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## Dignity: The missing building block in South African schools?

### Summary

There is a dire need in South Africa to build a strong education system to meet the needs and expectations of its people. Unfortunately, education is currently in an unacceptable state, with, *inter alia*, escalating school-based violence, deteriorating matriculation results and standards, high absenteeism rates among educators, strikes, and a lack of proper facilities and infrastructure. Lack of respect for the right to dignity of stakeholders will be investigated as an underlying contributing factor to this unfortunate situation. First, the concept of dignity will be discussed. Secondly, certain conduct, actions and decisions on the part of the different stakeholders will be considered with specific reference to the impact thereof on the different dimensions of the right to dignity of other stakeholders. It will be argued that all stakeholders in education infringe, to some extent, the right to dignity of others and that they should be sensitised to these infringements.

### Menswaardigheid: Die ontbrekende bousteen in Suid-Afrikaanse skole?

Om 'n gesonde onderwysstelsel te bou is een van Suid-Afrika se grootste behoeftes om te kan voorsien in die behoeftes en verwagtinge van die mense. Ongelukkig is onderwys tans in 'n bedenklike toestand met onder andere toenemende geweld in skole, dalende matriek resultate en standaarde, hoë afwesigheidskoerse van onderwysers, stakings en 'n gebrek aan voldoende toerusting en infrastruktuur. Die gebrek aan respek vir die menswaardigheid van mede-aandeelhouers sal ondersoek word as een van die onderliggende bydraende faktore tot die onbehaaglike situasie. Eerstens sal die reg op menswaardigheid as konsep bespreek word. Tweedens sal sommige van die gedrag, aksies en besluite van die verskillende aandeelhouers bespreek word met spesifieke verwysing na die impak daarvan op die verskillende dimensies van die reg op menswaardigheid van ander aandeelhouers. Daar word aangevoer dat al die aandeelhouers tot 'n sekere mate inbreuk maak op die reg op menswaardigheid van ander aandeelhouers en dat hulle gesensitiseer moet word ten aansien van hierdie aantastings.

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## 1. Introduction

It is undisputed that education under the apartheid system was unequal and that the majority of learners were subjected to inferior education. Building a prosperous and quality education system is rightly considered to be a priority under the new dispensation. The escalation in the budgetary allocation for education in the past has therefore been in line with the need to improve the quality of education in South Africa.<sup>1</sup> Sixteen years have passed since the inception of the new dispensation. It is thus to be expected that transformation would have run its course and that the education system would, at the very least, have improved steadily.

Yet, newspaper headlines illustrate the disturbing state of education. These headlines include references to educators using violent<sup>2</sup> and sometimes gruesome<sup>3</sup> disciplinary methods,<sup>4</sup> educators abusing children,<sup>5</sup> parents assaulting educators,<sup>6</sup> children insulting, attacking and even killing educators,<sup>7</sup> learners assaulting and killing one another,<sup>8</sup> violent attacks and killings on school grounds by outsiders,<sup>9</sup> misconduct by educators,<sup>10</sup> and striking educators who intimidate their colleagues and vandalise school property.<sup>11</sup> There are reports of fraud in the awarding of education-related tenders,<sup>12</sup> matriculation examination papers being leaked and sold,<sup>13</sup> unacceptable matriculation results,<sup>14</sup> discrimination in schools,<sup>15</sup> problems with access to schools<sup>16</sup> and declining standards<sup>17</sup>. Lack of proper school facilities has not yet been properly addressed. Consequently, there are not enough schools, numerous schools do not have the necessary water, electricity and sanitation facilities, and there are schools which are in a dilapidated condition.<sup>18</sup> This is over and above the inadequate supply of books, stationery and textbooks.<sup>19</sup> In the final instance, the much-criticised, outcomes-

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1 Johwa 2008:3: "In 2006, education accounted for 17.6% of total government spending or 5.4% of gross domestic product. This was higher than in Germany, Indonesia and Ireland, but lower than Mexico (25.6%), Chile (18.5%) and Thailand (25%)."

2 Pearce 2007:8.

3 Saville 2006:3.

4 Serrao 2007:15.

5 Memela 2007:7; La Grange 2006:1; Burton 2008:15-30.

6 Mbanjwa 2007:3; Burton 2008:15-30.

7 Mhlongo 2007:5; Viljoen 2006:4; Burton 2008:15-30.

8 Mcetywa 2006:1; Burton 2008:15-30.

9 Matomela 2007:2; Mhlongo 2007a:1; Burton 2008:15-30.

10 Mati 2006:8.

11 Thakali & SAPA 2007:1; Rademeyer 2007:5; Fleisch 2009:6; Serrao 2009a:2; Chuenyane 2009:10.

12 Peyper 2009:2.

13 Mogakane 2010:6; Voljoen 2009:2.

14 Rademeyer 2010:1; Masombuka 2010:4; Fredericks 2010:1.

15 Potgieter 2010:1; SABC news 2010:1.

16 Matlala 2010:5.

17 Ramphela 2009:19: "And we need to remember the low hurdle set for the definition of a pass. A pupil needs to have only three subjects at 40% and three at 30% to be included in the success rate figure [for matric]". Johwa 2008:3: "In global ranking SA's school system came behind those of Botswana and Kenya and way behind Mauritius, the Seychelles and Brazil". Smetherham 2009:1.

18 Fredericks 2009:11; Matlala 2010:5; Pienaar 2008:7.

19 Matomela 2010:1.

based education was recently done away with, with admissions being made that it had been a failure.<sup>20</sup> As a result of the current challenges in education, there are even claims that there has been no, or hardly any, improvement to date in education and that the current state of affairs is little different from the previous Bantu education.<sup>21</sup>

This unacceptable state of education can be attributed to many factors, such as apartheid, inexperienced managers, undertrained educators, a lack of resources and human capital, political power struggles, too much union involvement, high absenteeism rates among learners and educators, and the outcomes-based education curriculum, to mention a few.<sup>22</sup> These factors are indeed valid and the concerns legitimate. However, this article will focus on the lack of respect for human dignity as an important underlying contributing factor to the current state of affairs. It will be argued that one of the prime causes for some of the abovementioned endemic problems in education are indicative of an underlying value crisis namely the absence of a lack of respect for dignity and consciousness of mutual respect for human dignity. In view of the fact that many stakeholders in education are unfamiliar with the law, a brief overview of the legal meaning of the concept of dignity will be given, without any specific reference to the education setting. The discussion on the concept of dignity will provide the foundation for arguments that follow in the latter part of the article. This overview will be followed by a discussion on the actions of the different stakeholders in education, with specific reference to the impact of their actions and decisions on the dignity of other stakeholders. The aim of this part of the discussion is to highlight the infringements by the respective stakeholders with regard to the different dimensions of the right to dignity of others. Since the right to dignity can only be limited in terms of section 36 of the *Constitution of the Republic of South Africa* this provision will also be discussed briefly. To change a society's values is an immense challenge and there are no easy solutions to this problem. To propose a to-do list designed to solve the dilemma of lack of respect for the right to dignity would be to oversimplify a very serious issue. Therefore, no specific recommendations are made with the intention of restoring respect for the right to dignity. At this point, the aim is to sensitise stakeholders in education to the fact that almost all actions and decisions taken by them have a bearing on the dignity of other stakeholders.

## 2. Content of the right to dignity

Section 10 of the *Constitution of the Republic of South Africa*<sup>23</sup> (hereafter "the Constitution") provides that everyone has a right to dignity. Dignity is a pre-eminent right. The importance of dignity is captured, *inter alia*, in section 1 of the Constitution, which lays down that dignity is one of the founding values of

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20 Ncana 2010:6; Kruger 2009:14; Bloch 2009:17.

21 Smook 2009:3.

22 Serrao 2009:6; Ramphele 2009:19; Johwa 2008:3; Rademeyer 2008a:6; Kruger 2010:9; Van der Merwe 2009:10.

23 1996.

South Africa. This important provision can be amended only by way of a 75 percent majority of the National Assembly.<sup>24</sup>

Section 7(2) further provides that the state has an obligation to respect, protect, promote and fulfil the rights in the Bill of Rights. To “respect rights” means that the state has an obligation not to violate rights or to limit rights unlawfully. To “protect rights”, on the other hand, requires that the state take steps to prevent the violation of rights; hence measures must be put in place to prevent the infringement of rights. To “promote and fulfil rights” means that the state must take steps to make it possible to exercise rights.<sup>25</sup> Individuals must also respect the right to dignity of others and are not at liberty to violate this right unless such violation is sanctioned in terms of section 36.

Dignity plays an important role in South African jurisprudence. The interpretation of the right to dignity is therefore examined, as well as judgments of the South African Constitutional Court and some commentaries, in order to determine the content of the right to dignity.<sup>26</sup>

## 2.1 No precise definition

The right to dignity has no precisely defineable content.<sup>27</sup> In *National Coalition for Gay and Lesbian Equality v Minister of Justice*,<sup>28</sup> the court admitted that “[d]ignity is a difficult concept to capture in precise terms”.<sup>29</sup> Justice Brennan in the United States of America also alluded to the indeterminate nature of dignity and stated that “the demands of human dignity will never cease to evolve”.<sup>30</sup> Schachter<sup>31</sup> points out that there is no explicit definition of dignity and that “[i]ts intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors”. However, certain acknowledged features of the right to dignity can be highlighted. This might be helpful to make the dignity dimensions of the interactions of stakeholders more explicit.<sup>32</sup>

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24 Cheadle *et al* 2002:129

25 Rautenbach & Malherbe 2004:300.

26 Cheadle *et al* 2010:5-2 also stress the importance of recognising that the content of the concept of dignity in South Africa is dependent on the independent value ascribed to a democracy.

