

**CHALLENGES FACED BY SOCIAL WORKERS WORKING IN
CHILD PROTECTION SERVICES IN IMPLEMENTING THE
CHILDREN'S ACT 38 OF 2005
BY
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DECLARATION

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I hereby declare that this research report (dissertation) is my original work. All secondary material used has been appropriately referenced and acknowledged in accordance with the regulations of the University of Pretoria.

Signature

Date

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Lude loluhambo esengiluhambile, ngibonga uthando lomusa wakho Nkosi yami, Thixo wena owadala izulu lomhlaba, ngithi malidunyiswe igama lakho. Qhubeka ungikhokhelela kuze kube naphakade, Nkulunkulu wami, wena onamandla.

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ABSTRACT

CHALLENGES FACED BY SOCIAL WORKERS WORKING IN CHILD PROTECTION SERVICES IN IMPLEMENTING THE CHILDREN'S ACT 38 OF 2005

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The transition from the previous Child Care Act 74 of 1983 to the new Children's Act 38 of 2005 has been chaotic. Since the introduction of the Children's Act 38 of 2005, and its subsequent implementation in April 2012, there has been instability in rendering child protection services. This state of affairs has been caused by some serious loopholes and shortcomings in the new legislation; challenges faced by social workers in adapting to it; lack of capacity of the stakeholders in the child protection field; and the shortage of resources to implement it.

The goal of the study was to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

The researcher conducted this study from a qualitative approach. The study was applied and exploratory in nature and utilised a collective case study design. There were 18 social workers in the employ of Johannesburg Child Welfare who participated in the study. They were selected through purposive sampling. Data was collected by means of focus group discussions.

The findings show that social workers face institutional and infrastructural barriers in implementing the Children's Act. Furthermore, social workers face massive human resource challenges in the implementation of the Children's Act and these stem from the shortage of social workers; inadequate training of social workers and high case loads. Shortcomings that have been realised in the implementation of the Children's Act 38 of 2005 relate to the transfer of children to alternative placements; different interpretations of different sections of the said Act; the fundamental change to a court based system of renewing the placement of children; contradictions of the Children's Act with other legal statutes and societal values; and the over reliance of the child protection system on the foster care system to provide income support for children.

The study concluded that the Children's Act needs to be amended to address its pre-statutory, statutory and post-statutory shortcomings, which create many challenges in its implementation. The study also concluded that the shortage of social workers and/or inadequate training contributes to high case loads, which in turn, influences the effectiveness of child protection services.

Recommendations on addressing the challenges faced by social workers in implementing the Children's Act include the establishment of a kinship care grant; amending the Children's Act; organising training for all role players involved in implementing the Children's Act; and addressing technical issues on the implementation of the Children's Act.

KEY WORDS

- ✓ Children's Act 38/2005
- ✓ Social Workers
- ✓ Child protection services
- ✓ Statutory services
- ✓ Developmental approach
- ✓ Developmental social welfare
- ✓ Presiding Officers
- ✓ Children's Court
- ✓ Foster care
- ✓ Kinship care

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CHAPTER ONE

GENERAL INTRODUCTION AND ORIENTATION OF THE STUDY

1.1. Introduction

In order to reverse the legacy of apartheid, the democratically elected South African government had a tremendous task of addressing the inequalities it inherited from its predecessors (Hölscher, 2008:116). The process commenced with its pre-election manifesto of equity and adoption of a developmental approach as a new perspective for achieving social justice and human rights (Patel, 2008:98). The mandate for developmental services is outlined in the White Paper for Social Welfare of 1997 (Lombard, 2007). This mandate entails a deliberate shift from a racial, paternalist and residual apartheid welfare system, to a developmental approach which was intended to modernise the welfare system to be inclusive and more appropriate in meeting the needs of all South Africans (Lombard & Kleijn, 2006:213). The Department of Social Development (2011:13) postulates that, “The White Paper provides a framework for the transformation and restructuring of social welfare services in South Africa.” It also forms a framework for social welfare services in the country. Child protection services are included in the “basket of developmental social welfare service delivery” (Lombard & Kleijn, 2006:214).

The new South African government has remained true to its “first call for children” and its prioritisation of children’s issues (UNICEF, 1990). This is evident in the fact that, “It has enshrined children’s rights in its Constitution (1996) and ratified the UN Convention on the Rights of the Child (1989) in 1995 and the African Charter on the Rights and Welfare of the Child (1990) in 2000” (September & Dinbabo, 2008:113). In order to materialise and harmonise these commitments into domestic law and to suit the new developmental paradigm, the government introduced the Children’s Act 38 of 2005. Forty three sections of this new legislation came into effect on the 1st of July 2007

(Republic of South Africa, 2007). The rest of the Act, including the parts of most relevance to the care and protection of children, were effected on the 1st of April 2010. Two sets of regulations in relation to the Children's Act 38 of 2005 have also been published (Department of Justice and Constitutional Development 2010; Department of Social Development, 2010). The new Children's Act 38 of 2005 replaced the Child Care Act 74 of 1983 (here-in-after referred to as the previous Child Care Act), which was legislation that originated from the apartheid period (September & Dinbabo, 2008:113). Such policies were, "...aimed primarily at reinforcing racial hierarchies" (Barchiesi, 2007:12).

Since the introduction of the Children's Act 38 of 2005 and its subsequent effecting in April 2010, there has been instability in rendering child protection services (Hall & Proudlock, 2011; Loffell, 2011; Proudlock & Debbie, 2011). This state of affairs has been caused by some serious shortcomings in the new legislation and challenges faced by social workers in adapting to it. Most of these shortcomings relate to grounds of finding children in need of care and protection; and the fundamental change to a court based system of renewing the placement of children (Hall & Proudlock, 2011; Loffell, 2011). Despite all these challenges, not much research has been done to explore the nature of challenges that social workers working in child protection services are facing in implementing the said Act, in a bid to propose recommendations for its effective and efficient implementation.

The custodian of the Children's Act 38 of 2005 is the Department of Social Development. However, it has outsourced the rendering of child protection services to Non Governmental Organisations (NGOs). The Department of Social Development, however, is responsible for availing resources. Funded NGOs report to the Department of Social Development on a monthly basis through submission of statistical reports. Johannesburg Child Welfare, (where the researcher conducted this study) is one of these funded organisations.

The key concepts for the study are as follows:

Children's Act 38 of 2005

The Children's Act 38 of 2005 refers to a document legislating and guiding the rendering of child protection services in South Africa. It stipulates the type of services to be rendered, the persons to render them, and what procedures and principles to be followed when rendering them. The main objectives of the Children's Act 38 of 2005, as set out in Section 2 are:

- To promote the preservation and strengthening of families;
- To give effect to certain constitutional rights of children;
- To make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;
- To strengthen and develop community structures which can assist in providing care and protection for children;
- To protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards;
- To provide care and protection for children who are in need of care and protection;
- To recognise the special needs that children with disabilities may have;
- To promote the protection, development and well-being of children.

Social workers

Social workers are graduates of schools of social work, who use their knowledge and skills to provide social work services for service users (who maybe individuals, families, groups, communities, organisations, or society in general) (National Association of social workers, 1983:4) and by law are registered with the South African Council for Social Service Professions in terms of the Social Service Professions Act 110 of 1978. In addition, for the purposes of this study, social workers are graduates of the schools of social work that are in the services of Johannesburg Child Welfare (JCW), employed either in the Child and Family Unit (CFU); the Foster Care Unit (FCU) or the Child

Abuse Treatment and Training Services Unit (CATTSS) and are designated to implement child protection services as provided for in the Children's Act 38 of 2005.

Child protection services

Child protection services are interventions that are designed to promote, protect and fulfil children's rights to protection from abuse; neglect; exploitation; and violence (Kirst-Ashman, 2007:248). Such services are often aimed at preventing, responding to, and resolving the abuse; neglect; abandonment; and exploitation situations experienced by children in all settings (Department of Social Development, 2006:22). According to Section 105 of the Children's Act 38 of 2005, child protection services include the following:

- Services aimed at supporting the proceedings of the children's courts.
- Services aimed at the implementation of orders issued by the children's courts.
- Prevention and early intervention services.
- Services related to the removal and placement of children in alternative care (foster care; temporary safe care; and children's homes).
- Reunification and reconstruction services for children in alternative care.

Challenges

In the context of the study, challenges are viewed as infrastructural barriers and institutional obstacles (*Oxford School Dictionary*, 2002:74) deterring social workers working in child protection services against effective implementation of the Children's Act 38 of 2005.

1.2. Theoretical framework

The Children's Act was formulated in such a way that ensures that child protection services are rendered from a developmental approach. A developmental approach is

underpinned by a human rights based perspective (Midgley, 2010:16; Patel, 2005). This study therefore made use of a developmental approach embedded in a human rights paradigm as its theoretical framework, the rationale being that the study was within the domain of child protection. Moreover, a human rights approach is in itself an informative approach for developmental social welfare that the Children's Act seeks to further (Midgley, 2010:16; Proudlock & Jamieson, 2008:35). Some of the key principles of a rights based approach are spelt out in Midgley (2010:16) and Patel (2005) as: participation; universal access; social integration; self reliance; empowerment; appropriateness and accessibility. These principles are in alignment with the principles stipulated in the Children's Act 38 of 2005, which social workers should apply when rendering child protection services to children and their families. The key features of a rights based approach are: partnerships between rights holders, state and the civil society; harmonising social and economic development; participatory democracy; facilitating and promoting access to rights, and challenging policies and social systems that compromise rights (Lombard, 2010:7; Patel, 2005). In exploring the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005, the principles and features of a rights based approach are paramount as they inform the type of services to be implemented, the levels of intervention, the type of social work methods to be applied and the forms and types of partnerships to be present (Department of Social Development, 2006; Midgley, 2010:17). Within the context of a developmental theoretical framework, the above principles and features guided the study in terms of children's rights to protection and development.

1.3. Rationale and problem statement

The Children's Act 38 of 2005 was passed in order to further the child protection agenda within a human rights framework. However, since 2010, problems have emerged in relation to transfer of children to alternative placement, temporary safe care, post-removal processes, grounds for finding orphans and vulnerable children to be in need of

care and protection, and the changeover to a court-based system for deciding on extension of placements (Loffell, 2011). The transition from the previous Child Care Act 74 of 1983 to the new Children's Act 38 of 2005 has been chaotic and uncoordinated due to inadequate sensitisation; lack of capacity of the stakeholders in the child protection field; the loopholes and shortfalls of the Act itself and the shortage of resources to implement it. The impracticalities of this new document have remained in media discourse for a prolonged period now. Still there is no current information on the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005. Most available information in literature was obtained prior to the effecting of the said Act - it is therefore out-dated. The issue of concern is that there is no study that has been conducted on the actual challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005. The researcher's interest in the topic stemmed from his years of experience in the child welfare sector, which has cultivated his passion for the general well being of children.

The guiding research question for the study was:

- What are the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005?

Sub-questions that assisted the researcher in answering the research question were as follows:

- What are the shortcomings of the pre-statutory; statutory and post-statutory processes provided for in the Children's Act 38 of 2005 with regard to child protection?
- What institutional and infrastructural barriers are faced by social workers working in child protection services in implementing the Children's Act 38 of 2005?
- What effects do human resource challenges have on the implementation of the Children's Act 38 of 2005, with regard to child protection services?

1.4. Goal and objectives of the study

The research goal and objectives for the study were as follows:

1.4.1. Research goal

The goal of the study was to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

1.4.2. Research objectives

- To contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective.
- To determine the shortcomings of pre-statutory, statutory and post-statutory processes provided for in the Children's Act 38 of 2005, with regard to child protection.
- To identify institutional obstacles and infrastructural barriers faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.
- To explore human resource challenges in the implementation of the Children's Act 38 of 2005, with regard to child protection services.
- To make proposals towards addressing the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

1.5. Research methodology

A detailed description of the research methodology, including the research approach, type of research, research design, methodology, and the measures that were taken to ensure the trustworthiness of the data, as well as the ethical considerations of the study

will be presented in Chapter 3. The following discussion is a brief overview of the research methodology utilised for the study.

The study adopted a qualitative approach. A qualitative approach is more concerned with the “what” questions, which was exactly what the study sought answers for (Fouché & De Vos, 2011:95). A qualitative approach did justice to the study in that it enabled the researcher to report the challenges of implementing the Children’s Act from the social workers’ point of view (Fouché & De Vos, 2011:95).

This research was exploratory in nature. More specifically, it was an applied research study since it sought to apply and tailor knowledge to address the challenges faced by social workers working in child protection services in implementing the Children’s Act 38 of 2005 (Neuman, 2000:23).

A qualitative research design, more specifically, the collective case study design was utilised in the study (Neuman, 2000:37; Rubin & Babbie, 2011:442). A collective case study enabled the researcher to gain insight and an understanding into the challenges faced by social workers working in child protection services in implementing the Children’s Act 38 of 2005 (Struwig & Stead, 2001:7).

The research population for this study were all the social workers in different sectors of JCW that were involved in the implementation of child protection services as provided for in the Children’s Act 38 of 2005. The researcher made use of a non-probability sampling technique namely purposive sampling method, which allowed him to purposely gather typical and divergent data and to use his judgement in selecting the participants for the study (Rubin & Babbie, 2011:355; Strydom & Delpont, 2011:392).

The researcher made use of focus group discussions to collect data since they allowed him to question several social workers systematically and simultaneously (Rubin & Babbie, 2011:467). Due to the fact that the topic under study was exploratory in nature, during focus group sessions, the researcher made use of a semi-structured interview

schedule to ask open-ended questions (Neuman, 2000:250). Focus groups were inexpensive and generated speedy results (Rubin & Babbie, 2011:467).

1.6. Limitations of the study

The study was undertaken in a period when there were strong movements towards amending of the Children's Act. As such, the participants might have been influenced by these open debates, which in turn, could have influenced the findings, conclusions and recommendations of the study. However, findings still reflect the participants' personal experiences with the Children's Act.

1.7. Division of the research report

The research report consists of four Chapters. Chapter one provides an introduction and general orientation of the study including a broad introduction of the research topic, theoretical framework, rationale and problem statement, goal and objectives, a brief overview of the research methodology and the limitations of the study.

Chapter two contextualises child protection within the Children's Act 38 of 2005 from a developmental perspective. It also includes an in depth discussion of the pre-statutory, statutory and post-statutory processes provided for in the Children's Act 38 of 2005.

In chapter three, the researcher outlines the research methodology used for the study. This includes a detailed explanation on the research approach, type of research, research design, study population, sampling, data collection, data analysis, pilot study and ethical issues. This chapter also incorporates a presentation and discussion of the research findings.

Chapter four is the final chapter of the report and it outlines the conclusions and recommendations of the study. Furthermore, the researcher indicates how the goal and objectives of the study have been achieved. The key research findings from which conclusions were drawn are highlighted and in turn, recommendations are made.

CHAPTER TWO

IMPLEMENTATION OF THE CHILDREN'S ACT 38 OF 2005 WITHIN DEVELOPMENTAL SOCIAL WELFARE

2.1. Introduction

The focus of this chapter is on the implementation of the Children's Act 38 of 2005, its relevance to developmental social welfare, and a critical interrogation of its principles and provisions. The chapter will first contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective, where it would also look at the rationale and background of the Children's Act and the significance of issues addressed by the Children's Act to developmental social welfare. Current debates and studies on the Act will also be given due consideration. Next, human resource challenges in the implementation of the Act will be explored. On this subject, issues that would be deliberated include the shortage of workers and the range of poorly developed social service practitioners. Focus will then turn to institutional obstacles and infrastructural barriers faced by social workers in implementing the Children's Act, whereby unavailability of resources and budget issues will be deliberated on. Thereafter, an attempt would be made to determine the shortcomings of the Children's Act with regards to pre-statutory, statutory and post statutory processes. Still on this subject, due consideration would be given to unanticipated consequences of the Act. Finally, conclusions will be drawn.

2.2. Rationale and background of the Children's Act

The Children's Act guides the rendering of child protection services in South Africa. It stipulates the type of services to be rendered, the persons to render them, and the procedures and principles to be followed when rendering them. The Children's Act is thus a comprehensive piece of legislation with the purpose to afford children the

necessary care, protection and assistance to ensure that they can develop to their full potential (Department of Social Development, 2010:1). The Children's Act can be regarded as a social policy. The goals of social policy according to Hall and Midgley (2004:1) includes; poverty alleviation, social inclusion and protection and the promotion of human rights.

The main objectives of the Children's Act 38 of 2005 are:

- To promote the preservation and strengthening of families;
- To give effect to certain constitutional rights of children;
- To make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;
- To strengthen and develop community structures which can assist in providing care and protection for children;
- To protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards;
- To provide care and protection for children who are in need of care and protection;
- To recognise the special needs that children with disabilities may have;
- To promote the protection, development and well-being of children.

The Children's Act came after a realisation that the previous Child Care Act 74 of 1983 was narrow in focus and failed to live up to the standards of a new South Africa. It was premised on separate services for children based on the colour of their skin; it racially segregated blacks (including Indian, Coloured and African) (Dawes, 2009). Although these provisions were removed with an amendment in 1996, a more radical change was required to give effect to the rights provided to children in terms of section 28 of the 1996 Constitution (Dawes, 2009). Moreso, it advocated for residual services whereby the state was supposed to intervene when the need had already occurred, when a child had already suffered from abuse, neglect or exploitation (Dawes, 2009). The new government had vowed to "redress decades of social inequality" (Hölscher, 2008:117).

After winning the elections, politicians in the new government wanted to be seen as different from their predecessors and proceeded to transform inhuman apartheid legislations. September and Dinbabo (2008:120) note, “Political championship is imperative for successful implementation of social policy reform, and the Children’s Act is no exception.” The new Children’s Act replaced the Child Care Act 74 of 1983, which was legislation that originated from the apartheid period before South Africa became a constitutional democracy (September & Dinbabo, 2008:113).

