THE APPLICATION OF CHILD CARE POLICY AND LEGISLATION TO BLACK FAMILIES AND CHILDREN IN SOUTH AFRICA

by

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SUMMARY

This investigation attempts to analyse the applicability of child protection policy and legislation to black families and children in South Africa. The literature study focuses on the nature, scope and implications of child protection and child protection legislation, perspectives on children's and parents' rights, and more specifically on child-care policy and legislation in South Africa.

A limited exploratory empirical investigation within the confines of the Child and Family Care Society was undertaken. The researcher had, by way of a case analysis, studied factors influencing the application of child-care legislation and described how legislation is being applied in practice. The application of philosophies and principles inherent in child-care policies, and the evolvement of certain patterns and trends have also been analysed. Specific deficiencies have been identified and recommendations regarding more effective social work practice are highlighted.

KEY TERMS:
Child protection; Child protection legislation; Legal criteria; Law and Welfare; Child abuse; Childhood; Knowledge construction; Children and parent's rights; Family preservation; Parental competence; Democratising child welfare; Kinship care.

CHAPTER I

EXPOSITION OF THE RESEARCH

"law must be master in its own house, but it must equally remember that this house is staffed by many servants ... . But it is only a foolish master who keeps constant watch over the doings of his servants, nags them at every step, and ends by virtually doing the work himself"

(Jenkins 1980: 380)

1. INTRODUCTION

The volume and complexity of law which impinges upon social work, recent political changes, the tension and dilemma contained within child protection, and the sometimes uneasy juxtaposition between social work values and legislative intentions are all factors that contributed to the need for research in this sphere.

The state has in the past failed to provide a supportive environment for the majority of black families and children in South Africa, and child welfare agencies were (and presently are) required to cope with many of the consequences of its failure. Social priorities and social policies effectively determine the purpose and function of child protection and presently, are far from being a source of support in a nonstigmatised and caring way. Effective operationalisation of the premises and philosophies inherent in child care legislation are also inhibited by the context of child welfare and protection. A context where child welfare agencies and social workers have been confined to a position of investigating complaints of neglect and

abuse with respect to families who often lack the resources to care for their children, and where the function of child rescue often became the sole mission.

The research undertaken here attempts to critically unravel some of the above dilemmas to a limited extent, and to more specifically focus on the applicability of child care policy and child removal criteria (set out in Section 14(4)(a) and (b) of the Child Care Act 74 of 1983*) to black families and children in South Africa. The goal of the research will be:

- to make a limited contribution to the development of alternative welfare policy and legislation, and

- to set the stage for more extensive research in this sphere. The Child Care Act 74 of 1983 is presently under revision, but it will take some time before it is implemented. The research undertaken might thus serve as a basis for a comparative study between present and future legislation.

2. PROBLEM FORMULATION AND MOTIVATION FOR THE RESEARCH

The current focus on the upliftment of disadvantaged black families who have for many years been subjected to the discriminatory effects of apartheid policy in South Africa, have forced the social work profession, legislators and policy makers to rethink their approach and philosophy towards child protection. Grassroots social development, the pursuit of more equitable, democratic alternatives for social welfare policy, as well as the search for indigenous models of practice to local conditions in South Africa have emerged in the quest for alternatives to the protection of children within the existing welfare system. These new elements

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*The Child Act 74 of 1983 will hereafter be referred to as Act 74.

represent a completely new direction in the South African welfare field but have, according to Patel (1992: 1), not been subjected to any systematic analysis and research. Similarly Gil (1990: ix) states that in spite of worldwide interest in these issues, little systematic analysis of social policies is undertaken. He emphasises the need for greater understanding of the forces and processes which establish or change social policies, to predict the consequences of social policies, and to establish goals for the "good society" towards which social policies should lead us.

Patel (1992: 159) has in her own research aimed to fill some of the gaps in empirical research into welfare policy options, but after completion of her study pointed out that:

- the search for future social welfare policies will necessitate a dramatic break with past policies

- there will have to be some continuity and an evaluation of the positive elements in existing social policy

- an integrative, democratic and critical approach should be a vital component in any attempt to develop new policy

Social policies are, according to Gil (1992: 21), guidelines for behaviour, evolved through societal processes which specify and maintain or transform the structures, relations, values and dynamics of a society's particular way of life. In contemporary societies they tend to be codified in formal legal instruments and focus on particular domains of social life. The Child Care Act 74 of 1983 is a social institution of welfare policy and a visible and legal instrument which focuses on the domain of child protection within the broader field of social work practice. The legal and therapeutic practice of child protection is, however, influenced by a complex and

broad spectrum of other policies such as education, health, economic and human rights, to name but a few. The degree to which the broad policy mandate, goals for the protection of children and the preservation of families and the provision of services is achieved, is accordingly determined by a variety of factors.

Due to the limited scope of this research, it was necessary for the researcher to draw concrete and distinct boundaries in terms of which aspect or part of the child protection policy should be studied. Motivation for the research was particularly justified by the fact that there is a great deal of literature on the mistreatment of and legislation regarding white children in South Africa, but almost nothing on the suitability of existing legislation with regards to black families and children in South Africa. Most of the writing and research done in the field of statutory work with children and families have been done by white social workers about white children.

Although a number of articles have been written after the implementation of the Child Care Act 74 of 1983 (Levine, Loffell & Wright 1988; Starke 1988; Zaal 1988) in which some of the philosophics and articles have been criticised, almost no attempts have been made by social workers to critically analyse the philosophy and suitability of the present child care policy and legislation where it is being applied to black families and children in South Africa. The present Child Care Act 74 of 1983 is the product of a fragmented social welfare system which was founded upon a residual ideology, selective discrimination and racial division in the provision of welfare services (McKendrick 1990: 38-39). The White Paper on Reconstruction and Development (1994: 27, 41, 82) clearly spells out that part of the reconstruction of the welfare system involves services for children, the protection of the rights of children, and a review of the Child Care Act 74 of 1983.

The need for research to be done in this sphere is thus spelled out clearly. It is evident that child protection policies and legislation must be changed over time to

be consistent with changes in the broader South African context and should go hand in hand with changing community expectations. A complete review of child protection policies and of Act 74 is, however, beyond the scope of research of a limited nature. In narrowing down the field of research, the researcher has decided to focus on the premises inherent in child care policy and on Section 14(4)(a) and (b) of Act 74. Section 14(4)(a) and (b) of Act 74 provides social workers in practice with guidelines to the holding of enquiries into cases of children that need protection and sets out specific criteria in order to determine if a child is at risk or in need of protection. The philosophy of parental competence or fitness and the parent-centred focus of Act 74 is also inherent in Section 14(4)(b). What makes this philosophy and the criteria in Section 14(4)(a) and (b) particularly important, is that it must ultimately be applied in ALL cases where families are evaluated or where statutory intervention is inevitable. The question posed in the research focuses on how this Section of Act 74 is being applied to black families and children, and how applicable the philosophy and criteria set in pre-existing legal categories are to these families. The focus, specific goals and objectives of the research is highlighted in the following section.

In conclusion it might be said that in any research child care legislation will always fall short of the ideal, since the philosophy and perspectives that people have about children and families are constantly evolving, and therefore changing. Changes in legislation and effective operationalisation of child protection procedures is limited by economic, political and cultural circumstances, and by the priorities of governments. In attempting to analyse the sections of child protection policy as already described, it is nevertheless possible to identify some of the strengths, weaknesses and dilemmas in present child care legislation, which in turn could contribute to a more child and parent-responsive child care act, protection services and to welfare policy in general.

3. THE GOALS AND OBJECTIVES OF THE RESEARCH

Rubin and Babbie (1993: 99) emphasise that research is more likely to have value to the social work field if the topic selected addresses information needed to guide policy, planning or practice decisions in social welfare. Accordingly Thorpe (1994: 32-34) identifies the need for research which contributes to identifying decision-making points in child protection processes that can be applied to practice, and research which could enhance policy-making processes and monitoring.

The goal of the research is not merely to add to the growing list of publications on the failures of courts and social work agencies to protect children against abuse and neglect by adults, nor is it to offer simple proposals for changes in legislation itself which might result in more children being protected from the many forms of exploitation they are being subjected to. The main interest of the researcher is also not to criticise the way(s) in which Section 14(4)(a) and (b) of Act 74 are being applied in practice, but rather to identify and study factors influencing the application of criteria set out in Section 14(4)(a) and (b) and to describe how the criteria are being applied. The researcher will also, by way of a critical approach, evaluate if the criteria set in Section 14(4)(a) and (b) are being applied in accordance with the philosophy underlying it, certain patterns or trends that evolve in the application, and to what extent pre-existing legal categories set out in the Section can effectively be applied to black families in South Africa.

The overall goal of the research can be described as an attempt to:

> make a limited contribution to the development of alternative welfare policy and more specifically to the philosophy inherent in child care policy, and the applicability of pre-existing legal categories set out in Section 14(4)(a) and (b) of the Child Care Act 74 of 1983, to black families and children in South Africa.

3.1 Objectives

The objectives required to reach the overall goal of the research can also be seen as steps taken by the researcher. Objectives were formulated for the literature review as well as for the research design, methodology and data collection.

3.1.1 Literature review

The primary objective of the literature review was to equip the researcher with the knowledge required to successfully undertake and conceptualise the scope and boundaries of the research. Secondary objectives were the following:

Chapter 2 and 3

- Studying the scope, nature, function and objectives of welfare law and child protection legislation in general in order to be better equipped to analyse child welfare policy in South Africa.

- Studying similar investigations undertaken by other researchers in order to highlight steps as well as methods of managing the research undertaken. Of particular value here were the research undertaken by Thorpe (1994) in Australia; Dingwall, Eekelaar and Murray (1993) undertaken in Great Britain; and Farmer and Parker's research (1991) undertaken in England.

- Studying both local and international journals and sources in order to build on existing knowledge and to identify ideas and approaches relating to the research problem.

Chapter 4

- Making a critical analysis of the philosophy, values and objectives inherent in child welfare policy in South Africa, and more specifically of Section 14(4)(a) and (b) of Act 74 in order to be equipped to formulate a research design and methodology that will enable the realisation of the overall research goal and objectives.

3.1.2 Objectives of the research design, methodology and data collection

The objectives here were constructed on the basis of the knowledge that was accumulated in the literature review. These research objectives designate the specific variables which will be studied, as well as the questions of fact about their nature, distribution and interrelations (Mayer & Greenwood 1990: 155). They are as follows:

- To compile a profile of the respondents studied in the research in order to explore the context in which Section 14(4)(a) and (b) of Act 74 is operationalised.

- Design a schedule with data items for analysing the case careers of black children and their families.

- Evaluate whether the objectives of the mentioned Section are achieved.

- Describe how the circumstances of black families and evidence resulting from investigations are being constructed in order to fit into pre-existing legal categories.

- Identify the factors that influence decision-making during investigations where statutory interventions are inevitable.

Although the study sample is small and not representative of the total black population, research findings might be useful for policy and programme development and might guide future research undertaken in the same field.

4. RESEARCH QUESTIONS

Mayer and Greenwood (1990: 157-158) state that research questions depend largely on the overall goal and objectives of the research, and on the stage of the policy-making process at which the research is directed. The focus in the research undertaken is on policy that has already been implemented, namely child care policy spelled out in government circulars and in Section 14(4)(a) and (b) of Act 74. The level of knowledge needed to effectively operationalise the research has been reflected in the overall goal and objectives discussed under the previous point. In

order to attain these levels of knowledge and to specify what will be researched, close- and open-ended questions were asked by the researcher.

4.1 Close-ended Questions

Compiling a profile of the case careers of the cases studied in the research required the formulation of close-ended questions in order to generate data of a descriptive nature and quantitative in character (Mayer & Greenwood 1990: 160-162).

The following questions were asked:

- What were the age, gender, ethnicity, educational level, occupation and income of the respondents involved?

- What was the source of referral and what allegations were made?

- Were any services made available to families, and what did these services consist of?

- Over what period of time did the investigations take place?

4.2 Open-ended Questions

The following open-ended questions were formulated to generate data that is qualitative in character:

- How is the parent-centred philosophy inherent in Section 14(4)(b) being applied to black families?

- In what way/ways are the rights of parents and children being attended to in practice?

- Are black children being drawn into the child protection net and statutory proceedings because of a lack of family support provisions and services outside the child protection system?

- In what way(s) did services that were made available affect the families?

- Do social workers attend to the true needs of black families or are statutory interventions a reactive service which ignores the broader social problems experienced by black families?

- What are the factors which influence decision-making during investigations where statutory investigation is inevitable?

- How do social workers construct knowledge in order to prove parental competence and how do they fit knowledge into pre-existing legal categories?

- Which factual data do social workers identify as important in proving that parents are unfit or incompetent, or that children are in need of protection?

- Why was statutory intervention inevitable and what would be needed in order not to have intervened by way of statutory intervention?

- To what extent did final court orders and treatment plans reflect the premises of child care legislation in South Africa?

5. RESEARCH DESIGN

The nature of the research problem posed should suggest the research approach (Collins 1991: 305). The distinguishing characteristics of this research, as discussed in the problem formulation and motivation for the research, is the lack of prior knowledge concerning the application of child care legislation to black families and children in South Africa.

Rubin and Babbie (1993: 214-215) cite that it is appropriate to use flexible methods that yield tentative findings in studies that are limited to exploring areas about which little is known - in the hope of generating new insights and hypotheses that could be studied more rigorously later on.

Milling-Kinard (1994: 645-647) states that conducting research on sensitive subjects such as child maltreatment, neglect and abuse present several methodological and practical problems. He indicates that, although researchers prefer to deal with variables that can be easily and neatly categorised, maltreatment rarely exists in the pure form desirable for research. Similarly it will also become evident, as discussed in the literature review, that there is no clear definition of what the term "child abuse" means, and that the very nature of a belief that children require protection (whatever the circumstances) is a value stance.

Thorpe (1994: 16-28) describes the central requirement of research aimed at the evaluation of the effectiveness and ways in which children are being protected as that of dicerning patterns. He strongly rejects the traditional positivist paradigm and indicates that the pure scientific method neatly avoids the whole question of the way in which knowledge is constructed about natural and social phenomena.

The nature of this research and the arguments of the authors discussed here call for an exploratory approach which will yield data qualitative in nature. Rubin and Babbie (1993: 214-215) explain that exploratory studies are not tightly structured - specific attributes are not simply being described - and research are focused on casual processes occuring among variables. Exploratory studies are concerned with the logical arrangements of patterns that permit the researcher to make inferences about causality and to identify logical arrangements which will enable him/her to generalise casual inferences to a larger population.

Putt and Springer (1989: 82-86) indicate that an exploratory research design is oriented to:

• Broad classification and understanding of the problem

• Research tasks that emphasise the gathering of a variety of information reflecting different points of view in order to estimate the scope and importance of the problem.

• Information techniques which are aimed at gathering a broad range of information rather than concentrating on data reflecting a focused point of view.

An exploratory approach allows enough flexibility to accommodate the open-ended research questions as indicated under the previous point.

The closed-ended research questions calls, to a limited extent, for a descriptive or quantative method (Mayer & Greenwood 1980: 163). This method will only be used to a limited extent in order to compile a profile of the respondents studied. The data will not be presented as scientific variables, but rather as data which

contribute to a better understanding of the respondents within their environment or contexts.

The researcher will thus rely on an exploratory and qualitative approach which use, according to Collins (1991: 304) normative expectations, discusses the information which does exist, identifies what is missing in this information and attempts to strengthen the knowledge base where a topic has not been well explored.

5.1 Respondents or Unit to be Studied

The definition of the respondents or unit to be studied begins with the target population referred to in the policy objective, namely the population of persons, objects or events exhibiting the condition which is the objective of policy-making (Mayer & Greenwoord 1990: 189). The objective of the Child Care Act 74 of 1983 is in essence to protect children. The target population to which this objective ultimately applies is children and their parents or caretakers. The choice of units to be studied in research on maltreated or abused children depends, according to Milling Kinard (1994: 649) on the purpose and focus of the research, and should reflect the research goals.

In this research, units to be studied were firstly limited to recipients of specific intervention services, namely black families where statutory intervention was carried out and where Section 14(4)(a) or (b) of Act 73 were applied. Black families were considered particularly relevant with regard to changes in South Africa and the need that has arisen to reevaluate policy and protection programmes in the welfare system (this aspect was discussed under point 2).

Due to the fact that research of a limited nature was undertaken, it was decided to study a subset of a large group of available respondents. The scope of the research was also already narrowed down by only focusing on Section 14(4)(a) and (b) of Act 74.

Exploratory studies generally have small study populations and procedures for selecting units for research are usually based on purposive rather than probability sampling (Mayer & Greenwoord 1990: 179-180). Purposive sampling can be described as a type of non-probability sampling method where the researcher uses his/her own judgement in the selection of sample members which he/she believes will yield the most comprehensive understanding of the research subject (Rubin & Babbie 1993: 259, 369).

In order to accomplish this, the researcher decided that fifteen cases with the accompanying case files should be identified and selected where Section 14(4)(a) or (b) of Act 74 had been effectively applied to black families. Maltreatment, neglect or abuse had to be substantiated and a court order issued. The Child Care Society in Pretoria was approached in this respect. The following guidelines were given in assisting them with the identification and selection of case files which had to consist of:

- An allegation of child abuse or neglect
- Identifying particulars of all the parties involved
- Written records of the investigation that was conducted
- The reported results of the investigation (records of case conferences, multi-professional teams or case reviews are singled out as crucial sources of information)
- Court reports, because they usually present a fairly accurate discussion of relevant past and present issues and events

The organisation was further requested to select the better organised files in order to make the research operationally more viable. The organisation was, however, due to a lack of staff, not able to select the better organised files that were requested. The researcher was provided with a complete case load consisting of 58 files which had to be worked through in order to select the 15 files that were in the end analysed by way of the schedule for data analysis. Although time consuming, this served to be a good exercise as it provided the researcher with a more holistic understanding of the general application of child protection legislation, the dilemmas social workers experience in practice, the context in which policy is being applied, and the plight of black families and children in general.

The unit to be studied can thus be described as the case files or written records of fifteen black families where statutory intervention in terms of Section 14(4)(a) or (b) was undertaken.

5.2 Data Collection

5.2.1 Source of data collection

Case records are accounts which organise, and in some sense create, the reality which they describe within the constraints of some particular occasion on which they are read (Dingwall, Eekelaar & Murray 1983: 21). These records are a particularly important source of information and are very useful in exploratory research where the researcher is attempting to outline major dimensions of an issue, and available data will serve as a catalyst for the recognition of issues (Putt & Springer 1989: 225).

This research will be aimed at the written records of child protection cases in order to attain the research goal and objectives by laying bare the

reasoning of social workers. Their reasoning can be described as the product of their attempts to protect children, investigate the social circumstances of parents, evaluate parental competence and apply Section 14(4)(a) or (b) in practice. Case records are often seen as secondary data, collected for some other purpose, but used by the analyst in his/her research design (Mayer & Greenwood 1990: 202). Pithouse (1987: 28) identified case files or written records of events as one of the zones where some aspects of social work practice are made visible and accountable. Thorpe (1994: 43-44) in turn describes case records as a vast source of untapped data for the social work researcher. He puts it as follows: "... here we have a resource, a source of data which tells a story, delivers a chronicle, whose major task is to justify and indicate practices in specific circumstances". Case records therefore represent a kind of construct of potential or past transactions which does not describe either what should have happened (or not), but what is written in accordance with the unspoken notion of what the client as well as the social worker could and could not do (Garfinkel 1974: 123).

The value of case records is evident from the discussion here, but focusing on case records as a source for data collection was also made for the following practical reasons:

- The only records agencies possess of cases where Section 14(4)(a) and (b) is applied, are the case files which are, in practice, seen as an accountable and necessary source of data.

- Case files usually contain reports, documents and material which cover a number of events from the period during which the case was opened, to the time when it was formally closed. This provides a longitudional

dimension for analysis (Thorpe 1994: 42). The advantage here is that cut-off points can be identified which permits the identification of specific events over specific periods of time. In this research the researcher is only interested in the period starting at the time the case had been opened, until the court order was issued in terms of Section 14(4)(a) or (b).

- Case files provide at least an account, albeit not necessarily coherent or even complete, of the development and scope of a case as it is made officially available for scrutiny (Thorpe 1994: 42).

5.2.2 Procedures for data collection

Construction of a schedule for data analysis

The process of analysing case records within an organisation can, according to Pietrzak (1990: 28) be described as the systemic review of an agency's records, measuring its performance against a pre-established set of criteria. The aim is to examine the content and delivery of services, and the items in a schedule for data analysis should seek to elicit existing written information on variables that can help to answer the research question(s).

The researcher constructed a schedule for analysing the data in case files (refer to Addendum A). The close- and open-ended questions set under point 4, served as guidelines in identifying the categories and data items. The discussions in the literature study were used to briefly define categories and data items in order to be able to effectively operationalise procedures to be followed.

All the case records were collected from the agency whereafter files were studied. Information in the case files was recorded on the schedule for data analysis. Data was studied again after the file analysis took place and processed. The results of this process will be discussed in Chapter 5.

6. LIMITATIONS OF THE RESEARCH

Respondents or units to be studied

Due to the fact that research of a limited nature was undertaken, only a subset of a large group of available respondents was studied. Findings and results were thus based on a small sample and will only be representative of the population served by the specific organisation involved. The extent to which results can be generalised, will also be limited by the fact that the study sample is small and not representative of the broader population. Findings will therefore be restricted in their relevance. It can also be assumed that reported cases are likely to overrepresent a group of low socio-economic families.

Source of data collection

It could be argued that case records are incomplete records of events, and it generally only includes those events and matters which the organisation stipulates as a minimum record of work that should be done. It thus constitutes an official record rather than the verbal records of workers or clients. Where an alternative methodology is applied, clients and social workers may choose to describe their experiences differently. Interviews might, for example, produce very different accounts of phenomena. Pithouse (1987: 33-34), however, states that case records cannot simply be treated as accounts about "work". They are also part of work itself. Written records are, according to him, being seen as one of the many

skilled crafts that occur in social work. Although social workers are often unenthusiastic about this task, records stand as a potential resource for indicating practices.

With reference to the research undertaken, it must be accepted that written case records are valuable sources of information, but they do, to some extent, provide limited scope of events and circumstances of the client.

Research design

The chief shortcoming of exploratory studies is, according to Rubbin and Babbie (1993: 107-108) that they seldom provide satisfactory answers to research questions. They only hint at answers and often result into new research questions and the formulation of hypotheses.

In the next chapter the nature, scope and implications of child protection and child protection legislation will be discussed, in order to eventually be better equipped to analyse the application of child protection policies and legislation in South Africa, and to explain important concepts that will be addressed in the empirical research.

CHAPTER 2

LITERATURE STUDY

THE NATURE, SCOPE AND IMPLICATIONS OF CHILD PROTECTION AND CHILD PROTECTION LEGISLATION

The following objectives and research questions, outlined in Chapter 1 (point 3 and 4) will be highlighted in this section of the literature study.

Primary Objective

- To equip the researcher with the knowledge required to successfully undertake and conceptualise the scope and boundaries of the empirical research.

Secondary Objectives

- Studying both local and international journals and sources in order to build on existing knowledge and to identify ideas and approaches relating to the research problem.
- Studying the scope, nature, function and objectives of welfare law in general in order to be better equipped to analyse child welfare policy in South Africa.

Research Questions (Open-ended)

- What are the factors which influence decision-making during investigations where statutory investigation is inevitable?
- How do social workers construct knowledge in order to prove parental competence and how do they fit knowledge into pre-existing legal categories?
- Which factual data do social workers identify as important in proving that parents are unfit or incompetent, or that children are in need of protection?

1. INTRODUCTION

It is necessary to understand the nature, scope and legal basis for child protection before focusing on current welfare legislation in South Africa. The legal system operates according to Janko (1994: 91) in partnership - and at cross purpose - with a child welfare system whose stated mission is to preserve families and protect the safety and welfare of children.

The edifice of social work theory is founded in the belief that social workers control the context of their own practice and that the profession's knowledge base determines the fundamental characteristics of welfare work. In contrast, sociologically based observers see the state and its policies determining the essential nature of welfare practice (Howe 1986: 12). Lines (1991: 12) supports this in stating that the policy-making process is complicated since it has to reflect the legal, economic, social and political position of the child, the family and the state. She takes it even further in emphasising that additionally, policy-making has to take cognisance of the formal and informal processes which occur between the various parties and which are structured around specific ideas about childhood and the care of children. Principles and philosophies about good child care are likely to include ideas about dependency protection and exclusion of children under certain circumstances. Child care policy and legislation will therefore reflect the notions which are more prominent or in ascendency.

Welfare law, and more specifically child care legislation, can be seen as an expression of the interest shown by the state in the conduct and circumstances of people in society. A critical examination of the state and its laws makes it possible to explore the relationship between political, economic and ideological orders as it shapes legal control in the areas of poverty, child care, and family life (Alcock & Harris 1982: xi). At a deeper level, welfare law thus reflects the political and

economic climate of the times, and is designed to regulate relationships between people. The law is also seen to order and codify our perceptions of rights and wrongs. It is centrally concerned with classification and framing, and it works on and with wider moral classifications to encourage some ways of seeing (and being) and outlaw others (Freeman 1983: 11-12).

An analysis of the relationship between social work and the law forms the knowledge/base for a different type of practice. Paying heed to sociological explanations of the relationship between social work and the law, encourages social workers to explore more sophisticated accounts of practice within the context of state welfare. It releases both practice and training from the occupational blind alley of relying on the application of behavioural sciences, which many social workers continue to embrace. Howe (1986: 143) puts it as follows:

Raising the analytical status of welfare law cuts through the flaking veneer of social work. It helps to explore the underlying order and structure of welfare work. In so doing the traditional mask of social work is removed to reveal the essential character of the occupation's practice.

In this chapter the researcher will not only attempt to analyse the relationship between social work and the law, but will also highlight the complex issues surrounding the nature, scope and implications of child protection legislation in order to

- be better equipped to analyse child welfare policy in South Africa,
- explain important concepts that will be addressed in the empirical research, and
- highlight some of the research questions posed in Chapter 1.

