

The experiences of children in middle-childhood regarding Children's Court procedures

by

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Summary

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Current statistics show an alarming number of children entering the South African children's court system annually. Yet little to no research has been conducted involving children who actually attend children's court within the South African context, specifically since the promulgation of the new Children's Act 38 of 2005. Consequently, very little knowledge regarding these children's experiences and where the court system may be failing them exists.

Statutory intervention with children in the middle-childhood phase is based on the premise that such intervention is in the best interest of the child. The process begins with the assignment of a social worker who is tasked with conducting a comprehensive investigation into the child's life. Once this investigation has been finalised, the child and all relevant parties will attend children's court where a final decision will be made regarding the child's future care. The question arises how children experience children's court procedures and whether there are areas where improvement would be warranted, especially since heavy caseloads often result in postponements which could exacerbate any negative experiences.

With a view to gaining insight into middle-childhood children's experience of children's court procedures, the researcher conducted a qualitative, applied study using a collective case study design. Two literature studies form the knowledge base of the

study, where the first explores the various areas of development in middle childhood and the second the children's court process, with specific reference to the relevant legislation and policies underlying this process.

In-depth interviews with nine children in the middle-childhood phase who had been exposed to children's court procedures allowed the researcher to gather data from the children's perspectives, rather than from the perspective of professionals as is the case in the majority of other studies. This empirical study contributed to the knowledge base by providing evidence that children are not by any means adequately prepared for children's court and do not meaningfully participate in the process. Furthermore, empirical evidence revealed that children in middle childhood often associate negative emotions – notably fear, sadness and anger – with children's court procedures.

From this empirical study, it was concluded that social workers need to take responsibility for ensuring that children are comprehensively prepared for court procedures. Furthermore, steps need to be taken to enhance children's level of participation throughout the entire process.

The following key concepts are used in this study:

- Experiences
- Children
- Middle childhood
- Children's court
- Proceedings
- Best interest
- Participation
- Preparation
- Social worker
- Presiding officer

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1. Chapter One

Proposal

1.1. Introduction

According to a statistical survey conducted in mid-2010, 3.3 million children were living in Gauteng, constituting 18% of South Africa's population (Hall, 2012a). Of these, 64 047 were registered as beneficiaries of the Foster Care Grant in the preceding year alone (Hall, 2012b). This figure is indicative of the high number of children involved in children's court proceedings for foster-care purposes each year. This excludes all other matters heard in children's court within this time period. Overall, it can be deduced that a significant number of children enter the children's court system every year and, based on the researcher's professional experience in these courts, it is evident that each child experience children's court procedures differently, with subsequent varied levels of distress.

Research shows that although younger children in particular may think that they understand a legal concept or court process, they in reality often fall prey to serious misunderstandings (Eltringham & Aldridge, 2000:276). This highlights the dire need to adapt children's court procedures in order to be more child-friendly as well as to provide children with age-appropriate knowledge regarding children's court procedures. In this way, misunderstandings or misinterpretations which lead to a failure to address children's confusion, fears and anxiety can be ruled out.

This research aimed to explore the experiences of children regarding children's court procedures with the objective to highlight areas of court preparation where improvement is warranted. Furthermore, this research could be utilised to adapt relevant children's court procedures with a view to reducing court-related trauma and empowering these vulnerable members of society more effectively.

1.1.1. Key Concepts

- Experiences

Experiences can be defined as “something that happens to you that affects how you feel” (Cambridge Advanced Learner’s Dictionary, 2008:491). The researcher is in agreement with this definition since how and what a child feels during the course of children’s court procedures constitutes the very essence of this researcher’s study.

- Middle childhood

According to Piaget’s cognitive development theory, children in middle childhood are between the ages of seven and eleven and are in the concrete operational phase of development (Berk, 2009:249; Louw & Louw, 2007:217-218).

- Children’s court

Children’s court is defined in Section 42(1) of the Children’s Act 38 of 2005 as: “For the purposes of this Act, every magistrate’s court, as defined in the Magistrates’ Court Act, 1944 (Act 32 of 1944), shall be a children’s court and shall have jurisdiction on any matter arising from the application of the Act for the area of its jurisdiction”.

- Children’s court procedures

Procedure is defined as “a set of actions which is the official or accepted way of doing something” (Cambridge Advanced Learner’s Dictionary, 2008:1130). For the purpose of this study, “procedures” encapsulated all happenings in and around children’s court and included but was not limited to:

- Prior to the commencement of proceedings in a children’s court: These actions included, for example, the preparation of the child by the social worker for court, any contact made by the social worker with the child prior to each court date, information provided to the child regarding children’s court proceedings, an explanation of the child’s roles and responsibilities offered to the child and a discussion of the report with the child.
- Before, during and after children’s court proceedings: The child’s ecosystem and the court’s influence on these systems, encompassing amongst others contact by the social worker with any of the child’s systems, the quality of the child’s relationships with significant people in his/her life et cetera.

- The physical structure of the court building: For example, building security, the endless corridors, waiting areas and the office of the presiding officer where proceedings were conducted.
- Aspects relating to children's court: Such as time spent waiting for the case to be heard, coming face-to-face with parents at court if the child is in alternative temporary care, the child's expectations of what children's court entails as well as what is expected of him/her during proceedings, meeting the court-appointed lawyer, all proceedings involved in children's court and the child's participation in these proceedings, the possibility of case postponements and the systemic impact of extended delays due to postponements as well as the final court ruling.
- Post-children's court proceedings: This would encompass the child's concerns regarding its¹ future and the subsequent changes in its life.

1.2. Literature review

The Department of Justice and Constitutional Development states that children's courts were established to deal with matters that specifically relate to the daily care of children. Daily care includes providing a child with a place to live; ensuring living conditions that are conducive to the child's health, wellbeing and development; providing financial support and protecting children from any form of harm – emotional, physical or otherwise (Children's Act 38 of 2005; The courts in South Africa, 2012).

Children are entitled to the rights as stipulated within the Constitution of the Republic of South Africa 16th Amendment Act 1 of 2009. As stipulated in Section 16(b) of the Bill of Rights, all people, including children, have the right to freedom of expression, which includes freedom to receive and impart information or ideas (Constitution of the Republic of South Africa 16th Amendment Act 1 of 2009). Section 10 of the Children's Act 38 of 2005, to be discussed below, supports the following interpretation of a child's right regarding freedom of expression. Accordingly, the researcher is of the opinion that this includes children's rights to receive age-appropriate information about

¹ For the sake of brevity, the neuter noun and pronoun for 'child' will be used throughout and should be read as including male and female individuals.

children's court, what they can expect when appearing in such a court, the rights and responsibilities of all parties involved in the court proceedings and the children's right to express their thoughts and preferences regarding any decision made as a result of children's court procedures. Furthermore the Bill of Rights Section 28(2) states, "A child's best interest is of paramount importance in every matter concerning the child" (Constitution of the Republic of South Africa, 16th Amendment, Act 1 of 2009). Correspondingly, the Children's Act 38 of 2005, Section 9, clearly states that a child's best interest is of paramount importance in all matters that concern its care, protection and wellbeing.

Warshak (2003:373) notes that throughout history, children's voices in the decisions that affect their welfare have been visibly absent. This highlights the importance of ensuring the enforcement of the United Nations' convention on the rights of the child (UNCRC), ratified by South Africa in 1994 (Africa, Dawes, Swartz & Brandt, 2003:122). To date, the latter has served as the most comprehensive instrument to protect the various rights of children, specifically Article 12 which states that children have the right to voice their opinions regarding any decision-making that affects them (Kassan, 2004:5; UNICEF, [sa]). Warshak (2003:374) and Erasmus (2010:130) agree that children are empowered when they are allowed to voice their opinions regarding their wellbeing and know that their opinions are not disregarded but central to the decision-making process. However, it should be noted that children could feel pressurised to voice a particular opinion that is not their own, especially if they fear a person who, apparently, holds a position of authority (Warshak, 2003:375). This highlights the potential value of providing children with age-appropriate court knowledge in order to ensure that they feel secure in their understanding of procedures and, as a result, honestly reveal their own views and preferences.

Results from research conducted by Timms and Thoburn (2006:159) in the United Kingdom show that more than half (57%) of the children who responded to their survey indicated that they were not able to speak with the judge during court proceedings. Of this number, 21% indicated that they would have liked to discuss court proceedings with the judge. Studies in Canada show that judges consider the practice of judicial interviews with children undesirable (Mahlobogwane, 2010:240). Similar studies have not been conducted in South Africa; however, such an international trend

is of concern, especially since the Children's Act 38 of 2005) states in Section 10 that children have the right to participate in children's court proceedings.

Section 10 and 61 of the Children's Act 38 of 2005 clearly state that any child who is of such an age, maturity and stage of development that enables it to participate in any matter concerning itself has the right to participate, express its views and have due consideration be given to its views in the decision-making process. However, even if the child is provided the opportunity to voice its opinion, it may choose to not do so if it believes its view is not important and/or if it believes it will be punished for expressing its thoughts, wishes and concerns (Timms & Thoburn, 2006:267). Accordingly, this may have a negative impact on the child's experience of children's court procedures.

On the subject of the child's participation in children's court procedures, the Children's Act 38 of 2005 Section 29(6)(a) states that "the court may, subject to section 55 - appoint a legal practitioner to represent the child at the court proceedings." Furthermore, section 55(1) states "Where a child involved in a matter before the Children's Court is not represented by a legal representative and the court is of the opinion that it would be in the best interest of the child to have legal representation, the court must refer the matter to the Legal Aid Board referred to in section 2 of the Legal Aid Act, 1969 (Act 22 of 1969)."

From professional experience, as a social worker conducting statutory work whilst employed at a non-governmental organisation in Gauteng during 2011, the researcher has noted that the child is expected to inform the court-appointed lawyer of its opinions or preferences regarding important, often very personal, information: information which is likely to impact his/her life significantly. In fact, this child may often have to share this personal information in an often clinical environment of a court office or corridor, having in all probability never met with the lawyer who is to present his/her case before then (Mahlobogwane, 2010:240). Considering the above-described circumstances, it is a possibility that there is an absence of trust between the lawyer and the child. Without the presence of a trusting relationship, it is not reasonable to expect the child to confide its wants and needs to the lawyer (Grabhorn, Kaufhold, Michal & Overbeck, 2005:478).

To cite a practical example: The lawyer may discuss with the child which decision/outcome it would prefer as far as the court's decision regarding its care is concerned. However, based on this researcher's experience, and confirmed by literature, if the child experiences the children's court procedures negatively, there is a likelihood that he/she will not confide his/her true wishes to the lawyer, resulting in the child telling the lawyer a fib that will satisfy the latter or coming up with an explanation/excuse as instructed by significant others in the child's life (Block, Oran, Oran, Baumrind & Goodman, 2010:667; Mahlobogwane, 2010:243,246).

Therefore, it is possible that the child's inability to truthfully confide in his/her lawyer is, in the researcher's experience, partially related to the lack of comprehensive preparation of children for children's court as well as law professionals lacking the skills required to question and interpret the answers of children effectively (Mahlobogwane, 2010:240). Consequently, children are unable to make effective use of the procedures as stipulated in the Children's Act 38 of 2005.

According to Piaget's cognitive development theory, children in middle childhood are between the ages seven and eleven and are in the concrete operational phase of development. In this phase, the child will display certain cognitive limitations, the main limitation being that children in this phase think in an organised, logical manner only when they are dealing with concrete information which they can directly perceive. Consequently, their ability to understand abstract ideas or concepts is very poor. A child's ability to engage in logical thought is thus directly linked to immediate situations. Therefore children at this age will struggle to understand any discussions regarding situations not immediately apparent effectively (Berk, 2009:249; Louw & Louw, 2007:217-218). Furthermore, children in this phase struggle to comprehend any hypothetical concepts. An example would be whether the child would prefer to live with person A or B. Due to the fact that this is not a current reality, the child is not able to make this kind of decision effectively and to inform a lawyer of its preference.

This is confirmed by a study conducted by Block et al. (2010:667) where it was found that 30% of the child participants indicated that they were not able to inform the lawyer about their wishes regarding the court proceedings. A further 32% of the participants were of the opinion that their lawyers had not accurately conveyed their

wishes to the judge. Such findings are of great concern when taking into consideration that the Children's Act 38 of 2005 makes provision for the allocation of a legal representative, specifically to ensure the best interests of the child are preserved and that his/her 'voice' and preferences are heard and conveyed accurately.

It can be said that although children's court proceedings are concrete in that the child is physically present and thus involved in the proceedings, the information, which is dealt with during these proceedings are often abstract and hypothetical in nature since it involves legislative dialogue (Louw & Scherrer, 2004:18). Therefore it is important to note that children may, firstly, not understand what occurs during children's court proceedings and/or, secondly, and perhaps more importantly, they could completely misinterpret the proceedings due to their inability to comprehend hypothetical situations and/or think logically about situations which are not immediate due to their tendency to make use of concrete operational thought (Berk, 2009:249; Louw & Louw, 2007:217-218). Eltringham and Aldridge (2000:276) confirmed this by stating that, in particular, younger children may think that they understand a legal concept or court process but in reality are subject to serious misunderstanding. Thus it is imperative to ensure that professionals within the welfare and judicial system realise the importance of providing children with age-appropriate knowledge regarding court procedures and ensuring that there are no misunderstanding or misinterpretations, which will lead to failure in addressing children's confusion, fears and anxiety (Eltringham & Aldridge, 2000:276,277,281).

A child in middle childhood (7-11 years) is also still in the process of emotional development. Therefore full emotional maturity has not yet been reached at this age. Emotional development that has taken place by this age is as follows:

- Firstly, children in middle childhood have an increased ability to understand more complex emotions such as pride and shame. Such complex emotions also begin to integrate with the child's sense of personal responsibility.
- Secondly, children at this age are more likely to understand and take into account that certain events or situations can lead to particular emotional reactions.
- Thirdly, children in middle childhood begin to learn how to suppress or conceal negative emotional reactions (Louw & Louw, 2007:244).

All of the above illustrates that a child in middle childhood has the ability to understand as well as hide emotion if it perceives, for whatever reason, that the situation should require such an action. Thus although it may appear that children are not being negatively affected by children's court proceedings, this may not be accurate. In the researcher's opinion, it is a possibility that the above-mentioned cognitive limitations as well as the middle-childhood child's emotional development could affect the child's experience of children's court procedures, regardless of whether such an experience is positive or negative. This highlights the importance of taking into consideration the child as a whole when he/she is involved in children's court procedures.

The Gestalt concept **holism** is thus a concept that should be taken into consideration when dealing with children during children's court procedures. Thus the child should be viewed as a whole, inclusive of various aspects of the self such as behaviour, emotions and cognitive ability as well as various aspects of his or her environment/systems. Consequently a child's whole being and environment/systems must be taken into consideration when exploring how it experiences children's court procedures, since all the child's systems will impact on it as an individual (Blom, 2006:22; Carter & McGoldrick, 2005:437; Weyers, 2011:20).

According to a study conducted by Block et al. (2010:660), court appearances are often associated with anxiety for children, and a major source of this anxiety has been found to be a lack of courtroom knowledge. Furthermore, a child's level of anxiety has a direct bearing on its attitude towards court proceedings (Block et al., 2010:667). Eltringham and Aldridge (2000:276) are in agreement when they state that since children involved in court proceedings often feel vulnerable and powerless, it is important to ensure that a child has good knowledge regarding court and court procedures since then it is likely that the child will feel more in control and less fearful.

As is evident from the literature, numerous aspects relating to the child and its environment have a bearing on how it could experience children's court. These aspects include the child's cognitive, emotional, social and physical development as well as multiple systems which could influence the child's everyday life as well as its experience of proceedings in children's court. There is an evidential lack of research,

both national and international, on how children experience children's court proceedings and how their needs are to be met in this regard.

Eltringham and Aldridge (2000:283) highlight the importance of 'getting into the child's shoes' in order to understand its view of the strange and unfamiliar adult world of the welfare and judicial systems. Only then would it be possible to meet the child's needs within these systems more effectively.

1.3. Theoretical framework

This study will involve children who are part of multiple interrelated systems which are likely to impact on their experiences of children's court procedures (Weyers, 2011:20). Bronfenbrenner developed what is known today as the ecological systems theory or ecological perspective (Berk, 2009:26; Visser, 2007:12). The ecological systems theory considers that children develop within "a complex *system* of relationships affected by multiple levels of the surrounding environment" (Berk, 2009:26). Each level and the relationships between these multiple levels are believed to have a strong impact on the child's development. This theory divides the child's environment into four levels, namely: microsystem, mesosystem, exosystem and macrosystem (Berk, 2009:26-27; Louw & Louw, 2007:27; Visser, 2007:12).

Berk (2009:26) defines the microsystem as the innermost level of the child's environment, which consists of various activities and interaction patterns within the child's immediate surroundings. This, therefore, includes the children themselves, people and objects that are in the child's immediate environment, such as parents and guardians (Louw & Louw, 2007:27; Visser, 2007:12). This level is important to consider since, firstly, the child's intimate thoughts, feelings and experiences of children's court procedures will be the focus of this study. Likewise, parents and/or guardians are bound to be actively involved during children's court procedures; hence their impact on the child's microsystem.

Berk (2009:27) describes the mesosystem as encompassing connections between the microsystems. Thus the mesosystem consists of links between aspects in the microsystem, such as the child's school and peer group. For example, if a child is

involved in a delinquent peer group at school, such involvement may have a direct impact on that child, its relationship with parents and peers as well as its performance on an academic level. This example shows how four microsystem activities or interaction patterns are linked, having a reciprocal influence on each other and thus forming the mesosystem (Berk, 2009:27; Louw & Louw, 2007:27). In this study, it is likely that an incident occurred within the micro- and/or mesosystems (i.e. at the child's home, school or within the child's peer group) that led to children's court procedures being initiated. It can, therefore, be said that the micro- and mesosystem can either be a source of support or a detriment to the child during children's court procedures.

The exosystem is defined as including the various social settings which the child may not experience first-hand but which have an impact on the experiences within its immediate settings, namely in the micro- and mesosystem. Examples of such social settings are parents' work and social networks, extended family, community services and local government (Berk, 2009:28; Louw & Louw, 2007:27-28). The researcher is of the opinion that welfare and judicial services form part of the exosystem. Furthermore, the welfare and judicial system will have an impact, positive or negative, on the child's experiences, since these systems are directly linked to children's court procedures which, in turn, are linked to the child's micro- and mesosystems.

Lastly, the macrosystem is the broadest of all the systems in which all the other systems are embedded. The macrosystem essentially affects the child indirectly through broader cultural values, laws, customs and societal resources (Berk, 2009:28; Louw & Louw, 2007:27). In relation to this study, welfare and judicial resources will in some manner or form impact on the child's experiences of children's court procedures. Furthermore, laws such as the Bill of Rights and the Children's Act 38 of 2005 directly relate to how a child will experience children's court procedures since certain stipulations contained within these acts endeavour to improve the experience of children during children's court procedures (Children's Act 38 of 2005). Examples of such stipulations are provided in Section 42(8) of the Children's Act 38 of 2005, which states that "Children's Court hearings must, as far as is practical, be held in a room which - is furnished and designed in a manner aimed at putting the children at ease; is conducive to the informality of the proceedings and the active participation of all

persons involved in the proceedings without compromising the prestige of the court; is not ordinarily used for the adjudication of criminal trials”. This serves as a mere example as to how the law has attempted to make children’s court more child-friendly which, as a result, should have a positive impact on children’s experiences of children’s court proceedings (Children’s Act 38 of 2005).

Based on the evidence provided here, clearly all ecological systems, as developed by Bronfenbrenner, apply and have a bearing on how a child could experience proceedings in children’s court.

1.4. Rationale and problem statement

Based on the researcher’s experience in practice, social workers have to cope with high caseloads where many cases require children’s court proceedings (Denge, 2004:7). Furthermore, the researcher observed that children who attend children’s court often have a variety of experiences, some more positive than others. Taking this information as well as the absence of a children’s court preparation programme into consideration, the researcher conducted a literature search in order to ascertain whether research had been conducted on children’s experiences of children’s court procedures. Evidently, although a significant number of studies had been conducted on the experiences of children who had been exposed to divorce proceedings and criminal court proceedings, a dearth of research on anything related to children’s court existed, specifically since the promulgation of the Children’s Act 38 of 2005 in 2010.

The researcher believed that such a study would be of value to social workers who, as observed in practice, often do not have the time or opportunity to determine how the children’s court process as a whole may affect children in general. As such, the data collected through this study highlighted the voices of the children directly affected by children’s court procedures and highlighted areas of court preparation that need to be improved in order to empower these vulnerable children more effectively.

The research question for this study was:

How do children, in middle childhood, experience children’s court procedures?

1.5. Goal and objectives

Goal:

- To explore the experiences of children, in middle childhood, regarding children's court procedures.

Objectives:

- To determine and explore the needs of children in middle childhood regarding children's court procedures.
- To describe the knowledge children, in middle childhood, have of children's court procedures.
- To identify and gain an understanding of the strengths and challenges of children's court procedures with regard to children in middle childhood.
- To identify the emotional effect, which children's court procedures have on children in middle childhood.

These objectives were utilised purposefully since aspects, as mentioned in each objective, could influence how children experience children's court procedures. From this point forward note, too, that the definition of 'children' encompasses those in the middle childhood development phase only.

1.6. Research approach

This research study utilised a qualitative approach in order to explore the specific experiences of children who have been involved in children's court procedures. From the researcher's experience, there are many aspects surrounding children's court procedures that can influence how the child experiences children's court. In an attempt to gain a comprehensive understanding of these experiences from the child's own point of view, the researcher followed an approach which empowered this vulnerable group of children by ensuring that their individual voices were heard through the disclosure of their personal experiences of children's court procedures. The reasons why and the ways in which they responded within the court situation as well as their deeper thoughts regarding children's court procedures, which ultimately directed their responses in court, were explored (Creswell, 2013:48). Although the research approach had to be flexible, it ought to be noted that the data collected from the

initially assigned number of participants was sufficient and that saturation had been reached.

All the various factors discussed above are characteristic of a qualitative research approach. Therefore, the researcher is of the opinion that such an approach was best suited to this research study.

1.7. Type of research

Applied research aims to address specific and immediate concerns within practice in order to provide practical solutions that can be utilised within a short span of time (Neuman, 2011:27). Therefore, this study took the form of applied research, since it was specifically aimed at exploring the various experiences of children throughout children's court procedures. This ascertained whether children's court and aspects surrounding this court needed to be adapted in order to ensure that the best interest of the child is attained. Ultimately, the results of the study formed the basis from which recommendations were made to ensure that children's court becomes a more child-friendly environment (Neuman, 2011:27).

1.8. Research design

This study included children between the ages nine and eleven who were exposed to children's court procedures. Thus this study focused on individual experiences rather than on a process, activity or event (Fouché & Schurink, 2011:321).

The data obtained from the children was detailed, varied and extensive, thus allowing for comparisons to be made between the children's various experiences. It required the intensive investigation of the details within each child's personal experience of children's court, including the context within which children's court took place. Through the extensive collection of data from interviews, these children's experiences were effectively investigated (Creswell, 2013:97-98; Fouché & Schurink, 2011:321; Neuman, 2011:42).

Although the focus remained on the issue being illustrated in the study, namely the children's experiences of children's court procedures (Fouché & Schurink, 2011:321), the researcher related these experiences to larger structures and processes, namely the welfare and judicial systems (Neuman, 2011:42). In this way, as per Neuman, the details of social processes and how one factor affects another was revealed.

This study involved nine participants, which allowed for more meaningful comparisons between the cases. In this way, similarities and differences were identified and discussed proficiently (Creswell, 2013:99; Fouché & Schurink, 2011:322).

The researcher made use of a collective case study design for this study since it utilised multiple cases to explore current, real-life issues in order to create a detailed and comprehensive understanding of the children's experiences of children's court procedures (Creswell, 2013:97-98; Fouché & Schurink, 2011:321; Neuman, 2011:42).

1.9. Research methods

1.9.1. Study population and sampling

The study population was all children at the SAVF who have been exposed to children's court procedures. As stated, the researcher selected a sample of nine children from the population who met the sampling criteria (Strydom, 2011a:223; Unrau, Gabor & Grinnell, 2007:279). This population of children were utilised for sample selection since they had an informed understanding concerning the research topic, namely to explore how children experience children's court procedures (Creswell, 2013:156).

A sample list was drawn up according to specific criteria, as established by the researcher, using non-probability, purposive sampling. The sample was then selected from the sample list using simple random sampling (Neuman, 2011:249, 267). The specific selection criteria were as follows:

Non-gender specific children who:

- had been exposed to children's court proceedings, from opening to finalisation
- were between ages eight and eleven
- were fluent in English or Afrikaans

- had attended children's court more than once, with the added proviso that their children's court proceedings had been finalised.

It can be said that due to the use of purposive sampling, the children selected were not representative of the entire population. Consequently, generalisability was impaired. However, the researcher utilised a collective case study design which aimed to explore the phenomenon in an in-depth manner in order to gain a deeper understanding of each child's experiences of children's court procedures, thus limiting the number of participants which could be utilised (Creswell, 2013:101; Neuman, 2011:268).

1.9.2. Data collection

The research required the acquirement of a detailed account of the children's experiences of children's court procedures without a structure that was too formal, since such a structure would impair the collection of data. Since the children were between ages eight and eleven, their cognitive skills, and by implication their understanding of the questions, varied (Berk, 2009:249; Creswell, 2013:173; Greeff, 2011:351; Louw & Louw, 2007:217-218). This necessitated the use of semi-structured, one-on-one interviews, which provided more flexibility in that the researcher was able to further elaborate on a question when the child could not initially understand the question put before him/her (Greeff, 2011:351). The researcher was also able to follow any avenues of interest that arose during the interview. In so doing, the participants were more closely involved in the direction the interview took, since they could introduce an issue which the researcher had not initially considered (Greeff, 2011:351-352). Possible themes stemming from the preliminary literature study and included in the interview schedule were as follows:

- The quality of the preparation of the child by the social worker for children's court
- Knowledge provided to the child regarding children's court procedures
- The quality of relationships between the child and significant others before, during and after children's court proceedings
- The experiences of the child with regard to the physical structure of children's court.
- The level of the child's participation during children's court procedures

- Exposure of children to aspects related to children's court, for example time spent waiting for the case to be heard, seeing their parents at court if the child was in alternative temporary care, meeting the court-appointed lawyer, case postponements and the final verdict.

Since the participants were children, there was an unequal power dynamic. In order to combat this power imbalance and possible resultant resistance, the researcher utilised child-friendly language as well as communication and interviewing skills acquired during Social Work and Play Therapy tertiary training in order to facilitate a more child-friendly method of interviewing (Creswell, 2013:173). The interview followed the natural progression of children's court procedures so that the child was provided with a more developmentally appropriate format in which he/she could structure his/her thoughts regarding experiences of children's court procedures.

The researcher's understanding and interpretation of the data could not be separated from the interviewing process. Thus it was imperative that the researcher verified the meaning of the children's statements before concluding the interview. Furthermore, the researcher utilised similar questions in a variety of ways in order to ensure, as far as possible, the authenticity of the children's accounts of their experiences (Creswell, 2013:173).

