

CHAPTER 18

SCHOOL VIOLENCE

Mila Harding, Motheo Brodie and Tasneem Kathrada
This chapter is an update of an earlier version authored by Tina Power.

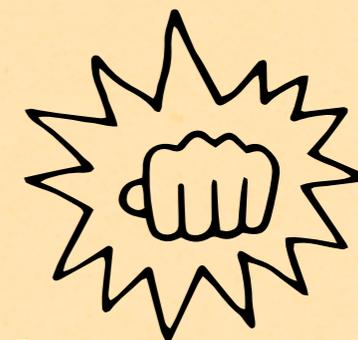




Figure 17.1: Satirical cartoon commenting on the lack of safety and security at many South African Schools. (Zapiro, July 2007, <http://mg.co.za/zapiro/fullcartoon/263>)

INTRODUCTION

Going to school is more than just learning to read and write and do maths. The South African Schools Act of 1996 says that our schools are meant to:

“[L]ay a strong foundation for the development of all our people’s talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators.”

A significant part of learning and developing is to feel safe. Unfortunately, as the cartoon above illustrates, school violence in South Africa is a widespread problem and South African schools are among the most violent schools in the world. School violence is caused by many different factors, and has adverse and sometimes tragic consequences on learners.

According to the World Health Organisation, violent acts are understood as the deliberate “use of physical force, or power, threatened or actual” that “results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation”.

School violence includes more than just acts at school; it is about the school environment and the school experience of learners. Patrick Burton and Lezanne Leoschut, from the Centre for Justice and Crime Prevention, explain that it does not only occur within the physical border of the school, but includes “acts that are, on a daily basis, associated with school, specifically travelling to and from school, or arriving at or waiting

outside the school grounds”. School violence can occur between a learner and an educator, a learner and a learner, an educator and an educator, and a learner or educator and a third party.

This overview chapter discusses some of the factors that contribute to the high prevalence of violence in schools, and what the different types of violence are. It is also important to know what the law says about violence in schools, and how learners, parents and educators must respond if they become victims of or witness violence in schools. This chapter intends to equip learners, parents and educators with the necessary information and tools to help address school violence.

CONTEXT OF SCHOOL VIOLENCE IN SOUTH AFRICA

Violence was used as a tool of oppression during apartheid, but also as a tool of resistance. The schooling system also segregated black learners from white and was used as another means to oppress the majority of South Africans.

Violence in schools, violence against learners and violence in communities was a common occurrence during apartheid. Our courts have noted that “[i]t is regrettable, but undeniable, that since the middle 1980s our society has been subjected to an unprecedented wave of violence” (S v Williams).

This culture of violence has become deeply rooted in our society, and has led many to adopt an ideology of violence. Experts such as Brandon Hamber have observed that:

The root cause of political violence in South Africa has to be located within the social matrix and the long history of

oppression, poverty and exploitation in the country ... These factors, coupled with the socially sanctioned use of violence and the politicisation of everyday life, resulted in extraordinary levels of intra- and inter-community conflict.

In 1994, South Africa became a constitutional democracy. At the time, there was a strong emphasis on creating a peaceful society that promoted respect, dignity, tolerance and non-violent solutions to problems. Our Constitution seeks to create a society that “endeavours to move away from a violent past”. (S v Williams).

Although South Africa has made significant strides in entrenching a

culture of human rights, continued exposure to violence has had a very harmful impact on our schools.

However, violence in schools is by no means limited to the South African context. UNESCO estimates that close to 246 million children worldwide are impacted by violence at the schools they attend. Additionally, the rapid rise of social media platforms such as Facebook, Instagram and TikTok has enabled cyberbullying to flourish. The relative anonymity and social pressure that social media provides has arguably emboldened abusive behaviour.

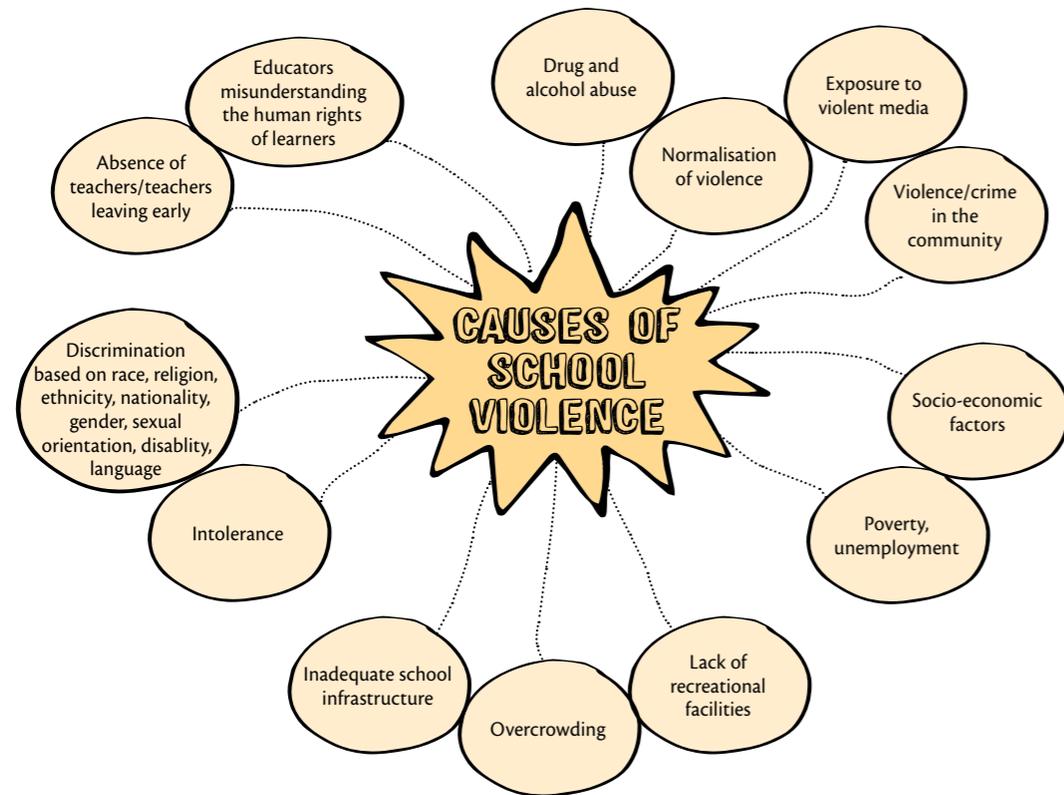


Figure 17.2: Factors contributing to violence in schools.