The new South African government has enshrined children’s rights in its Constitution (1996) and ratified the UN Convention on the Rights of the Child (1989) in 1995 and the African Charter on the rights and welfare of the child (1990) in 2000 (September & Dinbabo, 2008:113). In order to materialise and harmonise these commitments into domestic law and to suit the new developmental paradigm, the government introduced the Children’s Act. However, only forty three sections of this new legislation were put into operation on the 1st of July 2007 (Republic of South Africa, 2007). The rest of the Act, including the parts of most relevance to the care and protection of children, were promulgated much later, namely on the 1st of April 2010.

As noted above, South Africa had to amend its laws to align them with the new international standards on child protection. Section 2 (2) of the Children’s Act 38 of 2005 states one of its objectives as, “To give effect to the Republic’s obligations concerning the well-being of children in terms of international instruments binding on the Republic.” However, in analysing ANC’s post apartheid policies, the impact and influence of globalisation should never be underestimated (Magubane, 2002:81). Globalisation, through the UN convention on the rights of the child, precipitated and provided an epistemological framework for the new Children’s Act. Besides the constitutional imperative to draft the Children’s Act 38 of 2005, the complex social challenges facing children and their families demanded a new approach. These challenges include widespread poverty, social fragmentation, high rates of unemployment, and HIV/Aids (Proudlock & Jamieson, 2008:35).

The services which were regulated under the previous Child Care Act 74 of 1983 which the new Children's Act continues to provide include:

- Protection services for children who have suffered from abuse, neglect, abandonment or exploitation
- Foster care (this has been extended to include cluster foster care)
- Adoption
- Children's homes (now referred to as Child and Youth Care Centres)

Section 4 and 5 of the Children's Act 38 of 2005 dwell upon the implementation of the said Act.

Section 5 of the said Act states that:

To achieve the implementation of this Act in the manner referred to in section 4, all organs of state in the national, provincial and, where applicable, local spheres of government involved with the care, protection and well-being of children must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to children.

In summary, the rationale of the Children's Act 38 of 2005 is to ensure that services to children and their families are rendered in a developmental, holistic and comprehensive manner.

2.3. Current debates and studies on the Children's Act

There is no significant current literature on the challenges faced by social workers in implementing the Children's Act 38 of 2005. September and Dinbabo (2008) conducted a study which focused on the anticipated challenges in implementing the Children's Act 38 of 2005 drawing from the perceptions of 700 Social Workers in the Western Cape. Their study was done prior to the implementation of the Act. In an editorial on the Children's Act 38 of 2005 by Dawes (2009), it is stated that the said Act is way ahead of the capacity to deliver services at ground level. Dawes (2009) recommended a

significant scaling up of finance and staffing. However, this was a proactive recommendation since it was put forward prior to its implementation.

Equally significant is the fact that in 2009, Couzens conducted research on inter-country adoption and then published an article titled: “A very long engagement: the Children’s Act 38 of 2005 and the 1993 Hague Convention on the protection of children and cooperation in respect of inter-country adoption” (Couzens, 2009:1). In this article, Couzens (2009) provides a brief review of inter-country adoptions in the pre-Children’s Act context; emphasising the need for an urgent entry into force of the Children’s Act in order to provide adequate protection to children involved in inter-country adoptions. Couzens (2009) also analyses the provisions on inter-country adoptions contained in the Children’s Act in the light of the standards of the Convention. The article concludes that the Children’s Act dramatically improves the quality of the national legal framework pertaining to inter-country adoptions. Couzen’s study, like the abovementioned study by September and Dinbabo, was undertaken prior to the commencement of the implementation of the Children’s Act.

Thus, debates and research studies on the Children’s Act, done prior to its implementation, view the Children’s Act as a legislation which has the potential to provide adequate protection mechanisms for children. However, the studies anticipated numerous challenges in the implementation of the Children’s Act.

2.4. Contextualisation of child protection within the Children’s Act from a developmental perspective

The Children’s Act 38 of 2005 was formulated in a way which ensures that child welfare services are rendered from a developmental approach. Some of the key principles of a developmental approach are spelt out in the Draft Reviewed Framework For Developmental Social Welfare Services as: participation; universal access; social integration; self reliance; empowerment; appropriateness and accessibility (Department

of Social Development, 2011:11-12). These are the very same principles stipulated in the Children's Act that social workers should apply when rendering services to children and their families. The key features of a developmental approach according to Patel (2005) are: human rights perspective; bridging micro-macro divide; harmonising social and economic development, and welfare pluralism-collaborative partnerships. The principles and features of the developmental approach are paramount as they indicate the type of services to be implemented, the levels of intervention, the type of social work methods to be applied and the forms and types of partnerships to be present (Department of Social Development, 2006).

The Children's Act provides a wide scope to the rights and welfare of children and seeks to counter the narrow focus of the previous Child Care Act by aligning itself to the principles of developmental social welfare in the following areas:

2.4.1. Giving effect to the constitutional rights of children

The Constitution of the Republic of South Africa was passed in 1996. Its section 9.1 and 9.4 contain a Bill of Rights which also applies to children. In addition, section 28 is principally on children's rights (Department of Social Development, 2006). According to Proudlock and Jamieson (2008:36), section 28 of the Bill of Rights specifies that every child has the right to family care, parental care or appropriate alternative care; the right to be protected from abuse, neglect, maltreatment and degradation; the right to social services; and the right to have their best interests given paramount importance in all matters concerning them. This line of thought is reflected in section 7 of the Children's Act, which stipulates the best interest of the child standard.

According to Wexler (2003:54), from a developmental perspective, social workers inform clients of their right to information, participation and decision making, including the right to legal representation. Van Niekerk (1998:32) stipulates that the child and the family have a right to know in what way will statutory intervention lead to the protection

of a child. The community has a right to indicate how it can protect the child by keeping him or her in the community (Lombard & Kleijn, 2006:219).

Not all constitutional provisions for children were enshrined in the previous Child Care Act 74 of 1983 since its adoption was long before the Constitution was envisioned. After the 1996 Constitution, it became paramount to repeal the previous Child Care Act and to radically transform the whole child protection system in South Africa to ensure its alignment with developmental social welfare. This objective is listed under section 2 (b) of the Children's Act.

The drafting of this new legislation reflects what Booysen and Erasmus (2006:168) termed an "incremental approach" to policy decision making, since successive approximate changes were made to existing legislation in a bid to make it relevant to the practical realities of the day. The constitution, notably section 27(1)(c), provides not only for basic human rights but also for the right of access to appropriate social assistance for those unable to support themselves and their dependants. Moreover, they have a right to social security, health and education, to give effect to the right to education, the South African Schools Act 84 of 1996 obliges government to provide schools and, for social security, the Social Assistance Act 13 of 2004 obliges government to provide social grants (Proudlock & Jamieson, 2008:36). This line of thought is reflected in section 2(b)(i) of the Children's Act 38 of 2005 which categorically spells out what services government is obliged to provide in a bid to give effect to children's rights to social services.

Proudlock and Jamieson (2008:36) note that the Children's Act ensures that government takes the lead in moving into a rights paradigm in that each chapter of the Act, relating to each area of service delivery, has strategy, provisioning, and norms and standards clauses. Read together, these clauses place a legislative duty on the national Minister and provincial Members of Executive Councils (MECs) for Social Development to ensure that a sufficient spread of each service is provided in every province. These clauses are new in South African law governing social services. The Children's Act

shifts the country from a charity model to an approach that recognises that children have a constitutional right to social services and that the State bears the primary duty to ensure that these services are delivered.

The Children's Act 38 of 2005 is not ambiguous and obscure on the role of the state in its implementation. It clearly states in section 4(1), "This Act must be implemented by organs of state..." it also says in its section 4(2), "...local spheres of government must..." The role of the state is defined throughout the Act such that its systematic intervention efforts to drive the pillars of the Children's Act 38 of 2005 are very clear.

The responsibility of the state to fund social services is in line with what Midgley (2000:365) termed an institutional approach to social policy, in which government assumes responsibility for the provision of social welfare services. Marrying of social development with economic development is in tandem with developmental social welfare services (Midgley & Tang, 2001:246; Lombard, 2010:8). In a way, the Children's Act 38 of 2005 reflects what Anderson (2006:15) describes as a material policy, since it provides tangible resources and substantive power to beneficiaries. In addition, it ensures that holistic services are rendered to children and their families by providing clarity on "which services must be provided, to whom and by whom" (Proudlock & Jamieson, 2008:36). According to the Department of Social Development (2011:13), "South Africa is one of the few countries where the Constitution enshrines a duty to alleviate poverty." In addition to giving effect to the constitutional rights of children, the Children's Act reflects the principles of developmental social welfare due to its commitment to social integration issues.

2.4.2. Social integration

The Children's Act 38 of 2005 as a tool and guiding document to developmental child protection services is very insightful and reflects a pure commitment to social integration. Section 7 of the said Act is on the best interest of the child standard. According to Nkomo (2011), whatever intervention the worker does is cross referenced

to this section. As a way of protecting children from unfair removals, section 153 of the Children's Act makes a provision for the removal of an alleged offender (abuser or perpetrator) from a child's home. Chapter 7 of the same Act seeks to establish a register for sex offenders in order to prevent possible perpetrators from working in positions where they have direct access to children. This was omitted in the Child Care Act 74 of 1983, and the inclusion in the Children's Act 38 of 2005 is in alignment with developmental social welfare which will strengthen the prevention and protection services.

Nkomo (2011) noted that since the adoption of the new Children's Act, social workers in child protection organisations now render timely reconstruction services to biological parents and attend case conferences in child and youth care centres to devise exit strategies for institutionalised children. This averts institutionalism and ensures reunification with the family, which is every child's basic human right. According to the Department of Social Development (2006:19), "Reconstruction enables a client to return to the family as quickly as possible." The Children's Act implies that social service delivery to children lies in a continuum of care that ranges from prevention to early intervention, statutory intervention and finally reconstruction and after-care services. Within a developmental approach, the continuum of care should rather be seen as an open system/cycle as opposed to a linear process (Lombard & Kleijn, 2006:218). The Integrated Service Delivery Model (Department of Social Development, 2006:18) concurs, "...whilst these levels seem to be distinct, a client may enter (or exit) the system at any of the levels and the levels may overlap in practice." The commitment of the Children's Act to social integration is also visible in its provisioning chapters on child-headed households.

2.4.3. Child-headed households

Equally significant is the fact that when the old Child Care Act was developed in 1983, the problem of child-headed households had not yet emerged. The phenomenon of child-headed households in South Africa is a disturbing trend. According to the 2006

General Household Survey, 0,67% of children live in child-headed households and this is equivalent to roughly 122 000 children out of 18,2 million children in South Africa (Department of Social Development, 2010). The problem of child-headed households is an unfortunate result of the HIV and Aids pandemic, which has caused untold suffering, havoc and lamentation in the South African communities. A child in a child-headed household is recognised as a child in need of care and protection in terms of section 150(2)(b) of the Children's Act. This is a new provision and it reflects dynamism of social policy. In adjudicating the case of such a child, the presiding officer of a children's court in terms of section 46(1)(b) of the Children's Act 38 of 2005 may make an order placing a child in a child headed household in the care of a child heading the household under the supervision of an adult person designated by the court. This is an alignment to developmentalism in that it cultivates a principle of caring for each other's well being; it also fosters mutual support in communities. Moreover, it represents a concept of "Ubuntu", which according to McDonald (2010), means that people are people through other people.

As noted above, traditional statutory child welfare service provision in South Africa did not contextualize the care of children in the context of the HIV and Aids pandemic which has led to an increase in the number of child headed households who require statutory intervention. The effective addressing of the phenomenon of child headed households requires that families and communities be strengthened to enable them to provide care and support for children in their natural settings.

2.4.4. Universal access

Universal access is one of the key principles of the developmental approach. According to the Department of Social Development (2011:12), "Developmental social welfare services should be available to all vulnerable groups." The Children's Act 38 of 2005 defines a child as, "*Any person* [own emphasis] under the age of 18." This definition is now broad, comprehensive and sanctions designated social workers to provide services to non South African children who happen to be in the Republic and are in need of care

and protection. A significant number of foreign children face a plethora of problems; they are usually in great need of social work intervention. Sherraden (2009:3) notes that when people migrate their social rights and benefits are disrupted or lost.

However, it was not only foreign children who were experiencing difficulties in accessing services; children living with disabilities were also in the same position. Children with disabilities are more vulnerable to abuse and neglect than other children (Proudlock & Jamieson, 2008:38). This is due firstly to their increased vulnerability to abuse as a result of their disability and, secondly, because the child protection system has many barriers restricting equal access. The Children's Act provides that these barriers must be removed and that the necessary support services must be provided to enable children with disabilities to have equal access to services, and therefore to protection (Proudlock & Jamieson, 2008:38). References to equality for children with disabilities and chronic illnesses in the Children's Act 38 of 2005 are outlined in sections 2, 6, 7, 11, 13, and 42, and in most of the provisioning and strategy clauses in each of the service chapters. The abuse of the right to equality emphasises the importance of human rights and participation.

2.4.5. Participation and the rights based approach

The notion of child participation is echoed in a number of sections of the Children's Act. This stems from Article 12 of the UN convention on the rights of the child. According to Lombard (2010:8), "Participatory democracy is a more direct form of decision making, involving those affected by decisions taken." It includes direct consultation and encourages strengths based and empowerment approaches in service delivery (Lombard, 2010:9). Section 10 of the Children's Act stipulates, "Every child that is of such age, maturity and stage of development as to be able to participate in any matter, that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration." The child's views are paramount when finalising a children's court enquiry in terms of section 156 of the said Act. The same principle also applies when extending a court order in terms of section 159; section 176

and section 186. Equally significant is when transferring a child to alternative care in terms of section 171; section 174 and when removing a child in terms of section 173. According to section 144(3) of the Children's Act, "Prevention and early intervention programmes must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems."

The clauses highlighted and quoted above favour the strength based approach that builds on the inherent strengths of families and communities. Increased child participation ensures that monopolistic decision making tendencies on the part of social workers and adult care givers are curtailed and kept in check as the child is actively involved in the planning of his/her future care arrangements.

Moreover, participation ensures that projects designed to further the child protection agenda are pushed forward. According to Ascroft and Hristodoulakis (1999:322), "Projects are doomed if the principle of participation is ignored, and money will continue to be wasted when projects fail to catalyse people's participation." Social workers should therefore act as catalysts and facilitators, and should also strive to promote partnerships with the children whose future is being decided. This kind of participation is vital in that it ensures empowerment and enhances self esteem. To have the desired impact, participation should be facilitated on both micro and macro practice levels in an integrated manner.

2.4.6. Bridging micro-macro divide

An integration of the three traditional methods of social work as envisioned in the developmental approach to social development is acknowledged in the Children's Act 38 of 2005. From a practice experience, most social workers in the child protection field usually use all the three methods of social work interchangeably depending on the problem at hand and at the level of intervention required. Social workers in the child protection field normally engage biological mothers in group work activities to improve their parenting skills as part of a reunification services package. They (social workers)

also engage the foster parents looking after teenagers displaying behavioural problems in group work activities to impart skills to them on how to handle teenage behaviour, whilst at the same time engaging the teenage foster children in behaviour modification groups. These interventions at various levels ensure a holistic approach and the efficiency of the worker in ameliorating problems. These activities are in line with bridging the micro-macro divide, which Patel (2005) identified as a theme for developmental social welfare.

According to Patel (2005), developmental social welfare services are delivered from a generalist approach. However, Lombard (2007) postulates that it does not exclude specialised social services when required by client groups. From practice experience, the researcher notes that in addition to community development and statutory services departments, most organisations have the child abuse treatment and therapy departments to ensure the rendering of holistic services to clients and a contribution towards developmental social welfare. Developmentalism in statutory work recognises that there are other ways of approaching problems that need individual attention (Sturgeon, 1998:25). An abused child can thus be helped individually while societal structures are simultaneously being reformed through community based initiatives (Lombard & Kleijn 2006:215).

From the above discussion, it is evident that the principles and key features of a developmental perspective are visible in the Children's Act. This contributes to the strengths of the Children's Act which will next be discussed.

2.5. Strengths of the Children's Act 38 of 2005

The Children's Act deviates significantly from the previous Child Care Act 74 of 1983 and it adequately addresses the challenges of the 21st century. It is in alignment with the principles of developmental social welfare as envisioned in the 1997 White Paper for social welfare. The strengths of the Children's Act stem from its promotion and

prevention of early intervention services; sound budget and utilisation of a full range of social service practitioners which will next be discussed.

2.5.1. Promotion of prevention and early intervention services

The main strength of the Children's Act 38 of 2005 stems from its unwavering commitment to prevention and early intervention services. Programmes aimed at stopping abuse or neglect before it starts (prevention and early intervention services), have for the first time been clearly legislated for. Prevention and early intervention services are cost effective because they reduce the demand for more costly services such as state alternative care in children's homes (Proudlock & Jamieson, 2008:38). They are also an investment in human capital because they ensure that children develop to their full potential. According to section 144 of the Children's Act 38 of 2005; Prevention and early intervention programmes must focus on:

- preserving a child's family structure;
- developing appropriate parenting skills;
- promoting appropriate interpersonal relationships within the family;
- providing psychological, rehabilitation and therapeutic programmes for children;
- preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;
- avoiding the removal of a child from the family environment.

Dawes (2009:4) analysis of the Children's Act 38 of 2005 is reflected in the following statements: "...one of the interesting features of the Act, and an advance on its predecessor, is the recognition of the importance of services to vulnerable families and children in order to reduce the probability of abuse and neglect, and the need for statutory intervention. In the previous Act, the focus was on statutory care rather than early intervention and the intention of the new legislation is to shift the emphasis to the latter while strengthening statutory processes." Although this is a huge strength of the Children's Act, it is however the implementation of the Act and making it a lived reality

for children and their families that is still lacking. These challenges stem from the scarcity of resources; shortage of social workers and high case-loads.

