CHAPTER 17

SCHOOL VIOLENCE

Tina Power
CONTEXT OF SCHOOL VIOLENCE IN SOUTH AFRICA

Violence was used as a tool of oppression during apartheid, but also as a tool of resistance; and the schooling system segregated black 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 ‘it is regrettable, but undeniable, that since the middle 1980s our society has been subjected to an unprecedented wave of violence’ (S v Williams).

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.

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:

[...]

Basic Education Rights Handbook – Education Rights in South Africa – Chapter 17: School Violence
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. Increased exposure to violence at home or in communities can also influence the prevalence of violence at schools. Violent games and TV programmes can perpetuate the normalisation of the use of violence.

While schools reflect the norms and values of society, they can also be at fault for enabling school violence and failing to prevent it. The use of inappropriate and illegal forms of discipline, such as corporal punishment, sets 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 expect sexual favours from learners in exchange for good grades. Disability, gender, race and sexual orientation can often be factors that lead to violent behaviour. Schools that are mismanaged and lack effective leadership often create spaces for incidences of violence to exist.

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

Present-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, Department of Psychology, Wits

**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.

**FACTORS CONTRIBUTING TO VIOLENCE IN SCHOOLS**

There is no one cause of violence in schools; but rather, several intersecting factors that lead to school violence. The South Africa Council for Educators (SACE) states that ‘school-based violence does not take place in a vacuum, but is rather 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. Increased exposure to violence at home or in communities can also influence the prevalence of violence at schools. Violent games and TV programmes can perpetuate the normalisation of the use of violence.

**INTERNAL INFLUENCES**

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

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, and includes:
  - 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:
  - Applying force to a learner
  - 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 by another learner/learners or an educator, resulting in:
  - 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
  - The ultimate creation of a hostile environment that is counterproductive to learning.

**CORPORAL PUNISHMENT**
- Any deliberate act against a learner to punish or contain him or her that inflicts pain or physical discomfort. This includes, but is not limited to:
  - 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 and shelter
  - Pushing or pulling a learner with force
  - Forcing the learner to do exercise
  - Throwing things – such as a board duster – at a learner
  - Corporal punishment is dealt with in more detail in Chapter 19.

**GANGS**
- A gang is 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**
- Discrimination and gendered or sex-based harassment and violence, rape, femicide, sexual harassment and homophobia.

**HARASSMENT**
- Directly or indirectly engaging in conduct that causes harm or threatens harm. This can include:
  - 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.

**INJURY**
- 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:
  - 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**
- Unwelcome sexual attention, which includes:
  - Suggestive behaviour
  - Messages or remarks of a sexual nature
  - Intimidating or humiliating 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.

**SEXUAL VIOLATION**
- Includes any act which causes direct or indirect contact of:
  - The genital organs, mouth or anus of a learner, and in the case of a female, her breasts
  - The masturbation of one person without their consent
  - Compelling a learner to self-masturbate or watching the masturbation of another person
  - The insertion of 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 mouth of another person.

**VIOLATION**
- Physical harm or damage to person or property.
1. WHAT SHOULD THE SCHOOL DO TO ADDRESS BULLYING?
Schools along with school governing bodies (SGBs) 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 ensure that the school environment 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. This is why it is important for schools to have policies and procedures in place such that learners 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 to do, 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.

Example 4:
A 12-year old learner, who was a non-verbal autistic child, contracted a sexually transmitted infection while at school. The Right to Education of Children with Disabilities Campaign (RTECDC) explained that the absence of protection measures at the school means that this learner still remains out of school.
These examples illustrate how school violence can prevent learners from going to school or participating in school activities. The last two examples also illustrate the vulnerability of learners with disabilities.
The World Health Organization (WHO) explains that children with disabilities are more vulnerable to abuse and neglect than children who do not have disabilities. The WHO explains that there are many factors that contribute to the vulnerability of children with disabilities. These include stigma, powerlessness and social exclusion. The WHO explains that children with disabilities are often regarded as easy targets.
While all learners should always be protected from violence in order for them to receive the education they have a right to, learners with disabilities – who already have difficulty accessing education easily – are even more vulnerable to violence than others.

Example 5:
It is important to understand that threats of violence and verbal assault can also have adverse consequences for learners, and that the impact of school-based violence can go beyond the physical harm that arises from violent incidents (SAHRC). 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.
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 that provides a breakdown of all the complaints, per province, regarding alleged breaches of the code. In 2014/2015, SACE received 86 complaints of verbal abuse, defamation. SACE received 161 complaints of unprofessional conduct, alcohol abuse and absenteeism. It reported that during the year, 94 complaints of sexual abuse and absenteeism were received. and 253 complaints of corporal punishment.

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

- 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 were forced by someone at school to engage in activities, against their will, that they felt were wrong and 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

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 two chapters, as they have been identified as systemic problems throughout South African schools and incorporate many aspects of violent behaviour.

