the so-called “reasonable man” test set out clearly in *Kruger v Coetzee* 1966 (2) SA 428 (A). This test encompasses three essential elements:

- (a) Could the danger have been foreseen?
- (b) Were reasonable steps taken to guard against the danger occurring?
- (c) Was there a failure to implement those steps?

The second of these elements allows wide latitude for interpretation and “offers considerable scope for ensuring that undue demands are not placed upon public authorities and functionaries,” according to the ruling

in *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA). Such “undue demands” would potentially be a violation of educators’ right to dignity.

However, when there is a situation where obvious danger is present and insufficient steps were taken to prevent that danger from arising, educators and their employer can be held liable for the loss or damage that occurs. In the case of *Knouwds v Administrateur, Kaap* 1981(1) SA 544 (C), a child was injured while playing near to dangerous grass cutting machinery that the court ruled should not have been in use while the children were present. This principle also extends to instances where educators have simply failed to take due precautions such as locking a gate leading to a dangerous or busy road as in *Carmarthenshire County Council v Lewis* (1955) 1 All ER 565 (HL).

Whilst instructions and prohibitions would normally form part of the reasonable measures expected, these must be gauged against the age and maturity or relative lack thereof in young learners. Thus Jansen JA in *Weber v Santam Versekeringsmaatskappy Bpk* 1983 (1) SA 381(A) cautioned against “placing an old head on young shoulders” and expecting too much of children. Clearly, what could be seen as drudgery and somewhat menial work involved in the protection and safeguarding

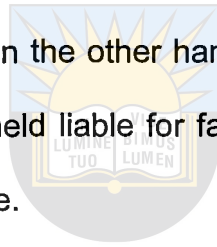
of young children is actually part of an educator's professional expertise and lends dignity to his/her task.

The duty to care is further compounded by the expectation that educators, being trained in child development and psychology, and being constantly in the presence of children, should have an even greater understanding and appreciation of the impulsive, unpredictable and irresponsible nature of children than the average parent, according to *Wynkward N O v Minister of Education and Another* 2002 (6) SA 564 (C).

Notwithstanding this, the degree of supervision that is expected from educators "would depend upon a great variety of circumstances," and it is not reasonable to expect educators to keep each pupil under constant supervision at all times, according to Desai J in *Minister of Education and another v Wynkward N O* 2004 (3) SA 577 (C). However, educators may often find themselves in the invidious situation of having to choose between providing reasonable supervision of learners and complying with an instruction or directive from the employer to attend a meeting or workshop.

An aspect of educators' duty of care that is based upon the particular esteem and status of educators is the legal obligation to report ill

treatment of children, as stipulated in Section 4 of the Prevention of Family Violence Act (Act 133 of 1993). In this regard educators are classified along with other professions such as medical practitioners and social workers as having both a particular right and an obligation to report suspected ill treatment. Whilst this elevates the status of educators it also imposes an increased measure of responsibility and exposure on educators. An educator who reports suspected neglect or ill treatment and is proved to be mistaken, is placed in an invidious position in relation to the parents of the child. On the other hand, an educator who errs on the side of caution may be held liable for failing to report in the face of reasonably sufficient evidence.



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The obligations imposed on educators because of the duty to care also imply that educators have certain rights to allow them to exercise such a duty, and these rights therefore further protect the dignity of educators. Beckmann and Prinsloo (1988:135) summarize the implied rights of educators in respect of preventing accidents at school as follows:

- The right to determine policies and rules to ensure safety.
- The right to implement such policies and rules.
- The right to guide colleagues and learners in respect of observing safety principles.
- The right to apply appropriate disciplinary measures when safety rules are infringed.

- The right to apply precautionary measures and limitations when unsafe conditions are recognized or foreseen.
- The right to maintain records of school accidents for the purpose of preventing repetitions.

In practice many of these rights are actually only exercised by the principal rather than by all educators, which may be seen as limiting the freedom and authority of the educators, and possibly threatening their dignity.



4.2.4 Consolidation and application

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Educators enjoy a special status within the community on the basis of their original and delegated authority, which ensures that they have a measure of dignity that transcends the basic dignity due to all persons. It does, however, place upon them a special burden of responsibility to exercise a high level of care towards the children in their charge, and to shoulder an increased measure of accountability for their actions. This requires a degree of transparency that might otherwise be considered quite invasive. Educators who fail to fulfil their responsibilities are vulnerable to strong criticism and attacks from unhappy parents who may find it difficult to deal with the matter in an objective and unemotional fashion. This can expose educators to potential violations of their right to dignity.

4.3 IN RELATION TO LEARNERS

4.3.1 Imbalance of influence and accountability

As adults in a position of authority, educators wield an unbalanced excess of power over learners, but at the same time as immature and less sophisticated subjects, learners have less legal responsibility and therefore less accountability towards educators. This imbalance poses the potential for abuses of power on the part of educators and abuses of freedom on the part of learners.

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One definition of power is that it is the ability to execute authority (Prinsloo, 2006:307). In this regard Prinsloo identifies several types of power:

- *Legitimate or positional power*, according to which educators have a reasonable expectation to have their instructions carried out by learners and subordinates, but this can also be abused.
- *Power by reward* when rewards or benefits are provided or withheld. This can be used positively to motivate students to study and engage with work or to make positive behaviour changes, but it can also be abused in the form of favouritism or corruption.

- *Coercive power* which uses fear and threat to manipulate people into compliant behaviour. Victimisation is a typical abuse of such power.

It is in the light of this principle that a particularly strong stance is taken against educators who abuse their position to engage, for example, in a sexual relationship with a learner. This is regarded as a serious misconduct in terms of Section 17(1) (c) of the Employment of Educators Act (Act 76 of 1998), and leads to mandatory dismissal.



On the other hand, when educators are able to influence learners through persuasion and respect to carry out instructions, there will be much less likelihood of any abuse of power. This type of persuasive power is only likely to operate in an environment of mutual respect where the dignity of both learners and educators is upheld.

Another view of power is that it is the ability to control or influence decisions and events (Swanepoel, Erasmus, Van Wyk and Schenk, 2000:91) When educators use their power for altruistic ends by influencing events in favour of meeting learners' needs, they will create an empowering environment where mutual respect is nurtured.

4.3.2 Insult

The relationship between educators and learners is highly interactive and verbal, and can often be quite sensitive. The likelihood therefore of either party saying or doing something that is potentially insulting to the dignity of others is high. In the past, classroom discipline tended to be highly punitive and authoritarian, but presently there has been a strong tendency to discourage such approaches and to tolerate learners' freedom of expression in order to promote a culture of rights in schools. Because of the disproportionate power and authority that educators have, the possibility sometimes arises that learners use nicknames, vandalism, caricatures and impersonation of educators as an outlet for frustration and aggression. One example reported anecdotally to the author involved a Grade eight student in a boarding school "new pots" concert doing a graphic and recognizable impersonation of a hostel master which included a sequence suggesting that the educator was masturbating (Vye, 2008, personal communication). It is a vital educational task to balance freedom of expression and opinion with the need to exercise respect for individual dignity.

The National Economic and Social Rights Institute (2006:1) notes that in the context of protecting students' right to dignity, "there should be *mutual* respect between teachers and students in all classrooms, and

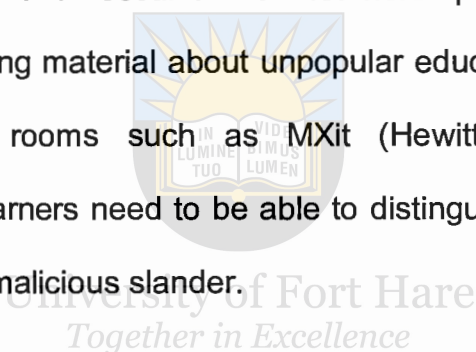
students' self-expression and self-confidence should be developed. "There is a clear implication here that student self-confidence and self-expression are unlikely to be properly developed in an environment where there is neither respect for the student nor the teacher.

Beckman and Nieuwenhuis (2004:55) warn against cultivating a critical disposition in learners that will undermine the authority of educators. They contrast a questioning curiosity about new knowledge and skills with a critical attitude against all authority and adults. The former is a desirable attitude and should be strongly encouraged by allowing students to openly ask questions and challenge information in a respectful and orderly fashion, and by welcoming a range of different viewpoints and allowing each one a fair and balanced hearing. On the other hand, a negatively critical attitude against all adult authority tends to be closed-minded and unwilling to consider or allow alternative opinion. This often arises where students are not taken very seriously or allowed to express any form of dissent. Students then express their frustration and anger through disrespect.

4.3.3 Defamation

Educators may find it difficult at times to distinguish between professional information-sharing and case discussion, and plain gossip about learners. This can even reflect in the sort of remarks and comments

educators make in learner reports and files. Such comments may tend to be quite defamatory. It is understandable, therefore, if one discovers learners expressing negative and defamatory opinions about educators. Such comments and views are usually dealt with as minor incidents, but they can become problematic when learners propagate libellous rumours affecting the reputation and moral standing of educators. This has become markedly more prevalent as access to electronic technology has increased. Cases have occurred of learners posting defamatory statements or insulting material about unpopular educators on websites, blogs or in chat rooms such as MXit (Hewitt, 2003, personal communication). Learners need to be able to distinguish between good-natured banter and malicious slander.



An equally destructive form of defamation that occurs against educators is the use of ill-chosen remarks on placards carried by learners during marches or other forms of protest action. Whilst learners have a legitimate and constitutionally protected right to public protest and freedom of expression, these rights are self-limiting in the Constitution. The Constitution of the Republic of South Africa Act (Act 108 of 1996) excludes hate speech, incitement to violence and propaganda for war from the ambit of freedom of expression (Section 16) and restricts the right to assembly, demonstration, picket and petition (Section 17) to actions that are peaceful and unarmed.

4.3.4 Intimidation

Cases have been reported of educators being held hostage at schools, having their property damaged, or of having stones thrown at them by disgruntled learners (Leerlinge teister onnies [Students harass teachers]. (2003, 6 April). *Rapport*, 2003:11). Such actions pose a direct threat to the basic human dignity of educators.

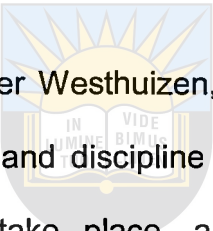


In two cases brought to the House of Lords in the United Kingdom by the NAS/UWT in 2003, it was ruled that educators can refuse to teach disruptive pupils who have been expelled but readmitted on appeal (*Education*, 28 February 2003).

Schools in particular areas are especially vulnerable to the presence of firearms and other dangerous weapons on school property and in the hands of learners. The possibility of this threat is not only a violation of educators' right to safety and security, but also infringes their right to dignity. To counteract this, amendments to the South African Schools Act (Act 84 of 1996) allow educators and principals extensive rights to carry out search and seizure actions in respect of reasonable suspicion of the presence of dangerous objects or illegal drugs in school (Section 8A).

4.3.5 Exercise of discipline

In contrast to punishment, discipline is intrinsic, educative and about self-control, and should be understood as the practice of care and respect towards others and oneself in order to create the emotional and social safety net each person needs for self-actualization (Le Mottee, 2005:2,5).



Swanepoel (quoted in Van der Westhuizen, Oosthuizen and Wolhuter, 2008:211) argues that order and discipline are necessary for effective education and learning to take place, and that when an orderly, disciplined and safe, but not rigid, environment exists, there is an effective organisational climate.

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Discipline is intended to safeguard all members of the school community, including educators. The right of educators to be protected from the under-controlled behaviour of children is as important as the right of children to be protected from abusive behaviour by educators (Le Mottee, 2005:6). The maintaining of proper discipline in school is important for the protection of educators' right to dignity.

4.3.6 The educator as role model

It has already been stated in this study that educators play a critical role in inculcating values that underpin a culture of respect for human rights, including the right to dignity. They do so particularly by means of the example they set, because “proper behaviour based on certain moral, ethical and religious norms forms the basis of all education,” and educators can thus not avoid imparting values through what they say and do (Rossouw and De Waal, 2004:286). Although a foundation of rules protectING educators’ dignity is important, it is not sufficient in the case of educators’ relationships with learners to ensure that educators’ right to dignity will be protected. Educators themselves play a crucial role in establishing a climate of mutual respect in which their own dignity will be upheld.

4.4 IN RELATION TO THE EMPLOYER

4.4.1 Working environment

It has been found that the high levels of poverty and deprivation in the Eastern Cape and in schools generally have a detrimental effect on the

effectiveness and performance of educators (Eastern Cape Department of Education, 2005a:7).

In 2007 it was reported that at schools in the Eastern Cape Province (Eastern Cape Department of Education, 2008:4):

- 42% of schools had no electricity
- 39% of schools had no water
- 14% of schools had no sanitation
- 35% of schools had no secure perimeter fencing

Access to safe drinking water is a constitutional right and is linked to the right to dignity. At the same time a study has shown that there is a strong correlation between the absence of proper sanitation and poor levels of performance in the Grade 12 exit examinations (Rich, Sauer and Sikrweqe, 2007:87).

Despite significant inroads into the problem, in 2007 6.2% of classrooms in the Eastern Cape (a total of 4778) were still so-called “mud structures” constructed from poor makeshift materials and typically lacking in lighting, proper ventilation, insulation, electricity or security (Eastern Cape Department of Education, 2007:78). These unsatisfactory physical conditions pose a significant violation of the dignity of learners and educators.

In 2005 the Association of Teachers and Lecturers (2005:11) reported that 88% of educators in the United Kingdom were not aware of any risk assessments being conducted at their schools, despite a legal obligation on the employer to minimize risk and avoid exposing staff to an environment that leads to illness or harm. In terms of Section 8 of the Occupational Health and Safety Act (Act 85 of 1993), a similar duty rests upon employers in South Africa, and it is apparent that there has been a similar failure to comply. Section 17 of the same Act requires that health and safety representatives be designated at every workplace with 20 or more employees. Since all schools with an enrolment of more than six hundred learners are likely to have more than twenty teaching and non-teaching employees, one would expect them to have health and safety representatives, but this is not always the case. The lack of compliance with safety legislation not only poses a direct risk to educator well-being, but by denying educators the right to proper channels for ensuring safe and healthy work environments, it also violates their dignity.