2. THE RELATIONSHIP BETWEEN SOCIAL WORK AND THE LAW

Social workers are empowered by statute to evoke the law in a manner which affects both the status and liberty of the client, as for instance under mental health and child care legislation. With regard to the context in which legislation is applied, it is important to note that legislation which affect welfare agencies is first understood, interpreted and operationalised by managers of organisations. This refers to the way in which laws find concrete expression in the forms, procedures, policies and criteria as designed by welfare managers (Grace & Wilkinson, as quoted by Howe 1986: 133). Braye and Preston-Shoot (1994: 177) put it as follows: "... the law offers no substitute for judgement. It informs practitioners what may or must be done, but not when and how". The way in which laws and policies are processed and integrated by welfare agencies thus further defines and delimits the activity of social workers. The resources politicians and managers make available to back procedures or the criteria used to determine eligibility for a service in turn, act as perceptual and conceptual blinkers on the assessment and treatment practices of social workers (Howe 1986: 133).

The relationship between law and social work practice is complex and attempts to define it have identified stereotypical assumptions and divergent purposes. Braye and Preston-Shoot (1994: 163) have asked the following questions in this regard:

- Is the law the pivot which occupies the central position in social work, defining professional tasks as the interpretation and exercise of legal responsibilities allocated through statutory mandate or
- is the law merely one tool amongst others available to pursue the professions' ethical duty of care as defined by a framework of key values?

The law is often seen as providing clarity in otherwise complex and muddled situations, alternatively, it is seen as alien and hostile in its requirements, a hurdle to overcome rather than a tool to be used constructively. Braye and Preston-Shoot (1994: 164) describe the assumptions behind both perspectives as a linear view of cause and effect, in that legal intervention is casually related to identified outcomes - for example, that because the law confers a duty to protect, if practitioners use it, they will achieve that effect' because it gives power to promote welfare, this is what social workers are doing when using it.

For social work to move beyond such stereotypes is an essential but not an easy task, as it requires a shift which has at least two key components, namely

- firstly there must be a more constructive, critical edge to social work's view of the law; an awareness and understanding of the functions the law performs and can perform in society, the images it reflects and promotes as well as the conflicting imperatives and practice dilemmas it presents,

and

- secondly, there must be greater clarity about how the law contributes to and concerns itself with the major contemporary themes of social work practice.

(Braye & Preston-Shoot 1992: 6)

It is only in making such connections, and establishing at both a conceptual and practice level the relevance of social work law to the decisions that are daily made in practice, that a more integrative understanding will be reached. This is then also one of the goals of the research that is undertaken, in that the researcher will, first by way of the discussions presented in the literature study try to establish a better

understanding of the law at a conceptual level and secondly by way of the empirical study attempt to highlight the way in which legislation manifests itself in practice.

3. THE PROTECTION OF CHILDREN

There is not a country in the world that has not struggled with the problem of child protection and child care, but public support and provision of child care services vary enormously among nations. Approaches to child care policy and forms of services - how much public funding is available, how it is distributed, eligibility for service development, and characteristics of services - have been very much shaped by each nation's motivations or goals for providing child protection (Friendly & Rothman 1995: 504).

The protection of the weak and the vulnerable requires social workers to consider and often control the behaviour of other people. The doctrine of parents patria is that the state has an overall parental responsibility towards those members of society who are unable to care for and protect themselves (Freeman 1983: 75). This doctrine is commonly applied to children. For children in particular, the adult world is inclined to protect and control them. This is an inescapable consequence of children being both biologically and psychologically dependant, and yet ultimately required to assume not only physical independence, but also economic productivity (Alcock & Harris 1982: 85).

Child protection proceeding's legislation and policy-making processes are not, and never have been, designed to protect children against all possible risks to their healthy mental and physical development. King and Piper (1990: 67) refer in this regard to environmental risks, such as those arising from the proximity of the child's home to a nuclear power station, or from polluted water supplies or polluted air. Similarly, child-care legislation does not protect children from failures of the state or

private institutions attended by the child, such as poor teaching in schools likely to blight the child's future career, or poor standards of health care dispensed by medical services.

If one were to widen the scope of enquiry to include all these factors that could have contributed to a particular case of child abuse or neglect, one could include as possible causes, not only those environmental matters already mentioned, but also a number of factors resulting directly from social policy. These would cover many issues presently prevailing in South Africa, such as stress caused by living in overcrowded conditions, homelessness, unemployment, and the lack of provision of creches and nursery schools, to name but a few. These matters are, however, not specifically part of the scope of the law and are in practice almost always associated with parental competence.

King and Piper (1990: 67) describe the nature and scope of legislation as follows:

The law is dealing ... with harms specific to that particular child, which because of their specifity, must necessarily involve the child's immediate, intimate environment, namely the family or family substitute. These harms involve, almost by definition, failures in parenthood, whether they be failures to fulfil legal and moral obligations or failures to act in a manner appropriate to the law's concept of parenthood.

Besharov (1985: 539-540) supports the fact that there are limits to the ability of the state to protect children, and indicates that, in the rush to deal with child protection in the United States, the public, the policy makers, and the politicians have sought to protect all children through a combination of laws, agency policies, and public pronouncement, as if it is remotely possible. In doing so, they have

fostered the idea that all children coming to the attention of the authorities can be protected from future abuse, and that if a child is subsequently injured or killed, someone must be at fault. Child protection professionals have, because of this, often ventured into a high level of unwarranted intervention which does not protect many obviously endangered children from being harmed, injured or killed. Besharov (1985: 556) points out that approximately half of the 750 000 reports of suspected cases of child maltreatment in the USA, involve situations of poor child care which, although of legitimate concern, are not sufficiently serious enough to be considered child maltreatment.

Finkelhor (1990: 29) accordingly indicates that the child welfare system has many problems, but that incidence reports itself will not solve the problem. He identifies the following needs:

- The need to define child abuse more clearly, especially in cases such as emotional abuse,

- the need for more trained staff to respond to reports, conduct investigations, and to provide services to families, and

- the need for greater public and professional confidence and esteem in the child welfare system.

He emphasises that child welfare workers need to be honoured and that people need to be educated that the protection of children sometimes entails difficult moral choices between family, neighbourhood, and professional loyalties on the one hand and the welfare of children on the other hand.

The points made by Besharov (1985) and the suggestions made by Finkelhor (1990) amount to little more than technical fixes, and are not very helpful when it comes to the practical realities of the South African context. It could be asked that if effective child responsiveness is so difficult to achieve in Western countries where legal procedures and policies are constantly being adapted, how much more so in South Africa where the legal and welfare system have for decades been developed by a white minority elite to meet primarily the needs of that minority.

Thorpe (1994: 196-198) attributes the problems in protecting children to the fact that politicians, policy makers, and social workers remain locked into a child protection frame which has at its core a vocabulary or technology of intervention and a knowledge base which is constructed around "child abuse". Researchers in child protection often attempt to represent the phenomenon in ways which would enable more effective management of child protection work. They also immediately encounter the limitations, the word abuse has on their work. To better illustrate this statement, it is necessary to take a closer look at the concept child abuse.

4. THE CONCEPT *CHILD ABUSE*

The ways in which society understands and defines child abuse or maltreatment are closely linked to the ways the child welfare system interprets and responds to the legal definition of child maltreatment (Garbarina as quoted by Janko 1994: 4). There are, according to Dingwall et al. (1983: 31), two components to the judgements which make up the definition of abuse ore maltreatment. They are both the objective, physical injuries, be they visible or experienced as pain by the child, and the subjective interpretation of their cause, the social meaning of the injuries which is a moral judgement, an impartation of culpability on the part of the observer. It is not as simple as describing an injury or the experience of pain, it is the complex matter of assigning responsibility. Moreover, as pointed out by Leiter,

Myers and Zingnaff (1994: 68), neglect often requires difficult-to-accumulate evidence of a pattern of failure in caregiving before being substantiated, whereas physical or sexual abuse may require only one trip to the hospital. The last mentioned writers have used the following definitions of abuse and neglect in their own research:

- "Abuse - A situation in which a child's parent or other person responsible for his care inflicts or allows to be inflicted, creates or allows to be created, any physical injury by other than accidental means, creates or allows to be created a substantial risk of physical injury, death, disfigurement, impairment of function of any bodily organ, or commits or allows the commission of any sexual act upon a child in violation of the law; commits, permits or encourages any act of prostitution with or by the child; or creates or allows to be created serious emotional damage to the child and refuses to permit, provide for, or participate in treatment; encourages, directs or approves of delinquent acts involving moral turpitude committed by the child.

- Neglect - A situation in which a child does not receive proper care, supervision or discipline from his parent or guardian, custodian or caretaker, or who has been abandoned, or who is not provided necessary medical care or other remedial care recognized under State Law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of the law."

It must be noted here that there exists no legal definition of child abuse and neglect in formal child care legislation in South Africa. The researcher was therefore forced to make use of other sources. According to Bosman-Swanepoel (1995: 142), a South African writer's definition of child neglect falls in line with the emphasis on parental competence in Act 74. She puts it as follows:

Child neglect is defined as the inadequate care of a child that may impede or adversely affect his normal growth and development. It is obvious that this syndrome has both a physical and a mental and emotional component. Neglect and desertion emanate from any of a host of external factors that affect and undermine parental ability, e.g., financial need, marital problems, parents who are inadequately socialised, social overloading, and physical, emotional and mental problems. The cause of parental incompetence must first be established before an individualised treatment programme can be determined for a particular family.

There seems to be no standardised definition of child abuse that has been developed by researchers and accepted by welfare professionals. More particularly the definitional boundaries of the problem have broadened. Dingwall (1989), as quoted by Parton (1989: 59-60) has argued that the definition of the problem has undergone considerable 'diagnostic inflation' and the growth of research reflects the transformation of the original concepts to embrace virtually any problem which may have an adverse impact on a child and can possibly be attributed to some act of commission or omission by an adult.

The complexity of "child abuse" is also reflected in studies concerning causality of the phenomenon. No single factor has been identified as causing child abuse or maltreatment. Most research ascribes to a multivariate, process model in which a number of factors interact to determine outcomes of parenting (Janko 1994: 55). Child maltreatment appears to be a product of parent's histories, child temperament, social support, economic status, psychological resources, and health status. The relative contribution of these factors towards incidents of child abuse are unknown; however, economic status is a factor frequently cited. Poverty typically co-occurs with a constellation of factors, such as unemployment, inadequate housing, and child care, all of which contribute to child maltreatment.

Although theoretical and philosophical underpinnings of intervention for child maltreatment have shifted to focus from the child or parent to the family as a unit, popular beliefs about child abuse and current practices of child protective services continue to focus almost exclusively on the abusive parent and ignore the influence of child characteristics and the environment on incidents of abuse (Wolfe 1985: 463).

Parental characteristics associated with abuse and neglect have been described as both personal or psychological and otogenic (Belsky & Vondra 1989: 160-164). Examples of personal/psychological characteristics attributed to abusive parents include maternal apathy, aggression, chronic depression, personality disorders, and cognitive impairments (Meier & Sloan (1984) as quoted by Janko 1994: 2). Ontogenic characteristics are being described as those characteristics that reflect the personal development histories of parents (who are labelled as abusive) that contribute to the social, cognitive, and affective processes that influence caregiving relationships (Pianta, England & Erickson 1989: 213-219). These include experiences of being maltreated as a child, family conflict, and parenting histories.

Children's characteristics: Children are according to Meier and Sloan (1984) as quoted in Janko (1994: 2-3), viewed as active agents in the complex transactions that contribute to developmental structures and behavioural outcomes, whereas they are often in practice to believe to be the products of their physical and social environments in combination with their underlying genetic constitutions. Certain behavioural and developmental characteristics may, however, predispose them to maltreatment, namely

- relatively permanent or chronic conditions, such as developmental disabilities,
- medical fragility and temperament traits,

- more transitory or situational characteristics, such as prematurity or low birth weight,

- discipline problems, and

- sexual acting out and poor performance in school.

Child and parent characteristics play an important role in child maltreatment, but are in themselves not sufficient to explain the phenomenon. The role of the environment in which parent and child development occur, particularly culturally determined behaviours, beliefs and attitudes that constitute institutional customs and practices, provides a medium that strongly influences the intrinsic development of parents and child (Bowman 1992: 10).

5. THE LIMITATIONS INHERENT IN THE CONCEPTUALISATION OF CHILD ABUSE

Thorpe (1994: 198) sees the use of the word "abuse" as a means of representing the "life world" of people as it is described in case records as an apparently insurmountable problem. The problem with the word "abuse" as an abbreviated representation of the events dealt with in child protection cases is according to him, that it serves to completely decontextualise events. He puts it as follows:

> At best it appears to be a deeply flawed attempt to represent complexity and variety, at worst it can so misrepresent those events and mislead both the public and professionals that the very different types of problems and different potential solutions become lost in an atmosphere of panic and pressure.

Existing categorisations serve to misrepresent the variety and complexity of child protection work, particularly those related to the problems exhibited by those adults

responsible for the care of children (Thorpe 1994: 29). Accordingly King and Trowell (1992: 109) indicate that issues concerning child welfare and child protection presented by legal textbooks and by the reports of court cases, tend to be simplified, sanitised accounts of reality as it is perceived by the social worker. Much of the complexity of emotional relationships is reduced and simplified by the legal process to dimensions that can be made to fit pre-existing legal categories.

Legislation tends to focus on the family as a legal unit. It defines the rights, duties and responsibilities of family members. Intervention takes place because rights have not been respected, duties neglected, and personal responsibilities ignored or avoided. Child psychiatry and psychotherapy similarly tend to emphasise the family as a dynamic system which to a large degree determines the mental health or illness of its children. From this perspective, when things go wrong, the problem lies with the relationship between children and adult caregivers. Clinical intervention is aimed at changing the functioning of the family. Within these individualising discourses and punctuations the social meaning - all those environmental and circumstantial factors which are outside the immediate control of the family - tends to be lost as a cause of harm to children or as a way of alleviating harm (King & Trowell 1992: 20).

This does not mean to say that all lawyers and social workers are unaware of these factors, but rather that the professional and legal framework in which they work, tend to exclude considering them as appropriate explanations for parents' of children's behaviour. Even when they are admitted as factors in the explanatory discourse, professionals have very little influence over them, so what tends to happen is that they become peripheral to the main/thrust of courtroom or clinical discussions.

Characteristics of the environment related to abuse and neglect should, according to Janko (1994: 3), be viewed in terms of whether they add elements of stress or support to child-caregiver relationships, such as, having adequate money, food, housing, health care, and available adults to share caregiving responsibilities. These stresses and supports occur at all levels, namely, within family relationships, through community resources, and in response to social policies and programme funding, that, in turn, influence the availability of resources to families and communities.

What needs to be required of child protection and its representation is, according to Thorpe (1994: 198-202), a complete reconceptualisation rather than sharper definitions. This reconceptualisation would begin to distinguish between *child welfare* (measures which promote the care and well-being of children) from *child protection* (measures which act directly as a barrier between children and significant harm or injury).

Environmental stress and lack of support impact the very characteristics associated with high risk children and adults where child abuse takes place. It is therefore seductive to believe that one needs only intervene with the guilty parent to address abuse and neglect. Such an approach offers nothing to those who require help and sympathy in managing the contexts of poverty, deprivation and discrimination while managing their children's lives. The expectation of the present ideologies of child protection are that caregivers can manage these contexts and manage their children. This approach lay the burden of blame back onto the shoulders of those who are often not responsible for the material and social conditions which can make childhood and parenthood for some, a traumatic experience.

One aspect that may in practice contribute to overcoming some of the limitations inherent in the conceptualisation of child abuse, is the vagueness of child care legislation in its attempt to define child abuse and neglect.

6. THE VAGUENESS OF CHILD CARE LEGISLATION IN DEFINING CHILD ABUSE AND NEGLECT

The language used in Child Care legislation is much broader and vaguer than language used in other areas of law. A social worker is, for example, not required to prove beyond reasonable doubt that abuse or child neglect occurred, thus tilting the balance in favour of protecting the child (Huxtable 1994: 60). The vagueness of legislation suggests both strengths and potential weaknesses (Early & Hawkins 1994: 314).

This vagueness, particularly in the definitions of child abuse and neglect, may have serious consequences for individual civil liberties and families' rights. In addition, because legal intervention may in some cases be preventative, intrusion into the life of the family may be based onto the likelihood of future harm rather than proven abuse. In this respect, Huxtable (1994: 62) states that the difficulty in case investigations often results from the lack of clarity of the law and guidelines for interpreting the law, and that without clearer definitions, there is much confusion regarding the minimum standards for providing care for children and the limits of parental authority. She emphasises the complexity of child abuse and neglect cases, and argues that there is room in these issues for misinterpretation and misrepresentation, especially if there is no physical evidence, if much time has passed since the alleged incident, if the child is young or communicates poorly, and if the cultural norms differ between caseworker and client. Dingwall et al. (1983: 91) remark accordingly that parents may treat their children in ways other

than those preferred by social workers, but that they are not so bad as to be conceived of as abusive or neglectful.

Contradictory to this viewpoint, it might be argued that a degree of vagueness and flexibility is necessary in legislation where the application of rules, procedures and decisions must take into account the specific needs and complex circumstances of families and children. In a complex and diverse society like South Africa this might be seen as an attempt to humanise and individualise the legal process to some extend. But why? Sibley (1981: 23) answers this in describing the problems encountered in policies and decisions regarding child care cases as one of two opposing ideologies, namely that of justice in the traditional juridical system and the welfare of children and families in general. The modern ethic of responsive justice with solutions tailored to fit individual children and families creates a paradox for the juridical system. Within such a framework of individual justice, emphasis is placed upon information and perspectives which are inconsistent with formal legal rationality and adversial process. Psychological evidence, therapeutic diagnosis, and social history of the family are, within this framework, relevant to a just and equitable consideration of child care cases.

From the discussion here it can be concluded that criteria set for child abuse and neglect, and child care policy and legislation in general, require an approach where individualised justice, tailored to treat a wide range of factors relevant to respond to the child and family in context, or the system as a whole should be emphasized. The vagueness of child care legislation serves as compensation for the incomplete rights, natural vulnerability of children and complexities of families, although social workers should be aware of the loopholes that might in practice, permit injustices to occur (Huxtable 1994: 60; Sibley 1981: 23). The vagueness of child care legislation also provides flexibility for social workers to construct their accounts of

people in such a way that they fit into the pre-existing categories and classifications that the law provides.

7. THE CONSTRUCTION OF KNOWLEDGE FOR CHILD PROTECTION PROCEEDINGS

Much of the legal reality and ideology concerning children has been constructed around the notion of the child as a victim. King and Piper (1990: 66) put it as follows: "According to law, children are typically and most exclusively the victims of adult exploitation, ignorance, neglect or misconduct .... Behind each abused child looms an abusing adult." This can, according to Thorpe (1994: 196), be ascribed to the category of competence parental status carries with it, and the assumptions about moral character embedded in it. He gives the following example:

It is one thing to speak of someone as being "drunk" but quite another to speak of a "drunken mother" or a "drunken father". Even if the drunkenness does not in any obvious way affect the care of children, "drunken parents" are in some sense worse than "drunks".

The law therefore emphasises the relationship between adults and children with the child acting as a reflection of, or response to an adult's (usually the parent or parents) behaviour. It is thus assumed that parents are always responsible for harm suffered by children in their care (King & Piper 1990: 67). Children are from this perspective not seen as the victims of government policies, but of the misconduct or inadequacies of individuals. In child protection proceedings the law then raises questions specifically about parental behaviour.

Thorpe (1994: 196) states in this regard that the true nature of much child protection work consists of the observation of parenting behaviours and the moral

character of parents. Investigations, decisions, assessments and interventions fit, according to him, more into an activity which could be described as the regulation of parenthood, the enforcements of standards, and the imposition of norms.

The importance of the social workers' role in interpreting criteria set in legislation becomes evident when considering the fact that statutes are not self-enforcing, but that their application and social significance depend upon case by case decisions taken by authorised interpreters. No statutes can exist on their own, they only take on significance once they are being applied in practice. Nevertheless, social workers' interpretations must be reconcilable with the terms of the organisations' charter, the problems policy intends to remediate, as well as the boundaries or criteria for application as set out by the legal system (Dingwall et al. 1983: 6; Early & Hawkins 1994: 314).

The way in which social workers define some event, person or act as deviant, presupposes some idea of what would count as normal and that it is relevant to draw attention to its absence. Both normality and deviance are, according to Dingwall et al. (1983: 56-57) outcomes of an interaction between:

• what is available to be observed,
• the model of normal appearances grounded in the social ecology of the area, and
• the framework of ideas within which observations are actually made.

Social workers combine these ideas in a particular fashion, depending upon the social groupings to whom they belong, their own value systems, and their theoretical perspectives. It is therefore important for social workers to be sensitive to variations from their conceptions of normality as a warrant to undertake investigations with the objective to protect children.

What follows from the discussion here, is that the social reality relating to child protection is constructed, and that different social workers may come up with different versions of the truth. What is accepted as truth by social workers, depends upon a variety of factors, including pre-existing beliefs and values, cognitive style, and present motivation for accepting one version of reality rather than another. This applies equally to truths about social institutions, such as the legal system. As King and Garapon (1987: 461) have pointed out: "where lawyers and child-care experts meet in the context of the court, the 'facts' that emerge are usually the result, not of rigid application of legal rules to facts, but of 'negotiations' between professional participants."

8. DIMENSIONS AND CATEGORIES IN THE CONSTRUCTION OF KNOWLEDGE FOR CHILD PROTECTION PROCEEDINGS

Dingwall et al. (1983: 57-65) have found in their research that social workers' conceptions of normal life have two principal dimensions, one relating to the material and the other to the interpersonal environment created within a particular household.

● *The material environment:* This part of social evidence may be further divided into subsidiary categories, namely: physical conditions of the home (the state of the property and its furnishings) and physical conditions of the occupants (clothing and self-care).

● *The interpersonal environment:* This dimension relates to the conduct of household adults as displayed in their relationship with each other, with their children, and with the community at large. These are, to an even greater degree than the material conditions, seen to be matters which lie within the individuals' control and, hence, are even more reliable indicators of their essential character.

Family size and spacing, adult/adult relationships, and adult/child relationships are aspects that need to be evaluated in this respect.

According to Dingwall et al. (1983: 31-37), most agency staff distinguish between two types of evidence, namely:

● *Clinical evidence:* Data which is yielded by examining the child's body, signs, and by the child's reports of his or her physical sensations or symptoms, <u>and</u>

● *Social evidence:* Data that are revealed by the investigation of the child's environment, covering matters like the observable quality of relationships with parents, the material conditions of the household, and the circumstances of the alleged injury or other physical disorder.

In both types of evidence, inquiries may be supplemented by records or detail of the child's clinical or social history. Identifications can, however, not be concluded without inquiry into a third dimension, namely, responsibility for the child's condition. There are two rules according to which decisions in this respect can be made in practice.

a. Find signs -------- conclude abuse or neglect

b. Find signs --------- consider context

conclude abuse or neglect

conclude other cause
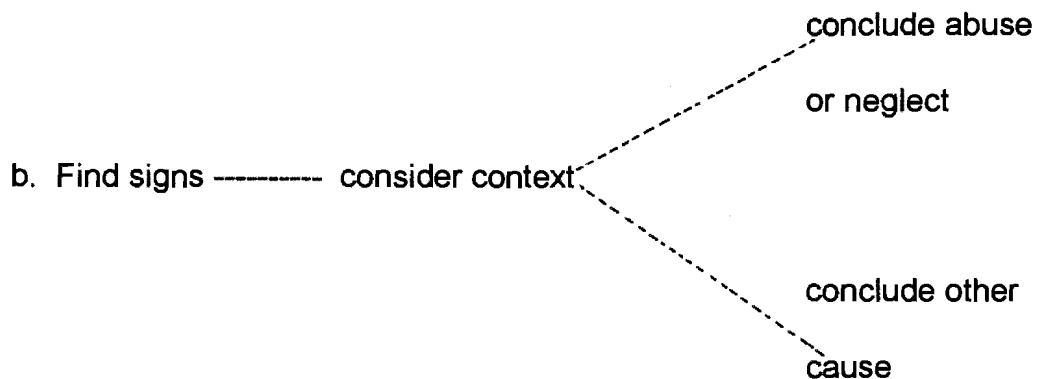
Rule (a) represents the view that identification is self-evident, while rule (b) represents the majority view that clinical evidence must be supplemented by a broader scrutiny of the child's general state and his or her social environment as preliminary to attributing responsibility for the presenting signs and symptoms.

The sequence of knowledge construction which occurs, according to Thorpe (1994: 201) in case records and which to some extent reflects the work in child protection takes the following form:

(a)   A caregiver (or caregivers) have specific identified problems.

(b)   A caregiver (or caregivers) have a particular moral character.

(c)   Services may or may not be made available to help the caregiver(s). These will have particular objectives.

(d)   The problems experienced by the caregiver(s) may or may not constitute a potential or actual threat to a child's well-being. This can be specified.

(e)   A child may or may not have sustained a specific harm or injury as a direct consequence of an identified caregiver problem.

Most child protection cases have, according to King and Trowell (1992: 1-2), a clear beginning and end determined by the law's procedures. They start typically with an application for a child protection order and they end with the making of a final order which sets out who should have legal control of the child, where the child should live and who should have contact with the child. For a few weeks or moths all sorts of people are extremely interested in the family's affairs. Files are being opened, interviews are carried out, detailed investigations are undertaken,

assessments are made, piercing questions are asked in court and the world is finally provided with a legal judgement.

It is, however, the social worker's task to transform complex, messy situations involving intricate human relationships and a multiplicity of possible causes and effects into a simple story which makes sense.

9. CONCLUSION

The issues of child protection and child abuse remain surrounded by questions and uncertainty despite the apparent prevalence of child maltreatment, society's increased attention to the problem, and the number of programmes that exist to address the problem. The label of "child abuse" covers a wide variety of symptoms, behaviours and contexts, and child abuse cases are the products of complex processes of identification, confirmation, knowledge construction, and disposal. Much child protection work is concerned with the observation and categorisation of parenting behaviours and the moral character of parents into pre-existing legal categories.

> In the next chapter perspectives on children's and parents' rights will be discussed in order to explore the relevance of these aspects within the realm of child protection policy and child protection legislation.

PERSPECTIVES ON CHILDREN'S AND PARENTS' RIGHTS

The following objectives and research questions, outlined in Chapter 1 (point 3 and 4) will be highlighted in this section of the literature study.

Primary Objective

- To equip the researcher with the knowledge required to successfully undertake and conceptualise the scope and boundaries of the empirical research.

