



**AN IMPLEMENTATION ANALYSIS OF THE CHILDREN’S ACT  
NUMBER 38 OF 2005 (PART B CHAPTER 13 AND 14): A CASE  
STUDY OF THE DEPARTMENT OF SOCIAL DEVELOPMENT,  
UMZINYATHI DISTRICT**

**BY**

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## **ABSTRACT**

This study examines public policy implementation with specific emphasis on the implementation of the South African Children's Act number 38 of 2005. The main area of concern for the current study is Chapter 12 of the act which focuses on foster care. Public policy is examined in general in order to provide a better understanding of why and how policies and Acts emerge. The study looks at policy implementation issues of the Children's Act number 38 of 2005, foster care. The Children's Act governs all the laws relating to the care and protection of children. It further defines the responsibilities of all involved (parents and care workers) and underscores provisions regarding court proceedings. The study examines how the Foster Care aspect of the Children's Act number 38 of 2005 was implemented in uMzinyathi district of Kwazulu Natal. The study reveals that the social workers selected for the study (except for the newly appointed amongst them) are aware of and have been capacitated on the areas of foster care as contained in the said Act. The study further reveals that the implementation of this Act has met with some obstacles which borders on lack of resources; processes to be followed when placing a child and the misinterpretation of the Act by other stakeholders involved in the implementation of the Act. Against the backdrop of the findings, recommendations are made to inform policy and praxis in the subsequent implementation of the Act.

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## **LIST OF ABBREVIATIONS**

DSD	-	Department of Social Development
KZN	-	Kwazulu Natal
MERU	-	Monitoring, Evaluation and Reporting Unit



## Chapter 1

### INTRODUCTION AND BACKGROUND

#### 1.1 INTRODUCTION

The main aim of this study is to examine public policy implementation with reference to the Chapter 12 of the South African Children's Act No. 38 of 2005 which focuses on "Foster Care". Emphasis is placed on the processes of implementation of the Act and how it has been actually implemented so far within the chosen context of the study. The current research further asks questions to ascertain if the implementation has been a success or if there were challenges encountered in the implementation. Ultimately, the study examines some aspects of public policy in general in order to provide a better understanding of why and how the Act has been implemented, monitored as well as evaluated. The Kwazulu Natal provincial statistics show why there is need for a proper implementation of this Act. The table below presents the validated 2014/15 KwaZulu-Natal statistics for the Department of Social Development as stated in 2014/15 Annual report:

<b>Sub-Programme</b>	<b>Key Performance Indicator</b>	<b>Validated performance information</b>	<b>Comments</b>
Child Care and Protection	Number of orphans and vulnerable children receiving psychosocial support services	20 113	The statistics show the total number of vulnerable children that received services in Kwazulu-Natal in year 2014/15. Based on the statistics as at 2014/15, one can identify the need for an Act that protects children.
Child Care and Protection	Number of children placed in foster care	50 458	
HIV/AIDS	Number of beneficiaries receiving psychosocial support services	95 850	The statistics report as stated in the Annual performance plan 2015/2016 of the department of Social Development, "KwaZulu-Natal has 23.9 percent of children compared to other provinces in South Africa. Furthermore the statistics indicate that KwaZulu-Natal has the highest number of children receiving social grants in the

Child and Youth Care Centres	Number of children in need of care and protection placed in funded Child and Youth Care Centres	3507	<p>form of child support grant as well as foster care grant.</p> <p>A number of reasons can be ascribed to this situation including the impact of HIV and AIDS as well as unemployment situation in the province.” (KwaZulu-Natal department of Social Development Annual Performance plan 2015/2016).</p> <p>The statistics further illustrate that there are more vulnerable children in KwaZulu-Natal and that is one of the pointers as to why there is a need for the Children’s Act No. 38 of 2005.</p>
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Table 1: *Validated KZN Statistics 2014/15* (DSD Annual Report, 2014/15)

The Children’s Act No. 38 of 2005 addresses and gives effect to the rights of children as stated in the Constitution under section 28 (1). The key focus areas of the Children’s Act No. 38 of 2005 as summarised in the Act itself governs all the laws and legislation relating to the care and protection of children in South Africa. The Act defines the roles, responsibilities and rights of parents whilst ensuring that it caters for other matters that are important for the welfare of children like the establishment of children’s courts and establishing criteria for the child welfare employees. The Act also serves as a guide in the establishment of places of safety and care for children.

