

CHAPTER 5

THE EMPIRICAL PROCESS

5.1 Introduction

In Chapter 1 researcher outlined the proposed blueprint of how the intended study (to develop a protocol to ensure the recognition of the rights of children during a legal process) is planned. This chapter's focus will be to describe the execution of that blueprint through the empirical process. In order to give accurate account of the process followed, similar headings as given in chapter one, will be used – describing how that given aspect was achieved or dealt with. The research findings will then be presented in table format to enable the reader to view the issue under discussion at a glance.

5.2 Purpose of the research

The research was done through a combination of exploratory and descriptive research. The qualitative part of the research was to explore, in order to gain insight into the following factors:

- Contributing factors causing professional role-players not to acknowledge children's rights.
- Discomfort of professional role-players when dealing with children.

Descriptive research blends in practice with exploratory research and presents a picture of the details of a situation with the focus on the "how" and

“why” questions. The quantitative part of this research entailed the development of a proposed protocol. This protocol focused on

- “how” the professional role-players should go about to ensure that children’s voices are heard, and
- “why” it is important to hear what children have to say.

5.3 Objectives of the research

The objectives of the research were to do a thorough literature study as a solid foundation to the empirical study.

The literature study entailed the following:

- The Person-Centered (Child Centered) Approach as the theoretical framework that forms the base of such a protocol (Chapter 2).
- Studying the needs and life tasks of children in their different developmental phases in order to gain a proper understanding of children before working with them (Chapter 3).
- A global study of legislation regarding the rights of children (Chapter 4).

In the empirical study, the objectives were to:

- Explore the knowledge base and perceptions of professional role-players regarding the implementation of children’s rights in practice during a legal process.
- To develop, implement and evaluate a protocol for professional role-players to enable them to recognise, respect and protect the children’s rights during the legal process.

5.4 Research Approach

Researcher's motivation for this study stems from the present problematic situation as experienced in practice, namely that there is no consistent method to portray the needs and views of children to the court to ensure that decisions are taken in the best interest of children. The most appropriate approach to the intended study seemed to be the scientist-practitioner approach. The goals of the scientist-practitioner approach correlates with the intended study in the following way:

- Stimulate research mindedness > Rethink current methods of practice.
- Integrate practice and research > Develop a protocol from the data gathered
- Increase professional accountability > Test, evaluate and implement protocol

In order to achieve the abovementioned goals, researcher followed a combined approach of qualitative/quantitative research and specific Creswell's model of Dominant – Less Dominant approach. Gathering data from the professional role-players were of verbal nature and therefore formed the qualitative, less-dominant, part of the approach. From this data a protocol was developed, implemented and evaluated and thus formed the dominant part of the study – being quantitative in nature.

5.5 Type of research

Applied research with Intervention research as sub-type was chosen as most appropriate and specific for the following reasons:

- The focus of applied research is to shed light on / or providing possible solutions to practical problems. The aim of this study is to shed light on the problem situation as experienced in practice that children's rights are not acknowledged and protected. Confirming the problem situation is of no value unless a practical solution is found, such as developing a protocol for professional role-players.
- Intervention research implies the application of research in practice. Working from a scientist-practitioner approach, the research need to be taken back to practice and this can be done by implementing the developed protocol in practice.

5.6 Research Design

Researcher decided on the Single System Design (A-B-A) considering the facts that:

- The motivation for the study stemmed from a problem as experienced in practice and is therefore scientist-practitioner orientated.
- A combined qualitative- quantitative approach is followed, and
- The type of research being Applied, with Intervention research as sub-type.

The A-B-A design implies the following:

A = Exploring the phenomenon as the baseline measurement. (Gathering data).

B = Intervention programme. (Developing of protocol).

A = Measurement compared to the baseline. (Evaluation of the effectiveness of the protocol).

5.7 Methodology

The methodology followed contained two parts namely data collection and data analysis. The data collection was done according to the five steps of the intervention research process and can be described as follows:

5.7.1 Data collection

5.7.1.1 Step 1: Problem analysis and project planning

The data collected for the study needed to determine the following:

- The perception, needs and discomfort of the professional role-players with regards to the protection of the rights of the child during the legal process (problem analysis).
- What does the professional role-player need in order to be able to protect the rights of the child during the legal process (project planning).

Working from a Person Centered Approach, researcher felt it imperative to determine the human experiences (proposition 1), human perceptions

(proposition 2), needs and behaviour (proposition 5), frame of reference (proposition 7) and values (propositions 10 and 19) of the professional role-players. This was done through a semi-structured, face-to-face interviewing schedule. Specific themes were identified to be covered in the interviewing schedule, such as:

- Knowledge base regarding the rights of children.
- Importance of the Bill of Rights.
- Aspects to consider when working with children.
- Understanding of the term “best interest”.
- Professional view with regard to the necessity of a protocol.
- Contents of a protocol.
- The way a protocol can contribute to additional services to ensure that the child’s wishes and needs are taken into consideration.

5.7.1.2 Step 2: Information gathering and synthesis

A proper literature review and synthesis of previous research contributed to the existing knowledge and helped to guide the design of the interview schedule (Annexure 2). By means of purposive sampling, personal interviews were arranged with representatives from the different professions identified as key role-players in the judicial process, namely:

- Social workers
- Commissioners of Child Welfare
- Lawyers
- Family Advocates

- Judges

The criteria the research population had to adhere to, can be listed as follows:

- Individuals from the Law- and Helping Professions.
- Work within the jurisdiction of Pretoria / Johannesburg Supreme court.
- Work with child related issues.
- Have direct contact with children.
- Be prepared to implement the developed protocol.

The interviews ranged between one and two hours and were conducted in each respondent's office.

5.7.1.3 Step 3: Design

From the data gathered through the interviews, professional role-players indicated a definite need for a protocol as a guideline to assist them in protecting the rights of children during a legal process. They further listed specific ideas about the contents of the protocol and the need for practical tools they could utilize in the process. (The results of these data will be given under the analysis of the qualitative research). From this data, the proposed protocol was written and called "THE HIGHWAY CODE TO EFFECTIVELY WORK WITH CHILDREN IN THE JUDICIAL PROCESS". The reason being that, when children were asked what they need, their comments were that adults should:

STOP and think about children's point of view

LOOK for their feelings

LISTEN to what they say.

5.7.1.4 Step 4: Early development and pilot testing

The proposed protocol was developed (with reference to the protocol of Barnes-September, 1999 as blueprint) and pilot tested by one representative of each of the professional role-players. A commissioner, social worker, lawyer and family advocate each evaluated the contents thereof.

Researcher would like to particularly recognise Mr. Acting Judge K. van Rooyen for his personal time devoted to scrutinize the judicial order of the protocol. His contribution to the project has been of great value.

The protocol was then introduced as part of the presentation at the doctoral seminar. Present at the seminar were, amongst others, a magistrate, commissioner of child welfare, lawyer, social worker and school principal. Important suggestions and recommendations were made to be included in the protocol. For instance, the important role of the school in gathering information about the needs and wishes of the child when investigating a situation, were discussed. It was then decided, as the school is not directly involved in the judicial process and therefore not listed as a professional role-player, they will be referred to as a significant other role-player in the process.

5.7.1.5 Step 5: Evaluation and advanced development

The contents of the proposed protocol (Annexure 5) were refined and printed. The same professional role-players who were originally interviewed, namely two (2) judges, two (2) family advocates, five (5) social workers, five (5) lawyers and five (5) commissioners of child welfare, were each given a copy of the protocol to implement together with a questionnaire (Annexure 3) to evaluate the effectiveness and shortcomings in the protocol. The questionnaires' results will be discussed under the quantitative data analysis.

5.7.2 Data analysis

De Vos (2002:340) refers to Creswell's data analysis spiral process, indicating that, instead of a fixed linear approach, the process moves in analytic circles and entails the following steps – indicating how it was done in this study:

- Collecting and recording data (semi-structured interviews with professional role-players & questionnaires).
- Managing data (file folders, index cards and computer files).
- Reading, memoing (get a sense of the whole by reading through your database and information gathered from the interviews).
- Describing, classifying, interpreting (identify themes, patterns of belief that link people and settings).
- Representing, visualising (presenting data by means of comparison tables {Baseline measurements before and after testing/evaluating protocol implementation} and graphs).

5.7.2.1 Qualitative data

The qualitative data as gathered from the personal interviews with each of the respondents was analysed manually and arranged according to the eight themes covered in the semi-structured interview schedule.

Theme 1: Knowledge base regarding the rights of children

As mentioned before, researcher would like to repeat that, working with people is an awesome kind of responsibility. Fraiberg (In De Vos, 1979:65) stated that the chief source of error in our work is the equipment we bring to our work. Evans (1997: 357) formulated requirements for professional competence, of which one component is a repertoire upon which the worker draw, which contains the requisite knowledge, skills and values.

James & James (1999:189) said that the term “children’s rights” has echoed in all countries over decades and listening to the voices of children have become a clarion call since the 1970’s, yet it remains rhetoric. Researcher experienced that few people / professions would disagree that children have the right to be heard, to have privacy, to be represented legally, or that children are persons, not property. The problem is, when it comes to practicing above rights, few people are comfortable in doing so. With this as main focus, researcher conducted the interviews with the professional role-players to determine their views on the issue. The responses were as follows:

- Both judges thought children's rights are important although only one was prepared to allow children to participate in a hearing. The first judge verbalised that he works with the South African Constitution as his foundation. He indicated that he would for instance let the children come to his chambers, replace his court clothes and sit with a leg across a chair while talking to the children in order to make them feel at ease, while determining their feelings and wishes. The other judge also thought it is important to know what children say and feel but preferred to request more information from the professionals involved if he is not able to determine the child's wishes and feelings from the documentation put to him. He verbalised that his focus is mainly on the protection and provision rights of children.
- The family advocates both felt very serious about including children as part of their investigation. They both verbalised that they do conduct personal interviews with the children concerned and try to explain to children what their rights entail. Unfortunately, both family advocates (representing two different jurisdictions) indicated that the current situation in the offices of the family advocates are much reason for concern. Because of the workload, advocates are appointed on ad hoc level. This implies that their respective practises are of higher priority. People appointed to do the investigations, are not knowledgeable about children's rights. Most of them have no experience in working with children, have no understanding of children and do not portray children's needs and wishes in their reports.

- Of the five (5) commissioners of child welfare, three (3) indicated that they consider children's rights as extremely important and try to implement the United Nations Convention on the Rights of the Child (1989) where-ever applicable. One (1) commissioner's comment was "children's rights starts at birth, and it is a process without a begin and an end." Two (2) commissioners each verbalised the importance of having children in court in order to explain to them their rights. They see it as a practical way of allowing children to participate. The two (2) commissioners, who were rather ignorant about children's rights, indicated that their focus is on the parents. They take their clues from the parents as to what is important for the children and base their decisions accordingly.

- The social workers that were interviewed reacted with surprise when asked what they know about and how they understand children's rights. After explaining that children's rights comprises of the three "P's" namely the right to protection, provision and participation, responses from all five social workers were very similar. They admitted that their main focus in their investigations is centred on provision and protection. Comments like the following were made:
 - "Our workload and pressure to finalize investigations do not allow us to spend time with children."

- “The information gathered during an investigation is from the adults in the child’s life.”
 - “We are trying to get on top of the case loads – there is no time for arguing about children’s rights.”
 - “Our focus with the hearings is to make sure the children are protected from harm and properly cared for.”
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- Of the five (5) lawyers interviewed, four (4) indicated that they are aware that children’s rights consists of provision, protection as well as participation but they are not clear as to how to implement it in practice. One (1) lawyer however did not think that children should form part of the investigation: “As long as they are well cared for”. Comments from the lawyers were:
 - “Few of us are qualified in family law yet we are exposed to situations where children are involved.”
 - “The authority of the parents is the main focus.”
 - “Knowledge about the rights of children should actually form part of our training.”

