

**The development of a protocol to ensure the
recognition of the rights of children during a legal
process**

by

MARIE ELIZABETH KRUGER

Submitted in partial fulfilment of the requirements

for the degree

DOCTOR PHILOSOPHIAE

in SOCIAL WORK (D.PHIL.)

in the

FACULTY OF HUMANITIES

DEPARTMENT OF SOCIAL WORK AND CRIMINOLOGY

at the

UNIVERSITY OF PRETORIA

Promoter: Dr. G.M. Spies

October 2005

Pretoria

ACKNOWLEDGEMENTS

I believe our Heavenly Father – to whom children are special, gave me the courage, wisdom and strength from day to day to undertake this study – knowing the Power behind me is greater than the task before me. All the praise and glory to Him.

He further provided me with the most amazing support system. Without their valuable contributions it would not have been possible to complete this thesis. I would like to acknowledge each for their specific contributions:

- ✚ Dr. G.M. Spies, my promoter under whose capable guidance the study was conducted. I benefited greatly from her wisdom, knowledge and practice experience. It was a honour to be her student.
- ✚ The University of Pretoria for granting me the bursary which enabled me financially to further qualify myself.
- ✚ Jacqueline Theunissen and Liesl Stieger from the Academic Information Centre for their assistance and dedication in finding the numerous literature sources.
- ✚ Dr. M. Herman for the thorough and dedicated way she undertook the enormous task of editing.
- ✚ Honourable Judge Kobus van Rooyen for his personal time and devotion to the protocol.

- ✚ Each and every respondent for their time and valuable input – without which this study would not have realized.
- ✚ Rosanne Green and Christine Bendixen for taking care of the statistical processing.

A special word of thanks to the following people:

- ✚ My husband, Roelof, and sons – Rohan, Werner and Wiehann, for believing in me, encouraging me and for their emotional (and technical) support. I know you all had to make sacrifices to enable me to complete the study and it is much valued and appreciated.
- ✚ My mother and my uncle Pietie for their encouragement, emotional support and providing a courier-service to take and fetch literature and chapters to and from Pretoria.
- ✚ Two special friends: Sonja Willis, who assisted with the arrangements of the seminar, copying and binding of the protocol and thesis and for just being there for me.
Ilze de Villiers for her continuous emotional support and help.
- ✚ Last, but not least, all the friends, family and colleagues for their prayers, encouragement and support.

SUMMARY

**The development of a protocol to ensure the recognition of the rights of
children during a legal process**

by

MARIE ELIZABETH KRUGER

PROMOTER: DR. G.M. SPIES

DEPARTMENT: Social Work and Criminology

DEGREE: DOCTOR PHILOSOPHIAE (D.PHIL.)

Children's rights are a world wide clarion call – yet, when it comes to implementing it in practice, the hearts of everybody starts racing because suddenly the issue is not just academic, it's personal. In practice it is evident that children's voices are not being heard or taken into consideration – while adults are solely responsible for making decisions that affects the lives children have to live. Children continue to suffer and are being traumatised due to the fact they have to live a life decided by adults who presumed to know the best.

The fact that there is no consistency when working with children, specifically during the legal process, has been experienced as a serious problem. Research

was undertaken to rectify the situation. The hypothesis for the intended study was formulated as follows:

A protocol that can be followed by professional role-players can ensure that children's rights will be protected during a legal process.

The key professional role-players involved with children during a legal process have been identified as social workers, commissioners of child welfare, lawyers, family advocates and judges.

In the qualitative study, a semi-structured schedule was utilized as guide for the personal interviews with each of the respondents. From this data, a protocol was developed and evaluated after implementation in order to determine whether such a protocol will enable the professional role-player to protect the rights of children during a legal process.

The quantitative results proofed that a protocol as a hands-on guideline, is a much needed tool for the professional role-player in practice.

From the study it was concluded that the existence of a protocol will enable the professional role-player to protect children's rights during a legal process.

Important recommendations included the following:

- Specific skill training of the professional role-players in working with children.
- The value of implementing a separate family court system, involving all the professional role-players.
- The different professional role-players should respect each other's profession, their abilities and skills and perform as a team to the benefit of the children in the legal process. Working against each other is to work ego-centered in stead of child-centered.

Key concepts:

- Rights
- Children's rights
- Legal process
- Protocol
- Professional role-player
- Child-Centered
- Voices of children
- Bill of Rights
- Family court
- Communication
- Skills

OPSOMMING

**Die ontwikkeling van 'n protokol ten einde te verseker dat die regte
van die kind beskerm word gedurende 'n regsproses**

deur

MARIE ELIZABETH KRUGER

PROMOTER: DR. G.M. SPIES

DEPARTEMENT: Maatskaplike Werk en Kriminologie

GRAAD: DOCTOR PHILOSOPHIAE (D.PHIL.)

Kinderregte is 'n wêreld-wye wekroep maar wanneer dit by die toepassing daarvan in die praktyk kom, raak almal benoud want skielik is dit nie slegs akademies van aard nie maar persoonlik. In die praktyk is dit duidelik dat die stem van kinders nie gehoor of in aanmerking geneem word nie. Alleen volwassenes is verantwoordelik vir die neem van besluite wat 'n invloed het op die lewens van kinders. Kinders word dus voortdurend getraumatiseer deur die lewens te leef wat volwassenes besluit het in hul sogenaamde beste belang te wees.

Die inkonsekwentheid wanneer met kinders gewerk word, spesifiek met verwysing na die regsproses, is as 'n ernstige problem in die praktyk ervaar.

Navorsing is onderneem ten einde die problem die hoof te bied.

As hipotese is gestel:

'n Protokol om deur professionele rol-spelers gevolg te word, kan verseker dat die regte van kinders beskerm word gedurende die regsproses.

Die sleutelpersone in die regsproses betrokke met kinders, is geïdentifiseer as maatskaplike werkers, kommissarisse van kindersorg, prokureurs, gesinsadvokate en regters.

Deur middel van 'n kwalitatief-kwantitatiewe benadering, het die navorser eerstens bepaal watter faktore daartoe aanleiding gee dat die professionele rol-spelers nie die regte van kinders erken nie. Met behulp van 'n semi-gestruktureerde onderhoudskedule is die kwalitatiewe data versamel deur persoonlike onderhoude met respondente te voer. Vanuit hierdie data is 'n protokol ontwikkel en die waarde daarvan ge-evalueer na toepassing in die praktyk. Die respondente moes, as deel van die kwantitatiewe studie, bepaal of die protocol hul instaat sal stel om die regte van kinders gedurende 'n regsproses te beskerm. Die resultate het bewys dat 'n protokol as riglyn 'n broodnodige hulpmiddel vir die professionele rol-speler in die praktyk blyk te wees.

Vanuit die studie is tot die gevolgtrekking gekom dat die bestaan van 'n protokol wel die professionele rol-speler in staat sal stel om die regte van kinders gedurende 'n regsproses te beskerm. Belangrike aanbevelings was as volg:

- 'n Vaardigheids-opleiding vir professionele rol-spelers wie met kinders werk.
- Die belangrikheid om 'n aparte gesinshof-struktuur te implementeer waar al die professionele rol-spelers betrokke is.
- Die professionele rol-spelers moet die onderskeie professies se vermoëns en vaardighede respekteer en as 'n span funksioneer tot voordeel van die kinders in die regsproses. Om teen mekaar te werk is om ego-gesentreerd in stede van kind-gesentreerd te werk.

Sleutelbegrippe:

- Regte
- Kinderregte
- Regsproses
- Protokol
- Professionele rol-speler
- Kind-gesentreerd
- Kinderstemme
- Handves van Regte
- Gesinshof
- Kommunikasie
- Vaardighede

TABLE OF CONTENTS

CHAPTER 1

<i>DELINEATION OF THE PROPOSED RESEARCH</i>	1
1.1 Introduction	1
1.1.1 The Constitution of the Republic of South Africa – Act 108 of 1996..	3
1.1.2 Internationally influenced Instruments.....	4
1.1.2.1 The United Nations Convention on the Rights of the Child, 1989 .	
.....	4
1.1.2.2 African Charter on the Rights and Welfare of the Child.....	6
1.1.2.3 The Children’s Charter of South Africa.....	6
1.1.3 Domestic Legislation and Policies.....	7
1.2 Problem formulation	11
1.3 Purpose, goal and objectives of the study	19
1.3.1 Purpose of the research.....	19
1.3.2 Goal	20
1.3.3 Objectives	20
1.3.3.1 Literature study	21
1.3.3.2 Empirical study.....	21
1.3.3.3 Conclusions and recommendations	21
1.4 Research question and hypothesis	22
1.5 Research approach	23
1.6 Type of research	26

1.7 Research design and methodology	28
1.7.1 Design.....	28
1.7.2 Methodology	30
1.7.2.1 Data collection	30
1.7.2.2 Data analysis	33
1.8 Pilot study.....	34
1.8.1 Literature study	36
1.8.2 Pilot test of data collection instrument.....	37
1.8.3 Overview of the feasibility of the study	37
1.9 Description of research population, delineation of sample and sampling method	38
1.9.1 Description of research population.....	38
1.9.2 Delineation of sample.....	39
1.9.3 Sampling method	40
1.10 Ethical aspects.....	41
1.10.1 Potential harm to participants.....	42
1.10.2 Informed consent	43
1.10.3 Deception of participants.....	44
1.10.4 Violation of privacy / anonymity / confidentiality	44
1.10.5 Actions and competence of researcher.....	45
1.10.6 Release or publication of the findings	46

1.11 Definitions of key concepts	46
1.11.1 Rights of children	46
1.11.2 Legal process.....	48
1.11.3 Client-Centered Approach / Person-Centered counselling.....	50
1.11.4 Protocol.....	51
1.12 Division of research project.....	52

CHAPTER 2

<i>THE PERSON-CENTERED APPROACH AS THEORETICAL FOUNDATION</i>	54
2.1 Introduction	54
2.2 Defining the Person-Centered Approach.....	56
2.2.1 Relationship	58
2.2.2 Vulnerability	58
2.2.3 Genuineness	58
2.2.4 Unconditional Positive Regard	59
2.2.5 Accurate Empathy.....	60
2.2.6 Personal power or autonomy	60
2.3 Value of the Person-Centered Approach	62
2.3.1 Qualities of the person of tomorrow	64

2.4 The integration of the different propositions in practice and implications for the child.....	68
2.4.1 Discussion of propositions	69
2.4.1.1 Proposition 1	70
2.4.1.2 Proposition 2	72
2.4.1.3 Proposition 5	74
2.4.1.4 Proposition 6	76
2.4.1.5 Proposition 8	78
2.4.1.6 Propositions 9 & 10	82
2.4.1.7 Proposition 12	85
2.4.1.8 Proposition 11	88
2.4.1.9 Proposition 13	90
2.4.1.10 Proposition 14	92
2.4.1.11 Proposition 16	93
2.4.1.12 Proposition 3	97
2.4.1.13 Proposition 4	98
2.4.1.14 Proposition 7	103
2.4.1.15 Proposition 17	105
2.4.1.16 Proposition 15	108
2.4.1.17 Proposition 18	111
2.4.1.18 Proposition 19	112

2.5 Application of the Person-Centered Approach in work with children	114
2.5.1 The meaning of Person-Centered Therapy to the child.....	114
2.5.2 The need for a Child-Centered Approach	117
2.5.2.1 Reasons to support the theory and practice of Child-Centered Counselling	119
2.5.2.1.1 Child-Centered Counselling possesses a positive philosophy of the person	119
2.5.2.1.2 Child-Centered Counselling articulates propositions regarding human personality and behaviour	120
2.5.2.1.3 Child-Centered Counselling possesses achievable goals for the child.....	121
2.5.2.1.4 Child-Centered Counselling possesses a definition of the Counsellor’s role within the counselling relationship	122
2.5.2.1.5 Child-Centered Counselling has research evidence supporting its effectiveness.....	123
2.5.2.1.6 Child-Centered Counselling is comprehensive.....	124
2.5.2.1.7 Child-Centered Counselling has application value	124
2.5.2.1.8 Child-Centered Counselling has an expansive intellectual and attitudinal substance	125
2.5.2.1.9 Child-Centered Counselling focuses on the child as a person rather than on the child’s problems	126
2.5.2.1.10 Child-Centered Counselling focuses on the importance of the counsellor’s attitude	127

2.5.2.1.11 Child-Centered Counselling provides the counsellor with a systematic response pattern	128
2.5.2.1.12 Child-Centered Counselling provides flexibility for the counsellor to go beyond reflection of feelings	129
2.5.2.1.13 Child-Centered Counselling can be individualized according to the particular needs of a child	129
2.5.2.1.14 Child-Centered Counselling enables a child's behaviour to change in a natural sequence	131
2.5.2.1.15 Child-Centered Counselling can draw from the process components of other theories of counselling and child development	132
2.6 Person-Centered Approach and the Rights of children	132
2.6.1 The child has the right to distributive justice.....	133
2.6.2 The child has the right to retributive justice	134
2.6.3 The child has the right to be treated with dignity and worth as a person.....	135
2.6.4 The child has the right to self-determination	135
2.6.5 The child has the right to become voluntarily involved in counselling	137
2.6.6 The child has the right to acquire an understanding of counselling	137
2.6.7 The child has the right to confidentiality	138
2.6.8 The child has the right to be different.....	140
2.6.9 The child has the right to be accepted	141
2.6.10 The child has the right to make mistakes.....	142

2.6.11 The child has a right to counsellor genuineness	143
2.7 Conclusion	144
 CHAPTER 3	
<i>THE NEEDS AND LIFE TASKS OF CHILDREN IN THEIR DIFFERENT DEVELOPMENTAL PHASES</i>	
<i>146</i>	
3.1 Introduction	146
3.2 Defining the different terms	149
3.2.1 Developmental phases.....	149
3.2.2 Life tasks.....	151
3.3 The developmental process.....	152
3.3.1 A historical overview	152
3.3.2 The Social Ecological theory.....	158
3.3.2.1 Description of the systems	161
3.3.2.1.1 Micro-system.....	161
3.3.2.1.2 Meso-system.....	162
3.3.2.1.3 Exo-system	163
3.3.2.1.4 Macro-system.....	164
3.3.2.2 Ecological transitions	166
3.3.2.3 Practice value	167

3.4 The needs and life task checklist according to the developmental phases	168
3.5 Combining theory and practice	183
3.5.1 The developmental model.....	185
3.5.1.1 Explanation of the model.....	187
3.5.1.1.1 Affect.....	188
3.5.1.1.2 Autonomy	189
3.5.1.1.3 Cognition	191
3.5.1.1.4 Belonging	193
3.5.1.1.5 The developing self	194
3.5.1.2 Implications for practice	196
3.6 Concluding remarks on development.....	197

CHAPTER 4

EXPLORATION OF THE RIGHTS OF CHILDREN

FROM A GLOBAL PERSPECTIVE.....	199
4.1 Introduction	199
4.2 Defining children's rights.....	200
4.2.1 Legal and Moral rights.....	202
4.2.2 Welfare and Liberty rights	202

4.3 The acknowledgement of children’s rights – a global perspective	204
4.3.1 International context.....	204
4.3.1.1 European Convention on Human Rights.....	204
4.3.1.2 United Nations Convention on the Rights of the Child	205
4.3.1.3 Legislation and children’s rights in the U.K.	208
4.3.1.3.1 The Children Act 1989	213
4.3.1.4 Childhood and children’s rights in China	216
4.3.1.5 Children’s rights in Australia.....	221
4.3.1.6 The Bulgarian Children Act	224
4.3.1.7 Children’s rights in Belgium.....	229
4.3.1.7.1 The status of children.....	230
4.3.1.7.2 Functions of the Commissioner’s Office.....	232
4.3.2 The South African context.....	235
4.3.2.1 Bill of Rights (Constitution of the Republic of South Africa 108 of 1996).....	243
4.4. Determining factors impacting the implementation of children’s rights	253
4.4.1 Age and Competence	253
4.4.2 The ‘best interest’ principle	266
4.5 Implementation of children’s rights in practice	283
4.5.1 Skills needed to work with children	284
4.5.2 How to communicate with children.....	285
4.5.3 Utilizing existing resources.....	290
4.6 Conclusion	295

CHAPTER 5

THE EMPIRICAL PROCESS.....	297
5.1 Introduction.....	297
5.2 Purpose of the research.....	297
5.3 Objectives of the research.....	298
5.4 Research Approach.....	299
5.5 Type of research.....	300
5.6 Research Design.....	300
5.7 Methodology.....	301
5.7.1 Data collection.....	301
5.7.1.1 Step 1: Problem analysis and project planning.....	301
5.7.1.2 Step 2: Information gathering and synthesis.....	302
5.7.1.3 Step 3: Design.....	303
5.7.1.4 Step 4: Early development and pilot testing.....	304
5.7.1.5 Step 5: Evaluation and advanced development.....	305
5.7.2 Data analysis.....	305
5.7.2.1 Qualitative data.....	306
5.7.2.2 Quantitative data.....	325
5.8 Conclusion.....	355

CHAPTER 6

A CONCLUSIVE REVIEW AND RECOMMENDATIONS.....	356
6.1 Introduction.....	356
6.2 The goal and objectives of the study.....	357
6.3 Research question and hypothesis.....	358
6.4 Conclusions as drawn from the empirical study.....	360
6.4.1 Knowledge base regarding the rights of the child.....	360
6.4.2 Importance of the Bill of Rights for children.....	361
6.4.3 Aspects to take into consideration when working with children...	363
6.4.4 The term “best interest” of children.....	364
6.4.5 The necessity of a protocol when working with children.....	365
6.4.6 The contents of a protocol.....	366
6.4.7 The way the existence of a protocol can contribute to more efficient services to children.....	367
6.4.8 The way a protocol can contribute to additional services.....	368
6.5 Recommendations.....	368
6.5.1 Knowledge base regarding the rights of children.....	368
6.5.2 Importance of the Bill of Rights for children.....	370
6.5.3 Aspects to take into consideration when working with children....	370
6.5.4 The “Best Interest” principle.....	371
6.5.5 The necessity of a protocol when working with children.....	371
6.5.6 The contents of the protocol.....	372
6.5.7 The way the existence of a protocol can contribute to more effective services to children.....	374

6.5.8 The way the protocol can contribute to additional services to
ensure the recognition of the rights of children during a legal
process 374

BIBLIOGRAPHY 376

LIST OF FIGURES

FIGURE 1: THERAPIST-CENTRIC MODEL	62
FIGURE 2: PERSON-CENTERED MODEL	62
FIGURE 3: PROPOSITIONS - THEME 1	70
FIGURE 4: PROPOSITIONS – THEME 2	73
FIGURE 5: PROPOSITIONS – THEME 3	78
FIGURE 6: PROPOSITIONS – THEME 4	87
FIGURE 7: PROPOSITIONS – THEME 5	96
FIGURE 8: PROPOSITIONS – THEME 6	103
FIGURE 9: PROPOSITIONS – THEME 7	108
FIGURE 10: MODEL OF CHILD-CENTERED INTERACTION IN EDUCATION.....	116
FIGURE 11: MODEL OF CHILD-CENTERED INTERACTION IN THE LEGAL PROCESS..	117
FIGURE 12: DEVELOPMENTAL SPHERES	150
FIGURE 13: BRONFENBRENNER’S ECOLOGY OF HUMAN DEVELOPMENT	160
FIGURE 14: DEVELOPMENTAL PROCESS	170
FIGURE 16: RESEARCH POPULATION	327
FIGURE 17: IMPLEMENTATION OF PROTOCOL	328
FIGURE 18: CHILDREN'S BENEFIT TO SYSTEM “OPEN” TO HEAR THEIR VOICES	330
FIGURE 19: PROTOCOL OPENING A "SOUND SPACE" FOR CHILDREN.....	332
FIGURE 20: IMPLEMENTATION OF PROTOCOL IN DOMESTIC.....	333
FIGURE 21: APPROPRIATE AGE BEFORE PROTOCOL.....	339
FIGURE 22: APPROPRIATE AGE SINCE PROTOCOL.....	340
FIGURE 23: CHANGING ATTITUDE WITH REGARD TO CHILDREN	342
FIGURE 24: PROTOCOL ENHANCES WORK-APPROACH.....	344

FIGURE 25: PROTOCOL CLARIFIES ASPECTS TO CONCENTRATE ON	345
FIGURE 26: PROTOCOL TO ENSURE CONSISTENCY	348
FIGURE 27: UTILIZING PROTOCOL IN ALL CASES WHERE CHILDREN ARE INVOLVED	349
FIGURE 28: PROTOCOL TO REDUCE WORKLOAD	350
FIGURE 29: PROTOCOL TO PREVENT BURNOUT	352
FIGURE 30: OVERALL EFFECTIVENESS	353

LIST OF ANNEXURE

Annexure 1: Letter of consent

Annexure 2: Semi-structured interview schedule

Annexure 3: Questionnaire

Annexure 4: Propositions of the Person-Centered Approach

Annexure 5: Protocol

CHAPTER 1

DELINEATION OF THE PROPOSED RESEARCH

1.1 Introduction

Javier Perez De Cuellar, UN Secretary-General, said in his international message on the Convention on the Rights of the Child in September 1987 the following:

The way a society treats children reflects not only its qualities of compassion and protective caring but also its sense of justice, its commitment to the future and its urge to enhance the human condition for coming generations. This is as indisputably true of the community of nations as it is of nations individually!

(United Nations Convention on the Rights of the Child, 1989: i).

Researcher interprets this opinion as a serious reprimand to countries world wide to focus on the way children (and their rights) are treated and respected.

Through a literature search it was reflected that the recognition of children's rights in practice are a relevant and contemporary concern on international level.

Different authors confirm the latter as follows:

- Bagnell (1980:83) stated that during the 19th century a child was not seen to have hopes and dreams and a personality that could be hurt, sometimes beyond restoring. A child was seen as an incomplete person.
- Kufeldt (1993:155) is of the opinion that we may have progressed in the 20th century in that we now recognise children as having hopes, dreams and a unique personality, but, there is still that tendency to think of them as incomplete persons for whom the wiser adult must make decisions. Furthermore, Kufeldt (1993:155) feels that we perpetuate injustice in that we do not ensure a child's right to be a legitimate voice in our decision making.
- James & James (1999:189) confirmed that listening to the voices of children have become somewhat of a clarion call since the 1970's, both within and outside the academically world. The pressing need to take into account children's own interests in and perspectives on the social world, means that children should no longer be regarded as the passive outcome of childrearing practices. Instead, acknowledgement to the importance of recognising the diversity of children's childhood and of children's own part as social actors in shaping their childhood experiences should be given.
- Hall & Kelly (1992:84) said that to respect the dignity of children and acting to promote their human and civil rights is not just a nice idea, it is also a moral mandate for those who profess an interest in the developing child.

Researcher then compared the situation locally and found that South Africa has a comprehensive child protection policy and statutory framework as set out primarily in

- The Constitution of the Republic of South Africa – Act no 108 of 1996
- A number of internationally influenced instruments to which the country is party
- In domestic legislation aimed at facilitating the implementation of principles espoused in the Constitution and in international instruments.

This legislation will be discussed as follows:

1.1.1 The Constitution of the Republic of South Africa – Act 108 of 1996

The Bill of Rights entrenched in the South African Constitution enumerates a number of provisions aimed at ensuring the protection, promotion and respect of human rights of South African people. The provisions are founded on values of equality, freedom and human dignity and are applicable to everyone, including children. These provisions include the following:

- Section 9 of the Bill of Rights guarantees everyone the right to equality before the law and to equal protection of the law.
- Section 10 provides that everyone has inherent dignity and the right to have their dignity respected and protected.
- Section 12(1)(c) & (e) guarantees the right to be free of all forms of violence from either public or private sources, and guarantee the right not to be treated or punished in a cruel, inhuman or degrading way.

- Section 28 guarantees every child's right to:
 - A name and nationality from birth
 - Family or parental care or to appropriate alternative care where the child is removed from his/her family environment
 - Basic nutrition, shelter, basic health care and social services
 - Be protected from maltreatment, neglect, abuse or degradation
 - Be protected from exploitative labour practices
 - Have a legal representative assigned to the child by the state and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result

(South African Human Rights Commission, 2002:12).

The Bill of Rights will be discussed in detail in Chapter 4.

1.1.2 Internationally influenced Instruments

1.1.2.1 The United Nations Convention on the Rights of the Child, 1989 (United Nations Convention on the Rights of the Child, 1989:2-4)

South Africa acceded to this Convention in 1995, thereby incurring the following obligations:

- Art 2: All rights apply to all children without exception. It is the State's obligation to protect children from any form of discrimination and to take positive action to promote their rights.
- Art 3: All actions concerning the child, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

- Art 9: The child has a right to live with his or her parents unless this is deemed to be incompatible with the child's best interest. The child also has the right to maintain contact with both parents if separated from one or both. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
- Art 12: State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
- Art 13: The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

1.1.2.2 African Charter on the Rights and Welfare of the Child

(South African Human Rights Commission, 2002:11)

[Ratified by South Africa on 18 November 1999]

By acceding to the African Charter on the Rights of the Child, South Africa assumed an obligation to take specific legislative, administrative, social and educational measures to protect the child from all forms of inhuman or degrading treatment. Such protective measures include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who care for the child, as well as other forms of prevention and for identification, referral, investigation and follow-up of instances of child abuse and neglect.

1.1.2.3 The Children's Charter of South Africa

(Schurink, 1992:18)

[Adopted by the Children's Summit of South Africa on 1 June 1992]

The Children's Charter of South Africa highlights the following provisions:

- In Part I Article 2 it is stated that children are the future leaders of tomorrow, but they are not given the right to participate in consultations or negotiations about their future.
- Part II Article 3(1): All children have the right to express their own opinions and the right to be heard in all matters that affect his/her rights and protection and welfare.
- Article 3 (2): All children have the right to be heard in courtrooms and hearings affecting their future rights and protection and welfare and to

be treated with the special care and consideration within those courtrooms and hearings which their age and maturity demands.

1.1.3 Domestic Legislation and Policies

(South African Human Rights Commission, 2002:13)

A number of domestic legislation and policies facilitate the practical implementation of children's rights and government obligations as set out in the Constitution and in international instruments, such as:

- The Child Care Act, No 74 of 1983 (as amended)
- Sexual Offences Act, No 23 of 1957 (as amended)
- Domestic Violence Act, No 116 of 1998
- The Criminal Procedure Act, No 51 of 1977
- The National Policy Guidelines for Sexual Offences
- The Multi-Disciplinary Child Protection and Treatment Protocol

James & James (1999) refer to the legislative issues as rhetoric – and, through practice experience as a social worker, researcher will echo that because it is easier said than done! 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. When it comes to putting the above rights into practise, the hearts of all parties involved are likely to start racing because suddenly the issue is not just academic, it's personal.

Many authors, working in the field with children and the implementation of their rights in practice, confirmed the above statement as follows:

- In a detailed discussion by Fox (1995) in his book “Everything you need to know about your legal rights”, it is categorically stated that children’s rights are blatantly ignored.
- Wallerstein & Kelly (1980) conducted research on the potential impact of custody and access decisions on the children involved in divorce (which is only one aspect of children exposed to judicial proceedings). This study was followed up ten years later by Wallerstein & Blakeslee (1989). Their observations that the young people in their study did not find a single court order to be useful in addressing their most fundamental needs and concerns, are distressing words to hear.
- L’Heureux-Dubè (1998:385), a judge of the Canadian Supreme Court, pointed out that the research by Wallerstein at the time and the follow up ten years after a divorce showed that, despite the repeated assurances of great interest in their welfare, children’s voices have gone unheard in the law or, at best, have been misheard or misinterpreted.

Not only is this a concern for Judge Claire L’Heureux-Dubè of the Supreme Court of Canada, but echoes the concern of researcher through twenty three years of practice experience. Already at the onset of researcher’s social work career, it was soon evident that children’s voices are not being heard or taken into consideration - while adults are solely responsible for making decisions that affects the lives children have to live. It is the experience of the

researcher that children continue to suffer and are being traumatised due to the fact they have to live a life decided by adults who presumed to know the best. The result in practice is that almost all decisions are made by adults and the autonomy of children are ignored and denied. This state of affairs causes resentment towards justice by these children and mistrust towards adults that they normally should trust.

Through consultation with different experts in the field, researcher can report their concerns and perceptions as follows:

- Advocate Chris Maree, Family Advocate in the Johannesburg Supreme Court, admitted that the different professional role-players very often follow their own intuition whether to consult with a child or not and fail to take into account the child's perceptions and needs. There is no fixed interview procedure or a way to determine whether the needs and wishes of children were taken into account. This is a serious shortcoming in the legal procedures when children are involved.
- Ms. Adélie Mostert – Family Law Attorney, admitted to an experience of uneasiness in interviewing children because of a lack of knowledge regarding the important issues to focus on when working with children.
- Ms. Alda Smit, Senior Social Worker at Kidz Clinic, cannot stress enough the importance of investigating a situation from the child's view as it often differs vastly from the view of the adult who investigates the matter.
- Mr. Acting Justice Kobus van Rooyen recognised the need for a protocol to which all professional role-players can adhere to. He

expressed the opinion that it will ensure consistency in practice. Mr. Acting Justice van Rooyen further emphasized the importance of creating a child friendly environment when working with children.

De Vos (1979:65) quoted the social work veteran, Selma Fraiberg, who said the following:

We are, willingly or not, great manipulators of a child's life. This is an awesome kind of responsibility, and perhaps an attitude of awe toward such undertakings is a proper one for us. We need to feel inadequate before the magnitude of these tasks.

Ruegger (2001:viii) identified this need in her work as Guardian ad Litem and social worker and is of the opinion that all professionals whose work bring them in contact with children, need to think and debate, according to a child's point of view, the issues that have arisen in the representation of children's interest in judicial proceedings. The author formulated her opinion regarding the latter as follows:

Judiciary, policy makers and those responsible for the organisation and delivery of national and local services, yet whose daily tasks have long-term consequences for some children, should learn something of how children experience the impact of their decisions.

Kufeldt (1993:157) refers to what Fraiberg calls “the disease of non-attachment” by saying the following:

Resistance to allowing children to tell us what is happening, is not only grossly unjust, it can be dangerous for the children; it can be dangerous for the community if these children grow up to be non-attached and filled with rage. And we are compounding injustice when children are punished for behavioural responses born of their anger and despair.

As a professional person, researcher finds it equally difficult and extremely frustrating to convey the children’s needs and wishes to all the professional role-players dealing with children. Researcher’s rationale for this intended study would be firstly to explore the reasons why children’s rights are not being recognised and respected despite the availability of the statutory framework; Secondly, to obtain sufficient knowledge about the current situation to formulate a protocol to rectify the situation.

1.2 Problem formulation

Ruxton (In Ruegger, 2001:2) expresses the view that children are among the most powerless of social groups and often have very limited opportunities to be involved in key decisions which affect them. He stated that:

To recognise their competence and valuing their contribution, individually and effectively, is a crucial prerequisite for creating a

dynamic and participative society. This means respecting the individuality of children who are not merely dependent on adults, but also social actors in their own right.

Landreth (1991:50) confirms that children are persons in their own right by stating the following:

They do not become persons under the attainment of some predetermined age or after having met certain criteria. Each child is a unique personality and that uniqueness is not dependant on any significant person in the child's life; neither is personal significance limited to or a function of the child's behaviour. Therefore, children are worthy of respect because they have worth and dignity as individuals.

According to the researcher's experience in practice, it often happens that the different professional role-players (everybody whose work brings them in contact with children, and for the purpose of this study, specifically judiciary, policy makers, social workers) are not fully informed, utilising and/or implementing the legislation that are already in place and discussed in this document. The result can be that we create a generation who views justice as rhetoric! The researcher further experiences it as a serious problem that the relevant professional role-players often create their own interpretation of children's rights and legislation. This legislation is neither read properly nor

discussed between the relevant professional role-players who deal with a case where children are involved in order to enable them to see it from different viewpoints – which include the view of the child – all to the detriment of the children concerned. At times even court-rulings are also inconsistent: In one case the judge may be willing to listen to children – regardless of age, while another may refuse to take children’s wishes into consideration at all. During a specific custody case for instance, a psychologist found the child to be ‘adult’ enough to do the senior psychological assessment test on a ten year old boy, but refused to listen to his reasons for preferring to stay with his father as the professional view the child as only a child who cannot make these decisions.

Another example is a different divorce hearing, when the judge refused to accept any evidence or reason from a twelve year old girl who refused to be placed in the custody of her mother who became a sex worker for a living. Not even strong evidence of possible sexual abuse or a real danger there-of was taken into consideration.

The researcher and many other professionals can rightfully ask: *How can these judgements be in the interest of the children concerned?*

Shirley Mabusela (April 2002) as Commissioner of Human Rights, said rightfully at the enquiry into sexual violence against children:

Children’s Rights are Human Rights!

Therefore, we cannot at any given time ignore the views of children regarding their own lives. Researcher would like to add to what Shirley Mabusela said. The age of children is no excuse not to talk to children. Rogers (1987:487) said to deny the autonomy of any person is the beginning of the emotional death of a person – children included.

A mind shift in professionals dealing with children seems to be necessary and the aspects where a mind shift is needed (as identified by researcher in practice), can be discussed as follows:

- **The way law considers children as inferior human beings:**

The voice of children below the age of majority is, in and of itself, considered immature and hence, legally irrelevant.

L'Heureux-Dubè (1998:386) confirms it through the following:

Although the law confer upon children a certain degree of independent legal recognition as they begin to show signs of maturity, the age of majority has been solidly set as a prerequisite to the exercise of most legal rights.

- The principle “Best interest of the child”:

The principle “best interest of the child” is a wide discretion and leave judges to rely on their own values and attitudes in making custody and access determinations as opposed to seek to elicit the interest of children from their own point of view. L’Heureux-Dubè (1998:386) claimed:

When representing children, parents and the state tend to perceive only those claims which serve adult purposes and protect adult interest. She also referred to Elkind, the author of an article “The Law and Post modern Perceptions of Children and Youth” who said that the legal treatment of children has led him (Elkind) to observe that our perceptions of children and youth have been more reflective of the needs and priorities of adults versus the best interest of the young!

Although parents and the state may know and do what is best for children, it does not mean that they are in the best position to convey the true needs and experiences of children. Wallerstein (In Wallerstein & Kelly, 1980) found that the children and young people in her study have been more than able to articulate their needs and interest, even from a very young age. Furthermore it was found that these needs and interests diverged sharply from those of the adults in their lives and were not necessarily promoted by their parents or the legal professionals involved.

- **Child's age and maturity:**

To listen attentively to children, judges as well as legal and human service professionals require a heightened awareness of and sensitivity to the *different ways* in which children express themselves as compared to adults. When dealing with very young children, professional people must realise that children are not yet capable of directly voicing their concerns. As professionals, we must remain especially attuned to behavioural and other signs of distress or wellbeing of these children.

Children are *different* but should not be treated as *being inferior*. L'Heureux-Dubè (1998:388) confirmed this when she said:

It is only by acknowledging that the perspectives of children are different as opposed to inferior and by hearing their voices that we shall afford these perspectives a legal value equal to that of adults.

Oaklander (1988:281) is of the opinion that the main problem lies in a community's lack of respect for children as human beings in their own right – which damages a child's sense of self-worth.

Through the study researcher intends to develop a protocol that can be implemented as a method in practice that will enable professional role-players to recognise and respect the children's rights during a legal process.

In order to motivate all the professional role-players involved with children to find a common ground of thinking and acting when dealing with children, researcher would like to investigate the situation and develop the protocol from a Person-Centered (thus Child Centered) approach as theoretical framework - believing that each individual (child) possess an inherent tendency toward self-actualisation and has the capacity to symbolise experiences accurately in awareness.

Nearly two decades ago, Patterson (1986:379) referred to the person-centred approach as

'The theory of the fully functioning person'.

He expressed the opinion that the individual has a need for positive regard from other and for positive self-regard. When these needs are met, to a maximum degree, the individual will be a fully functioning person. This theory is still valid and valued. Oaklander (1988:281) echoes this by saying:

How we perceive and value ourselves, determines to a great extent how we behave, how we cope with life, how we manage ourselves.

According to Landreth (1991:55), children are the best source of information regarding themselves. A child-centred approach is thus about promoting an

equal sense of self-worth for children, as like any individual, and treating children with equal concern, equal respect and equal consideration.

As Oaklander (1988:324) concluded after many years of experience with children, researcher also believes that:

Children already know how to grow, how to develop, how to learn, how to expand and discover, how to feel, laugh and cry and get mad, what is right for them and what is not right for them, what they need. They already know how to love and be joyful and to live life to its fullest, to work and to be strong and full of energy. All they need is the space to do it!

All that has been said and experienced motivates researcher to do this study. The development of a protocol that will enable professional role-players to no longer disrespect or disregard the rights of children is an absolute necessity in practice. Not only will this research enable researcher to make a valuable contribution to practice in that children will be granted the opportunity to be heard, but also earn the necessary respect for the social work profession and hopefully create a system of future co-operation.

1.3 Purpose, goal and objectives of the study

1.3.1 Purpose of the research

The purpose of the study will be a combination between exploratory and descriptive research:

Bless & Higson-Smith (1995:42) defines the purpose of *exploratory* studies as ...to gain insight into a situation, phenomenon, community or person.

Rubin & Babbie (2001:123) added to this, saying this purpose is typical when:

- A researcher is examining a new interest.
- The subject of study is relatively new and unstudied.
- A researcher seeks to test the feasibility of undertaking a more careful study.
- A researcher wants to develop the methods to be used in a more careful study.

Since the researcher intends to explore with the view to gain insight into

- a) the contributing factors causing professional role-players not to acknowledge children's rights, and
- b) the discomfort of the professional role-players in dealing with children

in order to develop a protocol that will enable the professional role-player to protect the rights of children during the legal process, the exploratory design will be most applicable as the qualitative part of the study.

Fouchè (2002:109) mentioned that *descriptive research* blend in practice with exploratory research and presents a picture of the specific details of a situation, social setting or relationship, and focuses on “how” and “why” questions.

In the quantitative part of the study, the developed protocol will focus on a description of the “how” professional role-players should go about to ensure that children’s voices are heard, and “why” it is important to be heard.

1.3.2 Goal

Fouchè (2002:107) refers to the term “goal” or “aim” as the “dream” towards which effort or ambition is directed. The researcher’s aim is that this study will encourage all the professional role-players who are involved in the representation of children in civil law proceedings to allow the voices of children to be heard. The overall goal of the research will be the following:

To develop a protocol that will enable the professional role-players to recognise and respect the rights of children during a legal process.

1.3.3 Objectives

According to Fouchè (2002:107), the term ‘objectives’ implies the more concrete, measurable and more speedily attainable conception of end toward which effort or ambition is directed. Where the goal is the dream, the objectives are the steps one has to take, one by one, realistically at grass-roots level, within a certain time-span, in order to attain the dream.

In keeping with the requirements for research, specific objectives have been delineated such that their achievement will contribute toward the achievement of the overall goal of the study and will be explained under literature, empirical study, conclusions, and recommendations:

1.3.3.1 Literature study

To undertake a literature study to form a foundation for the study. The following aspects will be explored during the literature study:

- A Person Centered (Child Centered) Approach as theoretical framework on which the protocol will be based.
- The needs and life tasks of children in different developmental phases.
- Legislation regarding the rights of children on a national and international level.

1.3.3.2 Empirical study

- 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 and respect the rights of children during the legal process.

1.3.3.3 Conclusions and recommendations

To create conclusions and recommendations based on the outcome of the empirical study.

1.4 Research question and hypothesis

De Vos (1998:115) said research questions are posed about the nature of real situations, while hypotheses are statements about how things can be.

With the studies of Wallerstein & Kelly (1980) and Wallerstein & Blakeslee (1989), it was proved that children's voices have gone unheard. This led to L'Heureux-Dubè (1998) calling a forceful challenge upon all the relevant professions to adopt a truly child-centred approach in order to ensure courts to address the most fundamental needs and concerns of children involved in civil law proceedings.

Researcher takes this challenge as her professional responsibility and would like to provide the professional role-players, through this research, with a vehicle that will assist or enable them to address the most fundamental needs and concerns of children in civil law proceedings.

In this regard, the research question for the intended study will be as follows:

To what extent will the existence of a clear protocol for professional role-players enable them to protect the rights of children during a legal process?

The stating of hypothesis and the testing thereof is an important part of the research process. In the New Dictionary of Social Work (2004:31) hypothesis

refers to a tentative statement that assumes the relationship between two or more variables in one or more than one population and which is accepted as a basis for discussion or as a premise from which a conclusion is drawn.

The hypothesis for the intended study can be formulated as follows:

A Protocol that can be followed by professional role-players can ensure that children's rights will be protected during a legal process.

1.5 Research approach

Researcher's motivation for this intended study stems from the present problematic situation 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.

Delport & De Vos (2002:59) are of the opinion that the use of research methods should be implemented by all professional practitioners as a routine approach to perform and evaluate professional services. They mentioned that there have been many attempts over the past fifty years to strengthen the professional practice of the caring professions and quote Briar (1980:35), who said that through the scientist-practitioner approach, the same person could engage in practice and research simultaneously as a set of integrated activities.

The goal of the scientist-practitioner approach is

- To stimulate research-mindedness and critical thinking among professional practitioners.
- To integrate practice and research.
- To increase professional accountability at the micro- and macro levels (Delpont & De Vos, 2002:59).

As mentioned, the motivation for the intended study stems from the fact that researcher is experiencing a problem in practice where children's rights often are disregarded during a legal process. The study thus lend itself to a scientist-practitioner approach in that it

- Stimulate research-mindedness and critical thinking amongst professional practitioners: The relevant professional role-players involved with children during a legal process need to re-think their current methods and determine what is necessary in order to protect the rights of children during the legal process.
- Integrate practice and research: Through the data gathered from respondents (professional role-players), a protocol will be developed and tested.
- Increase professional accountability at micro and macro levels: Once the protocol is tested in practice and evaluated, it can be implemented as part of the professional accountability.

Mouton and Marais (1990:169-170) stated that the preference to a single approach in the social science cannot succeed in encompassing human beings in their full capacity.

The most effective approach within the aim of the study will thus be a combined qualitative/quantitative approach, and more specifically Creswell's model of dominant-less dominant approach. De Vos (2002, 366) described this as an approach where the researcher presents the study within a single, dominant paradigm with one small component of the overall study drawn from the alternative paradigm.

According to Fouchè & Delport (In De Vos, 2002:77) a qualitative approach refers to research that elicits participant accounts of meaning, experience or perceptions.

Schurink (1998:240) said:

The aim of qualitative research is not to explain human behaviour in terms of universally valid laws or generalisation, but rather to understand and interpret the meaning and intentions that underlie everyday human action.

Mouton (1986:241) added to this when he refers to qualitative research as an approach that concentrate on *qualities of human behaviour* opposed the quantitatively measurable aspects of human behaviour.

Schurink (in De Vos, 1998: 241-243) effectively summarised the combined qualitative/quantitative approach as follows:

The main aim of the quantitative approach is to measure the social world objectively, to test hypotheses and to predict and control human behaviour. The qualitative approach is more interpretive and holistic in nature with its main aim to understand social life and the meaning that people attach to everyday life situations.

In order to develop a protocol, data will be needed from the professional role-players and the data in question will be of a principally verbal nature – therefore a qualitative approach, as the less dominant approach will be utilised.

After the data has been analysed from which a protocol will be developed, the protocol will, through a quantitative approach, be implemented, tested and evaluated. The overall paradigm will be thus be quantitative – as the goal of the research will be the developing and testing of a protocol.

1.6 Type of research

In order to address the aim and objectives of this intended study, namely to develop, test and evaluate a protocol to protect the rights of children during a legal process, applied research with intervention research as sub-type, will be the most appropriate.

The New Dictionary of Social Work (2004:4) refers to applied research as directed at the solution of some problem in Social Work. Fouchè & De Vos (1998:69) said applied research is directed towards shedding light on or providing possible solutions to practical problems.

Intervention research (as sub type) is a new view of applied research and is defined by De Vos, 2002:396 as:

studies carried out for the purpose of conceiving, creating and testing innovative human services approaches to prevent or ameliorate problems, or to maintain quality of life.

Fouchè (2002:112) mentioned that intervention research is targeted at addressing the application of research in practice. According to the New dictionary of Social Work (2004: 35) intervention research is research directed at the establishment of procedures for designing, testing, evaluating and refining techniques and instruments with a view to intervention in social problems in communities and groups. This links with the main aim of the study to develop a protocol that will enable the professional role-players to recognise and respect the rights of children during a legal process.

In this study it is necessary to remember that we do not need to re-invent the wheel. It is important to consider previous research and elaborate on that. L'Heureux-Dube (1998:385) pointed out that the research by Wallerstein & Kelly (1980) & Wallerstein & Blakeslee (1989) at the time and ten years after a

divorce, showed that children's voices have gone unheard in the law or, at best, have been misheard or misinterpreted. By developing, testing and evaluating a protocol to protect the rights of children during a legal process, problems can be ameliorated and eventually children will be able to maintain quality of life.

1.7 Research design and methodology

1.7.1 Design

Fouchè (2002:271) pointed out that the definition of a research design from a quantitative as well as a qualitative approach is rather ambiguous. On the one hand, some authors refer to 'design' as the plan or blueprint of how one intends conducting the study. On the other hand, some authors only use the term 'design' to refer to small, worked-out formulas from which researchers can select one or more that may be suitable to their specific research goal.

The New Dictionary of Social Work (2004: 53) refers to research design as the plan of a research project through which data is gathered in order to investigate the hypothesis or to realise the aim.

The researcher chose the single system design (specifically the A-B-A design) as most appropriate, considering the fact that

- The motivation for this study stems from a problem as experienced in practice and thus the need to work scientist-practitioner orientated.

- That the research approach being combined qualitative/quantitative research according to Creswell's model of dominant/less dominant approach.
- The type of research being applied, with intervention research as sub-type.

Strydom (In De Vos, 2002:150) referred to a seminar by Prof. Walter Hudson indicating that this design can become a normal part of a social worker's dealings with all cases. The rationale being that, before an intervention programme is implemented, time is taken to explore the most important dimensions of a problematic situation (**A**: Baseline measurement); The intervention programme is then implemented (**B**: Intervention) and followed by an evaluation of the effectiveness thereof (**A**: Measurement compared to baseline). This rationale falls exactly within the blueprint of intended research: The qualitative part of the research as the less dominant approach will be to explore the phenomenon as experienced by the professional role-players dealing with children during the legal process. From this data gathered, the intervention programme (protocol) will be developed, implemented and evaluated for effectiveness (quantitative as dominant approach).

According to Strydom (2002: 151) the term *single-system design* denotes the study of a single subject on a repetitive basis. This single subject can be an individual, a family, a group, an organisation, a community or any client system. He also quoted three different authors (Barker, 1997:348; Salkind, 2000: 233 and Williams, 1995: 161) who agree that the single-system

approach is the ideal way in which the effectiveness of treatment interventions or the effects of manipulating an independent variable can be evaluated. In this way the quality of service and accountability can be enhanced. Bloom and Fisher (1982:6) added that:

Probably the most productive way of assessing whether or not our practice is successful, is with systematized, objective methods of research that are capable of being repeated (replicated) by others. Using this design is therefore also one way of enhancing a linkage between research and practice.

With regard to this study, the *single system* would be the professional role players involved in the research and the *variable* will be the developed protocol. To enhance the linkage between research and practice, the protocol (when proven effective) can be replicated by all professional role-players (respondents) involved in dealing with children during the legal process.

1.7.2 Methodology

1.7.2.1 Data collection

The research procedure for the intended study will be done according to the first five steps of the intervention research process:

- Problem analysis and project planning
- Information gathering and synthesis
- Design

- Early development and pilot testing
- Evaluation and advanced development

The above can be discussed as follows:

Step 1: Problem analysis and project planning.

Through the qualitative approach, as the less dominant part of the study and with the given research question in mind – the data collected need to determine the following:

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

According to Kvale (1996:124), a qualitative interview obtains qualitative descriptions of the life world of the subject with respect to interpretation. Therefore, the data collection method best suited to the information required, is that of a semi-structured face-to-face interviewing schedule.

A semi-structured interview schedule will be used to gain a detailed picture of the participant's beliefs about or perceptions of a particular topic (see Greeff, 2002:302).

Step 2: Information gathering and synthesis

A literature review of previous empirical research and computerised databases will be done. It is also important to study natural examples – interviews with people (clients) who have actually experienced the problem as well as programmes or practices which previously have addressed the problem. The reason being, as De Vos (2002:407) said:

By studying successful and unsuccessful models or programmes that have attempted to address the problem, researchers identify potentially useful elements of an intervention.

Fawcett et al (1994:33) as quoted by De Vos (2002:407) concluded that the synthesis of existing knowledge helps to guide design and develop activities.

Step 3: Design

Design will be the development of a protocol, based on the information gathered as to what is necessary to enable the professional role-players to protect the rights of children during a legal process.

Step 4: Early development and pilot testing

The implementation of the protocol on a trial basis in order to test its adequacy and to enable the researcher to redefine and redesign it as necessary.

Step 5: Evaluation and advanced development

The implementation of the protocol will be followed by an evaluation in order to refine the intervention. De Vos (2002:414) stressed the importance of this step by saying:

Errors are instructive: the results of full field testing are used to resolve problems with the measurement system and intervention.

This quantitative data will be collected by means of a questionnaire. A questionnaire is defined as a set of questions on a form that is completed by the respondent in respect of a research project (New Dictionary for Social Work, 2004:51).

Bailey (1994:108) said:

The key word in questionnaire construction is relevance. The questions that are to be asked must be relevant to the goals of the study and to the individual respondent that will be taking part in the study.

1.7.2.2 Data analysis

De Vos, et al (In De Vos, 2002: 223) explains that data analysis (in the quantitative paradigm) entails that the analyst breaks data down into constituent parts to obtain answers to research questions and to test research hypotheses. Data (quantitative and qualitative) can be analysed either

manually or by computer, depending on the amount of data to be analysed. The researcher will analyse the data both manually and by computer, and display it by means of tables and graphic presentations – from which interpretation of the data will follow. As Kerlinger (1986: 125-126) stated, the purpose of analysis is to reduce data to an intelligible and interpretable form so that the relations of research problems can be studied, tested and conclusions drawn.

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:

- 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.)
- 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).

1.8 Pilot study

In order to undertake scientific research on a specific problem, the researcher should have thorough background knowledge about it and, as Strydom

(2002:210) confirms, the pilot study is one way in which the researcher can orientate herself to the project she has in mind.

According to Bless & Higson-Smith (1995:50), one of the uses of a pilot study is to allow the evaluator to investigate the accuracy and appropriateness of any instrument that have been developed. Neuman (1997:141) supports this view by stating that the aim of a pilot study is in fact to improve reliability.

A pilot study is defined in the New Dictionary for Social Work (2004:45) as the process whereby the research design for a prospective survey is tested.

Strydom (In de Vos, 2002: 211) adheres to the definition given by Bless & Higson-Smith (2000:155): A small study conducted prior to a larger piece of research to determine whether the methodology, sampling, instruments and analysis are adequate and appropriate.

The researcher's personal opinion of the pilot study as an essential part of the larger research process is that it serves as a pre-test to increase the precision of the main investigation.

The pilot study will entail the following:

- Literature study
- Feasibility of the interview schedule as measuring instrument

1.8.1 Literature study

Meaningful research can only be undertaken when researcher is fully up to date with existing knowledge on the subject and situation - both locally and internationally.

After identifying a problem situation from practice experience, researcher did a broad study of the recognition of children's rights. It was determined that "the child's right to be heard" is more of rhetoric than a reality in practice.

Researcher now needs to explore:

- From the professional role-players viewpoint, what is causing a discomfort in working with children and protecting children's rights.
- What is necessary to enable the professional role-players to protect the child's rights during the legal process.
- The person-centred approach as the theoretical base for this research.
- The needs and life tasks of children in their different developmental phases.

It is of cardinal importance when working with children to have a knowledge-base about their needs and life tasks in the different developmental phases – specifically as the protocol will be developed around the needs of children;

- The international statutory framework and the implementation of children's rights.
- The South African statutory framework and the implementation of children's rights.

The search for relevant information is conducted at the University of Pretoria's Academic Information Centre - using local as well as international database and are structured to include magazines, books and electronic magazines.

An information search via the Internet will also be done.

1.8.2 Pilot test of data collection instrument

The data collection instruments will be the semi-structured interview schedule for the qualitative part of the study and the questionnaire for the quantitative part of the study. Researcher intends to use a small group of professional role-players (one family advocate, one lawyer practising family law, one social worker) in the pilot study. A Face-to-face interview will be conducted with each of them and, after utilising the proposed protocol, they will be requested to complete the relevant questionnaire.

1.8.3 Overview of the feasibility of the study

The researcher does not foresee any problems in conducting the research.

The purpose and aim of the intended study has been discussed with the relevant professionals. They were very positive about being included as well as about the relevance of the study as such.

After identifying the participants, and fully informing them of the purpose of the research, they will have to provide their voluntary written consent for participation in the study.

It is anticipated that costs for the entire project will be kept to an absolute minimum, involving the time required for the interviews, venue and arrangements, fuel for the researcher's transport, the necessary administration costs, data processing and printing costs.

1.9 Description of research population, delineation of sample and sampling method

1.9.1 Description of research population

Powers, Meenaghan and Toomey (1985:235) define a population as a set of entities for which all the measurements of interest to the practitioner or researcher are represented. The entities may be people or things.

Seaberg (1988:240) also defines a population as the total set from which the individuals or units of the study are chosen. A population is the totality of persons, events, organisation units, case records or other sampling units with which our research problem is concerned.

Strydom & De Vos (1998:190) accept the distinction of Arkava & Lane between the terms "universe" and "population" in that "universe" refers to all potential subjects who possess the attributes in which the researcher is interested. "Population" refers to individuals in the universe who possess specific characteristics. For the purpose of this study, researcher would like to adhere to the same distinction.

The 'universe' will include everybody involved in legal processes. The 'population' will refer to all professional role-players. As the purpose of the study is to explore how the rights of the children can be protected through the development of a protocol, the population will specifically be the relevant professional role-players involved with children in the legal process.

1.9.2 Delineation of sample

According to Arkava & Lane (1983:27) a sample is the element of the population considered for actual inclusion in the study. Seaberg (1988:240) refers to sampling units (persons, events, organisation units, case records) with which the research problem is concerned. The following characteristics will determine the delineation of the sample:

- Individuals representing from both the Law - and Helping professions like Judges, Commissioners of Child Welfare, Family Advocates, Lawyers, Social workers.
- They must work within the jurisdiction of the Pretoria, Johannesburg Supreme Court.
- They must work with child related issues.
- They must have direct contact with the child.

1.9.3 Sampling method

As the study is of a combined qualitative - quantitative nature, the method of non-probability sampling will be utilised because, as Denzin and Lincoln (2000:370) point out, researcher seek out individuals, groups and settings where the specific process being studied are most likely to occur.

The most appropriate technique will be purposive sampling because it is based on the judgement of the researcher. Strydom & Delport (In De Vos, 2002:334) said: In purposive sampling a particular case is chosen because it illustrates some feature or process that is of interest for a particular study. The same authors also stressed the cardinal importance of clear identification and formulation of criteria for the selection of respondents. The sample will be composed of elements that contain the most characteristics representative of the research population:

- Criteria for the professional role-players will be their involvement in either private- and/or family law where children are involved in the legal process.
- Professional role-players prepared to implement the developed protocol.

For the purposes of this study, the sample will comprise of at least two judges, two family advocates, five commissioners of child welfare, five lawyers and five social workers.