1.9.3. Data analysis

Due to the qualitative nature of this study, attention had been paid to the issue of trustworthiness: the qualitative counterpart of validity.

It should be noted that the researcher has professional experience in children's court. This background cannot be separated from how it informed the interpretation of the data and, ultimately, what was gained from the study (Creswell, 2013:47).

Trustworthiness was enhanced as follows:

- Reflexivity is defined by Creswell (2013:216) as the researcher being conscious of the "bias, values, and experiences that he or she brings to a qualitative research study". The researcher was of the opinion that the study could be made reflexive and the trustworthiness of the data improved by, firstly, being aware

of the professional and personal experiences as well as bias regarding children's court. Secondly, verifying participant responses during and after fieldwork reduced misunderstanding or misinterpretation.

- A child-friendly, semi-structured interview schedule was developed, tested and utilised for each participant interviewed. Constructs were clearly conceptualised and were, therefore, clear and unambiguous (Neuman, 2011:209). The measuring instrument, i.e. the interview schedule, was tested during the pilot test phase of the study. Testing included interviewing a single child from the SAVF with characteristics similar to those children selected for the main study.
- Detailed field notes were produced through the use of recording devices; where after the recordings were transcribed and important pauses and overlaps identified (Creswell, 2013:253).
- The criteria used in selecting the participants, i.e. using purposive sampling, ensured the selection of participants who were knowledgeable and who had valuable personal experience on the subject of study (Delpont & Roestenburg, 2011:173).
- Multiple data sources and participants were utilised, and the researcher verified participant responses during and after fieldwork. In this way, misunderstanding and/or misinterpretation were reduced (Creswell, 2013:159; Strydom, 2011b:122).
- Results from each interview were compared and specific common themes were identified. The supervisor examined the subsequent data analysis in order to ensure that the researcher's interpretation corresponded with the raw data collected (Creswell, 2013:255).
- Raw data was verified, where possible, by comparing and incorporating current literature in the reporting of the results (Cresswell, 2013:256).

The data analysis process was as follows:

1.9.3.1. Transcription

The researcher began the process of analysing the data by transcribing the interviews conducted with each participant.

- Once these interviews had been transcribed, the researcher organised the data into respective computer files.
- Then the researcher read each transcription several times in order to become familiar with the data.
- While reading the data, the researcher recorded notes in the margins of the transcripts and field notes in order to assist with the later stages of data analysis. These notes were in the format of short phrases, ideas or key concepts (Creswell, 2013:183).

1.9.3.2. Classification

The researcher then classified the data into codes in order to illustrate said data.

- Common words or topics discussed by the participants during their interviews were identified and colour-coded
- Colour codes were aggregated and used to form specific themes and sub-themes, which were then interpreted and discussed in the results and discussion section of the research report (Creswell, 2013:184-186).

1.9.3.3. Interpretation

Next the researcher interpreted the data through the use of available literature as well as the researcher's personal experience of children's court procedures. Interpretation required:

- Separating the various codes and themes identified as well as expounding on the larger meaning of the data
- Examining the data within the larger context of the research issue, which is the welfare and judicial system, to see how it affected these children's experiences, be it positively or negatively (Creswell, 2013:186-187).

1.9.3.4. Data representation

Lastly the researcher represented the data in text and a visual format.

- In order to compare the children's respective experiences, a table format had been utilised (Creswell, 2013:187,185).

The final product of the data analysis provided an in-depth description of children's experiences of children's court procedures in the form of themes that were identified from the data (Creswell, 2013:99; Fouché & Schurink, 2011:321).

Qualitative data collection, data analysis and report writing are often interrelated and often occur simultaneously within the research project. This process of data analysis is also circular rather than a fixed, linear approach (Creswell, 2013:182). Thus various stages of data analysis were repeated and occurred simultaneously rather than in a systematic and linear manner.

1.9.4. Pilot study

To ensure quality interviewing during this study, it was necessary to conduct a pilot study to test the interview schedule. The pilot study for this research was conducted with one child from the same organisation who matched the sampling criteria of the children selected for the study. It became clear that the child struggled to understand the content or vocabulary of some of the interview questions. Consequently the interview schedule was adapted accordingly. No questions relevant to the study were overlooked. Furthermore, the researcher made use of experts in the field to assess the applicability of the content and language of the interview questions and, where necessary, adapted the interview schedule (Fouché & Delpont, 2011:73; Strydom & Delpont, 2011:394-395). In this way, the researcher was able to ascertain the relevance of the interview schedule and so ensured that optimal data was collected (Fouché & Delpont, 2011:73; Neuman, 2011:303).

1.10. Ethical considerations

Ethical issues are both complex and universal, specifically in the social sciences where there is a greater responsibility to protect participants as well as to provide sound research (Strydom, 2011b:113-114). There were specific ethical considerations relevant to this study which are discussed below.

Avoidance of harm

In this study, it was unlikely that the child participants would be harmed physically. However, it was very likely that they could be harmed emotionally if the interviewing process conjured up negative emotions and memories that are linked to their experiences during children's court procedures. The researcher eliminated particularly vulnerable children from the study before the study commenced by discussing the child's emotional stability throughout and following the children's court procedures with their respective caseworkers, thus protecting them from unintentional harm. It was imperative that the researcher explained the purpose of the research in a child-friendly manner to the selected children before the interview commenced. Effective debriefing was provided after the interviewing process, in order to ascertain whether the process was a traumatising and/or emotionally painful experience. The researcher ensured that the interviewing process was conducted in a constructive and child-friendly manner in order to limit and/or avoid possible harm. However, if it was evident that the child had suffered any negative effects from the interviewing process, he/she was referred to his/her SAVF caseworker for further debriefing and therapy. Each caseworker was approached before the study commenced in order to prepare him/her for the possible need of debriefing and therapy (Strydom, 2011b:115-116).

Voluntary participation and informed consent

The researcher is of the opinion that voluntary participation and informed consent cannot be viewed separately. In this study, the researcher obtained written permission from the participating organisation, the SAVF, to conduct the research. Furthermore, informed consent was obtained from the legal guardians of each participant. Lastly, informed assent was obtained from the children themselves. The researcher was of the opinion that since these are vulnerable children, due to their involvement in children's court procedures, it was imperative that each child fully understood that his/her participation was completely voluntary. Under no circumstances were they to be made to feel pressurised to participate. Possible reasons that were considered as to why a child may feel pressurised to participate could have stemmed from his/her guardian having agreed to the interview or his/her social worker having identified him/her as part of the sample population. The researcher carefully explained the purpose of the research to the children in a child-friendly manner. Following on this explanation, the children were informed that they were under no obligation to participate, and if they

chose not to or felt that they wanted to withdraw after the study had commenced, their decision would not be perceived as negative, nor would they be punished or treated adversely. Furthermore, the children were also informed of the purpose of and need for the utilisation of tape recorders during the interviews (Strydom, 2011b:116-118).

Deception of subjects

There was no need to deceive the participants in this study and, as stated above, they were fully informed about the purpose of the investigation, their role in the research as well as the research process in a child-friendly manner before assent was received and the research commenced (Strydom, 2011b:118-119).

Confidentiality and anonymity

It was communicated to the children as well as their legal guardians that this study did not allow for anonymity since the researcher, social worker and guardian would know each participant's identity. However, the researcher guaranteed confidentiality in that a number, which was only known to the researcher, was allocated to each participant before the study commenced. All data and recordings of the interviews were stored in password-protected files on the researcher's computer, accessible only to the researcher (Strydom, 2011b:119-121). Issues of confidentiality and anonymity were discussed as part of the informed consent and assent.

Debriefing

The researcher debriefed each child after the interview session. In this debriefing session, the children were allowed to clarify any concerns or questions they had regarding the study. The researcher again informed the children how the information they provided would be utilised in the research process. The researcher also once more informed the children that their interviews would remain confidential and that their identity would not be linked to the information they provided. Lastly the researcher utilised the debriefing session to ensure that there was no miscommunication or misrepresentation of information provided by the child (Strydom, 2011b:122).

Actions and competence of researcher

As stated, this study explored the specific experiences of children regarding children's court procedures. It should be noted that the researcher is a registered Social Worker and thus has a solid theoretical base as well as professional experience within this context. The researcher has received tertiary training in Play Therapy on a master's level and, as such, has specific child-friendly communication skills. Furthermore, the researcher has received tertiary training in research methodology on both undergraduate and post-graduate levels and, as such, has both practical and theoretical research experience. To ensure that the research occurred in an ethically sound manner and that each child was treated in a respectful manner, the researcher worked in close collaboration with her supervisor (Strydom, 2011b:123-124).

Cooperation with contributors

Since the researcher selected a sample of children from a specific organisation, the SAVF, it was imperative that a formal agreement be drawn up between the SAVF and the researcher. As per this agreement, the SAVF would not have access to the raw data of the study, since this would jeopardise the confidentiality of the participants. However, the SAVF will be provided with a detailed report upon completion of the research (Strydom, 2011b:124-125).

Publication of findings

Research findings were compiled into a final research report in close collaboration with the research supervisor. In this regard, the researcher ensured that all the data – negative or positive – was portrayed in the final research report. Thus there was no deception with regard to the findings. Furthermore, the researcher strove to compile the research report as objectively as possible. In addition, the research participants as well as the organisation from which the sample was obtained will be granted access to the final report should they so wish (Strydom, 2011b:125).

From the above, it is evident that there were various ethical issues that needed to be taken into consideration in order to ensure the safety of participants as well as the ethical reliability of the study.

1.11. Chapter outline and timeline

Chapter one focused on the background information of the study, which consisted of the proposed planning for the research to be conducted.

Chapter two consists of the literature review. This includes literature regarding the various aspects of development of middle childhood and the potential effect of this and abuse and neglect on children and court procedures. This chapter was completed while awaiting ethical and post-graduate approval during February and March 2013.

Chapter three consists of another literature review, which includes a description of children's court procedures, relevant legislation and policies as well as children's experiences of children's, divorce and criminal court.

Chapter four identifies and discusses the findings, themes, sub-themes, patterns and categories that emerged from the data collected. The chapter was compiled after the research was conducted during June, July and August 2013.

Chapter five contains the conclusions and recommendations made by the researcher from the findings of the research conducted. This chapter was compiled pending the finalisation of chapter three during September 2013.

2. Chapter Two

Child Development

2.1. Introduction

Development is an active, dynamic process which could result in multiple outcomes (Wolfe, 1999:36). Children undergo rapid holistic development during early childhood and into adolescence. However, the middle-childhood phase is seen as the most important phase for cognitive, social, emotional and self-concept development since this lays the foundation for later development (Louw & Louw, 2007:214).

All areas of development can be impacted negatively by trauma, neglect or abuse. Children who have been exposed to trauma, neglect or abuse can regress developmentally or fail to reach specific milestones applicable to their chronological age (Berk, 2009:598; Taylor, Tapp, & Henaghan, 2007:76). Consequences of abuse can range from symptoms that are barely detectable to those that are very powerful and severe (Wolfe, 1999:38). Due to the fundamental importance of the middle-childhood phase, the consequences of any hindrance to development during this phase could be destructive for future development.

Any type of child abuse, neglect and/or trauma has an extreme impact on a child's current and future functioning, extending into all areas of the child's development and overall wellbeing. A child's day-to-day functioning is also impaired, specifically due to the presentation of a diverse range of behavioural and emotional problems. This makes it imperative that the professionals working with such children have a solid understanding of children's experiences of abuse and neglect, how this impacts each area of their development and how to respond accordingly (Fredrico, Jackson & Black, 2008:344,357).

Accordingly, in this literature chapter, the researcher will be discussing cognitive, emotional, moral, sexual, psychological and social development within the context of middle childhood. The impact of abuse, neglect and trauma on a child's development, as well as risk and resilience factors, will also be discussed.

2.2. Key concepts

- **Child**

A child is defined in the Children's Act 38 of 2005 as "a person under the age of 18". However, for the purposes of this study, the researcher will focus on middle childhood, which is defined by Louw and Louw (2007:214) as the period from approximately age six to twelve.

- **Development**

For the purposes of this study, development can be explained as the process whereby a child grows and changes throughout its lifespan (Smith, Cowie & Blades, 2003:5). The areas of focus in this chapter are cognitive, emotional, sexual, psychological and social as well as moral development. Each area of development will be discussed in detail below.

- **Abuse and neglect**

According to Corby (2006:79), child abuse and neglect are socially defined constructs. Thus a particular culture or context will determine how child abuse and neglect are understood and, therefore, defined. Glaser (2000:97-98) views child abuse or neglect as a singular or multiple incident(s) or interaction(s) that takes place within a relationship and is considered to be outside the norm of customary interaction with a child. This incident or event must also be harmful or potentially harmful to the child.

Since this study is centred on children's court, the researcher will be guided by definitions provided by the Children's Act 38 of 2005. Children's court cases can be initiated for multiple reasons; however, the two areas which the researcher believes have the most influence on a child's development are abuse and neglect. These two areas will also be the focus of this literature chapter.

Abuse is defined in the Children's Act as "any form of harm or ill-treatment deliberately inflicted on a child". Aspects relevant to this study, as defined in this act, are:

- assault or any form of deliberate injury,
- sexual molestation or assault,

- exposure of a child to sexual activities or pornography,
- encouraging, inducing or forcing a child to be used for sexual gratification of another person, and
- exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally.

As can be seen from the above definition, abuse encompasses any act performed by another person that would physically, emotionally, psychologically or sexually harm the child.

McCoy and Keen (2009:63) and Crosson-Tower (2002:62) define neglect as “an act of omission”. Thus parents are not doing something which they should be doing in terms of caring for their children. Neglect can encompass many aspects, such as physical, emotional, psychological and educational neglect (Crosson-Tower, 2002:64; McCoy & Keen, 2009:63-75). This definition is in line with that of the Children’s Act 38 of 2005, which defines neglect as “a failure in the exercise of parental responsibilities to provide for the child’s basic physical, intellectual, emotional or social needs”.

2.3. Developmental theories

Over time, numerous professionals have developed many theories regarding various aspects of child development. However, for the purpose of discussing and explaining child development in this study, the researcher will be focusing on specific theorists and their theories only. To follow is a brief encapsulation of the main elements of the theories of Jean Piaget, Erik Erikson, Albert Bandura, B.F. Skinner, Lev Vygotsky and Urie Bronfenbrenner. Where warranted, a more detailed discussion of these theories will follow below each relevant area of development.

Jean **Piaget** (1896-1980) was a Swiss psychologist who formulated the first cognitive development theory. Accordingly, he approached development from a cognitive perspective (Louw & Louw, 2007:23). Piaget’s cognitive development theory incorporates the biological development of the brain with age and recognises simultaneously that social experiences add to cognitive growth (Berk, 2009:20). Piaget’s main belief was that just as a person’s body adapts to fit the environment, the

mind adapts to fit the external world in a more appropriate manner (Berk, 2009:21). In the researcher's opinion, this highlights the importance of understanding a child's unique development and the impact of said development on the child's daily functioning.

Piaget hypothesised that this development of the mind occurs when children create and revise 'theories' in order to understand their physical and social world (Louw & Louw, 2007:23). The drastic revision of these theories follows four basic stages, namely sensorimotor, preoperational, concrete operational and formal operational (Berk, 2009:21; Louw & Louw, 2007:23-24; Sigelman & Rider, 2006:42). The stage of particular relevance to this study is the concrete operational phase. Piaget postulated that this phase occurs in middle childhood between ages seven and eleven. In this study, the researcher will be utilising Piaget's cognitive development theory to discuss cognitive development.

Based on his cognitive development theory, Piaget divided moral development into three stages, namely pre-moral, heteronomous and autonomous morality (Berk, 2009:492; Louw & Louw, 2007:268-269; Sigelman & Rider, 2006:361). Children in middle childhood will fall in the first two stages depending on their age. Consequently, the pre-moral and heteronomous morality stages will be discussed in more detail as they relate to moral development.

Erik **Erikson** (1902-1994) was a student of Freud, but unlike Freud, Erikson emphasised the psychological and social aspects of unconscious conflict rather than the biological and sexual aspects. It was his belief that competent functioning is only achieved through the resolution of various crises, which occur at specific stages of development throughout the lifespan. Erikson also highlighted the importance of a person developing its personal identity. He divided a person's lifespan into eight different stages, each with a personal social crisis that needs to be resolved before progression to the next stage is possible. The belief is that with each personal crisis resolved, the individual gains ego-strength and becomes more adapt at living life successfully (Geldard & Geldard, 2008:32; Louw & Louw, 2007:20; Sigelman & Rider, 2006:32,34). The stage that is relevant to the middle-childhood age group is industry versus inferiority where the crisis to resolve is to learn basic social and academic skills

as well as how to interact with others. If this crisis is not resolved, the child will be left feeling inferior rather than industrious. In the later middle-childhood stage, the industry versus inferiority crisis may already have been resolved, and the child will be entering the identity versus identity confusion stage. In this stage, the child has to develop a lasting and integrated sense of self. Thus if the crisis is resolved, the child will have a strong identity. Conversely, if not, the child will experience identity confusion (Louw & Louw, 2007:20; Sigelman & Rider, 2006:32, 34). In this study, Erikson's psychosocial theory will be discussed in more detail in relation to psychological and social development.

Bandura was most influential in devising a social learning theory – later renamed social cognitive theory – which emphasised modelling, imitation or observational learning as a dominant source of development. His theory highlights the importance of cognition, in that children develop the ability to decide for themselves which behaviours to model. This decision is influenced by the child's own expectations of the consequences of imitation; the child's self-efficacy, own standards and values; and the power of the model (Berk, 2009:20; Louw & Louw, 2007:22). The researcher will be discussing aspects of Bandura's model as it pertains to social development.

Skinner was a behaviourist who posited that children learn by receiving responses from the environment, a process called operant conditioning. The basic premise is that children will repeat behaviour which they know will attract rewarding rather than punishing reactions. A stimulus which increases certain behaviours is called a reinforcer, whereas a stimulus which decreases behaviour is called punishment (Berk, 2009:139; Louw & Louw, 2007:21). The researcher will briefly discuss Skinner's operant conditioning in terms of language development as well as social development.

Vygotsky developed the socio-cultural theory, which emphasises the role of culture in a child's development. He posited that social interaction within a culture will shape the manner in which a child learns to think and behave (Berk, 2009:25; Louw & Louw, 2007:26). Children who have not yet developed their own identity, as described by Erikson, are much more likely to adhere to cultural rules, which implies that court professionals need to be aware of the impact of culture on a child's ability and level of participation and expression. It should be noted that although the focus of this study is

how children in middle childhood experience court procedures, it does not account for cultural influences in these experiences. Thus, although Vygotsky's theory is relevant to all aspects of development, the researcher will be discussing it with regards to language development only.

Since children form part of multiple interrelated systems which are likely to impact on their experiences of children's court procedures (Weyers, 2011:20), **Bronfenbrenner's** so-called ecological systems theory or ecological perspective (Berk, 2009:26; Visser, 2007:12) is also relevant to this study. The ecological systems theory postulates that children develop within "a complex *system* of relationships affected by multiple levels of the surrounding environment" (Berk, 2009:26). Each level, together with the relationships between these multiple levels, is believed to have a strong impact on the child's development. This theory divides the child's environment into four levels, namely the microsystem, mesosystem, exosystem and macrosystem (Berk, 2009:26-27; Louw & Louw, 2007:27; Visser, 2007:12).

Berk (2009:26) defines the microsystem as the innermost level of the child's environment, which is comprised of various activities and interaction patterns within the child's immediate surroundings. This, therefore, includes the children themselves as well as people and objects that are in the child's immediate environment, such as parents and guardians (Louw & Louw, 2007:27; Visser, 2007:12).

Spiralling out from the microsystem, the mesosystem, according to Berk (2009:27), encompasses connections between the microsystems referred to above. Thus the mesosystem links certain aspects in the microsystem with one another, such as the child's school and peer group. For example, if a child is involved in a delinquent peer group at school, such involvement may have a direct impact on that child, its relationship with parents and peers as well as its performance on an academic level. This example shows how four microsystem activities or interaction patterns are linked, having a reciprocal influence on one another and thus forming the mesosystem (Berk, 2009:27; Louw & Louw, 2007:27).

Defined as inclusive of the various social settings which, even though not necessarily experienced first-hand, have an impact on the child's experiences within its immediate

settings, the exosystem encapsulates both the micro- and mesosystem. Examples of such social settings are a parent's work and social networks, the extended family and services being rendered in the community and by local government (Berk, 2009:28; Louw & Louw, 2007:27-28). In the researcher's opinion, both welfare and judicial services would form part of the exosystem.

In the final instance, all systems referred to above are embedded in the macrosystem, being the broadest of all systems. The macrosystem essentially affects the child indirectly through broader cultural values, laws, customs and societal resources (Berk, 2009:28; Louw & Louw, 2007:27).

2.4. Impact of abuse and neglect on development

Human development occurs as a result of reciprocal influences within and between the individual and the multiple levels of the surrounding environment. However, although undeniably holistic in nature, interaction in terms of long-term relationships is crucial in determining the final and lasting outcome of the development process as a whole (Lewis, 2009:15).

Trauma can occur within all systems, be it the individual, the family, the community or society. Likewise, trauma comes in many different forms and can either be direct or indirect. Due to the diverse ways in which children can experience trauma, the researcher will focus discussions on trauma occurring as a result of abuse or neglect within the family system. In this regard, direct trauma would be where a child is intentionally abused or neglected, whereas indirect trauma would occur when a child is exposed to violence directed at another person, such as in the case of domestic violence. This indirect trauma often results in unseen victims: the children (Lewis, 2009:18; Singh, 2005:29). Irrespective of being direct or indirect, though, trauma within any of the multiple systems will have a holistic impact on the child. Moreover, trauma affects every aspect of the child and its development (Lewis, 2009:15). Wolfe (1999:35) summarised this phenomenon as follows:

Child development normally follows a predictable, organized course, beginning with the mastery of physiological regulation (eating, sleeping), and continuing throughout the development of higher skills, such as

problem solving and peer relationships. But under abnormal and unusual circumstances, especially abuse and neglect, predictability and organization are disrupted and thrown off course, resulting in developmental failure and limited adaptation.

According to Lewis (2009:19), a diagnosis of post-traumatic stress disorder (PTSD) in children fails to encompass the developmental impact of abuse and neglect. Accordingly, children who are consistently exposed to any form of abuse and neglect over time can develop developmental trauma disorder (DTD) resulting in perpetual consequences which will affect all areas of a child's development (Lewis, 2009:19; McIntosh, 2002:230; Singh, 2005:29). A child's reaction to abuse and neglect is typically complex and will often relate to behaviour, which, according to Levendosky and Graham-Bermann (2001:171), seemingly "exist on a continuum influenced heavily by the context in which the person is developing". This, in the researcher's opinion, makes it particularly relevant for court professionals to understand the context within which a child has developed in order to truly comprehend its behaviour, particularly if the child has been abused or neglected.

These reactions will encompass cognitive, behavioural, emotional and physical responses. Typically, such reactions will manifest as lapses in concentration, tiredness, headaches, depression, denial, anger, loneliness, numbness, guilt, helplessness, irritability, fear, anxiety, temper tantrums, destructiveness, aggressive outbursts and conflict (Perrin, Smith & Yule, 2000:278-279; Singh, 2005:31). It has been noted that boys often externalise their responses to trauma or abuse, while girls tend to internalise their responses, often as a result of higher levels of self-blame. However, despite these reactions being regarded as the norm, the opposite could also occur (Huth-Bocks, Levendosky & Semel, 2001:274; Singh, 2005:31).

Research conducted by Fredrico et al. (2008:352) under the auspices of the Take Two programme in Victoria, Australia with a sample size of 560 children found that 64% of children in middle childhood had been exposed to family violence. Furthermore, research conducted in the U.S. by the Department of Health and Human Services illustrated both the immediate and long-term effects exposure to domestic violence can have on children, including behavioural, social and emotional problems manifesting as high levels of aggression, anger, fear, anxiety, depression and poor social relationships.

Goldblatt (2003:532), Huth-Bocks et al. (2001:283) and Singh (2005:30) also reported evidence of lower cognitive functioning, a lack of conflict-resolution skills, pro-violence attitudes and a tendency to believe in the superiority of males in interpersonal relationships amongst a similar population. In particular, Holt Buckley and Whelan (2008:800) found that domestic violence increases a child's risk of physical and sexual abuse. Clearly, the sheer extent of the impact on and the heightened risk for the child who has merely been a witness to violence and abuse are cause for concern. It is especially troubling when considering that maladaptive behaviour caused as a result of exposure to abuse and neglect often continues into adulthood. This can have serious implications for society since these children can grow up believing that violence is an appropriate way to resolve conflict, resulting in the perpetuation of an intergenerational cycle of violence (McIntosh, 2002:240; Singh, 2005:31-32), a phenomenon which once again highlights the holistic impact of abuse.

In the research conducted by Fredrico et al. (2008:353,355) regarding child abuse and neglect, it was found that 27% of middle-childhood children experienced severe changes in affect or mood, 23% showed deterioration in attention and concentration, 19% had significant school attendance problems while 17% displayed repeated and severe violence towards others.

Children who are abused or neglected often experience a negative impact on their intellectual and behavioural functioning; language, socio-emotional and psychological development; and academic achievement. Seemingly, this can be ascribed to, amongst others, a lack of communication, intellectual stimulation and parental interaction within the family system (Du Preez, Naudé & Pretorius, 2004:25; Huth-Bocks et al., 2001:272; McCoy & Keen, 2009:80; Wolfe, 1999:48). In fact, Fredrico et al. (2008:356) found that 71% of children in the early middle-childhood age group (ages six to nine) showed difficulties or delays in speech, language and hearing development as a result of abuse and/or neglect.

According to Du Preez et al. (2004:26), in addition to having a direct bearing on behavioural issues, a child's language capability also plays a central role in its intellectual, socio-emotional and academic development. This highlights the importance of healthy language development. In addition to being strongly associated

with delays in overall language development, neglect is also associated with a delay in the development of expressive and receptive language in particular. As noted above, language acquisition and subsequent competency are closely linked to interactions within the family unit. Children who are abused and/or neglected often do not have such interaction, and if they do, it is frequently destructive, hence the negative impact on their language development (Du Preez et al., 2004:2-27; Huth-Bocks et al., 2001:272). Hence, when dealing with children who have been abused or neglected in children's court, those involved with the proceedings ought to take cognisance of the fact that the children may lack the language skills to fully comprehend what they are being told and/or to express themselves effectively.