**Theme 2: Perception regarding the importance of the
Bill of Rights for Children**

In Section 7 of the Bill of Rights it is stated that the Bill of Rights as the cornerstone of democracy in South Africa enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. This is in line with the basic principles of the Person-Centered Approach and relevant to children as much as it is to adults.

Franklin's distinctions between Legal and Moral rights and Welfare and Liberty rights when discussing children's rights, are important knowledge in order to know how to apply these rights in practice. As Franklin (2002:21) explains, a *legal* right is an entitlement which is acknowledged and enforced by an existing law.

A *moral* right enjoys no legal endorsement but is a claim for a right which it is believed children, indeed all human beings, should possess by virtue of their humanity. *Welfare* rights prioritise the provision for children's welfare needs and protection. *Liberty* rights focus on children's rights to self-determination. This implies that children should enjoy greater freedom and rights in decision-making.

The Bill of Rights, as contained in chapter 2 of the Constitution of the Republic of South Africa, 1998, covers all four distinctions and the professional role-player need to be able to enforce it in practice.

From the interviews conducted, one (1) judge's view was "Children are seen as human beings and therefore the whole Bill of Rights applies to them." The same judge also emphasized the importance of section 16 in particular – namely the right to information. The other judge's view was restricted to section 28 of the Bill only.

The family advocates both thought the whole Bill of Rights is and should be applicable to children although they expressed the concern that this does not portray a true view in general of the family advocates in practice.

Of the five (5) commissioners of child welfare, three (3) thought it is important to use the Bill of Rights as a whole, in conjunction with the Child Care Act. Two (2) of the commissioners focused only on section 28 of the Bill of Rights together with the Child Care Act. Important comments were that professional role-players should realise that the judicial process starts at the onset of the case, not only at the entrance to the statutory process. One (1) commissioner pointed out that the problem in practice lies in the judicial discretion – "Each interprets the Acts and sections in its own way."

None of the social workers were familiar with the Bill of Rights or knew how to use it in conjunction with the Child Care Act. One (1) social worker commented that she once requested the Bill of Rights from Department Social Development but received such a thick document and has no time to read through it all.

Although the lawyers were more knowledgeable about the Bill of Rights, they admitted that they have never considered the Bill as a whole as applicable to children. Their focus has been on section 28 specifically. They further admitted that they are not really familiar with the Child Care Act and rely on the input from the social workers in this respect.

Theme 3: Perception regarding aspects to take into consideration when working with children

Freeman (1999:53) stated that:

The more autonomy children are given, the better they are able to exercise autonomy.

Working from a Child-Centered approach, professional role-players have to realise that children need to be treated with respect and one way of showing them respect as individuals in own right, is to allow them autonomy. The situation in practice seems to be different though.

Coppock (2002: 151) quoted Professor Steve Baldwin, clinical psychologist at the Mental Health Foundation, who said the following:

We claim to be a child-centred society, but in reality there is little evidence that we are. In many ways we are a ruthlessly adult-centred society where children are defined almost exclusively in terms of their impact on adult lives.

When working with children, it is important to identify what is necessary to enable the professional role-player to work in such a way that children are respected, protected and valued.

The main aspects identified from the interviews with the respondents to take into consideration when working with children, were the following:

- Working with children should be a specialised field.
- The professional role-players must have the ability to work with children.
- There must be an openness and willingness to share information with children.
- The importance of creating a child-friendly environment in court.
- Specific skills working with special needs children.

Above aspects were further refined and the relevant issues related to each, as expressed by the different respondents, are listed below.

- Specialised field:

Landreth (1991:viii) stated that children are real people who possess unlimited potential and creative resources for growing, coping and developing. They are quite capable of teaching adults about themselves *if* adults are willing, patient and open to learning. This implies that not all adults are capable to work with and understand children. Fahlberg (2004:1) confirmed that the professional role-player need to work with children with thought, great care and sensitivity – qualities easily lost in a

world of targets, performance indicators and political pressures. Above authors thus confirmed that working with children is, and should be, a specialized field. The same conclusion was drawn from the empirical study: Both judges, family advocates, social workers and three (3) of the five (5) lawyers (12 of the 19 respondents) were of the opinion that working with children should be a specialized field and special skill training should be undertaken. The same respondents also regarded knowledge of the developmental capabilities of children as important. One (1) judge, two (2) family advocates, three (3) commissioners and three (3) lawyers considered training on how to communicate with children as important. The social workers all emphasized the importance of a team decision by professional role-players and three (3) social workers indicated that, working with special needs children, is another specialized field in own right.

- Ability to work with children:

As Fahlberg (2004:1) indicated, the profession role-player need to put children and their needs centre stage in his/her thinking and practice.

All the respondents agreed that the professional role-players involved in the legal process, should have the ability to work with children. The judges saw this ability as “being compassionate”. In this regard they also thought consideration should be given to appoint more woman judges.

The commissioners, two (2) lawyers and one (1) judge mentioned the ability to differentiate between the actual needs of a child and those

perceived by the professional role-players, as an important aspect to consider.

- An openness and willingness to share information with children:

The one (1) judge specifically focused researcher's attention of section 16 of the Bill of Rights whereby children have a right to information. Coppock (2002:151) referred to the recommendation of the British Association for Community Child's Health:

To ensure that a child or young person has sufficient understanding and intelligence to make an informed decision requires that adults allow them the information and opportunities for discussion they require.

The commissioners agreed with this view and therefore felt that children do have to be present in court. Three (3) of the lawyers also thought it is important to promote knowledge of children's rights through schools.

- The influence of the court environment on children was an issue raised by all respondents. It was a mutual feeling that the court environment should be made child-friendly. One (1) commissioner categorically states that, if the court environment is not child friendly, children are exposed to secondary abuse. The family advocates were both very much in favour of a family court system in a different building than

usual courts and the social workers echoed that. All respondents felt that court preparation of children is essential.

**Theme 4: The professional role-players' understanding of the term
“best interest” of the child**

The principle “best interest” of the child is a wide discretion and professional role-players rely on their own values and attitudes in making decisions about children. During the Judicial Conference held in Canada in 1981, this was one of the most debated issues and several authors such as L'Heureux-Dubè (1983), Goldstein (1983), Kufeldt (1993) and Davel (2001) confirmed the latter.

In practice it was found that the decisions are made without considering the child or allowing children to participate, yet – their decisions were then defended or justified with the term “best interest”. As Davel & De Kock (2001:272) stated, it is the content and application of the principle which seem to create problems in practice. Researcher wanted to determine exactly what the professional role-players understand when using this term and how do they qualify their decisions. Wide varieties of opinions were received from the respondents and are listed below:

- The social workers' regarded 'best interest' as the best available option for placement at that given time.

- The lawyers admitted that they allow themselves to be guided by the professional recommendations received from social workers and / or psychologists.
- One (1) judge regarded the term 'best interest' "as the situation deems fit".
- The commissioners emphasized the importance of receiving as much information as possible before and during a hearing in order to be able make a decision they feel are in the child's best interest.
- Both the family advocates, three (3) commissioners, one (1) judge and two (2) of the social workers said: "It should be seen as a process – what is the best interest now and what will be the best interest in the future".
- One (1) judge, two (2) commissioners and three (3) lawyers regarded 'best interest' as "what best is according to parents".
- Most of the respondents defined the term 'best interest' as "your own opinion, your feeling – which is usually led by the parents".

Regarding the child's age and competence to participate in decision-making, Alderson (2002:155) said that a central question to address is at what age can children begin to form and express views which have due weight in matters that affect them. Walker (1993) found the so-called incompetence on the side of the professional role-player communicating with the child as well as the adult legal system that the children are caught up in. Zilbach (1994) found that children are capable of serious and well-thought-out opinions. Selwyn (1996) strongly urged that all children should be presumed competent and

allowed to express their views about an order which will have such an impact on their lives.

From the empirical study the following responses were received:

- Most of the commissioners felt they would consider the ability of the child to communicate rather than age as criteria.
- Thirteen (13) of the nineteen (19) respondents thought age 10 and older to be more appropriate because children are then able to communicate.
- Both judges referred to the guidelines of Mc Call vs Mc Call.
- The social workers and a lawyer said: “Look at what is needed in terms of the physical, emotional and social aspects to benefit the child’s optimal development”.
- One (1) judge expressed the opinion that, according to a law dictionary, the word ‘paramount’ means “equal with other rights” not “higher than other rights”. He admitted though that it is interpreted differently by different people.

Theme 5: Professional view regarding the lack of a protocol when working with children

The most serious problem situation in practice, specifically when working with children as part of a judicial process, is the issues around inconsistency. Every commissioner for instance has a different way of operating; the same judge that was prepared to take children’s views into account yesterday, may not do it in the next situation. This leaves the judicial process full of

uncertainties, causing anxiety for the children and frustration for the professional role-players.

During the interviews, all 19 respondents' reaction was: "Because there are no protocols or guidelines, there is no consistency in decisions made."

They further elaborated as follows:

- The lawyers verbalised that, because of a lack of a protocol when working with children, lawyers who do not specialize in family law, drag out cases for as long as possible in order to increase the costs.
- The lawyers as well as the commissioners mentioned that every case with legal representation is about a win / loose situation and not about the effect on the children.
- Social workers felt it is imperative to have guidelines to work by.
- The judges commented that the lack of a protocol or guideline results in a lack of control of norms and ethical issues.
- Social workers experienced a problem with the fact that they are not respected as professionals.
- Lawyers mentioned that courts regard the psychologist's reports as more professional.
- Three (3) lawyers also expressed the opinion that the existence of a protocol will empower the professional role-player.

Theme 6: The contents of a protocol to be developed

If the existence of a protocol could ensure consistency and enable the professional role-players to protect the rights of children, it is important to determine what the contents of a protocol need to be that would fulfil their requirements. The suggestions received, can be grouped under the following headings:

- Guidelines and Checklists:
 - A developmental checklist as a hands-on guide to determine the child's level of maturity, capability and needs in each developmental phase.
 - Report writing guidelines on how to portray the child's wishes, feelings and needs. The reports should include a section on work done with the child and how the different options were discussed with them. It should further include which ongoing services will be provided.
 - Bill of Rights should be included as reference guide.
 - Checklist to enable professional role-players to identify possible sexual abuse.
 - Questionnaire to determine parental involvement with their child.
 - Questions to ask children to test their wishes, feelings.
 - Protocol should guide the judicial process.

- Prescriptions with respect to court proceedings:
 - Children should be prepared to give evidence.
 - A team approach should be used as part of the court process.
 - Presence of children in court is questioned by social workers.
 - The use of the judicial interview to protect children.
 - Court process should be changed. The lawyers suggested that, before litigation starts, a round table conference should be held. The purpose of such a conference is to create a checklist of aspects agreed on, aspects disagreed on, suggestions for solutions. This should include feedback from the child – whether present or via a mediator.
 - Cases should not be heard by individual judges or commissioners but there should be two advisors who rotate to enable a panel discussion and team decisions.
 - Should be judicially orientated.
 - Should make use of technology, such as channel television, video and special room where children are interviewed.
 - Should be environment friendly.
 - Supreme Court as the upper guardian of children has the role as protector of children and therefore there is an extra responsibility on the Supreme Court. For this reason, judges should have the discretion to state that the information supplied is not sufficient to make an informed decision and that a judicial interview needs to be undertaken.

- Special skill and abilities needed to work with children:
 - Professional role-players should be suitably qualified to work with children.
 - Professional role-player must have maturity.
 - Diversity training of professional role-players.
 - Family advocates should undergo a screening before appointed.
 - Family advocates should have life experience and have had contact with children.

- Social workers role:
 - Social worker need to make a recommendation whether or not the child needs legal representation.
 - Social worker must arrange supervision and access according to the best interest of the child.
 - After finalisation of a divorce, there should be continued counselling for the parents and children. A Case manager (social worker) should be appointed to control the situation.