4.4.2 Workload

Chisholm et al. (2005:ix) found that three out of four educators felt that their workload had increased “a lot” since 2005. According to the Personnel Administration Measures, Chapter A, paragraph 3, the formal school day must be at least seven hours in length, and educators are

expected to account for 1800 hours of work per annum, which translates into a working week of 43 hours. Despite wide variations in practice, the average for educators is only 41 hours per week (Chisholm et al., 2005: xi). The clear lack of uniformity and comparability in the amount of time spent at work between different institutions is a source of dissatisfaction to many educators and a potential affront to educator dignity because those educators who work a longer work week may feel that unfair advantage is being taken of them.



Chisholm et al. summarize the literature on workload as focusing on quantity of work and intensification of work as measures. The literature also relates workload to increased levels of educator stress and burnout.

Intensification of work has to do with:

- More of the same work
- More complex work
- Less money spent on education and larger classes
- Changes in curriculum, marking and assessment
- Changes in administrative demands
- A more diverse student population (Chisholm et al., 2005:31).

The impact of real and perceived increases in workload include higher levels of educator stress and burnout, declining educator numbers, increased labour conflict in education, greater disparity between

functional and dysfunctional schools, and decreasing levels of care towards clients (Chisholm et al., 2005:36-40). These negative effects can all have a potential impact on the right to dignity of educators

4.4.3 Workplace relationships

Relationships between employer and educator also contribute to stress and feelings of being devalued. It is especially important that educators perceive the employer to be protecting and supporting them in the event of interpersonal conflict and in terms of recognition of their efforts.



One report claimed that in 2005 seventy-two percent of educators in the United Kingdom were contemplating leaving the profession because they were “exhausted from dealing with the persistent disruptive behaviour” of learners (Association of Teachers and Lecturers, 2005:11). This is a clear indication of how important relationships and interpersonal conflict are in the day-to-day experience of educators

Hayward (2003:9) suggests that the employer can contribute to improving morale and educator dignity by:

- Improving service delivery

- Providing a better pupil-to-teacher ratio
- Allowing more professional autonomy for educators
- Implementing well-planned and managed changes
- Doing more listening to educators and less talking
- Ensuring that personnel appointments are fair and transparent.

4.5 IN RELATION TO COLLEAGUES AND THE PROFESSION



4.5.1 Coercion and intimidation

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As education becomes increasingly unionized, the incidence of industrial action by educators is likely to increase. At many schools educators are placed under subtle pressure to join the dominant union, and those who are not willing to participate in strike action may face varying measures of coercion and intimidation. During the protracted education strike in 2007 there were numerous instances of overt intimidation when striking educators forced district offices and schools to close. This effectively denies individuals the right to choose their own opinion and grossly violates their right to dignity.

4.5.2 Harassment

Harassment is primarily a violation of a person's dignity (Claasen, 2008 (a):1) and it can be defined as any incident in the workplace which was unwelcome, unsolicited and had a destructive effect.

Harassment can take many forms and includes: bullying, intimidation, unwarranted threats, malicious rumour mongering, belittling, victimization, discrimination, abuse of power, undermining or blocking progress, or promotion for no valid reason.



Sexual harassment is a particularly damaging form of dignity violation because it is highly traumatic. Claasen (2008 (b):1) distinguishes between sexual attention and sexual harassment. Sexual attention becomes sexual harassment he states when:

- It is persistent.
- The victim has made it clear that it is undesirable.
- The perpetrator would reasonably have been assumed to have known that it was wrong.

There are no detailed statistics available presently on the incidence of harassment amongst educators, but anecdotal evidence suggests that incidents of bullying or sexual harassment do occur at least from time to time. The present researcher personally dealt with two complaints of sexual harassment and at least six cases of alleged bullying or harassment of other sorts during a three-year period as a circuit manager, although only two of these instances led to formal grievances, because in all the other cases the complainants either claimed the matter had been resolved or they had decided to “let it go” and were unwilling to take any further action. It is clear that harassment of various sorts can also threaten the right to dignity of educators.



4.5.3 Professional registration and self regulation

The South African Council of Educators is a statutory body which registers and regulates the teaching profession, and sets and maintains ethical and professional standards, thereby protecting and promoting the dignity of educators as professionals. It operates in terms of the South African Council of Educators Act (Act 31 of 2000). The Code of Professional Ethics (Brunton, 2005:E-17) of the Council requires educators to uphold the dignity of colleagues, parents and learners. The existence of such a regulating body contributes to the credibility of education as a profession. At present educators are not required to abide

by any form of continuous professional development as is applicable in several other professions, but a system of Continuous Professional Teacher Development (CPTD) points has been mooted and is being piloted under the auspices of the South African Council of Educators. Such a system would probably make a significant positive contribution to the professional dignity of educators, but if managed poorly or unfairly it could also contribute to potential violations of the dignity of individual educators who face sanctions for failure to meet points targets, should these be too unrealistic.



4.6 IN RELATION TO THE CURRICULUM

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The National Curriculum Statement describes the kind of teacher that is envisaged for South African schools. It emphasizes the crucial role played by educators as “key contributors to transformation in education” and stresses that they play a particularly important role (Brunton, 2005:H-45). Teachers are seen as “mediators of learning, interpreters and designers of learning programmes, leaders, administrators and managers, scholars, researchers and lifelong learners, community members, citizens, pastors, assessors and learning area/phase specialists.”

In practice, however, education departments and curriculum documents tend to be highly prescriptive and rigid, as evidenced, for example, by the

detailed directives and tone used in the section on curriculum in the provincial Manual for School Management (Eastern Cape Department of Education, 2007:Section N). The very rigid prescription of methodology and content undermines the academic freedom, and hence the dignity of educators as professional practitioners.

4.7 EDUCATORS WITH HIV/AIDS



Although it is currently impossible to determine the levels and extent of HIV infection amongst educators, studies (Hall et al., 2004) indicate that educators are a high risk and high incidence occupational group.

4.7.1 No discrimination

Stigma, prejudice and ignorance regarding HIV are still rampant (Eastern Cape Department of Education, 2005b:10-11) and there is a real possibility that educators known to be HIV-positive could become the victims of prejudice. Section 9 of the Constitution of the Republic of South Africa Act (Act 108 of 1996) specifically prohibits unfair discrimination on the basis of HIV status. The case of *Hoffmann v South*

African Airways (CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1235 also entrenches the right of persons infected with the HI virus to fair labour practices without any discrimination.

4.7.2 Right to non-disclosure

Learners, parents, school governing body members, principals and educators are generally in favour of disclosure (Eastern Cape Department of Education, 2005b:52), but it is clear that compulsory disclosure of HIV status would be an invasion of privacy and a violation of the right to dignity.

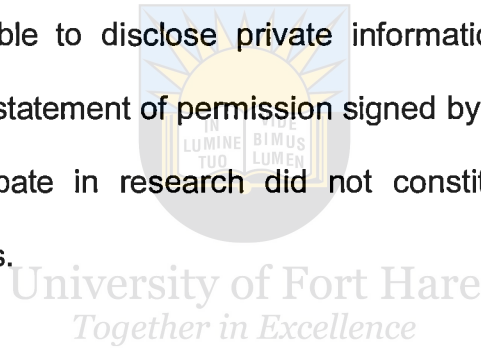
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4.8 EDUCATORS WITH DISABILITIES

Disabled educators comprise less than the recommended three percent of the workforce in education, but this may be as much a function of the fairly physical demands of the job as it may be a function of poor employment practices. The majority of schools are poorly equipped or completely unsuitable for disabled persons. Educators with disabilities are therefore vulnerable to violations of their dignity.

4.9 EDUCATIONAL RESEARCH

Educators are expected to be researchers, according to the National Curriculum Statement (Brunton, 2005:H-45). Proper regard for ethical research practice will ensure that educators do not violate the dignity of others. The case of *NM and Others v Smith and Others (Freedom of Expression Institute as Amicus Curiae)* 2007 (5) SA 250 (CC) found that it was not acceptable to disclose private information about research subjects and that a statement of permission signed by a research subject to agree to participate in research did not constitute permission to disclose such details.



Educators are also often participants in research, and it is important that their dignity is respected in such events.

4.10 CONCLUSION

This chapter has examined the potential positive and negative influences that various aspects of the educators' work have on the right to dignity of educators. The nature of the educator's work is governed by a range of

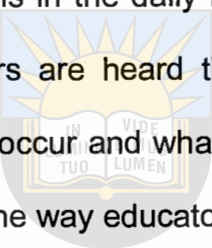
specific statutory and common law conditions. These may contribute positively to the image of an educator as an esteemed professional with special expertise and authority. The extent to which the education profession also regulates itself and sets appropriate standards will further strengthen this image.

On the other hand, the legal conditions may impose onerous obligations on educators which could contribute to a sense of being over-burdened unless there are sufficient safeguards in place to prevent violations of educators' dignity. Since education is a profession that involves intense interpersonal relationships, these potentially expose individual educators to a variety of circumstances that can leave them vulnerable to violation of their right to dignity, despite the existence of specific legal remedies.

CHAPTER 5 – ANALYSIS OF RESULTS OF FIELD STUDY

5.1 THE FIELD STUDY

Whilst an investigation of theory and court decisions can shed light on the essential nature of the concept of human dignity, it is also important to know what actually happens in the daily lives of educators. It is only when the voices of educators are heard that it becomes possible to determine whether violations occur and what sorts of violations occur. It also provides an insight into the way educators promote and protect their dignity.



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The results of the field study fall into three different categories. The demographic data describe the general characteristics of the sample investigated and indicate the extent to which it resembles the profile of educators in the province as a whole. There are also a number of items that investigate what educators know and understand about human rights. Finally, a group of items are designed to identify if educators have experienced violations of their own right to dignity as educators, and the nature and circumstances of these violations.

5.2 DEMOGRAPHIC FACTORS

A total of 19 educators were interviewed as part of the final selection group. This is too small a number to be treated as a statistically representative sample of the educators in the Eastern Cape, and is regarded as an illustrative example or, at best, a pilot study of the possible state of conditions in schools rather than an accurate basis for generalization. However, it is of interest to note some of the demographic characteristics of the group selected. In some respects the group closely resembled the general population of educators in the province, whilst in other respects it was noticeably different. This is probably as a result of the smallish size of the group and the lack of more rigorous attempts to draw a representative sample. Accordingly it must be stressed that the findings of this field study should not be used as a basis for broad generalization, but merely as an indicator of possible trends that require further investigation.

In terms of gender distribution the selected group was comprised of 13 females (68.42%) and 6 males (31.58%), which is similar to the distribution of gender amongst educators in the province (71.43% female: 28.57 male) and the district (71 % female and 29% male) (Eastern Cape Department of Education, 2007). Gender was included in the demographic factors recorded because of the possibility that female

educators may be more vulnerable to abuses such as intimidation and sexual harassment (Prinsloo, 2006:306).

Respondents were asked to state their rank because it was considered possible that vulnerability to rights violations may decrease as educators move up the hierarchy, since they are able to potentially wield more power within the school. However, the small number of participants selected did not allow for any controlling of rank distribution. The selected group consisted of 16 (84.21%) post level 1 educators, 2 (10.53%) heads of department (post level 2) and 1 (5.26%) deputy principal (post level 3). As a matter of interest this distribution was compared to the provincial rank distribution after the selection had been made. The majority of educators in the province are at post level 1 (78.4%).

With regard to home language the selected group of respondents was not a good reflection of the pattern amongst educators in the province as a whole. The majority of educators in the Eastern Cape are first language isiXhosa speakers, but the selected group included a disproportionately small number of Xhosa speakers.

Participants were not asked to state their ages or the actual years of experience, but were asked to place themselves into one of five broad categories for years of experience. The teaching corps within the Eastern Cape is progressively aging, with the mean age for all educators in the province in 2007 at 43.53 years (Eastern Cape Department of Education, 2007), and in East London district this was at 44.7 years. Educators in East London district had a mean of 18.03 years of teaching experience. It is possible that length of experience can significantly influence one's experiences in relation to human rights violations, either by increasing the likelihood of having been a victim of such violations or by increasing one's repertoire of skills to avoid them. The distribution of teaching experience within the selected group is indicated in the table below:

Teaching experience	0-5 years	6-10 years	11-20 years	21 + years
Number	1	2	9	7

Table 1: Distribution of teaching experience

The majority of the educators interviewed had extensive experience.

Amongst the educators in the study 10 (52.3%) had specialized in primary education with 6 (31.6%) of those being foundation phase

educators. The secondary educators in the sample were evenly distributed amongst the three categories of languages and humanities; mathematics and sciences; and commercial subjects.

The educators in the study displayed a wide range of levels of qualification as summarized in the table below:

Level of qualification	Grade 12	M + 3 diploma	M + 4 diploma	B. degree + diploma	Honours degree	Masters degree
Sample Number	1	2	9	3	3	1

Table 2: Qualification levels

The educators who were interviewed were drawn from one secondary school, one combined school and two primary schools. One of the primary schools was a suburban school and the other three schools were township schools.

Respondents were asked to indicate whether they had had any exposure to training in education law, as it was assumed that those who had would be more inclined to recognize their rights and be less likely to tolerate or allow violations of rights. The question was also asked because other

studies (e.g. Mubangizi, 2004:64) have indicated that there is widespread ignorance regarding human rights amongst South Africans.

In the sample group 14 (73.68%) stated that they had never had any training in education law, and none of the remaining 5 (26.32%) had had more than one year of training in education law.



5.3 KNOWLEDGE AND UNDERSTANDING OF HUMAN RIGHTS

It is critical to protecting and promoting one's rights to be fully aware of what those rights are. For this reason this study has investigated the nature and quality of educators' understanding of, and knowledge about, their constitutional rights. These questions were also intended to explore further the issue of training in education law investigated in the general demographic stage of the inquiry.

5.3.1 Understanding the concept of "human rights"

As outlined in the rationale for this study educators play a critical role in inculcating the values that underpin a culture of human rights in future

citizens. For this reason the field study sought to explore the level of understanding amongst the educators in the selected group. Respondents were asked to state or explain what they understood by the concept “human rights”. In the interview protocol the item was phrased as follows:

What do you understand by the concept “human rights”?

