

## Chapter 1

### INTRODUCTION

The right to basic education is a central facilitative right and its realisation is key to the enjoyment of other rights. The State has the duty to respect, protect, promote and fulfil these rights.<sup>11</sup> The Bill of Rights not only provides rights but also responsibilities that rest with the State to ensure the realisation of these rights. One aspect of the right to basic education includes the rights of learners and educators to learn and teach in a safe environment, free from all forms of violence. Numerous other provisions contained in the South African Constitution protect the rights of learners to study in a safe environment which is free from all forms of violence. Learners have the right to, among others: environment free from racial and gender discrimination (section 9(3)); human dignity (section 10); life (section 11); freedom and security of person (section 12); protection from maltreatment, neglect and abuse or degradation (section 28(d)); and basic education (section 29). These rights are or have the potential of being infringed by both the perpetuation of school-based violence as well as the tangible threat thereof.

Children often spend more time in the care of educators in educational settings than with any other role-player outside of their homes. Schools are therefore an important place where children need protection from violence. Education authorities have a duty to provide a safe environment that supports and promotes children's dignity and development.<sup>12</sup>

Unfortunately, for many children educational settings expose them to violence, and may even teach them how to be violent. The public perception of violence in schools has been coloured by the media's focus on extreme violent events involving shooting and kidnapping of schoolchildren.

Violence perpetrated by educators and other school staff includes corporal punishment, cruel and humiliating forms of psychological punishment, sexual and gender-based violence and bullying. Violence in schools in the form of playground fighting and bullying among learners also occurs. In some communities, aggressive behaviour, including fighting, is perceived as a minor disciplinary problem not requiring too much attention. Bullying is frequently associated with discrimination against students from poor families, racially marginalised groups, or those with particular personal characteristics (e.g. appearance, or a physical or mental disability). Bullying is most commonly verbal, but physical violence may also occur. Schools are also affected by events in the wider community, such as the prevalence of gang culture, gang-related criminal activity and the use and abuse of drugs.<sup>13</sup>

Sexual and gender-based violence also occurs in educational settings with most incidences targeted against girls by male educators and class-mates. There are also increased reports of violence being targeted against lesbian, gay, bisexual and trans-gendered young people.

Sexual and gender-based violence can be exacerbated by the government's failure to enact and implement laws that provide students with explicit protection from discrimination.<sup>14</sup>

The environment and climate necessary for effective teaching and learning is increasingly undermined by a culture of school-based violence – and this is becoming a matter of national concern.<sup>15</sup> This also impacts negatively upon the right to basic education which ought to be available, accessible, acceptable and adaptable. The right to basic education gets infringed if it takes place in an environment that is not free from all forms of violence.<sup>16</sup>

Recent initiatives by some provincial departments to curb school-based violence have met with criticism on the basis that some of these measures would, if implemented, infringe on the very rights the Bill of Rights aims to protect.<sup>17</sup>

The Commission decided to hold a Public Hearing (Hearing) on school-based violence and encouraged participation from all relevant government departments, national and provincial, members of the public and any other interested parties.

### **1.1 LEGISLATIVE MANDATE OF THE COMMISSION**

The Commission is one of the independent constitutional bodies supporting democracy and established in terms of Chapter 9 of the Constitution of the Republic of South Africa 108 of 1996 (the Constitution). It derives its mandate from the Constitution and from the Human Rights Commission Act 54 of 94 (the Act).

The Commission is mandated by section 184(1) of the Constitution to:

- a) Promote respect for human rights and culture of human rights;
- b) Promote the protection, development and attainment of human rights; and
- c) Monitor and assess the observance of human rights in South Africa.

The Commission has powers in terms of section 184(2) of the Constitution, read together with section 9 of the Act, to:

- a) Investigate and report on the observance of human rights; and
- b) Take steps to secure appropriate redress where human rights have been violated.

The Act confers further powers, duties and functions on the Commission. These include the power to conduct an investigation into any alleged violation of human rights; to call any person to appear before it and produce all articles and documents in his or her possession or under his or her control which may be necessary in connection with such investigation; and to ask any person who appears before it to give evidence under oath or affirmation.

### **1.2 PURPOSE OF THE PUBLIC HEARING**

The Commission has received many complaints concerning school-based violence and has thus found it necessary to hold a Hearing. The purpose of the Hearing was to create a framework within which to explore the phenomenon and evaluate the issues pertaining to school-based violence, and to contribute to the current dialogue. In achieving its purpose, the Hearing allowed participants to share their concerns and ideas, and to gauge the extent of school-based violence. The Hearing further provided a public accountability mechanism and an educational opportunity to all who attended.