- Other:
 - The history of the fact that adults believe “children are to be seen not to be heard”.
 - The assessments used should be standardised.

Theme 7: The way the existence of a protocol can contribute to more efficient services to children

Researcher needed to determine if the professional role-players would utilize a protocol, should it be developed – in other words, will the development of a protocol serve a purpose. All nineteen (19) respondents answered confirmative to this question and expressed it as important to have a hands-on guideline to work by.

Theme 8: The way that the protocol can contribute to additional services to ensure that children's wishes and needs are taken into consideration

Considering the way the judicial process works in different countries where different professional role-players work as a team and utilize technology, researcher needed to determine the perception of the professional role-players regarding the issues as well as gain ideas of possible aids to assist them in their respective tasks. The following responses were received:

- The use of technology:

Seven (7) respondents suggested the use of videos, channel television for courts and one way mirrors – including the judges and social workers.

- Decision making:

Ten (10) respondents (judge, commissioners, family advocate and social workers) suggested the use of judicial interviews; Lawyers were in favour of mediation for children.

Social workers suggested independent assessments by colleagues as a way to verify their decisions and act as a back-up.

- Legal representation:

Most of the respondents were in favour of children having their own legal representation. A commissioner expressed the concern however that the legal representation appointed through Legal Aid, is not necessarily in the interest of the child. The reason being that, firstly, they are not skilled or equipped to work with children, and secondly, because it is pro-bona, no real effort is put in to determine what is in the interest of the child.

- Pre-trials:

All the lawyers suggested a pre-trial or round table discussions with all the parties.

- Separate family court system:

A total of six (6) respondents, inclusive of both family advocates, felt that the implementation of a separate family court should be a serious consideration.

- Use of media:

The judges suggested the use of media to educate and make children aware of their rights.

5.7.2.2 Quantitative data

The quantitative data were gathered by means of questionnaires in order to evaluate the proposed protocol. The questionnaire was organized according to the themes from the interview schedule from which the qualitative data was gathered, but had several questions under each theme and included space for respondents to elaborate on questions and express their views, opinions and suggestions (Annexure 3).

The questionnaires were analyzed through a computer programme called 'The Survey System'. The computerized results are given in table format – differentiating between gender as well as the different professions of the respondents. Researcher organized this data and will display it by means of graphs with a description of the statistical results.

The quantitative results will be discussed and illustrated by means of graphs, under the headings as set out in the questionnaire, namely:

- A. General
- B. Knowledge base regarding the rights of children
- C. Importance of the Bill of Rights for children
- D. Aspects to take into consideration when working with children
- E. Term "Best Interest" of the child
- F. Contents of protocol
- G. The need for a protocol when working with children
- H. The way the existence of a protocol can contribute to more effective services to children

I. The way a protocol can contribute to additional services.

A. General

- Gender: The gender of the respondents was equally divided: Nine (9) male and nine (9) female respondents. (Note that the total of respondents from the qualitative and quantitative results differs. The reason being that one respondent had to withdraw at the last minute as she fell victim to crime and lost the protocol and questionnaire in the process when her briefcase was stolen.)
- Profession: Respondents consisted of two (2) male judges; two (2) family advocates (male and female); four (4) lawyers (3 male, 1 female); five (5) social workers (all female); five (5) commissioners of child welfare (3 male, 2 female). The research sample can graphically be illustrated as follows:

Figure 16: Research population

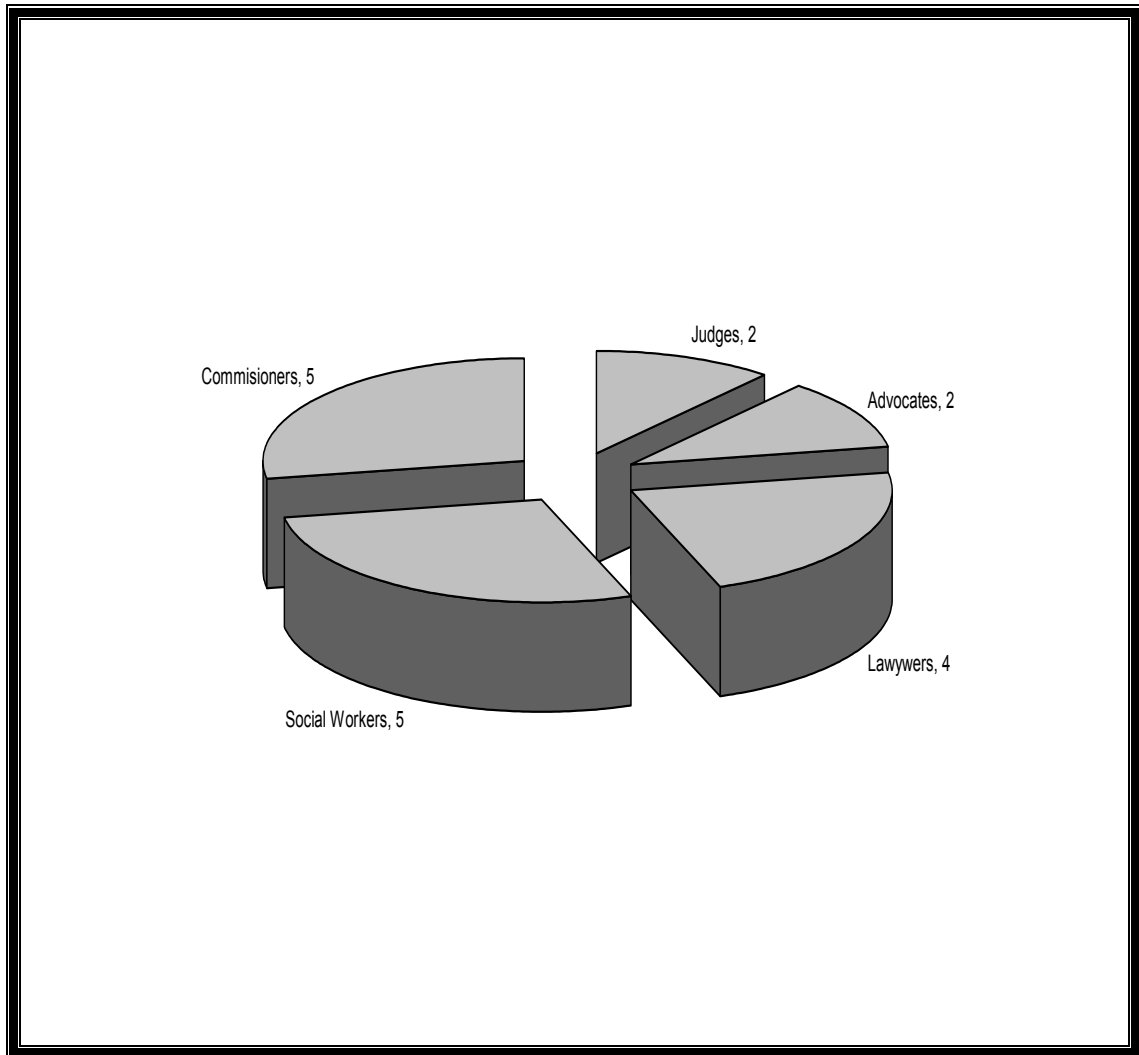
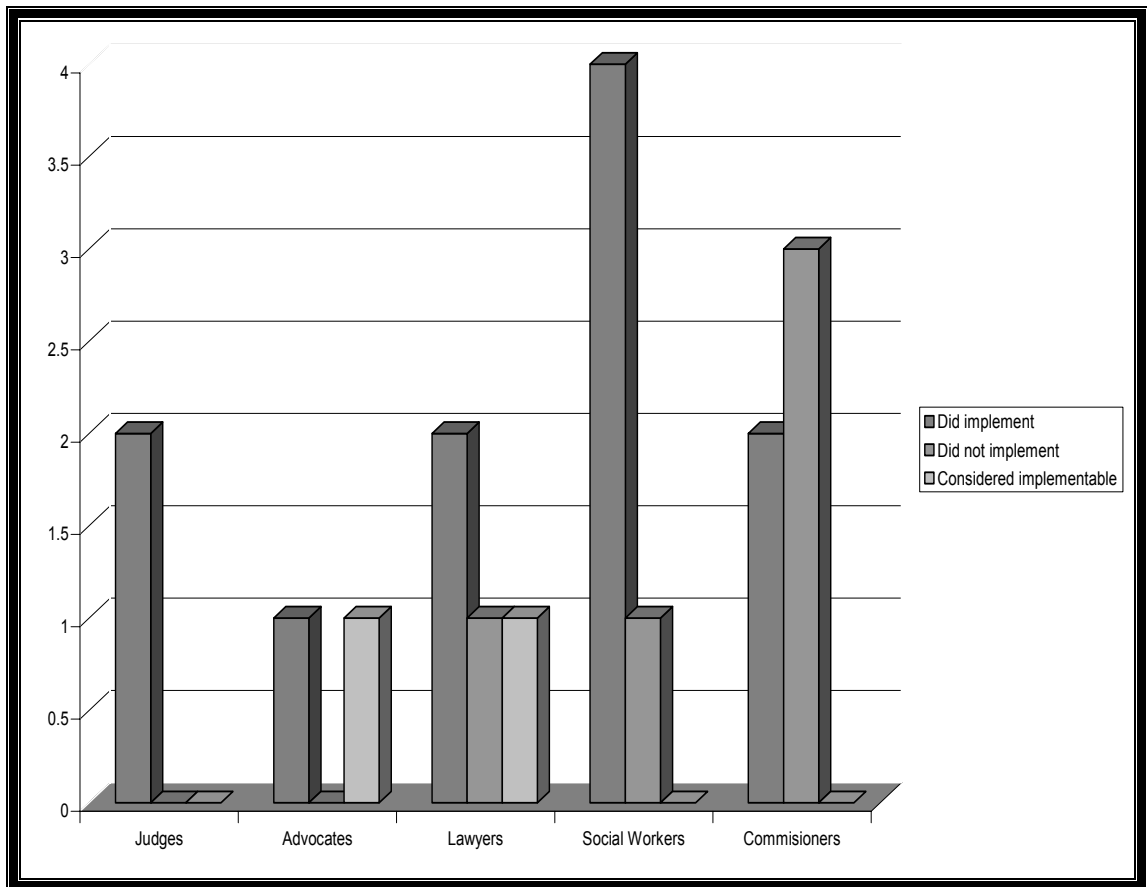