FACTORS CONTRIBUTING TO VIOLENCE IN SCHOOLS

There is no one cause of violence in schools. Instead, there are several intersecting factors that lead to school violence. School violence manifests in a number of forms, and is affected and enhanced by other types of violence that may take place in learners' home environments and their wider community. The South African Council for Educators (SACE) states that "school-based violence does not take place in a vacuum, but rather is influenced and shaped by contextual factors".

EXTERNAL INFLUENCES

Studies indicate that school violence often occurs more in lower-income communities in South Africa. Socio-economic factors such as poverty and unemployment can make people feel disempowered and frustrated by their circumstances, leading them to use violence, rape and other forceful acts as a means of asserting power and being in control. These social dynamics are aggravated in South Africa by easy access to weapons, alcohol and drugs.

Increased exposure to violence at home or in communities can also influence the prevalence of violence at schools. Children are prone to replicating behaviours they see around them, so if they are observing or experiencing violence in their homes or communities, they are more likely to enact violence in settings such as schools against their classmates. Violent games and TV programmes can also perpetuate the normalisation of the use of violence.

INTERNAL INFLUENCES

While schools reflect the norms and values of society, they can also be at fault for enabling school violence and failing to prevent it. Disability, gender, age, race and sexual orientation can often be factors that lead to violent behaviour, or make one more vulnerable to it. The use of inappropriate and illegal forms of discipline, such as corporal punishment, set bad examples for both learners and educators. The power dynamics between educators and learners can lead to educators believing that their position entitles them to abuse learners or to expect sexual favours from learners in exchange for good grades.

Schools that are mismanaged and lack effective leadership often create spaces for incidents of violence to exist. If learners and educators are fearful for their safety, they may feel that they need to carry weapons to protect themselves. The presence of weapons on school premises may in turn contribute to a violent and unsafe school environment.

Violence is not just a physical expression; it has a very real impact on behaviour in the classroom. Schools that have a high prevalence of violence often result in learners feeling unsafe, and this may have a negative impact on learners' ability to concentrate during class. Teachers may also struggle to maintain general discipline in the classroom, and learner attendance may also be negatively affected. These are just a few examples of how violence might have a dire impact on learning.

As already explained above, external violence in communities or homes can contribute to violence in the schooling environment; nevertheless, violence in schools can be managed and prevented. Proper management of the learning environment through care and appropriate discipline can greatly mitigate the likelihood of violence occurring in schools. In turn, well managed, safe schools can have a positive effect on communities in terms of shaping attitudes of non-violence.

Whether the influences are external or internal, it is important to remember that

"[p]resent-day school violence in South Africa must be understood with reference to the country's legacy of political struggle, as well as the associated economic disadvantage and social inequality" (Pahad & Graham).

EXAMPLE 1:

Ntombi is a learner at Phumelela High. She has complained to the principal about her teacher, who often says very inappropriate things to her about her looks and the ways in which he thinks about her. He also sends her pictures of himself that she doesn't like looking at. She has told the principal that this makes her feel uncomfortable, and that she wants the principal to speak to him. The principal told her that he would, but he never did, because he is friends with this educator and doesn't want to reprimand him.

Ntombi's teacher is sexually harassing her, which is a form of violence; but because of poor leadership and a failure to respect the dignity of learners, this school is failing to address school violence.

TYPES OF SCHOOL VIOLENCE

School violence can manifest in many different ways, and to differing degrees.

In a 2008 report, the South African Human Rights Commission (SAHRC) reported that “[i]n 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”.

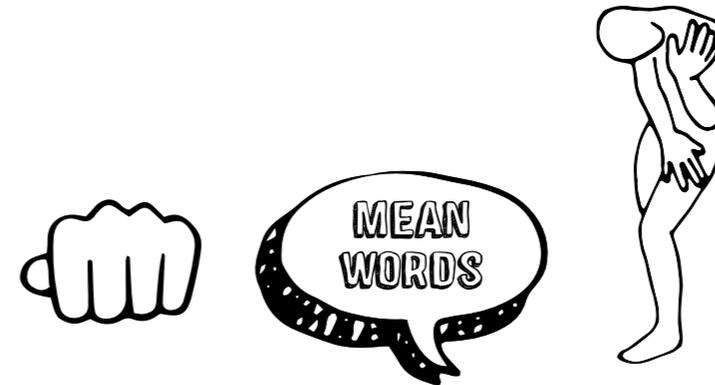
The table below defines some common forms of school violence.

These definitions have been taken from

different pieces of legislation, such as the Children’s Act, the Schools Act, and the Sexual Offences Amendment Act, as well as from various departmental policies and programmes.

Table 17.1: Some common forms of school violence as defined in legislation and policies.

ABUSE	Any form of harm or ill-treatment deliberately inflicted on a child including: <ul style="list-style-type: none"> • assaulting a child or inflicting any other form of deliberate injury to a child • sexually abusing a child or allowing a child to be sexually abused • bullying by another child • exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally.
ASSAULT	Unlawfully and intentionally: <ul style="list-style-type: none"> • applying force to a learner (for example through hitting, spanking, pinching, throwing things at them, and so on) • creating a belief that force is going to be applied to the learner.
BULLYING	Bullying can be characterised as frightening or intimidating treatment to which a learner is repeatedly subjected to by another learner/learners or an educator, resulting in: <ul style="list-style-type: none"> • physical harm to the learner or his or her property • emotional harassment • making the learner fear for his or her own safety or the safety of his or her property • a hostile environment that is counterproductive to learning.
CORPORAL PUNISHMENT	Any deliberate act against a learner to punish or contain them that inflicts pain or physical discomfort. This includes, but is not limited to: <ul style="list-style-type: none"> • spanking, slapping, pinching, paddling or hitting a learner, with a hand or with an object • denying or restricting a learner’s use of the toilet • denying meals, drink, heat or shelter • pushing or pulling a learner with force • forcing the learner to do exercise • throwing things – such as a board duster – at a learner. <p><i>Corporal punishment is dealt with in more detail in Chapter 20.</i></p>
CYBERBULLYING	This is a form of bullying that happens on digital platforms through the use of technologies such as cell phones and computers. Examples of cyberbullying include posting or sending hurtful messages, embarrassing pictures or videos that are aimed at harassing, threatening or targeting another person through a variety of social media or other online platforms.
GANG	A group with a sense of unity that seeks to intimidate and commit violent acts or other crimes, and which defends itself physically against violent acts of other groups.