Since child sexual abuse is very prevalent in South Africa (Padmanabhanunni & Edwards, 2012:40), a situation frequently stemming from but not always ascribable to neglectful circumstances, the profoundly damaging and traumatic consequences of this type of abuse will be discussed next. Despite the fact that numerous factors are instrumental in determining the degree of trauma (Spies, 2006:49), child sexual abuse places children at a significantly higher risk for experiencing a multitude of symptoms and developmental problems. The latter ranges from severe psychological symptoms and disorders, problems with emotional regulation, behavioural disturbances, interpersonal problems, somatic symptoms and psychosexual problems to a low self-concept, guilt and inadequate social abilities (Padmanabhanunni & Edwards, 2012:40; Spies, 2006:54,56; Wilson & Van Wyk, 2009:2). Undoubtedly, child sexual abuse threatens a child's physical and emotional sense of safety and security as well as all aspects of its development (Wilson & Van Wyk, 2009:8). The very way children think and feel about themselves and others as well as their interaction with others are influenced negatively as a result (Spies, 2006:58-59). Clearly, the impact of child sexual abuse is extensive and affects the entire developmental spectrum: be it psychological, emotional, cognitive, sexual or social. Child sexual abuse leaves deep scars, and the far-reaching consequences can have a lasting negative impact on the individual into adulthood (Spies, 2006:58).

As will be discussed below, since children in middle childhood need to develop self-confidence, diligence and capability, the emotional trauma associated with many forms of neglect and abuse could have a negative impact on a child's socialisation, peer

relations and school performance – all of which are integral to the development of self-confidence, diligence and capability (Wilson & Van Wyk, 2009:2). Abuse and neglect can impair emotional development in such a manner that children struggle to understand the emotional responses and behavioural intentions of other people. This can lead to the child having dysfunctional beliefs about itself as well as displaying dysfunctional interactions with peers since it simply lacks the knowledge and skills to forge or maintain basic relationships. Consequently, social and psychological development will be interrupted (Wolfe, 1999:45).

“Like a row of dominoes, failure to develop an adaptive attachment strategy sets off a chain reaction that leads to unpredictable outcomes.” By equating this failure to the domino-effect, Wolfe (1999:55) managed to highlight the symbiotic nature of the various areas of development in a child’s life: A delay or impairment in one will invariably trigger a delay or impairment in another. In the paragraphs to follow, the researcher intends to demonstrate the severe repercussions of abuse and neglect and, in particular, the ‘chain reaction’ abuse can have on development.

According to Briere, as discussed in Fredrico et al. (2008:345), the consequences of abuse manifest in three stages:

- In stage one, the child’s initial reactions can manifest as PTSD symptoms and changes in its developmental progress as well as experiencing painful emotions and cognitive distortions.
- In the second stage, a child may develop coping strategies in order to accommodate the experience of on-going abuse. Such strategies may include, but are not limited to, self-harm, substance abuse and/or avoidance.
- In the third stage, the above-mentioned coping strategies and distorted perceptions become integrated in the child’s developing self-concept. This integration can have a significant impact on the child’s future psychological development.

On the subject of coping strategies, Goldblatt (2003:540) points out that the impact of abuse and neglect depends on the interaction between the negative effects of the abuse and neglect and the coping aspects each child uses to deal with the abuse and neglect. Consequently, each child’s reaction to and the impact of the abuse and neglect will be

unique. For this reason, when assessing a child, it is important to do so holistically in order to gain a full and context-relevant understanding of the child's unique experience of abuse and neglect, including the impact abuse and neglect has had on the child and the resultant influence thereof on its development (Fredrico et al., 2008:345; Holt et al., 2008:807; Lewis, 2009:19).

Having discussed the diverse nature of the impact of abuse and neglect on development, the respective risk and resilience factors that will either increase the likelihood of abuse and neglect or determine how great the impact thereof will be on the child and its development will now be discussed.

2.5. Risk and resilience

Dunn (2008:37) states that one in three children in South Africa will be abused during their childhood. Nonetheless, each child is unique, and its reaction will vary according to its age, gender, personality, socio-economic status and role within the family as well as the frequency, nature and length of exposure to violence. Furthermore, the impact of abuse or exposure to violence is moderated by a further set of considerations, amongst others the relationship of the child with its parents and siblings and the support being offered to the child (Holt et al., 2008:804). Consequently, it can be derived that individual, social and environmental variables can moderate the impact of abuse and neglect on children (Wolfe, 1999:40).

When looking at the research findings of Turner, Finkelhor and Ormrod (2006:22), different forms of abuse seem to be interrelated in as far as children who experience one type of abuse are also likely to be exposed to other forms of abuse. In as far as the risk of being abused or mistreated is concerned, Beckett (2007:109) points to several factors, but Roper (2002:69), on the other hand, found that these risk factors directly relate to the immediate social system within which the child develops as well as the socio-economic and environmental elements underpinning that system. These elements can have a direct or indirect influence on the child with regards to its development and potential for abuse or neglect. It is important to note that even if risk factors are present in a child's life, they alone do not determine whether abuse or

neglect will occur or not. They merely increase the likelihood of such abuse or neglect (Beckett, 2007:111; Roper, 2002:70).

Risk factors associated with the child itself include gender, age and temperament. Female children are at a greater risk for sexual abuse; younger children are more dependent and at higher risk for neglect, and difficult children are at a greater risk for physical abuse. However, abuse or neglect cannot be ascribed to these factors only (McCoy & Keen, 2009:19-20).

As noted by Roper (2002:69), risk factors are located in immediate, social, environmental and societal systems. Risk factors more specifically associated with the immediate family environment include marital dysfunction, domestic violence, stepparents entering a family structure, disorganised and less cohesive family structures, poor inter-family communication, parental substance abuse, parental mental illness, rejection by a parent and parental criminality (Beckett, 2007:111; Howe, 2005:200; McCoy & Keen, 2009:20-26; Smith, et al., 2003:568). Risk factors of a social, environmental or societal nature include a lack of social support, rejection by peers, poverty and factors dictated by culture (McCoy & Keen, 2009:26-28, Smith et al., 2003:568). However, whether the cause relates to their immediate or broader environs, abuse and neglect place children at a much higher risk for emotional and adjustment problems, resulting in a heightened risk for the development of some form of psychopathology (Wolfe, 1999:51).

As is evident from the above, the risk factors are numerous and present at all levels of the child's systems. However, every child has some form of resilience that can moderate the impact of abuse and neglect.

Howe (2005:219) defines resilience as "the individual's capacity for adapting successfully and continuing to function competently under stress and adversity". Resiliency factors that will assist children in dealing with the adverse effects of abuse and neglect include supportive social networks, positive moral grounding, positive coping strategies, positive self-esteem, developed communication skills, confidence in dealing with adversity, problem-solving skills, intelligence, a strong tendency towards independence, a sense of mastery, social competence, participation in activities such as

sport, competency at school and involvement in community activities (Goldblatt, 2003:536; McCoy & Keen, 2009:78,101; Roper, 2002:69; Scholtz, 2001:3; Singh, 2005:30, Smith et al., 2003:569). Specifically relating to family and social support, Van Rensburg and Barnard (2005:3-4) added the following to the afore going list: positive family bonding, bonding with at least one parent, competence in and quality of parenting, a positive and accepting peer group, school attendance and a positive role model.

Van Rensburg and Barnard (2005:2) also discuss individual personality factors that increase resilience, showing how some children are less likely to succumb to the consequences of abuse and neglect. They would have an internal locus of control, the ability to see the positive opportunities in life, a sense of purpose and meaning, resulting in being more responsible, independent, committed and socially skilled, as well as exhibit above-average intelligence. These children often have a positive and optimistic temperament, show humour and creativity, have the ability to think critically and solve problems and have an understanding of their self (Van Rensburg & Barnard, 2005:2-3, Smith et al., 2003:569). A positive self-esteem appears to be a central resiliency factor since if children have a strong self-esteem, they are better able to develop successful coping strategies. In addition, a high self-esteem in one area, such as academic achievement, can provide a positive escape from family violence (Holt et al., 2008:806).

Having covered various important aspects surrounding abuse and neglect, in the detailed discussion of cognitive, emotional, sexual, psychological and social as well as moral development to follow, the researcher will pay specific attention to those aspects professionals ought to take cognisance of when working with children within the context of children's court.

2.6. Cognitive development

Children in Piaget's preoperational phase of development, being between the ages two and seven, display multiple cognitive limitations. These limitations are present even near the end of this developmental phase. Although these limitations improve as the child ages, they may still be present in some form in the early middle-childhood age

group (six to nine years) in children who have been exposed to any type of trauma (Berk, 2009:246). The limitation that is specifically relevant to this study is egocentric thinking.

Egocentric thought refers to the child's inability to distinguish between its own perspective and thoughts and that of someone else (Berk, 2009:240; Santrock, 2006:235). Thus a child that engages in egocentric thought believes everyone else perceives, feels and thinks the same way it does. As a result, such children are unable to reflect on and adjust their reasoning in response to their physical or social worlds, which impacts on the child's ability to engage in rational thought (Berk, 2009:241; Santrock, 2006:236). Lewis (2009:16) emphasises that early middle-childhood children remain egocentric as well as emotionally inflexible.

According to Piaget's cognitive development theory, children in middle childhood are between the ages seven and eleven and are in the concrete operational phase of development. In this phase, the child will display certain cognitive limitations, the main limitation being thinking in an organised, logical manner only when dealing with concrete information which can be directly perceived. Thus children in this phase are unable to think critically, and their ability to understand abstract ideas or concepts is very poor (Berk, 2009:249; Louw & Louw, 2007:217-218).

A child's ability to engage in logical thought is directly linked to immediate situations. Therefore, children at this age will struggle to understand any discussions regarding situations not immediately obvious effectively (Berk, 2009:249; Louw & Louw, 2007:217-218). Furthermore, these children have not yet developed critical thinking, which is the ability to evaluate evidence and think reflectively as well as productively (Santrock, 2006:306). According to Schofield (2005:39), children who are in this phase and engage in concrete thinking find it incredibly difficult, if not impossible, to easily and meaningfully engage in discussions about hypothetical situations, for example whether the child would prefer to live with person A or B. This is due to the fact that it is not a current reality, exacerbated by the child's inability to think critically. Consequently, the child is not able to make this kind of decision effectively and to inform a lawyer of its preference.

Santrock (2006:305) adds that what children notice as well as how they organise, represent and interpret information will affect their ability to remember, reason and solve problems. This again highlights the importance of understanding cognitive development in order to interpret and understand a child's views and preferences correctly, as well as assigning the correct weight to each child's views and preferences.

Since language, communication and memory are integral subsets of cognitive development, a detailed discussion on these areas and their impact on a child's ability to participate in children's court procedures will now follow.

2.6.1. Language/communication development

According to Piaget, cognitive development makes language development possible. Thus without first developing cognitive abilities, language would be improbable. However, Vygotsky disagrees, asserting that language is an instrument used to structure thought. Therefore, he holds that without language, thinking [cognition] is not possible. Furthermore, as a child develops, thought and speech patterns combine and begin influencing one another mutually. As a result, thoughts take on verbal characteristics, and speech becomes an expressive outlet for thought. Accordingly, Vygotsky holds that logical thinking, and thus speech, results from modelling the speech routines of older children and adults (Louw & Louw, 2007:165). The researcher tends to agree with Vygotsky's rational, namely viewing language and cognitive development as mutually influential.

According to Copen (2000:44) and Louw and Louw (2007:169), the development of language skills is most rapid up to the age of four or five. Typically, when children reach the age of six, they should have a vocabulary of between 10 000 and 13 000 words, which will increase with school attendance. Thereafter language development slows down but continues to progress steadily throughout the individual's lifespan (Santrock, 2006:319-320; Sigelman & Rider, 2006:260,263). This includes mastering phonology [sound], semantics [meaning], morphology [word structure] and syntax [sentence structure], which together form grammar, as well as learning the rules of language [pragmatics] (Berk, 2009:258; Louw & Louw, 2007:171; Smith, et al., 2003:348-349).

During middle childhood, children should understand the abstract meaning of words and sarcasm as well as begin to experiment with wordplay and the double-meanings of words. Children in this age group will also display a greater understanding of the use of facial expressions together with body language during the expression of language. Consequently, the ability to adapt language and expression to a social context is developed (Louw & Louw, 2007:220-221). Copen (2000:46) points out that a child's ability to describe, narrate and inform in an adult-satisfactory manner still develops during high school. Clearly, children in middle childhood cannot yet be expected to communicate in an adult manner.

As stated above, language development continues throughout an individual's lifespan. However, there are various factors that specifically influence a child's language development. Three of the main factors are the child's parents, socio-economic status and the media.

Optimal language development in a child requires good adult linguistic input. This includes how parents speak to their children and if/how they allow children to speak to them. In addition to the factors mentioned above, parenting style also impacts on language development. Poor linguistic interaction between parent and child inhibits the development of personal viewpoints and a questioning attitude, since children are not encouraged to verbalise personal experiences and feelings. This may hamper both the language and cognitive development of a child (Louw & Louw, 2007:171; Sigelman & Rider, 2006:260).

Children that grow up with a low socio-economic status are generally not exposed to the home literacy environment mentioned above, thus leading to a lack of language stimulation. It appears that parents from a low socio-economic status do not interact verbally with their children as often as parents from a higher socio-economic status do. Furthermore, parents from a low socio-economic status are often less responsive towards their children. This can lead to the creation of a non-stimulating environment, which in turn can lead to impoverished speech (Louw & Louw, 2007:171-172). Neglected children can experience similar circumstances to children from a low socio-

economic status, which may result in the same negative outcome (Louw & Louw, 2007:362).

Children are increasingly exposed to a multitude of mass media whilst growing up, namely television, radio and the Internet. Although this exposure may result in enhanced language development (Louw & Louw, 2007:172), Hoff (2006:71) cautions that language exposure via the mass media, in particular television, differs from the child's exposure to language via social interaction since the child does not actively partake in the process. Nonetheless, this type of exposure is no less influential and can be beneficial, depending on what is being watched. However, should the mass media be allowed to displace the more conventional means of language acquisition, i.e. social interaction, the child's language development will be impacted negatively (Hoff, 2006:72).

The above explanation of language acquisition appears to be in line with the behaviourist perspective of language development, which includes Skinner's theory of operant conditioning, and tends to favour the argument of nurture rather than nature. In other words, parents positively reinforce the use of familiar words by rewarding a baby or young child with a smile, a kiss or applause when the child uses the correct word. Alternatively, a parent will reward the child with what it has requested by using familiar sounds or words such as a toy, water or biscuit. Meaningless words are typically not rewarded and are thus not reinforced. In addition, words that are associated with strong emotions or experiences are likely to be reinforced in a more permanent manner (Berk, 2009:359; Louw & Louw, 2007:108; Sigelman & Rider, 2006:260).

In contrast, the nativist perspective of language development tends to favour nature rather than nurture. Theorists supporting this perspective argue that language development is innate and does not require deliberate training by caregivers (Sigelman & Rider, 2006:259).

From the above, it is evident that when working with children, one cannot assume that language development is universal. Children's unique contexts as well as their interaction with their systems will determine their language development. Based on

the literature discussed above, highlighting the link between a child's environment and language acquisition, the researcher is in agreement with the behaviourist perspective. Thus the need for each child's circumstances should be taken into consideration when attempting to interpret and understand its language and resultant communication correctly.

2.6.2. Memory

Memory development is a vast field. For the purposes of this submission, the researcher will limit the discussion to the different types of memory as well as how information is stored and retrieved, also known as encoding. There are two different types of memory: short term and long term. Short-term memory is also known as working memory and, significantly, develops during early childhood. On the other hand, in the case of long-term memory, information is permanently stored, a phenomenon which is already evident in children as young as three. However, such young children apparently have difficulty remembering specific details surrounding routine activity, such as bedtime (Louw & Louw, 2007:166).

Throughout childhood, specific memory strategies are developed. A memory strategy is the deliberate use of a mental activity in order to improve information retention in the working memory and to transfer that information to the long-term memory. During early childhood, these memory strategies are not very successful. However, during middle childhood, there is a surge in the successful use of said mental strategies (Berk, 2009:289; Louw & Louw, 2007:166). The mental strategies to be discussed below are related to the storage of information as well as the retrieval thereof.

During storage of information, three strategies are utilised, namely rehearsal, organisation and elaboration.

- **Rehearsal** is when the child repeats specific words in order to remember and retrieve them at a later stage. For example, if a child has to remember a list of words for school, it will repeat those words until the words can be recalled at whim. Children in late middle childhood are also able to link previously acquired words with new words, thus improving memory (Berk, 2009:289; Louw & Louw, 2007:166; Smith et al., 2003:432).

- **Organisation** is when related items are grouped together in order to facilitate storage and improve retrieval. Children in late middle childhood are able to utilise organisation as a memory strategy. However, young children and children in early middle childhood tend to struggle with this task. They will often fall back on the rehearsal strategy when they need to remember important information. Inversely, as their short-term memory retention improves, children in late middle childhood are less likely to utilise rehearsal (Berk, 2009:289; Louw & Louw, 2007:166; Santrock, 2006:305; Smith et al., 2003:434).
- **Elaboration** is a more complex memory strategy and involves creating a relationship between two or more pieces of information that are not in the same category. This can include the use of rhymes or pictures to assist in more effective retention and retrieval. Children in late middle childhood will begin to utilise elaboration. However, due to its complexity, elaboration as a strategy is only perfected later in adolescence (Berk, 2009:291; Smith et al., 2003:435).

Retrieval is the process of accessing information that has been stored in the long-term memory (Berk, 2009:292; Louw & Louw, 2007:166). During retrieval, three strategies are employed, namely recognition, recall and reconstruction.

- The simplest form of retrieval is **recognition** and it occurs when a stimulus is identical or similar to one previously experienced. An example would be when a child is shown a set of pictures: When this set is subsequently mixed with new pictures, the child will use recognition to identify the original set (Berk, 2009:292; Louw & Louw, 2007:166).
- **Recall** is more complicated and requires the child to create a mental representation of a stimulus that is no longer present in order to remember said stimulus correctly. An example would be a child creating a mental representation of a spelling word in order to remember it. Recall improves dramatically when the child starts school and is strongly associated with language development. As a result, recall improvement is linked to the age and experience-related growth of the child's long-term knowledge base. This knowledge base becomes more organised and increasingly elaborate as the child develops and when representations of these experiences are interconnected within long-term memory, recall with the aid of internal cues

becomes extremely simple (Berk, 2009:292; Louw & Louw, 2007:166; Smith et al., 2003:436).

- **Reconstruction** is when information is reconstructed or recoded while it is being stored or as it is being retrieved. It is used when a child is required to remember complex and meaningful information. Reconstruction allows the child to combine old and new information logically, to record sequences of information in a logical manner and to highlight important features of information and conversely discard unimportant features. By doing so, the child will reconstruct information in a way that will ease the recall process.

The effective use of reconstruction as a memory strategy will typically take place during middle childhood. However, the degree to which the child's language skills and working memory capacity has developed will determine the extent to which reconstruction is used successfully. Consequently, mastering reconstruction in the various stages of middle childhood depends on the development of the child in question (Berk, 2009:293).

Sigelman and Rider (2006:208-209) discuss various reasons as to why learning and memory improve with age. Firstly, older children have an increased biological capacity to process more information within their working memory. They are also capable of doing so quicker than younger children are. Secondly, older children are able to utilise more effective memory strategies when encoding and retrieving information. Lastly, as children age, they experience and learn more about the world; thus their knowledge base increases. Accordingly, memory improves since it is easier to recall information already familiar as a result of experience.

Although the researcher does not dispute the fact that all of the above may impact memory development, in terms of this study, the intention is to prove that a child's life exposure and experiences will determine its knowledge base and will either positively or negatively impact the child's ability to learn and remember. In short, the researcher holds that memory development is unique to each child, and should there be a need for a child's testimony during court proceedings, this phenomenon ought to be taken into consideration (Sigelman & Rider, 2006:208-209).

Clearly, cognitive development plays an important part in children's ability to participate in children's court procedures as well as professionals' comprehension and contextualisation of said participation. The next important type of development to consider is emotional development and how this should be interpreted in terms of children's court procedures.

2.7. Emotional development

A child in middle childhood (seven to eleven years) is still in the process of emotional development and has yet to reach emotional maturity (Berk, 2009:407; Santrock, 2006:331). Nevertheless, according to Berk (2009:407,410,416), Lewis (2009:17), Louw and Louw (2007:244) and Santrock (2006:331), the emotional development and/or maturity of a child having reached middle childhood can be typified as follows:

- Firstly, children in middle childhood have an increased ability to understand more complex emotions such as pride and shame. Such complex emotions also begin to integrate with the child's sense of personal responsibility.
- Secondly, children at this age are more likely to understand and take into account that certain events or situations can cause particular emotional reactions.
- Thirdly, these children begin to understand and conform to social norms regarding emotional expression.
- Lastly, children in middle childhood gain better intellectual control over their emotions. Consequently, they begin to learn how to self-regulate their emotions, encompassing both a differentiation between and the ability to express individual emotions. As a result, children in middle childhood also acquire the ability to suppress or conceal negative emotional reactions.

Since family relationships apparently have a direct bearing on emotional cognition, children who have developed a positive attachment relationship are seemingly more advanced in gaining emotional understanding. According to Louw and Louw (2007:175), this can primarily be ascribed to positive and frequent interaction between the child and its caregiver.

Emotional intelligence, as defined by Berk (2009:325), is “a set of emotional abilities that enable individuals to process and adapt to emotional information”. Santrock (2006:331) and Geldard and Geldard (2008:252) elaborate on this definition by stating that emotional intelligence involves the ability to identify and monitor one’s own and others’ feelings and emotions, to discriminate among various emotions and to use this information to guide one’s own thinking and actions. For the sake of this study, though, the researcher will focus on the deduction of Geldard and Geldard (2008:252), namely that emotional development largely impacts on a child’s ability to interact meaningfully with others. When taking into consideration a child’s emotional development and resultant ability to express or suppress emotion the concept of social referencing ought to be noted.

Social referencing, used even by babies, is the ability to first gauge the emotional expression of another person before deciding how the infant itself will react to an unfamiliar situation or person (Berk, 2009:401; Smith et al., 2003:180). Children also learn at a young age, around three or four years, to deliberately manipulate emotions in order to solicit a specific result or reaction from another person (Smith et al., 2003:182).

In light of the above, it could be deduced that children in middle childhood might look for a cue from people of significance before expressing or displaying a specific emotion. Given children’s ability to suppress negative emotions as well as to manipulate emotions, it can be said that the emotion expressed or displayed by the child should not necessarily be regarded as an accurate reflection of the child’s actual emotion. It could also be an expression of the emotion of a person of importance rather than the child’s own.

On the subject of emotional development, Berk (2009:401) noted that the emotional reactions of others can regulate children’s behaviour. Given the evidence provided above, this reinforces the probability that a child in middle childhood may have the ability to understand emotions and, most importantly, to comprehend when situations would, for whatever reason, warrant hiding emotions thus perceived. To complicate this phenomenon even further, Berk (2009:400) and Louw and Louw (2007:175) are of the opinion that emotions are interwoven with cognitive processing. Should this be

the case, anxiety can impair thinking and emotions considerably, resulting in a powerful effect on memory. When working with children in a stressful environment, such as children's court, the possibility that the emotional experiences of the child could impact its behaviour ought to be noted and considered.

Although not yet complete at this stage, a child's emotional development progresses significantly during middle childhood and, as has been illustrated, is likely to have an important impact on how a child's emotional experience and subsequent expression during children's court procedures ought to be interpreted. Even though sexual development does not have a specific impact on children's court procedures, it does warrant a discussion if a holistic understanding of child development and the overall impact thereof on these court procedures is to be arrived at.

2.8. Sexual development

From early childhood, children are typically curious about their bodies and will engage in sexual exploration, such as looking at and touching genitals as well as engaging in sexual play, such as playing doctor or house (Berk, 2009:16; Louw & Louw, 2007:19; Sigelman & Rider, 2006:344). According to a study by Herdt and McClintock (2000:587), an important milestone in sexual development occurs around the age of ten where both girls and boys can experience their first sexual attraction before maturation of sex organs in puberty. Although there is typically a shift in focus towards academic and social activities as well as gender segregation in middle childhood, the sexual awareness and curiosity from early childhood does not subside as was suggested by Freud (Berk, 2009:16; Louw & Louw, 2007:19; Sigelman & Rider, 2006:344).

During middle childhood, children typically spend most of their time with same gender peers. However, middle childhood is a time where a great deal of learning about sexuality and reproduction takes place. In children aged seven to twelve, the understanding of reproduction and sexual intercourse will vary greatly (Sigelman & Rider, 2006:343). Onset of puberty is on average between ages eight and 10 for girls and between nine and twelve for boys, implying that puberty can occur even in middle childhood (Berk, 2009:201). For girls, puberty includes breast development, a growth

spurt, pubic hair growth and menarche (first menstruation). For boys, puberty includes enlargement of testes, pubic hair growth, spermarche (first ejaculation), facial hair growth and a deepening of the voice. However, when considering that, atypically, a girl can reach her adult stature and complete breast growth as young as age ten, and boys can reach adult stature and complete growth of penis and testes at age twelve (Berk, 2009:201), the possibility that physical and sexual development may be completed during middle childhood cannot be discounted.

To exacerbate this possibility, research shows that children are becoming involved in more intimate forms of sexual behaviour at earlier ages than in the past (Sigelman & Rider, 2006:344). It should also be noted that the socio-cultural context in which children grow up could influence sexual development. For example, Western society bombards individuals, including children, with sex and sexuality in the media, especially in advertising and on the Internet. Being exposed to such a sexualised culture will impact sexual development in children (Santrock, 2006:369).

When children mature sexually and near adolescence, they have to incorporate into their newly forming identities that of sexual male or female (Sigelman & Rider, 2006:244). As will be discussed below, identity formation is an important aspect of overall development.

2.9. Psychological and social development

As previously discussed, Erikson's psychosocial stage, industry versus inferiority, is of relevance during middle childhood. During this stage, children adjust to school, establish peer relationships, learn to adhere to rules and achieve academically. If children are successful in these aspects, they will develop a sense of competence or industry. If unsuccessful, a child can develop a sense of inferiority which can impact the child's self-identity and future development negatively (Louw & Louw, 2007:241). Factors which can contribute towards a sense of competence and industry as well as aid social and emotional development in middle childhood are:

- a positive and realistic self-concept,
- pride in accomplishment,
- pro-social moral and value frameworks,

- moral responsibility,
- the ability to regulate emotions, and
- relationships that foster the above-mentioned factors.

(Louw & Louw, 2007:242)

Psychological and social development will now be discussed as it pertains to the self and the child's broader social context, with particular reference to family and peer relationships.

2.9.1. The self

Berk (2009:444) explains self-development as beginning with self-awareness during infancy which then "gradually evolves into a rich, multifaceted, organized view of the self's characteristics and capacities during childhood and adolescence." From this definition, the importance of a positive self-identity or concept and self-esteem becomes evident.

Children's self-identity consists of a set of attributes, abilities, attitudes and values children use to define who they are and what they value as well as the direction they choose to pursue in life. During middle childhood, this self-identity becomes more refined and will include both internal and external characteristics as well as social aspects. However, identity formation will only be complete in late adolescence or young adulthood (Berk, 2009:444,463,464; Louw & Louw, 2007:242; Santrock, 2006:329).