Secondary Objectives

- Studying both local and international journals and sources in order to build on existing knowledge and to identify ideas and approaches relating to the research problem.
- Studying the perspectives on children's and parents' rights in order to be better equipped to analyse child welfare policy and practice in South Africa.

Research Questions

- How, and to what extent do the needs and rights of black children and parents manifest themselves in practice?
- How are the limitations of law-affecting social work practice?

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1. INTRODUCTION

The national and international climate is changing, with an emerging awareness of the need to give greater recognition to children and their rights. The United Nations Declaration of the Rights of the Child and the European Charter have moved the issue of children's rights to the centre stage.

Part of the reconstruction of the welfare system in South Africa also involves more effective services for children and the Government intends to ratify and implement the terms of the United Nations Convention on the rights of the child in a National Programme of Action for Children (White Paper on Reconstruction and Development 1994: 27).

Similarly Lines (1991: 12-13) indicates that there is overwhelming evidence which suggests a swing away from needs to the rights of children. She refers to the Children Act of 1989 in Britain as an example of this, as well as to the fact that previous legislation was regarded as confusing, piece meal, outdated and often unfair.

Braye and Preston-Shoot (1994: 168) support a rights-based approach and state that if rights are uncertain, or difficult to enforce when known, the needs which service users may expect to be met are equally uncertain. They stress, however, that a rights-based approach is made infinitely more complex by the way in which needs, rights and resources exist in dynamic tension with one another, pulling often in different directions.

The emphasis on children and their rights raises complex questions about the following:

- The concept of childhood and its influence on children's and parents' rights.
- The limits inherent in legislation in meeting rights and needs.
- The relationship between needs, rights and resources.
- The balance between the rights and duties of parents and the rights and needs of children.

These questions (which will be highlighted hereafter) are aspects that tax social work practitioners, yet little attention and guidance is given to the dilemmas and tensions posed in operationalising what can often be conflicting mandates.

2. THE CONCEPT OF CHILDHOOD

The very concept of childhood has evolved over the centuries. Society's concern for the child is to be seen very much in terms of the child's eventual value to society (Freeman 1983: 18). According to Lines (1991: 12) childhood can be viewed as an institution or as a stage on a continuum defined in relation to adolescence and adulthood. Any definition of childhood has, however, to allow for wide ranging individual and cultural variations. In this regard, Lines (1991: 12) emphasises that these variations tend to revolve around "age appropriateness" and that the concept is nebulous and conflictual, as it is value-laden and uses scales and standards which change over time, and which differ from one context to another. For example, child labour was an accepted and necessary part of the British economy during the 18th century. Legislation now exists to protect children from exploitation by employers.

The State has become increasingly interested and concerned with freeing the child from unhealthy constraints to allow maximum growth of his or her potential on the one hand, and to control and police their neglect, misuse and abuse on the other (Howe 1986: 132; King & Piper 1990: 61).

The late 19th century was the period of the child-saving movement. By the early 20th century the family was no longer beyond the purview of State regulation and parental authority was turned into a contestable right, and it became possible for parents to lose their parental authority (Donzelot 1979: 83-84; Howe 1986: 132). Conceptually this led to confusion which occurred between the needs of children, the rights of children, and the rights of parents. The different roles which children,

parents, and the community play in first- and third-world countries have further complicated the concept of childhood. Lines (1991: 12) refers in this respect to a study carried out by Whitings (1975) in Kenya, Okinwa, India, the Philippines, and the USA, from which it was established that in societies which had relatively simple socio-economic structures:

- Children were less dependent and more responsible for caring for others,
- reciprocity among kin and neighbours was high,
- adults in the community functioned as important sources of help, support and advice to children who performed the "caring role", and
- caring responsibilities were devolved to older siblings irrespective of gender.

In contrast, the data regarding societies with complex socio-economic structures reflected the following:

- Children in these societies were expected to undertake small specific household tasks,
- children were more dependent on the mother or mother figure for everyday needs,
- children scored higher on dominance and attention-seeking behaviour,
- neighbours were regarded as competitors rather than sources of assistance, and
- gender-specific behaviour was inculcated during pre-school years.

It was further found that the way in which the family bonds together to share child rearing and home management, is closely related to the role of women, which in turn is a reflection of the pattern of subsistence and economic features of the society rather than the complexity of the culture (Lines 1991: 12).

It must be noted here that South Africa is a developing country where prosperous complex socio-economic structures exist side-by-side with extensive black, urban and rural societies which have simple economic structures and are characterised by extreme poverty, unemployment, and homelessness. Employment conditions for black women in South Africa are also characterised by low pay, long travelling distances to work, long hours of employment, and sometimes long periods away from home. Negotiations around household responsibilities are therefore essential and the concept of childhood will certainly be complicated by these. Similarly it will be interesting in the research to evaluate how child care legislation is applied within this context and how the concept of childhood manifests itself.

The legacy left by reconceptualisations of childhood is clearly very much with us today. It is clearly witnessed in the debates over welfare versus justice, and state intervention versus family autonomy. This conflict echoes too throughout legislation, leaving child care and practice often confused, about which way to act (Howe 1986: 132). Although children are freer today than they were a hundred years ago, the early philosophies remain. Children still belong to their parents (Freeman 1983: 16-17) The complex issues following from this statement will become more evident in the discussions that follow.

3. PUTTING CHILDREN'S RIGHTS INTO PERSPECTIVE

CRC

The United Nations Convention on Rights of the Child, as quoted by Dohrn (1993: 40), sets forth a moral and legal standard delineating children's rights to survival, protection and development. It is a document of basic social, economic, political and civil rights for children. With respect to health, the document states for example: "the child has a right to the highest attainable standard of health ... The State shall take appropriate measures to: diminish infant mortality, combat disease and malnutrition, and ensure health care for expectant mothers."

Although the Convention is presented as an embodiment of "rights", it is in fact broader than this in content. It incorporates each of the three perspectives,

namely: welfare, protection and rights. Smith (1991: 471) describes it as follows: The framework is established by the "Welfare Principle" (Article 3), which requires decision-making to be based on the child's "best interests" and states that effective child protection procedures should be implemented. This principle is elaborated by Article 27, which states that "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development." Article 12 and 18 recognise that the child who is "mature" enough to participate shall be guaranteed the opportunity to express his or her views freely; and that parents shall have the primary responsibility for bringing up children, in accordance with their best interests. Parents' responsibilities are, however, not set out in any detail.

The United Nations Convention Rights of the Child can be regarded as a response to the broad concept of children's rights. Social institutions and policies, wishing to respond to the broader version of children's rights, should, however, have to adapt themselves in ways which not only regard children as different from adults, but which also attempt to understand and respond to these differences so as to minimise the harm caused to children and, whenever possible, to promote their interests (King & Piper 1990: 131).

What is evident here, is that if we want decision-making institutions which are responsive to the broad concept of children's rights, and who can effectively address the complex issues surrounding children's rights, we have to look for them outside the legal system. For the purposes of the research undertaken, it is necessary to be aware of the factors limiting the rights of the child as set out in legislation.

Legislation itself creates certain obstacles to the recognition of children's rights. Their exercise is limited by the child's age and understanding in the initiation of court proceedings. In addition, the child's rights are limited in practice by other factors. For example, access to advice and advocacy is not guaranteed to children.

Many of the complex aspects of child welfare are not covered by legislation, such as minimum standards of housing, health and education. The legal process is not, for example, going to provide those material and emotional recourses that give children security and allow them healthy development. Urgent attention to guarantee a child's safety may very well ignore longer-term welfare needs, or override detailed consideration of the child's wishes and feelings. In the often extreme nature of interventions to protect children, the rights of the child, and family may appear to run counter to the need to act quickly and decisively (King & Trowell 1992: 120; Smith 1991: 472-473).

4. HOW THE LAW THINKS ABOUT CHILDREN'S AND PARENTS' RIGHTS

From a legal perspective, children's interests become reduced to issues of right and wrong. They do become submerged by the conflicts between adults, and the complexities and sensitivities of their emotional, physical and intellectual development become simplified into legal precepts and rules of thumb which guide decision-making (King & Piper 1990: 130-131).

Children's rights may be defined as the claim of children to be regarded as people with particular attributes, qualities, sensibilities, and vulnerabilities which make them different from adults. This version of children's rights becomes reconstructed within law, into something much narrower as either the right to be treated in approximately the same way as an adult, or the right to be seen as belonging to a parent, to parents, or to a family and thus not normally to be removed from that setting (King & Piper 1990: 130).

The law's utterances on children's well-being thus concentrate on the parent-child relationship. It might be argued that the law "knows" children through the parent(s). Parents' legal rights, duties and responsibilities do not merely empower them to take decisions about their children's lives, but they are the very threads

which the law attaches to people who become legal parents, jerking them into response when things go wrong in the child's life. The child's "wrongness", its inappropriate, abnormal or illegal behaviour, is seen as the responsibility of its parents. In legal terms parents have thus failed to exercise their rights or to perform the duties and responsibilities that have been attached to them through the medium of legal parenthood (King & Piper 1990: 48).

Family privacy, freedom from government interference, and due process of law are the parental rights that may suffer when in conflict with a child's right to be protected from harm. When the parents' right to privacy and freedom of choice clashes with a child's right to protection, the State must adjudicate the conflicting rights. Due process, thus, then becomes an important safeguard for parents' rights but adults are less able to exercise their rights because of immaturity and lack of knowledge (Huxtable 1994: 60-61).

The child's own views have, until recently been ignored, and were mostly what expert opinion projected unto children. Pressure from children's rights activists and the worldwide emphasis on human rights have, however, resulted in a process where children are increasingly defined by the rights that are attributed to them. The child as a legal construct is no longer merely a "thing in need of protection", but also a legal person whose interests must be represented at court hearings and whose views must be sought on issues concerning his or her future welfare (King & Piper 1990: 68). In practice children are, however, not being asked to decide the outcome of their cases, or to in effect become the judges of their cases. In most cases, children's views will, to a very limited extent, influence the court's decisions. Their wishes, either directly or indirectly, are treated as an addition to their assumed needs (King & Piper 1990: 62).

Eekelaar (1992: 221) comments in this respect on the crucial importance of assessing the child's competence. He indicates that the child's right is here related

to someone else determining his or her welfare and rightfully asks if it is (under such circumstances) a right in any meaningful sense. He further indicates that decisions are based on an assessment of future interests which is not a requirement of rights normally, and some of these assessments might prove to be wrong. Several court judgements (Houghton-James 1994: 195-198) demonstrate that there are no hard and fast rules for judges to apply when they are considering the child's age and understanding. The particular child and the issues at question in the case, are assessed subjectively and individually. Cambell (1992: 20) in addition is concerned that the focus on the future adult ignores the child's life and experiences in the present and that, fundamentally adult values constitute the best interests of the child. It can thus be said that with regard to children, there is a dichotomy between welfare and autonomy, with the welfare of the child ultimately having to prevail.

The court room hearing is, according to King and Piper (1990: 57), seen as the principle ground for the establishment of legal facts. The dilemma for the law is, however, how to reconcile its image of children as vulnerable uninformed, dependent creatures in need of protection with the necessity of extracting reliable information from child witnesses in order to convict an offender or protect the child from further abuse. The response of the law to this dilemma has been to sacrifice its own internal logic in order to accommodate concepts and procedures that are incompatible with its own discourse and processes for constructing the truth. King and Piper (1990: 59) note in this respect that the law has, in altering its procedures to accommodate the child and his needs, as well as the behavioural sciences, created inconsistencies in its construction of children and childhood. Children seem to be treated differently as semantic artifacts, depending upon the role they are to play in legal proceedings.

In cases of physical abuse, there is usually, due to evidence given by medical experts and social workers, no need for the child to appear in court. In cases of

sexual abuse, however, much of the evidence will be what the child said happened. The role of the social worker in such cases will be to elicit from the child a statement concerning what happened in a form that will be acceptable to legal procedures for determining the truth in court. Child victims are also treated different from child offenders. The former are considered highly vulnerable, whereas the latter are seen as quite competent to give evidence in court and to be examined on that evidence (King & Piper 1990: 57-59).

It may be inevitable that in being more responsive to children, a system will be less fair to adults. There is a worldwide tendency of encouraging labelling of adults who maltreat their children, with the exception of the new child care act in England which promotes the concept of parents as partners, and empowerment of parents. A result of an approach in which parents are pathologised, is that parents are seen as deviant and even if the parents are not prosecuted, statutory intervention that removes a child from the home, marks the parent as guilty in the eyes of the community ... the social stigma, psychological damage, and family disruption can involve every aspect of a person's life (Huxtable 1994: 65; Janko 1994: 70). This process may also affect parents' motivation and attitudes in their attempts to obtain legal presentation with the aim of protecting their own rights. Huxtable (1994: 63) points in this respect to the inherent resistance, or at least ambivalence, by various parties involved, to making court proceedings adversarial. She identified the following areas:

- Resistance is compounded by parents' confusion about whether the best way to get their child returned, is by cooperation or confrontation.

- Parents usually find themselves at a critical point and face the crisis of having a child removed from his or her custody, and may be emotionally ill equipped to make decisions that have serious consequences.

- In so far as representation effectively protects the interest of those represented, poor people are more at risk of losing their children and of being deprived of due process.

- There is evidence that minority parents, unemployed and unskilled parents, and parents who did not complete high school, lose their children to out-of-home placements more frequently than do others.

5. THE RELATIONSHIP BETWEEN NEEDS, RIGHTS AND RESOURCES

Child welfare policies and legislation generally are based on a welfare model of public provision, with resources targeted at particular children, rather than recognising the needs of all children. The definition of the needs of this group of children is determined by criteria (as set out in legislation) which reflect the circumstances of individual children. The definition of needs thus becomes the gateway to services. Child care policy and legislation is thus framed within a welfare rather than a universalist perspective. It does not set out to address the issue of inequality in access to provision (Statham & Cameron 1994: 28).

Existing child care legislation confers few rights on individual children and parents. Rather it confers duties upon local authorities to provide or do certain things if specific circumstances exist. These circumstances often rely upon establishing eligibility within a needs framework. Rights are implicit rather than explicit, but can be deduced from authorities' duty to assess for service provision. Organisations are required to provide services for which the "need" has been established through assessment. The passport to "right" is thus "need" which must be assessed and is thus prey to professional judgement. Service uses are dependent on bureaucratic and professional decision-making and discretion (Braye & Preston-Shoot 1994: 167-168).

King and Piper (1990: 62) agree with this line of reasoning in pointing out that legal conflicts are shaped by assumptions about children's needs and resolved by identifying which adult or combination of adults is best able to fulfil those needs. The objective is often, due to external factors and a lack of recourses, not always to create a satisfactory environment in which the child may fulfil its potential, but rather to weigh and compare the needs-responsive benefits offered. Davis (1988: 162) comments as follows in this respect: "The notion of children's rights has limited practical utility. In any child care dispute, the conflict is over whose conception of the child's needs should prevail."

6. FINDING A BALANCE BETWEEN THE LAW, WELFARE, RIGHTS, AND CHILD PROTECTION

The discussion in both Chapter 2 and 3 have thus far highlighted the complex issues surrounding child protection, children's needs, and children's and parents' rights. The idea of finding a balance may therefore be more real in conception than in reality. Child welfare services are limited by financial considerations, a restriction which is justified by the need to free families to take responsibility for their own children. According to Smith (1991: 477), this has implications for both children's rights, welfare, and for child protection, namely that:

- There is little value in expressing "wishes and feelings" if the services then sought, are not available.

- In the context of child protection, what is not recognised, is the preventative value of a whole range of welfare services which should be in place. In practice, child welfare and child protection services usually find themselves in competition for the same "pot" of money, with "welfare" typically losing out.

- The idealised view of the family compounds feelings (of parents in particular) that they have sole responsibility for their children, and that to turn elsewhere for help, is admission of failure. This in turn, has further implications, with parents struggling on under great pressure on the one hand, and, on the other hand, resenting and resisting intrusion from outside when it is imposed.

Under these circumstances, it is unsurprising that child protection often becomes an emergency service, based on the assumption of parental failure, acting against the wishes of some or all family members, and taking little account of children's rights, in the sense of enabling them to influence proceedings.

The ideal conditions for a child-responsive system can exist only if social policies and institutions outside the legal system are intact. It is therefore unrealistic for reformers to attempt to transform the legal system into an institution ideally suited for children's cases, for it can never be that. King and Piper (1990: 32) explain that what needs to be done, is rather to restrain and restrict the self-reproducing regularities of law in ways which allow the special nature of children, as developing human beings who respond to the environment and are affected by the environment differently to adults, to be addressed and accommodated.

While law's constructions, and that of any institution, must necessarily be selective and reductionist, there are degrees of selectivity and reductionism, and, thus the effectiveness of any legal system to handle children's issues may be judged in part by its success in restraining these tendencies. For law, the problem is not so much one of designing institutions capable of enforcing children's rights, but rather one of generating universally accepted concepts which are able to take decision-makers beyond the simplicity of the rights discourse. In order to accomplish this, the law must ultimately call upon the help of those child welfare experts whose very presence within the legal forum both enslaves their own

discourse and undermines the epistemic authority of the law (King & Piper 1990: 70).

In considering the implications for children's rights, it becomes apparent that here, too, the context or "real world" applies certain constraints on the realisation of legislation. It is by no means clear that the increased emphasis on children's rights in law and rhetoric will be reflected in practice. Smith (1991: 477-478) notes that although formal rights of complaint are established in certain relatively limited areas of the law affecting children, it seems that mechanisms and procedures to implement these are slow to emerge.

One reason for this may be the cost involved, another may be the fact that children's rights in practice are often only recognised in circumstances where things have already gone wrong: where parents/caregivers manifestly fail in their responsibilities, where the child is neglected or abused, or in the midst of his or her parents' divorce. Rights often do not extend to offer guarantees about the day to day existence of children or exercise of parental responsibility. Nor are children offered guarantees of minimum standards of care.

In conclusion it may be said that it appears then that despite the positive intentions of legislators, and the general statements of principle in the UN Convention, their inherent tensions and contradictions are compounded by social and political factors with the result that balance between the law, welfare rights, and protection is difficult, but not impossible to attain. Ongoing attempts to find this balance might act as an effective guarantee of minimum standards of care for children, might set clearer expectations for responsible adults, and might result in a more child-responsive society.

In the next chapter a critical analysis of the premises inherent in child welfare policy in South Africa will be made.

CHAPTER 4

CHILD CARE POLICY AND LEGISLATION
IN SOUTH AFRICA

The following objective and research questions, outlined in Chapter 1 (point 3 and 4) will be highlighted in this section of the literature study.

- Making a critical analysis of the premises inherent in child welfare policy in South Africa and more specifically of section 14(4)(a) and (b) of Act 74 in order to be equipped to formulate a research design and methodology that will enable the realisation of the overall research goal and objectives.

  (Research Questions (Open-ended)

- How is the parent-centred philosophy inherent in section 14(4)(b) being applied to black families.

- To what extent did interventions, treatment plans and final court orders reflect the premises of child care policy and legislation.

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1.   THE PREMISES INHERENT IN CHILD CARE POLICY IN SOUTH AFRICA

1.1   Introduction

Policy in respect of child and family care services is embodied mainly in the Child Care Act 74 of 1983, but is not founded exclusively in statutory terms. It is also modelled on decisions which have through the years, been taken on departmental, ministerial and cabinet levels. The Department of Health and Welfare's point of departure (Circular No 63 on 64 of 1989 as quoted by Bosman-Swanepoel & Wessels 1995: 151-152) is, that sound families form the basis for a

sound community and that government should be set towards creating a social environment within which individuals and families can develop to their maximum potential, through their own abilities. The child's most important bonds are seen as those made with his/her parents and his/her biological family holds the primary position in his/her relationships and association with other people. Continued care within the child's own family must therefore be the goal to ensure his/her stability and security.

It is the child's natural right to be supported and cared for by his/her parents, and it is the parent's duty to support the child to the best of their ability. Social work intervention must be aimed at preserving the child's natural right, and must therefore assist the parents to perform their parental role adequately. With these points of departure in mind, it is the Departments' policy that:

• priority must be given to services aimed at the preservation of the family unit

• treatment programmes must focus primarily on the family as a unit instead of on children and parents separately

• removal of a child from parental care should be regarded as a last extreme intervention, occurring either in an emergency situation or when all other forms of assistance have been attempted and failed, and the parental home holds a serious and imminent threat to the child's physical, mental, social or moral well-being and safety.

• removal from parental care is such a serious intervention that recommendations in this respect must be made by a professional team.

In analysing the premises inherent in the mentioned circulars and those in statutory terms (here specifically section 14 of the Child Care Act 74 of 1983) four streams of thought emerged.

- **A theoretical orientation:** The premises in child care policy is based on a residual approach which focuses on abused and neglected children who are at eminent risk.

- **Family preservation** which is directed toward the goal of keeping families together and reuniting them quickly if separation has been deemed necessary.

- **Permanency planning** which Levine, Loffell and Wright (1988: 11) describes as the prompt and decisive return of the neglected and abused child to the community or their family.

- **A parent-centred philosophy or focus on parental competence:** section 14(4)(a) and (b) inevitably reverts back to the image of the child as a victim of parental failure, incompetence or misconduct. This philosophy implies that the behavioural development of children is a reflection of parents' abilities/incompetencies to raise and care for children within a community's moral codes and standards.

The **first three** premises outlined here will now be discussed.

The parent-centred philosophy or focus on parental competence will, however, be discussed in the analysis of section 14(4)(a) and (b) of the Child Care Act 74 of 1983.

1.2 The theoretical orientation and residual paradigm inherent in child and family care

The social work profession in South Africa was strongly influenced by the growth of the psycho-analytic school in Europe and North America during the

1940's, and social workers began practising social casework as the dominant method of social work in welfare settings (Hare & Hoffmann 1987 as quoted by Patel 1992: 37-38). Social work in the Third World was according to Midgley (1981) as quoted by Patel (1992: 37) also influenced by Western industrial models, which resulted in the adoption of approaches often inappropriate to the conditions in poor countries.

The theoretical orientations underpinning child and family care policy and legislation in South Africa represent an assortment of therapeutic and behavioural theories that have up to recently been based on a First World model, which is curative in nature, located largely in urban areas, specialised and which requires highly trained professional staff. The method of service delivery, here the residual approach identifies the cause of maltreatment of children as rooted in the aberrant behaviour of the individual, and are oriented towards social control and influencing people to adapt to an often unjust social system (McKendrick 1988: 15-19; Lindsey 1994: 286).

McKendrick (1990: 22-23) points out that the culture and experience of the country's early white settlers, and the tradition of rugged individualism and family self-reliance which of necessity became a part of their lives, gave rise to the residual welfare approach in South Africa.

The residual approach is a minimalist perspective that requires identifying those children and families most in need and singling them out for services. Operating within this paradigm limits the scope of child welfare services to the residual group of children who are alleged at "imminent risk" of removal from their family. Within the residual approach child welfare services have come to be viewed as the provision of casework services to families having difficulty with the parent (caregiver)/child relationship (Lindsey, 1994: 289).

Intensive casework services form the fundamental treatment technology of the residual approach and statutory family services.

The casework method assumes that the client, in this case the parents of the child, are unable to manage their own problems. The task of the caseworker is to collect information, analyse and investigate the circumstances of the parents or caregivers and the child. The underlying premise is that the social worker can identify the family's problems, figure out a solution and develop a case plan to achieve remedy. The casework method thus shifts control over a subjects' life to a therapeutic professional, which places the fault for client failure and dysfunction squarely with the client being served. This approach encourages a form of dependency on the solutions and approaches developed by the social worker. Yet caseworkers often do not have proven treatment methods and there is an absence of empirical evidence that casework services make a significant difference. (Ezell & McNeese 1986: 401-402; Lindsey 1994: 289).

At the end of their exhaustive study, evaluating family preservation services, Shurman and colleagues (1993, 1994) as quoted by Lindsey (1994: 292) ask why, with 10 times more intensive casework services delivered directly to families, children were just as likely to end up in foster care, or to be abused again as children who received conventional services. They suggest two main explanations namely:

- the child welfare system is unable to identify those in "imminent need" of placement and thus target residual services; and

- for many of the families in their studies the overwhelming impact of severe poverty limited any intervention.

Operating within the residual paradigm in South Africa, the child welfare field has also been unable to make substantive advances in reducing poverty, abuse

and neglect among black children and families. The extent of poverty is so severe that it creates problems that are beyond the scope of the residual paradigm. King and Trowell (1992: 26) state in this respect that the residual model fails to appreciate the relationship between family mental health and social disadvantage and deprivation. They argue that no amount of counselling and psychotherapy is likely to make much impact on families suffering from multiple problems associated with poverty. One can hardly expect children and parents whose lives are insecure and unstable, who lack the basic amenities for fulfilling their needs as human social beings, such as proper nutrition, a solid physical environment which they can call "home" and educational play opportunities to provide adequate intellectual stimulation, to blossom forth into normal development after a programme of intensive casework services.

It would, however, be wrong to suggest that poverty and the lack of resources, the residual approach and intensive casework services in South Africa, alone contributed to problems experienced in child welfare in general. Many of the past policies such as apartheid legislation, migrant labour policies, detention without trial and the Group Areas Act which left certain social groups vulnerable to stress, ill-health or discrimination are potentially damaging to children's welfare. In this respect King and Trowell (1992: 27) point out that even well intentional policies, based on seemingly sound theoretical ideas concerning children's needs, when put into practice in an inflexible dogmatic manner, are likely to prove damaging to some categories of children. They refer to the de-institutionalisation of child welfare, and movement to foster care and family preservation which at some stage in England led to the closing down of several hundreds of children's homes throughout the country, and it became virtually impossible to find residential places for children. While these policies may have served the needs of many children, it took no account of evidence that there exist certain categories of children who have great difficulty in adapting to new families.

The discussion of the residual model focus on casework and policies that were detrimental to children's development here, is not an attempt to criticise child care services or social workers but serves as an illustration of the complex relationship between theoretical orientations, ideological paradigms, social policy and child care services. It is also evident that policies are ideologically driven rather than determined by the needs of children.

In future more consideration should be given to possibly combining the institutional and residual approaches in child welfare. The South African context which is characterised by a few well-developed communities and a majority of underdeveloped communities may lend itself to this. Economic problems and a poor tax base make it virtually impossible to implement an institutional approach in which welfare provision is provided to citizens by right as a normal first line function of a modern industrial society (Wilenskey & Le Beaux, 1958: 140). Wilenskey and Le Beaux (1958: 40) point out in their classic and authoritative book that not one of these philosophies exists in a vacuum, and that each is a reflection of the cultures and social circumstances in a society.