GENDER-BASED VIOLENCE	Physical, sexual, verbal, psychological or socio-economic violence against a person or group of people based on their sex, gender identity or sexual orientation. Victims of gender-based violence are most often women and lesbian, gay, bisexual, transsexual, queer, intersex (LGBTQI+) people.
HARASSMENT	Directly or indirectly engaging in conduct that causes harm or threatens harm. This can include: <ul style="list-style-type: none"> • Following, watching, pursuing or accosting a learner, or loitering outside of or near the building or place where a learner lives, goes to school or waits for transport. • Repeatedly calling and/or sending unwanted messages to a learner
INJURY	Physical harm or damage to person or property.
INITIATION	Any act that forms the basis of being accepted or admitted into a group, and which places the initiate in a situation that could lead to physical or emotional danger, and which undermines the dignity of that learner. Initiation practices are prohibited by the Schools Act.
RAPE	Any person who unlawfully and intentionally commits an act of sexual penetration with another person without their consent. Sexual penetration includes any act which causes penetration to any extent whatsoever in: <ul style="list-style-type: none"> • the genital organs of one person into or beyond the genital organs, anus, or mouth of another person • any other part of the body of one person, or any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person • the genital organs of an animal, into or beyond the mouth of another person.
SEXUAL HARASSMENT	<ul style="list-style-type: none"> • Unwelcome sexual attention and/or unwelcome behaviour, suggestions, messages or remarks of a sexual nature that intimidate or humiliate a learner. • Implied or expressed promise of reward for complying with a sexually-oriented request, such as good marks or being promoted to the next grade. • Implied or expressed threat of being punished or actually being punished for not complying with a sexually-oriented request, such as a learner being hit or marks being deducted from them.
SEXUAL VIOLATION	Includes any act which causes direct or indirect contact of: <ul style="list-style-type: none"> • the genital organs, mouth or anus of a learner, and in the case of a female, her breasts • the masturbation of one person by another person • compelling a learner to self-masturbate or watching the masturbation of another person • the insertion of any object resembling or representing genitalia into a bodily orifice of another person • forcing a learner to watch a sexual offence or sexual act.

EXAMPLE OF CYBERBULLYING

The effects of cyberbullying on learners can be devastating and sometimes fatal. In February 2018, a 13-year-old grade 6 learner from Doornpoort Primary School in Gauteng was cyberbullied by a schoolmate on WhatsApp. This was after the learner sent one of her schoolmates a video of herself naked, and the schoolmate then threatened to share the video with the rest of the school on other WhatsApp groups. The learner was severely stressed by this, and reported the matter to one of her teachers on a Thursday afternoon; however, the schoolmate had already gone home when the matter was reported, and so the teacher could not intervene. On the Friday the learner did not attend school because of the bullying; and on the following Monday, the learner committed suicide. Unfortunately, stories like this are not uncommon.

EXAMPLE OF BULLYING

In April 2021, Lufuno Mavhunga, a 15-year-old learner, was repeatedly slapped by a fellow learner at a secondary school in Limpopo. Learners crowded around as this happened, and some learners recorded the incident on their mobile devices. A video of the incident was subsequently circulated on social media. Later that same day, Lufuno committed suicide.

Lufuno was a victim of two forms of bullying: physical bullying and cyberbullying. The learner who physically assaulted Lufuno was later arrested on a charge of assault with intent to do grievous bodily harm. Because the perpetrator is under the age of 18, her case will be dealt with in terms of the Child Justice Act. The case is ongoing.

The different types of school violence can be committed by different people. They may be educators, learners, or staff members. While learners are most often the victims of school violence, they can also be the perpetrators. Bullying, initiation and gang violence are very prevalent in South African schools. The next section provides a brief discussion of bullying.

BULLYING

Bullying is understood as negative or aggressive behaviour that creates a pattern of victimisation. It can be verbal, non-verbal, physical, sexual or social. The Children's Act defines 'abuse' in relation to a child as any form of harm or ill-treatment, which includes bullying by another child.

According to the 2019 Trends in International Mathematics and Science (TIMMS) Report on South Africa, 45% of Grade 5 learners said that they were bullied approximately monthly, 29% said they were bullied approximately weekly, and only 26% of learners reported that they never or almost never experienced bullying. This rate of bullying was found to be higher than most of the other countries participating in TIMMS. Verbal bullying was found to be the most common form of bullying.

Cyberbullying is a rising phenomenon among learners, not just in South Africa but globally. A 2019 report from UNESCO reveals that reports of cyberbullying increased by 5% (from 7% to 12%) in seven European countries between 2010 and 2014. The rapid growth of online social media platforms means that more learners are increasingly socialising online. A joint UNICEF and Department of Social

Development study reveals that about 56% of children between the ages of nine and 17 use the internet daily. To varying extents, COVID-19 has also meant that teaching and learning has had to take place digitally because of school closures and the rotational timetabling model that has been adopted by many schools across the country. Since the beginning of the COVID-19 pandemic we have seen lessons for learners being uploaded on platforms such as YouTube, WhatsApp and Facebook, so learners are spending a substantial amount of time online. It is therefore imperative that guardians of children inform learners of the dangers associated with having social media profiles and interacting with people online, and that they monitor children's online activity where it is appropriate.

The impact of bullying can be very serious for learners who are victims. As can be expected, it has very serious psycho-social consequences for victims. It has been reported that bullying affects the self-esteem and self-confidence of learners. It has also been reported to have a negative impact on learners' participation in class, as well as contributing to learner absenteeism, among other negative consequences. Age, race, gender, disability, class and sexual orientation can be factors that contribute to bullying. According to the TIMMS Report, bullying is correlated with lower performance in mathematics and science.

A workbook on Addressing Bullying in Schools published by the Department of Basic Education and the Centre for Justice and Crime Prevention explains that everyone has a role to play in combating bullying in schools.

1. WHAT SHOULD THE SCHOOL DO TO ADDRESS BULLYING?

Along with school governing bodies (SGBs), schools can adopt anti-bullying policies, which among other things:

- define bullying
- highlight why it is important to address bullying
- explain the responsibilities of different role players
- explain the consequences of bullying and the procedures for addressing bullying.