2.5.2. Budget for implementing the Children's Act

The Act provides explicit guidance to National Treasury and the provinces with regards to making decisions about how much budget should be allocated for implementing the Act. Section 4(2) states that all spheres of government must take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of the Act. According to Proudlock and Jamieson (2008:39) this means that, "Treasury and the provinces need to prioritise the implementation of the Children's Act 38 of 2005 when they are making decisions about budgets and the allocation of resources." No longer can children's social services be given the left-over crumbs of the budget but they should be prioritised when budget allocation decisions are made. If budgets are limited for partial care, ECD, drop-in centres, prevention and early intervention services, the Children's Act states that priority must be given to funding these services in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children, and to making services accessible to children with disabilities.

2.5.3. Utilisation of a full range of social service practitioners

In recognising the severe shortage of social workers in South Africa and the pivotal role played by a range of other social services practitioners (e.g. child and youth care workers, auxiliary social workers, and community development workers), the Children's Act replaces some references to social workers with the term 'social service professionals'. This was to ensure that many of the tasks restricted to social workers can be done by other social service practitioners. These tasks include assessing partial care centres and drop-in centres for registration; and monitoring long-term foster care

placements. Diversification of roles will help ensure that each category of worker is appropriately used according to their particular training and will make services more accessible in poor and rural communities where social workers are scarce.

However, “This new approach cannot be implemented until the South African Council for Social Service Practitioners (SACSSP) and the Minister of Social Development officially recognise and register the full range of social service practitioners” (Proudlock & Jamieson, 2008:39). Although SACSSP newsletter for February/March 2013 indicates that a professional board for child and youth care workers (PBCYC) has been elected and appointed and that, “It will soon be inaugurated by the Minister for Social Development.” To date, (October 2013), this promise has not yet materialised. The fact that a range of social service practitioners is poorly developed and unrecognised leads to inevitable human resource challenges in implementing the Children’s Act.

The Children’s Act 38 of 2005 defines a social service professional to include a probation officer, development worker, community worker, child and youth care worker, youth worker, social auxiliary worker and social security worker who are registered in terms of the Social Service Professions Act 110 of 1978. However, currently only social workers and social auxiliary workers can register under this Act. The registration criteria as set out in the SACSSP regulations clearly stipulate what is required to register with the Council. To reach the stage of registration, these social service practitioners’ role and body of knowledge should be clearly spelled out to ensure that they all collectively work towards achieving the outcomes of the Children’s Act. The blockages to registration and development of the full range of social service practitioners need to be addressed urgently to ensure that children receive services. However, the challenge is that most of these social service professionals are not well organised to launch collectively. Currently, for example, training programmes for community development workers range from a three months course to a degree (Gray & Lombard, 2008). In a study conducted by Gray and Mubangizi (2009) on the progress of Community Development Workers’ Programme in South Africa, it was found that the biggest challenge faced by this group was:

Their lack of ‘professional’ organisation and their uneasy relationship with the social work profession, which has laid claim to community development as part of its modus operandi. Clearly, community developers need to ‘professionalise’, i.e. to organise themselves as a unified body, to give themselves a voice, to establish standards for community development practice, to lobby the government, to draw attention to their contribution to social development and so on (Gray & Mubangizi, 2009:9).

This “us and them” division amongst social service professionals makes it very challenging for various groups of professionals to unite for the implementation of the Children’s Act. From practice experience, this acrimonious relationship often stems from the fact that professionals look down upon one another.

2.6. Human resource challenges in the implementation of Children’s Act

The implementation of the Children’s Act has not been without human resource challenges. These challenges have a lot to do with the shortage of social workers in South Africa and the fact that a wide range of social service professional are unrecognised and poorly developed. These challenges will be discussed below.

2.6.1. Shortage of social workers and high case loads

September and Dinbabo (2008:12) note that social workers are the ones to turn the Children’s Act into lived reality for children and their families. However, this is a huge challenge because social work is regarded as a scarce skill in South Africa (Earle, 2008:5-6). In addition to universities not delivering sufficient graduate numbers due to resource constraints, social workers, as a consequence of a high work load, low salaries and poor working conditions are leaving the profession or the country to work abroad (Earle, 2008:74). In his State of the Nation Address of 9 February 2007, the then President of the Republic of South Africa, Thabo Mbeki, highlighted the need to ‘Accelerate the training of family social workers at professional and auxiliary levels to

ensure that identified households are properly supported and monitored'. This statement represents the high-level public acknowledgment by government of the critical role played by social workers and their shortage in the country. According to the South African Institute of Race Relations (SAIRR) (2012:1), the total number of social workers registered with SACSSP as at March 2012 was 16 740. This number includes social workers that work for the government; Non Profit Organisations, the private sector, as well as those that are no longer in practice but retain their registration status. Of these 16 740 registered social workers, "Only 6 655 (40%) are employed by government and 2 534 (16%) by NPOs." (SAIRR, 2012:1). This leaves 7 451 (45%) registered social workers that are either not practicing or are employed in the private sector. Clearly, the number of social workers is inadequate for a successful implementation of the Children's Act. Proudlock and Debbie (2011:2) state that, "Between 16 000 and 66 000 social workers providing direct welfare services for the Children's Act alone are urgently needed in the country." SAIRR (2012:1) postulates that about 16 504 social workers are required to implement the Children's Act. This accounts for 99% of all registered social workers, illustrating the huge shortage of social workers in the country.

The shortage of social workers have to be seen against the background and the impact of the high levels of poverty; deprivation and the HIV and Aids epidemic which contributed to high case-loads per social worker (SAIRR, 2012:1). This is undermining the successful implementation of the Children's Act, which places emphasis on prevention and early intervention services. Breide and Loffell (2005:24) as cited in the Sowetan (2005) reported, "63% of child welfare social workers have caseloads of more than 60, while 36% have caseloads of more than 100. Within other NGOs some social workers have caseloads in excess of 300. In such circumstances negligence is almost unavoidable." In a study by Naidoo and Kasiram (2006), it was found that social workers in South Africa are generally in excess of 120 cases (compared with a maximum of about 12 cases in the UK). This leads to high levels of stress and frustration among social work professionals (Earle, 2008:7). However, Lombard and Kleijn (2006:224)

challenge social workers to desist from using high caseloads as an excuse for not using a risk assessment model before removing a child.

In summary, it is evident that there is a critical shortage of social workers in South Africa. This leads to high social work caseloads and also contributes to human resource challenges in the implementation of the Children's Act.

2.7. Institutional and infrastructural barriers in the implementation of the Children's Act

Other than the human resource challenges discussed above, the successful implementation of the Children's Act has been undermined by institutional and infrastructural barriers. These barriers are multidimensional and multifaceted, they are internal and external. The common denominator in most of them is the unavailability of resources and budget constraints as will become evident in the following discussion.

2.7.1. Unavailability of resources

According to the Marxist framework, everything in a society revolves around the availability of resources (Harvey, 2010). A country might have sound policies like the Children's Act but if resources are inadequate, failure is inevitable and materialistic policies will be relegated to being symbolic (Anderson, 2006:15). Resource constraints have forced many social workers to implement services from a remedial approach at the expense of comprehensive and holistic services embedded in the social development approach (Midgley, 1996:14). According to Loffell (2011), "The more your money dries up, the more you end up running ambulance [emergency] services." Resource constraints often force social workers to work from a crisis intervention approach. Lombard and Kleijn (2006:224) asserts, "The crisis work approach implies that social workers are unlikely to have the time or energy to apply a human rights approach...",

where they recognise the voice of the child, family and community on whether the removal of the child would be appropriate within the context of the child's culture and to explore available community options. They further state that, "The decision to remove a child is, in many instances a lonely one" (Lombard & Kleijn, 2006:224). Research done by September and Dinbabo (2008:118) recommended that for the implementation of the Children's Act to be successful, efficient and effective infrastructure needs to be put in place and it includes office space, drop in centres, children's homes, vehicles and office equipment such as telephones, computers and fax machines. According to Bourke (1998), shortage of resources has led to the collapse of many well-intentioned projects. NPOs currently assist government to fulfil its obligation to provide social services to children but are only partially funded by government. As government does not cover NPOs' full costs it is impossible for them to grow and extend their services into under-serviced areas. Consequently a major review of the way NPOs are funded is needed to ensure that services can be continued, developed and expanded (Proudlock and Jamieson, 2008:40).

The draft framework for developmental welfare services (Department of Social Development, 2011:23) states, "Funding and subsidisation should be built on principles of fairness in relation to costing of services." Funding has been, and is still a bone of contention between NGOs and the state. There are disparities in subsidies paid to state run residential facilities and NGO run facilities, with the state run institutions getting more money for the same type and quality of services. There are also disparities in the salaries of state employed and NGO employed social workers, with state social workers earning more for doing the same job. The issues raised above are creating an "us and them situation" characterised by mistrust and conflict. This relationship betrays the spirit of the Children's Act 38 of 2005 and the 1997 White Paper for Social Welfare which advocates for cooperation and collaboration among all role players involved in child protection. Other than economic resource constraints, the attitude of human resources involved in the implementation of the Children's Act has short-changed its successful implementation.

2.7.2. Attitude of social workers

A successful implementation of the Children's Act requires a paradigm shift and a change of attitude among social workers (Mbambo, 2004:40). According to September and Dinbabo (2008:121) this means, "Acknowledging that old ways of doing things may not be the best." It is unfortunate that some social workers have been in the child protection field prior to the adoption of the developmental approach and the passing of the Children's Act and are opposed to change and not very accommodative to the new provisions in the Act. This derails the implementation of the Children's Act 38 of 2005 and undermines its success. Patel (2005:3) articulates that moving from an old way of doing things is always challenging and it causes considerable tension and uncertainty. Without a new mindset and attitude shift, the facets of the Children's Act will be discarded as impossible. Other than the above discussed institutional and infrastructural barriers, challenges in implementing the Children's Act also stem from specific shortcomings and unexpected outcomes which will be next discussed.

2.8. Shortcomings and unanticipated consequences of the Children's Act

Since the Children's Act 38 of 2005 has been in operation, problems have emerged in relation to transfer of children to alternative placement; temporary safe care post-removal processes, grounds for finding orphans and vulnerable children to be in need of care and protection, and the change-over to a court-based system for deciding on extension of placements, obligation on social workers to report possible offenses to the police; and over-reliance on the foster care system to provide income support to families caring for orphaned and abandoned children. All these challenges stem from the shortcomings of the Children's Act with regards to pre-statutory, statutory and post-statutory processes and will be discussed below.

2.8.1. Transfer of Children to alternative placement

Section 171 of the Children’s Act states that in the event that a child is being transferred deeper into the system, for example from a foster care placement to a Child and Youth Care Centre, the provincial head of the Department of Social Development issues transfer orders and then the Department of Justice (children’s court) “ratifies the order”. This has caused an administrative nightmare and has created institutional confusion (Nkomo, 2011). The word “ratify” is ambiguous and its meaning has been a bone of contention between the above-mentioned departments.

The division of responsibilities between these two departments has created administrative bottlenecks that are causing ambiguity in the statutory status of children, since the Department of Social Development deals with the transfer of children in a lateral manner and the Department of Justice extends the orders. Problems arise when a child needs both an extension and transfer order. The lack of capacity in the Department of Social Development is resulting in transfer orders being issued way after report due dates for the extension orders which mean social workers have to reinitiate children’s court enquiries. The conflicting interests and actions of role players in the implementation of the Act is against the principles and ethos of the Children’s Act as provided for in sections 4 and 5 of the Act, that advocates for inter-departmental collaboration in the implementation of the Act.

It can therefore be stated that having the issuing of a transfer order being based in one department (Department of Social Development) and being overseen by another (Department of Justice and Constitutional Development) is a “complex and unwieldy arrangement” (Gray & Mubangizi, 2009). Unfortunately, in this terrain marked by “institutional confusion”, social workers end up being “caught in a vortex” (Gray & Mubangizi, 2009). As stated above, it becomes a huge challenge when a child needs both a transfer and an extension of placement order.

2.8.2. The extension and duration of placement orders

The extension of placement orders (both foster care and institutional care) is provided for in Sections 159 and 186 of the Children's Act 38 of 2005. These sections serve the same purposes; however, they differ in that for a report submitted in terms of section 159, a placement order cannot be extended for more than two years, whereas for a report submitted in terms of Section 186, an order can be extended for a period longer than two years. The responsibility of extending court orders which was previously administratively decided on by the social workers acting under authority of the Department of Social Development has now been awarded to the presiding officers of the children's courts. This has led to immense pressure on the already burdened social workers. According to Loffell (2011), the presiding officers require voluminous and unnecessary documents to be attached to the section 159 (extension of orders) reports. It is now all about running all over the place with little pieces of paper and valuable professional time of social workers have now been relegated to clerical duties (Loffell, 2011). The state of affairs is further complicated by the fact that there is no uniformity on the requirements of presiding officers in different courts.

It is impossible for social workers managing high case loads to have all documents and attachments to reports for extending orders ready for courts on due dates. It is therefore inevitable for orders to lapse. According to Du Toit as cited in News24 (2011:1), an estimated 123 236 children's foster care orders had lapsed by the end of January 2011 without being extended and a large number of such orders were due to expire each month. Loffell, quoted in News24 (2011:1), attributed this to a contribution of backlogs at the various provincial departments, the children's courts and the child protection organisations. Seeing this catastrophe and touched by the plight of large numbers of children who were consequently facing discontinuance of foster care grants, an urgent application was made to the high court. In *Centre for Child Law v Minister of Social Development and others* (10 May, 2011a), Classen recognised the urgent need to provide a temporary solution for pre-Children's Act foster care orders requiring renewal "...until such time as the Children's Act 38 of 2005 is amended to provide for a more

comprehensive legal solution.” Concerning unexpired foster care orders made before 1 April 2012, he directed that renewals be considered simply using the old administrative process from the Child Care Act. There was thus no need to approach a children’s court to extend these. He ordered that the internal administrative process should continue until 31 December 2014 or until the Children’s Act is amended.

Classen also considered the problem of expired foster care orders. He instructed that those which have expired since 1 April 2010 should automatically be “...deemed not to have expired and are hereby extended for a period of 2 (two) years from the date of this order.” With orders that expired even earlier, he directed that any foster care order that expired within two years before 1 April 2010 is automatically revived and extended in the same way as those expiring after 1 April 2010. In another order, Classen added that, where a social worker operating in terms of the old administrative process decided that a placement should not be extended “for the full two year period...or should be extended for longer than two years, the social worker may approach the children’s court for an appropriate order in terms of the Children’s Act” (Centre for Child Law v Minister of Social Development and others, 8 June 2011b). The use of the word “may” here leaves doubt about whether the administrative process would suffice even in these matters. This temporary solution was meant only for lapsed foster care orders and does not address the challenge of lapsed orders for children in child and youth care centres.

2.8.3. Temporary safe care

As mentioned earlier (see 2.4), the new Children’s Act is developmental in nature due to its emphasis on early intervention and other pro-active services. Nevertheless, dilemmas faced by social workers on whether or when to remove children is a practical reality. Misjudgment and prejudicial decisions on the matter are likely to be traumatic for children and their families; in worse case scenarios, children can even die. Prior to removing a child, the Children’s Act requires a preliminary hearing. Section 151 of the said Act covers such removals with prior court approvals, whilst Section 152 provides

for emergencies where there are time constraints in getting a prior court authorisation. These sections came under the spotlight in a 2011 High Court case of *Chirindza and others v Gauteng Department of Social Development and others*. This was after some social workers in the services of the Pretoria East Department of Social Development, escorted by the police, municipal officials and media personnel used section 152 to forcefully remove children from men and women who were using children to gain sympathy when begging on the streets. After neither being denied access to their children nor being told where they were, two of those adults, through the Centre for Human Rights at the University of Pretoria subsequently challenged the process in the high court. During a court hearing, it was established that the first applicant was not begging at all. Instead, he was trading as a shoe repairer, and had been caring for his child while his partner was hospitalised. The second applicant, who is blind, had been begging. However, she had the assistance of another person who helped her to look after the child in question.

In his judgment, Fabricius found the Children's Act to be deficient in failing to provide adequate post removal procedures where children have been removed and placed in temporary safe care placements. It should have required that the Children's Act provided for an immediate review hearing by the children's court. The purpose of such an appearance would be to determine whether the removal was in the child's best interests. It is because of this shortcoming that the high court judge, Fabricius found and declared the Children's Act to be unconstitutional. He ordered that additional wording requiring reviews be inserted. Unfortunately, the said judge did not provide guidelines on what social workers will need to prove at the reviews. Nor did he indicate factors to be considered by presiding officers at reviews. In 2004, it was stated by the European Court in *Haase v Germany* that where social workers used the power and authority vested in them to remove children, "...imminent danger should be actually established" (Gilliat, 2008:3). In the 2005 English case of *X Council v B*, it was ruled that where prior court authorisation has been obtained, social workers must show at a review that immediate separation is essential to secure the child's safety, and that no other less radical measure would suffice (Gilliat, 2008:3). In all situations reviews must

show that removals were a plausible response to circumstances the child was exposed to. The evidence to that effect must be detailed, guile free, compelling and precise.

Regarding the role of presiding officers at review hearings, experience from the European courts clearly demonstrate that, “Interim removals should very rarely be ordered and that very great care indeed should be taken to ensure that there is proper pre-proceedings disclosure and scrupulously fair procedure adopted at hearings” (Gilliat, 2008:2). The author further quotes an English Judgment of Hale LJ who recommended that, “The court should begin with a preference for the less interventionist rather than the more interventionist approach. This should be considered in the best interests of children...unless there are cogent reasons to the contrary” (Gilliat, 2008:2). Of significance is that this is in line with article 14 of the UN guidelines for the alternative care of children (2009:7) which clearly states therein:

Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.

Apparently, in the Chirindza case a “less interventionist approach” was not applied by the social workers in question. Infantino as cited in News24 (2010) is of the view that even with street begging, “Separation of the child from his or her parent or primary care giver should happen only after a full investigation and with thorough preparation.” Bews quoted in News24 (2010) is of a similar view that instead, strong outreach and developmental programs should be considered first and criticises the move by those social workers as “draconian”. As elucidated by Lombard in News24 (2010), “Good practice requires thorough investigation and assessment to determine whether children are in any immediate danger.” In scenarios similar to those in the Chirindza case, “The children and their parents could have been taken together to a safe place to be counselled while the circumstances were investigated” (Lombard in News24, 2010). In the abovementioned case, the supportive preliminary measures described by the abovementioned authorities (Lombard, Bews and Infantino) were clearly not executed. It is a matter of great concern that the South African child protection system is in crisis

and that, "...it tends to be remedial, residual individualistic, deficit-based and adversarial" (Schmid, 2008:215). Fortunately, the Chirindza case clearly exposed it. The Department of Social Development, being the respective guardian of the Children's Act and a regulatory body of child protection organisations should lobby social workers, presiding officers and police officers to address these issues.