27 Schachter 1983:849; Raath 2007:161; Davis 1999:398-413. Davis refers to the “multifaceted meanings” of dignity and contends that the Constitutional Court “has given dignity both a content and scope that make for a piece of jurisprudential Legoland – to be used in whatever form and shape required by the demands of the judicial designer”.

28 1998 12 BCLR 1517 CC:par 28.

29 See also *Advance Mining Hydraulics (Pty) Ltd and Others v Botes NO and Others* 2000 2 BCLR 119 T:127.

30 Cheadle *et al* 2002:128. See also Cowen 2001:42.

31 Schachter 1983:849.

32 The concept of *ubuntu* is strongly connected to the concept of dignity. The relationship between the concepts are very important in the South African context, but will not be discussed in this article. Suffice to acknowledge its importance which was highlighted in *S v Makwanyana* 1995 2 SACR 1 CC where the court gave a brief overview of the concept and held: “Generally, ubuntu translates as humanness. In its most fundamental sense, it translates as personhood and morality. Metaphorically, it expresses itself as

## 2.2 Inherent nature of the right to dignity

Dignity cannot be earned, acquired or lost. The concept of dignity finds its roots in Kantian moral philosophy, which pronounces on the intrinsic worth of human beings.<sup>33</sup> Therefore, “individuals are not to be perceived or treated merely as instruments or objects of the will of others”.<sup>34</sup> The Constitution guarantees the inherent dignity of all people, “thus asserting that respect for human dignity, and all that flows from it, is an attribute of life itself, and not a privilege granted by the state”.<sup>35</sup>

## 2.3 Dignity is the foundation of many other constitutions and of other rights and values

In analysing the right to dignity across different jurisdictions, Cheadle, Davis and Haysom<sup>36</sup> found very little difference in the interpretation thereof, despite the fact that dignity is not entrenched in all the constitutions examined. The *International Covenant on Civil and Political Rights*<sup>37</sup> provides that fundamental rights “derive from the inherent dignity of the human person”. This is equally true in South African jurisprudence, where fundamental rights such as the right to life, to equality and not to be subjected to cruel, inhuman and degrading treatment or punishment are all closely linked to human dignity.<sup>38</sup> This was also accepted in *S v Makwanyana*<sup>39</sup> It can thus be asserted that dignity underpins all

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*umuntu ngumuntu ngabatu*, describing the significance of group solidarity an survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity making a shift from confrontation to conciliation. See also Metz 2007:321-341; Metz 2007a:369-387.

33 Liebenberg 2005:6; Schachter 1983:853; Raath 2007:159-191.

34 Schachter 1983:849. See Raath 2007:165: He refers to the work of Martin Luther and avers that “[d]ignity is actually reflective of the glory of God, because every human being and every institution should be pleasing to God and should reflect the glory of God ... Human dignity is primarily a spiritual matter discernable through faith and the work of the Spirit”.

35 Chaskalson 2000:196. See also *S v Dodo* 2001 1 SACR 594: par 38.

36 2002:125-7; Cheadle *et al* 2010:5-3- 5-4; Rautenbach & Malherbe 2004:332.

37 UN 1976. Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966; entered into force on 23 March 1976 in accordance with article 49 – see preamble. See also Schachter 1983:853.

38 Cheadle *et al* 2002:125. See also *S v Makwanyane* 1995 2 SACR 1 CC: par 328.

39 1995 2 SACR 1 CC: par 309.

civil, political, freedom, equality and socioeconomic rights.<sup>40</sup> However, dignity is not considered to be the only foundation for other rights.<sup>41</sup>

## 2.4 Dual role of dignity

Dignity has a distinct, dual role in the South African Constitution. Dignity is enshrined in the Constitution not only as a founding value<sup>42</sup> upon which a democratic society must be built, but also as a substantive and enforceable right.<sup>43</sup> Cowen<sup>44</sup> indicates that dignity as a right and dignity as a value have the same meaning, but that the difference between the two lies in their legal purpose. A legal right is “justiciable and enforceable”, while a legal principle can be seen as something that “a society holds to be important”. The difference between dignity as a right and a value will be discussed below.

### 2.4.1 Dignity as a value

Values play an important role, because they often constitute the main reason or purpose for the existence of a specific right in the Bill of Rights.<sup>45</sup> Dignity is often used by the courts to interpret other constitutional values, such as equality and freedom, but dignity is regarded as the “one pristine value that does not require interpretative assistance from other values”.<sup>46</sup>

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40 Liebenberg 2005:9. Dignity has played an important role in several other branches of constitutional law and in the application of several other rights. See *Augus v Electoral Commission* 1993 3 SA 1 CC:17-18 (right to vote); *S v Makwanyane* 1995 3 SA 391 CC (death penalty – right to life); *S v Williams* 1995 3 SA 632 CC: par 92 (corporal punishment – right to personal security); *S v Coetzee* 1997 3 SA 527 CC:121 (right to be presumed innocent); *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1999 1 SA 6 CC: par 30 (sodomy – right to equality and privacy); *S v Manamela* 2000 3 SA 1 CC:40 (right to be presumed innocent); *Christian Education South Africa v Minister of Education* 2000 4 SA 757 CC: pars 12, 17 and 40 (corporal punishment in schools – right to personal freedom and security); *S v Dodo* 2001 1 SACR 594 CC: par 34 (punishment – right to freedom and security of the person); *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 CC (socio-economic right – right to housing); and *Christian Education South Africa v Minister of Education* 2000 4 SA 757 CC: pars 12, 17 and 40 (right to culture and religion).

41 For divergent views on the origin and derivation on human rights and the right to dignity in particular see Van der Vyver 2005:455-471; Raath 2007:159-191; Nussbaum 2000: 1-33; Bilchitz 2007: 47-74; Capps 2009:106-122; Cheadle *et al* 2010:5-3- 5-4; Davis 1999:398-413.

42 *Constitution of the Republic of South Africa*: sections 1, 7(1), 36(1) and 39(1); Davis 1999:398-9; Liebenberg 2005:3; Cheadle *et al* 2010:5-2-5.3.

43 *Constitution of the Republic of South Africa*: section 10.

44 Cowen 2001:47.

45 Rautenbach & Malherbe 2004:41-42.

46 Cheadle *et al* 2002:125 & 2010:5-7-5-8. See also *Dawood and Another v Minister of Home Affairs and Others*; *Shalabi and Another v Minister of Home Affairs and Others*; *Thomas and Another v Minister of Home Affairs and Others* 2000 8 BCLR 837 CC:860. See also Davis 1999:412-413. He, however, warns that the courts are at risk of undermining the impact of dignity by its very wide interpretation and application.

## 2.4.2 Dignity as a substantive right

Dignity is not only one of the founding values of the Constitution, but it is also an enforceable right and is further regarded as a cornerstone of our Constitution.<sup>47</sup> Although rights cannot be prioritised, Chaskalson P held in the *Makwanyane* case:

The right to life and dignity are the most important of all human rights, and the source of all other personal rights in the Bill of Rights. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others.<sup>48</sup>

## 2.5 Dignity implies protection from inhumane conditions or treatment

Nobody should be treated as a nonhuman. Langa J held in the *Makwanyane*<sup>49</sup> case that “[t]he test of our commitment to a culture of rights lies in our ability to respect not only the rights of the weakest but also of the worst among us”. In the same judgment, with reference to the abolition of the death penalty, O’Regan J quoted Brennan J, who held:

The true significance of these punishments is that they treat members of the human race as non-humans, as objects to be toyed with and discarded. They are thus inconsistent with the fundamental premise of the clause that even the vilest criminal remains a human being possessed of common human dignity.<sup>50</sup>

Beyleveld and Brownsword<sup>51</sup> are of the opinion that human beings are

recognized not only as having the capacity to make their own choices, but also as being entitled to enjoy the conditions in which they can flourish as self-determining authors of their own destinies.

The courts have alluded more than once to human living conditions as a facet of dignity. Human conditions include the proper and safe supply of water and electricity, proper sanitation, and the upgrading and maintenance of facilities. People’s choices are often limited due to financial constraints. They therefore are at the mercy of private owners or the state to provide these facilities. Unfortunately these facilities are often not conducive to human usage. Therefore, lack of maintenance and provision of facilities conducive to humane

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He contents that the concept runs the risk of becoming to vague if the content and scope is not carefully guarded.

47 *Constitution of the Republic of South Africa*: sections 7(1), 10, 36(1), 39(1); *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1999 1 SA 6 CC: par 28.

48 1995 2 SACR 1 CC: par 144.

49 1995 2 SACR 1 CC: par 229; See also Cheadle *et al* 2010:5.7.

50 1995 2 SACR 1 CC: par 328.

