



CHAPTER 1

ORIENTATION AND BACKGROUND

1.1 INTRODUCTION

The United States Supreme Court stressed the fundamental importance of education for all in the famous case of *Brown versus Board of Education* and asserted that “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he or she is denied the opportunity of an education” (Hodgson 1998:3). Similarly, a South African court, in the well known case *Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA at 223* (a case involving discrimination in an educational institution) referred to the provisions in the interim Constitution (the then supreme law) of the Republic of South Africa of 1993. These provisions protected learners’ right to education and stated that “every person shall have the right to basic education and equal access to educational institutions”. The court further stated that it was common cause that a school was prohibited from turning learners away on racial grounds (*Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA at 230*). These two provisions were invoked in cases where school authorities discriminated against learners on the basis of their race and in so doing, violated the learners’ right to education because in the long term, these actions would impact badly on the learners’ right to education. As a result, it constituted an infringement of their right to education.

These statements made by the courts reflect the breadth of the scope of both international and South African interpretations of the right to education and possible direct and indirect infringements of this right. There have been many incidents in schools concerning the protection that school authorities offer learners with regard to their right to education, and the courts have had to intervene in order to protect this right.

1.2 BACKGROUND

Human rights are often in the news. It is common to see articles in newspapers reporting the violation of learners’ right to education or other human rights that impact directly on the right of learners to education. More often learners’ voices are silent, even if their rights may have been violated. The violation of learners’ rights does not only occur with regard to their right to education, but also in connection with other fundamental human rights. The following paragraph cites several events which occurred in schools and threatened learners’ rights to education.

The Cape Times (3 May 1999:8) reported findings of a survey on racism, which was conducted in 90 schools countrywide. It was found that blatantly racist, segregationist, and



discriminatory practices were flourishing in schools. The findings of the Human Sciences Research Council (HSRC) indicated that 60% of school learners felt that racism existed in their schools. Roughly similar numbers of students observed that their schools did not have a policy or programme to eliminate racism (Vally & Dalamba 1999:6).

In *Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA at 223* the applicants contended that their children were refused admission to Laerskool Potgietersrus because of the respondent's policy to refuse black children admission on racial grounds. Clause 5 of the school's policy contained a requirement for admission, which stated that the proposed pupil should be white. This policy violated section 8(2) of the South African Schools Act, Act 84 of 1996 (hereafter referred to as Schools Act) and also sections 8(2), 10, 24(a) and 32(a) of the interim Constitution of 1993. The respondent failed to establish beyond reasonable doubt that there was no unfair discrimination against black children. The court held that the applicant's application had therefore to succeed. The school could not exercise powers in conflict with the Constitution and it was emphasised that a person should have the right to basic education and equal access to educational institutions (*Matukane and Others versus Laerskool Potgietersrus 1996 (3) SA: 230*).

In *Michiel Josias De Kock versus The Head of Department of the Department of Education, Province of the Eastern Cape, The Governing Body, Overberg High School, and the Minister of Education of the province of The Western Cape, 12533 RSA 1998*, Floris de Kock was expelled from Overberg High school on the grounds of alleged serious misconduct. The respondents did not follow fair administrative procedures when investigating the offence and the decision that followed after this investigation was considered irregular and consequently nullified by the court. The court ordered that the plaintiff be enrolled as a learner at the school.

Mecoamere (2001:9) reported the case of learners who were chased from school and denied access to free textbooks and stationery, because of their parents' inability to pay school fees. In another instance, expulsion of learners also occurred following the inability of parents to pay school fees, or to buy school uniforms. Those learners were also denied free access to textbooks, stationery and examination results. These media reports reflect the violation of the learners' right to education. In other instances learners are unfairly expelled from school. A learner at Horizon International High School was expelled from school because of watching a pornographic tape in the boarding establishment TV room; however, proper disciplinary procedures were not followed. No disciplinary hearing was held (Somniso 2001:3). The rule of substantive fairness (reason for dismissal) was justified, but the expulsion was procedurally unfair.

According to Ngobeni (2001:9) corporal punishment is still in use in schools. The media reported real grievous bodily harm following the beating of a learner by an educator, which resulted in the learner losing her eye. A 16 years old learner died after he had allegedly been



caned by the school principal (The Educator's' Voice, 2004:16-17). Educators assaulted learners for reasons ranging from not having school uniform, coming late to forgetting their books at home, and making noise in the classroom (Mamaila 1996a:30, Mamaila 1996b:3; *The Star*, 13 September 1996). In another instance, an educator repeatedly burnt a learner with a cigarette and dripped melted plastic over his genitals. The educator suspected that he (the learner) had stolen her handbag (Prinsloo 2005:5).

Lorgat (2000:1-3) presents the findings of a research review of sexual violence in South Africa. This review was commissioned by the Crime Prevention Resource Centre of the HSRC and was conducted by the Gender and Health Group of the Medical Research Council. The findings were that 33% of women, who had been raped as children, identified school educators as their rapists. South African learners, who have been subjected to rape or sexual harassment by their classmates or educators, have sometimes become school dropouts in an attempt to escape trauma and pain. Such learners are forced to suspend their rights to education, without obtaining a matric certificate (The *Sowetan* 27 March 2001:4). In another instance, 13 educators were expelled from school for having sexual relationships with learners (Prinsloo 2005:5).

The above paragraphs cite the violation of learners' rights to education by the school. Learners do not endure silently only the violation of their right to education but also the violation of their right to freedom of expression (Van Vollenhoven 2005:1). Coercing learners to attend school where they are abused, bullied, and denied access to resources, seldom enhances learning, which is the school's primary function. Van Vollenhoven (2005:2) argues that educators themselves are victims of the past education system, which did not recognise human rights. They therefore unknowingly or unintentionally violate the rights of learners. The best safeguard of basic human rights in schools would be the enhancement of human rights knowledge through educator training. Educators should be educated on implementing human rights at schools. In support of this statement, Tomasevski (2003:60) notes that educators know a great deal about the wording of education policies and laws, because these are available in a codified form, but they know less about the process of teaching and least of all about human rights.