### **1.3 TERMS OF REFERENCE FOR THE PUBLIC HEARING**

The Hearing sought to understand the manifestation and impact of violence in schools within a human rights framework in order to make recommendations that seek to address the problem. The Hearing focused on the legislative and policy framework that addresses safety in schools, and also initiatives taken by the government and civil society to address school-based violence.

As stated at the outset, school-based violence is of national concern and therefore all interested parties were invited to participate in the initiative. The Hearing was held in the Western Cape, since this province experiences a high level of violent crime that flows over into schools. Also, in the province, there are well-established programmes that address school-based violence. Time and resource constraints unfortunately do not always allow the Commission to hold hearings in every province. In addition, there were initiatives such as the round-tables and meetings held in other provinces to further encourage as broad as possible participation in the process.

This report attempts to synthesise what was presented to the Commission by way of both written and oral submissions. The Commission received an overwhelming response to its call for submissions, and many excellent and comprehensive submissions were received from a variety of stakeholders. It is anticipated that this report will be a further aid to all stakeholders, and will assist positively and constructively to reduce the levels of school-based violence in our country.

In realising the purpose of the Hearing, consideration was given to:

- a) The extent to which the human rights of learners and educators are impacted upon by school-based violence;
- b) The nature and extent of violence in schools;
- c) The role of the community and other structures in dealing with the incidence of violence against learners;
- d) The psychosocial consequences of school-based violence for both learners and their communities;
- e) The causes of school-based violence and contributing factors thereto;
- f) The role and responsibility of various government structures in addressing the incidence of school-based violence;
- g) The reasonable responsibility of educators in ensuring school safety;
- h) The impact of violence on educators, learners and communities;
- i) Assess the extent of inter-departmental co-operation in ensuring the safety of learners;
- j) The prevalence of gender-based violence against female learners; and
- k) The success or shortcomings of initiatives taken by the national and/or provincial departments in addressing the systematic problems threatening the safety of learners.

#### **1.4 METHODOLOGY AND RULES OF PROCESS**

The Hearing provided a platform that contributed to the dialogue on school-based violence. As such, the hearing also afforded those who did not make formal written submissions the opportunity to express themselves on the issue.

The Hearing was conducted in terms of the rules of procedure promulgated in terms of section 9(6) of the Act. In terms of the rules, the Commission called for submissions from the government departments, the public and other interested parties. Provision was made for the Legal Services Programme of the Commission to assist parties to formulate their submissions.

On 1 September 2006, the call for submissions was published in the Government Gazette (No. 29154, Notice 1148 of 2006). The closing date was 12 September 2006. However, the Head of the Legal Services Programme exercised the discretion to consider late submissions. The Hearing was held at the Cape Town Civic Centre, Cape Town, on 28 and 29 September 2006.

A panel nominated by the chairperson of the Commission presided over the Hearing. The panel consisted of the Commission's chairperson Mr Jody Kollapen, who also chaired the proceedings, and his deputy, Dr Zonke Majodina and Ms Glenda Wildschut, an independent expert.

Whilst the Terms of Reference provided the Commission with powers to require or even to subpoena persons or institutions to submit written responses and appear before the panel, it was not necessary to use these powers. Testimony at the Hearing was not given under oath or affirmation. Rather, the aim was to create an environment for an open and frank discussion on school-based violence in the spirit that all parties were commonly and genuinely committed to achieving a safe school environment for learners and educators.

## **1.5 STRUCTURE OF THE REPORT**

Chapter 2 of the report seeks to identify the different types and forms of school-based violence and its impact on those who are affected. Chapter 3 seeks to identify factors that contribute towards school-based violence. Chapter 4 outlines and discusses the many programmes and responses that currently exist to address school-based violence. Finally, Chapter 5 sets out recommendations by the panel.

## Chapter 2

### SCHOOL-BASED VIOLENCE IN SOUTH AFRICA

#### 2.1 INTRODUCTION

In South Africa, school-based violence is multi-dimensional and takes on various forms. How it manifests itself often depends on the context in which it arises, such as whether the violence is perpetrated by learners against fellow learners, by educators against learners, by learners against educators or by external persons against both learners and educators.

