

## CHAPTER ONE

### ORIENTATION AND BACKGROUND: Invitation to undertake the journey

#### 1.1 INTRODUCTION

*“My dear, I don’t care what they do, so long as they don’t do it in the streets and frighten the horses”* (Madame Beatrice Stella Tanner Campbell, early 20<sup>th</sup> Century British actress).

Rasnic (2001, p. 1) avers that Madame Campbell’s words illustrate the latitude of protection the courts have provided in regard to freedom of expression, particularly in the United States of America (USA), where case law has been compelled to gradually develop the interpretation of this right in the absence of a limitation clause. The question arises as to how widely this statement reflects both the international interpretation of the right to freedom of expression, as well as the interpretation by South Africans of their right to freedom of expression. I have noted similar latitude regarding many incidents in schools concerning the protection school authorities offer learners<sup>1</sup> in regard to the right to freedom of expression,<sup>2</sup> one of which resulted in the suspension of a pupil for wearing a Rastafarian hairstyle.

#### 1.2 BACKGROUND

It is not uncommon to see headlines in newspapers indicating that learners’ right to freedom of expression has been violated, for example: “HRC<sup>3</sup> finds that schoolgirl’s right to freedom of expression was violated” (Ismael, 1999), apropos the suspension of Layla Cassim, a Muslim teenager, who was suspended for displaying her essay regarding the Palestinian issue on the notice board of a school with predominantly Jewish learners.

It is, however, not only the right to freedom of expression that is violated, but learners often endure (verbal) abuse for daring to speak their minds, e.g. “Pupil endured abuse for right to speak her mind” (Sukhraj, 1999). Layla Cassim’s peers blew spit-balls at her during a lesson while she was attempting to concentrate on her work. In a very recent incident Sunali Pillay was obliged to obtain an interim court order to prevent her school from continuing a disciplinary hearing which resulted from her wearing a nose-stud (Broughton, 2005). One could argue that the right to freedom of expression of these learners was violated by school authorities, because the “... teachers were victims of an education system that did not recognise freedom of speech” (Mazibuko, 2002, p. 6). Therefore, educators unknowingly and unintentionally violate the right to

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<sup>1</sup> “Learner” is the term used in South Africa for a “student” or “pupil” attending primary or secondary school.

<sup>2</sup> Section 16 of the Constitution.

<sup>3</sup> Human Rights Commission.

freedom of expression. Educators should be educated on implementing human rights in schools (Anon, 1998a).

In a new school system in a democratic country where human rights should be protected, the right to freedom of expression can be viewed as one of the core rights applied in solving social problems. Therefore, Mr Patrick Lekota, former chairperson of the National Council of Provinces, stated in 1997 that “*dialogue should already start at school level*” (Anon, 1997a, p. 2). The anonymous author indicates that a peaceful society is not one in which everyone always agrees on all issues. The solution lies in communication and not just in exercising one’s own fundamental human rights, like the right to freedom of expression, but also in respecting the rights of others.

It is, however, imperative to understand exactly what a specific human right entails in order to exercise it. Incidents like those mentioned in the media, indicate that learners and other stakeholders are not *au fait* with what their right to freedom of expression entails nor are they certain of how the right should be exercised. I therefore deduce that learners’ lack of understanding of their right to freedom of expression will pose a threat to the implementation of the right and the survival of democracy. Research is essential to determine exactly what learners understand by their right to freedom of expression.

### **1.2.1 Exercising the right to freedom of expression**

Although the cultural and socio-economic background of South Africans is not the major focus of this thesis, a short overview of the nature of South African society will serve as a backdrop for the investigation of fundamental human rights in the newly democratic Republic of South Africa,<sup>4</sup> as the qualitative approach applied here crosses the boundaries “between various institutions and the social and cultural contexts in which they exist, to tell a story of why things happen” (Adler, 1996).

The Republic of South Africa founded in 1961 was governed by a white minority according to an apartheid policy that neither respected nor protected, but rather violated, the fundamental human rights of the majority. The violation of fundamental human rights occurred, amongst others, in the form of repressive laws, arbitrary arrests, detention without trial and harassment by the police (Alston, 2002). In addition, the government controlled the media and denied citizens the right to full access to information by censoring information disseminated through the media, which could be regarded as a form of indoctrination.

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<sup>4</sup> The first democratic elections in the Republic of South Africa took place on 27 April 1994. Prior to this election, when the apartheid regime was in power, the majority of citizens were denied fundamental rights, such as political rights, and were therefore refused the right to vote in elections for any legislative body.