In a new school system, embedded in a democratic country where human rights should be protected, the right to education should be viewed as a prerequisite for the enjoyment of all other human rights; an indispensable means to the realisation of other human rights and therefore the solving of social, political and economical problems (Matsuura 2003:269). This implies that the right to education is a *conditio sine qua non* and that one cannot enjoy life fully without having the benefit of basic education. In the same vein, the right to education is characterised as a fundamental human right and can be considered as an "upstream right" in the sense that it determines whether other rights can be exercised. Individuals cannot exercise civil, political, economic, and social rights, unless they have received a certain



minimum education, without which their access to such rights remains illusory and theoretical.

In this regard, Daudet and Singh (2001:10) ask the following questions about the right to education:

What scope can freedom of expression and opinion have for those who, because they have not obtained, through their education a means for access to knowledge of the full range of opinion (under any, but a totalitarian regime) are unable to form any opinion of their own?

Of what use is freedom of expression to those who have not acquired through their education tools they really need for their self-expression?

It is, however, important to understand what specific human right is involved, in order to exercise it. Incidents like those mentioned in the media reports above indicate that learners and other stakeholders are not conversant with what the right to education entails, nor are they certain of how the right to education should be exercised. I therefore propose that learners' lack of understanding of their rights to education poses a threat to the implementation of their rights and the survival of democracy. Research is therefore essential to determine how learners understand their rights to education.

Although this study does not focus specifically on cultural and socio-economic backgrounds and socialising agents, such as the home and church in South Africa, a short overview of the nature of South African society serves as a background for the investigation of fundamental human rights in a democratic South Africa. Another reason for considering the influences mentioned above is that the literature shows that understanding of human rights is influenced to a certain extent by the following issues:

- The home environment (The level of education of the parents (Bohrstedt *et al.* 1981:455; Denney & Duffy 1974:279; Mehan 1992:34; Parikh 1980:1031-1037 (see § 3.4.1))
- The school environment (Keating 1990:77; Rowe 1992:70; Torney-Purta 1990:460) (see § 3.4.2))
- Prior exposure to human rights (Prior experiences with human rights (Cherney & Perry 1996:243; Edwards 1978:19; Grisso & Pomicter 1977:321; Tapp & Levine, 1974:33-34) (see § 3.4.3))
- Cultural environment (Melton & Limber 1992:176-97; Cherney & Perry 1996:243) (see § 3.4.5))
- Socio-economic status (Melton 1980:186; Melton & Limber 1992:176-197; Covell & Howe 1996:253; Peens 1998:25) (see § 3.4.7.))

A more detailed analysis of the aspects that influence the development of human rights understanding and reasoning is given in chapter three (see § 3.4). Knowledge of the above-



mentioned aspects might help during the interpretation of the findings. Since this study has been conducted as a qualitative case study, knowledge of the context in which the investigation was conducted is important to appreciate why learners understand human rights in a particular sense (Blanche & Kelly 1999:126; Merriam 2001:27). .

In the era prior to 1994, South Africa was governed by a white minority and was characterised by its apartheid policy. Human rights were neither protected nor respected and violation of the majority's rights was the order of the day. Learners did not enjoy the right to education on an equal basis. Free and compulsory education up to secondary level was available to the white minority, while for blacks there was a mixture of government and missionary provision, involving fees for learners who continued to higher levels of education. This placed a considerable financial burden on parents to erect and maintain school buildings, with the consequence that learners from impoverished families had to suspend their rights to education (Rex 1979:121). The government of the day introduced the Bantu education system, designed to promote white supremacy and black dependency by providing education of inferior quality. Bantu education suggested denial of learners' rights to education in all its forms. It ensured that black learners did not aspire to positions in life, which they could not attain, and it was also aimed at social control. The education system made sure that there was not even a slight chance for a black person to enjoy equal rights alongside the white minority. In 1953 the then Prime Minister of South Africa, Hendrik Verwoerd, introduced The Bantu Education Act with these words:

I just want to remind you, the Honourable Members of Parliament that if the native in South Africa is being taught to expect that he will lead his adult life under the policy of equal rights, he is making a very big mistake. The native must not be subjected to a school system, which draws him away from his own community, and misleads him by showing him the green pastures of European society in which he is not allowed to graze (Fourie 1990:108).

The role that separate development played in every sphere of the South African society was carried over onto the concept of human rights. Every kind of right (Peens 1998:62) was enjoyed by the whites; while blacks were deprived of their rights in terms of education, job opportunities, access to health care and freedom. As a result, most black people in South Africa had little or no formal education at all. Those who had the opportunity to receive education under the Department of education and training were indoctrinated into unconditional obedience to authority and thereby not to question any rules that were imposed on them.

The attempt to impose Afrikaans as a medium of instruction in black schools encountered opposition unparalleled in South African educational history. In 1976 black learners revolted against the system and took to the streets to protest. The result was police intervention, rioting and shooting of learners. For the first time in South Africa, influenced by the notion of the Black Consciousness Movement, learners fought for an adequate education, rejected the



education system based on subordination (Rex 1979:125), and rejected the violation of their rights.

Because of these past experiences, the South African government of that time inculcated into the larger parts of society the tendency to disrespect diversity, equality, human dignity, and promoted non-tolerance. Although apartheid has since been legally abolished, its effects were widespread and still remain engraved in the minds of some South African citizens (Peens 1998:62). The political, cultural and socio-economic backgrounds therefore complicate the realisation of the right to education.