According to the South Africa Constitution section 28 (1), every child has a right to;

A name and a nationality from birth; to a family care or parental care, or to appropriate alternative care when removed from the family environment; to basic nutrition, shelter, basic health care services and social services; to be protected from maltreatment, neglect, abuse or degradation; to be protected from exploitative labour practices; not to be required or permitted to perform work or provide services that are appropriate for a person of that child’s age or place at risk the child’s well-being, education, physical or mental health or spiritual, moral or social development; not to be detained except as a measure of last resort (Constitution of Republic of South Africa, 1996).

The Children’s Act No. 38 of 2005 was formed and implemented to give effect to certain rights of children as contained in the Constitution and to set out principles relating to the care and protection of children. According to a report available on the DSD website, the Children’s Act No. 38 of 2005 was passed in 2005 but implementation of the Act only began

in 2010. The Act addresses issues that concern children which include: promoting, preserving and strengthening families; protection of children; providing social services; strengthening community structure; recognition of special needs that children with disabilities may require; promoting development and wellbeing of children; adoption and fostering issues. Additionally, the Act seeks to provide and address the needs of a child; which also includes the protection and placement of a child who has committed a criminal act.

It is important to conduct this research in order to ascertain whether the implementation of the Children's Act No. 38 of 2005 has been successful or not; and if not what can be done to ensure that this important piece of legislation is implemented correctly following the stipulations of the Act. Notably, the main challenge for the government has been the inability to monitor the implementation of the legislative prescripts, since the departments do not have the capacity or the skills to monitor these legislative prescripts. The concern has been the need to determine the extent to which legislative prescripts or programmes are responsive to the needs of community; in this instance it would be to see if the Children's Act No 38 of 2005 has been effective. The Government, in 2004 established the Monitoring, Evaluation and Reporting Unit (MERU) as an attempt to see how effective the policies and programmes are. As a result monitoring and evaluation has now been established nationally, provincially and locally.

## **1.2 RESEARCH PROBLEMS AND OBJECTIVES: KEY QUESTIONS TO BE ASKED**

The study will ask several research questions underpinning a process evaluation of the Act; and also to find out which street level bureaucrats contributed to the implementation of the Act; how it was implemented and if implementation was a success. The current research particularly looks at the section (Chapter 12) in the Act which deals with "Foster Care" and how it has been implemented. Below are the research questions that will be asked:

- Who are the street level bureaucrats involved in the implementation of the Children's Act No 38 of 2005?
- What were the implementation issues encountered by street level bureaucrats of the Act?
- What strategies have been put in place to implement the Act No 38 of 2005 in the uMzinyathi District?

- What are the challenges and successes in the implementation of the Act?
- How may the implementation issues be resolved?

### **1.3 RESEARCH METHODOLOGY AND METHODS**

This study was conducted in uMzinyathi district and a qualitative methodology was used. A mixture of research methods are used to collect relevant data and information needed for the study. Firstly, several relevant documents which include governmental annual reports, the Act itself, the South African Constitution were sourced and used in this research. Additionally, secondary data from books, journal articles, internet sources was also used. Secondly, primary data generated from semi-structured interviews conducted with respondents within the uMzinyathi District was also used in this study. Semi-structured interview was used because it allows flexibility in the process of generating relevant information from respondents; it allows possibility of follow up questions and further probing on issues surrounding questions posed to respondents. This research also adopted the descriptive/ explanatory research design which helps in a proper analysis of data, information and report findings.

In terms of ensuring reliability, validity and objectivity in the process of conducting this research, a relevant approach used was the “qualitative heuristics” which was developed in order to try and bring back the systematic exploration into the sociological research (Kleining, 1986). This methodology aims at discovery and uses the variables of research design in a certain way to serve this purpose (Kleining, 1986). It asks the researcher to follow four basic rules and draws on a wide variety of methods including the reintroduced "qualitative experiment". “The concept of the research process involves seeing dialogue as a specific form of dialectic. An integrated part of the methodology is its verification procedure with tests of validity, reliability and range of findings” (1986:2). This is relevant to the research as this approach factors in the issue of validity; reliability and objectivity.