The current position of especially white, Afrikaans speaking South Africans can be understood only against the backdrop of their history and cultural background. The Europeans arrived in the Cape of Good Hope with Jan van Riebeeck's expedition on 6 April 1652 to establish and administer a refreshment and halfway station between Europe and India. During the 17<sup>th</sup> and 18<sup>th</sup> centuries The Netherlands government sent Dutch, German, and French settlers to the Cape to establish themselves at the Cape (Davenport, 1987; Omer-Cooper, 1987; Van Jaarsveld, 1982). Most of these volunteers, like the French Huguenots, grasped the opportunity to gain freedom of religion. Although most Germans belonged to the Lutheran church, the Dutch and the French settlers had a fundamental Calvinistic background.

This diverse European settler population, mainly supporting a Christian Protestant religion, was coaxed into cultural uniformity: "The Afrikaner people, an amalgamation of nationalities came gradually into being during the century after Hendrik Bibault described himself as an 'Afrikaander' in 1707" Davenport (1987). Since Europe was overwhelmingly Roman Catholic and the rights of Protestants there were violated, they sought opportunities to exercise their freedom of religion elsewhere.

The teachings of John Calvin, a French Protestant religious reformer, hold that God is Almighty. This was the basis for the Christian religion practised by many Protestants at the Cape, and is summarised in the Bible text: "Of Him, and through Him, and to Him are all things" (Meeter, 1960). To summarise, one can say that predestination, redemption and regeneration are the work of God by His grace only. In other words, God determines who will receive the gift of salvation. Since one's faith and salvation are thus totally in the hands of the Lord, Calvinism stresses morality. Although one cannot change faith, one must strive to a life of high morality because of one's thankfulness for being chosen. This life of high morality then gives authority to the church over all Christians. Discipline connects the members of the church and also forms the foundation of the church. No Calvinist is exempted from the discipline of the church. Calvinism sees authority as something given to its bearers by God. Anybody who questions or opposes any lawful power resists the ordinance of God.

Such Christians believed that they were instructed in the New Testament not to mix with the heathen, but rather to convert them to Christianity, after which they would be viewed as part of the group. On their travels to America, Africa and the East, the Europeans encountered dark-skinned inhabitants (natives) who, in contrast with themselves, had very little or no formal education and a much lower socio-economic status. This financial, educational and religious

advantage, among other factors, caused the Europeans to regard themselves as more privileged than the natives.

Originally the main difference between people in Cape of Good Hope was whether they were Christian or heathen. All Christians were accepted in the church, regardless of origin. Europeans were allowed to marry natives who converted to Christianity. Legislation as far back as 1678 led to differentiation between people on the basis of religion, distinguishing between Christians and heathens, as well as on socio-economic grounds. No intercourse was allowed between a Christian male and heathen female, i.e. miscegenation was opposed (Van Rensburg, 1982). It is ironic that these very same Europeans, who relocated to a new country to prevent majority groups from violating their human rights and to exercise freedom of religion (Christianity), later developed the policy of apartheid. It is, however, important to point out that they attempted to motivate their philosophy through biblical principles.

White Christians believed that the authority of the church or other high authority was unquestionable. This resulted in whites, influenced by their Calvinist origins, seldom questioning authority. In addition, they failed to exercise a variety of rights, including the right to freedom of expression. One could argue that an elite group was developed with Christianity as prerequisite for being part of society no longer relevant, but instead other values or variables mattered (Meeter, 1960).

In South Africa non-white<sup>5</sup> citizens did not have equal rights compared to whites, and their fundamental rights were severely violated. Non-whites also had no right to freedom of expression<sup>6</sup> and although they were offended and most probably despondent as a result of the situation, they learned not to speak out – those who did, were often imprisoned or banished from their country (Connolly, 2001; Mufson, 1990).

Although it is not my intention to focus on ethnicity, the following information in regard to authoritarianism is pertinent to the research topic. The cultural background of the majority of inhabitants in South Africa still influences the way they deal with their fundamental rights, especially the right to freedom of expression. Although black South Africans comprise of a

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<sup>5</sup> In South African society non-whites were differentiated into three separate groups based on race or skin colour, viz. blacks (the original inhabitants [natives] of the African continent), coloureds (the ethnic group which developed as a “mixed race” when Europeans mixed with the natives at Cape of Good Hope) and Indians (people who arrived in South Africa from India).