The following table adapted from Louw, van der Berg and Yu (2006:31,32) shows quite clearly how the academic attainment rates of the various racial groups differed from 1890 to 1980:

Table 1.1 Attainment profiles in percentages of different racial groups from 1890-1980

Year	Primary				Matric				Tertiary			
	Blacks	Coloured	Indians	Whites	Blacks	Coloured	Indians	Whites	Black	Coloured	Indians	Whites
1890	02%	08%	05%	75%	00%	00%	00%	19%	00%	00%	00%	06%
1900	03%	18%	10%	86%	00%	00%	00%	21%	00%	00%	00%	09%
1910	06%	20%	19%	94%	00%	00%	00%	25%	00%	00%	00%	09%
1920	10%	38%	30%	98%	00%	00%	02%	30%	00%	00%	02%	11%
1930	14%	42%	45%	98%	00%	00%	04%	35%	00%	01%	03%	14%
1940	22%	50%	62%	98%	00%	02%	09%	40%	00%	02%	04%	17%
1950	28%	62%	82%	98%	09%	10%	28%	68%	03%	03%	09%	28%
1960	52%	70%	91%	98%	15%	16%	48%	76%	05%	05%	15%	35%
1970	52%	82%	94%	98	29	30%	68%	80%	07%	06%	24%	38%
1980	82%	89%	96%	99%	30%	41%	80%	82%	03%	04%	18%	24%

Adapted from Louw *et al.* (2006:31, 32) Figures 9, 10 & 11

The education attainment gap among races at primary level for those who were born in 1980 is narrow (14%) with Indians and whites amongst the best performing races (96% and 99% respectively). The attainments of blacks and coloureds are low at secondary level in the same year. When moving to tertiary education levels, the racial attainment gap widens. The percentages of Indians and whites born in 1980 who completed tertiary education is 18% and 24% respectively, while only 03% of blacks and 04% of coloureds born in the same year completed tertiary education. This seems to suggest that access to tertiary education is constrained by factors which are not as limiting at primary and secondary levels. Finances



and dropout rates at secondary school level might be the probable cause (Louw *et al.* 2006:13).

South Africa stepped out of isolation and apartheid and adopted a new Constitution (the Constitution of the Republic South Africa, 1996, Act 108 of 1996 (hereafter called the Constitution), based on the values of equality, human dignity and freedom (Dlamini 1997:40; Rautenbach & Malherbe 1998:6; Van Raemdonck & Verheyde 1997:245). The Constitution is aimed at redressing the past imbalances and protecting the rights of all persons. The Constitution guarantees human rights (in chapter 2), including the right to basic education, which is provided for in section 29(1) (a-b). This section compels the state to take reasonable steps or measures to make further education progressively available.

While incorporating the Bill of Rights (Chapter 2 of the Constitution) into a legal system is a significant step, it nevertheless remains empty, or only formal, unless the whole social, economic and political order is transformed so that it allows everyone equal enjoyment of human rights (Eide 1983:107). Without knowledge and understanding, human rights remain only words that do not have any practical value and impact. Human rights can only be upheld in a society where everyone is aware of these rights and will help maintain them, even for children (Ramsden 1997:18).

However, it is also important to emphasise that, in the absence of knowledge and understanding, learners' rights may be nominal (Covell & Howe 1996:253, 1999:182). Learners may have the right to education or be free from abuse, but in the absence of understanding what it means to have a right or how to exercise it, learners may not be able to claim and enjoy it. In this regard Belter and Grisso (1984:899) state that beyond the question of knowledge lies the ability to apply the knowledge about one's rights in a practical manner, and the ability to take appropriate actions to protect or claim a right that has been violated. Children should be made aware of their right to education and they, in turn, should acknowledge that they possess it.

As South Africa emerged from the apartheid system of education where human rights, especially the learner's right to education, were not fully recognised, the question of how learners receive and perceive this right is inevitable when an education system, which fully recognises the learners' rights to education, has to be created and developed.

South Africa now has a single education system. The Constitution and Schools Act (section 3) require that learners be admitted to schools without unfair discrimination. The number of learners attending the former 'White only' schools is increasing. As the number of learners belonging to different cultural, ethnic and religious minority groups increases in the same school, tensions among learners, parents and the school authorities emerge. They begin to realise that there are different cultures and their own is not the only or correct one. Some fail



to recognise other cultures and are therefore intolerant and abusive and absolutise their rights. According to Van Vollenhoven (2005:35), the concept 'to absolutise' implies the tendency to perceive rights as non-derogable. Symptoms of the phenomenon can be that rights are viewed as unquestionable, non-negotiable, unequivocal, undeniable and incontestable (see § 4.14.3). These trends can have a detrimental effect on learners' rights to education if allowed to persist in schools. Learners appear to be unaware that their rights to education apply equally to each and every one of them. In this respect it is imperative to investigate how learners understand their rights to education. If learners' understanding of these rights can be determined, policy makers would be better equipped to ensure that the exercise of these rights occurs within the parameters of the legislation, without infringing upon the rights of others.

Although learners have the right to education by virtue of being human (D'Engelbronner-Kolff 1993:65), they are, however, not born with knowledge of human rights. It is through different socialisation agents and practical encounters with human rights experiences that learners acquire appropriate attitudes towards human rights and understand what constitutes basic human rights.

The question arises whether this is also the case with learners specifically in the Limpopo Province. For the purpose of this study it was assumed that learners have limited understanding of their rights to education. Their lack of understanding will pose a threat in their exercise and implementation of the rights, as well as the survival of democracy. Further, because the right to education is aimed at the development of human potential and cognitive thinking skills, lack of understanding of this right would retard learners' development of understanding and reasoning to a more advanced level of human rights arguments. Research is essential to determine exactly how learners understand human rights, especially their rights to education.

Therefore this case study investigated secondary school learners' understanding of human rights, particularly their right to education in South Africa. The investigation of this topic was twofold. Firstly, it attempted to interpret learners' understanding of the scope of their right to education and secondly, from their responses, it attempted to determine their level of understanding through the lenses of social contract theory and moral ethical development theory (Kohlberg 1969).

1.3 RATIONALE

In terms of principle 7 of the United Nations Declaration of the Rights of the Child of 1959 the intention regarding education is that:



The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education, which will promote his general culture, and enable him, on the basis of equal opportunity, to develop his abilities, his individual judgment and his sense of moral and social responsibility, and to become a useful member of the society.

