

ADDENDUM D: QUESTIONNAIRE FOR PILOT STUDY

VRAELYS

FASE 1:

1 Volgens artikel 16 van die Grondwet van die Republiek van Suid-Afrika, het almal 'n reg tot **vryheid van uitdrukking**.

1.1 Wat beteken **vryheid van uitdrukking** vir jou?

1.2 Wat dink jy mag jy alles doen onder die beskerming van jou reg tot **vryheid van uitdrukking**?

1.3 Wat dink jy sal jy toegelaat word om te doen (of nie te doen nie) by die skool onder jou reg tot **vryheid van uitdrukking**?

Addendum E: Posing Questions for the Focus-group Interview (Phase 2)

Phase 2: Posing Questions

Scenario 1:

Jonathan is a grade ten pupil at Achievement High School. He was suspended from school because he wears a golden sleeper in his left ear. The Code of Conduct for learners specifically mentions that girls are allowed to wear a golden stud or sleeper in their ears. Jonathan is suing the school for infringing his right to freedom of expression.

Posing questions:

- 1 Do you think Jonathan will have a strong case in the court?
Discuss.

Scenario 2:

Bianca is a grade eleven learner at New Life Secondary School. She embraced the principles of the Rastafarian religion. She, in line with this religion, grew her hair in dreadlocks and covered her hair with a cap. Although she knew that this was not the way to wear hair to school, she asked permission from the principal to do this. Believing her right to freedom of religion and expression was infringed; she attended school wearing a navy cap because this matched the prescribed school colours. The navy cap covered her dreadlocks. Bianca was suspended for five days for serious misconduct because she disobeyed the Code of Conduct for learners and disrupted the school. The Code of Conduct stipulates that hair should be neat and tidy. It did not specifically mention the growing of dreadlocks or the wearing of headgear.

- 1 According to section 4.5.1 of the schedule, issued by the ministry of Education, which deals with guidelines for consideration of SGBs in adopting a code of conduct for learners:

“Freedom of expression is more than freedom of speech. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles”

Would the schedule support Bianca’ argument in court that her right to freedom of expression was violated by the school?

- 2 Do you think the school violated Bianca’s right to freedom of expression?
- 3 Do you think the school can legally limit Bianca’s right to freedom of expression? Give reasons for your answer.

Scenario 3:

Riverside High School's ethos is based on Christian principles. They have a very strong Christian religion association where learners can freely participate in prayer and worship ceremonies during break time. The members of this association wear a badge on their uniform to witness to fellow learners.

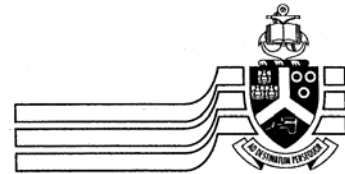
Rebotile, a grade eight learner, was suspended from school for wearing a badge on her uniform to promote Satanism. She sues the school claiming that her right to freedom of expression was violated.

- 1 Do you think the school may allow the wearing of only badges for the Christian organisation?
- 2 Do you think Rebotile has a strong case in the court?
- 3 What do you think would be the best precaution that the school can take in order to prevent being sued for cases like this?

Addendum F: Posing Questions for the In-depth Interview (Phase 3)

In depth interview with the plaintiff in Antonie v Governing Body Settlers High School, and others

- 1 In looking back at the court case, do you think it was worthwhile going through the whole ordeal?
- 2 Although you primarily felt that your right to freedom of religion was violated, was your right to freedom of expression also violated?
- 3 Why do you think that your right to freedom of expression should be protected?
- 4 Was your right to freedom or expression / religion not in contrast with the ethos of the school?
- 5 Do you think it would be fair to limit learners' right to freedom of expression?



Universiteit van Pretoria

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Faks (012) 362-5168 / 362-5190
<http://www.up.ac.za>

Fakulteit Opvoedkunde
Skool vir Opvoedkundige Studies
Departement Onderwysbestuur en Beleidstudie

Addendum: G Parents' Consent Form

Geagte Ouer

Ek is 'n voltydse dosent in die Fakulteit van Opvoedkunde se Departement van Onderwysbestuur en Beleidstudie by die Universiteit van Pretoria.

My vak is Onderwysreg. Ek is tans besig met my doktorale studies. Die titel van my skripsie is: ***“Learners’ understanding of their right to freedom of Expression.”***

Vir fase 1 van my data-insameling moet 'n gr 11-klas van 5 geïdentifiseerde skole, vraelyste invul.

Vir fase 2, gaan ek met 8, gr 11 leerders per skool 'n fokusgroeponderhoud voer en vir fase 3 sal ek met 1 of 2 leerders per skool 'n persoonlike onderhoud voer.

Die doel van die studie is eerstens om my studies te voltooi maar ook om vir beleidmakers aan te dui wat skoliere onder hulle grondwet beskermde mensereg van vryheid van spraak verstaan. Die inligting mag beleidmakers help om proaktiewe beleid in plek te stel om sodoende te verseker dat leerders se reg tot vryheid van spraak nie in skole geskend word nie.

Die skole en name van respondente is vertroulik en sal nêrens in my tesis vermeld word nie.

Geliewe asseblief die toestemmingsbrief te voltooi, sodat u kind aan die projek mag deelneem.

Willie van Vollenhoven
Departement Onderwysbestuur en
Beleidstudie

Toestemmingsbrief vir data-insameling

Hiermee gee ek,, IDouer/voog
van toestemming dat hy/sy aan die projek mag
deelneem.

| | Ja | Nee |
|-----------|-----------|------------|
| In Fase 1 | | |
| Fase 2 | | |
| Fase 3 | | |

Geteken te op hierdie dag van
..... 2004.

.....
Handtekening van ouer/voog



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Faculty of Education
School of Educational Studies
Department of Educational Management
and Policy Studies

Addendum G: Parents' Consent Form

26 April 2004

Dear Parent

RESEARCH PROJECT

I am a fulltime lecturer in the Faculty of Education in the Department of School Management and Policy Studies at the University of Pretoria. My field of study is Education Law. Currently, I am busy with my doctoral studies. The title for my thesis is: *Learners' understanding of their right to freedom of expression*.

My data will be collected from five identified secondary schools and will be done in three phases.

- In phase 1, a whole Grade 11 register class will complete a questionnaire
- In phase 2, I will conduct a focus-group interview with eight of the learners, and
- In phase 3, I will conduct a personal interview with two of the learners.

The aim of the study is firstly to complete my PhD but secondly to indicate to policy makers and legislators what learners in schools understand currently under this constitutional protected right. This will help legislators to be pro-active in writing policies in order to ensure that learners' right to freedom of expression will not be violated at schools and also to indicate to school authorities how this right can legally be balanced in a schools situation without the threat of a court case against them.

The names of the schools and the respondents will be totally confidential and respondents will participate anonymous.

Please complete the consent form and return it to the school.

Kind regards

Willie van Vollenhoven
082 872 3782

CONSENT FOR DATA COLLECTION

I,, ID parent of
..... in Grade 11 hereby give
my consent that he/she may participate in the research project.

| | Yes | No |
|---------|------------|-----------|
| Phase 1 | | |
| Phase 2 | | |
| Phase 3 | | |

Signed at on this day of
..... 2004.

.....
SIGNATURE OF PARENT

Addendum H: Interpretation of Quantitative data (Question 1.5 from Phase 1)

Phase 1: Section 2

This section of Phase 1 consists out of eleven questions where respondents only had to answer yes or no. After asking in section1 what they understand under the right to freedom of expression, without supplying to them the different types of expression, the aim of this section is to confront them with the whole spectrum of things that fall under the right to freedom of expression and to determine if they think they will be allowed to do or not to do certain things under the protection of the right to freedom of expression at school. I will look at the statistics of these questions one by one in a quantitative manner before interpreting them with section1.

Question1

A learner may **say** what he/she wants to say at school:

Yes: 46 No: 42

51,7% of the respondents indicated that you may say what you want under your right to freedom of expression at school while 47,2% disagree. This gives an indication that some learners tend to think that the right to freedom of expression is absolute, although almost half of the learners disagreed, which indicates that they know that the right to speak can be limited. The deduction from this data is that learners do know that they can speak their mind verbally under the right to freedom of expression. About half of the respondents think that this right is absolute, while the other half knows that the right can be limited. This responds totally with the data from Phase 1 section 1

Question2

A learner may **write** what he/she wants to write at school:

Yes: 40; No: 47

44,9% of the respondents indicated that they may write anything at school, while 52,8% respondents disagreed. Here the run up is also very close as with the previous question. Interesting, though is the fact that almost 45% say that they may write anything, while more than half knew that the right to write anything is limited. One should have expected that there would be a good relation between question 1 and 2. Although the percentages

do not vary that much, it is fascinating that more learners seem to think that the right to write anything would rather be limited than the right to speak your mind.

Question 3

A learner may **wear** any **headgear** to school:

Yes: 9; No: 80

10,1% of the respondents indicated that you are allowed to wear headgear to school while 89,9% disagreed. The respondents are clear about the fact that the wearing of headgear to school will definitely be limited. This data also responds with Phase 1 section1, as only one respondent indicated in Phase 1 section1 that you may wear religious attire under your right to freedom of expression. It is only 10% who believe that religious attire will be protected at school under your right to freedom of expression. The majority (90%), however, state that your right to freedom of expression does not allow you to wear religious attire at school.

Question 4

A learner may **wear** any **jewellery** to school:

Yes: 7; No: 82.

7,9% of the respondents indicated that they may wear any jewellery to school while 92,1% disagreed. As far as jewellery concern, the learners indicated that this right will be limited at school. This data is very equal to the previous point of religious attire. Respondents indicated that religious attire and jewellery will not be accepted under the right to freedom of expression. 2% more respondents will, however, rather limit the right to wear jewellery than limiting the wearing of religious attire. This is already an indication that learners might think that the right to freedom of expression will rather not be limited if it is connected to religion.

Question 5

A learner may wear any **hairstyle** to school:

Yes: 24; No: 64

27% of the respondents indicated that they may wear any hairstyle to school, while 71,9% disagreed. Although almost three quarters of the respondents indicated that the right to wear any hairstyle would also be limited at school, it is not as overwhelming as with the wearing of headgear and jewellery.

Question 6:

A learner may have **tattoos** anywhere he/she wants to at school:

Yes: 13; No: 75

14,6% respondents agreed that learners may have tattoos anywhere at school, while 84,3% disagreed. By far also the most learners indicated that the right to have tattoos at school will also be limited. Interesting is the fact that although more learners think that this right would rather be limited as the right to wear any hairstyle, less learners tend to think that the right to wear a tattoo would be limited than the right to wear headgear or jewellery.

Question 7:

A learner may **wear any clothes** at school:

Yes: 6; No: 82

6,7% respondents agreed that you may wear anything to school, while 92,1% disagreed. Learners basically agree that the right to wear anything at school will be limited.

Question 8:

A learner may have any **slogan** on his/her **satchel**:

Yes: 30; No: 58

33,7% of the respondents agreed that you may have any slogans on your satchel, while 65,2% disagreed. Although not all agreed on this one, there is a tendency to think that your right to write any slogan on a satchel will also be limited. Interesting is the fact that a third do not think that this right will be limited.

Question 9:

A learner may have any **slogan** on his **clothes** at school:

Yes: 25; No: 64

28,1% of respondents indicated that you may have any slogans on your clothes at school, while 72% disagreed. Although this question (as expected) corresponds with the previous one, one note that a few more respondents think that the right to write a slogan on your clothes will rather be limited than writing slogans on your satchel. The reason for this could be that they feel that the satchel is their personal belonging where although their school uniform is also, it is prescribed to them.