2.8.4. Abandoned or orphaned children

Notwithstanding hind-sight of the Children's Act on temporary safe care provisions, problems of immense proportions have resulted from the wording of section 150(1)(a). This section is one of the grounds for finding a child in need of care and protection. It states in section 150(1)(a) of the Children's Act, "A child is in need of care and protection if, the child; has been abandoned or orphaned and is without any visible means of support." From practice experience, this section has proved problematic when a social worker tries to open and finalise a children's court enquiry for a child in foster care whose order has lapsed. The same is true for an abandoned or orphaned child requiring foster care that has been staying with alternative parents on a private arrangement and now needs state assistance because of a small source of income which is only sufficient for themselves but not for an additional person (the child concerned). Such care givers are usually relatives receiving some form of state assistance (for example disability grant, older persons grant, and child support grant). A 2008 study conducted by the National Welfare, Social Service and Development Forum found that most children who require foster care reside with elderly relatives. Besides section 150(1)(a), there is usually no other ground for finding such children "in need of care and protection". Unfortunately, most presiding officers reject the ground saying, "The child is not without 'visible means of support' as required by section 150(1)(a)" (Hall & Proudlock, 2011:2). Such children can only be legible for a foster care grant if the children's court issues a court order placing them in foster care (be it with a relative or a non relative).

Noteworthy at this juncture is that the rejection of foster care applications on a “literal and strict” interpretation of “visible means of support” is still ongoing (SS v Presiding Officer of the Children’s Court, Krugersdorp and others, 2011). As alluded to earlier, “A child is in need of care and protection if, the child has been abandoned or orphaned and is without any visible means of support...” (Children’s Act 38 of 2005, section 150(1)(a)). This wording (a child is in need of care and protection if, the child; has been abandoned or orphaned and is without any visible means of support) should be changed, suggestions that have been offered to this effect advocate for the replacement of “and” with “or”, if this happens, then section 150(1)(a) will read, “A child is in need of care and protection if the child has been abandoned or orphaned or is without any visible means of support.” It can also significantly solve the issue if the grounds for the removal of children in section 150(1)(a) can be divided into two, an example could be: “A child is in need of care and protection if the child has been abandoned or orphaned” as first ground for finding a child in “need of care and protection”, and then have another ground for the removal of children as: “A child is in need of care and protection if the child is without any visible means of support” as another basis for finding a child in “need of care and protection”. Should the Children’s Act be amended according to the abovementioned suggestion, the far strict requirement (of being without visible means of support) would disappear. An application requesting the high court to make such a ruling is currently underway (SS v Presiding Officer of the Children’s Court, Krugersdorp and others, 2011). Lack of clarity on section 150(1)(a) and other sections of the Children’s Act makes it inevitable for different stakeholders and office bearers to have different interpretations of the Act.

2.8.5. Different interpretations of different sections of the Act

There are different interpretations of different sections of the Act amongst different stakeholders, departments and even within one department. In particular, children’s courts in various magisterial districts have different expectations from social workers. According to Nkomo (2011), this is frustrating, demotivating and demoralising, even the

intrinsically motivated social worker is bound to lose it and failure is inevitable. A successful implementation of the Children's Act will only be realised when a number of government departments, communities, duty bearers, rights holders, NGOs and Civil Societies collaborate.

A possible explanation for the current different interpretations is a lack of capacity on the part of all role players involved in the implementation of the Act. Lack of capacity has often been cited as one of the major reasons why social development programmes fail (Green & Nieman, 2003:164). The successful implementation of developmental social services lies in changes in behaviour, procedures and practices for those tasked with performing social development functions (Green & Nieman, 2003:164).

There was and still is inadequate training of professionals involved in the implementation of the Act. The researcher had encounters with presiding officers who were struggling to comprehend the provisions of the Children's Act 38 of 2005. This is proving to be quite a challenge for social workers in their attempts to provide services as decisions regarding the future care of children are left in the hands of people who are not adequately trained to make such decisions. Not only that, the Department of Social Development, being the guardian of the Children's Act, did not organise trainings and workshops to adequately inform social workers about the developmental nature of the Act. It is evidence in practice that the residual practitioner dominated intervention models and techniques are still in wide spread use. Chambers (1998) cited in Green and Nieman (2003:164) states that changing behaviour and attitudes are cardinal aspects of the developmental paradigm where practitioners have to unlearn dominating behaviour which inhibits participation by clients. This participation is also influenced by the fact that social workers are obliged to report possible offenses to the police.

2.8.6. Obligation on social workers to report alleged offences to the police

Reports of children in need of care and protection need to be made to either the Department of Social Development or a designated child protection organisation. Thereafter, a social worker will investigate the case. Parliament inserted a new subsection (110)(8) providing that, if a social worker finds that the child is in need of care and protection, they must report the possible commission of an offence to a police official. This amendment introduces a major change in practice. Currently social workers exercise discretion on whether or not to report the matter to the police. Section 110(8) takes that discretion away and obliges them to report the matter to the police if a criminal offence or an offence created under the Children's Act 38 of 2005 has allegedly been committed. This will effectively require most cases to be reported to the police and social workers have expressed a fear that this will interfere with their ability to gain the trust that is needed from the child and family to address the problem effectively (Proudlock & Jamieson, 2008:39).

It is imperative to note that the developmental approach challenges social workers, "To make a shift from statutory services (micro focus) to prevention and early intervention, which requires a greater focus on community development (community focus)." (Landman & Lombard, 2006:1). This very stance has been adopted by the Children's Act 38 of 2005, which has been declared to be developmental in nature. The challenge, however, is to simultaneously engage one social worker in both community work and statutory work (Landman & Lombard, 2006:1). However, these authors state that this is difficult and that it leads to confusion with regard to the role of the social worker in statutory services versus community development (Landman & Lombard, 2006:1). They further postulate that, "Statutory interventions [rendered by the social worker responsible for community development] impacted negatively on the relationship and trust between the community and the social worker, since his/her role as facilitator of community development was now confused with someone who takes children away from their families" (Landman & Lombard, 2006:2).

2.8.7. Contradictions of the Children's Act with other legal statutes

Section 134 of the Children's Act 38 of 2005 permits a child, twelve years and older, a right to obtain contraception without parental consent. This issue has generally been received with mixed feelings, and most sceptics are mainly worried about the fact that this would 'encourage' children to indulge in sex instead of encouraging them to abstain and delay their sexual debut, whilst some argue that it is un-African to give contraceptives to children (Nkomo, 2011). This section of the Children's Act has been severely criticised, with some arguing that it conflicts with the current South African laws regarding sexuality and maturity of children. Ancer (2011) compared this section of the Act with other legal statutes and the comparison is as follows:

- The criminal law (Sexual Offences and Related Matters, Amendment Act 32 of 2007) says it is a crime for children between the ages of 12 and 16 to take part in consensual sexual activity including kissing and "petting". Under this law, children may be charged with "statutory sexual violation or rape".
- Marriage law states that from the ages of 12 (girls) and 14 (boys), teenagers can get married as long as they have the consent of the relevant parties.
- The Children's Act 38 of 2005 section 134(1) says that from the age of 12, a child must be provided with contraceptives on request.
- It is illegal for two 15-year-olds to kiss or have sex, but they can get married and be given contraception. In an alarming twist anyone aware of the consenting sexual activity has a duty to report it to the police.

The issues discussed above show that there is need for critical thinking on this whole issue. The law allows a child as young as twelve to decide about contraception without parental consent, yet that same child is not allowed to consume alcohol or to open a bank account. A point to note is that decisions on contraception and sexuality have a direct correlation with maturity and responsibility.

2.8.8. Over reliance on foster care system to provide income support

The Children's Act now allows for courts to make permanent foster care orders in specified circumstances (section 186). This reduces the costs and time of the two yearly reviews by social workers and the courts that were required by the Child Care Act 74 of 1983. Nevertheless, social workers and courts are still required for the first placement decision. The backlog in foster care placement is therefore set to continue. In analysing this shortcoming of the Children's Act, Proudlock and Jamieson (2008:39) writes:

The result is that families caring for orphaned children will continue to wait for a long time before they receive the Foster Child Grant, while services for children who have been abused or exploited will also be delayed as social workers and the courts struggle under a heavy case load. The opportunity to promote the use of the administratively simple Child Support Grant for children placed with relatives and who are considered low-risk placements, has been lost. Besides reaching more orphaned children faster, and saving considerable costs for both the Departments of Justice and Social Development, it would also have freed up precious court and social worker time to deal with active cases of child abuse. The consequences of delays in dealing with child abuse cases are serious.

The Children's Act does not address the plight of children who are in need of cash and not much in need of care. According to Loffell (2011), a simple introduction of a "kinship care grant" can ameliorate this terrible predicament. Realising the burden on the foster care system, the Portfolio Committee on Social Development in its report on the Amendment Bill has requested that the Department of Social Development conducts a comprehensive review of the social security policy for children and the foster-care system (Proudlock & Jamieson, 2008:39). However, this review has not yet materialised.

2.9. Conclusion

In conclusion, the discussion on this chapter reveals that the Children's Act is a fine piece of law that has the potential to bring about services that would enhance both the development and protection of children. However, like many other policies and

legislations, it is way ahead of the capacity to deliver services at ground level. It should be acknowledged and recognised that the Children's Act is aspirational. It enables South African citizens, professionals and social policy analysts to hold government accountable to provide services; specifies responsibilities and points the country to a situation in which the rights and well-being of vulnerable children in particular are realised. To realise the promise of improved preventive and rehabilitation services, there is no doubt that a significant scaling up of finance and staffing is required to implement the Children's Act. As discussed, it is imperative to take into consideration that much of the work done on the topic of the Children's Act was prior to its adoption in April 2010. Therefore, available information, as far as implementation and impact of the Children's Act is concerned, is mainly based on speculation and assumptions.

CHAPTER THREE

RESEARCH METHODOLOGY, EMPIRICAL STUDY AND RESEARCH FINDINGS

3. Introduction

The focus of this chapter is on the empirical study that was undertaken to explore challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005. The researcher intended to answer the following research question:

- What are the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005?

Sub-questions that assisted the researcher in answering the research question of the study were as follows:

- What are the shortcomings of the pre-statutory, statutory and post-statutory processes provided for in the Children's Act 38 of 2005, with regard to child protection?
- What institutional and infrastructural barriers are faced by social workers working in child protection services in implementing the Children's Act 38 of 2005?
- What effects do human resource challenges have on the implementation of the Children's Act 38 of 2005, with regard to child protection services?

In this chapter, the research approach, type of research, the research design, methodology, ethical aspects related to the study and the empirical research findings of the study will be discussed. Due to the exploratory nature of this study, the findings can not be generalised to all social workers working in child protection services, they are particular to Johannesburg Child Welfare.

3.1. Research approach

The study utilised a qualitative approach. There is no significant information on the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005, since the Act came into effect in 2010. This is a topic which required an in-depth exploration. Therefore, a qualitative approach was the most suitable approach for the study. A qualitative approach is more concerned with the "what" questions, which was exactly what the study sought answers for (Fouché & De Vos, 2011:95). Moreover, the researcher wanted to gain an understanding of the challenges and not to explain them, which was best fulfilled within a qualitative approach (Fouché & Delport, 2011:65). Lastly, a qualitative approach did justice to the study in that it enabled the researcher to report the challenges of implementing the Children's Act from the social workers' point of view (Fouché & De Vos, 2011:95).

3.2. Type of research

This research study was exploratory in nature. More specifically, it was an applied research study since it sought to apply and tailor knowledge to address the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005 (Neuman, 2000:23). Applied researches often try to solve policy problems, which include legislation such as the Children's Act 38 of 2005 and also seek to help social work practitioners accomplish tasks (Neuman, 2000:24).

3.3. Research design and methodology

This section will elaborate on the research design and methodology.

3.3.1. Research design

A qualitative research design, more specifically, the collective case study design was utilised in the study (Neuman, 2000:37; Rubin & Babbie, 2011:442). A collective case study enabled the researcher to gain insight and an understanding into the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005 (Struwig & Stead, 2001:7). An explorative study through a case study enabled the researcher to gather detailed and rich-in-context information from the research participants (Fouché & Schurink, 2011:321).

3.3.2. Data collection method

In order to extract in-depth information from 18 social workers working in child protection services on challenges they encounter in implementing the Children's Act 38 of 2005, the researcher made use of a semi-structured interview schedule (see Appendix 1) to facilitate focus group discussions. The researcher had three focus groups, because relying on only one group was generally considered too risky since any one particular group could have been atypical (Rubin & Babbie, 2011:467). The three groups comprised of six social workers per group. These selected sizes allowed each member of the focus group to participate (Greeff, 2011:366). Three meetings of 60 minutes each were initially scheduled with each focus group, the assumption being that new and vital information only came during the first two sessions, with repetition thereafter (Greeff, 2011:367). However, data became saturated during the second meetings, and hence, third focus group meetings were not held. The researcher recruited a fellow social worker who has experience in group interviewing and who is well-versed with technology to act as an assistant facilitator. His role was to operate the tape recorder, take comprehensive notes and to respond to unexpected interruptions (Greeff, 2011:368). This gave the researcher an opportunity to concentrate on directing the discussions and in keeping the conversations flowing. The researcher transcribed the tape recordings after every focus group meeting, compared notes with the assistant

facilitator and got insights for follow-up matters. The researcher acted as a group facilitator since he has adequate background knowledge on the topic. Moreover, he is well-versed in group dynamics and processes (Rubin & Babbie, 2011:468).

The advantage of choosing the focus group as a data collection method was that it allowed the researcher to question several social workers systematically and simultaneously (Rubin & Babbie, 2011:467). Moreover, it was a powerful way of exposing reality and it helped the researcher to understand the everyday experiences of participants (Greeff, 2011:362). In addition, “Focus groups create a fuller, deeper understanding of the phenomenon being studied, and they stimulate spontaneous exchanges of ideas, thoughts and attitudes in the security of being in the crowd” (Greeff, 2011:374). Since the topic under study was exploratory in nature, during focus group sessions, the researcher made use of a semi-structured interview schedule to ask open-ended questions (Neuman, 2000:250). Focus groups were inexpensive and generated speedy results (Rubin & Babbie, 2011:467). However, the disadvantage of using a focus group discussion as a data gathering technique was that it generated voluminous, unstructured and less systematic data, which was often very difficult and tedious to analyse (Rubin & Babbie, 2011:488). The researcher counteracted this by carefully adhering to the facets of qualitative data analysis.

3.3.3. Sampling and sampling method

The study was conducted at Johannesburg Child Welfare (JCW), a child protection organisation which employs 70 social workers (see Appendix 2 for permission letter). The organisation has three departments involved in the implementation of the Children’s Act 38 of 2005, namely the Child and Family Unit (CFU); the Foster Care Unit (FCU), and the Child Abuse Treatment and Training Services (CATTs). The population for this study were all the social workers in the different sectors of JCW that were involved in the implementation of child protection services as provided for in the Children’s Act 38 of 2005. In total, at the time of the research, 51 social workers were based at CFU;

FCU, and CATTs. In a qualitative study, it was not feasible to include the entire population in the study (Sarantakos, 2000:139). Utilising a non-probability sampling technique, the researcher selected a sample of 18 social workers through purposive sampling. As indicated above, the three selected departments at Johannesburg Child Welfare deal with different aspects of the Children's Act 38 of 2005. The purposive sampling method allowed the researcher to purposely gather typical and divergent data (Rubin & Babbie, 2011:355; Strydom & Delpont, 2011:392). This was vital to the study in that, "a sample of information rich participants" was selected (Struwig & Stead, 2001:122). The researcher drew a sample of 18 social workers using the following selection criteria:

- Willingness to participate in the study.
- Availability to participate in the study.
- Having at least one year experience in child protection.
- Being in the employ of JCW for at least six months.
- Not serving a notice of resignation during the month in which the focus group took place.

As noted above, the advantage of purposive sampling was that it allowed the researcher to use his judgement in choosing who the participants were (Rubin & Babbie, 2011:355).

3.3.4. Pilot study

Using the same criteria for recruiting participants for the study, the researcher did a pilot test of focus group questions on six social workers. The information obtained from participants used in the pilot test was not used in the main study. The participants, as well as the assistant facilitator gave input in the reviewing and final formulation of the focus group questions (Greeff, 2011:370). Doing a pilot study was advantageous in that it gave the researcher a taste and feel of what the real study was going to be like. Moreover, it enlightened the researcher on the feasibility of the study in terms of financial resources, time and willingness of participants to participate in the study

(Strydom & Delpont, 2011:395). The focus group discussion appeared to be suitable during the pilot study. As such, it was not necessary to consider another procedure for collecting data (Strydom, 2011a:243). The participants in the pilot study and the assistant facilitator signed informed consent letters.

3.4. Data analysis

There was an inseparable relationship between data collection and data analysis (Schurink, Fouché & De Vos, 2011:402). The researcher utilised Creswell's (2009) model of data analysis. This model's premise is that, "Data analysis is always an on-going process that routinely starts prior to the first interview" (Creswell, 2009:184). The model further postulates that, "The process of data analysis and interpretation can best be represented by a spiral image – a data analysis spiral" (Schurink, Fouché & De Vos, 2011:403). In accordance with the said model, the researcher analysed data in the following manner.

- ✓ Data was recorded using tape recorders. The advantage of doing this was that it ensured verbatim recording and, at the same time enabled the researcher to communicate, listen and probe participants attentively (Rubin & Babbie, 2011:468). The assistant facilitator recorded the proceedings and simultaneously took down comprehensive notes, whilst the researcher took down sketchy notes (Creswell, 2009:184). These notes were written unobtrusively in the form of words and phrases to avoid disrupting the sessions. This stance aided the researcher to keep abreast of what was happening in the sessions (Rubin & Babbie, 2011:470). Field notes recorded by the assistant facilitator included comprehensive details on the seating arrangements, the order in which people spoke and this aided voice recognition during the playing of tapes after the sessions (Greeff, 2011:372).