Since human rights should be protected by the rule of law, it is agreed internationally, through this principle, that the right to education is a fundamental human right and an indispensable means to enjoy human rights and freedoms in a democratic society and to eradicate poverty (Daudet & Singh 2001:9,82). It was in this principle that I discovered the purpose for undertaking this study. If it is agreed that the right to education is a fundamental human right, aimed at the development of human talent, individual judgment, respect for human rights and therefore the protection of democracy, it is important to determine learners' understanding of this right. The violation of this right could lead to the violation of other human rights and impede the enjoyment of other human rights (Daudet & Singh, 2001:10).

This research also arises from recommendations made by Torney-Purta (1982:47), who pointed out that research based on human rights education is not as strong as it should be. It is believed that further research is needed to address issues such as young persons' knowledge and understanding of the concept of human rights. Researchers are needed to evaluate the effectiveness of formal human rights learning experiences, and the ability of learners to make use of their rights. South Africa's Constitution entrenches the Bill of Human Rights in chapter two. Eide (1983:107) notes that incorporating the Bill of Rights into a legal system is a significant step, but it would remain empty or only formal unless the whole social, economic, and political orders have been transformed in such a way that it allows everyone equal enjoyment of human rights. Human rights can be sustained in a society where everyone is conscious of these rights and will help maintain them, even for vulnerable groups such as children (Ramsden 1997:18).

Research on learners' perceptions of rights in legal and general spheres are increasing in fully-fledged democracies (Abramovitch, Higgins-Bliss & Bliss 1993:313; Abramovitch, Peterson-Badali & Rohan 1995:1; Cherney & Perry 1996:243; Grisso & Pomicter 1977:333; Helwig 1995:152; Melton & Limber 1992:174; Ruck, Abramovitch & Keating 1998(a):404; Ruck, Keating, Abramovitch & Koelg 1998(b):275). However, relatively little research has been done in South Africa regarding learners' understanding and perceptions of their rights in general (Peens 1998:24), and the human right to freedom of expression in particular (Van Vollenhoven 2005:7). Much of the research in the area of learners' rights was done in developed countries such as England, Finland, Canada and America. Although one may draw on other scholars' findings, it remains important to investigate what learners in young democratic countries such as South Africa know and understand about human rights, since knowledge and truth are relative concepts.



Prior to 1994, the South African education system did not respect human rights for all, especially learners' rights to education (Peens 1998:6). After 1994, a new constitution was adopted, which is underpinned by the values of equality, human dignity and freedom (Dlamini 1997:40; Rautenbach & Malherbe 1998:6; Van Raemdonck & Verheyde 1997:245).

The right to basic education is provided for in Section 29(1) (a-b) of the Constitution. This section provides that everyone has the right to a basic education which includes adult basic education and also compels the state to take reasonable steps or measures to make further education progressively available. In a new democracy where human rights are respected, the question of how learners receive and perceive their rights to education is inevitable.

Research on learners' experiences of their rights will be useful in constructing an agenda for child advocacy, because it may illuminate the most critical problems for children in the fulfilment of their rights. It may also help to define the contours of human rights. Education planners and educators should know learners' levels of understanding in order to plan curricula. Strategies should be aligned to enhance the rate of the development of human rights reasoning. Information about learners' conceptions of their rights and the phenomenology of the exercise of their rights may be useful to design structures and procedures for implementing learners' rights in a manner that protects their rights, especially their right to education.

I hope that even if there are no immediate instrumental and tangible benefits in asking learners about their views of their rights to education, this step would be an important signal of respect for a learner as a person. This view may have a positive impact on learners' socialisation, since their understanding of human rights is, to a certain extent, influenced by the perceptions and attitudes of others toward them and also towards their rights (Campbell & Covell 2001:132) (see § 3.2.2).

1.4 STATEMENT OF THE PROBLEM

The problems and reforms outlined in § 1.2 usually generate fears. The recognition by the international community and the South African education system of the concept of human rights for learners has given rise to an almost hysterical debate. Situations related to human rights become conflictive on many occasions because interests of individuals are at stake. Balancing the educators and learners' rights, duties and interests at school does not involve solely rights issues but also moral values, justice and relationships. Learners' rights have too often provided confusion and biased interpretation even to this day. Learners' rights are often dismissed because some educators and principals feel that the recognition of the learners' right to education in full might reduce their authority to discipline learners at school (Joubert. 2006:445). At the same time learners feel that their right to education allows them to do as they please while they are at school, for example the *Saturday Argus*, 9 March 1999 as cited

in Joubert (2006:446) noted that a schoolboy, executed an educator in front of the class. Possibly one may ask this question:

How do learners understand human rights and in particular their right to education?

The working premises that underpin this investigation are:

- (1) Some learners have limited knowledge of their rights to education.
- (2) Some learners do not know how to exercise their rights to education.
- (3) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the rights and duties of the school authorities.

In terms of the first working premise, it was assumed that some learners

- (1a) know that their right to education, like all other rights, has corresponding responsibilities;
- (1b) know that through the realisation of their rights to education an array of opportunities can be opened;
- (1c) confuse their rights to education with other human rights;
- (1d) do not know who are the beneficiaries of the right to education.

In terms of the second working premise, it was assumed that learners would

- (2a) perceive their right to education as absolute;
- (2b) not know how their rights to education could be limited.

In terms of the third working premise, it was assumed that

- (3a) Learners employ various levels of human rights understanding when dealing with dilemmas where the exercise of their right to education is in conflict with the right and duties of the school authorities.



1.5 AIM OF THE STUDY

The aim of this research is to analyse learners' knowledge and understanding of human rights, particularly their right to education.