Question 10:

A learner may **disseminate any information** at school:

Yes: 38; No: 51

42,7% of the respondents indicated that they may disseminate any information at school, while 57,3% disagreed. Here, again the run-up was very close, but it seems that although learners are not too sure they seem to think that one will not be allowed to disseminate any information at school. A substantial amount of respondents, however, believe that they may disseminate any information at school without being limited.

Question 11:

A learner may receive any information he/she wants to receive at school:

Yes: 70; No: 19

78,7% of the respondents indicated that they are allowed to receive any information that they want to receive at school, while 21,3 % disagreed. Very fascinating here is that almost 80% agreed that you may receive any information at school and only 20% think that the right to receive any information will be limited at school. One would have expected this to correspond with the previous question but it seems that learners think that they may not disseminate any information at school, yet they may receive any information at school.

ADDENDUM I: QUESTIONNAIRE

PHASE 1:

1 According to section 16 of the Constitution of the Republic of South Africa, everyone has a right to **freedom of expression**.

1.1 What does **freedom of expression** mean to you?

1.2 What do you think you are allowed to do under the protection of your right to **freedom of expression**?

1.3 What do you think are you allowed to do at school under your right to **freedom of expression**?

1.4 What do you think you are not allowed to do at school under your right to **freedom of expression**?

1.5 Do you think that you are legally allowed to do the following under your right to **freedom of expression**?

A learner can:

| | | YES | NO |
|----|--|-----|----|
| 1 | say what he/she wants to at school | | |
| 2 | write what he/she wants to at school | | |
| 3 | wear any head gear to school | | |
| 4 | wear any jewellery to school | | |
| 5 | wear any hairstyle to school | | |
| 6 | have tattoos anywhere he/she wants at school | | |
| 7 | wear any clothes to school | | |
| 8 | have any slogan on his/her satchel | | |
| 9 | have any slogan on his/her clothes | | |
| 10 | disseminates any information he/she wants to | | |
| 11 | receive any information he/she wants to | | |

Addendum J: Official Research Application GAUTENG DEPARTMENT OF EDUCATION



RESEARCH REQUEST FORM

REQUEST TO CONDUCT RESEARCH IN INSTITUTIONS AND/OR OFFICES OF THE GAUTENG DEPARTMENT OF EDUCATION

1. PARTICULARS OF THE RESEARCHER

| 1.1 | Details of the Researcher | |
|-----|---|-----------------------------------|
| | Surname and Initials: | Van Vollenhoven |
| | First Name/s: | Willem Johannes |
| | Title (Prof / Dr / Mr / Mrs / Ms): | Mr |
| | Student Number (if relevant): | 79 1994 8 (personnel no: 2520443) |
| | ID Number: | 601117 5050 008 |
| | Gender (Male/Female): | Male |

| 1.2 | Private Contact Details | |
|-----|-------------------------|--------------------------------------|
| | Home Address | Postal Address (if different) |
| | 849 Church Street | PO Box 11096 |
| | Arcadia | Hatfield |
| | Pretoria | Pretoria |
| | | |

For Official Use

Ref. No.

| | |
|--|-------------------------|
| <i>Postal Code:0083</i> | <i>Postal Code:0028</i> |
| <i>Tel: (012)420 3340</i> | |
| <i>Cell: 082 872 3782</i> | |
| <i>Fax: (012) 420 3581</i> | |
| <i>E-mail:wvollen@postino.up.ac.za</i> | |

2. PURPOSE & DETAILS OF THE PROPOSED RESEARCH

| | | |
|------------|--|---|
| 2.1 | Purpose of the Research (Place cross where appropriate) | |
| | <i>Undergraduate Study - Self</i> | |
| | <i>Postgraduate Study - Self</i> | X |
| | <i>Post-Doctoral Study</i> | |
| | <i>Private Company/Agency – Commissioned by Provincial and/or National Government Department/s</i> | |
| | <i>Private Research by Independent Researcher</i> | |
| | <i>Non-Governmental Organisation</i> | |
| | <i>National Department of Education Commissioned Study</i> | |
| | <i>Commissions and Committees</i> | |
| | <i>Independent Research Agency</i> | |
| | <i>Statutory Research Agency</i> | |
| | <i>Independent Study by Higher Education Institution</i> | |

| | | | |
|------------|--|----------------|------------------|
| 2.2 | If Post-Graduate Study – Please indicate by placing a “X” in the appropriate column | | |
| | <i>Honours</i> | <i>Masters</i> | <i>Doctorate</i> |
| | | | X |

| | |
|------------|---|
| 2.3 | Full title of Thesis / Dissertation / Research Project |
| | Learners’ understanding of their right to Freedom of Expression in South Africa |
| | |
| | |

| | |
|------------|--|
| 2.4 | Value of the Research to Education (Attach Research Proposal) |
| | This will emphasize the importance to get policies pro-actively in place so that learners would know in advance how there right to freedom of Expression can be limited. See the proposal at no 8. |
| | |
| | |

| | |
|--|---|
| 2.5 | Student and Postgraduate Enrolment Particulars (if applicable) |
| <i>Name of institution where enrolled:</i> | University of Pretoria |
| <i>Degree / Qualification:</i> | PhD |
| <i>Faculty:</i> | Education |
| <i>Department:</i> | Education Management and policy studies |
| <i>Name of Supervisor / Promoter:</i> | Prof J Beckmann |

| | |
|---------------------------------------|------------------------------------|
| 2.6 | Employer (where applicable) |
| <i>Name of Organisation/School:</i> | University of Pretoria |
| <i>Position in Organisation:</i> | lecturer |
| <i>Head of Organisation:</i> | Prof Pistorius |
| <i>Street Address:</i> | Lynnwood Road |
| | Pretoria |
| <i>Postal Code:</i> | 0002 |
| <i>Telephone Number (Code + Ext):</i> | (012) 420 2902 |
| <i>Fax Number:</i> | (012) 420 3581 |
| <i>E-mail:</i> | jbeckman@hakuna.up.ac.za |

| | |
|------------|---|
| 2.7 | PERSAL Number (where applicable) |
|------------|---|

| | | | | | | | |
|---|--|--|--|--|--|--|--|
| - | | | | | | | |
|---|--|--|--|--|--|--|--|

3. PROPOSED RESEARCH METHOD/S

(Please indicate by placing a cross in the appropriate block whether the following modes would be adopted)

3.1 Questionnaire/s (If Yes, supply copies of each to be used)

| | | | |
|-----|---|----|--|
| YES | X | NO | |
|-----|---|----|--|

3.2 Interview/s (If Yes, provide copies of each schedule)

| | | | |
|-----|---|----|--|
| YES | X | NO | |
|-----|---|----|--|

3.3 Use of official documents

| YES | | NO | X |
|---|--|----|---|
| <i>If Yes, please specify the document/s:</i> | | | |
| | | | |
| | | | |

3.4 Workshop/s / Group Discussions. (If Yes, Supply details)

| YES | | NO | X |
|-----|--|----|---|
| | | | |
| | | | |
| | | | |

3.5 Standardised Tests (e.g. Psychometric Tests)

| YES | | NO | X |
|--|--|----|---|
| <i>If Yes, please specify the test/s to be used and provide a copy/ies</i> | | | |
| | | | |
| | | | |
| | | | |

4. RESEARCH PROCESSES

4.1 *Types of Institutions.* (Please indicate by placing a cross alongside all types of institutions to be researched).

| INSTITUTIONS | Mark with "X" here |
|--|--------------------|
| <i>Primary Schools</i> | |
| <i>Secondary Schools</i> | X |
| <i>Technical Schools</i> | |
| <i>ABET Centres</i> | |
| <i>ECD Sites</i> | |
| <i>LSEN Schools</i> | |
| <i>Further Education & Training Institutions</i> | |
| <i>Other</i> | |

4.2 *Number of institution/s involved in the study.* (Kindly place a sum and the total in the spaces provided).

| Type of Institution | Total |
|--|----------|
| <i>Primary Schools</i> | |
| <i>Secondary Schools</i> | 5 |
| <i>Technical Schools</i> | |
| <i>ABET Centres</i> | |
| <i>ECD Sites</i> | |
| <i>LSEN Schools</i> | |
| <i>Further Education & Training Institutions</i> | |
| <i>Other</i> | |
| GRAND TOTAL | 5 |

- 4.3 **Name/s of institutions to be researched.** (Please complete on a separate sheet and append if space is deemed insufficient).

| Name/s of Institution/s |
|---|
| <i>Hoerskool Eldoraigne</i> |
| <i>Pro Arte</i> |
| <i>Lyttelton Manor Secondary School</i> |
| <i>Pelindaba Secondary School</i> |
| <i>Gatang Secondary School</i> |
| |
| |
| |
| |

- 4.4 **District/s where the study is to be conducted.** (Please mark with an “X”).

| District | |
|---------------------------|---|
| <i>Johannesburg East</i> | |
| <i>Johannesburg South</i> | |
| <i>Johannesburg West</i> | |
| <i>Johannesburg North</i> | |
| <i>Gauteng North</i> | |
| <i>Gauteng West</i> | |
| <i>Tshwane North</i> | |
| <i>Tshwane South</i> | X |
| <i>Ekhuruleni East</i> | |

| District | |
|------------------------|--|
| <i>Ekhuruleni West</i> | |
| <i>Sedibeng East</i> | |
| <i>Sedibeng West</i> | |

| If Head Office/s (Please indicate Directorate/s) |
|--|
| Not applicable |
| |
| |
| |

NOTE:

If you have not as yet identified your sample/s, a list of the names and addresses of all the institutions and districts under the jurisdiction of the GDE is available from the department at a small fee.

4.5 *Number of learners to be involved per school. (Please indicate the number by gender).*

| Grade | 1 | | 2 | | 3 | | 4 | | 5 | | 6 | |
|---------------|---|---|---|---|---|---|---|---|---|---|---|---|
| <i>Gender</i> | B | G | B | G | B | G | B | G | B | G | B | G |
| <i>Number</i> | | | | | | | | | | | | |

| Grade | 7 | | 8 | | 9 | | 10 | | 11 | | 12 | |
|---------------|---|---|---|---|---|---|----|---|----|----|----|---|
| <i>Gender</i> | B | G | B | G | B | G | B | G | B | G | B | G |
| <i>Number</i> | | | | | | | | | 20 | 20 | | |

4.6 **Number of educators/officials involved in the study.** (Please indicate the number in the relevant column).

| Type of staff | Educators | HODs | Deputy Principals | Principal | Lecturers | Office Based Officials |
|---------------|-----------|------|-------------------|-----------|-----------|------------------------|
| Number | 0 | 0 | 0 | 0 | 0 | 0 |

4.7 **Are the participants to be involved in groups or individually?** Please mark with an “X”.

| Participation | |
|------------------------|---|
| Groups (Phase 1 and 2) | X |
| Individually (Phase 3) | X |

4.8 **Average period of time each participant will be involved in the test or any other research activity** (Please indicate time in minutes)

| Participant/s | Activity | Time |
|---------------|--------------------------------|------|
| learners | Phase 1: Questionnaires | 30 |
| learners | Phase 2: Focus group interview | 90 |
| learners | Phase 3: Interviews | 30 |

4.9 **Time of day that you propose to conduct your research.** Please mark with an “X”.

| School Hours | During Break | After School Hours |
|--------------|--------------|--------------------|
| | | X |

4.10 **School term/s during which the research would be undertaken.** Please mark with an “X”.

| First Term | Second Term | Third Term |
|------------|-------------|------------|
| | X | X |