- ✓ Away from the field, data analysis involved playing the tapes to develop transcripts, which were then read into and had memos and comments written on the page margins (Creswell, 2009:184).
- ✓ After the researcher was in possession of voluminous data, he then compressed the data by generating categories, key themes and salient themes that appeared and reappeared among the three focus groups (Schurink, Fouché & De Vos, 2011:410). More so, in analysing data, the researcher considered the words, the context, frequency of comments, extensiveness of comments, specificity of comments and what was not said (Greeff, 2011:373).
- ✓ After themes were identified, the researcher asked the assistant facilitator to do an independent coding of data. This enhanced trustworthiness and easy retrieval of information (Rubin & Babbie, 2011:448). A colour coding scheme was used to highlight all similar categories and patterns using one colour (Rubin & Babbie, 2011:480). Then, the researcher interpreted data and finally presented and discussed it using a hierarchical tree diagram that depicted all themes accordingly.

The researcher enhanced data credibility and trustworthiness through prolonged and repeated focus group sessions until data saturation occurred (Creswell, 2009:192; Rubin & Babbie, 2011:448). In addition, he read interview transcripts numerous times until he was in a position to capture accurate descriptions of the challenges as reported by social workers. Moreover, respondent validation was the most critical technique for establishing credibility. This entailed interpreting the information and then checking with the participants if the interpretation and thematic analysis was consistent, correct, and congruent with their experiences (Creswell, 2009:191; Greeff, 2011:372). Besides enhancing credibility this was also essential in ensuring that information was not subjectively interpreted (Rubin & Babbie, 2011:447).

Furthermore, the researcher thrived to provide rich and thorough information regarding the description of the research setting (context) and observed transaction and

processes, in-depth discussion of findings and themes as a mechanism of ensuring rigor and transferability of data to other settings (Rubin & Babbie, 2011:450).

Lastly, the researcher employed data neutrality as a way of safeguarding against attaching preconceived ideas or own perceptions on the experiences of social workers (Creswell, 2009:192). This was achieved through maintaining neutrality, avoiding being judgemental and being mindful while becoming closely involved with the social workers' experiences.

3.5. Ethical considerations

The researcher obtained permission to conduct the study from the University of Pretoria (see Appendix 3). Through-out the entire research process, from design to data collection and analysis to publication of findings, the researcher maintained an active awareness and adherence to the following ethical issues:

3.5.1. Avoidance of harm

Since the goal of the study was to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005, there was bound to be some emotional issues at play because of the demands on social workers to deliver services despite limited resources. The researcher did everything in his power to ensure adherence to the principle of avoidance of harm, so that the study did not leave the participants psychologically distressed (Taylor, 2000:8). To minimise the possibility of harm resulting from this study, the researcher thoroughly informed all participants about the potential impact of the study and then gave every participant an opportunity to withdraw from the study if they so wished (Rubin & Babbie, 2011:77).

3.5.2. Informed consent

The researcher adhered to the principle of informed consent by providing adequate and all possible information to social workers selected for the study on the goal and objectives of the study, the procedures to be followed during the focus group discussions, the possible advantages and disadvantages of the study as well as the credibility of the researcher (Strydom, 2011b:117). After all the above-mentioned information regarding the study has been disseminated, the participants were in a position to choose to participate or not to participate in the study (Taylor, 2000:7). The researcher never coerced any social worker into participating in the study; he adhered to the principle of voluntary participation (Babbie, 2001:470). The researcher asked each participant to sign a consent letter (see Appendix 4) prior to the first focus group meeting. Key information regarding the informed consent form was repeated at the beginning of every focus group session and the researcher clarified any uncertainties to the participants. The researcher's assistant also signed a consent letter (see Appendix 5).

3.5.3. Deception

No form of deliberate deception was inflicted on the participants of this study (Strydom, 2011b:118). No information was withheld from participants (Struwig & Stead, 2001: 69). There was no hidden agenda in this study and every participant was given adequate and correct information (Taylor, 2000:9).

3.5.4. Privacy, confidentiality and anonymity

The researcher was not able to assure the anonymity of the participants since they knew each other and actually saw and heard each other during the focus group discussions. However, in the letter of informed consent, the researcher asked the

participants to treat the information shared during the focus group meetings with the strictest confidence. The researcher informed the participants that he was going to use a tape recorder and field notes to record data and also sought permission from them to use these two data gathering instruments. The participants were also informed that the researcher will compile a research report to be submitted to the University of Pretoria for academic purposes and that a possible publication of a scientific article on the topic might follow. However, he also assured them that no information that would identify them (particularly, names, surnames and post numbers) would be included in the transcriptions, research report and any other further publications. It was also indicated in the informed consent letter that raw data, transcriptions and informed consent letters will be securely stored for a minimum of 15 years, according to the University of Pretoria's stipulations.

3.5.5. Actions and competence of the researcher

The researcher was competent to undertake the proposed study because he has research experience gained from undergraduate studies and working as a research assistant in numerous research agencies. He has also successfully completed a research methodology module as part of his post-graduate course work. With regard to conducting focus groups, he is well versed in group facilitation techniques, skills and possesses the necessary communication skills (Greeff, 2011:368).

3.5.6. Collaboration with contributors

The researcher gave proper credit to all people who contributed to this research, that is, the participants, the assistant facilitator for a focus group, the management of Johannesburg Child Welfare and the supervisor allocated to the researcher by the University of Pretoria (Strydom, 2011b:125).

3.5.7. Compensation

The researcher did not offer any incentives in monetary value to the participants for being involved in the study. The focus group meetings were held on Friday afternoons, at the Johannesburg Child Welfare's boardroom and the participants did not need any reimbursement for transport costs because they were already in the area since the boardroom was located in their area of work. The researcher did not pay Johannesburg Child Welfare to utilise its boardroom and its members of staff (Greeff, 2011:371).

3.5.8. Publication of findings

The researcher reported the findings of this study in a morally and ethically sound manner in this chapter. He ensured that nobody is deceived of the findings by not manipulating the results and by compiling the research report as far as possible in an accurate and objective manner (Strydom, 2011b:126). The unearthed limitations of the study have been reported and the shortcomings of the study have been stated (see Chapter 1:6) (Rubin & Babbie, 2011:84). As a form of recognition and expression of gratitude, the researcher informed the participants and the management of Johannesburg Child Welfare about the findings in an objective manner (Strydom, 2011b:126). The work of others, sources and publications consulted by the researcher have been properly acknowledged and correctly referenced and plagiarism have been averted (Struwig & Stead, 2001:70).

3.5.9. Debriefing of participants

Lastly, the researcher offered debriefing sessions to the participants. This happened after the focus groups and accorded participants an opportunity to ventilate and work through their experiences. Moreover, it gave the researcher an opportunity to correct any problems or questions that might have been generated by the research experience

(Strydom, 2011b:122). The researcher referred participants to social work supervisors at JCW and specific officials in the Department of Social Development if they wished to further discuss challenges they encounter in the field of child protection service delivery.

3.6. Research findings

In this section, the biographic details of participants will first be presented in a narrative formant, and where applicable, followed by a graphical illustration of the findings. The findings from focus group discussions will be discussed by means of themes and sub-themes, which will also be presented in a hierarchical tree diagram. The discussion and analysis of data will be supplemented by the voices of the participations by means of direct quotes. The verification of findings with literature will be done in a separate discussion section following the presentation of the findings. This is done because the Children's Act 38 of 2005 is the one document that consistently has to be used to interpret the findings. The relevant sections of the Children's Act are intertwined and as opposed to repeating or cross referring the reference to the Children's Act, it is integrated as a unit with other literature in a general discussion of the findings.

3.6.1. Biographic profile

The biographic profiles were constructed by drawing information from the participants on their gender; age; racial group; years of experience in child protection services; years of employment at Johannesburg Child Welfare as social workers; years of experience with regard to the implementation of the Children's Act 38 of 2005; their involvement in the implementation of the Child Care Act 74 of 1983 and from the type of services that they provide.

3.6.1.1. Gender of participants

Of the 18 social workers that participated in the study, nine were male and nine were female.

3.6.1.2. Age of participants

Of the 18 participants, none were between the ages of 41 to 45 and 51 to 55. Of the participants, 12 were between the ages of 25 to 30; three were between the ages of 31 to 35; whilst two were between the ages of 36 to 40. There was only one participant who was above the age of 56. The ages of participants are visually presented in the following bar-graph.

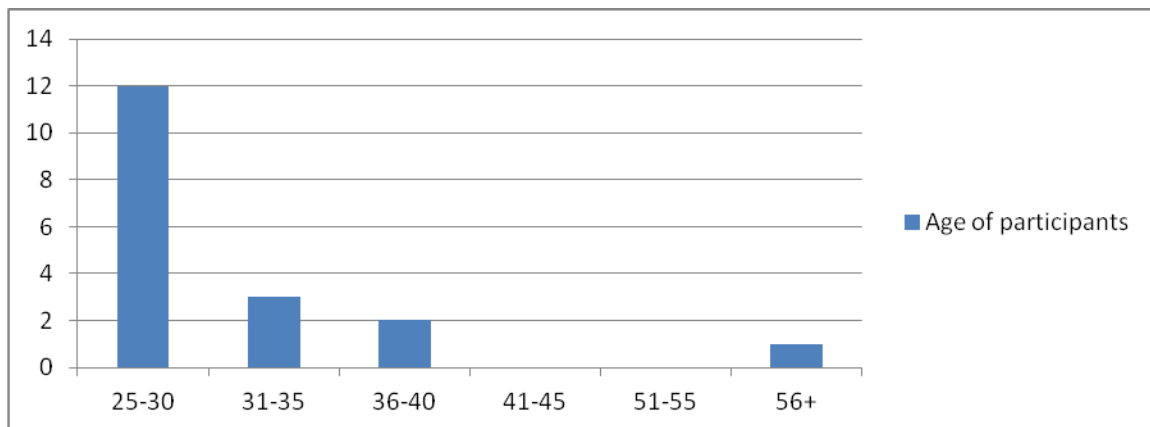


Figure 3.1: Age of participants

The gap between 41 and 55 may be because social workers in this age group are more likely to be either supervisors or managers.

3.6.1.3. Race of participants

Of the 18 participants, 17 were black and one was coloured. There were no White and Asian participants. The fact that there are more black social workers in the employment

of Johannesburg Child Welfare is just a natural unfolding in terms of the social work population and the service area of the organisation.

3.6.1.4. Years of social work experience in child protection services

Of the 18 participants, two had five years of social work experience in child protection services; whilst seven had three years experience; four had four years experience; one had seven years; one had six years; one participant had one year experience and one had one and a half years of experience of child protection services as a social worker. The abovementioned information is visually presented in the following pie-chart.

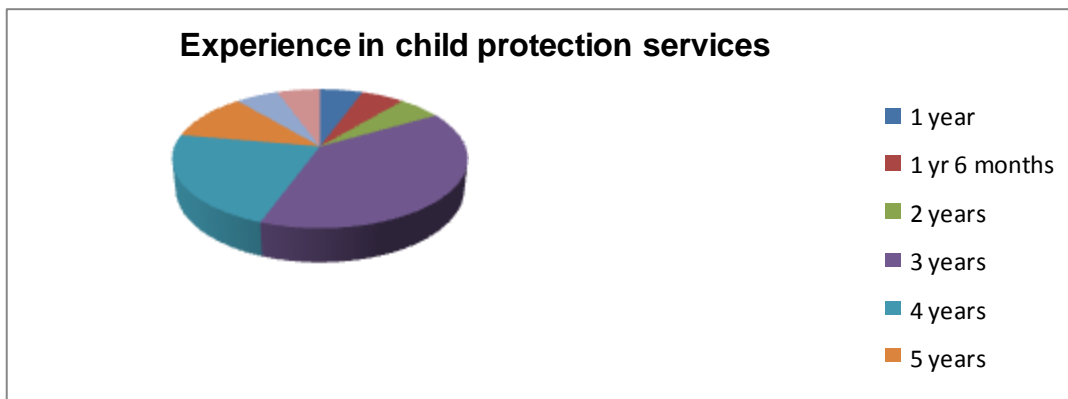


Figure 3.2: Years of social work experience in child protection services

3.6.1.5. Years of employment at Johannesburg Child Welfare

Of the 18 participants, two had been in the employ of Johannesburg Child Welfare as social workers for one year and four months; whilst five had been employed for three years; four for one year; three for two years; one for five years; one for seven years; one for four years and one had been employed for one and a half years. The years of participants' employments at JCW is visually presented in the following graph.

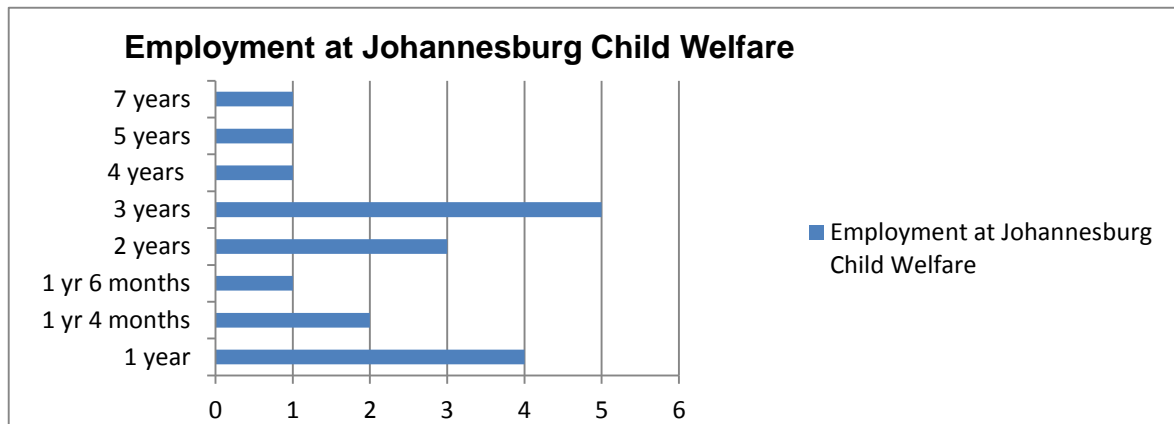


Figure 3.3: Years of employment at Johannesburg Child Welfare

The findings indicate that most of the participants had between one and three years of experience at Johannesburg Child Welfare.

3.6.1.6. Implementation of the Children’s Act 38 of 2005

Of the 18 participants, seven had been implementing the Children’s Act 38 of 2005 for three years; five had been implementing it for two years; two had been doing so for two and a half years; and the other two for one year. One social worker had implemented the Children’s Act 38 of 2005 for one year four months; whilst the other one had implemented it for one and a half years. The abovementioned information, pertaining to the length of the implementation of the Children’s Act by participants, is visually presented by the following pie-chart.

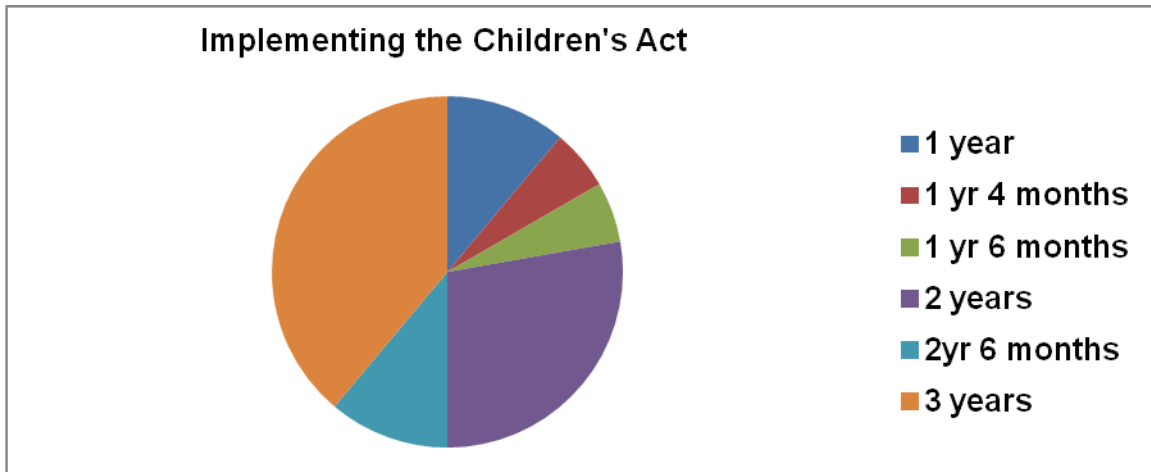


Figure 3.4: Implementation of the Children's Act 38 of 2005

3.6.1.7. Implementation of the Child Care Act 74 of 1983

Of the 18 participants, 11 were not involved in the implementation of the Child Care Act 74 of 1983, whilst seven were involved in the implementation of the aforementioned Act. Of the seven participants who were involved in implementing the Child Care Act 74 of 1983, two had done so for three years; whilst three had implemented the said Act for one year; two participants for six months and four months respectively. The aforementioned information is graphically presented by the following diagram.

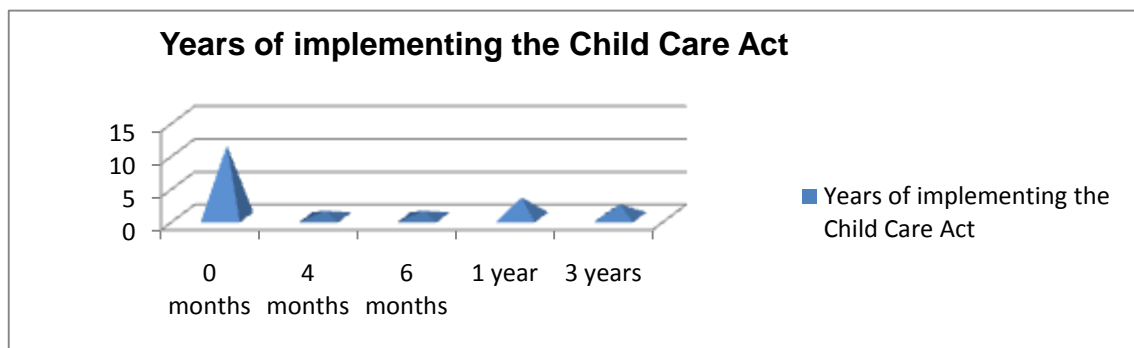


Figure 3.5: Implementation of the Child Care Act 74 of 1983

The findings show that most participants were not involved in the implementation of the Child Care Act 74 of 1983. This correlates with their years of experience as social workers as indicated above.

