

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.