During middle childhood, children begin to describe themselves in terms of psychological characteristics rather than physical characteristics as is typical in early childhood. In this phase, children also start to distinguish themselves from others in order to develop their self-identity properly through comparisons. By comparing the specific characteristics and abilities of the self to others, children will begin to evaluate their own worth and thus develop self-esteem, be it positive or negative (Berk, 2009:453,455; Louw & Louw, 2007:242-243; Santrock, 2006:329; Smith et al., 2003:185).

The typical structure of a middle-childhood child's self-esteem will comprise academic and athletic competence, social competence and acceptance and physical appearance. The weight of each aspect that makes up a child's self-esteem is unique to each child. For example, some children place more weight on academic performance than on sport achievement (Berk, 2009:456; Louw & Louw, 2007:243; Sigelman & Rider, 2006:295). Self-esteem can thus be significantly improved or hindered by achievements and relationships in the child's life. There is a definite link between the degree to which a child and its family value a specific activity, the success in achieving said activity and the resultant effect on the child's self-esteem (Berk, 2009:467; Henderson & Thompson, 2011:205; Louw & Louw, 2007:244).

A child's self-esteem is not always reflective of reality. A high self-esteem can reflect either a well-balanced and justified perception of the self and abilities, or it can reflect arrogant and grandiose feelings of superiority over others. On the other hand, a low self-esteem can reflect either an accurate perception of own shortcomings or a distorted, sometimes pathological insecurity or inferiority (Santrock, 2006:330). The researcher is of the opinion that the above highlights the complexity of not only self-esteem but also identity formation.

Culture also has a major impact on the value attached to a specific activity. For example, some cultures promote academic competitiveness and achievement, while other cultures place a stronger emphasis on sport achievement. Furthermore, gender stereotypes promoted in a culture or society will also impact a child's self-esteem. An example would be the emphasis placed on physical beauty as promoted through the media (Berk, 2009:458).

Parenting style can also impact self-esteem. A warm, accepting parenting style is conducive to a more positive self-esteem, whereas a controlling or overindulgent parenting style can lead to overachievement and disappointment or uncertainty about own capabilities, both of which are more conducive to poor self-esteem (Berk, 2009:458-459; Sigelman & Rider, 2006:296).

Just as the above aspects – family, peers, school and culture – influence self-esteem, they are also very influential in self-identity formation as discussed above (Berk,

2009:467-468). This again highlights the importance of considering each child holistically as well as understanding that each child's unique identity and self-esteem is the resultant impact of the child itself as well as the interaction between the child and its various systems.

Lewis (2009:17) notes that the relationship children have with themselves will largely determine the relationships they develop with others. Since relationships and social aspects play a large part in a child's formation of self-identity as well as self-esteem, the researcher will include a discussion of social development below.

2.9.2. Social development

During middle childhood, children are exposed to a much wider range of social learning situations, and this has a profound impact on their development. There are two aspects that are most influential during this time: interaction with family and interaction with peers (Louw & Louw, 2007:246).

2.9.2.1. Family

Due to role changes and an increase in time spent away from family participating in various social activities, middle-childhood children become gradually less dependent on their parents for assistance. Children become more independent and seek opportunities through which they can make their own life decisions and develop their own niche in life. As discussed above, comparison to others forms part of identity formation; similarly, children begin to compare various aspects of their family life with other children and will start questioning parental decisions (Louw & Louw, 2007:247,251).

Although children become less dependent on parents during this period, parents still play a crucial role, directly and indirectly, in the social development of their child (Lewis, 2009:17; Louw & Louw, 2007:250). Direct parental influence includes the type of home and neighbourhood in which parents chose to live as well as the school they send their children to. Since parents are also the main transmitters of both personal and cultural values and attitudes, they act as role models for their children. By allowing autonomy for their children while still providing boundaries, discipline, guidance and

support when necessary, parents allow for positive social development (Louw & Louw, 2007:250).

Effective discipline teaches children character, self-control, moral values and appropriate behaviour. Thus if used correctly, discipline is a powerful socialisation tool, especially in developing self-discipline (Louw & Louw, 2007:250).

Parents indirectly influence social development through the parent-child attachment as well as parenting style used. Research shows that positive parent-infant attachment positively impacts on a child's future peer competence. Furthermore, if a positive attachment is maintained through early childhood, a child is able to internalise these positive experiences and strategies and develop an internal working model for future relationships. Thus a positive parent-child attachment leads to successful future peer relationships, while negative attachment within the parent-child relationship will seriously compromise the success of future relationships.

In addition, sibling relationships can also be an important source of support during middle childhood. Two things should be noted: Firstly, despite siblings being a source of support, sibling rivalry does increase during this phase and can negatively impact on the middle-childhood child's development of self-identity. Secondly, research shows that siblings are not essential for healthy development and that only children are just as well adjusted as children who have siblings (Louw & Louw, 2007:256).

With reference to family interaction, Santrock (2006:343) also noted that when parents divorce and remarry, children can exhibit adjustment problems such as experiencing academic problems and displaying a lower self esteem. It ought to be noted, though, that these adjustment problems can be exacerbated due to the onset of puberty where development of identity, sexuality and autonomy takes place.

2.9.2.2. Peer relationships

As noted above, children in middle childhood experience an increase in social activity and spend more time at school and social activities involving other children who are similar in age and gender. School provides a new environment in which children are exposed to different norms and values, a different manner in which to relate to

authority figures and a more diverse range of friends and cultures (Prinsloo, Vorster & Sibaya, 1996:120). Peer groups during this phase tend to develop greater solidarity and cohesion, and the interactions within these relationships are what children use to practice and refine their social skills (Louw & Louw, 2007:257; Santrock, 2006:345).

According to Louw and Louw (2007:258) and Santrock (2006:346), the peer group:

- provides camaraderie, companionship and support,
- provides stimulation and opportunities to test new behaviour,
- facilitates the transfer of information and knowledge,
- teaches obedience to the rules and regulations of the group,
- reinforces gender roles,
- weakens the emotional bond between a child and its parent, and
- provides a platform from which children can compete with others on more equal ground.

From the above, it can be seen that peer groups are an important part of a child's social development, specifically in the middle-childhood phase. There are developmental advantages when children have friends who are socially skilled and supportive (Berndt, 2002:7). However, it is important to note that peer groups not only have a positive impact on a child's social development but can also have a negative influence. If a child is too reliant on the peer group, its development of independence and self-reliance is impaired. Furthermore, peer pressure can result in children engaging in risky behaviour, modelling poor social skills and unacceptable behaviour (Geldard & Geldard, 2008:263; Louw & Louw, 2007:258).

Berndt (2002:9) suggests that observational learning is enhanced within strong friendships. This is true for both positive and delinquent learnt behaviours: the stronger the bond between friends, the stronger the influence on learnt behaviour. A positive example is how a shy child can learn to become more confident if it has a strong bond with a friend that is sociable and confident (Berndt, 2002:9).

The media also plays a large part in the modern-day social development of children, and the unlimited access children have to television and the Internet can expose

children to anti-social behaviours much earlier than in the past and, as such, can enhance the development of similar anti-social behaviour (Louw & Louw, 2007:262).

It can be seen that there are many facets that impact on a child's social development. These facets and their impact should be taken into consideration when dealing with children in the context of children's court. Since morality has a direct impact on how the child perceives and relates to society, a detailed discussion on children's moral development will now follow.

2.10. Moral development

Moral development is defined as follows: "The process by which children learn the principles that enable them to judge behaviour in a particular society as good or bad and to direct their own behaviour in accordance with these principles" (Louw and Louw, 2007:267). The researcher will be discussing moral development from Piaget's point of view since he offers a more detailed explanation of moral development (Louw & Louw, 2007:267,268).

Piaget divides moral development into three stages, namely pre-moral, heteronomous morality and autonomous morality (Berk, 2009:492; Louw & Louw, 2007:268-269; Santrock, 2006:359; Sigelman & Rider, 2006:361). The pre-moral stage occurs between birth and five years. Children at this age are not yet able to understand rules and, as a result, cannot judge whether certain behaviours are wrong or right (Louw & Louw, 2007:268-269; Sigelman & Rider, 2006:361).

Heteronomous morality occurs between ages six and ten, and characteristic of this stage is a strict respect for rules and an almost blind obedience of said rules (Louw & Louw, 2007:268; Santrock, 2006:359). Sigelman and Rider (2006:361) explain heteronomous as being under the rule of another. Therefore, children in this stage of moral development generally show a respect for authority and believe that rules provided by a person in authority must be obeyed at all times. The child views this stage as exceedingly black and white: Behaviour is either right or wrong since they lack the ability to think that rules could be changed. Children in this stage will view misbehaviour solely by the end result rather than by the intention of the original action

(Berk, 2009:492; Louw & Louw, 2007:268-269; Santrock, 2006:359; Sigelman & Rider, 2006:361). It is important to remember that children at this age still utilise transductive reasoning, which results in faulty conclusions as a result of the linkage of two unrelated events in a cause-and-effect manner simply because they occurred close together in time or space (Louw & Louw, 2007:158; Sigelman & Rider, 2006:182). Consequently, a child can link misbehaviour to an unrelated event and incorrectly view the event as a punishable consequence of misbehaviour (Berk, 2009:492; Louw & Louw, 2007:268-269; Sigelman & Rider, 2006:361).

The last stage, autonomous morality, begins to develop around the age of ten or eleven, the age at which Piaget believed moral development is achieved (Berk, 2009:492; Louw & Louw, 2007:268-269; Sigelman & Rider, 2006:361). In this stage, the child begins to understand that rules are merely agreements between individuals or between society and individuals and can be challenged or even changed if the majority of the parties involved agree to the change. In this stage of moral development, the child will consider the intentions behind the end result of misbehaviour and judge the severity of the misbehaviour accordingly, thus highlighting the progression of cognitive ability (Berk, 2009:492; Louw & Louw, 2007:268-269; Santrock, 2006:359; Sigelman & Rider, 2006:361).

As previously discussed, children in early middle childhood still display aspects of egocentric thinking. As a result, they will have difficulty to generalise values and have limited development of a conscience. In late middle childhood, children are somewhat less egocentric and are, therefore, able to generalise values and understand that at times, right and wrong are not just black and white but can sometimes be flexible. Moral confusion can occur if a child is abused by an authority figure, thus possibly skewing a child's understanding of right and wrong (Lewis, 2002:17). Taking heed of this as well as the child's moral development in general is important in order to gain a professional understanding of a child's participation in children's court procedures.

2.11. Conclusion

Throughout this chapter, literature has highlighted the unique and serious impact abuse and neglect has on every child's development. Since the majority of children's court cases involve some form of neglect or abuse, it is imperative to acknowledge and take these influences into consideration when working with children within this context.

So much of who children are – their behaviour; personality; self knowledge; cognitive processes such as thinking, understanding and verbal and nonverbal expression; emotional understanding and expression; and social understanding and interaction – is inextricably linked to each child's unique developmental circumstances. As such, these circumstances and the invariable influence thereof on the child's development and ability should also be taken into consideration when working with children within the context of children's court. Only when this is done can children effectively participate in procedures that could have a lasting impact on their future.

3. Chapter Three

Legislation and the Implications

3.1. Introduction

As of 2010, the number of children living in South Africa is just in excess of 18.5 million (18 523 917). This constitutes nearly 40% of South Africa's population. Over six million children are currently living in poverty, and of the 16.5 million beneficiaries of social grants in South Africa, 74% (roughly 12 million) are children (Hall, 2012a).

The number of children's court cases opened during 2011/12 totalled 85 187. For 2012/13, this figure, up to and including July 2013, is already nearing the 2011/12 figures with 71 129 cases having been opened. When taking into consideration that this figure is not yet the final one, such high numbers are a cause for concern and show a definite and steady increase in the number of children's court cases being heard throughout South Africa. Already the number of children found to be in need of care and protection in 2012/13 stands on 66 000 (Department of Justice, children's court matters 2012 & 2013). Between 2005 and 2009, half-a-million (569 000) children were placed in foster care and are receiving foster care grants. This figure excludes those children who are in foster care and do not receive a grant (Hall 2012b; Meintjes & Hall, 2012; Hall, 2010; National Budget Review, 2013).

These statistics highlight the dire reality children are currently facing in South Africa. Furthermore, the figures mentioned above underscore the indisputable need to ensure that children's rights within the children's court process are safeguarded. This requires that all professionals involved have an adequate understanding of all the relevant laws and related policies as well as insight into child development and communication, be it verbal or nonverbal. It is also important that this understanding is correctly implemented and applied within the children's court process. At the heart of this understanding and implementation is upholding the best interest of the child as well as protecting each child's right to participate effectively during the entire process.

Due to the importance of the rights mentioned above, the relevant laws and policies as well as their implications will be discussed. Furthermore, the appropriate involvement and responsibilities as well as the shortcomings of the main role players within the children's court process, including the children, will be discussed in detail.

3.2. Key concepts

- **Best-interest standard**

Since this research study is based on procedures of and surrounding children's court, the researcher will be utilising the best-interest standard as provided in Section 7 of the Children's Act 38 of 2005:

7. (1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely -
- (a) the nature of the personal relationship between -
 - (i) the child and the parents, or any specific parent; and
 - (ii) the child and any other care-giver or person relevant in those circumstances;
 - (b) the attitude of the parents, or any specific parent, towards -
 - (i) the child; and
 - (ii) the exercise of parental responsibilities and rights in respect of the child;
 - (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
 - (d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from -
 - (i) both or either of the parents; or
 - (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;
 - (e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
 - (f) the need for the child -
 - (i) to remain in the care of his or her parent, family and extended family; and
 - (ii) to maintain a connection with his or her family extended family, culture or tradition;
 - (g) the child's-
 - (i) age, maturity and stage of development;
 - (ii) gender;
 - (iii) background; and

- (iv) any other relevant characteristics of the child;
- (h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
- (i) any disability that a child may have;
- (j) any chronic illness from which a child may suffer;
- (k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
- (l) the need to protect the child from any physical or psychological harm that may be caused by-
 - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- (m) any family violence involving the child or a family member of the child; and
- (n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

(2) In this section '**parent**' includes any person who has parental responsibilities and rights in respect of a child.

- **Participation**

The *Cambridge Advanced Learner's Dictionary* (2008:1035) defines participation as an individual taking part in or becoming involved in something.

Within the context of the United Nations Convention on the Rights of the Child, participation refers not only to children's rights to express their opinion in matters that affect them but also to have these opinions heard in an age-appropriate manner. In other words, children should not be expected to express their opinions in a manner utilised by adults through direct speech (Rosa & Dutschke, 2006:232).

Chawla (2001:2) provides a more comprehensive definition particularly relevant to participation in children's court procedures:

Participation is a process in which children and youth engage with other people around issues that concern their individual ... life conditions. Participants interact in ways that respect each other's dignity, with the intention of achieving a shared goal. In the process, the child experiences itself as playing a useful role.

3.3. Legislation and protocols

South Africa has shown great progress in recognising the rights of children (Rosa & Dutschke, 2006:224). Various achievements include:

- the adoption of a child-sensitive Constitution;
- the ratification of the United Nations Convention on the Rights of the Child, henceforth referred to as UNCRC, in 1994;
- the African Charter on the Rights and Welfare of the Child, henceforth referred to as the African Charter, in 2000; and
- the ratification of the Children’s Act 38 of 2005 in April 2010.

(Africa et al., 2003:122; Matthias & Zaal, 2010:528; Ratification table ..., 2013; Rosa & Dutschke, 2006:224).

From the above, it is evident that South Africa has made a concerted effort, since the abolishment of apartheid, to ensure the protection of the rights of all children. Some aspects in the relevant legislation and protocols do correspond, namely the right of expression and participation and the best interest of the child. These aspects will be discussed in greater detail below, as they apply to children's experiences of children's court procedures.

3.3.1. Expression and participation

Section 16(b) of the Bill of Rights specifies that all people, including children, have the right to freedom of expression, which includes the freedom to receive and impart information or ideas. Section 32(1) adds that every person has the right of access to information “required for the exercise or protection of any rights” (Constitution of the Republic of South Africa, 16th amendment, Act 1 of 2009).

Correspondingly, Section 10 of the Children’s Act 38 of 2005, Article 12 and 13 of the UNCRC and Article 7 of the African Charter all recognise children’s rights to receive age-appropriate information and express their views regarding anything that affects them (African Charter ..., 2009; Children’s Act 38 of 2005; UNICEF, [sa]). Providing age-appropriate information definitely has a bearing on the various procedures in and surrounding children’s court and can include providing age-appropriate information about:

- children’s court procedures, what the child can expect from proceedings and the court’s responsibility to act in the best interest of the child;
- the rights, roles and responsibilities of all parties involved in the court proceedings, specifically those concerning the child;
- children’s rights to express their views and preferences regarding any decision made in terms of children’s court procedures;
- the potential consequences of children expressing their preferences; and
- the fact that children’s views and preferences are not deciding factors and the court is not bound by the preference of the child, specifically when their best interests seemingly lay elsewhere.

(Mahlobogwane, 2010:242,244,245,246; Taylor et al., 2007:74-75).

According to Section 61(1)(a) of the Children’s Act 38 of 2005,

the presiding officer in a matter before a children’s court must – allow a child involved in the matter to express a view and preference in the matter if the court finds that the child, given the child’s age, maturity and stage of development and any special needs that the child may have, is able to participate in the proceedings and the child chooses to do so.

Furthermore, provided that it is in the child’s best interest, Section 61 makes provision for a presiding officer to intervene in questioning or cross examining a child, appointing an intermediary through whom a child is questioned as well as making an order stating that proceedings, or specific matters within the proceedings, are conducted in the absence of the child.

If the above, at a minimum, is not provided to a child during children’s court procedures, its rights in terms of Section 16(b) and 32(1) of the Constitution are violated, and the best interest of that child will be compromised. However, and particularly with reference to Article 12 of the UNCRC, Fortin (2009:236) emphasises that what is at stake here is “consultation and participation, not... self-determination”.

In sum, although the final decision rests with the court, a child ought to be afforded the opportunity to be heard during the court proceedings.

3.3.2. Best interest of the child

Section 9 of the Constitution explicitly states that all people, including children, have *equal* rights before the law and *cannot be discriminated* against directly or indirectly due to, amongst other things, their age (Constitution of the Republic of South Africa, 16th amendment, Act 1 of 2009).

As an integral part of the Constitution, Section 28(2) of the Bill of Rights adds to the above by stating, “a child’s best interest is of paramount importance in every matter concerning the child” (Constitution of the Republic of South Africa, 16th amendment, Act 1 of 2009). Correspondingly, Section 9 of the Children’s Act 38 of 2005 expounds on the afore-going by specifying that the child’s best interest should be sought in all matters concerning its care, protection and wellbeing. This is again reiterated in Article 4 of both the UNCRC and the African Charter which states that the child’s best interests should be of primary consideration in any situation affecting the child (African Charter ..., 2009; UNICEF, [sa]).

As discussed by Heaton (2009:4), ‘paramount importance’, as specified in the Constitution and the Children’s Act, signifies that the child’s best interests are more important than or superior to anything else. In a similar vein, ‘primary consideration’, as stipulated in the UNCRC and the African Charter, refers to the child’s best interests as being of principle or first-ranking importance. A crucial difference here is that South African law views the child’s best interest as the “supreme issue in any matter concerning the child” (Heaton, 2009:4). However, it should be noted that the Constitutional Court of South Africa has made it clear on several occasions that the ‘paramount principle’ should be approached in a manner that does not unduly infringe upon or violate other constitutional rights by proportionately counterbalancing competing interests (Heaton, 2009:4-5).

Although not exhaustive, it is evident from the definition of this key concept definition that the best-interest standard is comprehensive and attempts to highlight every aspect of children’s lives that should be considered when making decisions regarding their future. The researcher is of the opinion that by highlighting these aspects, the professionals involved in children’s court proceedings are obliged to view children holistically. In this way, children’s best interests ought to remain central to any

decision-making process concerning children and their future. The implications of the best-interest standard will be discussed below under heading 4.1.

From the above, it seems that South African legislation, as it relates to children and this study, have effectively integrated the salient sections of the UNCRC and the African Charter as discussed above.

3.3.3. Main role players

Any concerned party, including the child itself, can bring a matter before the children's court. Furthermore, children's court can adjudicate any matter concerning a child. This includes, but is not restricted to, the protection and care of a child (Children's Act 38 of 2005). The main role players involved in children's court proceedings are social workers, lawyers, presiding officers, and the child.

3.3.3.1. Social workers

The Children's Act 38 of 2005 provides for a designated social worker to be appointed in order to investigate and report holistically on all the various systems of the child involved. The social worker will then make recommendations in terms of Section 46 and 156 regarding the child's continued care as well as measures to be taken that can assist the child and its family. Section 155(2) states that a social worker has 90 days in which to conduct said investigation and to provide feedback in the form of a Form 38 report to the children's court.

Form 38 provides a detailed description of all the various systems of the child, including family background, financial means, family relationships and interactions, physical and psychological health, and environmental, religious and socio-cultural aspects relating to the biological parents, potential foster parents as well as the child. Also included is a discussion of previous interventions provided to the child and/or its family as well as a permanency plan should the child be removed from parental care. A permanency plan indicates how a child will maintain relationships with its family or community.

Of crucial importance for this study, part of Form 38 details the child's views of past, present and future care in terms of its emotions, preferences and personal needs and any observations made by the child. Since children have a constitutional right to access

information, the social worker must show, read, discuss and, if necessary, explain the contents of this report to the child before going to court (Children's Act 38 of 2005). The researcher is of the opinion that if a child is clearly informed about the contents of the social worker's report, the child will be better equipped to participate in children's court proceedings effectively.

3.3.3.2. Lawyers

According to Section 29(6)(a) and Section 55(1) of the Children's Act 38 of 2005, the court may appoint a legal practitioner from the Legal Aid Board to represent a child during children's court proceedings. This may be done if the child involved in the matter does not already have legal representation and the court finds it is in the child's best interest to be legally represented.

The child's lawyer has a vital role in ensuring that the child has the information and support it requires in order to understand and participate effectively in the legal system as a unique human being (Copen, 2000:95; Tapp, 2006:74).

3.3.3.3. Presiding officers

In terms of Section 42 of the Children's Act 38 of 2005, every magistrate in a magistrate's court is a presiding officer of children's court. A presiding officer's functions include but are not restricted to:

- hearing matters brought before the children's court;
- ordering a social worker or any other person to conduct an investigation into the child's life which will assist the court in deciding on a matter; and
- making any order in a matter brought before the court that is in the child's best interest and that will ensure the safety of the child.

The end result of children's court proceedings is that the presiding officer will determine whether or not a child is in need of care and protection. In order to do so, the presiding officer will refer to the social worker's report, any other report provided by a professional involved in the case as well as testimony from any relevant party, including the child (Children's Act 38 of 2005). It should be noted, though, that the court is not bound by the recommendations any professional feels obliged to make in his/her report (Mahlobogwane, 2010:239).

Should the designated social worker recommend that the child is in need of care and protection, the presiding officer will determine any further action to be taken in the case, such as further investigation or assessment, and/or make an appropriate order. If after said action the presiding officer determines that a child is, in fact, *not* in need of care and protection, he/she could make any order in terms of Section 46 of the Children's Act that could improve the child's wellbeing. Alternatively, if following on such action the child is indeed found to be in need of care and protection, the presiding officer can make any order in terms of either or both Section 46 and 156 (Children's Act 38 of 2005).

The various orders available to the presiding officer have increased and diversified significantly compared to previous legislation dealing with children. In an informal discussion with a presiding officer, the researcher took note that this increase in and diversification of orders has expanded the presiding officer's authority and ability to 'tailor' an order specific to a child's unique development and context (De Bruin, 2013). Consequently, the researcher is of the opinion that if utilised correctly, this diversification will afford presiding officers the opportunity to not only ensure a child's best interest is upheld but also to empower a child.

3.3.3.4. The child

In terms of the Children's Act 38 of 2005, children have various rights. These include, but are not restricted to, respect for their dignity and protection from any form of maltreatment. Likewise, depending on the child's age and maturity, the child has the right to age-appropriate participation and access to information. Most importantly, every child has the right to bring and/or be assisted in bringing a matter before a children's court, provided the matter falls under the jurisdiction of the children's court (Prilleltensky, Nelson & Peirson, 2001:153-154).

The implications of the various legislation and protocols pointed out above will be discussed below.

3.4. Implications of legislation

The preceding discussion highlighted the central role of children's rights within South African legislation and policies as well as an increase in awareness regarding the importance of protecting these rights. These laws and policies are relatively new and constitute a definite shift in how children are viewed as well as their place in society.

In short, in terms of the law, children are no longer viewed as passive victims of parental and adult disputes (Diduck, 2003:80; Kaganas & Diduck, 2004:961). Rather, children are now active rights-holders. Thus children are acknowledged as autonomous individuals who have the right to information and participation in all aspects that significantly affect them (Children's Act 38 of 2005; James, 2003:145).

Many authors (Bilson & White, 2005:236; Block et al., 2010:668; Kelly, 2002:162; Sheehan, 2003:29; Tapp, 2006:38; Taylor et al., 2007:78; Warshak, 2003:373) regard participation and best interests as being inseparable, stating that if a child is not permitted to participate, its best interests are not being met. Then, too, some of the main role players in children's court proceedings may have a significant impact on the outcome.

Thus, in the researcher's opinion, a discussion of the child's best interest, as defined by law, is warranted. Secondly, since the literature is unambiguous about the fact that children are entitled to uphold and express their rights and, as a consequence, should be afforded the opportunity to partake in children's court procedures freely, all external factors with the potential to prevent a child from doing so ought to be investigated. Consequently, the role fulfilled by those officiating in children's court will be scrutinised too in as far as legal adherence is concerned.

3.4.1. Best interests of the child

Section 6(2)(a) of the Children's Act 38 of 2005 states that "all proceedings, actions or decisions in a matter concerning a child must respect, protect, promote and fulfil the child's rights" as set out in the Bill of Rights, the best-interest standard provided for in Section 7 of the Children's Act as well as any other rights and principles set out in said act. Dausab (2009:147) states that the best interests of the child boils down to "considering the child before a decision affecting his/her life is made." In the

researcher's opinion, this explanation by Dausab summarises the concept 'child's best interest' in both a simple and concise manner.

When determining the child's best interest, though, several authors (Barrie, 2011:126; Dausab, 2009:148,156; Mahlobogwane, 2010:246) hold that the courts should always remain flexible in their approach towards and the standard they apply in determining such interests. Since each child is unique, varying aspects and circumstances ought to be emphasised at different times. The judges in the Constitutional Court case *S v M* (2008:248) also advocated that the best-interest standard should be flexible, since such flexibility allows for each child's unique characteristics and circumstances to determine the factors that will secure the best interests of that particular child.

Often during court proceedings, judgments are made as to whether or not children's wishes and views regarding their future are really in their own best interest or not (Bilson & White, 2005:203). Furthermore, the authors (Bilson & White, 2005:236) found that in court settings, "the views of children are generally a secondary consideration to adult views of their best interests".