Figure 17: Implementation of protocol



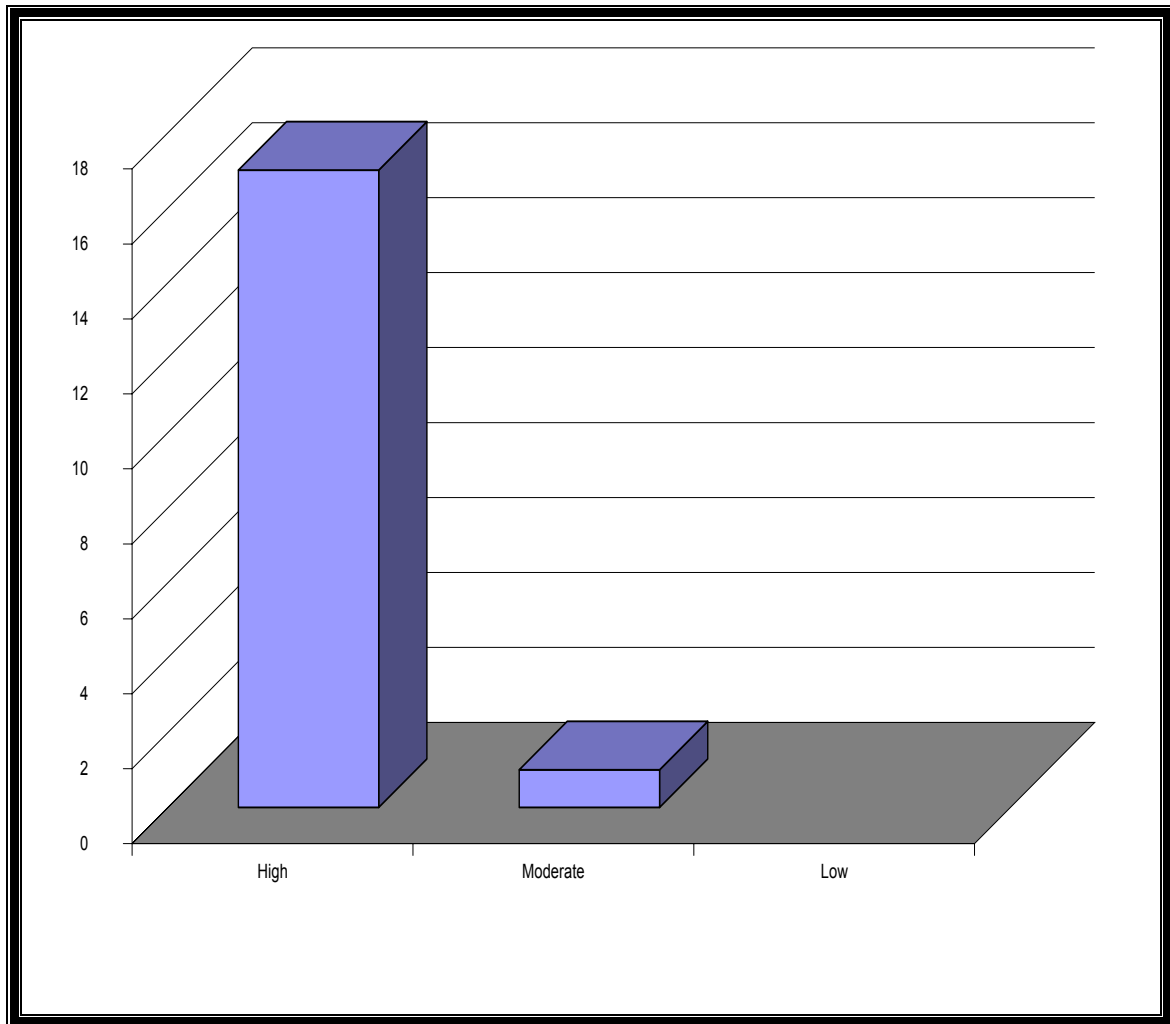
Eleven (11) of the respondents (61, 1%) did implement the proposed protocol; Five (5) respondents (27, 8%) did not implement the protocol; two (2) respondents (11, 1%) considered the protocol to be implementable although they have not done so personally. Their reasons given for not implementing the protocol were that time did not allow it due to their workload.

B. Knowledge base regarding the rights of children

It is crucially important that the professional role-players realize the responsibility of working with children. Part of this professional responsibility is to work within a theoretical framework as point of reference and part is the equipment we bring to our work. The Person-Centered Approach proved to be highly accurate in its ability to be congruent with the needs of children. Through the interpretation of the propositions, the professional role-players are able to have a better understanding of the child and realize the importance to treat a child as a person in own right. One way of showing this respect, is by being knowledgeable about children's rights and being prepared to allow children to be a participant in their own lives.

The results, after studying and implementing the protocol, showed that 94, 4% of the respondents were of the opinion that children will, to a high extent, benefit from a system which allow their views and opinions to be represented through a professional role-player. One (1) respondent (5, 6%) rated the benefit to children as moderate. Graphically it can be displayed as follow:

Figure 18: Children's benefit to system “open” to hear their voices



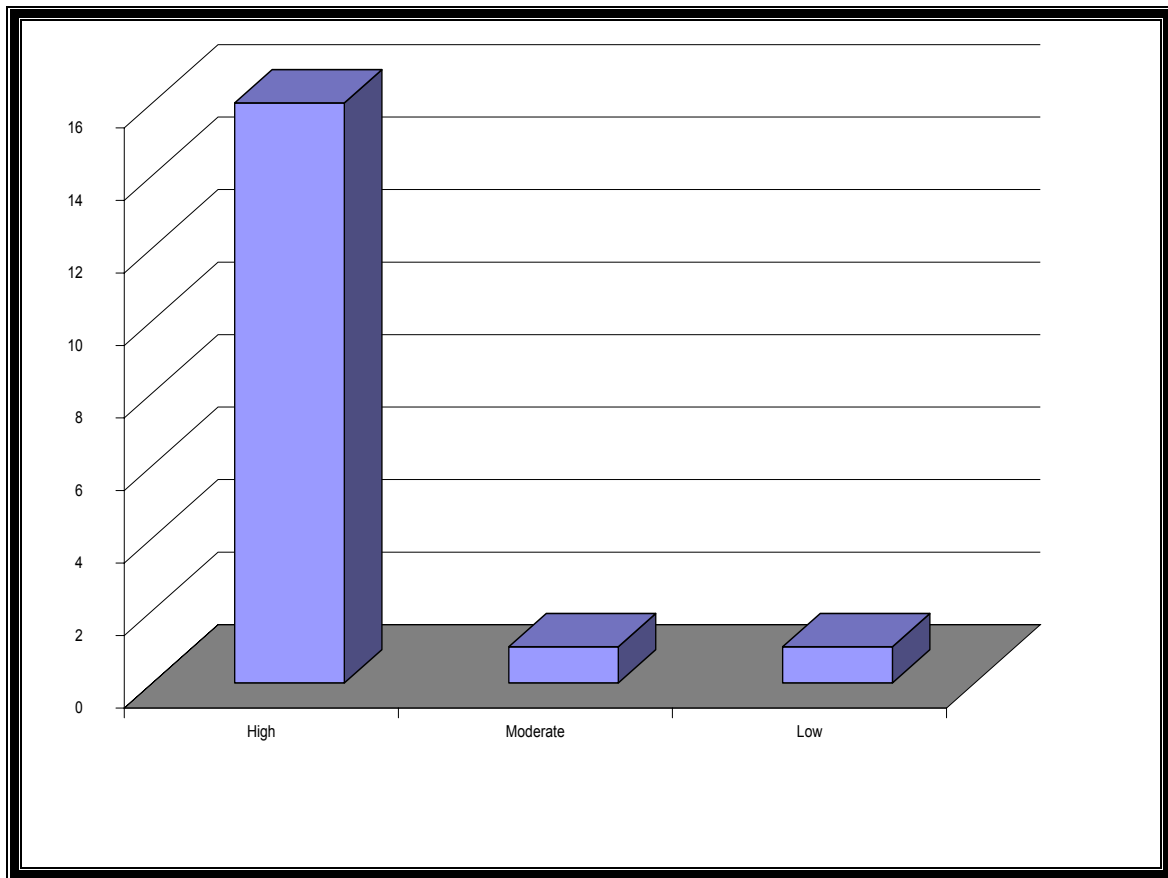
C. Importance of the Bill of Rights for children

Article 12(2) of United Nations Convention on the Rights of the Child stipulated that “the child shall in particular be provided the opportunity to be heard in judicial and administrative proceedings affecting the child”. The provision opens up an international legal “sound space” for the child’s voice – to be implemented through domestic legislation.

The purpose of this research was to create a platform – allowing children to be heard. In order to do so, researcher needed to portray the importance thereof to the professional role-players. From the qualitative data gathered, it was evident that professional role-players were not deliberately ignorant about children but were at a loss as to how to protect the rights of children. They indicated a serious need for a guideline which will enable them to the “how” of listening to children.

After reading and implementing the protocol, respondents had to rate to what extent they considered the protocol as efficient to enable the professional role-player to open a “sound space” for the child’s voice.

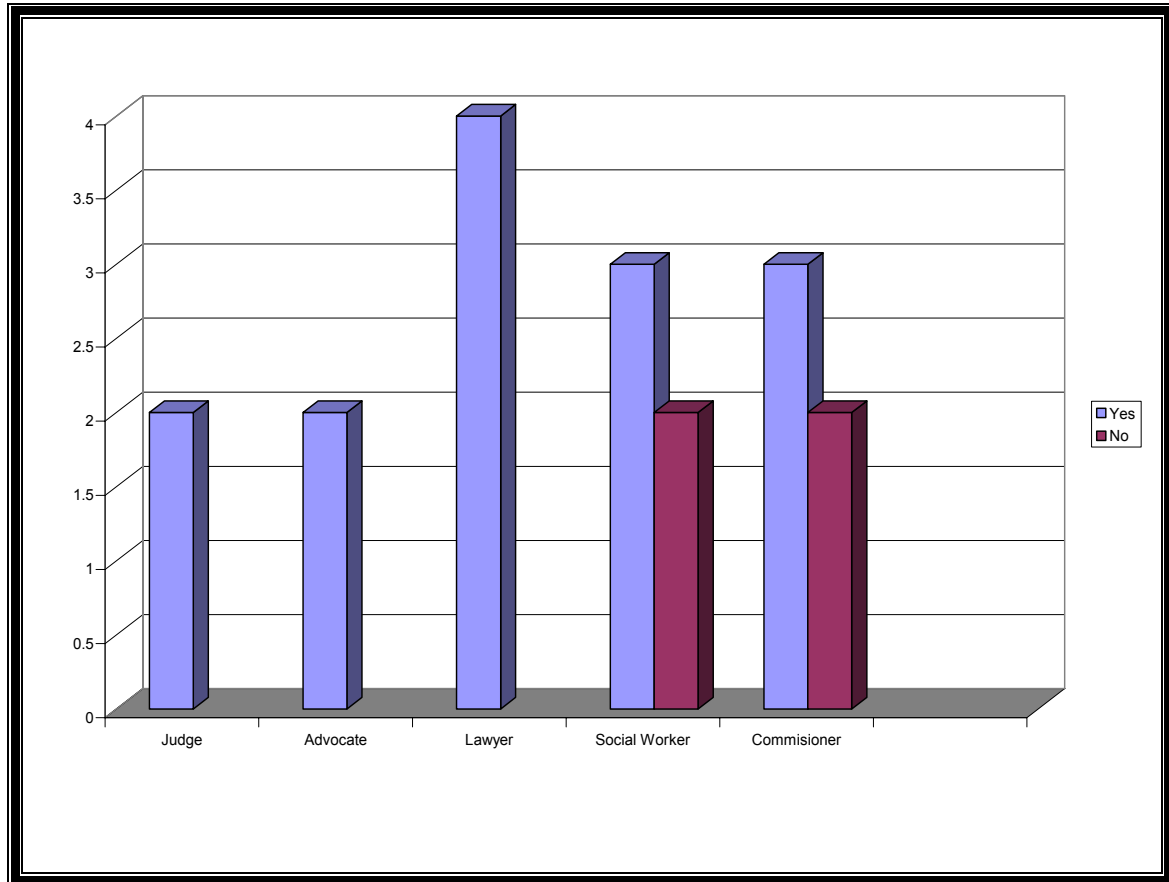
Figure 19: Protocol opening a "sound space" for children



88, 9 % (16 of the 18 respondents) regarded the protocol to assist in above to a high extent; 1 (5, 6%) rated it as moderate extent and 1 (5.6%) as to no extent.

Regarding implementing the protocol through Domestic Legislation, 88, 9% of the respondents felt the protocol should be implemented through domestic legislation. Only one (1) respondent said no and one was not sure what was meant with Domestic Legislation. Graphically, it is illustrated as below:

Figure 20: Implementation of protocol in Domestic Legislation



The suggestions given as to how the protocol should be implemented, was as follows:

- Through the Law Commission (16, 7%).
- Should be made a Code of conduct (10, 12%).
- Adopt across Boards of legislation and Professions (5, 6%.)
- Through all agencies working with children (5, 6%).
- Through Human Rights Commission (5, 6%).
- Should be incorporated in New Children's Bill (10, 12%).