1.3 Family Preservation

The emphasis on family preservation in child care policy in South Africa is not only in line with changes in policies in other countries (Kelly & Ramsey, 1985: 26) but is also the result of a consensus that had developed, namely that removing of a child from a poor environment to a safe haven does not always result in a benefit to the child. Research in the USA also suggests that children are removed from their homes more frequently than is necessary, often without strong justification in terms of real danger to the child (Hubbel 1981, Kelley & Ramsey 1983). There is evidence that the "safe haven", in practice often foster care, has many negative aspects (Wald 1975), and that involuntary termination of parental rights sometimes creates additional problems for the child. Borgman (1981: 392-394) found that the majority of children in a study of abused and neglected children

placed in adoptive homes resisted adoption, and nine out of 21 adopted children were returned to the group care facility.

Family preservation thus evolved as a response to the over emphasis on removal of children at risk of abuse from their family. The Child Welfare League of America (Bath & Haapala 1994: 387-388) describes intensive family preservation services as having the following characteristics:

- the target family is in crisis with at least one child being at imminent risk of placement;

- services are intensive, with contact hours averaging 8-10 hours per week;

- services are limited to 4-12 weeks;

- case loads range from two to six families; and

- the focus is on the provision of intensive counselling, education and supportive services.

Maintaining a balance between preserving families and protecting children is one of the most challenging tasks facing child welfare practitioners, administrators and policy makers. This challenge is according to Maluccio, Pine and Warsh (1994: 295) complicated by the following intricacies inherent in each case:

- the passion that the plight of children frequently arouses in most people;

- the legitimate concern about protecting the rights and interests of children as well as their parents;

- the imperfection of risk assessment instruments and procedures; and

• the inability to predict the future in regard to how children and families develop.

The policy framework for services to families is characterised by considerable ambiguity. This ambiguity is reflected in the paradoxes, conflicts and inconsistencies found between a philosophy of preserving families and the "best interests of the child" standard which is in direct conflict with the concern for family preservation (Maluccio et al. 1994: 228).

Social workers don't wish to risk the life and health of a child simply in order to preserve the family. Nor do they wish to tear a family apart simply to protect a child from the possibility that abuse may occur. Dingwall et al. (1983: 161) put it as follows:

"... child protection raises complex moral and political issues which have not one right technical solution. Practitioners are asked to solve problems everyday that philosophers have argued about for the last two thousand years and will probably debate for the next two thousand ..."

The question both family preservation and child protection address is moral in tone and a decision about what constitutes a good society. A search for a balance between both philosophies/approaches is required.

The current policy framework and service delivery system in child welfare encourage an either/or approach to family preservation, families are preserved or they are not. Mallucio et al (1994: 299) argue that an approach where family preservation and child protection are seen as complementary, instead of as competing goals should be more suitable. In this approach family preservation is viewed as sustaining or promoting family ties with all members of a child's kinship network, whether or not that child needs the protection of an out-of-home

placement, and even when adoption is the permanency plan of choice. Such an approach aims at:

- helping each child and family to achieve and maintain their optimal level of reconnection;

- suggesting that practitioners should use a flexible approach that seeks to meet the unique needs of children and their families in an individualised and carefully thought through way; and

- recognising that not every parent can be a daily caregiver and that some families, though not able to live together, can still maintain kinship bonds.

Wiltse (1985: 265-266) supports this viewpoint but indicates that the balance between family preservation and child protection is more easily achieved when the work with families is supported by an essential constellation of skills and resources. These include social workers who are trained to assess a family's capacity to be together; extended families that are involved with and supportive of birth families and their children, foster parents who recognise their primary responsibility to support family connections, provider agencies that deliver needed assistance, a judicial system that works to maintain family integrity, and agencies that are committed to an individualised, culturally-relevant approach to meeting the needs of children and families. Similarly Early and Hawkins (1994: 313) emphasise that services should be sensitive to the context in which they are delivered, that family preservation services are focussed on family strengths as opposed to a focus on family deficits and dysfunctions, and that linkage to a wide variety of supports and services outside the child welfare system are crucial to accomplish goals.

1.4 Permanency planning

The concept permanency planning is based on the following premises:

- A child needs security, stability and safety for sound development and must, above all, experience permanency in his relationship with his care-givers. He must know where and by whom he will be brought up and that those people are committed to him.

- The child's biological parents are the obvious people to bring about permanency in his life by the security they can offer him and by the closeness and continuity of his relationship with them. This enables him, in turn, to form meaningful and lasting relationships with other people.

- Every effort should be made to prevent children from being removed from their parents' care. Social work services should therefore focus on the family and be aimed primarily at enabling parents themselves to give their children proper care.

- When removal of children from their parents' care is inevitable, it must be a carefully planned, purposeful action, based on sound assessment and on the prognosis of all the parties concerned. A short-term plan must be formulated and must be aimed at reaching certain goals, within a given time frame and congruent with the child's interests, to enable his return to his parents. A long-term plan, which can be implemented should the short-term plan fail, must be formulated right from the start.

- As long as the child's return to his parents is the goal, everything possible should be done to prevent estrangement between parents and children during placement. Right from the start, the social worker must ensure that continued, meaningful contact between parents and children receives the necessary attention.

- Even though a child has been removed from his parents' care, recognition should still be given to the fact that they are the most important people in his

life. Consequently, the social worker must actively and resourcefully reach out to them, render services to them and secure their co-operation.

• When it proves impossible to reinstate children with their parents within the predetermined time and when, due to the passage of time, or other reasons, it is no longer in the child's interest to aim for his return to parental care, other means to bring about permanency in the child's life should be pursued. This can be achieved by long-term substitute care, with or without parental contact, or adoption, with or without continued parental contact.

(Circular No 64 of 1989 of the Department of Health Services and Welfare)

Permanency planning thus aims to ensure that children do not remain in limbo and at the same time ensure the delivery of adequate, effective reconstruction services. Levine, Loffell and Wright (1988: 11) have, however, in their research found that white children, in practice, often remained in infinite care, and that permanency planning did not work because of an over stressed system, with too few social workers, with too high case loads. With regard to black communities the same writers state as follows: "Take the situation in the white community and multiply the problems by ten for the black community and we realise we are dealing with a fantasy that cannot be realised within the South African Welfare system". This is then also one of the aspects which will be evaluated during the course of the research.

2. AN ANALYSIS OF SECTION 14(4)(a) AND (b) OF THE CHILD CARE ACT 74 OF 1983

2.1 Introduction

Section 14(4)(a) and (b) of Act 74 provides social workers in practice with guidelines to the holding of enquiries into cases of children that need protection

and sets out specific criteria in order to determine if a child is at risk or in need of protection. It has already been pointed out, (Chapter 2 and 3) that legal categories place limits on what is admissible knowledge for the purposes of legal inquiry, or that social workers are being forced to construct the causality of child abuse and neglect in such a way that it fits into pre-existing legal categories.

Some external factors that may pass as valid knowledge may thus be excluded by pre-existing categories. In testing this statement (often made in literature) it will be necessary to explore the way in which social workers do make use of social evidence in practice, and how they go about constructing knowledge in which external factors are included/excluded, and if external factors are always related to the parent/child-relationship. Dingwell et al. (1983: 55) state in this regard that physical signs or symptoms could, in practice, be interpreted as evidence of abuse and neglect only by implicit or explicit reference to the child's social circumstances.

It was also indicated that child care legislation is vague, particularly in the definitions of child abuse and neglect as well as in terms of guidelines for interpreting legislations. What follows from the discussion here is need to:

• take a closer look to what happens in practice;

• evaluate the dimensions and categories social workers use in their construction of knowledge in child protection proceedings;

• identify the way/s in which social workers fit dimensions and categories into pre-existing categories.

These aspects will become clearer during the execution of the empirical study. It is the researcher's basic assumption that the application of any of the criteria set in section 14 is the result of a complex process of identification,

investigation, exploration and confirmation of a child's or children's presenting circumstances. This assumption may, however, also in practice be proved wrong or it may be confirmed.

King and Piper's (1990: 122-123) point of departure, namely that the law in order to perform it's social function effectively has no choice but to simplify and reduce must be emphasised here. The issue posed in the research is however not whether or not legal categories promote simplistic and reductionistic accounts of reality, but rather whether these accounts reduce and simplify in ways that are appropriate for, and applicable to the context in which they are operationalised.

2.2   Discussion of the sections and sub-sections

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section 14(4)(a) and a(A)

"At such inquiry the children's court shall determine whether -
(a)   the child has no parent or guardian; or
(aA)   the child has a parent or guardian who cannot be traced;"
[Para. (aA) inserted by section 5 of Act No 86 of 1991] ?⌐

Documentary evidence of, for instance, the death of parents is required here. Where a child's parent(s) is/are deceased and a testamentary guardian has been appointed, such a child will only find him/herself in the circumstances contemplated in section 14(4)(a) if it can be proved in terms of section 14(4)(b) that the testamentary guardians are unfit to educate and care for the child.

Act 74, initially did not make provision for children who have removed themselves from parental care. In section 14(4)(a) and 14(4)(b) (all sections) the focus falls on the parents rather than on the child. This created problems in

dealing with street children as the parents often could not be traced in order to investigate their circumstances. It was therefore "presumed" in such cases that the parents were unable or unfit to care for the child. The act was therefore amended by way of section 14(4)(aA) in order to solve this problem.

"section 14(4)(b)

(b)   the child has a parent or a guardian or is in the custody of a person who is unable or unfit to have the custody of the child, in that he -

    (i)   is mentally ill to such a degree that he is unable to provide for the physical, mental or social well-being of the child;

    (ii)   has assaulted or ill-treated the child or allowed him to be assaulted or ill-treated;

    (iii)   has caused or conduced to the seduction, abduction or prostitution of the child or the commission by the child of immoral acts;

    (iv)   displays habits and behaviour which may seriously injure the physical, mental or social well-being of the child;

    (v)   fails to maintain the child adequately;

    (vi)   maintains the child in contravention of section 10;

    (vii)   neglects the child or allows him to be neglected;

    (viii)   cannot control the child properly as to ensure proper behaviour such as regular school attendance;

    (ix)   has abandoned the child; or

    (x)   has no visible means of support."

The philosophy of parental competence/incompetence

The first part of section 14(4)(b) reads as follows: "the child has a parent or a guardian or is in the custody of a person who is unable or unfit to have the custody of the child, in that he -" thereafter follow the criteria that have all been worded as defects or faults in a parent or guardian or custodian.

At first, the grounds for legal referral differ little from previous child care legislation, but there is in fact a radical shift in emphasis. The incompetence of the parent, and no longer the circumstances of the child, comes into clear focus. Finding the parent unfit, or unable, replaces the concept of finding the child "in need of care" as described in the previous act.

In his introduction of the Child Care Bill at Second Reading stage in Parliament the minister of Health and Welfare (Dr Nak van der Merwe) declared:

"... I think the time has come for us to tell an incompetent parent, without beating about the bush, that his child is in need of care because he is an incompetent parent, and that action should be taken against these unfit parents for the sake of the child" (Hansard 1983: col 6561)/

This remark may be said to capture aptly the tenor and apparent aim of the criteria set in section 14(4)(b), namely that of a bias against the parent who has neglected the child.

In supporting the aim of proving parental incompetence, as set out in section 14(4)(b) it might be suggested that a firm finding of incompetence in an ineffective parent or custodian would appropriately express society's justifiable displeasure, and be unlikely to harm the child's interests, since the child is in any case being removed from the parent's control. There are however some serious counter-considerations which this argument ignores.

Zaal (1988: 228) has for example in his analysis of Act 74 stated that:

• formal declarations of parental guilt or incompetence in court hearings are likely to serve little further purpose than to embitter and alienate the parent(s) or custodian concerned; and

• local and foreign researchers have pointed out that parental cooperation with state welfare authorities remains potentially important, because it may turn out that a monitored return of the child to the parents is the child's best long-term option.

Accordingly Levine et al. (1988: 12) argue strongly that Children's Court proceedings were never intended to determine guilt and assign blame, and that this shift in emphasis tends to "criminalise" the parent, rather than regard the child in need of help.

The social worker who is assigned to prove the parent's "guilt" in being unfit or unable, is often the same person assigned the task of providing long-term rehabilitation for the parents. His/her task is therapeutic, and to ask him/her first to act as prosecutor and then as therapist is not compatible. The compulsory utilisation of an adversarial work style may be said to be a most unfair import into a discipline traditionally committed to supportive and therapeutic interventions (Levine et al 1988: 12; Zaal 1988: 232).

The mentioned writer's arguments hold much credibility and it may rightfully be asked if the legislator in phrasing this section, fully contemplated the strong message inherent in it. It may, however, also be asked if the previous child care act where it had to be proved that the "child was in need of care" had necessarily resulted in a process where parents felt less stigmatised and incompetent. Although the emphasis fell on the child's circumstances, his/her circumstances could inevitable only be described by implicit or explicit reference to the parent's

competencies or incompetencies. This aspect falls however beyond the scope of the research. The researcher will in this research evaluate whether children's circumstances are in practice directly related to parental failure, incompetence or misconduct.

A second argument in defence of the parent-centred approach to removal criteria is that it provides a fairer balance of interest. Instead of child-centred criteria (and thus a child-rights approach) parent's rights are considered in this section, for a parent must be gravely at fault or defective as a parent, before statutory intervention is undertaken. By having thus balanced children's and parent's rights, Act 74 may be seen as more family-oriented than was the old Act.

The fallacy of this argument becomes evident in a careful study of Zaal's (1988: 229) assessment of Act 74. The following examples serve as an illustration:

• Although parents now have the right to proof of parental deficiency before removal may be finalised, such proof is something of a double-edged sword. For whilst it is true that it becomes harder to remove a child legally, it also becomes essential to formulate highly pejorative conclusions about the parent or caregiver, if the removal of a child/ren is to be upheld.

• Research conducted on white families by the Department of Health and Welfare (1982) as well as research conducted by "die Komitee van Ondersoek na die Pleegsorg van Kinders" (1989) showed that poverty was one of the main reasons leading to removal of children.

Condemnation of poor parents prove to be an artificial and unfair depiction of the underlying causes which led to the child's removal. It is unfortunate that persons whose parenting has failed largely because of poverty should find themselves having to be stigmatised by one of the removal criteria in section 14(4)(b). It may also be safely assumed that in black families in South Africa the

poverty factor will tend to be even more prevalent. In terms of section 14(4)(b) the nearest that the court may be able to come to the truth in such instances is to use either section 14(4)(b)(v) which reads "fails to maintain the child adequately" or section 14(4) (b) (x) which reads "has no visible means of support" as grounds in respect of a parent. Although these are two of the least depreciating of the section 14(4)(b) criteria, a parent will still in some instances feel their application to themselves to be needlessly insulting.

<div style="border:1px solid black; padding:1em;">

<u>Section 14(4)(b)(i) reads</u>:

"is mentally ill to such a degree that he is unable to provide for the physical, mental or social wellbeing of the child".

</div>

The term "mental illness" means mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973). The definition of mental illness reads as follows "... any arrested or incomplete development and any psychopathic disorder". A psychopathic disorder is defined as a persistent disorder or disability of the mind (whether or not subnormality of intelligence is present) which has existed in the patient from an age prior to that of 18 years and which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient. The term psychopath has a corresponding meaning.

According to Bosman-Swanepoel and Wessels (1995: 14-15) the above is a broad and somewhat vague term. When action is therefore taken solely on the grounds of mental illness in terms of section 14(4)(b)(i) a report from a psychiatrist or clinical psychologist is considered indispensable. Expert evidence is therefore needed in respect of the prognosis of the patient, as well as an evaluation of the parent/care-givers' long-term parental abilities. The certification of a patient by a medical practitioner, confirmed by a psychiatrist, result in the certified person losing

his civil rights - for example also the rights inherent in the guardianship and custody of the child. As soon as the person is decertified he again acquires his civil rights, for example to exercise control over his children.

Section 14(4)(b)(ii) and (iii) reads as follows:

(ii) **"has assaulted or ill-treated the child or allowed him to be assaulted or ill-treated"**

(ii) **"has caused or conduced to the seduction, abduction or prostitution of the child or the commission by the child of immoral acts."**

These categories cover all aspects relating to child abuse, incest and child molestation. The concept child abuse and the complexity surrounding it, has already been discussed in Chapter 2. Sexual abuse in contrast to child abuse is almost always devoid of physical violence. Emotional pressure, persuasion and bribe gifts are common. Molestation usually begins in a less drastic manner, for instance with exposure, inappropriate touching or masturbation. Frequently it develops into full-scale incest, with vaginal or anal penetration as a climax. The literature also points out differences between rape and incest. Incest rarely involves physical violence and victims of incest show no signs of acute trauma or injuries to the genitals. It usually takes months or years before incest becomes established as a pattern, whereas rape takes place within minutes (Sgroi 1982 and Cohen 1985 as quoted by Bosman-Swanepoel 1995: 139-140).

Cohen (1985 as quoted by Bosman-Swanepoel 1995: 139) describes three types of sexual abuse:

- Commercial exploitation - for example heterogeneous and homosexual pornography.

- Erotic and oral-erotic contact and stimulation from touching up to and including digital penetration.

- Sexual intercourse with vaginal or anal penetration.

It is important to note here that it was in terms of section 1(X)(i) of the previous child care Act possible to remove a battered child purely upon the basis of evidence of ongoing or serious assaults visible upon his physical person and there was no need to demonstrate parental complicity. In short the replaced provision differs markedly from the old provision in that the focus in the new provision is being hinged upon parental (or substitute caregivers) fault or defect. By contrast under the old Act it was possible to remove a child without any condemnation of parents or caregivers.

<u>Section 14(4)(b)(iv) reads as follows</u>:

"displays habits and behaviour which may seriously injure the physical, mental or social well-being of the child;"

The most common examples of habits and behaviour here are alcoholism, drug addiction, unemployment and criminality.

<u>Section 14(4)(b)(v) reads as follows</u>:

"fails to maintain the child adequately;"

This category is often in practice applied to parents/caregivers who do not have adequate financial sources to support children. Social workers should however first try to normalise the child's circumstances by means of a maintenance order before considering legal intervention. This applies particularly in cases where the child is being cared for in a satisfactory manner, and where finances are the only/principal source of concern. Both parents, including the fathers of illegitimate children are liable to pay maintenance. Should grandparents have the financial means, there are even circumstances under which maintenance can be demanded from them.

Section 14(4)(b)(vi) reads as follows:

"maintains the child in contravention of section 10;"

Section 10 applies to illegitimate children under the age of seven years who are being maintained apart from their parents for a period longer than 14 days. Both section 10 and 14 discriminates against illegitimate children and it is not clear why illegitimate children are singled out in section 14(4)(b)(vi). There are many young children who are born of marriages between parents who are both unfit to emotionally and/or physically car for them. These children need the protection of this section just as much, for they are often moved continually without discretion from one place of care to another.

Section 14(4)(b)(vii) reads as follows:

"neglects the child or allows him to be neglected;"

This category refers to children who are inadequately being cared for, and where it may impede or adversely affect their normal growth and development. Physical, mental and emotional components are involved. A host of external factors may affect parental ability, for example financial need, marital problems, parents who are inadequately socialised, parents with poor intellectual or cognitive abilities, social stress, and physical, emotional and mental problems (Bosman-Swanepoel 1995: 142).

Section 14(4)(b)(viii) reads as follows:

"cannot control the child properly so as to ensure proper behaviour such as regular school attendance;"

This category applies to children who display behavioural problems anti social behaviour and associate with undesirable friends. Bosman-Swanepoel and Wessels (1995: 40) indicate that parents often feel helpless and tend to blame the child's peer group for problems that may arise. The question remains however according to them, why a child needs to seek recognition out of the context of the family. It may also be asked if a child's behavioural problems is always a reflection of unfulfilled emotional needs and poor parenting.

The South African context, and here specifically politically induced situations, such as the liberation struggle and school boycotts were reality factors that may genuinely have influenced the behaviour of children, and over which parents have little control. Limited intellectual capacity on the part of parents is also an aspect that may seriously affect children's behaviour. Similarly are children of single parents exposed to a multitude of criminogenic factors. For example, a single mother who works long hours out of home in order to meet the family's material needs, and who is not financially in a position to arrange proper care for her

children, may possibly be labelled as an incompetent parent because of factors beyond her control (Bosman-Swanepoel 1995: 40 & September 1993: 10). It will be interesting to evaluate whether social workers are in practice always able to linearly relate behavioural problems in children to the negative functioning qualities in parents.

Section 14(4)(b)(ix) reads as follows:

"has abandoned the child;"

The most serious form of child neglect is child abandonment. In practice this frequently points to a complete lack of parental involvement with the child or utter desperation on the part of the parent. From January 1992 to January 1993, 3 076 children were abandoned by parents in South Africa (Draft White Paper for Social Welfare 1995: 94).

Section 14(4)(b)(x) reads as follows:

"has no visible means of support;"

Before legal intervention is considered exclusively on this ground it is first necessary to consider whether the family's problems cannot be resolved by way of a social grant, employment for the parent or by the availability of other support systems such as the church. Finances per se should never be the only grounds for legal referral (Bosman-Swanepoel & Wessels 1995: 40). Huxtable (1994: 61) quoting a court ruling in this regard remarks that the system often removes children from their homes instead of providing simple, basic services that would allow children to remain with their families.

3. DEMOCRATISING OF CHILD CARE POLICY AND LEGISLATION IN SOUTH AFRICA

The majority of South African families and children live in unhealthy, unsafe, disadvantaged communities. Overcrowding, a lack of housing and basic amenities such as sanitation and recreational facilities, and a lack of public transport have serious consequences for the stability and security of families. The lack of services and amenities in disadvantaged communities, coupled with extreme poverty and a lack of family support networks, are some of causes of general family disintegration as well as child abuse, child neglect, child abandonment and the phenomenon of street children (Draft White Paper for Social Welfare 1995: 19-92).

Patel and Schmidt (1989: 2) argue strongly that child care policy in South Africa has in the past been built on the twin pillars of racial discrimination and privatisation. Consequently child care services provided for the white minority and reflect approaches in first world countries, while for the majority of the population services remained inadequate and inappropriate.

The South African welfare system presently is in a process of transformation, and societies attempting to transform themselves need not develop new forms of popular democracy only, but have also to re-develop bureaucratic and authoritarian structures which have undermined people's power (Patel 1992: 8). The ANC stated that their approach to social policy development will be fundamentally different. It will no longer be legislation drawn up by technocrats, but will be based on a socio-political process. This means that laws, policies and regulations will be drawn up with the widest participation of all those who are affected by them either directly or indirectly. (ANC National Social Welfare and Development Planning Framework (1995: 16) Patel (1992: 6-7)) accordingly describe a democratic policy framework as one of debate and bargaining between political parties, interest groups, policy experts and various constituencies over alternative policy formulations.

To have a child Care Act that is representative of the South African population implies that a representative element would have to be brought in during the drafting of child care policy and legislation.

The development of a non-racial pattern of service delivery requires of organisations to give attention to the development of equal opportunities and positive action programmes. A participatory model implies also ongoing monitoring, evaluation and review of the system through procedures which ascertain the views of children, parents and other significant people in the child's life, and to give those views consideration (Lines 191: 13).

A new Child Care Act must be based on the principles of equality, equity, accessibility, user involvement, empowerment and public accountability. Policy makers should be more development orientated and broader welfare policies should be more supportive to families in the provision of preventative and supportive services. Child care legislation will only within such a context become more child responsive, able to protect children and able to attain the premises inherent in child care policy.

In the next chapter results of the empirical study will be discussed.

CHAPTER 5

RESULTS OF THE EMPIRICAL STUDY

The following objectives and research questions, outlined in Chapter 1 (points 3 and 4) will be highlighted in this chapter.

Primary objective

- To critically analyse the application of present child protection policy and legislation to black families and children in South Africa.

Secondary objectives

- To compile a profile of the respondents studied in the research in order to explore the context in which policy and legislation is operationalised.
- To describe the extent to which policy and legislation are successfully applied in practice.
- To describe how the circumstances of black families and children, and evidence resulting from investigations are being constructed in order to fit into pre-existing legal categories.
- To identify the factors that influence decision-making during statutory interventions.

Research Questions (Open-ended)

- All the research questions set in Chapter 1, section 4.2, will be highlighted here.

1. INTRODUCTION

In the extensive literature study that was undertaken an attempt was made to give a global theoretical outline, depicting the main concepts, assumptions, premises and viewpoints relating to child protection policy and legislation. Knowledge that was accumulated in the literature study enabled the researcher to designate the specific variables, data items and to design a schedule for analysing the data in the case files that were studied.

In this chapter the textual analysis of case files will be described in small tables and figures, followed by explanatory text to describe numbers, percentages and trends or patterns which were identified. The operational definitions for the data items contained in the schedule for data analysis (Addendum A) will be used in the description of data. The schedule for data analysis will also be used as a guideline for the sequence in which data will be presented. It should be noted here that the schedule for data analysis was designed to break down the extensive information in case files, into small comprehensible sections.

> How are child protection policies and legislation based on Western models of child rearing practices being applied to black families and children? The research gave an interesting picture.

2 PROFILE OF THE RESPONDENTS

Table 2.1 provides a clear picture of the family structures of the respondents.

TABLE 2.1   FAMILY STRUCTURES OF THE RESPONDENTS

Family structure	No's	%
Both biological parents	0	0
Reconstituted families	0	0
Kinship families	13	86
Single female parent	1	7
Single male parent	0	0
Private foster care parents	1	7
Total	**15**	**100**

Perhaps one of the most interesting features of the black families that were studied, was the extent to which the kinship network was used. In 86% of the cases kinship families were already involved at the time of the referral and later became the foster placements for the children involved. Although the nuclear family does exist it is generally found within the extended family. The kinship families that were studied were made up of:

- a biological parent who either lives with the family, lived with the family before death or lived with the family before she abandoned a child/ren with them,

- orphaned children of a biological parent or children who were abandoned, and

- other relatives and their children.

The dominant feature of these families is, that they are headed by aunts or grandparents, more often a grandmother who serves as the chief guardian of

children. It does not indicate a matriarchal tendency since most of these females moved into this role when their husbands died.