51 In Capps 2009:108; Cheadle *et al* 2010:5.7.

living conditions is an indication of lack of respect for the human dignity of the consumers of these facilities.<sup>52</sup>

## 2.6 Dignity implies equal worth and value

Cheadle *et al.* refer to the work of Dworkin and conclude that dignity entails the recognition of the equal worth of every individual, and that everyone therefore has a right to be treated “with equal respect and equal concern”.<sup>53</sup>

In the Canadian case of *Law v Canada (Minister of Employment and Immigration)*,<sup>54</sup> the court ruled that dignity can be harmed on an individual basis or as part of a group if physical or psychological integrity is impaired. The court held:

Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences. Human dignity is harmed when individuals and groups are marginalised, ignored, or devalued, and is enhanced when laws recognise the full place of all individuals and groups within Canadian society.<sup>55</sup>

In the education sector marginalised groups and individuals include victims of bullying, sexual violence and sexual harassment. The Human Rights Commission report on school based violence highlights that members of these groups often run the risk to have their dignity infringed upon.<sup>56</sup> Other personal traits that must be respected include race, gender, sexual orientation, religion, culture and language.

## 2.7 Dignity prohibits objectifying people

In *Advance Mining Hydraulics (Pty) Ltd and Others v Botes NO and Others*,<sup>57</sup> the Court emphasised the prohibition on objectifying people and held that, although the dignity concept is not clearly defined, –

... [t]he concept does require that persons be treated as recipients of rights and not as objects subjected to statutory mechanisms without a say in the matter.<sup>58</sup>

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52 *Mpange and Others v Sithole* 2007 6 SA 578 W: par 54; *City of Johannesburg and Others v Mazibuko and Others* 3 SA 592 SCA: par 17; *City of Cape Town v Rudolph and Others* 2004 5 SA 39 C:77.

53 Cheadle *et al* 2002:132. See also Cheadle *et al* 2010:5-9; Davis 1999:413.

54 [1999] 1 SCR 497; 170 DLR (4<sup>th</sup>) 1.

55 *Law v Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497; 170 DLR (4<sup>th</sup>) 1: par 53.

56 SAHRC 2008:5-15.

57 2000 2 BCLR 119 T.

58 *Advance Mining Hydraulics (Pty) Ltd and Others v Botes NO and Others* 2000 2 BCLR 119 T:127.



In *Government of the Republic of South Africa and Others v Grootboom and Others*,<sup>59</sup> the Constitutional Court warned that one should be aware of the danger of objectifying children by allowing parents to use them as “stepping stones” in the process of obtaining housing. In this regard, instead of viewing persons as an end in themselves, objectifying people would constitute “an almost complete reversal of the Kantian imperative and concept of priceless inner worth and dignity”.<sup>60</sup>

## 2.8 Dignity recognises individual qualities and includes self-actualisation and self-identification

In *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*,<sup>61</sup> the Constitutional Court emphasised the importance of being able to express oneself for who one is and that the limitation of one’s ability to achieve self-identification and self-fulfilment constitutes an infringement of the right to dignity. The Court warned that denying people the ability to achieve self-identification and self-fulfilment –

... [g]ives rise to a wide variety of other discriminations, which collectively unfairly prevent a fair distribution of social goods and services and the award of social opportunities ...<sup>62</sup>

The right to self-identification, self-determination, self-respect and self-worth is part and parcel of dignity. Dignity is concerned with the “physical and psychological integrity and development of an individual or a group”.<sup>63</sup> To be human implies “the ability to understand or at least define oneself through one’s own powers and to act freely as a moral agent pursuant to such understanding or self-definition”.<sup>64</sup> Respect for human dignity entails the recognition that every person is entitled to his or her own choices, preferences, ideas, beliefs, attitudes and feelings.<sup>65</sup> The inseparable link between dignity and one’s cultural and religious identity is acknowledged in *MEC for Education v Pillay*.<sup>66</sup>

Optimal personal development as an intrinsic feature of dignity is stressed in *Ferreira v Levin NO and Others*,<sup>67</sup> where Ackermann J accentuated the importance of individuals being able to develop their “humanness” to its full potential. The autonomy of everyone should be respected and should be

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59 2000 11 BCLR 1169 CC: par 71.

60 Cowen 2001:43.

61 1999 1 SA 6 CC. See also Schachter 1983:850; Raath 2007:173-6; Cheadle *et al* 2010:5-9.

62 *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1999 1 SA 6 CC: par 28; See also Cheadle *et al* 2010:5.7

63 *Law v Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497; 170 DLR (4<sup>th</sup>) 1: par 53.

64 Cowen 2001:43.

65 Schachter 1983:850.

66 *MEC for Education, KZN & Others v Pillay (Governing Body Foundation (1st amicus curiae), Natal Tamil Vedic Society Trust (2nd amicus curiae), Freedom of Expression Institute (3rd amicus curiae))* 2008 JOL 20810 CC: pars 53 & 62.

67 1996 1 SA 984 CC.

“appreciated in their concrete realities and respected for what they actually represent in the family and personal lives”.<sup>68</sup> The value attached to everyone is further dependent on his or her own capabilities and humanness and not on the sometimes distorted perceptions and values attached to the person by society. For example, due to some social constructs certain societies might attach less value to females. This might impact negatively on their opportunities to receive education and to develop their full potential.<sup>69</sup> Dignity is linked to the unique talents of everyone. These talents should be recognised and every individual should be permitted to develop his or her unique talents optimally.<sup>70</sup>

Liebenberg further points out that to value and respect the dignity of humans implies that they should have access to social and economic means to develop their “physical, emotional, creative and associational capabilities”.<sup>71</sup> Furthermore, conditions should be created to enable humans to “develop their capabilities and to flourish as individuals and social beings”.<sup>72</sup>

## 2.9 Dignity sets boundaries

Rights are not exercised in isolation, but within a community, which brings about inevitable conflict of rights. Cheadle *et al*<sup>73</sup> indicate that dignity plays an important role in contributing to crafting the boundaries between “personal and social demands”, and thus between individual autonomy and the needs of society at large.

For instance, while a learner has a right to the development of his or her full potential the educator has a duty to ensure that the learner is provided with sufficient opportunities to develop his or her potential. On the other hand the educator has a correlative right to be treated in a humane way and experience a sense of self actualisation through teaching. The learner should thus behave in such a way, while exercising his right to develop his full potential, that he or she does not infringe on the educators right to humane treatment and self actualisation in the education process.

## 2.10 The interpretative function of dignity

Dignity is often used in conjunction with other rights and plays an interpretative role. Dignity therefore has different roles in human rights jurisprudence. If an infringement of rights occurs in a specific situation, more than one right is often at stake. For example, if a learner or educator is assaulted, the right not to be subjected to cruel, inhuman or degrading treatment or punishment as well as the right to dignity are violated. In this instance, both rights will be used to determine whether the conduct is unconstitutional.

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68 Capps 2009:108-122; Cheadle *et al* 2010:5-5.

69 Nussbaum 2000:241-252; Cheadle *et al* 2010:5-4-5-5.

70 *Ferreira v Levin NO and Others* 1996 1 SA 984 CC:1013-14.

71 Liebenberg 2005:7.

72 Liebenberg 2005:13.

73 Cheadle *et al* 2002:132.

The right to dignity of the victim of the assault can be protected independently, but the courts often confine the role of dignity to interpreting the right more specifically related to the infringement. Dignity is then used to inform the other right and the meaning of other rights is enriched by the “idea of protecting human worth”. In addition, this approach ensures that the pitfalls of the most expansive available interpretation of the right to dignity are avoided.<sup>74</sup> Cowen<sup>75</sup> argues that dignity “for practical purposes serves as a flexible and residual right”. In this example, the court might focus on the prohibition against cruel, inhumane and degrading treatment and dignity would then inform and give content to the prohibition against cruel, inhumane and degrading treatment or punishment.

Dignity also plays a role in determining the acceptable limits of rights. For example, if the assault is found to be an infringement of the right not to be subjected to cruel, inhumane and degrading treatment or punishment, the limitation clause will come into effect and dignity will be used to determine whether the infringement can be justified.<sup>76</sup> If it is found that the infringement is not only a violation of the right not to be subjected to cruel, inhuman and degrading treatment, but also the right to dignity, it will be an aggravating factor.<sup>77</sup>

Cheadle *et al*<sup>78</sup> indicate that the interpretative approach is favoured by some authors, because it underlines the foundational value of dignity, encourages a “purposive interpretation of the content of the right more directly implicated” and “avoids the potential pitfalls of the most expansive interpretation” of the right to dignity.

Thus, to prevent the right to dignity being spread too thin that it eventually loses its meaning and impact, the courts focus rather on the other rights normally associated with the specific issue at hand. Dignity as a value will then be used to give content to these rights.

Rautenbach and Malherbe<sup>79</sup> refer to the overlap between dignity and other rights, but indicate that, if no overlap exists, “dignity may serve to protect conduct and interests that are not protected by any other rights in the Bill of Rights”.

Examples of the relationship between dignity and other rights closely related to education will be discussed briefly in what follows.

### 2.10.1 Dignity and the right to life

In *Makwanyane*,<sup>80</sup> O'Regan J held that the right to life includes the right “to live as a human being, to be part of the broader community”. It includes the right to “share in the experience of humanity”. Thus, every individual’s value must be recognised and treasured. She continued and held:

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74 Cowen 2001:47; Rautenbach & Malherbe 2004:332-3; Cheadle *et al* 2010:5-10.

75 Cowen 2001:47.

76 Cheadle *et al* 2002:132-4.

77 Rautenbach & Malherbe 2004:333.

78 Cheadle *et al* 2002:134.

79 Rautenbach & Malherbe 2004:332-3.

80 1995 2 SACR CC 1.