In this regard, several authors (Barrie, 2011:126; Erasmus, 2010:128; Heaton, 2009:115) suggest that a more individualised, contextualised and child-centred approach should be employed when determining a child's best interest. They hold that the way each factor will have a unique impact on the child ought to be determined by following an individualised and contextualised evaluation process (Barrie, 2011:127; Heaton, 2009:15). In this way, the possibility of a child's best interest being manipulated by a powerful and potentially subjective adult can be avoided (Heaton, 2009:8). Likewise, adhering to this process will ensure that the child's rights are more fully realised (Bilson & White, 2005:236). Furthermore, Erasmus (2010:135) cautions that a child's best interest should not be misused for the benefit of the adult parties bringing the matter to court.

In research conducted amongst professionals involved in children's court proceedings, Zaal (2003:168,183) found that, often, even well-intentioned lawyers and social workers presuppose that it is more important to inform the court of what *they* believe to be in the child's best interest than effectively assisting the child to express his or her

views in person. Sheehan (2005:29) confirms this finding by noting that the legal process often revolves around the participating adults' views regarding the child's best interest. Consequently, Prinsloo (2008:62) emphasises, in addition to being sensitive, professionals involved in children's court proceedings should also not only possess but also be able to impart specialist knowledge in order to ensure that children's rights are respected and enforced during such proceedings.

On the importance of children being 'seen' and their opinions being considered when determining their best interest, Grosman and Scherman (2005:557) remarked that when listening to children, the court should not only ascertain their needs, difficulties and views but also consider each child's personality. In so doing, every child's rights to due process will be preserved. To support their argument, the authors proposed three possible avenues to ensure children's rights are preserved:

- Firstly, the child should receive age-appropriate information regarding the significance of its expressed opinion.
- Secondly, children should be interviewed in a child-friendly environment that will reduce anxiety. Furthermore, these interviews should be conducted privately and in an informal, child-friendly manner in order to preserve privacy.
- Thirdly, specialists should be appointed to assess and interpret the child's communication, since proper understanding of a child's communication is crucial in order to identify a child's views and needs accurately.

Taylor et al. (2007:78) supports this notion, stating that in order to guarantee that a child's best interests are met, the court must ensure that it evaluates the context within which the child expresses its views, thereby facilitating an understanding of the true message communicated by the child from its perspective. Most importantly, chances are in adhering to this principle, the presiding officer will be afforded the best possible opportunity to comprehend what lies behind the child's expressed views (Tapp, 2006:73).

In the opinion of Munro (2001:134), "acting in the child's best interest is not just a question of good intention but also of knowledge" – warranting the question "what is in the best interest of the child in a particular circumstance?" In analysing various cases, Barrie (2011:127) noted that the best interests of children vary greatly and are

dependent upon specific facts unique to each case. Mahlobogwane (2010:233) also notes that the best interests of a child are unlikely to be determined with absolute certainty, highlighting that when determining the best interest of the child, and where maturity allows, a child's views and preferences ought to be considered in all earnest and should not simply be disregarded without first conducting a proper investigation into and offering a reasonable explanation to the child as to why these preferences would not be suitable (Barrie, 2011:128,134; Grosman & Scherman, 2005:557).

Of particular interest here, Africa et al. (2003:141) note that in a traumatic situation – often not of a child's making and resulting in court proceedings – the proper way to serve the best interest of the child is to ensure that the child's rights form the focal point in the decision-making process. The researcher fully agrees with this observation. To follow, the child's role in expression and participation in as far as ensuring that its rights remain at the heart of procedures in children's court will be discussed in detail.

3.4.2. Child expressions and participation

Commenting on Article 12 of the UNCRC – granting children their wishes – Fortin (2009:240) remarked:

Parents and professionals alike should remember that children could probably give them an extremely clear and insightful account of their own needs, if adults took the trouble to ask. Indeed, a greater appreciation of the aims of Article 12 of the CRC might persuade them to do so. Children's wishes are often disregarded by adults who consider that they know what these wishes will be, without any consultation

Taylor et al. (2007:71), too, contends that if children are truly to be allowed to partake in court procedures and, as a result, to realise their own best interests, such participation ought not to be clouded by professionals forming their own impressions of children's views, nor should a decision on the child's best interest be hampered by said professional's own values and beliefs. James (2003:145) confirms this tendency towards incorrect conduct by adults when stating that “rather than acknowledging an individual child's experience, agency and personhood, what is offered is an adult construction of what is in the best interests of the child that is rooted in adult concepts defining nature of childhood”. Fortin (2009:291), too, supports the argument that what

is currently expected of courts is to achieve results consistent with adult notions of children's best interests, irrespective of whether these results reflect the child's wishes.

As discussed above, under the UNCRC, African Charter, Constitution and Children's Act, children have the right to be heard on matters that affect them. Therefore, in all cases, their views and wishes ought to be appropriately investigated and noted with detailed notes on these investigations being contained in the report presented to court. However, the developmental level of the child as well as the consequences for the child actually voicing its views within a context of elevated conflict and emotional vulnerability should always be taken into consideration (Africa et al., 2003:141). Consequently, children's involvement in children's court proceedings should always be conducted in a sensitive manner, a manner that takes into account such factors as the degree of conflict, the clarity or ambiguity of the child's preferences and the child's overall development (Bala, Talwar & Harris, 2005:224; Mahlobogwane, 2010:246).

Although various authors advocate the need to allow children to express their views and preferences, the researcher will only focus on two main motivations to do so. Firstly, children are remarkably perceptive as to what happens around them. As such, they are able to provide a unique perspective on their situation which, combined with other factors, may assist the court to arrive at a decision (Bala et al., 2005:224; Fortin, 2009:291; Mahlobogwane, 2010:244; Parkinson, 2006:484; Smart, Neale & Wade, 2001:73-74; Wade & Smart, 2002:22). Secondly, decisions made regarding a child's future can have enormous repercussions for the child concerned: After all, the child will have to live with the court's decision, a decision which could have a perpetuating negative impact even into adulthood (Barratt, 2003:156; Lefevre, 2010:11; Mahlobogwane, 2010:232,233,246).

In addition, the researcher is of the opinion that children ought to be afforded more than one opportunity to express their views simply because, initially, they may wish to withhold their views or, at a later stage, to express those views within a different context, depending on how matters proceed in court (Taylor et al., 2007:75). Simply put, as observed by Day Sclater and Piper (2001:427), no hard-and-fast rules should apply to children who wish to and actually do partake in the decision-making process. All things considered, these children simply cannot be treated as a homogenous group.

Research conducted by Butler, Scanlan, Robinson, Douglas and Murch (2003:203) confirms that it is not only desirable but also feasible to consult with children when decisions about their future are being made. According to their findings, even children as young as five are able to contribute positively to this process. Merely allowing expression, though, may not be adequate since it is equally important to have professionals on hand who have the knowledge and expertise to understand children. Such an understanding should not only encompass insight into the child's communication – be it verbal or nonverbal – but also the child's development and the impact trauma and environmental factors may have had on the child's resultant ability to communicate (Lefevre, 2010:15).

Oftentimes, professionals base their assumptions and perceptions regarding a child on the child's ability to participate in the decision-making process, irrespective of what that decision/process may involve (Leeson, 2007:268). Children, however, often convey their feelings, intentions and experiences through play, metaphor, body language and other behaviours rather than directly through formal language (Lefevre, 2010:17). In effect, when children are being asked to participate solely by means of formal language, they are not afforded the opportunity to display their full competence and, consequently, could be viewed as incompetent (Thomas & O'Kane, 2000:831). Yet another reason why a more flexible and tolerant approach ought to be followed when communicating with children.

In following such an approach, the professionals concerned ought to be able to understand the child's point of view as well as to find the best way to communicate with that particular child. In so doing, the child will be able to voice its opinion in a manner which all concerned parties, specifically legal professionals, find not only comfortable but, hopefully, more comprehensible and of greater value. In sum, as Thomas and O'Kane (2000:828-832) noted: Adults need to adapt to children and their skills not the other way round. To add to this notion, Barratt (2003:154) notes that the decision-making process should be designed in such a manner that it will enhance children's capacity to make decisions and aid the development of their autonomy. Nonetheless, as will be evident from the discussion to follow, the court often assigns

varying weights to children's views and opinions in its attempts to arrive at a reasonable decision.

In this regard, Mahlobogwane (2010:232) discusses the importance of acknowledging and noting the views and feelings of the child concerned regarding anything that could affect the child directly or indirectly. According to Mahlobogwane, the weight assigned to these preferences and feelings should be determined on a case-by-case basis.

Moreover, since children have varying levels of competence at different stages in their development, assigning such weights ought to be unique to every case. The factors that may affect the weight accorded to a child's views and preferences are, correspondingly, varied. These factors include, but are not limited to, the child's unique context, perceived maturity, capacity for understanding and making rational decisions based on reality, cognitive and emotional developmental level exhibited at the time, relationship with caregivers, vulnerability to parental/external pressures and perceived validity and consequences of its views and preferences (Mahlobogwane, 2010:236,243,244; Todres, Wojcik & Revaz, 2006:138).

When determining a child's reliability to testify, Barrie (2011:129) cautions that cognisance should be taken of the trustworthiness of the child's statements, its powers of observation, its ability to narrate and its capacity to understand the questions being asked as well as the child's ability to express an intelligent answer in response. As such, it can be seen that determining a child's competence requires the use of professionals who have undergone appropriate training and have the ability to determine and convey a child's competence correctly (Barratt, 2003:154). This is confirmed by Schofield (1998:365) who stated that children 'in crisis' can express views and wishes incompatible with what both the child and the professional know to be the child's reality. According to Schofield, though, this should in no form or fashion imply that the child's views and wishes should be disregarded. He did, however, concur that the "process of ascertaining, understanding and determining the weight to be attached to children's wishes and feelings is more problematic than it may appear from the simple words of the Act".

As a means of determining a child's views and preferences, Taylor et al. (2007:72) and Mahlobogwane (2010:237) did note, though, that it would not be appropriate to utilise the social worker's report as a single reference only. Rather, they suggest that children's legal representation and the presiding officer should also interview the children. In addition, Mahlobogwane (2010:237-8) discusses the various ways in which a child can participate within the South African children's court system. The child does this by way of professional reports, judicial interviews and direct participation during court proceedings.

- **Professional reports**

Taylor et al. (2007:76) notes that special skills are required in order to facilitate and understand a child's communication, specifically when "the child is preverbal ... or has been subjected to trauma or pressure within the family". Furthermore, children's views can be expressed in a variety of manners, creating the need for a range of mechanisms to be utilised in order for children to express their views and be understood correctly (Taylor et al., 2007:74).

One such mechanism is reports submitted by professionals following on expert observations regarding the child's intonations, body language and capacity to understand and participate in the proceedings. Since these reports play a crucial role in finding a balance between the child's expressed views/wishes and its best interests (Taylor et al., 2007:78), Nicholson (2003:6) argues that the ability of professionals to convey their findings succinctly to the court will be crucial in upholding the child in question's best interest. It therefore goes without saying that such professionals ought to be skilled in interviewing children in a child-friendly manner and environment and have the ability to take cognisance of every child's unique personality and level of development.

- **Judicial interviews**

Mahlobogwane (2010:240) and Atwood (2003:633) discuss how legislation directs the presiding officer to consider the child's views and preferences. However, the law does not indicate that the presiding officer is under any obligation to interview the child in chambers.

On the subject of interviews conducted in chamber, though, several authors (Kelly, 2002:153-154; Abella, Heureux-Dubé & Rothman, as quoted in Mahlobogwane, 2010:240) remarked on the advantages and disadvantages associated with interviewing children in chambers. Seemingly, the biggest advantage is that such an interview affords the presiding officer the opportunity to interact directly with the child and to ascertain for him/herself the child's views and preferences.

Following this practice, though, have several pitfalls too, as will be discussed next:

- Firstly, the interview is conducted in an intimidating environment which can be inherently stressful for the child.
- Secondly, the interview is seldom confidential, which could result in the child experiencing an intense conflict of loyalty, feelings of guilt and fear of retribution; furthermore, the possibility that the parent-child relationship may be impaired as a result should not be overruled.
- Thirdly, presiding officers lack the skills required to ask questions and interpret the answers of children. This is partially due to their lack of knowledge regarding the developmental differences in cognitive, language and emotional capacities of children. As a result, presiding officers are rarely able to place children's responses in an appropriate context in order to assess the weight that should be assigned to their views and preferences within the decision-making process.
- Fourthly, the time available for such interviews is not sufficient for in-depth exploration in order to explain, justify and represent a child's views and preferences adequately.
- Lastly, the interview may be perceived as a contravention of the presiding officer's impartiality in the case.

For these reasons, in the researcher's opinion, interacting with the presiding officer during a judicial interview may not necessarily be in the child's best interest.

- **Direct participation**

In South Africa, children's court cases are, according to Section 42(8) of the Children's Act 38 of 2005, legally required to take place in a room not ordinarily used for criminal trials but in a room furnished and designed so as to place the child at ease: A room that

is conducive to the informality of proceedings as well as the active participation of all parties involved, without compromising the prestige of the court. Copen (2000:106) in particular stresses that court personnel should assist in creating an atmosphere conducive to child honesty when testifying in court.

However, despite the court proceedings being more informal, it can be very stressful if children have to express their views openly during proceedings with their parents and/or guardians present in court, particularly if proceedings are adversarial in nature (Mahlobogwane, 2010:241,2). This could, as is the case with judicial interviews, result in the child experiencing intense loyalty conflict, feelings of guilt and fear of retribution as well as the possibility of a compromised parent-child relationship (Kelly, 2002:154).

With reference to the type of court proceedings being followed, McCoy and Keen (2009:189) note that two types seem to prevail:

- the adversarial system where cross-examination is used to challenge and discredit opposing witnesses – this system was designed exclusively for use with adult witnesses; and
- the inquisitorial system where the court’s role to discern the truth by gathering information is emphasised – this system relies on lay witnesses and experts being questioned and is inherently more child-friendly in nature.

Based on the researcher’s experience, children’s court is mainly inquisitorial in nature. It can, however, incorporate elements of the adversarial system, depending on the case, specifically when lawyers are involved. These adversarial elements can be very frightening and overwhelming for children who do not understand the aggressive nature of the adversarial system (McCoy & Keen, 2009:189).

3.4.3. Main role players

The Children’s Act 38 of 2005 makes provision for a variety of professional role players to be involved in children’s court cases, thus reflecting the interdisciplinary nature of these cases (Copen, 2000:95). Both case law and research have revealed that children choose to disclose their most important feelings to different people within this system (Tapp, 2006:73). Therefore, in order for children’s best interests to be met, it is crucial that all professional parties cooperate and act responsibly when involved in children’s court cases (Copen, 2000:96; Sheehan, 2005:29).

Professionals should also be aware of parental pressure, be it conscious or unconscious, on a child to express a particular view. Part of ensuring children's views are their own is to understand the context within which the expression took place (Tapp, 2006:73; Taylor et al., 2007:78). A child-centred approach is also required in order to involve children effectively and to ensure that their best interests are attained (Barrie, 2011:126; Erasmus, 2010:128; Heaton, 2009:1, 15). The respective role players namely social workers, lawyers, presiding officers and the child will now be discussed.

3.4.3.1. Social workers

As was noted in section 3.3.1, social workers are assigned to investigate children and their circumstances holistically and to then provide feedback to the children's court in this regard. Tapp (2006:73) remarks that a child's views are not formed or expressed within a vacuum. As such, social workers and/or psychologists, who are trained in various areas of child development, are equipped to understand, interpret and convey a child's wishes (Leeson, 2007:270; Mahlobogwane, 2010:238).

However, the reality in practice is that social workers have extremely high caseloads and a shortage of resources. As such, they are not always able to finalise investigations within the 90 days stipulated in the Children's Act 38 of 2005. This leads to postponements in children's court and subsequent delays in the finalisation of cases, which may not be in the child's best interest (Denge, 2004:7; Zaal, 2010:402).

Furthermore, truly listening to children and understanding their worlds, wishes and feelings require a trusting relationship, which takes time to develop. Again due to high workloads, time is often not a luxury available to social workers. This can have a negative impact on the quality of information attained and provided by the social worker to the court, which in turn can compromise the best interest of the child (Leeson, 2007:269; McLeod, 2007:278,285; Tapp, 2006:47). Research conducted by McLeod in 2001 revealed that although social workers believed that they were listening to children and could even describe their efforts in detail, the children still felt that they had not been heard (McLeod, 2007:280). Clark and Statham (2005:54) mention one of the challenges adults, professionals included, are faced with is to find

new and sensitive ways in which to engage and communicate with younger children. Tapp (2006:47) effectively summarises the all-encompassing nature of a child's right of expression:

It is a necessary correlative of the right to express views, and to have those views taken into account, that those to whom the views are expressed have the ability to "listen" to the child. "Listening" involves both understanding what the child is communicating from the child's perspective, and conveying to the child that they will be heard and their views respected. If this does not occur, the child may lose trust and cease to attempt to communicate.

Research conducted by Leeson (2007:272) showed that children who were not allowed to participate in the decision-making process experienced feelings of helplessness, frustration and detachment as well as a sense of a lack of identity. Children who partook in the research highlighted their need for:

- clear and complete information, understanding and support from their social worker;
- recognition from important adults regarding their competency to make decisions;
- being treated as a competent person;
- a genuine sharing of power between child and social worker; and
- improved retention of social workers

(Leeson, 2007:273; Munro, 2001:131).

The attributes of social workers most valued by the children in the study were transparency, honesty and a sense of co-construction (Leeson, 2007:275).

Leeson (2007:275) notes that professionals seem to expect children to prove their ability to make decisions before actually allowing them the right to do so. However, this appears to lead to a perpetuating circle of non-participation. One of the participants in this study stated: "We need real choices, we need time to think and we need people who are prepared to listen and help."

Despite the training social workers and other court professionals undergo, their own personal frame of reference can interfere, especially if they believe that they know what is in the child's best interest. This can result in a serious barrier to effective

listening to and allowing the child to participate in children's court. This occurs when "adults do not really want to hear what children have to say" (McLeod, 2007:285).

3.4.3.2. Lawyers

All lawyers, but specifically the child's lawyer, have a vital role in "ensuring that the child and the parents have the information and support they require to understand and participate in the system as unique human beings" (Tapp, 2006:74). As was indicated in section 3.3.2, the Children's Act 38 of 2005 makes provision for the appointment of a legal practitioner to represent a child. With reference to the UNCRC, Taylor et al. (2007:71) highlight that children have the right to be provided with an opportunity to be heard, to be represented capably by a skilled lawyer as well as to be treated with the same respect as adult clients would. However, having said that, legal representation within a children's court context can be complicated.

The roles and responsibilities of lawyers are extensive, and their influence in a case is prominent. However, lawyers sometimes fail to appreciate the effects of abuse and the subsequent negative systemic impact these effects have on children (Copen, 2000:95). A research study showed, whereas 29% of lawyers were of the opinion that they had clarity about their role in representing children, as many as 71% felt that they were unclear about their roles (Taylor et al., 2007:71). When taking into consideration the influence a lawyer has within a case, as found by Copen, these findings are cause for great concern. The researcher believes that these results can be ascribed to the difficulty of finding a balance between the dynamics of a true client-lawyer relationship and the best interest of the child. This dynamic is further explained by Taylor et al. (2007:75):

The lawyer for the child ... has a responsibility to ensure the Court is provided with the information required to base its decision on the welfare and best interests of the child. This can create a conflict of duty for the lawyer where the child has sufficient understanding of the process to express a choice between the options before the Court, but the lawyer considers the child's choice would be contrary to the child's welfare [best interests].

As inferred, children usually participate via their lawyers; however, research conducted by Sheehan (2003:37) showed that it seemed to be taken for granted that children are able to give instructions to their lawyers. Furthermore, it was assumed that children were confident enough to question or dispute how their lawyer interprets

and conveys their views and preferences to the court. The researcher is of the opinion that this oversight could impact children's rights of participation and their best interests negatively.

From professional experience, as a social worker conducting statutory work whilst employed at a non-governmental organisation in Gauteng during 2011, the researcher has noted that the children are expected to inform the court-appointed lawyer of their opinions or preferences regarding important, often very personal, information; information which is likely to impact their lives significantly. Furthermore, children may have to share this personal information in the often clinical environment of a court office or corridor, having in all probability never met with the lawyer who is to present their case before the day of going to court (Copen, 2000:5; Mahlobogwane, 2010:240).

As already discussed, in order for a child's best interests to be maintained, the child's specific circumstances must be considered. This requires the development of a trusting relationship and rapport between the child and lawyer in order for the child to feel confident and safe enough to disclose what it is really thinking and feeling (Copen, 2000:59; Taylor et al., 2007:71). Taylor et al. (2007:75) point out that lawyers require time, training, experience and empathy in order to develop a trusting relationship with the child, to reinforce the child's understanding of the current situation and to assist the child to express its views effectively. In the absence of a trusting relationship, it is not reasonable to expect the child to confide its wants and needs to the lawyer (Grabhorn et al., 2005:478).

To cite a practical example based on the researcher's experience and supported by literature: Although the lawyer may discuss with the child which decision/outcome regarding its care would be preferred, when the child experiences the children's court procedures negatively, there is a likelihood that it will not confide its true views and preferences to the lawyer. Oftentimes, this results in the child telling the lawyer a lie that will satisfy the latter or coming up with an explanation as instructed by a significant other in the child's life (Block et al., 2010:667; Mahlobogwane, 2010:243,246).

In the researcher's experience, the child's inability to truthfully confide in its lawyer could possibly partially be ascribed to the lack of comprehensive preparation of children for children's court as well as a lack of the requisite skills amongst law professionals to question and interpret children's answers effectively (Doogue, 2006:20; Mahlobogwane, 2010:240; Taylor et al., 2007:75). McCoy and Keen (2009:191) as well as Copen (2000:4) state that children are less likely to experience additional trauma if they have been prepared properly as to what to expect during the legal process. As such, they are also likely to feel less anxious and will thus provide better testimony.

Consequently, if lawyers do not perform their role effectively, children may be unable to make effective use of the procedures as stipulated in the Children's Act 38 of 2005.

3.4.3.3. Presiding officers

This quote from a presiding officer highlights the important role they have within the process. It also confirms the discussion above regarding lawyers and the importance of their role within the process:

Given the new emphasis on 'views' as opposed to wishes, and the broadening of what the Court is to hear from the child through the lawyer for the child, counsel's competence to elicit those views must come under greater scrutiny. I will need to be satisfied by the lawyer for the child that the child has been provided with reasonable opportunities to express his or her views. I will need to evaluate the time/s at which the views were expressed, the timing of any change in views or the sustaining of those views over time and context. I will give consideration to where the interview/s occurred and who was present, whether the lawyer interviewed the child on his or her own or in the company of siblings. I will need to match what the child's lawyer has represented as the authentic views of the child against available evidence.

(Doogue, 2006:20)

Heaton (2009:9) argues that although norms applicable to the child's systems ought to be utilised to create context, the presiding officer cannot unquestioningly apply dominant social, cultural or religious norms when determining a child's best interest. Neither should the presiding officer allow his/her own personal views to influence decisions regarding a child's best interests.

In order for both lawyers and presiding officers to be more effective within the process, Taylor, et al. (2007:79) suggests specialised training. This will assist them

in determining a child's ability to understand the legal process, what the best means would be to facilitate a child's participation and the potential consequences of the child exercising its right to participate. The researcher is of the opinion that in this way, a child's rights and best interests can be protected.

3.4.3.4. The child

From the discussion regarding legislation and protocols in section 3, it can be argued that the legal rights of children have significantly improved over the past two decades. The best interests of children as well as their right to participate and to, accordingly, express their views and feelings regarding decisions that impact them appear to be the main areas of advancement (Mahlobogwane, 2010:235).

Accordingly, Mitchell (2006:262) acknowledges the growing realisation concerning the importance of children being allowed to contribute to decisions regarding their future. Prilleltensky et al. (2001:153-154) note that when children are allowed to participate in the decision-making process, they experience power and control in their lives, which in turn contributes to their wellbeing and sense of own agency. As discussed in chapter two dealing with child development, children who have been abused or neglected often do not have any power or control in or over their lives. Therefore, if situations are not created where children can experience a positive sense of power over their lives, they become even more vulnerable (Leeson, 2007:169; Mahlobogwane, 2010:235).

The importance of providing children with adequate information regarding court procedures and the extent of the child's role must be emphasised. However, since a child may hold the view that its expressed opinion will influence the court's final decision completely, the possibility exists that the child could feel responsible for a particular outcome in court or, worse still, could be held responsible by an uninformed parent (Taylor et al., 2007:77).

With reference to children's ability to provide information, Taylor and Henaghan, as quoted in Taylor et al. (2007:69), state:

[r]esearch evidence shows that all children, whatever their age, are generally able to express what is important to them. This is particularly so when the emphasis shifts from the child's ability to provide information to the adult's competence to elicit, or to observe, it ... Furthermore, the skill of the adult engaged in ascertaining the child's views, rather than the child's

level of cognitive development, plays a central role in the quality of the information elicited.

Due to the, at times, adversarial adult nature of court proceedings, it seems logical that children may struggle to communicate clearly. A resultant drawback of asking children to participate in this developmentally inappropriate arena is that children then appear incompetent. This incompetence is not due to children being incapable of providing good testimony but rather to the adults who are incompetent in asking developmentally appropriate questions and who are unable to interpret the children's responses correctly. This is often due to adults' lack of knowledge regarding child development and the respective differences in language comprehension (McCoy & Keen, 2009:189; Saywitz, Jaenicke & Camparo, 1990:523). Consequently, the responsibility should not rest with the children to prove their maturity or ability to participate, but rather the responsibility should rest with the adults involved to listen, understand, support and provide appropriate guidance and assistance to the child. In this way, they will ensure that children's views are correctly conveyed and respected, and in the process, the child will be empowered (Taylor et al., 2007:68, 70).

To participate effectively, children need to be provided with information and support in order to understand the issues, legal processes and roles of all those involved. In this way, they will be able to form views on matters from their own perspective and to decide to whom and when they will express these views (Taylor et al., 2007:70).

Fundamentally, children are experts on their own lives, and professionals should work with them in order to understand how they view their world and, in one way or another, act on this view in order to strengthen the children's identity and sense of control over their own lives (Braye & Preston-Shoot, 2005:5; Clark & Statham, 2005:54). It should be noted that what matters to children may differ from what adults view as important (Clark & Statham, 2005:46). Furthermore, listening to children's views should not be done in an adult manner. There are developmental differences in the way children make sense of and understand their families and the change they are currently undergoing because of the involvement of children's court. If these differences are not acknowledged and appropriate changes are not made in the way professionals communicate with and listen to children during all court procedures, it

may result in a failure to empower these already vulnerable children, children who deserve the respect of being listened to and taken seriously (Lefevre, 2010:17; Pryor & Rodgers, 2001:135).