1.10 Ethical aspects

Levy (1993:2) said:

Ethics imply preferences that influence behaviour in human relations. Since human beings are the objects of study in the social sciences, this brings its own unique ethical problems to the fore which would never be relevant in the pure, clinical laboratory settings of the natural sciences.

In the social work field there is an increasingly realisation that the recognition and handling of ethical aspects are imperative if successful practice is the goal.

Strydom (2002:63) defines ethics as

a set of moral principles that are suggested by an individual or group, are subsequently widely accepted, and offer rules and behavioural expectations about the most correct conduct towards experimental subjects and respondents, employers, sponsors, other researchers, assistants and students.

Anyone involved in research needs to be aware of the general agreements about what is proper and improper in scientific research. Ethical guidelines thus serve as standards and as the basis on which each researcher ought to evaluate his/his own conduct.

Researcher would like to present a study which fulfils all ethical requirements. What follows is an account of the manner in which the relevant concerns will be addressed in this study:

1.10.1 Potential harm to participants

As Strydom (2002:64) confirmed, harm can be done in a physical and / or emotional manner. Physical discomfort can be seen as physical harm and, according to Dane (1990:44) it is the researcher's ethical obligation to protect respondents against any form of physical discomfort that may emerge from the research project.

In order to counter such a situation, the researcher will ensure (as far as possible) that the environment where-in the interviews will be conducted, will be relaxed and participants will be granted breaks if they require so during the interview. The initial consent form will mention this.

Emotional harm is more difficult to predict but often has more far-reaching consequences for respondents. Participants may experience emotional discomfort in that sensitive issues will be discussed, or stress when being interviewed. It is therefore important that they be thoroughly informed beforehand about the potential impact of the investigation. Participants will be assured that their identity and views will be regarded as confidential as is an accepted practice in this kind of research. Researcher will further ensure that only information crucial for the research goals will be included in the

measuring instruments, in order to protect respondents from concrete harm with regard to their employment situation.

1.10.2 Informed consent

According to Strydom (2002:65) obtaining informed consent implies that all possible or adequate information on the goal of the investigation, the procedures that will be followed during the investigation, possible advantages, disadvantages and dangers to which respondents may be exposed as well as the credibility of the researcher, be rendered to potential respondents. Accurate and complete information such as the demands the project will make on their time, activities and disclosure of confidential information, will be included in the consent form in order to allow participants to make a voluntary, thoroughly reasoned decision about their participation. They will also be made aware of the fact that they are at liberty to withdraw from the investigation at any time.

The purpose of informed consent will be to relieve any possible tension, aggression, resistance or insecurity of the participants and ensures their full co-operation. Researcher will furthermore undertake to handle unforeseen situations in the best possible ethical manner.

1.10.3 Deception of participants

Neuman (2000:229) states that:

Deception occurs when the researcher intentionally misleads subjects by way of written or verbal instructions

Corey, et al. (1993:230) echoes this by adding that:

It would be seen as deception if any information is withheld or incorrect information is offered in order to ensure participation.

Every attempt will be made from the onset to ensure that subjects are aware of the real goal of the study as well as the experiences they might expect as a result of their inclusion in the study. Should any unforeseen developments occur, it will be discussed with participants immediately.

1.10.4 Violation of privacy / anonymity / confidentiality

Strydom (2002: 67) regards violation of privacy, the right to self-determination and confidentiality as synonymous. The right to privacy, according to Singleton (1988:454), is

The individual's right to decide when, where, to whom, and to what extent his or her attitudes, beliefs and behaviour will be revealed.

Strydom (2002: 67) adds to above opinion of Singleton by also taking into consideration the respondent's personal privacy and identity while handling information in a responsible, confidential manner.

Researcher cannot appeal to participants to acknowledge the rights of children if their (participants') rights are not respected. Researcher therefore intend to, at all times, be sensitive to the rights of each individual participant by ensuring their anonymity, adhere to their right to self-determination and to treat all information in a responsible, confidential manner.

1.10.5 Actions and competence of researcher

Strydom (2002: 70) stated that:

Ethically correct actions, attitudes and clothing for every specific research project should be considered under all circumstances and should be part and parcel of the competent researcher's equipment.

The proposed participants included in the study will be valued colleagues from the legal- as well as the helping professions. Researcher will take special care to be at all times, professional, tactful, honest and neutral. It is anticipated that the professional role-players may approach the situation with caution. Researcher intends to respect their views, opinions and restrain herself from making value judgements.

1.10.6 Release or publication of the findings

According to Strydom (1994: 18 – 19) a highly scientific investigation will not be viewed as research unless the findings of the study is introduced to the reading public in written form. Researchers should compile the report as accurately and objectively as possible – containing all essential information. Strydom (2002:72) added that shortcomings and errors should be admitted and all due recognition should be given to sources consulted.

Researcher undertake to release findings in such a manner that utilisation by others is encouraged, since that would be the ultimate goal of the research project.

1.11 Definitions of key concepts

1.11.1 Rights of children

According to Hunt (1990:309) rights have the capacity to be elements of emancipation. He cautions that rights can only be operative as constituents of a strategy for social transformation as they become part of an emergent common sense and are articulated within social practices.

Freeman (1999:51) is concerned that, even with an awareness of children's rights, the emphasis has been on protecting children, rather on encouraging their active participation in decision-making processes.

The term “rights” thus indicates “participation” and in this regard the United Nations Convention on the Rights of the Child, is the clearest international endorsement of a child’s participatory rights.

As stated in the Background note No. 7 of the United Nations Convention on the Rights of the Child, 1989:

Participation is normally understood as an active and conscious endeavour. By denying a child the opportunity to participate, decision makers could miss crucial information and insight.

Nations are being asked to look beyond their traditional concepts of childhood and consider the needs of children in a changing world. The nations which agree to ratify the United Nations Convention on the Rights of the Child (as adopted by the United Nations General Assembly in November 1989) will effectively endorse their children’s right to

- Express opinions and to have their opinions considered in matters which affect their well-being.
- Exercise freedom of thought, conscience and religion, subject to appropriate parental guidance.
- Meet with others and to join or form associations.
- Have access to, and share, information from a diversity of national and international services – especially services aimed at promoting their moral well-being and physical and mental health.

The purpose of allowing children rights and acknowledges, it implies that children will have to be treated as people rather than possessions. The United Nations Convention (1989) confirms the latter as follows:

The child should be fully prepared to live an individual life in society and be brought up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

For the purpose of the intended study, children's rights would mean *the opportunity to participate in their own lives and to be respected as individuals in own right.*

1.11.2 Legal process

There are two types of cases within the legal system namely criminal cases and civil cases. In the study of Carstens (2001:47) criminal cases is defined as cases where the state takes action against an individual to determine if that individual is guilty or not guilty of a crime. In civil cases, one individual is taking action against another.

Ruegger (2001:2) differentiated civil cases between private law proceedings and public law proceedings.

Most children who are the subjects of private law proceedings are those whose parents are in the process of divorcing. According to Ruegger (2001:2) private law proceedings constitute one area where children are often powerless:

When initiating proceedings, the parent seeking divorce completes a form setting out the proposed arrangements as to the child's accommodation, education, care, financial support, and contact with the non-residential parent. There is however, no provision for setting out the child's own views, no obligation for the parent to ascertain them or discuss the proposals and no requirements to indicate whether the child is in agreement with the proposed arrangements. Accordingly if there is no dispute between the parents there is little likelihood that the court will be aware of the wishes and feelings of the child.

In Private law, children do not have party status and thus do not have access to legal advice and representation in their own right, the right to attend court or to express their views to the court.

Public law proceedings, according to Ruegger (2001:3) are those in which the court's authority, to interfere in what would normally be considered private family business, is sought by the state. The state must demonstrate that the child has suffered, or is likely to suffer, significant harm, and that this is attributable to the care they receive from their parents. In public law proceedings children have party status.

For the purpose of the intended study, the legal process implies

any investigation that lead to an order made by court in respect of the child. These orders can be made within either criminal law proceedings or civil law proceedings.

1.11.3 Client-Centered Approach / Person-Centered counselling

The Person-Centered approach, developed by Carl Rogers in 1940, is based primarily on the belief that people behave in accordance with their self-concept, which is heavily influenced, often falsely, by their experience with others.

Gillis (1994:197) said:

The major objective of the approach is to help individuals develop a greater awareness and acceptance of their true feelings, so that their self-concepts become a more accurate reflection of their real selves.

According to Patterson (1986: 379-418) Client-Centered Interventions hypothesises that human beings are rational, socialised, constructive and forward moving and that each individual has the potential for growth and self-actualisation.

Mearns & Thorne (1999:6) added to Patterson's opinion by saying:

A Person-Centered point of view places high value on the experience of the individual human being and on the importance

of his or her subjective reality. It also challenges each person to accept responsibility for his or her own life, and to trust in the inner resources which are available to all those who are prepared to set out along the path of self-awareness and self-acceptance.

Mearns (1994: ix) stated that the counsellor is the guest within the client's world of experience (which encapsulates the essence of Person-Centered Counselling).

Researcher would then define the Person-Centered Intervention Approach as *an approach which focuses on the individual's perception of his world, and empower that individual to accept responsibility for his/her own life.*

Taken into consideration the focus of the intended study namely to acknowledge children's rights to participate in their own lives, it is clear that the researcher cannot undertake this study with a theoretical base other than the Person-Centered (Child Centered) Approach.

1.11.4 Protocol

Carstens (2001:80) refers to protocol as

A structure or guideline which provides checkpoints that interviewers use to orient themselves throughout the interview process.

She added that the protocol should cover the entire process of involvement with a client, from the first instruction received to the closure of the case.

Ruegger (2001:45) pointed out that, for instance the role of a Guardian ad Litem is to assist not just the court but the child as well, in trying to make sense of their needs, wishes and feelings, and to present them to the court in a way that gives the child a sense of involvement in the proceedings. This seems to be problematic as these aims can seem to be completely at variance with each other. A guideline, as mentioned above, will thus be of invaluable use.

Taken above into consideration, researcher will define a protocol as follows:

A guideline which provides checkpoints to enable the professional role-player throughout the legal process to present the child's wishes and feelings to court in a way that gives the child a sense of involvement in the proceedings.

1.12 Division of research project

The research report will consist of a total of six chapters, which will be presented as follows:

Chapter 1

The research process of the study will be discussed in detail.

Chapter 2

The Person-Centered (Child Centered) Approach as the theoretical foundation to the empirical study as well as the base for the development of the protocol.

Chapter 3

The needs and life tasks of children in their different developmental phases.

Chapter 4

The focus will be placed on a discussion of all legislative issues regarding the rights of children – globally and in South Africa.

Chapter 5

All aspects regarding the empirical study will be dealt with in this chapter.

Chapter 6

Conclusions and recommendations.

CHAPTER 2

THE PERSON-CENTERED APPROACH AS THEORETICAL FOUNDATION

2.1 Introduction

Working with people and be involved in taking crucial decisions about their future is an awesome kind of responsibility. Any input, whether meaningful or not, has a permanent impact on the lives of the people we work with. This is even more truer in work with children. Selma Fraiberg (In De Vos, 1979:65) stated it as follows:

The social worker carries the weight of the responsibility for making critical decisions for children and their families. This is an awesome kind of responsibility and perhaps an attitude of awe toward such undertakings is a proper one for us. We need to feel inadequate before the magnitude of these tasks.

Selma Fraiberg stated further that the chief source of error in our work is the equipment we bring to our work. In researcher's opinion, abovementioned statement is especially true when working with children. The task entrusted to the social work profession under such circumstances to always make the right decision, remains therefore a great responsibility. Doing justice to this task is however a challenge that could also serve to enhance the standard of professionalism in our work.

Evans (1997: 357-358) formulated the following requirements for professional competence, which comprises of four important components:

- A repertoire upon which the worker draws, which contains
 - a] the requisite knowledge, skills and values.
 - b] attributes relevant to the professional worker as a whole person, including warmth, empathy, emotional maturity, commitment, integrity and creativity.
- Effective practice (all the activities undertaken by the professional worker including direct work with service users, indirect work, internal judgment and decision making).
- Higher order learning skills, including skills for employing the repertoire of knowledge, skills and values in practice as well as the ability of evaluating practice outcomes.
- Development through time.

It would thus be irresponsible and unprofessional to work from a 'gut feeling' only and not be guided into a structured way of thinking as when working according a specific approach.

The approach that the researcher found most appealing through her 23 years of practice experience has been the Person Centered Approach by Carl Rogers.

As Rogers, researcher firmly believes that one cannot work with people without being able to 'hear' them.

Rogers (1980:26) referred to this ability as 'growth-promoting interpersonal communication' and describes it as follows:

A sensitive ability to hear, a deep satisfaction in being heard; an ability to be more real, which in turn brings forth the more realness from others; and consequently a greater freedom to give and receive love – these are the elements that make interpersonal communication enriching and enhancing.

Researcher further believes that the Person-Centered Approach enables the social worker to hear and so reached the child as well as to specifically address the rights of children in an effective way. The Person Centered Approach will therefore form the theoretical basis for this study and will be discussed in this chapter.

2.2 Defining the Person-Centered Approach

The Person-Centered Approach was founded and developed by Carl Ransom Rogers (1902 – 1987) who, according to Prochaska & Norcross (1999:140) demonstrated a profound openness to change. From Prochaska & Norcross (1999:140 – 142), it was learned that Rogers personally experienced the devastating effects on one's self-esteem of parents imposing conditions of worth on children. Since 1927, when he started as an intern, Rogers spent twelve years as a psychologist at a child guidance clinic in Rochester, New York. The seeds of Roger's ideas thus germinated in his work with children and their mothers.

Apparently, Rogers found both inspiration and confirmation of his views in the work of Otto Rank (1936), who emphasized the importance of the humanity of therapists rather than their technical skills in remedying human problems. Rogers (1980:114) referred to two tendencies as the foundation blocks of the approach, namely an actualizing tendency and a formative tendency. According to Rogers (1980:115), the central hypothesis of the approach can be formulated as follows:

Individuals have within themselves vast resources for self-understanding and for altering their self-concepts, basic attitudes and self-directed behaviour; these resources can be tapped if a definable climate of facilitative psychological attitudes can be provided.

Rogers (1987) believed that the tendency to self-actualization exists in every individual, and this tendency is facilitated in a climate where certain psychological conditions prevail. In the more recent literature [Prochaska & Norcross, 1999: 146 – 148] six conditions are specified, namely:

- Relationship.
- Vulnerability.
- Genuineness, realness or congruence.
- Unconditional positive regard.
- Empathic understanding.
- Personal power.

According to Rogers (1980:15), these conditions must be present in any climate aiming at growth promoting. Such a climate is necessary in any situation in which the development of the person is a goal.

2.2.1 Relationship

Rogers has stated explicitly in 1957 and again in 1959 that all six conditions are necessary for a relationship to result in constructive personality change. Obviously, two persons must be in a relationship in which each makes some perceived difference to the other.

2.2.2 Vulnerability

The client in the relationship is in state of incongruence and is therefore vulnerable to anxiety. This vulnerability to anxiety is what motivates a client to seek and to stay in the therapeutic relationship.

2.2.3 Genuineness

The term ***genuineness / congruence*** refer to the therapist making himself transparent to the client. As Rogers (1980:115) stated:

The more the therapist is himself in the relationship, putting up no professional front or personal façade, the greater the likelihood that the client will change and grow in a constructive manner.

This implies that the therapist is congruent and genuine in the therapeutic relationship. Genuineness, according to Prochaska & Norcross (1999:147),

means that therapists are freely and deeply themselves. Thus with the actual experiences of the therapists being accurately represented in their awareness of themselves. It is the opposite of presenting a façade.

2.2.4 Unconditional Positive Regard

Unconditional positive regard refers to a positive, acceptant attitude towards whatever the client is at that moment (Rogers, 1980:116). It is important to note that 'acceptance' does not mean 'approval'. As stated by Spies (Syllabus Theme 2 notes) the therapist need to accept an individual, group or community with whom they are working at any given time with all the feelings, attitudes and values that are present. Such an attitude requires an acute awareness of one's own values, biases and judgments, and an ability to suspend those during one's encounter with others. Prochaska & Norcross (1999:147) explained the essence of this condition as follow:

The client's incongruence is due to conditions of worth that have been internalized from other's conditional positive regard. In order for the client to be able to accept experiences that have been distorted or denied to awareness, there must be a decrease in the client's conditions of worth and an increase in the client's unconditional self-regard.

In other words, if the therapist is able to value and consistently care about clients, no matter what the clients are experiencing or expressing, then the clients become free to accept all that they are with love and caring.

2.2.5 Accurate Empathy

With the term *Empathic understanding* Rogers (1980:116) referred to the therapist's ability to sense accurately the feelings and personal meanings that the client is experiencing, and to communicate this understanding to the client. Empathy is not only a technique but also a way of being with the client. The client must experience, know and hear that he/she is understood.

As Prochaska & Norcross (1999:148] explained it, empathy means that the therapist senses the client's private world as if it were his/her own, without his/her own anger, fear or confusion getting bound up in the experience. With this clear sense of the client's world, he/she can communicate their understanding, including their awareness of the meaning in the client's experience of which the client is scarcely aware.

Without empathic understanding, clients cannot trust the therapist's unconditional positive regard. Rogers' statement that accurate empathy and unconditional positive regard ensures that clients come close to being fully known and fully accepted, brings us to the next condition.

2.2.6 Personal power or autonomy

The condition of personal power can be described as the ability to act effectively in accordance with one's own intentions, will, and capability or conscious choice rather than under external control. It is a state where-in the person is aware of and can act upon his/her feelings, needs and values rather than looking to others for direction (Spies, Syllabus Notes 2).

Patterson (1986:379) further emphasized the value of the Person Centered Approach when he refer to the approach as ‘**The theory of the fully functioning person.**’ He stated it as follows:

Each individual possesses an inherent tendency toward self-actualization; each individual has the capacity and tendency to symbolize experiences accurately in awareness. The individual has a need for positive regard from others and for positive self-regard. When these needs are met, to a maximum degree, the individual will be a fully functioning person.

Patterson’s referral is a cryptic summary of the essence of the approach and is confirmed by Rogers’ (1980:116-117) explanation of how this ‘growth-promoting’ climate (as described above), can bring about change:

As persons are accepted and prized, they tend to develop a more caring attitude toward themselves. As persons are empathically heard, it becomes possible for them to listen more accurately to the flow of inner experiencing. As a person understands and prizes self, the self becomes more congruent with the experiences. The person thus becomes more real, more genuine. These tendencies, the reciprocal of the therapist’s attitudes, enable the

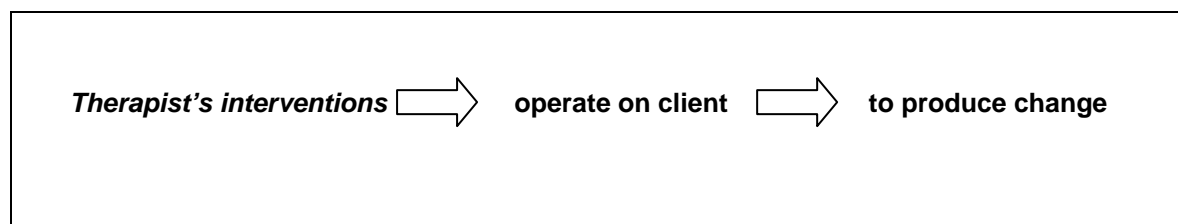
person to be a more effective growth-enhancer for him or herself.

There is a greater freedom to be the true, whole person.

2.3 Value of the Person-Centered Approach

Bohart (2004:102-106) explained that typical views of therapy are therapist-centric in that therapists and their interventions are portrayed as operating on client processes to create change. The “therapist-centric” model can be viewed as follows:

Figure 1: Therapist-Centric Model



In Person Centered Therapy however, the clients are seen as active change agents. Bohart (2004:106) states that it is clients who make therapy work.

The Therapist-Centric Model is thus changed as follows:

Figure 2: Person-Centered Model



Bohart (2004:102) explained the process, saying:

Clients are seen as active change agents who extract patterns of meaning from the therapy interaction, deduce implications, and use therapist empathy responses for purposes of self-support, validation, exploring experience, testing self-understanding, creating new meaning, and making connection with the therapist.

As van der Veen (2004:1-8) stated, there are certain essential and valuable characteristics and principles that are central and unique to Person Centered Practice that distinguish them from other practices. These core principles are the principle of self-direction and of mutuality.

Clients come to therapy when they need some assistance or support in order to move forward from the crisis they experience. This suggests that people (children included) are capable of generating personal growth on their own.

Rogers' (1980:330) opinion that ***“The very difficult crises of tomorrow represent equally great opportunities”*** is drawn from an analogy from the Chinese language in which the same character stands for two meanings, namely

Crisis and Opportunity.

If these believes, namely that

- every crisis represents an opportunity, and
- children too are capable of self-direction

can be internalized by children as well as the relevant professional role-players working with children, we will have a remarkable positive population.

For many people it is convenient to believe that “children are to be seen and not to be heard”. Yet, it is important to remember that the children of today will be our adults of tomorrow.

2.3.1 Qualities of the person of tomorrow

Rogers (1980: 350-352) identified certain characteristics that will enable a person to live in this revolutionized world of tomorrow. Each characteristic will be briefly discussed:

- **Openness:** The ability to be open to experience, to new ways of seeing, of being, new ideas and concepts.
- **Desire for authenticity:** The individual should value communication as a means of telling of the way it is.
- **Skepticism regarding science and technology:** The individual shows a distrust in science and technology that is used to conquer the world of nature and to control the world's people. On the other hand, when science is used to enhance self-awareness and control of the person by the person, they are eager supporters.
- **Desire for wholeness:** These persons do not like to live in a compartmentalized world. They strive for a wholeness of life, with

thought, feeling, physical energy, psychic energy, healing energy all being integrated in experience.

- The wish for intimacy: Seeking new forms of closeness, of intimacy, of shared purpose.
- Process persons: The awareness that the one certainty of life is change. These individuals are or should be vitally alive in the way they face change.
- Caring: They are caring, eager to be of help to others when the need is real.
- Attitude towards nature: The ability to be 'ecologically minded' – in other words, they feel a closeness to and a caring for nature.
- Anti-institutional: These persons have an antipathy for any highly structured, inflexible, bureaucratic institution. They believe that institutions should exist for people, not the reverse.
- Authority within: The ability to trust in your own experience and a profound distrust of external authority.
- Un-importance of material things: The person should be fundamentally indifferent to material comforts and rewards. Money and material status symbols should not be their goal.
- A yearning for the spiritual: In other words, the individual will always yearn for meaning and purpose in life - greater than the individual will.

Abovementioned qualities can only be obtained and ensured when children too are treated with dignity and respect and the professional role player's

behaviour is build on an attitude of warmth, empathic understanding and unconditional positive regard.

David Mearns, a professor of Counselling at the University of Strathclyde, Glasgow and author of numerous academic articles, is fascinated by the fact that even in an apparent 'open' relationship, there is still a large 'unspoken relationship' between client and counsellor. He is delving more deeply not only into the practice of Person-Centered Counselling, but also into the Self theory which underpins it. Mearns (1994:18) said the following about it:

The Person-Centered Counsellor must always remember that he/she is guest within the client's world of experience.

The researcher echoes this statement whole-heartedly – more so when working with children! In practice, researcher is often confronted with children in therapy who are angry because they have to live a life decided by adults. Adults are of the opinion that they know best and are acting in the children's interest. Yet, children perceive it as a lack of trust in them as a person in own right as well as in their abilities.

The issue of how to prevent the therapist's own maladjustments, emotional biases and blind spots from interfering with the therapeutic process, has always been a matter for concern. Rogers (1951:42) is of the opinion though that this issue is minimized considerably in Person-Centered Counselling merely by the very nature of the therapist's function:

In any therapy in which the counsellor is asking himself 'How do I see this?' 'How do I understand this material?' the door is wide open for the personal needs or conflicts of the therapist to distort these evaluations. Where the counselor's central question is 'How does the client see this?' and where he is continually checking his own understanding of the client's perception by putting for the tentative statements of it, distortion based upon the counsellor's conflicts is much less apt to enter, and much more apt to be corrected by the client if it does enter.

The value of the Person-Centered Approach can thus be summarized as follows:

- Counsellors learn that self-disclosure and the expression of feelings are facilitative rather than 'weak'. They experience that cooperation rather than competition enhances both individual and group development.
- Counsellors accept differences – their own and others – as a resource for creativity rather than deviances.
- Person-Centered approach can be described as a double-edge sword in that it sets in motion a series of experiences that ultimately not only produce positive changes in the client, but also in the broader context in which the client is functioning.
- A Person-Centered approach contributes to the ability of clients to take responsibility for themselves, moving from a state of

dependence to increasing independence, from the expression of negative feelings to positive ones, from confusion to insight, and from being stuck to taking action.

- Clients develop an empathetic understanding for other people like their families and friends to which they belong. It enables them to recognize the personalized nature of their own belief system or realities.
- Counsellors using the Person-Centered Approach, often report that their own personal growth has been fostered by their understanding of those with whom they work.
- The Person-Centered Approach can be applied to a variety of fields. It is applicable to individuals, groups and in developmental work within communities.

(Taken from Spies, Syllabus theme 2 notes)

Rogers looked at much more than people's feelings and behaviour. He often refers to the 'self', the values and needs of people he works with and has formulated his theoretical ideas by the way of nineteen propositions, which will be discussed in the following section.

2.4 The integration of the different propositions in practice and implications for the child

According to Du Toit, Grobler & Schenck (2001: xi) these propositions about being human and what possibly motivates people, on various levels of consciousness, provide tentative guidelines for facilitators in their efforts to

understand, think about and make sense of what we can observe of others, like what they say, do and feel when we encounter them. These authors elaborated on this statement as follows:

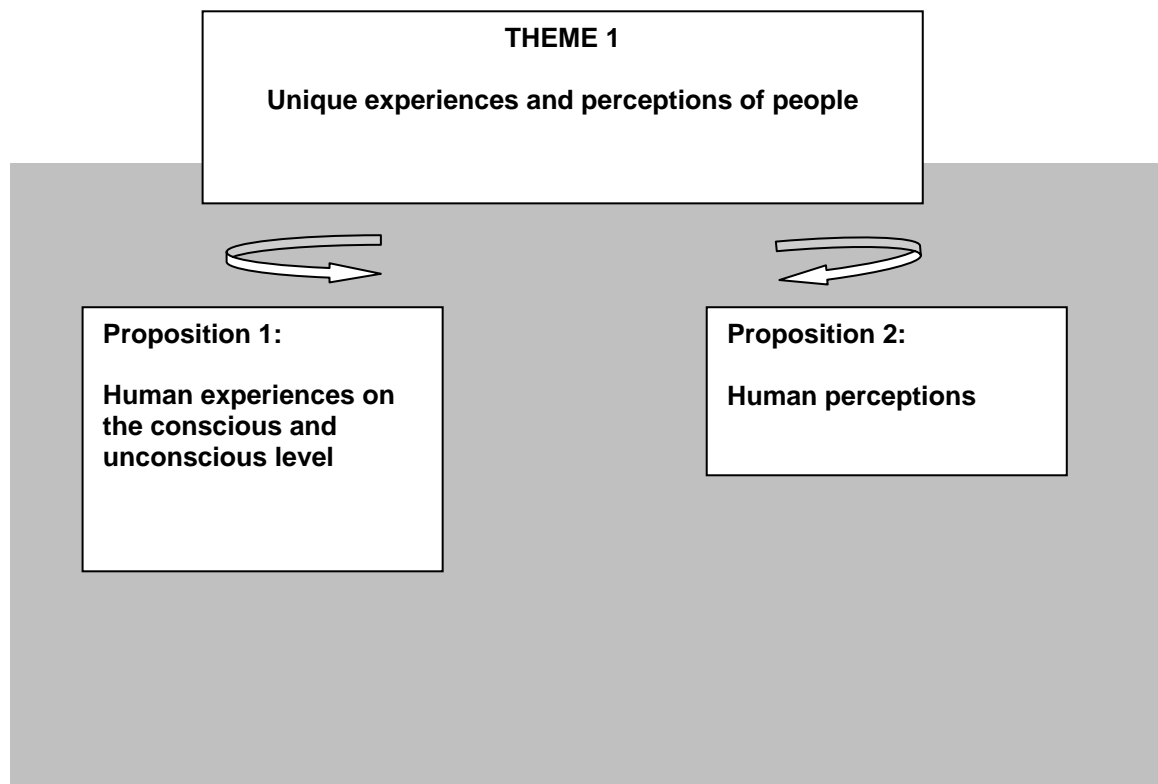
Considering these ideas, even if you do not agree with them, could enable you to think more broadly about other people.

They cautioned however that these propositions are by no means the only ones applicable to human beings. Furthermore one must bear in mind that people are not the propositions, but the propositions can help us explore and consider a spectrum of possible dimensions through which people can be understood.

2.4.1 Discussion of propositions

The propositions will be discussed according to the themes used by Du Toit, Grobler & Schenck (2001). These themes are presented in chronological order together with the various propositions peculiar to each theme. To get a comprehensive view of all the propositions these are presented in chronological order in Annexure 4.

Figure 3: Propositions - Theme 1



2.4.1.1 Proposition 1

Human experiences on a conscious and unconscious level

Every individual exists in a continually changing world of experience of which he is the center
Rogers, 1987: 483

The experiential world of each person includes both conscious and unconscious experiences and it is central, personal and continually changing. According to Rogers (1987: 483), only a portion of the experiential world is

consciously experienced. Du Toit, Grobler & Schenck (2001: 4) added to this by mentioning that this experience is only knowable to the individual and outsiders can only form an idea of that experience if the individual tells them about it. To explain this statement, Rogers used the example of himself sitting on a chair while writing. To feel the pressure of the chair against his body is something he is experiencing, but only as he deliberately think and write about it, does the symbolization of that experience become present in consciousness.

Practical example

A mother approached a counsellor because of continuous conflict between herself and her teenage son. In the individual consultations with mother and son respectively, it was evident that each of them was acting from their own experiential world. Only after sharing their individual experiences with one another, they could understand why each of them reacted the way they did. Part of their experience was still on an unconscious level.

Implications for the child

Every child is a person in own right. Already as a newborn, the baby is entering his experiential world of which he is central. This experiential world is constantly changing as he/she grows and develops. Nobody can on the child's behalf exactly tell what he/she is experiencing or even deny that such an experience does exist. Unfortunately, in practice, adults so-often do not want to realize that children have their own experiences of situations. Researcher is of the opinion that, in dealing with children, it is essential to

allow the child him/herself to share their experience as there is no way of knowing for sure how they experience certain situations. Adults must therefore not decide on their behalf, what they (the children) should be experiencing. According to Landreth (1991:55), children are the best source of information regarding themselves. Oaklander (1988: 324) confirmed this with her opinion that children knows best what is right for them and what their needs are.

2.4.1.2 Proposition 2

Human perceptions

**The organism reacts to the field as it is experienced and perceived. This perceptual field is, for the individual, reality.
Rogers, 1987: 484**

Du Toit, Grobler & Schenck (2001: 8) explained that people respond in terms of both experience and perception and this perception of reality is an individual matter. Rogers (1987: 484) realized that the individual do not react to some absolute reality but to his/her perception of that reality. For them, perception is reality.

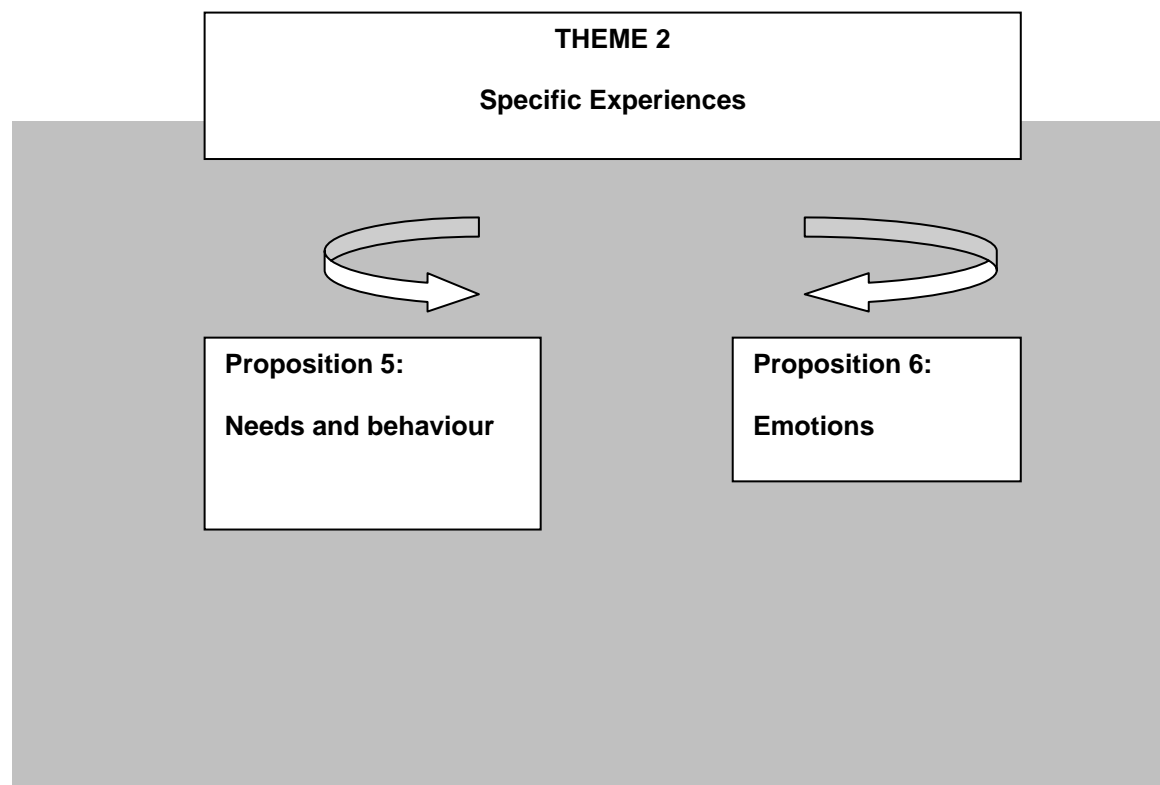
Practical example

Two or more children of the same parents grow up in the same home and are exposed to the same environment, but they each develop their own personality and set of values. One child may be an academic achiever and feels this is the only way to become an important person in the family system. The other child believes you have to be good in sport to be special. For both it is a reality and can not be argued by a counsellor that one is right and the other wrong.

Implications for the child

Every child reacts according to his/her perception of the importance in life (a different way of looking at the same thing) and must be respected for that. In practice, parents often expect from the second child to be similar to his/her older sibling. The result is that the child starts to rebel, which may as well have a negative influence on sibling relationships. In the case of the counsellor, his/her role will be to respect both children's views and help them to understand why their own personal views on being special within the family system, are so important.

Figure 4: Propositions – Theme 2



2.4.1.3 Proposition 5

Needs and behaviour

Behaviour is basically the goal-directed attempt of the organism to satisfy its needs as experienced in the field as perceived.

Rogers, 1987: 491

It is important to look at the relationship between an individual's needs, behaviour and emotions in order to make us aware that people have these kinds of experiences, which are unique to each person. Rogers (1987: 491) expressed the opinion that all needs have a basic relatedness in that it stems from the basic tendency to maintain and enhance the organism. Du Toit, Grobler & Schenck (2001: 14) said the following about it:

Behaviour is essentially purposeful endeavors by individuals to satisfy their needs as experienced in their life world.

Behaviour is thus associated with needs and individual needs motivate behaviour. If one considers this, it is clear that all behaviour has some motive, reason or goal – no matter how odd it may appear to an outsider.

Practical example

Parents of an adolescent boy approached the counsellor, as they are concerned about his juvenile delinquent behaviour. They do not know what causes him to steal and thinks it is a personality disorder. In consultation with the boy, he explained about a 'gang' threatening to kill his parents if he does not comply with their demands (to steal stuff they can re-sell)!

Implications for the child

This child wanted to protect his parents but everybody was focusing on his behaviour.

The importance of listening to the child before judging him or labelling him according to his behaviour is again emphasized. Through the Person-Centered Approach, the professional role-players need to be able to listen, understand and empower the child by asking the questions “What is happening here?” and “What process must be followed to empower this child to deal with the situation?”

2.4.1.4 Proposition 6

Emotions

Emotion accompanies and in general facilitates such goal-directed behaviour, the kind of emotion being related to the seeking versus the consummatory aspects of the behaviour, and the intensity of the emotion being related to the perceived significance of the behaviour for the maintenance and enhancement of the organism.

Rogers, 1987: 492-493

Rogers (1987: 493) referred to behaviour as a goal-seeking effort. In other words, behaviour has a purpose and is focused on fulfilling the individual's basic needs. Du Toit, Grobler & Schenck (2001:17) explained that emotion accompanies and facilitates the purposeful behaviour. The intensity of the emotion correlates with the importance that the person attaches to the behaviour in terms of self-preservation. This intensity of emotions also varies from one person to another and from one situation to the next.

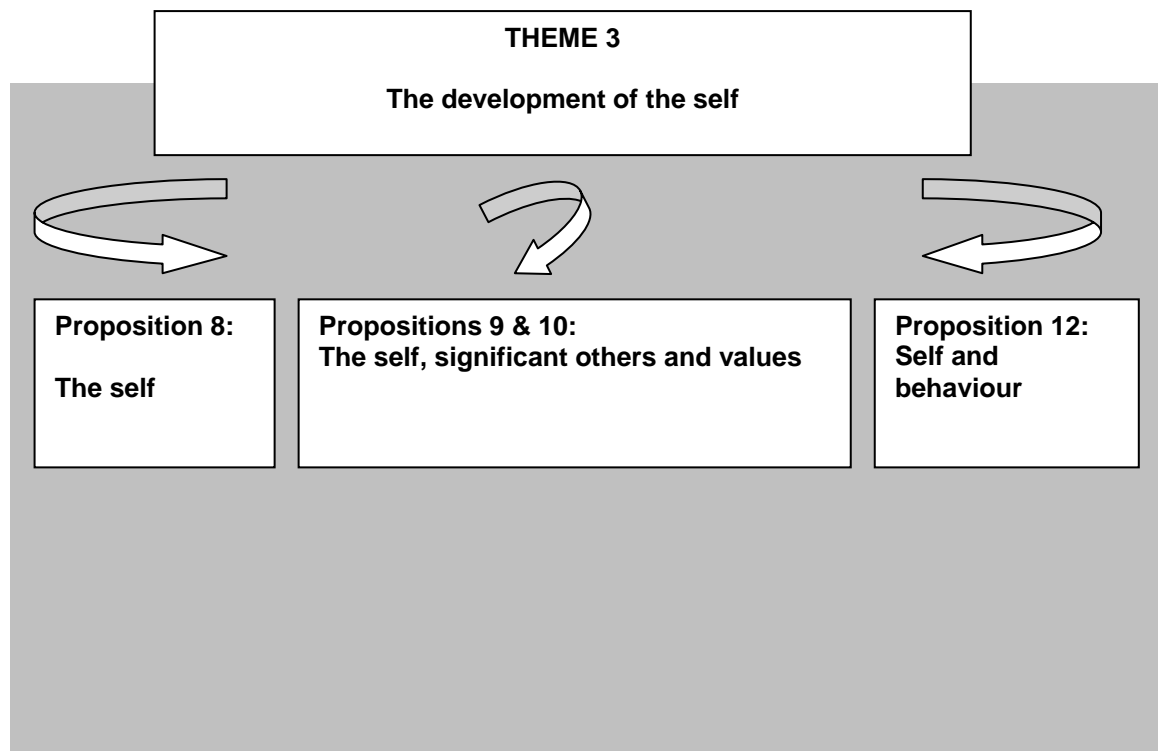
Practical example

Two boys from the same family will react differently to their parents' divorce. One will react with tantrums and acting-out behaviour while the other will be quiet and comply to everything in a withdrawn way. Obviously, the child with the severe reaction is the one brought for therapy.

Implications for the child

Adults are often of the opinion that the smaller the child, the quicker they will adjust to a situation – for instance their parents' divorce. Parents are further of the opinion that they spare the child the hurt by not sharing the facts with him/her. Hardly ever do parents bother to consider the child's emotions and perception regarding the situation – let alone considering how intense he may experience it. In fact, if the child does not display behaviour problems, they automatically assume he/she is coping well. Quite the opposite is the truth. When children have to live with major changes in their lives, parents owe it to them to explain the reason for the change – no matter what age. Children perceive it as a lack of trust from their parents and may react either by rebelling (showing their anger) or by complying (but actually withdrawing). The latter is more serious as the child is not showing any emotions because of the distrust in the parents.

Figure 5: Propositions – Theme 3



2.4.1.5 Proposition 8

The self

A portion of the total perceptual field gradually becomes differentiated as the self.

Rogers, 1987: 497

Rogers (1987: 498) referred to the self as the awareness of being, of functioning:

Gradually, as the infant develops, a portion of the total private world becomes recognized as 'me', 'I', 'myself'.

He further describes this awareness as a gradient of autonomy which first gives the infant the awareness of self, as he/she is for the first time aware of a feeling of control over some aspect of their world of experience. Du Toit, Grobler & Schenck (2001:21) made the statement that individuals always retain some part of themselves in the midst of day-to-day changes. In other words, you are not a completely different person from whom you were at ages 18, 25 or 30. As you grow older, your personality matures and your image may change by losing or gaining weight or a different hairstyle but, you still remain the same person.

Ferdinand van der Veen as guest at the European Person Centered Approach Network meeting in Luxembourg (September 1998), emphasized the principle of self direction of the client:

Self-direction is based on the value of individual autonomy and self-responsibility as most conducive to personal and social fulfillment and to the worth of the individual human being (van der Veen, 1998:1)

Moorman (1999:2) echoed abovementioned opinion in the paper he submitted to the ADPCA (Association for the Development in Person-Centered Approach) in 1999. His theme was to clarify and develop the notion of being in a way that allows a satisfying transaction between self and other – without forgoing either individuality or relationship. In other words, a way of moving

towards autonomy in a relationship. Moorman (1999:2) described the historical development process of dependence through a process of narcissism (excessive interest in one's own importance) and misunderstanding of Rogers' counter-dependence, towards an interdependence of autonomy and mutuality. Interdependence is described as having the capacity to prize ones self and to prize the different other – which is a key element in Rogers' notion of “the fully functioning person”.

To become a fully functioning person (to be that self which one truly is) is a complex maturing process through which the client discovers that your own life is your own personal responsibility. Moorman (1999:3) quoted a poem of Rudyard Kipling that he had learned as a child, as an example of a fully functioning person:

‘If you can keep your head when all about you
Are losing theirs and blaming it on you;
If you can trust yourself when all men doubt you
But make allowance for their doubting too...”

The abstract from the above mentioned poem confirms that the process of becoming a fully functioning person is a self accepted and executed developmental responsibility.

Clients need to be able to see themselves more clearly and explore their own purposes more deeply in order to make conscious choices as to the direction

they wish to take, before they will develop the capacity and ability to value themselves and other people differently from themselves.

Practical example

A newborn baby was breastfed by her adoptive mother. After two days she realized it was easier to get milk through the tube than from the breast. She started to push the breast away with her tongue and only sucked the tube!

Implications for the child

Researcher strongly believes that children know what they need and want regardless of their age. This belief is based on the principle of autonomy. Spies (Syllabus Notes 2) referred to autonomy as a state where in the person is aware of and can act upon his feelings, needs and values. Abovementioned practical example is a perfect example that a child, even two days old, is able to act upon feelings and needs.

A child is like a sponge – every life experience since birth is absorbed and continues to play an important role in the continual development of his/her personality. Once the adult stage has been reached, thinking, feeling and acting patterns are more firmly set and although not impossible, much more difficult to change.

It therefore places a serious responsibility on all adults dealing with children as we either contribute to the positive forming and development of their personalities or the destruction thereof. One must realize that a mistake in dealing with a child is not a mathematical calculation that can be easily altered or even erased.

2.4.1.6 Propositions 9 & 10

The self, significant others and values

As a result of interaction with the environment, and particularly as a result of evaluational interaction with others, the structure of the self is formed – an organized, fluid, but consistent conceptual pattern of perceptions of characteristics and relationships of the 'I' or the 'me' together with values attached to these concepts.

Rogers, 1987: 498

The self is shaped through interaction with both the environment and other people. As Du Toit, Grobler & Schenck (2001:24) explained it:

It is a fluid yet organized picture of the attributes and relationships of the self, as well as the values attached to that picture.

The values attached to experiences, and the values which are a part of the self-structure, in some instances are values experienced directly by the organism, and in some instances are values introjected or taken over from others, but perceived in distorted fashion as if they had been experienced directly.

Rogers, 1987: 498

Values attached to experiences and forming part of the self, may be shaped by the individual's own experience, but they may also be taken over from others and assimilated into the self as if they had been experienced personally.

Rogers (1987: 498-501) excellently described this through the example of the process of growing up. He explained that as the infant interacts with his/her environment, they gradually build up concepts about themselves, about the environment and about him/her in relationship to the environment. At the same time that there is the awareness of 'I experiences', there is also the awareness that 'I like / dislike' it. For example, "I am cold and I dislike it"; "I am cuddled and I like it". Infants value those experiences which they perceives as enhancing themselves and place a negative value on those experiences, which seem to threaten them.

The next step in this process is the evaluation of self by others, for instance parents, teachers and the peer group: "You're a good child" or "You're a naughty boy". These evaluations of themselves and of the behaviour by others, form a large and significant part of the infant's perceptual field. In this

stage of development, a distorted symbolization experience has much significance for the later development of psychological maladjustment. As Rogers (1987:501) claimed:

Out of these dual sources – the direct experiencing by the individual, and the distorted symbolization of sensory reactions resulting in the introjection of values and concepts as if experienced – there grows the structure of the self.

Practical example

Parents were pressurizing their son to participate and excel in everything: academic-, sport- as well as cultural activities. To cope, he was enrolled for therapy. It was learned that he has an older, mentally challenged sister who could not fulfill her parents' expectations. The boy felt he had to perform in order not to be another disappointment for his parents. He put an enormous responsibility on himself to perform on behalf of both children and losing himself in the process! His performance was thus not necessarily according to his own values but more the values of his parents as he thought they wish to be seen.

Implications for the child

It is often experienced in practice that children do and say what they think the adult wants to hear or will approve of. Du Toit, Grobler & Schenck (1987:25) mentioned the situation where a mother may encourage her son to take part in athletics because he is a good runner. She believes in his potential and wants the best for her child. The son, on the other hand, may feel that he is

under pressure to achieve and may wonder whether he will still be accepted if he fails to achieve. Consequently, the boy may import the value of his mother, namely to achieve to be accepted. If he fails to achieve, he may resort to steroids or drugs because he fears rejection.

When working with children, it is important to convey the message that they are totally accepted, as they are – in other words, the principle of unconditional positive regard in action.

2.4.1.7 Proposition 12

Self and behaviour

**Most of the ways of behaving which are adopted by the organism are those which are consistent with the concept of self.
Rogers, 1987: 507**

Symbolised behaviour is usually consistent with the individual's self-concept.

Rogers (1987: 508) elaborated by explaining that:

As the organism strives to meet its needs in the world as it is experienced, the form which the striving takes, must be a form consistent with his self-concept.

Du Toit, Grobler & Schenck (2001: 27) confirmed abovementioned and is of the opinion that behaviour is not merely directed at need satisfaction but also

has to agree with the individual's self-perception. For example: The person, who attaches high values to honesty, cannot strive for a sense of achievement through means that seem to be dishonest.

I

As behaviour usually fits with the self of the person, the counsellor should ask:

- Who do the people involved experience themselves to be?
- In what way does the behaviour fit with their sense of self?

Practical example

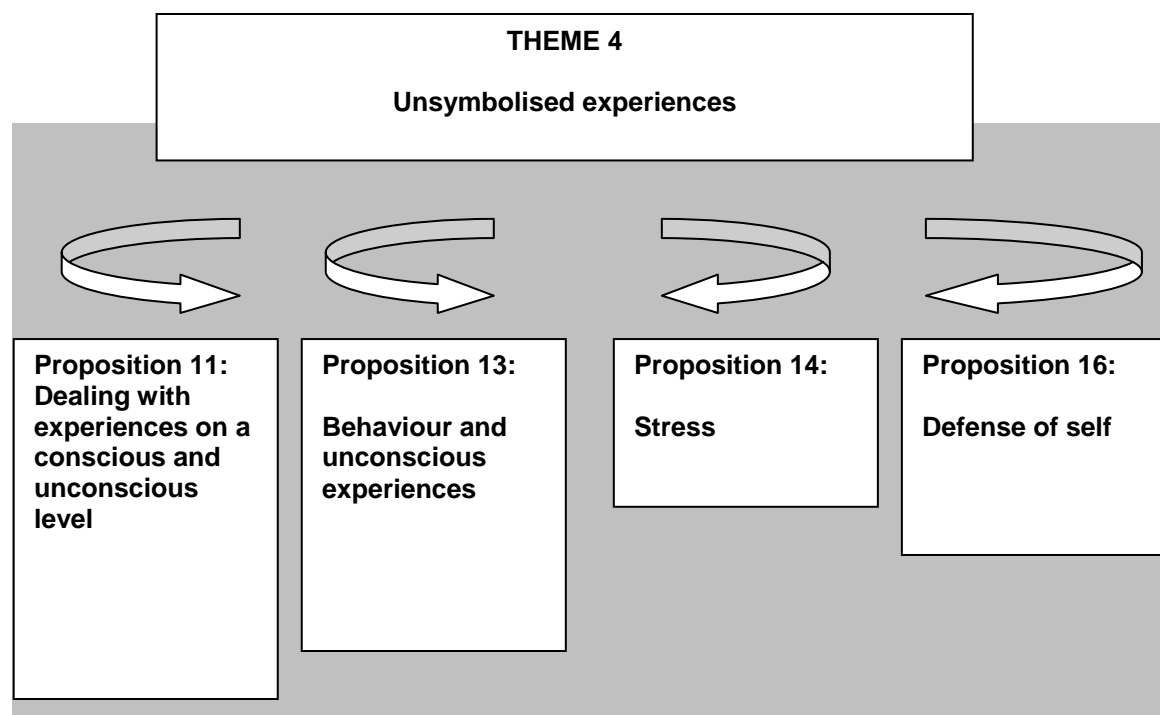
A 16 year old girl deliberately behave in a certain way to focus attention on herself – trying to shock people. In counselling it became clear that she has a very negative self-image and through her behaviour, want people to confirm it! She would, for instance, dress inappropriate for work and when confronted, blaming it on the fact that they just do not like her.

Implications for the child

Professional role-players working with children need to develop an ability to enable them to “see” the child's self-concept behind his/her behaviour instead of only focusing on the behaviour itself. Children try to tell us something through their behaviour and may not be able to verbalize their feelings or even be aware of what they are doing unconsciously. It is thus a challenge to the professional role player to first “see” the reason for and feelings behind the behaviour and secondly, to help the child also to “see” him/herself. As in the situation of the above practical example, instead of reacting to the negative behaviour and for instance placing the girl in a industrial school for problem

behaviour, “see” and listen to the unspoken message behind the behaviour, help her to see and understand herself and focus on enhancement of self worth. Through this, she will be more empowered to start taking control of her behaviour and her life.

Figure 6: Propositions – Theme 4



There are four propositions under the theme of unsymbolised experiences – as indicated in the schematic presentation above. In the previous proposition, it was clear that not all behaviour are necessarily conscious.

Rogers (1987: 144 -145) stated as follows:

The human being deals with much of his experience by means of the symbols attached to it. These symbols enable him to

manipulate elements of his experience in relation to one another, to project himself into new situations, to make many predictions about his phenomenal world.

As Du Toit, Grobler & Schenck (2001:31) explained the situation, a people have different experiences during their lifetime and attach particular symbols to each. For instance, a child see a picture of a tree and hear his/her parents tell him/her the word 'tree', which he/she then attach as symbol to the picture. The same process takes place in the case of feelings: If the child falls and his/her mother mentions a pain word like 'hurt', he/she symbolizes the word pain with something they do not like. Some experiences however are not conscious and therefore no symbols can be attached to it – for example when a client says 'I do not know why I am feeling this way of what is happening to me'. The proposition explains it as follows:

2.4.1.8 Proposition 11

Dealing with experiences on a conscious and unconscious level

As experiences occur in the life of the individual, they are either

- (a) symbolized, perceived, and organized into some relationship to the self,**
- (b) ignored because there is no perceived relationship to the self structure,**
- (c) denied symbolization or given a distorted symbolization because the experience is inconsistent with the structure of the self.**

Rogers, 1987: 503

According to Du Toit, Grobler & Schenck (2001: 32), individuals may deal with their experiences in various ways:

- Experiences may be symbolized and organized in some relationship to the self (Example: the books we read and remember are the ones that corresponds with our own ideas and needs).
- They may be ignored because they have no perceived relation to the self (Example: when we go shopping with a list, we focus only on the items we want to buy and hardly ever take notice of other items).
- Symbolizing of experience may be avoided (Example: Threatening or uncomfortable experiences are blocked out – for instance the individual exposed to incest cannot remember what happened as a child).
- Symbolizing may be distorted because the experience conflicts with the individual's self-perception (Example: If an experience cannot be symbolized or blocked out completely, it is distorted to fit in with the self. For instance, someone very modest may rather refer to an exam as easy instead of admitting that he/she did well).

Practical example

An eighteen year old girl was referred for counselling by her employer. She would make good progress in her work up to a point and then make careless mistakes as if she doesn't want to progress. The employer sensed that she might behave this way unintentionally because of something in her past. In counselling, it became evident that she was sexually abused by her father from a young age. In order for her not to tell on him, he deliberately belittled her. He told her it is because she is fat and ugly that these things happen to her and that she always will be unsuccessful!

Implications for the child

Before the professional role-player who works with children, make a decision that will affect such a child's life, they need to understand the symbols which were attached to every experience, which experiences are blocked out and which experiences are distorted to fit the child's self. In order to be able to do so, it is of utmost importance to get to know the child first, in other words, to see, feel and understand a situation through the eyes and experience of a child.

2.4.1.9 Proposition 13

Behaviour and unconscious experiences

Behaviour may, in some instances, be brought about by organic experiences and needs which have not been symbolized. Such behaviour may be inconsistent with the structure of the self, but in such instances, the behaviour is not 'owned' by the individual.

Rogers, 1987: 509

With this proposition Rogers (1987: 509) is of the opinion that the self is not in control and the behaviour not regarded as part of the self. Du Toit, Grobler & Schenck (2001: 37) elaborated on this as follows:

When an individual with a certain self-perception (of who he is and of what is consistent with his self) manifest behaviour inappropriate to that self, the individual will deny such behaviour rather than change his entire self-perception.

Practical example

An eleven-year-old boy constantly gets himself in trouble by running away from home – stay away for hours and then climbs back through the window again. He cannot explain his behaviour and, despite many promises not to do it again, he cannot control it. It was only through intensive therapy it became clear that tension in the home environment triggered the response.

Implications for the child

Never judge behaviour on face value only. It is important to investigate and to understand the motivation (conscious or unconscious) behind it. The behaviour of above-mentioned boy could have been seen as truancy and, because of his uncontrollable behaviour (through the eyes of his parents), found to be in need of care. Instead of placing him in an industrial school for behavioural problems, the social worker could focus on possible problems in the home environment and support the boy to become aware of the rational of

his behaviour, which lied on subconscious level and was inconsistent with the structure of his self.

2.4.1.10 Proposition 14

Stress

Psychological maladjustment exists when the organism denies awareness to significant sensory and visceral experiences, which consequently are not symbolized and organized into the gestalt of the self-structure. When this situation exists, there is a basic or potential psychological tension.