Bullying, gender-based violence, accidental violence, discrimination and violence, sexual violence and harassment, physical violence and psychological violence, describe some of the most prevalent forms that were identified during the Public Hearing. Some educators suggested that the nature of these types of school conflicts has not really changed. Rather, learners now seem more willing and able to employ physically aggressive methods to resolve conflicts.<sup>18</sup> Knives, weapons and handguns appear to be more readily used than before.<sup>19</sup>

#### **Box 2.A – The school is a common site of crime**

In the case of assaults against learners, as well as theft of property, the school was the single most common site reported for these crimes. More than one quarter (26%) of those assaulted reported that this had occurred at school while more than half (52.4%) of those who reported theft had their property stolen while at school.<sup>20</sup> Robberies are also deemed to be serious crimes, and school was the second most common site of reported cases of robberies, with 13.7% of the incidents taking place at school.<sup>21</sup>

The impact of school-based violence can go beyond the physical harm that arises from violent incidents. Its effects can be expressed in a range of defective learner behaviour such as high absentee rates; poor learning performance and achievement; high truancy rates; high dropout rates; and, as some studies indicate, even an increase in suicide rates among learners who are unable to deal with violence, and who feel vulnerable.<sup>22</sup>

The reality that the Hearing depicted was one of a national school system in which many learners are under constant threat of violence at school, even from educators and principals. Educators themselves feel threatened by their students. Many schools have become places in which violence has become the norm, rather than an exception. While the majority of schools may indeed appear to be safe places – with only 25% of schools actually reporting violence<sup>23</sup> – testimony at the Public Hearing was still particularly disconcerting, given that schools should ideally be regarded as places that are safe for children.<sup>24</sup>

#### **Box 2.B – The most common forms of victimisation for learners**

According to statistics from the Red Cross Children's Hospital, in Rondebosch, Cape Town, in the Western Cape, the most common forms of violence for which learners are admitted and treated are:

- Assault with a fist or an object;
- Assault with sharp objects such as knives and pangas;
- Rape and sexual assault;
- Bite wounds and injuries related to the use of firearms.<sup>25</sup>

### Box 2.C – Young people are twice as more likely to be victims of crime

A national study undertaken by the Centre for Justice and Crime Prevention (CJCP) in 2005/2006 explored the victimisation of young people at schools. The CJCP stated that victimisation of children has been excluded from victimisation studies conducted to supplement the official crime statistics depicting the extent and nature of crime in South Africa. The National Youth Victimisation Study particularly addressed this gap in data.<sup>26</sup>

The study interviewed more than 4 500 young people aged between the ages of 12 and 22 nationally. Just over two fifths (41.4%) of the young people interviewed had been victims of some form of crime in the year preceding the study. While the most common crime experienced was theft of personal property, assault constituted the second most common crime, with 16.5% of the young people being assaulted in the twelve-month period under review. One tenth (9.4%) of those interviewed were victims of robbery. Both these crimes are classified as violent and usually result in injuries to the person. Another 4.2% of interviewees were victims of sexual assault. According to the CJCP, these figures correspond with international trends, which suggest that young people are twice as more likely to be victims of crime than adults.<sup>27</sup>

### 2.2.1 Bullying

Bullying is possibly the most common and well-known manifestation of school-based violence. However, the levels and intensity of bullying actions appear to have increased with time.<sup>28</sup> Bullying refers to both repetitive physical and non-physical acts. Physical bullying includes pushing, hitting, kicking, biting, spitting, intentional damage to property, theft and even extortion. Non-physical bullying includes teasing, name-calling, whispering campaigns, exclusion and threats of harm.<sup>29</sup> Bullying can also be malign or non-malign. Malign bullying is that which occurs when the perpetrator has the intention to cause harm to another. Non-malign bullying is unintentional.<sup>30</sup>

#### What is bullying?

Bullying can be physical, verbal or psychological aggression that occurs repeatedly and is marked by an imbalance of power, intent to harm, threat of further aggression, and the creation of terror in the victim.<sup>31</sup>

Bullying tends to occur in unsupervised areas of the school or at times when educators are not with learners. Research indicates that learners perceive school toilets as the least safe areas, as are grounds and playing fields. Some learners view the principal's office and classrooms as unsafe.<sup>32</sup>

Learners at risk of being victims of bullying are identified as those who have low self-esteem; are shy or non-assertive; have difficulty reading social signals; tend to cry or over-react when teased; or, have no friends. Those learners who were once victims of bullying sometimes become bullies to avoid being bullied themselves<sup>33</sup> The Child Accident and Prevention Foundation has been informed by many learners that if they refuse to be a bully at school, they are labelled as cowards, and this aggravates their social insecurity further.<sup>34</sup> Learners who are bullies often come from dysfunctional homes. They are often exposed to domestic violence, and come from a background with little or inconsistent parental discipline. They know of no rules, and hardly receive parental supervision.<sup>35</sup>