#### **1.3.1 SAMPLE SELECTION**

Participants for the research were selected from the Midlands region specifically in uMzinyathi District. There was a selection of different stakeholders from the different areas within the uMzinyathi District in order to have a good sample population because part of the uMzinyathi area is urban and other parts are rural. These stakeholders were made up of Social Workers that work for the Department of Social Development, a total number of 20 Social Workers come from Dundee and Glencoe service offices which are situated in the urban area

and another 30 came from Nquthu and uMsinga service offices which are in the rural area. This selection allows for a comparison of the findings in both rural and urban regarding the implementation process and problems encountered.

### 1.3.2 DATA COLLECTION METHODS

**Interviews:** Direct contact semi-structured interviews were conducted with selected stakeholders. The primary research goal was to get empirical data through interviews and questionnaires. This method was used in the uMzinyathi District, in the Dundee; Glencoe; uMsinga and Nquthu Service offices. Approximately 50 respondents were chosen as they best represent a fair percentage of the implementers in the uMzinyathi District.

**Focus Groups:** Discussions with focus groups were captured and recorded properly during the set meetings. There were four sessions with the different focus groups from the selected offices as well as uMzinyathi district. The focus group sessions were organised by the District Management and took place at Dundee service office where the District Office is located.

**Document Analysis:** This is one of the methods used in this study where content analysis was done. Additionally Departments' Annual performance plan; Annual report and Strategic plan and any other published public records relevant were discussed.

### 1.4 STRUCTURE OF DISSERTATION

The research study consists of five chapters. The first chapter covers introduction and brief background into the Children's Act No. 38 of 2005. It also covers the research problems, research questions, research aims and objectives and research methods.

The second chapter covers the conceptual and theoretical framework. This chapter examines "Street Level Bureaucracy" envisaged to be relevant theoretical framework for the current research. Also, since the Children's Act No.38 of 2005 is implemented by different officials, this research specifically looks at the contribution of social workers in implementing the "Foster Care" aspect of the Children's Act No. 38 of 2005. Thus, the frameworks used in this study include: Street Level Bureaucracy model; Policy Implementation model; Contextual Interaction Theory and Process Evaluation.

The third chapter focuses on the implementation process of the Children's Act No 38 of 2005 with emphasis on the implementation of the "Foster Care" aspect of the Act. This chapter

looks at how the Act has been implemented in uMzinyathi District which is under Midlands region. The study focuses on the processes followed at this district. Four offices were chosen from this district, two from rural areas and two from urban area. This sample allows for a comparison to be made between different geographically located offices under uMzinyathi District. Two Offices come from rural parts and the other two come from urban parts of uMzinyathi. The findings from this research allows one to best compare between the differences in the implementation processes in both rural and urban areas of uMzinyathi District. Notably the lack of infrastructure especially in the rural area, which may impact on the implementation process, is a factor to be looked at.

The fourth chapter presents the research findings and analysis. This chapter looks at actual collection of data through interviews as well as focus groups in uMzinyathi District. The findings from this study are looked at and analysed properly to ascertain what problems were encountered by the Social Workers when the Act was being implemented.

The fifth chapter concludes the study by describing in length the findings and recommendations and it also refers to the theoretical arguments regarding the process of implementation. This chapter also draws from previous chapters, key points relating to implementation process and makes recommendations which effectively conclude the study.

## **1.5 CONCLUSION**

Summarily, this study is qualitative research which utilizes the uMzinyathi District of Kwazulu Natal South Africa as a case study. The study analyses the implementation of the Children's Act No. 38 of 2005 with special emphasis on the implementation of the Foster Care aspect of the Act. The study seeks to find out if implementation has been successful; if there were challenges and how the District addressed the challenges.

This chapter was a breakdown of the research paper and how this research was conducted. The next chapter unpacks the theoretical frameworks relevant to the research study.

## Chapter 2

### **THEORETICAL PERSPECTIVES**

#### **2.1 INTRODUCTION**

This chapter provides a conceptual and theoretical framework to guide the study. The study adopts the street level bureaucracy framework and the policy implementation and process evaluation framework for the purposes of its analysis. The defining characteristics and role of street level bureaucrats in delivering public policy are outlined.

The chapter also explores the relationship between street level bureaucrats and their clients as well as how street level bureaucrats see their role in public policy implementation. Street level bureaucrats have discretion in performing their duties and in delivering public policy; this is examined in light of their role as implementation agents of the Children's Act. The chapter first defines public policy; provides breakdown of policy cycle; defines the concepts of implementation as well as evaluation and concludes with a discussion of the framework.