DECLARATION BY THE RESEARCHER

- 1. I declare that all statements made by myself in this application are true and accurate.**
- 2. I have read and fully understand all the conditions associated with the granting of approval to conduct research within the GDE, as outlined in the GDE Research Briefing Document, and undertake to abide by them.**
- 3. Should I fail to adhere to any of the approval conditions set out by the GDE, I would be in breach of the agreement reached with the organisation, and all privileges associated with the granting of approval to conduct research, would fall away.**

Signature:

Date:

| DECLARATION BY SUPERVISOR / PROMOTER / LECTURER | |
|--|---|
| <i>I declare that: -</i> | |
| <ol style="list-style-type: none"> 1. <i>The applicant is enrolled at the institution / employed by the organisation to which the undersigned is attached.</i> 2. <i>The overall research processes meet the criteria of:</i> <ul style="list-style-type: none"> • <i>Educational Accountability</i> • <i>Proper Research Design</i> • <i>Sensitivity towards Participants</i> • <i>Correct Content and Terminology</i> • <i>Acceptable Grammar</i> • <i>Absence of Non-essential / Superfluous items</i> | |
| Surname: | Beckmann |
| First Name/s: | Johan |
| Institution / Organisation: | University of Pretoria |
| Faculty: | Education |
| Department: | Education Management and Policy Studies |
| Telephone: | (012) 420 2902 |
| Fax: | (012) 420 3581 |
| Cell: | 082 570 1825 |
| E-mail: | jbeckman@hakuna.up.ac.za |
| Signature: | |
| Date: | |

N.B. This form (and all other relevant documentation where available) may be completed and forwarded electronically to Ebrahim Farista (ebrahimf@gpg.gov.za) or Nomvula Ubisi (nomvulau@gpg.gov.za). The last 2 pages of this document must however contain the original signatures of both the researcher and his/her supervisor or promoter. These pages may therefore be faxed or hand delivered. Please mark fax - For Attention: Ebrahim Farista at 011 355 0512 (fax) or hand deliver (in closed envelope) to Ebrahim Farista (Room 911) or Nomvula Ubisi (Room 910), 111 Commissioner Street, Johannesburg.

Addendum K: Research Proposal

PhD RESEARCH PROPOSAL

**LEARNERS' UNDERSTANDING OF THEIR RIGHT TO
FREEDOM OF EXPRESSION IN SOUTH AFRICA**

WILLEM J VAN VOLLENHOVEN

Faculty of Education

Department of Education Management and Policy Studies

University of Pretoria

Groenkloof Campus

Tel (012) 420 3340

Fax (012) 420 3581

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RESEARCH PROPOSAL

1 TITLE

Learners' understanding of their right to freedom of expression in South Africa.

2 BACKGROUND

It is not uncommon to see headings in newspapers indicating that learners' right to freedom of expression is violated, for example:

"HRC finds that schoolgirls' right to freedom of expression was violated" (Ismael, *The Sunday Independent*, 19 September 1999:1), when she, Layla Cassim, a Muslim teenager, was suspended for pinning her essay on the Palestinian issue on the school notice board.

It is however not only learners' right to freedom of expression that is violated, but they are also abused when speaking out.

"Pupil endured abuse for right to speak her mind" (*Sunday World*, 26 September 1999:6). Layla's peers blew spitballs at her during the middle of a class while she was concentrating on her work. One can argue that learners' right to freedom of expression is violated by school authorities because the "present teachers were victims of an education system that did not recognise freedom of speech" (*Sowetan*, 4 June 2002:6).

In a new school system of democracy in a country where human rights should be protected because they are explicitly entrenched in the Constitution, the right to freedom of expression can be viewed as one of the core rights to solve social problems. Therefore, Patrick Lekota, chairperson of the National Board of Provinces, stated in 1997 that "*dialogue should already start at schools level*" (*Die Volksblad*, 23 July 1997:2). He added that a peaceful society does not mean everyone to always agree on everything.

The solution lies in communication and not only exercising one's fundamental human rights like 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 these mentioned in the newspapers, indicate that learners are not *au fait* with what their right to freedom of expression entails and how this right should be exercised. It, is therefore, necessary to conduct research to determine exactly what learners understand under their right to freedom of expression.

South Africans are not used to exercising their right to freedom of expression

In investigating any fundamental human right in the young democratic Republic of South Africa¹ it is necessary to give a short overview of the anthology and nature of the South African society.

After the Republic of South Africa was founded in 1961, a white minority governed it. The majority of black South Africans did not have any voting rights. In fact, this government was known for its policy of Apartheid and the fundamental human rights of the citizens were neither protected nor respected, but were violated, in many ways.

A small coterie of white South Africans were in power during the apartheid era. In order to understand the significance of the white South Africans, especially the white Afrikaans speaking South Africans, one needs to focus on their culture and historical background. The white man arrived in Cape of Good Hope with Jan van Riebeeck on 6 April 1652. He was sent to the southern point of Africa by the Dutch East India Company (DEIC) to establish and run a refreshment halfway base for ships on their way between Europe and India or the East (Davenport, 1987:22, Omer-Cooper, 1987:18, Van Jaarsveld 1982:39). The single reason why the DEIC sent Van Riebeeck to the Cape of Good Hope was to supply sailors with fresh water, vegetables and meat to reduce the casualties and losses

¹ The Republic of South Africa had its first democratic elections on 27 April 1994. Prior to this election, when the Apartheid regime was in power, the majority of citizens were denied their fundamental rights such as political rights and were therefore refused to vote in any elections for any legislative body.

from scurvy. Although Parsons (1994:57) maintains that the reason for the Cape settlement was an effort to control trade between the Atlantic and Indian Oceans, it can be argued that the settlement of white Europeans on the southern point of Africa never had it as purpose to establish a colony.

However, the DEIC committed itself to a policy of establishing a colony when some of the Company's servants were allowed the freedom to establish private farms. During the seventeenth and eighteenth century, the Netherlands sent Dutch, German, and French to the Cape to establish themselves at the Cape (Davenport, 1987:22; Omer-Cooper, 1987:19 and Van Jaarsveld, 1982:41). Many volunteers arrived in Cape of Good Hope to join in the development of this new country that of course was offering them several opportunities. Most of these volunteers grasped this opportunity to gain freedom of religion. Although most Germans belonged to the German Lutheran church, the Dutch and the French refugees had a Calvinistic background. Most sources state that more Germans arrived in the Cape than Dutch people (Davenport, 1987:22; Omer-Cooper, 1987:19, and Van Jaarsveld, 1982:41) while others state that the Dutch people were the most (Parsons, 1994:57). They all agree with the fact that all the settlers adopted Dutch as their language and became members of the Dutch Reformed church. This diverse European settler population was thus coaxed into cultural uniformity, as Davenport (1987:23) states: "The Afrikaner people, an amalgamation of nationalities came gradually into being during the century after Hendrik Bibault described himself as an 'Afrikaander' in 1707." These white Europeans were from the Christian Protestant religion. While Europe was overwhelmingly Roman Catholic and the Protestants were violated, they were looking for better opportunities where they could exercise their freedom of religion - in fact the French refugees fled their country to be free to practise their Protestant religion.

In order to understand the underlying influence of Calvinism, it is vital to refer briefly to its philosophy. Calvinists stress their belief in God the Almighty. According to Meeter (1960:63) the life view of Calvinists is summarized in the Bible text, "Of Him, and through Him, and to Him are all things." Steele and Thomas (1967:16-17) summarize the

Calvinistic philosophy in five points which are important for this study to get an overall view of the base of this philosophy.

- **Total inability or total depravity**

The sinner is bound by his/her evil nature. Salvation through faith is a gift from God and not something that you can contribute to.

- **Predestination**

God chose certain individuals for salvation before the foundation of the world. The sinner can actually do nothing to change his/her faith. "Thus God's choice of the sinner, not the sinner's choice of Christ, is the ultimate cause of salvation (1967:16).

- **Particular redemption**

Christ's redeeming work and His crucifixion and resurrection were intended to save only those sinners chosen before the foundation of the earth.

- **The efficacious call of the spirit**

Although there is an outward general call to salvation, the Holy Spirit extends a special inward call to the elect that brings them to salvation inevitably.

- **Perseverance of the saints**

The chosen are kept in faith by God and thus persevere to the end.

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 be recipients of 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 or perhaps for if by any change one would have been one of those chosen. This life of high morality actually then gives authority to the church over all Christians. Discipline connects the members of the church. This discipline also forms the ligaments of the church. No one was 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.

Meeter quotes (1960:cover) Rev. Peter van Tuinen on the front cover of his book on Calvinism to emphasize the impact of this philosophy on the totality of men:

The Calvinist believes that when God saves men, He saves the whole man. The whole man must, therefore, be devoted to God's cause. Not only when he is at church, but when he is transacting business, or engaging in political or social activities of any sort. No sphere of his life may be excluded. Life as a whole must be God-directed. Politics, social and industrial relations, education, science and art must all be God-centred. No domain of life in which high morals are not essential! God must control the whole life. Not only individual but social ethics as well is stressed.

Calvinism can thus be viewed as an all-comprehensive system of thought or world- and life view. God is sovereign and therefore the Calvinist sees God behind all phenomena and in everything that occurs. Therefore, the Calvinist seems not to use its right to freedom of expression, since they are not allowed to question authority per se. The Calvinist in fact has no right to claim but rather privileges given to them by the Lord's mercy.

The Christian is told in the New Testament not to mix with the heathen but rather to convert them to Christianity. After their conversion to Christianity, they would be viewed as part of the group. The Europeans who had gone to America, Africa and the East found atheists with darker skins. These Europeans who had the financial backup of their governments, lived a higher socio-economic standard than the native inhabitants. Most

Europeans also had a better formal education than the native inhabitants. All these factors (and more) led to the fact that as time passed, the Europeans (whites) thought of themselves as being better creatures, and being more privileged than the native (sic).

Originally the only difference between people in Cape of Good Hope was whether you were a Christian or a heathen. Christians were all accepted in the church (whether you were European or a native) and an European was allowed to marry a native once the native became a Christian. However, the differentiation between Christian and heathen and between having a higher socio-economic lifestyle led to legislation as far back as 1678 that sex between a Christian male and heathen female was not allowed. Four years later this was changed to the wording that miscegenation should be opposed (Van Rensburg, 1982:45). It is ironic that these white Europeans who moved to a new country to exercise their freedom of Christianity devolved the policy of Apartheid in need of surviving and to save their positions from the majority by violating their human rights. It is, however important to point out that they were really looking for and giving motivation for their philosophy in the depth and principles of the Bible and their religion. As this differentiation between people escalated, the more people's fundamental rights were violated. As the white Christian believed that the authority of the church or anyone higher up in the hierarchy is unquestionable they believe that their actions were also beyond questioning by those lower down in the hierarchy. This led to the scenario that whites, so indoctrinated by their Calvinist background, never questioned their authority; thus did not exercise a variety of rights including their right to freedom of expression. Whether one was a Christian did not have any relevancy anymore.

At the same time, all non-white² citizens in the Republic of South Africa had no equal rights compared to whites and their fundamental rights were violated, they were also not

² "Non-whites" in the South African society were basically differentiated into three separate groups based on race or the colour of one's skin. It refers to blacks (the original inhabitants [natives] of this continent), coloureds (the ethnic group who developed as a "mixed race" when the Europeans who arrived from Europe mixed with the natives at Cape of Good Hope), and Indians (referring to the people who arrived in South Africa from India).

given the right to freedom of expression.³ Although non-whites were offended and surely despondent with the situation, they learned not to speak out. This would only devolve into worsening the situation, or getting thrown into jail or banned from the country and their beloved.