<sup>6</sup> Those who tried to speak out and who “fought” for their human rights, were banished and had to live in exile or spend their lives in prison on charges of terrorism, as did Nelson Mandela, the first president of the democratic Republic of South Africa.

number of ethnic groups, each with its own culture and customs, Ramagoshi (2003) indicates that the culture and customs of all these groups are basically the same.

The traditional culture of the black South African is characterised by respect and obedience toward authority and the elderly. Hoernlé (1946, p. 14) notes that the early history of black South Africans, shows an “ordered group-life, with reciprocal rights and duties, privileges and obligations, of members, determining behaviour-patterns for each individual member toward other members, and moulding the feelings, thoughts, and conduct of members according to these patterns, so that it is only in and through them that the individual can achieve his personal self-realisation and participate in the satisfaction offered by the life of his community”. Sebahwane (1993) points out that South African black societies are traditionally patriarchal. Unlike schools in most western countries, many rural secondary schools in South Africa (and other Southern African countries) used to have far more male than female educators (Davies, 1990; Sebahwane, 1993). In many ethnic groups, women and children traditionally have no rights reflected in customary law (Steyn, 1999). Children are regarded as adults only after the successful completion of initiation rites in a traditional initiation school.

The rights of blacks were often violated in South Africa prior to 1994. They were not treated as equal to whites and did not have the same right to just administrative action. Although there is a well-documented history of rebellion, resistance and oppression in South Africa where the right to freedom of expression was used under the auspice of liberation and black consciousness movements (also in the form of expressing opposition to policies and practices in many ways) (Connolly, 2001; Karis & Gerhart, 1997; Motlhabi, 1988; Mufson, 1990 ),there was not a general government-led culture that enhanced or respected the right to freedom of expression. The apartheid society bred an oppressed culture of people that would rather not speak out, for fear of arrest or assault or they had to speak out “behind the scenes” (Gerhart, 1997; Mufson, 1990).

During the Soweto riots of 1976 when the government attempted to enforce the teaching of certain subjects through the medium of Afrikaans, black learners were urged to challenge the government and to speak out against the violation of their rights. They were encouraged to challenge authority and to break the silence enforced by their tradition and the system, and they spoke violently in public, using hate speech to achieve their aims. On 16 June 1976 a sector of society challenged the government when a large crowd of learners gathered in Soweto to protest against this enforcement of existing legislation. Policemen fired into the crowd and killed several youths, including thirteen-year-old Hector Pieterse (Hopkins & Grange, 2002). These young people sacrificed many rights in attempting to achieve their aims e.g. the burning down of their

schools. They also used hate speech to achieve their aim - at the time that was the only way they could speak out in public in South Africa.

Alston (2002) finds that the implementation of the right to freedom of expression in South Africa is affected among others, by culture, group identity and dependence. The political background and history, as well as socio-cultural development in South Africa, created a society, that even in a new democracy, does not know how to speak out and to exercise the right to freedom of expression. The rigid and repressive system of the apartheid regime became a way of life that was not easy to accept and the influence of the apartheid tradition cannot be underestimated: "The normative prescriptions implied by the idea of 'tradition' derive from the ways in which people appeal to an image of their past to give legitimacy to presently preferred beliefs and practices" (Spiegel & Boonzaier, 1988, p. 56). Human rights in former black schools are currently being researched by Dumisani Mkhize at the University of KwaZulu-Natal and his research will contribute toward the debate from an African perspective.

Since the implementation of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution), South African citizens have generally become more aware of their protected and entrenched fundamental rights. Furthermore, the Calvinist-orientated population tends to make less use of the Calvinist Christian doctrine as basis for decisions. The urbanisation of rural South Africans has also alienated them from their traditions and customs (Finlayson, 1984). One should, however, be alerted to the fact that the notion of human rights in theory, differs from the reality. International human rights instruments and the Constitution spell out a utopia toward which citizens must strive. The application of such instruments and constitutions, however, does not guarantee the smooth implementation of the human rights. When dealing with human rights there will always be a tension between the intention in theory and the reality of implementing the human rights (Joubert & Beckmann, 2001).

In the new democratic South Africa, many black learners attend former 'whites only' schools. This multi-cultural, ethnic and racial interaction serves to alert learners to the fact that their own traditional culture and customs are not the only 'correct' ones. Learners either still fail to use their rights, e.g. freedom of expression, as a result of their traditional beliefs, or, if they become accustomed to the fact that they can exercise rights, they become defensive and absolutise the rights. They appear to be unaware that rights imply a responsibility not to violate the fundamental rights of others. In light of this, it is imperative to investigate learners' understanding of the right to freedom of expression. If learners' understanding of this right could be gauged, policy makers would be able to ensure that the exercising of the right occurs within the parameters of legislation

without infringing the rights of other stakeholders and will be able to indicate to learners when and how the right should be limited.