It is important for schools to have an effective anti-bullying policy; but it is more important that the principal, the SGB and the educators ensure that the policy is implemented to create a school environment that is free from hostile behaviour, and that the learners feel safe.

2. WHAT SHOULD LEARNERS DO IF THEY OR SOMEONE THEY KNOW IS BEING BULLIED?

Learners often feel they cannot speak out about bullying because they are scared it will lead to further or more severe

bullying. That is why it is important for schools to have policies and procedures in place that enable learners to feel safe in reporting incidents of bullying.

A learner who is bullied, or sees someone being bullied, can do the following:

- Report the bullying to an educator. If you do not feel comfortable doing this alone, then speak to someone you feel safe with and who you think is reliable, and ask them to approach an educator with you or on your behalf
- If you feel that your complaint was not taken seriously, you can approach another teacher or the principal
- If you have been bullied or have witnessed bullying, it can be helpful to speak to someone about it. If this is something you would like, you should ask your teacher to help set up counselling sessions for you. Bullying can be very traumatic and have very negative effects on a learner, so it is important that you have someone who can help you work through your experiences.

3. WHAT SHOULD A PARENT DO IF THEIR CHILD IS BEING BULLIED?

- Speak to your child and explain to them that this is not their fault. Reassure them that you love them and that you support them
- Ask them for all the facts and ask them how you can help them
- Speak to your child's educator or to the principal about the bullying.

Sometimes bullying can be so severe that it requires someone to lay criminal charges. South Africa has laws against harassment, assault, the use of weapons, threatening behaviour and damage to property. If the bullying amounts to this behaviour, it is important to report it to the school and to the police. Educators have a legal duty to report the abuse of a child; this will be discussed further on in the chapter.

The Child Justice Act 75 of 2008 deals with the procedures applied to children who have perpetrated a crime. This will also be discussed further on in the chapter.

It is important to understand that threats of violence and verbal assault can also have adverse consequences for learners, and that according to the SAHRC, the 'impact of school-based violence can go beyond the physical harm that arises from violent incidents'.

The psychological impact of threats of violence and verbal assault on learners can include depression, low self-esteem, and feeling isolated, scared or embarrassed. It can cause learners to dislike or want to avoid school.

SCHOOL VIOLENCE STATISTICS

The South African Council of Educators (SACE) is a statutory body that was established to develop and maintain ethical professional standards for educators. All educators are required to register with SACE and abide by its code.

Every year, SACE submits a report containing a breakdown of all the complaints, per province, regarding alleged breaches of the code. In 2018/2019, SACE received 141 complaints of verbal abuse, victimisation, and harassment. SACE received a further 141 complaints of improper conduct, use of improper language, alcohol abuse, insubordination, defamation, intimidation and absenteeism. It reported that during the year, 93 complaints of sexual misconduct and rape were received, and 295 complaints of corporal punishment.

The 2012 National School Violence Study indicated that:

- 13% of learners reported bullying
- 14% of learners claimed to have had someone at school threaten to say something about them that was intended to stigmatise them
- 13.3% of learners reported that they had been forced by someone at school to engage in activities, against their will, that they felt were wrong and that they did not want to engage in
- 12.2% had been threatened with violence by someone at school
- 6.3% had been assaulted
- 4.7% had been sexually assaulted or raped
- 4.5% had been robbed at school.

Save the Children, an independent organisation that advocates for children's rights, has reported that children with disabilities are three to four times more likely to be exposed

to abuse, including physical, emotional and sexual abuse, as well as neglect.

In 2013, the Department of Women, Children and People with Disabilities and UNICEF reported the following:

- One in every five incidents of sexual abuse happens in schools
- One third of people who raped children were teachers
- One in every five boys is a victim to bullying
- Approximately two million learners have experienced some form of violence in schools.

According to the 'General Household Survey (GHS) Focus on Schooling Report' in 2018, 6.6 percent of learners reported that they had experienced violence, verbal harassment or corporal punishment within the preceding three months. Corporal punishment was the most common form of violence reported in all provinces except for the Western Cape.

If these numbers seem low, it is important to keep the problem of underreporting in mind. Learners often feel disempowered or uncomfortable reporting incidents of violence, or are uncertain about how to report them, or do not think they are allowed to speak out.

A more recent report from UNICEF and the Department of Social Development, titled 'Disrupting Harm Study: South Africa', which was released in May 2021, reveals the following:

- In the past year alone, 5.5 percent of learners have been touched sexually by someone at their school without permission
- In the past year alone, 15 percent of learners experienced physical violence (punched, kicked, beaten) at their school
- While 82 percent of learners reported that they have never had to stay home because of bullying at school, 5 percent reported that they have sometimes stayed home to avoid bullying.

This overview chapter and the chapters that follow will address this problem, and provide practical advice and guidance to learners, educators and parents on reporting all types of school violence.

We acknowledge that school violence comes in many different forms, and that the Department of Basic Education and the government have a responsibility to protect learners from all forms of violence. We have chosen to focus on corporal punishment and sexual violence in the following chapter, as they have been identified as systemic problems throughout South African schools and incorporate many aspects of violent behaviour.

SACE, the SAHRC and other public interest organisations frequently receive complaints about these forms of violence. The SACE report concluded that most of the offences they dealt with related to corporal punishment, harassment and sexual misconduct.

LAW AND POLICY

This section sets out the laws, policies and programmes in place to address school violence. It is important that we are aware of what needs to be done, so that we can ensure that all role players meet their legal obligations to ensure the safety of all learners.

INTERNATIONAL LAW

The Convention on the Rights of the Child (CRC) was created internationally to acknowledge the inherent human rights of all children. South Africa ratified the CRC on 16 June 1995. This means that South Africa is obligated to act in accordance with it, and to ensure that our domestic laws are consistent with the provisions of the CRC.

Article 19 of the CRC places an obligation on states to:

"[T]ake all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

In a general comment made by the committee that monitors the implementation of the CRC, it was stated that "[c]hildren do not lose their human rights by virtue of passing through the school gates". The general comment states further that "education must be provided in a way that respects the inherent dignity of the child".

Article 16 of the African Charter on the Rights and Welfare of the Child (ACRWC) provides similar protection. It states that:

"Children should be protected from all forms of torture, inhuman or degrading

treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse."