Rogers, 1987: 510

Rogers (1987: 510 – 512) argued that, if we think of the structure of the self as being a symbolic elaboration of a portion of the private experiential world of the organism, we realize that, when much of this private world is denied symbolization, certain basic tension result. He further indicates that statements as “I don’t know what I’m afraid of”, “I don’t know what I want” are frequent in counselling cases and are an indication of the lack of any integrated purposeful direction in which the individual is moving.

Practical example

In the previous practical example of the eleven-year-old boy who constantly ran away from home, he could never explain his behaviour – nor could he control it. Being caught in this vicious circle of running away, being caught, be in trouble, resulted in a lot of tension inside himself that he could not verbalize.

Implications for the child

Repeated negative behaviour, for instance stealing or absconding, must not automatically be labelled as delinquent behaviour. The professional role-player should first gain some understanding of whether the motivating behaviour is conscious or uncontrolled and then act accordingly.

2.4.1.11 Proposition 16

The defence of self

Any experience which is inconsistent with the organization or structure of self will be perceived as a threat, and the more of these perceptions there are, the more rigidly that self-structure is organized to maintain itself.
Rogers, 1987: 515

Du Toit, Grobler & Schenck (2001: 41) explained that experiences that conflict with the individual's self-perception are considered to be threatening to the self. The greater the number of such experiences, the more intent the self-structure becomes on self-preservation. In other words, the individual will protect him/herself from whatever appears to be threatening to their self-identified values and existence. In Prochaska & Norcross (1999:152-153) it was pointed out that Person-Centered Theory has been especially concerned with intrapersonal conflict between the client's concept of self and the total experience of the client, which includes feelings that are threatening to the person's self-concept.

Rogers (1987: 515) confirmed the seriousness of this when he said:

If the self cannot defend itself against deep threats, the result is a catastrophic psychological breakdown and disintegration.

In practice, for some reason, people find it acceptable to defend your physical self, but, behaviour to defend their psychosocial self is seen as peculiar. For instance, when a lion threatens people, they will act to protect themselves (*physical self*) by running and screaming. Nobody will find it peculiar behaviour. Yet, if a person becomes scared or angry when the *psychosocial self* is under threat, counsellors tend to regard such person's behaviour as abnormal. Researcher could not agree more with Du Toit, Grobler & Schenck, 2001: 42 when they stated that counsellors themselves are in fact threatening when they behave in ways that do not accord with the client's self! This is especially true when working with children. As Boy & Pine (1995: 222) confirmed:

Children quickly learn that the counsellor is the person with whom you have got to stay friendly or stay away from!

Practical example

A seventeen-year-old girl was labelled as 'delinquent' because she acted aggressively with every therapist and showed resistance to therapy - until she had a therapist who realized she was only defending herself because she felt threatened. The therapist actually "saw" through her. Not only did her behaviour change when she did not need to defend herself any longer, but she could actually be true to her real self – caring and sweet-tempered.

Implications for the child

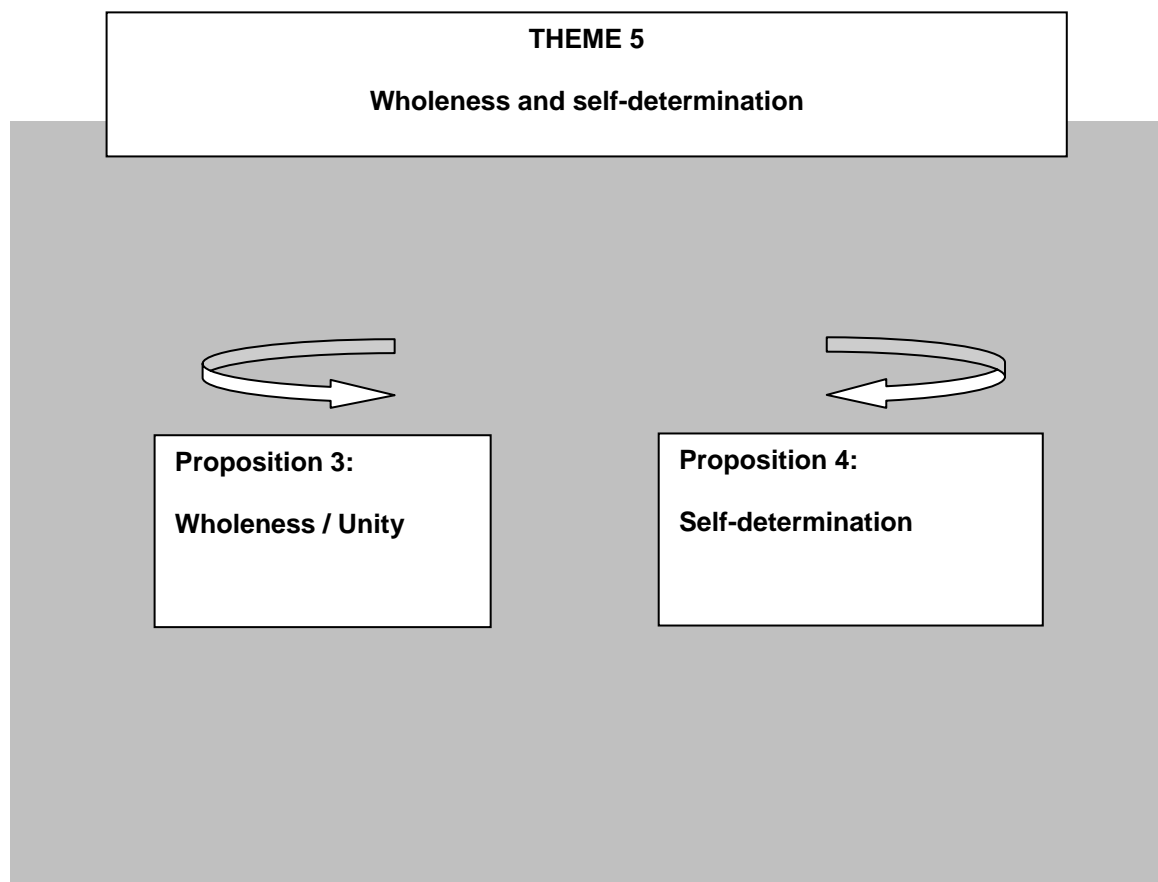
It is a regular tendency in practice to refer children for an assessment. Based on these assessments, recommendations are made and important decisions are taken, which seriously can affect a child's life. For researcher this imposes critical ethical issues, namely the issue of trust, versus the accuracy of the assessments on which the recommendations and decisions are going to be based. Researcher has often experienced that many professional role-players do not actually allow the child to get to know them first, build a trusting relationship with the children and let the children feel comfortable with the environment before doing the assessment. This implies that if the child does not trust adults and is scared because he/she perceives the environment as a threat, the assessment results will not be a true reflection of the situation.

Nobody feels exactly the same everyday. The results of a test on a day when a person is distressed will differ completely from the results of a test written in a relaxed atmosphere in which the person felt comfortable to reveal his/her real self. The latter will be a more accurate result and therefore more reliable for making recommendations on regarding issues that will affect such a person's whole life! Boy & Pine (1995: 223) echoed researchers concern by saying that children are aware of and are sensitive to such procedures:

The practice by the counsellor of gathering and using information may constitute a threat to the child and prevent the child from

revealing the feelings which cause behaviour. Counseling relationships formed under these circumstances, are not open and are characterized by a lack of authenticity and trust.

Figure 7: Propositions – Theme 5



According to Du Toit, Grobler & Schenck (2001:45) Rogers included all human experiences in his deliberations, including his thinking about how we respond to the world. Thus, our actions cannot be seen in isolation, or in terms of only some part of ourselves, but must be understood in the totality of people, including our interactions with each other.

2.4.1.12 Proposition 3

Wholeness / Unity

**The organism reacts as an organized whole to this phenomenal field.
Rogers, 1987: 486**

People are complete with all their ideas, feelings, behaviour, needs, values and physical attributes and each part is connected to the next. One does not act exclusively in terms of one's perceptions but all the dimensions of the self are integral to the person. Although we are not constantly aware of all these dimensions, they are always there and part of what we do and what we are.

Du Toit, Grobler & Schenck (2001:46) therefore urged counsellors to be open to all dimensions of human nature and not focus on just one aspect of a person.

Practical example

In order to counsel the mother and teenage son who experience serious problems in their relationship, the counsellor need to see each party within their own frame of reference. The mother's experience of childhood, issues she was exposed to, etcetera, influences her values attached to parenthood, her self-esteem and her way of thinking about life. The boy himself are exposed to different issues (peer pressure). The way they experience themselves, the values attached to parenthood, each individual's needs, how these needs are expressed, how they perceive each other, are all aspects that contribute to their wholeness and needs to be taken into consideration in order to understand their individual viewpoints.

Implications for the child

The professional role-players dealing with children cannot do so unless they have an understanding of children and an understanding of how children themselves experience all these aspects (their ideas, feelings, behaviour, needs, and values – every dimension of the self). Knowing the child is vastly different from knowing facts about the child!

Boy & Pine (1995: 210) stated categorically that it is the child's right to have the freedom of their own ideas, values and beliefs. Children should experience the epitome of respect, acceptance and understanding of their uniqueness and difference.

2.4.1.13 Proposition 4

Self-determination

The organism has one basic tendency and striving – to actualize, maintain, and enhance the experiencing organism.

Rogers, 1987: 487

Every human being has one basic striving: to actualize, maintain and develop the total self. Du Toit, Grobler & Schenck (2001:49) emphasized it as an extremely important principle in the counselling world but stressed that it is very difficult to operationalise. It is important that counsellors keep in mind

that this proposition refers to the *self* of the person (client) as he or she experiences it.

This self or identity might not necessarily be what a counsellor sees as 'good', but what is important is what the clients see as relevant to themselves. According to Rogers (1987: 487-488), self-actualization involves the tendency of the organism to maintain itself by for example taking in food, to behave defensively in the face of threat, to achieve the goal of self-maintenance even when the usual pathway to that goal is blocked, as well as the tendency to move in the direction of maturation. In short, to develop him/herself to be the best person he/she can.

Grant (2004:157) referred to self-determination as the liberty to do anything, which does not coerce, restrain, or injure another person:

The right to self-determination is the core element of the liberal idea of freedom, which claims for man, by reason of his humanity, the right, within limits to order his life as seems good to him.

Grant (2004:157) further more expressed the opinion that the right to direct one's life is an ethical, not a psychological or empirical concept. He confirmed the important principle as stressed by Du Toit, Grobler & Schenck (2001:49) that the focus are on the clients and what they see fit with their lives – not the opinion of the counsellor:

It does not depend on persons possessing an evolving capacity to make 'better' choices, or a potential to actualize their natures, or special knowledge or skills. All persons who are free from coercion, restraint or threat of injury are ordering their lives as they see fit. Persons who are depressed, miserable, suicidal, without hope or initiative, as well as those who are confident and have a sense of self-efficacy, are exercising their right to self-determination.

Practical example

Children removed from home and placed in alternative care (children's home) for instance – to what extent, if any at all, do we as professional role-players allow them to fulfil their right to self-determination? Researcher often experienced that they grow up with such a resistance towards the system (children's home) that their only focus in life is to get out and make their own decisions – whether right or wrong. The effect is that all the therapy given while in substitute care, are therefore of no value unless children are allowed to be an active participant in their lives and empowered to be part of their own process of decision-making.

Implications for the child

Axline (1969:13–14) referred to self-realization as the ultimate goal in life. She further stated that, when people develop sufficient self-confidence (consciously and purposefully to direct their behaviour by evaluation, selectivity, and application) to achieve their ultimate goals, they seem to be more adjusted in their experiential worlds. Landreth (1991:64) explained that all maladjustments result from incongruence between what is actually

experienced and the concept of the self. He specifically said the following about it:

Whenever a child's perception of an experience is distorted or denied, a state of incongruence between self and experience exists to some degree.

Rogers (1980: 115) built his Person-Centered Theory completely around the believe that:

Individuals have within themselves vast resources for self-understanding and for altering their self-concepts, basic attitudes, and self-directed behaviour.

He further believed that Client-Centered Therapy is an enactment of a deep feeling of respect for others. Landreth (1991:50) fully supported this opinion and in his tenets for relating to children, indicated that

- Children have an inherent tendency toward growth and maturity.
- They possess an inner intuitive wisdom.
- Children are capable of positive self-directio.
- They are capable of dealing with their world in creative ways.

According to Grant (2004: 158), the right to self-determination, can be exercised in the following ways:

- Through speaking for oneself, as voicing one's preferences and ideas.
- Through speech and action, as one makes one's own way in the world.

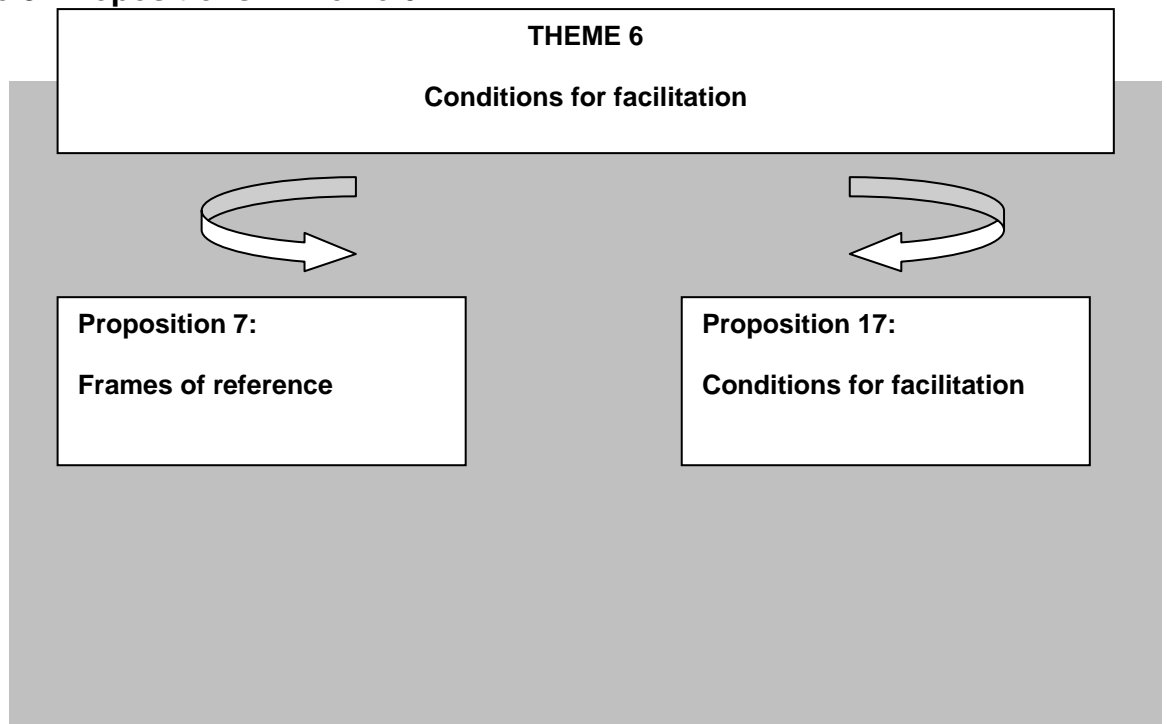
As professional role-players, we need to internalize this attitude and believe toward and about children. If not, we do not respect them as human beings and

do not allow them to fulfil their basic tendency or achieve their ultimate goal in life! As Grant (2004:159) eloquently stated:

Individuals who are not regarded as free to determine their ways in the world are treated as less than human, as less than oneself.

The right to self-determination is such a core aspect of the concept of a person in the Person-Centered Approach that we must have good ethical reasons to deny someone the right – even a child.

Figure 8: Propositions – Theme 6



2.4.1.14 Proposition 7

Frames of reference

The best vantage point for understanding behaviour is from the internal frame of reference of the individual himself.
Rogers, 1987: 494

Rogers (1897: 494) indicated that the only person, who fully knows his/her field of experience, is the individual him/herself. It would therefore appear that behaviour might best be understood by gaining, in so far as possible, the internal frame of reference of the person

him/herself, and seeing the world of experience of this person as nearly as possible through his/her eyes.

Du Toit, Grobler & Schenck (2001: 56) elaborates on this by saying that since behaviour is motivated by needs and accompanied by emotion, these three dimensions are best understood in terms of the individual's frame of reference. With respect to children in this regard, Landreth (1991:55) commented that children are the best sources of information about themselves.

Practical example

After failing Gr.9 for the second time, the professional role-players were considering placing this sixteen year old girl in an industrial school. Their justification was her IQ score of 85 (special school material!), her failing of two consecutive years and that she should be trained in a practical career direction. This girl experienced a lot of trauma within her family who always doubted her abilities. She had an extreme low self-esteem but a desperate need to proof her abilities. Through play therapy she started to believe in herself and believed she could complete matric in an academic school. Despite everything that counted against her, she did complete matric and also completed a secretarial course through college afterwards!

Implications for the child

Adults very often think they know what a child feels and therefore they entitle themselves to the right to make decisions on their behalf. As professional role-players we need to be very cautious about this as we make decisions that affect the child for the rest of his/her life. Sometimes behaviour seems meaningless and strange to the outsider but for that individual, it is meaningful and goal-directed. We need to remember that we are mere guests in the lives of the people we work with and need to use them to help us to understand their worlds. We are not allowed to force an entrance in people's lives but rather negotiate one with them. Rogers (1961:284) summarized it excellently when he explained the meaning of empathy, saying:

To sense the client's private world as if it were your own but without ever losing the 'as if' quality...!

2.4.1.15 Proposition 17

Conditions for facilitation

Under certain conditions, involving primarily complete absence of any threat to the self-structure, experiences, which are inconsistent with it, may be perceived, and examined, and the structure of self revised to assimilate and include such experiences.

Rogers, 1987: 517

It is clear that self-concepts change, both in the ordinary development of the individual as well as in therapy. In Person-Centered Therapy, by means of the relationship and the counsellor's handling of it, clients are gradually assured that they are accepted as they are. According to Rogers (1987: 517) people will then be more able to symbolise their experiences. Du Toit, Grobler & Schenck (2001: 60) explained that this proposition provides a guideline for intervention whereby the counsellor has to create a climate in which clients are accepted unconditionally, without judgment or condemnation. If the counsellor tries to perceive and accept the self as the client experience it, the client has no need to fight for the preservation of the symbolized self or to defend it. The result being that, as the symbolised self comes to be accepted, unsymbolised experiences are gradually admitted to consciousness.

Practical example

The biological mother of a teenage girl is involved in a lesbian relationship. The lesbian partner applied through court to adopt the girl and the biological parents consented to it. The court referred the case to a social worker for investigation. The social worker have to set her own values and believes aside, create a climate where the couple, as well as the child, feels accepted. Without any judgment and condemnation doing the investigation of whether the adoption will be to the benefit of the child, is of great importance.

Implications for the child

Landreth (1991:66) mentioned that he learned from his experience with children, what acceptance really mean and what it should be. He explained that children are non-assuming in their acceptance. They do not try to analyze or diagnose a person but accepts them unconditionally. It is therefore of utmost importance that the professional role-player realize how crucial the therapeutic conditions are in their relationship with children. Landreth (1991:64-65) described it as follows:

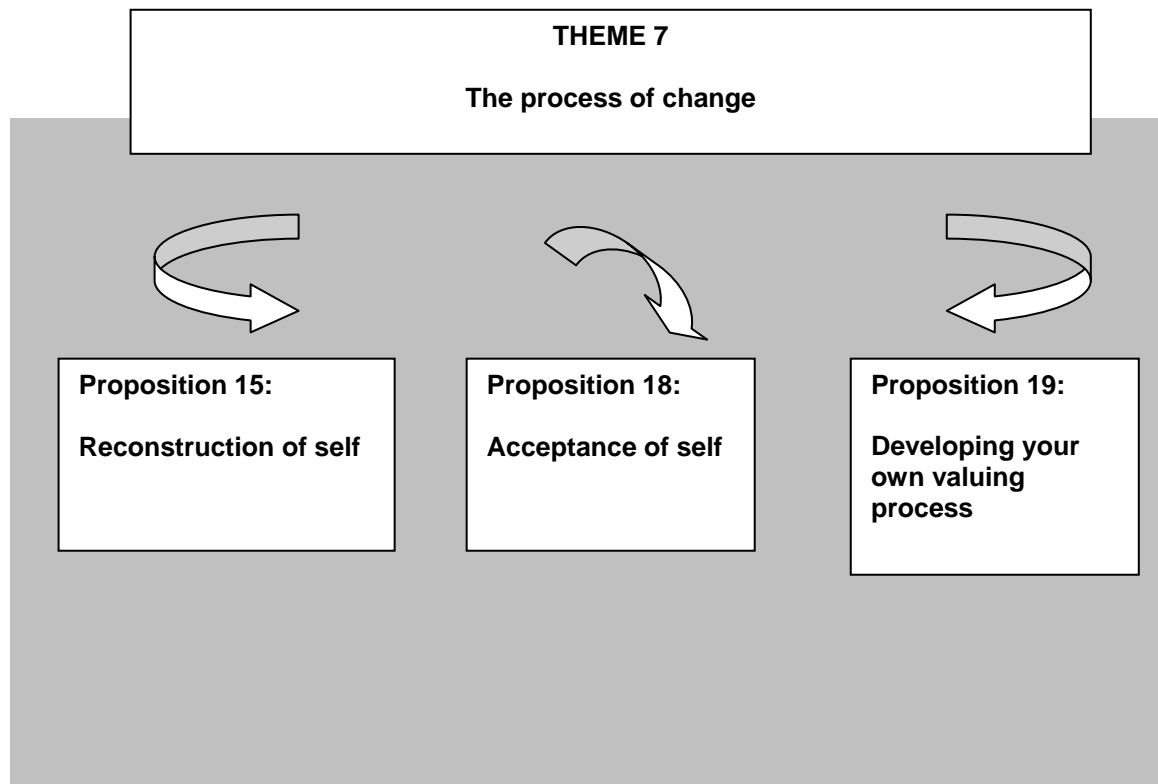
The attitude of the therapist which form the basis for the therapeutic relationship and which facilitate the release of the child's inner resources for growth are genuineness (being real), non-possessive warmth (warm caring and acceptance), and empathy (sensitive understanding).

This kind of acceptance and warm caring is characterised by respect for the child as a person of worth. If the professional role-player really cares about children and accepts them unconditionally, there will be an absence of labelling or judgment. The child will then be respected and prized just as much when deviant, moody, angry or resistive as when co-operative and happy with the result as Landreth (1991:77) confirmed:

Experiencing this acceptance of them, children begin to value them and come to perceive and accept themselves as unique and

separate. As children gradually experience being themselves, they are free to experience living in the present and to make creative, responsible use of their individuality.

Figure 9: Propositions – Theme 7



2.4.1.16 Proposition 15

Reconstruction of self

Psychological adjustment exist when the concept of the self is such that all the sensory and visceral experiences of the organism are, or may be, assimilated on a symbolic level into a consistent relationship with the concept of self.

Rogers, 1987: 513

Rogers (1987: 514) mentioned that the freedom from inner tension exists when the concept of self is at least roughly congruent with all the experiences of the organism - in other words, the feeling of being in control of themselves. In this respect – with regard to children, Landreth (1991:120) explained that the development of self-control grows out of the interaction between the child's responsibility to make decisions, to choose without adult interference or guidance, and the child's redirection of unacceptable behaviours into controlled acceptable avenues.

Du Toit, Grobler & Schenck (2001: 64) hold the view that when previously unsymbolised or distorted experiences (whether positive or negative) are allowed symbolization and integration with the self, it enables the individual to express their experiences in a controlled way. This process (therapy) brings about changes – either the self could be restructured to fit with the experiences or the behaviour could change to fit with the existing self. The following practical example by Lucy Weeks (In Boy & Pine, 1995:154) would illustrate it perfectly:

Practical example

A Boy in fourth grade was referred for therapy as he was constantly in trouble with his teachers and playmates. He was disruptive, inattentive, rude or in tears and at times destructive.

In early play sessions, he showed great tension and restlessness. He tested out the counsellor's acceptance at first, and then found release from tension through bodily activity. He talked very little, and when he did, it was largely about interest other than self and family. When he mentioned his own behaviour, it was to blame others, a refusal of responsibility for his actions, and he would move away very rapidly from any uncomfortable subject. He soon began to use play media with more purpose. He found a means to express what he had experienced and what he dreamed. He expressed himself, often with great feeling and seemed to move to a greater realization of himself and his environment. His next steps were toward a more realistic assessment of himself and a greater acceptance of his family and peers.

Implications for the child

Oaklander (1988:281) confirmed the essence of this proposition when she said the following:

How we perceive and value ourselves determines to a great extent how we behave, how we cope with life, how we manage ourselves. Our society's general lack of respect for children as entitled human beings serves to deteriorate every child's sense of self-worth.

Weeks (In Boy & Pine,1995:145) echoes the above statement with the following:

The child's response to life, in the form of continual striving, growing, and changing as the child observes and experiences the world and the people in the child's life, can be supported and nourished by the child's self-awareness as a valued human being.

Children need to be treated in such a way that they can experience that they are accepted and respected as individuals in their own right. If we, as professional role-players, can act in such a way that children's rights will be protected, we will be giving them back their sense of self-worth.

2.4.1.17 Proposition 18

Acceptance of self

When the individual perceives and accepts into one consistent and integrated system all his sensory and visceral experiences, then he is necessarily more understanding of others and is more accepting of others as separate individuals.

Rogers, 1987: 520

The person who accepts him/herself, will, because of his or her self-acceptance, has better interpersonal relations with others. If a child experience love and acceptance from others, the child will more readily, accept his/her self. If the child is continually unsure of the self as a person of

worth, much of the child's energy for growth is spent in defending the self against the hurt of not being completely acceptable.

Landreth (1991:96) stressed the fact that a significant objective of the professional role-player is to help the child to create a climate in which the child feels free to be fully who he/she is at that moment. His rule of thumb is:

You cannot accept another person's weakness until you are able to accept your own (Landreth, 1991:97).

2.4.1.18 Proposition 19

Developing your own valuing process

As the individual perceives and accepts into his self-structure more of his organic experiences, he finds that he is replacing his present value system – based so largely upon introjections, which have been distortedly symbolized - with a continuing organismic valuing process.

Rogers, 1987: 522

Du Toit, Grobler & Schenck (2001:67) stated that propositions 18 and 19 present the long-term goal of Client-Centered Therapy.

Individuals are now able to decide for themselves what they consider being important in their lives and no longer need to adopt other people's values.

Practical example

(Taken from Oaklander, 1988:232)

The parents brought their 10-year-old little girl to therapy because she is withdrawn and refused to talk. Although she does well in school, the teacher also commented on the fact that she completely clams up. By doing so, she closes herself off many parts of herself and her life. Through therapy and expressive techniques she first began to communicate without giving up her silence – giving information about her likes and dislikes. Eventually she realized she has something to say and began talking to the therapist, her parents, teacher and friends.

Implications for the child

The essence of these two propositions can be summarized through the opinion of Oaklander (1988: 284) when she said the following:

To help a children feel better about themselves, we need to bring them back to themselves. The first, and essential, step in this process is to accept their present feelings – the rotten, blank, nothing, despairing ones they has now. As they accept these feelings, they can become acquainted with their senses and their bodies and all they can do with it. They can learn about themselves and their uniqueness from the inside, instead of through the judgements and opinions of others, and begin to feel a sense of well-being - that it is OK to be who they are.

Taken above into account, the professional role-player has a responsibility, and according to the researcher, an obligation, to accept children for whom they are. Furthermore, to understand how they feel and experience a situation; to allow them to participate in their own lives by having a say as to what they need, like or dislike. Last, but not least, the professional role-player should respect children in ensuring that their rights are protected. Only then will children feel worth, safe and secure enough to allow themselves to be part of a therapeutically process.

2.5 Application of the Person-Centered Approach in work with children

2.5.1 The meaning of Person-Centered Therapy to the child

Rogers (1987: 257) expressed the opinion that

to be accepted as a person despite one's deficiencies, seems to be an important part of therapy.

To work according to the Person-Centered Approach as a counselor, and specifically in this regard a Child-Centered Approach, means that children perceive adults who

- Are not shocked by anything they do.
- Allow the expression of their feelings.
- Treat their utterances with respect which no other adult offers to the same extent.

Dated back to 1939, Rogers already realized the importance of dealing with children as persons and not with behaviour symptoms. In his book on ***The Clinical Treatment of the Problem Child (Rogers, 1939: 14)*** he said:

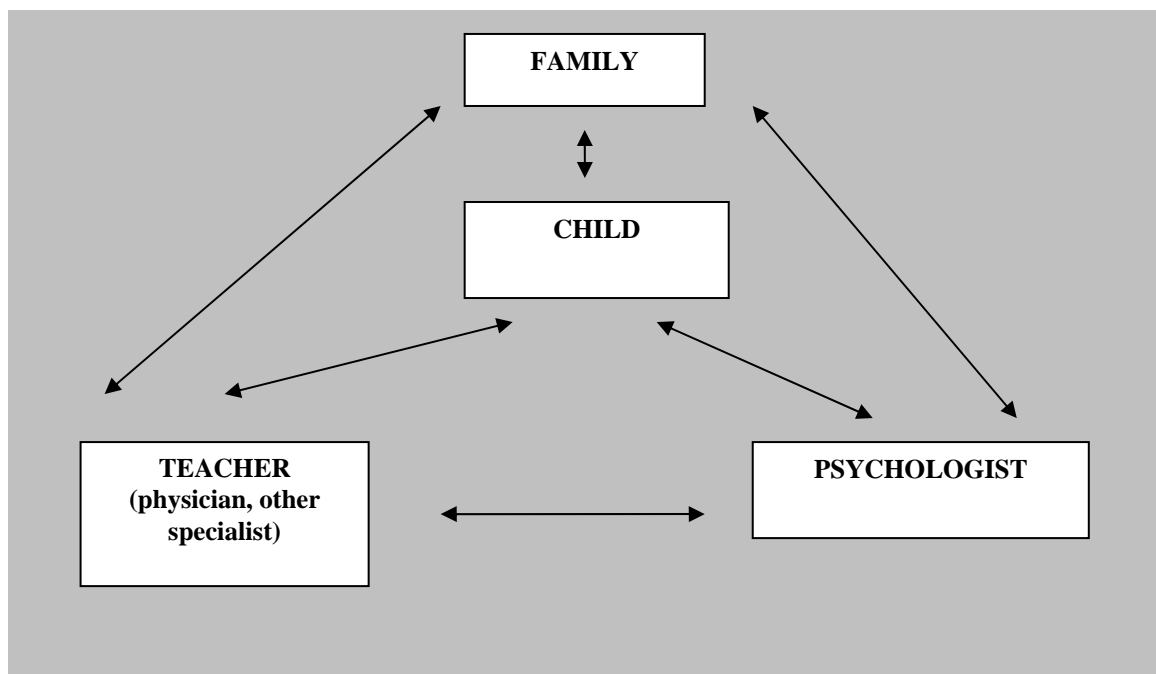
It is widely recognized that the child who today exhibits personality problems and behaviour deviations is the delinquent, the criminal, or the neurotic of tomorrow. To what extent have we developed rational means of treating the childhood symptoms so as to prevent and avoid the later serious consequences?

Many years later, the same question is still relevant, as confirmed by Boy & Pine (1995: 165):

Many adults have a “they’ll grow out of it” attitude toward the typical problems of children. Fortunately, some children do outgrow some of their problems. But for the majority, these problems carry over into the adolescent and adult years. They show themselves in various forms of delinquent behaviour, underachievement, self-centeredness, destructive tendencies, rebelliousness, personal irresponsibility, strained relations between husband and wife, personality clashes at work, lack of commitment to anything, and an inability to love or find meaning in life.

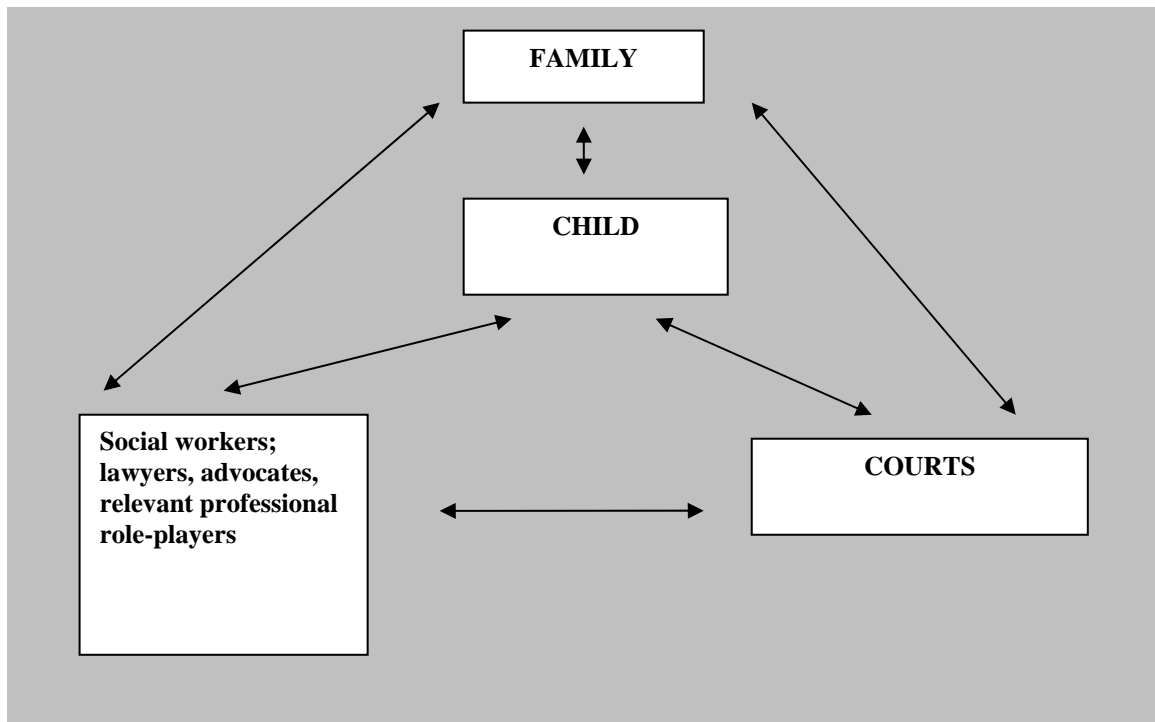
Recently the Russian Education Department realized that children's psychological health is the most fundamental value of education. Shuvalov's research (2003: 71 – 94) on *Problems of the development of the psychological counselling service in the system of children's supplementary education*, resulted in a model of Child-Centered Interaction:

Figure 10: Model of Child-Centered interaction in education



For the sake of the current research, namely to develop a protocol to ensure the protection of the rights of the child during the legal process, the same model will be applicable if adjusted as follows:

Figure 11: Model of Child-Centered Interaction in the legal process



This model implies that children (their needs, behaviour, thoughts and feelings about their lives as well as their rights) be the centre of the process that needs to be followed when children are involved in a legal process.

2.5.2 The need for a Child-Centered Approach

Adults too frequently adopt the attitude of “children are to be seen, not heard” and justify their own behaviour accordingly. Borland, Laybourn, Hill & Brown (1998:119) concluded in their research that adults like to remain in control – making decisions on behalf of children and saw this as the best way to promote children’s best interests! The first logical question in introducing this model will thus be “Why a Child-Centered Approach?” Boy & Pine (1995:164 -165) explained that, since adults are, (emotionally) many years removed from

the experiences of childhood, they tend to forget the difficult and painful aspects of being a child. The authors further emphasized an extremely important matter which researcher cannot stress enough, namely:

The child's psychological and social development is more critically important today than at any time in history. Today's children are faced with problems which are unprecedented in their severity. The world has changed and that change has produced deeper and more debilitating problems than those faced by any previous generation.

Landreth, Baggerly & Tyndall-Lind (1999:272) dealt with the frustration of many counsellors who attempted to counsel children by adapting basic adult counselling skills without success. Based on these experiences, they recommended a paradigm shift to Child-Centered counselling. Erdman & Lampe (1996: 374) recognized that:

Developmentally, children differ from adults cognitively, emotionally, physically, and psychologically, and these differences require special knowledge and sensitivity by the counselor.

Landreth, Baggerly & Tyndall-Lind (1999:272) pointed out how essential it is to recognize how the abovementioned developmental characteristics can affect a child's ability to communicate! Boy & Pine (1995: 9 – 21) identified

fifteen objective and subjective reasons to support the theory and practice of Child-Centered counselling which will be based on the Person-Centered Approach and will be discussed briefly as follows:

2.5.2.1 Reasons to support the theory and practice of Child-Centered Counselling

2.5.2.1.1 Child-Centered Counselling possesses a positive philosophy of the person

The Person-Centered Approach views the person as having basic impulses of love, belonging and security, which in turn influence one to be co-operative, trustworthy, forward moving and realistic. These human qualities tend to become actualized in environments that encourage their emergence and are dormant in environments that repress them. Through a Child-Centered Approach, the relationship between the professional role-players and the child concerned will focus on respect, the child's capacity for self-direction, and a prizing of the worth of each child (Boy & Pine, 1995: 9). As Landreth (1991: 55) confirmed:

Child Centered Therapy is an attitude, a philosophy and a way of being.

2.5.2.1.2 Child-Centered Counselling articulates propositions regarding human personality and behaviour

The propositions regarding human personality and behaviour (as discussed in detail in this chapter), form the philosophic core of Child-Centered Counselling and provide the counsellor with a general conceptual framework for understanding human motivation and behaviour. With specific reference to a Child-Centered Approach, Boy & Pine (1995: 9) summarized the basic propositions regarding personality as viewing the child as:

- Being the best determiner of a personal reality.
- Behaving as an organized whole.
- Desiring to enhance the self.
- Goal directed in satisfying perceived needs.
- Being behaviourally influenced by feelings that affect rationality.
- Best able to perceive the self.
- Being able to be aware of the self.
- Valuing.
- Interested in maintaining a positive self-concept.
- Behaving in ways that are consistent with the self-concept.
- Not owning behaviour that is inconsistent with the self.
- Producing psychological freedom or tension by admitting or not admitting certain experiences into the self-concept.
- Responding to threat by becoming behaviourally rigid.

- Admitting into awareness experiences that are inconsistent with the self if the self is free from threat.
- Being more understanding of others if a well integrated self-concept exist.
- Moving from self-defeating values toward self-sustaining values.

2.5.2.1.3 Child-Centered Counselling possesses achievable goals for the child

Boy & Pine (1995:10) emphasized that Child-Centered Counselling is aimed at helping the child to:

- Engage in behaviour which liberates, actualizes, and enhances the self [Propositions 5,6,12].
- Engage in the discovery of previously denied feelings and attitudes [Propositions 11,13,14.]
- Become more acceptant and trustful of the self [Propositions 8,18].
- Engage in re-organizing the self [Proposition 15].
- Become more self-reliant [Propositions 16,18].
- Become more responsible for the self [Proposition 19].
- Engage in self-determined choices, decision, and solutions [Propositions 1,3].
- Achieve individuality while being conscious of social responsibilities [Propositions 2,7,9,10].

- Becomes sensitive to the process of becoming a person which involves a new and self actualizing way of being [Propositions 4,17].

2.5.2.1.4 Child-Centered Counselling possesses a definition of the Counsellor's role within the counselling relationship

To work from a Child-Centered Approach as a counsellor (professional role-players) will enable the counsellor to be understanding, liberal, acceptant, empathic, a sensitive listeners, authentic, concrete and possesses a sense of involvement while equalizing the relationship (Boy & Pine, 1995: 10). Axline (1969) identified eight basic principles as the nature of the interaction between the therapist and child in the Child-Centered Approach. Landreth (1991:77-78) revised it in order to incorporate the basic conditions of the Person- Centered Approach:

- The therapist is genuinely interested in the child and develops a warm, caring relationship.
- The therapist experiences unqualified acceptance of the child and does not wish that the child were different in some way.
- The therapist creates a feeling of safety and permissiveness in the relationship so the child feels free to explore and express self completely.
- The therapist is always sensitive to the child's feelings and gently reflects those feelings in such a manner that the child develops self-understanding.

- The therapist believes deeply in the child's capacity to act responsibly, unwaveringly respects the child's ability to solve personal problems and allows the child to do so.
- The therapist trusts the child's inner direction, allows the child to lead in all areas of the relationship and resists any urge to direct the child's play or conversation.
- The therapist appreciates the gradual nature of the therapeutic process and does not attempt to hurry the process.
- The therapist establishes only those therapeutic limits that help the child accept personal and appropriate relationship responsibility.

2.5.2.1.5 Child-Centered Counselling has research evidence supporting its effectiveness

According to Boy & Pine (1995:11), any theory of counselling must satisfy the requirements of being both an art and a science by possessing both qualitative and quantitative research evidence, which confirms the effectiveness of the theory. They confirm that the Child-Centered Approach is supported by a greater amount of research than any other approach to counselling and psychotherapy.

2.5.2.1.6 Child-Centered Counselling is comprehensive

Boy & Pine (1995: 12) pointed out that the comprehensive nature of Client-Centered view is evident in its application to teaching, organizational behaviour, family relationships, parenting, groups, marriage and its alternatives, leadership, pastoring and the process of peaceful communication between and among nations. The comprehensiveness of Client-Centered Counselling enables it to be applied in a variety of settings which deal with a wide range of human problems: elementary, middle, and high schools; mental health centres; colleges and universities; rehabilitation agencies; prisons and halfway houses; pastoral counselling centres; marriage and family centres; human development centres; employment service agencies; youth centres and religious seminaries. The depth and range of the Client-Centered viewpoint enables it to be applied in any agency that deals with human experiences and perceptions.

2.5.2.1.7 Child-Centered Counselling has application value

A further motivation of the authors (Boy & Pine, 1995: 13) to support the use of Child-Centered counselling is that it is clear and precise enough to be applied. They explained it as follow:

At the process level, the counsellor's reflections of the child's feelings is an understandable concept that is

applicable in proportion to the counsellor's grasp of why it is done and how such reflections contribute to the child's self-awareness.

In order to apply the approach, it is important for the counsellor (professional role-player) to be *attitudinally* Child-Centered – as Landreth (1991:55) previously stated:

Child -Centered therapy is an attitude, a way of being!

2.5.2.1.8 Child-Centered Counselling has an expansive intellectual and Attitudinal substance

Boy & Pine (1995:14) is of the opinion that one of the intellectually stimulating aspects of client-centeredness is its connection with other past and present systems of thought. Through the Client-Centered viewpoint as a point of reference, it enables professional role-players to a better understanding of the writings of existentialists, humanist, phenomenologist, theists, rationalists and politicians. According to Prochaska & Norcross (1999:168), Rogers implored such an openness in his later writings. Rogers (1986:259) said:

Open new vistas, bring new insights, challenge our hypotheses, enrich our theory, expand our knowledge and involve us more deeply in an understanding of the

phenomena of human change.

2.5.2.1.9 Child-Centered Counselling focuses on the child as a person rather than on the child's problems

As this approach is Person-Centered and not Problem-Centered it have certain advantages in contrasts to other theories. However Mearns (2004: 90-91) acknowledged that it is difficult to function as a Person-Centered therapist in a Problem-Centered environment. He explained that, when we consider the relationship between 'Problem-Centered' and Person-Centered' we need to be aware that it very much depends on how we view 'the problem'. Mearns (2004:90) emphasized the fact that each person has a unique problem and must be treated as unique:

The definition of the problem is something the client does, gradually symbolizing different facets under the gentle facilitation of the therapist; the client's work in 'defining the problem' is the therapy. This is the same reasoning behind Rogers's statement that the therapy is the diagnosis.

In dealing with children in the legal process, researcher cannot emphasize enough that this is where the focus should be. As Boy & Pine (1995: 15) explained:

Since Child-Centered Counselling focuses on the child rather than the problem, it possesses a deeper potential for assisting

a child to become more adequate, as a person, in dealing with a range of problems. When the child becomes more psychologically stable, the child is freer to deal with, and find solutions to, specific problems.

2.5.2.1.10 Child-Centered Counselling focuses on the importance of the counsellor's attitude

Boy & Pine (1995: 15) made an interesting remark that counselling theories in general focus on techniques as the core of the counselling process and the therapeutic influence of the *counsellor as a person* is neglected.

The personhood of the counsellor, when expressed through a qualitative counselling relationship, becomes the primary influence on the child's co-operation in the counselling process (Boy & Pine, 1995: 15).

The authors substantiated their opinion by saying when one listens to children when they describe how counsellors have helped them, one often will hear the counsellor's personhood as the fundamental influence rather than the techniques that the counsellor used.

This is where the core conditions of the Person-Centered Approach (genuineness, unconditional positive regard, congruence and empathy) come into practice. When working with children, they

need to sense the genuineness of the relationship with the professional role-player before trusting them with the facts that influence their lives.

2.5.2.1.11 Child-Centered Counselling provides the counsellor with a systematic response pattern

Child-Centered Counselling presents the most clear and well defined response pattern to guide the Child-Centered counsellor in the process of counselling, namely to reflect the child's feelings. As described by Boy & Pine (1995: 16), this response pattern

- Enables the counsellor to assimilate and absorb the child's perceptions, values and attitudes. [*acceptance*]
- enables the child to develop an awareness of how these perceptions, values and attitudes affect his/her behaviour. [*relationship*]
- Enables the child to perceive the counsellor as a caring person who is able to understand him/her and his/her problem from the child's viewpoint. [*empathy*]
- Frees the child to disclose information which the child was not able to share in other interpersonal relationships.
- Serves to establish a bond of trust between the child and the counsellor. [*unconditional positive regard and acceptance*]

2.5.2.1.12 Child-Centered Counselling provides flexibility for the counsellor to go beyond reflection of feelings

The principles underlying Child-Centered Counselling are neither restrictive nor rigid. Consequently this approach gives the counsellor a high degree of flexibility if one is willing to absorb the implications of what it means to be Child-Centered. As Boy & Pine (1995:17) stated;

The Child-Centered counsellor's behaviour is within the bounds of the theory when it is Child-Centered and meets the needs of the child. The counsellor's behaviour is outside the bounds of the theory and is Counsellor-Centered when it instead meets the needs of the counsellor.

2.5.2.1.13 Child-Centered Counselling can be individualized according to the particular needs of a child

Child-Centered Counselling enables the process to fit the child rather than forcing the child into a predetermined process. Considering the current legal process, we have to admit it is a predetermined process and we are forcing the children into it – with the result that more harm than good, is done.

Through the Child-Centered Approach, the counsellor (professional role-player) develops a relationship in which the child identify the problem and choose the behaviour that will enable the need to be met. As Boy & Pine (1995: 18) explained:

A Child-Centered relationship is an open and flexible relationship because the child is the one who determines the scope and depth of a problem, and once this has occurred, the child is in the best position to explicitly or implicitly identify the process for solving the problem. Such and individualization of counselling enables child-centeredness to be a highly accurate approach in its ability to be congruent with the needs of children.

Landreth (1991:78-79) echoed above opinion and therefore suggested that the relationship (as the key to growth) is always focused on the present, living experience:

Personrather thanproblem

Present.....rather thanpast

Feelingsrather than.....thought or acts

Understanding.....rather thanexplaining

Accepting.....rather than correcting

Child's direction.....rather than.....therapist's instruction

Child's wisdom.....rather than.....therapist's knowledge

2.5.2.1.14 Child-Centered Counselling enables a child's behaviour to change in a natural sequence

Children who enter a counselling relationship usually has an interpersonal communication problem, which is caused by an inability to communicate their feelings. When a number of negative feelings are repressed, it causes tension, behavioural confusion and physical symptoms. When acting from a Child-Centered Approach, a relationship is established with the child, in which these repressed feelings can be released. By accurate reflection of this feelings, children become more comfortable in the relationship, which enable them to describe these feelings more deeply. Once the repressed feelings are expressed, these children will be inclined to seek a solution for these (Boy & Pine, 1995: 18). Landreth (1991:79) described it as follows:

The relationship provides the consistent acceptance of the child which is necessary for the development of enough inner freedom and security by the child to express self in self-enhancing ways.

2.5.2.1.15 Child-Centered Counselling can draw from the process components of other theories of counselling and child development

Since the Child-Centered Approach relies more on the counselling relationship itself as the vehicle for behavioural change, the counsellor

will look for useable techniques from other theories to suit the individual needs of the child. These techniques include role playing, fantasizing, desensitization, goal identification, modelling, encouragement and confrontation (Boy & Pine, 1995: 20).

2.6 Person-Centered Approach and the Rights of children

The statement by Boy & Pine (1995: 206-207) that

Counselling has the potential to be a liberating process in which the child can sense personal rights, the child's worth as a person, and an awareness that the child can have some control over what is happening in his or her life

is echoed by researcher and is, in essence, what this research is aimed at – namely to create a process through a protocol, to ensure that children

- Are aware of their rights.
- Feel worth as people.
- Can experience some control in their lives.

In the introduction of this chapter, researcher mentioned the fact that the Person-Centered Approach enables the social worker to deal effectively with the rights of children. Although chapter four deals with children's rights in detail, researcher do feel it is necessary to refer to some specific rights at this stage in order to clarify how the Person-Centered (Child-Centered) approach as such, is inseparable from working with children and ensure that their rights are respected.

Boy & Pine (1995: 207 – 214) identified a tentative list of rights of children that need to be respected. They described it as follows:

2.6.1 The child has the right to distributive justice

The child has the right to equality of treatment under the law.

Distributive justice is based upon the concept that all children should have equal access to counselling; equality of treatment, positive regard and empathic understanding regardless of the child's race, gender, religion, values, handicap and ethnic affiliation. It is the opinion of researcher that age should be added to the above criteria. It is often experienced in practice that children are being discriminated against because of their age.

The following example demonstrate researcher's view:

Practical example:

A four-year old boy witnessed his father killing his mother and himself. He wanted to remain in the care of his maternal grandmother who were his primary caretaker since birth and always lived with the family. Yet, the Commissioner of Child Welfare decided he is too young to decide for himself and issued an adoption order in favour of the paternal uncle and aunt. The result is an extremely unhappy child, constantly in psycho-therapy!

2.6.2 The child has the right to retributive justice

Retributive justice is the rendering of justice to those who have been denied justice. Children's rights are mentioned in the United Nations Convention on the Rights of the child (United Nations Convention, 1989: 2 – 4); the Bill of rights as entrenched in the South African Constitution (The Constitution of the Republic of South Africa, Act 200 of 1993) and various domestic legislation aimed at facilitating the implementation of principles espoused in the Constitution. Yet, when it comes to practice, it remains rhetoric! There are no consistency, for instance in court procedures, ensuring that children's rights will be respected.

2.6.3 The child has the right to be treated with dignity and worth as a person

Boy & Pine (1995: 207) expressed the opinion that the society and the counselling professions often give lip service to this concept. Oaklander (1988:281) actually confirmed the statement when she said:

The society's general lack of respect for children as entitled human beings serves to deteriorate every child's sense of self-worth.

What all children want, is fair treatment, equal access to a counsellor's time, energy and attention and to be treated with dignity and worth simply because the child is human. Their parents' position in the community should not be a qualifying criterion. Landreth (1991:50) echoed above statements and emphasized fact that children are worthy of respect because they have worth and dignity as individuals:

Children are people. They do not have to earn that distinction!

2.6.4 The child has the right to self-determination

The child's right to reach for self-determined solutions to problems comes from the counsellor's respect for the dignity and worth of the child as a person. This right of self-determination is a natural extension of the

counsellor's respect for the child's dignity and worth. The child's right to make mistakes, to challenge, to grow, to develop is a right which cannot be denied (Boy & Pine, 1995: 208). The question may be asked as to why not? As professional role-players dealing with children, we need to be aware of and believe in their abilities, as well as respect them for dealing with their worlds the way they do. Landreth (1991:50) confirmed that children are capable of positive self-direction and dealing with their worlds in creative ways. To prove the statement that children are capable of self-determination, Landreth (1991:61) referred to the infant as an example:

The infant is not content to continue crawling from one place to another. An inner urge exists to stand up, followed by a developmental forward-moving continuation of the inner striving which results in the child learning to walk. This is not a conscious decision, a well thought out plan, or the result of some significant adult's effort to teach walking. It occurs spontaneously as a result of growth and development. Although some pain may be experienced in this process when the child falls or take a wobbly step, the infant continues this forward-striving directional process toward growth. The infant will try again and again until walking is mastered to the infant's satisfaction. Since, in these experiences, the infant has been responsible for self, the accomplishment and accompanying satisfaction are internalized and strengthen the self. Such effort and determination do earn respect!

2.6.5 The child has the right to become voluntarily involved in counselling

The child's right to be voluntarily engaged in counselling will ensure a counselling program with credibility in which children sense that their voluntary participation is not only a right but a necessary first step if the counselling process is to be effective (Boy & Pine, 1995: 208). When children are forced into counselling, they lack the motivation to deal with a problem situation – mostly because they may not necessarily perceive or experience it as a problem in the same way the parent does. By allowing children to participate voluntarily in counselling, a responsibility is placed on the counsellor to render a quality service.

2.6.6 The child has the right to acquire an understanding of counselling

If the child has the freedom of choosing or rejecting counselling, then the child has the right to sufficient knowledge and understanding of the counselling process (Boy & Pine, 1995: 209). With regard to this study, researcher is of the opinion that children must have a right to know what is going to happen in their lives during a counselling process. Parents, counsellors and professional role-players often think they protect children by not sharing the information with them. Children can only experience and perceive it as distrust. In practice, this scenario is often found when parents go through a divorce. Parents often think they protect the children by not explaining the facts to them. This is unfair to children as their whole

life is disrupted through all the changes – yet it is expected of them to successfully cope with it! Concerning counselling, children need to know why they have to attend the sessions, what is expected of them and what the process entails. The following example explains the above:

Practical example:

Researcher explained to a nine-year old boy that he would be coming to play once a week until his heart is healed. When he realized he actually enjoys the special time where he do not need to pretend, he asked “*and what if I don’t tell you when my heart is healed?*”

2.6.7 The child has the right to confidentiality

Maintaining and respecting the confidences of children is essential in counselling. Boy & Pine (1995: 209) said:

counselling cannot occur unless the confidentiality of the relationship is assured.

If a child cannot feel secure in revealing him/herself to the counsellor because of a lack of trust, counselling will not have any purpose. Children will be hesitant to talk about their problems or needs until they are certain that the counsellor can be trusted. Boy & Pine (1995: 210) are of the opinion that children will enter the counselling relationship voluntarily and

more openly when they know that the counsellor will respect their right to confidentiality.

Landreth (1991: 145-147) pointed out that confidentiality is a difficult issue when working with children. On the one hand, the counsellor must be cautious of the way the child is informed or assured about keeping certain information confidential. The child should not feel guilty about information he/she shall or cannot share with the parents at that moment of time. On the other hand, parents are legally responsible for the child and also pay the bills for therapy. They may feel they have the right to know what is going on in the sessions. Where does the parent's right to know end and the child's right to privacy begin? It is an important ethical question and difficult to answer. Researcher would like to adhere to the guideline given by Landreth (1991:147) in this respect. According to him, the decision is always dependent on the parent's ability to use the information appropriately, the content of the information, the emotional vulnerability of the child, and the physical safety of parties involved.

It is also wise to inform children that their special time with the counsellor is private – no information about what is said and done will be revealed unless the child consents to it. Should there be information the counsellor deems necessary to share with the parents, the child will be informed about it – except in a situation where the child needs to be protected from physical harm (for instance a suicidal threat). It should always remain the

child's choice whether they want to share any information with their parents regarding the therapeutically sessions.