Traditionally, because of a general authoritarian culture, a tendency exists for the majority of people in South Africa to remain silent, rather than to speak out and to use the right to freedom of expression. Nowadays, because of the culture of human rights and rapid social transformation (Steyn, 1999), people are confused about using the right to freedom of expression. Some clearly do not know what it entails or how (or even that) it can be used. It is important to investigate in this research what learners understand under the right to freedom of expression.

### **1.3 AIM**

The aim of this research is to determine learners' understanding specifically of the right to freedom of expression.

### **1.4 RATIONALE**

The intention of the Universal Declaration of Human Rights (UDHR), which was proclaimed in 1948 is to ensure that all human beings "shall enjoy freedom of speech and belief and freedom from fear as common people of the world" ("UDHR", 1948, preamble). Since human rights should be protected by the rule of law, the nations of the world agree through this preamble that the right to freedom of expression is the core of a democracy and individual freedom. It was in this preamble that I discovered the purpose for writing this thesis. If it is agreed that the right to freedom of expression is the core of individual development and democracy, it is important to determine learners' (the leaders of tomorrow) understanding of this right, as the violation of the right to freedom of expression could lead to the violation of a whole range of human rights.

In the past, South African learners were indoctrinated by the culture of Calvinistic and cultural acceptance and taught total acceptance of authority. Learners were not aware of the fact that they had fundamental human rights and that they were denied those rights. It would have been regarded as unmannered to speak out against an educator<sup>7</sup> or any other figure of authority. The change in this regard was brought about on 27 April 1994, when South Africa became a full democracy and the new democratic government accepted the Constitution with the Bill of Rights, which entrenches human rights and for the first time in the history of South Africa, the human rights of all citizens were now protected and people realised that they too have human rights.

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<sup>7</sup> "Educator" is the term used in South African legislation for primary and secondary school teachers.

I anticipated, however, that these human rights would cause people to absolutise them, as they were not familiar with the interpretation or implementation of the rights. My assumption was based on disciplinary problems, critical incidents and even court cases reported in the media (Anon, 1998c; "Antonie", 2002; Broughton, 2005). The school curriculum needed to be transformed to develop critical thinking and to teach young citizens to function responsibly in a democratic society in which human rights are entrenched and protected (Anon, 1997c; Jansen & Christie, 1999; Schoeman, 2003; Tiley & Goldstein, 1997; Van der Horst & McDonald, 2003). To this end the South African government implemented an outcomes-based education (OBE)<sup>8</sup> approach.

This is in direct contrast with the previous culture of total acceptance of authority. In a society where learners were taught neither to question authority nor to use freedom of expression, critical thinking was discouraged. It became necessary to change the teaching/learning approach to develop citizens' skills for effective participation in a democracy (see § 4.2.1.3) as the old curriculum was based on the retention of information. Tiley and Goldstein (1997, p. 6) argue that "... the previous [education] system did not help people learn to make sound, compassionate judgements in a changing world". Since the new South African government was aware of the importance to develop critical thinking, the education system was changed from an educator centred system where the educator was believed to possess all the knowledge while the learners had none, to a learner centred system based on the assumption that learners possess knowledge and an ability to learn through discovery (Anon, 1996). The importance of the learner centred approach is highlighted in the preface to the policy for the foundation phase: "... education within the formative years follows an integrated child centred approach in which the learner is developed holistically" (Anon, 1997b, p. iii). This new curriculum is skills-orientated and applicable in practice. The curriculum prior to 1994 emphasised diversity in regard to race, class and gender and had to be restructured to enhance the values and principles of the new democracy. The report of the ministerial committee for development on the National Qualifications Framework (NQF), *Lifelong learning through a national qualifications framework* (NQF, 1996), emphasises the need for a paradigm shift as prerequisite for the realisation of the vision of democracy.

South Africa transformed its government from a government of the minority, which violated the rights of the majority, to a full democracy. The preamble to the Constitution states that the Constitution was adopted to "lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law" ("Constitution of the Republic of South Africa", 1996). It is also stated in section 1 of the

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<sup>8</sup> Total implementation of the new curriculum was originally planned for 2005 – hence the name Curriculum 2005.

Constitution that “[t]he Republic of South Africa is one, sovereign, democratic state ...” (“Constitution of the Republic of South Africa”, 1996).

