

schools and not by us as social workers, but the presiding officers push the social workers to the extreme.”

Presiding officers look down upon social workers

A number of participants indicated that presiding officers look down upon them, often talk to them in a demeaning manner and embarrass them in front of clients.

“Some of the presiding officers, I think they don’t really know how to deal with social workers because they actually tend to look down upon us.”

Furthermore, presiding officers often doubt the decisions of social workers and reject requests and recommendations from social workers.

“Instead of the process being collaborative, it becomes competitive, whereas others [presiding officers] want to show that they have more power than others [social workers]. Some are lesser human beings, or are second-class professionals, so to say.”

Insufficient number of presiding officers

Some participants stated that there is an insufficient number of presiding officers in the children’s court to the extent that they end up being in court for the whole day to present just one case. What is more frustrating for them is that they are all ordered to be in court by 8 am, when they only get attended to perhaps at 12 pm, so they spend many hours doing nothing, waiting in a very long queue, which is counter-productive. At times, when a presiding officer who had ordered a monitoring report is not at work on that particular day, cases are just postponed because the other presiding officers do not want to touch the case because of their own heavy case loads. The participants’ frustrations are captured in the following words:

“There is a few number of presiding officers to an extent that social workers end up waiting on a queue for two or three hours before they are attended to and I feel that if children are a priority, the children’s court is a priority, we need to address things swiftly, we need the correct number of presiding officers who can attend to social workers, or at least a schedule that makes it easier and convenient for social workers to attend court, because it is an inconvenience for social workers to spend the whole day in court.”

Attitude of social workers

Some participants were of the opinion that a successful implementation of the new Children’s Act is being undermined by attitudes of some social workers who are used to the old way of doing things. One participant’s view summarises this issue as follows:

“Probably, it also boils down to the issue of attitudes, having worked with the old Children’s Act, for a very long period of time, their attitude change might be probably taking too long to adapt to the developmental perspective as prescribed by the new Children’s Act.”

Untrained and uncooperative police officers

The majority of the participants stated that the lack of corporation and insufficient knowledge among the police officers is a huge stumbling block to them in the implementation of the Children's Act. The participants further stated that the police have no clue as to what their responsibilities are as far as implementing the Children's Act is concerned. Furthermore, police officers are not trained to work with children and as a result they intimidate the children. The participants' views on police officers are reported as follows:

“The police know some parts of what their duties are but they are not aware of what the social worker must do when they have finished their part. Some of the police don't even know what to do when they get to an abused child. You find that when children or parents go to the police to report child abuse, they are dismissed from the police station, they are told [to] go away.”

“I think the police are not doing the risk assessment, they just remove children.”

Other than the above-discussed institutional challenges, the participants also revealed infrastructural challenges in implementing the Children's Act 38 of 2005. These infrastructural challenges will be next discussed.

Theme 3: Infrastructural challenges in the implementation of the Children's Act

Several participants indicated that they are facing numerous infrastructural challenges in the implementation of the Children's Act. These infrastructural challenges stem from the unavailability of resources, which is a result of poor funding of the child protection sector. The consequence of poor funding is that it places restrictions on the use of telephones, computers, fax machines and vehicles. These restrictions make social workers fail to adequately execute services as advocated for by the Children's Act 38 of 2005. The infrastructural challenges are evident in the following comments:

“There is a lack of resources and this lack of resources emanates from the poor funding of the sector as a whole, with respect to social development and particularly child welfare, because it is difficult to justify whether we are not just a consumer, unlike other sectors which are producing.”

“We face a lot of shortages in terms of the resources that we need to execute our duties; for example, we need to contact a lot of collaborative partners, who could be fellow social workers, other professionals and paraprofessionals and to do that, we need to engage, via telephonic conversations; we need to travel to some other places, and in our organisation, it is very difficult because of the restrictions in terms of the use of telephones, the restrictions in terms of access to vehicles and when you can travel and when you can not travel. So, that brings a lot of challenges as a collaborative process also becomes a longitudinal process, and along the way, some of the services are not effectively and comprehensively implemented.”

In an editorial on the Children's Act 38 of 2005, Dawes (2009) states that the said Act is way ahead of the capacity to deliver services at ground level and recommends a significant scaling up of finance and staffing. Research done by September and Dinbabo (2008:118) recommend that for the implementation of the Children's Act 38 of 2005 to be successful, efficient and effective infrastructure needs to be put in place.

Theme 4: Human resource challenges in the implementation of the Children's Act

A significant number of participants stated that they face a lot of human resource challenges in the implementation of the Children's Act. They explained these as stemming from the shortage of social workers, which inevitably leads to high case loads. The consequence of the shortage of human resources is that it causes delays in responding to emergencies. On the other hand, some participants stated that they end up only responding to crises and neglecting prevention and early intervention services. They also end up rendering services in a remedial manner as opposed to the comprehensive developmental services that are legislated for in the Children's Act. Some participants felt that social workers were not adequately trained on the Children's Act. Sub-themes which emerged from human resource challenges will be discussed next.