The right to life, thus understood, incorporates the right to dignity. So the rights to human dignity and life are entwined. The right to life is more than existence; it is a right to be treated as a human being with dignity: without dignity, human life is substantially diminished. Without life, there cannot be dignity.<sup>81</sup>

It is thus clear that the right to life entails much more than being alive. It also includes quality of life. The link between poverty and many other social problems, such as drug and alcohol dependency, dysfunctional families, unemployment, violence and child abuse, is well known. There are many people in South Africa who seem to be unable to break the cycle of poverty in their families. Research indicates that this is often due to a lack of skills to improve their desperate situation. There is a link between providing dignified living conditions for citizens and education.<sup>82</sup> Thus, to deny people the opportunity to improve the quality of their lives through education would constitute an infringement of their right to dignity.

## 2.10.2 Dignity and equality

The *Universal Declaration of Human Rights*<sup>83</sup> provides, in article 1, that “all human beings are born free and equal in dignity and rights”. Equality is “informed by and intimately connected to dignity”. The value of dignity is relevant in the equality analysis since the Constitutional Court employed the value of dignity to develop the concept of equality.<sup>84</sup> The inherent dignity of people is often ignored, resulting in discrimination and inequality and infringements of people’s dignity. Therefore, the Court held in *President of the Republic of South Africa v Hugo*<sup>85</sup> that:

[a]t the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups.<sup>86</sup>

In *Bhe and Others v Magistrate Khayelitsha and Others, Shibi v Sithole and Others, SA Human Rights Commission and Another v President of the RSA and Another*,<sup>87</sup> the Court linked the right to dignity and equality and held:

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81 *Makwanyane* 1995 2 SACR CC 1: par 326-7.

82 Patel 2005:29-30.

83 UN 1948: Adopted and proclaimed by the General Assembly of the United Nations Resolution 217 A (III) of 10 December 1948.

84 Cowen 2001:47-8; Liebenberg 2005:14. See Davis 1999:398-413; Cheadle *et al* 2010:5-2; Albertyn & Goldblatt 1998:248-276. They criticise the use of dignity in equality jurisprudence: Raath 2007:166-7. He explains equality and dignity with reference to the work of Martin Luther.

85 1997 4 SA 1 CC.

86 *President of the Republic of South Africa v Hugo* 1997 4 SA 1 CC:par 92.

87 2005 1 BCLR 1 CC.

The right to equality is related to the right to dignity. Discrimination conveys to the person who is discriminated against that the person is not of equal worth.<sup>88</sup>

Although dignity requires that everyone should be treated with equal respect and concern, it does not “presuppose equality of goods and the elimination of material difference”.<sup>89</sup> Chaskalson stated in this regard:

No society can promise equality of goods or wealth. Nor could it be reasonably thought that this is what our Constitution contemplates.<sup>90</sup>

### 2.10.3 Dignity and the right to education

Although the focus of the article is on the right to dignity it is also important to refer briefly to the relationship between the right to dignity and the right to education. Section 29(1) of the Constitution provides that everyone is entitled to basic education. The right to further education is subject to progressive availability and accessibility.<sup>91</sup>

The Committee on Social, Economic and Cultural Rights’ General Comment on the Right to Education provided in General Comment 13 that:

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments states can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.<sup>92</sup>

The Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms, adopted by the General Conference of UNESCO at the 18th session in 1974 states that:

The word ‘education’ implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the

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88 *Bhe and Others v Magistrate Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another* 2005 1 BCLR 1 CC: par 187.

89 Cowen 2001:41-2.

90 Chaskalson 2000:202; See also Cheadle *et al* 2010:5-12

91 *Constitution of the Republic of South Africa*: section 29(1)(b).

92 In Woolman & Fleisch 2009:117.

whole of their personal capacities, attitudes, aptitudes and knowledge. This process is not limited to any specific activities.<sup>93</sup>

The importance of education as a vehicle to promote human dignity is highlighted in these two quotations. Education can empower people to ensure that they can provide properly for themselves and are thus not at risk of being denied the opportunity to make real choices. Since they will be able to break the poverty cycle they will probably not be at risk to be treated as nonhumans who might be exposed to inhuman conditions and treatment due to financial constraints.<sup>94</sup> Poor and illiterate people are often devalued and marginalised in society. Being properly educated heightens the chances of being treated with equal respect and equal concern.<sup>95</sup> Education also enhances the ability to exercise one's autonomy rights, to take part in national and international communities, to realise self-actualisation and self-identification, to improve self-respect and self-worth. Education can also contribute to the development of one's unique talents and to be able to reach one's full potential.<sup>96</sup> Being educated enables one to participate more effectively in a democracy and are thus less likely to be "treated as a recipient of rights and not as objects subjected to statutory mechanisms without a say in the matter."<sup>97</sup> In addition education can also contribute towards crafting boundaries between personal and social demands since an educated person is less likely to be exploited.<sup>98</sup>

According to Woolman and Fleisch<sup>99</sup> the right to basic education is, unlike other socio-economic rights, not subject to a reasonableness standard; not dependent on the availability of resources; and is the source of a direct, immediate and specific entitlement. Yet, it should not be interpreted in total unqualified terms.<sup>100</sup> Education rights are empowerment rights and ensure that citizens are in a position "to set the rules of the game, and not merely be assured that the rules are applied as written." In addition "they allow the individual to determine the shape and direction of his or her life."<sup>101</sup> These sentiments on the right to education are in line with our understanding of the right to dignity as discussed above.

Despite these entitlements on the one hand and the government's provision of education on the other the question inevitably arise whether the mere provision of basic education, for a set period of time, is enough to satisfy the expectations set out in the abovementioned quotations. Standards will undoubtedly be necessary to determine whether the minimum requirements for the fulfilment of the right to basic education were met. Therefore it is argued that it is not only the right to basic education but rather the right to adequate basic education that

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93 In Hodgkin & Newell 2007:411.

94 See par 2.5; See also Woolman & Fleisch 2009:118.

95 See par 2.6; See also Woolman & Fleisch 2009:118.

96 See par 2.7; See also Woolman & Fleisch 2009:118.

97 *Advance Mining Hydraulics (Pty) Ltd and Others v Botes NO and Others* 2002 2 BCLR 119 T

98 See par 2.9. See also Woolman & Fleisch 2009:118.

99 Woolmen & Fleisch 2009:121-126.

100 Hodgkin & Newell 2007:407-408. The South African standard set for the provision of basic education is set higher than that of the Convention on the Rights (section 28) of the child which provides that education should be made progressively available.

101 Woolman & Fleisch 2009:117.

should be fulfilled. It is argued that one of the outcomes of education should be that it should enable the learner to fully enjoy his or her right to dignity while at school and also once the minimum requirements for attaining the basic education qualification was met. In this regard The World Declaration on Education for All emphasises that education should enable a person to realise his or her full potential.<sup>102</sup> It provides that education should meet basic learning needs.

These learning needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to survive, to develop to their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.

Basic education is thus more than finishing a specific time period of education, but rather the ability to attain the abovementioned learning needs To determine whether proper effect is given to the right to basic education the so called four A's were developed. This entails that basic education must meet a certain level of availability,<sup>103</sup> accessibility,<sup>104</sup> acceptability<sup>105</sup> and adaptability.<sup>106</sup> These four deal primarily with formal constraints. Lately it is argued that the adequacy of the education should be regarded as the core criterion for the right to basic education.<sup>107</sup>

### 3. Dignity – rights and duties of stakeholders

The realisation of human rights seems to be problematic in general and in schools in particular, and Judge Chaskalson gives a possible reason for this problem:

The Constitution offers a vision of the future. A society in which there will be social justice and respect for human rights, a society in which the basic needs of all our people will be met, in which we will live together in harmony, showing respect and concern for one another. We are capable of realising this vision, but in danger of not doing so. We seem temporarily to have lost our way. Too many of us are concerned about what we can

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102 Woolman & Fleisch 2009:127.

103 Woolman & Fleisch 2009: 130-131. Availability means: Functioning educational institutions and programmes have to be available in sufficient quantity. Includes buildings, sanitation, safe drinking water, trained teachers receiving domestically competitive salaries and teaching materials. It may also include libraries, computers and information technology.

104 Woolman & Fleisch 2009:131-132. Accessibility deals with learners' ability to enter schools. It deals with non-discrimination, financial accessibility and physical accessibility.

105 Woolman & Fleisch 2009:132-133. Acceptability means: In terms of international law education should be "directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."

106 Woolman & Fleisch 2009: 134-135. Adaptability in education entails that it must be "flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of learners within their diverse social and cultural settings."

107 Woolman & Fleisch 2009:135-137. Adequacy includes a) teaching (quality of teaching staff en teacher: learner ratio's); b) school facilities and classrooms structures that protect learners form elements, desks, chairs, water, electricity and sanitation and c) instrumentalities of learning (textbooks, blackboards, stationary and possibly computers).

get from the new society, too few with what is needed for the realisation of the goals of the Constitution.<sup>108</sup>

Thus, many are empowered and enjoy the fruits of the new democratic dispensation, but are not willing to share or pass on these fruits and prefer to focus on their own wellbeing. Educators, learners and public officials have a duty to give effect to the goals of the Constitution, and therefore self-centredness cannot be tolerated.