#### **2.2 PUBLIC POLICY**

Public policy is described by Parsons (1953:3) as "that dimension of human activity which is regarded as requiring governmental or social regulation or intervention, or at least common action." Parsons added that policy does not always follow a path of intended activity and can therefore result in unintended consequences (1995:13). Notably, policies and Acts come into being to address a particular issue but when it reaches the stage of implementation, they may not necessarily be implemented as planned and therefore might end up not addressing what they were intended for because of the different changes that a policy goes through. Colebatch (2002:49) cited Bridgman and Davis' definition of public policy as "a course of action by government designed to achieve certain results." The Children's Act is a piece of legislation that came into being in order to provide protection for children as well as provide guidance, coordination and uniformity in the way that services to children are delivered.

## 2.3 POLICY CYCLE

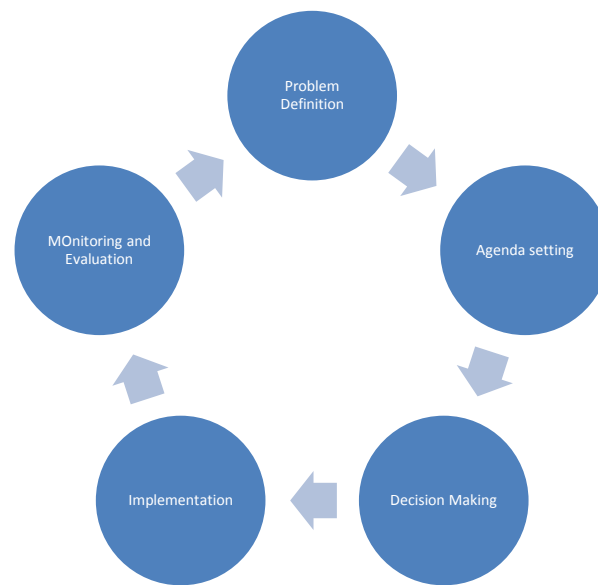


Figure 2: *Policy Cycle* (Parsons, 1995)

In order to discuss implementation it is important that the policy cycle is discussed briefly. According to Colebatch (2002:50), public policy as a driver of change goes through phases and activities in search of a solution to a particular problem. Parsons (1995:22) identifies five stages in policy cycle but these stages overlap with each other. The five stages are problem definition; agenda setting; decision making where policy proposals and alternatives are looked at; implementation stage and monitoring and evaluation. These stages represent how the policy comes into being and shows the progression of a policy from one stage to the next. The current study concentrates on the aspects of implementation, monitoring and evaluation; the emphasis is on the implementation processes of the Children’s Act No. 38 of 2005.

### 2.3.1 PROBLEM DEFINITION

Parsons (1995:88) states that the first step in policy cycle is defining the problem. A problem has to be “defined, structured and located within certain boundaries.” Importantly, “policy problems are most often complex, badly defined, not clearly demarcated and have a governmental context which greatly influences how a problem is structured” (1995:89). For Kingdon (1995:113) there are three factors that make policy makers aware of problems and these are indicators, events and feedback. Indicators give an indication of the extent of a problem through data collection in existing government reports. Some indicators provide information on the trends of social problems and they indicate whether there is improvement or not. “Problems are not always obvious and sometimes a crisis, a disaster, or policy-



makers' personal experiences make government and officials aware of the problem (Kingdon, 1995:94). In the case of the Children's Act No. 38 of 2005, the Constitution did make provision for the protection for the children but not entirely. However the Children's Act No. 38 of 2005 became the all-encompassing solution as it covers all aspects relating to Children and families at large.

### 2.3.2 AGENDA-SETTING

Agenda setting is a stage in the policy cycle which according to Howlett and Ramesh (2003:121-125) can be defined as the "recognition of a problem on the part of the government." Kingdon (1995:17-20) regards problem recognition as a socially constructed process that, once recognised by government in the agenda-setting process, is responded to by constructing a policy. 'solutions become joined to problems and both of them are joined to political forces" (Weiner and Vinning, 2005:262). Additionally, "governments can be strategic and choose to address certain problems around which they then create policy, so that they can be re-elected at the next poll" (2005:262).