During the Public Hearing it was pointed out that bullying can be a precursor to aggression and, if not addressed early, may lead to more serious acts of violence in the future.<sup>36</sup>

#### **Box 2.D – Violence can include non-criminal acts of violence**

The CJCP indicated that—in addition to the criminal activity that takes place on school grounds—non-criminal acts of violence against children also impact on the rights to education and a safe environment. This includes bullying, teasing, and taunting, all of which generate fear, insecurity and trauma. Many young South Africans (16.8%) report that they fear travelling to and from school, with female learners comprising a little more than half of this number (51.3%). Learners from Limpopo (24.2%), North-West (20.6%) and the Western Cape (18.5%), were significantly more likely to report being afraid when travelling to and from school. Learners in rural areas are often more likely to be victims because they travel long distances on foot and are therefore more exposed.<sup>37</sup>

The study further indicated that 1 in 10 of the participants indicated that there is a particular area in school they are afraid of. Of these, about half (49.3%) indicated the toilet as the most feared area. Other areas included open grounds (16%), playing or sporting areas (10.7%) and the principal's office (11.5%).<sup>38</sup>

### **2.2.2 Sexual violence and sexual harassment**

The Constitutional Court has stated that sexual violence, and the threat of it happening, is at the core of women's subordination in society, and that it was the single greatest threat to women's self determination.<sup>39</sup> Unfortunately, too many young men use unwelcome conduct and violence in their relationships with young women. These young women become victims of young men calling them names, fondling their breasts, touching their buttocks, physically assaulting them and even raping them.

Community Action towards a Safe Environment (CASE) raised the concern that violence had become part of children's identities, and described observing children playing such games as "hit me, hit me" and "rape me, rape me". This involves a game in which children run after each other. When they reach the person they want to catch, they pretend to rape them.<sup>40</sup> This game demonstrates the extent and level to which brutalisation of the youth has reached, and how endemic sexual violence has become in South Africa.

Teenagers are trying to conform to the norm of being sexually active. Young female learners are particularly vulnerable, and very often are not in a position to negotiate consensual sex or the use of contraception. Teenage pregnancies are a great concern and account for a third of all births in South Africa today.<sup>41</sup> Given the high Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome (HIV/AIDS) infection rate in South Africa, teenage pregnancies take the added dimension of potentially being infected with the virus and the infant being born HIV positive. There has been some controversy around the granting of maternity leave to female learners – some argue that maternity leave may be perceived as a privilege that may encourage schoolgirls to fall pregnant.

Although counteracted by recent research commissioned by the Department of Social Development, the popular view is that female learners fall pregnant in order to access child support grants as a way of alleviating poverty.<sup>42</sup>

### **Box 2.E – Sexual assaults occur at school**

According to a study conducted by TVEP, of the 1 227 female learners who were victims of sexual assault, 8.58% can be attributed to perpetrators who were educators.<sup>43</sup> The Public Hearing was not provided with statistics regarding the outcome of these cases in terms of successful criminal prosecutions and/or measures taken against the accused by the relevant Department of Education.

According to the CJCP, schools are some of the most common sites where sexual assaults occur. More than one fifth (21.1%) of the sexual assaults against young people occurred while they were at school. In one third of the cases of sexual assault reported, physical injuries were also sustained during the incidents.<sup>44</sup>

### **2.2.3 Accidental violence**

On average, more than six thousand children between the ages of 1 and 14 die as a result of unintentional injuries each year. Accidental violence within the school setting includes learners causing injury to other learners without an apparent intention to do so. The probability that a child growing up in South Africa will be admitted to a hospital with an injury is approximately 25 times higher than that of a child growing up elsewhere in the world.<sup>45</sup>

The Public Hearing heard that some children are exposed to guns and weapons at a young age.<sup>46</sup> There are even instances where learners bring guns onto the school premises. The Catholic Institute of Education (CIE) gave various examples in which learners had brought guns from home that accidentally went off and injured fellow learners. A number of significant factors concerning accidental violence were highlighted, and these include:<sup>47</sup>

- Many incidents of school-based violence are unintentional, and in certain instances learners play with guns that go off accidentally. Children underestimate the potential lethal consequences of possessing a gun.
- Guns that are found in the possession of learners usually come from their home and belong to a family member.
- Learners bring guns to schools to show off and receive attention from fellow-learners.
- Fellow learners are usually aware that the gun is on the school premises. Sometimes learners fail to report the presence of a gun to school authorities mistakenly thinking it is a fake or a toy gun. Peer pressure also accounts for the lack of reporting of the presence of a weapon on the school premises.
- Male students are overwhelmingly the perpetrators of shooting incidences in schools.