D. Aspects to take into consideration when working with children

From the wide range of responses received, the important issues that were repeatedly mentioned are listed below:

- Working with children should be a specialized field (100%).
- The professional role-players must have the ability and skills to work with children (100%). 70% of the respondents admitted that they lack in communication skills and the ability to actually understand what the child is really saying. Other skills identified as important to develop, was:
 - Teamwork.
 - Play therapy techniques.
 - Questioning skills.
 - Knowledge of other legislation.
 - Knowledge of children's developmental abilities.

Suggestions given as to how these obstacles can be overcome, was:

- Utilizing guidelines and checklists given in the protocol (35, 7%).
- Special training courses, also for court assistants and lawyers requested through Legal Aid Board to represent children (54, 7%).

- A separate, child-friendly court system should be considered (100%). All the respondents agreed that the court environment should be child-friendly in order not to expose children to secondary abuse. All the respondents were also in favour of a family court system.

Several conditions to that were highlighted namely:

- It should be a separate building away from other courts.
 - It should be child friendly.
 - All the necessary equipment and technology like one-mirror rooms, video cameras should be available.
 - All cases where children are involved, regardless of whether it is a children's court hearing, juvenile court hearing or custody hearing, should be dealt with in this Family Court.
 - All the professional role-players working with children (Judges, Family Advocates, Social workers, Lawyers, Commissioners) should be stationed there.
 - There should be separate waiting rooms for children and offenders – for instance in sexual abuse cases.
- The child's right to information and the importance of court preparation for children were regarded as important. All the respondents agreed that children should not be exposed to court without the necessary preparation. Following from this were the next issue, namely

- The necessity of children attending court hearings. In this regard a conflicting view between the social workers and the commissioners were identified. Social workers felt that the court is too exposing for children and add to the child's already high anxiety levels. The commissioners held the opinion that children have to be part of the hearing. The reasons being that, when present, the commissioners can explain to children their rights, respecting their right to information and allowing them the opportunity to participate.

Social workers further held the opinion that the commissioners should see the children in camera in order to allow children to say what they may be too scared to say in front of the parents or other adults. The commissioners' view on this is that it will be regarded as unethical because all evidence given to court has to be tested via cross examination.

E. Term "Best Interest" of the child

According to Alderson (2002:155), the central question to address is what age children can begin to form and express views which have due weight in matters that affect them. Two (2) aspects seem to be the issue namely:

- Age and competency.
- Best interest.

Research on this topic for the past decade indicated that it is the incompetence of adults that is at the root of this problem. This was confirmed through the current study.

When determining the professional role-players' view regarding the term "best interest", the respondents admitted that they are guided by adults (mostly parents) in a situation and make a decision "as the situation seems fit" at that particular stage. This confirmed researcher's concern as experienced in practice that orders are made and / or decisions are taken without "hearing" the child.

Davel & de Kock (2001:274) confirmed that the most common critique against the best interest principle is that of being vague. In this respect, respondents also commented that "best interest" is not definable.

One of the specific challenges to researcher was to create a mind shift of the professional role-players regarding their views about the term "best interest" of a child, as well as an appropriate age to listen to children. Researcher argued that children from a very young age know what they like or dislike – even before they can talk and that opinion should be respected. Landreth (1991:55) as well as Oaklander (1988:281) confirmed it – saying children are the best sources of information about themselves and that society's general lack of respect for children as human beings serves to deteriorate every child's sense of self-worth.

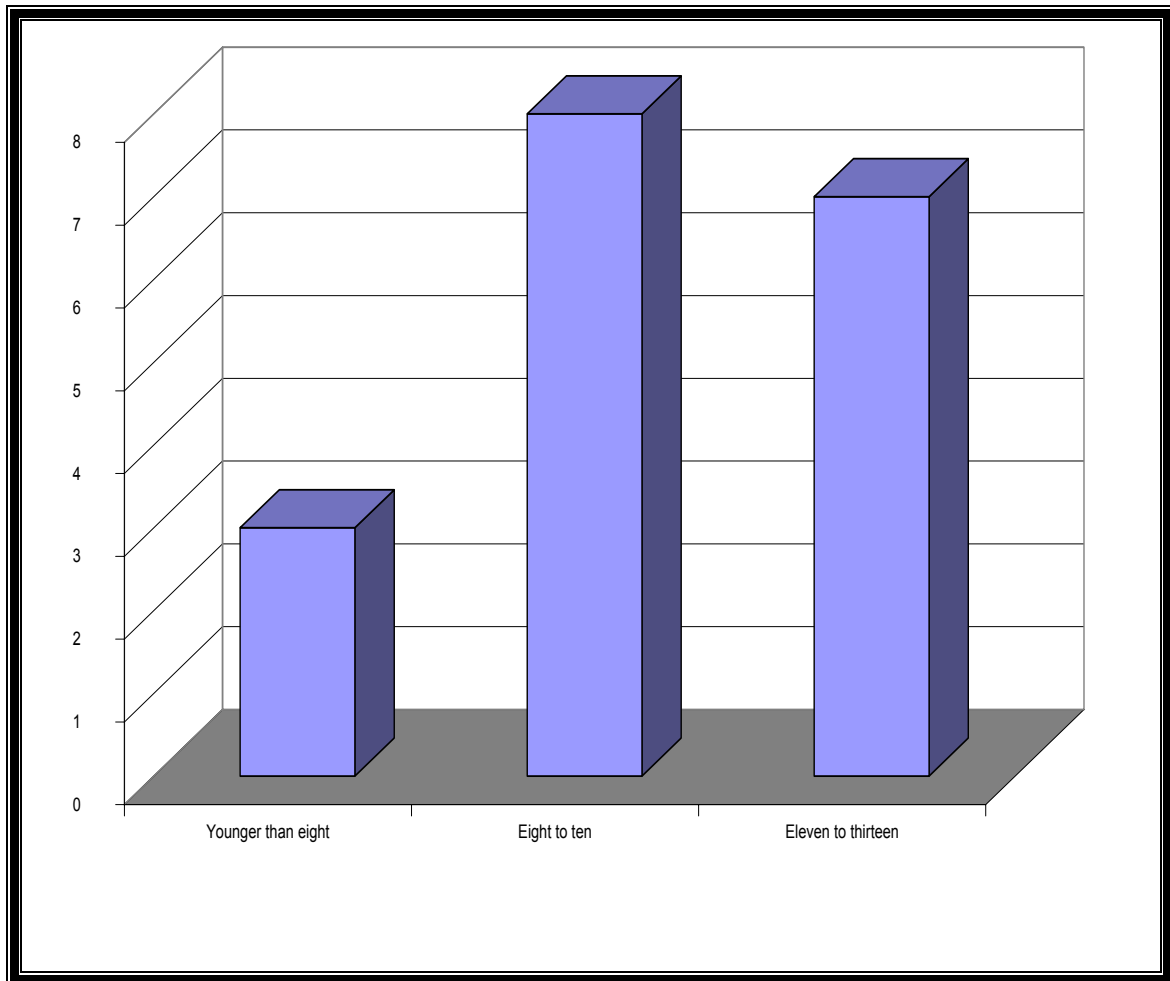
Research findings during the last decade also verified above opinions:

- Walker (1993:78-79) conducted a linguistic study and found that the problem lies within the adult legal system and adult language in which proceedings are conducted, that children are caught up in.
- Zilbach (1994:56) found in her study on family therapy that children are capable of serious and well-thought-out opinions about their families.
- Selwyn (1996:14) found that practitioners do not listen to the child and therefore fail to ascertain the child's wishes and feelings.
- Freeman (1998/1999:50) argued for a cultural revolution in attitudes to childhood and stated that the more autonomy children are given, the better they are able to exercise autonomy.
- Borland, Laybourn, Hill and Brown (1998: 11) found in their study that children often have an understanding of situations that is far more sophisticated than adults suppose.

This "hiding" behind the terms "competency" is thus no longer a valid excuse although a similar attitude was found in the current research:

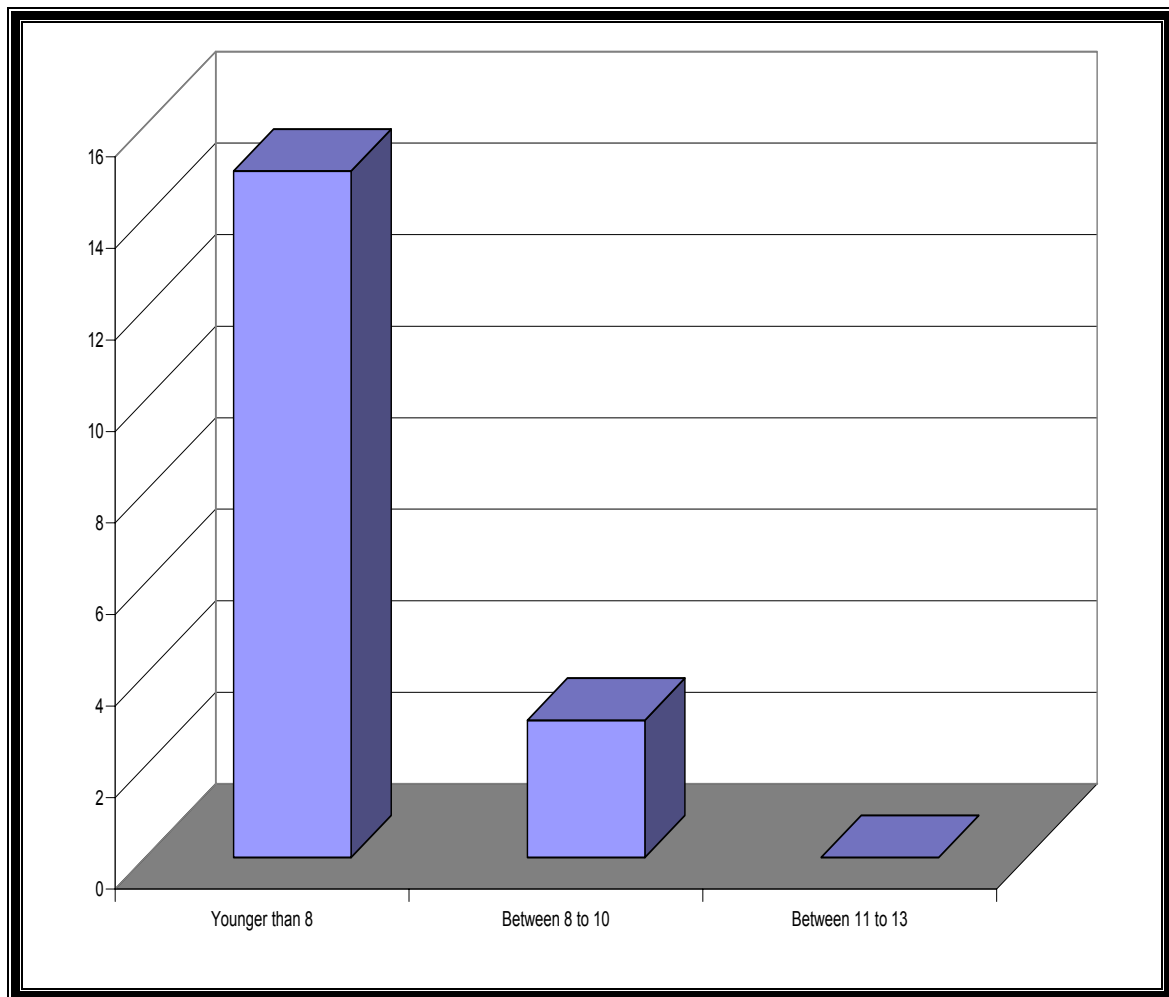
At the time of the interviews with the respondents, only three (3) (16, 7%) were of the opinion that one should take the views and opinions of children younger than eight (8) years into consideration. Eight (8) respondents (44.4%) felt comfortable with ages 8 – 10 years and seven (7) respondents (38, 9%) thought ages 11 – 13 to be most appropriate.