2.6.8 The child has the right to be different

In the counselling relationship, children should experience the epitome of respect, acceptance and understanding of their uniqueness and difference. Boy & Pine (1995: 211) pointed out that the freedom to have ideas, values and beliefs - the permission to be oneself - the right to be different - exist in a counselling climate that is marked by a deep respect for the individuality and uniqueness of the child. In line with the basic principal of Person-Centered Therapy, it is in an atmosphere where uniqueness is fostered and difference is valued that the full discovery of the self can be achieved. With reference to Child-Centered therapy, Boy & Pine (1995:211) confirmed the above statement by saying:

In an atmosphere where differences are valued and where the child feels that individual worth and contribution are held in high regard, the child sees that there is something that the child can contribute – that the child's meaning, feelings, and ideas have value and significance.

2.6.9 The child has the right to be accepted

Acceptance should be a basic therapeutic condition when dealing with children. Landreth (1991:185) also acknowledged the importance thereof and stated as follows:

Acceptance grows out of a genuine and sincere interest in children, sensitivity to their rights, and a belief that they can assume responsibility for themselves. Children, who experience such an atmosphere of acceptance, learn that they can depend on others for support while developing their own sense of adequacy and independence.

Acceptance of the child means acceptance of the child's values. Boy & Pine (1995:211) mentioned that the counsellor does not have to agree or disagree with these values, only accept them as representing the child's viewpoint. Landreth (1991:185) echoed above and mentioned that acceptance does not imply approval of what the child is doing. Children have a need to be accepted as a person of worth, regardless of inadequacies, deficiencies or behaviour. As Boy & Pine (1995: 211-212) explained:

In being acceptant of the child's personal values – the counsellor must recognize the child's right to be so that the child may become. Allowing a child to be will enable the child to examine

that state of being and alter it as a response to effective counselling.

In practice it implies that the professional role-player will give children the opportunity of holding and expressing personal meanings without ridicule, attack, or moralization. With this kind of acceptance children will be free to look at values without fear.

2.6.10 The child has the right to make mistakes

As Boy & Pine (1995: 212) explained:

Where mistakes are not permitted, the freedom and willingness of people to make choices are severely limited.

Growth is facilitated when error is accepted as a natural part of the process of growth. Growth requires the challenge of new and different experiences, the trying of the unknown, and therefore, it necessarily must involve, making mistakes.

For children to grow and learn, they need opportunities to explore new situations and ideas without being penalized. Unlike the preconceived notion of adults, Boy & Pine (1995: 212) confirmed researcher's opinion that no child, within a normal intelligence range, is incapable of making choices, although some children may feel that they can't. Boy & Pine

(1995:212) summarize the importance of allowing children to make mistakes:

The child who feels free to choose and move in any direction discovers an increasing pride and confidence in making personal choices, and those choices will be characterized by experiences and goals which sustain the self and enhance others.

2.6.11 The child has a right to counsellor genuineness

Genuineness, as one of the conditions for a therapeutic relationship in the Person-Centered Approach, implies, according to Boy & Pine (1995:212), recognizing persistent feelings and attitudes and expressing what one experiences. Prochaska & Norcross (1999:147) adds to this, stating:

Genuineness means that therapists are freely and deeply themselves, with the actual experiences of the therapists being accurately represented in their awareness of themselves. It is the opposite of presenting a façade.

Boy & Pine (1995: 213) confirmed that counselling has no room for facades. Prochaska & Norcross (1999:148) added a sixth condition for a therapeutic relationship – explaining that, in order for the client to trust the caring and empathy of the professional role-players, they must be seen as genuine and not as just playing a role. Boy & Pine (1995: 212) emphasized

that children have a right to know and respond to the counsellor (professional role-player) as a real person.

Children are extremely sensitive to genuineness and do not reveal themselves or relate to people who play a role. Boy & Pine (1995:213) confirmed this in stating the following:

By feigning acceptance and understanding when they are feeling anxiety, some counselors come across to children as unauthentic. Counselor genuineness in the helping process will help children to discover the universality of their own individual values.

Providing children with an opportunity to experience the preceding rights, represents the counsellor's (professional role-player)'s respect for both the child and for justice.

2.7 Conclusion

This chapter serves to motivate why researcher applied the Person-Centered Approach as theoretical foundation in work with children and, in conclusion, the following issues can be highlighted:

- Through the interpretation of the propositions, the professional role-player are able to have a better understanding of the child and realize the importance to treat a child as a person in own right and not as an inferior human being.

- It has research evidence that the Child-Centered Approach is supported by a greater amount of research than any other approach to counselling and psychotherapy.
- Researcher mentioned that, because it is such a responsibility to work with people, it is necessary to work from a specific frame of reference. The Person-Centered Approach provides an effective frame of reference to work from, and regarded as a highly accurate approach in its ability to be congruent with the needs of children.
- Most important, when a counsellor works from a Child-Centered Approach, the children will be able to perceive the professional role-player as a caring person who is able to understand them as human beings and their problems.
- If the child's viewpoint can also be taken into consideration, researcher will be assured that the rights of children will be better protected.

As the value of applying the Person-Centered Approach has been clearly indicated in working with children, the focus will in the next chapter shift to the needs and life tasks of children of different ages.

CHAPTER 3

THE NEEDS AND LIFE TASKS OF CHILDREN IN THEIR DIFFERENT DEVELOPMENTAL PHASES

3.1 Introduction

It is essential for anyone undertaking work with children to understand how children develop. Such knowledge enables the professional role-player to

- Understand how the child has reached his or her current stage of development and, equally important,
- It provides an understanding of which factors, among many in the child's social environment, are most likely to influence how the child develops in the future.

From this perspective, a clear focus for intervention (targeting the most significant factors) will be possible and a responsible, respectful way of dealing with children.

Cunningham (1993: 2) substantiated the above by saying the following:

There are three reasons for studying child development. First, on a personal level, we get a chance to see how the events of our own childhood may have influenced us to become the people that we are today. Second, on a practical level, if we know how

different events can influence development, then we have the opportunity to help all children reach their full potential both as children now and as adults later. Third, on a theoretical level, as we learn more about how children change over time, we should be better able to explain why they change the way they do and why they differ in their responses to similar events.

Researcher strongly agrees with the following opinion of Garbarino & Stott (1989:1):

As adults learn more about the child's perspective, they will begin to see children as intelligent, respected actors in the adult-child communication process. As they learn that children have a comprehensible point of view, even though it is immature compared to the adult perspective, adults can improve the validity and ethical soundness of their efforts to communicate with children.

What professional role-players are seeking is a perspective on children as sources of information for adults – a perspective to inform professional practice. According to the current draft of the new Children's Bill (B 70B – 2003), it is enquired in terms of Section 6(2) that all proceedings, actions or decisions in a matter concerning a child must

- respect, protect, promote and fulfil the child's rights set out in the Bill of Rights
- respect the child's inherent dignity

- treat the child fairly and equitably
- protect the child from unfair discrimination on any ground
- recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age
- recognise a child's disability and create an enabling environment to respond to the special needs that the child has.

This can only be done if all stakeholders or professional role-players

- have knowledge about children's needs and life tasks in the different developmental phases.
- knows what the rights of children entail (as will be discussed in the next chapter).
- combine above into a practice model.

In other words, the necessary knowledge of the developmental process will enable the adult (professional role-player) to view aspects from a child's perspective. This in turn, will enable them to be more effective in what they do and how they do it, and ensure that it is in greater harmony with the needs and rights of children.

3.2 Defining the different terms

3.2.1 Developmental phases

Smith & Cowie (1991: 5) defined development as

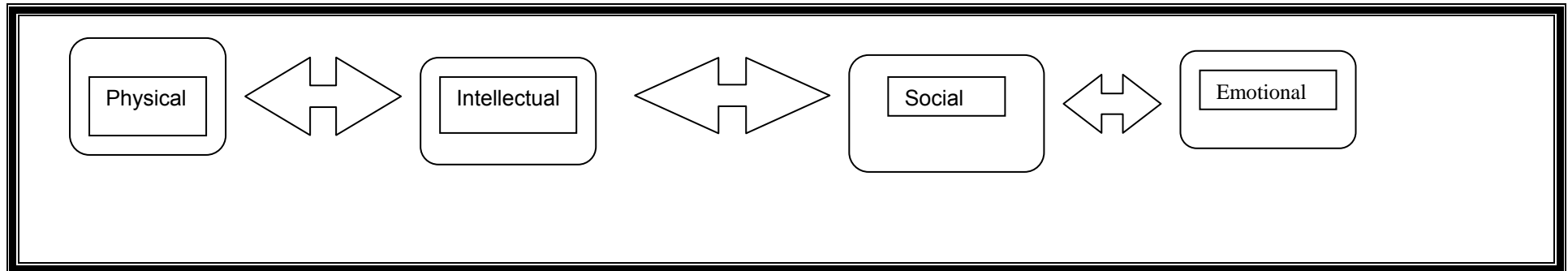
The process by which an organism (human or animal), grows and changes through its life span.

They further state that the most dramatic developmental changes in humans occur in infancy and childhood, as the newborn develops into a young adult capable of becoming a parent him or herself. This *process* referred to, is known as the different developmental phases and, as Smith & Cowie (1991: 5) indicated, is related to age. In Bemporad (1980) the following phases are distinguished, to which researcher would like to adhere:

- Infancy → birth to 18 months
- Toddler → 18 months to 3 years
- Pre-school years → 3 to 6 years
- Primary school years (middle childhood) → 6 to 12 years
- Adolescence → 13 to 19 years

Reynolds (1992: 63) as well as Garbarino & Stott (1989:9) emphasized that this developmental phases are divided into four areas (spheres) which are interlinked and dependent upon each other:

Figure 12: Developmental spheres



As Garbarino & Stott (1989:9) explained:

Rather than viewing development as a steady progression from the time of birth, when the infant knows nothing, to adulthood, when the person has accumulated the adult store of knowledge, we see children proceeding through a series of qualitatively different stages. These changes reflect successive reorganizations of shifts in the quality of functioning and occur in all spheres of development, physiological, cognitive, social, and emotional.

This brings us to the next term, namely life tasks.

3.2.2 Life tasks

According to Garbarino & Stott (1989:9), the major task of childhood is maintaining the capacity for continued development. Gary (2003:1) referred to Professor Robert Havighurst of the University of Chicago who proposed that stages in human development can best be thought of in terms of the developmental tasks (life tasks) that people need to master in order to move on to the next developmental phase. Jackson & Rodriguez-Tome (1993: 145) defined developmental tasks as problems that arise at certain periods in an individual's life. They hypothesized that successful achievement of these tasks leads to happiness and greater probability of success with future tasks. Failure leads to unhappiness, societal disapproval and difficulty with later developmental tasks. The importance of successfully mastering these tasks

should therefore not be underestimated. Researcher would like to link these tasks to the different needs of children. If these needs are not met, the general social, emotional and cognitive developmental processes are put at risk.

3.3 The developmental process

3.3.1 A historical overview

Colton, Sanders & Williams (2001: 21) pointed out that one of the earliest fundamental divisions between groups of child-development theorists stemmed from the belief among some that children are the way they are, because they are born that way, and the belief among others that the environment is the main influence on how children develop.

The first child-developmental theorists were John Locke (1632 – 1704) and Jean-Jacques Rousseau (1712 – 1778).

Lock emphasized the importance of environmental influences and held the opinion that the ways children develop are determined by their early experiences and interactions with people. He also seemed to appreciate the inherent nature underlying children's readiness to learn. As Colton, Sanders & Williams (2001:23) pointed out, Lock realized that children had difficulty remembering rules in the abstract and therefore favoured a modelling approach to teaching. Piaget later developed the notion that very young children are not capable of abstract thinking.

Rousseau emphasized the importance of nature or internal forces. He believed that children already have their own individual natures at birth and adults are advised not to damage this individuality by trying to impose adult notions of reason or social order. According to Colton, Sanders & Williams (2001:23) Rousseau had little faith in society's ability to guide children's development:

Individuals who are well socialized are too dependent upon how others see them and have forgotten how to see with their own eyes and think with their own minds.

Rousseau rightfully believed that we should be helping children to develop their capacity to think rather than teaching them *how* to think! He described nature as 'a hidden tutor' helping children to develop different capacities at different stages of their lives. According to Rousseau, children will arrive at a point where they can think logically through the progressive unfolding of inherent abilities. He was the first of the 'stage' theorists and identified four main stages of development in which the child's inherent capacities unfold namely infancy, childhood, late childhood and adolescence.

Following on from Locke and Rousseau, there has been no shortage of child-development theories. Colton, Sanders & Williams (2001: 26 - 30) made an interesting summary of how different theories were linked with the original theories of Locke and Rousseau:

Locke and the environmentalists	Rousseau and the developmentalists
Pavlov (1849-1936)	Freud (1856-1939)
Watson (1878-1958)	Eriksson (1902-1994)
Skinner (1905-1990)	Piaget (1896 – 1980)
Bandura (1925 -)	Kohlberg (1927 – 1987)
	Gesell (1880 – 1961)
	Maslow (1908 – 1970)

Pavlov embarked on Locke's suggestion that children learn from the environment through an association of ideas and used the association ideas with dogs. **Watson** adapted Pavlov's conditioning experiments to a child.

Skinner took the concept of learning by association and extended it to learning by reinforcement. **Bandura** expanded the theory and showed that children can learn from direct and indirect consequences of their behaviour. According to Colton, Sanders & Williams (2001:27) Bandura's maxim was 'Children are more likely to do what we do than what we tell them to do.'

Several basic principles closely related to Rousseau's concepts, were found in the **Freudian** theory of psychoanalysis. **Erikson** took the emphasis away from the biological and psychosexual and looked at the psychosocial development over the entire lifespan. He proposed the following stages as given in Colton, Sanders & Williams (2001:28):

- Basic trust vs. basic mistrust (birth – 1 year)

- Autonomy vs. shame and doubt (1 – 3 years)
- Initiative vs. guilt (3 – 6 years)
- Industry vs. inferiority (7 – 11 years)
- Identity vs. role confusion (adolescence)
- Intimacy vs. isolation (early adulthood)
- Generativity vs. stagnation (middle adulthood)
- Ego integrity vs. despair (late adulthood)

According to Smart & Smart (1978: 292-294) Erikson referred to the life cycle as the epigenesis of identity:

This principle states that anything that grows has a ground plan, and out of this ground plan, the parts arise, each part having its time of special ascendancy, until all parts have arisen to form a functioning whole.

Piaget focused on the cognitive development by saying that development is a progressive equilibration from a lesser to a higher state of equilibrium (Smart & Smart, 1978:295). Piaget's analysis of these progressive forms of successive equilibrium highlights the differences from one behavioral level to another, all the way from the elementary behaviour of the neonate through adolescence. Above authors explained that the variable structures – motor or intellectual – on the one hand and affective on the other, are the organizational forms of mental activity. They are organized along two dimensions namely intrapersonal and interpersonal.

Smart & Smart (1978:296-297) as well as Colton, Sanders & Williams (2001: 29) summarized Piaget's stages of development. A combination of the summaries can be presented as follows:

- Infancy (birth – 2 years):
 - Reflex or hereditary stage at which first instinctual nutritional drives and emotions appear.
 - First motor habits, organized percepts and differentiated emotions.
 - Sensorimotor or practical intelligence (prior to language).
- Early childhood (2 – 7 years):
 - Pre-operational period.
Pre-conceptual stage (18 months – 4 years).
Intuitive stage (4 – 7 years).

The stage of intuitive intelligence, spontaneous interpersonal feelings and of social relationships in which the child is subordinate to the adult.
- Middle childhood (7 – 12 years):
 - Stage of concrete intellectual operations, beginning of logic, of moral and social feelings and of co-operation.

- Adolescence:
 - Stage of formal / abstract intellectual operations, formation of personality, affective and intellectual entry into the society of adults.

Kohlberg extended Piaget's stages of moral development to three levels:

- Pre-conventional (based on punishment and rewards).
- Conventional (based on social conformity).
- Post-conventional (based on moral principles).

As Colton, Sanders & Williams (2001:29) pointed out, each of the abovementioned stages or levels are sequential, and one cannot progress to a higher stage until one has passed through the stage before.

Gesell's approach focused on human traits as determined by genetics. According to him, children simply mature with age, and environment plays a minor role. **Maslow** developed a model of a hierarchy of human needs, with physical needs at the base of the pyramid of needs and self-actualization at the top. According to Maslow's thinking, the drive for self-actualization is seen as inherent: one needs to fulfil one's intrinsic nature and become all that one can be. According to Colton, Sanders & Williams (2001:30), this drive is usually suppressed in early childhood by the needs of adults to have children conform to expectations. In adulthood, the drive is suppressed by the willingness of adults to conform to society's expectations.

Above statement confirms the denial of children's participatory rights during their developmental years - and the result thereof in adulthood.

3.3.2 The Social Ecological theory

The American psychologist – Urie Bronfenbrenner – expressed dissatisfaction with the traditional way of understanding child development in that the exclusive focus was invariably the immediate setting of the individual, and the wider societal impact on how children develop was generally ignored. Smith & Cowie (1991: 8) confirmed that Bronfenbrenner emphasized the importance of studying 'development-in-context' or, in other words, the ecology of development and is also in line with their point of view on this matter.

According to Smith & Cowie (1991:8) ecology can be described as

The environmental settings which the person or organism is experiencing, or is linked to directly or indirectly.

Colton, Sanders & Williams (2001:45) are of the opinion that ecological thinking appears to be on the verge of gripping the imagination of those who are involved with children. They also acknowledge that one of the benefits for students and practitioners alike is that such a model enables them to see their clients in the widest possible social contexts.

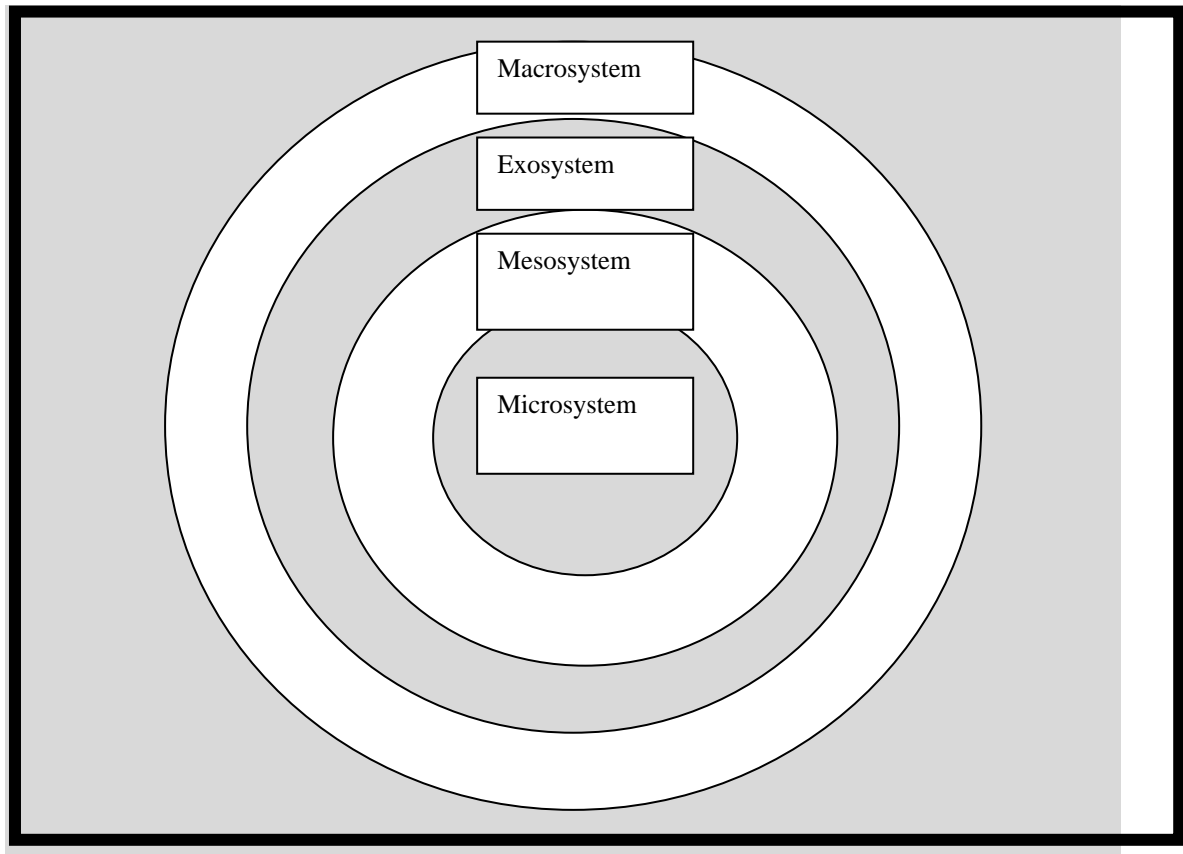
The main thrust of the ecological model is the adaptation between the individual and his or her environment. Bronfenbrenner (1979:21) defined the ecology of human development as follows:

The scientific study of the progressive, mutual accommodation, throughout the lifespan, between a growing human organism and the changing immediate environments in which it lives, as this process is affected by relation obtaining within and between these immediate settings, as well as the larger social contexts, both formal and informal, in which the settings are embedded.

Colton, Sanders & Williams (2001: 46) explained that the mutual accommodation mentioned in the definition, is the result of the individual and the environment interacting with each other. The individual plays an active role in influencing the environment, which in turn exerts an influence on the individual, which takes into account previous influence. It is in other words a synergistic (combined) cycle of influence between the changing individual and the changing environment.

The environment itself is seen as a complex set of systems within systems and can be visualized as four concentric circles:

Figure 13: Bronfenbrenner's ecology of human development



3.3.2.1 Description of the systems

3.3.2.1.1 Micro-system

Bronfenbrenner (1979:22) defined the micro-system (small system) as:

A pattern of activities, roles, and interpersonal relations experienced by the developing person in a given setting with particular physical and material characteristics.

Examples of the micro-system according to Smith & Cowie (1991: 9) as well as Colton, Sanders & Williams (2001:47) would be home (with parents and siblings): school (with teachers and peers) and workplace (with colleagues). Colton, Sanders & Williams (2001:47) pointed out that most traditional theories of child development restrict themselves to this level.

It is important to understand that there are several micro-systems for each child and these become more as the child grow older. As Colton, Sanders & Williams (2001:47) states:

Wherever there is a setting in which the child is physically present, there is a micro-system for his or her development.

Practical Example

As a baby, the child is largely rooted in the family system. As he or she grows, the child moves into the school system and learns to move back and forth between these two micro-systems. As the child gets older and becomes more independent, the child moves more and more between many different micro-systems – friends, church, work, sport, etc.

3.3.2.1.2 Meso-system

The meso-system (middle system) is defined by Bronfenbrenner (1979:25) as:

Comprising the interrelations among two or more settings in which the developing person actively participates (such as, for a child, the relations among home, school, and neighbourhood; for an adult, among family, work and social life).

Colton, Sanders & Williams (2001:48) referred to the meso-system as a system of micro-systems. Smith & Cowie (1991:8) explained that the meso-system refers to links amongst settings, which the individual participates in.

Practical Example

The quality of a child's home life may influence his/her school performance or confidence with peers. Colton, Sanders & Williams (2001:49) elaborated on above example by emphasizing the importance to remember that the influence is reciprocal. Not only does the nature of the relationship between parents and school influence the child, but the child influences the nature of that relationship.

3.3.2.1.3 Exo-system

Bronfenbrenner (1979:25) defined the exo-system (outside system) as:

One or more settings that do not involve the developing person as an active participant, but in which events occur that affect, or are affected by, what happens in the setting containing the developing person.

Smith & Cowie (1991:9) explained that the exo-system refer to links of settings which the individual does not participate in directly but which do affect him/her.

Practical Example

A parent's work environment may affect the parent's behaviour at home and thus influence the quality of parental care. Children do not directly experience the parent's work environment but they do experience the effects indirectly.

According to Colton, Sanders & Williams (2001:49) the exo-system is the most challenging to understand. They maintained the opinion that

understanding the impact of the exo-system on the individual is a two-stage process: The first stage is to demonstrate the impact of the exo-system on the individual's micro-system and the second stage is to demonstrate the resulting impact of the micro-system on the individual.

An interesting point by Colton, Sanders & Williams (2001:49) is that the individual may exert an impact on his or her micro-system, in such a way that it has wider repercussions beyond the micro-system.

Practical Example

A child might interact with his peer group in a way that causes disruption in a youth centre and affects the local community. For instance to negatively influence other youths, start a gang and may cause havoc in a community.

3.3.2.1.4 Macro-system

The macro-system (large system) is defined by Bronfenbrenner (1979:26) as:

Consistencies, in the form and content of lower-order systems (micro-, meso-, and exo-) that exist, or could exist, at the level of the subculture or the culture as a whole, along with any belief systems or ideology underlying such consistencies.

According to Smith & Cowie (1991:9), the macro-system refers to the organization of social institutions in the society or subculture the individual find him / herself in.

Practical Example

The effects of parental stress at work will be affected by factors such as working hours in that society, rates of pay, holidays and leave entitlement, occupational status or the degree of social stigma attached to unemployment.

Colton, Sanders & Williams (2001:50) explained that examples of the macro-system can be both explicit (laws, regulations and rules) and implicit (belief systems as they are reflected in custom and practice). It is at the level of the macro-system that ways can be considered in which children internalize values in relation to gender, disability, race, sexual orientation and so forth. An important part of the macro-system is the way in which ideologies at the national level operate at the local level, through books that the child reads, television, the behaviour of adults, and a host of other influences. Researcher would like to add here the consideration of the effect it will have on adults (as responsible citizens) when they were in that position as a child that their rights to participate in their lives, were denied.

3.3.2.2 Ecological transitions

Bronfenbrenner (1979:26) defined an ecological transition as follows:

Whenever a person's position in the ecological environment is altered as the result of a change in role, setting, or both.

He emphasized the importance of changes in the ecological environment on development. Smith & Cowie (1991:9) explained that every time the person is faced with a challenge, he/she has to adapt to allow development to take place. Colton, Sanders & Williams (2001:50) listed examples of ecological transitions as the birth of a new baby; the arrival of a sibling; the child's first day at school; beginning work, or the loss of a significant person from the micro-system. They explained it as follows:

Indeed any loss from the micro-system, any addition to it, or any change in the way the components of the micro-system relate to each other could entail an ecological transition.

3.3.2.3 Practice value

In researcher's opinion, the main advantage of an ecological orientation towards child development is situated in its congruence with anti-discriminatory practice. Colton, Sanders & Williams (2001:50-51) confirmed this by saying:

It exhorts the practitioner to look widely at the influences on a particular child in a particular place, and in doing so challenges the practitioner to become aware of how structural inequalities within society are played out in the very immediate situations that the practitioner encounters.

A developmental assessment of children should thus incorporate factors of the macro-system as they have a significant impact on and are integrally related to an understanding of the child in his or her situation. Colton, Sanders & Williams (2001:51) summarized the practice value concisely when they said:

A consideration of the macro-system for an individual child is important because it calls upon the practitioner to locate his or her practice in the widest possible political and social contexts, and can serve as a secure basis for developing anti-discriminatory practice.

The Social Ecological theory allows the practitioner or professional role player to incorporate the Child Centered Approach and the developmental process with children's rights. From this foundation, the professional role-player can consider the effects on children when these rights are denied.

3.4 The needs and life task checklist according to the developmental phases

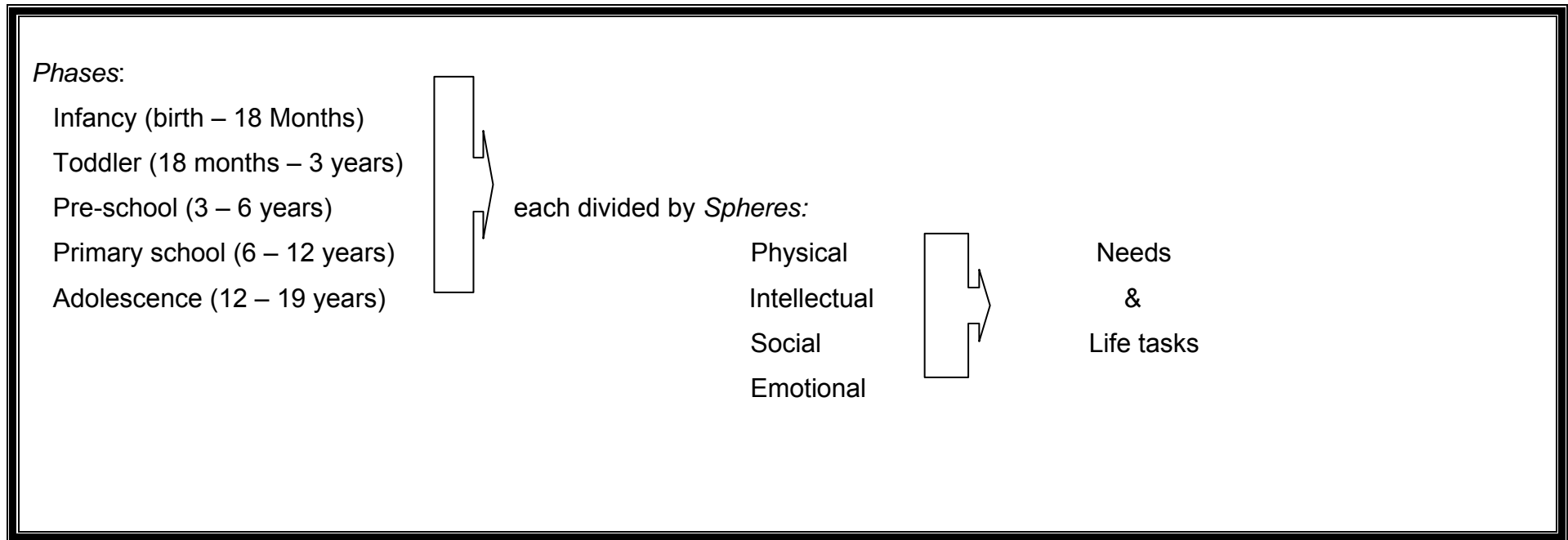
Fraiberg (1978: 6) said that:

If we understand the nature of the developing child and those parts of his personality that work for solution and resolution towards mental health, we are in the best position to assist him in developing his inner resources.

Although human development forms an integral part of the curriculum in the training of relevant professional role-players, researcher experienced in practice that this knowledge is easily forgotten or not taken seriously. For this reason, the loophole (as mentioned in the beginning of the chapter) exists, namely that adults make decisions, and so justify their actions of ignoring the children's views, feelings and capabilities with the term 'best interest of the child'. Researcher considered the sentence '**bearing in mind the child's age, maturity and developmental phase**' and came to the conclusion that, because this knowledge is so important, the professional role-player working with children, actually needs a hands-on checklist that will enable them to

control which abilities the child is capable of at what age. In order to create such a checklist, many different theories and viewpoints were studied and summarized. First, it is important to visualize the developmental process as a whole – knowing the meaning of the different terms involved in this process:

Figure 14: Developmental process



Four spheres characterize every developmental phase. Each Sphere has its own developmental life tasks. Each task must be accomplished before the child is ready to move on to the next phase. Whether the child has accomplished each of these tasks, the reasons if not and the effects thereof within the micro-, meso-, exo- and macro-system of each child, should be taken into consideration.

To put above theory into practice, researcher compiled a checklist, mainly from the following sources: Levy (1953:113-122); Fraiberg (1978); Smart & Smart (1978); Bennett (1980:45-92); Kestenbaum (1980: 99-120); Sarnoff (1980:146-173); Sharp (1980:174-217); Sours (1980:121-144); Fahlberg (1988); Reynolds (1992:63-99); Cunningham (1993); Gillis (1996:67-75); Sharp & Cowie (1998:3); Colton, Sanders & Williams (2001:20-51).

All children, throughout the developmental phases, have certain needs and when these needs are not met, normal social, emotional and cognitive developmental processes are put at risk. Sharp & Cowie (1998:3) compiled a comprehensive list of needs, which are essential for all children from infancy through to adolescence and can be listed as follows:

- **Basic physical care:**

Children need to be assured of warmth, shelter, food, rest and hygiene.

- **Security, guidance, support and control:**

Children need to have a sense of continuity of care and the expectation that the family unit will remain stable. Routines and predictable patterns of care, reasonable sets of rules and consistent monitoring facilitate this sense of security. They need to be in a context where there is consistent, firm guidance on acceptable social behaviour and where adults act as 'good-enough' role models.

- **Love, affection and respect:**

Children need to have affectionate, respectful physical contact, to be comforted when in distress, to be held with tenderness; to be listened to; to be taken seriously; to be given opportunities for challenge, exploration and the growth of a sense of competence; to be encouraged to share feelings, including those that express anger, bewilderment and hurt.

- **Stimulation to learn and access to schooling:**

Throughout the pre-school years, children need to explore their world at their own pace; to have stimulating materials, playthings and books; their questions need to be answered. Once at school, they need to have access to appropriate educational opportunities in context where

there is a concern to provide them with resources to help them learn and realize their potential.

- **Autonomy and responsibility:**

Children and young people need to gain the experience of taking responsibility for themselves and others in age-appropriate ways (tidying of toys, household chores, managing their pocket money). They need to be given helpful information for example on sexual matters, to help them to make informed, reasoned decisions which affect themselves, their families and friends. This information should not be weighed with value-laden judgments. There should be opportunities to deal with ethical dilemmas and interpersonal conflicts and to live with the consequences, whatever these may be. Fahlberg (1988:13) summarized the needs effectively when she said:

A basic psychological task faced by every individual is to find a healthy and comfortable balance between autonomy or self reliance, and dependency or trust in others. No one achieves this balance once and for all. It is, instead, shifted and negotiated throughout life.

Abovementioned basic needs should be considered from a Child Centered Approach when utilizing the following checklist.

DEVELOPMENTAL CHECKLIST

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
INFANCY: Birth – 18 months	To build a sense of safety, security and trust in other human beings	Physical:	Meeting of dependency needs Develop motor skills Fine-motor skills Sensory development	Active, stimulus seeking Sit, crawl, walk Grasp and hold objects, building blocks, scribbling. Vision and hand/eye coordination; hearing; distinguish smell; awareness of sensation of touch and sense of taste

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
		<p>Intellectual</p> <p>Social</p> <p>Emotional</p>	<p>Learning through senses – firsts gains knowledge through own body and then of external objects</p> <p>Beginning of sorting out perceptions of the world</p> <p>Building up of trust and feelings of security (attachment)</p>	<p>Able to learn and respond to social stimuli; possessing Powerful control and signalling devices. Communication and language skills starts develop.</p> <p>Smile, differentiate between parents and strangers. At 18 months showing signs of independence and assertiveness!</p> <p>Unable to control emotions/ feelings but display them freely.</p>

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
<p>PRE-SCHOOL: 3 – 6 years</p>	<p>Proficiency in self care within home setting; Period of questions, time of play and continuing individuation and independence</p>	<p>Physical</p> <p>Intellectual</p> <p>Emotional</p> <p>Social</p>	<p>Learning to care for themselves</p> <p>Dramatic change in conceptual functioning</p> <p>Individuation and self-proficiency;</p> <p>Need opportunity to play with children of own age as well as family members.</p>	<p>Bathing, dressing; rapid physical growth.</p> <p>Able to understand logical rules, increased memory capacity; heightened ability to differentiate perceptual experiences.</p> <p>Capable of symbolizations; Learn emotional control.</p> <p>Move from solitary play to parallel play to cooperative play. Growth from egocentricity to companionship.</p>

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
<p>PRIMARY SCHOOL: 6 – 12 years</p>	<p>To master problems they encounter outside the family unit; Devote energy to learning in school; develop motor skills, social interactions with peers of same sex. Issue of fairness or lack of it important at this phase.</p>	<p>Physical</p> <p>Intellectual</p> <p>Emotional</p>	<p>Acquisition of gross motor skills</p> <p>Increase academic learning. Concrete and rule-bound in thought.</p> <p>Specific personality structure develops</p>	<p>Control his drives – able to cooperate and participate in learning situation.</p> <p>Calm, educable. Able to evaluate a given setting.</p> <p>Age 6: Become aware of guilt; Age 7: Ability to remember abstract aspects of experience;</p>

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
		<p style="text-align: center;">Social</p>	<p style="text-align: center;">Developing of socializing skills</p>	<p>Develops a understanding of the intrinsic nature of things / events; Able to express: Motor level > modelling clay; Verbal level> verbal description; Abstract level> metaphors, poems, theoretical interpretations; Age 8: Conscience is guided by tendency to move away from parental influence and begin to seek influence from outside (peers, teachers); Age 9-10: would like to be able to take responsibility for their own lives; Object to parental interference; desire to make own decisions.</p> <p style="text-align: center;">Influence of peers important.</p>

NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
	<p data-bbox="992 443 1279 877">Emotional</p> <p data-bbox="992 877 1279 1469">Social</p>	<p data-bbox="1279 443 1659 877">Psychological separation from the family; Identity issues; Achieving a satisfactory sexual identity; Attaining emotional independence from parent, family and other adults.</p> <p data-bbox="1279 877 1659 1469">Overhaul his/her outlook on life, his/her view of themselves and his/her entire personality. Learning to relate to peers and to society in a mature way.</p>	<p data-bbox="1659 443 2045 877">Great upheaval; discomfort; uncontrolled tension and inner turmoil. Become pre-occupied and absorbed in him/her. Integration of emotions.</p> <p data-bbox="1659 877 2045 1469">Turn-away from adults towards devotion to peer group. Trying new relationships; accepting adult responsibilities and social acceptable values and behaviour.</p>

3.5 Combining theory and practice

The decisions that professional role-players need to make when working with children, are life changing and, as Schofield (2005:29) said:

These decisions can create beneficial turning points or downward spirals that may affect the rest of children's lives.

The United Nation's Convention on the Rights of the Child stressed the importance of listening to children and of taking their wishes and feelings into account. This places a tremendous responsibility on the professional role-player – especially with children who are involved in a judicial process.

Making sense of children's development is an essential part both of listening to children and facilitating their participation in decision-making. Schofield (2005: 29) confirmed this opinion by saying:

An understanding of developmental theory can help practitioners to identify children's strengths and difficulties, make sense of children's communications and enable children to feel more valued and effective.

Too many professional role-players, especially from outside the helping professions, are still of the opinion that the child's right to be heard contradicts his/her right to be protected. Schofield (2005:29) expressed the opinion that one way of reconciling the potentially competing but potentially

complementary discourses of participation rights and welfare rights, may be to take an approach that draws on theories of child development. She explained that this can assist in both the task of ascertaining the wishes and feelings of children and in the way in which courts, panels and planning meetings take the evidence of those wishes and feelings into account. Dr Vera Fahlberg (Fahlberg, 1988:7), a well known author on child development, expressed the opinion that behaviour should be perceived as a child's way of communicating need rather than as an inconvenient problem in the path of an adult. Furthermore, children should be seen in their historical context and within their total environment if they are to be understood and helped.

Not only is it a child's right to participate in decision-making but, increasing the accuracy of the professional role-players' understanding of the mind of the child, their thoughts, feelings and hopes for the future, will also contribute to a more accurate assessment. Listening to children when making decisions that effect their lives, is not simply about offering them the right to contribute views, it is about understanding children's point of view as well as their developmental needs, striving to make sense of what their lives have meant to them and seeing the world through their eyes. It is about working with them to anticipate, plan for and create a pathway that will bring them their best chance of stability, happiness and personal fulfilment in family and community life.

Researcher would like to enable the professional role-player to combine theory and practice by providing them with a compact set of 'tools' to utilize.

These ‘tools’ will include the developmental checklist as discussed above in combination with the developmental model (to be discussed in detail). Utilizing it in practice should enable the professional role-player to enhance their effectiveness in their work with children, ensure that children’s rights are protected and experience the reward of satisfaction when listening and understanding children.

3.5.1 The developmental model

As co-director of the Centre for Research on the Child and Family at the University of East Anglia, Norwich Gillian Schofield linked key areas of development together into a model that highlights the complex transactional, psychosocial and ecological nature of development, while encouraging practitioners to use this knowledge to support and empower children. Although this model was developed for use in children’s court enquiries – deciding which alternative placements will be best, researcher considered it as most suitable to apply in all cases where children are part of a judicial process. Through this model, the professional role-player will have a compact, practical framework which will allow them to take into consideration children’s developmental needs and abilities as well as their participation rights, before making any decisions. The developmental model of Schofield (Schofield, 2005: 29-44) is of the latest research and offers the possibility of using developmental insights to assist with the dilemmas around both listening to children and taking what they say into account.

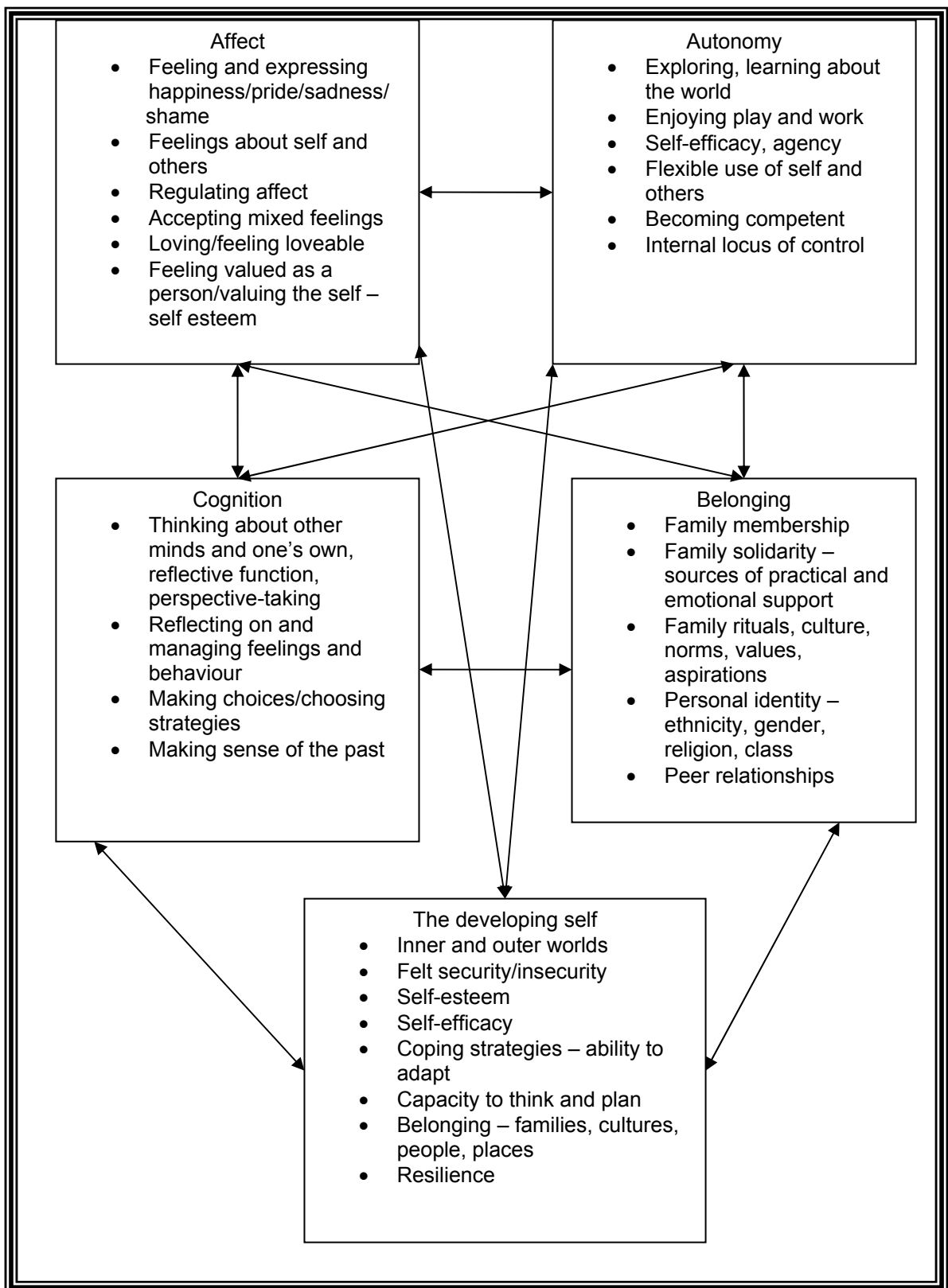


Figure 15: The voice of a child: a development model

3.5.1.1 Explanation of the model

Affect, cognition and autonomy interact developmentally from infancy to adulthood. According to Schofield (2005:30), a sense of security and a capacity to manage feelings liberate children both to think flexibly and to be effective. In contrast, abuse, neglect and fear make it hard for children to trust other people, to think clearly and to communicate in words about their feelings.

As Schofield (2005:30) explained:

Children will have strengths as well as vulnerabilities that derive from their genetic, birth family and care histories. Both must be identified in order to maximize the child's capacity to speak and be heard.

It is therefore essential that children's stories must be set in an ecological framework (see Bronfenbrenner's social ecological theory above) since children's minds and behaviour develop both in the context of close relationships and in the world of peers, school, community and culture.

The aim of the model, according to Schofield (2005:31) is to provide a concise but holistic picture of the development of a child's mind and behaviour, a framework in which the significance of listening to children can be understood.

3.5.1.1.1 Affect

Reports about children to courts, panels and other planning forums should describe children's *feelings* about their birth families (foster families, adoptive families), their siblings, their friends and themselves in detail. In order to do that, it is helpful to start by thinking about children's emotional development and the ways in which feelings are both felt and expressed. It is important to remember that a child's expressions of emotion and ability to put their feelings into words will vary greatly depending on their experience in close relationships. Particularly important will be those experiences in the formative period of infancy, but also through the pre-school years as language develops. As Schofield (2005:32) stated:

The capacity to name emotions, for example, relies on the child's developing sense of the meaning and specificity of different emotions, on their developing language skills and on the ability to put those two together in conversation with others.

Research has demonstrated the consequences of synchrony between the infant and the caregiver. When a child has experienced a lack of synchrony, such a child becomes confused and uncertain about the feelings that he or she is experiencing. Children in neglectful or maltreating families often have difficulty in expressing emotions. Schofield (2005:32) also pointed out that children who have been maltreated will show fewer negative emotions and may display false positive affect. This is a developing strategy for managing

their feelings in order to stay safe when close to people they do not trust. In working with children, the professional role-player needs to portray that such contradictory feelings are understandable.

3.5.1.1.2 Autonomy

One of the major developmental tasks from infancy, through adolescence to adulthood, is to manage and balance dependency and autonomy. Schofield (2005:35) mentioned that negotiating how much autonomy to allow when decisions are made about children's lives and their futures, causes anxiety to practitioners / professional role-players.

The risks and benefits of giving or withholding power and choice in situations of very great seriousness lie at the heart of the debate between children's participation rights and children's best interests.

Schofield (2005:35) explained that autonomy is about the flexible use of self and others and says throughout childhood, children are expected to make decisions – (who shall I play with? What shall I make from the play dough?) When children are invited to participate in decision-making, they are offered the opportunity to influence decisions that will affect their future in highly significant ways. For children who have experienced exercising appropriate autonomy, making decisions is achieved by a combination of careful thinking through and asking advice from people they trust. They can think, act and plan rather than only react to events. Children, who have been discouraged

from asserting themselves in their birth families, find it difficult to know where to start. Schofield (2005:36) emphasized that these are the children who need most help to ensure that when momentous decisions are made about their lives, they are considered to have views worthy of consideration:

This moment in their lives is a time of crisis, but it can also be an opportunity for a different experience of being valued, one that itself can be a positive turning point.

Children need to be treated with respect as an autonomous being but they also need to feel that their interests are protected. Schofield (2005:36) quoted from the Children Act Guidance (1989, Vol. 3, par 5.53), offering wise counsel:

Children should feel that they have been properly consulted, that their views have been properly considered and that they have participated as partners in the decision-making process. However, they should not be made to feel that the burden of decision-making has fallen totally upon them.

3.5.1.1.3 Cognition

As Schofield (2005:37) stated:

The expression and regulation of feelings and the appropriate development of autonomy in children cannot be achieved without the fundamental development of the capacity to think, about the self, about others and about the world around them.

This capacity has many components: some have genetic roots, such as intelligence; others are associated with age and developmental stage; and others are influenced by environmental factors. When referred back to the developmental checklist, it is evident that cognitive development moves from sensory-motor stages in infancy to be more concrete and rule-bound in middle childhood. In adolescent and adult minds, thinking is more flexible and abstract. These shifts in thinking towards increasing complexity and abstraction have great significance for professional role-players. Schofield (2005:37) however pointed out that such shifts towards increasing complexity are not automatic with advancing age but will still depend on the quality of experience. Cognition, like affect and autonomy, is particularly affected by the more extreme experiences of maltreatment and the professional role-player need to take cognizance of it.

As Schofield (2005: 37) explained:

Listening to children, reaching an understanding of the thinking as well as the feeling mind of a child, requires a firm foundation of knowledge about nature, nurture and the interaction between the child's mind and the environment in which they are growing and developing.

The importance of the development of a flexibly thinking, reflective mind that can approach new situations with confidence and adaptive strategies highlights the risks and difficulties for those children who do not have this capacity. This is highly relevant for the professional role-player who seeks to ascertain, understand and take into account the wishes of children. Schofield (2005:39) mentioned that the challenges for professional practice operate at several levels, namely that problems with children's thinking interact with difficulties in naming feelings and exercising autonomy. It is important for the professional role-player to realize that a relatively high order of thinking is required when for example children are asked to offer a view on future placements. Children and young people cannot exercise autonomy without having some understanding of the options or legal choices and the meaning it will have on their everyday lives. Children whose thinking is at a very concrete level because of their age, or who are anxiously confused, find it difficult or impossible to engage easily in a discussion about hypothetical situations. For children to think about the risks and benefits of possible futures is not only difficult but also painful. This implies that the professional role-player need to

take into account the child's developmental capabilities and put in more effort into using that knowledge to promote children's effective participation. Schofield (2005:39) effectively summarized the importance of above when she said:

Such understanding can be used to ensure that as accurate a picture as possible of the way children think, as well as feel, about their world is available for those charged with deciding a child's future.

3.5.1.1.4 Belonging

All the children exposed to the judicial process and with whom the professional role-players come into contact, are hurt or confused – either because they have or are likely to be removed from their birth families or because their parents are going through a divorce. It is thus important to include in the model a more psychosocial dimension of development – the significance of belonging. Schofield (2005:40) said that:

Although understanding the quality of close relationships within families is an essential part of listening to children, family placement decisions almost invariably have to deal with options that will potentially re-orientate the child in terms of their family memberships and their identities.

Although 'belonging' may seem a relatively straightforward concept, many children find it hard to think about or express their ideas and feelings about where they currently belong or would like to belong in the future. For this reason, the professional role-player needs to do such a weighing process about belonging (respecting the quality of relationships) with a lifespan perspective in mind. Belonging to a family is often linked to a number of other sources of identity, such as ethnicity, religion, school and community. All of these areas of belonging may also be affected by placement decisions. Schofield (2005:42) pointed out an important aspect namely that, although a conversation with children about family belonging provides an opportunity to gather evidence for the decision, it also helps the child to think about and evaluate aspects of their family membership as part of the process of refining their sense of self.

3.5.1.1.5 The developing self

All the different aspects of children's development are inevitably linked to the child's evolving sense of self. As Schofield (2005:42) described it:

Feeling loved and loveable and knowing that caregivers are predictable and available, for example, liberates the child's capacity for exploration and for autonomy, but also increases the likelihood of an improved capacity to think things through.

Schofield (2005:42) described this as a psycho-social and ecological model in which inner and outer worlds interact so that experiences in school and peer

groups will be both affecting and being affected by the child's capacity to think, manage affect and behaviour, and feel competent to use their own resources and the support of others. The more secure children feel, the more likely it is that they will be able to think logically and flexibly and be comfortable in expressing a range of feelings. The more insecure and anxious they feel the more help they will need to be able to access and communicate these feelings.

The developmental goal of resilience is, according to Schofield (2005:42) built from building blocks such as security, regulating emotion, self-esteem, autonomy, self-efficacy, reflective function, identity and a sense of belonging:

These all contribute to fortifying the child in times of stress and enabling them to meet developmental and life-event challenges.

Although we must use theory and research to help understand the likely interaction between children's development and their environments, the professional role-player still need to keep in mind that each child's pathway will be unique.

3.5.1.2 Implications for practice

Listening to children as part of decision-making processes entails taking account of this rich developmental picture. It involves being aware of the challenges and subtleties of establishing a partnership with children that can enable them to communicate what they think or feel and to express their views on the directions, which their lives might take.

According to Schofield (2005:42), children themselves will not be aware of this complex developmental picture, but professional role-players need to recognize it on their behalf and can very often use this awareness to help children make better sense of their experiences. The message that it is not unusual for children to have mixed feelings, for example, is a simple one, but can bring a great deal of relief to troubled children.

Schofield (2005:43) concluded by saying:

Active listening by workers who understand the complexities of development, the need for children to take the lead in a safe environment and the need to find ways to reach each child, whatever their history or ability to communicate, is the only way in which we can hope to achieve the best outcomes for children.

3.6 Concluding remarks on development

Landreth (1991:49) remarked that some people mentioned that space is our last frontier to explore but in fact, he is of the opinion that childhood may our last frontier. As he explained:

We know so little about the complex intricacies of childhood and are limited in our efforts to discover and understand the meanings in childhood because we are forced to allow children to teach us. Many adults do not want to be taught by children, but we can only learn about children from children.

Development is indeed a process of complex intricacies although adults do not deliberately think about the efforts it involves from the child to achieve the developmental tasks – managing to balance dependency and autonomy. Fraiberg (1978: ix) echoed this statement when she said:

It is only in the minds of adults that childhood is a paradise, a time of innocence and serene joy.

Yet, adults (parents, professional role-players) need to be aware of these efforts and give recognition to these achievements because, as stated by Gillis (1996:72):

The manner in which young people come to view their efforts in achieving success – or otherwise- in the different developmental

areas, greatly influence the extent to which they eventually emerge with a positive or negative self-concept.

The professional role-player working with children thus have a greater impact on children's lives, and therefore a greater responsibility, than they would realize otherwise.

Having reached more clarity on the needs and life tasks of children of different ages, the important role of the judicial system and the need for a protocol to follow when working with children will now receive attention in the next chapter.

CHAPTER 4
EXPLORATION OF THE RIGHTS OF CHILDREN
FROM A GLOBAL PERSPECTIVE

4.1 Introduction

In the previous chapters, researcher discussed the importance of

- Working from a Child-Centered approach in order to respect children's autonomy, and
- Knowledge regarding the developmental processes of children, their needs, life tasks and capabilities.

In this chapter researcher would like to consider the extent to which children face discrimination simply by virtue of being young.

The term "children's rights" has echoed in all countries over decades as awareness grew of the importance of recognizing that children do have rights. James & James (1999:189) confirmed that listening to the voices of children, have become somewhat of a clarion call since the 1970's, both within and outside the academically world. Yet, it remains rhetoric as researcher experienced in practice as a social worker. 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. When it comes to putting the above rights into practise, the hearts of all parties involved are likely to start racing because suddenly the issue is not just academic, it is personal.

Franklin (2002:18) mentioned that in the early 1970's, children's rights were described as 'a slogan in search of a definition'. Subsequently, over the past three decades, an expansive academic awareness was noticed. The United Nations Convention on the Rights of the Child has also substantially increased public awareness of children's rights.