Cowen<sup>109</sup> is of the opinion that promoting respect for dignity is capable of facilitating a process of transforming society into one “in which quality of life is improved and people’s potential is freed”. There are a number of human rights which are directly applicable to the education setting, such as, *inter alia*, the right to basic education,<sup>110</sup> the right to personal freedom and security,<sup>111</sup> and labour rights.<sup>112</sup> However, in the discussion that follows, the right to dignity and the accompanying duty to promote and protect the right to dignity of the different stakeholders in education will be scrutinised and applied to the real-life experiences of stakeholders in education. Although the above-mentioned rights would normally be the focus of determining the unconstitutionality of certain conduct in the education system, in what follows the focus will not be on these rights. Rather, the infringement of the right to dignity as an enforceable right will be the focus of the next part of the discussion.

### 3.1 Educators

The fact that educators are leaving the teaching profession at an alarming rate,<sup>113</sup> the difficulties experienced by the Department of Education in recruiting educators,<sup>114</sup> and the unprecedented strike in 2007 by all educators are alarming.<sup>115</sup>

Educators were widely criticised for taking part in the 2007 strike. However, the actions of educators were not totally unjustified. They did not only strike for an increase in their salaries, but also to demand better working conditions, where they would not be exposed to physical and verbal violence and where they would be able to work in an environment conducive to teaching and learning. They demanded smaller classes, better training to implement the new curriculum, safer schools, a reduction in unnecessary administrative tasks, and proper balancing of the rights of transgressors with those of educators and the majority of learners.<sup>116</sup> The question is: why should it be necessary for professional educators to strike about these issues or ultimately leave the profession?

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108 Chaskalson 2000:205.

109 Cowen 2001:42.

110 *Constitution of the Republic of South Africa*: section 29.

111 *Constitution of the Republic of South Africa*: section 12.

112 *Constitution of the Republic of South Africa*: section 23.

113 Malan 2004:18.

114 Rademeyer 2007c:12; Ueckermann 2007:1; Fredericks 2007:5; Political Bureau 2008:6; Kruger 2008:13; 2008a:2.

115 Verslagsplan 2007:2; Dlodlo 2007a:6, 2007b:4; Kok 2007:6; Philips 2008:1.

116 SAOU 2007:1; Chuenyane 2009:10. In 2009, educators went on strike in Soweto because of alleged nepotism.



By ignoring the legitimate demands of educators, the message to them and prospective educators might be that they are not worthy of the government's concern and are not valued. It seems as though they felt it necessary to strike in order to be heard, to be seen, and to be noticed as human beings with intrinsic worth. The above-mentioned demands for improved working conditions can also be linked to the needs of educators for self-fulfilment and job satisfaction.

Since educators are employees of the state, they have a duty to promote and protect dignity, and not only to respect dignity. Unfortunately, educators are also guilty of infringing on the right to dignity of other stakeholders.

Educators too often fail to respect and promote the right to dignity of learners by denying them the opportunity to develop their full potential. Numeracy and literacy levels are dropping at an alarming rate, the matriculation pass rate is plummeting, and higher education institutions are complaining that the academic preparedness of first-years is decreasing.<sup>117</sup> Educators who are drunk,<sup>118</sup> absent,<sup>119</sup> and unprepared for classes are unable to provide the effective, quality education that learners need to develop.<sup>120</sup> To fail the matriculation examination, or any other grade, owing to the careless conduct of educators must be a painful and degrading experience and is indeed an infringement of the right to dignity of learners.

Dignity entails the development of unique talents. Many schools do not provide any extracurricular activities, sometimes for justifiable reasons, but, in many cases, do so for unjustifiable reasons. Children in these schools are deprived of their right to self-actualisation, self-worth and to explore and develop who they are if they are not exposed to cultural activities and sport. The right to dignity of learners is infringed in such instances, because their physical, emotional, creative and associational capabilities are not properly developed. The Department of Education has an obligation to ensure that educators develop all the capabilities of learners and that active steps are taken to provide the facilities and training to enable educators to fulfil this obligation, within the constraints of limited resources. The lack of resources should however not be justification for a complete failure to develop the unique talents of learners. There are numerous activities that can be introduced in schools with no or limited additional resources to develop the full potential of learners, such as playing soccer, taking part in road running, singing in a choir and establishing a debating society.

The *Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners*<sup>121</sup> provides that the *Code of Conduct* should guide children's conduct in order to prepare them for their conduct and safety in civil society. Furthermore, the guidelines provide that the aim is to "promote positive discipline, self-discipline and exemplary conduct as learners learn by observation and experience". A culture of "reconciliation, teaching, learning and mutual respect" and "a culture of tolerance and peace" must be instilled in the

117 Smetherham 2009:1; Rademeyer 2008a:6; Johwa 2008:3; Ramphela 2009:19; Smook 2009:3; Serrao 2009:6; Fredericks 2010:1; Masombuka 2010:4; Rademeyer 2010:1.

118 Hawker 2007:6; Pearce 2007:8.

119 Hawker 2007:6; Smith 2004:9; Mbanjwa 2007:3.

120 Ramphela 2009:19; Bloch 2009:17.

121 GN 776 *Government Gazette* 1998:395 (18900).

learners. Unfortunately, the example set by many educators is not worthy of imitation and is in direct contrast to dignity as a founding value. Some of these examples are discussed below.

Everyone is entitled to his or her own beliefs and opinions. In addition, the right to dignity entails the proper protection of marginalised groups. This aspect of dignity has come in for criticism on more than one occasion. During the 2007 strike, numerous educators who preferred not to strike were intimidated by colleagues. Striking educators forced their views on others by vandalising property and assaulting learners and other educators.<sup>122</sup>

Another example can be found in *MEC for Education, KZN & Others v Pillay (Governing Body Foundation) (1st amicus curiae), Natal Tamil Vedic Society Trust (2nd amicus curiae), Freedom of Expression Institute (3rd amicus curiae)*.<sup>123</sup> This case illustrates the intolerance shown regarding the religious convictions of a learner who wanted to wear a nose stud to school so as to observe her religious beliefs. Intolerance of the sexual orientations of others was found in the South African Human Rights Commission (SAHRC) report on school-based violence.<sup>124</sup> Recently, 27 girls were expelled from a school because they were alleged to be lesbians.<sup>125</sup> The sexual abuse and assault of learners by educators are another cause for concern.<sup>126</sup> In another incident, race was also used to marginalise and discriminate against a group of black learners in a predominantly white school. The principal blamed the black learners for the disciplinary problems in the school.<sup>127</sup>

One of the most alarming infringements of the right to dignity by educators is the continued use of corporal punishment in schools. A study by the SAHRC indicated that more than 50 percent of learners are still subjected to corporal violence.<sup>128</sup> Incidences of corporal punishment in schools are as high as 65,3 percent in some provinces. In 1995, the Constitutional Court found corporal punishment to be unconstitutional in *S v Williams*<sup>129</sup> and it was subsequently prohibited in schools in 1996 by the South African Schools Act.<sup>130</sup> The Constitutional Court again, in 2000, explicitly found that corporal punishment is an infringement of the right to dignity in *Christian Education South Africa v Minister of Education*.<sup>131</sup>

The outlawing of physical punishment in the school ... represented more than a pragmatic attempt to deal with disciplinary problems in a new way. It had a principled and symbolic function, manifestly intended to promote respect for the dignity and physical and emotional integrity of all children.

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122 Thakali & SAPA 2007:1; Moses 2007:4; Rademeyer 2007d:5; Serrao 2009a:2; Fleich 2009:6.

123 2008 JOL 20810 CC: par 53.

124 South African Human Rights Commission Report 2008:9.

125 SABC news 2010:1.

126 Memela 2007:7; Msimang 2004:1; Govendor 2006:6; Hans 2006:3; Premdev 2006:3.

127 Potgieter 2010:1.

128 2008:13.

129 1995 7 BCLR CC.

130 84/1996: section 10.

131 2004 4 757 CC: par 50.

Yet, 15 years since corporal punishment was found to be unconstitutional, educators are not only blatantly breaking the law, but are still infringing on the right to dignity of learners. The intensity of some of the incidents of disciplinary measures and corporal punishment in particular, or rather assault, is frightening, with children even ending up in hospital.<sup>132</sup> What is even more alarming is that 58 percent of educators are asking for the reinstatement of this undignified disciplinary measure.<sup>133</sup>

### 3.2 Learners

There is an incorrect perception that learners have rights but no duties in terms of the Constitution.<sup>134</sup> However, there is nothing in the Constitution to suggest that children are not equally bound by its provisions. Learners under the age of 18 are equally bound to respect and protect the dignity of others – in this instance, mostly the dignity of educators and fellow learners.

Children are regarded as a vulnerable group who are entitled to additional protection. This additional protection is afforded to children to safeguard them against harm, but is not intended to place them in a superior position to adults. Learners and educators are therefore of equal worth and equal value and are entitled to equal respect. Learners who use foul language, intimidate educators or even assault educators are guilty of harassment, and the disruption of classes unlawfully infringes on the right to dignity of educators.<sup>135</sup> This behaviour is unjustifiably demeaning the intrinsic worth of the educator. For instance, it is impossible to justify the need for an educator to use foul language when addressing a learner, and it is equally impossible to justify the need for a learner to do the same when addressing an educator. In both instances, the dignity of the other person is infringed.