Another aspect that surrounds children's involvement in children's court is their experience of attending court. Sheehan (2003:31- 38) conducted research on the impact of the court process on children, and the results are reason for concern. The various aspects highlighted by this and other studies conducted by Copen (2000:5,6,70,71,75) and McCoy and Keen (2009:192) are as follows:

- Attending children's court resulted in children and their families experiencing considerable distress. This was mainly due to having to discuss private family matters and problems within a more public setting as well as uncertainty about the court's final decision.
- The formality of the court procedures was confusing and intimidating. In this regard, participants in the research pointed to the following:
 - the court itself is an unfamiliar environment;
 - the language used by professionals is unfamiliar and confusing;
 - children do not know how they should behave in court and how or when to speak and ask questions or even when to ask for breaks;
 - not all professionals involved are known to the child;
 - the children only meet their legal representatives for the first time prior to the court appearance but are expected to confide in them their views and preferences despite being fearful and distressed;
 - children are confused about what would happen in the courtroom, what they can expect and what is expected of them; and
 - cross examination creates an oppositional environment that is difficult for children to handle.
- Lengthy postponements disrupted children's school attendance.
- Decisions and debates about the children's best interests and welfare were conducted in front of the children by the adult participants without any involvement of the children themselves.
- Children who attended children's court as a result of being abused were re-traumatised, and family conflict often increased after attending children's court.

Sheehan (2003:39) effectively summarised his findings as follows:

The [legal] process ... is fundamentally adult-centred and adult-driven. While this does not mean children's interests are excluded, the reality is that children who are already marginalised by child abuse are further marginalised by a system that sets out to protect them.

3.5. Conclusion

When working with children, especially within the context of children's court, there are two main concepts that are of utmost importance. These are the best interests of children and the effective participation of children. From this literature review, it can be seen that these two concepts are inextricably linked, and that if one is not met, the other will be impacted negatively.

If we are to understand and assist children who are involved in children's court effectively, a one-size-fits-all approach cannot be followed (McLeod, 2007:285). Thus in order to ensure that children's best interests are met and that they are allowed the opportunity to participate effectively, it is necessary to take cognisance of each child's unique circumstances, the child's level of development and the context within which the child is expected to participate.

Furthermore, it must always be taken into account that children express their feelings and views in different ways than adults. It should not be expected of children to prove their ability to participate or communicate in an adult manner. Rather, professionals within the children's court context should be trained in understanding and utilising the various ways in which children can communicate effectively with a view to facilitating circumstances that will be conducive to this form of communication.

It can thus be noted that working with children during children's court procedures is not a simple matter of applying 'adult logic'. It requires an in-depth understanding of child development as well as how to include children effectively in procedures while simultaneously not compromising their best interests or right to participate.

4. Chapter Four

The Empirical Process

4.1. Introduction

This study explores the experiences of children in middle childhood regarding children's court procedures. Having provided an outline of the proposed study in chapter one, conducting an empirical study of this nature clearly predicates that a sound theoretical base regarding two main aspects should first be established, the first aspect being child development and the second the legislation governing children's court procedures in South Africa. Working from this premise, the researcher discussed child development – particularly with reference to the middle-childhood phase – in chapter two, followed by an in-depth analysis of legislation and policies governing procedures in children's court as well as the implications of such legislation and policies in chapter three.

In this chapter, the researcher aims to provide an account of the empirical process as delineated in chapter one as well as to present, analyse and discuss the empirical findings of this study.

4.2. Goal and objectives of the research

With a view to suggesting areas where amendments to the system and/or the involvement of those charged with ensuring the child's best interest may be warranted, this study set out to explore the experiences of children, in middle childhood, with regard to children's court procedures. In order to realise this goal, specific objectives were developed, namely:

- To determine and explore the needs of children in middle childhood regarding children's court procedures;
- To describe the knowledge children in middle childhood have of children's court procedures;
- To identify and gain an understanding of the strengths and challenges of children's court procedures with regard to children in middle childhood; and

- To identify the emotional effect children's court procedures have on children in middle childhood.

4.3. Research approach

By nature, the topic of this study necessitated the utilisation of applied research. Furthermore, it ought to be noted that having practised as a statutory social worker, the researcher often experienced children's reactions to court procedures first hand and have, on more than one occasion, noted that children seemingly react differently to procedures in court, despite the fact that these procedures seem to follow a rigid course.

Upon conducting a literature search, the researcher found that although a significant number of studies have been conducted on children's experiences of almost every court in South Africa, there is a dearth of research regarding anything related to children's court, particularly since the promulgation of the Children's Act 38 of 2005 in 2010. In light of this information, the researcher set out to explore those areas where improvement, with a view to empowering vulnerable children and preparing them for their appearance in court, would be warranted.

However, in order to gain a comprehensive understanding of how a child experiences children's court, the individual voices of children had to be explored, and this could only be achieved by asking them, in person, to disclose their personal experiences of children's court procedures.

Given the personal nature of responses thus derived, and given the limited sample, the researcher opted for a qualitative approach as the most appropriate research design for this study.

4.4. Research design

This study focused on individual experiences rather than on processes, activities or events (Fouché & Schurink, 2011:321). The data obtained from the participants was extensive and required intensive investigation of the details contained in each child's

personal experience of children's court, including the context within which children's court took place.

Consequently, the researcher employed a collective case study design for this study since such a design utilises multiple cases to explore current, real-life issues in order to arrive at a detailed and comprehensive understanding of children's experiences of children's court procedures (Creswell, 2013:97-98; Fouché & Schurink, 2011:321; Neuman, 2011:42). Against this background, the resultant methodology followed by the researcher will be outlined below.

4.5. Research methodology

4.5.1. Sampling and sample

The researcher used non-probability, purposive sampling with the following criteria:

Non-gender specific children who:

- have been exposed to children's court proceedings, from opening to finalisation;
- are between ages eight and eleven;
- are fluent in English or Afrikaans; and
- have attended children's court more than once, with the added proviso that children's court proceedings have been finalised.

Identifying children for this research study proved to be extremely difficult. The sampling criteria had to be adjusted several times in order to identify the nine participants who, eventually, took part in the study. It ought to be noted, though, that saturation was reached during the interviews.

4.5.2. Data collection

As indicated, the researcher required detailed accounts of children's personal experiences of children's court procedures. This as well as the children's ages and varied levels of cognitive abilities required the use of a flexible method of data collection. As such, semi-structured, one-on-one interviews with participants were conducted (Berk, 2009:249; Creswell, 2013:173; Greeff, 2011:351; Louw & Louw, 2007:217-218).

Initially, themes identified from the literature were used as a basis for the interview schedule, with the final themes being as follows:

- First time meeting social worker
- Knowledge of and preparation for court
- First time in court
- Lawyer
- Proceedings
- Postponements
- Finalisation

Originally, the researcher planned to interview between eight and ten children from the Pretoria Central and Pretoria North SAVF offices. However, as stated above, finding participants to interview proved to be challenging. Consequently, nine participants, including the child partaking in the pilot study, were interviewed from various SAVF offices within Gauteng and the North-West Province.

4.5.3. Pilot study

To ensure the appropriateness and effectiveness of the interview schedule, and thus the quality of information obtained during the main study, a pilot study was conducted in order to test the interview schedule (Fouché & Delpont, 2011:73; Strydom & Delpont, 2011:394-395). From this pilot study, two issues came to the fore:

- Firstly, the interviewee did not understand certain words or entire questions.
- Secondly, the formality of the interview proved to be intimidating, resulting in the interviewee not being able to express herself and discuss her experiences adequately.

In order to address these issues, the interview schedule was adapted accordingly while the researcher also changed the style of interviewing to an approach that is more child-friendly. This approach included playing a game of the child's choice before the interview commenced in order to relax the child, to enhance its sense of control and, thus, to facilitate communication.

Finally, since identifying children suitable for participation in this study proved to be rather difficult, and due to the richness of the information provided by the participant in this pilot study, the researcher opted to include information derived in this manner in the main study.

4.5.4. Data analysis

For the data analysis process, the researcher utilised Creswell's spiral process, which suggests that the process of data analysis is flexible and circular rather than fixed and linear (Schurink, Fouché & De Vos, 2011:403) In this instance, the process followed four distinct steps:

- **Transcription**

Once the interviews had been conducted, they were transcribed and organised into separate electronic files. The researcher then read and re-read the transcriptions in order to familiarise herself with the content. This included making annotations in the margin, which formed the basis for the classification process to follow.

- **Classification**

Common words and topics discussed by participants were colour-coded, and these codes were aggregated into specific themes and subthemes for the purpose of interpretation. Where required, the relevant quotes for each theme and subtheme were translated from Afrikaans to English in full. However, to ensure unbiased reporting on the findings of this study, the original Afrikaans quotes are noted as footnotes where applicable.

- **Interpretation**

In order to interpret the data, the researcher relied on available literature as well as personal experiences gained in practice as a statutory social worker. This assisted the researcher to examine the data within the context of the research issue.

- **Data representation**

Interpreted data will be presented in the text as themes and subthemes with accompanying discussions on findings.

4.5.5. Ethical considerations

Since this research study involved children, a number of ethical considerations had to be kept in mind:

- **Avoidance of harm and debriefing**

This was one of the main ethical considerations, specifically since the topic of the study is of an emotional nature. Many of the children had negative emotions regarding children's court, and for this reason, it was imperative for the researcher to ensure that the children were not emotionally harmed in the process. As a result, and adding to the difficulty of identifying suitable subjects, particularly vulnerable children were rejected from the sample before the process commenced. Nevertheless, working forward from the pilot study, the researcher made sure that interviews were conducted in a child-friendly manner and that the children were not unduly emotional on completion of the interview.

Only one child cried during the interview, and this was brought to the attention of the attending social worker afterwards with a view to offering follow-up consultation as required. In this instance, too, the researcher informed the social worker of the child's lack of understanding and emotional state with a view to ensuring that effective debriefing is provided.

The researcher also allowed for a debriefing period after each interview, during which children could ask any questions or voice any concerns they may have had regarding the research. This period was also utilised by the researcher to ensure no miscommunication or misunderstandings existed on the side of participants.

- **Voluntary participation and informed consent**

This was the second most crucial ethical consideration, since children could feel that either their guardians or social workers have coerced or pressurised them into becoming involved in the research. Consequently, the researcher made it abundantly clear, in a manner the children understood, that they did not have to take part in the research and that no negative consequences would result should they choose not to be

involved. This was also addressed in the process of explaining the content of the informed assent letter to each child.

Informed consent was also obtained from each child's guardian prior to each interview, and guardians were afforded ample opportunity to discuss any queries or concerns they had regarding the research before the interviews commenced.

- **Confidentiality and anonymity**

All parties involved – social workers, guardians and children – were explicitly informed that information provided in the interview will remain confidential and would not be discussed with others. This aspect was also addressed in the informed consent and assent letters. Furthermore, in the course of the research process, the researcher maintained confidentiality by safeguarding transcriptions and audio-recordings on a password-protected computer to which only she had access.

In this study, though, anonymity could not be assured since the identity of each participant is known to the researcher as well as the guardians and social workers involved.

- **Actions and competence of researcher**

The researcher is a registered social worker with tertiary training in Play Therapy. As a result, the researcher was able to engage the children in a child-friendly manner designed to minimise any possible trauma – an ability further strengthened by her previous experience in conducting research and interviews in a sound, ethical manner.

- **Cooperation with contributors**

Although the sample had been compiled with the aid of the non-governmental organisation SAVF, this organisation – as per prior agreement – will have no access to the raw data since such access would compromise confidentiality. Nevertheless, as per agreement, the SAVF will be provided with a detailed report upon completion of the research.

- **Publication of findings**

All findings in this report have been subjected to close scrutiny by the research supervisor in an attempt to ensure reliability and objectivity. Likewise, ethical considerations have been duly attended to and in no instance has ethics been violated.

As is evident from the above, all ethical considerations were attended to throughout the research process and no ethical violations took place. Participants' biographical information will now be noted prior to addressing the respective themes and subthemes in detail.

4.6. Introduction of participants

The relevant biographical information of the nine participants who took part in this study is summarised in the table below.

4.6.1. Biographical information of participants

	Age	Gender	Race	Grade	Reason for Court Proceedings	Current Placement
Participant 1	Nine	Female	White	Three	Abandonment [mother abuses substances]	Related foster care
Participant 2	Eight	Male	White	Two	Neglect [parental substance abuse]	Reunified with family of origin
Participant 3	Nine	Female	White	Two	Neglect [parental alcohol abuse; domestic violence]	Child and youth care centre
Participant 4	Eight	Male	White	Two	Neglect [parental alcohol abuse; domestic violence]	Child and youth care centre
Participant 5	Ten	Female	White	Four	Abandonment	Related foster care
Participant 6	Twelve	Female	White	Five	Neglect [father abuses alcohol]	Unrelated foster care
Participant 7	Nine	Male	White	Three	Neglect [parental substance abuse]	Place of safety
Participant 8	Twelve	Male	White	Seven	Neglect [parental substance abuse]	Related foster care
Participant 9	Ten	Male	White	Four	Neglect [parental substance abuse]	Related foster care

Table 1: Biographical information of participants

From the above, it is immediately obvious that participants ranged from ages eight to twelve, were mostly – bar one – referred to children’s court as a result of neglect and represent an almost equal distribution in terms of gender (four female and five male participants). Of note, too, is that eight of the nine participants have been exposed to some form of parental substance abuse and that only one had been reunified with the child’s family of origin – the balance being predominantly placed in foster care.

4.7. Discussion of themes

The researcher interviewed nine participants using semi-structured interviews as the data collection method. Interviews were conducted in the child’s preferred language. As a result, one interview was conducted in English and the remaining eight in Afrikaans. In the course of analysing the data, and crystallising from those originally identified in 5.2 above, seven main themes emerged:

- Interaction with social worker
- Preparation for children’s court
- Court – first appearance and all proceedings
- Children’s lawyers
- Postponements of proceedings
- Finalisation of proceedings
- Child’s response to physical structure of children’s court

A discussion on these themes and the subthemes contained in each will now follow.

4.7.1. Theme 1: Interaction with social worker

• **Interaction and participation with social worker**

Lefevre (2010:1) states that the importance of effective mutual communication between social workers and children cannot be ignored: In order to make a real difference in children’s lives, social workers must be able to relate to children, listen to them, support them and completely involve them in matters that concern them. In terms of this research study, effective mutual communication evidently clearly lacked.

Four participants stated that the social worker had not explained why they were taking notes while in conversation with the participants, and one of the younger participants did not understand what the social worker was saying during the interview. However,

three participants were of the opinion that the social worker did, in fact, listen to what they had to say, with participant eight commenting; “Yes she did listen; she always wrote everything down”². However when asked if his social worker had explained to him why she was writing everything down, he stated: “Not actually.”³

From the above, the researcher surmises that there is ample room for improvement as far as mutual communication and interaction between social worker and child is concerned. Part of relating to children and involving them in the process completely includes informing children of those seemingly minor issues the social worker may take for granted but which the child does not understand (Lefevre, 2010:1). In this regard, the researcher is of the opinion that by simply explaining to children why notes must be taken or by making use of the active listening technique where children can readily perceive that they are being listened to and understood, the child’s concept of self will be improved and a process to interact and to build lasting relationships will be established. Of note here is that Cournoyer (2008:145) proposes that active listening involves making others feel that they are understood and encouraged to express who they are and what they feel even more freely. Through active listening, the social worker can show children that he/she is interested in their views, feelings and experiences and that he/she is making the effort to really understand.

Although active listening was not specifically explored in this study, it is positive to note that participant eight was of the opinion that the social worker was listening to him. However, in the researcher’s opinion, active listening should lead to a sense of being part of the decision-making process and, as will be indicated below, children do not always feel part of this process.

As discussed in chapter three, participation is a process whereby children engage with others in issues that concern them. What children experience in the process, though, is of vital importance (Chawla, 2001:2). In the researcher’s opinion, this yet again highlights the crucial part children ought to fulfil in both their current and future situations. Yet, asked whether the social worker sought their opinion in matters

² “Ja, sy het geluister. Sy het alles altyd afgeskryf.”

³ “Nie eintlik nie.”

concerning them, only two participants responded, albeit negatively, indicating that they were not consulted in the decision-making process.

These negative responses are reason for concern when considering that social workers are appointed by the children's court to investigate and report on a child's respective systems and the child's relation to those systems holistically and then to make recommendations regarding the child's future care. Furthermore, when the child's emotions, feelings, preferences and personal needs are discussed, the child's views *must* be included in the feedback to court (Children's Act 38 of 2005). In the researcher's opinion, this is an important responsibility not to be taken lightly and should always include a comprehensive account of the child's opinions and wishes with regard to its future care.

On the subject of social workers reporting back to court, two participants indicated that the social worker had not worked through or read this report to them, with one participant indicating that the social worker had done so. Two participants could not recall if their social worker had even written a report. The fact that only one social worker worked through the report with the child is concerning when noting that children have the constitutional right of access to information. As such, the social worker must show, read and discuss the contents of his/her report with the child involved before going to court (Constitution of the Republic of South Africa 16th Amendment Act 1 of 2009).

In terms of children's court, the right of access to information affords children the opportunity to clarify any aspect they do not understand, gain an age-appropriate understanding of what could happen with regards to their care and to have an informed input in court proceedings. Since children have to live with the repercussions of the decisions made in children's court, it seems only fair that they are provided with everything they need to participate effectively in the process (Barratt, 2003:156; Lefevre, 2010:11; Mahlobogwane, 2010:232, 233,246; Pitchal, 2008:4).

- **Relationship building and trust**

Emphasising the need for mutual communication, Hepworth, Rooney, Rooney, Strom-Gottfried and Larsen (2006:35) discuss the importance of effective communication within the helping relationship. They hold that in order to *engage* clients successfully, rapport must be established, where such a rapport “reduces the level of threat and gains the trust of clients, who recognize that the social worker intends to be helpful”. In instances where the ‘clients’ are children, establishing such a rapport is even more important. As discussed in the previous subtheme, if children do not even understand the basics of the social worker-client relationship, it is unlikely that they will feel secure enough to enter into a relationship of trust with the social worker.

As discussed in chapter two, abuse and neglect interrupt predictable and organised development which, in turn, results in developmental failure and limited adaptation (Wolfe, 1999:35). Briere, as discussed by Fredrico et al. (2008:345), points to the progressive consequences of abuse, which include: displaying changes in developmental progress, developing coping strategies in order to accommodate the ongoing abuse and integrating these coping strategies and distorted perception into the still developing self-concept. Evidently, trauma has a holistic impact on development. It can thus be expected that children who have been neglected or abused may have difficulty in building relationships with and trusting others (Wolfe, 1999:55). Social workers should, therefore, always keep this in mind when beginning an investigative process involving children.

In this study, participants were asked if they felt comfortable enough to speak openly with the social worker when they first met. Three participants stated that they could not, while two participants indicated that they were able to do so. Participants were then asked if they felt that they could divulge all information to said social worker. Responses were mostly negative. Four participants indicated that they did not want to tell the social worker everything, while one indicated that she felt she could. Participant one stated: “No... because I was scared that [social worker] would tell other people and that [social worker] wouldn’t keep it between me and [social worker]”. Participant six also stated that she would “still keep some things to [her]self”⁴.

⁴ “Party goed nog vir myself hou.”

Furthermore, as discussed in chapter two, abuse and neglect can impair children's emotional development which in turn can lead to children struggling to understand the emotional responses and behavioural intention of other people. Thus, it can be deduced that abuse and neglect can lead to deficits in knowledge regarding basic relationship skills (Wolfe, 1999:45). Due to these deficits, children may be wary of a social worker's attempts to build a relationship with them. This should be taken into consideration and adaptations should be made accordingly when social workers begin the investigative process with children.

Factors that contribute to a sense of competence and industry in children include relationships that foster a positive and realistic self-concept, pride in accomplishment, pro-social moral and value frameworks, moral responsibility and the ability to regulate emotions (Louw & Louw, 2007:242). The researcher is of the opinion that if the social worker instils the above-mentioned aspects in his/her relationship with a child, the likelihood of building a positive, trusting relationship with that child will be enhanced. However, it should also be noted that the quality of previous relationships in the child's life, specifically the child-parent relationship, could have an impact on the success of future relationships.

The biographical information of the participants in table 1, indicates that the majority experienced neglect within their primary relationship: the parent-child relationship. It should thus be noted that children's understanding of behaviour and interaction constituting a positive or negative relationship may be compromised. It therefore follows that their ability to develop positive relationships may also be compromised. All of the afore-going ought to be taken into consideration by the social worker when interacting with children, especially when attempting to establish a trusting relationship.

- **Emotions regarding social worker involvement**

The respective emotions identified by the participants with regard to social worker involvement were negative. Most of the emotions centred on feeling scared, sad or angry. Some participants were able to articulate why they experienced the specific

emotions, with the most noticeable response regarding why she felt anger coming from participant three: “She told us we were coming to the children’s home.”⁵

Notably, all participants were able to identify their own emotions towards the social worker or the situation. The two most noteworthy responses related to fear and clearly indicate how each participant’s reaction to his/her fear differed:

Participant 5: “I was a bit scared the first time, but I am not scared anymore.”⁶

Participant 9: “I was a bit ...” [points to scared face] ... I hid under the couch.”⁷

As discussed in chapter two, emotional intelligence involves the ability to identify and monitor one’s own and others’ emotions, to discriminate between the various emotions and then to use this information to guide one’s own thinking and actions (Geldard & Geldard, 2008:252; Kaur, 2010:42; Santrock, 2006:331).

Based on the above, different levels of emotional intelligence clearly come to the fore: Although both participants acted upon the emotion created by the situation, participant five realised that the social worker would not remove her from her current placement after which her fear decreased to some extent. Participant nine, on the other hand, did not interpret the situation correctly and simply acted on his emotion by hiding under the couch.

According to Gottman (2001:33), children with higher emotional intelligence are able to assess a situation and to adapt their behaviour appropriately. This ability to adapt is highlighted by the opposing reaction of the two participants to the same emotion. Not discounting external variables and keeping in mind that none of the participants had been tested for emotional intelligence, this finding interestingly contradicts Kaur’s (2010:41), namely that male respondents scored higher on emotional intelligence than their female counterparts: In this instance, with both participants being of a similar age, the one to react positively was female.

⁵ “Sy het vir ons gesê ons kom kinderhuis toe.”

⁶ “Ek was die eerste keer ‘n bietjie bang, maar ek is nie meer bang nie.”

⁷ “Ek was ‘n bietjie ... [wys na bang-gesiggie] ... Ek het onder die bank weggekruip.”

From the above responses, it seems evident that the main reason why children experience negative emotions with regard to the social worker's involvement can be ascribed to uncertainty as to why the social worker is involved in the first place and unhappiness or uncertainty about being removed from their parents'/guardian's care. This uncertainty will be further explored below.

- **Uncertainty about social worker's involvement**

Participants were asked if they understood why the social worker was involved in the situation. Five participants indicated that they did not understand, while only two participants responded affirmatively. Participant three indicated that the reason she had been removed by a social worker was because she had been walking around in the streets. This was, however, only partially correct. She was actually removed due to parental neglect, substance abuse and exposure to domestic violence. This indicates a possible introject that this participant has regarding the reason for her removal. Introjects occur when a child takes in information from others without criticism or awareness (Blom, 2006:32). Therefore, at some point, participant three may have heard or been told that she had been removed from her parents' care because she was walking around in the streets unsupervised. Without having developed hypothetico-deductive reasoning associated with the adolescent stage of development, participant three may not have the cognitive ability to develop alternative hypotheses as to why she had been removed. Consequently, the introject remains in place unchallenged (Blom, 2006:32; Louw & Louw, 2007:299). The danger with not informing children correctly or only partially about why they are being removed from parental care is that they may incorporate the information or lack thereof incorrectly as an introject, which can have a negative effect on their functioning and self-awareness (Blom, 2006:32).

Participant nine did not have an informed understanding about the social worker's involvement. He stated that he was scared: "Because I thought she was going to put me in foster care."⁸ In this instance, the social worker had no intention of removing him from his current foster-care placement but actually became involved with a view to removing his siblings from temporary placement to a child and youth-care centre.

⁸ "Want ek het gedink sy gaan my in pleegsorg sit."

As was discussed in chapter three, Section 10 of the Children’s Act 38 of 2005, Article 12 and 13 of the UNCRC and Article 7 of the African Charter all recognise children’s rights to receive age-appropriate information regarding anything that affects them (African Charter ..., 2009; Children’s Act 38 of 2005; UNICEF, [sa]). The researcher is of the opinion that being informed and understanding why the social worker is involved is the most basic but most important information that should be conveyed to a child at the very outset of the court process. Conveying this information is, in the researcher’s opinion, also likely to enhance the relationship building process.

- **Participant suggestions**

Only participant one made a suggestion regarding what a social worker should do to make it better for children who have to see him/her: “I said [previously] explaining. Tell them why they are seeing you and everything, to listen to them, to ask them questions, and to be happy to see them.”

4.7.2. Theme 2: Preparation for children’s court

- **Participant explanations and expectations regarding children’s court**

Before discussing this subtheme, it is worth noting that neglect and abuse appear to impact children’s court knowledge negatively. This is thought to be due to delays or impairments in intellectual and language development (Block et al., 2010:660). Consequently, it is even more important to ensure that children involved in the children’s court process be prepared properly. In terms of preparation, Eltringham and Aldridge (2000:276) note that there has been a shift in terms of how children are viewed within the court system and in the process of empowering them. Practical ways are now being utilised to prepare them and to ensure they are supported throughout the process. These practical preparations include arranged visits to the courtroom prior to proceedings which will include explanations of “what court is, who is likely to be there and what it is likely to involve”.

With regard to whether or not the participants knew why they were going to court, two participants could not remember. Five participants indicated that they were not informed about why they were attending court, while two other participants indicated that they were informed and did know why they were in court. When asked if anyone

explained what the participants should do in court and how the procedures work, the responses were again mostly negative.

Four participants indicated that they did not know what they should do in court or how the procedures worked. Participant six stated the following in this regard: “... It was the first time in court. Scared I say the wrong things.”⁹

With regard to who was expected to be in court, of the six responses, three participants stated that they knew who would be there, and three participants did not.

As was indicated in the findings above, participants were not appropriately prepared regarding their role during court proceedings, how they should ‘behave’ in court and who would be present. By not informing and preparing children in this way, children are placed at a distinct disadvantage rather than being empowered, as should be the case. Due to being disadvantaged in the process, children are also likely to experience anxiety and confusion which will not only impact their court experience negatively but also their ability to participate effectively (Block et al., 2010:660; Eltringham & Aldridge, 2000:281; Taylor, 2004:233).

Relating to this is the next subtheme which discusses preparing children specifically with regard to the people involved in court, namely parents, the presiding officer and lawyers.

- **Being informed**

As indicated above, this subtheme relates to children receiving information regarding specific parties who could be part of the court proceedings. With regard to parents, the researcher asked the participants if they knew that their parents would be present in court and what their feelings about them being present were. Five participants said that they were happy to see their parents at court, while two participants expressed having mixed emotions. Participant one stated: “Little bit good and little bit bad. Because I was scared that she was still doing drugs and I couldn’t trust her – and still can’t.” Participant three indicated that she was both happy and sad. The sadness

⁹ “... dit was die eerste keer in die hof. Bang ek sê verkeerde goed.”

related to her wanting to be placed back in her parents' care rather than remain in the children's home.