Figure 21: Appropriate age before protocol



Since applying the proposed protocol, fifteen of the eighteen respondents (83, 3%) now regarded it appropriate to listen to children younger than 8. The remaining three respondents (16, 7%) thought between age 8 and 10 to be appropriate.

Figure 22: Appropriate age since protocol



83, 3% of the respondents admitted that their opinion regarding the term “best interest” did differ before and after the protocol – to the benefit of the children. They elaborated on it as follows:

- Children should be part of the decision.
- We realised we did not act in the best interest of the child.
- Have a new insight / different view.
- Realise what participation of child means.
- Implementing the protocol means consideration of rights.

- Focus will shift from adults to children.
- Should be joint decisions between professional role-player and child.
- Children who are emotionally mature have important opinions.

F. Contents of protocol

With regards to evaluating the contents of the protocol, 20% of the respondents felt it was still not practical enough.

Suggestions on further aspects to be included were as follows:

- More examples.
- Under legislation: African Charter on Rights of Child.

Domestic Violence Act no 116/1998.

Section 29 of Bill of Rights.

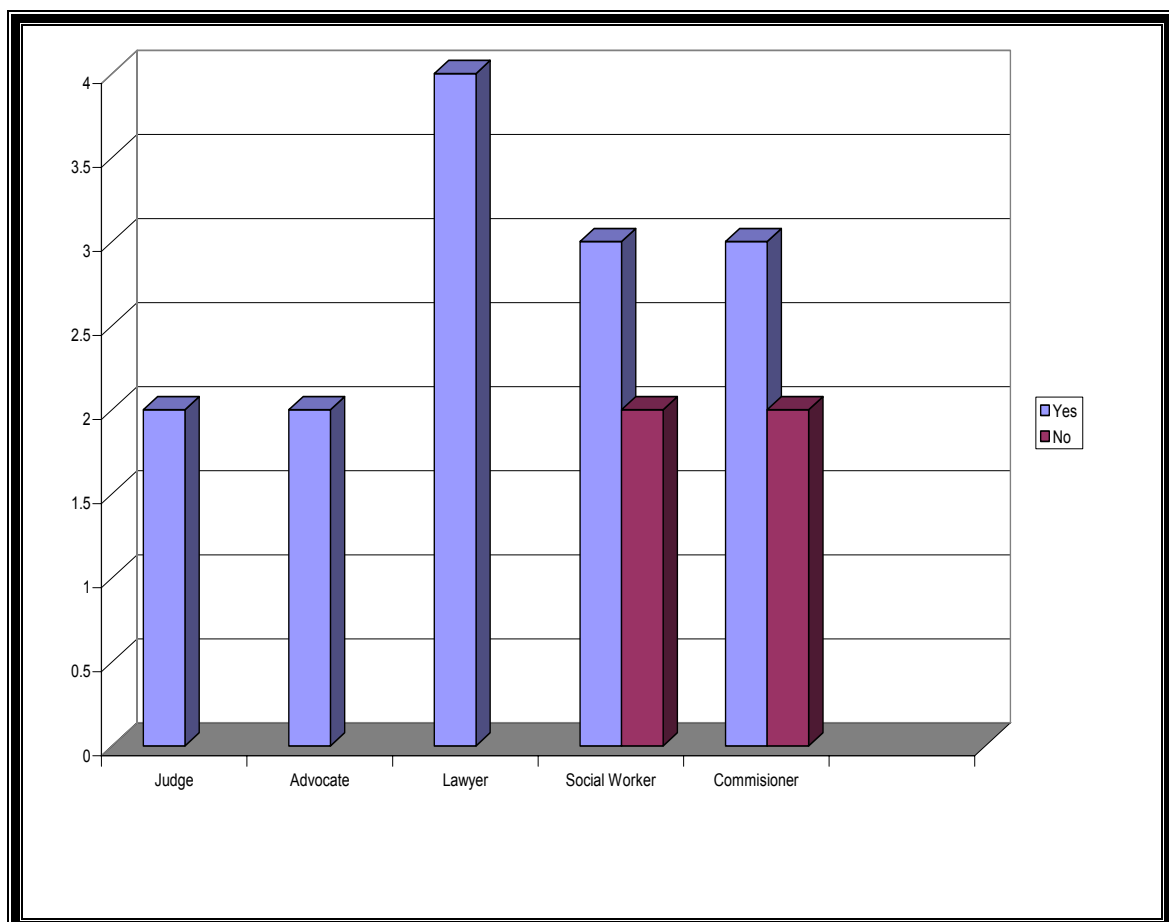
G. The need for a protocol when working with children

In response to the question whether, by utilizing the proposed protocol, it affected the way respondents were thinking about children, four (4) respondents (22, 2%) said they have always felt that children are special. Fourteen (14) respondents (77, 8%) confirmed that the protocol did change the way they were thinking about children and elaborated as follows:

- The child now becomes part of the process and not a victim of the process.
- Makes me more attentive to children.

- More openness to listen to children.
 - Realising it affects the child's future.
 - Protocol gives information we do not always know.
 - Protocol gives a better understanding of children.
 - Helps to focus.
 - Brings about a mind shift.
 - Realise children have feelings.
-
- The following graphic displays respondents' reaction to the question whether, by utilizing the protocol, it did or can change their approach to children?

Figure 23: Changing attitude with regard to children



Fifteen (15) respondents (83, 3%) answered positively and qualified their answers with the following comments:

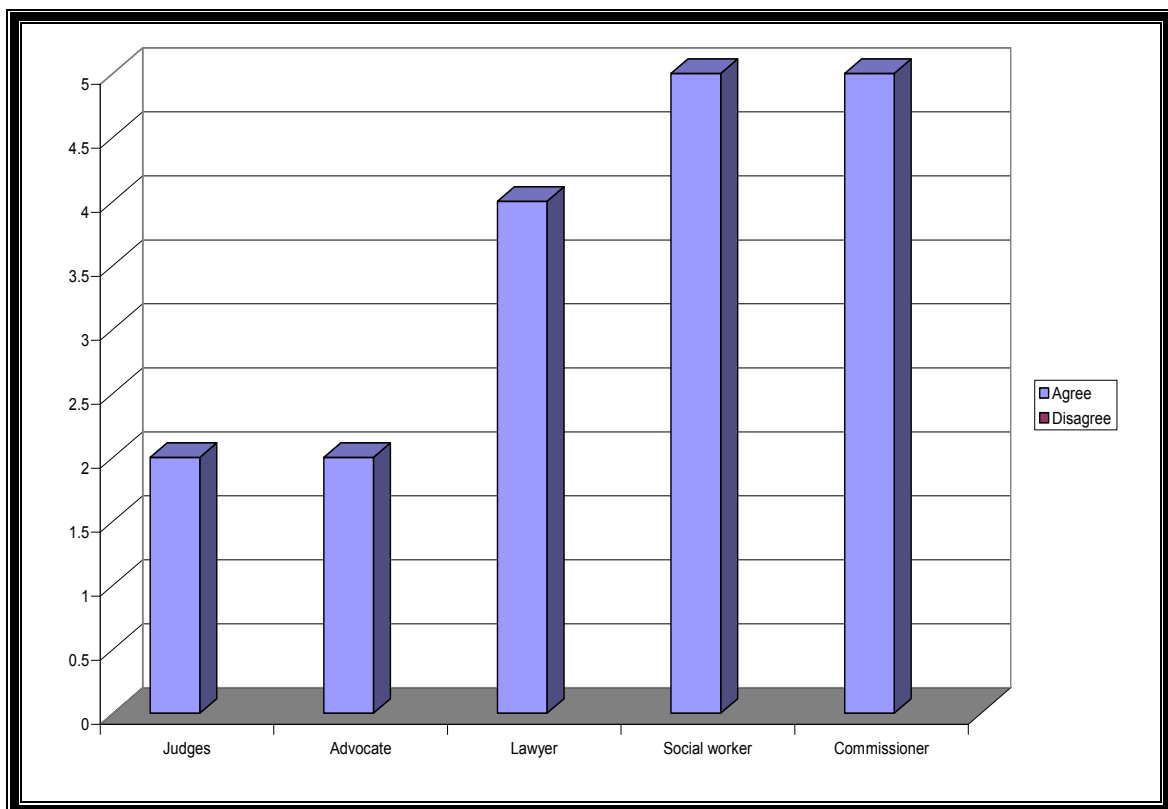
- Children are a source of information that cannot be ignored in fairness.
- More focused on child's need / see it from child's eyes.
- Openness.
- I feel guilty now if I don't include children.
- More careful decisions.
- Developmental phases are important.

H. The way the existence of a protocol can contribute to more effective services to children

- **It enhances my work-approach**

100% of the respondents agreed.

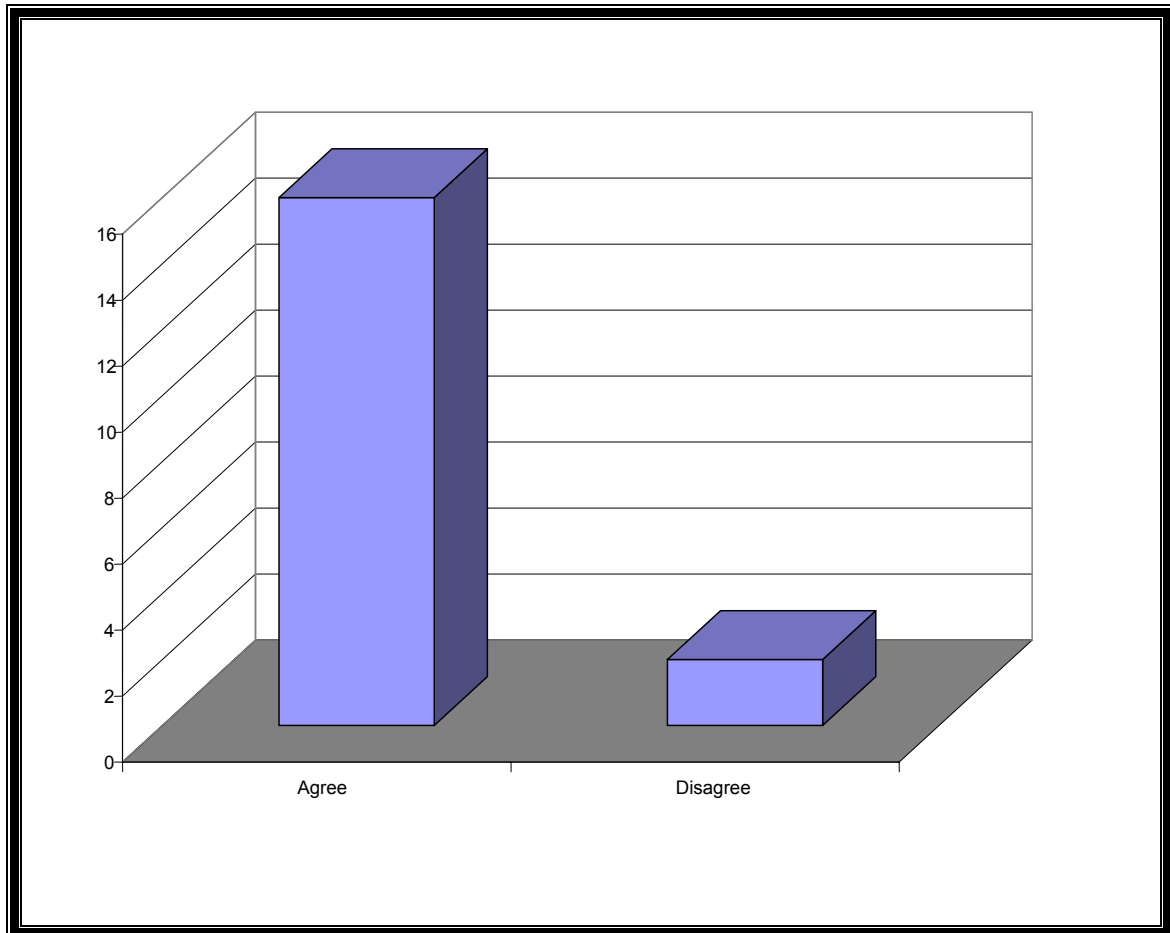
Figure 24: Protocol enhances work-approach



- **It clarifies aspects to concentrate on**

94, 1% of the respondents agreed.