Shortage of social workers, high case loads and poor salaries

The experiences of most participants regarding the human resource challenges that they face in the implementation of the Act stem from high caseloads; an inadequate number of social workers; and their poor salaries. These three issues are intertwined as reflected in the following views of participants:

“The reality in the social welfare service is that the field has got [a] high staff turnover. We have government, which is offering better opportunities for social workers, so we will always have a consistent migration of social workers from the NGO sector being absorbed into government and that leaves a lot of gaps in the NGO sector.”

“Implementation is a challenge, because we are working with a population of over 49 million and we have a drop in the ocean number of social workers, who are supposed to render, not only child protection services, but also family preservation services, services for persons living with disabilities and a lot of other welfare sectors.”

According to the South African Institute of Race Relations (SAIRR) (2012:1), the total number of social workers registered with SACSSP in March 2012 was 16 740. This number includes social workers who work for the government; non-profit organisations, the private sector, as well as those who are no longer in practice but retain their registration status. Of these 16 740 registered social workers, “Only 6 655 (40%) are employed by government and 2 534 (16%) by NPOs.” (SAIRR, 2012:1). This leaves 7 451 (45%) registered social workers who are either not practising or are employed in the private sector. Clearly the number of social workers is inadequate for the successful implementation of the Children's Act 38 of 2005. Proudlock and Debbie (2011:2) state

that “Between 16 000 and 66 000 social workers providing direct welfare services for the Children’s Act alone are urgently needed in the country.” SAIRR (2012:1) postulates that about 16 504 social workers are required to implement the Children’s Act effectively. This accounts for 99% of all registered social workers, illustrating the huge shortage of social workers in the country.

Inadequate training of social workers

Besides the shortage of social workers, a few participants highlighted that social workers did not receive enough training on the Children’s Act and that is why it is very difficult to implement it, because they do not know its provisions and regulations.

“Some social workers are not well trained on the Children’s Act, the new Act, because some are still familiar with the old Act, and are not yet familiar with the new Act and it is very difficult for them to implement it.”

“The Act was introduced too quickly. I for one never received any training on how to implement the Children’s Act. I would have thought that something as huge as the new legal system is introduced; people should be adequately trained to know the new system in and out. I for one have been kind of like operating in the dark; it has been on a trial and error basis and I have made a lot of mistakes.”

What is needed is a paradigm shift, “acknowledging that old ways of doing things may not be the best” (September & Dinbabo, 2008:121). Patel (2005:3) adds that moving from an old way of doing things is always challenging and it causes considerable tension and uncertainty.

Theme 5: Shortcomings of the Children’s Act 38 of 2005

The majority of the participants stated that some of the challenges they face in implementing the Children’s Act relate to the shortcomings of the Children’s Act 38 of 2005; loopholes within the Act itself; and some terms and concepts in the Children’s Act that are unclear and ambiguous. These include, among others, transfer of children to alternative placements; problems relating to section 150(1) of the Children’s Act 38 of 2005 (ground for finding that a child is in need of care and protection, which states that a child is in need of care and protection if the child has been orphaned or abandoned and is without any visible means of support); and the fact that the child protection system is very slow in processing cases that pass through it.

“What does rectify mean, for example? An order issued by the Department of Social Development is invalid when the order has not yet been rectified. And then probably issues of interpretation of terms in the Children’s Act, in terms of visible means of income. What does that imply? It’s a relative term, which can be interpreted differently between all the partners engaged in this collaborative approach.”

“A lot of elaboration is needed to really make a clear distinction of who is a child in need of care. We need a lot of explanation in order to make it very clear; it also mean that social workers need to attend a lot of workshops

because you find that in some cases where the child was removed in terms of section 150 (a), (f) and (g), they overlap each other so at times you find that social workers are confused over which sections to use, is it (f) or (g) or it is both sections. You cannot choose g, for example, and leave f because they complement each other, so in some cases the social workers opted only for (f) or (g), and this shows a doubt in implementation; it shows a doubt in saying whether a child is in need of care and protection or not.”

Theme 6: Addressing challenges in the implementation of the Children’s Act

The participants proposed numerous solutions to addressing the challenges they face in the implementation of the Children’s Act 38 of 2005, which will be discussed under the following sub-themes.

Establishing a kinship care grant

Most participants stated that their case loads are unnecessarily high due to the fact that they have cases for children who passed through the formal foster care system so as to access foster care grants. The majority of the participants are of the view that this can be ameliorated by establishing a kinship care grant. This would be for children in the care of relatives who are basically in need of cash and not as much in need of care, and who generally go through the formal foster care system in order to access a grant.