### 2.3.3 DECISION-MAKING: POLICY PROPOSALS, ALTERNATIVES

According to Parsons (1995:245) decision-making occurs between policy formation and implementation. It is a process where a "choice is made or a preferred option is selected by the state." Weiner and Vinning (2005:262) further state that policy decisions start as "proposals in the political arenas and culminate in effects on people." Colebatch (2002:50) on the other hand is of the view that government makes policy related decisions to "maximise the welfare of individuals" and that "the best action is that which makes someone better off and no one worse off." For example the Children's Act No. 38 of 2005 is meant to enhance protection of children and address all aspects concerning children and their wellbeing.

Also, Parson is of the view that "when choices are made or a preferred option is selected on different occasions, then decision-making goes on throughout the policy cycle because decisions are taken on defining the problem, information used, strategies, options, ends and means, as well as implementation and evaluation" (1995:245). However Simon (cited in Parsons, 1995:272-278) states "that the rational decision-making process is based on assessing each policy proposal and alternative and then selecting the most effective and efficient option that will achieve the required goals and interests."

#### 2.3.4 MONITORING AND EVALUATION

A concern of the Government has been lack of monitoring and evaluation capacity of implementation of the legislative prescripts. The concern has been the need to determine the extent to which legislative prescripts or programmes are responsive to the needs of community, in this instance, the need is to see if the Children's Act No 38 of 2005 has been effectively implemented.

The Government, in 2004 established the MERU as an attempt to see how effective the policies and programmes are. Monitoring and evaluation has now been established Nationally, Provincially and locally. The MERU looks at the implementation processes followed as well as the effectiveness of the policy. Implementation of Children's Act No 38 of 2005 requires a strong monitoring and evaluation system to be able to track implementation process. Monitoring and evaluation takes place during and after policy implementation and it is usually regarded as the last stage in the policy cycle. Monitoring and evaluation allows for feedback regarding usefulness of a policy. Rossi and Freeman (1989:170) affirms that monitoring looks at policy compliance of legal and regulatory requirements, for example to see if the requirements of the Act are being followed, to see if there is compliance with the regulations stipulated in the Act. Notably monitoring is an on-going process.

Evaluation on the other hand can be defined as "the process of finding out about a public policy in action, the means being employed and the objectives being served" (Cloete and Wissink, 2002:211). Different reasons are given regarding why evaluations are conducted and they include among many others: measuring progress, testing feasibility, providing political or financial accountability and learning lessons from the project or programme for future policy review or implementation (2006:212). Policy evaluation is another step in the policy cycle where the implemented is looked at and assessed in terms of meeting the objectives or in terms of impact. Evaluation can take place at different stages in a policy cycle and findings from evaluation are critical. Policy evaluation can be defined as "the stage of policy process at which it is determined how a public policy has actually fared in action" (Howlett and Ramesh, 2003:207). Also we can understand that "policy evaluation assesses the effectiveness of a public policy in terms of its perceived intentions and results" (2003:207). The evaluation of policy could either lead to termination or learning from the process, not only that but if the policy has been evaluated, depending on the findings, the policy might go back to any stage in the policy cycle including agenda-setting.

Evaluation at an implementation stage can be defined as an evaluation that takes place “while a policy is being implemented, a need exists to monitor the implementation process in order to keep track of the time-frame, the spending programme, the progress towards objectives and the quality and quantity of outputs” (Cloete and Wissink, 2002:215). The type of evaluation that one can conduct at the implementation stage is also known as formative evaluation. According to Imas and Rist (2009:9) “formative evaluation looks into the ways in which a program, policy, or project is implemented. It examines whether or not the assumed “operational logic” corresponds with actual operations and identifies the (immediate) consequences the implementation (stages) produces. This type of evaluation is conducted during the implementation phase of a project or program.” This type of evaluation is discussed in detail in the current study which also looks at the processes followed in the implementation of the Child Act.

### 2.3.5 IMPLEMENTATION

Policy implementation is seen as “multidirectional, fragmented, frequently interrupted, unpredictable, and very long term” also in it “authority and responsibility are dispersed among actors involved” (Brinkerhoff and Crosby, 2002:23). O’Toole (cited by Hill and Hupe, 2002:8) defines policy implementation as “the connection between the expression of governmental intentions and actual results.” Implementation can be seen as a process of a policy in action in which different actors (as in the Children’s Act No. 38 of 2005) are involved in. These actors are from national, provincial, local or any other sphere involved in the implementation process. Implementation comes after a decision has been made on which policy to implement; once a decision has been made for a policy to be adopted, that particular policy has to be implemented. In implementing a policy, some problems might arise due to the model or approach being used. According to Colebatch (2002:23), policy work that takes place inside and across organisational boundaries affects policy implementation as much as authorised decisions within any single organisation.” This is relevant to the implementation analysis of Children’s Act no 38 of 2005 because multiple organisations are involved in the implementation of the Act.