As discussed by Pitchal (2008) in Block et al. (2010:667), the reasons why children are excluded from court proceedings often relate to concerns that seeing the parents again may be distressing for the children. However, research conducted by Block et al. (2010:667) shows findings that disprove these concerns. They found that 61% of their respondents were positive about seeing their parents in court. Similarly, the participants' responses in this study all indicate positive feelings linked to seeing their parents at court. In fact, none of the participants expressed feelings of distress at the thought of seeing their parents at court.

Participants were asked if anyone had explained the role of the presiding officer. Two participants indicated that they were not aware of the role of the presiding officer compared to five participants who indicated that they had been told something about what the presiding officer does. However, the participants' knowledge regarding the role of the presiding officer seemed to extend only so far as knowing that he/she would ask questions. Furthermore, the participants did not know what type of questions they themselves would be asked. A lack of this type of knowledge again places children at an immense disadvantage and impairs their ability to participate effectively (Block et al., 2010:660; Eltringham & Aldridge, 2000:281; Taylor, 2004:233).

With regard to lawyers, only one participant had legal representation. However, she did not know why the lawyer was there and what she ought to discuss with the lawyer, stating: "Umm, I can't remember – or [social worker] said, '[name of participant], you need to go speak to her [lawyer]'". Block et al. (2010:660) and Pitchal (2008:17) discuss how children often have very little understanding regarding the roles and responsibilities of legal professionals and how the legal system can be utilised to meet their needs. The findings of this study seem to support this notion since the specific participant did not understand why the lawyer was involved and how to interact with her.

- **Knowledge and understanding**

This global lack of knowledge of the participants regarding the majority of procedures and aspects of children's court indicates the need for professionals to explain all aspects of the court process. Explanations in a manner that children understand would lead to an increase in knowledge as well as a greater chance of effective participation (Block et al., 2010:666). Davis and Saffy (2004:23) support this when they state that "children are strong and resilient and with proper support and preparation most of them are empowered" and thus able to participate effectively in court proceedings.

Discussed by Block et al. (2010:660), and confirmed by a study conducted by Saywitz et al. (1990:533), age seemingly influences children's knowledge and understanding of legal terms most. Younger children seem to have less knowledge of the legal system than older children. However, older children also tend to exhibit substantial confusion regarding various legal terms. In a study conducted by Block et al. (2010:666), results showed that children in middle childhood had a very low average level of court knowledge. When taking into account that the number of children's court cases opened thus far this year amounts to 71 129, this lack of court knowledge, discussed in literature and previous studies as well as confirmed in this study, is of great concern (Department of Justice, children's court matters 2013).

In line with the above, only two participants were able to verbalise why they thought they were in court. Both responses show an incorrect understanding of the reasons, though. Participant one indicated, "cause they thought I do drugs and smoked and that," and participant two indicated, "I thought we were going away completely from my mom".¹⁰ With regards to participant one, she had previously indicated that she thought she was at court because of something she had done wrong. Furthermore, her mother is a drug user which could explain her incorrect thought process. However, both responses highlight a lack of understanding due to not being adequately prepared for court.

The importance of preparing children for court and what they can expect, in a manner they understand, cannot be underestimated or downplayed. The researcher strongly

¹⁰ "Ek het gedink ons gaan heeltemal weg van my ma af."

believes that vulnerable children, such as children who are involved in children's court procedures, need to be empowered and protected. This can only occur if professionals make an effort to engage with children at their level and speak to them directly (Lefevre, 2010:13). Something as simple as children having a proper understanding of why they are in court empowers them to begin the process of participating effectively during the various procedures and proceedings. It also allows them to start formulating their own decisions regarding their future. Since they, in the final analysis, are the experts on their own lives, ignoring this expertise will place these children at further risk (Holland & Scourfield, 2004:33; Taylor, 2004:233).

According to Block et al. (2010:660), exposure to court procedures may increase a child's knowledge. In this study, a few participants had been exposed to court on more than one occasion. However, only participant five indicated that this had aided her understanding of court in some way: "Then I was still okay because now I know what it looks like inside."¹¹ This response was with reference to her not being scared when she went to court the second time because she knew what to expect. This seems to support the notion that exposure to court increases a child's knowledge. However, the researcher is of the opinion that a child should not have to learn about court as a result of exposure but should rather have a complete understanding before actually attending court for the first time.

- **Emotions about attending court**

When asked to identify the emotions experienced before attending court, three participants indicated that they were sad, while four indicated that they were scared. These emotions seemed to centre on 'not knowing' what to expect and thoughts that they would 'never see their parents again'. They verbalised it as follows:

Participant 1: "Because I never knew what I was doing there and I was scared I did something wrong and I felt guilty and I just wanted to go home."

Participant 2: "I did not know what was going to happen."¹²

¹¹ "Toe was ek nog oukei want nou weet ek hoe lyk dit binne."

¹² "Want ek het nie geweet wat gaan gebeur nie."

- Participant 3: “We will not see mommy and them.”¹³
- Participant 6: “It was the first time in court. Scared I say the wrong things.”¹⁴
- Participant 7: “I thought I was never going home again.”¹⁵
- Participant 9: “I thought they would take me away.”¹⁶

These emotions are directly related to how the participants experienced and perceived the court procedures, which corresponds with proposition two of the person-centred approach: human perceptions. It follows that their feelings of uncertainty led to their emotional reaction, namely fear (Grobler, Schenck & Du Toit, 2006:49). Furthermore, the various responses that link negative emotions to attending court appear to be directly related to not being adequately prepared for court. These responses clearly show that the majority of participants were not clear about what would happen in court and had valid concerns that they would be removed from their current place/person of care. Participant three, for instance, had already been removed from her parents’ care and was afraid that she would not see them again.

The fears and concerns of these participants likely created much anxiety that could easily have been minimised or completely avoided through adequate preparation. In fact, a lack of courtroom knowledge has been indicated as a major source of anxiety for a participating child (Block et al., 2010:660; Eltringham & Aldridge, 2000:281). Louw and Scherrer (2004:28) rightly state that everything possible should be done to reduce the fear and uncertainty associated with the unfamiliar situation of children’s court procedures. Most especially, this should be done because these children are already experiencing trauma and disruption in their lives.

Furthermore, inadequate preparation of children, particularly abused and neglected children, could not only lead to confusion and increased fear of the unknown but could contribute to feelings of powerlessness, stigmatisation and betrayal (Block et al., 2010:660; Eltringham & Aldridge, 2000:281). This is corroborated by the discussion in chapter three. McCoy and Keen (2009:191) as well as Copen (2000:4) state that

¹³ “Ons sal nie vir mamma-hulle sien nie.”

¹⁴ “En dit was die eerste keer in die hof. Bang ek sê verkeerde goed.”

¹⁵ “Ek het gedog ek gaan nie weer huis toe gaan nie.”

¹⁶ “Ek het gedink hulle gaan my weg vat.”

children are less likely to experience additional trauma if they have been properly prepared for what to expect during the legal process. Consequently, they are also likely to feel less anxious and more in control and will thus provide better testimony. Other studies, too, have shown that knowledge is associated with a “reduction in children’s anxiety” (Block et al., 2010:666; Eltringham & Aldridge, 2000:276).

Block et al. (2010:667) hold that court preparation programmes have the potential to reduce anxiety as well as to increase knowledge. The researcher is of the opinion that effective court preparation is essential in order to not only minimise additional and secondary trauma for children within the process of children’s court but also to improve their ability to participate effectively in the entire process. In fact, Eltringham and Aldridge (2000:283) hold that “[a]ppearing in court with proper safeguards and good preparation may be a therapeutic experience, contributing to a sense of empowerment and vindication”.

- **Participant suggestions**

Participant five made a valid suggestion regarding preparing children for court: “They must just actually tell them why they will be there and then they must just ask again next time if it is nice. Because they actually do that now, so it would actually make it a bit easier.”¹⁷

Naturally, the degree to which children have been prepared for children’s court will not only have a direct bearing on how they experience court but also on how they partake in the proceedings.

4.7.3. Theme 3: Court – first appearance and all proceedings

- **Interaction with presiding officer**

Pitchal (2008:19) notes that when children participate in proceedings, the presiding officer gains more information, which is crucial in the decision-making process. Furthermore, Pitchal (2008:20) rightly states:

Few decisions are as enormous in our society as the decision to involuntarily remove a child from her [his] parents’ custody and place

¹⁷ “Hulle moet net eintlik vir hulle sê hoekom hulle daar gaan wees en dan moet hulle net weer volgende keer vra of dit lekker is. Want dit doen hulle ‘actually’ nou, so dit sal [dit] ‘actually’ ‘n bietjie makliker maak.”

her [him] in foster care. Children face the possibility of great psychological harm when separated from their families, even in cases where abuse is a factor.

Consequently, it can clearly be argued that when making such a decision, the presiding officer's information base should be as comprehensive as possible. This will only be possible when children's voices are included in this base (Mahlobogwane, 2010:240).

When discussing if the participants felt that they could speak to the presiding officer and why, only three responses were noted. One response was linked to trust with the participant stating, "No, cause he wasn't my social worker". Another participant did not appear to have been provided with an opportunity to speak, stating: "He asked many questions ... [to] all the other people"¹⁸. The last participant was of the opinion that she was able to interact with the presiding officer.

When asked if they would respond truthfully to the presiding officer's questions, six participants indicated that they would. Only one participant could explain why, and her response can be linked to her mother's altercations with the law: "Yes – because I don't want to go to jail, just like my mom." This indicates a misunderstanding of the presiding officer's role and actions, most likely due to not having been informed appropriately. This, the child's frame of reference and her level of development were the likely reasons for her incorrect interpretation of the presiding officer's role within children's court proceedings (Grobler et al., 2006:68). As Gottman (2001:27) explains, this participant's reasoning for being truthful is not related to an internal code of ethics or value system but is rather a morality based on a cost-benefit analysis: She determined that the cost of lying – going to jail – outweighed the benefit. Consequently, she chose to tell the truth. However, based on this assumption, if children are faced with a different set of circumstances where lying may keep them in their placement of choice, the outcome of the cost-benefit analysis is likely to be entirely different, which may lead to some children not answering the presiding officer truthfully.

In the researcher's opinion, not having been informed appropriately together with the child's frame of reference both have a bearing on knowledge and preparation as well as

¹⁸ "Hy het baie vrae gevra ... al die ander mense"

relationship building and trust. If children are not provided with appropriate knowledge and prepared adequately as to interaction with the presiding officer, it follows that they will not feel comfortable or capable to interact effectively with said officer (Pitchal, 2008:14-15). Furthermore, as discussed in chapter three, the ability of the presiding officer to interact with children in an informal child-friendly manner together with his/her ability to interpret information gathered from the interaction correctly is crucial in lowering children's anxiety as well as gaining sufficient information for utilisation during the decision-making process (Grosman & Scherman, 2005:557). Presiding officers should always keep in mind that the often intimidating context of children's court can be inherently stressful for children, and this could influence whether they will interact and, if they do, what they will say and how they will say it. Again the skills of the presiding officer in asking questions in a manner that children will understand and in interpreting the answers correctly within the context it is provided cannot be downplayed (Kelly, 2002:153-154; Tapp, 2006:73).

When asked if the presiding officer asked the participants any questions, four participants indicated that they had not been asked any questions. The other four participants indicated that they had been asked questions. The main questions seemed to revolve around where they wanted to stay or if they were happy in their current placements. Only in the case of participant five did the presiding officer seem to focus on her and to make an effort to get to know her through the questions he asked: "He like asked me what my name is, in which school I am and if I'm happy there and who my principal is"¹⁹, and "He asked me if I'm happy here [foster placement], and then I just said yes and stuff because I'm happy here [foster placement]"²⁰. Participant six, though, was asked where she would prefer to stay, and this seemed to create a certain level of anxiety for her. She indicated that she was uncertain as to how she should respond: "Then I wasn't sure what I must say. Because I was scared I upset my mom ... I said I want to stay by the lady [foster mother] ... No-one was angry with me."²¹

¹⁹ "Hy het my soos gevra wat my naam is, in watter skool ek is, en of ek gelukkig daar is, en wie my hoof is."

²⁰ "Hy het gevra of ek gelukkig hier is, en toe sê ek maar ja en goeters want ek bly lekker hierso."

²¹ "Toe was ek nie seker wat ek moet sê nie. Want ek was bang ek ontstel my ma ... Ek het gesê ek wil by die tannie bly ... Niemand was kwaad vir my nie."

The responses above highlight the fact that in these cases, the presiding officers in question seemingly lack those skills Kelly (2002:153-154) and Tapp (2006:73) view as crucial. This is of concern since, as discussed in chapter three, the Children's Act 38 of 2005 makes provision for the presiding officer to hear testimony from any relevant party, including the child. Although presiding officers do rely on the social worker's report to gain a holistic understanding of the family and the current circumstances, the presiding officer should confirm this information with the child – even if it is just by engaging in superficial conversation as was done in the case of participant five (Doogue, 2006:20; Mahlobogwane, 2010:239).

As indicated above, it was clear from her response that participant six experienced a certain level of anxiety by having to 'choose' where she would prefer to live and then to verbalise this choice in the presence of her mother. This can be explained as a form of loyalty conflict where the child experiences feelings of guilt and fear of retribution, all of which could possibly damage the parent-child relationship as was discussed in chapter three (Kelly, 2002:154; Mahlobogwane, 2010:241,2).

Breger (2010:176), Kelly (2002:153-154) and Abella, Heureux-Dubé and Rothman, as quoted in Mahlobogwane (2010:240), suggest that if the presiding officer is to interview the child alone in-chambers, such an interview will provide the child with the opportunity to speak freely. In addition, the presiding officer will be afforded the opportunity to interact directly with the child at the child's level. However, as discussed in chapter three, it must be noted that there are disadvantages to this approach. Nevertheless, it does raise the question as to how the anxiety and discomfort levels of participant six may have been affected if she were asked where she would prefer to live without her mother and proposed foster mother being present.

Participants were also asked if they, from their side, wanted to put a question to the presiding officer and why they believe they did or did not ask that question. Six participants indicated that they did not ask the presiding officer any questions, but only three indicated why: One participant was shy, and the other two participants seemed to have been intimidated by the presiding officer and were scared of him.

Participant six stated no questions were asked “because he looked scary”.²² Although the majority of the participants indicated that they did not have any questions to ask the presiding officer, three participants said that they did not and could not ask questions because they felt shy or scared.

This indicates to the researcher the possibility that the presiding officers in these cases did not create a child-friendly environment and possibly did not have the skills to engage these participants properly in the conversation and subsequent decision-making process. Furthermore, had the other participants in their preparation for children’s court been alerted to the fact that they are permitted to interact and participate in the proceedings and had an environment permitting such interaction and participation been created, they, too, may have raised aspects they wanted to question (Coogan & Parelo, 2011:5; Grosman & Scherman, 2005:557; Pitchal, 2008:14-15).

- **Participation in proceedings**

During proceedings, two participants indicated that they had not been asked where they wanted to be placed. One participant was asked if she was happy in her placement, and another was asked out rightly where she wanted to live. As discussed in chapter three, Chawla (2001:2) views participation as a process in which children engage with others regarding issues that concern their ‘life conditions’. From the participants’ responses to be discussed below, evidence of engagement seems to be lacking.

When asked if participants understood what was being discussed during court proceedings, only three participants said that they did, compared to six participants who did not. Asked whether anyone had explained to them at any point during the proceedings what was being discussed, all nine participants replied in the negative.

As discussed in chapter three, previous studies conducted by Sheehan (2003:31- 38), Copen (2000:5,6,70,71,75) and McCoy and Keen (2009:192) indicate that the language used by professionals during court proceedings is unfamiliar and confusing to children. In the majority of the responses above, these findings seem to be confirmed. As

²² “Want hy het kwaai gelyk.”

indicated, only two participants understood what was being discussed during proceedings. When linking these findings with the fact that no professional in the court ensured that the participants understood what was being discussed, these results are a cause for great concern. If children cannot understand what is being discussed, they clearly cannot be expected to participate effectively. This is especially worrying when taking into consideration that five participants expressed their desire to understand what was being discussed, with only one indicating that he did not want to understand.

Research conducted by Butler et al. (2003:203) confirms that it is not only desirable but also feasible to consult with children when decisions about their future are being made, concluding that even children as young as five are able to contribute positively to this process. Since decisions made regarding children's future can have enormous repercussions for the children, they ought to be provided with multiple opportunities to express their views and to interact during the proceedings (Barratt, 2003:156; Lefevre, 2010:11; Mahlobogwane, 2010:232,233,246; Taylor et al., 2007:75).

In conclusion, the participants were asked what they did while in court. Their responses were as follows:

- Participant 1: "Just sat ... Boring ... Day dreaming of nice things that was going to happen"
- Participant 2: "I just kept quiet ... just sat there and listened."²³
- Participant 5: "When they spoke, I daydreamed. I just ignored it; the adults had to speak now."²⁴
- Participant 6: "I just sat; it was boring."²⁵
- Participant 7: "Just sat"²⁶

From the responses, it is clear that children merely sat and either listened to what was being said or daydreamed. This again highlights a lack of child participation during court proceedings.

²³ "Ek het maar net stil gebly ... net daar gesit en luister."

²⁴ "Toe hulle gepraat het, het ek gedagdream. Ek het dit maar [net] [ge]ignoreer; die grootmense moes nou praat."

²⁵ "Ek het net gesit; dit was 'boring'."

²⁶ "Net gesit"

In the United States, ‘dependency courts’, which are similar to the children’s courts in South Africa, most often do not involve children in the proceedings. In fact, in most states, no established right for the child to be present exists (Pitchal, 2008:4). However, in South Africa, not only are children allowed to be present during proceedings, but according to Section 10 of the Children’s Act 38 of 2005, they have a legal right to participate – making allowances for their age, maturity and stage of development. Furthermore, the views expressed by the child are to be given “due consideration”. However, from the results of this study, albeit limited, children are seemingly not allowed or empowered to participate to their fullest capacity. Furthermore, children’s unique perspective of their lives and current situations are not being utilised effectively in the decision-making process. As Pitchal (2008:4) rather scathingly remarked:

Look at the many adults concerned about the child gathered together! ... [N]otice one glaring problem with this scene. There is someone critical to the court process who is noticeably absent. Someone with information no one else has. Someone who has to live with the decisions that are made in court far more than anyone else with an interest in the outcome. Where is the child?

Whether children are physically absent from proceedings, as in the United States, or whether children are not properly prepared and allowed to participate in proceedings, as was the case with this study’s findings, the ‘exhaustive nature of our process’ as well as the progressive nature of the new Children’s Act 38 of 2005 will be meaningless if ways are not found for children to participate in the proceedings and decisions-making process efficiently and in an age-appropriate manner and if the professionals involved do not “slow down, to ask more questions and inquire about the child’s perspective on the case” (Pitchal, 2008:3,15).

As will be addressed below, Jenkins (2008:168) notes that allowing children to participate in court proceedings could assist with combating the often intense fear they experience due to the uncertainty about their future.

- **Emotions of participants before or during court proceedings**

Coogan and Parello (2011:5) discuss how attending court is often an emotional experience for children and how, as such, they require support from a variety of people in the process. This is confirmed by the findings of this study where seven participants' responses were negative when asked what emotions they experienced before or during court proceedings:

- Participant 1: "Because I never knew what I was doing there and I was scared I did something wrong."
- Participant 2: "I thought we were going away completely from my mom."²⁷
- Participant 3: "We would not see mommy and them."²⁸
- Participant 5: "I was scared that I would be taken away, or something like that."²⁹
- Participant 7: "I thought I would not go home again."³⁰
- Participant 8: "Because I thought they wanted to take me away."³¹

Chapter two referred to the fact that Berk (2009:400) and Louw and Louw (2007:175) view emotion as being interwoven with cognitive processing. Consequently, emotion such as the strong negative emotions experienced by the participants in this study can impair their ability to think and, thus, to reason. This may be especially true when taking into consideration that these children are fearful of being removed from their parents or never seeing their parents again. As indicated by Eltringham and Aldridge (2000:276), in order to empower children, we ought to be preparing children appropriately for the court process and provide them with the support they require. If these fundamental factors are not addressed, the current court system is disempowering and disrespectful to children and has a high probability of doing great damage to the dignity and self-worth of the children involved (Pitchal, 2008:31). The emotions identified by the participants in this study indicate disempowerment.

²⁷ "Ek het gedink ons gaan heeltemal weg van my ma af."

²⁸ "Ons sal nie vir mamma-hulle sien nie."

²⁹ "Ek was bang dat ek sou weggevat word, of so iets soos dit."

³⁰ "Ek het gedog ek gaan nie weer huis toe gaan nie."

³¹ "Want ek dink hulle wil my weg vat."

- **Participant suggestions**

Participant one and two suggested that professionals must explain to children what is being discussed in court so that they can also understand. In particular, participant five suggested the following: “They must just actually tell them why they will be there and then they must just ask again the next time if it is nice. Because they actually do that now, so it will actually make it a bit easier.”³²

With the obvious exception of the social worker involved, the person most likely in a position to prepare and empower the child would be the lawyer assigned to the case. As is to be discussed below, this, sadly, does not seem to be the case, though.

4.7.4. Theme 4: Children’s lawyers

In this study, only one participant had a lawyer. However, contrary to the social auxiliary worker’s indication that no lawyer had been present, participant two, when interviewed, seemed to be under the impression that he had a lawyer. In the researcher’s opinion, this indicates that despite having been provided with an explanation as to what a lawyer is, this participant misunderstood. This misunderstanding in itself is concerning, which begs the question how many other children misinterpret the involvement of the respective professionals during court procedures.

Due to participant two’s misinterpretation, and since only one participant had a lawyer, no generalisations could be derived. Nonetheless, the information provided by the single participant who did acknowledge having a lawyer, with specific reference to the first time these two parties met, does warrant a discussion under the subtheme relationship and trust.

- **Relationship and trust**

Participant one emphatically stated that the lawyer had not explained to her who she (the lawyer) was and why they needed to talk about the case. The participant further indicated that she did not feel she could speak to the lawyer: “No - I never even wanted

³² “Hulle moet net eintlik vir hulle sê hoekom hulle daar gaan wees en dan moet hulle net weer volgende keer vra of dit lekker is. Want dit doen hulle ‘actually’ nou, so [dit] sal dit ‘actually’ ‘n bietjie makliker maak.”

to speak to her ... because I don't know her." This response clearly indicates that no bond or relationship of trust has been developed, a relationship that could improve the likelihood of the child speaking truthfully to the lawyer.

In this regard, Pitchal (2008:27) notes that lawyers appointed to children in children's court are often overburdened with high caseloads and, in the process of trying to 'juggle' these caseloads, important information may go unnoticed. For his part, Lefevre (2010:20) highlights the importance of allowing sufficient time for children to become relaxed and comfortable with the person who will be facilitating their involvement. The researcher is of the opinion that as much as this refers to social workers involved, the same can be said of lawyers.

As noted in chapter three, if a child already experiencing high levels of anxiety who does not understand the role of the lawyer meets that lawyer for the first time within a stressful environment, such a child cannot be expected to reveal information of a highly personal nature openly and comfortably to this stranger (Copen, 2000:5; Mahlobogwane, 2010:240). It is worth noting that if participant one did not feel comfortable merely speaking to the appointed lawyer, she is unlikely to feel comfortable with the way her lawyer interprets and conveys her views and preferences to the court, let alone dispute it (Sheehan, 2003:37). From professional experience and discussions with a presiding officer, court-appointed children's court lawyer and social worker in the field (De Bruin, 2013; Niewenhuis, 2013; Spies, 2013), the researcher unfortunately found that it is common practice for children to meet their appointed lawyers for the first time only on the day of court proceedings, often also the day of finalisation.

As will be revealed under theme 5, although postponements seemingly only serve to heighten the anxiety and uncertainty experienced by the child, such a postponement could well create an opportunity for the lawyer to gain more insight into the child's systems and its needs and wants. This was confirmed by Niewenhuis (2013), a children's court appointed lawyer.

4.7.5. Theme 5: Postponements of proceedings

- **Frequency of court appearances**

Although the majority of participants only attended court once or twice, they all noted that they did not enjoy going to court so many times and did not want to attend court more than once, indicating that participants did not experience postponements positively. The two responses that stood out in terms of why they did not like attending court came from participant one – “I thought it was a jail ... that there is jails there and that is where people that did wrong things go” – and participant five – “No, it is also not nice for me ... Because the court is actually for criminals and stuff; it is not nice for me to be there”³³.

Despite the fact that both participants made reference to the ‘jail’ aspect of court, their understanding differed vastly. Due to her background and resultant frame of reference, participant one likely views court as a place where ‘bad people go’ as a result of introjects (Blom, 2006:32). Furthermore, at age nine, this participant is in Piaget’s heteronomous phase of moral development. As discussed in chapter two, this stage is characterised by a strict respect for rules and an almost blind obedience of said rules (Louw & Louw, 2007:268; Santrock, 2006:359). Thus it could be argued that participant one’s strict respect for and adherence to ‘rules’ led to her reasoning that because only ‘bad’ people go to court, she must be ‘bad’ too or must have done something ‘bad’. This understanding and the resultant anxiety and possible confusion could have been avoided if the participant had been adequately prepared (Eltringham & Aldridge, 2000:281).

Conversely, participant five seemed to understand that although court is where criminals go, she herself was not a criminal and had done nothing ‘bad’. However, the knowledge that criminals were also appearing in court the same time she was, albeit in another part of the building, made her feel uneasy.

Block et al. (2010:661) discuss how participating children often display negative attitudes towards the court system. This is confirmed by the afore-going quotes from

³³ “Nee, dis ook nie vir my lekker nie ... Want die hof is ‘actually’ vir kriminele en goeters. Dit is nie lekker vir my om daar te wees nie.”

participants one and five, who both indicated that it was not pleasant to go to court because this is where criminals go.

- **Emotions regarding aspects of postponement**

The three participants who returned to court multiple times all expressed positive emotions about seeing their parents on each occasion. This once more confirms findings by Block et al. (2010:667), namely that children often experience positive emotions about seeing their parents again rather than feelings of distress as was suggested by Pitchal (2008) in Block et al. (2010:667).

As with the possibility that postponements, albeit stressful, may actually benefit the child in as far as it affords the opportunity to prepare and empower the child properly, the same dichotomy around the finalisation of proceedings seemingly exists.

4.7.6. Theme 6: Finalisation of proceedings

The dichotomy referred to above clearly comes to the fore in the way participants responded when asked how they felt about attending court for the last time: Three participants said they were glad that their cases had been finalised, but participant three voiced sadness by stating: “We would not see mommy and them.”³⁴ Participant three’s response, though, may have a direct bearing on how children are informed about the actual outcome of the court case.