“There are too many children that are going through the formal foster care system. I think it’s actually prudent if we have a parallel system that can actually capture some of the children, especially the related placements, so that they don’t go through the statutory processes that foster children go through, so that they can actually have their own sort of grant that is administered differently from the foster care grant, so that we reduce pressure on the conventional foster care system.”

Amending the Children’s Act 38 of 2005

All participants were of the view that most problems that they face in implementing the Children’s Act 38 of 2005 can be addressed by amending the Act itself. They stated that the Act should clarify the meaning of certain terms and definitions, for example, the phrase “visible means of support”, “ratify”, “orphaned” and many other terms.

“I think there is need for more clarity, or even revisit the phrase [A child is in need of care and protection if the child has been abandoned or orphaned and is without any visible means of support] itself to bring clarity to that.”

Taking administrative extension of orders back to the Department of Social Development

Participants were of the opinion that the administrative extension of orders should be taken back to the Department of Social Development. They stated that this would solve all the problems that they experience with the children’s courts.

“I think the issue of the administrative function of extending orders, I think it is actually more better that they are returned to the Department of Social

Development, so that people do not need to frequent the courts on a daily basis for something that can be done in their absence. So it is actually better if they return that administrative function to where it was before, which is the Department of Social Development, then we will not have an issue of dealing with different courts, spending unnecessary time at court, the issue of different courts having different requirements, this would make life easier.”

Addressing problems with presiding officers

Of significance is the fact that most problems that the majority of participants face in implementing the Children’s Act 38 of 2005 seem to be caused by the presiding officers. Therefore, the majority of the participants stated that problems with presiding officers should be addressed:

“We should have regular meetings or monthly meetings with the representatives of the Children’s Court, especially with the magistrates, where social workers should attend, together with the police and any other authorised officers who are involved in the implementation of the Children’s Act.”

“I think periodicals would do. Just as much as doctors would meet to discuss and afterwards release periodicals about new drugs and whatnot, social workers should do the same.”

“We need to address things swiftly; we need the correct number of presiding officers who can attend to social workers, or at least a schedule that makes it easier and convenient for social workers to attend court, because it is very inconvenient for social workers to spend the whole day in court.”

CONCLUSIONS

Although the social workers have awareness of some features and key principles of a developmental approach, and some participants were able to contextualise child protection within the Children’s Act 38 of 2005 from a developmental perspective, the provisions of this Act are not fully implemented within a developmental paradigm. Lombard and Kleijn (2006:214) argue that, “The first step towards statutory social service delivery within a developmental approach is recognising that statutory services are included in the basket of developmental social welfare service delivery.” Having some knowledge on where statutory services fit within a developmental approach is a good start towards shifting towards a developmental approach in child protection services (Lombard & Kleijn, 2006).

Institutional obstacles that participants face in implementing the Children’s Act 38 of 2005 stem from the attitude of social workers who are not well versed in the provisions of the Children’s Act and who are not implementing services from a developmental perspective. Successful implementation of the Children’s Act requires a paradigm shift and a change of attitude among social workers (Mbambo, 2004).

Social workers are the victims of the Children’s Court system, which they do not challenge in the interest of effective child protection services. Findings show that most institutional barriers in implementing the Act stem from the presiding officers who lack

uniformity, who are not well versed in the provisions of the Act, look down upon social workers and overburden them with unrealistic demands. Infrastructural barriers inhibit effective child protection services and make developmental child protection services a “pipe dream”. Social workers should take a critical stance against the presiding officers to stand up for their rights. Adams (2002) argues that social workers should become more critical practitioners and respond to oppressive behaviour.

Some of the institutional challenges that most participants face stem from actions of untrained and uncooperative police officers who do not know how to fulfil their roles and obligations. The police officers often remove children from their families due to poverty, even though the children might not be in need of care and protection. This is probably due to the fact that they did not receive adequate training on the Children’s Act. UN guidelines for the alternative care of children (2009:7) clearly state that “Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care ... but should be seen as a signal for the need to provide appropriate support to the family.”

The infrastructural barriers that most participants face in implementing the Children’s Act 38 of 2005 stem from the unavailability and restricted use of resources. The shortage of resources seems to stem from the poor funding of child protection organisations. Efficient and effective infrastructure including office space, drop-in centres, children’s homes, vehicles and office equipment such as telephones, computers and fax machines are required to implement the Children’s Act (September & Dinbabo, 2008).