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

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 its domestic laws are consistent with the provisions of the CRC.

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

1. Take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment, including sexual abuse.

The National Education Policy Act of 1996 (NEPA) seeks to facilitate the democratic transformation of the national system of education into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights. This includes those rights listed above. Other national laws can be divided into three broad sections in respect of school violence: what educators must do, what educators must refrain from, and the consequence of failing to refrain from prohibited acts.
WHAT EDUCATORS MUST DO

In 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 who 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 organization, 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 R v The Jesus 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 26(1)(b) of the Constitution states that every child has the right to appropriate care and support removed from the family environment. In Hlakwazi 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 (Pro Tempo v Van der Merwe). In other words, educators are required by law to try and make sure that learners are protected from any acts of violence.

WHAT EDUCATORS ARE NOT ALLOWED TO DO

School South Africans have repeatedly held 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 (Pro Tempo v Van der Merwe). In other words, educators are required by law to try and make sure that learners are protected from any acts of violence.

The Employment of Educators Act, 1998 (EEA)

Chapter 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, cultural, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution.

The EEA lists the following as acts of 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 to, a learner, student or other employee
- Making a learner or a student perform any of these acts.

The South African Council for Educators Code of Professional Ethics states that an educator must:

- Refrain from improper physical contact with learners
- Refrain from sexual or otherwise 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

Temporary/Incapacitation of School Staff

However, both these Acts criminalise a wide range of violence. These prohibitions do not specifically mention educators.

The Protection from Harassment Act 17 of 2011 and the Sexual Offences and Related Matters Act 6 of 2012 do not specifically mention educators.

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This section will indicate briefly what steps to take when reporting violence in schools. The following chapters 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 to ensure that 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 report to another teacher you trust, or to the principal. You might feel safer if you tell a parent or caregiver about the incident, 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, 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 right 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.

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

HOW TO REPORT
This diagram 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 also encouraged to report incidents of violence to organisations such as Childline, Lawyers Against Abuse, SECTION27, Centre for Child Law, Legal Resources Centre and Equal Education.

**HOW TO REPORT**

**REPORTING SCHOOL VIOLENCE**

**DEPARTMENT OF BASIC EDUCATION (DBE) OR DEPARTMENT OF SOCIAL DEVELOPMENT (DSD)**

- The matter should be reported via the principal provided the principal is not implicated.

**SOUTH AFRICAN COUNCIL FOR EDUCATORS (SACE)**

- A complaint must be lodged with SACE.

**SOUTH AFRICAN POLICE SERVICE (SAPS)**

- Report incidences of abuse, assault, harassment or other forms of violence at your local police station.

**The matter should then be reported to the Head of DSD and the District Manager of the DBE.**

**This can be done by calling the SACE complaints hotline, or faxing, emailing or posting the complaint.**

**If the learner is under 18, a parent, educator or social worker must report the matter to the police.**

**If the learner is over 18, they have a choice in whether or not to lay a charge.**

**A complaint must be lodged with SACE.**

**This is done by calling the SACE complaints hotline, or faxing, emailing or posting the complaint.**

**Tel: 012 663 9517**
**Fax: 012 663 3331**
**Email: info@sace.org.za**
**Post: Private Bag X127, Centurion, 0046**
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 to physical and psychological violence – and threats of violence – daily. 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. Communities should work together to promote and encourage non-violence. Schools also have a very important legal duty of creating 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

CONCLUSION

CASE LAW

Pro Tempo v In van der Merwe 2016 (39) SA 565 (SCA); 2016 ZASCA 39.
Hawekwa Youth Camp v Byrne 2010 2 SA 312 (SCA); 2009 ZASCA 156.
Minister of Education & Another v Wynkwart NO (2004) (3) SA 577 (C); 2004 ZAWCHC 1.
S v Williams and Others 1995 (3) SA 632 (CC); 1995 ZACC 6.
Rusere v The Jesuit Fathers 1970 (4) SA 537 (R).

POLICY AND GUIDELINES

Department of Basic Education & Centre for Justice and Crime Prevention ‘Addressing Bullying in Schools’, 2012.

FURTHER READING

Centre for Justice and Crime Prevention School Violence Study (2013).

Tina Power is a former Students for Law and Social Justice Fellow at SECTION27. She is currently serving her articles at the Legal Resources Centre and has been accepted for an LLM in Human Rights Advocacy and Litigation at the University of the Witwatersrand.

INTERNATIONAL LAW


POLICY AND GUIDELINES

Department of Basic Education & Centre for Justice and Crime Prevention ‘Addressing Bullying in Schools’, 2012.

LEGISLATION

Protection from Harassment Act 17 of 2011.
Children’s Act 35 of 2005.
Employment of Educators Act 76 of 1998.
South African Schools Act 84 of 1996.

Basic Education Rights Handbook – Education Rights in South Africa – Chapter 17: School Violence