Figure 25: Protocol clarifies aspects to concentrate on



- **It enhances my work effectiveness**

100% of the respondents agreed that a protocol will enhance their work effectiveness in the following ways:

- Standardises the way role-players assess the situation.
- Brings a new insight into our work.
- Creates work satisfactions as a result of it.
- One would look deeper and be more focused.
- When working according to protocol, the work is structured.
- Protocol gives information relevant to our work.
- Given guidelines are ideal. Of specific importance and value, the developmental checklist.
- At present, our decisions were very subjective.
- Creates openness to children.
- Provides consistency.
- Practical guidelines are a good tool.
- Working according, satisfaction is derived from helping a child.

Recommendations on how the protocol can further enhance the effectiveness of the professional role-player were as follows:

- Skills training for different professional role-players – 42, 9%
- All the information in one document very handy.
- Takes away bias of subjective approach to decision making.
- Contact Department of Education for information on how they implement protocols.
- Gives solution to seemingly impossible situations.

- **Reports on children:**

77, 8% of the respondents confirmed that reports were inadequate in the sense that they did not specifically portray the needs and wishes of children.

Aspects needed to be included in reports were listed as:

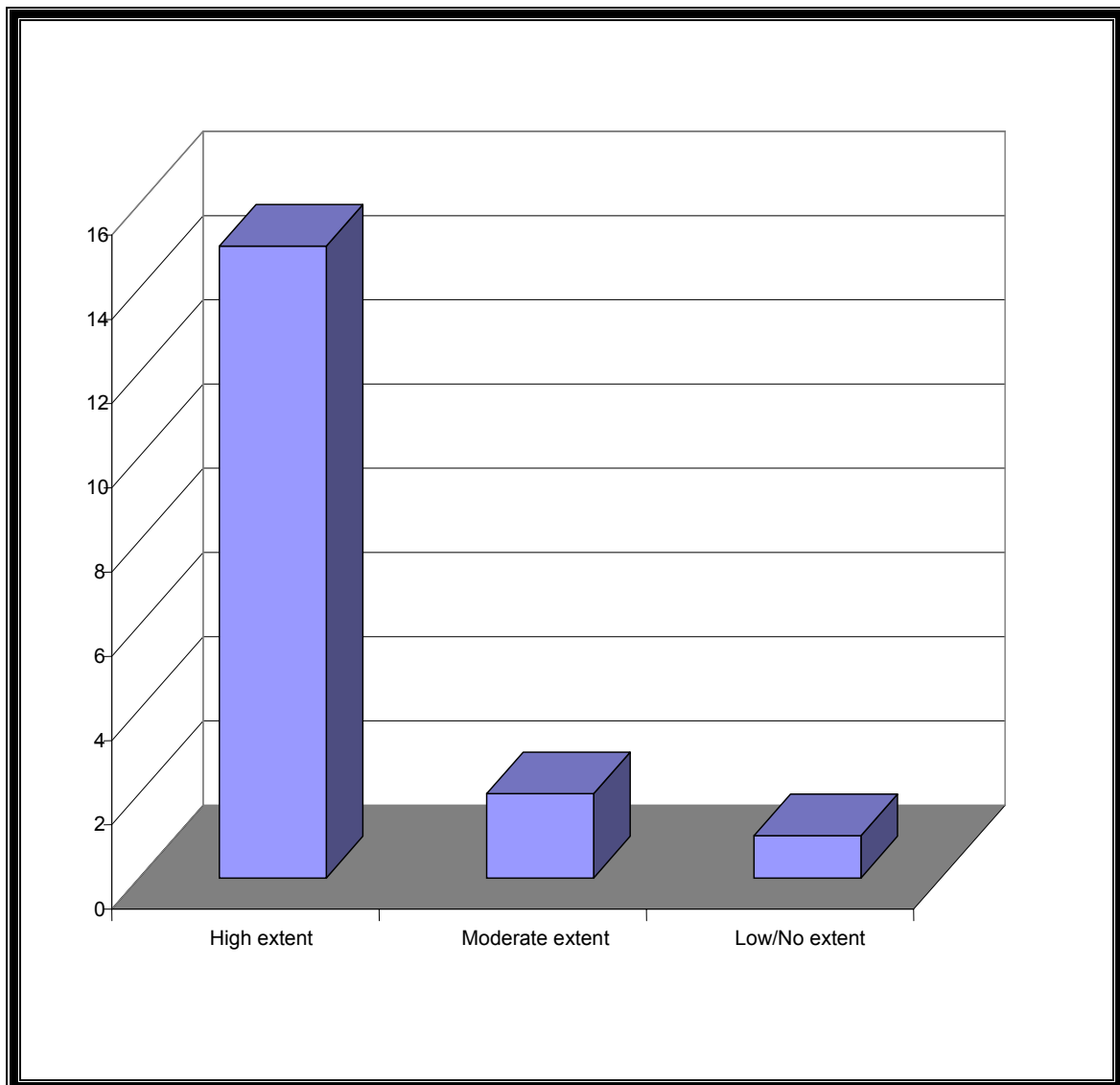
- Child's ideas of situation and solutions / child's view.
- Child's background and effect it had on child.
- As in guidelines given in protocol.
- Child's developmental stage.
- Considering all parts of Bill of Rights relevant for case / child.
- Rights of child.
- Child's wishes and feelings.
- Child's reaction.
- Consider the views of all parties involved.
- Parental bonding and attitude.

- **Ensure consistency**

Respondents were asked to indicate to what extent the utilizing of the protocol will ensure consistency in court decisions.

83, 3% (15 respondents) indicated that the protocol will ensure consistency to a high extent; 11, 1% (2 respondents) said to a moderate extent and 5, 6% (1 respondent) said to no extent.

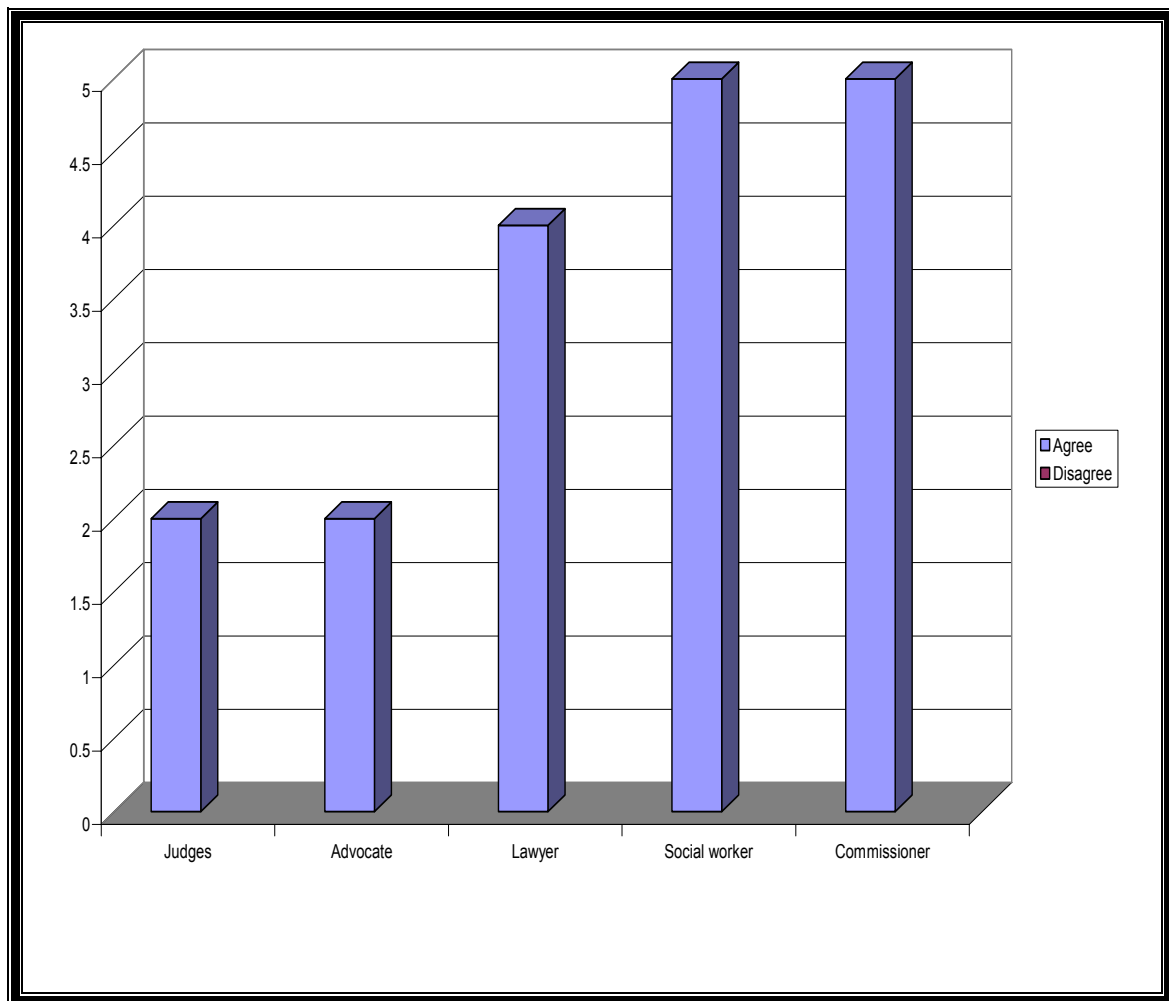
Figure 26: Protocol to ensure consistency



- **Implementation of the protocol at all times whenever a child is involved in the legal process – regardless of whether a case is contested or not.**

All respondents (100%) agreed that the protocol should be followed at all times.

Figure 27: Utilizing protocol in all cases where children are involved



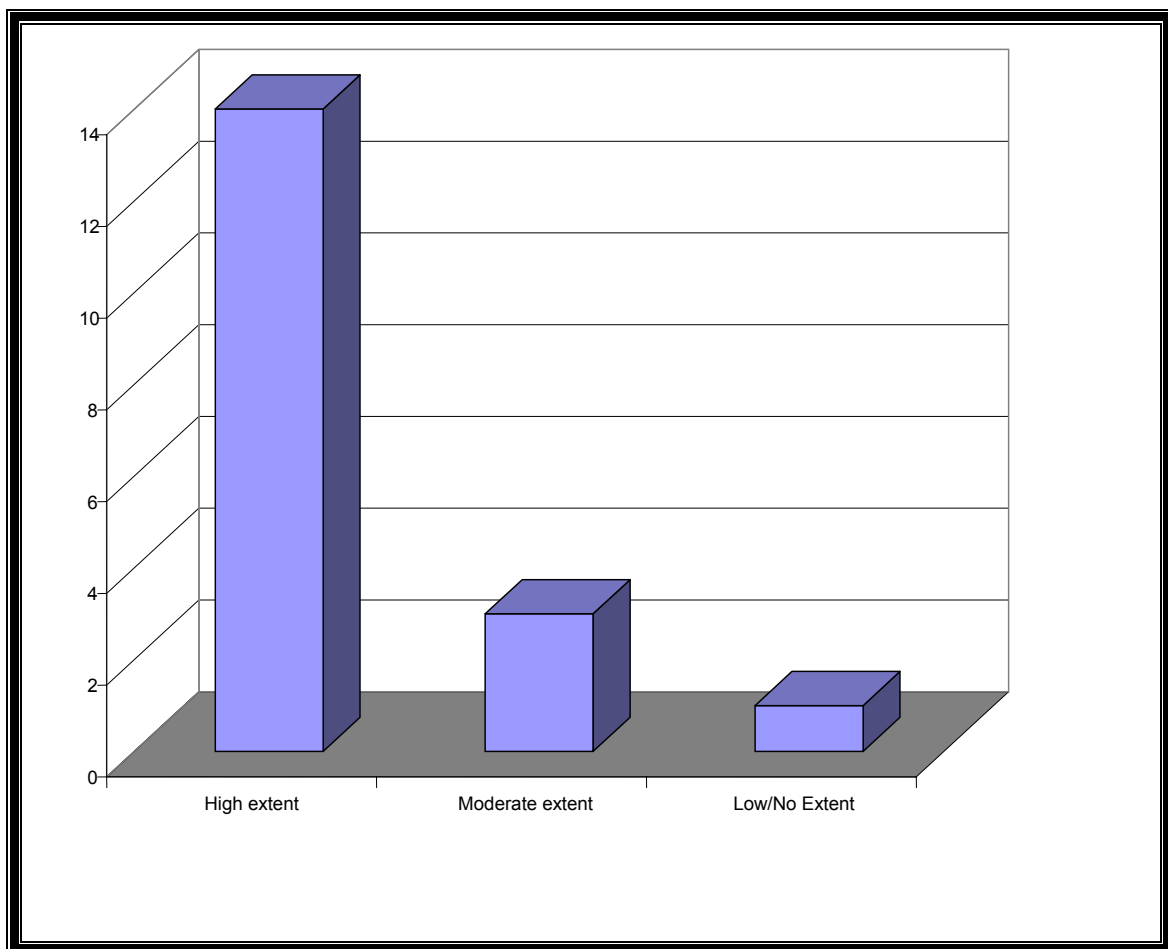
- **If all professional role-players follow the same protocol, to what extent will it assist with reducing the overwhelming volume of work as well as the complexity of cases requiring special skills**