Freeman (1999:51) is concerned that, even with an awareness of children's rights, the emphasis has been on protecting children, rather than encouraging their active participation in decision-making processes. Researcher echoes above concern and is of the opinion that the reason behind it lies in a comfort zone for the adults. For some reason, adults believe they always have to be in control and this implies making decisions on behalf of children – justifying it with the term "acting in their best interest". Practice has proven that children are continuously exposed to being traumatized through the fact that they have to live the life decided by adults. This implies that practice is currently operating from an Adult Centered Approach in stead of a Child Centered Approach. By allowing this behaviour to continue will be to sanction negative behaviour at the cost of children's lives.

4.2 Defining children's rights

The 54 articles of the United Nations Convention on the Rights of the Child (1989) embrace a wide range of rights which are grouped under three broad categories, namely the three 'P's for provision, protection and participation. Franklin (2002:20) as well as Colton, Sanders & Williams (2001:229-230)

identified certain rights that accompany each category and it can be listed as follows:

Provision:

- Right to life.
- Right to adequate health care, food, clean water, shelter, security.
- Right to physical care, family life, play, recreation, culture and leisure.
- Right to education.

Protection:

- Right to protection against physical, emotional and sexual abuse.
- Right to protection against neglect.
- Right to protection against exploitation.
- Right to be safe from discrimination, substance abuse, injustice and conflict.

Participation:

- Right to a name and identity.
- Rights to privacy.
- Right to freedom of association, expression and thought.
- Right to be consulted and taken account of.

- Right to access to information.
- Right to challenge decisions made on their behalf.

Franklin (2002:20) suggested two broad distinctions in the discussion of children's rights, namely:

- Legal and Moral rights.
- Welfare and Liberty rights.

4.2.1 Legal and Moral rights

As Franklin (2002:21) explains, a *legal right* is an entitlement which is acknowledged and enforced by an existing law in a specific state. *Legal rights* is actual rights which children possess.

Moral rights (sometimes referred to as human or natural rights) enjoys no legal endorsement but serve as a claim for a right which it is believed children, indeed all human beings, should possess by virtue of their common humanity.

4.2.2 Welfare and Liberty rights

According to Franklin (2002:21) the distinction between welfare and liberty rights corresponds with the 'nurturance' versus 'self-determination' orientation. He further states that these two kinds of rights can conflict and are at the centre of much of the controversy which surrounds discussions of children's rights.

Welfare rights prioritise the provision for children's welfare needs and the protection thereof. These include rights to education, health, shelter and a minimum standard of living.

Liberty rights focus on children's rights to self-determination. These rights imply that children should enjoy greater freedom and rights in decision-making.

Welfare and liberty rights are very different kinds of rights – both in terms of the type of claims which rights holders are making as well as the qualification necessary to exercise them. Franklin (2002:21) explains the latter as follows:

The possession of welfare rights – to education, health, shelter require only that the right holder possesses interests which can be preserved, protected and promoted. Claims for liberty rights – to participate in decision-making, to vote – require that the right holder must be capable of making and exercising choices. Children's claims to protection rights have rarely been contested. Their claims for liberty rights invariably are.

4.3 The acknowledgement of children's rights – a global perspective

As mentioned before, the term 'children's rights' has echoed world-wide. It is therefore important to see which international instruments influenced legislation and how different countries utilized it.

4.3.1 International context

4.3.1.1 European Convention on Human Rights

The European Convention on Human Rights was drafted in the aftermath of World War II and, as Fortin (2002:119) explains, the rights it contains reflect the determination of those living in post-war Europe to prevent a recurrence of the type of atrocities and persecution experienced by so many. Its provisions protect an individual's private life and secure his/her freedom from undue state interference. It guarantees the basic liberties deemed essential to a free and civilised society, including protection against imprisonment without a fair trial, freedom of expression and religion and the right to peaceful assembly.

This Convention has undoubtedly had an important influence on the development of all further laws. According to Fortin (2002:121), the incorporation of the European Convention into domestic law of different countries has made people think far more about their entitlement to the rights it protects. Without doubt, children can benefit from the heightened rights consciousness. Unfortunately, as Fortin (2002:121) stated:

To date, the notion that children have rights and that these must be fully acknowledged and promoted has been regarded with some suspicion.

Despite abovementioned suspicion, the United Nations Convention on the Rights of the Child saw the light.

4.3.1.2 United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (1989) which has attracted an unprecedented number of signatory countries to ratify its principles embraces a comprehensive set of civil, economic, social and cultural rights which it argues the global community of children should enjoy as a minimum.

Sharp & Cowie (1998:4) strongly support above and expressed the opinion that society has an obligation to establish a basic set of children's rights, which should be unacceptable or even illegal, to contravene.

Researcher deems the following articles of specific importance:

- Art 2: All rights apply to all children without exception. It is the State's obligation to protect children from any form of discrimination and to take positive action to promote their rights.
- Art 3: All actions concerning the child, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

- Art 9: The child has a right to live with his or her parents unless this is deemed to be incompatible with the child's best interest. The child also has the right to maintain contact with both parents if separated from one or both. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
- Art 12: State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
- Art 13: The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

One hundred and eighty six countries ratified the Convention – only Somalia and the United States of America are not signatories. As Colton, Sanders & Williams (2001:229) explain:

By ratifying, a government signifies its intention to comply with the provisions in the Convention, and must make regular reports on its progress towards implementation to the UN Committee on the Rights of the Child.

Ruxton (1996:22) considers the Convention a highly significant document in that it provides a comprehensive framework within which to examine the impact of all legislation, policy and practice relating to children's rights. However, he adds that a key challenge for the United Nations Committee is to establish clear interpretations of each of the articles in the Convention so that legislation and policy develop coherently. Freeman (2002: 115) shares this concern and stated:

The Convention has to be seen as a beginning but the lives of children will not change for the better until the obligations it lays down are taken seriously by legislatures, governments and all other concerned with the daily lives of children.

In the light of this comment, it is important to review the influence this Convention has on legislation in different countries. These countries were selected as they experience similar problems to that of South Africa.

4.3.1.3 Legislation and children's rights in the U.K.

The United Kingdom signalled complete commitment to the ideals of the European Convention on Human rights by being the first European country to ratify the Convention in March 1951. It was with the practical implementation that the shortcomings in this Convention came to the fore. Fortin (2002:123-124) critically examined this Convention and identified three aspects which undermine its ability to promote children's rights. These aspects will be discussed in short:

- It has a narrow scope: Fortin (2002:123) state that it principally revolved around the basic freedoms deemed essential to individual autonomy and privacy from state interference (i.e. freedom from torture and the right to a fair trial).
- Although its provisions apply to all individuals, whatever their age, it was self-evidently never designed to provide specifically for children as a group. For instance, it could have been better worded had it been designed with children specifically in mind.
- Even applications which focus on children's rights will inevitably be brought on their behalf by adults because children are too young to cope with the procedural complication of making claims themselves. Adults acting for children are often their parents and, as Fortin (2002:124) mentioned, the adult perspective of the articles may be exploited by parents to promote their own rights, at the expense of those of their children.

In 1991 the U.K. government ratified the United Nations Convention on the Rights of the Child and it played an important role in the development of The Children Act 1989.

The Committee on the Rights of the Child responded critically to the U.K.'s implementation of the United Nations Convention on the Rights of the Child.

Fortin (2002:121) state as follows:

Even the government's ratification of the United Nations Convention on the Rights of the Child failed to ensure that legislators took full account of the rights of children.

The Committee on the Rights of the Child drew detailed attention to widespread improvements in British Law as well as policy still required to accomplish the aims of the United Nations Convention on the Rights of the Child.

Franklin (2002: 3 - 7) grouped the recent progress concerning children's rights in the U.K. under five broad headings:

- **Intellectually**

The discussion of children's rights has achieved a degree of respectability. Franklin (2002:3) explains:

Instead of being dismissed as "utopian nonsense" or mere "political correctness" the idea that children possess rights

which adults should respect and help to promote now informs aspects of government policy and legislation, the policy of voluntary sector and charitable organisations as well as the practice of welfare professionals.

This recently achieved respectability reflects a growing scholarly interest in the study of childhood, children and society. According to Franklin (2002:3), three assumptions inform this paradigm shift, namely:

- Childhood is judged to be a social rather than a biological construct.
- Children's social relationships are worthy of study, not merely as the construction of adults, but as the outcome of children who actively help to shape their own and others' social lives as well as the societies of which they are members.
- Ethnography provides a useful methodological approach to the study of childhood as it provides greater opportunities for children's participation and creates possibilities for a more direct voice for children in research.

- **Politically**

Children's rights have become contested territory for mainstream political parties.

- **Legally**

Franklin (2002:4) mentioned that the paternalistic notion that the “best interests of the child” must be protected has increasingly come to be supplemented by the principle that children have a right to express their views and have their wishes taken into account in legal decisions which concern them. He further states that The Children Act 1989 carefully straddles the divide between protectionist (paternalist) and participatory rights:

Its guiding principle is that “the child’s welfare is paramount” but the legislation also supports the principle that, where possible and appropriate, the “ascertainable wishes and feelings of the child concerned” should inform decisions (Children Act, 1989: Section 1(3) (a)).

The truth though, according to Franklin (2002:4), is that judiciary continue to interpret this latter requirement conservatively falling back on paternalistic assumptions of children’s incompetence!

The most significant legal development regarding children’s rights is the incorporation of the European Convention on Human Rights into English domestic law in 1998 through the Human Rights Act 1998 which became fully operational on 2 October 2000. The Human Rights Act forces government to review carefully any new draft legislation which directly/indirectly affects children in every context, to ensure its

compatibility with their rights, as secured by the European Convention. According to Fortin (2002:122), any government Minister introducing draft legislation into either House of Parliament must now annex a written statement confirming that it is, in his view, compatible with the terms of the European Convention (Human Rights Act, 1998: Section 19). Domestic courts may also adjust the principles of common law themselves – without waiting for Parliament – in order to accord with the demands of the Convention. So, after almost fifty years after the United Kingdom ratifies the abovementioned Convention, it became a practical reality in the lives of children.

- **Institutionally**

The development of organisations such as End Physical Punishment of Children (EPOCH) along with the appointment of more than fifty Children’s Rights Officers in different local authorities offers testament to the growing commitment to children’s rights. Franklin (2002:5) also mentioned that the last decade witnessed a considerable growth in the number of ombudsman or Children’s Rights Commissioners. A further development, as described by Franklin (2002:5) has been the emergence of a number of institutions to enhance citizenship in the local arena. Such developments reflect the United Nations Convention on the Rights of the Child’s emphasis (Article 12) on children’s right to participate, but also the fact that children and young people are the major users of local government services such as schools, libraries, sport and leisure facilities, education, parks and public transport. Youth

councils and forums have been the typical institutional expression of this desire to increase young people's local involvement.

- **Internationally**

The United Nations Convention on the Rights of the Child has established a near global consensus concerning the minimum necessary rights for children. Yet, as Freeman (2002:97) pointed out, it is important not to mistake the word for the deed!

4.3.1.3.1 The Children Act 1989

The Children Act 1989 came into force in England and Wales in 1991, in Northern Ireland in 1996 and in Jersey in 2000. It does not apply under Scottish Law.

The *Families Need Fathers* website regarding the Children Act 1989 (www.fnf.org.uk/childact.htm : 1) states the purpose of the Children Act 1989 as:

Based upon the belief that children are generally best looked after within the family, with both parents playing a full part and without resort to legal proceedings. The welfare of the children is paramount consideration.

Roche (2002:63) asked in what ways the Children Act 1989 can be said to have advanced children's rights. Three key decision-making principles need to be pointed out, namely the endorsement of the paramountcy principle, the

provision of the “welfare checklist” and the no order principle. These considerations can be said to have advanced both the “welfare rights” as well as “liberty rights” of children. As explained on the website (www.fnf.org.uk/childact.htm), courts will not make orders regarding children unless the parents are in fundamental disagreement or if there are concerns about their welfare. Two important clauses though, are the ones stating that children should always be consulted (subject to age and understanding) and kept informed about what will happen to them as well as the one specifying that children’s issues must be determined as soon as possible so that minimum disruption is caused to the child’s life:

To minimise delay the court must draw up a timetable at a preliminary hearing in respect of subsequent proceedings. The court must have regard to a prescribed Statutory Checklist of the factors to be taken into account in deciding the future of children.

The abovementioned Statutory Checklist under Section 1(3) of the Children Act 1989, states as follows:

The court must have regard in particular to:-

1. The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).
2. His physical, emotional and educational needs.
3. The likely effect of any change in his circumstances.

4. His age, sex, background and any characteristics of his which the court considers relevant.
5. Any harm which he has suffered or is at risk of suffering.
6. How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of his needs.
7. The range of powers available to the court under this Act in the proceedings in question.

Researcher previously referred to Freeman who said it is important not to mistake the word for the deed. Roche (2002:72) indeed proved this when he found in his research ten years after the implementation of the Act that some of the positive hopes for the Act have failed to materialize. The roots of the 'failure'

according to Roche's research lied in the practices and attitudes of adults and professionals! Roche (2002: 73) states pertinently:

The way in which we think about children and children's rights has to shift and in that process adult practices including professional practice centring on children will shift. The rhetoric of rights is as much about shifting our imagination as it is about specific demands for legal change. We might all benefit from taking children and their rights more seriously.

4.3.1.4 Childhood and children's rights in China

As West (2002:341) explained, attempting to look at children's rights in this country is immensely difficult simply because China contains one fifth of the world's population and 20% of the world's children. The processes of 'transition' of economic and social reform at the end of the twentieth century have had considerable impact on Chinese childhood, and provided both opportunities and problems for many children.

Children in China face a unique situation through the one-child policy, parental indulgence, educational pressure, and the increased importance of peer relationships. Many children also face difficulties which will need to be addressed using the concept of rights as a basis, such as the right to identity, to education and to protection. These issues and the impact thereof on children's rights will be discussed in short:

- **The one-child policy:**

In 1979-1980 the one-child policy was formally adopted. West (2002:332) stated that, in explaining the need for the policy the government has tried to convince the public not only that China has too many people but its population quality badly needs improvement through "prevention eugenics" meaning that marriages of mentally retarded people, close relatives and patients with hereditary diseases must be prevented to avoid births of children with severe medical problems. The policy has been seen as children's rights issue but, as West (2002:332) stated:

The problems raised are often not the policy per se but attitudes around gender and disability (which are important rights issues), or discussions revolve around right to life/anti-abortion beliefs, or parents' reproductive rights, or a child's right to have a brother or sister.

The policy has affected families in numerous ways. Cultural preference for a son implied that parents who have a first child who is female, or a disabled boy, may try again for a non-disabled male. Discrimination against girls was also linked to patterns of excess female mortality, deriving from less attention paid to their nutrition and health care needs in poorer areas. Unwanted girls were often adopted locally, sometimes by being abandoned on the doorstep of a childless couple. West (2002:333) pointed out that, on the other hand, adherence to the one-child policy has in many places meant love, value and future hopes placed on a single daughter, and brought some shift in perceptions of female children.

Another perspective on this one-child policy is referred to as “Little emperors and family life”. Basic to Chinese tradition is the idea of a family's physical togetherness. As West (2002:333) described it:

You are not encouraged to defend your privacy and autonomy within the family – your letters are for any member of the family who can read, and you will be thought selfish and unnatural if you try to keep your acquisitions to yourself. The boundary you have

to defend is not the one around your private self but the one around the family unit.

These relationships of sharing and cooperation have implication for children's lives and expectations. Parents have absolute rights to enter their children's private space and the children can use their parents' personal belongings as they wish. Families placed all their hopes on their one child. Boys and girls experienced both the devotion and generosity of parents, and pressure to do well. West (2002:234) mentioned that concerns over the single child family emerged in public and private:

First, children were receiving too much love and attention, becoming "Little Emperors" within the family; second, children experiencing loneliness and difficulties in peer relationships; and third, pressures to do well, carrying the burden of the family's expectations.

The lack of siblings has a great impact for children in the urban areas of China where the majority of children are only children. West (2002:335) emphasized the fact that competition for peer friendships may arise because of loneliness. Children also experience parental pressure, particularly on education. West (2002:335) referred to a child who said:

Our parents don't care enough about us. They are only concerned about how well we do in school!

According to West (2002:335), some children find school pressures intolerable, run away or harm themselves. He pointed out though that recently the government announced measures aimed at relieving overload and ensuring mental well-being of children.

- **Issues and problems:**

A few issues and problems related to children's rights are outlined:

Separated children: West (2002:337) referred to the question of care of children separated from or with no parents, as an important issue in China. The reason being that the so-called "welfare homes" reflect the earlier city schools. He quoted from Spence who described the practices in these schools – "teaching" children "mechanical trades" by letting them work in flour mills operating machines or, if they are too crippled to work the mill equipment, they are employed by the rope- or basket makers in hoisting the cordage and weaving the rushes.

Disability: Most children with disabilities are cared for in family homes and not seen much in public. Some children with severe impairments are abandoned and subsequently cared for on welfare homes which are primitive in the extreme. Apparently, foreigners are never taken to such places – even on request. West (2002:338) confirmed that few Chinese he met admitted that institutions for the handicapped exist and explained the severity of the situation for the disabled when he said:

A deformed or mentally handicapped child represents a tragedy anywhere in the world but in China such unfortunate children bear a special burden.

Street children: This phenomenon attracted attention in the late 1980's and the government has responded with the development of Street Children Protection Centres. Improper behaviour on the part of the parents, such as gambling, drug-addiction and child beating were identified as reasons for children's departure to the street.

Child labour: West (2002:339) reported that there are examples of exploitative child labour reported in the media in China, and many of these cases involve children who have been trafficked or kidnapped.

Abuse: As child sexual abuse becomes more acknowledged, there is some public recognition that perpetrators may be people known to the child, but there is considerable resistance to the notion that family might be involved. More openly discussed is the question of physical abuse, in particular the beating of children.

- **Children's rights and the law:**

China ratified the United Nations Convention on the Rights of the Child in 1991 and that same year signed the Declaration of the Plan of Action at the World Summit for Children. A National Plan of Action for children in

China was created following on from the Summit, and was the focus of attention in the 1990s. West (2002:341) listed relevant laws as:

Protection of Minors Act 1992

Adoption Act 1999

Prevention of Juvenile Delinquency Act 1999.

In the latter part of the 1990s, interest in the UNCRC (United Nations Convention on the Rights of the Child) as a framework for implementing policy on children became evident. The children's right to participation is still contested though and, as West (2002:341) confirmed, much remains to be done in promoting the idea and method.

4.3.1.5 Children's rights in Australia

Maira Rayner (2002:345) described the situation of the 4,8 million children in Australia as lucky in the sense of being within striking distance of a beach or swimming pool, have clean drinking water, health care is free and they are likely to have their own bedrooms. Should they be Aboriginal or a Torres Strait Islander, or has arrived in the country without proper travel documentation, or has a disability, or needs the care of the state however, their luck has changed.

In 1990 Australia ratified the United Nations Convention on the Rights of the Child but child poverty had grown. It missed the timetable for lodging its first report to the UN Children's Rights Committee in 1993 and since then faced significant and justified criticism on how it treats its children. Rayner

(2002:345) reported that real human rights abuses have been revealed and left without redress; indigenous infant mortality rates are more than three times higher than the rate for other Australian infants; refugee children are not accepted either. In the year 2000, Amnesty International reported one instance of a 3-year old being put in leg restraints and detained with his father in a suicide-proof cell without windows, toilet or shower for thirteen days, and being denied food and medical attention.

The question why the ratification of the United Nations Convention on the Rights of the Child did not make children's rights part of a national agenda, was investigated. Rayner (2002:348) explained that Australian laws, institutions and policies about children are divided among the original six Australian colonies, now states, and two self governing mainland territories. Each vigorously guards its sovereignty and possesses its own Governor, written Constitution, legislature, executive and judiciary. The Australian Constitution establishes a "Commonwealth" of states and territories, and a system of federal courts dealing with the laws made by the federal parliament. Australia thus has several sets of governmental arrangements; hundreds of local government bodies peculiar to each state, and legal and administrative responsibilities for children are divided among them all. The federal parliament does not have the authority to make laws binding the states about education, child protection, how offending children should be treated by the criminal justice system or, simply, children's civil and political rights. As stated in Rayner (2002:350):

The division of legislative and bureaucratic authority over children have affected the development of children's law, policy and practice, even in terms of parental rights and responsibilities. There is no national children's policy or federal solutions to the kind of problems that have left Australia's government so vulnerable to legitimate criticism. Without a coherent, consistent and permanent voice for children at both national and state level, United Nations Convention on the Rights of the Child implementation cannot be achieved.

According to Rayner (2002:350), children in the courts were traditionally treated as either forensic objects or persons under a legal disability. In 1975 however, this changed dramatically with regard to Australian divorce law. For the first time children had the right to be legally represented. The new legislation even required the Family court to give effect to the wishes of children as to custody and access. The problem though is that no government has made proper provision for appropriately trained legal advocates for children or adequately funded children's specialist legal services. As Rayner states:

There seems little point in recognising a child's right to participate in decisions that affect them, thus denying the means of expressing those or any views.

Unfortunately, children's rights are not high on the political agenda. Rayner (2002:357) confirmed that it will take the concerted efforts of parents, children and children's groups to change this. She further stated that:

Adult institutions must take the rights of Australian children as seriously as they do the country's overseas reputation. It is bizarre that the federal government was willing to protect children's rights overseas but remains unwilling to give leadership in providing services for children that will keep Australian-based children well, happy, and help them to achieve their potential as adult citizens.

Since 1990 Australians have, "in principle", accepted that children have human rights but in practice, not implemented them.

4.3.1.6 The Bulgarian Children Act

In 1991 Bulgaria ratified the United Nations Convention on the Rights of the Child with enthusiasm. Although it provided a serious external stimulus for reconsideration of child policy and legislation in the country, the ratification however remained only a political token.

Todorova (2000:137) described the development of above act as a battlefield for adult policies in stead of a genuine commitment to children!

Wide reaching reform in the field of family law and child protection is currently under discussion in Bulgaria and was initiated when four legislative Drafts for Child Protection were brought to Parliament. Although the intention was to bring about reform in the public protection of children, the impact was far wider, and these proposals have helped to accelerate the entire reworking of legal regulation in the area of family relation. In May 1998 these four drafts were incorporated into a single draft for a new Family code. As Todorova (2000:137) explained, on the one hand there was growing recognition of the need for such a law; on the other hand, however, it became clear that there are serious obstacles to the social and parliamentary discussions. The government refused to participate in the deliberations and this seemed to predetermine the failure to move ahead.

As a result of public pressure and the efforts of the experts, the politicians admitted that the condition of children and their rights, together with the international commitments assumed by Bulgaria, required legislative measures for the implementation of the rights recognised in the Convention. Unfortunately, according to Todorova (2000:140), this fell short of recognition of the need for state policy towards families and children to be reconstructed in harmony with the new values and social tendencies.

Todorova (2000:140-145) identified a number of problems in the development and improvement of the legislation for children in Bulgaria:

- Social necessity

The reduction of social expenditure by the state and the impoverishment of families had led to serious deterioration in the welfare of children. Access to even basic services such as health care and education was reduced. Todorova (2000:141) quoted alarming statistics from a report of the Ministry of Education:

3% (50 000) children were dropping out of school annually due to mainly economic reasons; The number of children who began to work (usually in an unhealthy environment) before they turn sixteen, were rising progressively; There was a growing tendency of children to use drugs; Child prostitution has developed and nearly a thousand children were living on the streets where they became victims of brutal violence; The child-care establishments have accommodated about 30 000 children of whom only 4% were orphans.

- Public care for children

Five ministries and two central committees (Ministries for Health, Education, Labour, Social Policy and Justice and the Central Commission for Children with Delinquent Behaviour, and Youth and Sport Committee) were responsible for children. There were no authorities at the local level to implement public care for children. To a large extent the policies of these ministries and committees were inconsistent and controversial – dealing with administrative issues rather than serving the interests of

children. The police had no special obligations or authorisation for the protection of children. The only provision particularly targeted at children in the Ministry for Home Affairs Act authorises the police to take into custody for delinquent behaviour, children who have run away from their homes or other places where they have been placed for reasons of safety. The absence of individually targeted social services did not allow for child protection against possible domestic violence. Todorova (2000:143) found it cumbersome that there are no known or accessible authorities in Bulgaria where cases of violence or other risk for the child can be reported. No mechanism is provided to respond to a call for help and provide the child with immediate assistance.

- Legislative situation

Todorova (2000:143) pointed out that it is a constitutional principle that both society and the state should provide care for children and she quoted from Article 14 as well as Article 47 of the Constitution where it is stated that:

Children left without the care of their relatives shall be placed under the special protection of the state and society.

In practice the mechanisms for implementing these principles are outdated and ineffective. Todorova (2000:143-144) states as follows:

The current law cannot respond adequately to the social needs arising in the process of transition, especially those related to children and family.

Family law preserves an emphasis on the rights of the parents and therefore preserve and reproduce patriarchal relations in the family. The philosophy of the law is that the children are a part of the family, they belong to their parents and what they need is only protection and prevention from harm. In spite of the provision of a broad range of opportunities for consulting children over a number of family conflicts, there are no procedural means for hearing the voice of the child. The lowest level of change in legislation lies in the area of regulating parent-child relations.

- Changes in the Family, Children and Childhood

Todorova (2000:145) explain that in the context of the Bulgarian cultural milieu, the child is seen as a valued member of the family. She emphasized that new legislation is expected not only to set up mechanisms for more efficient protection of the children's welfare, but also to support the emerging social relations and status changes.

The most significant reason for the failure of the debate regarding legislation, as stated by Todorova (2000:155) is the fact that there are no professional communities in Bulgaria (such as social workers and child psychiatrists) to serve children. Social work training was started only in the

1990s and the newly emerging professional community of social workers is still incapable of serious contribution to the development of universal criteria and objectives in child policy. Contacts and communication between professional – physicians, social workers and lawyers – attending to children are just beginning to emerge. In fact there are no lawyers qualified specifically to work with children.

Todorova (2000:156) concludes with the concern that, although the experts are convinced Bulgaria must have a Children Act that is expected to deal with the deficiencies of current policy, it is not easy to foresee how long the children of Bulgaria will have to wait for it.

4.3.1.7 Children's rights in Belgium

Vandekerckhove (2002:362) reported that, inspired by the United Nations Convention on the Rights of the Child, other international guidelines and examples from other countries, the Flemish Parliament on 15 July 1997 voted to enact a law establishing a Children's Rights Commissioner and the Children's Rights Commissioner's Office. The first Commissioner was officially appointed by the Flemish Parliament on 13 May 1998 and the office really began to work in January 1999. The law sets out the main principles and tasks of the new office, which is, in its broadest sense, intended to provide an independent voice for children at parliamentary level. Vandekerckhove (2002:362) describes the function of the Children's Rights Commissioner as

A megaphone for children in a political forum where they are not represented.

She further elaborates:

Children may not have their own place in political life, but they are part of society, here and now. Children are certainly not formally citizens (because they lack the adult political rights which bestow citizenship), but they are citizens in as much as they experience – along with everyone else – the consequences and effects of policy decisions in their daily life. The Children’s Rights Commissioner’s Office is there to protect and promote their rights and interests.

4.3.1.7.1 The status of children

According to Vandekerchove (2002:363), children in Belgium seem to be at an ideological crossroad and an ambiguous position:

First, the status of children might be described as being simultaneously “not yet” on the one hand but being “already” on the other. The distinction between these two states is drawn by adults, who designate children as competent or not at different ages and in different spheres.

To illustrate the above statement, she explained that in the area of penal law, minors have for a long time been protected in the sense that they were considered to be legally incapable of committing criminal acts. More people lately believe that juveniles should be held responsible for their criminal acts and should be punished accordingly. The debate about their responsibilities under penal law is being conducted in the justice and welfare departments, with age-limits as low as 12 being advocated. At the same time, there is a debate about the age at which young people can freely consent to and engage in sexual acts. One proposal which triggered a heated debate, was the suggestion that the age of consent be lowered from 16 to 14. So, at the same time within the same society and political climate, different notions of competence and responsibility coexist. This also implies that children do have rights but are unable to exercise them.

Researcher strongly supports the following opinion of Vandekerchove (2002:363):

Stating that minors are people too and that they therefore should enjoy all human rights is an incomplete statement as long as they have to rely on the goodwill of adults to ensure that their rights are genuinely and effectively respected.

4.3.1.7.2 Functions of the Commissioner's Office

In general terms the Children's Rights Commissioner's Office has to monitor the implementation of the Convention on the Rights of the Child. This includes the following functions:

- Checking whether legislation is consistent with the principles of the Convention on the Rights of the Child.
- Giving advice on how the Convention can be put into practice.
- Stimulating child-friendly policies in which the social position of children can be strengthened.

Vandekerchove (2002:364) experienced that the issue of participation for children is the most debated element of the Convention on Children's Rights. From the Commissioners Office several recommendations were made to the Flemish Parliament and other authorities on a wide range of topics including family mediation, youth care, youth work, advertisements on television, sports, education and discrimination.

An important function the Commissioners' Office is fulfilling is to *inform* the public (adults as well as children) about the contents and the importance of the Convention on the Rights of the Child and raises public awareness about children's issues. As Vandekerchove (2002:364-365) explains, this is done through a number of activities such as the following:

- Annual campaign which involves activities for children and targets messages at adults and policy-makers.

- In the year 2000 a referendum for children was held with the results being sent to the newly elected community councils.
- The annual Children's Rights festival set up as an ideal city for children.
- A booklet for publication containing practical tips and information and strategies for children to claim their rights in their own communities. The rights-related themes and topics for the booklet were gathered from questions and suggestions received from children.
- A range of leaflets for different age groups were published containing information about children's rights.
- An interactive website was launched (www.kinderrechtencommissariaat.be). (Researcher was most impressed with this website – offering children the opportunity to participate in their own lives, as well as a facility to report when their rights were violated.)

Of extreme importance for this research, is the study that the Commissioner's Offices were required by law to undertake investigation into the circumstances and living conditions of children. Vandekerchove (2002:365) commented that it was an important but difficult commitment to meet and researcher would like to emphasize the following statement:

An effective child policy requires knowledge about children but this information is sparse and fragmentary. What, for example, are children's attitudes towards school? How important are media to them? These are questions that we have been answering from

an adult perspective for a long time, while the perceptions of children themselves are undoubtedly very different. Only when we begin to address issues from the child's perspective, will we be able to find the correct answers to their concerns and needs.

Vandekerchove (2002:365) reported that throughout 2000 a substantial social inquiry has been planned and conducted with data gathered about the different ways in which children view their daily life at home, in school and in their neighbourhood. She stated:

On completion, the study has provided essential insights into children's perspectives on the world around them. Access to such child perceptions is vital to performing the task of being a "megaphone" for children to the policy-makers.

The Commissioner's Office has to report annually to the Flemish Parliament about all its activities and achievements. This report is due on 20 November every year and, as Vandekerchove (2002:366-367) stated:

We take advantage of the situation to put children's rights on the political and media agenda. We realize however that making a reality of children's rights will never be possible without targeting the adult society. In the beginning it is adult society that will have to make the shift towards more child-friendly practices: parents,

teachers, social workers, politicians, doctors and all other adults who are related to children.

To conclude, Vandekerchove (2002:372) stated the following:

Promoting children’s rights is a never-ending story; travelling the same road again and again, at first having to create a “market” in the sense of getting people interested and convinced about the importance of human rights in general and children’s rights in particular. On occasions it is certainly a bumpy road but it is never boring.

On this positive note, researcher would like to conclude the section on the international context and focus on the situation locally – keeping in mind that we do not have to re-invent the wheel.

4.3.2 The South African context

South African Law is built on legislation in the United Kingdom and benefit from utilizing their previous experience. Yet, as China, Australia and Bulgaria, South Africa ratified the United Nations Convention on the Rights of the Child but haven’t as such implemented as domestic legislation and therefore experience similar problems as abovementioned countries.

In an enquiry by the South African Human Rights Commission in April 2002, it was stated that South Africa has a comprehensive child protection policy and

statutory framework. The framework is set out primarily in the South African Constitution, a number of international instruments to which the country is party and in domestic legislation aimed at facilitating the implementation of principles espoused in the Constitution and in international instruments.

Regarding international instruments, South Africa acceded and ratified the United Nations Convention on the Rights of the Child on 16 June 1995. As stated in the Human Rights Commission Report (2002:10), by acceding to this Convention, South Africa incurred the following obligations:

- To take all appropriate legislative, administrative, social and educational measures to protect the child from forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parents(s), legal guardian(s) or any other person who has the care of the child.
- To protect children from all forms of sexual exploitation and sexual abuse by taking all appropriate national, bilateral and multinational measures to prevent:
 - The inducement or coercion of a child to engage in any unlawful sexual activity.
 - The exploitative use of children in prostitution or other unlawful sexual practice.
 - The exploitative use of children in pornographic performances and materials.

- To take all appropriate national, bilateral, and multinational measures to prevent the abduction of or the sale of or traffic in children for any purpose or in any form.
- To take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation, or abuse, torture or any form of cruel, inhuman or degrading treatment or punishment; or armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Another international instrument South Africa acceded to on 18 November 1999 was the African Charter on the Rights and Welfare of the Child. The Human Rights Commission (2002:11) stated that by acceding to the African Charter on the Rights of the child, South Africa assumed an obligation to:

- Take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse.
- Protect the child from all forms of sexual exploitation and sexual abuse and in particular take measures to prevent:
 - The inducement, coercion or encouragement of a child to engage in any sexual activity.
 - The use of children in prostitution or other sexual practices.
 - The use of children in pornographic activities, performances

and materials.

- Take appropriate measures to prevent:
 - The abduction, sale of, or trafficking of children for any purpose or in any form, by any person including parents and other care-givers or legal guardians of the child.
 - The use of children in all forms of begging.

Schurink (1992:18-19) reported that the Children's Charter of South Africa, adopted by the Children's Summit of South Africa on 1 June 1992, specified that all children of South Africa are entitled to the following rights and protections:

PART II

- Article 1

1. All children have the right to the protections and guarantees of all the rights of the Charter and should not be discriminated against because of his/her or his/her parent's or family's colour, race, sex, language, religion, personal or political opinion, nationality, disability or for any other reason.

2. All political parties, the government, CODESA, the future government, communities, families, and parents should do everything possible to ensure that children are not discriminated against due to his/her or his/her parent's or family's colour, race, sex, language, religion, personal or political opinion, nationality, disability or for any other reason.

- Article 2

All children have the right to a name and nationality as soon as they are born.

- Article 3

1. All children have the right to express their own opinions and the right to be heard in all matters that affect his/her rights and protection and welfare.

2. All children have the right to be heard in courtrooms and hearings affecting their future rights and protection and welfare and to be treated with the special care and consideration within those courtrooms and hearings which their age and maturity demands.

3. All children have the right to free legal representation if arrested.

4. All children have the right to participate in the government of the country and special attention should be given to consultations with children on their rights and situation.

- Article 4

All children have the right to freedom to practice their own religion, culture or beliefs without fear.

- Article 5

Violence

1. All children have the right to be protected from all types of violence including: physical, emotional, verbal, psychological,

sexual, political, gang, domestic, school, township and community, street, racial, self-destructive and all other forms of violence.

2. All children have the right to freedom from corporal punishment at school, from the police, in prisons and at home.

3. All children have the right to be protected from neglect and abandonment.

4. All children have the right to be protected from township and political violence and to have 'safe places' and to have community centres where they can go for help and safety from violence.

5. All children have the right to be educated about child abuse and the right to form youth groups to protect them from abuse.

6. All persons have the duty to report all violence against, abuse of and neglect of any child to the appropriate authorities.

7. Children should not be used as shields or tools by perpetrators of violence.

8. Children have the right to say no to violence.

9. The media has the duty to prevent the exploitation of children who are victims of violence and should be prohibited from the promotion of violence.

10. All children have the right to be protected from violence by the police and in prisons.

11. Children should not be obligated or forced to follow adults in their political involvements.

12. All children have the right to be free from torture, detention or any other physical or emotional violence during apartheid or at times of unrest or war.
13. All children have the right to be protected from drug and alcohol abuse by their parents, families and others and to be educated about these forms of violence.
14. Children have the right to a special children's court and medical facilities to protect them from violence.
15. Special groups and organizations should be formed within the communities to protect and counsel victims of all types of violence.
16. No child should be held in prison or police cells at any time.

The rights included above are very much in line with the United Nations Convention on the Rights of the Child in that it includes the characteristics of *Provision, Protection as well as Participation*. Unfortunately, Article Three (as stipulated above), was excluded from section 28 regarding children in the Bill of Rights entrenched in the Constitution of the Republic of South Africa 108 of 1996.

Section 28 of the Bill of rights mainly focuses on the provision of services and protection against harm – the so-called welfare rights. The exclusion of liberty rights was confirmed by the research of Robinson & Ferreira (2000:54-67). Robinson & Ferreira investigated whether article 12 of the United Nations Convention on the Rights of the Child (1989), which provides for the right of the child to be heard, is self-executing. The conclusion is reached that article

12 is not self-executing in terms of South African law and that legislative action, rather than judicial action, is required by this provision. In practice it means that children under South African law actually have no right to express their views freely in all matters affecting them, or to be heard in any judicial and administrative proceedings. Researcher believes that the above finding should be challenged and would therefore like to discuss the Bill of Rights to determine how children's rights can be protected.

4.3.2.1 Bill of Rights (Constitution of the Republic of South Africa 108 of 1996)

In this discussion, researcher will concentrate on specific sections, or relevant parts thereof, which should be applicable and enable the professional role-players to protect (and enforce) the rights of children in practice, specifically if working from a Child Centered Approach:

- **Section 7**

(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

When referred to “all people in our country”, it should include children. Children are also worthy of human dignity and respect. In practice however, this dignity and respect do not reflect – with the result that children have to live a life decided by adults, regardless of their views and feelings. In order to raise responsible, well-balanced adults and citizens, children need to be treated with the necessary respect and dignity.

- **Section 8**

(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(2) A provision of the Bill of Rights binds a natural or a juristic person, if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court

a. in order to give effect to a rights in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and

b. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

(4) A juristic person is entitled to the rights in the Bill of Rights to the

extent required by the nature of the rights and the nature of that

juristic person.

According to this section, there should be no excuse to exclude a person's rights in the judicial process as section 8(3) (a) empowers the court to develop such a law should legislation not give effect to that right.

- **Section 9**

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection

(3). National legislation must be enacted to prevent or prohibit unfair discrimination.

It was enlightening to see that age was specifically listed as one of the grounds on which not to discriminate against people. This implies that discrimination against children, by virtue of their age, is unacceptable. It further implies that, regardless of the child's age, their views, wishes, feelings should be given serious consideration.

- **Section 10**

Everyone has inherent dignity and the right to have their dignity respected and protected.

- **Section 11**

Everyone has the right to life.

- **Section 12**

(1) Everyone has the right to freedom and security of the person, which includes the right

a. not to be deprived of freedom arbitrarily or without just cause;

b. not to be detained without trial;

c. to be free from all forms of violence from either public or private sources;

d. not to be tortured in any way; and

e. not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right

a. to make decisions concerning reproduction

b. to security in and control over their body; and

c. not to be subjected to medical or scientific experiments without their informed consent.

These sections are of specific relevance in cases of physical, emotional and sexual abuse. When a child is abused, his/her dignity is not respected or even acknowledged. Abuse further threatens the child's right to life. Not only is the child's life physically threatened, but the psychological damage done to that child has a permanent impact on his/her life. Abuse, in any form, is a direct violation of section 12 as a whole.

- **Section 16**

(1) Everyone has the right to freedom of expression, which includes

- a. freedom of the press and other media;**
- b. freedom to receive or impart information or ideas;**
- c. freedom of artistic creativity; and**
- d. academic freedom and freedom of scientific research.**

This section should be utilized to allow for the provisions made in Article 12 of the United Nations Convention – allowing children to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body. From a Person-Centered Approach as theoretical foundation, researcher is of the opinion that, by allowing children to participate in their own lives, their self-actualizing tendency (which Rogers believes exists in every individual) as well as their right to autonomy is acknowledged. Section 16(1)(b) specifically should be highlighted. By

denying children a right to information which will affect their lives, is denying them their right to autonomy.

- **Section 28**

(1) Every child has the right

- a. to a name and a nationality from birth;**
- b. to family care or parental care, or to appropriate alternative care when removed from the family environment;**
- c. to basic nutrition, shelter, basic health care services and social services;**
- d. to be protected from maltreatment, neglect, abuse or degradation;**
- e. to be protected from exploitative labour practices;**
- f. not to be required or permitted to perform work or provide services that**
 - i. are inappropriate for a person of that child's age; or**
 - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;**
- g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be**

- **Section 32**

(1) Everyone has the right of access to

- a. any information held by the state; and**
- b. any information that is held by another person and that is required for the exercise of protection of any rights.**

(2) National legislation must be enacted to give effect to this rights, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

- **Section 33**

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must

- a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;**
- b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and**
- c. promote an efficient administration.**

The right to information (for instance about decisions that will effect their lives) should be seriously taken into consideration when working with children. One of the basic principles in the helping professions, and of specific importance when working with children, is that of confidentiality and trust. Children need to be informed of issues that effect them (for example what impact their parents' divorce will have on their lives) in order to be able to portray their wishes and feelings. Life is about choices and one cannot make a decision without being informed. If children are not given the opportunity to make decisions while being guided and protected, they will not be able to make an informed decision as an adult.

- **Section 38**

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –

- a. anyone acting in their own interest;**
- b. anyone acting on behalf of another person who cannot act in their own name;**
- c. anyone acting as a member of, or in the interest of, a group or class of persons;**
- d. anyone acting in the public interest; and**
- e. an association acting in the interest of its members.**

- **Section 39**

- (1) When interpreting the Bill of Rights, a court, tribunal or forum**
 - a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;**
 - b. must consider international law; and**
 - c. may consider foreign law.**
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.**
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by law, customary law or legislation, to the extent that they are consistent with the Bill.**

Knowledge of these sections should empower professional role-players to enforce children's rights and views to be taken seriously. Furthermore, children's counselling rights (as discussed in Chapter 2) should also be recognised. The fact that Section 39(1) (b) specify that international law must be considered, is enough reason and motivation to implement the provisions of the United Nations Convention on the Rights of the Child.

4.4. Determining factors impacting the implementation of children's rights

Without doubt there are comprehensive global statutory frameworks in place to acknowledge children's rights. What need to be determined is the factors that prevent the implementation of the legislation in practice. The two determining factors seem to be the arguments around children's age and competence on one hand and the best interest principle on the other hand. Researcher is of the opinion that none of these factors are a valid excuse and do not justify that children are being discriminated against purely by their virtue of being young.

4.4.1 Age and Competence

In practice it is often found that these factors are abused in order to justify adults continuing making decisions on behalf of children. What it actually implies is a lack of knowledge regarding the developmental processes as well as the needs and life tasks of children. The professional role-players working with children, need a comprehensive knowledge base regarding all aspects of childhood. As Garbarino & Stott (1989:1) state:

What we seek here is a perspective on children as sources of information for adults – a perspective to inform professional practice, not a cookbook to dictate it.

Garbarino & Stott (1989:8) claim that in presenting a framework for thinking about children as sources of information, we need to take a developmental point of view that recognizes children's changing capacities in the context of a series of ongoing interactions between children and their social environments. This also confirms from a Person-Centered Approach, that children will always change, and therefore the ecological perspective of child development (as discussed in Chapter 3) refers to two kinds of interaction namely:

- Interaction of the child as a biological organism with the immediate social environment as a set of processes, events, and relationships.

Rogers' Person-Centered Theory was built around his personal experience of the effects that imposing conditions of worth, has on a person's self-esteem. Proposition 1 of the Person-Centered Approach stated that every individual exists in a continually changing world of experience of which he is the centre.

- The interplay of social systems in the child's social environment that affect the child's face-to-face experiences. Here, proposition 9 and 10 of the Person-Centered Approach is of specific reference:

As a result of interaction with the environment, and particularly as a result of evaluational interaction with others, the structure of the self is formed – an organized, fluid, but consistent conceptual pattern of perceptions of

characteristics and relationships of the 'I' or the 'me' together with values attached to these concepts.

Rogers, 1987: 498

The values attached to experiences, and the values which are a part of the self-structure, in some instances are values experienced directly by the organism, and in some instances are values introjected or taken over from others, but perceived in distorted fashion as if they had been experienced directly.

Rogers, 1987: 498

As explained by Garbarino & Stott (1989:8):

These interactions require from us to look both inward, to the child's developing capacities in the context of the family, and outward, to the forces that shape the social and physical contexts in which we seek information from and about children.

In Alderson (2002:155) it is said that a central question to address is at what age children can begin to form and express views which have due weight in matters that affect them. In order to answer this question, researcher drew from research findings during the last decade the following:

- Walker (1993:59) conducted a linguistic study on questioning young children in court. She found the 'incompetence' being on the side of the adults (professional role-players) doing the questioning and not necessary the children – regardless of what age they were. As she explained:

When the competency of a witness is an issue in a court case, two of the tests that must be met are the capacity to understand the questions propounded and the ability to give intelligent answers. For an adult witness, poorly worded questions may simply be a nuisance, but for a child, this may be a potentially serious source of miscommunication.

In the research, Walker studied different transcripts, including the evidence given by a five-year old child. Her finding with regard to this transcript was as follows (Walker, 1993:67):

There seemed to be nothing essentially wrong with this child's competence as a speaker or competency as a witness in a court of law.

In conclusion, Walker (1993:78-79) stated:

It is our adult legal system that the children are caught up in, it is our adult language in which the proceedings are conducted, and it is our adult assumptions about both law and language upon which communication in the courts is based. As adults, we are not doing as well as we might in integrating children linguistically into a system not built for them.

Adults – judges, prosecutors, defence counsel, police and therapists – simply do not know enough about children’s capabilities, cognitively and linguistically, and that lack of knowledge presents the opportunity for untold mischief.

- Zilbach (1994:56) conducted a study on including children of all ages in family therapy and expressed the following opinion:

Children are capable of serious and well-thought-out opinions about their families, and of understanding and then describing complex family mechanisms.

- Selwyn (1996:14) stated that the public opinion and legislation have changed in the last twenty years as to the competence of children to express a view in matters that concern them and the weight attached to

these opinions. She found that practitioners do not listen to the child and therefore fail to ascertain the child's wishes and feelings. Researcher strongly supports Selwyn (1996:20), saying:

All children should be presumed competent and allowed to express their views about an order which will have such an impact on their lives. The reports should contain the wishes and feelings of every child with the onus on the social worker to demonstrate why the child is not competent.

- Freeman (1998/1999:50) expressed the view that children need to be taken seriously. In defending children's right to be heard, he argues for a cultural revolution in attitudes to childhood. According to Freeman, 'competence' is not an easy concept and he distinguished between levels of competence and incompetence. In his research on the competence of children, he utilized the seven levels of incompetence as identified by Beauchamp and Childress as well as Buchanan and Brock in 1989. Freeman (1998/1999:51) summarised these levels as follows:

- **The inability to give evidence.**
- **The inability to understand one's situation or relevantly similar situations.**
- **The inability to understand disclosed information.**

- **The inability to give a reason.**
- **The inability to give a rational reason.**
- **The inability to give reasons where risk and benefit have been weighed.**
- **The inability to reach a reasonable decision, as judged, for example, by reasonable person standard.**

Freeman (1998/1999:51) commented that:

Even small children can show a preference and most children can understand a situation as well as disclosed information. Many can give reasons, though we might not be convinced by them. But how many adults get any further? If rights were to hinge on competence at any of the higher levels depicted here, few would have them!

As part of his research, Freeman referred to studies done in 1982, comparing the response of participants aged nine, fourteen, eighteen and twenty-one to hypothetical problems of decision-making. It was found that the fourteen year olds did not differ from the adult groups on any of the major standards of competency, such as evidence of a choice, understanding of the facts, reasonable decision-making process; reasonable outcome of choice. Even the nine-year olds were as competent as the average adult according to standards of evidence

of a choice and reasonableness of choice. Freeman (1998/1999:53) concluded with the following statement:

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

- Borland, Laybourn, Hill and Brown (1998:11) found that children have mainly been seen as ‘objects of study’, whether as subjects of experiments, or as respondents to questionnaires (the contents of which have been determined in advance by adults) so that even when they are asked their views, the areas open to discussion have already been decided for them. In other words, there is little or no recognition that children have their own perspectives on situations that concern them, and that they often have an understanding of these situations that is far more sophisticated than adults suppose.

In the above authors’ study on middle childhood, it was found that from around age eight, children were able to discuss with parents, to understand the reasons for people’s actions and have an appreciation of what was right and wrong. Researcher’s opinion that ‘competence’ is used as an excuse to deny children a right to participate in their lives, is confirmed by Borland, Laybourn, Hill and Brown (1998:133) saying:

Children’s lack of competence and heightened vulnerability compared with adults are conventionally used as reasons

to exclude children from decision making even in the settings like schools in which they are centrally engaged.

- Naudé & Maree (2001) conducted research on the decision-making capacity of a minor child in a divorce case. They recommended that the minor child's choice and ability should be evaluated consistently, in context with assessment of the following factors (Naudé & Maree, 2001:43):
 - **Current psycho-social functioning of the minor child.**
 - **Current psychological development needs of the minor.**
 - **Current emotional needs of the minor.**
 - **Possible 'vulnerability' and special educational needs of the minor.**
 - **Determining the option that will cause the least damage.**
 - **Determining that which is in the best interests of the child.**

- According to Ruegger (2001:26), a number of studies have shown that very young children can give a clear account of matter within their personal experience, if they are interviewed appropriately. Ruegger (2001:83) further confirmed that research with children in public law proceedings suggests that many young children are able to

differentiate between their ideal wishes and the reality of the options open to them. The conclusion in her study was that the underlying debate about the child's competence to participate directly in decision-making, are the conflicting concepts of the child's right to autonomy, including the right to make mistakes, as against their need for protection to enable them to reach maturity without impairing their ability to lead a fulfilling adult life. Ruegger (2001:95) made important recommendations:

A shift in the way evidence is presented, both in written form and in court, so as to make the proceedings more suitable for children's participation, by encouraging shorter, clearer evidence more firmly rooted in the essential issues for decision, and a less adversarial stance would benefit all parties. Most importantly it would give real meaning to the objective underlying both international and domestic legislation of giving children a real voice in proceedings concerning them.

- Cairns & Brannen (2005:78) state that, as long as children and young people remain politically voiceless and powerless, there will be little change to their status in society. They conducted a project attempting to promote an alternative discourse within which children and young people are seen as active citizens, who are knowledgeable about their

world and able to play a full part in decision-making processes that affect them. Cairns & Brannen (2005:78) state as follows:

Our refusal to acknowledge the ability of children and young people to speak for themselves has left them at the mercy of unscrupulous or uncaring adults.

They further expressed the opinion that, despite legislative requirements that children must be heard in judicial proceedings, it has had little or no effect on the politically voiceless position of children in society, and it is here that the vulnerability lies. The project '*Investing in Children*' included children from three years old to adults in their early twenties. Their vision (in accordance with the United Nations Convention on the Rights of the Child) is as follows (Cairns & Brannen, 2005:79):

Children are seen as full human beings, right-holders who can play an active part in the enjoyment of their rights. They are not – as they have often been presented in the past – mere dependants, the property of their parents. They are not people who only become full human beings when they become adults. They are in need of protection but also have strengths. Every child is seen as important, no matter what its abilities, origins or gender. Their views and opinions are significant. They are not to be seen merely as

victims, workers, young offenders, pupils or consumers, but as complex and fully rounded individuals.

The authors confirmed that a radical change in the way professional role-players think and treat children, are necessary.

- Clark & Statham (2005:45) state that most existing literature on children's participation has focused on their involvement in service planning, delivery and evaluation rather than on children's views of their own world, starting from their interests and concerns. Few studies have considered the views and experiences of young children (under five years old). They identified one of the barriers as the uncertainty about 'how to listen' to children at this age. Apart from exploring an approach useful in communicating with children, Clark & Statham (2005:54) stated the following:

Fundamental to any approach is a belief that children, including very young children, are experts in their own lives, and that working with them to understand how they see the world and then acting on this can strengthen their identity and sense of control. Feeling understood and having their views taken seriously by adults is likely to be particularly important for children who are unable to live with their parents, and who have often experienced serious disruptions in their lives.

A major challenge for professional role-players, are to find new and sensitive ways of engaging and communicating with young children instead of hiding behind the term 'competency' – implying children are not competent and therefore not worth listening to. From abovementioned research, the following challenges should be adhered to:

- The professional role-players' communication skills when working with children (Walker).
- A mind shift in acknowledging that children from all ages are capable of well-thought-out opinions and understanding (Zilbach).
- Ascertaining children's views and wishes (Selwyn).
- A cultural revolution in attitudes to childhood. This implies that children should be taken seriously and professional role-players should keep in mind that the more autonomy children are given, the better they will be able to exercise autonomy (Freeman).
- Giving recognition that children have their own perspectives on situations and an understanding of these situations far more sophisticated than adults suppose (Borland, Laybourn, Hill and Brown).
- Utilizing the assessment factors as stipulated by Naudé and Maree in order to evaluate the child's decision-making capacity (Naudé & Maree).
- Making court proceedings more suitable for children's participation (Ruegger).

- Children should be seen as full human beings. Every child is important, no matter what its abilities, origins or gender and their views and opinions are significant (Cairns & Brannen).
- How to listen to children – even at a very young age (Clark & Statham).

It is the professional opinion of researcher that it is easier to hide behind the term 'incompetence of a child' than to admit that the actual incompetence lies in the ability of the professional role-player to work with and to listen to children – as confirmed by above research.

4.4.2 The 'best interest' principle

In 1981 a Judicial Conference on Family Law was held in Canada and judges from all levels of court were brought together to discuss a specific area of substantive law. One of the much debated issues was that of the 'best interest' principle. Justice Claire L'Heureux-Dubé expressed concern about the orders she made in court being to the benefit of the children involved. In view of this concern, the term 'best interest' was investigated. As L'Heureux-Dubé (1983:301) responsibly acknowledged:

The law does not operate in a vacuum: it is essentially a tributary of social change, particularly in the field of family law which is so closely linked to the everyday lives of people.

Researcher's concern in practice centres around the fact that orders are made or decisions taken on behalf of children without allowing them to participate – yet they are the ones who have to live accordingly!

Goldstein (1983:121) called the paper he delivered at the Judicial Conference “In Whose Best Interest?” and stated:

In the eyes of the law, to be a child is to be at risk, dependent, and without capacity or authority to decide free of parental control what is ‘best’ for oneself.

To be an adult is in law to be perceived as free to take risks, with the independent capacity and authority to decide what is ‘best’ for oneself without regard to parental wishes. To be an adult who is a parent is therefore to be presumed by law to have the capacity, authority, and responsibility to determine and to do what is ‘good’ for one’s children; what is ‘best’ for the entire family.

Above statement is thus a confirmation that the law discriminates against children simply by virtue of being young. Where do adults learn the capacities to make decisions or to take risks if they were not allowed to do so as children within a protective environment?

Researcher firmly believes that to have children does not make you a parent. If children grow up, resenting the fact that they were not

allowed to be participants in their own lives and judged by court as incapable to owe the right to autonomy, one need to ask the question: What kind of parents and role-models are they going to be to their own children? It is experienced in practice that this creates a vicious circle: As they were not listened to or respected when they were children, they now do not listen to their children and adopt an attitude of 'if I could survive, so can my children'.

Andrews & Gelsomino (1983:245) state that, strictly speaking, the term 'best interests' is not a legal term. As they explained:

It is borrowed from the behavioural sciences and refers to the non-legal appraisal of what constitutes the "welfare" of a child in a particular social setting, assessed from the perspective of someone other than the child himself or a spokesman for the child's preferences. It is not the same as the child's subjective view of his or her "interests", although the two may occasionally coincide.