The responses were analysed and grouped semantically into ten distinct factors as indicated in the table below, which also lists typical comments that were placed under each category. The number of times each category was identified in a response is indicated in the third column. It is important to note that the number of mentions exceeds the total number of respondents because in several cases respondents offered multiple responses to the item. Each category of response is therefore compared to the other categories, thus the relative frequency with which each factor is mentioned by different respondents gives an indication of its relative strength within the selected group as a whole.

Factor	Typical statements	Total
Dignity	<i>Right to dignity and equality for all persons.</i> <i>Right to be respected.</i>	6
Legislated or constitutionally enshrined provisions or protections	<i>Enshrined in constitution.</i> <i>Protection deserved and due to all people.</i> <i>Some protection required by law.</i> <i>How we conduct ourselves in line with the constitution.</i> <i>We have protected rights but most of us don't know them.</i>	5
Democratic freedoms	<i>Freedoms (expression, movement etc.)</i> <i>Democratic ideals.</i> <i>Right to education, freedom of speech and worship.</i> <i>Right to be free.</i> <i>Freedom to vote.</i> <i>Right to live in a free, equal, democratic society e.g. free education.</i>	5
Personal rights / fundamental requirements to enable one to live suitably	<i>My rights as a human being, what is expected from me.</i> <i>Something any person has to enable them to lead a decent life and be accepted.</i> <i>All people have rights that no one can infringe – basic rights.</i> <i>Right to be yourself and develop to best of your capabilities.</i>	5
Equality and equity	<i>Fairness, equity and equality.</i> <i>Not to be discriminated against.</i> <i>People's rights which should be respected at all times regardless of rank or situation.</i>	5
Mutual social obligations	<i>Person's rights and responsibilities in relation to</i>	4

	<i>self and society.</i> <i>How you treat people.</i>	
Universally applicable; part of human condition	<i>Respecting myself/ my humanness.</i>	4
Must be actively taken up	<i>You have to exercise your rights.</i> <i>You mustn't let anyone take away your rights.</i>	3
Inalienable	<i>Something nobody can take from you</i>	2
Value based	<i>Values people have.</i> <i>It has to do with your values.</i>	2

Table 3: Concept of human rights



It is clear from the above that the selected educators have a wide variety of interpretations of the concept of human rights, but that the centrality of the fundamental constitutional values of dignity, equality, freedom, and democracy are widely understood by them to be at the core of human rights.

5.3.2 Understanding of the concept “right to dignity”

This study is specifically focused on the right to dignity, and accordingly respondents were asked to explain their understanding of this concept. In the interview protocol the item was phrased as follows:

What do you believe is meant by the “right to dignity?”

Respondents generally found this a difficult issue to articulate, but there was a high degree of consensus in the responses which were analysed semantically and grouped according to identified factors in the table below. The table also indicates the number of times a particular factor was mentioned. Again, the number of responses exceeds the number of respondents because several respondents offered more than one response to the item.



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Factor	No. of mentions
Right to be treated with respect	12
Right to be treated in a human / humane way /to be accepted	2
Right to feel important / not to feel less as a person / self.worth	5
Morale, values and pride	3
Right to be treated fairly without discrimination	4
Right to be equal to others	2
Right to express oneself without fear of being belittled or embarrassed / to have an opinion	2
Right to contribute to humanity	1
Your personal rights	1
Not too clear	1

Table 4: Concept of right to dignity

It is significant that the most commonly held interpretation of human dignity links it to “being treated with respect”, and closely allied to this is

the idea of being treated humanely or being accepted. This echoes the view expressed by Marmot (2004:1089) that “human dignity is fragile and can be affected by the way one is treated.” It is clear therefore that these educators themselves placed a high value on humane and respectful treatment from others as a critical aspect of how their right to dignity should be actualized.

Respect is also fundamental to an effective teaching or helping relationship, and was identified by Glasser (1975:11) as the primary human need, which, when not fulfilled, led to psychiatric problems. Educators who complain of stress in the workplace may well be indicating that their right to dignity is not being effectively upheld, because the way they are being treated is experienced as disrespectful.

The importance of respect in relation to dignity leads to the need to clarify what patterns of behaviour signify respect for others. Collins (1980:24-27) lists key behaviours identified in psychological studies that promote healing and helping relationships. These are:

- Expressing warmth
- Being genuine
- Displaying empathy
- Attending
- Listening
- Responding
- Teaching

Whilst these are clearly desirable behaviours for educators to display, it could also be argued that they are patterns of behaviour that would promote the dignity of educators as well, especially when displayed by colleagues and superiors, because they accurately describe the sort of actions that would constitute “being treated with respect”, which is what appears to be the essence of how most of the educators in the sample interpret the right to dignity.

5.3.3 Knowledge of the Bill of Rights



In light of the finding that 74% of the respondents had never had any training in education law, and based on Mubangizi's findings (2004:64) that most people were ignorant or ill-informed about the Bill of Rights, this study sought to determine the extent to which these educators were aware of the Bill of Rights. Knowledge of the Bill of Rights would also empower and equip educators to defend their rights, including their right to dignity, more effectively, whilst ignorance would increase their vulnerability to rights violations.

In the interview protocol this item was phrased:

“Have you ever read the South African Bill of Rights? Why / why not?”

The table below summarizes the responses:

Response	Reasons given	Frequency
Yes	(a) In order to teach it (Life Orientation) (b) Because it is regarded as necessary to know as an educator (c) As requirement for studies (d) As part of a union duty	9 (47.37%)
Partly	(a) Seen snippets in media (b) Seen in advocacy booklets distributed at school	5 (26.32%)
No	(a) Don't know where to find it (b) Not easily available (c) No time	5 (26.32%)

Table 5: Knowledge of the Bill of Rights

Since the Bill of Rights is the primary source of knowledge about one's rights, it is a cause for concern that only 47.37% of all the respondents stated unequivocally that they had ever read it, and that the majority of those had done so because of some external obligation to do so such as to complete a study assignment, to prepare a lesson on human rights or to fulfil a union obligation. In fact, not a single respondent stated that they had read the Bill of Rights out of interest or curiosity. In all fairness, it must be acknowledged that a document such as the Bill of Right is not likely to be a popular choice of reading matter, but this simply emphasizes the need to promote awareness more vigorously.

The majority of respondents had either not ever seen the Bill of Rights or had only very scant and cursory awareness gleaned via quotations in the media or in other sources. In terms of the research question, the apparent general lack of knowledge about their rights may well impact negatively on the extent to which educators are able to actualize their right to dignity.

Lack of awareness of how or where to access the Bill of Rights appears to be a major reason why many educators remain ignorant of its contents. Ironically, the National Curriculum Statement envisages that learners will be able to “collect, analyse, analyse and critically evaluate information” (Eastern Cape Department of Education, 2004:12) and that educators will, by implication, have the necessary expertise to do so as well. It would appear, however, that educators lack either the skill or the motivation, or both, to find, analyse and critically evaluate a document as important as the Bill of Rights. If most educators have only rudimentary knowledge of the Bill of Rights, it is doubtful that they will be able to adequately play an effective role in promoting a culture of human rights and democracy among the learners they teach.

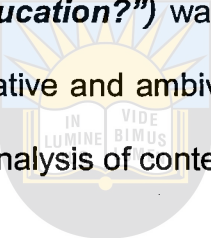
5.4 GENERAL PERCEPTIONS ABOUT THE RIGHTS OF EDUCATORS

If educators are unable to effectively actualize their right to dignity, they would be likely to express this as a sense of lacking rights. The items in

this section attempt to assess educators’ perceptions of their own rights in relation to those of others in the educational context.

Two items in the interview protocol were used to assess this issue.

An open-ended item (*“How do educators’ rights compare to those of other people involved in education?”*) was analysed both in terms of the frequency of positive, negative and ambivalent responses (see Table 6 below), and in terms of the analysis of content.



Response	Percentage	Frequency
Better	0%	0
As good as / same	15.78%	3
Worse	73.68%	14
Undecided / ambivalent	10.52%	2

Table 6: How educators’ rights compare to those of others

A significant majority of respondents felt unequivocally that educators did not enjoy the same rights as others in the education relationship. This is consistent with a study quoted by Green (2004:109), which found that 78% of educators felt that the government over-emphasizes human rights and that this leads to classroom problems.

Since it is possible that the previous item could have been interpreted in slightly different ways by the respondents, a second item was included as a control measure and required respondents to indicate how often or frequently they believed the statement below was true:

“Educators have fewer rights at school than learners and parents.”

The results in this case are summarised in the table below:



Respondents believe the statement below to be true:	Almost always	Some of time	Seldom	Hardly ever
Educators have fewer rights at school than learners and parents.	14 73.68%	2 10.53%	1 5.26%	2 10.53%

Table 7: Comparative perception of educators’ rights

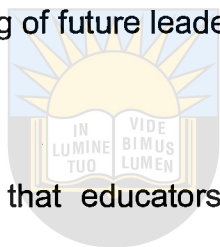
The results of this item tend to confirm the results of the previous item.

Most respondents spontaneously elaborated on their responses and explained why they felt that educators' rights were not as good as those of other role players. These comments are set out below:

Some respondents who felt that educators’ rights were generally better than, or as good as, those of other people in the educational situation

explained that educators have some special rights or privileges. Such special privileges could be regarded as part of the reward of being engaged in a profession or calling. The following were specifically mentioned as examples of these:

- To set the tone of the school
- To influence the quality of education provided
- To have an input in the way institutions are run
- To influence the shaping of future leaders.



Some respondents stressed that educators have particularly onerous responsibilities (that possibly overshadow their rights) because of the unique demands of working with children.

It was claimed by some that educators' rights (as educators) are vague and poorly documented.

In arguing that educators' rights are overshadowed by the rights of learners and parents, some respondents gave the following reasons:

- They receive less recognition or acknowledgement.
- They receive less emphasis
- They do not enjoy the same protection
- They do not enjoy the same priority and are regarded as subordinate to the rights of parents and learners.

On the other hand, some respondents went so far as to claim that educators' rights are being undermined or restricted, and gave the following reasons:

- Unequal protection
- Removal of certain rights
- Reduction of authority

Educators, it was claimed, have limited, fewer or no rights compared with learners and parents.



Changes in disciplinary practices are singled out as a particular factor that has contributed to reducing the scope of educators' rights, especially the removal of corporal punishment.

Other circumstantial factors that respondents claimed impact negatively on the rights of educators include:

- Lack of safety at school
- Increased work load
- Decline in morale and increase in discouragement and disillusionment. (This could also be a consequence of rights being violated or undermined, but some respondents specifically cited it as a contributory factor. The respondents who cited a decline in morale or increased discouragement as a source of rights

infringements tended to reason that the lack of morale would lead to people behaving with less courtesy, consideration or mutual respect towards each other.)

5.5 EXPERIENCES OF DIGNITY VIOLATIONS

These items sought to determine the extent to which the educators interviewed were able to report actual violations of their right to dignity. In the interview protocol this was phrased as:

“Have you or do you ever experience occasions at work when you feel as if you have been violated, deeply insulted, or treated with much disrespect as a person?”

The wording of this particular item was an attempt to express the essential nature of a dignity violation without using the word “dignity”. A deliberate decision was made not to use the word “dignity”, which could have been ambiguous, but to rather use an operational description of the term.

In the event that respondents replied negatively, they were asked to identify possible factors that had contributed to the sense that their dignity had never been violated, and in the event that they did report violations

they were asked to elaborate on these in terms of the nature and source of such violations.

5.5.1 Frequency of dignity violations

The table below sets out the findings in regard to the extent to which respondents felt that their dignity had been violated.

Dignity violations reported?	Percentage	Frequency
Yes	78.95%	15
No	21.05%	4

Table 8: Frequency of reported dignity violations

A significant majority¹ of the respondents reported that there had been at least one, and often more than one, occasion at work when they felt as if they had been violated, deeply insulted or treated with much disrespect as a person.

5.5.2 Factors that prevent dignity violations

Reasons given by those who did not experience any violation include:

¹significant at between 90% and 95% level of confidence - $\chi^2 = 3.48$

- The existence of a close collegial network
- A tendency to avoid open conflict
- The ability to be strongly self-assertive
- A determination to try to understand others.

5.5.3 Sources of dignity violations

The table below indicates the various sources of violation, deep insult or disrespectful treatment. These are arranged by frequency of mention. It must be noted that some respondents mentioned more than one source of violation, and the total number of responses therefore exceeds the number of respondents.

Source of violation	Frequency
Senior colleague (Principal)	7
Departmental official	5
Peer colleague	3
Parent	3
Learner	3
Administrative colleague (School secretary)	1
Others (Public)	1

Table 9: Sources of dignity violations

It is noticeable that management staff (principals, circuit managers, heads of department and other departmental officials) account for more negative mention than all other sources (including learners and parents) combined. This may be partly due to the fact that many of these officials still tend to rely on an authoritarian style of management, whilst the majority of educators expect a more democratic approach. It is also interesting to note that the same category of officials is often cited as the source of assistance when rights violations occur. In fact these same officials are frequently spoken of in very positive terms, usually by the very same respondents who cite them as sources of rights violations. One respondent in fact mentioned that the principal was the main source of rights violations, but that the circuit manager was “a perfect gentleman”. It can therefore be concluded that complaints about senior officials and management are not a general expression of antipathy towards authority, but are more likely to be genuine objections to inappropriate or disrespectful treatment because of poor management and leadership skills.

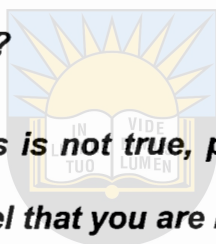
This study also examined in more detail the types of violation of dignity that were perpetrated by different possible sources of violation, and the role played by various key groups of role players in promoting, protecting or violating educators' right to dignity. This was considered important because of the strong role interpersonal relationships play in the work of educators. The key groups identified were:

- Superiors
- Parents of learners
- Learners
- Colleagues and peers.

In the interview protocol this item was phrased as:

“In your dealings with the following people, do you always feel that you are treated with dignity?”

If there are times when this is not true, please explain briefly what happens that makes you feel that you are not treated with dignity.”