The extended family tends to absorb all relatives and children into the family, who are suffering economic hardship, and thus serves as a survival system for adults and children who have been deprived of job opportunities and adequate resources. It provides tangible help such as material support, income, child care and assistance in household tasks as well as nontangible support such as emotional support, supervision, counselling and advice.

The grandmother relies on her children and others to assist her in care giving, but often the entire family step in to support abandoned or orphaned children who must, due to a lack of institutional support and other resources, be absorbed by the family. The willingness of relatives to serve as support systems as well as role flexibility within these families are a strong feature. These can be seen as survival mechanisms on the one hand, but on the other as underlying strengths that allow black females and males to adapt multiple roles in the family.

The two cases, where the kinship network was not involved, were both exceptional cases. Case number 9 involved a orphaned teenaged mother who was during her teenage years emotionally, educationally and financially supported by a **white** family. She fell pregnant during Standard 9 and decided to marry the biological father of her child who also had to pay lobola to the white family. She later got divorced and eventually abandoned her child with the white family. Case number 15 involved a baby who was abandoned by her mother a day after she was born. The hospital where she was abandoned could not trace the biological mother and the social worker was forced to look for private foster parents.

The important role of the kinship network became even more visible in the section of the study regarding the social circumstances, educational level, occupations, and income of the respondents that were involved. Case files were scrutinised in order to answer questions such as:

- How do these families live?
- How many occupants/relatives were living together?
- How do they survive?

This process proved to be time consuming but also very valuable in order to better understand the context in which child protection policies and legislation is operationalised. Table 2.2 provides a picture of the type of housing and the total number of adults and children who occupied these houses. The number of adults include all the relatives, biological parents and other adults. The number of children includes all other children, also those who were the focus of child protection services. The number of rooms indicated, refers to the total number of rooms in a house.

TABLE 2.2　THE NUMBER OF CHILDREN AND ADULTS INVOLVED AND TYPE OF HOUSING OF THE KINSHIP FAMILIES

Case no	Occupants		Housing			
	Number of adults	Number of children	Two rooms	Four rooms	Seven Rooms	No accommodation
1	4	1		✓		
2	8	2		✓		
3	12	1		✓		
4	5	2		✓		
5	7	3	✓			
6	6	2		✓		
7	4	5		✓		
8	4	1		✓		
9	1	1				✓
10	6	4		✓		
11	5	4		✓		
12	11	4		✓		
13	7	4			✓	
14	3	4			✓	
15	7	1		✓		
Total	90	39	1	11	2	1

None of the respondents owned a house. All four roomed houses and the seven roomed houses were rented from the local municipality. The house with two rooms indicated in the table (Case no 5) was in actual fact two sink huts or shacks in a backyard. Of importance here is that all the houses were very clean and well looked after. Although these families were exposed to extreme poverty none of them were untidy and they were all very proud of their houses.

Overcrowding was mentioned in eight cases (53%) by the social workers involved, namely in respect of cases 2, 3, 5, 7, 10, 11, 12 and 13. It thus seemed as if a four roomed house with nine or more occupants constitutes overcrowding from the social worker's point of view. Overcrowding was however not mentioned by the families themselves. This became evident in studying the process notes of interviews and house visits. The grandmothers involved often mentioned to social workers that there are too many people living in their houses, but that they have learned to adjust. Kitchens and lounges were functional during day, but all rooms served as sleeping rooms at night. Grandparents of grandmothers usually have their own room and adults were allowed more space than children.

What also became evident during the study is the fact that poverty , inadequate housing and the lack of resources did not rob black families of their pride, dignity and ability to establish routine and harmony in their day to day existence.

The over representation of adults (90 adults versus 39 children) occupying fifteen houses can be attributed to the fact that these adults, many of them children (but not minors) still living with their biological parents, could not leave home due to the fact that they were unemployed. Only 26 (29%) of the 90 adults involved were employed. Even in the few cases where adults were employed did they feel that their responsibility lies with the kinship family. They preferred to contribute financially to maintaining the kinship family. Leaving home and independency in their context often refers to setting up a zink hut in the backyard or buying a Zozo hut for more living space.

A description of the biological parents, their family structures and the reasons for their absence (tables 2.3 and 2.4) lead to a better understanding of the frequent occurance of kinship care.

The overwhelming majority of biological parents were single female parents. All these mothers have abandoned their children in one way or another. Very little

TABLE 2.3   FAMILY STRUCTURES OF BIOLOGICAL PARENTS

Family structure	Number (N=15)	%
Single female (unmarried)	7	47
Single female (unmarried and deceased)	4	27
Divorced parents	1	6.5
Married parents (deceased)	2	13
Unknown	1	6.5
Total	**15**	**100**

was known about four of these mothers (cases no 1, 2, 4 and 15) as they abandoned their babies and their whereabouts were unknown. All the babies in these cases were only a few days, weeks or months old with the exception of case 14 where the biological mother's identify was unknown and the baby was abandoned at a hospital immediately after birth. The five mothers in the other abandonment cases were all in their teenage years, and still at school when they fell pregnant. These mothers initially stayed with their kinship families, whereafter they abandoned their children with the kinship families. Four of the mothers died of natural causes leaving their orphaned children behind. The two mothers who died of unnatural causes were both killed, one by her husband who committed suicide after he killed her and the other was found at a taxi rank with stab wounds.

TABLE 2.4   REASONS FOR ABSENCE OF BIOLOGICAL PARENTS

Reason for absence of parents	Number (N=15)	%
Abandoned children	9	60
Deceased (natural causes)	4	27
Deceased (unnatural causes)	2	13
Total	15	100

Only three of the biological mothers involved have been employed at some stage in their lives. It became evident in the cases where information regarding the biological mothers was available that they were all leading unstable nomadic lives, abusing alcohol, co-habiting with males in hostels, practising prostitution and showing no interest in the welfare of their children. These aspects will be discussed in more detail later on in the chapter. Very little information regarding the biological fathers was available due to the fact that the children involved often had different fathers and the biological mothers didn't know who the fathers of their children were.

TABLE 2.5   PROFILE OF THE CHILDREN INVOLVED TO WHOM STATUTORY SERVICES WERE DIRECTED

Sex	Age (years)					
	0-2	3-6	7-12	13-18	Total	%
Male	1	4	3	4	12	46
Female	2	3	4	5	14	54
Totals	3	7	7	9	26	
%	11	27	27	35		100

Table 2.5 shows the sexes of the children who were involved, cross tabulated against their age groups. Age and sex seem to be evenly distributed between the children, although the majority of children were three years and older. No important tendencies in regard of age and sex could be identified. What is however important here is to note that all these children with the exception of three were from a westernised point of view illegitemate children. The ages given here were the ages recorded on the case files at the time of the referral. Only two of the children had birth certificates, and it seemd to be standard practice that children are taken to a district surgeon where their ages are being estimated. This in turn may be a reflection of the biological mothers' maternal apathy towards their unwanted children or ignorance in regard of the procedures for registering children's births.

3 SOCIO-ECONOMIC DETAILS OF THE RESPONDENTS
TABLE 3.1 AGE OF THE PRIMARY CAREGIVERS/FOSTER PARENTS

Caregiver (N=21)				Age group				
	45-50	51-55	56-60	61-65	66-70	71-75	Total	%
Single maternal grandmothers				2	1		3	15
Single maternal aunts		4					4	19
Maternal aunts and uncles (married)	2		1	1			4	19
Both paternal grandparents				2			2	9
Both maternal grandparents		1		5			6	29
Private foster care parents					1	1	2	9
Totals	2	5	1	10	2	1	21	
%	9	24	5	48	9	5		100

Table 3.1 shows the prime caregivers who were involved, cross tabulated against their age groups. Only two (9%) of these caregivers were younger than fifty years. Five (24%) fell in the age group 51 to 55 years. These age groups primarily provided for uncles and aunts who served as caregivers whereas 14 (67%) of the caregivers were 56 years and older. The most interesting feature of table 3.1 is that only two (9%) of the caregivers were paternally related to the biological parents. This can be attributed to the high percentage (47%, table 2.2) of single female mothers involved. Similarly demonstrates the low incidence of private foster care parents (9%) the extend to which the kinship network is established and valued as a caregiving system.

TABLE 3.2   EDUCATIONAL LEVEL OF THE PRIMARY CAREGIVERS/FOS-TER PARENTS

Educational level	Number (N=21)	%
No schooling	7	33
Standard 3	4	19
Standard 4	2	9
Standard 5	4	19
Standard 8	1	5
Unknown	3	15
Totals	21	100

Table 3.2 shows that only one adult (5%) attained a standard eight qualification. The majority of the respondents have either a standard 3 or 4 qualification (19% respectively). Seven (33%) of the adults had no schooling. Only one of the respondents who obtained a Standard 8 qualification had post-school training as a nursing assistant but retired due to ill health. The respondents' low level of education as well as their age make it difficult for them to find employment.

TABLE 3.3   OCCUPATIONS OF THE PRIMARY CAREGIVERS

Occupation	Number (N-21)	%
Pensioner (old age)	5	24
Pensioner (retired)	1	5
Labourers	4	19
Domestic workers	3	14
Priests	2	9
Unemployed	5	24
Own business	1	5
Totals	**21**	**100**

Table 3.3 shows that only 10 of the respondents were economically productive. Of these ten, four (19%) were employed as labourers, three (14%) as domestic workers, two (9%) as priests, and one of the respondents (5%) had her own business. The number of domestic workers and old age pensioners attribute to the fact that nine (43%) of the respondents do not earn more than R400,00 per month as indicated in Table 3.4. Five (24%) of the respondents were unemployed. Most of the old age pensioners and unemployed respondents did odd jobs like selling vegetables, fruit and plastic cups. One of the unemployed maternal aunts sold beer and food over weekends to make ends meet.

TABLE 3.4   MONTHLY INCOME OF THE PRIMARY CAREGIVERS

Monthly income	Number (N=21)	%
No income	2	10
R100,00-R200,00	1	5
R200,00-R400,00	9	43
R400,00-R600,00	4	19
R600,00-R800,00	2	9
R800,00-R1000,00	3	14
Totals	21	100

The respondents also supplemented their monthly income with rent collected from squatters who they allow to stay in their backyards. The five caregivers who earned more than R600,00 per month were the only respondents with a monthly budget. All the other respondents lived from hand to mouth. They have a very low standard of living compared to normal western standards and they struggle to survive.

The socio-economic circumstances of the respondents contribute to the fact that they are extremely dependent on the foster care grants, which they receive after cases are finalised. The foster care grant often not only contributes to raising the living standard of an entire family, but at the same time serves the best interests of children involved. Although a very small part of the grant is used to fulfil children's needs, children are no longer experienced as an extreme financial burden.

Precaution should however be taken in cases where acceptance of a child is conditional to receiving a foster care grant, as was clearly demonstrated by case 3. In this case attempts to keep an adolescent boy in the extended family were taken

to the extreme. The child was eventually put in foster care with his uncle and aunt who made it very clear that they were experiencing severe financial difficulties and that they will need financial assistance to be able to foster the child. They ordered the boy after a few months to leave and to go back to the place of safety because of difficulties in the administration of the foster care grant.

The fifteen cases that were selected provide a recurring profile of impoverished kinship families, unmarried mothers, illegitimate children, poor housing, economic hardship, unemployment and a daily struggle for survival. Important here is that these cases reflect a virtual image of the complete case load that were studied before the cases were selected. The researcher became very aware of the fact that the phenomenon of child abuse, neglect, sexual abuse and the standards that are usually applied to white families presented itself in a completely different way as far as black families are concerned.

The characteristics of the respondents' environment as well as their socio-economic circumstances (having adequate money, food and housing) certainly add elements of stress to the child-care giver relationships. The many available adults to share care giving responsibilities serve as a supportive resource. The immediate environment in which the children involved, grow and develop can not be measured against traditional Western standards, be described as child-responsive. A different set of standards come into play here, an aspect which will be explored and discussed in more detail later on in this chapter. The reality here is that the context of the respondents that were studied reflects the standards of the majority. In that sense a different, culturally-sensitive set of standards for assessment are required. Lines (1991:21) statement (discussed in chapter 2, point 1) that the policy-making process is complicated since it has to reflect the legal, economic, social and political position of the child, the family and the state is confirmed by the realities inherent in the socio-economic circumstances of the respondents. The sophisticated ideas about childhood and the care of children set

out in present child care policies are certainly the ideal, but they reflect the notions which are more prominent in traditional white communities.

4.   CASE CAREERS AND INVESTIGATION OF THE RESPONDENTS

The case careers here indicate the period of time over which the investigation of the children, their parents and foster parents' circumstances took place. The dates on which cases were opened were taken as a starting point and the dates on which final court orders were made, taken as a cut off point.

TABLE 4.1   CASE CAREERS OF THE RESPONDENTS

Period of time over which the investigations took place	Number (N=15)	%
1-4 months	3	20
5-8 months	2	13,5
9-12 months	0	0
13-16 months	0	0
17-20 months	3	20
20-24 months	5	33
25-28 months	0	0
29-32 months	2	13,5
Totals	15	100

Table 4.1 shows that only three cases (20%) took between one to four months to be finalised and two cases (13,5%) between five to eight months. The majority of the cases took respectively 17 to 20 months (3 cases, 20%) and 20 to 24 months (5 cases, 33%) to be finalised. Two cases (13,5%) took 29 to 32 months to be completed.

It can be concluded here that it took more than one and a half to two and a half years to complete the majority of investigations. This is an extremely long period of time considering the fact that very few of the cases were complicated. In all of these cases a substantial amount of paper work was involved in which postponements of final court dates were constantly required and motivated by way of progress reports. Social workers in most of the cases informed the court that they were still busy with their investigations and that they will furnish the court with a report as soon as they have all the required information.

Factors that influenced the amount of time taken with the investigations were identified as the following:

- Probably the most important factor here is the lack of urgency in cases where children were already co-habiting for long periods of time with kinship families. The financial difficulties that most of these children posed were immediately overcome after children were put in place of safety with these families and allowances were paid to them. The families experience less difficulties with the administration of these allowances compared to the difficulties experienced with the administration of foster care grants. Finalising cases after children were put in place of safety often become a pure formality and social workers seem to be aware of the fact that a final court order not only indicates applying for a foster care grant, but also indicates the beginning of the endless ˙Section 16 progress reports in which the general and social circumstances of the child and his/her parents must be reported on.

- Social workers are required to submit Section 16(2) reports in terms of Regulation 15 of the Child Care Act 74 of 1983, three months before the expiry of an order of the court in order to ensure that foster care grants are extended. Grants are terminated in the absence of progress reports.

• Cases where the biological mothers of children had to be traced were very time consuming. It often took months to try and establish their whereabouts. Long periods of time went by in cases where they were traced and reports on their circumstances were requested from other welfare organisations. These mothers were all found unfit as parents and they showed no interest in their children. It could be asked if the amount of energy, time and paperwork that are invested in these cases serve the best interests of the children, and if the skills and time of social workers cannot be used more productively.

• The lack of institutional facilities for black children and social workers attempts to find kinship families as foster care placements also contributed to the length of time taken to finalise investigations.

5. SOURCES OF REFERRAL AND ALLEGATIONS AT THE TIME OF THE REFERRAL

TABLE 5.1   SOURCES OF REFERRAL

Source of referral	Number (N=15)	%
Maternal grandmother	4	26
Paternal grandmother	1	7
Maternal aunt	3	20
Paternal aunt	2	13
Anonymous	2	13
School	1	7
Hospital	1	7
Other: White family	1	7
Totals	**15**	**100**

Table 5.1 clearly identifies the different sources of referral that were involved. A further interpretation of the table shows maternal family serving in 46 percent of the cases as sources of referral. This can again be attributed to the high incidence of single female mothers discussed in a previous section. Paternal family in comparison served in 20 percent of the cases as sources of referral.

Extended family (maternal as well as paternal) thus take up 66 per cent of the sources of referral. This again affirms the over representation and active involvement of kinship families discussed in previous sections of the chapter. The white family who served as a source of referral in one of the cases involved (7%) may also be added to the kinship families here, as they served as extended family to one of the biological mothers who abandoned her child with them. This brings the percentage of extended families involved to 73 per cent. The children related to these families were all either abandoned or orphaned children and traditional child neglect or child abuse as operationally defined in the addendum (refer to Addendum A, point 2.6) were not present.

Very interesting here are the two cases (13%) where the sources of referral were anonymous. Both of these cases involved children who were neglected and abused. Similarly were the children who were reported by the school (7%) also neglected. It thus seems as if the extended family steps in where children are orphaned or abandoned and they are experiencing financial hardship, whereas anonymous people and formal institutions become sources of referral in cases where traditional abuse and neglect are involved. The case where the hospital served as a source of referral involved the baby who was abandoned immediately after birth.

But what are the factors which prompt extended families and other sources to approach a welfare organisation at a specific time? Evidence from the case files provided an interesting picture.

TABLE 5.2   ALLEGATIONS AT THE TIME OF THE REFERRAL

Allegation	Number (N=15)	%
Physical abuse	1	7
Sexual abuse	0	0
Neglect	4	27
Abandoned children	8	53
Orphaned children	2	13
Totals	**15**	**100**

Table 5.2 shows that in eight of the cases (53%) children were allegedly abandoned children. All the allegations of abandonment, with the exception of one case, where the baby was abandoned at a hospital immediately after birth, were however supplemented with complaints of extreme financial difficulties.

The extended families found it difficult to provide for the children's financial needs. In most of the cases it was alleged that the biological mothers neglected their children since birth. Neglect was described here as maternal apathy in regard of providing children with food, clothing and supervision. Extended families seem to be able to tolerate children as long as the biological mother shows some interest in the children, provides some form of financial support and takes on some of the responsibilities in providing care for the children. As soon as the biological mother withdraws, abandons the children or loses contact with the family she is viewed as neglectful. The extended family approaches the welfare organisation when they can no longer tolerate the financial burden the children pose, when biological parents demand custody of their children, and when financial difficulties negatively affect interpersonal relationships.

The four cases (27%) in which allegations of child neglect were made, varied with complaints about a biological father's failure to maintain children financially and complaints regarding a biological mother who failed to take care of the children's basic needs such as washing of their clothes, cooking food and failure to provide the children with love and affection. In both of these cases contact with the welfare organisation was encouraged by the fact that the parents demanded custody of their children after a period in which they showed no interest in them. The extended families demonstrated here that the time and money which they invested in these children were of more value to them than the custodial claims made by their biological parents. The other two cases of neglect firstly involved a boy who was neglected by his maternal uncle and aunt, after his mother passed away, in that they didn't monitor his school attendance and often refused to provide him with food due to financial difficulties. The second case involved four adolescents (three girls and a boy) who were sent to their maternal aunt when their biological father felt that he could no longer maintain them after the biological mother died. The allegation of neglect was based on the fact that he refused to pay their school fees after he was retrenched at work and showed no interest in them.

The case where physical abuse was alleged involved a thirteen year old boy who complained to neighbours that he had no clothes and that he was beaten with a fan belt by his uncle. It became evident that the boy was often forbidden to play outside, treated as a slave and he was beaten because the uncle felt he should be punished for the fact that he was a financial burden to the family. The boy was often instructed to go and ask for food from his deceased mother and punished if he came back without food.

It is important to note here that Table 5.2 suggests that statutory services in the welfare agency where the research was undertaken focused extensively on black children who were not victims of physical or sexual abuse.

The detailed description of Table 5.2 clearly illustrates the interconnectedness of single parenthood, child abandonment, financial and economical impoverishment, kinship or extended family care and child abuse and neglect. Child abandonment, neglect and abuse clearly emanate from a host of external factors that affect and undermine parental ability, the most prominent one here is financial need. Financial need experienced by both biological parents and kinship families is however aggravated by unwanted teenage pregnancy, poor education, unemployment and a lack of resources.

Having made a preliminary attempt to answer the question "what are the factors which prompt extended families and other sources to approach a welfare organisation at a specific time?", the next question would be "what happens to cases after they were referred?" An appropriate way to answer this question is to first look at the placement of children after allegations were made and thereafter at the assessment procedures and ways in which social workers construct knowledge for the courts.

TABLE 5.3   PLACEMENTS OF CHILDREN AFTER ALLEGATIONS WERE MADE

Place of Safety	Number (N=15)	%
Kinship family	10	67
Private family	3	20
Formal institution	2	13
Totals	15	100

Table 5.3 shows the distribution of placements of children in different places of safety. Setting aside the five placements of safety (33%) with private families and formal institutions, the largest category of cases was those who were placed in place of safety with kinship families (67%).

Table 5.3 demonstrates the already identified, persistent theme of kinship families. The high degree of consistency with other research results in this regard, indicates a pattern of kinship care which may prove to be one of the essential features of statutory service rendering to black families and children.

6.   ASSESSMENT PROCEDURES

Assessment procedures aim to answer the question "what did the social workers do in response to the allegations that were made and how did they go about doing it?" An indication of the people who were involved and the frequency of involvement may be a starting point in answering the question.

TABLE 6.1   RESPONDENTS/OTHER PEOPLE INVOLVED IN ASSESSMENT PROCEDURES AND THE FREQUENCY OF INVOLVEMENT

The number of contacts here refer to the total number that were recorded in the case files of the fifteen cases that were studied.

People involved	Number of contacts (N=229)	%
Children	19	8,2
Biological mothers	14	6
Biological fathers	8	3,5
Both parents	0	0
Maternal grandparents	9	4
Paternal grandparents	6	2,6
Maternal grandmothers	49	21,3
Maternal grandfathers	11	5
Paternal grandfathers	7	3
Paternal grandmothers	14	6,1
Maternal Uncles & aunts	2	0,9
Paternal Uncles & aunts	1	0,4
Maternal aunts	23	10
Paternal aunts	6	2,6
Neighbours	5	2,1
School	10	4,3
Police	3	1,3
Hospital	6	2,6
Social workers (other organisations)	8	3,5
Formal Place of Safety	6	2,6
Private Place of Safety	3	1,3
Multidisciplinary team	2	0,9
District surgeon	12	5,2
Other: White family	6	2,6
Totals	**229**	**100**

Table 6.1 looks at the people who were involved during the course of investigations. Contacts with these respondents were documented. The following can be concluded:

- The highest number of contacts (21,3%) were made with grandmothers and the second highest number with maternal aunts (10%). The role of maternal grandmothers and aunts as primary caregivers and primary sources of information is emphasized by the results. Other factors that may contribute to the frequency of contacts with them is their accessibility and the fact that they were the stabilising factors in both kinship family structures and in the lives of the children who were involved.

- The table reflects that 19 contacts (8.2%) were made with a total of 39 children (refer Table 2.5). This could be interpreted as disturbing results in that children are the main focus of statutory intervention. The unique features of the contexts in which statutory interventions were undertaken must however be kept in mind here. Previous discussions have identified various factors that may play a role, for example the fact that children were already for long periods co-habiting with kinship families and more specifically the ideas about children and childhood prevailing in these contexts/communities. The last aspect will be explored in more detail later on.

- The over representation of single unmarried mothers, difficulties in tracing them and their complete lack of interest in the welfare of their children are self-explanatory of the limited amount of contacts being made with biological mothers (6%) and biological fathers (3,5%).

- Contacts with paternal grandparents, maternal grandfathers, paternal grandmothers, schools and district surgeons were more or less equally distributed as were the contacts with other resources.

The case file analysis revealed more frequent contacts in the two cases where traditional child abuse and neglect were involved. The multidisciplinary team was only consulted in these two cases. This confirms the lack of urgency regarding service delivery in other cases, as do the long periods of time between contacts in other cases.

6.2 ASPECTS THAT WERE ASSESSED AND DOCUMENTED DURING THE INVESTIGATION

TABLE 6.2.1 BIOLOGICAL PARENTS

Categories that were assessed	Number of assessments per category	%
Social circumstances	4	12,5
Histories/background	3	9,5
Parenting skills	8	25
Values, attitude and morality	4	12,5
Social support systems	2	6,25
Psychological emotional and mental state	6	18,75
Culturally determined behaviour	1	3
Prognosis	3	9,5
Other: Physical health	0	0
Interpersonal relationships	1	3
Totals	**32**	**100**

Tables 6.2.1 and 6.2.2 look at the different categories investigated in regard of both biological parents and primary caregivers, and at the number of assessments made per category. The categories were documented in court reports, as were the results of assessments. The most striking feature of Table 6.2.1 is the high percentage (25%) of attention that was given to the parenting skills

TABLE 6.2.2 CAREGIVERS

Categories that were assessed	Number of assessments per category (N=32)	%
Social circumstances	10	26,5
Histories/background	1	2,6
Parenting skills	8	21
Values, attitude and morality	4	10,5
Social support systems	8	21
Psychological emotional and mental state	1	2,6
Culturally determined behaviour	3	8
Prognosis	1	2,6
Other: Physical health	1	2,6
Interpersonal relationships	1	2,6
Totals	**38**	**100**

and the psychological, emotional and mental state (18.75%) of biological parents, irrespective of the limited amount of personal involvement with them.

It is worthwhile at this point to reflect on some of the arguments discussed in the literature study (refer Chapter 2, point 4). The research results clearly reflects that popular beliefs about child abuse and current practices of child protective services continue to focus almost exclusively on the abusive parent and tend to ignore the influence of the environment as stated by Wolfe (1985:463). A counter argument here may be that social workers are certainly aware of the external environmental and other factors that affect and undermine parental ability but they don't document or construct court reports accordingly. But why? The answer may lie in the fact that knowledge about parents is superficially constructed to satisfy the requirements set by the philosophy of parental competence/incompetence inherent

in Act 74. This aspect will be explored in more detail later on. Although social circumstances accounted for four (12,5%) of the assessments that were made very little attention is given to it in final court reports. Similarly is the availability of social support systems in only two (6,35%) of the cases documented as part of the assessments. Table 6.2.2 reveals an interesting picture compared to that of Table 6.2.1. Social circumstances received the highest degree of attention (26.5%) with an equal amount of attention given to parenting skills (21%), and social support systems (21%). The higher degree of attention given to these categories may be self-explanatory considering that assessments of parents are aimed at proving them to be unfit and incompetent, whereas assessments about prospective caregivers/foster parents aim at proving them to be fit as parents. The fact that many of the biological parents were difficult to trace may account for the small percentage (9,5%) of assessments that were made regarding their backgrounds and histories. It is however important to note here that even in cases where extensive information regarding parents' histories and backgrounds was documented in process notes, very little was documented in the final court reports.