Above statement confirms that, according to law, only the child's welfare rights and not his/her participatory rights, are acknowledged or taken into account. It is noted however that, in above statement, the court is aware of the fact that decisions under the term 'best interests' are made by ***someone other than the child*** and also that ***it is not the***

same as the child's view of his/her interests! Andrews and Gelsomino (1983: 246) elaborate on this view, saying:

In a legal proceeding, "best interests" is, ultimately, what a judge decides it to be.

This confirms researcher's concern as experienced in practice that orders are made and / or decisions are taken without "hearing" the child. In this regard, it is also important to consider the value of assessments. The purpose of the assessment is or should be to determine the child's views and feelings about a given situation. Yet, again the child is exposed to adults "interpreting" of what children have said and done, based on what the professional role-player think they heard. Children have often indicated that information, contained in the reports about them, do not collaborate with what they have said but that it is the opinion of the professional role-player.

Davel & de Kock (2001:272) explain the principle that courts have to adjudicate in the best interest of a child in every matter concerning that child. This principle has for some time been applied in a number of private law disputes. It has been described as the golden thread that runs through the law relating to children. The Constitution of the Republic of South Africa raised this principle to that of a constitutional imperative. Although it sounds ideal, Davel & de Kock (2001:272) state:

It is the content and application of the principle which seem to create problems in practice.

Researcher strongly echo above statement and is of opinion that if the term 'best interest' are more defined, it will eliminate problems in practice.

Davel & de Kock further mentioned that clarity concerning the contents of the best interest measure, without restricting the courts when considering all relevant circumstances and facts in every particular case, is essential.

It is stated that this best interest principle is firmly entrenched in International law. Article 3(1) of the United Nations Convention on the Rights of the Child (1989:2) stipulates:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

According to Davel & de Kock (2001:273), the African Charter on the Rights and Welfare of the Child stated it even stronger – referring to the best interest principle in Article 4(1) as *the* primary consideration.

Section 28(2) of the Constitution of the Republic of South Africa states:

A child's best interests are of paramount importance in every matter concerning the child.

Without doubt all the countries have good intentions although, the fact that the power to decide what is in the best interest of children, remains with adults, is problematic. The needs and wishes of children are not always considered under all circumstances and there is therefore no consistency in practice. As Davel & de Kock (2001:274) highlighted in their investigation, the most common critique against the best interest principle is that of being vague.

With referral to divorce cases, several aspects have been listed to be considered in order to make a decision with regard to custody and access decisions. The basic guideline used since 1994 was the criteria given in the case of *McCall v McCall* (1994 (3) SA 201):

- The love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child.
- The capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires.
- The ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings.

- The capacity and disposition of the parent to give the child the guidance which he/she requires.
- The ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs – generally speaking, the provision of economic security.
- The ability of the parent to provide for the educational well-being and security of the child, both religious and secular.
- The ability of the parent to provide for the child's emotional, psychological, cultural and environmental development.
- The mental and physical health and moral fitness of the parent.
- The stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the status quo.
- The desirability or otherwise of keeping siblings together.
- The child's preference, if the Court is satisfied that in the particular circumstances the child's preference should be taken into consideration.
- The desirability or otherwise of applying the doctrine of same sex matching.
- Any other factor which is relevant to the particular case with which the Court is concerned.

Ellis (2001:134 -136) contributed substantially in this respect with her list of considerations:

- Which parent is more likely to permit the non-residential parent free and easy access to the child?
- Which parent has better parenting skills?
- Which parent is least likely to be abusive, neglectful or unstable on the basis of a past history of psychiatric problems, alcohol or drug abuse, abusiveness or neglect with this child or other children, or a pattern of choosing partners with such a history?
- Who has done the work of primary caretaker and knows best the child's needs, aversions, likes and dislikes?
- To whom is the child more attached?
- Who has the most time and energy available to give to the child?
- Which parent has the healthier relationship with the child?
- Which parent can provide a better quality of life for the child in terms of siblings, stepparents, grandparents, home and neighbourhood, schools, church, etcetera?
- Does the child have special needs?
- Which parent is better fit on the basis of a number of factors?

Each of above criteria should be evaluated in terms of the following seven factors:

- Continuity and stability of living arrangement.
- Child's preference.
- Child's attachment to each parent.
- Each parent's sensitivity to and respect for the child.
- Parent and child gender.

- Each parent's physical and mental health.
- Parental conflict.

In the study of Davel & de Kock (2001:277), the need for a similar kind of checklist of guidelines or factors to be taken into account when the principle of best interests is to be considered, is been identified. The authors investigated some cases where the best interest principle (or lack thereof) was implemented (Davel & de Kock, 2001:279-291):

- In the past and until recently, courts thought the mother to automatically be the best parent to award custody to. In the *van der Linde versus van der Linde* (1996) case however, the court investigated whether the quality of a parental role should be decided on the grounds of gender. It was determined that a father can be an equal good 'mother' and vice versa. Unfortunately, the best interests of the children were not a consideration in this case and, as Davel & de Kock (2001:281) mentioned, parental gender should not be a consideration when determining children's best interest.
- In the *Denston versus Denston* case, custody of a four year old little girl was awarded to the father in spite of the recommendation of the family advocate and the social worker that it would be in the child's interest to remain in the care of the mother. Because the mother did not contest the fathers' application for custody, the judge ignored the recommendations

of the professional role-players as well as the needs and wishes of the child.

- Another example of the inconsistency in decisions, was the *E versus E* (1940) situation where the court determined that the father had no right to force the mother to undergo the necessary blood tests to determine paternity. In *Seetal versus Pravitha* (1983) the opposite was decided and the court decided that, as upper guardian of the child, they can order blood tests. In *M versus R* (1989) the court decided that a child has a right to identity and ordered blood tests to proof paternity. *Nell versus Nell* (1989) again proofed otherwise as the judge decided it is not within the court's jurisdiction to order such tests.

All these cases proved that the decisions regarding the best interest of the child were taken solely by the judges individually. Not in one of these cases were the children's wishes and feelings considered or were they given the opportunity to express it. Even in matters concerning a similar application (for example blood tests to determine paternity) there was no consistency in the decisions.

Researcher would like to elaborate on examples taken from literature in order to highlight the seriousness of adults-only having the power to decide on behalf of children what are supposedly to be their best interests:

- Coppock (2002:139) referred to a television programme exposing alarming statistics regarding the increase in the numbers of children and young people in Britain being diagnosed with Attention Deficit Disorder and prescribed medication to treat it. They compared the number of prescriptions that were issued for Ritalin:

1991 - 2 000

1995 - 14 700

1996 - 47 900

1999 - 158 000

Overall it is estimated that some 190 000 children in the United Kingdom are being given psychiatric drugs to control their behaviour.

As Coppock (2002:139) states:

The power of adults, as parents and professional, to describe and define the oppositional behaviour of children and young people as “illness” or “disorder” is of great concern.

The author further states:

Professional discourses contain both written and unwritten assumptions about the nature of “childhood” and “adolescence” which inform judgments concerning what is deemed “acceptable” and/or “appropriate” behaviour for

young people. These judgments, and the various interventions that flow from them, can have profound consequences for the lives of children and young people. In many circumstances they may actually undermine or overtly breach the core principles of those initiatives intended to secure the rights of children and young people in law and through convention.

The investigation by Coppock proved that children have little option but to submit to medical treatment considered “in their best interests”. Both the United Nations Convention on the Rights of the Child as well as the Children Act 1989 placed a duty on health professionals to seek the views of children. There is thus no valid excuse for health professionals to exclude a child or young person from actively participating in this decision-making process.

Coppock (2002:151) refers to the British Association for Community Child Health’s recommendation:

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

Coppock (2002:151) found in her investigation that the feelings and attitudes of the children themselves have been systematically excluded from nearly all studies. Researcher agrees with the opinion that the drugging of children to control their behaviour amounts to “technological child abuse” and it should raise profound spiritual, philosophical and ethical questions about ourselves as adults and about how we view the children in our care.

Coppock (2002:151-152) concluded with the statements by Mental Health Foundation, confirmed by Professor Steve Baldwin, clinical psychologist:

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. Our adult-centred society has tried to contain and limit the impact of children on adult life by either excluding them from much of it or blaming them for disturbing it.

What children need is our understanding. Occasionally they need psychotherapy, they need counselling, they need us to provide them with our best services and our best efforts to meet their needs, their health needs, their social

needs, their educational needs, and their interpersonal needs. What they don't need is to be drugged.

Although this study of Coppock was done in the UK, the situation is not different in other countries – including our own! Researcher has found the same concern in her practice where children are often placed on medication, without them having a say about it, because it is decided by adults 'to be in their best interests'! It is no use to hide behind the sentence "in accordance with their age and maturity" because Alderson (2002:155) conducted research on the age children can begin to form and express views which have due weight in health matters that affect them. She came to the astonishing conclusion that even children aged three or four years showed a mature grasp of their complex condition and treatment!

- Another example of adults having the power to decide on the child's best interests is found with disabled children.

There has always been a tendency to regard disabled children as children in need of services and protection rather than as children who have rights alongside non-disabled children. Campbell (2002:196) argued that by securing the rights of disabled children would bring home rights for all children. She explained that one approach to acknowledge rights issues for disabled children has been to issue Charters of Rights that focus on disabled children. Apparently, in 1997 Chailey Heritage Hospital School produced a charter of children's rights

as part of its child protection guidelines. This eventually leads to the acknowledgement in the Children Act 1989, stating that disabled children should be regarded as “children first”. Campbell (2002:197) identified four issues of fundamental importance that should be included in the rights for disabled children, namely:

- Right to life.
- Right to protection.
- Right to information.
- Right to education.

In her study she included a comment of a disabled young person who said:

When you are a disabled child, assumptions are made that our life is lacking in quality. These assumptions are made as soon as you are born and are used to justify discrimination.

Campbell (2002:197) elaborates on above statement by claiming that these assumptions are made about the value of a disabled child’s life even prior to birth. To the same extent, many disabled children were denied the right to education. Again, adults have the power to decide whether children are worthy of being informed and educated!

According to Campbell (2002:205), the most significant rights issue for disabled children is their invisibility and lack of contact with the mainstream world. She stated as follows:

Unless particular attention is paid to the inclusion of disabled children within any mainstream activity they will remain invisible and their needs and rights unmet.

Upholding their rights is as simple as acknowledging these rights to be the same as for all children. The simplicity of this conclusion is however predicated on a fundamental re-evaluation of disabled children as full members of an inclusive society.

Researcher holds the opinion that adults and professional role-players do not deliberately think about the impact of their power to make decisions on behalf of children and should perhaps act with more caution in this regard.

There is a need for closer and more trusting relationships between professionals and children in order to ensure not only their protection but also to encourage their full participation in matters relating to their welfare and development. By allowing children to contribute in their lives and hear what they say, the professional role-players will be empowered to truly communicate the child's best interests. It then becomes a shared reality between the professional role-player and

child and the professional role-player does not need to be the 'all knowing authority'.

Barry (2002:252) confirmed researcher's statement when she says:

Children and young people can only effectively participate through acquiring communication and assertiveness skills and developing self-confidence, as well as receiving adequate information and an open response from professionals.

For this to happen, the right to protection for all children and young people needs to be ensured in practice as well as in legislation. Furthermore the children and young people must be participants with a right to provide their own assessment regarding their competencies, wishes and needs as their contribution to the decision-making process. Children and young people should be encouraged to exercise their right to participate in decisions about their welfare based on their own experiences and competencies. Barry (2002:252) emphasizes above as follows:

Their rights to protection and participation can only be guaranteed if professionals and parents, with adequate resources and training, meet their legal obligations to work in the best interests of children and to consult with them on matters relating to their welfare.

Researcher would like to conclude with the statement by Kufeldt (1993:163), who said:

Unless and until we give children a voice we cannot claim that justice for children has been provided. We need to provide consistency and continuity, we need to create a climate of trust, and we need tools and opportunities for children to share their hopes, their fears, their knowledge and their wishes, with those entrusted with their care.

Time, courtesy and the willingness to listen are the endorsements of sincerity that a child requires of the adult in conversation. This is surely not too much to ask.

4.5 Implementation of children's rights in practice

In order to be able to put all of above into practice, it is important to identify the 'tools' referred to by Kufeldt (1993:163). Researcher would like to focus on three specific aspects, namely:

- Skills needed to work with children.
- How to communicate with children.
- Utilizing existing resources.

4.5.1 Skills needed to work with children

Any work with a child must be based on a very thorough understanding of children's development and of the needs of the particular child. The child's needs will be identified through an assessment of the child's situation. This assessment is a continuing process and not a single event. Following the assessment, the needs must be addressed through specific activities related to specific goals, and the degree of success in meeting the needs must be evaluated both on an ongoing basis and at the end of the therapy.

It is important for the professional role-player to keep in mind that the way you work with children changes, depending upon the age of the child. As an example: with a child aged four, you get down on the floor to play with a puzzle or dolls; if the child is fourteen, puzzles and dolls will be inappropriate. Adolescents are in a transition between childhood and adulthood and are usually more interested in where they are going (adulthood) than where they came from (childhood) and this must be respected.

Colton, Sanders & Williams (2001: 55) identified specific skills needed to work with children and it can be listed as follow:

- Ability to maintain clarity of focus.
- Ability to recall the experience of being a child and to relate that to the work in hand.
- Ability to get children to talk or express themselves.

- Ability to feel comfortable in the presence of children and to have them feel comfortable with you.
- Ability to facilitate children's play.
- Ability to decentre from an adult perspective to engage the child.
- Ability to continue working uninterrupted despite the emergence of painful and disturbing material.
- Ability to respond to the different vocabulary, idioms, and expressions of children.
- Ability to be the diplomat.

Researcher would like to add:

- The ability to create a safe environment for the child to take risk to share information.
- The ability to create a trustful relationship.
- The ability to portray respect to a child.

Every professional role-player working with children, need to have (or develop) these abilities. Of utmost importance is the ability to be sincere and genuine. Children are extremely sensitive and will not respond if they sense insincerity.

4.5.2 How to communicate with children

When the issue of competence was discussed earlier in this chapter, researcher referred to the linguistic study of Walker (1993:59) on questioning young children in court. She found the 'incompetence' being on the side of

the adults (professional role-players) doing the questioning and not necessary the children – regardless of what age they were.

Garbarino & Stott (1989:10) state the following as a practice guideline in communicating with children:

The better one's knowledge of normal child development, the better prepared one is to identify effective ways to communicate with children.

A child's performance as a source of information will depend on particular capacities to perceive, remember, interpret, and communicate. These capacities develop in connection with more general intellectual and emotional capacities. Misunderstanding and misinterpreting developmental markers are a common mistake made by professional role-players. In order to understand children's behaviour and words, it is important to take account of the psychological factors that motivate their behaviour.

As Garbarino & Stott (1989:11) confirm:

It is important to be critical of one's own conclusions about a child's motivation that attribute irrationality or meaninglessness to the child; consider how things might look and feel to the child.

The child's ability to provide information depends on children's feelings about being competent, their attitudes toward adults, and the ways in which they defend themselves from difficult consequences or feelings. These issues of self-esteem and coping may influence the way children communicate. Another important factor determining the effectiveness of communicating to children, is the professional role-players' relationship with the child as well as personal characteristics such as the adult's style of interaction, tone of voice and degree of empathy. Garbarino & Stott (1989:14) pointed out a danger that adult's preconceptions can powerfully influence children by creating self-fulfilling prophecies through nonverbal cues. In other words, adults 'find' evidence that confirms their own biases.

Garbarino & Stott (1989:14) further noted that the adult's professional role will greatly influence the nature of the information obtained from the child:

Who you are can influence what you want and value and what you get

The same authors suggested the following:

- Asking general questions in stead of specific questions. The child is an informant of his /her own behaviour and feelings of his/her experience of an event.
- Through tests and other measurements, the professional role-player learns from the child by testing the child's response to stimuli and

comparing his/her responses to predetermined norms, standards, or established criteria.

Garbarino & Stott (1989:187-189) discussed some important issues with regard to interviewing. Adult competence, according to Garbarino & Stott (1989:16), is derived from the skill in recognising the status of a child, in formulating a context that will maximise the child's performance, and in minimizing violations of the child. Together, these factors may influence the choice of technique or tactics for eliciting information from children.

The following techniques reflect different degrees of adult direction in the encounter with the child, differences in the degree to which the adult stimulates and control the interaction:

- In observation of children's behaviour, the professional role-player, without interacting, learns from the child by watching and listening to the child's spontaneous behaviour.
- In children's play and stories, the professional role-player uses play and storytelling as a method of communicating to a child through metaphor and as a source of information from the child about his/her inner world of thought and feelings.
- In interviewing children, the professional role-player learns interactively from a child along a continuum ranging from eliciting a narrative through techniques.
- Being aware of the child's experience will help the professional role-player ask more informed, intelligent questions to which the child will be

more likely to respond in detail. Information obtained prior to the interview should be used only as a general guide to the areas the investigation will touch on and as a source of background material from which to construct questions.

- The setting in which the child is interviewed should be neutral, relaxed and relatively free from distractions. There should be cushions or mats to enable the professional role-player to sit on the same level as the child.
- A selection of tools and props to assist the child and professional role-player may be included, depending on the age of the child. The professional role-player's knowledge of the child's age, sex and background will help to select appropriate items.
- An interview kit containing familiar items selected because this could facilitate communication and help build rapport is helpful when seeking information, especially from younger children. Useful items to be included in the kit are felt-tipped markers or crayons, paper, dolls and dollhouse, puppets, play dough and toy telephones.
- Questioning techniques are important. Open questions and encouraging responses are keys to encouraging children to talk. Garbarino & Stott (1989:190) stated that to be effective, questions must be appropriate for the developmental level of the child being interviewed. There are qualitative differences in language, comprehension, reasoning, and memory between adults and preschoolers. The following suggestions are intended to ameliorate some of the difficulties in interviewing these children:

- Use sentences with only three to five more words than the number of words in the child's average sentence.
- Use names rather than pronouns.
- Use the child's terms; if necessary, elicit them. If elicitation is impossible, use various terms in your question to be sure the child understands, and monitor his/her response to be sure.
- In order to determine if you have been understood, ask the child to repeat what you have said rather than asking "do you understand?"
- Rephrase questions the child does not understand. Repeating a question may be taken as an indication that the child has given an incorrect answer and the child may change his/her answer.
- Avoid asking questions involving a time sequence.
- Be careful in interpreting responses to very specific questions. Children are apt to be very literal.
- Do not respond to every answer with another question. Merely acknowledge the child's comment. This will encourage the child to expand on his previous statements.

4.5.3 Utilizing existing resources

As mentioned before, it is unnecessary to re-invent the wheel. However it is important to learn from prior projects. In both the UK and Belgium there are several important projects running to promote children's rights.

One of the projects is called Children's Express (A voice for young people in an adult world). Williams (2002:254) explains that Children's Express's

mission is to give young people the power and means to express themselves publicly on vital issues that affect them, and in the process to raise their self-esteem and develop their potential. In its work it aims to:

- Ensure that children have the skills and support to enable them to express their views on issues that concern them.
- Bring these concerns to the attention of policy-makers and opinion formers.
- Encourage children's development as good citizens.
- Motivate adults to take an interest in children's issues.
- Provide a supportive and nurturing environment.
- Work on a national basis.
- Become a recognised and respected source of objective view on youth issues.

Currently Children's Express targets children aged 8 to 18 from areas of limited opportunity, but the programme is open to all. Work takes place after school, at weekends and during holidays. It is registered as a charity and operates like a news agency, delivering articles and broadcasts produced by teams of young people to mainstream national, regional and local media.

Another project is the work of the Save the Children's Centre for young children's rights. They believe that even the youngest child has a right to be heard and to promote that is at the heart of their work. Hyder (2002:311) explains that the goal of the Centre is to ensure that all young children have the opportunity to express their views on the matters that affect them and to

participate in the places where they spend much of their time. They also work in partnership with those adults (professional role-players) who work daily with children in their early years, play settings and schools, so that the principles of listening to children and young children's participation are embedded in everyday practice.

Cairns and Brannen (2005:78) state the following about it:

As long as children and young people remain politically voiceless and powerless, there will be little change to their status in society.

Through the project 'Investing in Children' they are promoting the human rights of children and young people – attempting to promote an alternative discourse within which children and young people are seen as active citizens, who are knowledgeable about their world and able to play a full part in decision-making processes that affect them.

In Belgium, the Flemish Parliament appointed and supports the "Kinderrechtencommissariaat" who are aggressively promoting the rights of children through many different projects. Ankie Vandekerchove (2005:15) is the children's rights commissioner and states their viewpoint about the importance of acknowledging children's rights as follows:

Kinderen moeten opgroeien tot verantwoordelijke en betrokken burgers. Het klinkt zo evident. Maar hoe willen we dat realiseren als we ze tegelijk op zoveel terreinen uitsluiten? Als we kinderen kansen ontnemen om mee verantwoordelijkheid te dragen en zich mee verantwoordelijk te voelen.

Above author confirms researcher's concern, namely: If children are continuously excluded and not given the opportunity to accept responsibility, how are they going to learn to be responsible, participating citizens?

Firstly it is the believe of the commissioner that children cannot utilize their rights if they are not aware of them. In this regard, they have published booklets called "K30 – 30 vragen en antwoorden over kinderrechten"; "Megafoon – Actietips voor kinderen en hun ouders" and "Megafoon – Actietips voor leerlingen met ideeën". A serious emphasis is placed on participation. Vandekerchove (2005: 17) states in this regard the following:

Participatie is gewoon een recht van alle mensen. Ook van kinderen dus. Het Internationaal Verdrag van de Rechten van het Kind legde daar in 1989 de juridische grond voor. België ratificeerde het verdrag in 1991. Een hele mond vol, voor een belangrijk document dat een hele reeks mensenrechten vertaalt voor minderjarigen (iedereen onder 18 jaar). Die mensen moeten niet alleen leerlingen informeren over hun rechten. Ze moeten ze

ook elke dag respecteren en toepassen in de praktijk. Alleen leren over iets zonder het ook te ervaren, leidt tot minder resultaat.

Vandekerchove confirms the importance of the United Nations Convention on the Rights of the Child – stating that people should not only be aware of the rights as stipulated in the Convention, they should also respect and implement it in practice.

In view of above opinion, the focus of the different projects are to empower children to exercise their right to participate. An example from the booklet for parents and children are the picture of the huge ear and mouth that the child have to cut out, tie a string to it and wave it around whenever they feel that nobody listens to them or do not get the opportunity to voice their opinion.

Another very important and successful project is a programme focused on schools. The programme is a practical guideline on how to implement children's right to participate in school. Two hundred and seventy schools are currently participating with great success. As one of the pupils commented:

De school is van iedereen. Groot én klein moet kunnen meedoen op school: zijn mening zeggen en mee kiezen wat er op school gebeurt.

(Jeroen, vijfde klas).

In South Africa we also have different committees and bodies who endeavour to promote the rights of children, for example a Human Rights Commission, a Children's Rights Commission, a Children's Rights clinic. It is a noted concern that children are not directly involved in any of above committees but, again, it is adult-driven. It is further researcher's considered opinion however that, instead of the different committees functioning individually, all the bodies should work together through one co-ordinating body similar to the Kinderrechtencommissariaat in Belgium. When active projects, as mentioned above, are driven from one central point, it will be more effective and ensure that everybody works towards a common goal – protecting the rights of children.

4.6 Conclusion

Children have the right to be seen, heard and taken into account even when they do not have problems or are judged to be causing problems for society. It is important to emphasize that children are part of society, here and now, and as such they deserve the relevant attention on all matters of public policy.

Creating a reality of children's rights will never be possible without targeting the adult society as well. Before being able to do so, it is adult society that will have to make the shift towards more child-friendly practices: parents, teachers, social workers, politicians, law professions, doctors and all other adults who are related to children - that means everyone.

Too often children are expected to fit into adult ways of participating when what is needed in stead is institutional and organisational change that encourages and facilitates children's voices.

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.”
-
- 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

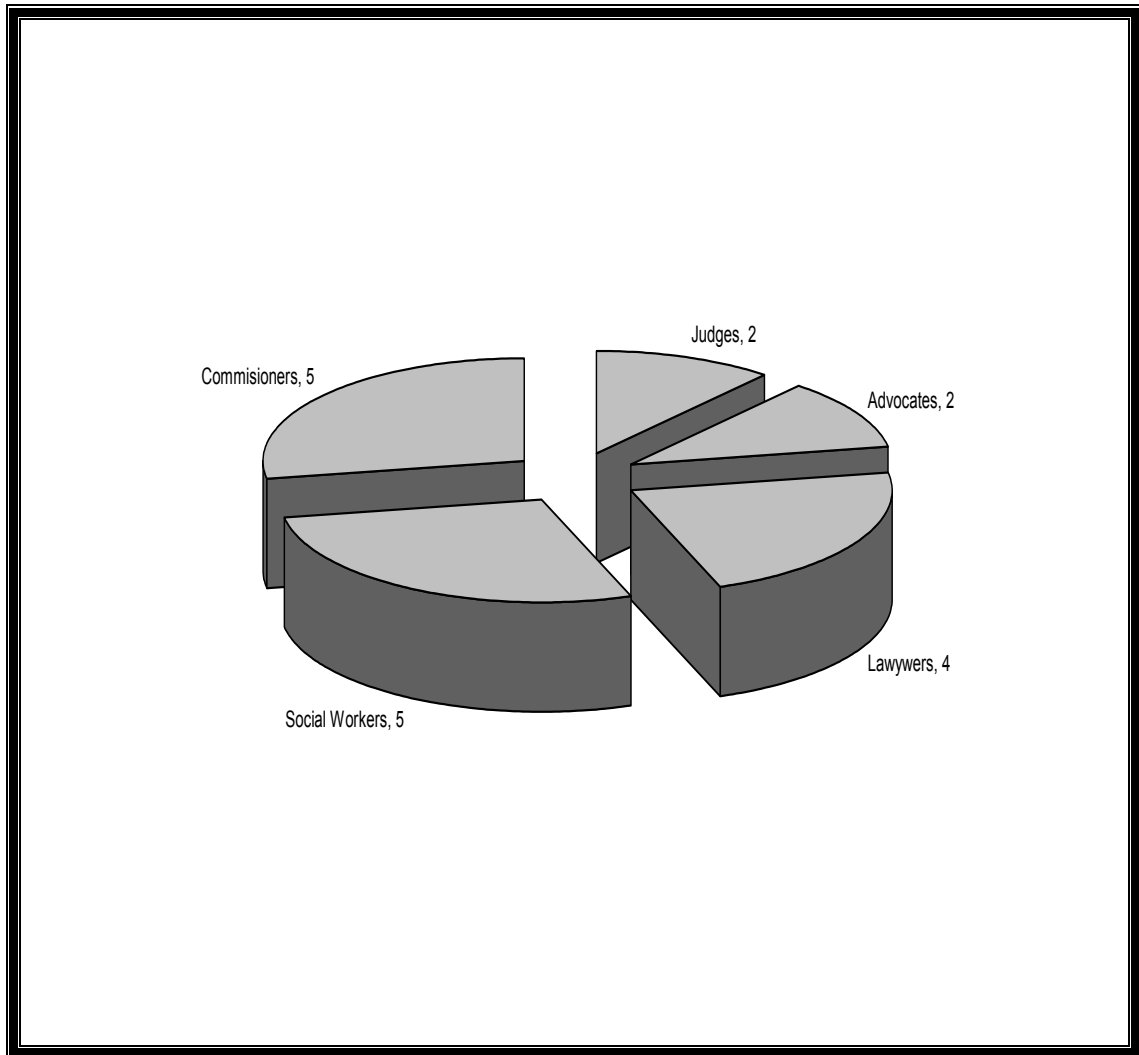
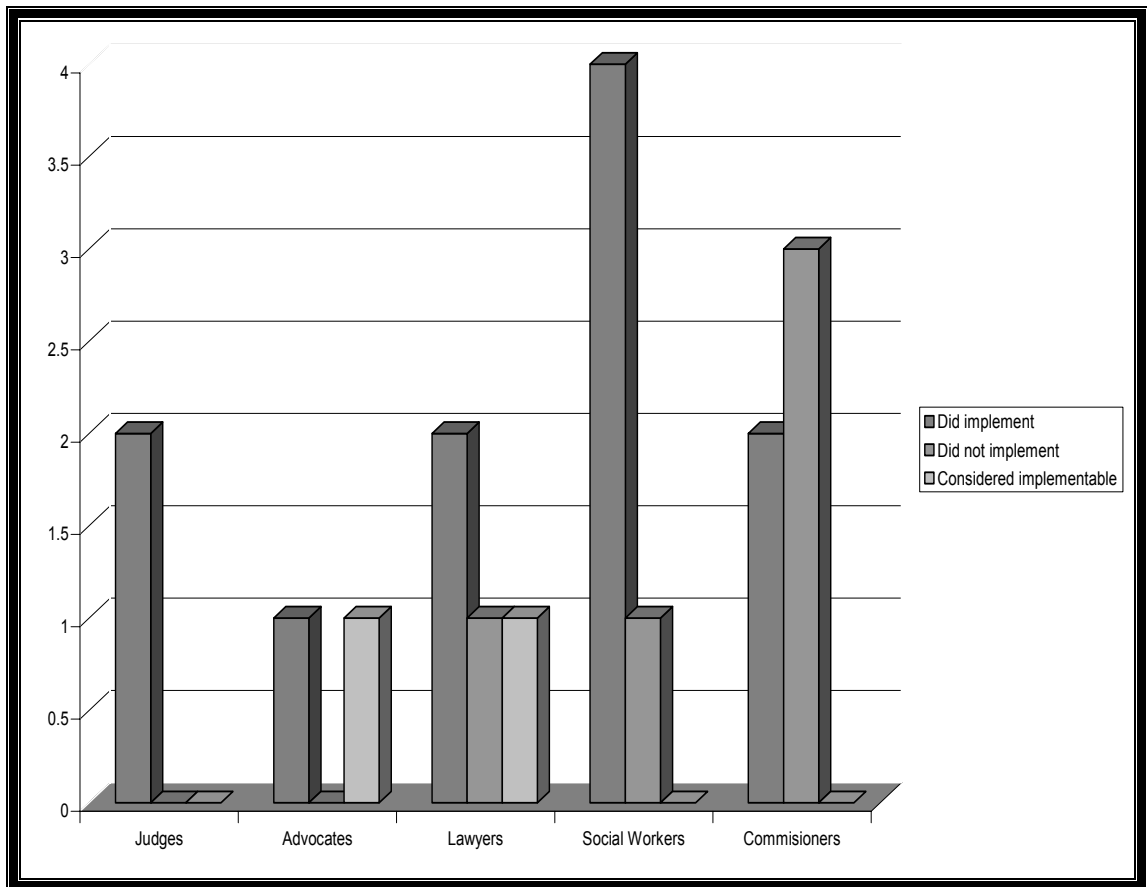


Figure 17: Implementation of protocol



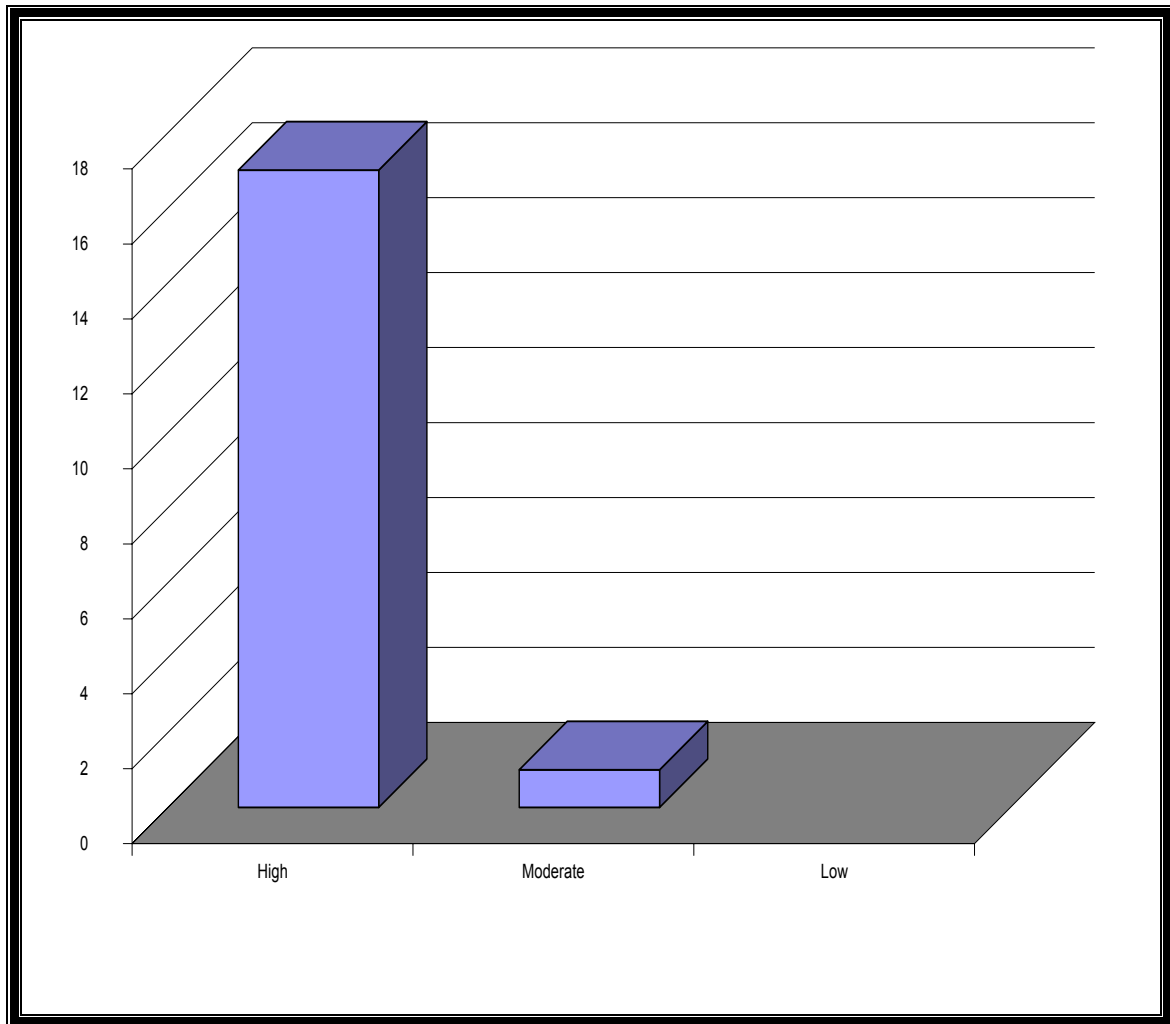
Eleven (11) of the respondents (61, 1%) did implement the proposed protocol; Five (5) respondents (27, 8%) did not implement the protocol; two (2) respondents (11, 1%) considered the protocol to be implementable although they have not done so personally. Their reasons given for not implementing the protocol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



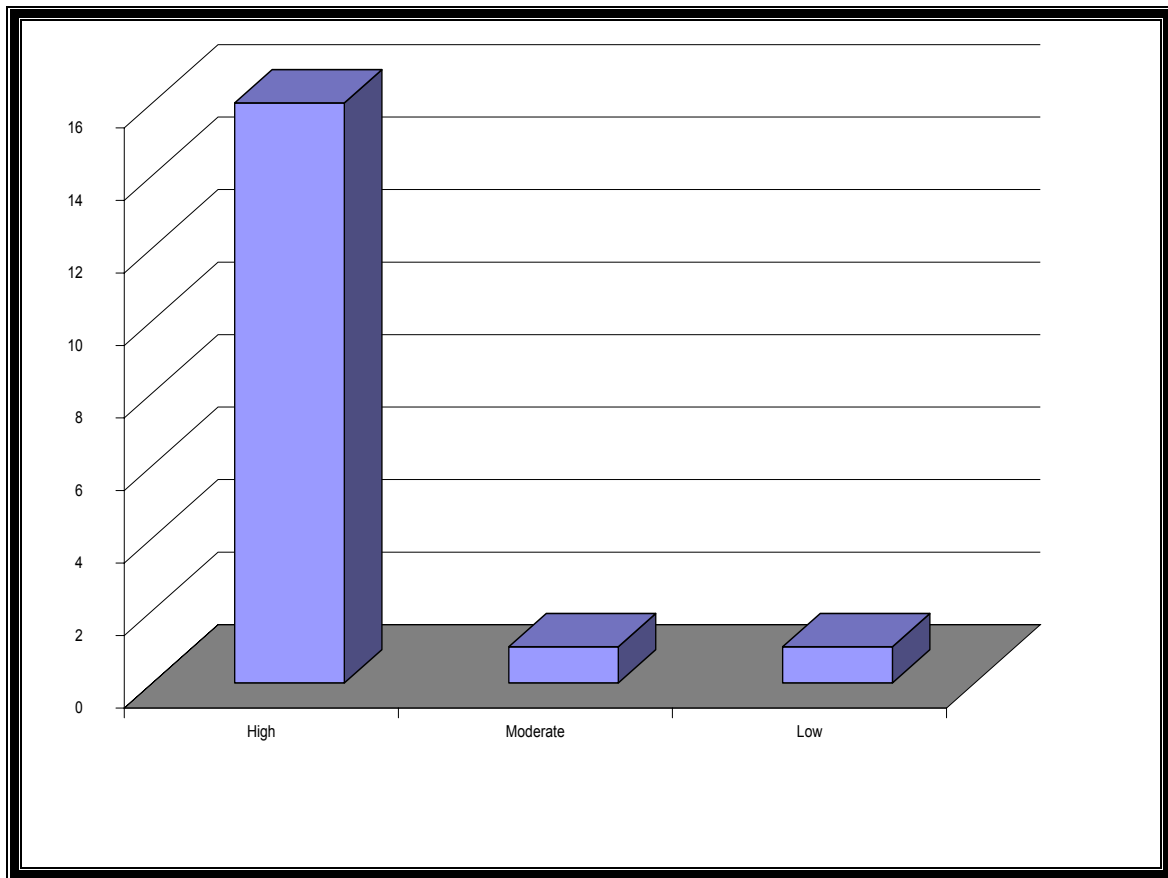
C. Importance of the Bill of Rights for children

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.

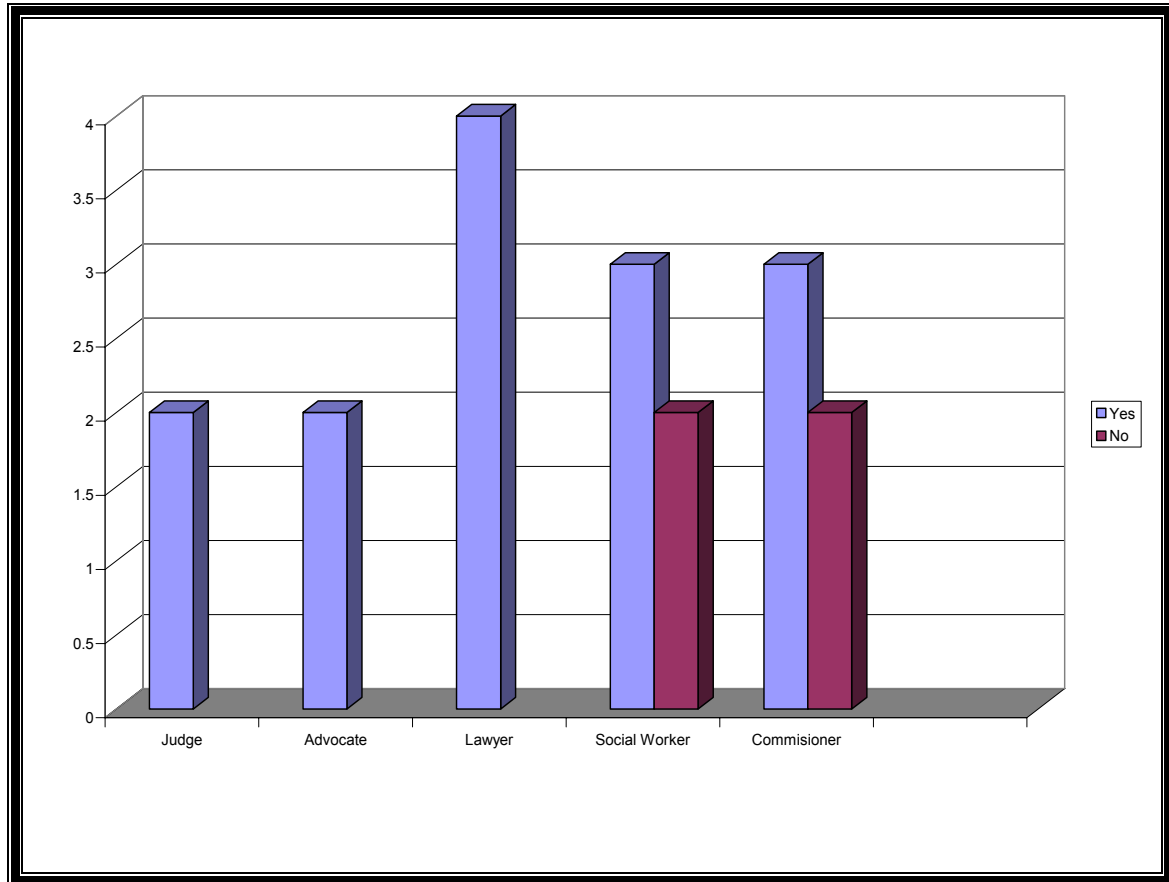
Figure 19: Protocol opening a "sound space" for children



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.

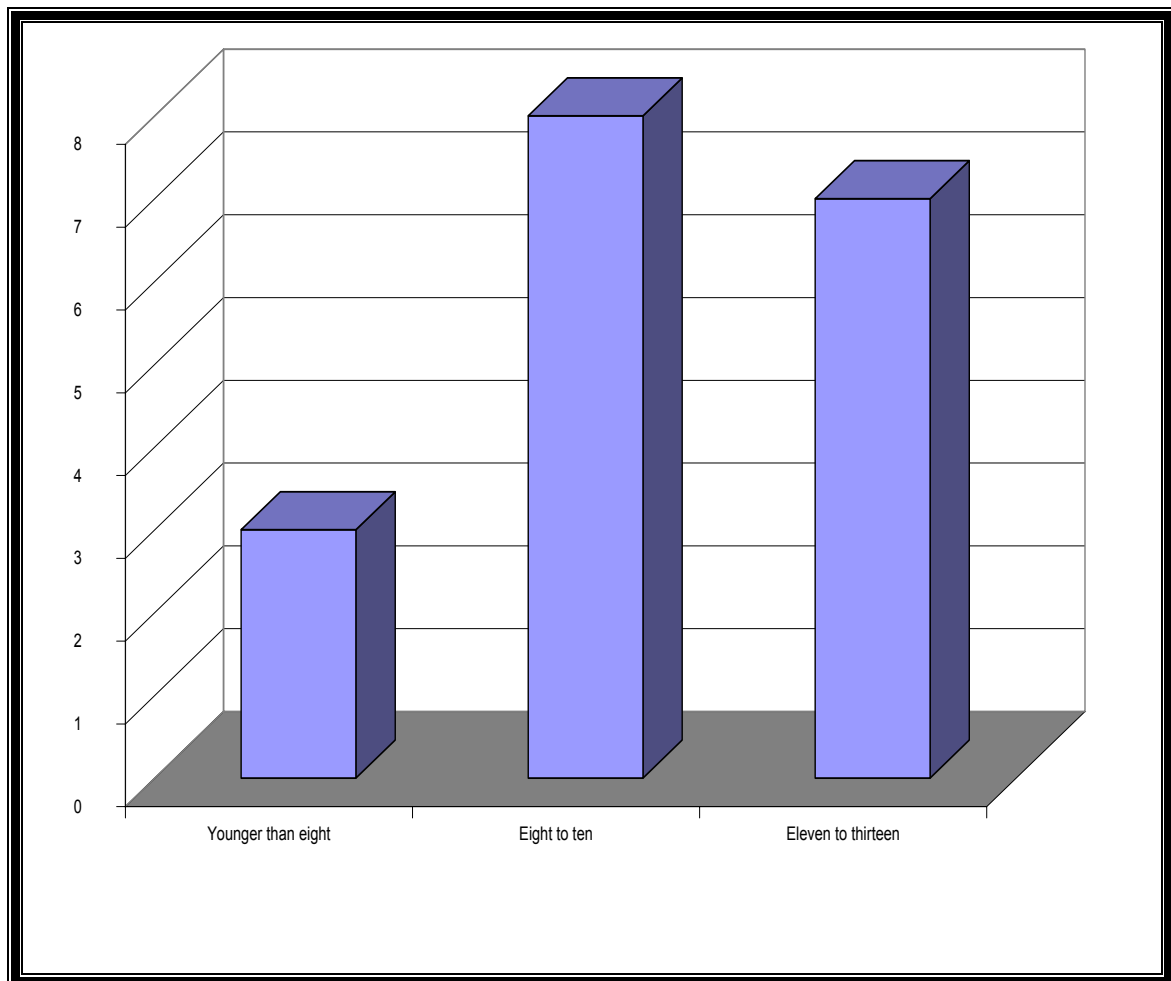
Research findings during the last decade also verified above opinions:

- 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:

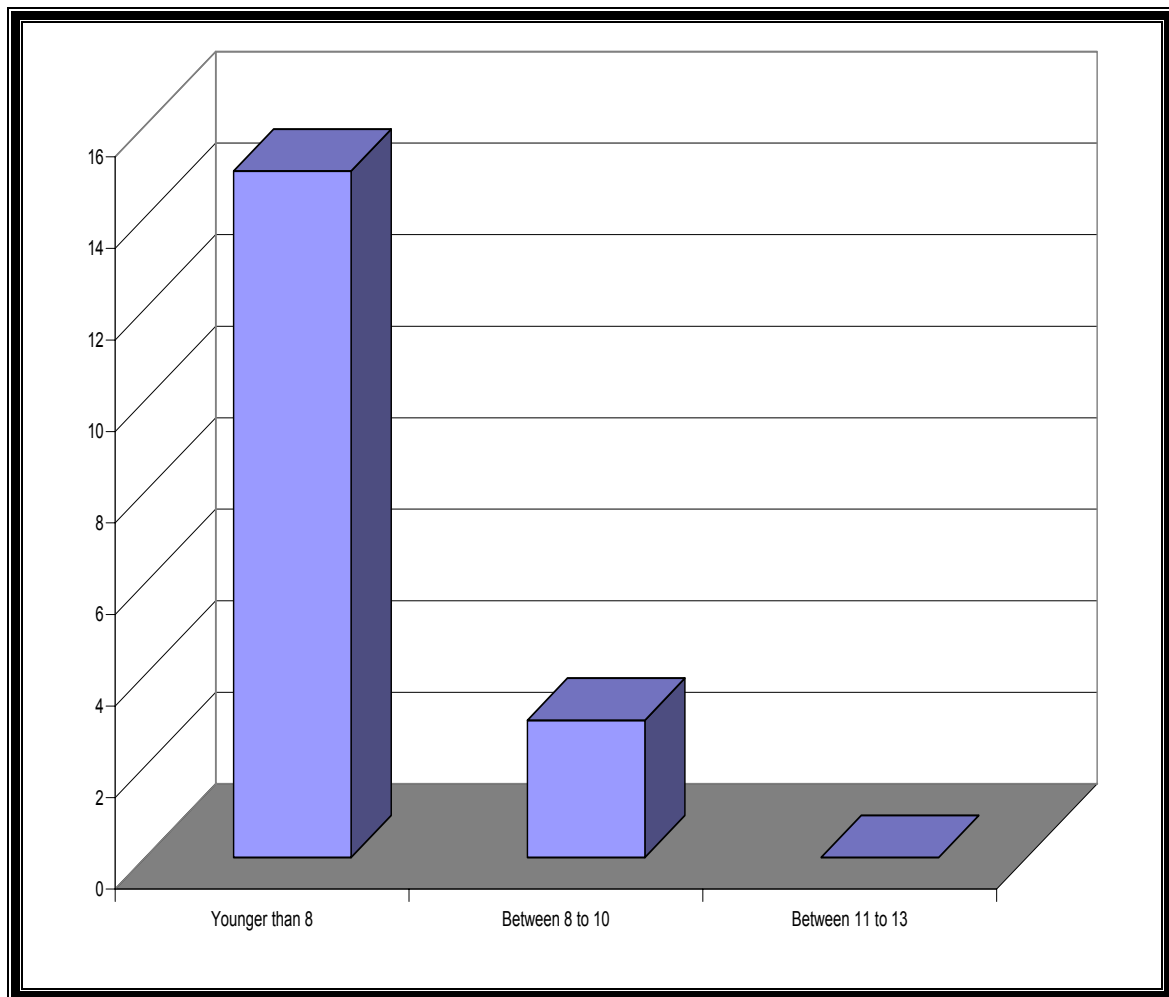
At the time of the interviews with the respondents, only three (3) (16, 7%) were of the opinion that one should take the views and opinions of children younger than eight (8) years into consideration. Eight (8) respondents (44.4%) felt comfortable with ages 8 – 10 years and seven (7) respondents (38,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

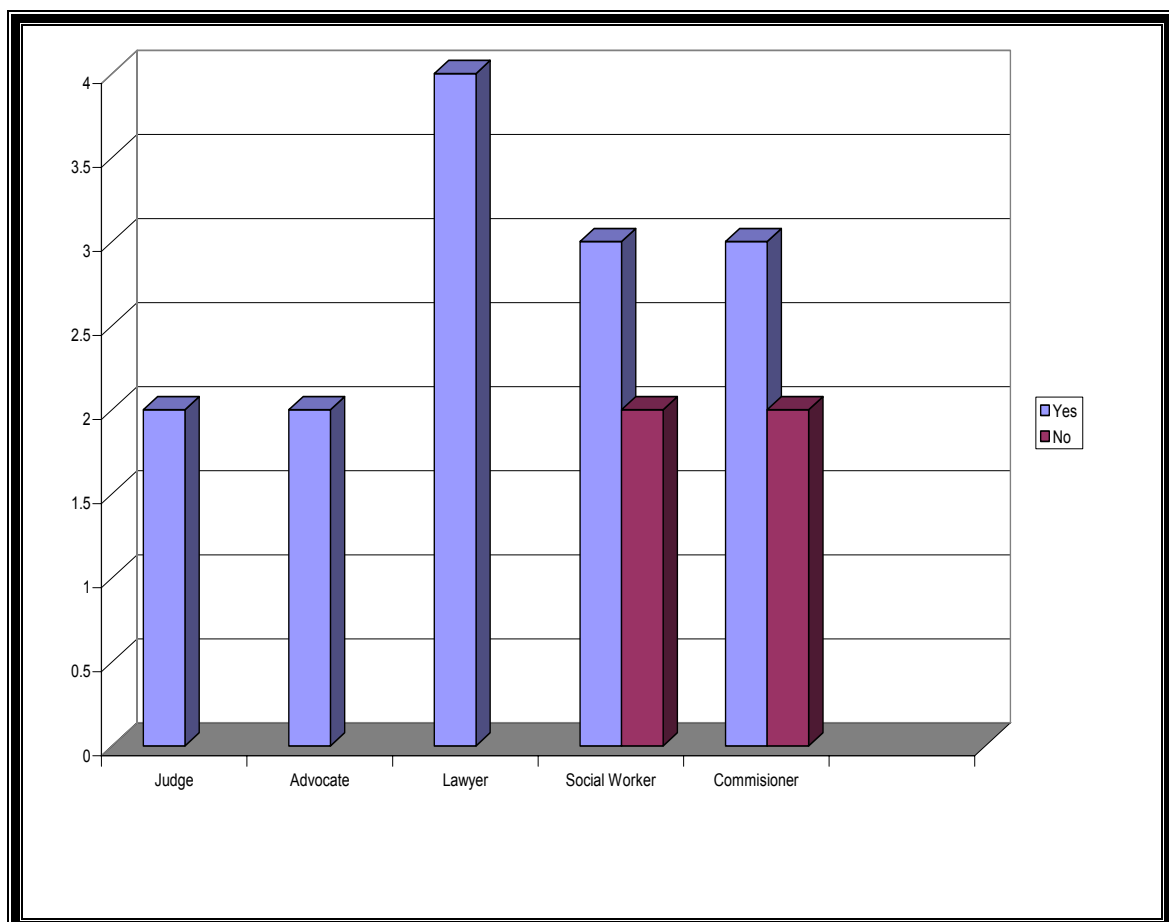
G. The need for a protocol when working with children

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:

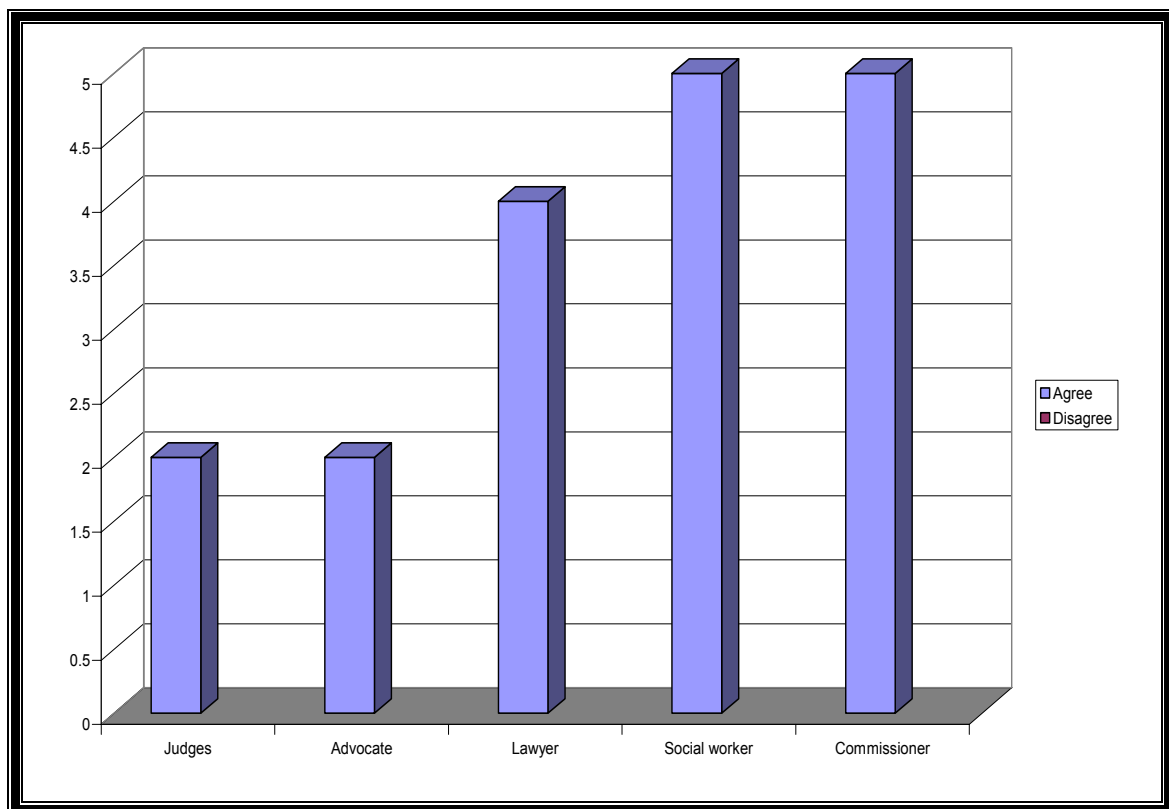
- Children are a source of information that cannot be ignored in fairness.
- More focused on child's need / see it from child's eyes.
- Openness.
- I feel guilty now if I don't include children.
- More careful decisions.
- Developmental phases are important.