School-based violence, which includes physical and psychological violence, has a devastating impact on learners and educators. Unfortunately, learners are often the originators of this violence which is perpetrated against educators and fellow learners. As a result of this, learners suffer from various learning problems, which include a lack of concentration and poor performance in the classroom and in assessments. High dropout rates and a lack of motivation to be successful in school and in general also occur. Being exposed to school-based violence has resulted in educators becoming depressed, thereby impacting negatively on their personal lives. It has contributed to alcoholism and substance abuse in some instances, and, in some cases, post-traumatic stress has been diagnosed.<sup>136</sup> To be exposed to physical and psychological violence is thus not only an infringement of the victim's personal security rights, but also an infringement of his or her right to dignity. The victim's right to dignity is impacted on because the victim is often treated as a mere object of the perpetrator's frustration and anger. In addition it impacts on the individual's

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132 Serrao 2007:15; Premdev 2006:3; Pearce 2007:8; Msimang 2004:1.

133 SAHRC 2008:13.

134 Rademeyer 2007b:3, 2007c:11; Fourie 2007:19.

135 Carstens 2007a:14, 2007b:13; Rademeyer 2007a:3.

136 SAHRC 2008:14-15.

capacity to reach his or her full potential and to reach self-actualisation, which has a negative impact on the quality of life

The importance of learners not only being the bearers of the right to dignity but also being obliged to cooperate and contribute to attaining and fostering the dignity of others was stressed in the *Pillay*<sup>137</sup> case. In this case, the learner was found guilty of transgressing the code of conduct by wearing a nose stud. In dealing with the question of exempting a learner from school rules on religious and cultural grounds, O' Regan J held, in a minority judgment, that –

[a]n exemption process in a school environment, particularly where one is dealing with learners in their teens, should require learners to take responsibility for the exemption they are seeking by setting out their reasons for requiring the exemption. Such a process contributes to an enhancement of human dignity and autonomy.<sup>138</sup>

Educators are often the subject of jokes and defamation in schools. In the unreported Supreme Court of Appeal case of *Le Roux v Dey*,<sup>139</sup> the court held that educators have a right to approach the courts to vindicate themselves with regard to unjustifiable attacks on their character. However, the position of educators in the school context to some extent reduces their protection against defamation, but they are still entitled to protection.

They must accept to be the subject of robust comment and the butt of jokes by scholars but, once again, there is a line that may not be crossed because they, too, have a right to reputation and dignity, which must be protected.<sup>140</sup>

These sentiments expressed in the above-mentioned two court cases are in line with the *Guidelines for a Code of Conduct* which aim to promote, *inter alia*, democratic values, positive citizenship, the development of values, self-discipline, respect for one another's convictions and cultural traditions, and the right of learners to participate in decision making.

### 3.3 The state and its public officials

Section 8(1) of the Constitution provides that the legislature, the executive, the judiciary and all organs of state are bound by the provisions of the Bill of Rights. As an organ of state, the Department of Education is also bound by section 7(2) of the Constitution to respect, protect and promote the right to dignity. In addition, section 195(1) of the Constitution prescribes that the public administration must be governed by means of the democratic values and principles enshrined

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137 *MEC for Education, KZN & Others v Pillay (Governing Body Foundation (1st amicus curiae), Natal Tamil Vedic Society Trust (2nd amicus curiae), Freedom of Expression Institute (3rd amicus curiae))* 2008 JOL 20810 CC.

138 *MEC for Education, KZN & Others v Pillay (Governing Body Foundation (1st amicus curiae), Natal Tamil Vedic Society Trust (2nd amicus curiae), Freedom of Expression Institute (3rd amicus curiae))*: par 5.

139 Case no 44/2009 [2010] ZASCA 41 (30 March 2010).

140 Case no 44/2009 [2010] ZASCA 41 (30 March 2010):par 11.

in the Constitution and that certain principles must also be adhered to. The Department of Education, through its public officials, is therefore responsible for protecting, promoting and respecting the values of dignity, equality and freedom. The Department of Education should give effect to the right to dignity as a democratic value through implementing the principles of maintenance and promotion of professional ethics, of the promotion of the efficient, economic and effective use of resources, of a development orientation, of fairness and equity, of responding to the needs of people, and of accountability are a few of the principles which should guide the Department.

In *Ex Parte Minister of Safety and Security and Others: In Re: S v Walters and Another*,<sup>141</sup> the Court stressed the following obligation of the state:

For good or for worse, the State is a role model for our society. A culture of respect for human life and dignity, based on the values reflected in the Constitution, has to be engendered, and the State must take the lead.<sup>142</sup>

The Court further referred to Brandeis J in his dissenting opinion in *Olmstead et al. v United States*,<sup>143</sup> who succinctly stated that “[o]ur Government [the USA government] is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example”. Thus, the state bears an enormous duty to respect, promote and protect the right to dignity both openly and actively. Unfortunately, there are numerous examples of noncompliance with these principles and the responsibility to set a proper example in public administration in general, and such noncompliance is also to be found in education.

Former Education Minister, Naledi Pandor,<sup>144</sup> acknowledged the existence of underperforming public officials. Underperformance includes poor assistance with the implementation of a new curriculum, subsidies not being paid out in time,<sup>145</sup> and incidents of unprofessional conduct.<sup>146</sup> Underperformance is contributing to the infringement of the educator’s and learner’s right to dignity, because the above-mentioned conduct hampers the proper development and self-actualisation of both educators and learners.

Public officials play a vital role in the unacceptable state of discipline in schools and in the accompanying perceptions. Minister Pandor acknowledged that public officials are not rendering enough support to schools regarding discipline.

In terms of section 9 of the *South African Schools Act*,<sup>147</sup> a school may suspend a learner for a maximum of only one week after a proper hearing or pending a decision by the Head of the Department on the expulsion of a learner. Learners may be expelled only by the Head of the Department after a hearing, on condition that the Head of Department makes alternative arrangements for learners who are subject to compulsory attendance. This provision and current

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141 2002 7 BCLR 663 CC.

142 *Ex Parte Minister of Safety and Security and Others: In Re: S v Walters and Another* 2002 7 BCLR 663 CC:par 6.

143 277 US 438, 485 (1928).

144 Pandor 2007:3.

145 Retief 2008:16; Rademeyer 2007a:5.

146 Carstens 2007:4; Van Rooyen 2008:1; Monare 2008:10.

147 84/1996.

trends regarding expulsions in schools have created the perception that the heads of the different departments of education are unwilling to assist schools in maintaining discipline, because they frequently refuse to confirm the expulsions recommended by the school governing bodies (SGBs).

The situation has now deteriorated to such an extent that schools deem it fit to take the heads of department on review concerning their decisions not to expel learners. Heads of departments have seemingly abandoned their obligation to give due consideration to the recommendations of the SGBs.<sup>148</sup> This conduct constitutes an infringement of the right to dignity of the accused learners as well as of the other parties, namely the victims of the misconduct and the members of the SGBs who have spent many hours conducting the disciplinary hearing on a voluntary basis. It seems as though the public officials do not take real cognisance of the fact that the future and certainty of the different stakeholders involved, in a stressful and unpleasant situation, are in their hands. It seems, further, as though public officials do not consider the impact of misconduct and delayed decision making on the dignity of stakeholders, and innocent parties in particular. It should be kept in mind that this seemingly straightforward administrative action involves human beings with aspirations and fears. Some heads of department do not really apply their minds to the matter because they unjustifiably lean towards upholding the right to education of the transgressor and often refuse to expel learners who are guilty of serious transgressions.<sup>149</sup> It seems as though balancing the right to basic education on the one hand and the right to dignity of the victims of the transgression and the interests of the other learners and educators at the school on the other hand is problematic. To overemphasise the right to basic education gives rise to the notion that the victims and the rest of the school community are not of equal value and worth compared with the transgressor. One is also tempted at this point to ask whether the legislative provision that the Head of the Department should arrange alternative education for learners of compulsory, school going age plays any role. This additional responsibility on the shoulders of the Head of the Department can easily tip the scales in favour of the rights of the transgressor if one is not cautious concerning the right to dignity of other stakeholders.

The lack of a proper infrastructure touches on another facet of dignity, namely not to be treated as a nonhuman and to be protected from inhumane conditions. Access to social and economic means in order to develop the full

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148 *Maritzburg College v Dlamini & Others* 2005 JOL 15075 N; *Pearson High School v Head of Department Eastern Cape Province and Others* 1999 JOL 5517 Ck; *Queens College Boys High School v Member of the Executive Council, Dept of Education, Eastern Cape Government and Others* Case no. 454/08; *St Michaels School for Girls and Others v The Head of the Free State Education Department and Others* Case no. 5597/2008.