A focus on the basic "here and now" survival of black families and factors related to it emerged as a pattern in assessment procedures.

The histories and backgrounds of primary caregivers/prospective foster parents (Table 6.2.2) received minimal attention (2,6%), as did their psychological, emotional and mental state.

The prognosis of biological parents and primary caregivers/prospective foster parents was assessed in only 9,5 per cent and 2,6 per cent of the cases. Research results indicate in this instance that mothers who abandoned their children are perceived to not have the potential to take care of their children again. The requirements set for assessment of parents and children emphasize that

proper assessment of parents and children is a prerequisite for correct diagnosis and for compiling a meaningful treatment plan (Circular No 64 of 1989 of the Department of Health Services and Welfare in Bosman-Swanepoel & Wessels (1995:154)). These requirements seem to become obsolete in statutory work with abandoned children, yet social workers are still required to comply to other requirements directly linked to initiating contact with biological parents and permanency planning such as the section 16 progress reports discussed after Table 4.1.

The philosophy of permanency planning, which will be discussed in more detail in the last section of the chapter creates a double bind in that permanency planning in the lives of black children often indicates foster care as a permanent placement. Children cannot be adopted by their primary caregivers because they will lose their foster care grants in that event.

Assessments in both tables revealed that culturally determined behaviour played a very limited role in the lives of the respondents. The majority of families abandoned ancestral beliefs, traditions and practices. They belong to traditional churches and value Western health care and medicine. Interesting is that all the primary caregivers make provision for monthly payments to burial societies, irrespective of the economic hardship they experience.

TABLE 6.2.3 CHILDREN

Categories that were assessed	Number of assessments per category (N=33)	%
Clinical evidence	2	6
Physical development	12	36,5
Emotional condition	9	27,5
School attendance/performance	7	21
Specific behavioural problems	2	6
Other: Church involvement	1	3
Totals	33	100

Table 6.2.3 shows the categories that were assessed, and the number of assessments in regard of the children involved. Physical development here more specifically milestones in regard of the child's physical development emerged as the category receiving the highest percentage (36,5%) of assessment. The case file analysis revealed that most of the children (as discussed after Table 2.5) did not have birth certificates. This accounts for the high percentage, as social workers had to take children to the district surgeon in order to have their ages estimated. Children's emotional condition was assessed in nine (27,5%) of the cases. The operational definition for assessment of emotional condition in the schedule for analysis referred to the children's emotional needs, ability to relate to people/parents and emotional problems. Attachment to and emotional bonding with the primary caregivers was emphasised in discussions relating to the children's emotional condition. Very little was being said about emotional needs with the exception of two cases. Social workers instead focused on children's wishes and more specifically on their wish to stay with prospective foster care parents. Research results thus indicate that children's emotional condition is determined by two components namely their attachment or bonding with prospective parents and

their wishes to stay there or not. If social workers were to widen the scope of their assessments regarding children's emotional condition to include factors such as unsatisfied emotional needs, for example under-stimulation, cultural and linguistic disadvantages (Pringle 1987:88-102) as well as overcrowded conditions, unemployment and lack of resources, to name but a few that might cause emotional stress, they may find themselves without placements for these children.

Clinical evidence as well as specific behavioural problems accounted for 6 per cent of the assessments. Both of the cases where physical abuse, physical injuries and serious neglect were involved, was included here.

Children's school attendance and performance were assessed in 21 per cent of the cases. Case files revealed that contacts with schools were made in some of the cases, but information in this regard was often obtained from primary care givers and children themselves. In three of the cases where children attended school no information regarding their performance at school was recorded in court reports.

The aim of assessments seem to be to secure the child's physical safety to a very limited extent. The extent to which children are mentally safe became almost obsolete, although it could be rightfully asked if the social worker's had any other options.

7.   BEHAVIOURAL AND DEVELOPMENTAL CHARACTERISTICS THAT MAY PREDISPOSE MALTREATMENT OF THE CHILDREN INVOLVED

In only one of the cases (case no 3) were the characteristics that may predispose maltreatment of children involved. Medical fragility and discipline problems may have contributed to the boy being physically and emotionally

abused. The literature study (chapter 2, point 4) highlighted two views in this regard namely that:

- children are active agents in the complex transactions that contribute to developmental and behavioural outcomes, and
- children are often in practice believed to be the products of their physical and social environment in combination with their underlying genetic constitutions.

The most prominent characteristics which have evolved in regard of the circumstances of children who were studied were the following:

- the majority of children were unplanned, unwanted, illegitimate children;
- the children were abandoned with impoverished kinship families by young, uneducated, single, unemployed mothers;
- statutory intervention was initiated by the financial burden these children posed, including the orphaned children.

It can be concluded that the environment in which both parent and child development occurred played a very important role. Children were clearly the products of their physical and social environment. The absence of reported behavioural problems is significant in that it possibly reflects the ability of kinship families to create an environment conducive to child development, irrespective of the presence of a range of factors and stressors noncondusive to it. Pringle (1987:109-129) focuses for example on stressors such as overcrowded, large, low-income families, illegitimacy, maternal deprivation, a lack of privacy and stimulation and explain the negative effects these stressors may have on a child's development. The ideal conditions set for child-responsive contexts should be questioned here, as well as their relevance to the realities of children living in the context which were studied. The reality is that it will not be possible to change these environments in the near future. This does nót implicate passive acceptance of the

limitations or poor standards prevailing in these contexts, but rather to focus on the strengths and inherent potential of kinship families to adapt to their contexts and to develop a set of standards unique and applicable to their environments.

> You cannot empower people by telling them constantly that they lack power and resources to improve the quality of their lives, and they lack the necessary strength and capacity to improve their own circumstances. The research results indicate that the power is already there - we must merely help them to use it to their maximal potential.

8. PROVISION AND AVAILABILITY OF SERVICES AND RESOURCES DURING INVESTIGATIONS

It is critical to know what types of intervention and service provision were provided to the abused, neglected, orphaned and abandoned children and their families. Discussions of the research results thus far indicated that the majority of children were abandoned children who had been left by the biological, single, female parents with relatives, who then approached the welfare organisation for financial assistance to support the informal placements. In twelve out of the fifteen cases grants were allocated to kinship families by approving them as private places of safety and thereafter as foster-parents.

Research results highlighted service rendering which focused extensively on the material needs of families who were experiencing the same levels of poverty. The financial assistance given to these families can hardly be described as treatment or therapy. With regard to the relationship between needs and resources it is important to note that resources outside the child protection system that should be made available to back the procedures and statutory interventions are non-

existent. This may account for the fact that interventions did not focus on any specific aspects of behaviours, personal strengths or attitudes, nor did social workers try to improve the social circumstances of the families. Provision of services comprised principally of:

- securing children's placements;
- investigating parents and caregivers' circumstances; and
- administrating foster care grants after cases have been finalised.

Important here is to note the continuity in social workers' responses. The respondents know that the expression of material need is the passport to financial assistance. Social workers' responses in turn confirm the respondents' perceptions in that all interventions and services are centered around material needs. This pattern of service rendering reflects, and simplifies the role of the social worker to one of administrator and reporter. It may be rightfully asked if services empower families, whether it creates dependency and also if children are really being protected by these services. It may also be asked if social workers need four years of formal training to render services of this nature. It may be argued that there is little value in delivering sophisticated therapeutic services aiming at the empowerment of people if back-up services and resources are not available.

Social workers, on the other hand seem to be locked into specific patterns of reasoning and responding. Their responses to material needs indicate that they cannot move beyond the presenting problem - "material need". In doing so they punctuate and define material need as the one all important reality in clients' existence. The research results have already revealed the extent to which kinship families are able to care for relatives, the ability to adapt to different roles and the ability to creatively survive and establish routine and stability in the midst of extreme poverty.

Simplistic provision of services and resources will not necessarily improve families' circumstances or spontaneously enable them to overcome problems. Similarly will the approach of social workers, namely to focus on material needs only, maintain the way/s in which families and society alike often respond to impoverished families.

Provision and availability of services and resources are like a rights-based approach (which will be discussed in the next section) complex and require development of structures outside the welfare system in order to make services relevant. Social workers' approach reflects a traditional paradigm in which social workers respond reactively to needs and pathologise parents in order to protect children. An alternative approach will be suggested in the last chapter.

9. CHILDREN AND PARENTS' RIGHTS DURING THE COURSE OF THE INVESTIGATIONS

The aim of this part of the case analysis was to critically evaluate the feasibility and applicability of a rights-based approach and the way/s in which parents' and children's rights are reflected in practice. A rights-based approach which was discussed in Chapter 3 of the literature study involves:

- processes in which decision making is based on the child's best interests,
- the right of every child to a standard of living adequate for his/her physical, spiritual, moral and social development,
- material and emotional resources that give children security and allow them healthy development.

But what picture did the research provide in this respect?

> The research clearly highlighted that a rights-approach is made infinitely more complex by the way in which needs, rights and resources exist in dynamic tension.

Attempts to secure children's placements and basic survival override consideration of their rights. In the majority of cases their assumed needs, here mostly material needs, were given priority and their wishes were treated in addition to these. Children's views concerning their future placements were sought, but have to a very limited extent, influenced decisions that were made by both social workers and the courts. None of the cases which were studied reflected a rights-approach. It became clear that child protection procedures, policy and legislation cannot guarantee a standard of living which is according to Westernised standards adequate for the child's physical, mental, spiritual, moral and social development. Case number three serves as a good example where a child was placed with a kinship family consisting of twelve adults occupying a four roomed house (refer Table 2.2) with a estimated monthly income of R300,00. Only one of the adults was formally employed. Social workers try secure an "artificially safe" living environment which is clearly not in line with what is traditionally described as the ideal. Pringle (1987: 112) describes these unsafe environments as beset by multiple, interrelated and interacting disadvantages which have a detrimental effect on children's educational level of attainment and social adjustment. She further states that the adverse influence of these environments increases over time so that the gap between the most advantaged and the most disadvantaged grows wider as the child grows older.

The following factors played an important role in limiting a rights-based approach:

- Children have no access to advice and advocacy and are not aware of the fact that they have rights. Although all the parents and children have been informed of their rights during court proceedings, none of the parents or children have according to court documents responded with more than "... they understand but have nothing to say ...". It should be recognised that it is by no means easy for parents to contribute in this respect. Not only do they have little experience of the procedures and complexity of professional roles in the court, but they are also likely to feel "on trial" when their basic need is often to get things over, obtain a foster care grant to secure their children, and continue with their daily lives.

- Children and adults alike have been exposed to sub-standards of housing, education, income and health since they were born. These standards have become an integral part of their existence and their cultures. Their daily routines and patterns of caring are organised around this. The ideology of rights is difficult to conceptualise in the midst of this and certainly is a distant non-practical utility in their struggle to survive.

- Existing ideas around childhood and child care in black disadvantaged families are completely different from patterns which have long been established and propagated by traditional child care policy legislation, which originated from Westernised standards. The care of children emerged as a communal responsibility within the context of the kinship network. Children often spend long periods of time with relatives before any statutory intervention takes place. Much of the supervision and socialisation of children are undertaken by grandparents and children often have more affectionate relationships with relatives than with their own biological parents. The research results have strongly indicated that

kinship families participated intensely in decisions about placements of children. The traditional rights and wishes of kinship families thus play an important role and their rights became very important within a rights-approach.

- A rights-approach is limited by a host of external factors prevailing in the lives of the respondents such as a lack of resources, unemployment, poor education, low income, poor housing and a whole range of preventative services which are not in place, for example family planning and birth control to name but a few.

The complexity of a rights-based approach and the limited practical utility of it, as discussed in Chapter 3 of the literature study is thus clearly highlighted by the research.

The objective in the cases that were studied was not to create a satisfactory environment in which the children could fulfil their potential, but rather to weigh and compare very basic needs - responsive benefits that were offered.

10 CONSTRUCTION OF KNOWLEDGE FOR CHILD PROTECTION PROCEEDINGS IN FINAL COURT REPORTS

The process of reasoning (here also moral reasoning) behind the question of culpability, the emphasis in the court reports, factors which influenced decision-making, and the way in which the social worker translates and interprets factual data and value positions into legal categorisations were critically analysed in this part of the research. Language in court reports is full of meanings that are not

discernible by a review of the words used. To trace these meanings Brennan and Brennan (1988:8) suggest that we must look beyond the mere accumulation of the meanings of simple words ... to look at what the words do and suggest ... to look at their effect, and not to claim a rigid objective neutrality.

There is no easy way of accounting for the pattern of knowledge construction that emerged during the case file analysis. A starting point here may be to look at the factors which influenced decision-making and parent/caregiver behaviour that were punctuated as important.

TABLE 10.1 FACTORS WHICH INFLUENCED DECISION-MAKING

Categories/Factors that were documented	Number of times recorded	%
Clinical evidence	5	9
Material environment	10	17
Social evidence:		
• Adults/adult relationships	6	10
• Family size and spacing	5	9
• Available adults to share caregiving responsibilities	4	7
• Financial need	13	23
• Unemployment	12	21
Other: emotional needs of children	2	4
Totals	**57**	**100**

TABLE 10.2 PARENT/CAREGIVER BEHAVIOUR

Behavioural categories that were recorded	Number of times recorded (N=37)	%
Moral character and values of parents/caregivers	11	30
Cognitive impairment	0	0
Inadequately socialised parents	8	21,5
Personality disorders	6	16
Substance abuse	6	16
Marital problems	2	5,5
Culturally-determined behaviour	2	5,5
Other: Child abandonment	2	5,5
Totals	37	100

Tables 10.1 and 10.2 both identify certain categories that were recorded in final court reports and the number of times they were recorded. Although these are quantitative descriptions of information in court reports they do confirm qualitative patterns and trends that were discerned. It can also be argued that although these aspects are respectively described as factors which influenced decision making and behavioural categories that were recorded they dó represent the process of knowledge construction.

Table 10.1 clearly shows that the material environment played a very important role in the construction of knowledge for court reports. The reports focused in 17 per cent of the cases on the material environment of the primary caregivers who later on became the foster parents. Social workers used the following language in order to describe this category:

The grandma can no longer provide for the child's needs.

The family suffers extreme poverty.

Poor housing and a lack of privacy and facilities exist ...

These children are still young and their grandparents have to ensure that they are well looked after.

The grandma must cater for all their material needs.

A description of the material circumstances is in the majority of cases followed with descriptions of social evidence, again focusing on the kinship family, in which the social worker gives a brief explanation of the reasons for the nature and existence of material circumstances.

The way in which ideas are combined clearly reflected linear thinking. Financial need (23%) and unemployment (21%) were in the majority of cases identified as causes for material circumstances (e g poor housing and overcrowding). A substantial section of reports (61%) comprised of information regarding material aspects.

There is thus a direct link between categories that were investigated during assessment procedures (refer Section 6) and the information that is recorded in final court reports. In both areas black disadvantaged families are described as mere material entities.

Knowledge construction regarding all the other categories was more or less equally distributed with the expectation of the emotional needs of children which were recorded in only 4 per cent of the cases (the last mentioned aspect was already discussed in Section 6). Interesting is to note that the operational definition

of clinical evidence could only be applied to two of the cases. In most of the other cases social workers recorded that "... the child was in a poor state and physically neglected ..."

Description of the child's physical state was then almost immediately linked to a certain period, namely during the time of abandonment, or when a parent lost interest in the child. In doing that social workers effectively focused on parental incompetence, and inadvertently define abandonment as neglect.

Table 10.2 shows that the moral character and values of biological parents/caregivers were discerned as the most important category to be recorded in reports (30%). Behaviour that was associated with this category included the following:

- Two mothers were described as irresponsible because they didn't take their children for immunisation.
- Mother's apathy towards and rejection of their children were often recorded, and it was mentioned in the court report that "... this raise questions about their moral character". Similarly was parent's reluctance to financially maintain their children, although the majority of them were unemployed, and poorly educated. One of the mothers was described as "work shy" and the social worker continues "... she has never been employed and never attempted to get a job".
- The moral characters of mothers who were nót religious and who did not attend church services were also questioned.
- Mothers who earned a living by way of prostitution were described as completely immoral.

Knowledge regarding inadequately socialised parents (21,5%) was constructed in referring to:

- Parents' inability to establish positive relationships with their children. Traditional patterns in black families (here the fact that children often have more affectional relationships with other relatives, than with their own parents) are here clearly being pathologised and interpreted within a Westernised framework of parent/child relationships.

- The nomadic lifestyles of parents were emphasised and maternal apathy and rejection of children were also often linked to inadequately socialised patterns.

Personality disorders and alcohol abuse was respectively recorded in 16 per cent of the cases. Maternal apathy was frequently identified as a personality disorder. Other conditions that were mentioned in this category were suicidal tendencies, depression, manipulative behaviour, paranoia and poor parenting skills. Only one of the biological mothers received therapy. An issue which gives pause for thought is that there were very limited contacts between social workers and biological parents (refer Table 6.1). Much of the information regarding parents was being based on hearsay - yet it was constructed as facts in final court reports.

The irony with regard to alcohol abuse is that while it is easily identifiable as a problem, it became (in the process of knowledge constructing) a reason for bringing children into care rather than a reason for remedial actions. The assumption here is that caregivers who abuse alcohol harm children in some way - yet this assumption is often being based on hearsay evidence, and is not in case records connected with direct, observable effects on children. In that sense case records, gave accounts about the moral character and disabilities of caregivers rather than accounts about the obvious effects of alcohol abuse on children.

What is interesting about cases where alcohol abuse was recorded is that none of the mothers concerned received any help to deal with their alcohol problems. The focus of intervention was entirely on the potential foster parents and children and all services were directed to them. It could be asked if there still exists a racial bias when it comes to alcohol abuse. Although a comparative study was not undertaken - it is generally accepted practice that alcohol treatment and services are made available to white parents.

Scarcity of treatment facilities may however also play a role as may the possibility that alcohol abuse is tolerated in black communities, or that treatment for the problem is not yet part of black cultures. Social workers clearly and subtly used alcohol abuse (to a certain level) to pathologise and stigmatise parents.

TABLE 10.3   ASSIGNING RESPONSIBILITY FOR THE CHILD'S CONDITION

Person believed responsible for the child's condition	Number (N=15)	%
Biological mother	8	53
Both biological parents	1	6,5
Guardians (uncles & aunts)	2	13,5
Other: Orphaned children	4	27
Totals	**15**	**100**

Table 10.3 refers to the persons responsible for the child(ren)'s condition and the way in which their responsibility is being described in order to be in line with the philosophy of parent-centredness inherent in Section 14(4)(a) and (b) of Act 74.

Biological mothers were in 8 (53%) of the cases believed to be responsible for their children's condition. The situated moral reasoning of social workers, discussed in the previous section, has already reflected a set of interlinked considerations which clearly identify a sequence of knowledge construction which stigmatise and pathologise parents. On the whole it can be said that court reports bear remarkable similarities in terms of the sequence of knowledge construction with regard to unfit biological parents and other guardians.

The following sequence was identified:

- A baby is abandoned by his biological mother.
- A caregiver(s) within the kinship/network take(s) care of the children but experience financial difficulties after a while.
- The caregiver's material circumstances and financial needs are being highlighted.
- The problems of the caregiver and the physical state of children are directly connected to poor parenting skills. Child abandonment if often described as neglect or maternal apathy. This in turn is described as immoral behaviour or personality disorders.
- Circumstances of potential foster parents are then portrayed as positive, irrespective of the presence of overcrowding, poverty and a lack of resources which all constitute environments that are traditionally not child responsive.

The research results suggest that social workers are able to construct reports to meet the requirements set by the philosophy of parental competence/incompetence inherent in Act 74 (refer Chapter 4, point 2.2). In doing that they document parental circumstances and behaviour in a certain way to conform to a set of standards regarding parenthood which are in essence value laden. Their court reports are thoroughly imbued with value judgements about

what is good and what is bad, and discussions of parental skills and competence in relation to children's conditions clearly reflect case-effect relationships.

> **The way and sequences in which knowledge is constructed discern a pattern of decontextualisation of events.**

The surrounding social circumstances of single unskilled, unemployed mothers for example would suggest that these features go along with poor housing, nomadic lifestyles, alcohol abuse and associated stresses. Yet these mothers are portrayed as incompetent, unfit parents and rightfully so because that is what is being required by the philosophy inherent in Act 74.

> **The focus on parental competence denies the existence of very specific and local factors in the context that was studied.**

In none of the cases did social workers attempt to contextualise material needs or the incompetencies of biological mothers. In part many of their problems are structural and environmentally related. Abandonment of their children is often the only option left when mothers become overwhelmed by the harsh commands of child care and they know that they secure their child's future to some extend by abandoning it.

The language used by social workers effectively defines the black families as hopeless victims of their circumstances. Yet in reality their circumstances reflect the life styles and patterns of the majority of black South African families. In that sense it can be said that they function like all other black families, and that their

living standards are a reflection of a variety of social factors and personal attributes which enable them to survive.

Of importance here is the fact that no mentioning is made of any of the personal strengths inherent in these patterns of so-called substandard living. Final court reports clearly aim at proving and identifying financial need and poverty. This clearly illustrates the point made previously (refer Section 8), namely that "needs become the passport to services". Although both families and social workers end up being successful in accomplishing just that - it does raise a few concerns namely

- What happens to the human potential and strengths of these families?
- To what extent does the social work profession create dependency on a child care system that is financially not geared to maintain these families? What will happen for example if the majority of black families become aware of the fact that the child care system can be manipulated?
- To what extent do social workers confirm a lack of human potential, inner strengths and helplessness in their approach and responses?
- Is the child care system and here specific legislation the appropriate system to respond to these needs?

The research results are also disturbing in that it is a poor reflection of a profession that claims to be holistic in it's approach and people-empowering in the values that it propagates. Similarly can it be asked if social workers' approach is a reflection of the models and theories in which they are being educated?

Assigning responsibility, or blaming one of the role players or systems involved here will however mean that we fall in the same trap as the social workers who wrote the reports regarding the respondents. Thus constructing and punctuating one part of a reality.

Child care legislation orders and codifies our perceptions of rights and wrongs, is centrally concerned with classification and framing, and it works on and with wider classifications to encourage some ways of seeing (and being) and outlaw other. This argument from Greeman (1983:11-12) cited in the literature study as well as the limitations inherent in legislation were extensively discussed in Chapter 2 of the literature study.

King and Piper's (1990:122-123) point of departure, namely that the law in order to perform it's social function effectively has no choice but to simplify and reduce must be emphasised here. Social workers must construct knowledge within these boundaries and they must also work within the definitional boundaries of child abuse and neglect. The ways in which these definitions serve to completely decontextualise events further complicate statutory intervention (refer to Chapter 2, point 5).

In addition to this is legislation which affects welfare agencies first understood, interpreted and operationalised by managers of organisations, and it finds concrete expression in the forms, procedures, policies and criteria as designed by welfare managers (Grace & Wilkenson as quoted by Howe 1986:133). Most of these managers were trained in a residual paradigm and have for years being part of processes where resources and skills were channelled to white families. Social workers give their own personal meaning to these aspects, depending upon the social groupings to whom they belong, their own value systems, and their theoretical perspectives. They must certainly experience a great deal of confusion regarding minimum standards for providing care for children, as most of the subjects and curricula in social work education, have in the past focused on Westernised standards of parenting, child care and development.

"... the law offers no substitute for judgement. It informs practitioners what may or must be done, but not when and how." (Braye & Preston-Shoot 1994:177)

This argument quoted here as well as the vagueness of child care legislation in defining child abuse and neglect (refer Chapter 2, point 6) do however provide the opportunity to individualise in a complex and diverse society like South Africa. Research results have thus far indicated that a different set of standards came into play as far as black families and children are concerned. Standards articulated by child protection policies, laws and practices as they are applied to white children and families differ to a great extent when they are applied to black families and children. A strict application of standards set for white children will automatically define a huge sector of black disadvantaged children in families, as well as street children, as neglected.

What is in the context of black cultures "normal" child rearing (e g exposing children to substandards of living, leaving them alone or allowing them to stay for indefinite periods with relatives, children becoming the communal responsibility within the context of the kin network) may easily become constructed as neglect in the legal context of Westernised child protection. Customary practice becomes pathologised when children become a financial burden and when the child's situation must be stabilised by way of legal placements and foster care grants.

In that sense it can be said that social workers have succeeded in manipulating child care policy and legislation to the benefit of these families and children. Similarly have commissioners of child welfare been able to become "culturally sensitive" It may however be asked if they are culturally sensitive or if there are just no other options available.

The aspects discussed so far clearly show that legislation, policy and social work practice cannot be divorced from some fundamentally cultural and contextual issues.

The question arising here is whether it is necessary to pathologise traditional patterns to enable families to cope with the financial burdens that children pose, and if the criteria set for child neglect are the best possible way to attend to material needs. Not only does it lay a heavy burden on social work budgets and practice, but it also forces social workers to superficially render reconstruction services to individual families.

Cultural and contextual considerations about what is important in child rearing may contribute to the focus of court reports (here basic survival and securing children's placements by way of financial assistance). The willingness of caregivers to passively cooperate and accept the social worker's version of their circumstances do however also play a role. They are in this sense co-responsible for the fact that they are dehumanised and portrayed as material entities. Their behaviour may however also be seen as a direct reflection of the approach used by social workers. Their approach does not empower families to be assertive.

In conclusion it can be said that the construction of knowledge for court reports is to a certain extent dishonest with the complex set of contextual issues existing within the environments of the cases that were studied. Statutory intervention is however the only way in which social workers can secure and stabilise children's placements to some extend.