At this point, it is also important to briefly discuss the social and cultural background of the black South Africans because they are the majority of inhabitants in South Africa and their cultural background influences the way they deal with their fundamental rights, especially their right to freedom of expression. Although the black South African population can be divided into different ethnic groups with their own culture and customs, Ramagoshi pointed out in an interview that the culture and customs of all these groups are basically the same with smaller variations in the way it is applied. It is also not the intention of this research to focus on the differentiation of ethnicity.

The traditional culture of the black South African is also one of respect and obedience towards authority and the elder. Hoernlé (1946:14) noted that there was an “ordered group-life, with reciprocal rights and duties, privileges and obligations, of members, determining behaviour-patterns for each individual member towards 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”. So for instance, the father in the Zulu culture is seen as the patriarch. Certain parts of the hut and homestead were considered his and women (Hunter,1961:36) but specifically children were not allowed there (Raum, 1973:86). Similarly Ramagoshi points out that the Xhosa hut was separated into a section for males and one for women. Also the speech and gesture of women and children are limited in this culture. When children are with their parents in the same hut, they are only allowed to speak when they are addressed. When adults discuss serious affairs children have to leave the hut. The child is not allowed to argue or pass remarks when given an order by its parents. A son should

³ Those who tried to speak out and “fought” for their human rights, were banned and had to live in exile or spend their life in jail for terrorism as our former and first president of the Democratic Republic of South Africa, Nelson Mandela.

only talk to his father by using a “go-between” (Finlayson, 1982:18; Kriel, 1991:27). Girls should lower their eyes at any person of authority. A married woman will also express her respect for her husband by speech avoidances. She is also forced to avoid syllables occurring in her husband's family's names (Finlayson, 1982:18). Kriel (1991:27) notes that after the bride's family has received the labola,⁴ she is bound to her husband and his family for life.

That this “tradition” still has a deep influence on the modern generation is clear when looking at the research that Van der Vliet conducted in 1982 concerning Xhosa marriages. The men, although modern, still believed that they had the traditional authority. Some respondents stated: “Xhosa tradition is that the man is always the boss. His word is final, that's the custom. The Xhosa do not like a henpecked man. He's seen as stupid.” “I am the boss. At times, I let my wife have a say, but at times I stand up and show her that I am a Xhosa man. I have found with my wife, and with Xhosa woman in general, if you let her do things her way she doesn't care about you.” And “ The women do not like the husband to be boss, especially the educated ones, but in the long run it has to be like that. The husband has the final word.” Under the Xhosa there definitely was a strong patriarchal trend traditionally, which, according to Van der Vliet (1982: 223) still exists in modern marriages. Sebakwane (1993:84) points out that South African black societies are traditionally characterised by a patriarchal culture. This still has an influence in modern society. Unlike most western countries some rural secondary schools, in South Africa and other Southern Africa countries, have far more male educators than female (Davies, 1990:62; Sebakwane, 1993:85).

In the eyes of these different ethnic groups, not only the women but also the child has traditionally basically no rights. A child would be regarded an adult after successfully attended initiation school. Before graduation at the initiation school, the boy is not allowed to take decisions. It is basically the king with his councillors who decide when there would be an initiation school. Only after successful graduation from the initiation

⁴ Marriage goods which are provided by the groom and his family to the bride's family as gesture of goodwill.

school, he is allowed to get married, but even in this serious decision he does not have much of a say. Only after the king has chosen his new bride to be from the initiation group, the rest of the graduates can make their choices. This choice should only be from the group of graduates or if you have been promised to marry a younger person who has not yet been to initiation school, the young lad has to wait till such time occurs. Even after making one's choice; the choice should be discussed with one's uncle who would negotiate with the parents of the young lady.

It is evident that before the successful completion of initiation school, a child has basically no rights or say at all and even had to accept the bride chosen or negotiated for him by others. He is not allowed to speak out against it. This strict authoritarian hierarchy and the violation of one's right to freedom of expression is evident in the fact that children were not allowed to eat with adults, nor were women allowed to eat with men.

Respect for authority can also be seen in the fact that a kraal-head must not be addressed before he has greeted the visitor. Nobody is allowed to address his/her seniors without their express permission. It is regarded disrespectful to answer back when reprimanded by a senior or to participate in a conversation between members of an older generation.

Only men were allowed in the kgotla (palace) where "court cases" were decided. Women and children had no say in public and no right to freedom of expression.

Alston (2002: 378) finds that the implementation of the right to freedom of expression in South Africa is affected by culture, group identity and dependence. The background and history of the political as well as social cultural development in South Africa thus created a society that even in a new democracy does not know how to speak out and to exercise their right to freedom of expression. That the influence of the tradition can not be diminished is clear as Spiegel and Boonzaier state: "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." (1988:56)

After accepting the Constitution of the Republic of South Africa, Act 108 of 1996 (CRSA), citizens became more aware of their protected and entrenched fundamental rights. Furthermore the Calvinistic orientated population tends no longer to use their Christian and Calvinist doctrine to guide their value system on which decisions are made. There is a tendency that the younger people do not go to church as often as their parents. The urbanisation of black South Africans also alienated them from their traditions.

The mining industry of South Africa forces black male workers to leave their homes for the mines. With the outbreak off their traditional environment, the workers started to lose touch with their cultural customs. The traditionally bounded rules do not have the binding effect of earlier years. This urbanisation and modernisation were at the expense of customs and tradition (Finlayson, 1984:137).

With the new democratic South Africa, black learners attend former white schools. This multi-cultural, -ethnic and –racial interaction, made learners aware of the fact that their traditional culture and custom is not the only and correct way. This adoption to a new ‘Western’ culture made black South Africans lose their culture. This confused learners either still do not use their rights e.g. freedom of expression as this is part of their inherent being or if they became accustomed to the fact that they do have this right, they start to become defensive, absolutise this right and do not know that the right also poses a responsibility and duty on them not to in the process violate any other fundamental rights of other human beings. Therefore, it is imperative to investigate what learners understand under their right to freedom of expression. If one succeeds to determine their understanding of this right, one will understand how they look at it. This will give insight in policy making to ensure that the exercising of this right occurs within the parameters of legislation without infringing on any right of other stakeholders and also to indicate to learners when and how this right can be limited.

3 AIM

The aim of this research is to engage in an in-depth study to determine what learners understand specifically under their right to freedom of expression. This right includes the freedom to receive or impart information or ideas as well as freedom of artistic creativity.

4 THEORETICAL FRAMEWORK

Vithal and Jansen (2001:7) state that a theoretical framework is a well-developed, coherent explanation for an event to signal where research is coming from. This proposed study will focus on learners' understanding of their right to freedom of expression. Before focussing on this right specifically, it is evident to first give a short overview of a global development of human rights.

4.1 The development of human rights

One of the earliest legal principles that addresses human rights came from the canon lawyers of the 11th and 12th centuries. This principle is called the legal maxim "*lex injusta non est lex*" or 'an unjust law is not a law' (Sieghart, 1985a:22). This implied that laws made by rulers need not be obeyed if they were unjust (Alston, 2002:26).

To protect the human rights of society, courts have the right to test the legality of the law. The legal maxim was established as a legal principle in *Marbury v Madison* (1803) 5 U.S. 137 when the court stated "...[i]t can refuse justice to no man" (153).

The very first constitution to protect human rights ever was drafted in 1787. The United States Federal Constitution was drafted after the reigning monarch had been replaced by a republic with elected representatives and begins with the following words:

We the people of the United States, in order to form a more perfect Union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare,

and to secure the blessings of liberty to ourselves and our posterity, do ordain and establish the Constitution for the United states of America.

The French Constitution (France 1789) was drafted under similar circumstances and was named “Déclaration des Droits de l’homme et du citoyen” or ‘Declaration of the Rights of Man and the Citizen (Sieghart, 1985a:27).

Although these two constitutions are the oldest constitutions to protect citizens from unfair rulers or governments, the principle that all men are equal, was found in the 1776 American Declaration of Independence, which begins with the words:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with unalienable rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...

It is evident to note that both countries became a republic with representation for all its citizens after overthrowing the monarch via a rebellion. Brinkley (1993:155) points out that amendments to the U.S. Constitution came into force in 1791 to give even bigger protection to the citizens of the USA and that we can refer to these amendments as the Bill of Rights.

The U.S. Federal Constitution became the supreme law of the country and the Bill of Rights was entrenched (Alston, 2002:36). These first constitutions’, with their Bills of Rights, objectives were to protect citizens against arbitrary power (Alston, 2002:38).

During the 19th century the focus shifted from the natural rights to evolutionism and utilitarianism (Dlamini, 1995:13). Great wealth was introduced to mankind with the industrial revolution (Alston, 2002:41). This wealth, however, brought even greater inequality among people. Poor people were exploited by the wealthy. The focus then moved from freedom from government intervention in individual lives to laws which place an imperative on the government to intervene in order to protect their rights. This shift in

focus plays an important role in the history of human rights. Now the individual can appeal to higher authority to protect its rights (Alston, 2002:42).

During the 20th century international law developed in order to respect human rights of every citizen in the world. The common striving to end slavery and piracy on the high seas, could be seen as some force in the development of international law to protect human rights (Alston, 2002:43).

The USA, Britain and the USSR started negotiations in 1944 to establish an international organisation that would “facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms” (Van der Vyver, 1979:14). After the Second World War there was a need for external constraints to be imposed on all states (Babbio, 1996: 32). States could no longer be left alone to do their own devices (Sieghart, 1985a:40). This first code of international human rights was found in the Charter of the United Nations in 1946. Dlamini (1995:15) argues that this charter marked a new chapter in the history of human rights. This charter was amended and in 1948 the United Nations passed the Universal Declaration of Human Rights (UDHR). This was followed, in 1950 by the European Convention on Human Rights (ECHR), which proves that everyone at that stage was aware of the protection of human rights.

However, the UDHR, as well as the ECHR did not ensure immediate Utopia and many countries had still violated human rights. It was only twenty years later that states began to ratify two international covenants adopted by the U.N. Human Rights Commission. These two international covenants were the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC) (Human Rights: A Compilation of International Instruments, 1993:8-40).

It is important to remember that the UDHR and ECHR were declarations and conventions to spell out the good intentions of most countries of the world. These human right “pleas” could not be enforced on governments. Zurigen (Daily Dispatch, 10 December 1999)

described the UDHR as “essentially a wish-list, buttressed by a series of non-binding covenants, backed only by moral sanctions” (Aston, 2002:49) and “still very much without teeth.” Similarly Kofi Annan, the U.N. Secretary-General described it as “a mirror that at once flatters us and shames us” (Daily Dispatch, 10 December 1999).

Although the UDHR was the first comprehensive international document on human rights, it was followed by regional and international declarations and conventions which only started to have an influence when it is ratified by specific countries.

South Africa has also decided to join the world in protecting human rights when the first democratically elected government accepted the CRSA in 1996, which is one of the most modern and advanced constitutions with its entrenched Bill of Rights in chapter 2. The new government adopted the CRSA with a Bill of Rights that entrenches the fundamental human rights of all citizens. It is thus necessary for South Africans to consider how international constitutions address human rights and more specifically how human rights are interpreted in international courts.

5 RATIONALE

Freedom of expression is a core fundamental right in a democracy. Even so taking in consideration the fact that no right is absolute, the exercising of this right must always be balanced with the fundamental rights of other human beings in the society. Therefore, the right to freedom of expression may be limited “in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom” (Section 36 of CRSA).

Freedom of expression consists of a wide spectrum of entities. It is not generically seen only as the words that one utters but includes the totality of being and one’s freedom to show this to the world. It includes aspects such as academic freedom, advertising, artistic creativity, blasphemy, broadcasting, regulation, commercial expression, common law offences restricting expression, defamation, false speech, hate speech, incitement to

imminent violence, information (freedom to receive), press freedom, pornography, prior restraints on publication and propaganda.