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The table below sets out the results. When respondents answered in the affirmative, they usually did not offer any elaboration, and were not asked to elaborate. Some of the respondents answered in the negative, but did not offer any further elaboration or explanation, and some of the explanations were repeated almost exactly by more than one respondent. In the case of some of the target groups, some of the respondents declined to comment or respond at all, and as a result the total number of responses varies and is not always the same as the total number of respondents. In order to compare the different groups, the responses were converted into percentages of the total number of responses:

Category	Treated with dignity	Not treated with dignity	Explanations offered
Your superiors	12 ² (60.0% of all responses)	8 (40.0% of all responses)	Odd exceptions are easily resolved Do not always feel we are listened to. Sometimes shout at teachers in front of learners. Treated with respect by school management, but departmental officials do not have much contact. Principal is erratic and rude, but EDO is a perfect gentleman.
Parents of learners	11 ³ (61.1% of all responses)	7 (38.9% of all responses)	Have to learn to be diplomatic Try to be empathetic Sometimes parents avoid their responsibilities or fail to give support, although they are respectful. Sometimes get insulting remarks.
Learners	8 (42.1% of all responses)	11 (57.9% of all responses)	No problems with those I teach, but others may be problem Sometimes get insulting remarks. Swearing and disrespectful May be disruptive or familiar. Excuse their disrespect because they don't know any better. Have received death threats.
Colleagues / Peers	13 ³ (72.2% of all responses)	5 (27.8% of all responses)	Sometimes take advantage and don't share workload or criticize unfairly. Lack of cooperation. No socializing / isolation. Immature and selfish.

Table 10: Role players and dignity

² One respondent answered “Yes and no” to this item and explained that generally superiors treated her with dignity, but that “the odd exceptions when they did not were easily resolved”.

³ One respondent did not comment on this group

Learners were the only group that appeared to include individuals who were regarded as disrespectful more often than not, but significantly they were also more likely to be excused by the respondents. The idea that if learners treat educators without much dignity it is often not to be taken too seriously as they cannot be held to the same standards because of their immaturity is certainly consistent with common law principles of legal accountability, but remains problematic in terms of setting clear behavioural standards.



It is interesting that although an earlier item identified superiors as the commonest source of dignity violations (Table 9) they are still regarded as more likely to treat educators with dignity and respect than not to do so. However, the fact that respondents felt that superiors did not always treat them with dignity and respect in as much as 40% of cases emphasizes that some managers in schools probably need to change some aspects of the way in which they work with educators. Once again the major causes of dissatisfaction revolved around rude, aggressive confrontations, lack of consultation, public humiliation, inaccessibility and inconsistency.

Several respondents emphasized that parents are often initially aggressive and confrontational, but can be won over if treated diplomatically and with empathy. This suggests that many of the educators questioned have a high level of caring for parents, but that they

recognize that there is a measure of alienation between school and home. This was also evident in the number of respondents who commented on the frustration experienced when parents “did not meet their responsibilities” or “abdicated their responsibilities” and tended to “expect too much” from educators.

In general colleagues and peers are seen as the most supportive category and least likely to treat educators in an undignified manner. The main reasons given by respondents for feeling that colleagues were not respecting their dignity were related to lack of cooperation, collaboration and collegial teamwork. Studies that focus on effective schools and school improvement have repeatedly identified the importance of fostering collegial collaboration, participatory decision-making and a climate of mutual care and concern (Christie, 2001:50; Brown, Anfara and Roney, 2004:450; Peacock, 2006:253).

5.5.4 Nature of dignity violations

Educators who reported feeling violated, deeply insulted or disrespected were asked to explain what had been done that caused them to feel that way. Reasons for educators feeling violated, deeply insulted or much

disrespected were analysed and grouped according to type. Five broad categories of reason were identified:

- (a) Rude and aggressive attacks on personal worth
- (b) Inconsiderate and unprofessional treatment
- (c) Being overlooked or ignored
- (d) Demeaning working conditions, and
- (e) Miscellaneous.



The table below analyses the factors in more detail that respondents mentioned as causing feelings of being violated, insulted or disrespected, and indicates their relative strength in terms of the frequency of mention.

Main category	Types of action included in the category	Frequency	Total frequency
Rude and aggressive attacks on personal worth	Shouted at (in front of others)	4	14 (53.85% of all responses)
	Treated rudely by management	5	
	Degrading remarks and letters from parents / being sworn at	3	
	"Overstepping boundaries" ⁴	1	
Inconsiderate and unprofessional treatment	Being put on the spot or caught unawares/ unscheduled interruptions/ inconsiderate demands at short notice	2	6 (23.08% of all responses)
	Unprofessional treatment / Professional judgment overturned	2	
	IQMS (not being done properly and thoroughly) ⁵	1	
	Parents interrogating in class.	1	
Being overlooked or Ignored	Input in staff meeting not taken seriously	1	2 (7.69% of all responses)
	Not having our side heard in a conflict	1	

⁴ The respondent explained that it meant socially inappropriate behaviour that one would not expect from a colleague in the workplace. The same respondent also suggested later that she had experienced mild sexual harassment, and it is possible that this was actually a reference to that experience.

⁵ The respondent found this to be insulting because after careful and thorough effort to complete all the required administrative requirements properly, the management treated the entire exercise as a superficial compliance issue, and did not even examine the information provided.

Demeaning working conditions	Poor salaries	1	3 (11.54% of all responses)
	Poor service from district officials	1	
	Overcrowding	1	
Miscellaneous	High levels of educator absenteeism ⁶	1	2 (7.69% of all responses)
	Let down by colleagues	1	

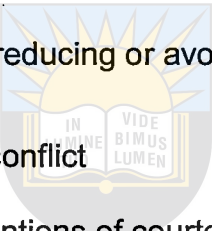
Table 11: Nature of dignity violations



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⁶ The respondent explained that this was insulting because it left him feeling “taken advantage of” when having to field the classes of teachers who were absent for trivial reasons.

Although the most frequently cited cause for dignity violations among the educators interviewed was direct and aggressive behaviour that was clearly an assault on the victims' dignity, this was not the only possible type of dignity violation mentioned. Respondents also identified situations that caused embarrassment as being violations of dignity. Another source of perceived violation among the educators interviewed was situations where they felt that their effort had not been adequately valued or appreciated by others. Conversely, the following would appear to be helpful patterns of conduct for reducing or avoiding dignity violations:

- 
- The logo of the University of Fort Hare is a shield-shaped emblem. It features a yellow sun with rays at the top. Below the sun is an open book with the Latin motto 'IN VIDE BIMIUS LUMEN' written on its pages. The shield is flanked by two yellow pillars. The entire emblem is set against a blue background.
- Minimising or defusing conflict
 - Maintaining basic conventions of courtesy
 - Only confronting or reprimanding in private
 - Giving due appreciation for effort
 - Apologizing when plans are changed or expectations cannot be met
 - Allowing people adequate opportunity to present their views and giving these proper attention, and
 - Being responsive to complaints, queries and suggestions.

5.6 UNFAIR DISCRIMINATION

Although the constitution deals with dignity and equality as separate rights under Section 10 and Section 9 respectively, they are closely linked

concepts, and any form of unfair discrimination also impacts on a person’s sense of worth and dignity (Alston, 2004:4). For this reason respondents were also asked about experiences of being the victim of unfair discrimination. Their responses were analysed in terms of the source and basis of the unfair discrimination and the results are reflected in the table below:

Have you ever had occasion at the workplace to believe that you have been the victim of unfair discrimination?	Yes	No	No response
	7 (36.84%)	10 (52.63%)	2 (10.53%)

Table 12: Incidences of unfair discrimination

The majority of respondents reported that they had not suffered any unfair discrimination.

Source of discrimination	Management	School governing body	Employer
Frequency of mention	5	2	1

Table 13: Sources of unfair discrimination

Although only seven respondents reported experiences of unfair discrimination, one of the respondents saw both management and the

school governing body as a source of unfair discrimination. All reported incidents of unfair discrimination were linked to superior authorities.

When respondents were asked on what grounds they had been unfairly discriminated against, gender emerged as the leading basis for discrimination, whilst race or ethnicity was not mentioned at all. The following table summarises the factors reported as bases for unfair discrimination.

Basis of discrimination	Frequency
Gender	4
Occupational status	1
Age	1
Marital status	1
Physical condition	1

Table 14: Basis for unfair discrimination

Only gender was mentioned more than once as a basis for unfair discrimination.

It is particularly interesting that no mention was made in this item or any other of racism as a source of discrimination or dignity violation. This is in marked contrast with the findings of another study (De Wet, 2004:35) that racism was widely experienced by educators of all race groups in the work place. This finding is probably an artefact of the very small number

of respondents in this study, whereas De Wet's study used a far larger and more balanced sample, but the sample was also drawn from parts of the country traditionally associated with right wing politics and greater levels of racial polarisation. There is clearly a need to probe the role of racism more thoroughly amongst educators in the Eastern Cape.

5.7 SEXUAL HARRASSMENT



Sexual harassment can be a particularly destructive and traumatic violation of dignity within the workplace. It has not been widely researched and reported on in the context of education in South Africa, and because of its often clandestine nature is probably under-reported.

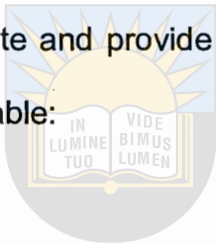
This study sought to gauge the incidence of sexual harassment as a particular form of dignity violation. Three elements of sexual harassment were identified:

- (a) Verbal (speech)
- (b) Physical (touch, actions)
- (c) Representational (pictures, objects or gestures).

The item also included in the ambit of harassment the following elements:

- (a) Subjective feelings of being uncomfortable sexually
- (b) Obscenity
- (c) Lewdness
- (d) Pornography.

Respondents who reported incidents of harassment were asked if they would be prepared to elaborate and provide further details. The findings are reflected in the following table:



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Action	Frequency	Source	Description
Speech	2	Principal	Vulgar language and remarks.
		Learners	Swearing and vulgar remarks
Touch	1	Senior colleague	Inappropriate fondling when respondent was a young teacher
Material, actions	2	Learners	Displaying pornography or obscene cell phone messages.
		Learners	Inappropriate public displays of affection or public petting

Table 15: Sexual harassment

Very few incidents were reported, and only one of these was of a serious enough nature to have probably led to a disciplinary charge of sexual harassment, whilst the others were more in the order of minor insults to dignity, and may at worst have led to charges of *crimen injuria*.

5.8 WORKPLACE BULLYING AND VIOLENCE



Schools in South Africa have been identified as particularly prone to violence, and the percentage of educators who have indicated that they were victims of school violence was higher than the reported average for violent crimes in South Africa (De Wet, 2003:98).

Intimidatory and manipulative conduct by supervisors has been identified as a particular form of unacceptable workplace behaviour and has been referred to as “workplace bullying”. Conduct of this nature also infringes employees’ rights to dignity, and this study therefore examined the possible incidence of such behaviour in terms of (a) verbal behaviour and (b) actions, pictures, gestures or other material. The test applied was a subjective one of feelings of physical or emotional threat, or intimidation. The results are reflected in the table below:

Action	Yes	No
Speech	9 (47.37%)	10 (52.63%)
Material / actions	6 (31.58%)	13 (68.42%)

Table 16: Incidence of workplace bullying

The number of incidents reported was significantly high⁷ enough to warrant attention. It is also alarming that reports of verbal threat and intimidation are only slightly more prevalent than actual physical threats and intimidation.



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Once again respondents who reported such incidents were given the option of elaborating on the source and nature of the bullying behaviour. No distinct pattern emerged, either for the source of bullying and intimidation or for the nature of such conduct. The following table reflects the findings regarding source and nature of the bullying conduct:

⁷ $\chi^2 = 1.98$ significant at 80% level.

Type of bullying	Source	Actions
Verbal	Principal	Threats and harsh manner from a previous head. Intimidating staff in staff room. Making vindictive remarks.
	Circuit manager	Demanding changes on promotion schedules without being prepared to hear alternative views.
	Learners	Abusive language; name calling; death threats. Female learner swearing at and threatening a male teacher.
	Parents	Threatening and abusive letters.
Physical (intimidatory behaviour)	Parents	Father entered class brandishing a whip.
	Learners	Male learners adopting aggressive postures and actions towards female educators. Carrying weapons (knives).
	Colleagues	Harassing and "policing". Teachers assaulting each other creating threatening climate.
	Community	Gang fights that spill over onto school property.

Table 17: Source and type of workplace bullying

5.9 PROTECTION OF RIGHTS

Several items on the interview protocol were designed to probe the ability of, and resources available to, respondents in regard to protecting their right to dignity. One of these items was a statement requiring respondents to signal their agreement on a four-point scale. The results are reflected in the table below:

Statement	Almost always	Some of time	Seldom	Hardly ever
I know exactly what to do if someone infringes on my rights.	10 52.64%	4 21.05%	1 5.26%	4 21.05%

Table 18: Protection of rights

Most respondents indicated that they knew exactly what to do if their rights were infringed. This was also probed by means of an open-ended question in which respondents were asked:

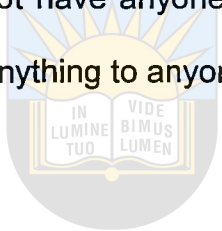
- (a) whether they had access to anyone at work to help them if their rights were infringed upon
- (b) to whom they would turn, and
- (c) the extent to which that was effective.

The results are indicated below:

Do you have someone to turn to at work if your rights are infringed upon?	Yes	Uncertain	No
	12	3	4

Table 19: Access to support

The responses to this item are similar to those for the previously mentioned item. It is interesting, however, that one of the respondents who indicated that she did not have anyone to turn to went on to state that she was “scared to say anything to anyone”.



The following table indicates the sources of help to which respondents felt they could or would turn if their rights were infringed upon, and their belief about how effective those sources would be.

Source	Very effective	Moderate	Low
Management	10	1	1
Union	3		
Friends	1	1	

Table 20: Sources of protection

Despite superiors and management sometimes being seen as the source of rights violations, the majority of respondents would still turn to the

principals or other supervisors as a first resort if they felt that their rights were in jeopardy.