The CRC and the ACRWC both provide for participation rights for children in procedures and matters concerning them. Children who are at an age or have the personal maturity to form an opinion have the right to express their views and have their views considered in matters affecting them. This applies to children who are victims and/or perpetrators of school violence.

THE CONSTITUTION

Like all the people of South Africa, children are entitled to all the rights set out in the Constitution's Bill of Rights. When children are subjected to violence at school, various rights are violated. These include:

- Section 9: the right to equality
- Section 10: the right to human dignity
- Section 12: the right to freedom and security of the person
- Section 28: the right of the child, which includes
 - The right to be protected from maltreatment, neglect, abuse or degradation
 - That in every matter concerning the child their best interest is of paramount importance
- Section 29: the right to a basic education.

NATIONAL LAWS AND POLICIES

1. THE NATIONAL SCHOOL SAFETY FRAMEWORK

The National School Safety Framework (NSSF) was published by the DBE in 2015. The NSSF is meant to provide a roadmap for districts, provincial education departments, schools, school governing bodies (SGBs), learners and educators to identify, address and prevent school violence.

The general aims of the NSSF are to help schools with comprehending and identifying security threats and violence, to guide schools' responses to security threats and violence, and to create reporting and monitoring systems. The NSSF adopts a 'whole-school approach' to addressing school safety. This approach emphasises that the school is composed of many actors – SGBs, principals, educators, learners, school management teams, caregivers/parents, and the broader community – who need to work together to address school violence.

The NSSF holds that school violence prevention takes place on three levels. Primary prevention includes identifying learners at risk of school violence early on, and putting in place intervention measures before violence occurs.

Secondary prevention includes early intervention and detection of violent behaviour to prevent progression, or to minimise the impact of school violence. Tertiary prevention includes learners showing serious behavioural issues or who have been victimised, and puts in place rehabilitative or therapeutic programmes designed for long-term use. All three levels of prevention must occur together, and schools must ensure that the specific needs of the learners and school are monitored and evaluated, and that interventions are designed to address these needs comprehensively.

The NSSF document sets out a number of minimum requirements for school safety:

- School-level policies and procedures regarding school violence need to be developed and implemented. Learners and all school staff must be aware of the policies and procedures.
- School safety audits must take place annually. Reporting and response systems for school violence should be developed and implemented; these should also be reviewed continually.
- School safety committees should be established.
- School safety and violence prevention plans should be developed annually by the school safety committees.
- Engagement with the community and actors outside the school should occur, where such actors can play a role in addressing school violence.
- Schools must ensure their codes of conduct aim to foster an environment of respect and cooperation.
- Referral systems for school violence should be established.

2. THE CHILD JUSTICE ACT

In South Africa's past, the criminal justice system applied to children was the same as the one applied to adults, which was unduly harsh and punitive to children. In recognition of this, the Child Justice Act was enacted to provide a separate criminal law regime to adults for children accused of committing criminal offences.

The Act recognises that the incarceration of children usually does not have any rehabilitative effect, and is generally against the best interests of the child. The Act aims to divert a child who commits a crime away from the criminal law system, and to use the detention of children "...only as a measure of last resort and for the shortest appropriate period of time". The Act stipulates that the age of the child is an important factor, and that children, even if they have committed a crime, need to be protected and cared for. The Act emphasises restorative justice and ubuntu, while recognising that accountability for wrongdoing is important for rehabilitation and the moral development of children.

The Act provides the following procedure for persons who have committed a crime when under the age of 18:

1. Children under the age of ten:
 - (a) A child under the age of ten does not have criminal capacity according to the Act, and cannot be made subject to arrest or prosecution.
 - (b) A child under the age of ten who has committed an act amounting to an offence must be referred to a probation officer, who must assess the child as soon as possible.

- (c) The probation officer may make the following interventions, none of which imply the child is criminally liable for the offence:
 - (i) Refer the child to the children's court, which is a court established by the Children's Act
 - (ii) Refer the child to counselling or therapy
 - (iii) Arrange support services for the child
 - (iv) Arrange a meeting for the child in which further assessment may take place and a plan of action can be developed
 - (v) The probation officer may also decide not to make any intervention.

2. Children of the age of ten or over:

- (a) A child between the ages of ten and fourteen is presumed to lack criminal capacity. However, the state may prove beyond a reasonable doubt that at the time of the commission of the crime, the child was able to understand the difference between right and wrong and was able to act in accordance with that understanding; in which case the child can be made subject to prosecution.
- (b) If a child is arrested, their parents or guardians must be notified as soon as possible.
- (c) A child over the age of ten who has committed an offence and who is required to attend a preliminary hearing must be assessed by a probation officer before their first appearance.
- (d) After assessment, a preliminary hearing must be held, unless:

- (i) The matter has been diverted in terms of section 6 of the Act;
 - (ii) A child committed an offence between the ages of ten and fourteen, and criminal capacity is unlikely to be proved; or
 - (iii) The matter has been withdrawn.
- (e) Diversion may be considered at a preliminary hearing.
 - (f) If a matter is not diverted the matter must be referred to a child justice court, which may also consider diversion. Diversion means to move the matter involving the child away from the formal criminal justice and court system, dealing with the offence in a more informal manner.
 - (i) A child justice court is '...any court provided for in the Criminal Procedure Act, dealing with the bail application, plea, trial or sentencing of a child.'

The seriousness of the offence committed by a child is an important factor in how the child justice system will deal with the matter. For example, rape or murder will warrant a different response to petty theft. Where a child has committed more than one crime, the most serious crime will guide the proceedings. On 4 June 2020, the President assented to the Child Justice Amendment Act 28 of 2019. Notably, among other changes, the amendments change the minimum age of criminal capacity from ten years to twelve years. The amendments will only take effect at a later, unspecified date.

3. THE CYBERCRIMES ACT

In light of the increasing rate of South Africans using the internet and social

media platforms, this is an important piece of legislation which offers some protection to internet users, including children. This Act was signed into law by the President on 1 June 2021; but like the Child Justice Amendment Act mentioned above, it will only come into operation at a later date.

Sections 14, 15 and 16 of this Act make it a criminal offence to send malicious 'data messages' which:

- incite damage to property or violence,
- threaten people with damage to property or violence; or
- contain intimate (sexual) images which were sent without consent.