1.6 CONCEPTUAL FRAMEWORK

Jansen (2004:1-2) explains that a conceptual framework is an explanatory device that enables a researcher to make sense of collected data. It is relatively easy to collect data, yet much more difficult to explain what the data means. The conceptual framework also assists a researcher to focus the data collection and is done to understand the reason behind the research. This study focuses on learners' understanding of human rights, especially their right to education. It involves two phenomena: "understanding" and "human rights", which fall within cognitive, moral, ethical and legal domains. The right to education is a human right and is extensively documented in human rights instruments (see § 2.4.4), legislation and South Africa's Bill of Rights incorporated in the Constitution (see § 2.7). For these reasons, this section investigates social contract theory (Baah 2000:12-15; Balton 1992:211; Whittle 1994) and Kohlberg's theory of moral, ethical and social development (Kohlberg 1969:376-381) (see § 3.5).

1.6.1 Social contract theory

Many international 'social contracts' exist in which governments agree amongst themselves to treat their people in accordance with universally recognised laws. The United Nations Charter proclaims that the primary purpose of the organisation is to respect human rights. Traditional human rights law covers the period from 1648 to 1945. During this period international organisations were not as developed as they are today. Only the contractual legal agreements existed and states adhered voluntarily to the contracts. Since 1945, the United Nations (hereafter UN) has provided a forum in which governments have concluded numerous international social contracts in the field of human rights (see figure 1.1). Some of them are binding, while others are not. One can view the internationalisation process of the human rights instruments as the stages in a natural evolution of international law. In any event the social contract theory and human rights law both require that government observes the rights of the governed by proposing certain rules and laws to order the manner in which governments treat the governed (Balton 1992:211; Dorr 1994:10).

The social contract theory requires that once human rights instruments are ratified, they become law and legally binding on the countries that ratified them (Balton 1992:211; Dorr 1994:10). According to Dorr (1994:11), to ratify means to accede or accept. Internationally the member states of the UN have agreed to human rights principles by adopting several conventions, declarations and covenants and thereby affirm that they will uphold human rights



and protect the rights of their citizens, including the rights of the vulnerable and weak members, that is, among others, the learners and women. The Czech Republic (Kroupova 1996:681) and the United Kingdom (Freeman 2002:97) for instance, ratified the Convention on the Rights of the Child (CRC). In 1996 the UN General Assembly managed to get 187 ratifications or accessions (Kolosov, 1996:364).

The right to education is a human right and it is contained in international human rights instruments. This implies that the right to education is recognised in international human rights law and it is entrenched in South Africa's Bill of Rights in chapter two of the Constitution. Upon reviewing the human rights instruments and tracing the provisions which deal with the right to education it was found that most of them affirm learners' rights to education. South Africa ratified some of the human rights in 1994 –1996 and by so doing agreed along with the international world to abide by the international social contracts such as the following:

- The Universal Declaration of Human Rights (1948) (UDHR).
- The UNESCO Convention against Discrimination in Education (1960) (UNESCO CDE).
- The International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR).
- The Convention on the Rights of the Child (1989) (CRC) (Sarkin 1998:635).

By adopting the above human rights instruments, South Africa agreed to abide by the international human rights law standards and therefore recognises the rights of citizens on a legal basis. South Africa adopted a Constitution that incorporated a Bill of Human Rights in chapter 2 and it is the supreme law of the Republic of South Africa (Bray 2000(a):25, 2000(b):8). The right to education is provided for under section 29 of the Constitution.

It is imperative to have knowledge of international law, a clear understanding of the Constitution and how the development of human rights understanding occurs when researching any topic dealing with human rights and law. In practice case law has developed legal principles that are used as tools to guide people when implementing law practically. Hence the research of the understanding of learners' right to education should take place against the social contract and moral ethical development theories. These theories will help in the interpretation of the findings of this research. Figure 1.1 comprises the conceptual framework of this research.