11 THE APPLICATION OF FACTUAL DATA TO PRE-EXISTING LEGAL CRITERIA

TABLE 11.1 CATEGORY SET IN SECTION 14(4)(A) AND (B) OF ACT 74 IN TERMS OF WHICH THE FINAL COURT ORDER WAS MADE

Sections and Categories	Numbers (N=29)	%
section 14(4)(a) and a(A)		
"At such inquiry the children's court shall determine whether -		
(a) the child has no parent or guardian; or	4	14
(aA) the child has a parent or guardian who cannot be traced;"	0	0
[Para. (aA) inserted by section 5 of Act No 86 of 1991]		
"section 14(4)(b)		
(b) the child has a parent or a guardian or is in the custody of a person who is unable or unfit to have the custody of the child, in that he -		
(i) is mentally ill to such a degree that he is unable to provide for the physical, mental or social well-being of the child;	0	0
(ii) has assaulted or ill-treated the child or allowed him to be assaulted or ill-treated;	0	0
(iii) has caused or conduced to the seduction, abduction or prostitution of the child or the commission by the child of immoral acts;	0	0
(iv) displays habits and behaviour which may seriously injure the physical, mental or social well-being of the child;	3	10
(v) fails to maintain the child adequately;	5	17,5
(vi) maintains the child in contravention of section 10;	3	10
(vii) neglects the child or allows him to be neglected;	3	10
(viii) cannot control the child properly as to ensure proper behaviour such as regular school attendance;	1	3,5
(ix) has abandoned the child; or	8	28
(x) has no visible means of support."	2	7
Totals	**29**	**100**

Table 11.1 shows the categories set in Section 14(4)(a) and (b) of Act 74 in terms of which the final court orders were made. The table reflects the total number of times sections and categories were recorded whereas Table 11.2 looks at the way in which categories were combined in cases.

The court ruled in 28 per cent of the cases that children were abandoned. The overrepresentation of abandoned children was already identified and is confirmed by the results here. Parents who failed to maintain children adequately account for 17,5 per cent and parents/caregivers who neglected children or allowed them to be neglected for 10 per cent. Thirteen per cent of the children had no parents or guardians. Children who were maintained in contravention of section 10 of Act 74 (10%) involved some of the children who were cohabiting with kinship families. In 10 per cent of the cases did the court rule that parents/caregivers displayed habits and behaviour which may seriously injure the physical, mental or social well-being of the child. In only one case (3,5%) caregivers (here an uncle and an aunt) were found to be not able to control a child properly in that they didn't ensure regular school attendance. In two (7%) of the cases did the court rule that parents had no visible means of support.

TABLE 11.2 COMBINATION OF SECTIONS AND CATEGORIES IN TERMS OF WHICH FINAL COURT ORDERS WERE MADE

Combinations of	Number (N=12)
14(4)(a)	2
14(4)(a) and 14(4)(b)(iv)	1
14(4)(a) and 14(4)(b)(vi) and (viii)	1
14(4)(b)(iv) and (v)	1
14(4)(b)(iv) and (ix) and (x)	1
14(4)(b)(v) and (vi)	1
14(4)(b)(v) and (vii)	1
14(4)(b)(v) and (ix)	1
14(4)(b)(vi) and (ix)	2
14(4)(b)(v) and (vii) and (ix)	1
14(4)(b)(vii) and (ix) and (x)	1
14(4)(b)(ix)	2
Totals	**15**

Percentages were not indicated in Table 11.2 due to the equal distribution of combinations. Table 11.2 is however of great importance because it reflects discrepancies in court reports as well as final court orders. The most visible discrepancy here, the fact that social workers mentioned in four cases that the biological mother's whereabouts were unknown. Yet in none of these cases were Section 14(4)(aA) ("the child has a parent or guardian who cannot be traced") applied by both social workers or the court. The fact that social workers didn't emphasise this aspect in their reports, but instead focused mainly on material circumstances and negative attributes of biological parents may have contributed to this. The research results may instead highlight the fact that child abandonment (Section 14(4)(b)(ix)) alone or in combination with other sections seemed to fit

better with the way in which knowledge was constructed. In only two of the cases were Section 14(4)(b)(ix) ("has abandoned the child; or") applied solely.

In all the other cases of abandonment were the category of abandonment combined with other categories. Combinations were determined by the following:

- the behaviour of other caregivers involved, for example caregivers who could not properly control children, or neglected children;
- the behaviour of biological parents, for example mothers who neglected children, abused alcohol, practised prostitution or had nomadic lifestyles;
- whether primary caregivers maintained children in contravention of Section 10 for example cases where children informally co-habited for long periods of time with kinship families.

A discrepancy was identified in the four cases where the category of abandonment was combined with the categories of no visible means of support (Section 14(4)(b)(x)) and the category which found parents to fail to maintain children adequately (Section 14(4)(b)(v)). The material circumstances of the parents involved were a virtual image of each other. Yet in two cases did the social workers recommend, and did the court rule that the biological parent failed to maintain the child adequately (Section 14(4)(b)(v)) and in the other two cases that biological parents had no visible means of support (Section 14(4)(b)(x)). The two parents who failed to maintain their children adequately were both poorly educated and unemployed. It may be rightfully asked if these parents were in any position to maintain their children adequately? Parents who have no visible means of support are also often not able to maintain their children adequately.

Of importance here is the fact that some categories are more stigmatising than other, and that social workers should become more sensitive in this regard. Section 14(4)(b) defines parents already as unfit or unable to have custody of their children which is in itself stigmatising. One of the arguments posed in the literature

study (refer Chapter 4, point 2.2) can directly be linked to the research results here namely that:

> Condemnation of poor parents proves to be an artificial and unfair depiction of the underlying causes which led to the child's circumstances and it is unfortunate that persons whose parenting has failed largely because of external factors should find themselves having to be stigmatised.

Social workers recommended with the exception of one case, in all other cases the same sections and categories as those that were in final court orders. The case in which the court ruled differently involved a recommendation of Section 14(4)(b). The social worker recommended this category because it was alleged that the biological mother abused alcohol. This allegation was however poorly substantiated, as were two of the other cases whereby the court acknowledged allegations.

It became evident that the court relied heavily on the information in final court reports. Court reports were however of a poor standard in that they often lacked important information and essential documents for example birth certificates, and substantiation of evidence. Although this aspect was not explored and a comparative study regarding the standard of report writing was not undertaken it did seem as if commissioners of child welfare were less strict with regard to reports concerning black families than they were in reports regarding white families. Aspects that may contribute to this are again the contextual realities discussed in the previous section in which investigations must be carried out.

In all of the cases it can be said that statutory intervention was inevitable in that there were no other options. Act 74 is presently the only instrument available in terms of which social workers can secure placements of abandoned and orphaned children. Many concerns have already been raised (refer previous discussion) about the simplistic disempowering way in which this is being done. Social workers are however forced to follow the route of statutory intervention, and often exaggerate the most prominent or threathening factor, namely neglect in order to respond to the material crisis of families. Again it could be rightfully asked if statutory intervention is the appropriate and best possible way in which abandoned and orphaned children's placements can be secured?

12 PLACEMENTS OF CHILDREN AFTER FINAL COURT ORDERS WERE MADE

TABLE 12.1 NATURE OF PLACEMENTS AFTER FINAL COURT ORDER WAS MADE

Nature of placement	Number (N=15)	%
Foster care (kinship families)	12	80
Foster care (private families)	2	13
Institutionalisation	1	7
Totals	**15**	**100**

Table 12.1 shows that in twelve of the cases (80%) children were placed in foster care with kinship families. The absence of traditional foster care families, abandoned, illegitimate children and single unemployed mothers are some of the forces that have played a role here. Extended families are thus taking over the care of children who would otherwise be placed in out-of-home care. The lack of facilities available for out-of-home placements certainly contributed to this tendency

and may create problems in situations where children are suited for an out-of-home placement. Institutional facilities may become more accessible in future as these facilities and welfare organisation alike are going through a process of transformation.

> The present situation may however be a blessing in disguise because social workers and black families have been forced to overcome the incredible odds to maintain the stability of families and enforce established kinship systems.

In doing that they confronted obstacles which are often difficult to overcome in traditional social work practice with white families where extended family is not as supportive.

The traditional process of foster care is clearly reversed as the extended family present themselves as prospective foster parents. In only two of the cases did the social worker initiate foster care by requesting families to make themselves available. This may contribute to the fact that caregivers in the extended family do not consider themselves as foster parents in the traditional sense.

A very limited study was undertaken, but it can be assumed that many black children, who informally live with extended families, are not included in these statistics or in general statistics relating to black families. This assumption is backed by the fact that the majority of children in the study have already for long periods of time been in the care of the extended family. .

> Families only approached the welfare organisation when these children became extreme financial burdens.

13. TREATMENT PLANS

Present policy regarding compiling of treatment plans consists of the following:

A sound treatment plan must be drawn up according to the following principles:

(a)   The goal and the expected results which must be achieved within a certain time must be stated clearly.

(b)   The different objectives which must be reached in order to achieve the aim must be set out clearly. Objectives are of the utmost importance and must meet the following requirements:

(i)   They must be realistic, clear and meaningful for the particular family and therefore acceptable to them and aimed at their particular needs and expectations.

(ii)   Objectives must be determined in co-operation with the family members. For instance, classes to improve parenting skills may be of primary importance for the social worker, but if the family is starving or problematic family relations are threatening the family unit, these problems should, from the family's point of view, receive priority.

(iii)   The family members must be able to accept each objective with enthusiasm, because of the obvious advantage it holds for them.

(iv)   The family must know what the results will be if the objectives are not reached within the agreed period of time.

(v)   The treatment plan must be adaptable and must leave room for changing circumstances and needs.

(c)   Where children have been placed in substitute care, the following requirements have to be met for the successful progress of the treatment plan:

(i)   Parents must be informed of the legal aspects of their situation as well as their rights and responsibilities.

(ii)   Parents must be fully informed about the substitute care and its purpose. They must be informed especially about a child's concept of time and the effects of prolonged separation between parents and children.

(iii)   Parents must understand the necessity to reach the objectives necessary for their children's return within a given time.

(iv)   In order to facilitate the early restoration of the family unit, objectives must be set within a certain time frame. Parents must also be fully aware of the long-term planning and that this is meant to protect the child's interests should the child's return within the set time be impossible. Parents must know, for instance, that the child may be adopted should adoption be in his best interest, or that they may have to reconcile themselves with long-term foster care without any prospect of the child's return.

(v)   Services must be aimed at resolving those problems which directly or indirectly led to the children's removal. This includes, amongst others, material assistance, services aimed at better social functioning, professional services to children, and training and guidance to enhance parenting skills.

(vi)   Provision must be made for the correct type of substitute care that will best provide for the child's particular needs.

(vii)   Services must be provided to ensure that the child receives good care while he is in substitute care.

(viii)   Contact between children and parents must receive high priority and may not be restricted in any way because it suits the children's home, organisation or foster parents. From the very beginning, contact should be as often and meaningful as possible. Contact is important to keep interest alive and to further the possibility of the child's return. Planning contact must be a joint action of the social worker supervising the child and the one who renders services to the parents.

(ix)   The social workers rendering services to the child and the parents must negotiate to ensure that their ultimate purposes correspond. They will therefore have to communicate regularly and plan jointly.

(x)   When parents are able to meet the minimum requirements to take reasonable care of their children, the treatment plan must be adjusted and aimed at the preparation process for the children's return. This process may cause uncertainty and anxiety for all parties concerned and should not be prolonged unnecessarily.

(Bosman-Swanepoel & Wessels 1995:154-155.)

Van Delft (1994:70-74, 84-85) has in his research regarding the prognosis of white parents in reconstruction services, found that there was very little evidence of well thought through treatment plans. Social workers in his investigation also rarely became involved in intensive therapeutic services, and no clear constructive future planning was being done. Some of the factors which attributed to this were that:

- the case loads of social workers were too high and administrative tasks didn't allow enough time for intensive therapeutic work, and
- there was not enough time to make thorough assessments of clients.

The similarities between the mentioned research results of Van Delft (1994) and the results here will become evident. It should also be noted that treatment plans were according to his research ineffective in a context with westernised standards, child rearing practices, family structures and more available resources.

The question set in the research, namely "was there any treatment plan?" can be answered as "yes" there were in ten of the cases that were studied. No indication of treatment plans were found in the other cases and no reasons were given to explain their absence. Nor was it being questioned during court proceedings. This may reflect that cases can be finalised without any treatment plans, and that both social workers, organisations and commissioners of child welfare may be aware of the impracticability of treatment plans in some cases.

But what did the treatment plans, that were formulated, consist of? The following excerpts give a clear and interesting picture.

- "... to link the biological mother to employment bureaus."

- "... to see to it that the foster grant is approved."

- "... to provide the child with stability."

- "... to render reconstruction services to the biological mother, enlist her in Child Welfare's Programme of Parenting training and to encourage contact between her and the child."

(Important to note here is that the same treatment plan was after a year formulated in a progress report. Nothing except the administration of the foster care grant happened during that year.)

- "... to involve the children in a group for slow learners in order to improve their school performance."

(One daughter was thereafter sent on a camp for children in foster care - nothing else happened as far as can be deducted from the case file.)

- "... to assist the aunt in obtaining a foster care grant."

- "... to try and initiate contact between the biological mother and the children."

(No contact was initiated.)

- "... to encourage the mother to go for psychotherapy."

(Several unsuccessful attempts were made to send the same mother for therapy during the course of the investigation. Yet the social worker stuck to the same plan.)

- "... a working agreement cannot be compiled as the mother lived a nomadic life and her present whereabouts are unknown. It is also apparent that she is an alcoholic."

- "... to supervise the placement and to see to it that her emotional and physical needs are fulfilled."

- "... to assist the grandmother to apply for the foster care grant. To assist and guide her in the grant's administration. To provide supportive services to the family in involving them in foster parents' meetings and activities. To apply for the extension of the child's pre-school sponsorship."

- "... to assist the foster parents to apply for the child's birth certificate. To assist foster parents in registering the child in their house file. To assist the foster parents to apply for the child's foster care grant."

The case file analysis confirmed that the emphasis in reconstruction services centred around the administration of foster care grants. Other treatment plans were very vague and non-specific. Only in two cases were therapeutic work attempted, but both clients were referred to people outside the organisation. In most of the cases treatment plans seemed to be a mere formality, and the treatment plans did not live up to the requirements set in policy. They were, however, realistic in that they reflected the material needs of families and also the approach used by social workers. It would be interesting to try and establish the kind of work satisfaction that these social workers have, in that most of their work comprised of very basic task centred activities. The treatment plans and case file analysis again highlighted a previous point made by the researcher in that they do reflect an approach in which very little value is attached to the potential of biological parents and kinship families.

In two of the cases reconstruction services were being forced by the government department (Transvaal Provincial Administration) who channelled reports. The social workers were informed that reconstruction services are not adequately rendered to the biological mother, yet nothing was spelled out in terms of the kind of reconstruction services that were required. The children in one of these cases were staying with their maternal grandmother since birth and they were all well adjusted. The oldest one was already 17 years old. The biological mother abandoned them, lived as a prostitute and had for years showed no interest in them. The rationale for reconstruction services to the biological mother is certainly unclear, unrealistic and impractical.

None of the treatment plans specified any parental behaviour that would be attended to and none of them were geared to parents/caregivers' ability to achieve them.

> The research results clearly reflect the impracticability of present sophisticated treatment plans and practices which do not realise in practice. There is clearly a missing link between policy and practice.

14. THE FEASIBILITY AND APPLICATION OF PREMISES INHERENT IN CHILD CARE LEGISLATION AND POLICY IN SOUTH AFRICA

14.1 THEORETICAL ORIENTATION

The extent to which case files reflect a residual approach which is characterised by intensive casework services, and where the cause(s) of maltreatment is linearly related to individual competencies/incompetencies were explored as were any other approaches that were used.

Case work services were rendered in all of the cases. Yet only in two cases were services intensive in nature. The focus was in the majority of cases on children who were not at eminent risk. The lack of urgency and time taken to finalise cases confirmed this. The focus of services was on securing children's placements and on the material needs of kinship families.

Very little evidence was found in terms of a specific theoretical approach that was used. Social workers were task centred, focusing on very basic and concrete needs. They were client centred only in regard of the respondents' material needs. Very little attempts were made to explore client's emotional needs, human potential or personal attributes.

The method of service delivery and construction of knowledge clearly identified the cause of children's circumstances as rooted in the aberrant behaviour of parents, here mainly single female mothers. The way(s) in which social workers described the respondents' circumstances reflected a linear pattern of reasoning. Operating within this paradigm did not only limit the scope of services provided to the families, but also limited the extent to which significant difference was created. It should however be asked if the context can respond to anything but linear thinking? Rescuing a small group of children surfaces as the most prominent feature of case work services. Child protection on a wider level became almost obsolete.

14.2 FAMILY PRESERVATION

The emphasis on family preservation in child care policy in South Africa has been discussed in Chapter 4 (refer point 1.3). According to this premise the extent to which cases and treatment plans reflect an attempt to keep families together, and the extent to which the context is conducive to an approach where intensive counselling and supportive services are made available should be analysed.

The lack of intensive counselling services, and meaninglessness of services due to a lack of resources, have already been identified. Supportive services were in most of the cases materialistic in nature and comprised of very limited material assistance. The characteristics of traditional family preservation services as discussed in the literature study became a vague, unrealistic and idealistic commodity during the course of the research. The traditional practices within this premise are clearly not being applied in practice.

The extent to which the context of child protection within black families lends itself to this premise may also be questioned.

Kinship care instead can be seen as the South African answer or equivalent to family preservation. It can be said that black families, resiliently respond with kinship care to the threat to the preservation of the family. The research results indicate that they certainly have the ability to overcome the disintegration of the traditional family in the midst of multiple environmental stressors. Placements of children at extended families often received approval of the biological parent and spontaneously result in family preservation.

14.3 PERMANENCY PLANNING

The extent to which cases and treatment plans reflected attempts to provide children with security, stability and safety, and a permanent relationship with their parents/caregivers were explored here. Also the extent to which continued meaningful contact between parents and children is initiated.

The absence of treatment plans and failure of treatment plans to live up to the requirements set out in present departmental policy have been discussed in the previous section (refer point 13). The requirements set for permanency planning for example carefully planned action based on sound assessment and on the prognosis of all parties concerned were also not reflected in the research results. A

host of factors within the contexts of black families and children played a role here (refer point 9).

Foster care in kinship families can be seen as the way in which family preservation manifests itself in the context of child protection practices with black families and children. Foster care in the majority of cases becomes the permanent living arrangement for children.

The existing assumption in policy regarding permanency planning (refer Chapter 4, point 1.4) and here specifically that the child's biological parents are the most important and obvious people to bring permanency in his life have been proved wrong by the research results. In contrast the kinship family evolved as the most important people and primary support system in children's lives. This may explain the fact that very little effort was made to initiate continued meaningful contact between biological parents and children. Children often have more affectionate relationships with extended family members than with their parents and parents approve of permanent foster care within the extended family.

14.4 A PARENT CENTRED APPROACH

The extent to which cases reflects parental failure, incompetence and pathology were explored. The condition and circumstances of children were in the majority of cases described as a reflection of parental incompetencies.

> In can be said that the single female mothers in the study have been portrayed as people who have nothing to give - except birth - thereafter ... abandonment.

Black parents, family structures, specifically patterns of kinship and child rearing practices can within existing personality theories, and theories of normal healthy development, easily be pathologised as detrimental to a child's healthy development. Scarcity of resources and the erratic nurturance of children by different adults can similarly be seen as fostering a child's feelings of insecurity and instability.

The reality is, however, that the majority of children in the study felt content with their circumstances and they felt safe and secure in their placements. Great numbers of children presently find themselves in similar circumstances in South Africa and will grow up in these circumstances. The majority of personality theories on healthy development are all being based on Western standards and traditional white middle-class ideas of parenthood. It is certainly difficult to, within this frame of reference, attempt to focus on the abilities and possible human potential of single, unmarried, uneducated, unemployed black mothers. Empowerment of these parents will, however, require us to move beyond traditional constructed disempowering realities.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

1. INTRODUCTION

In this chapter the findings of the study and the relevance of these findings to social work theory, practice, research and education will be discussed. Conclusions and recommendations will be based on both the literature study and the empirical research contained in the previous chapters.

2. CONCLUSIONS

The detremental effects of apartheid laws, discrimination, political unrest and a lack of resources are evident in a range of social indicators which emerged during the course of the research, namely inadequate housing, over crowdedness, unemployment and poor levels of education and of income. The research provides a recurring profile of impoverished kinship families, single unemployed mothers, illegitimate children, poor housing, economic hardship and a daily struggle for survival.

The characteristics of the respondents' environment as well as their socio-economic circumstances have however not robbed black families of the capacity to resiliently and successfully adapt despite challenging or threatening circumstances. The common view in the literature of black families during the years of struggle against apartheid was that families were disrupted, disorganised and that their structures were chaotic and pathological (Van Aswegen 1988:83).

In contrast is the **pivotal role and established existence of kinship or extended families** clearly being highlighted by the research results. Extended family is visibly a kin group that is vital to the black family's survival and it serves as

a supportive haven for the protection of children. The extended family provides both emotional and economic support to children in need, however limited it may be. What follows here is a more positive view of black families and it can be concluded that a hostile discriminatory environment with very little resources can actually perform the function of strengthening ties between family members. Black families seem to have a strong adaptive capacity, displaying flexibility of roles in the family, and potential to serve as a supportive structure to other family members.

The immediate environment in which children grow and develop is not child responsive and child rearing patterns, cannot be measured against traditional Western standards. A different set of culturally sensitive standards come into play.

The **context** of the respondents that were studied reflects the standards of the majority of black families in South Africa. Application of the sophisticated ideas about childhood, child protection and the care of children to these contexts set out in present child policies have been questioned in many ways during the course of the research.

The most important factor that was identified in regard of the **case careers** of children is the lack of urgency in these cases and long periods of time that it took to finalise cases. This may serve to be a poor reflection of social work practice, irrespective of the factors that influenced the amount of time taken with investigations. The amount of energy social workers invested in paper work to report progress regarding investigations and to postpone final court dates can certainly be utilised in more constructive and productive practice. On another level it should be acknowledged that statutory social work practice is interwoven with a legal system that is prescriptive in nature and where the working method, here "paperwork" provides the breeding ground for delays in finalising cases. In that sense both systems are co-responsible for the long periods of time taken to finalise statutory cases.

The **focus** on the basic **"here and now"** survival of black families which emerged as a **pattern** in assessment procedures and the limited scope of assessments reflect an almost futile attempt to apply therapeutic processes to a context where the causes of circumstances of children and families must be sought at a broader level than that of the inabilities of, and stressors inherent in the biological parent per se. The limitations inherent in child care legislation, the fact that the majority of social workers have been trained in "first world" social work practice and the lack of resources in black communities may only partly be blamed for the way in which social workers approach their clients in practice. The accepted working method prescribed by government and organisations, the premises inherent in child care policy and the philosophy of Act 74 certainly contribute to the way/s in which assessments are done. The absence of critical thinking in, and critical analysis of social work practice also play a prominent role. Critical analysis of social work practice has remained for too long in abeyance.

Social work interventions consistently:

- fail to demonstrate in practice a holistic view of the context in which statutory interventions take place, similarly are contexts not always susceptible for holistic approaches;
- minimise the strengths and positive human potential and family structures of black families;
- place an emphasis on material needs of black families and children;
- define black families as hopeless victims of their circumstances; and
- pathologise parent's behaviour.

It is however easier for the social worker, and often a great deal safer to restrict one's perspective to the individual and his/her immediate circumstances, rather than to wider environmental and societal forces which are co-responsible for many of respondents' problems. A wider perspective may force social workers to become proactive instead of reactive. **Indiscriminate** application of **child care legislation** to black families where the primary need is material may unfortunately in the end result in an overburdened statutory system where child protection in the traditional sense of the word become obsolete. Social workers themselves may become demotivated, since their efforts clearly have little impact on the quality of client's lives.

> It is also important to ask if social workers do not experience a great deal of frustration because they know how to effectively do things in practice, but they lack the ability to realise knowledge into practice. Or it may be that the context does not allow them to do what they know is right, and they are instead being caught up in reactive processes. Most social workers will be able to theoretically explain the interrelatedness of social problems and phenomena, yet this is not being demonstrated in practice. The huge gap between what social workers know and what they do in practice needs to be addressed.

The case file analysis highlighted the fact that **the aim of statutory intervention** is not to create a satisfactory environment in which children could fulfil their potential nor to "protect" children but rather to weigh and compare very basic needs - responsive benefits that were offered. The focus of statutory intervention here gave rise to a complex set of issues where the protection of black children is concerned. Strict application of the definitions of child abuse and neglect in regard of black children living in townships would lead to taking into care a great number of

children. Similarly will a strict application of a rights-approach reflect that both adults and children have no rights in any meaningful sense.

Child protection practices in black communities emerge as a **two-edged sword**. On the one hand it exposes a very small vulnerable group of children to statutory activities by means of "neglect" definitions, and on the other hand it allows an even bigger group of vulnerable citizens, namely the extended families of these children the opportunity to get some form of state compensation in the form of a foster care grant in a country that is plagued by poverty. The **practical realities** of black impoverished communities amount to a sound rebuttal of child protection policy, practice and legislation, by means of the **reintroduction** of "welfare" as opposed to "protection". These modifications also offer some direction as to how child protection in regard of these communities might begin to be redefined. In wrestling with these complex issues, knowing that there is no easy resolution to it, one must face the pure **idealistic nature** of child protection policy and principles in the South African context.

The **response** of the **court** to this dilemma is presently to sacrifice its own internal logic in order to accommodate a different set of standards in regard of black children.

Social workers in turn **respond** to the dilemma by way of compromise. They superficially construct knowledge regarding black families and children to conform to a set of standards which cannot be applied to black contexts. They succeed by way of **moral reasoning** and **decontextualisation of events** in defining phenomena like child abandonment and illegitimacy as child neglect. They pathologise parental behaviour and condemn poor, uneducated, unemployed parents in order to meet the requirements set by the philosophy of parental competence/incompetence inherent in Act 74. In doing that social workers are able to place children with kinship families, formally accord them foster parent status and

ensure that financial resources are injected into the network, not only to strengthen it, but also to ensure better care for children. This appears to be a regular and routine measure which can be argued to be an invincible but culturally sensitive form of social work practice. Taking everything into account, it could be said that social workers try to make the best of a context that does not provide opportunities for "the best".

The **unintended consequences** of both the court and social worker's responses have however also been highlighted by the research in that:

- black families are disempowered;
- dependency on a child care system that is not geared to render financial assistance to families is nurtured;
- responses confirm a lack of human potential, inner strengths and helplessness in black families; and
- these responses deny the existence of very specific and local factors in the context that was studied.

It is **indisputable** that legislation, policy and social work practice cannot be divorced from some **fundamentally cultural and contextual issues**. The "taken for granted standards" of Westernised civilisation inherent in present child protection policy and legislation become inapplicable and farcical within the protection of black children. To educate students within this paradigm will certainly prepare them to work with affluent and middle class minorities in South Africa, but it will grossly distort the judgements they have to make about the majority of impoverished communities and children in our country.