Another item examined what action, if any, had actually been taken in the past by respondents who had suffered violations of their right to dignity, and the extent to which these actions had proven successful. The table below reflects the results:

Action taken	No. reporting	Resolved	Not resolved
Confronted party and resolved on own	5	4	1
Reported/ complained to supervisor	2	1	1
Spoke out publicly / in meeting	2	0	2
Spoke to friends	1	0	1

Table 21: Nature and efficacy of protective action taken.

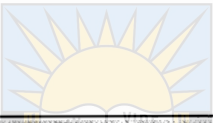
These results suggest that the more directly the issue of rights violations or infringements is addressed, the more effectively the matter is resolved

5.10 PROMOTION OF DIGNITY

It is important that human rights, including the right to dignity, are not only protected, but also that they are actively promoted and upheld.

5.10.1 Factors promoting a sense of dignity

Two forced choice statements were used as a control measure to ascertain the extent to which respondents felt that their working conditions contributed to a sense of worth and dignity, and the extent to which they believed that people at work respected their rights. These results are reflected in the following table:



Statement	Almost always	Some of time	Seldom	Hardly ever
The conditions under which most educators work give them a strong sense of being worthwhile and appreciated.	3 15.79%	5 26.32%	5 26.32%	6 31.58%
Where I work people tend to respect my rights.	10 52.64%	4 21.05%	5 26.32%	0

Table 22: Factors promoting a sense of dignity

Whilst there is no strong pattern with regard to the role of working conditions in promoting a sense of worth and dignity for educators, there is a tendency towards seeing the working conditions as detracting from a sense of dignity. The main reasons given for this by respondents were related to issues of safety and security, and to issues of salary and workload.

On the other hand, all respondents expressed the view that people at work tended to respect their rights to some extent, and in most cases this was strongly so.

5.10.2 Sources of affirmation

Respondents were also asked an open-ended question in which they reported incidents that had left them with a sense of affirmation of their dignity. This item was worded as:

“Could you describe any incident(s) at the workplace that have left you with a sense that your dignity was particularly upheld or respected, or that made you feel particularly worthwhile as a person?”

In analysing responses to this item attention was paid to the source of the positive affirmation and the nature of the affirming experience. The results are reflected in the table below:

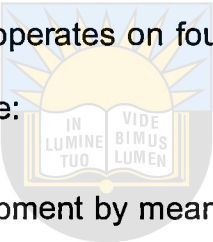
Main factor	Typical forms of expression	No of reports
Approval and positive feedback	Headmaster expressed appreciation; commendation	7
	Commendation from SGB	1
	Commended by colleagues	3
	Being valued by EDO	1
Acknowledgement of ability and expressions of confidence	Given special responsibilities	2
	Inclusion in teams / work groups	2
	Elected as SGB representative	1
	Approached to mediate in disputes	1
Positive self-evaluation	Satisfaction of seeing learners achieve success due to your efforts	1
	Personal achievements / awards	1
	Able to make a lasting contribution to the school	2
Peer support	Collegial support while studying	1
"Customer satisfaction"	Treated respectfully by a parent/ Appreciation from parents	3

Table 23: Affirming experiences

It is interesting to note that respondents tended to mostly mention forms of external approval as affirmations of their sense of dignity and self-worth rather than focusing on the satisfaction of internal standards in their own minds. This suggests that generally educators in the group selected may

have tended towards a more external locus of control, which is associated with poorer levels of self-motivation (Deci and Ryan in Tyson, 1987:247). It may, however, also simply indicate that such external acts of appreciation and recognition are so uncommon that they are very significant when they are experienced.

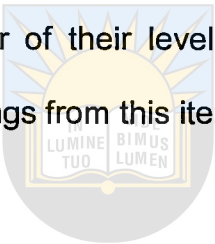
The developmental appraisal system used in the integrated quality management system (IQMS) operates on four levels of assessment and developmental input. These are:

- 
- (a) Self-evaluation and development by means of a personal growth plan and self-development activities
- (b) Peer assessment and support through classroom observation and meetings with a developmental support group
- (c) Supervisory assessment and support through classroom observation and meetings with a developmental support group
- (d) Generic staff development through programmes organised by the staff development team, and in-service programmes organised by the employer at district and provincial level.

The first three of these levels (self, peer and supervisory assessment and support) coincide with the first four factors identified above by the respondents as sources of affirmation of self-worth and dignity. This suggests that the IQMS can potentially be used to great benefit to affirm educators' sense of dignity, and to motivate and encourage educators.

5.10.3 Self-promotion of own dignity rights

Promotion and protection of one's rights does not only depend on others, but can also be exercised by the individual in respect of his or her own rights. Respondents were asked to identify actions that they could take that would promote respect for their dignity as a person. It was also envisaged that the extent to which respondents were able to identify actions would be an indicator of their level of self-empowerment. The table below indicates the findings from this item:



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Type of action	No. of times mentioned
Treat others with dignity / respect	7
Do not take people for granted	1
Do not “class” people / treat people in prejudiced way	1
Set example / be dignified ourselves	4
Self respect	2
Be a good listener	2
Be honest	1
Be a team player	1
Learn from others	1
Do work well	1
Become more involved in school activities	1
Improve teacher parent relationship	2
Special projects to help learners	1

Table 24: Actions to promote one’s own dignity

It is notable that most of the suggested actions relate to individual conduct that epitomises dignity and that emphasizes the reciprocal nature of

dignity, whilst suggested actions that focus on social action of an organised or semi-organised nature were mentioned less frequently by the educators in the sample. None of the respondents actually mentioned structured campaigns or educating people about dignity as ways to promote their own dignity.

5.10.4 Promoting the dignity of the education profession



The extent to which others treat educators with respect and dignity in the workplace is closely linked to the status and respect for the profession of educator. It is therefore also important for educators to promote their professional dignity. Respondents were asked to identify and discuss ways in which they could do this, and the results are reflected in the table below:

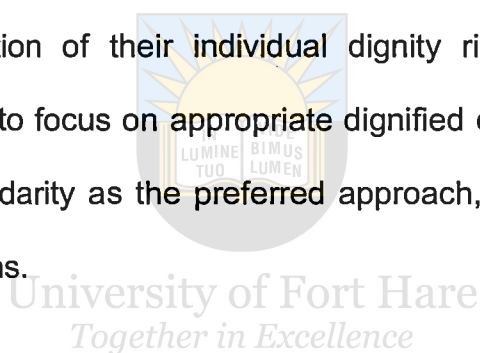
Actions that promote professional dignity	No. of mentions
Encourage communication / teamwork among colleagues / Teambuilding	8
Promote informal gatherings and contact among staff	3
Loyalty / support to colleagues in front of others	2
Be positive even in adversity	2
Welcome / embrace new ideas	1
Work enthusiastically / whole heartedly	1
Work professionally	2
Uphold / promote profession	2
Teachers' bill of rights	1
Orientation	1
Stress basic principles	1
Improve links between school and community	1
Don't know	3

Table 25: Promoting the professional dignity of educators

The most commonly suggested strategies revolved around promoting collegiality and collaboration amongst educators.

Another important cluster of strategies stressed the notion of positive “professionalism” and maintaining professional standards. One respondent proposed the need for an educators’ “bill of rights” which should be vigorously publicized. It is also interesting that several respondents were unable to identify any strategies for promoting the dignity of their profession.

As with the promotion of their individual dignity rights, most of the respondents tended to focus on appropriate dignified conduct or conduct that encouraged solidarity as the preferred approach, rather than public awareness campaigns.



5.11 DISCUSSION OF FINDINGS

5.11.1 General aspects

The field survey raised several significant issues in relation to the research question. The initial research problem asked was:

“How is the educator’s right to dignity protected and promoted in the workplace?”

This led to the questions:

- (d) What is the actual current situation in schools regarding the upholding of this fundamental right for educators? What sorts of infringement of this right are currently taking place in schools?*
- (e) What needs to be done to ensure that the educator's right to dignity is upheld?*

Since the field study was conducted with a very small sample it is not appropriate to make generalizations, but the observations do provide useful indications of possible tendencies that can be the subject of further verification and research. The following discussion attempts to learn from the results of the interviews, and to identify possible actions that could ensure that educators' right to dignity is upheld.

5.11.2 Knowledge and understanding

Firstly, the educators who were interviewed displayed a wide range of understandings of the concept of "human rights", but these were mostly related to the core constitutional values of equality, freedom, non-discrimination, justice and individual worth. They also held a range of ideas about the meaning of "the right to dignity". The commonest view in this regard related to being treated with respect. This suggests that the concepts of both "human rights" and "dignity" are intuitively well

understood by educators. The understanding by the educators of these concepts tends to be consistent with the legal and philosophical theory underpinning such concepts. Most of the educators appeared to understand that human dignity is universally applicable, inherent, related to fairness and equality, and reciprocal in nature. Educators frequently have to stress fairness and respect in the course of disciplining learners. It is therefore understandable that most educators would easily relate to the concepts of equality and dignity.



Although many educators may be reluctant to debate or philosophize about the concepts of rights, dignity and equality in general abstract terms, they would be willing to think deeply about these issues when they come up in the classroom and it would be appropriate to encourage educators to discuss these issues from time to time with learners. One of the respondents suggested that the need for an “Educators’ Bill of Rights” and the development of such a document, perhaps as an addendum to the SACE Code of Ethics, would prompt educators to explore and refine their understanding of various fundamental concepts and issues.

The second observation is that most of the educators surveyed had little or no first-hand knowledge of the Bill of Rights, and those that did had only read it because it was required for work, study, or union duty

purposes. The main reason cited for not reading the Bill of Rights was ignorance of how to access it. Other studies also indicate that it is not common for most South Africans to have a sound knowledge of the Bill of Rights. However, educators have a critical role to play as primary agents for propagating a culture of human rights, and leading social transformation, and it would therefore be important for them to have a better-than-average understanding of the Bill of Rights. Since some of the educators surveyed had read the Bill of Rights when obliged to do so, it would seem that the main obstacle to a greater level of knowledge is a lack of motivation. Not only did most of the educators surveyed lack knowledge of the Bill of Rights, but most of them also had no formal training in education law. Since knowledge of the law applicable to the particular profession is usually a requirement in the training of most other professions, and even of most trades, it is anomalous that this is not the case in education, and clearly leaves educators vulnerable to unintentional malpractice and to potential violation of their rights.

Educators can be educated about their rights through in-service courses in education law, union information sessions, and advocacy campaigns that promote awareness of the Bill of Rights among educators. A broad introductory overview of education law that includes a component dealing with human rights should be a compulsory element in all pre-service training of educators. In-service training of educators should always

include reference to the legal and human rights implications of the content being covered.

5.11.3 Educators' perceptions about their rights

Most of the educators in the study felt that educators have fewer or inferior rights compared to other parties involved in education, or that their rights are overlooked in favour of the rights of others. This is possibly aggravated by the generally poor level of knowledge about their rights. The main reasons they gave for believing that their rights were inferior were the unbalanced emphasis on the rights of learners and parents, the disempowering effect of changes in approaches to discipline, and the negative impact of unsatisfactory working conditions. Although it is clear that educators have extensive rights in terms of the law, and there are numerous remedies in law for violations of their rights including the right to dignity, it would seem that this is not what most educators would believe.

If it is true that educators generally perceive themselves to be unequally provided for in terms of basic rights, this would have important implications. One possible consequence would be a lack of motivation and low morale amongst educators. Another potential consequence

would be a widespread sense of embitterment that could result in educators failing to uphold, or even violating, the rights of others. If rights are seen to be mutually exclusive, it is likely that a highly adversarial climate will be developed. In other words, if parties believe that they can only enjoy their rights fully at the expense of others' rights, and vice versa, there will be a strong tendency to compete for dominance. It is, however, possible to interpret rights as the outcome of a mutual partnership. In other words, protecting and promoting others' rights increases the access to one's own rights. For example, improving the working environment and conditions of educators should also produce positive benefits for learners and parents.



It would appear that much can be gained from promoting the positive benefits to educators of upholding learners' and parents' rights rather than simply imposing this as an obligatory duty. It would also be very helpful to promote an awareness of the rights of educators amongst parents and learners as being worth protecting because of the beneficial effects for learners and parents.

There would also appear to be a need for greater guidance and support to educators on alternative approaches to discipline and classroom management. This can be done by the Education Department at provincial and district level through formal in-service programmes, but it

can also be addressed very fruitfully at school level through in-school staff development activities. One aspect of the problem stems from the apparent lack of practical support and backing for schools from the Education Department when serious disciplinary problems are encountered. Often the district office is only engaged for the first time when the school has already decided to expel a learner. If circuit managers were to be routinely engaged as advisors and mentors when serious misconduct first surfaces, and if the circuit managers were competent enough to provide support or facilitate support through referrals to other sources of professional help, school managers and educators would feel more empowered to address behavioural problems. The district-based and institutional level support teams envisaged in White Paper 6 on Inclusive Education (Department of Education, 2001: 29) would fulfil this purpose, but unfortunately these often do not exist, or exist on paper only, and even when they do operate, they tend to focus largely on bureaucratic issues relating to learner placement.

Some of the educators surveyed elaborated on particular aspects of their working conditions which they felt had a negative impact on their dignity. Lack of proper facilities and equipment, unhygienic environment, poor safety and security at school and excessive work load were the issues most frequently mentioned. These are all examples of what Herzberg (Herzberg, Mausner and Snyderman, 1959) called hygiene factors. The presence of such factors does not necessarily increase motivation or

performance, but their absence has a demotivating and demoralizing effect.

Securing the perimeters of schools, and screening and managing access are critical aspects of school safety, whilst the provision of clean water and proper sanitation should be prioritised in the planning of infrastructure development at schools (Rich, Sauer and Sikrweqe, 2006:18). It should not be left to the provincial Education Department alone to address these issues. School governing bodies must take up their responsibility in terms of policies and implementation of plans to ensure that schools are safe and healthy environments (Prinsloo, 2005:10). School management teams and school governing bodies should build close links with community policing forums and with helping agencies in the community to improve school safety. Training educators in conflict handling skills through programmes such as Rosenberg's *Non-Violent Communication* (Rosenberg, 2003) can equip them to contribute to making schools safer and more harmonious places.