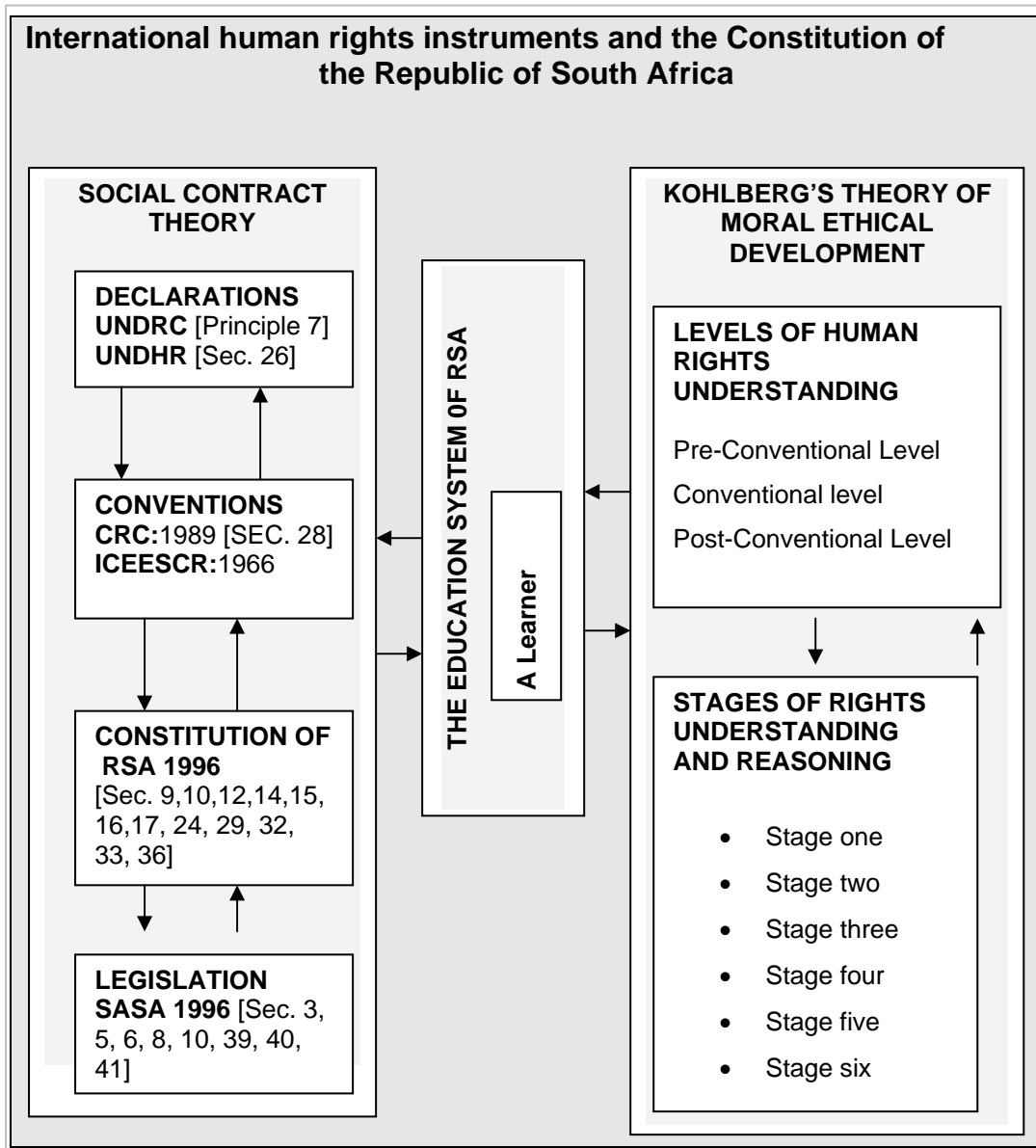


Figure 1.1 Visual representation of conceptual framework depicting the moral ethical development of a learner in relation to his¹ levels of human rights understandings within international human rights instruments and the Constitution of South Africa

The investigation occurs within the framework of the Constitution. As the Constitution is the supreme law of South Africa, all national or subordinate legislation must be consistent with the Constitution in the opinion of the courts (Bray 2000(a):30). The Constitution prescribes how the human rights contained in the Bill of Rights must be interpreted. It is important to have knowledge and understanding of international law and a clear understanding of foreign law when researching any field that concerns the law. In this way one would be better equipped to recognise when one's right has been violated. Hence the research on learners'

¹ In this thesis the masculine form includes the feminine, unless the context indicates otherwise.



understanding of human rights and their right to education should take place against the backdrop of this theoretical background.

1.6.2 Kohlberg's theory of moral ethical development

Since the right to education aims at the development of learners' talents, skills, critical reasoning capacity, and respect for human rights and to determine whether or not learners have developed to a level of autonomous human rights reasoning and judgment, Kohlberg's theory of moral ethical development should be useful. This theory stresses that the development of moral (human rights) judgement occurs in sequential stages. Each stage is qualitatively more advanced than the stage that has preceded it and this forms a hierarchy which integrates in the higher stages the structures found in lower stages (Fernhout 1990:81; Kohlberg 1969:352; Kohlberg & Kramer 1969:99; Kohlberg, Levine & Hower 1983:31; Kurtines & Greif 1974:454; Melton 1980:186; Snarey 1985:204).

Since this study involves learners' understanding of their rights to education, which is one of the fundamental human rights, it is imperative to understand how the development of human rights understanding and reasoning occurs. This can be best understood by looking at the learners' understanding of their rights to education through the lenses of Kohlberg's theory of moral ethical development. Kohlberg (1969:376) distinguishes between three general levels of moral development (also called stages of justice reasoning). Each level has three stages. The second stage is more advanced than the first stage. Kohlberg organised these stages in three levels, which he calls conventions. The convention indicates three types of relationships, that is, relationship between the self, the society's moral rules and personal and societal expectations. In this respect the term convention as explained by Peens (1998:40) refers to the moral values, norms and rules of a given society. This is the degree to which an individual conforms to socially prescribed views of morality.

When investigating the topic that involves the understanding of human rights it is of vital importance to understand how the development of human rights understanding occurs, especially since it is assumed in the third premise that learners' understanding of human rights would progress along three levels (see § 1.4). The social contract theory (a human rights theory dealing with social contracts in the form of legal agreements between states) and Kohlberg's theory of moral ethical development (dealing with the stages and levels of human rights understandings) have, therefore, been blended. Knowledge of these two theories and the intertwinement between them are of great importance, and could be used as a tool to interpret the results of this study.

The role that development plays in the way learners of different ages reason about rights and moral issues is particularly important in this study of learners' understanding of their rights to education. In this regard the relevance of the work done by Kohlberg on the issue of



development of morals could not be ignored (Peens 1998:40) in a study dealing with learners' understanding of their rights, since human rights fall to a certain extent within moral and legal domains. It is also necessary for this study to include a developmental theory as understanding of human rights falls partly in the cognitive and affective domains.

Whereas cognitive processes in the category of understanding include interpreting, classifying, explaining, comparing and summarising (Anderson & Krathwohl 2001:70) the affective domain involves the acquisition of social skills and values (D'Engelbronner-Kolff 1993:65). It is vital that a uniform background exists as to where learners are in terms of moral development and cognitive development in assessing their understanding of their rights to education.

1.7 DELIMITATION OR SCOPE OF THE STUDY.

This study was not conducted in all of the provinces of South Africa. Instead, I concentrated on the Soutpansberg East Circuit, Vhembe district in the Limpopo province.

This case study researched the understanding of human rights, the rights to education, in particular, of learners of one public secondary school, from a rural setting in one cultural group, falling within the age group of 15-18 years old, who are in grades 9-12. Learners from the foundation phase, intermediate phase, higher education and training phase and educators were not included. Learners receiving education in the independent schools were not included in this research. According to Schools Act section 1(ix) a learner is any person receiving education or obliged to receive education in terms of the Act. Although many learners in South African schools are older than 18 or 21 years they are not included in this studies. In this research a learner is defined as a person, who is being taught by educators at a public secondary school level, in grades 9-12 and aged between 15-18 years old. The detailed description of a learner is done in chapter 2 (see §2.2).

1.8 RESEARCH DESIGN

The following points describe the research design of this study in order to orientate the reader regarding the methodology and expectations of this inquiry. The study explores a single phenomenon namely learners' understanding of human rights, particularly their right to education. Three working premises and seven assumptions guide this inquiry.