In the South African school system learners were indoctrinated by the culture of Calvinistic and cultural acceptance and brought up in the mode of unquestioned acceptance of authority. Learners were not aware of the fact that they had fundamental human rights and that these rights were taken away from them. It would be judged as bad manners to speak out if one differs in opinion from one's educator or any authority. The scenario changed on 27 April 1994 when South Africa became a full democratic country. This new democratic government accepted their Constitution, The CRSA, which has a Bill of Rights with entrenched Human rights.

For the first time in the history of South Africa, everybody's human rights were protected. For the first time people started to realize that they have human rights. This newly founded reality, however, caused people to absolutise these human rights because they did not know how to interpret or implement them. They are not sure what the rights entail and are also not aware of the fact that they can be limited or what the criteria for limitation are. Nor do they understand that their fundamental rights also impose a duty or responsibility on them. Basically, they do not understand how to interpret or implement these newly found rights. This result in disciplinary problems or even court cases. The school curriculum needed to be changed to enhance critical thinking and to teach young citizens how to fulfil their lives in a democratic society where human rights are entrenched and protected. The South African school system's methodology thus changed to outcomes-based education (OBE). The new curriculum is planned to be used through the whole system by 2005. Therefore it is called curriculum 2005.

One of the main focuses of curriculum 2005 is to create critical thinking. This is directly in contrast with the culture of total unquestioned acceptance of authority. In a society where one is taught neither to question nor to use one's freedom of expression, the development of critical thinking was left behind. One is not aware of what this right entails

and how it should or could be limited. There is thus a need to find out exactly what learners' understanding of their right to freedom of expression is.

As mentioned, South Africa transformed its government from a government of minorities where the human rights of the majority of the population were violated to one with full democracy. This new government of democracy adopted the Constitution (CRSA) with an entrenched Bill of Rights that protects the human rights of every citizen. The preamble to the CRSA states that the CRSA 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”. It is also stated in section 1 of CRSA that “[t]he Republic of South Africa is one, sovereign, democratic state ...”

It cannot be expected from people who were brought up and indoctrinated through decades of a certain life view to change their attitudes overnight. South African citizens are not *au fait* with the idea of having their human rights protected. This leads to the fact that many citizens are still not aware of the rights that they have and that are protected by the CRSA. The more people hear or read about their rights, they become aware of these rights. They still do not know exactly what every right entails and how it should be practically interpreted. As a result of this there is then also a tendency for people to start exercising their rights but they forget to balance the scale towards the duty and responsibilities that are posed on them by this right.

When focusing on the schools, one needs to pay attention to the creation of the ethos and basic moral values of a society. In terms of section 1 of CRSA 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.
- (c) Supremacy of the constitution and the rule of law.

These are the values that ought to underpin every deed and action in South Africa and should also be the core of education in our country. Within the operation of this value system it is imperative to address every stakeholder with human dignity. There should also be equality in dealing with all stakeholders in trying to protect everybody's human rights and freedoms (section 1(a) CRSA). When looking at the right to freedom of expression (section 16 of CRSA) in schools, one should look at all the stakeholders involved, who are the learners, the educators and the parents. Since there is a continuous mutual interaction and interrelationship between the stakeholders, the exercise of one's right to freedom of expression would be balanced against the rights of the other stakeholders. Everyone should also be aware of his partner's human right in order not to violate it.

Being aware of the fact that human rights were violated under the previous government in South Africa and that children – therefore also learners – had no right to speak out, it is important for the researcher to focus on the right of the learner. In the previous government human rights were not protected. It is necessary to find out what learners' knowledge and understanding of their right to freedom of expression is.

Children (learners) are seen in the eye of the law as minors with limited capacity and limited *locus standi in iudicio* (Bondesio, Beckmann, Oosthuizen, Prinsloo and Van Wyk, 1994). It is clear at this point that learners don't have full capacity and that they secondly were not accustomed to the fact that they have rights and thirdly that they were brought up in a culture of keeping quiet and not to question authority. It is imperative to find out at this stage what learners' knowledge and understanding of their right to freedom of expression currently entails. This research will not only be an indication for learners on how to improve their right to freedom of expression but would also be informative to parents, educators and policy makers.

In a democracy it is important for every partner to participate in every decision. It is also imperative to respect the rights of all the other stakeholders and to ensure that their rights are respected. In a democracy every voice should be heard. Therefore it is

important to protect the right to freedom of expression. Everyone should be free to express him/herself without fear to damage him/herself in the process.

Children as minors need to be guided in the school situation to execute not only their fundamental rights but also to deal with their obligations and responsibilities in a democracy. Therefore, it is the purpose of education to develop the necessary skills to enhance a democracy.

A democracy requires critical thinking

The public school, as education-mentor for children (learners) in a democracy becomes a forum where the children are guided to adulthood and guided to fulfil their place in a democratic society.

Though the primary purpose of schools is to educate, it has long been understood that education consists of more than the development of academic skills and the accumulation of knowledge. One of the central purposes of schools in a democratic society is to encourage the critical and independent thinking necessary for effective participation as citizens. This was emphasized 250 years ago by Montesquieu in *The Spirit of the Laws*:

It is in republican government that the full power of education is needed ... One can define this virtue as love of the laws and the homeland. This love, requiring a continual preference of the public interest over one's own, produced all the individual virtues; they are only that preference ... in a republic, everything depends on establishing this love, and education should attend to inspiring it (I, 4, 5) (Cohler, Miller and Stone, 1989:35).

Similarly, James Madison, one of the American 'Founding Fathers', pointed out that "Republican government presupposes the existence of these qualities [of civic virtue] in a higher degree than any other form" (Federalist, 1993:207). Similarly section 7(1) of the CRSA provides the Bill of Rights as a cornerstone of democracy in South Africa. It

enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom.

After the new democracy was established in 1994, it was necessary to change the school methodology in order to develop citizens' skills for participation in a democracy. The old curriculum was based on the retention of information and theory. Tiley and Goldstein argue (1997:6) that "[t]he previous [education] system did not help people learn to make sound, compassionate judgements in a changing world." One of the characteristics of the previous education system was rote learning, while the aim in outcomes-based education is to develop critical thinking, reasoning and reflection. (Tiley and Goldstein, 1997:29) Since the South African government was aware of the importance to develop critical thinking, the whole education methodology has changed from one that was educator centred to one that is learner centred. In the old system the educator possesses all the knowledge. Educators assumed that the learners knew nothing. This teacher-centred approach was changed to the new paradigm (learner centred) where learners possess knowledge and the ability to learn (Anon. 1996:5). The importance of the learner centred approach is also stipulated in the preface to the policy foundation phase: "...education within the formative years follows an integrated child centred approach in which the learner is developed holistically." (Anon, 1997:iii). This new curriculum must be skills-orientated and applicable in practice. One of the seven critical outcomes of this new methodology developed by the South African Qualification Authority (SAQA) for curriculum 2005 is per se to develop critical thinking (Cape Argus, 1997:8) by means of data collection, analysing, organising and to critically evaluate the data (Anon. :5). The pre-1994 curriculum ensured the existence of diversity in race, classes, sex and ethnicity. The curriculum was re-structured to enhance the values and principles of the new democracy (Anon. :2). Therefore, the document, Learning through a National Curriculum Framework, puts the paradigm shift as a prerequisite for the realisation of the vision for the democratic South Africa. "A prosperous, truly united, democratic and internationally competitive country with literate, creative and critical citizens leading productive, self-fulfilled lives in a country free of violence, discrimination and prejudice." (**)

Wielemans (:3) pointed out that education is more than Taylorism. In Taylorism, the totality of the child is ignored to become a subject specialist. In the 21st century the school functions “toenemend als een sociaal podium waarop jonge mensen met elkaar in gesprek zijn en ervaringen uitwisselen” (Wielemans :4). Education tries to solve problems in society. There is a movement back to an holistic approach where the school becomes more than “leerinstituut” but rather “opvoedingsgemeenschap” (Wielemans :5). Similarly the department of education set out the purpose of a General Education and Training Certificate (GETC) as “to equip learners with knowledge, skills and values that will enable meaningful participation in society...” (SAQA, 200:14).

A prerequisite for critical thinking

It is necessary to enhance and respect the freedom of expression in order to develop and encourage critical and independent thinking. Freedom of expression creates a market place of ideas (*Abrams v United States 250 US 616(1919)*) that helps to develop individuals to self-fulfilment (Clayton and Tomlinson, 2001:112 and De Waal, *et al.*, 2001:310). As such De Waal *et al.* (2001:310) argue that the denial of this right would be inhuman because it is an essential human activity to express oneself.

The right to freedom of expression enables human beings to express new ideas and discoveries which enhance scientific, artistic or cultural progress. This can be seen as the foundation of the ‘quest for truth’ paradigm. As De Waal *et al.* point out (2001:310), if everyone who believed that the world is round had been silenced, one would still have a misconception about the shape of the earth. In other words, even the right to freedom of false ideas should be protected because it provokes further discussion through which the truth may be discovered.

One can argue that freedom of expression is essential to the right of citizens to participate in the democratic process. People must be able to make political choices and therefore they need to have access to information and to different viewpoints. The right to freedom of expression is related to freedom rights as well as political rights. Türk and

Joinet (2001:37) also argue that the case law of the European Court of Human Rights confirms that this right constitutes one of the basic foundations of a democratic society.

The first ever constitutional rights provisions is the First Amendment to the Constitution of the United States (1791) which provides that:

Congress shall make no law ... abridging the freedom of speech, or of the press ...

In Canada, freedom of expression was also regarded as a “core right” even before the advent of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 (hereafter the Charter). This means that freedom of expression may well be treated as if it were a constitutionally protected freedom even in countries without a constitutionally entrenched Bill of Rights. It thus follows clearly that freedom of expression is globally protected as a prerequisite to a democracy.

In 1988 the UN Commission on Human Rights requested its Sub-Commission on the Prevention of Discrimination and Protection of Minorities to propose a study on the right to freedom and expression. The report suggested that the right to freedom of expression and information should be placed in the core of inalienable rights. This means that even in a state of emergency, this right could not be subjected to restrictions beyond those permissible in a democratic society. Türk *et al.* (1999:38) argue that the right to freedom of expression is indeed a right tending towards the absolute.

An internationally protected right

The importance of the right to freedom of expression as a pillar of democracy is clear when one sees that this right is protected in all of the major international human rights instruments.

The ICCPR of 1966 was adopted by the UN and was accepted to recognise that “the inherent dignity and the equal inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (Preamble). It continues to state

that it recognise that “in accordance with the Universal Declaration of Human Rights the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”.

The Covenant will also consider “the obligation of states under the charter of the United Nations to promote universal respect for, and observance of, human rights and freedom”.

This right is addressed in article 19:

- (1) Everyone has the right to freedom of opinion and
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the right provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order, or public health or morals.

The freedoms of expression, opinion and information are also protected in article 19 of the Universal Declaration of Human Rights (UDHR) of 1948 which is a clear indication that freedom of expression is a fundamental right (Türk *et al.*, 1999:37).

As is the case with all fundamental rights, the right to freedom of expression is not absolute and must be balanced against other freedoms and rights. According to Rautenbach and Malherbe (1999:345) all rights can be limited “under specific circumstances and in a particular way for the protection of some public interest or the rights of others.” So it was also agreed upon at the Sixth International Symposium on the European Human Rights Convention and Freedom of Expression “that no democratic

society has yet removed the obstacle to full freedom of expression, and it is improbable that any will do so in the near future (Türk *et al.*, 1999:37).

The core human right?