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.

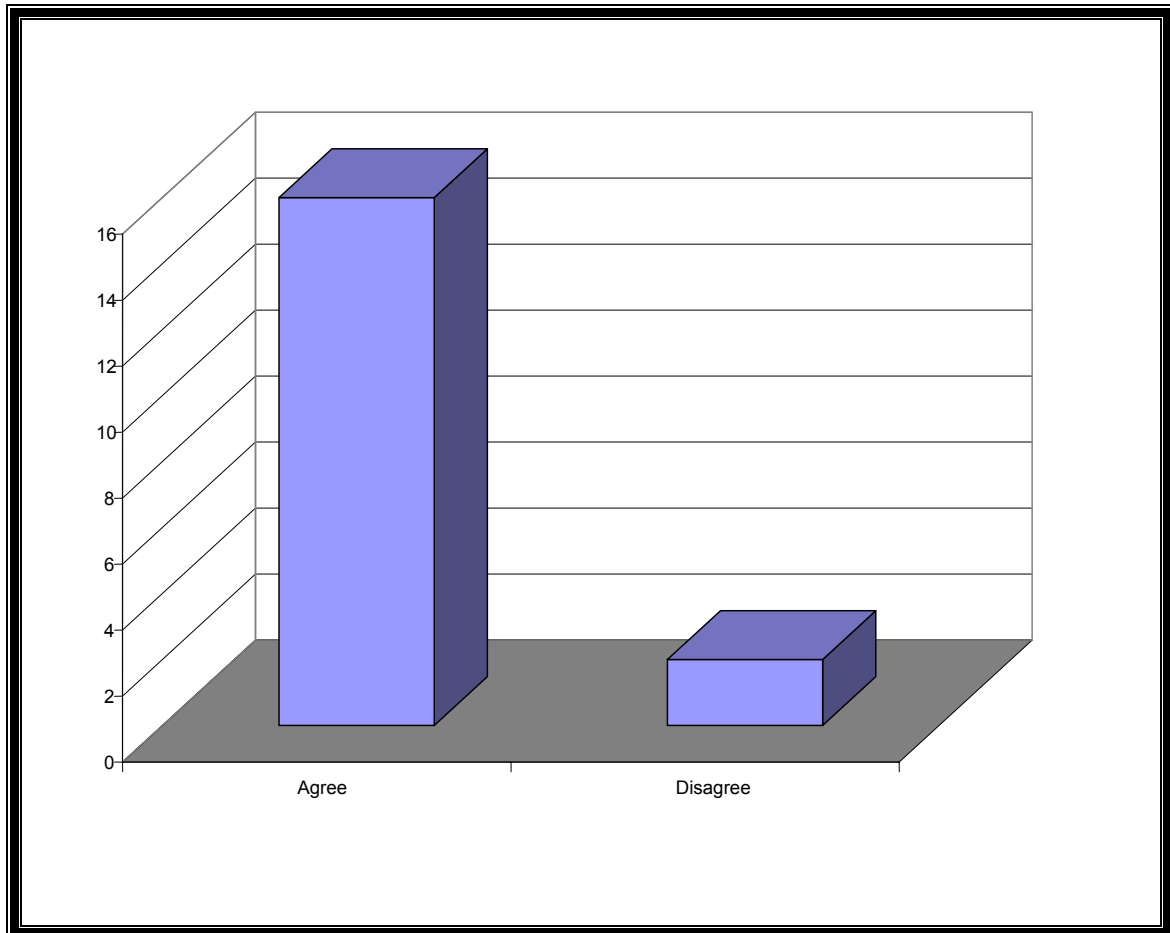
Figure 24: Protocol enhances work-approach



- **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:

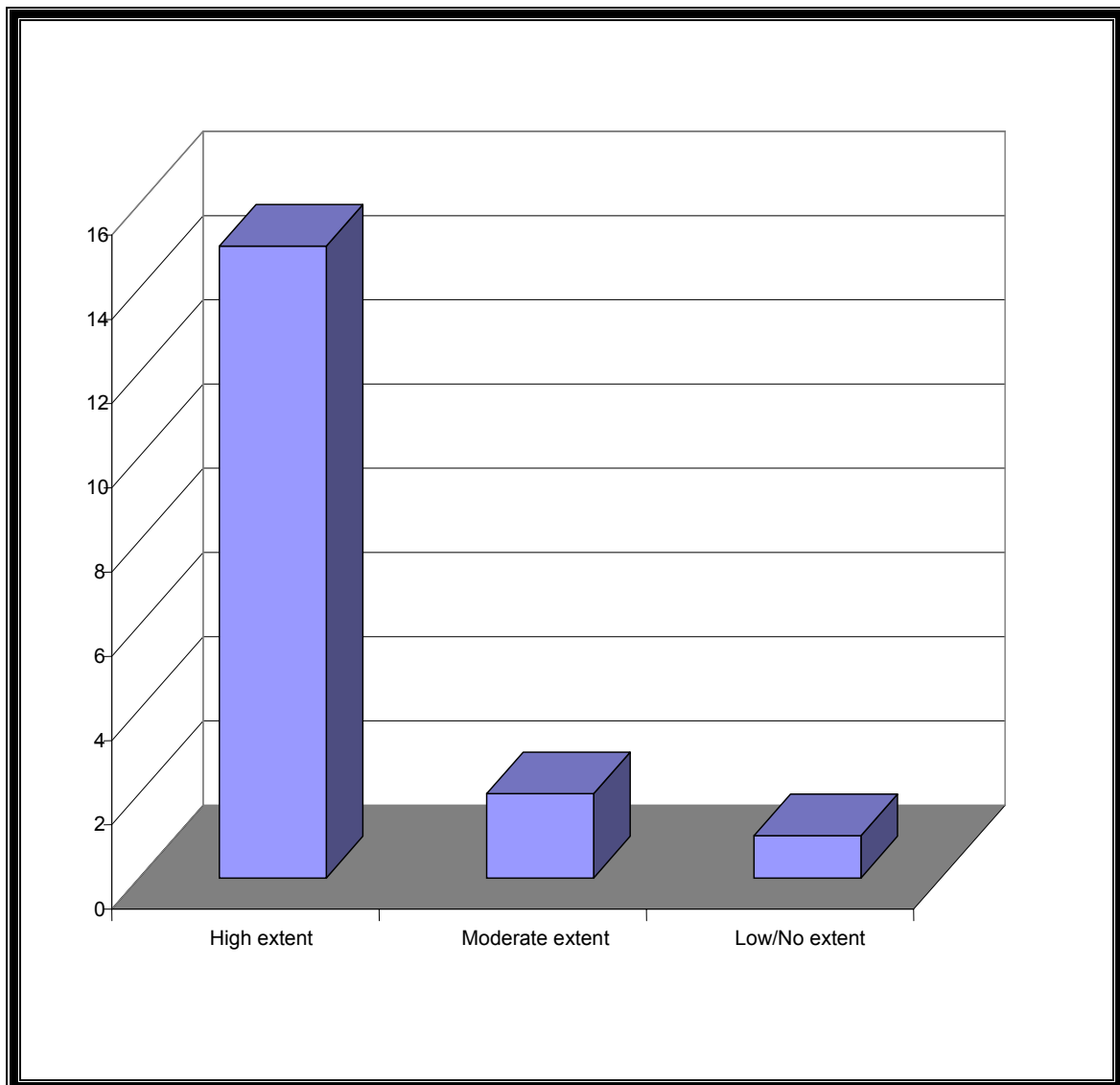
- Child's ideas of situation and solutions / child's view.
- Child's background and effect it had on child.
- As in guidelines given in protocol.
- Child's developmental stage.
- Considering all parts of Bill of Rights relevant for case / child.
- Rights of child.
- Child's wishes and feelings.
- Child's 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% (! respondent) said to no extent.

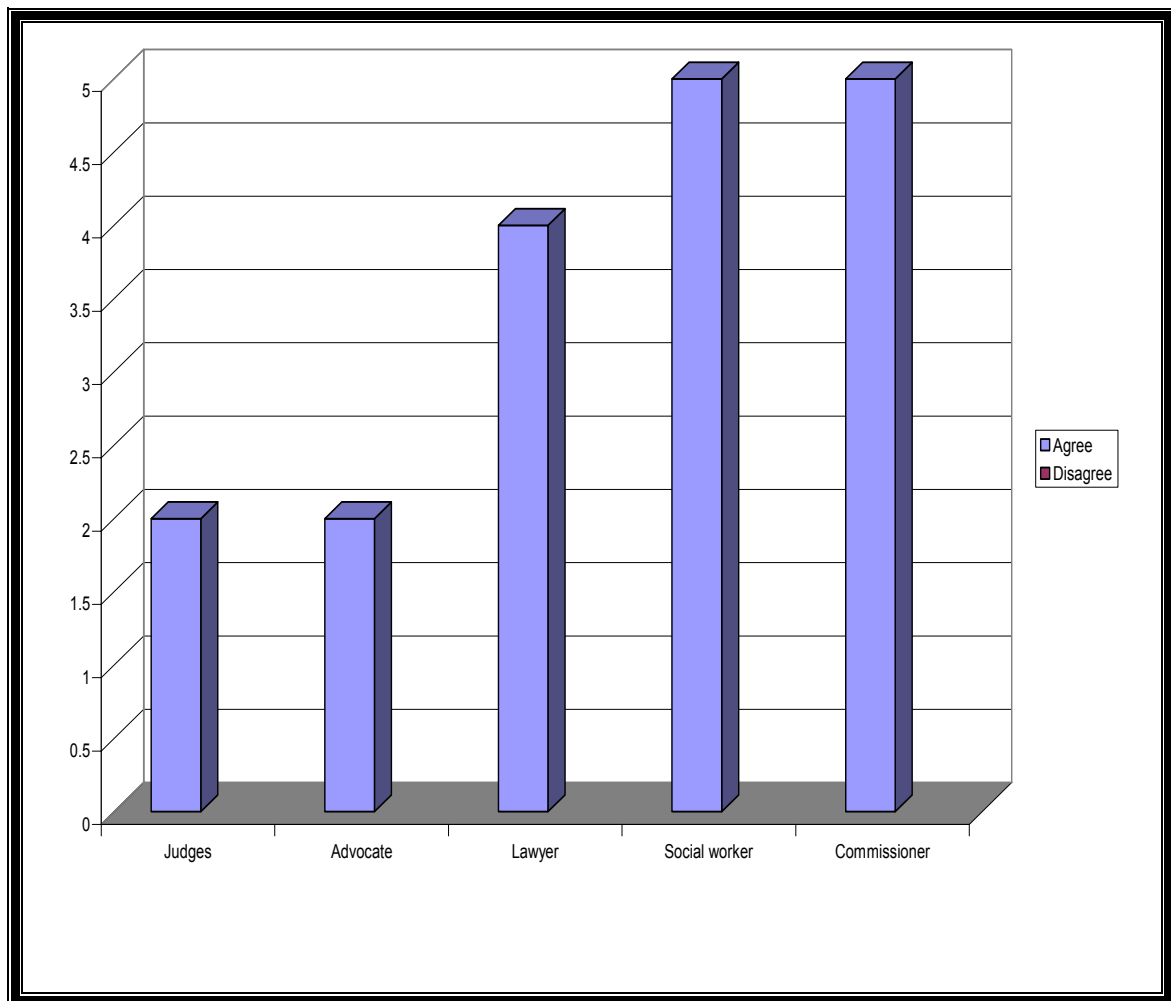
Figure 26: Protocol to ensure consistency



- **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



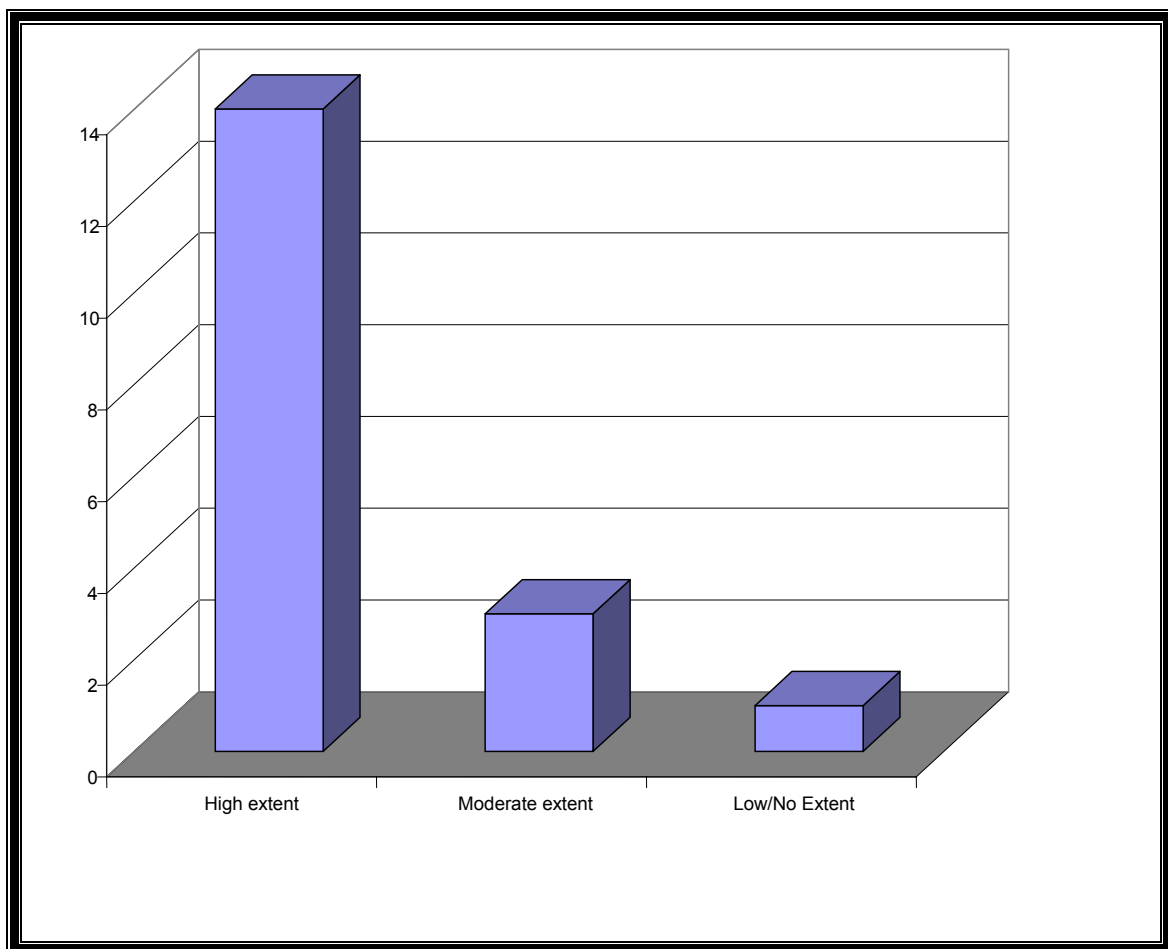
- **If all professional role-players follow the same protocol, to what extent will it assist with reducing the overwhelming volume of work as well as the complexity of cases requiring special skills**

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**

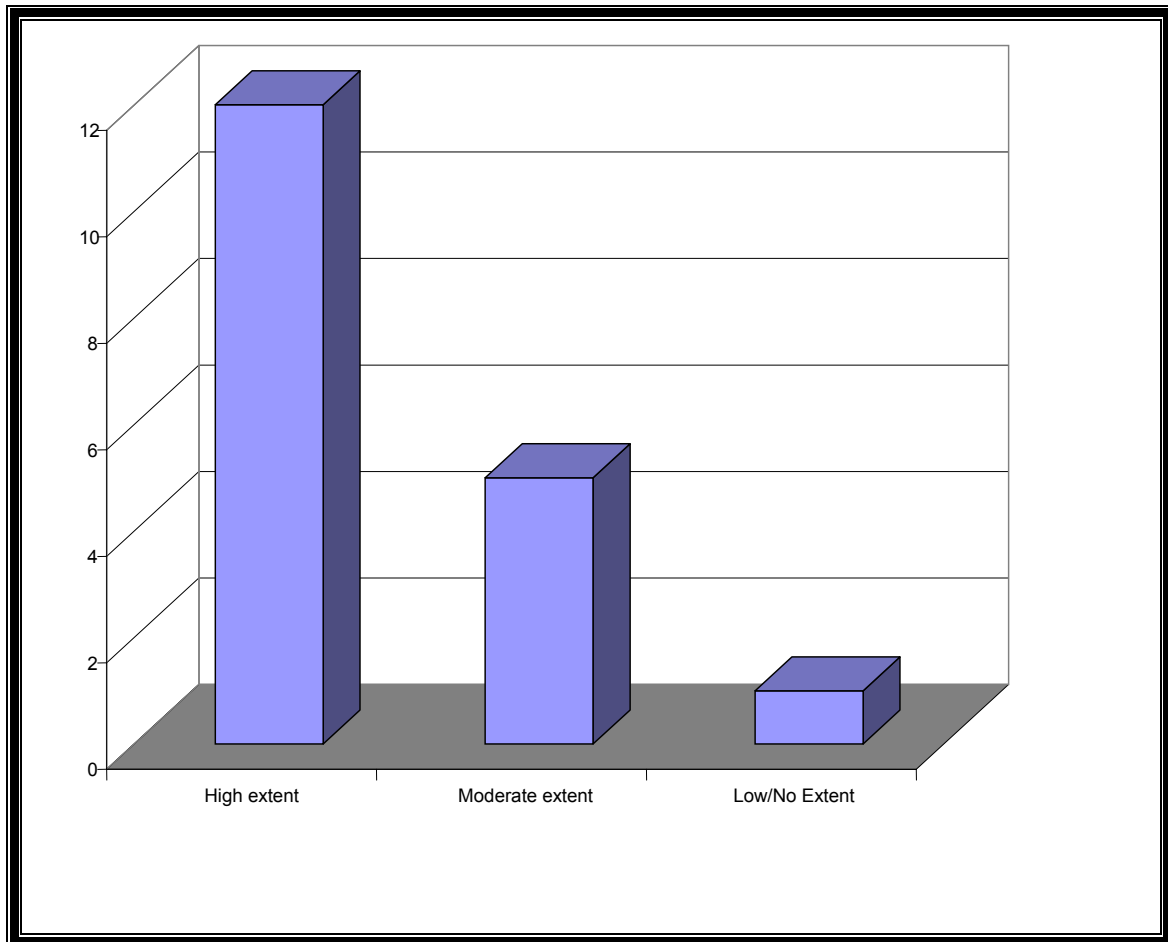
It was found in practice that, because of the high workloads, the professional role-players' focus was to deal with emergencies only. This caused a lot of frustration on no job satisfaction – resulting in burnout. Researcher wanted to determine whether working systematically will prevent burnout.

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.

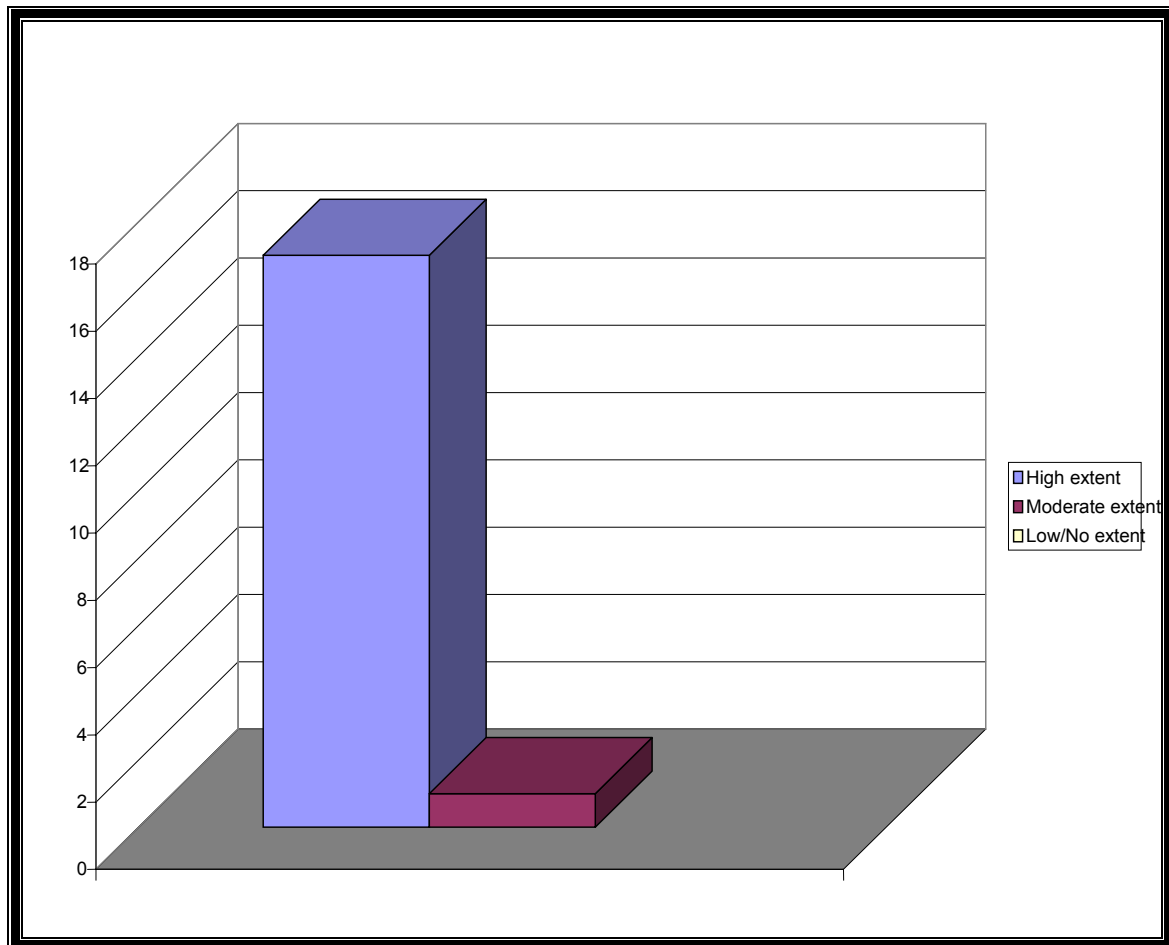
Figure 29: Protocol to prevent burnout



- **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.

CHAPTER 6

A CONCLUSIVE REVIEW AND RECOMMENDATIONS

6.1 Introduction

Fouchè (2002:107) referred to the term 'goal' or 'aim' as the "dream" towards which effort or ambition is directed. The purpose of this chapter will be to determine whether researcher's dream has realised. It has certainly been a challenging situation to do research on an issue that stemmed from a problem experienced as world wide – namely acknowledging and protecting children's rights.

In practice as a social worker, realising the importance of the decisions and recommendations we make as professional role-players in the judicial process and the permanent effect it has on the people we work with, researcher felt a professional obligation to pursue the issue. Protecting children's rights is a world wide clarion call and it is one thing to be aware of it and another to implement it in practice. Researcher's aim is that this study will encourage all the professional role-players involved with children in the judicial process to find a common ground of thinking and acting when working with children - allowing the voices of children to be heard.

6.2 The goal and objectives of the study

As stipulated in chapter one, the overall goal of the research was to develop a protocol to ensure the recognition of the rights of children during a legal process.

The objectives delineated to contribute towards the achievement of the overall goal, was a *literature study* as a thorough foundation for the *empirical study*. Through the literature study, the Person-Centered (Child Centered) Approach as theoretical framework was investigated (chapter two) and the conclusion was drawn that the principles embraced in this approach are of crucial importance when working with children.

Knowledge about child development is imperative when working with children and often age and developmental phase have been used as excuses to justify why children have been ignored as part of the process. By developing a developmental checklist as a hands-on tool for professional role-players whereby they can at a glance view the life-tasks, needs and abilities of a child within each developmental phase, age can no longer be a convenient excuse (Chapter Three).

The legislation regarding the rights of children on a national as well as international level was investigated. Researcher also focused on the way different countries approached children's rights. Included in Chapter Four are previous research and programmes from different countries in order to

determine what is necessary for professional role-players to recognise and protect children's rights in practice.

With the powerful information gathered through the literature study as foundation, the empirical study was conducted. The objectives of the empirical study 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.

6.3 Research question and hypothesis

De Vos (1998:115) indicated that research questions are posed about the nature of real situations, while hypotheses are statements about how things can be. From the literature study it was proved that children's voices have gone unheard in practice. The challenge was what to do to rectify the situation.

In order to determine what professional role-players require enabling them to acknowledge and protect children's rights, their need for a guideline such as a protocol had to be established.

The research question put to respondents were:

To what extent will the existence of a clear protocol for professional role-players enable them to protect the rights of children during a legal process?

The hypothesis stated for the study was stipulated as follows:

A Protocol that can be followed by professional role-players can ensure that children's rights will be protected during a legal process.

The empirical process as a whole was a positive and rewarding experience. The respondents were excited about the idea of a protocol and admitted that they do need a hands-on guideline in practice. According to their needs, the proposed protocol have to have a dual purpose, namely to be a guideline on the one hand, pointing out what aspects needs to be focused on, and a tool on the other hand – assisting them in their task. Considering the empirical results, researcher can confirm that the research question has been answered. In both the qualitative data as well as the quantitative data where respondents had to indicate whether the existence of a protocol will contribute to more effective services to children, a 100% response was achieved. This verifies that the research question has been answered.

Regarding the hypothesis, the overall positive feedback of the empirical study, with specific reference to the quantitative data from the questionnaires after

testing the proposed protocol, the hypothesis can be accepted as true.

Although this was a small scale investigation, the sample included all the relevant role players. All the findings indicate that such a protocol will greatly improve the rights of children and ensure that they receive the best possible services at a most critical time in their lives.

6.4 Conclusions as drawn from the empirical study

In this section, researcher chose to discuss the conclusions under each of the themes which formed the structure of the data gathered for both the qualitative and quantitative part of the study.

6.4.1 Knowledge base regarding the rights of the child

Kufeldt (1993:155) expressed the opinion that injustice is perpetuated in that we do not ensure a child's rights to be a legitimate voice in our decision making. The Canadian Judge, L'Heureux-Dubè (1998:385) found that over a period of ten years, not one court order was truly in the best interest of children because children's voices have gone unheard in the law. Without doubt there are comprehensive global statutory frameworks in place to acknowledge children's rights. What needed to be determined are the factors that prevent implementation. Walker (1993:79) determined in her research that judges, prosecutors, defence counsel, police and therapist simply do not know enough about children's capabilities and that lack of knowledge presents opportunities for untold mischief.

From this research, a similar conclusion can be made:

From the study it was evident that less than a third of the respondents were knowledgeable about children's rights or how to implement it in practice. Of serious concern is the fact that the majority of the respondents were not aware of the extent of children's rights – for instance that it includes protection, provision as well as participatory rights. Yet they have been making decisions and recommendations on behalf of children. This confirms the statements by Fraiberg (In De Vos, 1979:65) as well as Evans (1997:357) namely that the problem in practice is the knowledge (equipment) we bring to work.

It is thus concluded that, unless the professional role-players equip themselves with the necessary knowledge, they will not be able to act in the interest of children or to protect their rights.

6.4.2 Importance of the Bill of Rights for children

Researcher referred to the United Nations Secretary-General's international message on the Convention on the Rights of the Child where he stated that the way society treats children, reflects their sense of justice and commitment to the future. This was seen as a serious reprimand to countries world wide to focus on the way children and their rights are treated and respected. One way of doing so in South Africa, is by utilizing the Bill of Rights.

Through this research, it was evident that the helping professions' knowledge of the Bill of Rights specifically, were poor and therefore they have not utilized it to protect children's rights. This is alarming as the report and recommendation of the social worker is of extreme importance and basically the backbone of an investigation. If the reports portray the feelings, needs and wishes of children, ensuring their rights are protected, the social workers will be able to make a more professional recommendation and the courts will be able to make an informed decision. Through utilizing the Bill of Rights together with the Child Care Bill or the new Children's Bill when implemented, their reports and recommendations will have more impact and social workers will gain more respect as a profession.

With regard to the legal professions, it was alarming that their view regarding the Bill of Rights as far as children are concerned, mainly focused on Section 28, and because the heading states "rights pertaining to children". This tunnel vision of professional role-players involved in this study was hopefully broadened through the protocol."

When evaluating the protocol, the majority of the respondents were of the opinion that the protocol will assist in opening a "sound space for the child's voice" and should therefore be implemented through domestic legislation. This implies that the researcher's aim were reached because, as stated in the introduction paragraph, " Researcher's aim is that this study will encourage all the professional role-players involved with children in the judicial process to

find a common ground of thinking and acting when working with children - allowing the voices of children to be heard.”

From this theme, it can be concluded that the Bill of Rights do not figure at all time in the professional role-player’s work with children. As a result of that, the liberty rights of children (the child’s right to self-determination) cannot be promoted fully. In the same respect, the fact that the country has ratified the United Nations Convention of the Rights of the Child, together with other international instruments, yet it is not enforced in domestic legislation, implies that the country is failing to promote children’s rights fully. As Freeman previously stated, the word should not be mistaken for the deed.

6.4.3 Aspects to take into consideration when working with children

Alderson (2002:155) addressed the question as to what age children can begin to form and express views which have due weight in matters that affect them. As discussed in Chapter Five, research on this topic for the last decade indicated that the incompetence of the adults working with children is at the root of this problem. This was confirmed through the current study. Researcher’s conclusion drawn from this is that it is dangerous to accept work with children unless the professional role-player is properly equipped to do so. The professional role-player’s recommendation and / or decision will have a permanent impact on the lives of children.

6.4.4 The term “best interest” of children

The literature study confirmed that, world wide, adults are hiding behind the term “best interest” to justify their actions of excluding children the right to participate in the decision-making process. Goldstein (1983:121) said:

In the eyes of the law, to be a child is to be at risk, dependant, and without capacity or authority to decide free of parental control what is ‘best’ for oneself.

Landreth (1991:50) rightfully stated that:

Children are persons in their own right. They do not become persons under the attainment of some predetermined age or after having met certain criteria.

Researcher’s motivation for this study stemmed from the problems experienced in practice where there are no consistency in dealing with or making decisions on behalf of children – leaving them to grow up with a resistance and anger towards an unfair system. It is thus evident that a mind shift in the way professional role-players thinks about and works with children, is imperative.

The initial reaction of the respondents about the age they regard as appropriate to take children serious, was mostly given as ten (10) years and older. Since implementing the protocol, the majority of the respondents

indicated they now will consider listening to children younger than eight (8) years. A complete mind-shift has set in and is proof that professional role-players can change the way they feel and think about children.

From the empirical study it was further evident that the term “best interest” is not defined and open for judicial discretion. Researcher therefore concludes that, unless specific criteria are set whereby the term “best interest” is defined, our judicial system will continue to fail the child. In considering these criteria, we need to go back to children themselves to determine what they need from adults. Feedback from children was that adults should

STOP and THINK about children’s point of view;

LOOK for their feelings, and

LISTEN to what they are saying.

By doing that, professional role-players will truly act in the best interest of children.

6.4.5 The necessity of a protocol when working with children

In Chapter 4 researcher expressed the opinion that the inconsistency experienced in practice, has a detrimental effect on efforts to protect the rights of children. The lack of a guideline, such as a protocol, leaves important decisions open to the individual role-player’s discretion. This discretion is not necessarily to the advantage of the children concerned. Ruegger (2001, viii) expressed the opinion that all professional role-players whose work bring

them in contact with children and whose daily tasks have long-term consequences for children, need to learn how children experience the impact of their decisions.

All the respondents interviewed confirmed that, because there is no protocol or guideline, there are no consistency in court procedures and decisions. This in turn exposes children to an abusive system as was found in the investigation of the Human Rights Commission (2002:66). It is thus concluded that a definite need for a hands-on guideline for professional role-players exists.

6.4.6 The contents of a protocol

During the interviews with respondents, a list was compiled regarding aspects they thought should be included to enable the professional role-player to address the most fundamental needs and concerns of children in the legal process. As part of the practical guidelines, the developmental checklist, a summary of the Bill of Rights, communication skills with children, a parental questionnaire, psychosocial indicators of child sexual abuse and different report guidelines were included.

On evaluating the contents of the protocol, 60% of the respondents indicated that the protocol fulfil their needs. One respondent suggested that it be more practical and one respondent recommended the inclusion of reference to the African Charter on Rights of the Child as well as the Domestic Violence Act no

116/1998. The same respondent also thought it appropriate to include Section 29 of the Bill of Rights as very much relevant to children.

In conclusion though, the proposed protocol was seen as an important contribution to guide the professional role-player on the journey to recognise and protect children's rights in the legal process.

6.4.7 The way the existence of a protocol can contribute to more efficient services to children

Before developing the protocol, all the respondents expressed the opinion that a protocol will lead to consistency and protect children's rights. When evaluating the protocol, it was with much appreciation to see that 100% of the respondents agreed that the protocol will enhance their work approach. This implies that another mind shift was obtained namely that professional role-players involved in the study indicated that it is important to listen to children, to allow children to participate in their lives and to move the focus from Adult Centered to Child Centered. A further achievement was the fact that 100% of the respondents admitted that, by implementing the proposed protocol, they experienced that it did enhance their work effectiveness and contributes to job satisfaction. With this attitude, the said professional role-players will be motivated to protect children's rights because they believe it should be done. This finding can be used in future to enable both the helping and the law professions to gain more respect and credibility in practice.

6.4.8 The way a protocol can contribute to additional services

From this study the need and advantages of implementing a family court was identified and agreed on by all respondents (100%). Several criteria in this regard were highlighted and discussed in Chapter Five.

These criteria will not only assure that the focus will be on the child, but also create an excellent opportunity for professional role-players to work together as a team. Researcher can conclude that, through utilizing the protocol within the structure of a family court, the best interest and rights of children will definitely be protected.

6.5 Recommendations

Important recommendations, based on the findings and conclusions of the study, came to the fore during the empirical process and researcher will discuss each recommendation under the relevant heading:

6.5.1 Knowledge base regarding the rights of children

- Training of professional role-players to work with children as a specialized field is a definite recommendation. The focus of such a training programme must include all aspects needed to enable the professional role-player to recognise and protect the rights of children, such as knowledge about children's rights and the Bill of Rights. Researcher intends to develop a training programme to be presented in

workshop format – suitable for all the professional role-players – and to register the programme with the South African Council for Social Service Professions as part of the Continued Professional Development programme. This programme can also be marketed at the Department of Social Work of different universities as part of the specialized training for social work students intending to work in the Family and Child Care Field.

- Knowledge on the rights of children must be promoted widely as children cannot utilize their rights if they are not aware of it. Equally, adults (parents, teachers, professional role-players) need to know what children's rights entail. In this respect, the following can be recommended:
 - The use of the media to promote children's rights.
 - Human Rights Commission to create and distribute booklets explaining what the rights mean and the accompanying responsibilities.
 - Researcher to develop a school-programme similar to the one referred to in chapter 4 that is implemented with success in Belgium. The purpose of this programme will be to focus on the participation rights of children and how to utilize it with responsibility.

6.5.2 Importance of the Bill of Rights for children

The following recommendation can be made:

- Informative training and educating on the Bill of Rights and how it can be utilized to the benefit and best interest of children in the legal process.
- The Human Rights Commission can play an important role in promoting and explaining the Bill of Rights via child-friendly pamphlets or booklets.

6.5.3 Aspects to take into consideration when working with children

The recommendations in this respect centred on training as well as access to and provision of facilities to enable the professional role-player to work with children:

- Training of clerks of children's courts.
- Training of family advocates before appointment.
- Specific skills-training of professional role-players, focussing on aspects like:
 - Communication skills with children.
 - Questioning skills.
 - Play-techniques.
 - Working with young children.
- The undergraduate training of social workers at university should include assessment skills in order to equip them to do ecometrical

assessments as part of their therapy with clients. Play therapy and techniques should also form part of the curriculum.

- Well equipped facilities such as one-mirror play rooms, video-recording equipment, channel television for court rooms and mock court rooms to use for court preparation of children, is of great importance.

6.5.4 The “Best Interest” principle

From both the literature study as well as the empirical study it was evident that the problem does not lie with the principle but in the way it is applied in practice. It is therefore recommended that:

- The term “best interest” be clearly defined to include the child in totality – considering his/her physical, emotional, social and psychological needs at this particular point in time but also in ten (10) to twenty (20) years later.
- Specific guidelines should be set and made part of the proposed protocol. These guidelines should be followed with every individual child.

6.5.5 The necessity of a protocol when working with children

Both the qualitative and quantitative results proved the desperate need of professional role-players for a protocol when working with children. Following this, it is recommended that

- Department of Education be contacted to determine the process to follow regarding implementing a protocol.
- The proposed protocol be refined and implemented in the following manner:
 - Introducing it to the different universities (social work as well as law departments).
 - Develop a training programme for the different professional role-players.
 - Further explore the possibilities of including the protocol in the new Children Bill.
 - Submit the protocol to the Human Rights Commission for consideration and inclusion in relevant domestic law.

6.5.6 The contents of the protocol

An important aspect that was raised during the doctoral seminar was the role of the school in the process of gathering information on the child. The principal, teachers and friends can specifically be crucial sources of information in determining the child's feelings, needs and wishes. It is therefore recommended that:

- The role of the school be recognized and referred to in the protocol as "significant others" as they are not identified as one of the professional role-players directly involved in the legal process.
- Section 29 of the Bill of Rights should be included in the protocol.

Another issue that was touched on but not dealt with in detail was that of the disabled child. Due to the intensity of the issue and the fact that working with the disabled child is a specialized field in own right, the following are recommended:

- There should not be a differentiation between the rights of the child and the disabled child.
- Although the disabled child may have special needs other than other children, all the sections of the Bill of Rights also pertain to them.
- Legislation pertaining to the disabled child and with specific reference to the Child Care Act (no 74/1983), should be reviewed and adjusted to be in line with their specific situation.
- Services such as a supportive training programme for parents of disabled children should be developed and enforced through the medical profession – for instance through referral of the family physician. This programme's focus should be to assist parents to deal with all the issues surrounding having a disabled child and be a quality parent.
- Further research in this regard as a specialized field in its own right is recommended. A specific recommended topic is to consider which method and toys can be effectively utilized with blind children.

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

The empirical results were proof that the existence of a protocol can contribute to more effective services to children. It can thus be recommended that:

- The proposed protocol be refined, implemented and made part of the everyday tools of the professional role-players.
- Researcher will accept responsibility to continually update the document and ensure that it is a user friendly document.
- Marketing the protocol at all quarters concerned working with children.

6.5.8 The way the protocol can contribute to additional services to ensure the recognition of the rights of children during a legal process

- The protocol should be used to motivate for additional services such as the implementation of a family court system by negotiating with the Law Commission.
- Guidelines on how to effectively utilize mediation, independent legal representation for children and judicial interviews should form part of the protocol and be implemented where it will benefit the child.

- The most important recommendation is that the different professional role-players should respect each other's profession, their abilities and skills and perform as a team to the benefit of the children in the legal process. Working against each other is to work Ego-Centered in stead of Child-Centered.

6.6 Overall conclusion

It is of great importance that professional role-players not just take notice of children's rights, but also obtain skills on how to practically apply these skills during a legal process. Researcher sincerely hope that this study will contribute to an awareness of the importance and enhance the professional responsibility of all professional role-players working with children during a legal process.

BIBLIOGRAPHY

Abella, R.S. & L'Heureux-Dubè, C. 1983. **Family law: Dimensions of justice**. Toronto: Butterworths.

Ammerman, R.T.; Herson, M.E. & Last, C.G. (Eds.) 1999. **Handbook of prescriptive treatments for children and adolescents**. 2nd Edition. U.S.A.: Allyn & Bacon.

Andrews, H.T.G. & Gelsomino, P. 1983. The legal representation of children in custody and protection proceedings: A comparative view. In Abella, R.S. & L'Heureux-Dubè, C. **Family law: Dimensions of justice**. Toronto: Butterworths.

Archbold, C. 2000. Family law-making and human rights in the United Kingdom. In Maclean, M. (Ed.) **Making law for families**. Canada: Hart Publishing.

Arkava, M.L. & Lane, T.A. 1983. **Beginning social work research**. Boston: Allyn & Bacon.

Asquith, S. 1983. **Children and justice: Decision-making in children's hearings and juvenile courts**. Edinburgh: University Press.

Austin, G.W.; Jaffe, P.G. & Hurley, P.M. 1991. Incorporating children's needs and views in alternative dispute resolution approaches. **Canadian Family Law Quarterly**, 8(69): 69-79.

Axline, V. 1969. **Play therapy**. New York: Ballentine.

Bagnell, K. 1980. **The Little Immigrants**. Toronto: Macmillan of Canada.

Bailey, K.D. 1994. **Methods of social research**. 4th Edition. New York: Free Press.

Barnes-September, R.L. 1999. **The development of a protocol for the management of child abuse and neglect**. Unpublished D.Phil. thesis. University of Western Cape.

Barry, M. 2002. Minor rights and major concerns: The view of young people in care. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Bemporad, J.R. (Ed.) 1980. **Child development in normality and psychopathology**. New York: Brunner / Mazel Inc.

Bennett, S.L. 1980. Infancy. In Bemporad, J.R. (Ed.) **Child development in normality and psychopathology**. New York: Brunner / Mazel Inc.

Bernstein, B.E. & Haberman, B.G. 1981. Lawyer and counsellor as an interdisciplinary team: Problem awareness in the blended family. **Child Welfare - Journal of the Child Welfare League of America**, LX(4), April: 211-219.

Blau, M. 1993. **Families Apart**. New York: The Berkley Publishing Group.

Bless, C. & Higson-Smith, C. 1995. **Fundamentals of social research methods: an African perspective**. 2nd Edition. Cape Town: Juta.

Bloom, M. & Fisher, J. 1982. **Evaluating practice: guidelines for the accountable professional**. Englewood Cliffs, New Jersey: Prentice Hall.

Bohart, A.C. 2004. How do clients make empathy work? **Person-centered and Experiential Psychotherapies**, 3(2), Summer: 102-115.

Borland, M.; Laybourn, A.; Hill, M. & Brown, J. 1998. **Middle childhood: The perspectives of children and parents**. London: Jessica Kingsley Publishers.

Borthwick, S. 1994. Preparing child witnesses: involving parents and carers. **Adoption & Fostering**, 18(4):18-23.

Boy, A.V. & Pine, G.J. 1995. **Child-centered counseling and psychotherapy**. U.S.A.: Charles C. Thomas Publishers.

Briar, S. 1980. Toward the integration of practice and research. In Franshel, D. (Ed.) **Future of social work research**. Washington DC: National Association of Social Workers.

Bronfenbrenner, U. 1979. **The ecology of human development**. Cambridge, MA: Harvard University Press.

Burns, A. & Dunlop, R. 1999. How did you feel about it? Children's feelings about their parents' divorce at the time and three and ten years later. **Journal of Divorce & Remarriage**, 31(3, 4): 19-35.

Cairns, L. & Brannon, M. 2005. Promoting the human rights of children and young people: The "Investing in children" experience. **Adoption & Fostering**, 29(1): 78-87.

Campbell, L. 2002. Rights and disabled children. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Carstens, R.C. 2001. **The Social Worker as expert witness in cases of child sexual abuse: a professional guideline**. M.A. dissertation. Pretoria: University of Pretoria.

Child Care Act, 1983 (Act 74 of 1983). Government Gazette No. 8765.

Pretoria: Government Printers.

Child Care Amendment Act, 1996 (Act 96 of 1996). Government Gazette No.

17606. Pretoria: Government Printers.

Children's Bill, draft (B 70B – 2003).

Clark, A. & Statham, J. 2005. Listening to young children: Experts in their own lives. **Adoption & Fostering**, 29(1): 45-56.

Collins English Dictionary – Millenium Edition. 1999. Wm.Collins Sons & Co.Ltd.

Colton, M.; Sanders, R. & Williams, M. 2001. **An introduction to working with children: A guide for social workers.** New York: Palgrave.

Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993).

Government Gazette No 15466. Pretoria: Government Printers.

Coppock, V. 2002. Medicalising children's behaviour. In Franklin, B. (Ed.)

The new handbook of children's rights: Comparative policy and practice.

London: Routledge.

Corey, G.; Corey, M.S. & Callanan, P. 1993. **Issues and ethics in the helping professions.** Pacific Grove, CA: Brooks / Cole.

Cunningham, B. 1993. **Child development.** U.S.A.: Harper Collins Publishers, Inc.

Dane, F.C. 1990. **Research methods.** Pacific Grove, CA: Brooks / Cole.

Davel, T. & De Kock, P. 2001. In 'n kind se beste belang. **De Jure**, 2(34): 272-291.

Davis, J.M. & Sandoval, J. 1991. A Pragmatic framework for systems-orientated consultation. **Journal of Educational and Psychological Consultation**, 2(3): 201-216.

Delport, C.S.L. & De Vos, A.S. 2002. Professional research and professional practice. In De Vos, A.S.(Ed); Strydom,H.; Fouchè,C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions.** 2nd Edition. Pretoria: J.L. van Schaik.

Denzin, N.K. & Lincoln, Y.S. 1994. **Handbook of qualitative research.** Thousand Oaks: Sage.

Denzin, N.K. & Lincoln, Y.S. 2000. **Handbook of qualitative research.** London: Sage.

De Vos, A.S. 1979. Ken die maatskaplike werker die kind? *Social Work / Maatskaplike Werk*, 15(2), Junie: 64 – 68.

De Vos, A.S. 1998. Conceptualisation and operationalisation. In De Vos, A.S. (Ed.); Strydom, H.; Fouchè, C.B.; Poggenpoel, M.; Schurink, E.M. & Schurink, W. **Research at Grass Roots: a Primer for the caring professions**. Pretoria: J.L. van Schaik.

De Vos, A.S. 2002a. Combined quantitative and qualitative approach. In De Vos, A.S. (Ed); Strydom,H.; Fouchè,C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions**. 2nd Edition Pretoria: J.L. van Schaik.

De Vos, A.S. 2002b. Qualitative data analysis and interpretation. In De Vos, A.S. (Ed); Strydom,H.; Fouchè,C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions**. 2nd Edition Pretoria: J.L. van Schaik.

De Vos, A.S. (Ed.); Strydom,H.; Fouchè, C.B.; Poggenpoel, M. Schurink, E.M. & Schurink, W. 1998. **Research at Grass Roots: a Primer for the caring professions**. Pretoria: J.L. van Schaik.

De Vos, A.S. (Ed.); Strydom,H.; Fouchè,C.B & Delport,C.S.L. 2002.

Research at Grass Roots: For the social sciences and human service professions. 2nd Edition. Pretoria: J.L. van Schaik.

Divorce Act, 1979 (Act No.70 of 1979). Government Gazette No. 6506.

Pretoria: Government Printers.

Donaldson, M. 1978. **Children's minds.** London: Croom Helm Ltd.

Du Toit, A.S.; Grobler, H.D. & Schenk, C.J. 2001. **Person-centred communication: Theory and practice.** S.A.: Oxford University Press.

Dziuba-Leatherman, J. & Dolan, E.M. 1994. The need for child representation reform: Policy issues and new roles for family specialists. **Family Relations – Journal of Applied family and child studies**, 43(1), January: 81-85.

Ellis, E.M. 2001. **Divorce Wars: Interventions with families in conflict.**

Washington D.C.: American Psychological Association.

Fahlberg, V.J. 2004. **A child's journey through placement.** London:

British Association for Adoption & Fostering.

Faller, K.C. 1993. **Child sexual abuse: Intervention and treatment issues.**

U.S.A.: The Circle Inc.

Fanshel, D. (Ed.) 1980. **Future of social work research.** Washington DC: National Association of Social Workers.

Feldman, F.L. & Scherz, F.H. 1976. **Family Social Welfare: Helping troubled families.** Chicago: Aldine Publishing Group.

Ferreira, M.; Mouton, J.; Puth, G.; Schurink, E. & Schurink, W. 1986. **Module 3: Inleiding tot kwalitatiewe metodes.** Pretoria: Raad vir Geesteswetenskaplike Navorsing.

Flekkoy, M.G. 2002. The ombudsman for children: Conception and developments. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice.** London: Routledge.

Fortin, J. 2002. The Human Rights Act 1998: human rights for children too. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice.** London: Routledge.

Fouchè, C.B. & De Vos, A.S. 1998. Problem formulation. In De Vos, A.S. (Ed.); Strydom, H.; Fouchè, C.B.; Poggenpoel, M.; Schurink, E.M. & Schurink, W. **Research at Grass Roots: a Primer for the caring professions.** Pretoria: J.L. van Schaik.

Fouchè, C.B. 2002a. Research strategies. In De Vos, A.S.(Ed.); Strydom,H.;

Fouchè, C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions.** 2nd Edition. Pretoria: J.L. van Schaik.

Fouchè, C.B. 2002b. Problem Formulation. In De Vos, A.S.(Ed.); Strydom,H.;

Fouchè, C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions.** 2nd Edition. Pretoria: J.L. van Schaik.

Fouchè, C.B. & Delport, C.S.L. 2002. The place of theory and the literature review in the qualitative approach to research. In De Vos, A.S.(Ed.); Strydom, H.; Fouchè, C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions.** 2nd Edition. Pretoria: J.L. van Schaik.

Fox, K. 1995. **Everything you need to know about your legal rights.**

U.S.A.:The Rosen Publishing Group, Inc.

Fraiberg, S.H. 1978. **The magic years: Understanding and handling the problems of early childhood.** London: Methuen & Co. Ltd.

Franklin, B. 2002. Children's rights and media wrongs: changing representations of children and the developing rights agenda. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Freeman, M.; Adcock, M.; Bevan, H. & Rawstron, D. (Ed.) 1981. **Rights of children**. U.K.: Witley Press Limited.

Freeman, M. 1999. The right to be heard. **Adoption & Fostering**, 22 (4): 50-59.

Freeman, M. 2002. Children's rights ten years after ratification. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Garbarino, J. & Stott, F.M. 1989. **What children can tell us**. London: Jossey-Bass Limited.

Gary, M. 2003. Normal adolescence. Bloomington Center for Adolescent studies. <http://www.education.indiana.edu/cas/devtask.html> (12/7/2003).

Gillis, H. 1996. **Counselling young people**. Pretoria: Kagiso uitgewers.

Goldstein, J.; Freud, A. & Solnit, A.J. 1979. **Before the best interests of the child**. New York: The Free Press.

Goldstein, J. 1983. In whose best interest? In Abella, R. & L'Heureux-Dubè, C. **Family law: Dimensions of justice**. Toronto: Butterworths.

Grant, B. 2004. The imperative of ethical justification in psychotherapy: The special case of client-centered therapy. **Person-Centered & Experiential Psychotherapies**, 3(3), Autumn: 152–163.

Greeff, M. 2002. Information collection: Interviewing. In De Vos, A.S.(Ed.); Strydom, H.; Fouchè, C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions**. 2nd Edition. Pretoria: J.L. van Schaik.

Greenberg, L.S. 2004. Being and doing: Person-centeredness, process guidance and differential treatment. **Person-Centered & Experiential Psychotherapies**, 3(1), Spring: 52-63.

Griffiths, A. & Kandel, R.F. 2000. Legislating for the child's voice: Perspectives from comparative ethnography of proceedings involving children. In Maclean, M. (Ed.) **Making law for families**. Canada: Hart Publishing.

Grinell, R.M. (Ed). 1988. **Social work research and evaluation**. 3rd Edition. Itasca, IL: Peacock.

Grinkler, G. (Ed.) 1953. **Midcentury psychiatry**. Springfield Ill: Charles C. Thomas.

Hall, A.S. & Kelly, K.R. 1992. Protecting Children's Rights: "I want to live with BOTH Daddy and Mommy" **Journal of Humanistic Education and Development**, 31, December: 84 – 92.

Hart, J.T. 1970. The development of client-centered therapy. In Hart, J.T. & Tomlinson, T.M. (Eds.) **New directions in client-centered therapy**. Boston: Houghton Mufflin.

Hart, J.T. & Tomlinson, T.M. (Eds.) 1970. **New directions in client-centered therapy**. Boston: Houghton Mufflin.

Hauptman, B. 1980. The assessment of emotional maturity in the young child: A guide to maturation and development. In Bemporad, J.R. (Ed.) **Child development in normality and psychopathology**. New York: Mazel Inc.

Hill, M.; Laybourn, A. & Borland, M. 1996. Engaging with primary-aged children about their emotions and well-being: Methodological considerations. **Children & Society**, 10(2): 129-144.

Hunt, A. 1990. Rights and social movements: counter-hegemonic strategies. **Journal of Law and Society**, 17:309–328.

Hyder, T. 2002. Making it happen - young children's rights in action: The work of Save the Children's Centre for young children's rights. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

James, A.L. & James, A. 1999. Pump up the volume: Listening to children in separation and divorce. **Childhood**, 6(2):189–206.

Kalter, N. 1987. Long-term effects of divorce on children: A developmental vulnerability model. **American Journal of Orthopsychiatry**, 57(4): 587-600.

Kerlinger, F.N. 1986. **Foundations of behavioral research**. 3rd Edition. Fort Worth: Harcourt.

Kestenbaum, C.J. 1980. Early childhood: The toddler years. In Bemporad, J.R. (Ed.) **Child development in normality and psychopathology**. New York: Brunner / Mazel Inc.

King, C.A. & Kirschenbaum, D.S. 1992. **Helping young children develop social skills: The social growth program**. U.S.A.: Brooks / Cole Publishing Company.

Krueger, R.A. 1988. **Focus group: a practical guide for applied research**. Newbury Park: Sage.

Kufeldt, K. 1993. Listening to children: an essential for justice. **The International Journal of Children's Rights**, 1:155–164.

Kutosh, J.L. & Wolf, A. (Eds.) 1986. **Psychotherapist's casebook**. San Francisco: Jossey-Bass.

Kvale, S. 1996. **Interviews: An Introduction to qualitative research interviewing**. Thousand Oaks: Sage.

Landreth, G.L. 1991. **Play Therapy: The art of the relationship**. U.S.A. Bristol: Accelerated Development.

Landreth, G.L.; Baggerly, J. & Tyndoll-Lind, A. 1999. Beyond adopting adult counseling skills for use with children: The paradigm shift to child-centered play therapy. **Journal of Individual Psychology**, 55(3), Fall: 272-287.

Landsdown, G. 2002. Children's rights commissioner for the U.K. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Levy, D. 1953. The early development of independent and oppositional behaviour. In Grinkler, G. **Midcentury Psychiatry**. Springfield Ill: Charles C.Thomas.

Levy, C.S. 1993. **Social work ethics on the line**. New York: Haworth.

L'Heureux-Dubè, C. 1983. Family law in transition: An overview. In Abella, R.S. & L'Heureux-Dubè, C. **Family law: Dimensions of justice**. Toronto: Butterworths.

L'HEUREUX-Dubè, C. 1998 . A response to remarks by Dr J. Wallerstein on the long-term impact of divorce on children. **Family and Conciliation Courts Review**, 36(3), July: 384–391.

Maccoby, E.E. & Mnookin, R.H. 1992. **Dividing the child: Social and legal dilemmas of custody**. London: Harvard University Press.

Macleay, M. (Ed.) 2000. **Making law for families**. Canada: Hart Publishing.

Mc Intosh, J. 2000. Child-inclusive divorce mediation: Report on a qualitative research study. **Mediation Quarterly**, 18(1), Fall: 55-69.

Mcloughlin, C.S. & Lelless, D.B. 1997. School psychologists' knowledge of children's legal rights. **Psychological Reports**, 80, April: 451-455.