Furthermore, Parsons (1995) writes about delivery analysis in which he looks at analysis of implementation, evaluation, change and impact. Parsons gives us a background of the main concern which had to do with policy making not meeting or achieving the desired goals and how the goals themselves were not well defined which means not well executed as if something is not well defined, it is not easy to be implemented in such a way that the

outcomes are met. Implementation can be defined as “policy-making carried out by other means” (Parsons, 1995:462). According to Anderson, policy is being made as it is being administered and administered as it is being made” (in Parsons, 1995:462). Implementation can also be defined as “a process of interaction between setting of goals and actions geared to achieve them” (1995:464).

The second definition stresses the importance of the link between all that is involved—the goals have to be clearly defined and understood by all actors involved. The resources have to be made available and the chain of command must be able to control resources; not only that but also communication between those involved must be clear and effective (Parsons, 1995:464). This concern with the end result or outcome of policy process “was framed by attempts to model a rational set of sequences involved in successful implementation, thus extending the logic of the policy stage approach to a more detailed analysis of the closing phases of decision-making cycle” (1995:457). This is the top-down model that Parsons discusses at length together with the bottom-up approach model.

### **2.3.5.1 Bottom-up and Top-down approach**

Matland (1995), Parsons (1995) and Weimer (2005) also discuss the bottom-up and top down approaches and how implementation can be a success as well as what is the cause for implementation failure. Looking at the models being used, they identify the problems of implementation failure while trying to come up with ways to ensure implementation success.

Colebatch (2002) also delineates two primary approaches to understanding policy making, the top-down approach and the bottom up approach. For this research both approaches will inform the analysis. The bottom up approach shows the realities of policy action by allowing focus to fall on the implementers themselves. The Children’s Act No. 38 of 2005 is implemented by Social Workers who may be and are considered street- level bureaucrats.

#### *2.3.5.1.1 Top-down approach*

Parsons (1995:465) further discusses another view of implementation as a top-down approach which looks at effective implementation in terms of there being a “good chain of command and a capacity to co-ordinate and control.” The top-down approach sees effective implementation as possible if there is that command or leadership from above that is in control and in charge; which means the rest just follow orders. The top-down approach, where policies and Acts are formulated at the top and operationally flow down through the implementation ranks will guide systemic implementation questions. Colebatch (2002:23)

shows how the top-down dimension of policy emphasises “instrumental action, rational choice and the force of legitimate authority.”

Moreover Rousseau sums up the view of top-down approach as “everything is good when it leaves the Creator’s hands; everything degenerates in the hands of man” (in Parsons, 1995:466). According to the top-down approach, when implementation fails the blame is not owned by the powers that be or by the ones that command but rather something else in the sequence of stages is blamed whether it be the strategy that was chosen at lower level was wrong or poor machinery but the blame shifts to the other levels and not to the top.

Observably, top-down approach as much as it applies rationality, is very authoritative in nature as it emphasizes the “definition of goals by the top, rather than on the role of the workers on the line. It assumes a great deal about goal definition and human interaction and behavior or as in the case of Dunshire it just blatantly excludes any consideration of how real people actually behave” (Parsons, 1995:467). The exclusion of the workers and other actors is also one of the reasons why the top-down approach is criticized. It is important to understand how people really behave as these people are the ones who are involved in the real work, operations of the implementation process. Top-down approach has also been criticized for not being effective or convincing in practice since it chooses to ignore real human behavior. The actual behavior of the workers in line is important in ensuring that whatever goals are set and understood by all, communication is clear to all.

The top-down model “see implementation as concerned with the degree to which the actions of implementing officials and target groups coincide with the goals embodied in an authoritative decision” (Matland 1995:146). There is also an emphasis on the authoritative side of the top-down approach; a top-down approach would have a “tractability of the problem, ability of statute to structure implementation and non-statutory variables affecting implementation, which they argue determines the probability of successful implementation” (Mazmaian and Sabatier, 1989 in Matland, 1995:146). According to top-down approach it is important that policy goals are clear and consistent and there must be a limit in terms of the actors involved.