3.6.1.8. Type of services provided by participants

The information on the type of services that the 18 participants were providing is presented in the following table:

Table 3.1: Types of services provided

Type of service	Number of participants providing the service
Intake services	9
Prevention and early intervention services	10
Statutory services	16
Monitoring and supervision of foster care placements	8
Recruitment and screening of foster parents	5
Family reconstruction services	13
After care services	2
Adoption services	3
Counselling and therapeutic services	14
Other: 1. Risk assessment	1
2. Community work	1
3. Group work (educational)	1

The above findings indicate that most participants provide core services of child protection across the respective levels of child protection, namely prevention and early intervention services; statutory services; monitoring and supervision of foster care placements, and family reunification services.

3.7. Key themes

As data was being processed and analysed, there were recurrent themes and sub-themes that were raised by the participants and specific trends and patterns emerged. The findings will be supported by direct quotations in order to give voice to views of participants. In the final discussion section of the chapter, the key findings will be highlighted and substantiated with literature.

The researcher identified the following themes and sub-themes from the transcripts:

Table 3.2: Themes and sub-themes

Themes	Sub-themes
1. Contextualisation of child protection within the Children's Act 38 of 2005 from a developmental perspective	
2. Institutional obstacles in implementing the Children's Act	2.1. Attitude of social workers 2.2. Problems with presiding officers 2.3. Untrained and uncooperative police officers
3. Infrastructural barriers in implementing the Children's Act	
4. Human resource challenges in the implementation of the Children's Act	4.1. Shortage of social workers; high caseloads and poor salaries 4.2. Inadequate training of social workers
5. Shortcomings of the Children's Act 38 of 2005	
6. Addressing challenges in the implementation of the Children's	6.1. Establishing a kinship care grant 6.2. Amending the Children's Act

Act	6.3. Training all role players involved in implementing the Children's Act 6.4. Addressing problems with presiding officers 6.5. Collaboration and cooperation of professionals 6.6. Addressing human resource challenges 6.7. Taking administrative extension of orders back to the Department of Social Development
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Theme 1: Contextualisation of child protection within the Children's Act 38 of 2005 from a developmental perspective

Participants' responses to contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective varied significantly. Participants could not specifically define what a developmental approach to social work is as reflected in the following question of one participant:

- *Can you explain the developmental perspective?*

However, a few participants were very elaborative in their contextualisation of child protection within the Children's Act 38 of 2005 from a developmental perspective as reflected in the following statements:

- *"The developmental perspective, especially concerning the Children's Act, requires that social work practitioners employed by agencies render preventative work, they also render services to contain children within the families before they can even think about removing them or taking any other drastic measures. So the developmental perspective stresses that children should be retained within*

their families, within the immediate family, within the extended family and if not possible, within their communities; it talks about doing preventative work, raising awareness within communities to protect children.”

- *“I do believe that the Children’s Act is aligned to the developmental perspective in that it calls for collaboration of many stakeholders, especially the foster parents, the social workers, the psychologists and other professionals who are there to see to it that the best interests of the children are a priority.”*
- *“The Children’s Act, it stems from developmental social work, which is an approach that was adopted in South Africa as formal policy through the White Paper for Social Welfare.”*

Theme 2: Institutional obstacles in implementing the Children’s Act

The participants revealed that the institutional obstacles that they are facing in implementing the Children’s Act stem from the attitude of social workers; attitude of presiding officers; unrealistic expectations from presiding officers; expertise of presiding officers; untrained and uncooperative police officers. These obstacles will be discussed next as sub-themes.

Sub-theme 2.1: Attitude of social workers

Some participants were of the opinion that a successful implementation of the new Children’s Act is being undermined by attitudes of some social workers who are used to the old way of doing things. One participant’s view summarises this issue as follows:

- *“Probably, it also boils down to the issue of attitudes, having worked with the old Children’s Act, for a very long period of time, their attitude change might be probably taking too long to adapt to the developmental perspective as prescribed by the new Children’s Act.”*

Sub-theme 2.2: Problems with presiding officers

The majority of participants stated that most of the problems that they face in the implementation of the Children's Act stem from presiding officers who lack uniformity; who are not well versed on the provisions of the Children's Act; who look down upon social workers; who are unprofessional, and who have unrealistic demands as will be next discussed.

- *Lack of uniformity among presiding officers*

The majority of the participants stated that most presiding officers do not have a standardised way of doing things. Even though there are regulations in place, the regulations are not very clear. Hence, presiding officers are ambiguous, which is exacerbated by the Act stating that the presiding officers must use their discretion in dealing with cases. This causes a huge challenge in that presiding officers in one magisterial court interpret the Act differently. However, it is not only the lack of uniformity in one magisterial court that is a concern. Participants also stated that they work with presiding officers in different magisterial districts who have complete different ways of handling and approaching matters. This therefore frustrates social workers in that they always have to be conscious of which court they are going to and what the specific procedures of that particular court entail. The challenges, views and experiences of participants on the lack of uniformity of presiding officers are reflected in the following quotes:

- *“When approaching the courts in terms of the attachments they need on the reports, specifically section 159 reports for the extension of orders, where you find that the Johannesburg Court presiding officers have a set of attachments that they require but if you go to the Alexandra court or if you go to Alberton court, they have different attachments that they need and my understanding is that in the regulations, it is left to the discretion of the presiding Officer, so the fact that there is no uniformity in terms of the attachments that are required by*

different courts, makes it very difficult and it's a cumbersome process that we are encountering because now we have to either memorise or we have to come up with lists of what is required, at which particular court and that makes it very difficult to organise our selves administratively in terms of those needs."

- *"There is Randburg, there is Wynberg and there is Jo'burg court and they all have different requirements, for instance, in some other courts, they need you to bring the children concerned and some of the parties and in other courts they do not require you to bring all of those people, so it becomes very difficult, like when-ever you are handling a case, you have to ask yourself, which court am I going to? Am I going to Wynberg?, so I need to prepare ABC, whereas, if everything has been made uniform, I know that I will have to do everything in a standard way and there are also some documents that you find that Randburg requires but Wynberg does not require, so all these issues are very frustrating."*
- *"The Act goes with regulations and from jurisdiction to jurisdiction, for instance between Benoni and Johannesburg, the implementation of the Act or the interpretation of the Act is different depending on how the presiding officer understands the Act, so you are asked for certain things in one court that may not be required in the next."*
- *"There is a certain lack of convergence, lack of congruence among the professionals who deal with this [Children's] Act."*

- ***Presiding officers who are not well versed on the provisions of the Children's Act***

Most participants stated that one of the challenges that they face in the implementation of the Children's Act has to deal with presiding officers who are not well versed on the provisions of the Children's Act and who are not experienced in working with children. They stated that the children's court matters are often presided over by magistrates who

are borrowed from other courts and then often rotated resulting in some of them not being well versed on the provisions of the Children's Act. This is evident when presiding officers read the Act during the session; at times they quickly run to a presiding officer next door to ask for clarity on how certain issues are handled and even ask the social worker on what they should do. The challenges for social workers regarding presiding officers who are not well versed on the provisions of the Act are evident in the following quotes:

- *“You see, the children’s court has a shortage of presiding officers, so what they do is that they take some presiding officers from other courts, for example from the maintenance courts to come and preside on matters pertaining to the children’s court and you find that we use different Acts altogether so these presiding officers who come to preside on child welfare issues in the children’s court, you find that some of them would actually be reading the Children’s Act within the session, or before the session, or after the session, to show that they do not have the experience or the knowledge of the Children’s Act, so that is a challenge that we face. So you find that at the end of the day, the way that they preside over the cases, it becomes too intimidating for the children, yet the courts are supposed to be child friendly, you know, they interrogate children and that is not a role of the presiding officers, so at the end of the day you find that they either have lack of knowledge of the Children’s Act or they also have lack of experience in working within the Children’s Court.”*
- *“When they are not experienced in dealing with children, they become very technical and very impersonal so then the court becomes too intimidating for the child, which should not be the case, so, I think there is need for a training of specialised presiding officers so that we do not have an issue of officers coming from other courts.”*
- *“We feel that to some extent, they are acting against the best interest of a child because the social worker would have investigated and concluded that it is to a*

greater extent in the best interest of a child to remain in this placement for a further period of two years or even beyond but the presiding officer comes to court and rejects our recommendation on the basis that the child is not doing well at school.”

- ***Unrealistic demands from presiding officers***

The majority of participants indicated that presiding officers often burden them with unrealistic demands, for instance they are ordered to ensure that children who are not doing well at school go for educational assessments; yet that is the role of the school authorities which social workers do not have control over. At times when the children are not doing well at school, the presiding officers order that they be placed in special schools. However, there is a huge shortage of special schools. Moreover, it is also not the role of the presiding officer or the social workers to make such decisions; it is the role of the education authorities, since they are experts in the field.

The majority of the participants said that they are requested to order teachers around, by the presiding officers who think that they know everything (*yet the presiding officers are not experts in the field of education*). Most participants indicated that some of the documents that the presiding officers want them to attach to the reports are not necessary at all, for example, the SASSA extract to prove that the foster mother is getting a foster care grant; school reports for the past four terms and copies of all the previous extension orders. A significant number of participants stated that presiding officers demand that they (social workers) advertise for the biological parents to come forward. This is the case even for children who have been in alternative care for the past 16 years, who were abandoned as newly born babies and whose biological parents' identities and whereabouts have never been known, and who also do not even know the name of the child, since the child would have been given an assumed name and surname. This according to social workers is “ridiculous and an unnecessary waste of time and resources.” The participants' responses to the unrealistic demands of the presiding officers were voiced as follows:

- *“There are some attachments which really do not make any sense and there is duplication of efforts in that you send these attachments every two years, for example, a certified copy of a birth certificate, you have to send a copy of that each and every time you approach the court and you also have to give them copies of court orders, which they already have in their files, so that really becomes a challenge, administratively.”*
- *“There are demands from presiding officers that are beyond our scope of work, especially the demand that we take an active role in the educational assessments of children, of which that matter should be addressed by the educators in schools and not by us as social workers, but the presiding officers push the social workers to the extreme.”*
- *“And some of those are the documents they issue, for example, a form 8 (court order), they are the ones who would have issued it, now they want you to bring them a copy of something that originated from them.”*
- *“I think the documents that are required are just too much. There is a form 36; a form 38 and a form 2 and you really wonder what is in the form 2 that you can not cover in the form 38 or in the form 36, so all this paperwork contributes to the paper dragon, where everything has to be written down, if you look for the actual reason for writing it down, you find that there is no reason, you can still achieve your goal by doing only a form 36 and probably a form 38 only, without doing a form 2.”*

- ***Presiding officers look down upon social workers***

A number of participants indicated that presiding officers look down upon them, often talk to them in a demeaning manner and embarrass them in front of clients. Furthermore, presiding officers often doubt the decisions of social workers and reject

requests and recommendations from social workers. The views of participants on how presiding officers behave towards them are reflected in the following voices:

- *“Some of the presiding officers, I think they don’t really know how to deal with social workers because they actually tend to look down upon us.”*
- *“Instead of the process being collaborative, it becomes competitive, whereas others [presiding officers] want to show that they have more power than others [social workers]. Some are lesser human beings, or are second class professionals, so to say.”*
- *“The presiding officers tend to question the professional opinion of social workers, but then it is social workers who go into the field, who know the clients, so it becomes very infuriating when one questions you on information they have no knowledge over, so I think there is need for that collaborative approach.”*
- *“Sometimes magistrates undermine social workers a lot in terms of investigations. We do a lot of investigations, when we come up with outcomes; they just ignore the outcomes, set our recommendations aside. An example being a case where I removed a child from the circumstances that were not conducive for the upbringing of the child, but then the magistrate said no, you have to return that child back home to the biological parents. After the child was placed back, I went there again and found the place not conducive at all, the child was no longer attending school and the environment was generally not good at all, but just because the magistrate said so, there is nothing you can do about it as a social worker.”*

- ***Insufficient number of presiding officers***

Some participants stated that there is an insufficient number of presiding officers in the children’s court to the extent that they end up being in court for the whole day so as to present just one case. What is more frustrating for them is that they are all ordered to be

in court by 8am, when they only get attended to perhaps at 12pm, so they spend many hours doing nothing, waiting in a very long queue and this to them is counter productive. At times, when a presiding officer who had ordered a monitoring report is not at work on that particular day, cases are just postponed because the other presiding officers do not want to touch the case due to their own heavy case loads. The participant's frustrations are captured in the following words:

- *“There is a few number of presiding officers to an extent that social workers end up waiting on a queue for two or three hours before they are attended to and I feel that if children are a priority, the children’s court is a priority, we need to address things swiftly, we need the correct number of presiding officers who can attend to social workers, or at least a schedule that makes it easier and convenient for social workers to attend court, because it is an inconvenience for social workers to spend the whole day in court.”*
- *“At times you go to court, wait forever to be attended to, only to find out that your 159 hearing or your section 65 hearing has to be postponed for a further date just because a specific presiding officer is not around.”*

Sub-theme 2.3: Untrained and uncooperative police officers

The majority of the participants stated that the lack of corporation and insufficient knowledge from the police officers is a huge stumbling block to them in the implementation of the Children’s Act. The participants further stated that the police have no clue on what their responsibilities are as far as implementing the Children’s Act is concerned. Furthermore, police officers are not trained to work with children and as a result, they intimidate the children. The participants’ views on police officers are reported as follows:

- *“The police know some parts of what their duties are but they are not aware of what the social worker must do when they have finished their part. Some of the police don’t even know what to do when they get to an abused child. You find that when children or parents go to the police to report child abuse, they are dismissed from the police station, they are told [to] go away.”*

- *“The perpetrator is supposed to be removed by a police officer, but the police do not do that, they go there and remove the child. In most cases that we get from the police, they have already removed the child and not the perpetrator, then they come with the child to our offices. I mean, that is all I see, removal of children and not of the perpetrator.”*

- *“I think the police are not doing the risk assessment, they just remove children.”*

- *“The way we interpret some of the identifying factors of whether a child is in need of care and protection is different from the police’s interpretation, for example, they can just remove a child that they see as dirty at that time and say the child is neglected, whilst with us as social workers, we remove a child after doing some investigations to see whether a child is really in need of care and protection or not.”*

Theme 3: Infrastructural barriers in implementing the Children’s Act

Several participants indicated that they are facing numerous infrastructural barriers in the implementation of the Children’s Act. These infrastructural barriers stem from the unavailability of resources, which is a result of poor funding of the child protection sector. The consequence of poor funding is that it places restrictions on the use of telephones; computers; fax machines and vehicles. These restrictions make social workers fail to adequately execute services as advocated for by the Children’s Act. The challenges accompanied with infrastructural barriers are evident in the following quotes:

- *“There is a lack of resources and this lack of resources emanates from the poor funding of the sector as a whole, with respect to social development and particularly child welfare because it is difficult to justify whether we are not just a consumer, unlike other sectors which are producing.”*

- *“We face a lot of shortages in terms of the resources that we need to execute our duties, for example, we need to contact a lot of collaborative partners, who could be fellow social workers, other professionals and paraprofessionals and to do that, we need to engage, via telephonic conversations; we need to travel to some other places, and in our organisation, it is very difficult because of the restrictions in terms of the use of telephones, the restrictions in terms of access to vehicles and when you can travel and when you can not travel. So, that brings a lot of challenges as a collaborative process also becomes a longitudinal process, and along the way, some of the services are not effectively and comprehensively implemented.”*

- *“It’s a circle of poverty; you are underfunded where you work, then you become underpaid, the underpayment leads to underperformance, the underperformance leads to the continuation of social problems, they will continue and continue and continue.”*

Theme 4: Human resource challenges in the implementation of the Children’s Act

A significant number of participants stated that they face a lot of human resource challenges in the implementation of the Children’s Act. They explained these as stemming from the shortage of social workers, which inevitably lead to high case loads. The consequence of the shortage of human resources is that it causes a delay in responding to emergencies. However, on the other hand, some participants stated that they end up only responding to crises and neglecting prevention and early intervention services. More so, they end up rendering services in a remedial manner as opposed to the comprehensive developmental services that are legislated for in the Children’s Act.