### **Box 2.F – Boy children are slightly more likely to be victims of violence**

The CJCP study indicated that male learners tend to be victimised more often (34.3%) than female learners (31.3%). This is consistent with international and local victimisation data. Additionally, the study indicated that:

- The most common forms of victimisation include insults and various forms of verbal abuse
- Males (59%) are more often compelled by individuals at school to engage in wrongful activities against their will.<sup>48</sup>
- Perpetrators in these incidents were primarily classmates (54.1%) and other learners attending the same school (36.7%).
- The frequency of these incidents may vary, depending on the type and form of violence. Nearly half (49.1%) of the participants reported that this had occurred once, while more than a third (33.4%) had been victimised two to five times.<sup>49</sup>

## 2.2.4 Discrimination and violence

Learners may suffer harassment on the grounds of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture and language.<sup>50</sup> In particular, the Public Hearing did not receive many submissions that addressed violence that was perpetrated with accompanying racial discrimination. There have, however, been a number of such incidences that have received media attention<sup>51</sup>. The Public Hearing was informed that xenophobia contributes towards some incidences of violence in South African schools, particularly those schools that attract non-national learners. In these schools, discrimination on the grounds of ethnic, racial or social origin may well be a contributing factor to the violence.

Some lesbian and gay learners experience discrimination and violence at school. OUT LGBT Wellbeing, an organisation working towards the promotion of lesbian, gay, bisexual and transgender (LGBT) peoples' sexual and mental health and the related rights, referred to a research conducted in Gauteng, KwaZulu-Natal and the Western Cape, which showed that gay and lesbian youths experienced high levels of prejudice and discrimination resulting in exclusion, marginalisation and victimisation. Heterosexism and homophobia fuel much of this discrimination. This, in turn, influences how societies understand sexual identity and social roles. This can lead to negative perceptions of the LGBT youths whose gender behaviour is consequently deemed unacceptable by some.

The fear of being discriminated against could be as debilitating as discrimination itself. In order to prevent discrimination, learners may remove themselves from social situations where there is an anticipated possibility that they will be discriminated against. In some instances, this may result in the LGBT learner dropping out of school.<sup>52</sup> It was also indicated that a direct link exists between discrimination against the LGBT youths and the negative impact this has on their well-being and self esteem.<sup>53</sup>

### **Box 2.G – The hate crime of corrective rape**

There is a growing phenomenon of corrective rape. This refers to an instance where a male learner rapes a lesbian learner in the belief that after such a sexual attack the learner will no longer be a lesbian.<sup>54</sup>

OUT has been involved with pilot programmes that aim to create a more enabling environment for the LGBT youths within the school environment. These programmes include the distribution of relevant materials and sensitisation training for life orientation educators. Within the school environment there is a clear need to place the LGBT issues within a human rights framework and to engage religious values.<sup>55</sup>

## 2.2.5 Psychological violence

Psychological violence is an umbrella term that encompasses bullying, harassment, victimisation, abusive threats and intimidation. It can have a discriminatory basis, and can occur in a number of educational settings, both between educators and learners and between learners and fellow learners. Although a single incident can suffice, psychological violence often consists of repeated, unwelcome, unreciprocated and imposed action that may have a devastating effect on the victim.<sup>56</sup>

Psychological bullying of learners by educators was highlighted as occurring when a learner is made to feel excluded, vulnerable or distressed by an educator in the classroom. This type of bullying can have long-lasting effects on the performance and willingness of a learner to actively participate in the classroom. It may also result in a learner displaying provocative and disruptive behaviour in the classroom.