5.11.4 Violations of educator dignity

Most of the educators who were interviewed (78.95%) reported that their personal dignity had been violated on occasion in the workplace. This is

a very high percentage, and suggests that there is a need for improved measures to promote and protect the dignity of educators. The commonest source mentioned by these educators of such violations was senior staff and departmental officials. Closer examination of respondents' comments suggests that when supervisory staff behave in a rude, insensitive or overly authoritarian fashion, this is often seen as deeply insulting by educators. This suggests that leadership and management styles may sometimes be too authoritarian and impersonal. Typically, violations of personal dignity stemmed from five broad categories: rude and aggressive conduct interpreted as an attack on one's personal worth, inconsiderate and unprofessional treatment, being overlooked or ignored, demeaning working conditions, and unfair treatment or lack of teamwork among colleagues. Education as a profession involves high levels of interpersonal engagement, and it is thus understandable that poor interpersonal skills could contribute to negative experiences in the workplace. At the same time it is also reasonable that educators would expect their colleagues to display sound interpersonal skills. Educators who had not experienced violations of their dignity ascribed this to self-assertion, avoidance of conflict, and sound interpersonal relations. Colleagues and peers are seen as least likely to be a source of dignity violation, and most likely to be a major source of positive support.

It would appear that it is important to continually develop the leadership and management capacity of principals and circuit managers, especially in the soft skills associated with a more democratic and participatory approach to school leadership. Staff development sessions should regularly include activities aimed at improving interpersonal communication skills for all educators.

About half of the educators questioned had experienced some form of unfair discrimination, usually from authority figures and most often on the basis of gender. Given the relatively extensive working experience of most of the respondents, it is likely that most of them started their teaching careers at a time when there were still overt structural measures in place based on gender discrimination. For example, many educators can still recall a time when married women educators could not be permanently appointed, when positions could be advertised specifically for males or females, and even when males were paid more than females.

Schools should regularly conduct a self-evaluation of their policies and practices in terms of diversity requirements such as gender sensitivity and non-racism. Performance Standard 1 of the developmental appraisal component of the integrated quality management system provides circuit

managers and principals with a legitimate platform to address diversity issues in schools, both as a focus of training and of supervision.

Among the educators questioned, sexual harassment was not a commonly reported source of dignity violations, and was largely confined to isolated rather than repeated incidents and to indecent language, displaying of obscene material or inappropriate petting by adolescent learners. Only one respondent reported an incident of inappropriate fondling by a co-worker. In the light of the notoriously high levels of sexual crime and violence in South African society in general, it could be expected that sexual harassment was more common than appears to be the case in this sample.  *Together in Excellence*

On the other hand, amongst the educators questioned, workplace bullying was a significant source of violations to personal dignity, stemmed from a wide range of sources including learners, parents, colleagues, superiors and the wider community, and covered a range of actions including brandishing weapons, making death threats, physical assault and general threats. The high levels of violence in South African schools are documented in other studies (De Wet, 2003; Prinsloo, 2005; Prinsloo, 2006) and stem from a wide range of contributory factors.

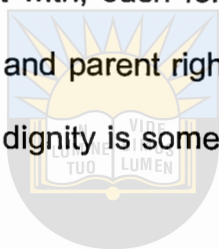
5.11.5 Protecting and promoting educator dignity

Most of the educators questioned believe they have a reliable source of assistance at the workplace if their rights are infringed, and in most cases they would turn to the school management. It also transpired from reports of incidents when violations were addressed that the most effective measure in most instances was to confront the party responsible for the violation directly and resolve the matter. This is understandable because it restores the dignity of the victim of the violation and empowers him or her, whilst at the same time protecting the dignity of the perpetrator by allowing him or her to respond to allegations.



Most educators in the selected group could identify incidents when their right to dignity was strongly affirmed, and this was usually as a result of positive feedback or acknowledgement from superiors or peers, or self-affirmation from meeting personal goals, collegial support or appreciation from parents. It is notable that it required very little on the part of supervisors or colleagues to affirm respondents' dignity. In addition, most of the educators who were questioned believed that treating others with respect and behaving in a dignified and exemplary manner were the most effective ways to promote respect for their own dignity. They also believed that the dignity of the education profession was best promoted by setting and maintaining high standards of professional conduct, and

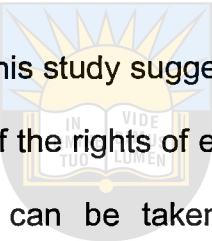
fostering cohesiveness and collaboration amongst colleagues. This gives credence to the fact that schools should be encouraged to set aside a portion of their staff development budget specifically for activities and programmes that promote team-building and the development of collaboration skills. Very little emphasis was placed on formal, organised campaigns and strategies to promote or protect the rights of individual educators or the dignity of the profession. This may be partly due to mistrust of, or disillusionment with, such formal campaigns which have tended to emphasize learner and parent rights in the past, or it could be due to a general sense that dignity is something that must be practised rather than spoken about.



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CHAPTER 6 – RECOMMENDATIONS FOR RESEARCH AND PRACTICE

6.1 GENERAL RECOMMENDATIONS



In general, the findings from this study suggest that there may be a need for an increased awareness of the rights of educators, and that there are several critical actions that can be taken at systemic, school and individual practitioner level to bring about a more balanced approach to educator rights.

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The National Economic and Social Rights Initiative (NESRI, 2007) recommends six “Human Rights Standards to Guarantee Dignity in Schools” which can provide a useful framework for recommendations for further action. The NESRI standards are:

- **Whole school approaches to safety and respect.** This suggests that all aspects of the school including facilities, curriculum, policies and practices must promote a culture of mutual respect and dignity. School management and policies are also areas that can contribute to improved educator dignity.

- **Better trained staff and adequate standards** Both pre-service and in-service training have a role to play in improving educators' rights, and codes of conduct and standards should not only address educator performance but also educators' working conditions.
- **Protection from degrading punishment and loss of learning opportunities.** This should also extend to educators in terms of protection from degrading treatment and undue stress. Loss of learning opportunities relates to erosion of instructional time because of educators having to spend too much time on non-core tasks.
- **Free expression and active participation among students.** This should also extend to educators in terms of opportunities for involvement in decision-making and academic freedom.
- **Emotional support and well being for students.** This should also include support to educators through employee assistance programmes, wellness programmes, collegial networking and professional support.
- **Monitoring schools and providing remedies for violations.** This must also include violations against educators.

6.2 RECOMMENDATIONS FOR WHOLE SCHOOL APPROACHES TO SAFETY AND RESPECT

6.2.1 Classroom management and school discipline

Many infringements of educator dignity originate in the classroom or in disciplinary encounters between educators and learners, which then possibly spill over into confrontation between educators and parents or educators and supervisors. Difficulties with classroom management and discipline appear to be a potential source of violations against educators' dignity.

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Le Mottee (2006:5) suggests that educators need to rethink what is meant by discipline and to establish the role of punishment within that understanding. She defines discipline as the practice of care and respect towards oneself and others, and stresses that it is not about control, but about teaching self-control. In the researcher's own experience of working with primary, secondary and special needs learners, a system of classroom management based on ensuring that learners have thoroughly understood the principles of *mutual respect* and *responsibility*, and then consciously assessing all questionable action and conduct against these principles tended to work far more effectively than a rigid set of rules and

sanctions. For example, if a learner disrupts the class, the class is asked to comment on whether the action is respectful to everybody else's right to work and learn. Thereafter the disruptive learner and the rest of the class are asked to suggest what will happen if the learner is allowed to carry on disrupting the class, and therefore what should be done when someone does disrupt the class. Usually the students suggest something along the lines of asking the disruptive student to stand outside or to "cool off in the corner", and to apologize to the class. This incident then forms the precedent or pattern for any subsequent similar patterns of behaviour, thus speeding up the handling of misconduct. It is important to note that the focus is not on punishing the learner, but on dealing with incorrect or inappropriate behaviour and the reason behaviour is inappropriate is because it interferes with or impedes the common goals of the class (usually stated as teaching and learning). Infringements of the educator's right to dignity by learners now become issues of poor self-control and actions that are not helpful to the learner and to the common goals of teaching and learning rather than a matter of personal affront. Another related approach that also stresses responsibility and self-discipline is the concept of learners drawing up contracts and setting their own consequences and rewards in terms of the contracts. Such behavioural contracts can also include provisions dealing with respect towards the educator. Non-retributive approaches, such as these, tend to be restorative, and in keeping with the values of the philosophy of ubuntu. They are therefore especially appropriate in an African context.

Le Mottee (2006:5) also proposes that disciplinary procedures and codes that clearly spell out the consequences and recourse for misbehaviour should be developed and put in place in a participatory fashion. It can be a valuable educational experience for learners to hear how the educator feels when treated with disrespect and to be given an insight into why it is more appropriate to respect the educator's (and each other's) dignity. Transparency about the likely consequences for misconduct is not only a deterrent, but also increases the sense of fairness, because consequences are no longer arbitrary or personal. If learners and educators clearly understand what action can be taken when rules (including rules about respecting the dignity of the educator) are transgressed, there is an increased sense of security and empowerment. Rules or codes of conduct developed in a participatory fashion tend to enjoy a greater measure of mutual ownership and commitment; they reduce the adversarial climate that easily arises when rules are imposed unilaterally; and involving learners in crafting their own rules demonstrates a high regard for their dignity. The South African Schools Act (Act 84 of 1996) specifically requires school governing bodies to develop a code of conduct *in consultation with* educators, parents and, where applicable, learners. The Eastern Cape Manual for School Management (East Cape Department of Education, 2006: L8) provides detailed guidance to schools on the steps to be followed in developing school rules and codes of conduct in a participatory fashion. It also provides a model code of conduct and set of school rules derived from

an example from Quebec. This code of conduct and set of rules is based on the overriding principle of safety and mutual respect.

In terms of the common law principles of natural justice any set of rules or code of conduct must meet certain standards or pass certain tests.

These are that the rules must:

- (a) Not conflict with the Constitution, legislation, common or case law and must follow correct legal procedure. Rules that uphold the dignity of educators and learners are clearly in line with other laws including the Constitution.
- (b) Be worded so that learners know with *certainty* what is allowed and what is not allowed. The terms *dignity* and *respect* are abstract and subject to various interpretations so they should be given some concrete explanation in school rules and codes of conduct.
- (c) Be consistent. This is also potentially difficult because some educators may be more good humoured, tolerant or “thick-skinned” than others with regard to violations of their right to dignity.
- (d) Be able to be defended in a court of law. The tests usually applied by the courts in relation to *crimen injuria* and defamation can be helpful when determining how to draft school rules that deal with protecting the right to dignity.
- (e) Be able to be fairly applied.

- (f) Have reasonable consequences if broken (in relation to both the offence and the age of the offender). In the case of violations of the educator's right to dignity the most appropriate consequences should usually stress measures to restore the relationship between the offending and offended parties.
- (g) Take into account differences in age, maturity, gender, and the physical or other handicaps of learners. This is especially important in relation to violations of the educator's right to dignity, because an action that may be quite a minor demonstration of immaturity at one developmental stage may well be grossly offensive at another stage.
- (h) Be communicated in writing to all learners, educators, administrative staff and parents.
- (i) Be able to be realistically enforced.

It is also vitally important that codes of conduct and school rules must be educationally sound and serve the educational purposes and goals of the institution. (Eastern Cape Department of Education, 2006: L10)

Le Mottee also proposes (2006:5) that educators should consider discipline as part of a whole school strategy supported by external and internal policy and forming part of the culture of the school. She argues that when all elements of the school work well together there will be fewer disciplinary problems. Sometimes school discipline needs to be reorganized at a holistic level involving rearranging the way the school is organized. Partland et al. (1997:14-17) describe how a large high school

with serious disciplinary problems leading to rampant educator and learner absenteeism was turned around by reorganizing the school into six smaller special purpose academies within the school. The high level of interaction at a personal level and the customized arrangement of teaching programmes not only elevated the dignity of learners, but also that of educators.

Prinsloo (2006: 315) stresses that it is important to develop a school culture in which values and human rights are protected, promoted and fulfilled. This means that educators need to spend time reflecting on and examining human relationships at school and to help learners to recognize and uphold human dignity, equality, diversity and respect for all (Le Mottee, 2006:5). Traditions, rituals, decorations, customs, slogans and songs typically form part of the culture of most schools and these can subtly or directly contribute to upholding or undermining the values that support human rights and constructive discipline.

Le Mottee (2006:5) also argues that it is important that the roles of educators and learners and the expectations associated with these must be clearly defined.

6.2.2 School safety

An unsafe learning and working environment is an affront to human dignity. Ample mechanisms exist for promoting school safety, but some of these tend to emphasize an authoritarian, policing approach that may not necessarily tend to reduce crime and accidents. One increasingly popular strategy in many schools is the use of closed circuit television camera surveillance of classrooms and other parts of the school. These measures are justified by the schools using them because of their value for promoting safety, but they obviously have serious implications regarding the invasion of learner and educator privacy and resultant infringement of the right to dignity. All members of the school community should be encouraged to take joint responsibility for the safety and security of everyone else. Approaches that use classroom forums and joint problem solving to deal with identified threats are more likely to succeed than unilaterally imposed restrictions that inconvenience the majority because of the misconduct of the minority. One constructive way to address school safety is to conduct a highly visible safety audit or inspection every year and report back to the whole school community on the findings, then to embark on a programme of addressing the areas of weakness. It is, however, important, for schools to provide a variety of safety nets such as anonymous reporting points, safe rooms for counselling and similar measures. It should be made easy for learners, parents or educators to report potential safety hazards or threats,

including such things as the presence of weapons or drugs, anonymously on an ongoing basis without the fear of any repercussions to the person reporting. The type of public accounting encouraged by the National Occupational Safety Association on building sites where a prominent notice board declares the number of accident free days and the time since the last accident was reported can be adapted and used fruitfully in schools to foster a sense of mutual responsibility and security. This public reminder of the success of learners' and educators' mutual efforts to maintain a safe environment will have a positive effect on their sense of dignity. Prinsloo (2006: 315) emphasizes that educators and school governing bodies need to work together and must also join forces with other structures such as Community Policing Forums to promote school safety. These measures will communicate to everybody in the school community that the safety and well being of people is valued and there is a genuine attempt to care for people in the school.