A democratic society is continuously in a process of change and will have restrictions on rights and freedoms and will persistently be questioned. In this way, democracy can be viewed as a “tragic” political system. As Castoriadis says democracy is “the only regime that openly faces the possibilities of its self-destruction by taking up the challenges of offering its enemies the means of contesting it.” (Turk *et al.*, 1999:38). Similarly Woods (2001:142) argues that freedom of expression is regarded as an essential pillar of a free and democratic society. Although freedom of expression is regarded as a core human right in a democratic society, even this right can be limited.

In the USA, the First Amendment’s guarantee of free speech has never been absolute. Although the United States Supreme Courts have characterized freedom of expression as a “preferred right”, some forms of speech, such as defamation, fighting words, and obscenity, fall outside the protection of the First Amendments belligerent.

It is within this background of the freedom of expression as being seen as crucial in a democracy but which however cannot be absolute that I am going investigate the matter in South Africa.

The South African case

South African legislation

The Constitution of the Republic of South Africa

The CRSA protects freedom of expression as an entrenched human right in section 16.

- (1) Everyone has the right to freedom of expression, which includes –
 - a. freedom of the press and other media;
 - b. freedom to receive or impart information or ideas;
 - c. freedom of artistic creativity, and

- d. academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to –
- a. propaganda for war;
 - b. incitement of imminent violence; or
 - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

As mentioned earlier, this right basically protects scientific, artistic or cultural progress. It also enhances self-fulfilment in a democracy. The right to freedom of expression, however, is thus closely related to the freedom rights and political rights in the Bill of Rights. O'Regan J stated this for the Constitutional Court:

Freedom of expression is one of a 'web of mutually supporting rights' in the Constitution. It is closely related to freedom of religion, belief and opinion (s 15), the right to dignity (s 10), as well as the right to freedom of association (s 18), the right to vote and to stand for public office (s 19) and the right to assembly (s 17). These rights taken together protect the rights of individuals not only individually to form and express opinions, of whatever nature, but to establish associations and groups of like-minded people to foster and propagate such opinions. The rights implicitly recognize the importance, both for a democratic society and for individuals personally, of the ability to form and express opinions, whether individually or collectively, even where those views are controversial. The corollary of the freedom of expression and its related rights is tolerance by society of different views. Tolerance, of course, does not require approbation of a particular view. In essence, it requires the acceptance of the public airing of disagreements and the refusal to silence unpopular views (*South African National Defence Force Union v Minister of Defence 1999 (4) SA 469 (CC) para 8*).

Section 16 (1) protects freedom to expression. The protection of this right is important in South Africa. For many years, the majority of citizens were denied this right to freedom of expression. They could even be sued for speaking out against the government. In this bureaucracy even learners were taught not to "back chat" and not to question anything told to them by educators or authorities (Mazibuko, 2002:6). Therefore, all citizens – even

educators – were never taught to think critically, to question whatever was told to them or what was happening to them. They could never speak out or differ from authorities.

Subsections 16 (1) a – d particularly include protection for the freedom of the press and media (1a), the freedom to receive or impart information and ideas (1b), artistic creativity (1c) and academic freedom and scientific research (1d). Section 16 (2) specifies when this right in section 16 (1) can be limited. According to section 16 (2) this right can be limited when it is used as propaganda for war (2a), incitement of imminent violence (2b) and some forms of hate speech (2c). It is important to realize that the mere fact that certain ways of expression are mentioned in section 16 (1) definitely do not single them out for greater protection than other forms of expression (De Waal *et al.*, 2001:311). Although the right to freedom of expression is inherently limited in section 16(2), it can also (as any other right) be limited under the limitation clause (section 36 of CRSA). (See p. 19.)

Of importance to the Higher Education sector is the focus of Section 16 (1)(d) “academic freedom and freedom of scientific research.” One should be aware of the fact that since this is a subsection of CRSA, the right to academic freedom of any academic enterprise is protected and not only “institutions of higher learning”. This emphasizes the right of the individual to do research to publish etc. without government interference. One should bear in mind that academic freedom pertains not only to lecturers but also to everyone who engaged in the practice of science. Even if you are a government employee, you still have the right to freedom of expression that includes academic freedom. Since the focus of this study is the right to freedom of expression of the learners in public schools, I shall not focus on Section 16(1)(d) of CRSA.

In South Africa, which is characterized by a multi-cultural diverse society, hate speech, as limited by section 16 (2)(c), needs to be addressed. International law would guide South African courts in implementing legislation in this view. The Canadian Supreme Court has also accepted the legitimacy of controls on hate speech (*R v Keegstra [1990] 3 SCR 697*). Section 16 (2) of CRSA excludes advocacy of hatred based on race, ethnicity,

gender and religion from the ambit of the right to freedom of expression when it amounts to incitement to cause harm. Hate speech can cause emotional damage and will be a violation of the individual's right to human dignity⁵. It is therefore important to guide young learners in executing their right to freedom of expression, not to infringe upon the fundamental rights of another person by using hate speech. Section 16(2) of CRSA defines hate speech as speech that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm. At this point we need to focus on the South African Schools Act, Act 84 of 1996 (SASA) and its prerequisite of freedom of expression.

The South African Schools Act

When one focuses on the freedom of expression on school level, we learn that SASA is silent about this right. Freedom of expression will hence be viewed directly from the CRSA as well as through the value system that underpins the CRSA and our democracy.

Evidence that there is uncertainty about the exercising of the right to freedom of expression in the public school sector of South Africa can be noticed when reading the local newspapers. One of these incidents happened to Yusaf Bata, a Muslim teenager who attended Hoërskool Vorentoe in Johannesburg.

He, in acting according to his religion, never shaved his young beard as symbol/notification that he knew the Koran off by heart, was refused admission to school in 1998. Although this was mainly viewed as an infringement of his right to freedom of religion (*Beeld*, 20 January 1998:8) or the right to attend a school of his choice,⁶ this is also an infringement of his right to freedom of expression. The growing of his young beard is a symbolic act to express his fundamental protected right to religion, belief and opinion and expression. In terms of section 16 (1) (b) everyone has the right to freedom of expression, which includes freedom to receive or impart information or ideas as well as the freedom of artistic creativity (Section 16(1)(c)).

⁵ Sec. 10 of CRSA.

⁶ Section 18 of CRSA.

I have already indicated that freedom of speech is recognized as a basic right because it is crucial in a democracy. Saying this, one should remember that even this crucial right can be limited: “Total freedom of speech in the school situation is not feasible (Joubert and Prinsloo, 2001:64). Joubert and Prinsloo argue that the right of learners to freedom of speech must be limited in cases where:

- It will disturb the general order.
- Vulgar language is used.
- It accuses falsely and maliciously.
- It encourages another learner to behave in a disorderly manner.

In all of these circumstances, the fundamental rights of others will be violated hence the limitation will be fair and justifiable in an open and democratic society.

“Generally, it is recognized that public order, safety, health and democratic values justify the imposition of restrictions on the exercise of fundamental rights.” (De Waal *et al.*, 2001:144) All fundamental rights can thus be limited in terms of the general limitation clause in section 36 of CRSA which according to Malherbe (2001:13) is a pivotal provision in the Bill of Rights. This general limitation clause applies to all rights in the Bill of Rights and is the most common form of limitation. The limitation must be reasonable and justifiable in an open and democratic society based on human dignity, freedom and equality. There must thus be an appropriate balance between the limitation of the right and the purpose for which the right is being limited. All relevant factors to the issue must be taken into account which according to section 36(1) of CRSA includes –

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) less restrictive means to achieve the purpose ...

A balance must be found between the legitimate interest of the learner and the duty of the SGB to maintain proper order and discipline in the school. Under section 8(1) of SASA, every SGB must adopt a code of conduct for the learners. Section 8(2) of SASA clarifies that the aim of such code of conduct should be to establish a “disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.” Schools need to be able to identify an appropriate balance and only limit learners’ right to freedom of expression in cases where a legitimate interest of the school’s educational mission is at stake or where fundamental rights of other stakeholders will be violated. SGBs should be pro-active in addressing learners’ right to freedom of expression as part of their code of conduct and develop a separate policy on this matter.

This balancing of constitutional rights must be done in accordance with a broader social interest. Would it for instance be consistent with the professional responsibilities of a history teacher to express racist views in a public forum outside the school? In such a case, the interest of the school leadership in ensuring that the school is able to fulfill its educational mission in a way consistent with the *Constitution* would justify disciplinary action against that educator despite the educator’s right to freedom of expression of an individual opinion. In this matter, the right to freedom of expression in section 16 of CRSA must be exercised consistently with section 16(2), which states, “The right in subsection (1) does not extend to –

- propaganda for war;
- incitement of imminent violence; or
- advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”

The question, then, is how school authorities can model respect for the right to free expression while ensuring that this right is not abused. While the same problem can arise in any sphere of public life, it is especially difficult in schools, where vulnerable young people are under the care and influence of educators, school managers and SGBs who

are responsible for providing protection from hateful and harmful expression. The same young people – still ‘green in judgement’ – are learning what it means to be citizens of a free society where differences of opinion are respected. How can limits on expression be set without restricting it to such an extent that the school becomes an anti-democratic environment?

From the example of Ysaf Bata it is clear that learners may not know how to exercise their right to freedom of expression in terms of sections 16(1)(b) and 16(1)(c). Furthermore it is also clear schools do not know how to respect or limit this right according to the CRSA. This problem or lack of knowledge leads us to the research problem.

6 RESEARCH DESIGN

6.1 Research problem/working assumption

Since South Africa became an independent country in 1961, it had a minority government and for thirty- three years human rights were not protected by legislation. In 1994 South Africa became a fully democratic country after the first democratic elections on 27 April 1994. The new government adopted the CRSA with a Bill of Rights that entrenches the fundamental human rights of all citizens. It is thus necessary for South Africans to consider how international constitutions address human rights and more specifically how human rights are interpreted in international courts. Section 39(1) (b) and (c) of CRSA provide that international and foreign law should be considered when interpreting the Bill of Rights. Although one can learn from international law and can learn to apply certain legal principles, we must however, not forget that legal principles can only be interpreted in a specific situation and that international scenarios might not always be relevant or appropriate to the South African scene. Therefore section 39(1) of CRSA specifies that when interpreting the Bill of Rights, a court, tribunal or forum “must promote the values that underlie an open and democratic society based on human dignity, equality and freedom.”

For the first time in the history of South Africa, every citizen has human rights that are protected or entrenched. This is important for all the stakeholders in education, since education focuses on the human sciences. In education one deals with human beings and their interrelationships. The interrelationships of the stakeholders are important, because in interacting with a stakeholder, one can easily infringe upon a human right and perhaps be sued in a court. Most stakeholders in education are by now aware of the fact that they do have protected human rights. There is, however, a tendency that stakeholders do not really know how to deal with these newly found human rights. For example, learners seem to think that they have absolute rights and that they can demand these rights without looking at the situation or without considering any other stakeholder.

On the other hand some learners still think that they cannot exercise their rights because they still believe that they should respect authority and do not dare to differ. This leads towards the working assumption that Grade 11 learners in the Gauteng Province of South Africa do not understand the full implications of their right to freedom of expression and that they either think this right is absolute and abuse it or they are still not aware of the implications of the fact that they actually are allowed to speak out.

I make the assumptions that

- learners have limited knowledge of their right to freedom of expression
- some learners overemphasise their right to freedom of expression
- some learners do not exercise their right to freedom of expression
- school authorities also have a limited knowledge of learners' right to freedom of expression and therefore tends to violate this right.

I need to clarify here that although the right to freedom of expression includes a whole spectrum of expressions, that I would only focus on the learners understanding of their right to freedom of expression of non-verbal and non-written expression.