People who were indoctrinated over a number of decades could not be expected to change their attitudes overnight. Newspaper articles and critical incidents indicate that even now, in the eleventh year of democracy, South African citizens are not *au fait* with the protection of human rights and many are still not aware of their rights under the Constitution. The more people hear or read about their rights, the more aware they become of such rights. The tendency for people to exercise their rights while neglecting to balance the scale in regard to the concomitant responsibilities, often results in incidents which sometimes lead to court cases.

When focusing on schools, one must pay attention to the ethos and basic moral values of society as these moral values become the force behind the momentum and aim of society. In terms of the Constitution, South Africa is founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms;
- (b) Non-racialism and non-sexism; and
- (c) Supremacy of the Constitution and the rule of law (“Constitution of the Republic of South Africa”, 1996, section 1).

These are the values that ought to underpin the actions of citizens in South Africa, and therefore also pertain to education in this country. It is imperative when dealing with every stakeholder to be guided by this value system. There should also be equality in dealing with all stakeholders to protect the human rights and freedoms<sup>9</sup> of all citizens. In regard to the right to freedom of expression<sup>10</sup> in schools, one should note that all the stakeholders, i.e. the learners, educators and parents are entitled to this right. Since there is a continuous mutual interaction and interrelationship between the stakeholders, the exercise of the right to freedom of expression would need to be balanced against the rights of other stakeholders. Accordingly people should also be aware of the human rights of others in order not to violate them.

The violation of human rights under the previous government in South Africa and the fact that children (learners) had no right to speak out against authority is significant for this research which focuses on determining learners’ knowledge in regard to and their understanding of the right to freedom of expression. Although all people, also learners, have the right to freedom of expression, the law regards children (learners) as minors with limited capacity and limited *locus*

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<sup>9</sup> Section 1(a) of the Constitution.

<sup>10</sup> Section 16 of the Constitution.

*standi in iudicio*<sup>11</sup> (Bondesio, Beckmann, Oosthuizen, Prinsloo, & Van Wyk, 1989) (see § 4.2.3.1). Learners do not have full legal capacity, are not accustomed to having rights and were brought up in a culture of remaining silent and not questioning authority. It is imperative to gauge learners' knowledge and understanding of the right to freedom of expression, as this research will serve not only as an indication for learners on how to improve their right to freedom of expression, but will also be informative to parents, educators and policy makers.

In a democracy it is important for every partner to participate in every decision and to respect the rights of all stakeholders. In a democracy every voice should be heard. It is therefore important to protect the right to freedom of expression, since everyone should be free to express themselves without fear of the consequences, within the parameters of section 16 of the Constitution.

As minors children need to be guided in the school situation to exercise not only their fundamental rights, but also to deal with their obligations and responsibilities adequately in a democratic society. The purpose of education is to assist learners to develop the necessary skills. Human rights can be respected within a democracy, which can be enhanced by critical thinking, for which the right to freedom of expression is a prerequisite.

## 1.5 THEORETICAL FRAMEWORK

Vithal and Jansen (2001) state that a theoretical framework is a “well-developed, coherent explanation for an event”. This study will focus on learners' understanding of the right to freedom of expression, which is a human right that is entrenched in the Bill of Rights in chapter 2 of the Constitution. The investigation of any legal topic in South Africa should occur within the framework of the Constitution as the Constitution is the supreme law in South Africa and all other law, e.g. national legislation or subordinate legislation, is to be judged according to the Constitution in a court of law (Bray, 2000a; Van Vollenhoven, 2003). The Constitution is also prescriptive on the interpretation of human rights in the Bill of Rights. It is in these requirements for the interpretation of the Bill of Rights that my theoretical framework is anchored. In terms of the Constitution:

- (1) When interpreting the Bill of Rights, a court, tribunal or forum:
  - a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - b. must consider international law; and
  - c. may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

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<sup>11</sup> Place in the eye of the law.

- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill ("Constitution of the Republic of South Africa", 1996, section 39).

It is imperative to have knowledge of international law and a clear understanding of foreign law when making decisions or researching any field that involves law. In practice, case law has developed legal principles that are used as common law tools to guide practitioners to interpret and implement the law practically, as intended by statutory law. Hence the research of the understanding of learners' right to freedom of expression, should take place against this theoretical backdrop. Figure 1.1 comprises a visual representation of the theoretical framework for this research.

## **1.6 RESEARCH DESIGN**

The research design will now be highlighted to orientate the reader regarding the expectations and methodology for this journey. The journey aims to explore only a single phenomenon, namely learners' understanding of their right to freedom of expression. However, various working premises and assumptions guide the inquiry.