Physical and psychological school-based violence may overlap. Whilst the acts and effects of physical violence are often more easily recognisable, psychological violence leaves no physical scars or evidence. Yet it can have a devastating long-term impact on a learner. It was argued that whilst the presence of physical violence in schools has always been recognised, the presence of psychological violence is underestimated and consequently receives less attention than it ought to.<sup>57</sup>

### 2.3 VIOLENCE BY LEARNERS AGAINST EDUCATORS

The Western Cape Education Department (WCED) stated that there are minimal incidents of violence perpetrated by learners against educators. On the other hand, the South African Democratic Teachers' Union (SADTU) stated that a number of their members' resignations could be directly attributed to psychological violence and physical assault perpetrated against them by learners.<sup>58</sup>

SADTU, in preparing their submission, requested its members to forward incidents of violence perpetrated by learners against educators in their respective schools. (The results of this request will be discussed more fully in chapter 3). The incidents included:

- Educators being physically attacked by learners.
- Incidents of psychological violence against educators such as: learners acting disrespectfully; learners swearing at and taunting educators; learners ignoring or disrupting classes; and learners bullying educators.
- Some incidents had discriminatory racist and sexist undertones.

#### Box 2.H – Educators are subjected to verbal violence

According to NAPTOSA, educators are exposed to verbal violence perpetrated by both learners and their parents daily.<sup>59</sup> An educator made the following statement:

*“Swearing has become the home language to many learners. Learners swear at educators, parents and helpers. They experience the same at home, the lack of respect through bad language. Even the lift club drivers swear at educators for keeping learners late. This affects the moral of educators, making them very despondent. Some educators are pushed to the limit through sheer frustration and retaliate by screaming and shouting. Some even stay absent by taking their sick leave.”*

Continuous verbal abuse is the breeding ground for physical abuse and such an environment is not conducive to teaching and learning.<sup>60</sup>

SADTU sent in submissions from various schools throughout the country, painting the picture of educators also being the victims of school-based violence. An educator from the North-West Province attached a letter a learner wrote to his educator:

*“You don't know how sick you make me, you make me f..... (sic) sick to my stomach every time I think of you I puke...”*

SADTU has put forward reasons why it believes educators have become the victims of violence in their classrooms. The reasons include:

- Lack of discipline being maintained in the homes of learners by their parents.<sup>61</sup>
- Although SADTU did not substantiate or give reasons why schools with higher numbers of female educators were more susceptible to disciplinary problems, it however held that a higher percentage of male educators yielded fewer disciplinary problems.
- An over-emphasis of human rights of learners as opposed to their reciprocal responsibilities towards others.<sup>62</sup>

### **Box 2.1 – Educators are victims of physical violence**

An educator from Gauteng reported an incident in which a learner with both a chair and table physically attacked him. The educator had repeatedly asked the learner to leave a classroom because the learner did not belong there and was being disruptive during a class examination. The learner refused and instead assaulted the educator, who was severely injured.

Other instances were reported in which learners snuck out of hostels to get intoxicated and subsequently returned swearing at and assaulting educators.

## **2.4 VIOLENCE BY EDUCATORS AGAINST LEARNERS**

### **2.4.1 Sexual violence and sexual harassment**

The Employment of Educators Act states that it is a dismissible disciplinary offence for an educator to engage in sexual relations with or sexually assault a learner.<sup>63</sup> An area of serious concern raised during the Public Hearing was that of an educator accused of sexual assault or rape who remained teaching the alleged victim pending disciplinary measures being taken, and the outcome of a criminal investigation and prosecution.<sup>64</sup> In September 2006, the Commission approached the High Court to obtain an order against the Gauteng Provincial Department of Education to ensure that the Department used its disciplinary procedures, as set out in the South African Schools Act (SASA)<sup>65</sup>, against an educator who had been accused of sexually assaulting a learner. The Commission argued that the fundamental rights of learners are not respected when victims of sexual violence are forced into situations of ongoing trauma or secondary victimisation due to the alleged educator-perpetrator being present in the same classroom.

During the Public Hearing, a number of concerns were raised regarding the under-reporting of sexual offences that occur within the school environment, and in particular those cases in which the perpetrator is an educator. A learner from Mount View High School in Hanover Park made the following statement:

*“We have lost respect for our teachers as they abuse us in so many ways that we occasionally retaliate. The teachers are not there as parental figures we are meant to learn from, but rather they are people who are there to misguide us.”<sup>66</sup>*

Tohoyandou Victim Empowerment Programme (TVEP) referred to "sexually transmitted marks" in their submission (nicknamed "STMs"). This refers to circumstances in which girl learners voluntarily engage in sexual acts with educators as an inducement to receiving good grades. Of even more concern was a study conducted by TVEP that found that 26% of learners were of the opinion that forced sexual intercourse did not necessarily constitute rape. This finding raises pertinent questions as to what in the perception of a girl learner constitutes sexual assault. Consequently the accuracy of statistics that relate to sexual

assault incidents can also be questioned. (Further statistics from TVEPs database will be discussed in chapter 3).