Sub-theme 4.1: Shortage of social workers, high case-loads and poor salaries

The experiences of most participants regarding the human resource challenges that they face in the implementation of the Act, stem from high caseloads; an inadequate number of social workers and the poor salaries that they are getting. These three issues are intertwined as reflected in the following views of participants:

- *“The reality in the social welfare service is that the field has got [a] high staff turnover. We have government, which is offering better opportunities for social workers, so we will always have a consistent migration of social workers from the NGO sector being absorbed into government and that leaves a lot of gaps in the NGO sector.”*
- *“I would have a caseload of 300 files and it is just unrealistic for anyone with common sense to expect you to render effective services, this is because of high staff turnover which no one has control over. Why, just because the sector itself is poorly funded.”*
- *“High staff turn-over means that you might have to chip in and work on another person’s caseload because the post would be vacant and this impedes service delivery.”*
- *“Implementation is a challenge, because we are working with a population of over 49 million and we have a drop in the ocean number of social workers, who are supposed to render, not only child protection services, but also family preservation services, services for persons living with disabilities and a lot of other welfare sectors.”*

Sub-theme 4.2: Inadequate training of social workers

Besides the shortage of social workers, a few participants highlighted that social workers did not receive enough training on the Children’s Act and that is why it is very

difficult to implement it because they do not know its provisions and regulations. The voices of participants on the shortage of training are reflected in the following quotations:

- *“Some social workers are not well trained on the Children’s Act, the new Act, because some are still familiar with the old Act, and are not yet familiar with the new Act and it is very difficult for them to implement it.”*
- *“The Act was introduced too quickly. I for one never received any training on how to implement the Children’s Act. I would have thought that something as huge as the new legal system is introduced; people should be adequately trained to know the new system in and out. I for one has been kind alike operating in the dark, it has been on a trial and error basis and I have made a lot of mistakes.”*
- *“The other issue is the issue of residential social workers’ knowledge of the Act, since there has been no effort in trying to acquaint them with the provisions of the Act, so when we do submit our reports, some of them are not so sure of the attachments that are needed or what is expected of them, the contents of the report and how to conduct themselves when in court, so there is a need for a rectification on the Act so that the specifications can be made clear to all the people concerned.”*

Theme 5: Shortcomings of the Children’s Act 38 of 2005

The majority of the participants stated that some of the challenges they face in implementing the Children’s Act relate to the shortcomings of the Children’s Act; loopholes within the Act itself and some terms and concepts in the Children’s Act that are unclear and ambiguous. These include among others, transfer of children to alternative placements; problems relating to section 150(1) of the Children’s Act; contradictions of the Act with other legal statutes and societal values; and the fact that

the child protection system is very slow in processing cases that pass through it. The voices of participants regarding the short comings of the Children's Act are as follows:

- *“What does rectify mean, for example, an order issued by the Department of Social Development is invalid when the order has not yet been rectified. And then probably issues of interpretation of terms in the Children's Act, in terms of visible means of income. What does that imply; it's a relative term, which can be interpreted differently between all the partners engaged in this collaborative approach.”*
- *“The child maybe in foster care, the foster parent passes on when the child is 18 years old, the child is discharged from foster care. Where to, that is a challenge, we have had a challenge to say okay he is an adult now, but do you kick somebody into the street just because he is an adult. What would therefore be the purpose of you investing money into raising a child into an adult, who you later leave on the streets?”*
- *“The Sexual Offences Act and the Children's Act don't go hand in hand. The Sexual Offences Act say you have to get proof beyond reasonable doubt that this person has done that, that is when they want the physical evidence. Whereas the Children's Act is saying you just have to go with the balance of probability.”*
- *“A lot of elaboration is needed to really make a clear distinction of who is a child in need of care. We need a lot of explanation in order to make it very clear, it also mean that social workers need to attend a lot of workshops because you find that in some cases where the child was removed in terms of section 150 (a); (f) and (g), they overlap each other so at times you find that social workers are confused over which sections to use, is it (f) or (g) or it is both sections. You can not choose g for example and leave f because they complement each other, so in some cases the social workers opted only for (f) or (g) and this shows a doubt in implementation, it shows a doubt in saying whether a child is in need of care and protection or not.”*

- *“The system itself is not fast enough to achieve the ultimate objective of the Children’s Act, which is the protection of children, it is not achieved because the system is too slow, it is too cumbersome, it is too big, and it is too heavy to process the children who are going to pass through it.”*

Theme 6: Addressing challenges in the implementation of the Children’s Act

The participants proposed numerous solutions to addressing the challenges they face in the implementation of the Children’s Act, which will be discussed under the following sub-themes:

- Establishing a kinship care grant
- Amending the Children’s Act
- Training all role players involved in implementing the Children’s Act
- Addressing problems with presiding officers
- Collaboration and cooperation of professionals
- Increasing social work salaries
- Taking administrative extension of orders back to the Department of Social Development.

Sub-theme 6.1: Establishing a kinship care grant

Most participants stated that their case loads are unnecessarily high due to the fact that they have cases for children who passed through the formal foster care system so as to access foster care grants. The majority of the participants are of the view that this can be ameliorated by establishing a kinship care grant. This would be for children in the care of relatives who are basically in need of cash and not as much in need of care, and who generally go through the formal foster care system in order to access a grant. The following quote captures the essence of participants’ views on a kinship grant:

- *“There are too many children that are going through the formal foster care system, I think it’s actually prudent if we have a parallel system that can actually capture some of the children, especially the related placements, so that they don’t go through the statutory processes that foster children go through, so that they can actually have their own sort of grant that is administered differently from the foster care grant, so that we reduce pressure on the conventional foster care system.”*

Sub-theme 6.2: Amending the Children’s Act

All participants were of the view that most problems that they face in implementing the Children’s Act can be addressed by amending the Act itself. They stated that the Act should accommodate a transfer for the children in alternative care who are above the age of 18. More-so, it should clarify the meaning of certain terms and definitions, for example, the phrase “visible means of support”, “ratify”, “orphaned” and many other terms. The views of participants regarding amending the Act are as follows:

- *“There should be a system in place, which caters for young adults who would have been discharged from the provisions of the Children’s Act but having nowhere else to go.”*
- *“I think there is need for more clarity, or even revisit the phrase [A child is in need of care and protection if the child has been abandoned or orphaned and is without any visible means of support] itself to bring clarity to that.”*
- *“I think there is need to broaden the definition [of a child in need of care and protection] so that it is all encompassing and that it looks at all aspects of a person, not just the visible means of support.”*

Sub-theme 6.3: Taking administrative extension of orders back to the Department of Social Development

Participants were of the opinion that the administrative extension of orders should be taken back to the Department of Social Development. They stated that this would solve all the problems that they experience with the children's courts. The views of the participants on taking the administrative extension of orders back to the Department of Social Development is aptly captured in the voice of one participant:

- *“I think the issue of the administrative function of extending orders, I think it is actually more better that they are returned to the Department of Social Development, so that people do not need to frequent the courts on a daily basis for something that can be done in their absence. So it is actually better if they return that administrative function to where it was before, which is the Department of Social Development, then we will not have an issue of dealing with different courts, spending unnecessary time at court, the issue of different courts having different requirements, this would make life easier.”*

Sub-theme 6.4: Addressing problems with presiding officers

Of significance is the fact that most problems that the majority of participants face in implementing the Children's Act seem to be caused by the presiding officers. Therefore, the majority of the participants stated that problems with presiding officers can be addressed by the following:

- *“We should have regular meetings or monthly meetings with the representatives of the Children's court especially with the magistrates, where social workers should attend, together with the police and any other authorised officers who are involved in the implementation of the Children's Act.”*

- *“I think periodicals would do. Just as much as doctors would meet to discuss and afterwards release periodicals about new drugs and whatnot, social workers should do the same.”*
- *“Presiding officers must find uniformity on how we have to present our reports, for example, a form 38 if they were just to stick to it, not to bring in new things that are really not in the Act.”*
- *“We need to address things swiftly, we need the correct number of presiding officers who can attend to social workers, or at least a schedule that makes it easier and convenient for social workers to attend court, because it is very inconvenient for social workers to spend the whole day in court.”*

Sub-theme 6.5: Training all role players involved in implementing the Children’s Act

In order to efficiently address the challenges that social workers are facing in implementing the Children’s Act, most of the participants stated that everyone who is involved in the implementation of the Children’s Act should receive adequate training and that all the role players should be simultaneously trained by the same trainers so that they all have similar interpretations and understanding of the Act. The views of participants on the need to train all role players involved in the implementation of the Children’s Act are as follows:

- *“I think that the police should have been given more training or more support services like what we have as social workers, so that we can be at the same level in terms of implementing the new Children’s Act and so that we can get support from them as well.”*
- *“I think, more resources should be channelled towards offering training to different stakeholders that are involved in implementing the Act.”*

- *“We need to get identical trainings on how to implement the Children’s Act, and then maybe we will properly handle issues affecting children.”*

Sub-theme 6.6: Collaboration and cooperation of professionals

Some participants stated that problems regarding the implementation of the Children’s Act can only be addressed if the key personnel involved in implementing it can cooperate and collaborate with one another. These key personnel are social workers, presiding officers and police officers. When the key personnel collaborate with one another they will strengthen and complement each other’s efforts in achieving a united mandate which is child protection. Moreover, they need to cooperate with one another using the principles of equity, equality, respect and fairness so that they avoid playing power games. The views of participants on the need for collaboration and cooperation between different professionals are reflected in the following quotations:

- *“I think there is need for a collaborative approach.”*
- *“There has to be a revisit or a redress of the collaborative aspect as to trying to deal with who has more power, or who has the upper hand? Is it the social worker who is working with the family on a day to day basis? Or is it the presiding officer who sees the family in a few minutes or hours at the children’s court or is it a school psychologist or someone outside the system who is a professional or a para-professional?”*
- *“I think the issue of people [presiding officers] trying to exert themselves as having more power than the other one should be addressed.”*

Sub-theme 6.7: Addressing human resource challenges

A number of participants stated that the human resource challenges they face in implementing the Children's Act can be addressed by increasing the funding for social work salaries in the NGO sector, particularly in the field of child protection. The views of some of the participants in this regard are as follows:

- *“It would be beneficiary to the profession as a whole if there could be a gazetted salary for social workers.”*
- *“They [social workers] will also have to be capacitated with the necessary funding and resources that are required to implement the Children's Act.”*
- *“It is very clear that people are motivated by economic resources, so in as much as we would want to implement the Act to the best of our ability, I think we need some motivation in that regard and I think there is an urgent need to look at the funding for social work salaries because we end up having a situation whereby we have demoralised people, who are expected to provide services of high quality and then those same people are subjected to those other conditions that we were talking about, the pressure, time constraints and the meagre salaries, I don't think that is actually developmental in nature, I think we need to look at the funding of social work salaries.”*

3.8. Discussion of findings and integration of literature

This section will note all the key findings of the study and attempt to integrate them with the relevant literature and theoretical framework.

The findings indicate that some participants were able to contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective. The participants

have awareness of some features and key principles of a developmental approach, including participation; empowerment; collaborative partnerships; prevention and family and community focused interventions (Department of Social Development, 2011:11-12; Patel, 2005). Lombard and Kleijn, (2006:214) argue that, “The first step towards statutory social service delivery within a developmental approach is recognising that statutory services are included in the basket of developmental social welfare service delivery.” Having some knowledge on where statutory services fit within a developmental approach is a good start towards shifting to a developmental approach in child protection services (Lombard & Kleijn, 2006:214).

The findings further show that institutional obstacles that participants face in implementing the Children’s Act stem from the attitude of social workers who are not well versed on the provisions of the Children’s Act and who are not implementing services from a developmental perspective. This view is supported by Mbambo (2004:40) who states that successful implementation of the Children’s Act requires a paradigm shift and a change of attitude among social workers. This shift requires, “Acknowledging that old ways of doing things may not be the best.” (September & Dinbabo, 2008:121). Patel (2005:3) adds that moving from an old way of doing things is always challenging and it causes considerable tension and uncertainty.

However, the findings also show that most institutional barriers in implementing the Act stem from the presiding officers who lack uniformity, who are not well versed in the provisions of the Act, look down upon social workers and overburden them with unrealistic demands. Social workers do not take a critical stance against the presiding officers to stand up for their rights. They can become more critical practitioners and respond to oppressive behaviour (Adams, 2002:84).

The findings also show that some of the institutional challenges that most participants face stem from the untrained and uncooperative police officers who do not know how to fulfil their roles and obligations. The police officers often remove children from their families due to poverty, even though the children might not be in need of care and

protection. This is probably due to the fact that they did not receive adequate training on the Children's Act. UN guidelines for the alternative care of children (2009) clearly states, "Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care ... but should be seen as a signal for the need to provide appropriate support to the family."

The infrastructural barriers that most participants face in implementing the Children's Act stem from the unavailability of resources, restriction on the use of telephones; computers; fax machines and vehicles. The shortage of resources seems to stem from the poor funding of child protection organisations. In an editorial on the Children's Act 38 of 2005 by Dawes (2009), it is stated that the said Act is way ahead of the capacity to deliver services at ground level. Dawes (2009) recommends a significant scaling up of finance and staffing. Research done by September and Dinbabo (2008:118) recommend that for the implementation of the Children's Act to be successful, efficient and effective infrastructure needs to be put in place and it includes office space, drop in centres, children's homes, vehicles and office equipment such as telephones, computers and fax machines.

Findings indicate that a significant number of participants face enormous human resource challenges in the implementation of the Children's Act and these stem from the shortage of social workers; inadequate training of social workers and high case loads. These findings correspond with what is stated in literature that due to resource constraints, social workers, as a consequence of a high work load, low salaries and poor working conditions are leaving the profession or the country to work abroad (Earle, 2008:74). September and Dinbabo (2008:12) note that social workers are the ones to turn the Children's Act into lived reality for children and their families. However, this is a huge challenge because social work is regarded as a scarce skill in South Africa (Earle, 2008:5-6). Proudlock and Debbie (2011:2) state that, "Between 16 000 and 66 000 social workers providing direct welfare services for the Children's Act alone are urgently needed in the country." In a study by Naidoo and Kasiram (2006), it was

found that social workers in South Africa are generally in excess of 120 cases (compared with a maximum of about 12 cases in the UK). This leads to high levels of stress and frustration among social work professionals (Earle, 2008:7).

The findings show that the shortcomings that some participants have realised in the implementation of the Children's Act 38 of 2005 relate to the transfer of children to alternative placements; different interpretations of different sections of the Act; contradictions of the Act with other legal statutes and societal values; and the over reliance of the child protection system on foster care structures to provide income support to children. The findings on challenges relating to the ambiguity and subjective grounds of finding children in need of care and protection as outlined in section 150(1) of the Children's Act, are confirmed by Hall and Proudlock (2011:2) who state that most presiding officers reject recommendations made in terms of section 150(1)(a) saying, "The child is not without 'visible means of support' as required by section 150(1)(a)." The findings regarding section 12 of the Children's Act concur with Ancer's (2011) comments that this section of the Act has been severely criticised, with some arguing that it conflicts with the current South African laws regarding sexuality and maturity of children. The criminal law (Sexual Offences and Related Matters, Amendment Act 32 of 2007) says it is a crime for children between the ages of 12 and 16 to take part in consensual sexual activity including kissing and "petting" (Ancer, 2011). Under this law, children may be charged with statutory sexual violation or rape (Ancer, 2011).

A significant number of participants were of the view that the challenges they are facing in the implementation the Children's Act can be effectively addressed by establishing a kinship care grant; amending the Children's Act; organising trainings for all role players involved in implementing the Children's Act; increasing salaries of social workers; taking administrative extension of orders back to the Department of Social Development; and by encouraging the cooperation and collaboration between various role players involved in the implementation of the Children's Act. Loffell (2011) concurs that a simple introduction of a "kinship care grant" can ameliorate this terrible predicament of going through the formal child protection system in order to access a foster care grant.

Realising the burden on the foster care system, the Portfolio Committee on Social Development in its report on the Amendment Bill has requested that the Department of Social Development conducts a comprehensive review of the social security policy for children and the foster-care system (Proudlock & Jamieson, 2008:39). However, this review has not yet materialised.

Lastly, participants were of the opinion that the problems they face with presiding officers can be addressed by training magistrates on the provisions of the Children's Act and having monthly meetings with presiding officers to discuss and address technical issues on the implementation of the Children's Act.

3.9. Summary

The chapter presented the research methodology that guided the research study, the ethical issues related to the study and the research findings obtained from the empirical study, followed by a discussion of the findings and literature verification.

Chapter four will focus on conclusions derived from the key findings and the researcher will make recommendations based on the study.

CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

4. Introduction

The focus of this chapter is to discuss how the goal and objectives of the study were reached. Furthermore, the key findings of the study will be presented, followed by the conclusions derived from the findings. Finally, recommendations will be drawn from the conclusions.

4.1. Goal and objectives of the study

The goal of the study was to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005. The goal of the study was achieved through the fulfilment of the following objectives:

Objective 1

- To contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective.

This objective was achieved in a thorough discussion in chapter 2 (sub-sections 2.4.1 to 2.4.6) as part of the literature study. In addition, it was addressed in the empirical study findings in chapter 3 (sub-section 3.7).

From the literature study, it is evident that the Children's Act 38 of 2005 was formulated in a way which is intended to ensure that child protection services are rendered from the developmental approach. However, this is only the case in policy but it is not implemented in practice. The principles and features of the developmental approach are

paramount as they provide guidelines for the type of services to be implemented; the levels of intervention; the type of social work methods to be applied and the forms and types of partnerships to be present (Department of Social Development, 2006). However, in the empirical study it was not that evident that the developmental approach is clearly understood by social workers in practice. Participants' responses to contextualising child protection within the Children's Act 38 of 2005 from a developmental perspective varied significantly. Overall, the majority of participants did not know what a developmental perspective entails. However, a few participants were very elaborative in their contextualisation of child protection from a developmental perspective within the context of the Children's Act 38 of 2005.

Objective 2

- To determine the shortcomings of the pre-statutory, statutory and post-statutory processes provided for in the Children's Act 38 of 2005, with regard to child protection.

This objective has been addressed in chapter 2 (sub-sections 2.8.1 to 2.8.8), where it is stated that since the Children's Act 38 of 2005 has been in operation, problems have emerged in relation to transfer of children to alternative placements; temporary safe care post-removal processes; grounds for finding orphans and vulnerable children to be in need of care and protection; the change-over to a court-based system for deciding on extension of placements; the obligation on social workers to report possible offenses to the police, and over-reliance on the foster care system to provide income support to families caring for orphaned and abandoned children. In chapter 2, it has been made clear that all these challenges stem from the shortcomings of the Children's Act with regards to pre-statutory, statutory and post-statutory processes.

Further more, the second objective was also achieved in chapter 3 (sub-section 3.7) of the empirical study, which indicates that the majority of the participants stated that some of the challenges they face in implementing the Children's Act relate to the shortcomings of the Children's Act; loopholes within the Act itself and some terms and

concepts in the Children's Act that are unclear and ambiguous. These include among others, transfer of children to alternative placements; problems relating to section 150(1) of the Children's Act; contradictions of the Act with other legal statutes and societal values; and the fact that the child protection system is very slow in processing cases that pass through it.