### **1.6.1 Research question**

What is learners' understanding of their right to freedom of expression?

### **1.6.2 Qualitative research premises and assumptions**

My working premises are that some learners:

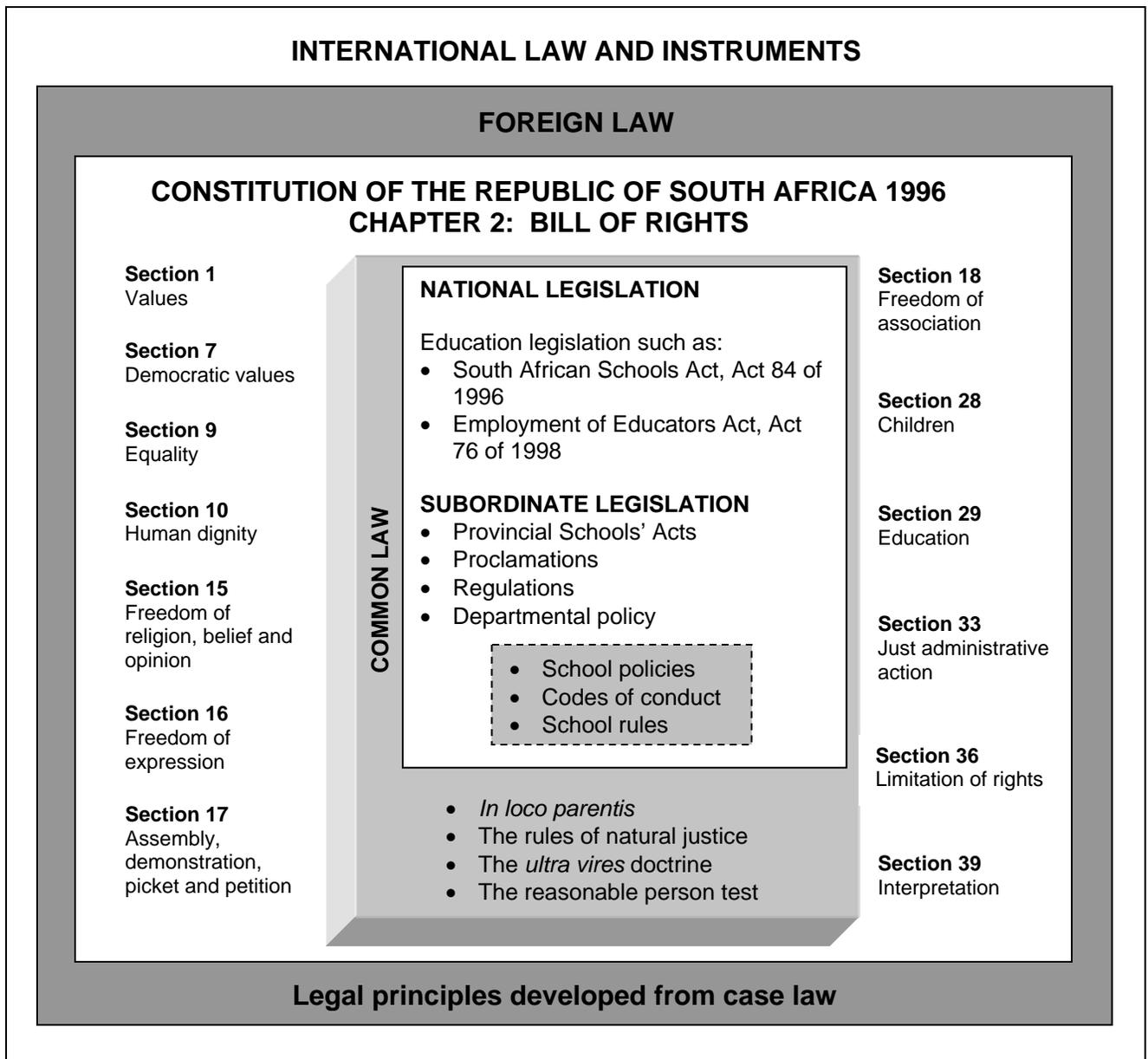
- (1) have limited knowledge of their right to freedom of expression; and
- (2) do not know how to exercise their right to freedom of expression.

In terms of the first premise I assume that most learners would:

- (1a) know that the right to freedom of expression entails the spoken word;
- (1b) know that the right to freedom of expression entails the written word; and
- (1c) not know that the right to freedom of expression entails symbolic or creative expression.