Prinsloo (2006:315) also identifies particular measures that can be adopted especially to protect girl learners from harassment and intimidation. These same measures can also easily be adapted to afford protection to female educators. The measures are:

- *Create awareness of the definition and forms of sexual harassment (for example, through the use of posters, pamphlets and staff development activities.)*

- *Develop clear standards of conduct among gender groups.*

Educators should establish and maintain clear boundaries about the sort of speech, physical contact, mannerisms and actions that are offensive or unacceptable.

- *Create a climate of trust in which stereotyping is avoided.*
- *Encouraging female learners and educators to talk to others who are trusted about any incident of sexual harassment or sexual abuse.*



6.3 RECOMMENDATIONS FOR TEACHER TRAINING AND STANDARDS SETTING

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6.3. 1 Education law

Since the majority of the educators who were interviewed had no training of any sort in education law, it suggests that there is a need for such training at both pre-service and in-service levels. Education law should emphasize the practical implications of human rights and other key education legislation on classroom practice, as well as focusing on relevant legal principles such as the duty of care, the rules of natural justice, the accountability of minors and the rules of evidence. Educators who know and understand their rights and obligations and the legal

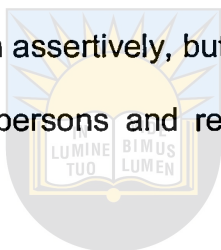
mechanisms and remedies associated with these are better equipped to protect their own right to dignity.

6.3.2 Human rights awareness

The majority of educators interviewed admitted to never having read the Bill of Rights. Schools often do little to promote a sound awareness of rights. Human rights should be infused into all aspects of the curriculum and should emphasize both rights and attendant responsibilities and the balancing of the rights of all parties involved in the school. Educators should be encouraged to study courses that emphasize values and human rights (Prinsloo, 2006: 315). It is especially when discussing particular rights to always consider how the exercising of a particular right will impact on the rights of others. For example, how does the educator's right to privacy impact on parents' and employers' rights to information and safety, or how does a learners' right to freedom of expression impact on other learners' or educators' right to dignity? This ability to see single issues from multiple perspectives is an important cognitive skill that both educators and learners need to master.

6.3. 3 Assertiveness skills

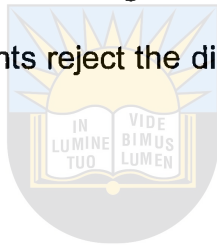
Educators have to deal with complex and highly charged interpersonal situations in which there may be conflict or trauma. The findings of this study suggest that many educators felt that they were easily belittled by superiors or intimidated by parents but were not always sure how to handle such situations. Educators need to learn how to handle interpersonal communication assertively, but in a manner that recognizes the unmet needs of other persons and relates to them with empathy (Rosenberg, 2003:4-14).



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Traditional patterns of teacher training in South Africa tended to stress authoritarian strategies of coercion and domination, and this may make it difficult for some educators to make the transition to a more open and democratic way of working with parents, learners and subordinates. Alternatively educators have often been inclined to be patronising towards learners or parents in an effort to maintain their image of expertise. Eisler (1987: xvii) draws the distinction between dominance and partnership paradigms, and Rich (2007:33) proposes that the latter, being characterized by cooperation, collaboration and empathy, is more appropriate for supporting learning. This implies that in their interactions with both learners and parents educators should strive to spend more time asking questions of clarification and reflecting their understanding of

what has been said. They should spend less time giving direct instructions and expert advice and more time on active listening. Instead of taking responsibility by providing solutions or prescriptions, they should help parents and learners to clarify their own views and ideas. The educator should aim to facilitate decision-making by learners and parents and should respect their potential to act sensibly. In this way educators not only promote the dignity of learners and parents, but also reduce the likelihood that their own right to dignity can be placed under attack when learners or parents reject the directive advice or instructions they have given.



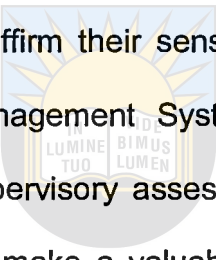
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6.3.4 Induction

Thorough, well-planned induction programmes for new and re-entering educators which include awareness of rights will significantly improve the climate at schools. It has been claimed that as a result of poor induction programmes, as many as fifty percent of educators in urban schools in the United States leave the profession within three years (Steyn, 2004:82). Immediately after the introduction of effective induction programmes, attrition was cut from 51% to 15 % (Steyn, 2004:82).

6.3.5 Performance appraisal and staff development

Positive and constructive feedback promotes self worth and dignity. The Integrated Quality Management System places great emphasis on collegial support and staff development. Findings from this study indicated that the respondents tended to rely on their own self assessment, the encouragement of peers and the recognition and approval of supervisors to affirm their sense of dignity and self worth. The Integrated Quality Management System includes self appraisal combined with peer and supervisory assessment and support. If these are well managed they can make a valuable contribution to promoting educators' human dignity.



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diagnostic tool to guide meaningful school based staff development activities. Staff development programmes are an ideal platform to address and promote understanding of rights in education.

The Imbewu programme's module on In-School Professional Development provides valuable methods and resources for initiating and running staff development at schools and is available to all public schools (Imbewu, 2003).

6.4 RECOMMENDATIONS FOR PROTECTION FROM DEGRADING TREATMENT AND LOSS OF TEACHING TIME

6.4.1 A Bill of Educators' Rights

Educator codes of conduct such as the Code of Professional Ethics of the South African Council of Educators should be balanced with a Bill of Educators' Rights that emphasizes the particular applications of educators' constitutional rights. However, a Bill of Rights on its own will not solve any problems. It is how such a document is discussed, absorbed and implemented that is critical to promoting a climate of respect for dignity.

Loss of teaching time has a markedly negative impact on the performance and morale of educators and learners. The widespread obsession with formal examinations and the general practice of suspending normal instruction during examinations; the tendency to hold meetings and workshops during the teaching day; the practice of using the first few days of the year for registration of learners and administration rather than teaching and the erosion of instructional time for non-core activities such as sports and music practices are malpractices that should be strongly discouraged.

6.5 RECOMMENDATIONS FOR PROMOTING FREEDOM OF EXPRESSION AND ACTIVE PARTICIPATION BY EDUCATORS

6.5.1 Management and leadership style

Principals should see their role more as coordinating and monitoring the management work of their management teams, giving strategic vision to the staff team and unblocking resources and opportunities for educators. They need to approach their roles more consultatively and democratically, with less authoritarianism.



The servant leadership model (Spears in Spears and Lawrence, 2004: 13) is proposed as an appropriate approach for use by school managers. Greenleaf proposed that leadership begins with the desire to serve and leads to the aspiration to lead. The best test of leadership lay in asking whether those being served grew as persons (Greenleaf, 1977: 12). This approach places a high value on the dignity of those being led. This model identifies some fundamental leadership behaviours which include: listening (to oneself and others), empathy, healing, awareness, persuasion, conceptualization, foresight, stewardship, commitment to the growth of people and building community. These are all patterns of

behaviour that lend themselves to the role of educators in general, and principals in particular.

6.6. RECOMMENDATIONS FOR PROVIDING SUPPORT AND PROTECTING EDUCATOR WELL-BEING

6.6.1. Collegial relationships and networking

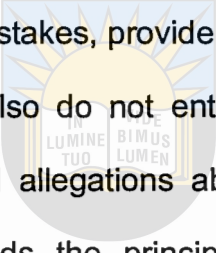


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The findings of this study indicate that the educators who were interviewed felt that their colleagues were their most significant source of support in protecting and promoting their rights. Collaboration and collegiality are important for overall functionality of the school and provide the best organizational culture, it seems, for optimal learning and teaching (Gruenert, 2005:50). Gruenert isolated four characteristics of collegial support:

- Teachers trust each other.
- Teachers are willing to help out whenever there is a problem.
- Teachers' ideas are valued by other teachers.
- Teachers work cooperatively in groups.

School leadership strategies can play an important role in fostering these conditions within the school. Gajda and Koliba (2008: 135) recommend that school leaders should become more “collaboration literate” and increase the same awareness in their schools.

Mutual trust between teachers is engendered when leaders model a climate of trust. They take educators seriously, entrust responsibility to them, allow them to make mistakes, provide non-judgmental support and protect confidences. They also do not entertain gossip, and insist on dealing with complaints and allegations about colleagues in an open transparent way that upholds the principle of *audi alterem partem* (hearing the other side).  *Together in Excellence*

Modelling a willingness to assist and support, encouraging shared responsibility and credit for successes, and recognizing and appreciating the contribution of each individual will promote a general willingness to help and a sense of mutual supportiveness.

Leaders who are alert to the innovations and ideas of colleagues and give them opportunities to showcase successes cultivate a sense that ideas are valued. It is important to draw out the more retiring and unassertive staff members as well as the confident ones, so that

gradually awareness is cultivated that everybody has something of value to offer. Joint problem solving and careful listening and consideration of all contributions in staff discussions also foster the sense of people's ideas being valued by others.

Joint planning and preparation of work in instructional teams is not only enriching for the educators involved, but also improves the range of instructional techniques to which learners are exposed. Teachers should form themselves into "communities of practice" based on shared concerns, problems or topical interests (Gajda and Koliba, 2008:137). The levels of collaboration in such teams should be regularly assessed and, if necessary, corrections should be made or the teams reconfigured. Successes and accomplishments must be visibly recognized to promote collaboration.

Leadership is a crucial element in promoting collegiality and principals clearly have a very important role to play, but unfortunately many principals are promoted to the position without having developed the necessary human management skills and there is no obligatory training programme in place for new and potential principals.

6. 7 RECOMMENDATIONS FOR MONITORING AND PROVIDING REMEDIES FOR VIOLATIONS

As educators increase their awareness of their rights and the legal framework within which they operate, the likelihood of self-monitoring and self-regulation increases. However, it is probably also necessary to establish some forms of formal monitoring to safeguard the rights of educators and others in schools. Assessment of the human rights climate of the school should be a regular component of any form of school assessment, or whole school evaluation, and education development officers should routinely be looking for evidence that rights are being promoted and protected whenever visiting schools. This, of course assumes that they have the required knowledge and skill to do so, but this is probably an area for the further professional development of education development officers.

The field study conducted indicated that most of the educators felt confident that they had somewhere to turn if their rights were violated and that this was likely to lead to a satisfactory outcome, but those who did not indicated that the challenge was a sense that nothing could be done about violations. The review of the legal literature in this study shows clearly that where rights, including the right to dignity, have been violated; there are a range of possible legal remedies available.

Obviously these tend to be last resort remedies after attempts at alternative dispute resolution have failed. The first resort should always be a more conciliatory approach of resolving the conflict and restoring the relationship through mutual discussion and reconciliation. If such approaches have failed, educators are able to lay criminal charges for *crimen injuria* and defamation and they may lodge civil claims for defamation and *injuria*. They may also resort to the human rights commission and, in some instances, the equality court to take action on their behalf.



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6.8 RECOMMENDATIONS FOR FURTHER RESEARCH

6.8.1 Demographic differences

The small sample size used in this study did not allow for a meaningful analysis of the variances between respondents based on demographic differences. It would certainly be helpful to know if factors such as age, race, gender and rank do play a role in educators' experiences regarding their rights.

6.8.2 Other educator rights

This study focused specifically on the educators' right to dignity but the issues of equality, freedom of opinion and expression, safety and security and freedom of association in relation to educators should also be examined more closely.

6.8.3 Training programme efficacy



This study makes specific recommendations, based on the literature and findings regarding educator ignorance, about the need for training. However, this begs the question as to whether such training will really have the desired effect of improving the way educators' exercise their rights. It also raises issues around the most suitable content and methods to be used for such training. These are questions that can only be addressed by further research.

6.8.4 Relationship of educator rights to performance and behaviour

No attempt was made within this study to compare educators' perceptions to those of learners and parents despite the speculative

thesis that educators who do not feel secure in exercising their rights are likely to overlook the rights of others.

It may be helpful to compare the actual conduct and behaviour patterns of educators who experience high and low levels of rights violations in order to determine the impact of such violations on the behaviour of educators. For example, are educators who have suffered serious rights violations more prone to absenteeism than those who have not? Such investigations would also be helpful in identifying if there are patterns of educator behaviour that are more helpful in preventing or avoiding rights violations. This study suggests, for example that some strategies of confronting rights infringements are more suitable than others

6.8.5 Sexual harassment and other forms of violence.

Although some insightful research has been done on crime, violence and sexual harassment in schools (De Wet, 2003; De Wet, 2004; Prinsloo, 2005; Prinsloo, 2006; Rossouw and de Waal, 2004; Zulu, et al., 2004.), these have tended to largely concentrate on the learner as victim. There would certainly be value in examining more closely how these issues affect educators.

6.8.6 Opportunities for action research

As educators address their own empowerment and explore ways to improve the human rights culture of their schools there are many valuable lessons that can be learned if the processes are carefully documented and educators reflect on what they do in structured ways.



6.9 CONCLUDING REMARKS

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This chapter has identified a variety of recommendations for improvement or innovation in educational practice that arise from the findings of this research.

The implementation of most of these recommendations will depend on educators and school principals, but in some instances, especially in the area of training, the education departments can also play a role. The organized teaching profession, through the agency of the South African Council of Educators and the educator unions, can play a role in promoting a Bill of Rights for Educators, and in supporting various training initiatives.

CHAPTER 7 – CONCLUSIONS

7.1 CRITICAL REFLECTION

This study has raised a range of important issues and questions that have a bearing on education in schools and the ideal of developing a culture of human rights.



Through focusing on the right to inherent human dignity, this study has indicated that it is a fundamental value addressed in similar ways by religion, philosophy and law. It is critical to effective learning and teaching relationships, and is integral to all other values associated with social justice.

However, this study has revealed that human dignity is by no means a simple concept to understand or define. It has both objective and subjective dimensions. Human dignity is affected both by what people do, and by what is done to them. Fundamental to a clear understanding of dignity are notions of worth, reciprocity, interdependence, freedom of choice, respect and acceptance.

An analysis of constitutional and case law has provided valuable insight into, and understanding of, the concept, and of ways in which it can be applied to the work of educators. Educators can deal legally with violations to their dignity by means of criminal prosecutions for *crimen injuria* and defamation, by civil litigation for defamation or *actio injuriarium*, or by appeals to the Human Rights Commission or the Constitutional Court. This study identifies the wide variety of potential threats to the dignity of educators. There are also several structures and measures, such as the South African Council of Educators and provisions in legislation, that are designed to protect educators' rights.