Fourteen (14) respondents (77, 8%) said to a high extent.

Three (3) respondents (16, 7%) said to a moderate extent.

One (1) respondent (5, 6%) said to no extent.

Figure 28: Protocol to reduce workload



- **To what extent will the protocol assist with preventing staff burnout**

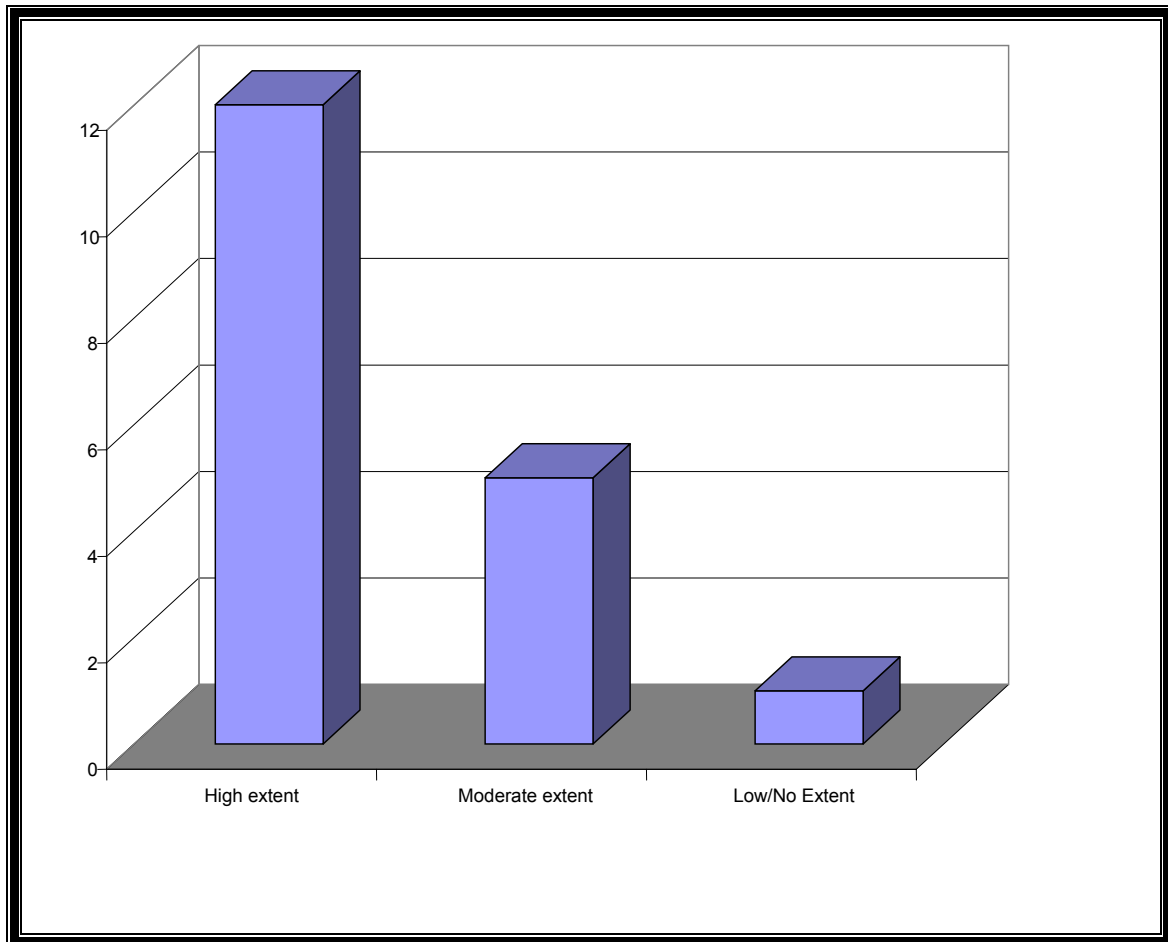
It was found in practice that, because of the high workloads, the professional role-players' focus was to deal with emergencies only. This caused a lot of frustration on no job satisfaction – resulting in burnout. Researcher wanted to determine whether working systematically will prevent burnout.

66, 7% -Twelve (12) respondents said to high extent.

27, 8% - Five (5) respondents felt to a moderate extent.

5, 6% - One (1) respondent) said to no extent.

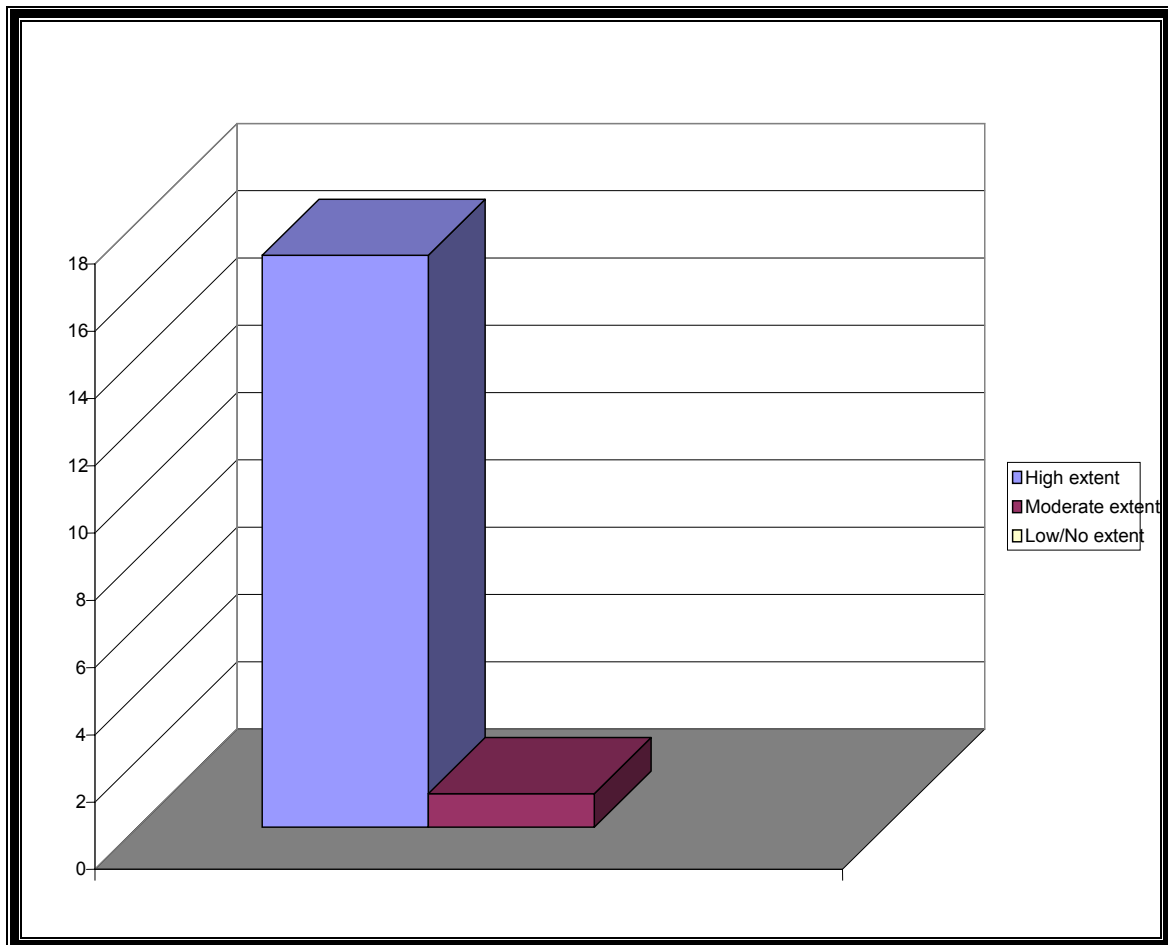
Figure 29: Protocol to prevent burnout



- **To what extent will a protocol assist with enhancing the overall effectiveness of services**

Seventeen (17) of the respondents (94, 4%) were of the opinion that a protocol will enhance the effectiveness of services and one (1) respondent (5, 6%) felt that a protocol will enhance services to a moderate extent.

Figure 30: Overall effectiveness



I. The way a protocol can contribute to additional services

Do the following services have the potential to ensure that children's rights are protected and to enhance the effectiveness of court-orders made regarding children?

- Unified Family Courts – 100% of the respondents agreed.

- Mediation – 76, 5% were in favour of mediation and 23, 5% said no.
- Assessments by experts – 94, 1% of the respondents were in favour of assessments and only one respondent did not agree.
- Pre-trials – 64.7% of the respondents were in favour of pre-trials and 35, 3% were against it.
- Independent legal representation for children – 70, 6% of the respondents felt that it will be beneficial to the children while 29, 4% of the respondent were against it.
- Judicial interviews with children – 76, 5% of the respondents were in favour of a judicial interview and thought it will enhance the effectiveness of court-orders made regarding children. 23, 5 % were actually not in favour of it. One (1) commissioner felt it would be unethical behaviour.
- Other comments and or suggestions?
 - Well done – I could not have done better.
 - Protocol was well planned and thought through.
 - Protocol contains new and interesting ideas.
 - Family Courts important.
 - New Children's Bill will make a difference.
 - The report guidelines given in protocol where used successfully.
 - Social workers play an important role.
 - Social workers should be trained to do more effective assessments.

- Legal representation must have skills training.
- Protocol must be followed at all stages to benefit the child.

5.8 Conclusion

On the overall, researcher found the empirical process a satisfactory experience. The respondents were co-operative, even if they did not totally agree with the idea being sold to them. An openness and willingness to rethink the current methods in practice were experienced and a need for a hands-on guideline was a high priority, as identified through the interviews. After the development of the proposed protocol, researcher has been in a privileged position where an Honourable Judge of the Honourable Supreme Court of Pretoria, evaluated the protocol and made the comment that the protocol contained new and valuable ideas. He further commented that the protocol was well thought through, well planned and implementable.

Respondents' majority reaction after implementing or studying the protocol, were positive. Of specific importance for researcher is the fact that all the respondents admitted to a mind-shift made when thinking about children and re-considering their view on the appropriate age to take children seriously.

Based on the empirical study, researcher would like to make conclusions and suggest further recommendations in the following chapter.