A 'data message' is defined in the Act as any message which is created, sent, received or saved electronically. It therefore includes any message sent electronically, including on social media platforms such as WhatsApp and Facebook.

A victim of these offences can lay a charge at a police station, and can also approach a magistrate's court to apply for a protection order. The protection order may direct the perpetrator to stop sharing the harmful message. Any person who is found guilty of contravening section 14, 15 or 16 of the Act may face a fine or imprisonment of up to three years or both.

4. PROTOCOL TO DEAL WITH INCIDENCES OF CORPORAL PUNISHMENTS IN SCHOOLS

In 2017 the DBE published the Protocol to Deal with Incidences of Corporal Punishments in Schools ('the Protocol'), which sets out how corporal punishment of learners in school should be reported. The Protocol aims to enforce guidelines

for provinces, districts and schools on how to manage instances of corporal punishment in schools; but more importantly, with regard to implementing and enforcing its total prohibition. The Protocol emphasises the abolishment of corporal punishment in schools, by outlining the roles and responsibilities of the DBE, provincial departments of education, school governing boards and educators, etc. in eradicating corporal punishment. It further seeks to entrench non-violent methods of discipline in schools by providing a "national framework to standardise the education sector's response to corporal punishment ... in order to empower all stakeholders to respond constructively towards learner ill-discipline".

5. PROTOCOL FOR THE MANAGEMENT AND REPORTING OF SEXUAL ABUSE AND HARASSMENT IN SCHOOLS

This Protocol was developed to outline the management and reporting mechanisms available for incidents of sexual abuse and harassment. It was published to provide schools, districts and provinces with information on how to go about processes of reporting and responding to various forms of sexual assault, whether perpetrated against learners, teachers or any other school staff. All schools in the country have a 'duty of care' towards learners and staff to keep them safe inside and outside the classroom, and to help and support victims of sexual crimes. The Protocol sets out just how a school and employees of the DBE can do this; both step-by-step approaches and measures for dealing appropriately with perpetrators are outlined.

For educators, the national legal framework regarding school violence is set out below.

WHAT EDUCATORS ARE OBLIGED TO DO REGARDING SCHOOL VIOLENCE

MANDATORY REPORTING

While educators have a general duty to “acknowledge, uphold and promote basic human rights, as embodied in the Constitution of South Africa” and to “respect the dignity, beliefs and constitutional rights of learners and in particular children”, there are also more specific duties that are placed on educators with regard to school violence.

Section 110(1) of the Children’s Act states that any educator:

“[w]ho on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.”

This mandatory reporting is a legal duty placed on educators. Failure to report in terms of this section is a criminal offence.

DUTY OF CARE

South African law places a legal duty on certain people to take steps to make sure that other people are not harmed. In *Rusere v The Jesuit Fathers*, a case about a learner who lost vision in one eye after playing a game using grass shoots as arrows, it was acknowledged this obligation exists between schooling authorities and learners.

Section 28(1)(b) of the Constitution states that every child has the right to appropriate childcare when removed from the family environment. In *Hawekwa Youth Camp v Byrne*, a case about a learner on a school camp who fell from a bunk bed and fractured his skull, it was submitted that the Minister of Basic Education acknowledged

that educators owed learners a duty of care, to take reasonable steps to ensure that the learners are safe from risks and dangers.

In the 2002 draft Regulations to Prohibit Initiation Practices in Schools, the Minister stated that “[e]ducators have a duty to care for and protect learners from violence because of their *in loco parentis* status”. *In loco parentis* means ‘in the place of the parent’.

The high courts of South Africa and the Supreme Court of South Africa have repeatedly held (as recently as April 2016) that if a child is under the care and control of the school, the teachers of that school owe the child in their care a legal duty to prevent physical harm. This legal principle was confirmed by the Supreme Court of Appeal in *Pro Tempore v Van der Merwe* 2018 (1) SA 181 (SCA).

In other words, educators are required by law to try to make sure that learners are protected from any acts of violence.

WHAT EDUCATORS ARE PROHIBITED FROM DOING

SOUTH AFRICAN SCHOOLS ACT

Section 10 of the Schools Act prohibits the use of corporal punishment in schools, and states that an educator who administers corporal punishment to a learner is guilty of an offence. It also prohibits the use of initiation practices at schools.

THE EMPLOYMENT OF EDUCATORS ACT, 1998 (EEA)

Section 18 of the EEA states, among other things, that misconduct includes unfairly discriminating against a learner on the basis of race, gender, disability, sex, pregnancy, marital status, ethnic and social origin, colour, sexual

orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution.

The EEA lists the following as acts of serious misconduct:

- committing an act of sexual assault on a learner, student or other employee
- theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports
- having a sexual relationship with a learner from the school where he or she is employed
- seriously assaulting, with the intention to cause grievous bodily harm, a learner, student or other employee
- making a learner or a student perform any of these acts.

The South African Council of Educators (SACE) Code of Professional Ethics

SACE is the professional council for educators, empowered by the South African Council for Educators Act 31 of 2000 to enhance the status of the teaching profession through appropriate registration, management, and instilling a Code of Ethics for all educators. All educators must be registered with SACE and are bound by its code.

SACE’s Code of Professional Ethics states that an educator must:

- refrain from improper physical contact with learners
- refrain from any form of sexual harassment (physical or otherwise) of learners
- refrain from any form of sexual relationship with learners at any school
- not use language or behaviour that is inappropriate in his or her interaction with learners.



The Protection from Harassment Act 17 of 2011 and the Sexual Offences and Related Matters Act 6 of 2012 do not specifically mention educators. However, both these Acts criminalise a wide range of violence. These prohibitions are applicable to educators.

THE CONSEQUENCES OF EDUCATORS COMMITTING SCHOOL VIOLENCE

UNDER THE EEA

Disciplinary hearings can be held when there is an allegation of violence against a learner:

- If an educator is found guilty of misconduct or serious misconduct, the educator can be dismissed.

Sometimes educators who have been dismissed go to the Education Labour Relations Council (ELRC) to determine, based on the facts, if the dismissal was fair.

UNDER SACE

SACE has a prescribed disciplinary procedure that is used when they receive a complaint of an alleged breach of the code. If an educator is found guilty of a breach:

- He or she can be reprimanded or cautioned.
- He or she can be made to pay a fine not exceeding one month’s salary.
- His or her name can be removed from the SACE register, which means that they cannot be employed as a teacher at any school (this can be for a specific period, indefinitely or permanently).

