

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.