The WCED indicated that on average it receives between one and four cases a month against educators for sexual assault and/or harassment of learners. Few of these cases are found to be of no merit. Very often, disciplinary procedures are not followed through and educators resign upon being formally charged. In some instances learners, or their parents, withdraw the charges.<sup>67</sup> The WCED acknowledged that the unit, which deals with disciplinary investigations, could be better resourced to handle such allegations. Despite this challenge, there are strict processes in place that are adhered to.<sup>68</sup>

#### **Box 2.J – Under-reporting and a lack of monitoring of school-based violence**

In South Africa, crime-reporting rates are low. These rates are lower among the youth than the adults. Young people tend to report crimes to their parents and not to the authorities. In many instances, parents do not report crimes to the police or appropriate authorities. When parents neglect to inform the school authorities of the incidents, the scope of the problem remains unknown to these authorities.<sup>69</sup> Fellow-learners or educators often commit these types and forms of violence. The perpetrator is often known to the victim, which complicates the matter even further.

The CJCP study demonstrated that many incidents of violent and non-violent crimes were unrecorded by school management and the police, therefore resulting in an inaccurate reflection of the extent of violence. A consequence of this is the under-emphasis on support and counselling being offered to young traumatised victims.<sup>70</sup>

#### **2.4.2 Physical assault**

South Africa's legislature and judiciary have rejected corporal punishment within public life. In June 1995, the Constitutional Court<sup>71</sup> abolished corporal punishment on the grounds that it violates a child's human dignity. Three years later, the Court upheld section 10 of SASA, which prohibits corporal punishment as a form of discipline.<sup>72</sup>

Meanwhile, a considerable number of educators still administer corporal punishment in the classroom. Often, educators argue that they resort to corporal punishment because they are unaware of other disciplinary methods that can be used more effectively. In some instances educators even receive parents' consent to use corporal punishment. Within this context, the Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) told the Public Hearing that learners who were recipients of corporal punishment or other forms of humiliating treatment were more likely to exhibit behavioural problems, including bullying and disobedience. There is therefore an obvious disincentive to use corporal punishment when it appears to aggravate disciplinary issues.<sup>73</sup> Still, alternatives are a challenge, and both parents and educators need to be encouraged to understand other forms of behavioural management.

Training programmes on human rights and values were presented during the Public Hearing. It was suggested that such programmes should be implemented in order to assist educators in seeking alternative behavioural management solutions in their classrooms. However, parental involvement and responsibility in supporting educators was also highlighted as being critical to rooting out the negative effects of corporal punishment. There is a need for consistency in the disciplinary model at home and at school for discipline to be effective. In order to address this issue, the NGO Child-line contended that the Children's Amendment Bill would provide an opportunity to reconsider the use of corporal punishment in the home. Prohibiting corporal punishment in the home

would require support and awareness-raising processes about appropriate forms of discipline that are violence-free. Thus parental education programmes should not only focus on the negative impact of physical violence on learners, but also on the effects of other forms of violence, such as verbal and psychological violence. Child-line is currently in the process of developing a manual for parents on positive discipline, which should be available in the near future.<sup>74</sup>

### **Box 2.K – Corporal punishment is still occurring in South African schools**

Although corporal punishment is prohibited in South Africa within the school environment, it is still reported as having occurred in more than half of the schools (51.4%), with the Eastern Cape (65.3%), Mpumalanga (64.1%) and Limpopo (55.7%) reporting the highest incidences.<sup>75</sup>

A recent study<sup>76</sup> indicated that 58% of educators are in favour of the reinstatement of corporal punishment, while 28% conceded to still using corporal punishment. The CJCP study reported that 51% of learners indicated that they had been caned or spanked at school.<sup>77</sup> According to RAPCAN, educators and schools are failing to report the use of corporal punishment and are becoming complicit in the use of violence against children.<sup>78</sup>

During 2006, the WCED received 94 cases of which 54 were finalised by September 2006. Typical examples of cases included instances of educators attacking learners with canes or sticks, slapping them, flinging objects at them and even locking learners in small spaces as a form of punishment. The WCED stated that it has a 90% success rate in proving these cases. In most cases where the assaults were minor, the educators received fines together with a final written warning. In such instances the WCED also advises parents that they may bring civil charges against the educators.<sup>79</sup>

## **2.5 VIOLENCE BY EXTERNAL PERSONS AGAINST LEARNERS AND EDUCATORS**

### **2.5.1 Assaults and robberies**

The high levels of crime in South Africa spill over into playgrounds and classrooms.<sup>80</sup> Learners and educators residing in high-crime areas are at continuous risk of being victims of crime as they travel to and from school as well as on school property. Such crime may take the form of an assault, theft, robberies and hijackings.