In terms of the second premise I assume that most learners would:

- (2a) tend to absolutise the right to freedom of expression; and
- (2b) not know how to limit the right to freedom of expression.



**Figure 1.1:** Visual representation of theoretical framework depicting the relationship between human rights within international law, foreign law and national legislation [adapted from Joubert and Prinsloo (2001, p. 28)]

### 1.6.3 Methodology

I shall now give a summary of the methodology chosen for this research. This will guide the participants on the journey of understanding; make them aware of my basic assumptions, epistemological stance, my approach to the research, as well as the strategies and data collection instruments. This will enable them to prepare themselves to accompany me on a journey toward understanding.

### **1.6.3.1 Knowledge claim**

While I view science as a search to understand a phenomenon, I believe that there is no single truth to be discovered. People give meaning to 'own truth' in their search to understand phenomena. I therefore view knowledge from the basis of two epistemological theories, viz. interpretivism and postmodernism (see § 2.3).

Furthermore, knowledge does not 'belong' only to the authoritative voice of the expert, but values the subjective and multiple voices of individuals who view the world holistically. All people construct meaning from information (interpretivism) in a world in which the truth can be regarded as a dynamic reality, which changes over time (see Human Rights in § 3.2.2).

As I shall conduct my study according to the interpretive paradigm, I shall construct my own understanding from the understanding with which the respondents construct their reality. While the right to freedom of expression is clearly entrenched in the Constitution, everyone attaches an individual, subjective meaning to the interpretation of this right. Court cases are therefore necessary to ensure harmony. While assuming that learners give their own interpretation to this right, understanding their understanding of this right will enable authorities and managers to formulate and implement policies to ensure greater harmony between learners and school authorities and to be pro-active in avoiding possible court cases.

### **1.6.3.2 Approach**

As I am researching fundamental human rights, I shall use the traditional law method of research (Russo, 1996). Since this research will be conducted under the auspices of a Faculty of Education, I shall combine the traditional law methods with the research methodology used in the human sciences. Qualitative research will be done in terms of the literature review based on an in-depth literature study, including articles and case law relating to the research problem (see § 2.2).

In assuming that multiple realities are social constructs created by individuals and society, a qualitative approach will assist in determining learners' understanding of the right to freedom of expression, which in turn will help managers and policy makers develop more learner centred policies.

### **1.6.3.3 Inquiry strategies**

I shall use a hybrid case study as strategy of inquiry as I do not intend to research a full case study by for instance, focusing on a specific school or learner (see § 2.6). As no single learner or school will be studied, i.e. the limitation of the hybrid case study is the selection of a single topic,

viz. learners' understanding of their right to freedom of expression. Due to purposive sampling the boundary was extended to grade 11 learners in the five sampled schools in the Gauteng Province (see § 2.8).

#### **1.6.3.4 Methods of data collection**

My methods of data collection can be divided into three phases (see § 2.10). In phase 1 I shall use structured, open-ended questionnaires. In phase 2 I shall conduct five open-ended semi-structured, focus-group interviews in order to determine why learners are unable to exercise their right to freedom of expression.

In order to ensure rich data collection I intend conducting an in-depth interview with the plaintiff in *Antonie v. Governing Body, Settlers High School, and Others 2002 (4) SA 738 (C)* to enable me to glean a detailed view from a learner who experienced a court case because she believed that her right to freedom of expression had been violated. This in-depth interview should produce rich data because it will be on a one-to-one basis.

### **1.7 DATA ANALYSIS PROCEDURES**

I shall use Atlas.ti™, a computer-aided qualitative data analysis software programme (CAQDAS), to aid the analysis of multiple data. The data from each research phase will form a hermeneutic unit<sup>12</sup> (see § 2.13), thus resulting in three complete hermeneutic units, which will be available in the format of HTML files on the CD-ROM included with this thesis (see addenda A, B and C).

The three phases (see § 1.6.3.4 and § 2.10) of data collection will ensure thick and rich data. The amalgamation of the questionnaires, focus group interviews as well as an in-depth interview will add depth, breadth and insight. The in-depth phase will help to crystallise the data and findings of the first two phases (see §.8.1). The varied data collection methods will afford multiple perspectives. The use of a sequential procedure will assist to expand the findings from one phase to the following phase and will also allow me to change questions and foci as required.