1.8.1 Knowledge claim

At this point I present the justification of my choice of interpretive paradigm, as it is from its lens that I view the world or reality in this research (Cohen *et al.*, 2000:3). While I believe that science is a search for the understanding of a phenomenon, I am also convinced that there is



no single truth (Mouton 1996:26). When people search for the truth in their real world, they invoke their experiential knowledge and give meaning to their own truth as lived experiences and therefore they give subjective meaning to the phenomenon (Cohen, Manton & Morrison 2000:6). I therefore view knowledge from the interpretivist and constructivism epistemological theories (Denzin & Lincoln 1998b:26-27; Schwandt 1997:19, 2000:191-197) (see § 4.3).

Furthermore, people do not gain knowledge of a phenomenon from research only, nor does knowledge belong to the authentic voice of the specialist. It also belongs to the subjective and diverse voices of individuals, who view the reality in a holistic way. This therefore means that people interpret reality as it presents itself to them, at a specific time and context. One research finding, which dominates as truth for the time being, may be challenged by other researchers, who bring forth new truths that reject the previous research and can yet be followed by other research with new findings. The truth is therefore constantly evolving. This became even clearer when the historical development of learners' right to education and scholarly criticisms of Kohlberg's theory of moral ethical development were reviewed. The criticism is not described in this section. Scholarly views on Kohlberg's theory are discussed in chapter three (see § 3.6). As the image of the child changed with time (Melton 1991:61), so the right to education acquired greater significance and the next step was to incorporate it in the international and national human rights law (see the development of the right to education in § 2.4.1).

The study was conducted in terms of the interpretive paradigm. The interpretive paradigm assumes that realities are varied and how one person knows and understands reality can differ considerably from another person (Smit 2001b:69). I therefore construct my own understanding from the view of reality as constructed by the respondents. While the right to education is entrenched in the Constitution, everyone attaches an individual, subjective meaning to the interpretations of this right. I assumed that learners' understanding of human rights might differ from other people's understandings of this same phenomenon. They may interpret their rights differently and exhibit different levels of human rights reasoning. By understanding how learners understand their human rights, the authorities and managers will be able to pro-actively formulate and implement policies to ensure harmony and stability between learners and school authorities and avoid possible lawsuits.

1.8.2 Research approach

I researched fundamental human rights under the auspices of the Faculty of Education at the University of Pretoria. This combined the traditional law research method (historico-legal), as defined by Russo (1996:34,35) that is, the review of some human rights related court cases (see § 2.5.2.1 & § 2.6.3.1), human rights instruments with research methods commonly used in human sciences. (Russo, 1996:34). The source of information in legal research is mainly



the law itself and the research tends to be reactive I conducted this type of qualitative research in terms of a literature review based on an in-depth literature study of international instruments, Constitution, statutes, case law and common law relating to the research problem (see § 2.5).

It is a given that there are multiple realities and they are the results of subjective individual and societal constructions based on lived experiences. This view forms the rationale of my choice of the qualitative research approach. A qualitative research approach helped in determining learners' understanding of human rights and their rights to education in particular, which in turn will help the education managers and policymakers to develop more learner-centred policy approaches and approaches that accelerate learners' levels of human rights reasoning. The research approach was explained in detail in chapter 4 (see § 4.5)

1.8.3. Inquiry strategy

This study seeks to explore, understand and interpret learners' understanding of human rights, with special emphasis on the right to education. This study may be described as subjective and interpretive (see § 4.3) and was conducted as a qualitative case study. Because of its unique characteristics, it could be described as an exploratory case study (Cohen *et al*, 2000:183). Purposive sampling was adopted, with the focus being on one rural public secondary school, involving learners of one age group (15-18 years old) in grades 9-12, belonging to one cultural (that is racial, language and socio-economic) group. Therefore a homogeneous sample was used (see § 4.7).

1.9 RESEARCH METHODOLOGY

The following subsections explain the methodology chosen for this study. This orientates the reader in terms of the basic premises, epistemological position, research approach, data collection strategies, as well as data collection instruments.

1.9.1. Sampling

The respondents of this study were purposively sampled. Denzin and Lincoln (1998: xiv) state "*Qualitative researchers employ theoretical or purposive, and not random sampling model*". The justification of my choice of purposive sampling and the sample size is discussed in detail in chapter 4 (see § 4.7).

1.9.2 Data collection technique

The method of data collection consisted of three stages (see § 4.6.1). In stage one, I used an open-ended and semi-structured questionnaire, which was more appropriate during the first



stage of data collection, as it was aimed at the compilation of a demographic profile of the respondents (Cohen *et al* (2000:248). Unlike rigid structured questionnaires, open-ended questionnaires are flexible and allow the respondents to write a free response in their own terms (McMillan & Schumacher, 2001:260). This also allowed control of aspects that could influence the learners' understanding of human rights and their rights to education in particular and provided the basis of interpretations of unexpected data later on during the data analysis and interpretation stage (see chapters 5 and 6). In this regard consideration was given to what Cohen *et al* (2000:248) call "fitness for the purpose".

In stage two, I conducted focus group discussions, while stage three consisted of in-depth face-to-face interviews. These stages are explained in detail in § 4.6.1.2 & 4.6.1.3. In this way I was able to determine not only what learners understand about their rights regarding education, but also why they understand their rights in a particular way. Consequently, based on the reasons learners provided for their assertion or non-assertion of their rights, I was able to determine the levels of human rights understanding and reasoning at which learners operate (§ 6.2 and § 7.4.3).

1.9.3 Data analysis procedures

I analysed the data manually, firstly using open coding and then axial coding. I followed the step-by-step procedure as proposed by Tesch (1990:95) and McMillan and Schumacher (2001:462). Analysing data manually is a tiresome and time-consuming procedure but it was necessary in this study.