### **Box 2.L – Being at school is more dangerous than being anywhere else**

The Red Cross Children's Hospital says that child violence injury death rates in South Africa are 60% higher than the global average. According to the hospital's statistics, of the 4,474 children treated in nine years at the facility, 441 were assaulted at school. This figure constitutes approximately 10% of the total number of injuries. Yet keeping in mind that children under the age of 12 spend less than 7% of their time at school, it would appear that being at school is more dangerous for children than being elsewhere.<sup>81</sup>

### **2.5.2 Attacks on school facilities and vandalism**

A large number of schools in the Western Cape have been vandalised with graffiti, the breaking of windows and fences and burglaries. Damage caused by vandalism in one school in the North-West Province was estimated at R6 million.<sup>82</sup> Various participants at the Public Hearing commented that even where fences are erected at schools to increase safety and security the fences are difficult to maintain due to vandalism.

Vandalism not only indicate a lack of respect for the property of others, but also for the institution of education itself.<sup>83</sup> Anger and bitterness towards anyone who is successful and has accumulated material wealth was identified as a motive for vandalism and the destruction of property.<sup>84</sup>

## **2.6 THE IMPACT OF SCHOOL-BASED VIOLENCE**

### **2.6.1 Impact of school-based violence on learners**

There are both short and long-term consequences for the victims of school-based violence. Physically, the victimised learners bear the trauma of attacks soon after they have occurred. How long the wounds, scars, or pains persist depends on the severity of the violence the learner has suffered. However, this will affect the learner's ability to participate comfortably in learning environment and may sometimes prevent them from participating or coming to school.

There is also a psychological impact on learners in both the short and long run. It includes a range of symptoms: depression; poor self-esteem; feelings of isolation; being frightened; being humiliated by their experiences; and/or developing an aversion to school. Learners who have been the victims of repeated incidents of school-based violence may succumb to aggressive patterns of behaviour in response to their experiences, and in some instances may themselves resort to becoming the perpetrators of violence. It was further contended that in extreme cases, violence against learners might result in mental health problems in adulthood, including schizophrenia.<sup>85</sup>

Learners who have been the victims of school-based violence experience some of the following common learning problems:<sup>86</sup>

- Limited concentration span;
- Serious numeracy and literacy problems;
- Inability to handle class assignments;
- Poor performance in the classroom, control tests and examinations;
- High absentee and dropout rates;
- Being unmotivated to succeed in school and life in general.

School violence can lead to serious consequences. The recent National Youth Risk Behaviour Survey conducted by the Medical Research Council indicated that 4% of boys' and 3.5% of girls' deaths between 10 and 14 were as a result of suicide. It was also found that 35% of children experienced feelings of overwhelming sadness, while 33% of them indicated that they had considered suicide and 23% had actually planned some form of suicide.<sup>87</sup>

### **2.2.2 Impact of school-based violence on educators**

In the Western Cape gangsterism is rife in and around many schools. Consequently, learners and educators are exposed to gang violence, including gang members shooting at each other.<sup>88</sup> In CASE's submission, a psychologist gave her perspective on teaching in an environment of gang violence. A number of educators and school staff have been referred to her as a result of traumatic experiences they were exposed to in their workplace. They presented with several symptoms of chronic post-traumatic stress due to gang violence. As a result of their exposure to several traumatic incidents, a number of changes in their mood, thoughts and behaviour were reported. Symptoms of post-traumatic stress such as feeling hyper-aroused, re-living the event and avoidance, were presented.<sup>89</sup> All this impacts negatively on the educators ability to teach as they feel trapped or confined in the school environment. This adds to constant

negative feelings towards their employment. These negative feelings may cause educators to lose interest and to become detached to the extent that they are unable to relate to their learners. Their self-confidence and self-esteem are reduced, making it difficult to accomplish their task. The educators often report feeling disempowered within the classroom setting.<sup>90</sup>

Constant stress caused by school-based violence can result in educators becoming depressed and this may sometimes result in violent behaviour being displayed towards learners. The educators have expressed feelings of hopelessness and often feel exasperated by a sense that they are not heard or supported by their relevant authorities. School-based violence can also affect the personal lives of educators, with some, for example, resorting to alcoholism and other forms of substance abuse.<sup>91</sup>