Objective 3

- To identify institutional obstacles and infrastructural barriers faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

This objective has been accomplished in chapter 2 (sub-sections 2.7.1 to 2.7.2), where it became evident that the successful implementation of the Children's Act has been undermined by institutional and infrastructural barriers. These barriers are further indicated as being multi-dimensional, multi-sectoral and multi-faceted. Moreover, they are internal and external. However, the common denominator in most of them is the unavailability of resources and budget constraints.

In addition, the third objective of the study was accomplished in the presentation of empirical study findings in chapter 3 (sub-section 3.7). The participants revealed that the institutional obstacles that they are facing in implementing the Children's Act stem from the attitude of social workers; attitude of presiding officers; unrealistic expectations from presiding officers; expertise of presiding officers; lack of knowledge of residential social workers, and untrained and uncooperative police officers. Of equal significance is that several participants indicated that they are facing numerous infrastructural barriers in the implementation of the Children's Act. This includes among others, the unavailability of resources; restriction on the use of telephones and computers, sharing of offices, and the shortage of child and youth care centres. The unavailability of resources makes social workers fail to adequately execute services as advocated for by the Children's Act.

Objective 4

- To explore human resource challenges in the implementation of the Children's Act 38 of 2005, with regard to child protection services.

This objective was realised in chapter 2 (sub-section 2.6) as part of the literature study. Moreover, it was achieved in the empirical study in chapter 3 (sub-section 3.7). The implementation of the Children's Act has not been without human resource challenges. These challenges have a lot to do with the shortage of social workers in South Africa and the fact that a wide range of social service professionals are unrecognised.

A significant number of participants stated that they face many human resource challenges in the implementation of the Children's Act; they explained these as stemming from the shortage of social workers, which inevitably lead to high case loads. The consequence of the shortage of human resources is that there is a delay in responding to emergencies, whilst others stated that they end up only responding to crises and neglect prevention and early intervention services. More so, they end up rendering services in a remedial manner and neglecting the comprehensive developmental services that are legislated for in the Children's Act.

Objective 5

- To make proposals towards addressing the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

This objective was partially attended to in chapter 2. However, it was fully accomplished in chapter 3 (sub-section 3.7). The participants proposed numerous solutions to addressing the challenges they face in the implementation of the Children's Act. The main proposals that they made are as follows:

- Establishing a kinship care grant
- Amending the Children's Act
- Training all role players involved in implementing the Children's Act
- Addressing problems with presiding officers
- Collaboration and cooperation of professionals
- Increasing social work salaries
- Taking administrative extension of orders back to the Department of Social Development.

4.2. Key findings and conclusions

In this section the researcher will present key findings and conclusions in a sequential manner.

- The findings indicated that most participants could not contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective.
- ✓ It can therefore be concluded that the provisions of a Children's Act 38 of 2005 are not fully implemented within a developmental paradigm.
- The findings revealed that participants face numerous institutional challenges in implementing the Children's Act. Most institutional barriers in implementing the Act stem from the presiding officers who lack uniformity, who are not well versed in the provisions of the Act, who look down upon social workers and overburden them with unrealistic demands.
- ✓ The researcher concludes that social workers are the victims of the children's court system which they do not challenge in the interest of effective child protection services.
- The findings exposed infrastructural barriers faced by participants in the implementation of the Children's Act as stemming from the unavailability of

resources, restriction on the use of telephones and computers, sharing of offices and from the shortage of child and youth care centres.

- ✓ The researcher concludes that infrastructural barriers inhibit effective child protection services and make developmental child protection services a 'pipe dream'.
- The findings indicated human resource challenges in the implementation of the Children's Act as stemming from the shortage of social workers and inadequate training of social workers.
- ✓ The conclusion is that the Children's Act cannot be fully implemented in the absence of sufficient numbers and capacity of social workers.
- The findings revealed that there are several shortcomings of the Children's Act 38 of 2005 which stem from the loopholes; ambiguity and short sight of the Children's Act itself. These relate to the transfer of children to alternative placements; different interpretations of different sections of the Act; contradictions of the Act with other legal statutes and societal values; and the over reliance of the child protection system on the foster care system to provide income support to children.
- ✓ It can be concluded that there are pre-statutory; statutory and post-statutory shortcomings in the Children's Act which create many challenges in implementing the Children's Act.
- The findings indicated proposals towards addressing the problems faced by social workers working in child protection services in the implementation of the Children's Act, including: establishing a kinship care grant; amending the Children's Act; training all role players involved in implementing the Children's Act; addressing problems with presiding officers; collaboration and cooperation of professionals; increasing social work salaries; and taking administrative extension of orders back to the Department of Social Development.
- ✓ It is concluded that social workers understand the gaps in the implementation of the Children's Act, as well as what could possibly be done to address these gaps and

effect the required change. However, it is not certain how empowered social workers are to bring about the required changes.

4.3. Recommendations

In view of the above-mentioned findings and conclusions, the researcher respectfully make the following recommendations to address the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005:

➤ Establishing a kinship care grant

The regulations of the Social Assistance Act 13 of 2004 should be amended to allow for a kinship-care grant which would cater for orphans in the care of relatives. This will replace the use of the inaccessible foster care grant for this category of children and therefore ensure that the majority of orphans living in poverty with family members receive an adequate grant efficiently and timeously. By providing a kinship care grant that is accessed by direct application to SASSA and that is higher than the standard child support grant, the use of the foster care grant for orphans in the care of relatives will be reduced. This will also lighten social workers' case loads and therefore enable improved prevention; early intervention and protection services for abused and other vulnerable children.

➤ Amending the Children's Act

It is recommended that the Children's Act should be amended in the following areas and sections:

- Section 42(3) should be amended to state that the Minister of Justice and Constitutional Development and the head of the administrative region "must" appoint a dedicated presiding officer, instead of "may". The phrase "who meets the prescribed requirements" should be included after "magistrate or additional magistrate" to ensure that the presiding officer has the requisite training. The

dedicated magistrate who acts as a presiding officer should be a specialist in family law and the Children's Act and should receive specialist training in the Children's Act, the Bill of Rights and international instruments that deal with children. Moreover, it should be a permanent position and should not be rotated in order to counteract the lack of experience of rotating magistrates resulting in procedural difficulty and irregularity in the application of the Act.

- Section 150(1)(a) should be amended to remove the words “and is without any visible means of support” and replace them with the words “abandoned or orphaned and not in the care of a family member.” The effect of this would be that children who are abandoned or orphaned but who are nevertheless living with a family member (who is not a biological parent) are not automatically in need of care and protection. However, the question is, what will then happen to children who are orphaned or abandoned but who are living with family members? Therefore, it is recommended that section 150(2) should be amended by the addition of a new paragraph (c) which adds the following to the category of children who may be in need of protection: “A child who has been abandoned or orphaned and is not living with his or her biological parent, but is in the care of a family member.” This subsection requires that such children's cases should be “investigated”. Furthermore, it is recommended that “investigated” be changed to “assessed”. The rationale for this proposition is that an investigation is thorough and comprehensive whilst an assessment is general and simple. Moreover, an investigation can only be done by a social worker, whilst an assessment can be done by either a social worker or a social auxiliary worker. The proposed amendment to section 150 would create a system that allows for non-court ordered care by relatives, namely, kinship care grant as discussed above.
- Section 171(6) regarding the transfer of children deeper into the child and youth care system (e.g. from foster care into a children's home) be amended to make such transfer orders to be issued by the children's court only. This will reduce the bottle necks associated with the issuing of transfer orders by the Department of Social Development and then being “ratified” or approved by the children's court.

Placing the issuing of such orders in one department would avert institutional confusion. More so, the word “ratify” should be included in the definition of terms and its meaning be elaborated.

- Section 176 should be amended to allow children above the age of 18 to be transferred from one placement to another. More so, section 176(2)(b) be amended by changing “education and training” to “schooling; further education and training or tertiary education.” This would ensure that children above the age of 18 who are in tertiary education receive a foster care grant, since SASSA has been refusing to pay out grants for such children.

➤ **Training all role players involved in implementing the Children’s Act**

The Department of Social Development must take responsibility to train all the role players involved in the full implementation of the Children’s Act. More so, the presiding officers, the police and social workers should attend the same training workshops and be trained by the same trainers so that everyone is clear of their roles and obligations. This would ensure that there is similar interpretation of the Act and it would increase uniformity in the implementation of the Children’s Act.

➤ **Addressing problems with presiding officers and police officers**

Regular meetings between the presiding officers of the Children’s court, police officers and social workers involved in the implementation of the Children’s Act should be conducted. During such a meeting these three stakeholders should deliberate on issues of importance, address the respective expectations from one another and discuss the possible challenges and the difference that they experience with one another and table appropriate ways of handling situations. This would ensure that problems between social workers, police officers and presiding officers are swiftly addressed.

Moreover, social workers should make use of their critical and anti-oppressive social work knowledge and skills so as to address the problems they experience with presiding officers and police officers.

➤ **Training social workers in the developmental approach**

There is a need to educate social workers in the practical application of a developmental approach in the rendering of child protection services. Once the social workers have been trained on how to render services in a developmental fashion, then sufficient resources need to be availed to them by the Department of Social Development.

➤ **Taking administrative extension of orders back to the Department of Social Development**

The administrative extension of orders in terms of section 159 and section 186 should be taken back to the Department of Social Development. This would solve most problems that social workers encounter with courts regarding the extension of placements orders. Moreover, it would free up the presiding officers of children's courts valuable time to enable them to fully focus on other duties that have a direct bearing on the protection of children.

➤ **Availing infrastructural resources for the implementation of the Children's Act**

For the implementation of the Children's Act to be successful, efficient and effective infrastructure needs to be put in place and it includes office space, drop in centres, children's homes, vehicles and office equipment such as telephones, computers and fax machines.

➤ **Further research to be carried out**

Further research should be carried out in determining the best way of addressing the identified challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

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Semi-structured interview schedule

Social Workers

Goal of study:

The goal of the study is to explore the challenges faced by social workers working in child protection services in implementing the Children’s Act 38 of 2005.

Biographical details:

Please provide the following details:

1. Gender:

Male		Female	
------	--	--------	--

2. Age group:

25-30		31-35		36-40		41-45		46-50		51-55		56+	
-------	--	-------	--	-------	--	-------	--	-------	--	-------	--	-----	--

3. Racial group:

White		Black		Coloured		Asian	
-------	--	-------	--	----------	--	-------	--

4. How many years of social work experience do you have in child protection services?.....

5. How many years have you been employed at Johannesburg Child welfare as a social worker?

6. How long have you been implementing the Children’s Act 38 of 2005, as a social worker?

7. Were you involved in the implementation of the Child Care Act 74 of 1983?

Yes		No	
-----	--	----	--

8. If yes, how many years?

9. What type of services do you provide (*Please tick all relevant*)

Intake services	
Prevention and early intervention services	
Statutory services	
Monitoring and supervision of foster care placements	
Recruitment and screening of foster parents	
Family reconstruction services	
After care services	
Adoption services	
Counselling and therapeutic services	
Other: (please indicate).....	

Focus group questions:

1. How do you contextualise child protection within the Children’s Act 38 of 2005 from a developmental perspective?
2. What institutional obstacles do social workers working in child protection services face in implementing the Children’s Act 38 of 2005?
3. What, in your view, are the infrastructural barriers that social workers working in child protection services face in implementing the Children’s Act 38 of 2005?
4. What human resource challenges do you encounter in the implementation of the Children’s Act 38 of 2005?
5. What effects of human resource challenges have you witnessed on the implementation of the Children’s Act 38 of 2005?
6. What, if any, are the shortcomings of the pre-statutory; statutory and post-statutory processes provided for in the Children’s Act 38 of 2005, with regard to child protection?
7. What in your view can be done to address the challenges that you experience in implementing the Children’s Act 38 of 2005?



307 Rifle Range Road

Johannesburg

05/10/2012

Attention: Mr S. Sibanda

RE: PERMISSION TO CONDUCT A RESEARCH STUDY

Your letter dated 14/08/2012 refers; the management of Jo'burg Child Welfare is pleased to inform you that permission has been granted to you and your research assistant to interview 21 social workers in our organisation, by means of focus group discussions. We take note that our selected social workers (participants) will be asked to attend at least three meetings of approximately 60 minutes per meeting. We further take note that the goal of your study is to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

So as not to inconvenience the organisation and the participants in terms of time, the organisation has granted your request to use our boardroom for the focus group meetings. We further acknowledge that we will not receive any monetary benefits for the use of our facilities and that no incentives or material benefits will be offered to our social workers (study participants).

Thank you for selecting our organisation. We hope that the study will go a long way in addressing the challenges in implementing the Children's Act 38 of 2005, faced by social workers in the child protection field.

Let us know when you are ready to start your investigations.

I trust that you will find this in order.

Yours faithfully,

A handwritten signature in black ink, appearing to read "m. a. coetzee".

Ms Maureen Coetzee

Manager (Foster Care Department)

Tel: 011 298 8519

Email: fostercare@jhbchildwelfare.org.za



Appendix 3

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Humanities
Office of the Deputy Dean

6 December 2012

Dear Prof Lombard

Project: Challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005
Researcher: S Sibanda
Supervisor: Prof L Lombard
Department: Social Work and Criminology
Reference number: 11256992

I am pleased to be able to tell you that the above application was **approved (with comment)** by the **Postgraduate Committee** on 13 November 2012 and by the **Research Ethics Committee** on 29 November 2012. Data collection may therefore commence.

Please note that this approval is based on the assumption that the research will be carried out along the lines laid out in the proposal. Should the actual research depart significantly from the proposed research, it will be necessary to apply for a new research approval and ethical clearance.

The committee requests that you convey this approval to the researcher.

We wish you success with the project.

Sincerely

Prof Elsabé Taljard
Acting Chair: Research Ethics Committee
Faculty of Humanities
UNIVERSITY OF PRETORIA
e-mail: elsabe.taljard@up.ac.za



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Humanities
Department of Social Work & Criminology

24/10/2013

Researcher: Sipho Sibanda
Mobile: 0785048764
Email: sipho41@yahoo.co.uk

Letter of informed consent for participants (social workers)

Title of the study: Challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005

Goal of the study: The goal of the study is to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

Objectives of the study:

- To contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective.
- To determine the shortcomings of the pre-statutory; statutory and post-statutory processes provided for in Children's Act 38 of 2005, with regard to child protection.
- To identify institutional obstacles and infrastructural barriers faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.
- To explore human resource challenges in the implementation of the Children's Act 38 of 2005, with regards to child protection services.
- To make proposals towards addressing the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

Procedures: I understand that I will be invited to participate in focus group discussions to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005. The duration of focus group sessions will be approximately 60 minutes per session. I am aware that I should attend at least three sessions and that I will be advised of the time and venue of the focus group meetings. I

Department of Social Work & Criminology
University of Pretoria
PRETORIA 0002
Republic of South Africa

Tel: Number 00 27 12 420 2325/2030
Fax: Number 00 27 12 420 2093

www.up.ac.za

give full consent to the researcher to audio tape the focus group discussions. I take note that the study is scheduled for February 2013 to April 2013.

Risks and discomforts: I take note that there are no foreseen risks and discomfort involved in participating in the study. However, I understand that this research will remind me of the practical realities and challenges in implementing the Children's Act 38 of 2005.

Benefits: I understand that the researcher will not offer me any incentives for being involved in the study.

Participants' rights: I am fully aware that participation in this study is voluntary and that I may withdraw my participation from the study at any time if I so wish, without negative consequences.

Confidentiality: Information shared during the focus group discussion will be treated with the strictest confidence. I will not divulge information from the focus group discussion to anybody else and I will, to the best of my ability prevent inadvertent disclosure of confidential information.

Dissemination of research results: I also understand that the researcher will compile a research report to be submitted to the University of Pretoria for academic purposes and that the research findings will be submitted for publication to a scientific journal. However, I take note that the researcher will ensure that no information that would identify me (particularly, my name, my surname and my post number) would be included in the transcriptions, research report and any other further publications. Other than the researcher, I am aware that the researcher's assistant and the researcher's supervisor will have access to the research data and they will treat it as confidential. I am also aware that raw data will be securely stored for a minimum of 15 years, according to the University of Pretoria's stipulations. I take note that the research data and transcripts will not be used by the researcher or any other researcher without my informed consent.

By signing this letter of consent, I confirm that I have read and clearly understood its contents. I do not give up any legal right by signing this letter of informed consent.

.....
Participant (Print name)	Participant's Signature	Date
.....
Researcher (Print name)	Researcher's Signature	Date



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Humanities
Department of Social Work & Criminology

24/10/2013

Researcher: Siphon Sibanda
Mobile: 0785048764
Email: siphon41@yahoo.co.uk

Letter of informed consent for the researcher's assistant

Title of the study: Challenges faced by social workers working in child protection services in implementi

Goal of the study: The goal of the study is to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

Objectives of the study:

- To contextualise child protection within the Children's Act 38 of 2005 from a developmental perspective.
- To determine the shortcomings of the pre-statutory; statutory and post-statutory processes provided for in Children's Act 38 of 2005, with regard to child protection.
- To identify institutional obstacles and infrastructural barriers faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.
- To explore human resource challenges in the implementation of the Children's Act 38 of 2005, with regards to child protection services.
- To make proposals towards addressing the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005.

Procedures: I understand that I will be invited to act as a research assistant in focus group discussions to explore the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005. The duration of focus group sessions will be approximately 60 minutes per session. I am aware that I should attend at least three sessions and that I will be advised of the time and venue of the focus group meetings.

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www.up.ac.za

Risks and discomforts: I take note that there are no foreseen risks and discomfort involved in acting as a research assistant in the study.

Benefits: I understand that the researcher will not offer me any incentives for my involvement in the study as a research assistant

Confidentiality: Information shared during the focus group discussion will be treated with the strictest confidence. I will not divulge information from the focus group discussion to anybody else and I will, to the best of my ability prevent inadvertent disclosure of confidential information.

By signing this letter of consent, I confirm that I have read and clearly understood its contents. I do not give up any legal right by signing this letter of informed consent.

.....
Participant (Print name) Participant's Signature Date

.....
Researcher (Print name) Researcher's Signature Date