Both the law and social work practice do however **provide opportunities** for **indigenous** ways of practice. The vagueness of child care legislation together with the fact that it informs practitioners what may or must be done, but not when and how provide the opportunity to individualise in a complex and diverse society like

South Africa. Welfare agencies who interpret and operationalise legislation in certain ways to give concrete expression to the forms, procedures and criteria which must be used in practice should also take responsibility for the ways in which policies and legislation are presently being applied. Similarly should social workers become more aware of the personal meanings they ascribe to policy and legislation and contemplate the consequences of their approaches, value systems and theoretical frameworks.

The research served as a good **example** of how child protection policies and legislation **cannot serve as an instrument to protect and catch within its net those social groups who for reasons beyond their control find themselves in contexts that are not conducive for normal development, measured against traditional standards.** In addition to this, a focus on parental weakness within black families detracts attention from economic and social inequality and discrimination built into the fabric of the South African society itself. It can be concluded here that ethnically sensitive practice requires a theoretical orientation which will not protect unjust societal structures and force social workers to focus on parental incompetencies in order to protect children.

Statutory interventions are not, and have never been, designed to protect children against all possible risks to their healthy mental and physical development. Similarly can Westernised standards not be identified as the only contributing factor to ineffective social work practice. Many white families, living in Westernised communities have also been exposed to ineffective social work practice. Black families will also in future increasingly become part of these Westernised communities and inevitably recipients of the same social work interventions. What is needed is perhaps to rethink and reconceptualise standards relating to child rearing and child protection. The research clearly highlighted that child rearing patterns, living standards and the way/s in which children are protected appear to be the product of parent's histories, culture, children's temperament, political

forces, availability of social support systems, economic status, psychological resources and health status.

> **A reconceptualisation of standards will thus have to be contextually bound. The different ways in which child neglect and abuse manifest itself in different contexts need to be identified.**

The present South African Government accepted the United Nations' Convention of the rights of the child as policy (White Paper on Reconstruction and Development 1994:27). This implies that all children should be treated equally in as far as their rights and needs are concerned. Finding a balance between rights, needs, culture and standards will however be complex and a challenge for future policy makers and social work practice.

Continuing to invest the minimal amount in the development of children, especially children from low income or poor families, is an unwise investment decision. The future of our society is determined by the achievements of its young people. The result of children who grow up in poverty is often despair and resentment against a society in which they have little stake. This is the essential problem confronting child welfare and it is beyond the scope of child welfare legislation and the philosophy of family preservation. If we hope to make substantial progress for children, a broader and more comprehensive approach will need to be developed. This broader effort may include traditional child protection practices, but only as a small part of a much larger effort that recognises the best interests of children in a just society.

3. RECOMMENDATIONS

The following recommendations are made on the strength of both the literature study and the empirical results.

- The lack of policy formation in the sphere of **kinship care** indicates that policy makers and social workers struggle to understand and constructively use this established pattern of care in black families. Interventions, policies and child care legislation should be designed to incorporate the unique features presented by these families as opposed to superficially using these features within traditional frameworks of child care.

- Decision and policy makers will have to come to terms with the impact of placements with relatives on the child welfare system. A contextualised and culturally sensitive perspective is needed to grasp the intricacies and nuances of this pattern of care. Kinship care as a child placement option needs to be acknowledged and the resilient and adaptive capacities of these families should be affirmed. Social workers and policy makers should attempt to formalise this tradition and the cultural issues inherent in it should be part of the development of policies and legislation.

- Social workers will have to acknowledge the importance of the extended family by including them in assessments, treatment plans and reconstruction services. The goal should be to make these systems more sufficient and competent to effectively respond to the unique needs of children in their care.

- Recognition and identification of the adaptive capacities of black families should be the focus of future research. The disintegration of black families have in the past been politicised and the focus has been on negative attributes.

- Traditional child protection services should be supplemented with contextualised and ethnic sensitive criteria and practices to enable social workers to determine child abuse and neglect in black communities. These criteria will enable social workers to adapt to the realities of diverse child rearing practices and to deliver a more ethnically sensitive service. There is thus a need for effective, practical, working definitions of child abuse and neglect in impoverished black communities which do not lose sight of the context in which they are applied.

- What appears to be required of child protection practices on another level is a reconceptualisation rather than limited definitions of child abuse and neglect. A starting point would be to distinguish between child welfare (those measures which promote the care and well-being of children) from child protection (those measures which act directly as a barrier between the child and significant harm or injury).

- There is an urgent need to educate more "middle-level" paraprofessional social workers (not necessarily at universities) for specific hands on tasks, for example obtaining of birth certificates for children, or for the pure administration of foster care grants. Professional social work manpower is presently poorly and ineffectively being utilised in practice.

- There is a clear need for child and family welfare organisations to identify recurring phenomena such as child abandonment, single mothers and illegitimacy in the case loads of social workers. Not only do these phenomena justify more extensive research but organisations, policy makers and social workers alike should increasingly try to identify more effective ways of addressing these problems in practice. The legal system and statutory intervention per se are clearly not the best possible ways to attend to these problems.

- Existing child care policy and the philosophy inherent in Act 74 should be adapted in order to more effectively accommodate diversity in the South African society. The emphasis on parental incompetence or deficits fails to take into account the social structures within which the black family co-exists. Legislators, policy makes and social workers will have to rethink the principles and philosophies inherent in child care legislation and policy - here specifically the philosophy of parental competence/incompetence. The extent to which this clause criminalise parents and stigmatise poverty stricken parents should be reconsidered. Similarly should the applicability of the residual school of thought with its emphasis on the Western concept of the nuclear family type be questioned. This does not mean that premises inherent in child care policy in this regard should be done away with, instead it should be asked how these premises can be widened in order to become more flexible and applicable to different contexts.

- Social workers should speak out, and not passively accept policies and practices that polarise and destroy the cultural and familial strengths inherent in black South African families.

- Policy makers, welfare organisations and universities have yet to adopt culturally sensitive approaches and indigenous models of practice. What is necessary is to move beyond ideological, philosophical and political rhetoric to an approach that is realistic, has clear guidelines and is of use to social work practice. The challenge is to integrate indigenous, acceptable Africanised models of practice with present curricula, theories and social work practice in ways that allow leaning towards one extreme or the other. This does not mean a reduction in standards of academic excellence, but rather an adaptation of universal models and theories to the South African context and situation of the majority, in order to improve social work practice.

- Universities and other educational institutions will seriously have to consider identifying statutory work as a field of specialisation and teaching it as such. This may enhance a more professional approach and a constructive, critical edge to social workers' view of statutory practice, an awareness and understanding of the functions the law performs in society, the image it reflects and promotes as well as the conflicting imperatives and practice dilemmas it presents.

- The development of indigenous non-racial patterns of service delivery/rendering requires a new culture at educational and organisational levels. Not cosmetic changes of policy statements or curricula, and consultation channels, but an open dialogue about how power can be used non-oppressively and anti-oppressively.

- Future child care legislation and policy must be based on the principles of equality, equity, accessibility, user involvement, empowerment and public accountability. Policy makers should be more development orientated and broader welfare policies should be more supportive to families in the provision of preventative and supportive services. Statutory practices will only within such a context become more child responsive, able to protect children and able to attain the premises inherent in child care policy.

It may be appropriate to conclude with Piaget's (in Ginsbury & Opper 1988:238) description of the aim of education. This should also be the aim of social work education and practice.

"To create men (and women) who are capable of doing new things, not simply of repeating what other generations have done - men (and women) who are creative, inventive, and discoverers. The second goal is to form minds which can be critical, can verify and not accept everything they are offered. The great danger today is of slogans, collective opinions, ready-made trends of thoughts. We have to be able to resist individually, to criticise, to distinguish between what is proven and what is not. So we need students who are active, who learn by their own spontaneous activity and partly through material we set up for them; who learn early to tell what is verifiable and what is simply the first idea to come to them!"

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SCHEDULE FOR DATA ANALYSIS

Data items, definitions and description of respondents.

1.   PROFILE OF THE RESPONDENTS

Case number

1.1   Family structure

<u>Both biological parents</u> (where the child/ren lived in a family which included the biological mother and father. Marital status of the parents is not of significance here).   _____

<u>Number of children</u>   _____

	<u>Age</u>	<u>Gender</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

<u>Other relevant information</u>

_____

_____

_____

<u>Reconstituted family</u> (where the child/ren lived in a family with two caregivers, one of whom is not a biological parent. Marital status of care-givers is not of significance).

-    <u>Reason/s why the family is reconstituted</u>:

_____

_____

_____

<u>Number of children</u> (biological parent)   _____

                      (other caregiver)   _____

Biological parent			**Other caregiver**		
	<u>Age</u>	<u>Gender</u>		<u>Age</u>	<u>Gender</u>
1.	___	___	1.	___	___
2.	___	___	2.	___	___
3.	___	___	3.	___	___
4.	___	___	4.	___	___
5.	___	___	5.	___	___

<u>Other relevant information</u>

_____

_____

_____

<u>Single female or male parent</u> (where the child lived in a family where the child's mother or father was the only parent taking care of the child/ren).

                             Single female parent   _____

                             Single male parent   _____

<u>Reason/s why the parent is single</u>:

_____

_____

_____

<u>Number of children</u>

	<u>Age</u>	<u>Gender</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Other relevant information

_____

_____

_____

Kinship family (where the child lived within a kinship system where particular members beyond the immediate family had certain caregiving responsibilities for the child. This category does not include any family structure described in other categories).   _____

-        **Nature of kinship:**   _____

_____

_____

_____

Reason/s for absence of biological parents: _____

_____

_____

_____

Number of children

	Age	Gender
1.	___	___
2.	___	___
3.	___	___
4.	___	___
5.	___	___

Other relevant information

_____

_____

_____

<u>Other family structure</u> (where the child/ren lived in a family structure which may be a combination of the above categories or in any other situation not included in other categories, for example, homeless children or street children). _____

- <u>Nature of family structure:</u> _____

_____

_____

_____

<u>Reason/s for absence of biological parents:</u> _____

_____

_____

_____

<u>Number of children</u>

	<u>Age</u>	<u>Gender</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

<u>Other relevant information</u>

_____

_____

_____

1.2 **Age, educational level, occupation and income of the parents/ caregivers**

Family structure = _____

Age

Biological father □ _____   Biological mother □ _____

Other caregiver/s ☐ (Indicate category of caregiver, gender, age):

        Category/ies   _____

        Gender   _____

        Age   _____

Educational level

Biological father (indicate category of other caregiver in open space) ☐ /
Other caregiver (male _____) ☐

None   _____

Primary (Highest standard)   _____

Secondary (Highest standard)   _____

Tertiary: Diploma   _____

        Degree   _____

Trademanship   _____

Other   _____

Not known   _____

Biological mother ☐ / Other caregiver (female _____) ☐

None   _____

Primary (Highest standard)   _____

Secondary (Highest standard)   _____

Tertiary: Diploma   _____

        Degree   _____

Trademanship   _____

Other   _____

Not known   _____

Occupation

Biological father ☐ / Other caregiver (male _____) ☐

Categories (specify after each category):

None   _____

Labourer (persons engaged in physical/
unskilled work)   _____

Security   _____

Administrative   _____

Professional   _____

Other   _____

Biological mother □ / Other caregiver (female _____) □

Categories (specify after each category):

None   _____

Labourer (persons engaged in physical/
unskilled work)   _____

Security   _____

Administrative   _____

Professional   _____

Other   _____

Income

Biological father □ / Other caregiver (male _____) □

None   _____

Amount per day   _____

Amount per week   _____

Salary per month   _____

Grant   _____

Pension   _____

Other   _____

Biological mother □ / Other caregiver (female _____) □

None   _____

Amount per day   _____

Amount per week   _____

Salary per month   _____

Grant   _____

Pension _____

Other _____

2. CASE CAREERS AND INVESTIGATION OF THE RESPONDENTS

2.1 Case number: _____

2.2 Date case opened: _____

2.3 Date case closed: _____

2.4 <u>Length of time open</u>

* Less than 1 week _____

* 1 - 4 weeks _____

* 5 - 8 weeks _____

* 9 - 12 weeks _____

* 13 - 16 weeks _____

* 17 - 20 weeks _____

* 21 - 24 weeks _____

* 25 - 28 weeks _____

* 29 - 32 weeks _____

* 33 - 36 weeks _____

* 37 - 40 weeks _____

* 41 - 44 weeks _____

* 45 - 48 weeks _____

* 49 - 52 weeks _____

* Longer period _____(specify)_____

2.5 <u>Source of referral</u>

* Child _____

* Person believed respon-
  sible for maltreatment
  (if not parent) _____

* Parent/guardian _____

* Sibling _____

* Other relative _____

* Friend/neighbour _____

* Medical practitioner _____

* Other medical personnel _____

  Specify: _____

* Hospital/health centre personnel (any person nog elsewhere classified who is employed at a public or private hospital or health centre/clinic)

  Specify: _____

* Social worker/other trained welfare worker (any person engaged in providing social work services to the community).

  Specify: _____

* School personnel (any person involved in the education of the child. This includes teachers, teachers' aids, school principles or people who work in pre-school, primary or secondary education).

  Specify: _____

* Family day-care personnel (any person engaged in providing part-time and/or full-time day care for children).

  Specify: _____

* Police _____

* Departmental officer (any person who is employed by a state department)

  Specify: _____

* Non-governmental personnel (any person working for a non-governmental organisation which provides services to the community).

  Specify: _____

* Anonymous (cases where the source of allegation does not give his/her identity)).

* Other (all persons not stated here).

  Specify: _____

* Not stated (unknown sources) _____

2.6   <u>Allegation</u>

*   **Physical abuse** (any non-accidental physical injury inflicted upon a child by a person responsible for the child's care).

        Description:

        _____

        _____

        _____

        _____

*   **Sexual abuse** (any parent/caregiver exposing a child to, or involving the child in sexual processes beyond his/her understanding or contrary to accepted community standards).

        Description:

        _____

        _____

        _____

        _____

*   **Neglect** (any serious omissions or behaviour by a parent/caregiver, within the bounds of cultural tradition, that constitute a failure to provide conditions which are essential for the healthy physical and emotional development of the child. Specify type of neglect.)

        Description:

        _____

        _____

        _____

        _____

*   **Abandoned and street children** (where the child has no parent or guardian or where the child has a parent or guardian who cannot be traced).

        Description:

        _____

        _____

        _____

        _____

* <u>Other</u> (any other allegation)

_____

_____

_____

_____

2.7 <u>What happened to the child/children after the allegation was made?</u>

(Was the child moved to a place of safety, or did he/she stay with his/her parents/family/friends or caregivers?)

Description:

_____

_____

_____

_____

3. **ASSESSMENT PROCEDURES**

An indication of the respondents/other people involved and assessment procedures.

3.1 <u>Amount of contacts and people involved</u>

People involved	_Yes/No_	_Amount (contacts)_	_Venues_
<u>Children</u>			
* alone	_____	_____	_____
* together	_____	_____	_____
Whole family	_____	_____	_____
Father	_____	_____	_____
Mother	_____	_____	_____
Father and mother	_____	_____	_____
Grandparent	_____	_____	_____
<u>Other siblings</u> (specify)			
_____	_____	_____	_____
_____	_____	_____	_____

Neighbours   _____   _____   _____

School   _____   _____   _____

Police   _____   _____   _____

Hospital   _____   _____   _____

<u>Other</u> (specify)

_____   _____   _____   _____

_____   _____   _____   _____

<u>Did the social worker make use of the multidisciplinary team, psychologists, supervisor or other?</u>

<u>Indicate who</u>   _____

What was the nature of their involvement and what did they recommend?

_____

_____

_____

_____

3.2   <u>Aspects that were assessed and documented during the investigation</u>

3.2.1   <u>Parent or caregiver</u> (refer to profile, Section 1)

Specify: _____

*<u>Social circumstances</u> (housing, economic status, employment/environmental stressors)

_____

_____

_____

_____

*<u>Histories/background</u> (those factors that contributed to the social, cognitive and affective processes, that influence caregiving relationships, for example, parents who were maltreated as children, family conflict, etc.).

_____

_____

_____

*Parenting skills (ability to fulfill the requirements set by the child's material and emotional needs).

_____

_____

_____

_____

*Values, attitudes and moral character (the extent to which these are in line with standards set by the community).

_____

_____

_____

_____

*Social support systems (sources that are available in assisting parents/caregivers with their responsibilities, e.g., extended family, day care facilities for children, material assistance, etc.).

_____

_____

_____

_____

*Psychological, emotional and mental state (psychological problems, e.g., chronic depression, emotional problems (like aggressive behaviour), serious mental problems).

_____

_____

_____

_____

*Culturally determined behaviour (certain forms of behaviour that are determined by parents/caregiver(s), culture or ethnicity).

_____

_____

_____

_____

*Prognosis (any prediction(s) of the ability of parent(s)/caregiver(s) to change or respond to treatment or predictions of possible outcomes).

_____

_____

_____

_____

*Other

_____

_____

_____

_____

3.2.2   Children (description of the child(ren) involved)

*Clinical evidence (signs and bodily symptoms that were observed)

_____

_____

_____

*Physical development (the relationship between the child's age, physical development and general physical condition).

_____

_____

_____

_____

*Emotional condition (the child's emotional needs, ability to relate to people/parents and emotional problems).

_____

_____

_____

_____

*School attendance and performance

_____

_____

_____

_____

*Specific behavioural problems (e.g., aggressive behaviour, criminal activities).

_____

_____

_____

_____

*Other

_____

_____

_____

_____

3.3   **Behavioural and developmental characteristics that may predispose maltreatment of the children involved**

*Relatively permanent or chronic conditions (e.g., developmental disabilities)

_____

_____

_____

_____

*Medical fragility

_____

_____

_____

_____

*Temperament traits

_____

_____

_____

_____

*Pre-maturity or low birth weight

_____

_____

_____

_____

*Disciplinary problems

_____

_____

_____

_____

*Sexual acting out

_____

_____

_____

_____

*Absence from school and poor performance in school

_____

_____

_____

_____

*Other

_____

_____

3.4   Provision of services and resources during the investigation

*The relationship between needs and resources (identification of the needs of the family and the availability of services/resources to meet these needs).

_____

_____

_____

_____

_____

*Were any resources or services being made available during the course of the investigation?

YES/NO

IF YES -

*What was the nature of these services and resources?

_____

_____

_____

_____

*To what extent did these services/resources fit with the family's needs?

_____

_____

_____

*To what extent did these services/resources enable the family to improve their circumstances or to overcome problems?

_____

_____

_____

_____

IF NO -

*Why were services/resources not being made available?

_____

_____

_____

_____

*To what extent would the provision of services/resources enable the family to improve their circumstances or to overcome problems?

_____

_____

_____

_____

*What are the nature of services/resources that were needed to support the family?

_____

_____

_____

_____

_____

3.5   Children and parents' rights during the course of the investigation

(The feasibility of a rights-based approach in social work practice and the way(s) in which parents' and children's rights are reflected in practice).

Children

Living standards: The rights of children to a standard of living adequately for their physical, mental, spiritual, moral and social development.

*A brief description of the child's environment and circumstances and the extent to which the context is child-responsive (e.g., health care, education, availability of support systems, etc.)

_____

_____

_____

_____

*Child participation (the extent to which the involved child(ren) was/were allowed to participate during the investigation, the extent to which his/her/their wishes was/were explored,and the influence these had on the social worker's decision).

_____

_____

_____

_____

_____

*Any other aspects that reflect a right's approach

_____

_____

_____

_____

Parents/Caregivers

Parental/caregiver participation

*To what extent did the parents/caregivers participate and cooperate during the investigation?

_____

_____

_____

_____

*Were parents/caregivers informed of their right to legal presentation and did they make use of it?

_____

_____

_____

_____

*To what extent were the parents'/caregiver's(s)' wishes explored and did they play any role during the investigation?

_____

_____

_____

_____

*Any other aspects that reflected a right's approach.

_____

_____

_____

_____

4. CONSTRUCTION OF KNOWLEDGE FOR CHILD PROTECTION PROCEEDINGS IN THE FINAL COURT REPORT

The process of reasoning (here also moral reasoning) behind the question of culpability, the emphasis in the court report, factors which influenced decision-making, and the way in which the social worker translates and interprets factual data and value positions into legal categorisations.

4.1 Factors which influenced decision-making

*Clinical evidence (to what extent did the social worker focus on data yielded by the child's body signs, information given by medical personnel or other professions, or on the child's reports [or other people's reports] of physical symptoms).

_____

_____

_____

_____

_____

_____

_____

*Material environment (the extent to which physical conditions of the child's immediate environment are emphasised, e.g., housing, health care, etc.).

_____

_____

_____

_____

_____

*Social evidence (the extent to which data revealed by the investigation of the child's social environment, is emphasised). This covers the following matters:

Adult/adult relationships (between parents/caregivers themselves and with the community at large).

_____

_____

_____

_____

_____

Family size and spacing

_____

_____

_____

Available adults to share caregiving responsibilities

_____

_____

_____

_____

_____

Social factors (such as financial need, unemployment)

_____

_____

_____

_____

_____

Moral character and values of the parent(s)/caregiver(s)

_____

_____

_____

_____

4.2   <u>Parent/caregiver behaviour</u>   Specific behaviour to prove parental incompetence, such as the following:

Cognitive impairment

_____

_____

_____

_____

Inadequately socialised parents

_____

_____

_____

_____

Personality disorders   (e.g., mental and emotional problems, chronic depression, maternal apathy, etc.)

_____

_____

_____

_____

Substance abuse

_____

_____

_____

_____

Marital problems

_____

_____

_____

_____

Culturally-determined behaviour

_____

_____

_____

_____

Other behaviour

_____

_____

_____

_____

4.3   Assigning responsibility for the child's condition

This refers to the person(s) responsible for the child(ren)'s condition and the way in which his/her/their responsibility is being described in order to be in line with the philosophy of parent-centrednes inherent in Section 14(4) (a) and (b).

Person believed responsible

Parent   _____   (Specify father/mother/both)   _____

Guardian   _____

Foster parent   _____

Sibling   _____

Step-parent   _____

Other relative   _____

Friend/neighbour   _____

Other (specify)   _____

Decontextualising of events: Cases where the description of circumstances focusses on the child as the victim and where his/her condition is linearly related to parental behaviour only. Briefly describe how it is being done and which factual data is being used.

_____

_____

_____

_____

_____

Contextualising of events: Cases where the context is considered and where clinical evidence is supplemented by a broad scrutiny of the child's general state and his/her social environment as preliminary to attributing responsibility for the presenting signs and symptoms. Briefly describe how it is being done and which factual data is being used.

_____

_____

_____

_____

_____

4.5   The application of factual data to pre-existing legal criteria

*In terms of which category set in Section 14(4) (a) and (b) was the final court order made?

Section 14(4)(a) and a(A)

"At such inquiry the children's court shall determine whether -

(a)   the child has no parent or guardian; or   _____

(aA)   the child has a parent or guardian who cannot be traced;"   _____

[Para. (aA) inserted by section 5 of Act No 86 of 1991]

Section 14(4)(b)

"(b)   the child has a parent or a guardian or is in the custody of a person who is unable or unfit to have the custody of the child, in that he -

        (i)   is mentally ill to such a degree that he is unable to provide for the physical, mental
                or social well-being of the child;   _____

(ii)   has assaulted or ill-treated the child or allowed him to be assaulted or ill-treated;

_____

(iii)   has caused or conduced to the seduction, abduction or prostitution of the child or the commission by the child of immoral acts;   _____

(iv)   displays habits and behaviour which may seriously injure the physical, mental or social well-being of the child;   _____

(v)   fails to maintain the child adequately;   _____

(vi)   maintains the child in contravention of section 10;   _____

(vii)   neglects the child or allows him to be neglected;   _____

(viii)   cannot control the child properly as to ensure proper behaviour such as regular school attendance;   _____

(ix)   has abandoned the child; or   _____

(x)   has no visible means of support."   _____

*Did the social worker recommend the same category in her report?   **YES/NO**

*If **no**, indicate why the court ruled different.

_____

_____

_____

_____

_____

*If **yes**, indicate the extent to which the social worker's investigation and final construction of knowledge fit with the category in terms of which the final court order was made.

_____

_____

_____

_____

_____

_____

_____

*Can it be said that statutory intervention and child removal was inevitable, and that there was no other option?

YES/NO

<u>Motivate</u>

_____

_____

_____

_____

_____

*What would be needed in order to have prevented statutory intervention?

_____

_____

_____

_____

_____

*Identification of the kind of placement after the final order was being made.

- Foster care

- Adoption

- Institutionalisation

- Other (specify)   _____

- Unknown

4.6   <u>Treatment plan(s)</u> (planning for reconstruction services)

*Was there any treatment plan?   **YES/NO**

IF NO

*Is there any indication why no treatment plan was formulated?

_____

_____

IF YES

*What does it consist of?

_____

_____

_____

_____

*Were any treatment goals formulated?

_____

_____

_____

_____

*Does the treatment plan specify parental behaviour that will be attended to, or services that will be offered?

_____

_____

_____

_____

*Is the treatment plan and goals geared to the parents'/caregivers' ability to achieve them?

_____

_____

_____

_____

5. **THE FEASIBILITY AND APPLICATION OF PREMISES INHERENT IN CHILD CARE LEGISLATION AND POLICY IN SOUTH AFRICA**

5.1 *Theoretical orientation: The extent to which the case reflects the residual approach which is characterised by intensive casework services, and where the cause(s) of maltreatment is linearly related to individual competencies/ incompetencies. Indicate other approaches that were used.

Description

_____

_____

_____

_____

_____

_____

_____

5.2 Family preservation: The extent to which the case and treatment plan(s) reflect(s) an attempt to keep the family together. Also the extent to which the context is conducive to an approach where intensive counselling and supportive services are made available.

Description

_____

_____

_____

_____

_____

_____

5.3 *Permanency planning: The extent to which the case and treatment plan(s) reflect(s) attempts to provide the child(ren) with security, stability and safety, and a permanent relationship with his/her/their parents/caregivers. Also the extent to which continued meaningful contact between parents and children is initiated.

Description

_____

_____

_____

_____

_____

5.4   <u>A parent-centred approach</u>: The extent to which the case reflects parental failure, incompetence and pathology. A focus where the condition of the child(ren) is/are thus a reflection of parental abilities/incompetencies.

Description

_____

_____

_____

_____

_____

_____

_____