Mearns, D. 1994. **Developing person-centred counselling**. London: Sage Publications.

Mearns, D. 1997. **Person-Centered counselling training**. London: Sage Publications.

Mearns, D. & Thorne, B. 1999. **Person-Centered counselling in action.** 2nd Edition. London: Sage Publications.

Mearns, D. 2004. Problem-centered is not person-centered. **Person-Centered & Experiential Psychotherapies**, 3(2), Summer: 88-99.

Moornan, J. 1999. Moving towards autonomy in relationships: The dialogical philosophy of Carl Rogers and Soren Kierkegaard. <http://www.centreforthe person.org/V-Veen.htm> (29 Oct. 2004).

Morrison, D.R. & Cherlin, A.J. 1995. The divorce process and young children's well-being: A prospective analysis. **Journal of Marriage and the Family**, 57(3), August : 800-812.

Mouton, J. 1986. Die filosofie van kwalitatiewe navorsing. In Ferreira, M.; Mouton, J.; Puth, G.; Schurink, E.M. & Schurink, W.

Module 3: Inleiding tot kwalitatiewe metodes. Pretoria: Raad vir Geesteswetenskaplike Navorsing.

Mouton, J. & Marais, H.C. 1990. **Basic concepts in the methodology of the social sciences.** Pretoria: Human Sciences Research Council.

Naudé, D. & Maree, K. 2001. The decision-making capacity (power) of a minor child in a divorce case: Guidelines for psychological assessment. **Acta Criminologica**, 14(3): 34-45.

Neuman, W.L. 1997. **Social research methods: Qualitative and quantitative approaches**. 3rd Edition. Boston: Allyn & Bacon.

Neuman, W.L. 2000. **Social research methods: Qualitative and quantitative approaches**. 4th Edition. Boston: Allyn & Bacon.

Oaklander, V. 1988. **Windows to our children**. U.S.A.:The Gestalt Journal Press.

Ogawa, Y. 2004. Childhood trauma and play therapy: Intervention for traumatized children. **Journal of Professional Counselling: Practice, theory and research**, 32(1): 19-29.

Parkinson, L. 1987. **Separation, divorce and families**. London: Macmillan Education Ltd.

Patterson, C.H. 1986. **Theories of Counselling and Psychotherapy**. 4th Edition. New York: Harper & Row Publishers, Inc.

Pollock, S. & Farmer, E. 2005. A hidden population: Understanding the needs of sexually abused and abusing children in substitute care. **Adoption & Fostering**, 29(2): 18-31.

Powers, G.T.; Meenaghan, T.M. & Toomey, B.G. 1985. **Practice focused research: Integrating human service practice and research**. New Jersey: Prentice Hall.

Prochaska, J.O. & Norcross, J.C. 1999. **Systems of psychotherapy: A trans-theoretical analysis**. 5th Edition. U.S.A.: Pacific Grove Books.

Ramolotja, M.A. 1999. Determining the best interest of the child. **Codicillus**, xxxx(1), May: 10-14.

Rayner, M. 2002. The state of children's rights in Australia. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Reynold, V. 1992. **Finding out about child development**. U.K.:Stanley Thomas Publishers.

Robinson, J.A. & Ferreira, G.M. 2000. Die reg van die kind om gehoor te word: Enkele verkennende perspektiewe op die VN Konvensie oor die regte van die kind, 1989. **De Jure**, 33(1): 54-67.

Roche, J. 2002. The Children Act 1989 and children's rights: A Critical reassessment. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Rogers, C.R. 1939. **The clinical treatment of the problem child**. Boston: Houghton Mifflin.

Rogers, C.R. 1961. **On becoming a person**. Boston: Houghton Mifflin.

Rogers, C.R. 1980. **A way of being**. Boston: Houghton Mifflin.

Rogers, C.R. 1986. Client-centered therapy. In Kutosh, J.L. & Wolf, A. (Eds.) **Psychotherapist's casebook**. San Francisco: Jossey-Bass.

Rogers, C.R. 1987. **Client-Centered therapy: its current practice implications and theory**. Boston: Houghton Mifflin.

Rubin, A. & Babbie, E. 2001. **Research methods for social work**. 4th Edition. Belmont, CA: Wadsworth.

Ruegger, M. 2001. **Hearing the voice of the child: The representation of children's interests in public law proceedings**. U.K.: Russell House Publishing.

Ruxton, S. 1996. **Children in Europe**. London: NCH Action for children.

Ruxton, S. 1998. **Implementing children's rights.** London: Save the Children.

Sachse, R. 2004. From client-centered to clarification-oriented psychotherapy. **Person-Centered & Experiential Psychotherapies**, 3(1), Spring: 27-29.

Schäfer, I.D. 1994. **The law of access to children: A comparative analysis of the South African and English laws.** Pretoria: Butterworths.

Schilling, R.F. 1997. Developing intervention research programs in social work. **Social Work Research**, 21(3): 173-180.

Schmid, P.F. 2004. Back to the client: A phenomenological approach to the process of understanding and diagnosis. **Person-Centered & Experiential Psychotherapies**, 3(1), Spring:36-49.

Schofield, G. 2005. The voice of the child in family placement decision-making: A developmental model. **Adoption & Fostering**, 29(1): 29-44.

Schurink, E. 1992. Children's rights and the role of the social worker. **The Social Work Practitioner/Researcher**, 1:18–20.

Schurink, E.M. 1998a. Deciding to use a qualitative research approach. In De Vos, A.S. (Ed); Strydom, H.; Fouhè, C.B.; Poggenpoel, M.; Schurink, E.M. & Schurink, W. **Research at Grass Roots: a Primer for the caring professions**. Pretoria: J.L. van Schaik.

Schurink, E.M. 1998b. Participatory action research as a tool for sustainable social development and reconstruction. In De Vos, A.S.(Ed); Strydom, H.; Fouhè, C.B.; Poggenpoel, M.; Schurink, E.M. & Schurink, W. **Research at Grass Roots: a Primer for the caring professions**. Pretoria: J.L. van Schaik.

Seaberg, J.R. 1988. Utilizing sampling procedures. In Grinell, R.M. **Social Work Research And Evaluation**. 3rd Edition. Itasca, IL: Peacock.

Selwyn, J. 1996. Ascertaining children's wishes and feelings in relation to adoption. **Adoption & Fostering**, 20(3): 14-20.

Sharp, S. & Cowie, H. 1998. **Counselling and supporting children in distress**. London: Sage Publications.

Sharp, V. 1980. Adolescence. In Bemporad, J.R. (Ed.) **Child development in normality and psychopathology**. New York: Brunner / Mazel Inc.

Sharron, H. 1987. **Changing children's minds: Feuerstein's revolution in the teaching of intelligence**. London: Souvenir Press.

Shaw, D.S. & Ingoldsby, E.M. 1999. Children of divorce. In Ammerman, R.T.; Herson, M.E. & Last, C.G. (Eds.) **Handbook of prescriptive treatments for children and adolescents.** 2nd Edition. U.S.A.: Allyn & Bacon.

Shuvalov, A.V. 2003. Problems of the development of the psychological counselling service in the system of children's supplementary education. **Russian Education and Society**, 45(3), March: 71-94.

Singleton, R.; Straits, B.C.; Straits, M.M. & Mc Allister, R.J. 1988. **Approaches to social research.** New York: Oxford University Press.

Smart, M.S. & Smart, R.C. 1978. **School-age children: Development and relationships.** 2nd Edition. New York: Mc Millan Publishing Co.Inc.

Smilth, H. 1995. **Unhappy children: Reasons and remedies.** London: Free Association Books.

South African Human Rights Commission. 2002. **Report on the enquiry into sexual violence against children: Does the criminal justice system protect children?** Johannesburg: Human Rights Commission.

Spies, G.M. **The integration of the different propositions of the person-centred approach in practise.** Pretoria: University of Pretoria. (Year unknown).

Spies, G.M. Syllabus theme 2: The people-centered approach, Pretoria: University of Pretoria. (Year unknown).

Strydom, H. 1994. **Maatskaplike werk navorsing.** Potchefstroom: PU vir CHO.

Strydom, H. & De Vos, A.S. 1998. Sampling and sampling methods. In De Vos, A.S.(Ed); Strydom, H.; Fouchè, C.B.; Poggenpoel, M.; Schurink, E.M. & Schurink, W. **Research at Grass Roots: a Primer for the caring professions.** Pretoria: J.L. van Schaik.

Strydom, H. & Delport, C.S.L. 2002. Sampling and pilot study in qualitative research. In De Vos, A.S.(Ed); Strydom, H.; Fouchè, C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions.** 2nd Edition. Pretoria: J.L. van Schaik.

Strydom, H. 2002a. Ethical aspects of research in the social sciences and human service professions. In De Vos, A.S. (Ed); Strydom, H.; Fouchè, C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions.** 2nd Edition. Pretoria: J.L. van Schaik.

Strydom, H. 2002b. The Pilot study. In De Vos, A.S.(Ed); Strydom, H.; Fouchè, C.B. & Delport, C.S.L. **Research at Grass Roots: For the social sciences and human service professions.** 2nd Edition. Pretoria: J.L. van Schaik.

Swildens, H. 2004. Self-pathology and postmodern humanity: Challenges for person-centered psychotherapy. **Person-Centered & Experiential Psychotherapies**, 3(1), Spring: 4-18.

Takens, R.J. & Lietoer, G. 2004. Process differentiation and person-centeredness: A contradiction? **Person-Centered & Experiential Psychotherapies**, 3(2), Summer: 77-87.

Taylor, R.J. 2001. Listening to the children: Children of divorce speak out about their parents. **Journal of Divorce & Remarriage**, 35(1/2): 147-154.

The Children Act, 1989: Summary. <http://www.fnf.org.uk/childact.htm> (31 July 2005).

Terminology Committee for Social Work. 2004. **New Dictionary of Social Work.** Revised and comprehensive edition. Cape Town: CTP Book Printers.

Theron, L. 2001. The upper guardian steps in. **Children First**, 4(34), December/January: 12-13.

Todorova, V. 2000. The Bulgarian Children Act: A battlefield for adult policies or a genuine commitment to children? In Maclean, M. (Ed.) **Making law for families**. Canada: Hart Publishers.

United Nations Convention on the Rights of the Child. 1989. U.S.A: UNICEF.

Vaktaalkomitee Vir Maatskaplike Werk. 1971. **Verklarende Afrikaanse Woordeboek vir Maatskaplike Werk met ekwivalente terminologie in Engels**. Pretoria: Staatsdrukker.

Vandekerchove, A. 2002. A commissioner for children's rights in the Flemish community in Belgium. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice**. London: Routledge.

Vandekerchove, A. 2005a. **Oprechte deelneming: Werkmap leerlingenparticipatie voor de basisschool**. Brussel: Kinderrechtencommissariaat.

Vandekerchove, A. 2005b. **K30: 30 Vragen en antwoorden over kinderrechten**. Brussel: Kinderrechtencommissariaat.

Vandekerckhove, A. 2005c. **Megafoon – School: Actietips voor leerlingen met ideeën**. Brussel: Kinderrechtencommissariaat.

Vandekerchove, A. 2005d. **Megafoon: Actietips voor kinderen en hun ouders.** Brussel: Kinderrechtencommissariaat.

v/d Veen, F. 1998. Core principles of the person-centered approach. <http://www.centerfortheperson.org/V-Veen.htm> (20/2/2005).

Van Zyl, G.J. 2000. The family advocate: 10 years later. **Obiter**, 21(2): 372-393.

Walker, A.G. 1993. Questioning young children in court: A linguistic case study. **Law and Human Behaviour**, 17(1): 59-81.

Wallerstein, J.S. & Kelly, J.B. 1980. **Surviving the break up: How children and parents cope with divorce.** Great Britain: Pitman Press.

Wallerstein, J.S. & Blakeslee, S. 1989. **Second chances: Men, women and children – a decade after divorce.** New York: Ticknor & Fields.

West, A. 2002. Childhood and children's rights in China. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice.** London: Routledge.

Westcott, H. 1992. The 1991 Criminal Justice Act: Research on children's testimony. **Adoption & Fostering**, 16(3): 7-12.

Williams, S. 2002. Children's express: A voice for young people in an adult world. In Franklin, B. (Ed.) **The new handbook of children's rights: Comparative policy and practice.** London: Routledge.

World Wide Websites:

www.bapca.org.uk (30/9/2004).

www.centrefortheperson.org/V-Veen.htm (29/10/2004).

www.education.indiana.edu/cas/devtask.html (12/7/2003).

www.fnf.org.uk/chldact.htm (10/8/2005).

www.kinderrechtencommissariaat.be (10/8/2005).

www.socdev.gov.za (22/7/2005).

Yates, A. 1987. Should young children testify in cases of sexual abuse? **The American Journal of Psychiatry**, 144(4), April: 476-480.

Zilbach, J.J. 1994. **Young children in family therapy.** London: Jason Aronson Inc.

ANNEXURE 1

LETTER OF CONSENT

ANNEXURE 2

SEMI-STRUCTURED INTERVIEW SCHEDULE

Semi-structured interview schedule

Title: The development of a protocol to ensure the recognition of the rights of children during a legal process

Researcher would like to cover the following themes in the interviews with the professional role-players:

- Knowledge base regarding the rights of the child;
- Perception regarding the importance of the bill of rights for children;
- Perception regarding aspects to take into consideration when working with children;
- The professional role-player's understanding of the term "best interest of the child";
- Professional view regarding the lack of a protocol when working with children;
- The contents of a protocol to be developed;
- The way the existence of a protocol can contribute to more effective services to children;
- The way that the protocol can contribute to additional services to ensure that the child's wishes and needs are taken into consideration.

QUESTIONS TO BE ADDED TO THEMES (Researcher's purpose only)

- **Best interest: Age of children.**
- **Aspects to take into consideration: Skills needed by professional role-players when working with children.**
- **Service structure (compared to CAFCASS – Children and Family Court Advisory and Support Service: Court Welfare Service \ Guardian ad Litem \ Official Solicitor's Dept.**
- **Additional services to ensure that the child's wishes and needs are portrayed, i.e.**
 - * **Unified family courts**
 - * **Mediation**
 - * **Assessments by experts**
 - * **Pre-trials**
 - * **Independent legal representation for children**
 - * **Judicial interview with children**

ANNEXURE 3

QUESTIONNAIRE

The development of a proposed protocol to ensure the recognition of the rights of children during a legal process, following from this research project.

Dear colleague,

The questionnaire is aimed at determining the effectiveness of the proposed protocol in ensuring that the rights of children during a legal process are being recognized and taken into consideration. Your input with this research is very much appreciated as your years of experience and knowledge will eventually improve service delivery by developing an effective protocol to follow when working with children. You are requested to answer each question and reflect your true reaction when doing so. Indicate your choice by marking the appropriate block with an X.

For example:

Male	<input type="checkbox"/>
Female	<input type="checkbox"/>

The questionnaire is completed anonymously and your time to complete it is highly appreciated. Thank you kindly for your co-operation.

Group number	<input type="text"/>	<input type="text"/>	<input type="text"/>
Case number	<input type="text"/>	<input type="text"/>	

A] GENERAL:

1. Gender

Male	<input type="checkbox"/>
Female	<input type="checkbox"/>

Office use only

2. Profession

Judge

1

Advocate

2

Lawyer

3

Social worker

4

Commissioner of child welfare

5

3. Did you implement the proposed protocol?

Yes	No
1	2

4. If you have answered “No” to the previous question, please indicate the main reason why:

Time wise not possible

1

Workload

2

Do not view it as important

3

Other (please specify):

4

B] KNOWLEDGE BASE REGARDING THE RIGHTS OF CHILDREN:

5. To what extent do children benefit from a system which allow their views and opinions to be represented through a professional role-player?

High extent

Moderate extent

Low extent

No extent

1
2
3
4

C] IMPORTANCE OF THE BILL OF RIGHTS FOR CHILDREN:

Article 12(2) of the UNCRC provides, in pertinent part, 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.

6. How far does the developed protocol assist in above requirements?

High extent

Moderate extent

Low extent

No extent

1
2
3
4

7. In your opinion, should the use of the protocol be implemented through domestic legislation?

YES	1
NO	2

8. Suggestions?

D] ASPECTS TO TAKE INTO CONSIDERATION WHEN WORKING WITH CHILDREN:

9. Which additional aspects, in your opinion should be considered in working with children? Please list in order of importance:

9.1 _____

9.2 _____

9.3 _____

9.4 _____

10. What suggestions do you have regarding the service structure of representing children (compare CAFCASS – UK: Court Welfare Service (social worker); Guardian ad Litem; Solicitor)

11. Which additional skills, knowledge or any other factor do you personally lack in working with children, if applicable.

11.1 _____

11.2 _____

11.3 _____

11.4 _____

12. How can the obstacles referred to in par. 11 be overcome, if applicable.

E] TERM: 'BEST INTEREST' OF THE CHILD:

13. Before utilizing the protocol, which age did you consider as appropriate to take the child's views and opinions into consideration?

Younger than 8	1
Between 8 and 10	2
Between 11 and 13	3
Older than 13	4

14. Since applying the proposed protocol, which age do you now consider as appropriate?

Younger than 8	1
Between 8 and 10	2
Between 11 and 13	3
Older than 13	4

15. Did your opinion regarding "the best interest of children" differ before and after the proposed protocol?

Yes	1
No	2

Please elaborate:

F] CONTENTS OF PROTOCOL:

16. Please list any shortcomings of the proposed protocol

17. Suggestions on further aspects to be included in the proposed protocol

G] THE NEED FOR A PROTOCOL WHEN WORKING WITH CHILDREN:

18. By utilizing the proposed protocol, did it or can it in any way change the way you were thinking about children?

Yes	1
No	2

Specify: _____

19. By utilizing the proposed protocol, did it or can it in any way change your approach to children?

Yes	1
No	2

Specify: _____

HJ] THE WAY THE EXISTENCE OF A PROTOCOL CAN CONTRIBUTE TO MORE EFFECTIVE SERVICES TO CHILDREN:

20. Mark either “Agree” or “Disagree”

	Agree	Disagree
By utilizing the protocol, it		
a) enhances my work-approach	1	2
b) clarifies aspects to concentrate on	1	2
c) enhances my work effectiveness	1	2
d) other (please specify)	1	2

21. Referring to above question, please elaborate on your answers as to the replies above:

a] _____

b] _____

c] _____

22. Any recommendations on how the use of the protocol can further enhance your work effectiveness?

23. Did the reports portray the needs and wishes of the child as been spelled out by the bill of rights of children?

Yes	1
No	2

24. Please list, in order of priority, aspects that need to be included

24.1 _____

24.2 _____

24.3 _____

24.4 _____

24.5 _____

25. To what extent will the utilizing of the proposed protocol ensure consistency in court decisions?

High extent	1
Moderate extent	2
Low extent	3
No extent	4

26. What is your opinion on the recommendation that the proposed protocol should be followed at all times whenever a child is involved in the legal process – regardless of whether a case is contested or not?

Definitely agree	1
Agree	2
Disagree	3
Strongly disagree	4

27. If all the relevant professional role-players follow the same protocol, to what extent will it assist with the following:

27.1 Reduce the overwhelming volume of existing work :

High extent	1
Moderate extent	2
Low extent	3
No extent	4

27.2 Reduce the complexity of cases requiring special skills:

High extent	1
Moderate extent	2
Low extent	3
No extent	4

27.3 Prevent staff burnout:

High extent	1
Moderate extent	2
Low extent	3
No extent	4

27.4 Enhance the overall effectiveness of services?

High extent	1
Moderate extent	2
Low extent	3
No extent	4

I] THE WAY A PROTOCOL CAN CONTRIBUTE TO ADDITIONAL SERVICES:

28. In your opinion, 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?

	Yes	No
• Unified family courts	1	2
• Mediation	1	2
• Assessments by experts	1	2
• Pre-trials	1	2
• Independent legal representation for children	1	2
• Judicial interviews with children	1	2

29. Any other comments / suggestions?

Thank you for your time in completing this questionnaire!

ANNEXURE 4

PROPOSITIONS

ANNEXURE 4

PROPOSITIONS OF THE PERSON-CENTERED APPROACH

The original order of the propositions is listed below for easy reference:

Proposition 1: Human experiences on the conscious and unconscious level

Proposition 2: Human perceptions

Proposition 3: Wholeness / unity

Proposition 4: Self-determination

Proposition 5: Needs and behaviour

Proposition 6: Emotions

Proposition 7: Frames of reference

Proposition 8: The self

Proposition 9: The significant others who influence the development of the self

Proposition 10: Values. Own and adopted from other people

Proposition 11: Dealing with experiences on a conscious and unconscious level

Proposition 12: Self and behaviour

Proposition 13: Behaviour and unconscious experiences

Proposition 14: Stress

Proposition 15: Reconstruction of self

Proposition 16: Defence of self

Proposition 17: Conditions for helping

Proposition 18: Acceptance of self and others

Proposition 19: Developing an own value system

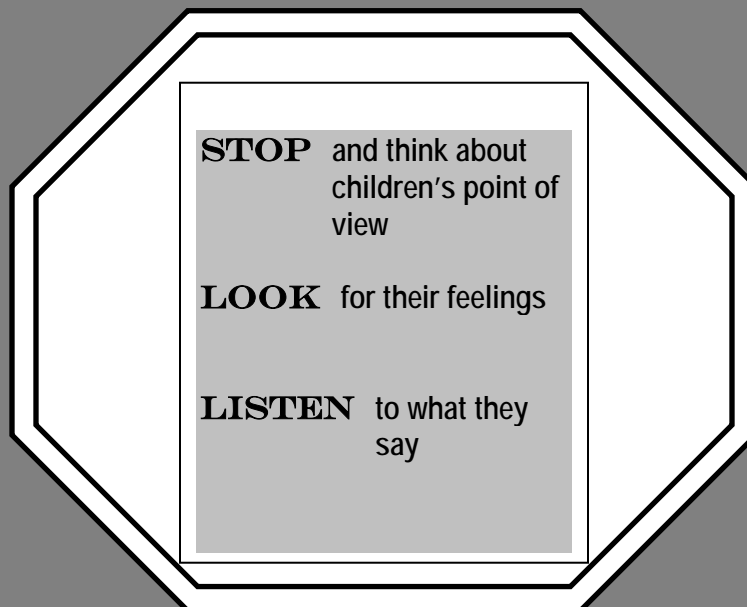
ANNEXURE 5

PROTOCOL

PROTOCOL

THE RECOGNITION OF THE RIGHTS OF CHILDREN DURING A LEGAL PROCESS

(THE HIGHWAY CODE TO EFFECTIVELY WORK
WITH CHILDREN IN THE JUDICIAL PROCESS)



M.E. KRUGER

**THIS DOCUMENT IS DEDICATED TO
ALL CHILDREN**

Principles for relationships with children

Garry L. Landreth

I am not all knowing,

Therefore, I shall not even attempt to be

I need to be loved.

Therefore, I will be open to loving children.

I want to be more accepting of the child in me.

Therefore, I will with wonder and awe allow children to illuminate my world.

I know so little about the complex intricacies of childhood.

Therefore, I will allow children to teach me.

I learn best from and am impacted most by my personal struggles.

Therefore, I will join with children in their struggles.

I sometimes need a refuge.

Therefore, I will provide a refuge for children.

I like it too when I am fully accepted as the person I am.

Therefore, I will strive to experience and appreciated the person of the child.

I make mistakes. They are a declaration of the way I am – human and fallible.

Therefore, I will be tolerant of the humanness of children.

I react with emotional internalization and expression to my world of reality.

Therefore, I will relinquish the grasp I have on reality and will try to enter the world as experienced by the child.

It feels good to be an authority, to provide answers.

Therefore, I shall need to work hard to protect children from me!

I am more fully me when I feel safe.

Therefore, I will be consistent in my interactions with children.

I am the only person who can live my life.

Therefore, I will not attempts to rule a child's life.

I have learned most of what I know from experiencing.

Therefore, I will allow children to experience.

The hope I experience and the will to live come from within me.

Therefore, I will recognize and affirm the child's will and selfhood.

I cannot make children's hurts and fears and frustrations and disappointments go away.

Therefore, I will soften the blow.

I experience fear when I am vulnerable.

Therefore, I will with kindness, gentleness and tenderness touch the inner world of the vulnerable child.

Human rights are children rights. The fact that children have rights is a reality.

The fact that these rights are not recognised and respected the way they should, is also a reality – not only in South Africa but globally. Through this research, proof was found that the situation can be altered by means of a protocol for professional role-players. The decisions made daily have a permanent effect on the lives of children and may determine the future of our country. This is an extreme responsibility. It is therefore imperative that professional role-players be equipped with all the tools and guidelines contained in a protocol that will ensure the recognition of the rights of children during a legal process.

- MARIE KRUGER -

Preamble:

Whereas

Research identified Professional role-players' unease when working with children, and

Whereas

The term 'child's age, maturity and stage of development' has often been used to justify denying children's participatory rights,

A strong need amongst professional role-players to a hands-on guideline which will enable them to work effectively with children was identified through research.

SECTION A: GENERAL

1. INTRODUCTION

The term “children’s rights” has echoed in all countries over decades as awareness grew of the importance of recognizing that children do have rights.

James & James (1999:189) confirmed that listening to the voices of children have become somewhat of a clarion call since the 1970’s, both within and outside the academically world. Yet, it remains rhetoric as the author experienced in practice as a social worker. 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. When it comes to putting the above rights into practise, the hearts of all parties involved are likely to start racing because suddenly the issue is not just academic, it is personal!

In practice, there is no problem to acknowledge children’s right to provision or

protection – it is the participatory rights that raise questions.

It is essential for anyone undertaking work with children to understand how children develop. Such knowledge enables the professional role-player to

- understand how the child has reached his or her current stage of development and, equally important,
- it provides an understanding of which factors, among many in the child's social environment, are most likely to influence how the child develops in the future.

From this perspective, a clear focus for intervention (targeting the most significant factors) will be possible and a responsible, respectful way of dealing with children!

The author strongly agrees with the following opinion of Garbarino & Stott (1989: 1):

As adults learn more about the child's perspective, they will begin to see children as intelligent, respected actors in the adult-child communication process. As they learn that children have a comprehensible point of view, even though it is immature compared to the adult perspective, adults can improve the validity and ethical soundness of their efforts to communicate with children.

A mind shift like above, will in practice imply more of a willingness to allow children their participatory rights.

2. THE PURPOSE OF THIS PROTOCOL

Questions about the extent to which the rhetoric of public policy documents, and the fine word of inquiry reports, are

translated into everyday practice, remain unanswered. The purpose of this protocol would thus be as follows:

- To ensure that children's rights will be acknowledged and protected during a legal process by effectively utilizing the statutory framework available (for instance the Bill of Rights).
- To ensure that professional role-players listen to children and portray the needs and wishes of children in their respective investigations.
- To provide a clear understanding between professional role-players regarding their respective roles, responsibilities and functions.
- To ensure mutual respect and co-operation between the professional

role players involved in the process.

- To provide for joint decision-making to facilitate decisions to be truly in the best interests of children.
- To ensure standardization of procedures to enable predictability and consistency of services

3. WHO IS PARTY TO THIS PROTOCOL?

The following people, by virtue of their role and commitment to children during a legal process, are party to the protocol:

- Social workers (Whether employed by state departments, non-government organizations or in private practice).
- Legal and judicial system professionals (including judges, family advocates, lawyers and commissioners of child welfare).

4. Legislation relevant to the Protocol

The following core legislation is relevant to this protocol :

4.1 International statutory framework

- The United Nations Convention on the Rights of the Child, 1989.
- United Nations Universal Declaration of Human Rights.
- Geneva Declaration of the Rights of the Child.
- United Nations Declaration on the Rights of the Child.
- African Charter on the Rights of the Child.

4.2 National statutory framework

- The Constitution of the Republic of South Africa (no 108 of 1996).
- The Bill of Rights (as set out in the constitution).
- The Child Care Act (NO 74 of 1983) and amendments.
- Children's Bill (B 70B – 2003).
- The Prevention of Family Violence Act (no. 133 of 1993).
- The Criminal Law Amendment Act (no 135 of 1991).
- The Criminal Procedures Act (no 51 of 1977).
- The Sexual Offences Act (no 23 of 1957 as amended).
- Domestic Violence Act (No 116 of 1998).

5. Working definitions

5.1 Professional role-players

Individuals representing both the helping- and law professions such as social workers, judges, family advocates lawyers and commissioners of child welfare. It is a tremendous responsibility to work with children – specifically because whatever input, it will have a permanent impact on the children for the rest of their lives – positive or negative! For this reason, the professional role-player involved in the judicial process with children, should meet the following criteria:

- Be suitably qualified in children's rights
- Be Mature with a certain level of life experience
- Should have the necessary skills (as listed below) to work with children:

- Ability to maintain clarity of focus.
- Ability to recall the experience of being a child and to relate that to the work in hand.
- Ability to get children to talk or express themselves.
- Ability to feel comfortable in the presence of children and to have them feel comfortable with you.
- Ability to facilitate children's play.
- Ability to decentre from an adult perspective to engage the child.
- Ability to continue working uninterrupted despite the emergence of painful and disturbing material.

- Ability to respond to the different vocabulary, idioms, and expressions of children.
- Ability to be the diplomat.
- Most important – to be genuine!

5.2 Legal process

The moment the child enters the process at intake level, through the statutory process (whether children's court, criminal court or Supreme Court).

SECTION B: PROCEDURES

This section entails the different procedures each professional role-player could follow in order to listen to children and to enable them to portray the needs and wishes of children in their respective investigations, reports and decisions. Through following this procedure, professional role-players need to experience the comfort in knowing they have truly acted in the best interest of the child. These procedures were constructed from a Child Centered Approach as theoretical framework.

Children entering or involved in the legal process (whether through the divorce of their parents, a children's court enquiry or criminal court enquiry) are likely to have negative feelings about themselves. Consulting children gives them the message that their feelings are of significance.

Children benefit most from sensitivity of professional listeners who understands their (often contradictory) feelings. It is therefore vital that the professional role-player working with children is a person fit and able to work with children and possess the qualities as described under the definitions.

1. Role and responsibilities of social workers

A tremendous responsibility lies on the shoulders of the social worker working with children. This should be a specialized field in own right. The quality of the social worker's investigation and report is the foundation of the decision to be made in the interest of the child.

Children cannot grow up to be responsible, caring, considerate adults and citizens if they are forced to live a life decided by adults without allowing their voices, thoughts and feeling to be heard. In order to fulfil this responsibility, social workers should:

- ✓ Utilize the school as most significant source of information. Children spend most of their day at school and reveal what they really feel and think to either a teacher or friends. School personnel should be regarded as fellow colleagues in the process.
- ✓ Include the children as source of information in their investigation.
- ✓ Utilize age-appropriate techniques and questions to obtain the information
- ✓ All reports, whether to courts, panels or planning forums, should reflect in detail

children's feelings about their birth history, families, foster families, siblings, friends and themselves.

- ✓ The reports should include the views of all parties involved in order to assist the commissioner / magistrate / judge to be able to make an informed decision.
- ✓ The social worker should discuss the judicial process with the child as well as all the available options and portray the reaction of the child in the report.
- ✓ Court preparation of the children is of extreme importance and should be included from the beginning of the process. Children have a right to know what the process would entail, what to expect and to be empowered to stand up for their rights.

- ✓ The social worker should make a recommendation whether the child needs a legal representative.
- ✓ Independent but standardised and relevant assessments of children as addendum to the social worker's report is recommended.
- ✓ Decisions regarding children to be made jointly (as in a panel) and not individually.

2. Role and responsibilities of lawyers

- ✓ Family law is a specialized field and should be respected for that. It is thus recommended that only lawyers who specialize in this field or are suitably knowledgeable and trained in human rights, should be involved in matters pertaining to children.
- ✓ Whenever children are involved in the judicial process, the focus should be to reach a solution to the benefit of all parties involved and not about winning or losing a case.
- ✓ Children should be involved as part of the process and lawyers should not consult with parents only.
- ✓ It should be open to the lawyer's discretion to either conduct the

interviews with children themselves or arrange mediation on behalf of the children.

- ✓ A panel discussion or round table conference with all parties concerned before litigation is recommended. The purpose being to create a checklist of aspects agreed, aspects disagreed and suggestions for solutions. The view and opinion of the children to be included. This will prevent cases being dragged out unnecessary.

3. Roles and responsibilities

of

Commissioners of child welfare

- ✓ The Commissioner of child welfare should create a child friendly atmosphere in court and surroundings in order not to expose children to secondary abuse.
- ✓ The Commissioner should explain to the child the purpose of the court hearing, his/her presence and his/her rights within the hearing.
- ✓ The Commissioner should have the power to call a hearing in camera with children.
- ✓ The Commissioner could be accompanied by two advisors in making an order that will have a life long effect.

- ✓ A rotating system of commissioners was recommended in order to function as a support system.

4. Role and responsibilities Of family advocates

The function of the family advocate, their investigation and specially the report they write, are of crucial importance. Often the judges only look at the family advocate's report to make his decision without considering other documentation. This is of great concern as there is no level of control as to what the family advocate has recommended. It is therefore recommended that:

- ✓ Certain criteria be set in order to be appointed as a family advocate, such as

age, level of maturity, life experience, expertise in the family law and human rights.

- ✓ A report guideline be followed to ensure consistency.
- ✓ The report should be discussed with all relevant professional role-players before submitting it to court.

5. Role and Responsibilities

Of judges

The role of the judge as upper guardian of a child should not be taken lightly. It should not be about power to make a decision but rather focus on the ability to make a decision that will benefit the child now and in twenty years time onwards. Judges

therefore need to have the following characteristics:

- ✓ Be compassionate, child friendly, have the ability to work with and understand children and know how to communicate with children.
- ✓ Judges needs to be able to make an informed decision on the strength of the documentation presented to them. Should the reports or documentation not portray the needs, feelings and wishes of a child, the judge should be willing and able to allow a judicial interview with the children.

Concl usi on

Unless and until we give children a voice we cannot claim that justice for children has been provided. We need to provide consistency and continuity, we need to create a climate of trust, and we need tools and opportunities for children to share their hopes, their fears, their knowledge and their wishes with those entrusted with their care.

Time, courtesy and the willingness to listen are the endorsements of sincerity that a child requires of the adult in conversation.

This is surely not too much to ask - considering the life long impact it will have on them?

SECTION C: PRACTICAL GUIDELINES

From the research done, professional role-players have requested specific tools to be included in the protocol which will enable them to be more effective in working with children.

The guidelines to be included are the following:

- Developmental checklist as a measure to determine what the child is capable of at a specific age (constructed from a Child Centered Approach).
- Summary of the sections of the Bill of Rights relevant to children.
- Communication skills with children.

- List of questions to determine how in touch respective parents are with their children.
- Psycho-social indicators of child sexual abuse, as this is an area often exposed to be abused in custody and access cases.
- Report guidelines to effectively portray the child's view, feelings and wishes.

DEVELOPMENTAL CHECKLIST

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
INFANCY: Birth – 18 months	To build a sense of safety, security and trust in other human beings	Physical:	Meeting of dependency needs Develop motor skills Fine-motor skills Sensory development	Active, stimulus seeking Sit, crawl, walk Grasp and hold objects, building blocks, scribbling. Vision and hand/eye coordination; hearing; distinguish smell; awareness of sensation of touch and sense of taste

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
		<p>Intellectual</p> <p>Social</p> <p>Emotional</p>	<p>Learning through senses – first gains knowledge through own body and then of external objects</p> <p>Beginning of sorting out perceptions of the world</p> <p>Building up of trust and feelings of security (attachment)</p>	<p>Able to learn and respond to social stimuli; possessing powerful control and signalling devices.</p> <p>Communication and language skills starts develop.</p> <p>Smile, differentiate between parents and strangers.</p> <p>At 18 months showing signs of independence and assertiveness!</p> <p>Unable to control emotions/ feelings but display them freely.</p>

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
PRE-SCHOOL: 3 – 6 years	Proficiency in self care within home setting; Period of questions, time of play and continuing individuation and independence	Physical Intellectual	Learning to care for themselves Dramatic change in conceptual functioning Individuation and self-proficiency; Need opportunity to play with children of own age as well as family members.	Bathing, dressing; rapid physical growth. Able to understand logical rules, increased memory capacity; heightened ability to differentiate perceptual experiences. Capable of symbolizations; Learn emotional control. Move from solitary play to parallel play to cooperative play. Growth from egocentricity to companionship.

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
<p>PRIMARY SCHOOL: 6 – 12 years</p>	<p>To master problems they encounter outside the family unit; Devote energy to learning in school; develop motor skills, social interactions with peers of same sex. Issue of fairness or lack of it important at this phase.</p>	<p>Physical</p> <p>Intellectual</p> <p>Emotional</p>	<p>Acquisition of gross motor skills</p> <p>Increase academic learning. Concrete and rule-bound in thought.</p> <p>Specific personality structure develops</p>	<p>Control his drives – able to cooperate and participate in learning situation.</p> <p>Calm, educable. Able to evaluate a given setting.</p> <p>Age 6: Become aware of guilt; Age 7: Ability to remember abstract aspects of experience;</p>

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
		Social	Developing of socializing skills	<p>Develops a understanding of the intrinsic nature of things / events; Able to express;</p> <p>Motor level > modelling clay;</p> <p>Verbal level> verbal description;</p> <p>Abstract level> metaphors, poems, theoretical interpretations;</p> <p>Age 8: Conscience is guided by tendency to move away from parental influence and begin to seek influence from outside (peers, teachers);</p> <p>Age 9-10: would like to be able to take responsibility for their own lives; Object to parental interference; desire to make own decisions.</p> <p>Influence of peers important.</p>

PHASE	NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
ADOLESCENCE: 12 – 19 years	Adapt to physical and emotional changes.	Physical Intellectual	To master problems experienced outside the family; Adjusting to changing body growth; Dealing with awakening sexuality and the powerful drives which accompany it. Emphasis on his growing sense of autonomy and individuality. Vast expansion of the capacity for abstract thinking. Mastering new, complex ways of thinking / flexible.	Biological beginning in puberty and social ending with onset of early adulthood. Awareness of sexuality. Who am I? Where am I going? Developing sense of self-certainty, self-awareness and self-worth.

NEEDS	SPHERES	LIFE TASKS	CAPABILITIES
	<p>Emotional</p>	<p>Psychological separation from the family; Identity issues; Achieving a satisfactory sexual identity; Attaining emotional independence from parent, family and other adults.</p>	<p>Great upheaval; discomfort; uncontrolled tension and inner turmoil. Become pre-occupied and absorbed in him/her. Integration of emotions.</p>
	<p>Social</p>	<p>Overhaul his/her outlook on life, his/her view of themselves and his/her entire personality. Learning to relate to peers and to society in a mature way.</p>	<p>Turn-away from adults towards devotion to peer group. Trying new relationships; accepting adult responsibilities and social acceptable values and behaviour.</p>



**SUMMARY OF THE BILL OF RIGHTS (CONSTITUTION
OF THE REPUBLIC OF SOUTH AFRICA 108 OF 1996)**

In this discussion the focus is on specific sections, or relevant parts thereof, which should be applicable and enable the professional role-players to protect (and enforce) the rights of children in practice:

- **Section 7**

(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

When referred to “all people in our country”, it should include children. Children are also worthy of human dignity and respect.

- **Section 8**

- (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.**
- (2) A provision of the Bill of Rights binds a natural or a juristic person, if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.**
- (3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court
 - a. in order to give effect to a rights in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and**
 - b. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).****
- (4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.**

According to this section, there should be no excuse to exclude a person's rights in the judicial process as section 8(3) (a) empowers the court to develop such a law should legislation not give effect to that right.

- **Section 9**

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.**
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.**
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.**
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.**

It was enlightening to see that age was specifically listed as one of the grounds on which not to discriminate against people. This implies that discrimination against children, by virtue of their age, is unacceptable. It further implies that, regardless of the child's age, their views, wishes, feelings should be given serious consideration.

- **Section 10**

Everyone has inherent dignity and the right to have their dignity respected and protected.

- **Section 11**

Everyone has the right to life.

- **Section 12**

(1) Everyone has the right to freedom and security of the person, which includes the right

- a. **not to be deprived of freedom arbitrarily or without just cause;**
- b. **not to be detained without trial;**
- c. **to be free from all forms of violence from either public or private sources;**
- d. **not to be tortured in any way; and**
- e. **not to be treated or punished in a cruel, inhuman or degrading way.**

(2) Everyone has the right to bodily and psychological integrity, which includes the right

- a. **to make decisions concerning reproduction**
- b. **to security in and control over their body; and**

**c. not to be subjected to medical or scientific experiments
without their informed consent.**

These sections are of specific relevance in cases of physical, emotional and sexual abuse. When a child is abused, his/her dignity is not respected or even acknowledged. Abuse further threatens the child's right to life. Not only is the child's life physically threatened, but the psychological damage done to that child has a permanent impact on his/her life. Abuse, in any form, is a direct violation of section 12 as a whole.

- **Section 16**

(1) Everyone has the right to freedom of expression, which includes

- a. freedom of the press and other media;**
- b. freedom to receive or impart information or ideas;**
- c. freedom of artistic creativity; and**
- d. academic freedom and freedom of scientific research.**

This section should be utilized to allow for the provisions made in Article 12 of the United Nations Convention – allowing children to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body. From a Person-Centered Approach as theoretical foundation, researcher is of the opinion that, by allowing children to participate in their own lives, their self-actualizing tendency (which Rogers

believes exists in every individual) as well as their right to autonomy is acknowledged. Section 16(1)(b) specifically should be highlighted. By denying children a right to information which will affect their lives, is denying them their right to autonomy.

- **Section 28**

(1) Every child has the right

- a. **to a name and a nationality from birth;**
- b. **to family care or parental care, or to appropriate alternative care when removed from the family environment;**
- c. **to basic nutrition, shelter, basic health care services and social services;**
- d. **to be protected from maltreatment, neglect, abuse or degradation;**
- e. **to be protected from exploitative labour practices;**
- f. **not to be required or permitted to perform work or provide services that**
 - i. **are inappropriate for a person of that child's age; or**
 - ii. **place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;**
- g. **not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under**

sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be

- i. kept separately from detained persons over the age of 18 years; and**
 - ii. treated in a manner, and kept in conditions, that take account of the child's age;**
- h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and**
- i. not to be used directly in armed conflict, and to be protected in times of armed conflict.**

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

In this section, there are no provisions for children to be active participants in their lives. Of the three "P" characteristics embraced in the United Nations Convention on the Rights of the Child (rights to provision, protection and participation), participatory rights are ignored. This implies that, according to this section, only welfare rights and no liberty rights received attention. In

Subsection (2) it is stated that a child's best interests are of paramount importance.

- **Section 29**

(1) Everyone has the right

- a. to a basic education, including adult basic education; and**
- b. to further education, which the state, through reasonable measures, must make progressively available and accessible.**

(2) Everyone has the right to receive education in the official

language or languages of their choice in public educational institutions where that education is reasonable practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account

- a. equity;**
- b. practicability; and**
- c. the need to redress the results of past racially discriminatory laws and practices.**

(3) Everyone has the rights to establish and maintain, at their own expense, independent educational institutions that

- a. do not discriminate on the basis of race;**

- b. are registered with the state; and**
- c. maintain standards that are not inferior to standards at comparable public educational institutions.**

Children spend most of their time during the day at school. The educational profession are therefore a significant role-player in the legal process. Although not directly involved in the process, the principal and teacher will be able to provide important information regarding the child, his fears, needs and wishes as expressed during school hours.

- **Section 32**
 - (1) Everyone has the right of access to**
 - a. any information held by the state; and**
 - b. any information that is held by another person and that is required for the exercise of protection of any rights.**
 - (2) National legislation must be enacted to give effect to these rights, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.**

- **Section 33**

- (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.**
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.**
- (3) National legislation must be enacted to give effect to these rights, and must**
 - a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;**
 - b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and**
 - c. promotes an efficient administration.**

The right to information (for instance about decisions that will effect their lives) should be seriously taken into consideration when working with children. One of the basic principles in the helping professions, and of specific importance when working with children, is that of confidentiality and trust. Children need to be informed of issues that effect them (for example what impact their parents' divorce will have on their lives) in order to be able to portray their wishes and feelings. Life is about choices and one cannot make a decision without being informed. If children are not given the opportunity to make decisions while being guided and protected, they will not be able to make an informed decision as an adult.

- **Section 38**

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –

- a. anyone acting in their own interest;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. association acting in the interest of its members.

- **Section 39**

(1) When interpreting the Bill of Rights, a court, tribunal or forum

- a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- b. must consider international law; and
- c. may consider foreign law.

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by law, customary law or legislation, to the extent that they are consistent with the Bill.

Knowledge of these sections should empower professional role-players to enforce children's rights and views to be taken seriously. The fact that Section 39(1) (b) specify that international law must be considered, is enough reason and motivation to endorse the provisions of the United Nations Convention on the Rights of the Child.



COMMUNICATION SKILLS WITH CHILDREN

Adult competence, according to Garbarino & Stott (1989:16), is derived from skill in recognising the status of a child, in formulating a context that will maximise the child's performance, and in minimizing violations of the child. Together, these factors may influence the choice of technique or tactics for eliciting information from children.

The following techniques reflect different degrees of adult direction in the encounter with the child, differences in the degree to which the adult stimulates and control the interaction:

- In observation of children's behaviour, the professional role-player, without interacting, learns from the child by watching and listening to the child's spontaneous behaviour.
- In children's play and stories, the professional role-player uses play and storytelling as a method of communicating to a child through metaphor and as a source of information from the child about his/her inner world of thought and feelings.
- In interviewing children, the professional role-player learns interactively from a child along a continuum ranging from eliciting a narrative through techniques:
- Knowing something about the child's experience will help the professional role-player ask more informed, intelligent questions to which the child will

be more likely to respond in detail. Information obtained prior to the interview should be used only as a general guide to the areas the investigation will touch on and as a source of background material from which to construct questions.

- The setting in which the child is interviewed should be neutral, relaxed and relatively free from distractions. There should be cushions or mats to enable the professional role-player to sit on the same level as the child.
- A selection of tools and props to assist the child and professional role-player may be included, depending on the age of the child. The professional role-player's knowledge of the child's age, sex and background will help to select appropriate items.
- An interview kit containing familiar items selected because they facilitate communication and help build rapport is helpful when seeking information, especially from younger children. Useful items to be included in the kit are felt-tipped markers or crayons, paper, dolls and dollhouse, puppets, play dough and toy telephones.
- Questioning techniques are important. Open questions and encouraging responses are keys to encouraging children to talk. Garbarino & Stott (1989:190) stated that to be effective, questions must be appropriate for the developmental level of the child being interviewed. There are qualitative differences in language, comprehension, reasoning, and memory between adults and preschoolers. The following suggestions are

intended to ameliorate some of the difficulties in interviewing these children:

- * Use sentences with only three to five more words than the number of words in the child's average sentence.
- * Use names rather than pronouns.
- * Use the child's terms; if necessary, elicit them. If elicitation is impossible, use various terms in your question to be sure the child understands, and monitor his response to be sure.
- * In order to determine if you have been understood, ask the child to repeat what you have said rather than asking "do you understand?"
- * Rephrase questions the child does not understand. Repeating a question may be taken as an indication that the child has given an incorrect answer and the child may change his answer.
- * Avoid asking questions involving a time sequence.
- * Be careful in interpreting responses to very specific questions. Children are apt to be very literal.
- * Do not respond to every answer with another question. Merely acknowledge the child's comment. This will encourage the child to expand on his previous statements.



LIST OF QUESTIONS TO DETERMINE PARENTAL CONCERN

(Taken from Ellis, E.M. 2001. Divorce Wars)

Children are always caught up in pre- and post divorce conflict. Disruptive or distressed behaviour at visitation time is a common presenting complaint. In order to assist the professional role-player to assess the situation in a highly ethical and professional manner, the following is a working model of factors to consider:

Factors within the situation:

- ✓ Is there high tension, overt conflict at the time of the transition?
- ✓ Are the transitions very frequent?
- ✓ Is the child triangulated in the parents' battle?
- ✓ Are the homes extremely different?
- ✓ Is there no communication or co-operation between the parents?

Factors within the child:

- ✓ Does the child have an irritable, disruptive temperament? An anxious temperament? A distractible, inattentive temperament?
- ✓ Does the child have separation anxiety, especially if he or she is young?
- ✓ Is the child strongly allied with one parent, especially if the child is older?

- ✓ Is the child maneuvering – that is, expressing distress over separating from, for example, the mother to go to the father, then expressing distress over separating from the father to return to the mother, thus pleasing both parents?
- ✓ Is the child equilibrating – that is, experiencing withdrawal, anxiety, and somatic symptoms out of a need to please both parents?
- ✓ Is the child depressed, coping with the divorce with a negative, pessimistic explanatory style?
- ✓ Does the child have poor coping skills? Is he or she coping with the transitions by using angry ventilation and avoidance rather than proactive approaches and internalization?
- ✓ Is the visitation plan simply unsuited to the child's age, developmentally?

Factors in the residential parent:

- ✓ Does the residential parent have poor parenting skills?
- ✓ Does the residential parent have a poor relationship with the child?
- ✓ Is the residential parent hostile toward the other parent? Does he or she feel betrayed or abandoned by the other parent? Is he or she secretly pleased at the child's resistance?
- ✓ Is the residential parent anxious or withdrawn at the time of the visitation, unable to separate from the child?

- ✓ Does the residential parent have a history of seeking to reduce the time, importance, and involvement of the non-residential parent in the child's life?

Factors in the non-residential parent:

- ✓ Does the non-residential parent have a poor bond with the child?
- ✓ Does the non-residential parent provide a home situation that is lonely and unstimulating?
- ✓ Does the non-residential parent spend time with the child, or does he or she leave the child in the care of unrelated people?
- ✓ Is the non-residential parent hostile toward the primary parent? Denigrate the other parent? Express an interest in reversing custody? Engage the child in an alliance?
- ✓ Could someone in the home, other than the parent, be abusing or neglecting the child?
- ✓ Could the non-residential parent be abusing or neglecting the child?

This checklist may be used as a handout for parents to enlighten them as to all the possible explanations for stress at visitation times. It may also be used to develop a treatment plan.



PSYCHOSOCIAL INDICATORS OF CHILD SEXUAL ABUSE

(Taken from Faller, K.C. 1993. Child Sexual Abuse: Intervention and Treatment Issues)

A two-category typology of behavioural indicators is proposed:

- ✓ Sexual indicators
- ✓ Nonsexual behavioural indicators

Sexual indicators found in younger children

These behaviours are high-probability indicators because they represent sexual knowledge not ordinarily possessed by young children:

- ✓ Statements indicating precocious sexual knowledge, often made inadvertently
- ✓ Sexual explicit drawings (not open to interpretation)
- ✓ Sexual interaction with other people
- ✓ Sexual interactions involving animals or toys
- ✓ Masturbation is indicative of possible sexual abuse if the child:
Masturbates to the point of injury; masturbates numerous times a day;
cannot stop masturbating;

Sexual indicators found in older children

- ✓ Sexual promiscuity among girls
- ✓ Being sexually victimized by peers or nonfamily members among girls
- ✓ Adolescent prostitution

High-probability sexual indicator for all children

When children report to anyone they are being or have been sexually abused, there is a high probability they are telling the truth. Only in rare circumstances do children have any interest in making false accusations. False accusations by children represent between 1 and 5 percent of reports.

Nonsexual behavioural indicators of possible sexual abuse

Nonsexual behavioural symptoms are lower probability indicators of sexual abuse because they can also be indicators of other types of trauma.

Nonsexual behavioural indicators in young children

- ✓ Sleep disturbances
- ✓ Enuresis
- ✓ Encopresis
- ✓ Other regressive behaviour
- ✓ Self-destructive or risk-taking behaviour
- ✓ Impulsivity, distractibility, difficulty concentrating
- ✓ Refusal to be left alone

- ✓ Fear of the alleged offender
- ✓ Fear of people of a specific type or gender
- ✓ Fire setting (more characteristic of boy victims)
- ✓ Cruelty to animals (more characteristic of boy victims)
- ✓ Role reversal in the family or pseudo maturity

Nonsexual behaviour indicators in older children

- ✓ Eating disturbances (bulimia and anorexia)
- ✓ Running away
- ✓ Substance abuse
- ✓ Self-destructive behaviour
- ✓ Incurability
- ✓ Criminal activity
- ✓ Depression and social withdrawal

Nonsexual behavioural indicators in all children

- ✓ Problems relating to peers
- ✓ School difficulties
- ✓ Sudden noticeable changes in behaviour

Sexually abused children may manifest a range of symptoms, which reflect the specifics of their abuse and how they are coping with it. Suspicion is heightened when the child presents with several indicators, particularly when there is a combination of sexual and nonsexual indicators. Similarly, the presence of both behavioural and physical symptoms increases concern.



**REPORT GUIDELINES TO EFFECTIVELY PORTRAY
THE NEEDS, WISHES AND FEELINGS OF CHILDREN**

1. REPORTS INTENDED FOR CHILDREN'S COURT ENQUIRIES

(Adapted from Colton, Sanders & Williams, 2001).

Framework for the Assessment of Children in Need and their Families.

This framework consists of three dimensions with subheadings and should address the following three questions:

- ✓ What are the needs of the child?
- ✓ Are the parents able to respond appropriately to the child's needs?
Is the child being adequately safeguarded from significant harm, and are the parents able to promote the child's health and development?
- ✓ Is action required to safeguard and promote the child's welfare?

Dimension 1: Child's developmental needs

- ✓ Health
- ✓ Education
- ✓ Emotional and behavioural development
- ✓ Identity
- ✓ Family and social relationships

- ✓ Social presentation
- ✓ Self-care skills

Dimension 2: Parenting capacity

- ✓ Basic care
- ✓ Ensuring safety
- ✓ Emotional warmth
- ✓ Stimulation
- ✓ Guidance and boundaries
- ✓ Stability

Dimension 3: Family and environmental factors

- ✓ Family history and functioning
- ✓ Wider family
- ✓ Housing
- ✓ Employment
- ✓ Income
- ✓ Family's social integration
- ✓ Community resources



2. REPORTS INTENDED FOR SUPREME COURT REGARDING CUSTODY

The following guideline for evaluating custody is suggested:

- ✓ Shortened Curriculum Vitae of professional role-player
- ✓ Introduction
- ✓ Identifying details
- ✓ Family Background
- ✓ Each parent's concern / motivation to apply for custody
- ✓ Guidelines for recommending a parent for primary custody according E.M. ELLIS (DIVORCE WARS, 2002. American Psychological Association)

[Discuss each parent's position or attitude under each heading]:

- Which parent is more likely to permit the non-residential parent free and easy access to the child?
- Which parent has better parenting skills?
- Which parent is least likely to be abusive, neglectful or unstable on the basis of a past history of psychiatric problems, alcohol or drug abuse, abusiveness or neglect with this child or other children, or a pattern of choosing partners with such a history?
- Who has done the work of primary caretaker and knows best the child's needs, aversions, likes and dislikes?
- To whom is the child more attached?
- Who has the most time and energy available to give to the child?

- Which parent has the healthier relationship with the child?
- Which parent can provide a better quality of life for the child in terms of siblings, stepparents, grandparents, home and neighbourhood, schools, church, etc?
- Does the child have special needs?
- Which parent is better fit on the basis of a number of factors?

✓ Evaluation:

Evaluate and weigh above discussion in terms of the following 7 factors:

- Continuity and stability of living arrangement
- Child's preference
- Child's attachment to each parent
- Each parent's sensitivity to and respect for the child
- Parent and child gender
- Each parent's physical and mental health
- Parental conflict

✓ Recommendation