149 *Maritzburg College v Dlamini & Others* 2005 JOL 15075 N; *Pearson High School v Head of Department Eastern Cape Province and Others* 1999 JOL 5517 Ck; *Queens College Boys High School v Member of the Executive Council, Dept of Education, Eastern Cape Government and Others* Case no. 454/08; *St Michaels School for Girls and Others v The Head of the Free State Education Department and Others* Case no. 5597/2008.

spectrum of human capabilities is another dimension of the right to dignity.<sup>150</sup> Unfortunately, there are numerous examples of stakeholders being subjected to inhumane conditions in schools. There are still numerous dilapidated or mud schools which lack running water and proper sanitation.<sup>151</sup> Schools are often not well maintained and may lack basic equipment such as textbooks, enough classrooms, and sports facilities.<sup>152</sup> In addition, there are not enough schools, which affects poor learners in the rural areas in particular.<sup>153</sup> These problems are related to one of the most basic human needs namely to be treated as a human and to receive education in an environment conducive to human usage. They are still not being addressed and it seems as though there is a lack of enthusiasm on the part of some education departments to rectify such problems. This can be illustrated with reference to two cases. First, in March 2010, the Eastern Cape Department of Education was ordered, by agreement between the parties, to build a new school in Grahamstown to replace the current dilapidated Amasango School. While the school is under construction, the Department must provide six prefabricated classrooms, four toilets and a library by 1 October 2010. The Department had to provide the Court with an affidavit setting out the implementation of the construction plans for the school by 25 March 2010 to ensure that construction would commence by May 2011.<sup>154</sup> The question however arises as to why it is necessary for a school to approach the High Court to force the Department of Education to provide the basics needed for a dignified education.

Equality of opportunities and goods will never be attained in schools. The truth is that there will always be schools which will be better resourced than others, because parents will always try to provide the best they can for their children. In addition economic differences between people are a reality. Despite this reality, the state is obliged to provide, on an equal basis, infrastructure and facilities which indicate that the dignity of all involved in schools is respected. There should thus be a minimum standard for infrastructure and facilities which indicates equal respect and concern for all learners and educators. The standards should thus ensure that school facilities are adequate, reflects suitability for human usage and respects the dignity of those who have to use it.<sup>155</sup>

In *Centre for Child Law and Others v MEC for Education, Gauteng and Others*,<sup>156</sup> the residence of JW Luckhof High, a school of industry, was found to be in an appalling condition, with no access control and no psychological support structures. The Centre for Child Law investigated the matter and found that there was no proper bedding for children, despite freezing conditions in the middle of winter. It wanted the Department to, *inter alia*, immediately

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150 Liebenberg 2005:7.

151 Nombembe & George 2008:6.

152 Sokana 2008:5; Rooi 2008:20; Metcalfe 2008:10; Steenkamp 2007:8; Matlala 2010:5; Pienaar 2008:7; Fredericks 2009:11; Matomela 2010:1; Kruger 2010:9.

153 Fredericks 2009:11; Johwa 2008:3; Matlala 2010:5; Pienaar 2008:7.

154 *The School Governing Body of the Grahamstown Amasango Career School v MEC for Education, Eastern Cape and Others* Case no. 3838/2009.

155 See Liebenberg 2005:1-31 on the importance of dignity in interpreting and giving effect to socioeconomic rights such as education.

156 2008 1 SA 223 T.

provide the children with proper bedding. The Department acknowledged that the conditions were poor, yet it defended the matter. The Court expressed concern about the “bureaucratic prevarication intrinsic to the department’s litigation strategy”.<sup>157</sup> The Court suggested that government departments often unnecessarily defend matters and “in doing that use resources that might be better applied elsewhere”. The Court also alluded to the poor service delivery to the “vulnerable and marginalised sectors of our society”.

The Court further found that the minimal costs involved in immediately providing the children with sleeping bags by far outweighed any budgetary problems. The Department argued that providing the children with sleeping bags would create inequality and would impose a costly duty on the state to provide sleeping bags for other children in similar situations. The Court, after weighing the evidence, found that –

... in cases such as the present where the fundamental right to dignity is central, and where the costs are foreseeable, manageable and containable, levelling up is the appropriate and desirable remedy.

The humanity and vulnerability of the learners were not recognised in this matter. The learners were treated as mere objects of a legal argument on levelling up or down. The state found it necessary to protect itself from possible future expenditure at the expense of vulnerable children, without evidence of such unmanageable expenses in the near future. Even if such expenses were a real possibility, the question that remains is how children in state care ended up in such despicable circumstances.

On this issue, the Court found that children had been removed from their parents under the pretence that they deserved better care, but that the state had then failed completely to provide care and, in fact, had infringed on their right to dignity. In this regard, the Court found that the following message was being sent to the children:

We betray them, and we teach them that neither the law nor State institutions can be trusted to protect them. In the process we are in danger of relegating them to a class of outcasts, and in the final analysis we hypocritically renege on the constitutional promise of protection.<sup>158</sup>

Evidence was produced that indicated that the Department had failed to provide appropriate fencing and access control, as well as psychological and therapeutic services, despite requests in this regard for more than 6 years. These requests were “met with bureaucratic silence and inertia”.<sup>159</sup> Proper regulations existed, and psychological and therapeutic services were available and only needed to be redeployed, but the Court found that the Department of Education, “in typical bureaucratic fashion, would rather dawdle than act”. In sum, the Department of Education chose rather to litigate despite overwhelming

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157 2008 1 SA 223 T:225-6.

158 *Centre for Child Law and Others v MEC for Education, Gauteng and Others* 2008 1 SA 223 T:229.

159 2008 1 SA 223 T:228.



evidence that it was failing to respect, protect and promote, *inter alia*, the right to dignity of the children at the school.

Since the Department of Education is responsible to protect the right to dignity of all stakeholders it should ensure that *inter alia* adequate legislative provisions are in place to ensure this protection. There is currently no legislation explicitly protecting the rights of learners during educator strikes. This is indicative of the unequal value attached to learners and educators. Learner's rights are often infringed during strikes because they do not receive any education, sometimes for protracted periods, are exposed to violence, intimidation, unacceptable and often unlawful behaviour of educators. Often no alternative arrangements are made to ensure that learners are safe during a strike or able to continue with their education and sports events are cancelled.<sup>160</sup> In the past the department made some arrangements for additional classes for pupils, but teachers again disputed the remuneration involved in presenting these classes. To present catch-up classes were further on a voluntary basis. Thus, if the educators were not willing to take part, they could not be forced to do it and the learners just had to accept the decision of the educator. In some instances the catch-up of academic work resulted in the cancelation of extra curricular activities, which has a bearing in the development of other skills of learners.<sup>161</sup> Despite the efforts made to present catch-up classes it should be kept in mind that matric is a very stressful time for learners. The absence of educators and the tension surrounding a strike adds to their stress. The time spend on classes to catch-up on their work could have been used to relax or prepare for the exams by revising work. All the above have a bearing on the learners' right to develop their full potential, not to be exposed to undignified treatment and to be valued and respected in processes that have an impact on them.

Van der Vyver<sup>162</sup> contends that a person is violated by an Act or any policy if the logical ground for that Act or policy negates the person's dignity or if the person is treated as if he or she did not possess inherent dignity. It is thus argued that the omission in terms of providing explicit legislative provisions to curb the violation of the right to dignity of learners during strikes can, at the very least, be construed as a failure to protect the right to dignity of learners and, at best, as a direct infringement of their right to dignity.

On the other hand, much has in fact been done and progress has been made. School-fee-free schools have been introduced,<sup>163</sup> facilities at many schools have been upgraded and safeguarded,<sup>164</sup> bursaries for the training and further training<sup>165</sup> of educators have been made available, and agreements on improved remuneration have been reached.<sup>166</sup> These are only some of the examples of the government's attempts to protect and promote, *inter alia*, the

160 Thakali & SAPA 2007:1; Moses 2007:4; Rademeyer 2007d:5; Serrao 2009a:2; Fleich 2009:6; Masondo 2007:1; Mhlongo 2008:3; Matomela 2007a:1; Gower 2007:20; Naidu & Momberg 2007:5.

161 Matomela 2007b:5; Tau 2007:3; Keating 2007:5; Rademeyer 2007e:4.

162 Van der Vyver 2005:460.

163 Rademeyer 2008:7.

164 Zondi 2007:3.

165 Cull 2007:5.

166 Kwon 2008:6.

right to dignity of learners and educators. Yet, a lot more must be done to convince educators and learners that the government, and the Department of Education in particular, is truly concerned about them and values them.

### 3.4 Parents

The autonomy of parents to decide what is in the best interest of their children as far as education is concerned contains elements of the right to dignity and centres on the autonomy and equality rights of parents. A thorough discussion on the interplay between the right to dignity and autonomy however falls outside the scope and focus of this article.

This notwithstanding, parents have a duty to instil respect for the dignity of others in their children. They should respect the right to dignity by treating educators and other learners with dignity and by ensuring that their children follow this example. This can be done by, for instance, not humiliating educators in the presence of their children and by supporting reasonable disciplinary measures at schools. Parents often worsen the unacceptable behaviour of learners by unreasonably defending their children's conduct. This is evident from *Tshona v The Principal, Victoria Girls High School & Others*,<sup>167</sup> where the parents approached the Court to set aside the learner's expulsion from a school hostel. They accused senior office bearers of the school of fraud, forgery and dishonesty without substantiation. This application was in the end dismissed with a *de bonis propriis* cost order against the parents<sup>168</sup> In the recent Supreme Court of Appeal case of *Le Roux v Dey*,<sup>169</sup> the Court found that learners had indeed defamed an educator. Both parties appealed. The appeal by the learners was dismissed and costs were awarded for two counsel on the High Court scale, while costs were awarded for only one counsel on the magistrate's court scale in the High Court.

Former Education Minister Pandor has rightly complained about uninvolved parents. In the context of the right to dignity, this indifference can be construed as a lack of concern for, and a failure to recognise, the worth and value of their children. Parents also fail to realise that they have a duty to contribute to the self-actualisation and development of their children, which are all aspects of the realisation of the right to dignity.<sup>170</sup>

### 3.5 Unions

Unions play an important role in education in South Africa. Recent pronouncements and the conduct of union officials and union members are all cause for concern and indicate that the right to dignity of other stakeholders is often infringed. It seems as though unions are protecting the jobs of educators

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167 2006 JOL 18445 E.