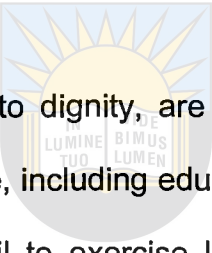


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Data gathered through structured interviews with educators have raised particularly interesting issues. Educators who were questioned displayed a wide range of ideas about rights and dignity, but generally felt that their own rights were undermined and not supported. The educators appeared to be poorly informed as to their basic rights. They did, however, have a sense of what to do if their rights were infringed. Violations and infringements of rights among the educators in the study stemmed from superiors, parents, learners, the wider community and even colleagues, but the last mentioned group were also the strongest source of support.

7.2 REVISITING THE RESEARCH PROBLEM AND OBJECTIVES

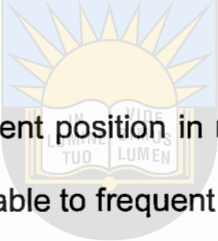
This study examined the interpretation and application of the right to human dignity as enshrined in chapter 2 section 10 of the South African Constitution with regard to educators in the educational situation, and sought to describe how that right does and should manifest itself with regard to educators in their professional context.



Rights, particularly the right to dignity, are complex, controversial and difficult to define. Most people, including educators, have a poor grasp of these concepts and often fail to exercise legitimate rights because of such ignorance. This study has synthesized a general description of the right to dignity.

Historically the concept of inherent dignity is a fairly recent concern in human rights thinking, being preceded by concerns regarding freedom and equality. It has, nevertheless, been a strong focus in much spiritual discussion about the human condition, although different religious expressions have not always agreed on the universality of its application. The religious, cultural and historical examination of the concept indicates that educators have a legitimate right to be treated with the same dignity as all other role players in education, but that they also have a significant responsibility as role models and trustees of young people's education to uphold and promote a general awareness of dignity.

Human dignity has been a subject of interest philosophically, and clearly has both subjective and objective dimensions. It is clearly linked to both behaviour and state of mind, and is strongly linked to the ability to exercise a choice. Educators may sometimes be limited in the courses of action open to them, but they always retain the inherent choice to respond to situations with dignity, and to maintain their dignity in the face of violations. However, asserting their individual and collective rights in an appropriate fashion can definitely enhance their dignity.



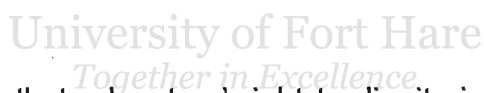
Educators are in an ambivalent position in relation to the right to dignity in that whilst they are vulnerable to frequent and widely varying violations of their basic dignity from other role players in the educational situation (and this has been shown to be the case in many instances), they are also potentially vested with extra status and authority that enhances and protects their individual dignity. The educators' right to dignity is particularly closely interwoven with the dual obligations of the educators' position *in loco parentis*. These are the duty to care and the duty to exercise necessary authority to protect learners. The latter is further affected by the relative imbalance of power between educators and learners.

Legally dignity is not only an entrenched constitutional right but is also dealt with in the realms of public law (*crimen injuria* and defamation) and

private law (actio injuriarum and defamation). All of these aspects are very relevant to the daily practice of educators' work.

Educators' right to dignity is also affected by the way the curriculum is designed, the way schools are organized and managed, the work load and working environment at schools, the support structures available to educators, and the policy framework in which educators work.

Some particular areas where the educators' right to dignity is also subject to challenge include: the HIV/AIDS pandemic, educational research, and the revolutionary changes in technology.

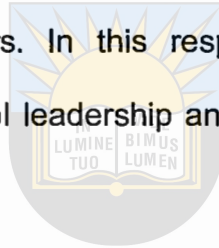


This study indicates that educators' right to dignity is strongly protected and promoted by:

- High standards of professional performance, skilful delivery and ethical conduct
- Empathic, caring and respectful interpersonal relations
- A climate of collaboration, loyalty and collegiality
- Continuous professional development and learning
- Democratic and participatory school management and visionary leadership
- Holistic and humane approaches to school discipline
- A healthy and vibrant partnership approach to school safety.

This study has sought to make a contribution to the ongoing debate about human rights in education and educational transformation by focusing on the educator as both a beneficiary of particular rights and an agent of transformation.

At the same time this study has sought to raise awareness of issues closely affecting the professional practice of educators by relating these to the dignity of educators. In this respect classroom and school discipline, curriculum, school leadership and educational research have been examined.



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This study has also sought to make a contribution to the field of education law by placing the law relating to human rights, especially the right to dignity under close scrutiny, particularly in respect of the educators' right to dignity. The conclusion arrived at is that there are adequate legal safeguards for the dignity rights of educators, but that these are often not accessed because of widespread ignorance amongst educators of their rights.

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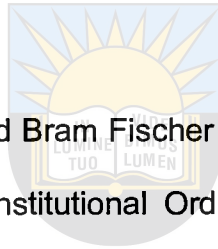
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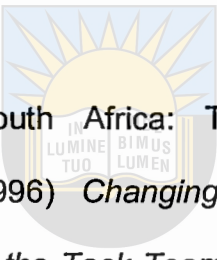
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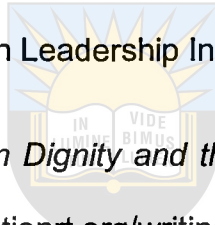
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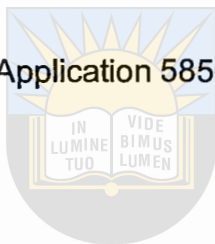
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APPENDIX 1

INSTRUCTIONS TO PARTICIPANTS

1. Thank you for being willing to participate in this study.
2. Your participation is voluntary and if at the end of this interview you feel that you would not like your responses to be used your wishes will be respected and the record of this interview will be destroyed.
3. Please provide as much honest information as you wish to each of the questions the interviewer will put to you.
4. You may also ask questions for clarification if a question is not clear.
5. It is an ethical requirement of research that you give your written permission for the researcher to use the information gained in this interview. You are therefore asked to sign the declaration below. Please note that your identity will be kept strictly confidential and by agreeing to sign the declaration you will in no way compromise your anonymity.
6. Should you feel the need for further support or counseling after the interview because of any effect of your participation in this interview you may contact the researcher, Mr. J. Rich, who will arrange for you to receive such supportive counseling.
7. Please note that the interviewer may be recording your responses both electronically and in writing. At the end of the interview you have the right to listen to the recording of the interview.

APPENDIX 2

DECLARATION BY PARTICIPANT

I hereby declare that:

- I have participated in this research project freely and voluntarily.
- I have been fully informed of my rights including the right to withdraw from the project at any point.
- I give the researcher, Mr J. Rich, my full permission to use any information obtained from me during the course of this project for the bona fide purposes of the research project.
- I understand that my participation in this project is subject to a condition of anonymity and that I will not be specifically identified in any reports or communications about this research project.
- I was offered the opportunity of a further follow-up counseling session in the event of any negative effect of this research.

Signed: _____

Date: _____

APPENDIX 3

INTERVIEW PROTOCOL

INSTRUCTIONS

1. Furnish the participant with a copy of the interview instructions and read them out to the participant ensuring that he or she understands and agrees to them.
2. Furnish the participant with a declaration form and obtain his or her signature of consent.
3. Ensure that the participant is relaxed and at ease.
4. Complete the demographic section first
5. Work through the questions on the protocol in an informal and relaxed fashion. It is more important to ask the question meaningfully than to use the exact wording in the protocol and further questions can be posed where needed for clarification.
6. Afterwards thank the participant and ask if he or she is happy for us to use the responses in the research. If not destroy the notes immediately in front of the participant and erase any tapes.
7. Ask if the participant has any other questions, requests or comments and deal with them accordingly.



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DEMOGRAPHIC DETAILS

Could you please give us some general information about yourself:

- 1. Gender: M / F
- 2. Rank: Teacher
HOD
Deputy
Principal

- 3. Years of experience: 1-5 years
6-10 years
11-20 years
21 + years



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- 4. Type of school: Primary / Secondary / Combined / Other
- 5. Location of school: Township / Suburban / Rural
- 6. Your teaching specialization: Foundation phase
Intermediate phase – general
Intermediate phase - specialist
Senior phase / FET Languages or humanities
Senior phase / FET Technical
Senior phase / FET Science or mathematics
Senior phase / FET Commercial

Senior phase / FET Arts or Music

Other (specify)

7. Your home language: Afrikaans/ English / isiXhosa / Other

8. Your highest educational qualifications: M+3 diploma

M + 4 diploma

B-degree

B- degree + Diploma

Honours degree

Masters degree

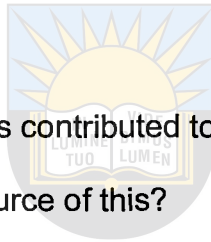
Doctorate

9. Have you completed any courses or programmes in education law? Y / N

INTERVIEW QUESTIONS

1. What do you understand by the concept “human rights”?
2. Have you ever read the South African Bill of Rights?
3. How do educators’ rights compare to those of other people involved in education?

4. Do you believe that enough is done to protect your rights as an educator?
5. If yes what in particular is being done that makes you feel that way?
6. If no what do you believe should be done that is not being done?
7. What do you believe is meant by the “right to dignity”?
8. Have you or do you ever experience occasions at work when you feel as if you have been violated, deeply insulted, or treated with much disrespect as a person? (There may be more than one incident – deal with each one separately.)
9. If not, what do you believe has contributed to this?
10. If so, what or who was the source of this?
11. What did they do that caused you to experience a sense of being violated, disrespected or insulted?
12. Were you able to do anything about it? What did you do and what was the outcome?
13. In your dealings with the following people do you always feel that you are treated with dignity? If there are times when this is not true please explain briefly what happens that makes you feel that you are not treated with dignity:
 14. Your superiors
 15. Parents of learners
 16. Learners
 17. Your colleagues / Peers



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18. Have you ever had occasion at the workplace to believe that you have been the victim of unfair discrimination? (Please describe the incident or incidents briefly noting especially the **source** of the discrimination and the **basis** of the discrimination)
19. Have you ever experienced any of the following at the workplace:
20. Being spoken to or addressed in a way that has made you feel uncomfortable sexually or in a way that you regard as obscene, lewd or suggestive
21. Being touched in a way that has made you feel sexually uncomfortable
22. Being exposed to actions, gestures, pictures or material that has made you feel sexually uncomfortable or has struck you as obscene, lewd, pornographic or suggestive.
23. 10. If you answered yes to any of the above would you be prepared to name or describe the source, type of source or circumstances surrounding the event?
24. 11. Have you ever experienced any of the following at the workplace:
25. Being spoken to or addressed in a way that has made you feel physically or emotionally unsafe or threatened or in a way that you regard as intimidating or bullying?
26. Being exposed to actions, gestures, pictures or material that has made you feel physically or emotionally unsafe or threatened or in a way that you regard as intimidating or bullying?

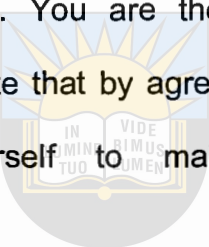
- 27.12. If you answered yes to any of the above would you be prepared to name or describe the source, type of source or circumstances surrounding the event?
- 28.13.If you feel that your rights are being violated or infringed upon do you have access to someone at work who can assist you? Who? How effective do you believe they would be in helping you?
- 29.14. Could you describe any incident(s) at the workplace that have left you with a sense that your dignity was particularly upheld or respected or that made you feel particularly worthwhile as a person?
- 30.15. What do you believe you can do at the workplace to promote respect for your dignity as a person?
- 31.16. What do you believe you can do at the workplace that will promote respect for the dignity of educators in general?
- 32.17. Are there any questions you would like to ask or any other comments you would like to make on this subject?
- 33.18. For each of the following four statements please say whether you believe it is true: Most of the time/almost always; some of the time; seldom; hardly ever.
- 34.Educators have fewer rights at school than learners and parents.
- 35.The conditions under which most educators work give them a strong sense of being worthwhile and appreciated.
- 36.Where I work people tend to respect my rights.
- 37.I know exactly what to do if someone infringes on my rights.

APPENDIX 4

CONTRACTUAL DECLARATION BY INTERVIEWER

INSTRUCTIONS

1. Thank you for being willing to assist with this survey.
2. It is an ethical requirement of research that you respect the privacy and confidentiality of participants. You are therefore asked to sign the declaration below. Please note that by agreeing to sign the declaration you are committing yourself to maintain confidentiality and professionalism.

The logo of the University of Fort Hare is a circular emblem. It features a sun with rays at the top, a shield in the center containing an open book, and the motto 'IN OMNIBUS VIDE TUO HOMINEM' (In all things see the man) written around the shield. Below the emblem, the text 'University of Fort Hare' and 'Together in Excellence' is displayed.
University of Fort Hare
Together in Excellence

DECLARATION

I hereby declare that:

- I will treat all participants with the highest degree of respect.
- I will maintain absolute standards of confidentiality and not divulge the findings or experiences of this project to any other party without the permission of the chief researcher, Mr. J. Rich.
- I will not express any opinion to participants on the merits or aims of this research project that will in any way influence the results.

CONTRACT

I undertake to carry out the required interviews according to the interview protocol and to record the interview in full both electronically and in writing.

I undertake to deliver completed interview records within twenty four hours of completion to the chief researcher.

I undertake to report to the arranged interview venues punctually at the times arranged and to submit to all instructions of the team leader.

I understand that I shall be reimbursed at the rate of R..... per interview whether the interview is subsequently used in the research or not, but that I shall only be reimbursed for interviews that were properly conducted and recorded as per training received.

I accept that this will be the only remuneration paid and that no additional payments will be made for travel or subsistence costs or for any other purpose.

I undertake to exercise all reasonable care of the recording equipment issued to me and take full responsibility for the safekeeping thereof whilst in my care.

I also undertake not to use the recording equipment for any other purpose other than that for which it is issued.

I undertake to return all research material whether used or not to the chief researcher at the conclusion of the project.

Signed: _____

Date: _____