The tape-recorded data obtained from the focus group discussions and face-to-face interviews were transcribed (see addenda A and B respectively). The transcript was then read while listening to the tape and classifying the data into codes. This involved breaking the data into sections and organising them differently. Classification was done for this purpose and was guided by the research objectives. Codes that belonged together were coloured and clustered into one category. The correlations and connections between the categories were studied which resulted in clustering together the categories that belonged together into the same family. In the next step, patterns that emerged from the data were identified and a name was assigned to each pattern. A detailed description of the data interpretation process is presented in chapter 4 (see § 4.12).

The same processes of coding, categorising the data and clustering the data into families and eventually searching for the patterns that emerged from the data was done for both stages two and three, that is, focus group discussions and face-to-face interviews. The arrangement of codes, categories, families and patterns is available in addenda C and D respectively. The two stages of data collection (see § 1.9.2 and § 4.6.1) ensured comprehensive data. The merger of data from the focus group and in-depth face-to-face interviews added depth,



breadth and insight about how learners understand their rights to education. The numerous data collection methods afforded multiple viewpoints and the fact that data collection had been done in sequential stages assisted to expand and validate the findings. Additional information could also be obtained if the need arose.

1.10 SIGNIFICANCE OF THE STUDY

Since the right to education interlinks with other human rights, and the violation of other rights within the school context may impact negatively on learners' realisation of their rights to education, its implementation may pose challenges to school authorities with regard to balancing the rights of all learners. The focus of this study was on learners' understanding of human rights, especially their rights to education, since this would alert the authorities to learners' expectations and perceptions with regard to these rights. Information about learners' perceptions of their rights and the phenomenology of the exercise of their rights may be useful to design structures and procedures for implementing learners' rights in a manner that is protective of their rights, especially with regard to education.

Even when political and legal authorities have announced their good faith and intentions concerning the implementation of learners' rights to education, a central problem remains in persuading learners themselves to understand that they actually have those rights and that these would be meaningless, until they gain courage and confidence in order to exercise their rights.

This research was also intended to assist the school authorities to understand learners' understanding of their rights to education and guide them to develop appropriate policies to ensure that these rights are respected and balanced correctly to prevent court cases. I hope that, even if there were no immediate instrumental and tangible benefits in asking learners about their views of their rights to education, this step would be an important signal of respect for learners as individual persons. This view may have a positive impact on the learners' socialisation.

While other studies address learners' understanding of human rights in legal (see § 3.2.1.1) and medical spheres, this case study expands the knowledge base by documenting the learners' understanding of their right in the educational sphere. Whereas the right to education is a prerequisite for the enjoyment of other human rights, it may, however, be threatened by lack of understanding on the part of learners. Therefore it is important for authorities to know where the learners' levels of rights understanding are in order to design teaching strategies that would enhance their knowledge and accelerate the development of their understanding from the lower to advanced levels.



1.11 LIMITATION OF THE STUDY

This research focused on learners' understanding of human rights with special emphasis on learners' right to education. A study of this nature could cover all learners in South African schools. Since such an endeavour would be too expensive and time consuming for purposes of a dissertation, I decided to focus on one rural public secondary school in the Soutpansberg Circuit, Vhembe district in the Limpopo province. One limitation of my study is the sample size. The respondents of this study were purposefully sampled (see § 4.7), and as such do not represent the whole population, as in the case of a quantitative study. This choice of the purposeful sampling strategy was guided by the research paradigm. The sample was as homogeneous as possible so that variables that might influence the results were limited (see Table: 4.1). I cannot however, claim that one would achieve the same results with a more heterogeneous and inclusive sample.

The most obvious methodological limitation relates to the inability to construe global generalisations from the findings of this study. Since the focus was on the understanding of learners in one rural public secondary school, involving learners from one cultural group, low socio-economic background and one age-group (15 to 18 years old), it follows that these particular findings will not be representative of learners of different ages, cultural groups and socio-economic backgrounds in South African schools. The patterns that evolved from the data are therefore not necessarily typical of all learners. It cannot be claimed that all patterns in learners' understanding of human rights have been identified.

Despite this limitation, one may be able to contextualise the findings within a bounded context (Merriam, 2001:208-9). The results can be generalised within the context from which the results were obtained.

1.12 CHAPTER PLANNING

Chapter 1 Introduction and orientation

Chapter 2 The rights to education and other human rights of learners

Chapter 3 The development of learners' understanding of human rights

Chapter 4 Research design and methodology

Chapter 5 Data analysis: Knowledge and understanding of human rights

Chapter 6 Data analysis: Levels of human rights understanding and reasoning

Chapter 7 Overview, conclusion and recommendation



1.13 SUMMARY

In the years prior to 1994, the South African Government was characterised by its apartheid policies and the rights of the majority were not recognised. There was gross violation of human rights, including the learners' rights to education. The education system of South Africa was characterised by inequalities and discrimination (Dlamini 1997:39; Fourie 1990:122; Rex 1979:120). The type of political environment in which people find themselves tends to influence their way of understanding human rights. In this regard the South African Government inculcated into its society the tendency of disrespect of diversity, basic freedoms, equality and human dignity. The violation of learners' rights to education was the practice of the day and might still be to some extent today. The authoritarian philosophy based on different historical and cultural backgrounds might socialise the people of South Africa into disrespecting others' rights (Van Vollenhoven 2005:206). They therefore are not used to exercising their rights. In a democracy where human rights are known, understood and internalised (making feelings, attitudes and beliefs about human rights part of the way one thinks and behaves) a learner should understand exactly what it means to have the right to education and how to exercise this right. An in-depth study to determine learners' specific understanding of their rights to education was, therefore undertaken. This research aimed to determine learners' understanding of their rights to education. The conclusion of this study presents the main findings (see § 7.4) and recommendations (see § 7.8).

The next chapter focuses mainly on learners' rights to education and other human rights, which are directly relevant to the learners' right to education. This includes the historical development of learners' rights to education, the recognition of learners' rights to education in international human rights law, the recognition of learners' right to education in South Africa, some other human rights that are directly and indirectly relevant to learners' rights to education and limitation of human rights.