

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

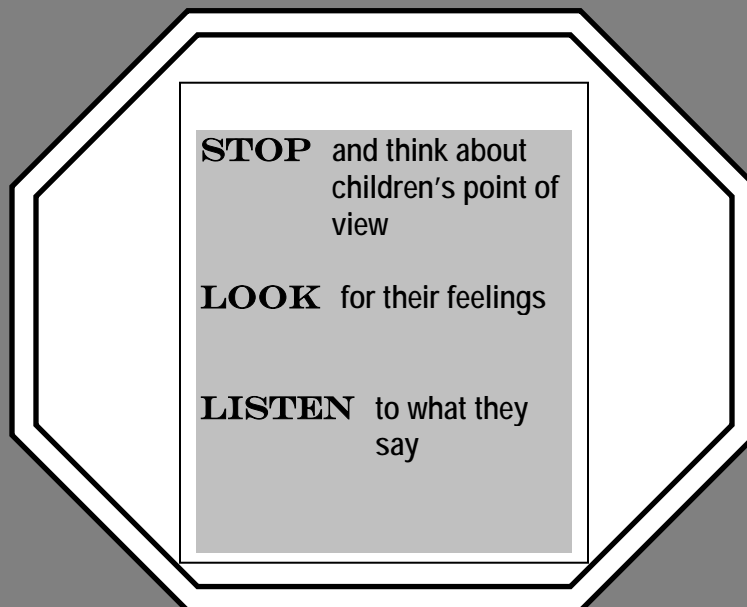
ANNEXURE 5

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 appreciate 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 attempt 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
		<p>Emotional</p> <p>Social</p>	<p>Separation from mother / parents</p> <p>Continued sorting out of perceptions of the world; Relate to an increasing number of people; Learn people's reactions and how to respond</p>	<p>Attempts to see hem/herself as separate from parents and establish their own set of rules.</p> <p>Age 2: play alone even in presence of other children;</p> <p>Age 3: engage in social activity;</p> <p>Fantasy important;</p> <p>Dreams = repetition of daily events.</p> <p>Egocentric.</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	Bathing, dressing; rapid physical growth. Able to understand logical rules, increased memory capacity; heightened ability to differentiate perceptual experiences.
		Emotional	Individuation and self-proficiency;	Capable of symbolizations; Learn emotional control.
		Social	Need opportunity to play with children of own age as well as family members.	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