The Children’s Act cannot be fully implemented in the absence of sufficient numbers and capacity of social workers. Social workers face enormous human resource challenges in the implementation of the Children’s Act stemming from the shortage of social workers, inadequate training of social workers and high case loads. These findings correspond with what is stated in the literature, namely that due to resource constraints, social workers, as a consequence of a high work load, low salaries and poor working conditions, are leaving the profession or the country to work abroad (Earle, 2008). The poor and inadequate working conditions for social workers are an ongoing issue. A study by Alpaslan and Schenck (2012:374-376) found that social workers work in environments characterised by lack of offices, inadequate office equipment, shortage of vehicles, high caseloads and a shortage of staff. September and Dinbabo (2008) note that social workers are the ones to turn the Children’s Act into a lived reality for children and their families. A study by Naidoo and Kasiram (2006) found that social workers in South Africa generally deal with over 120 cases (compared with a maximum of about 12 cases in the UK). This leads to high levels of stress and frustration among social work professionals (Earle, 2008).

Shortcomings that some participants have realised in the implementation of the Children’s Act 38 of 2005 relate to the transfer of children to alternative placements; different interpretations of different sections of the Act; and the over-reliance of the child protection system on foster care structures to provide income support to children.

The findings on challenges relating to the ambiguity and subjective grounds of finding that children are in need of care and protection as outlined in section 150(1) of the Children's Act, are confirmed by Hall and Proudlock (2011:2), who state that most presiding officers reject recommendations made in terms of section 150(1)(a), saying, "The child is not without 'visible means of support' as required by section 150(1)(a)."

Challenges that social workers are facing in the implementation of the Children's Act can be effectively addressed by establishing a kinship care grant; amending the Children's Act; organising training for all role players involved in implementing the Children's Act; increasing salaries of social workers; taking administrative extension of orders back to the Department of Social Development; and encouraging cooperation and collaboration between various role players involved in the implementation of the Children's Act. Loffell (2011) concurs that a simple introduction of a kinship care grant can ameliorate this terrible predicament of going through the formal child protection system in order to access a foster care grant. To deal with the burden on the foster care system, the Department of Social Development should conduct a comprehensive review of the social security policy for children and the foster care system as requested by the Portfolio Committee on Social Development in its report on the Amendment Bill (Proudlock & Jamieson, 2008:39).

RECOMMENDATIONS

Recommendations to address the challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005 are outlined below.

The regulations of the Social Assistance Act 13 of 2004 should be amended to allow for a kinship care grant which would cater for orphans in the care of relatives. This will replace the use of the inaccessible foster care grant for this category of children and therefore ensure that the majority of orphans living in poverty with family members receive an adequate grant efficiently and timeously. By providing a kinship care grant, the use of the foster care grant for orphans in the care of relatives will be reduced. This will also lighten social workers' case loads and therefore enable improved prevention, as well as early intervention and protection services for abused and other vulnerable children.

Numerous sections of the Children's Act should be amended. Section 42(3) should be amended to state that the Minister of Justice and Constitutional Development and the head of the administrative region "must" appoint a dedicated presiding officer, instead of "may". The phrase "who meets the prescribed requirements" should be included after "magistrate or additional magistrate" to ensure that the presiding officer has the requisite training. Moreover, it should be a permanent position and should not be rotated in order to counteract the lack of experience of rotating magistrates resulting in procedural difficulty and irregularity in the application of the Act. Section 150(1)(a) should be amended to remove the words "and is without any visible means of support" and replace them with the words "abandoned or orphaned and not in the care of a family member." The effect of this would be that children who are abandoned or orphaned, but who are nevertheless living with a family member (who is not a biological parent), are not

automatically in need of care and protection. The proposed amendment to section 150 would create a system that allows for non-court-ordered care by relatives, namely, the kinship care grant as discussed above.

The Department of Social Development must take responsibility to train all the role players involved in the full implementation of the Children's Act. Furthermore, the presiding officers, the police and social workers should attend the same training workshops and be trained by the same trainers so that everyone is clear about their roles and obligations.

Regular meetings between the presiding officers of the Children's Court, police officers and social workers involved in the implementation of the Children's Act should be conducted. During such meetings these three stakeholders should deliberate on issues of importance, address their mutual respective expectations, and discuss the possible challenges.

Social workers should be trained in the practical application of a developmental approach in the rendering of child protection services. Once the social workers have been trained on how to render services in a developmental fashion, then sufficient resources need to be available to them by the Department of Social Development.

The administrative extension of orders in terms of section 159 and section 186 should be taken back to the Department of Social Development. This would solve most problems that social workers encounter with courts regarding the extension of placements orders. Moreover, it would free up the valuable time of the presiding officers of Children's Courts to enable them to fully focus on other duties that have a direct bearing on the protection of children.

For the implementation of the Children's Act to be successful, efficient and effective, suitable infrastructure needs to be put in place; this includes office space, drop-in centres, children's homes, vehicles and office equipment such as telephones, computers and fax machines.

To deal with the burden on the foster care system, the Department of Social Development should conduct a comprehensive review of the social security policy for children and the foster care system as requested by the Portfolio Committee on Social Development in its report on the Amendment Bill (Proudlock & Jamieson, 2008:39).

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