168 See also *Mose (Legal guardian of Luzuku Mose) v Minister of Education, Provincial Government of the Western Cape, Gabru & Others* 2008 JOL 22623 C.

169 Case no. 44/2009 [2010] ZASCA 41 (30 March 2010).

170 Pandor 2007:3.

at all costs, “to the point where they don’t put the child first”.<sup>171</sup> Thus, the right of learners to develop is infringed. Despite the critical need for mathematics teachers and the availability of educators from Zimbabwe to address this problem, unions are opposed to their employment.<sup>172</sup> Underperformance and absenteeism by educators are condoned and defended, despite the fact that their conduct is infringing on the right of learners to develop. A decision of the South African Council for Educators to publicise the names of educators who are guilty of sexually abusing children was criticised by South African Democratic Teachers Union (Sadtu), since such publication would, it was believed, “ruin the careers” of the guilty parties. The same union led teachers to strike when learners complained about educators being absent from school. In addition, the learners were threatened with severe violence if they turned up at school. Moreover, the union refused to listen to learners, the Department or parents.<sup>173</sup> In Soweto, educators went on strike because a union allegedly wanted to appoint a teacher with only six months’ teaching experience as a principal and further wished entry-level teachers to be appointed as deputy principals. One of the candidates was believed to be the wife of the district executive member of the union. As a result of the conflict, the union sought to dispense with the current criteria, which included managerial experience coupled with seven years’ teaching experience.<sup>174</sup> Even if the allegations of nepotism are not true, the mere demand to lower the criteria for appointment to crucial management positions is indicative of self-interest designed probably to win the support of members without considering the consequences thereof on the development, self-actualisation, value and growth of other stakeholders.

#### 4. Limiting the right to dignity in education

The preceding discussion has indicated that, if the right to dignity of others is not properly taken into account in one’s actions and decisions, one will be at risk of infringing or unlawfully limiting the right to dignity of others. Section 36 of the Constitution lays down strict preconditions for the limitation of rights. It must be kept in mind that although the right to dignity is non-derogable it can still be limited and cannot claim to be a “trumping” value<sup>175</sup> A few examples of the application of the limitation test will be discussed briefly in order to emphasise the need to sensitise stakeholders to the consequences and implications of their decisions and actions on the limitation of the right to dignity of others.

Whenever a learner misbehaves, educators and the Department of Education are very cautious not to infringe the transgressor’s right to basic education. Learners are therefore expelled or suspended only in instances of serious transgressions.<sup>176</sup> To send a misbehaving learner out of class is also frowned upon. On the other hand, the transgression often infringes, *inter alia*, on the right to dignity of the educator and fellow learners.

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171 Serrao 2009:6.

172 Ramphele 2009:19.

173 Van der Merwe 2009:10; Fikile-Ntsikelelo 2009:13.

174 Chuenyane 2009:10.

175 Cheadle *et al* 2010:5-15.

176 *South African Schools Act* 84/1996:sec 10(3)(a).

To limit the educator's right to dignity or that of fellow learners, the limitation must be permitted by a law of general application. The applicable law of general application in the present context is the *South African Schools Act*, which provides that all children from 7 to 15 years of age are obliged to attend school. Any unreasonable prevention of a learner attending school constitutes an offence.<sup>177</sup> To expel or suspend a learner is also subject to strict conditions.<sup>178</sup>

The misbehaviour of a transgressor often constitutes a limitation of the right to dignity of the educator and fellow learners. To lawfully limit the right to dignity, strong arguments should be advanced by the transgressor, since dignity is regarded as one of the most important rights in the Constitution. The question that has to be asked is: why should the infringement be allowed? In other words: for instance why should the violence, foul language and disruptions be allowed? The purpose of the limitation of the right to dignity of educators and fellow learners would be to allow the transgressor to receive education. The question is: how reasonable is the infringement of the right to dignity of others in an open and democratic society? At which stage will, or should, the dignity rights of the educator and fellow learners outweigh the transgressor's right to education? One should also ask: what is the impact of the limitation of the dignity on educators and fellow learners? According to the SAHRC report<sup>179</sup>, serious consequences often follow, such as depression, poor performance, alcoholism, post-traumatic stress and high dropout rates. Another aspect to consider is whether there are any less restrictive measures available to prevent the limitation of the right to dignity of the educator or fellow learners' dignity. Although expulsion would be the harshest measure to prevent the limitation of the right to dignity other less restrictive measures, to ensure the prevention of the unlawful limitation of the right to dignity, is available. These less restrictive measures can include suspensions, therapy for the transgressor, restorative processes, teaching learners conflict management skills and creating a culture of respect for the right to dignity in schools. This immediately imposes additional duties on educators to ensure that suitable alternative measures are available in schools.

A thorough analysis, on a case-by-case basis, will be necessary to determine whether the infringement is unlawful. In this analysis, various aspects must be considered, such as the seriousness of the transgression, the duration thereof, whether the transgression was a single incident or part of a pattern of infringing the right to dignity, whether proper measures are in place to prevent such infringements or to restore dignity, and whether there are any alternatives available to prevent the infringement.

The same line of argument should be followed concerning all major issues in education. Educators who deliberately do not show up for classes or who are unprepared, and public officials who fail to execute their duties, would have a difficult time in explaining in terms of which Act of general application they are neglecting their duties. It would also be hard to justify the importance and purpose of limiting the right of learners to dignity in these circumstances. It would furthermore be difficult to come up with an acceptable reason for

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177 84/1996: sections 3 (1) & 3(6)(b).

178 *South African Schools Act* 84/1996:sec 9.

179 2008:14-15.

justifying not doing one's work while the impact of such inaction is very grave. Less restrictive means to limit the right to dignity are available – the educator and public official should simply do their work properly. In addition, it would be hard for educators to argue that they are not properly qualified or do not have the necessary equipment to teach. There are numerous bursaries and other opportunities available to enhance their education. Although the provisioning of textbooks and equipment is not at 100 percent yet, there has been a huge improvement. Furthermore, there are many schools with the same problems which do teach learners properly despite these difficulties.

The current debate on the right to strike of educators, and other debates in education, should thus have due regard for the dignity of learners. In this instance, the balance between the competing rights of educators and learners should thus also pass the constitutional test of not unlawfully infringing on the right to dignity of learners and of educators who prefer not to strike.

## 5. Conclusion

All possible infringements of the right to dignity in the education sector were not discussed. At this point it suffice to hold that all stakeholders are to some extent guilty of infringing on the right to dignity of other stakeholders. These infringements are often the result of conflicting interests, with stakeholders often promoting their own interests at the expense of other stakeholders. In this regard Chaskalson rightly said that respect for human dignity is crucial in accommodating conflicting interests.<sup>180</sup>

It was also emphasised in the above discussion that the conduct and decisions of stakeholders not only infringe on the right to dignity, but also on numerous other rights. Although lack of respect for the dignity of others is just one of the causes of the unacceptable state of education, it was argued that lack of respect for the dignity of others is the root cause of many of the problems currently experienced. What is even more alarming is the fact that it seems as though the stakeholders has no consciousness that they are infringing the right to dignity of others.

The need to revive the value of human dignity was stressed by the Constitutional Court in the *Makwanyana*-case<sup>181</sup> in 1995. Yet it seems as though little progress, if any, was made in the education sector to revive the value of human dignity since then. To restore dignity in education will not be an easy task, because this calls for a major change in the values of stakeholders as well as their consciousness. It is submitted that self-interest and a lack of concern for self-actualisation, self-identification, the ability to reach one's full potential, inherent worth, equality and the personal security of others are to blame for a largely dysfunctional education system. The devastating effects of these infringements are indisputable.

Unless real efforts are made to give effect to the right to dignity of all stakeholders in education, improved management, more resources and more stringent quality

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180 Chaskalson 2000:200-201. See also Cheadle *et al* 2010:5-9.

181 1995 2 SACR 1 CC: par 311.

control systems will not be as effective as they could be.<sup>182</sup> The current egocentric focus must make way for a focus on the value and worth of others. Unless the constitutional imperative to recognise and respect the humanness of everyone is not given effect to, education will not prosper in South Africa. There are no easy solutions to this problem, but to sensitise stakeholders to be conscious that their conduct, actions and decisions have an impact on the dignity of others are a necessary first step. To build a prosperous education system, everyone has to be committed to complying with the constitutional imperative to respect, promote and protect the right to dignity in education. Furthermore, everyone should be held accountable for failing to do it.<sup>183</sup>

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182 See Nieuwenhuis (ed) 2007 on the importance of human rights values in schools and education policies as well as on the importance of living and growing human rights and values in schools.

183 These recommendations are also in line with the Constitutional Court's findings on the importance of reaffirming and respecting the importance of *ubuntu* in the South African context. The court held in *Makwanyana* 1995 2 SACR 1 CC: par 263: "The need for *ubuntu* expresses the ethos of an instinctive capacity for and enjoyment of love towards our fellow men and women; the joy and the fulfilment uninvolved in their innate humanity; the reciprocity this generates in interaction within the collective community; the richness of the creative emotions which it engenders and the moral energies which it releases both in the givers and the society which they serves and are served by."

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