- **Understanding regarding finalisation**

Five participants indicated that the presiding officer had not explained the ruling to them, while one participant could not remember. Of greater concern, though, when asked if they understood the ruling, only three participants responded. Of these, only one indicated that the ruling had been understood, with participant six remarking: “Now... then I did not know so much.”³⁵

The fact that participant six did not understand why she was being placed in foster care is concerning, since this should have been addressed by the social worker at the very beginning of the process. The researcher is of the opinion that the presiding

³⁴ “Ons sal nie vir mamma-hulle sien nie.”

³⁵ “Nou ... Toe het ek nie so baie geweet nie.”

officer should also have reiterated the reasons for the placement to ensure understanding. Here, cognisance should be taken of the fact that substantial changes to a child's living situation inevitably have a harmful impact. This harmful impact is exacerbated when children are confused or uncertain about the permanency of the new living situation.

As can be deduced from the responses in this study, the ruling and the reasons for such a ruling were not discussed with the participants, resulting in a certain degree of confusion and anxiety (Pitchal, 2008:18).

- **Participants' response to ruling**

Five participants expressed agreement with the ruling. However, participant two indicated that he wanted to return to his parents, and participants three and four expressed anger at having been removed from their parents' care and being placed in the children's home. Block et al. (2001:667) pointed to the fact that within children's court, fundamental attachments are often at stake. As a result, children are likely to experience some form of attachment-related anxiety, whether fearing separation from their parents or wishing to remain in a current secure attachment with their foster parents.

These attachment-related anxieties ought to be considered, especially since this study revealed that two participants indicated they had never been asked about their view regarding continued care. A further three participants stated that they would have preferred a different ruling where they remained in their parents' care rather than being placed in foster care and/or a children's home respectively. Keeping the best-interest standard discussed in chapter three in mind, it could well be postulated that hearing a child's opinion regarding its future care, although not determinative, will surely be in that child's best interest (Pitchal, 2008:20).

Since this study set out to look at children's experiences of children's court holistically, it would be incomplete if their reaction to the actual court buildings itself were not investigated too, hence the inclusion of theme 7.

4.7.7. Theme 7: Child's response to physical structure of children's court

- **Waiting and play area**

Louw and Scherrer (2004:17) mention that the court process should be experienced positively by children and should not exacerbate their trauma. This includes the waiting area where children are expected to wait until their case is called.

In conducting their study, Louw and Scherrer (2004:30-31) asked children to comment on what they experienced as positive within the environs of the Office of the Family Advocate where divorce investigations are conducted. Children responded that they had liked that there were magazines, toys and things to draw with while they waited. They further commented that a comfortable waiting area with a TV was something they enjoyed.

Clearly, these findings point to the fact that children want things in the waiting room that would keep them entertained. In this study, the researcher found the same. All participants remarked that they would have liked a play area as a waiting room since this would have helped to relieve the boredom of having to wait for their case to be called.

Eight participants in this study indicated that there had not been an area where they could play while they waited. In fact, all participants had to wait in the same area as the adults for the case to be called, and four participants clearly stated that they found this to be very boring. Without exception, all participants indicated that it would have been nice to have a play area where they could be kept busy while waiting. Of the nine, only participant five indicated that she and her foster parent waited in a play area where there were toys that she could play with. Despite being the only participant who had access to a play area, though, it was interesting to note that she did not make use of it.

With regard to what should be in the play area, participants suggested the following:

Participant 1: "Toys, puzzles, umm, balls, basket things you can throw the ball in like at Spur. It should look almost like Spur there, and the court should look a bit neater and nicer so that people can expect nice things not yucky stuff."

- Participant 2: “Sandpit, a play ground ... to put colouring stuff there.”³⁶
- Participant 4: “Playing cars”³⁷
- Participant 5: “I think they can change that child play area also a bit so that it is more colourful, because it is so white and stuff... They can colour it like a rainbow and stuff like that... They can make it a bit higher and then they can put a jungle gym or something in where the children can play and stuff ... Everything is indoors, but they can like put in this hockey grass, because hockey grass is like plastic; then they can put that indoors and paint it like it looks outdoors and then put in a door that says something like ‘welcome to the house of fun’. That would be quite nice.”³⁸
- Participant 6: “Something to keep children busy with ... It must be colourful.”³⁹
- Participant 7: “Play stations ... bicycles, huge 4x4 remote-control trucks”⁴⁰
- Participant 8: “For the little ones, just toys ... Books to read ... Just full of toys and like at Spur, they have these blocks and stuff the little ones can stack on top of one another.”⁴¹
- Participant 9: “A game place or something ... like a video screen for the little ones. And for the bigger children: They can just hang around on the swings or stuff.”⁴²

³⁶ “Sandpit, ‘n speelgrond ... om inkleurgoeters daar te sit.”

³⁷ “Karretjies speel”

³⁸ “Ek dink hulle kan daardie kinderspeelplek verander [sodat dit] ook ‘n bietjie meer kleurvol is, want dit is so wit en goeters ... Hulle kan dit soos ‘n reënboog verf en so goeters [sulke goed] ... Hulle kan dit ‘n bietjie hoër maak en dan sit hulle soos ‘n klimraam of iets in waar die kinders soos kan speel en goed ... Alles is binne, maar hulle kan soos hierdie hokkiegras daarin sit, want hokkie se gras [hokkiegras] is mos soos plastiek; dan kan hulle dit daarin sit en dit verf soos dit buite lyk en dan maak ‘n deur daarso [maak]; dan sê hulle ‘Welcome to the house of fun’, of so iets. Dit sal nogals lekker wees.”

³⁹ “Iets om kinders besig te hou ... Dit moet kleurvol wees.”

⁴⁰ “Play stations ... fietse, groot 4x4-‘remote-control’-bakkies”

⁴¹ “Vir die kleintjies, net speelgoed ... Boeke om te lees ... Net vol speelgoed en soos by Spur het hulle sulke blokkiegoeters wat die kleintjies so opbou.

⁴² “‘n ‘Game’-plekkie of iets ... Soos ‘n video-‘screen’ vir die klein kinders. En vir die groterige kinders: kan hulle maar rondhang op die swings of goed.”

As is evident from the response above, participant five had been very specific in her suggestions. The researcher is of the opinion that this participant's suggestions are valid and could be used quite effectively in courthouses, especially those lacking access to outdoor play areas for children. Often, since courthouses come across as only being comprised of waiting areas and offices, her idea of making an office look as if being part of the outdoors is quite innovative.

In respect to the response from participant seven, it ought to be noted that this child's background speaks of depravity and neglect. Consequently, his wishes as to what the play area should contain may well relate to those things he dreams of having.

Participant eight also made a valid point when he stated, "but look here, sometimes then they [children] steal it [toys]."⁴³ A point to be noted since participant seven repeatedly asked the researcher if he could have some of the toys used at the start of the interview.

Nonetheless, as indicated above, participants without fail expressed boredom whilst having to wait for the presiding officer and a need for a play area where they could be kept occupied and entertained while waiting.

Despite the fact that participants voiced no further emotions with reference to having to wait, Louw and Scherrer (2004:33) indicated that having to wait can be stressful. They are also of the opinion that in order to 'soften' the emotional impact of this waiting period, everything possible should be done to make the waiting area more child-friendly. Jenkins (2008:167) agrees, stating that courts in general ought to be more child-friendly – a notion this researcher fully subscribes to since the creation of an environment where children's fears and anxieties are alleviated while they await their appearance in court – a system dominated by adult presence – would surely aid their ability to participate effectively in children's court proceedings.

⁴³ "Maar kyk hier, partykeer dan steel hulle dit."

- **Security procedures**

With reference to the other aspect addressed under this theme, namely the court structure, only two participants expressed feelings of fear when asked about having to proceed through security at the entrance of the court building. Participant seven commented as follows: “I thought they were going to take me away.”⁴⁴

Despite the fact such profound fear was voiced by only one participant, the researcher is of the opinion that such a strongly voiced response warrants concern regarding the way children are prepared for their mere arrival at court and the reason why everyone entering court are subject to a security check, let alone what such a check involves. Frankly, in the researcher’s opinion, such a simple matter can be addressed effectively by simply ensuring that the child is sufficiently prepared in terms of what to expect from the word go.

- **Experiences while waiting**

While waiting, four participants indicated that they became hungry, and three indicated that they developed a thirst. Of the latter, two went to buy something to drink while one participant’s mother gave him something to drink. None of those who were hungry had brought food or even a snack to court. As suggested by those participating in a study conducted by Louw and Scherrer (2004:31), refreshments ought to be made available to children while they wait. Based on the responses of those partaking in this study, the researcher holds that guardians should be requested to bring refreshments to court for the children while they wait for their cases to be called. Since not having food or drink available may add to their inability to effectively partake in children’s court proceedings.

- **Reactions to having to miss school**

To conclude, three participants noted that they did not like missing school to come to court. The older two participants attributed this to being forced to catch up with schoolwork as a result, and the younger participant merely said that he always missed enjoyable school tasks when he had to go to court. A further two participants indicated that they went to court during the school holidays so as to not be absent from school.

⁴⁴ “Ek het gedink hulle gaan my weg vat.”

Krinsky and Rodriguez (2006:1311) note that children often have to miss school to attend court. Consequently, children who find themselves in this position ought to be allowed time to catch up on unfinished schoolwork according to a schedule that takes their needs into account (Caring for kids, 2009:3). This suggestion is in line with the participants' responses in this study where they expressed a dislike with having to catch up on missed schoolwork by the next day of school.

- **Participant suggestions**

Participant eight noted: "The court, he's [it is] big, and I think there are too many people for one day."⁴⁵ This is an interesting observation, and although this participant did not have to wait very long before his case was called, clearly no separate waiting area had been set aside for children awaiting their cases to be called in this instance. As a result, a sense of being overcrowded in an area populated by all those attending court on a daily basis could be experienced as overwhelming, with the resultant effect of fear and anxiety for the child.

4.8. Conclusion

As is evident from this research study, the implications of ineffective preparation for the procedures followed in children's court may well have lasting consequences for the child concerned. In this regard everyone involved in these processes ought to take heed of the individual child's level of development, specifically with reference to that child's ability to understand and reason. Based on the empirical findings discussed in this chapter, the researcher will make conclusions and propose recommendations in the following chapter.

⁴⁵ "Die hof, hy's groot, en ek dink daar is te veel mense vir een dag."

5. Chapter Five

Conclusions and Recommendations

5.1. Introduction

A great number of children go through the children's court process every year, and during this statutory intervention, children are exposed to various procedures they are likely unfamiliar with. This unfamiliarity and uncertainty can lead to an increase in anxiety and fear. In this chapter, conclusions and recommendations will be discussed based on the empirical data and findings of the study as was discussed in chapter four. However, to place these conclusions and recommendations in context, a discussion as to whether or not the goal and objectives of the study have been achieved will first follow.

5.2. Goal and objectives of the study

The goal of this research study was to explore the experiences of children, in middle childhood, regarding children's court procedures. This goal was achieved and revealed a great deal of important information regarding how children experience children's court procedures.

In order to achieve the goal, specific objectives were developed which were as follows:

- **To determine and explore the needs of children in middle childhood regarding children's court procedures.**

Participants were able to make suggestions regarding their needs. However, the participants often did not specifically identify the needs. The researcher had to analyse and interpret the data in order to identify these needs. Consequently, not all needs were fully explored.

- **To describe the knowledge children, in middle childhood, have of children's court procedures.**

It became evident during this research that the participants had limited knowledge about children's court procedures. It was further evident that this lack of knowledge was due to poor preparation by the designated social workers.

- **To identify and gain an understanding of the strengths and challenges of children's court procedures with regard to children in middle childhood.**

Similar to the needs, the strengths and challenges were identified through analysis and interpretation of the data. The researcher was able to identify various challenges children faced with regards to children's court procedures. Very few strengths have been identified.

- **To identify the emotional effect which children's court procedures have on children in middle childhood.**

This objective was definitely met since the researcher spent a great deal of time exploring the emotions experienced by participants during the various stages of the children's court procedures.

5.3. Key Findings

Within the empirical study, specific key findings have been identified. These are as follows:

- Social workers do not seem to provide comprehensive preparation to children who attend court procedures.
- Children do not participate in a meaningful manner during court proceedings.

5.4. Conclusions

From this study, and as can be seen from the key findings above, it was evident that children were not by any means adequately prepared for children's court procedures. The researcher is of the opinion that partly due to this lack of preparation, children did not participate in proceedings. However, it was clear from the research that the majority of the presiding officers did not facilitate participation. Consequently, it seems

that children did not know they have the right to participate and were not provided an opportunity for participation. This is contrary to stipulations in all the relevant legislation and policies that South Africa adheres to, namely the Constitution Act 1 of 2009, the Children's Act 38 of 2005, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Most of the conclusions to be discussed below link back to the two key findings mentioned above. The researcher will now be discussing the conclusions in terms of the themes which formed the structure for the discussion on empirical findings.

Theme 1: Interaction with social worker

- **Interaction and participation with social worker**

From this research, it was found that the majority of the social workers did not allow effective participation of the children in the investigative process. This includes not explaining why notes were taken during interviews with children, not always asking children's opinion about their views and preferences in terms of their future care as well as not providing children with the opportunity to work through the social worker's report before children's court proceedings. It can be noted that if children do not understand such insignificant aspects such as why notes are taken during the interview with them and if they are not asked their views and preferences, effective participation is not possible (Chawla, 2001:2; Lefevre, 2010:1). Even if children are merely provided with a clear and simplified summary of the report's contents (Lefevre, 2010:193), they are in a better position to participate in proceedings since then they should be able to confirm or deny the contents of the report and whether or not it is an accurate description of their reality. If children are unaware of the contents of the report, it may increase anxiety levels since they will also not be privy to the recommendations made regarding their future care. In turn, heightened anxiety levels can impair their thinking processes negatively, thus also impairing their ability to participate effectively (Berk, 2009:400; Louw & Louw, 2007:175).

The researcher would conclude that it is the child's right to be provided with age-appropriate information and to be allowed to participate in every aspect of the court procedures. Thus it is not a case of whether the social worker has a choice in this matter: It is a legal requirement that children must be informed and allowed to

participate (Children's Act 38 of 2005; Constitution of the Republic of South Africa, 16th amendment, Act 1 of 2009).

- **Relationship building and trust**

It was found that social workers do not spend enough time on developing a trusting relationship with children. As previously noted, social workers have high caseloads and as such do not have the time available to spend on building a trusting relationship with every child in their caseload. This does, however, have a negative impact on the quality of the information obtained from the children (Leeson, 2007:269; McLeod, 2007:278,285; Tapp, 2006:47). This was confirmed by the participants when they stated that they did not feel that they could speak openly with their social worker, neither could they disclose everything to the social worker. This, in the researcher's opinion, is indicative of a lack of a trusting relationship between the child and the social worker.

- **Emotions regarding social worker involvement**

This research indicated that the children experienced negative emotions regarding social workers' involvement. The majority of emotions centred on feeling scared, sad or angry. The fear was, in the researcher's opinion, due to poor communication between the social worker and the child, which resulted in a lack of understanding and uncertainty for the child about his/her future. Seemingly, the sadness and anger can be ascribed to being removed from parental care. Children who have been abused or neglected are already likely to experience high levels of fear, anxiety and even possible depression (Perrin et al., 2000:278-279; Singh, 2005:31). As a result, the researcher is of the opinion that the lack of understanding and uncertainty with regards to social worker involvement, especially if the social worker removes the child from its primary care giver, is likely to add to these already increased levels of negative emotions. It is thus concluded that currently, social workers are unclear in their explanations to children as to their involvement and possible outcomes, and this uncertainty is disempowering children.

- **Uncertainty about social worker involvement**

In this research, it was found that the majority of children did not understand why the social worker was involved. This is indicative of the social workers not explaining the purpose of their involvement to the children in a manner that they understand clearly. As already indicated, this can lead to children experiencing increased levels of negative emotions. This can also lead to children blaming themselves for being removed or children being uncooperative and obstructive in the investigative process as was found in this research. Children have the right of access to information (African Charter..., 2009; Children's Act 38 of 2005; Constitution of the Republic of South Africa, 16th amendment, Act 1 of 2009; UNICEF, [sa]), and part of this information should, in the researcher's opinion, be a transparent explanation of the reason for the involvement of the social worker.

Theme 2: Preparation for children's court

- **Participant explanations and expectations regarding children's court**

From this research, it became evident that the children did not know why they were attending court. This was due to either not being informed at all or being informed but not understanding. Children were also not informed about their role in court as well as the manner in which they should behave in court. Yet again, the result was higher levels of anxiety due to a lack of knowledge and understanding. When taking into consideration that children are no longer viewed as passive victims within a court system but rather as active right holders, the importance of empowering children and supporting them through the process is highlighted (Children's Act 38 of 2005; Diduck, 2003:80; Eltringham & Aldridge, 2000:276; James, 2003:145; Kaganas & Diduck, 2004:961). Consequently, in order to empower and support children during children's court procedures, social workers must prepare them fully with reference to all aspects regarding children's court, including their roles and rights.

- **Being informed**

In this study, the majority of children indicated that they were aware that their parents would be present in court and they expressed happiness and excitement at the prospect of seeing their parents.

This study showed that children do not know the roles and responsibilities of the presiding officer. They also do not know what the presiding officer may ask them and how to answer him/her. If children do not know what to expect from the presiding officer and if they do not understand what his/her role in the process is, they are immediately placed at a disadvantage since their ability to participate is impaired (Block et al., 2010:660; Eltringham & Aldridge, 2000:281; Taylor, 2004:233). Social workers should include this knowledge in their preparation of children, and the presiding officer him-/herself should explain his/her role to the children before proceedings commence. This is likely to lower anxiety linked with the uncertainty children experience as a result of a lack of knowledge.

- **Emotions about attending court**

In this study, children experienced negative emotions about attending court and the majority expressed feelings of fear associated with attending court. These feelings were directly linked to being unprepared and uncertain about the outcome of the court case and their resultant future care. This highlights the crucial link between preparation and emotion. If negative emotions stem from being unprepared and uninformed, positive emotions ought to result from being properly prepared and informed. Consequently, social workers should take preparation of children for court very seriously.

Theme 3: Court – first appearance and all proceedings

- **Interaction with presiding officer**

This study showed that children believe that they have to be honest when interacting with the presiding officer. Although children did not always feel that they could interact with the presiding officer, due to a lack of trust or opportunity, the majority of the participants did indicate that they would be or were honest in their interactions with the presiding officer. It seemed apparent from this study that it is rare for a presiding officer to interact with a child to the extent that would facilitate participation as described in section 10 of the Children's Act 38 of 2005.

- **Participation in proceedings**

This study clearly showed that although children are present during proceedings, children did not participate. Due to not being prepared, the majority of the children indicated that they were not involved in the proceedings, since many of them merely sat quietly while the professionals and adults discussed the case; some even admitted to daydreaming. This is indicative of children not having been prepared to participate. As such, while a few participants did attempt to listen to what was being discussed, it held no meaning because they either did not understand or could not voice their opinion on what was being discussed. The children indicated that at no point did any adult explain to them what was being discussed in the proceedings. Participation is a process of engagement (Chawla, 2001:2), and as shown in this research, the majority of the children were not engaged at any point in the court proceedings. Furthermore, it is known and confirmed by this study that the language used in court by professionals is unfamiliar and can be confusing to children (Copen, 2000:5,6,70,71,75; McCoy & Keen, 2009:192; Sheehan, 2003:31- 38). This again may cause uncertainty and can increase levels of anxiety. Consequently, presiding officers ought to make a concerted effort to either utilise language that children will understand or the social worker should explain the complex jargon of what is being discussed to the child throughout the proceedings so that the child is able to participate in the conversation (Lefevre, 2010:192). Only in this way will children be able to participate fully. It goes without saying that if they cannot understand what is being discussed, they cannot ask questions or provide their view when required.

- **Emotions of participant before or during court proceedings**

This research found that children experience negative emotions regarding court proceedings. The majority of children in this and other studies expressed negative feelings associated with the belief that they would be removed from their current and preferred placement or that they would never see their parents again (Block et al., 2010:661). This once more links to not being prepared properly for proceedings and the possible outcomes of said proceedings.

Theme 4: Children's lawyers

Children are often not appointed a lawyer. Of the nine participants, only one participant had a lawyer. Despite the Children's Act 38 of 2005 making provision for a lawyer to be appointed for the child, seemingly this does not happen most of the time. A child's lawyer has a crucial role in ensuring that children have the information and support required to enable them to participate within the legal system (Tapp, 2006:74). When considering all of the above, children's best interests may be compromised when they do not have legal representation.

Children do not always feel comfortable speaking with lawyers. The participant indicated that she did not want to speak to the lawyer because she did not know who it was and why she had to speak to the lawyer.

Theme 5: Postponements of proceedings

- **Frequency of court appearances**

This research showed that children preferred it when cases were finalised in a timely manner and not having to return to court multiple times as a result of postponements. However, those children who had to return to court multiple times all indicated that they were happy to see their parents each time.

Theme 6: Finalisation of proceedings

- **Understanding regarding finalisation**

It was found that presiding officers do not explain their rulings to the children during finalisation. This lack of a satisfactory explanation can lead to confusion and anxiety (Lefevre, 2010:29,191; Pitchal, 2008:18), as was confirmed in this study where some children indicated that they did not understand the ruling. The researcher is of the opinion that presiding officers should deliver and explain their ruling to the children. However, it should also be the responsibility of the social worker to ensure that the ruling is explained clearly to the child, using language that is appropriate, in order to ensure understanding of such complex and distressing matters such as the final outcome of the case (Lefevre, 2010:191). Since the social worker will continue to provide supervisory services to the child in its new placement, making sure the child understands the final decision could contribute to maintaining a positive and trusting relationship with said child (Lefevre, 2010:33,210).

- **Participant's response to ruling**

Children do not always agree with rulings made by the court. Many of the children in this study indicated that they would have preferred a different ruling. The researcher is of the opinion that the children's lack of participation and understanding of the proceedings may have contributed to their not agreeing with the ruling made (Block et al. 2010:667; Van Alst, 2012:60). They may have been more accepting of the ruling had they been actively involved in the decision-making process.

Theme 7: Child's response to physical structure of children's court

The majority of the children's courts in this study did not have a play area where children could wait for their case to be called. Indicated in this research and other findings (Louw & Scherrer, 2004:30-31), children want to be kept busy while they wait for their case to be called, and all the participants indicated that they would like having a playroom to wait in.

Also related to the structure of court, a small number of the children were unsure about the security procedures and expressed fear at having to go through the security area at the court. This is once more related to not being prepared properly. If children know what to expect when they enter the court building, they will not experience an unnecessary increase in anxiety.

Furthermore, children seem to become hungry and thirsty at court. A great deal of the participants indicated that they were hungry and thirsty while waiting for their case to be called. Although there seemed to be facilities where cool drinks could be bought, no food was available. This could indicate a lack of preparation of guardians in that they should bring snacks for the children when they attend court.

Lastly, children indicated that they do not like missing school for court proceedings. This was more evident with the older children who had to catch up on schoolwork missed while at court. This disempowerment is even worse when taking into consideration that they are not provided with opportunities for effective participation within the court process, as was found in this study.

In conclusion, it is clear that a lack of preparation and meaningful participation were significant findings in this study. The majority of negative experiences of children could be traced back to inadequate preparation or lack of participation. The researcher is of the opinion that despite having an incredibly advanced Children's Act, this lack of preparation and participation is a very serious obstacle to the effectiveness of the act itself. Furthermore, the manner in which children's court procedures are currently dealt with is flawed, since children are not supported and greatly disempowered. In an attempt to help rectify the matter, to follow are the recommendations made by the participants in the study as well as those of the researcher.

5.5. Recommendations

Based on the empirical study and above-mentioned conclusions, the following recommendations can improve children's experiences of children's court in the future.

5.5.1. Participant recommendations

Participants made various suggestions throughout the study. The most valuable will be noted below:

- The social worker should explain to children why he/she is involved, listen to them, ask questions and ensure that interaction is positive.
- The social worker should prepare children for court by explaining to them why they are attending court.
- The social worker should explain to the children what is being discussed in court in order for them to understand.
- There should be a separate play/waiting area where children can keep busy while they wait with their guardians for the case to be called.

5.5.2. Recommendations in terms of the study

The following recommendations will be discussed in relation to the specific role-players in the court system.

5.5.2.1. The social worker

- Social workers must take the time to build a trusting relationship with children in order to improve the quality of the information obtained and presented in the final court report.
- Social workers must interact with children in a child-centred manner.
- Social workers must clearly and effectively explain all aspects of their involvement and intervention to children in order to prevent confusion, fear and uncertainty.
- Social workers must include children in the decision-making process in order to empower them and strengthen their sense of self.
- Social workers must work through their final court report with the children in order to enhance their ability to participate effectively in court proceedings.
- Social workers must ensure that children understand the final ruling in terms of their future care.
- Children must receive comprehensive preparation for children's court proceedings. This includes an understanding of why they are going to court, what to expect, who will be present and how to interact with the presiding officer as well as their rights. This will decrease anxiety and increase the child's ability to participate.

5.5.2.2. The presiding officer

- A child-friendly environment that is conducive to child participation must be maintained throughout children's court proceedings.
- Presiding officers need training in understanding child development and the effects of abuse and neglect on development and a child's resultant behaviour.
- Presiding officers need training in how to interact with children in a child-centred manner as well as how to use child-friendly language during proceedings.
- Presiding officers must involve children throughout the proceedings and ensure that they understand what is being discussed.
- Presiding officers must allow children to participate and voice their opinions during proceedings.
- The presiding officers must explain the final ruling to the child in a manner the child will understand.

5.5.2.3. The lawyer

- Lawyers should receive training in how to interact with children in a child-centred manner.
- Lawyers must spend time developing a trusting relationship with children in order to enhance the quality of information obtained from children.

5.5.2.4. General

- Cases should be finalised as quickly as possible.
- Postponements must be kept to a minimum.
- Children should be allowed to ask questions regarding the ruling in order to ensure that they have a comprehensive understanding.
- Each court should have a play area where children can wait with their guardians before their case is called.
- This play area should include a variety of toys and activities to keep children occupied.
- Children must be prepared regarding the security process to avoid unnecessary anxiety.
- Guardians should be requested to bring refreshments for the children to court.
- Teachers should be requested to assist children, who attend court and miss school, in catching up on missed schoolwork.

From the above conclusions and recommendations, it is important to note that all the role players must adhere to section 10 of the Children's Act 38 of 2005 where it is clearly stated that attention must be given to the participation of children during proceedings. All these role players should be working towards preparing and supporting children to participate effectively in all aspects of children's court procedures, as is their right.

5.5.3. Recommendations for further research

- It is recommended that more research be conducted to explore children's experiences in children's court. This should include a bigger sample as well as children of varying ages.

- Further studies should be conducted in terms of how presiding officers interact with children during children's court proceedings and how effective this interaction is.
- Further research is required into the effectiveness of lawyers as well as their ability to work within a children's court context where interaction should be child-friendly
- Further studies should be conducted in how lack of preparation impacts on children's experiences of children's court procedures.
- More research should be conducted on how to prepare children effectively for children's court procedures.
- A South African preparation programme should be developed to assist social workers in preparing children comprehensively for children's court.

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