In the Guidelines for Consideration of Governing Bodies in accepting a Code of Conduct for Learners (RSA 1998: Section 4-5-1), the right to freedom of expression is described as

... more than freedom of speech. It includes the right to seek, hear, read and wear, and is extended to all forms of outward expression as seen in clothing selection and hair styles.

Alston (2002) did a literature study to explore the relevance of the right to freedom of expression to the South African Schools Community. He focuses basically on the application of this freedom in respect to grooming, dress, jewellery, learner press, artistic creativity and academic freedom in schools (Alston, 2002: 20). He has noted critical incidents at schools including above mentioned issues reflected by the media and indicated that the School Community should determine the relevance of the right to freedom of expression and how to balance this right within the school sector (Alston, 2002: 300-315). He also continues by focussing on the educators' right to freedom of expression.

6.2 Research questions

With the research problem in mind, I would like to pose the following research questions to guide and focus this study, although they cannot be explored in equal depth:

- What is learners' knowledge of their right to impart information or ideas?
- How do learners interpret and apply their right to impart information or ideas?
- What is learners' knowledge of their right to freedom of artistic creativity?
- How do learners interpret and apply their right to freedom of artistic creativity?

6.3 Methodology

6.3.1 Knowledge claim

Before continuing I need to clarify my epistemology, as this will be important in understanding my point of departure. I view science as a search to understand a phenomenon. However, there is not A TRUTH out there. People rather give meaning to “their own truth” in search of an understanding of phenomena. That the truth is not static, but rather a dynamic phenomena interpreted by the meaning or understanding people give to it, is clear when looking at the development and different foci of Human Rights (See 4.1). I therefore view knowledge from an amalgamation of two epistemological theories viz interpretivism as well as postmodernism. People assign meaning to their experiences and therefore interpret meaning. This is then the reason for a society having a positive growth in case law. People only go to court to sue one another if they fully agree that they have interpreted the law correctly in other words believing that the meaning that they have given to the law is the truth. The court then needs to adjudicate on the “real” interpretation of the law (knowledge). There are thus a variety of intersubjective meanings that are crucial to achieve understanding and meaning.

Furthermore, knowledge does not only “belong” to the authoritative voice of the expert but it values the subjective and multiple voice of individuals. We look at the world holistically. Everyone constructs meaning from information (interpretivism). The absolute truth doesn’t exist. The truth is rather a dynamic reality, which changes over time. (See the development and change of the face of Human Rights in paragraph 4.1).

I intend to answer my research question for a constructivism paradigm. While the right to freedom of expression is clearly entrenched in the CRSA, everyone gives their own meaning in interpreting their understanding of this right. Therefore, court cases develop to ensure harmony. While assuming that learners give their own interpretation to this right, an understanding about their understanding of this right will enable authorities and

managers to get policies in place to ensure harmony and to be pro-active in avoiding possible court cases.

6.3.2 Approach

According to Russo (1996:34) the primary source of information when doing legal research is the law itself. The traditional method of doing law research is a systematic investigation which involves the interpretation and explanation of the law. While legal research traditionally is neither qualitative nor quantitative, legal researchers try to place legal disputes in perspective in order to inform practitioners about the meaning and status of the law. This method of research is necessary since the nature of the law tends rather to be reactive than a proactive force. Past events (e.g. court interpretations) can thus lead to stability in its application. Therefore, it would be imperative to look at legislation and case law to determine how courts have interpreted statutory law in applying legal principles.

Since this research is conducted in the Faculty of Education, I shall also use research methodology used for research in the human sciences. Therefore, qualitative research will be done in terms of a literature review. McMillan and Schumacher (2001:108) define literature study as a critique of the status of knowledge of a carefully defined topic. It is similarly defined by Garbers (1996:305) as “a systematic circumspect search to trade all the published information about a specific subject in whatever term it exist and to collect useful resources”. Bell (1993:33) also points out that “any investigation, whatever the scale, will involve reading what other people have written about your area of interest, gathering information to support or refute your arguments and writing about your findings”.

An in-depth literature study including articles and case law will be undertaken with the purpose of searching for data relating to the research problem. The literature study will allow me to compare various interpretations of other researchers or courts on this topic. Noteworthy is that in a “normal” literature review, the researcher should determine the primary sources or key publishers on the topic. In the amalgamation of law and social

sciences, the primary source would be statutory law and case law. All other written sources, such as articles, books, and law reports would be secondary sources.

The functions of the literature review according to Ary, Jacobs and Razavich (1990:68) is that it enables the researcher to define the frontiers of a study to place questions in perspective, to limit my questions and to clarify and define the concepts of the study. A critical literature review might lead to insight into the reasons for contradictory results and might also indicate which methodologies have proven useful. The literature would also avoid replication of previous studies and would finally help me to interpret the significance of my results.

The literature review will allow the researcher to gain knowledge and ideas of others interested in the research questions and also to see the results of previous research done on the topic by others (Wallen and Fraenkel, 2001:48). In this way I shall gain background information which appears to be relevant to my topic (Bless and Higson-Smith, 1995:22).

When reading about fundamental rights or the right to freedom of expression, most researches have used the traditional law method of research and a substantial amount of researchers only used a literature review or comparison when interpreting the law. In brief, researchers discuss the relevant legislation and then compare how different courts had interpreted the legislation and deduce the consequences of the interpretation for understanding legislation in everyday life.

Qualitative methods are typically used when researchers intend to determine what went right or wrong in developing and implementing policies. Quantitative methods are used when researchers generalise about practices (Schimmel, 1996:1).

Since I am looking at what the right to freedom of expression entails, I shall start off with a literature review according to the traditional method of law research, as my intention is to determine WHAT learners' knowledge about their right to freedom of expression is.

In assuming multiple realities are socially constructed by the individual and the society, the qualitative approach will help me to determine learners' understanding of this right which again will help managers and policy makers. Qualitative research will enable me to understand learners' understanding of this right from their (respondents') perspectives. Furthermore one needs to remember that learners in South African schools are imbedded in a society of a new democracy where human rights are entrenched in the CRSA. This context certainly will have an influence on how learners, but also other stakeholders understand learners' right to freedom of expression. Therefore the qualitative approach will help me to interpret the phenomena in terms of the meaning of the respondents (Smit 2002:7).

Accepting that there is a range of different ways of making sense of the world, a qualitative approach will suit my research the best. Thereby I will be able to construct the "reality" as I see it from my respondents' point of view as Lincoln and Culba (1985: 160-186) argue that the epistemological foundations of qualitative research are based on value judgements. As my research will be an attempt to understand learners' understanding (meaning of their right to freedom of expression), I will do an interpretive research.

6.3.3 Strategies of inquiry

I will use a hybrid case study as strategy of inquiry. I do not intend to research a full case study by looking for instance at a specific school. Although my study will have boundaries, I will have purposeful sampling and I will use the data to generalise. The boundaries of my case study will be the learners. Due to my purposeful sampling the boundaries will extend to Gr 11 learners and then to the Gr 11 learners in the 5 sampled schools in the Gauteng Province.

6.3.4 Methods of data collection

My methods of data collection can be divided into three phases.

In phase 1 intend to use semi-structured open-ended questionnaires, since I want to determine what learners understand under their right to freedom of expression. Questionnaires can be administered without the presence of the researcher and are mostly straightforward to analyse (Wilson & McLean, 1994: 241). Oppenheimer (1992:115) points out that they also enable comparison to be made across groups in the sample. However, where rich and personal data are sought, a word-based qualitative approach will be preferable. Therefore my questionnaire will have a clear structure, sequence and focus. The open-ended questions will enable the respondents to respond on their own terms. This will enable me to collect honest and personal comments about what learners really understand under their right to freedom of expression. With the use of the open-ended questions I hope to contain the “gems of information” (Cohen, *et. al.* 2000:255); the extra data that I have not anticipated within the questionnaire. This will put ownership of the data more firmly into the respondents’ hands which will increase validity and reliability of the data.

Although not typically a qualitative procedure, I intend to use sequential procedures in order to expand the findings of phase 1 in phase 2 and again the findings of phase 2 with phase 3, etc. The results of phase 1 will indicate to me what type of questions to pursue in phase 2. The analysed data of phase 1 will guide me to structure questions for the focus-group interviews. Kvale defines an interview as “an interchange of views between two or more people on a topic of mutual interest (Kvale, 1996:14).

In phase 2 I intend to conduct four open-ended semi-structured, focus group interviews in order to determine why learners are or are not able to exercise their right to freedom of expression. With the focus group interview I intend to get rich data to answer the research question and to see what learners’ understanding of their right to freedom of

expression is. This qualitative semi-structured open-ended focus group interviews will enable me to collect detailed views from the participants.

Focus group interviews are neither strictly structured with standardised questions, nor are they non-directive (Cohen, et al., 2000:272). The reliance of a focus group interview is on the interaction within the group who discusses a topic (Morgan, 1988:9). It is not a backwards and forwards conversation between interviewer and the group (Cohen et al., 2000: 288). In this way data emerges from the interaction of the group. Although focus-group interviews are unnatural settings, they are “very focused on a particular issue therefore, will yield insight that might not otherwise have been available in a straightforward interview. Focus-group interviews are economical on time and produce a large amount of data in a short period of time. Again the analysed data obtained from both phase 1 and 2 will help me to structure questions for phase 3 and 5. In phase 4 I will do a document analysis on the court case *Antonie v SGB Settlers High School, and others* 2002(4) SA 738.

In order to collect rich data I will lastly like to have an in-depth interview with the plaintiff in *Antonie v Governing Body, Settlers High School, and Others* 2002 (4) SA 738. These qualitative open-ended interviews will enable me to collect a detailed view from a learner who has gone through a court case for believing that her right to freedom of expression was violated. This in-depth interview will produce a lot of data because it is on a one-to-one basis and is very time consuming.

6.3.5 Sampling

For phase 1 I will do a purposeful sampling of five secondary public schools in Gauteng Province. Two schools will be sampled from former black schools, and three from former white schools (one English and one Afrikaans as well as Pro Arte because its learners are creative and my topic thus is very relevant for them). I hope to receive at least 100 respondents.

For phase 2 I intend to return to four of these five schools for focus group interviews with eight learners in each interview group. This will also be a purposeful sampling, determined by the analysed data obtained from the questionnaires in phase 1.