UNDER THE CHILDREN’S ACT

The Children’s Act established the National Child Protection Register.

- Part B of the Register records persons who are found to be unsuitable to work with children.
- Once a person’s name appears on Part B, they may no longer be employed at an institution dealing with children.

UNDER THE SEXUAL OFFENCES AMENDMENT ACT

The Sexual Offences Amendment Act provides for the establishment of the National Register for Sex Offenders.

- This keeps a record of the names of people found guilty of sexual offences against children or mentally disabled people.
- People who employ educators are obligated to check the register to

ensure that an educator is fit to work with children or people with disabilities.

PROVINCIAL PROTECTION

The legislation at the provincial level reflects the national legislation. However, some provinces have gone beyond this and have issued circulars and policies in an attempt to combat violence in schools.

In 2012, the Western Cape Department of Education issued a circular titled ‘Safe School Call Centre – Reporting of School Crime and Abuse’. The KZN Department of Education issued a circular in 2012 titled ‘Measures to Counter Violence, Drug Abuse and Other Forms of Crimes in Public Schools’. KZN has also issued two policy guidelines, the most recent in 2015: ‘Guidelines for the Management of Child Abuse, Neglect and Exploitation for Public Schools in KwaZulu-Natal’.

In 2014 the Gauteng Department of Education issued a circular about the ‘Prohibition of Corporal Punishment in Public Schools’. In 2018, the North West Department of Education hosted a provincial school summit specifically to address issues of safety in schools.

REPORTING INCIDENTS OF SCHOOL VIOLENCE

This section will indicate briefly what steps to take when reporting violence in schools. The chapters that follow will go into more detail about reporting sexual violence and corporal punishment.

LEARNERS

If you or someone you know has been a victim of school violence, it is important to report it. Reporting school violence is necessary; to ensure that the incident does not happen again, that the learner is supported and assisted, and that ultimately, your school is safe. It can be scary or intimidating for a learner to report school violence, so it is often helpful to have someone with you who can support you during this process.

Learners are encouraged to report the incident to a teacher. If the teacher is involved in the violence, you can go to another teacher who you trust, or to the principal, to report the incident. You might feel safer if you tell a parent or caregiver what happened, and ask them to report the matter with you or on your behalf.

When reporting, it is important to give as much information as possible. Sometimes this can be difficult, and you might not feel comfortable sharing everything, but learners are

encouraged to share as many facts as possible, so that the school, police or SACE have enough information to address the problem properly.

School violence has wide-ranging and adverse effects on learners. Getting counselling and speaking to someone about what has happened can often be very helpful. If you need to talk to someone, you can ask a teacher, parent or caregiver to help set up counselling sessions for you.

TEACHERS

As discussed above, there is a legal duty on teachers to report school violence. Use the diagram on the next page to report violence at schools.

PARENTS

Parents should play a very supportive role in addressing any violence that has been committed against their child at school. It is important as a parent to make your child feel safe. You must report any

incidents of violence. You might need to fill out forms with your child and take your child to counselling to ensure they are fully supported during this process.

HOW TO REPORT

The diagram on the next page explains the different reporting mechanisms for school violence. Learners, teachers and parents should take the following steps when reporting school violence:

It is important to remember that all these processes need to be done simultaneously. Different statutory bodies impose different consequences on teachers found guilty of an offence, so we need to ensure that all measures are taken to ensure that guilty teachers are appropriately punished, and that present and future learners are safe.

Learners, parents and teachers are encouraged to report incidents of violence to organisations such as Childline, Lawyers Against Abuse, SECTION27, the Centre for Child Law, the Legal Resources Centre and Equal Education.