### **1.8 LIMITATIONS OF THE RESEARCH**

Research dealing with learners' understanding of their right to freedom of expression should be an inclusive study of the entire South Africa, cover all education sectors and focus on all races and ethnic groups. Since such a study would be time-consuming, I have decided to focus only on the public school sector in one province. Unfortunately private schools are not included here. It can be anticipated that the outcome in regard to private schools will differ slightly from that

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<sup>12</sup> A hermeneutic unit is a unit of transcribed data which is managed by Atlas.ti™.

regarding public schools as the existence of private schools *per se* is already a break away from the traditional authoritative school system.

I shall not focus on the highly interesting and information rich sector of higher education, but only on grade 11 learners, i.e. the further education and training phase. The reason for this choice is that these learners are more advanced than learners in grade 1 to 9 in terms of their discretion and decision-making skills. Despite their maturity in certain respects, grade 11 learners are minors with a lack of *iudicium*<sup>13</sup> (Davel, 2000).

Despite the limitation I intend to research a diverse school system, including former black and white urban and rural schools, to ensure a sample representative of the total population of South Africa.

### **1.9 SIGNIFICANCE OF THIS STUDY**

Since I am aware that the implementation of freedom of expression could pose challenges to school managers in regard to balancing the rights of all learners, I shall focus on learners' understanding of the right to freedom of expression, as this may alert authorities to learners' expectations and perceptions regarding the right. As the right encompasses such a wide spectrum of nuances, I shall focus on learners' understanding of their right to symbolic and artistic freedom of expression, i.e. their understanding of the right to freedom of expression, which includes their understanding of their grooming, dress, jewellery and artistic creativity.

This research is also intended to assist authorities to understand learners' understanding of the right to freedom of expression and to guide them to, *inter alia*, develop appropriate policies, to ensure that this right is respected and balanced correctly, and to prevent court cases.

### **1.10 RELIABILITY AND VALIDITY**

The three-phase data collection will not only help to crystallise the data, but will also increase the reliability and validity of the data. If the data from phase 1 in which the questionnaire is used as data collecting instrument, correlates highly with data from phase 2 in which the focus group interview is used, and these two phases correlate with the data in phase 3 in which the in-depth interview is used, concurrent validity will be achieved (Cohen, Manion, & Morrison, 2000). Although the purpose of qualitative research is not to generalise, I suspect that I shall be able to generalise in context some facets of the three phases, which will enhance the reliability of the data (Adler, 1996). If I manage to generalise some issues or themes from the three phases of data collection, this will further enhance the validity of the data. The way the data is captured,

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<sup>13</sup> Judgement or discretion.

analysed and presented, i.e. so that all evidence, as well as the structuring and crystallisation of the data is available to the reader, will enhance the reliability, validity and trustworthiness of the data.

In addition, a final report based on the participants' perusal and verification of the transcribed data from phase 2 and phase 3, will further enhance the validity.

### **1.11 DELIMITATION**

I shall not be able to research all the provinces of South Africa or the private school sector. The foundation phase, the intermediate phase and the senior phase have also been excluded. Only the understanding of the right to freedom of expression of learners in grade 11 (further education and training phase) will be researched. I have neither planned to examine the right to freedom of expression of educators, nor the right to freedom of expression in the higher education sector. A learner is here defined as a person receiving a (public) school education.

### **1.12 ITINERARY FOR THE JOURNEY TOWARD UNDERSTANDING**

Chapter 1:	Introduction and orientation	Invitation to the journey
Chapter 2:	Research design and methodology	Planning the journey
Chapter 3:	Human rights	The logistics of the journey
Chapter 4:	Freedom of expression	Packing ... the journey begins!
Chapter 5:	Case law	Speeding and appearing in court
Chapter 6:	Data analysis	First glimpses of the destination
Chapter 7:	Data analysis	Becoming acquainted with the environment
Chapter 8:	Data analysis	Crystallising the events of the journey
Chapter 9:	Conclusions	Reflecting on the journey toward understanding

### **1.13 SUMMARY**

The right to freedom of expression of learners in South African schools is often violated. I therefore propose an in-depth study to determine learners' specific understanding of the right to freedom of expression. The authoritarian life view based on different historical and social backgrounds, has resulted in people in South Africa being unaccustomed to exercising the right to freedom of expression or respecting those who do exercise the right. In a democracy in which human rights are internalised, learners should understand exactly what it means to exercise the right to freedom of expression, i.e. that the right is not absolute and that it has an inherent limitation and can also be balanced in terms of section 36 of the Constitution. This research aims

to determine learners' understanding of the right to freedom of expression and will conclude with findings and recommendations to address issues, which may be identified during the research journey.

In the next chapter I shall discuss the research design and methodology as guide to the rest of the journey.