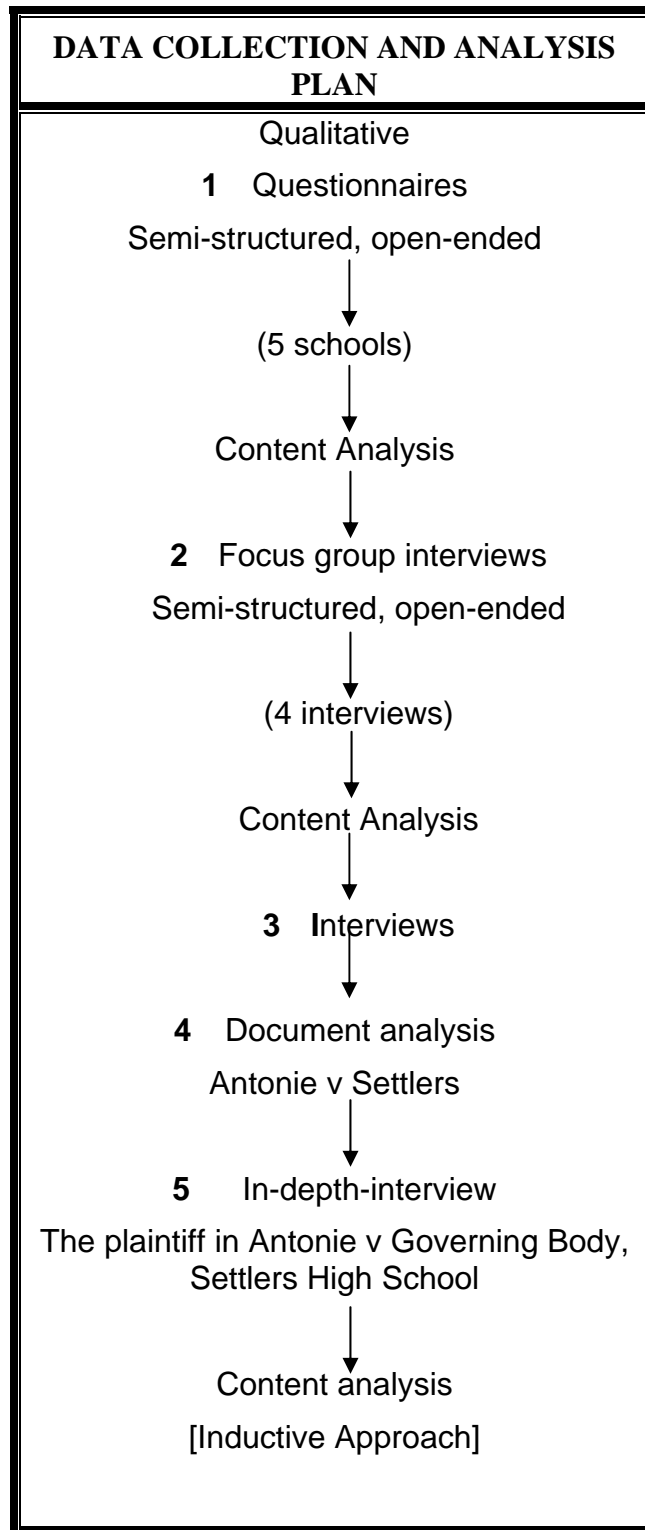
In phase 3 I will target one or two specific person for the interview.

In phase 4 I will do the document analysis and in phase 5 I will target one specific person for the in-depth interview.

Schools will be sample in the Gauteng Province because it is accessible for me. There also already exists a good correlation between the Gauteng Department of Education (GDE) and the University of Pretoria (UP). Furthermore, Gauteng is representative of the Republic of South Africa (RSA). Because of time and funding limitations, I will only work in Gauteng.

The data collection plan and analysis is summarised in table 1.

Table 1:



6.3.6 Research strategy

Although data collection in qualitative research traditionally happens simultaneously. I intend using a sequential, transformative strategy. The result of phase 1 will guide my research to phase 2 and again to phase 3 and 5. By using different phases “a sequential transformative researcher may be able to give voice to diverse perspective... or to better understand a phenomenon ...” (Creswell, 2003: 217). The designs are often emergent and flexible. Because inductive reasoning is emphasised, what researcher learn in earlier stages of the research substantially affects subsequent stages of the research process. Often, qualitative research is quite dynamic. The research and the research subjects and the research setting are all subject to change and development (Paechter, 2000).

The process of the qualitative research is non-linear and non-sequential. Data collection and analysis often proceed simultaneously. They may be modified in tight of early findings, in order to gather more specific information, or explore new and unanticipated areas of interest. Sometimes, early findings may suggest that the original research question itself should be changed because the underlying premise are not supported or the initial question was no salient in the context studied (Frankel & Devers, 2000). New questions might also be necessary from following their initial research questions and aims (Troman, 1996).

7 LIMITATIONS OF THE RESEARCH

Research dealing with the understanding of learners’ right to freedom of expression, should be an inclusive study of the entire Republic of South Africa, cover all the sectors of education and focus on all the different races and ethnic groups. Since such a study would be a time consuming research project, the researcher has decided to only focus on the public school sector in one province. Private schools will thus not be part of this research project. It can be anticipated that the outcome of private schools will differ slightly and interestingly from that of the public schools system.

I will not focus on the highly interesting and information rich sector of higher education. Within the public school sector, I will only focus on Gr 11 learners, which are in the senior secondary phase. The reason for choosing the senior secondary phase resonates with the fact that these learners are more advanced than learners in Grade 1 to 9 in terms of their discretion and decision-making skills. The child is seen as a minor and has a lack of *iudicium* (Davel, 2000:18).

Learning Orientation 2 of the learning area Life Orientation is Responsible Citizenship:

“The learner is able to demonstrate competence and commitment regarding the values and rights that underpin the constitution in order to practise responsible citizenship, and enhance social justice and sustainable living” (2002:12).

Although these learners began their school career under the previous compensation of apartheid, it was already in the time that human rights were very contentious and they have been in the system while the school system have changed and therefore it would be ideal to check how they have understood their right to freedom of expression being part of this culture of changing from the violation of human rights to the entrenchment thereof.

Despite the limitation I intend to do research in a diverse school system where former black and white schools will be part of the research. Urban as well as rural schools will ensure that the sample is representative of the total population of the Republic of South Africa.

8 SIGNIFICANCE OF THIS STUDY

While knowing that the implementation of freedom of Expression will pose challenges to school managers in balancing everyone’s rights; I am going to focus on what learners understand under their right to freedom of expression, as this may alert authorities of learners expectations and perceptions of this right. Since these rights entails such a wide spectrum of nuances, I will also only research learners understanding of their right to

freedom of expression, excluding their right to written and spoken expression. I will thus focus on their understanding of their right of freedom of expression, which will include their understanding of their grooming, dress, jewellery and artistic creativity.

This research is intended to help authorities to realise what learners' understanding of their right to freedom of expression is. This will secondly guide them to develop timeous policies to ensure that this right is respected and balanced correctly to avoid being sued.

9 DATA ANALYSIS PROCEDURE

In phase 1 the open-ended questions will be analysed in order to find out certain themes or issues, which appear generally.

In phase 2 it will be necessary to have a description of the individuals in the focus group Interview, which will also generalise certain themes and issues.

In phase 3 interviews will be held with some of the focus group respondents to triangulate the findings and data from phases 1 and 2.

In phase 5 there will be a detailed description of the individual for the in-depth interview. Here I will also look for the appearance of certain themes or issues.

The data analysis of the three phases will help me with my triangulation, reliability and validity of the data. The three phases of data collection will help me to triangulate and to enhance thick and rich data. The amalgamation of the questionnaires, focus group interviews as well as an in-depth interview would add greater depth, breadth and insight to my research. Furthermore, it will allow me to approach my problem from multiple perspectives. The use of this sequential procedure will allow me to expand the findings of the one phase with the next phase and also allow me to change my questions and foci all the time as required by the received data.

In the first phase the non-structured, open-ended questions will address the relationship between the knowledge of the rights and the grade 11 learners at the five sampled schools. In phase 2 (focus group interviews), phase 3 (interview), phase 4 (document analysis) and phase 5 (in-depth interview) the data will be used to probe significant knowledge by exploring aspect of the understanding and interpretation of their rights to freedom of Expression with the 5 schools (focus group interviews) and the one in-depth interview with the plaintiff in *Antonie v Governing Body, Settlers High School*.

10 TRIANGULATION, RELIABILITY AND VALIDITY

The use of data collection in three phases will not only help me to triangulate, but also to increase the reliability of my data. I suspect that I definitely will be able to generalise some facets of my three phases which will enhance reliability of the data.

To ensure validity, I will have a interviewer of colour doing the focus group interviews at former black schools in order to enhance trust and to use learners' mother tongue if language will be a problem.

If I manage to generalise some issues or themes from the 5 phases of data, this would also enhance the validity of the data.

Furthermore, for phases 2,3 and 5 I will definitely do a final report by asking participants whether they agree with the transcribed data to ensure validity.

Delimitations

I will not be able to research in all the provinces of the Republic of South Africa and will also not research the private school sector. The primary phases as well as the junior secondary phase will also not be included in the research.

In this research I will only investigate the understanding of learners' right to freedom of expression. I do not intend to look at the right to freedom of expression of educators.

11 TIME FRAME

The following time frame is proposed to ensure that I keep on track and that I can check my performance on the way and to ensure that I deliver on time.

| | | |
|-------------------------------|---|--|
| January 2003 – June 2003 | : | Proposal |
| May 2003 – | : | Literature review |
| December 2003 – April 2004 | : | Development of data-collecting instrument |
| January 2004 – April 2004 | : | Develop questionnaires and case studies for focus group interviews |
| May 2004 – July 2004 | : | Focus group interviews |
| August 2004 – December 2004 | : | Analysing and interpreting of questionnaires and focus group interviews and interviews |
| January 2005 – February 2005 | : | In-depth interview with court case participant and document analysis |
| March 2005 – August 2005 | : | Writing of PhD |
| September 2005 – October 2005 | : | Finishing of PhD. |
| November 2005 – January 2006 | : | Editing, binding, etc. |
| 31 January 2006 | : | Delivery date! |

12 WORKING DEFINITIONS

Learner

The SASA, defines a learner as “any person receiving education or obliged to receive education” in terms of the Act (Section 1(iv) of SASA).

In terms of section 2(1) of SASA “[t]his Act applies to school education in the Republic of South Africa.

Therefore a learner would be a person receiving a school education.

Freedom of expression

In defining the concept: "*expression*" it is necessary to focus on the choice of this word. *Expression* is a wider concept than speech and includes activities such as painting and sculpting, displaying posters, dancing and the publication of photographs. Cachalia, Cheadle, Davis, Hayson, Maduna and Marcus (1994:54) state that symbolic acts such as flag burning, the wearing of certain items of clothing and physical gestures amalgamates under the right to freedom of expression. This is also emphasised in *Tinker v Des Moines Independent Community School District 393 U.S. 503 (1969)* when pupils were suspended for wearing black armbands to show that they disagree with the Vietnam war. An express or belief can also be communicated through other forms of non-verbal expression. For example, the wearing of certain insignia and the length of one's hair could also represent a statement or expression (Wood, 2001:142). As De Waal, Currie and Erasmus (2001:311) summarise it "...every act by which a person attempts to express some emotion, belief or grievance should qualify as constitutionally-protected 'expression'." Van der Westhuizen (1994:269) expresses the diversity of expression in his definition: "It is submitted that any expression, verbal or otherwise, which is intended to be observed by one or more person(s) and even though it may not be 'speech'". Freedom of expression also includes one's freedom of belief and opinion as well as freedom of association and vocational freedom, because it is within one's execution of these fundamental rights that you exercise your right to freedom of expression.

During the first phase of this research (Survey by means of questionnaires) the whole spectrum of expression will be covered. In the second phase (focus group interviews and in-depth-interviews) I will only concentrate on the non-written and non-spoken freedom of expression, which include section 16(1) (b) and (c) of the CRSA.

- "b freedom to receive or impart information or ideas;
- c freedom of artistic creativity"

13 CHAPTER PLAN

Chapter 1: Introduction and orientation

Chapter 2: Literature review

Chapter 3: Methodology

Chapter 4: Research

Chapter 5: Findings, recommendations and conclusions

14 CONCLUSION

As indicated in the background, learners in South African Schools' right to freedom of expression is often violated. It is therefore proposed that an in depth study be done on determining what learners understand specifically under their right to freedom of expression. It is clear that because of the Calvinistic life view, as well as a life view of respect to the elder, people in South Africa are not accustomed to exercise their right to freedom of expression or to respect those who want to exercise their right to freedom of expression. In a democracy where human rights are internalised, learners should understand exactly what it means to exercise their right to freedom of expression. They need to understand that this right is not absolute. Not only does it have an inherent limitation, but it can also be balanced in terms of section 36 of the CRSA. This research aims to determine what learners understanding is of their right to freedom of expression. The research will conclude with findings as well as recommendations to address what is discovered.

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