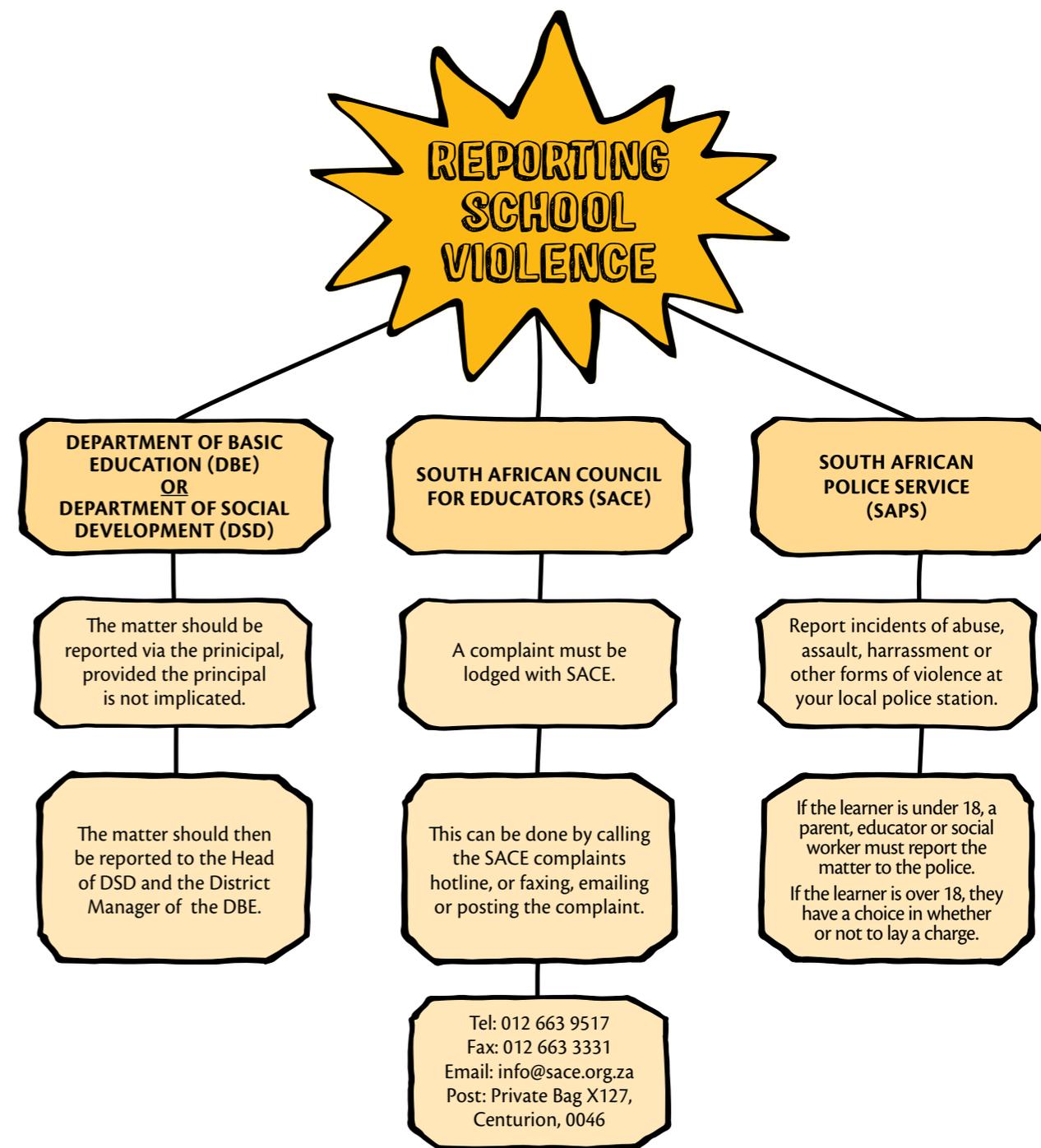


Figure 17.2: The three avenues of reporting incidents of violence in schools.



CONCLUSION

Violence in South African schools is a serious problem, and is caused by a wide range of intersecting factors. Since 1994, South Africa has tried to create a culture of peace, tolerance and respect.

Unfortunately, learners are still exposed daily to physical and psychological violence – and threats of violence.

We have laws in place designed to protect learners. Those who fail to do so can and must be held responsible. 'It takes a village to raise a child', so all members of the village have a duty to ensure that children are protected from harm.

It is also important to deal with violent behaviour from learners while they are still young; because if the behaviour is not corrected early, learners may carry it into adulthood, which may have a negative impact on their ability to form and maintain healthy relationships throughout their lives.

Communities should work together

to promote and encourage non-violence. Schools also have a very important legal duty to create a safe place for children. We all have a role to play, whether it is teaching our children good values and morals, setting a good example, respecting the dignity of children, reporting violence, or supporting learners who have been victims of violence.

“We owe our children – the most vulnerable citizens in society – a life free from violence and fear.” – Nelson Mandela

Tasneem Kathrada is an LLB student and intern at SECTION27, working in the Education Rights Programme.

Motheo Brodie is an LLB graduate from the University of the Witwatersrand, and is currently a Legal Researcher in the Education Rights Programme at SECTION27.

Mila Harding is an LLB graduate from the University of the Witwatersrand, and is currently a Legal Researcher in the Education Rights Programme at SECTION27.

CASES

Hawekwa Youth Camp v Byrne 2009 ZASCA 156.

Minister of Education & Another v Wynkwardt NO 2004 ZAWCHC 1.

Pro Tempore v Van der Merwe 2016 ZASCA 39.

S v Williams and Others 1995 ZACC 6.

Rusere v The Jesuit Fathers 1970 (4) SA 537 (R).

LEGISLATION, POLICY AND GUIDELINES

Children's Act 35 of 2005.

Child Justice Act 75 of 2008.

Child Justice Amendment Act 28 of 2019.

Constitution of the Republic of South Africa, 1996.

Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007.

Criminal Procedure Act 51 of 1977.

Cybercrimes Act 19 of 2020.

Department of Basic Education 'National School Safety Framework', 2015.

Department of Basic Education 'Opening Our Eyes: Addressing Gender-Based Violence in South African Schools – A Manual for Educators', 1998.

Department of Basic Education, 'Protocol for the Management and Reporting of Sexual Abuse and Harassment in Schools', 2019.

Department of Basic Education, 'Protocol to Deal with Incidences of Corporal Punishments in Schools', 2017.

Department of Education 'Regulations to Prohibit Initiation Practices in Schools', 2002.

Department of Basic Education 'Speak Out Youth Report Sexual Abuse: A Handbook for learners on how to prevent sexual abuse in public schools', 2010.

Department of Basic Education and Centre for Justice and Crime Prevention, 'Addressing Bullying in Schools Workbook', 2012.

Employment of Educators Act 76 of 1998.

National Education Policy Act 27 of 1996.

Protection from Harassment Act 17 of 2011.

South African Council for Educators Act 31 of 2000.

South African Council for Educators, 'Code of Professional Ethics', 2017.

South African Council for Educators (SACE), 'How to Lodge a Complaint'.

South African Schools Act 84 of 1996.

International and Regional Instruments

The African Charter on the Rights and Welfare of the Child (ACRWC), 1990.

The Convention on the Rights of the Child (CRC), 1989.

FURTHER READING

Childline, 'Procedures for Reporting Abuse'.

Department of Basic Education, 'TIMSS 2019: Highlights of South African Grade 5 Results in Mathematics and Science', 2019.

Department of Social Development and United Nations International Children's Emergency Fund, 'Disrupting Harm Study: South Africa Research Report', 2021.

E Bornman, R van Eeden & M Wentzel (eds), *Violence in South Africa: A variety of perspectives*, 1998.

P Burton & L Lesoschut, 'School Violence in South Africa: Results of the 2012 National School Violence Study', 2013.

Save the Children, 'Out from the Shadows: Sexual violence against children with disabilities', 2011.

SECTION27, Centre for Applied Legal Studies and Lawyers Against Abuse 'My Teacher Hurt Me: What Should I Do', 2014. Also available in isiZulu, XiTsonga and Sepedi.

S Pahad & TM Graham 'Educators' Perceptions of Factors Contributing to School Violence in Alexandra', (2012) 10(1) African Safety Promotion Journal.

South African Council for Educators, '2018/19 Annual Report', 2019.

South African Human Rights Commission 'Report of the Public Hearing on School-based Violence', 2006.

Stats SA 'General Household Survey (GHS): Focus on Schooling 2018', 2019.

The United Nations Educational, Scientific and Cultural Organisation 'Behind the numbers: Ending school violence and bullying', 2019.

United Nations International Children's Emergency Fund and Department of Women, Children and People with Disabilities, 'The Study on Violence Against Children in South Africa: Special Summary for Teens', 2013.

World Health Organisation & The United Nations International Children's Emergency Fund, 'Early Childhood Development and Disability: A discussion paper', 2012.