Additionally, according to Matland (1995) the top-down approach has been criticized for using statutory language as their starting point failing to take into consideration whatever actions and decisions and the policy formation process into consideration. The use of statutory language may result in top-down theorists failing to take into account public

objectives. Top-down approach has also been criticized for ignoring the political aspects in implementation as it view implementation as purely administrative. Also the criticism extends to the approach's "exclusive emphasis on the statute framers as key actors" (Matland, 1995:148). This criticism is twofold as it speaks to the fact that the locals have better perspective of what is going on and are in a better position to propose a policy. The other aspect is that top-down model does not take the local actors into account because they see them as obstruction to successful implementation whereas the information the local actors have is crucial.

#### *2.3.5.1.2 Bottom-Up approach*

Bottom-up approach also criticizes the top down approach for excluding the workers and for the assumption made on their behavior arguing that implementation process "involves 'policy-making' from those who are involved in putting it into effect" (Parsons, 1995:467). Bottom-up approach places emphasis on the relationship between policy makers and those who ensure delivery which are the workers in line previously ignored by the top-down approach.

Matland (1995) then introduces the bottom-up model which is different in its emphasis on target group and service delivery implementers; in this, policy is made at local level. Berman (1978) affirm that an understanding of implementation is best when one looks at the target populations and the service deliverers. Bottom-up theorists place emphasis on the goals and how it is important that goals and strategies of all involved are known and understood in order to understand implementation.

### **2.4 COMPARISON OF TOP-DOWN APPROACH AND BOTTOM-UP APPROACH**

Whereas with top-down approach the start was with rationality which looked at the top leaders who command and did not place any fault at their level when policy implementation fails, bottom-up approach on the other hand begins at the end point of the policy and also organizes policy with behavior of workers in mind and the conflict that might exist. This approach "sees the process as involving negotiating and consensus building" (Parsons, 1995:469). There is a slight difference for rational-control model of implementation which "tends to see interests as capable of being united for common goals and conflict as manageable source of friction" (1995:471).

According to Matland (1995) top-down models present a more prescriptive or authoritative way of understanding implementation whereas bottom-up places emphasis on looking at the

factors that caused difficulties. Matland (1995) mentions two criticisms of bottom-up approach, one being normative which looks at democracy and its system and how policy control should be given to those actors who have the power and are accountable to the people who put them into power and the second criticism is that of methodology which places a lot of emphasis on local autonomy.

It is important to note that both admit that conflict is something that has to be taken into consideration but take different routes on how these conflicts can be resolved. Another commonality with these models is that even though they start from a different place, they tend to simplify the complexities of the implementation process. Both approaches tend to over-emphasize and underplay some aspects involved in policy implementation and as a result there has been a synthesis of both the top-down approach and the bottom-up approach.

This synthesis comprises of the six sufficient and necessary conditions for effective implementation. According to (Parsons, 1995:486) these are:

- clear and consistent objectives;
- adequate causal theory;
- implementation structures that are legally structured;
- committed and skillful implementers;
- support interest groups and sovereigns and
- changes in socio-economic that do not undermine or subvert the causal theory underpinning the theory.

This model takes into account concerns of bottom-up and top-down approach serving as a way of a consensus between the two approaches.

Additionally, Matland (1995) introduces a theory which synthesizes the top-down and bottom-up models but not in the way that Parsons has done. The author takes on a different approach of looking at when these two approaches are appropriate rather than combining them. In order to give us a clear picture of this alternative model which reconciles existing findings on implementation, Matland first defines and stresses the importance of understanding policy conflict and policy ambiguity.

## **2.5 SYNTHESIS OF THE BOTTOM UP AND TOP DOWN APPROACH**

A number of researchers have tried to combine the two models, some have combined the models and some have looked at the appropriate applicability of the models. Dunshire argues that “top down perspectives are more appropriate in the early planning stages, but a bottom-up view is more appropriate in later evaluation stages” (in Matland, 1995:152). Berman also “argues that an implementation plan should be developed using either the top-down or bottom-up approach” (in Matland, 1995:152). They both cite different ways of combining the two.

Matland (1995) however has chosen a different approach in synthesizing the two models; the author shows where the models are most appropriate and introduces a comprehensive model of implementation. It is evident that these two models choose to study different types of policies and therefore in order to build an effective implementation model, an evaluation of policy characteristics seemed important. Matland (1995) presents a more comprehensive basis to understand implementation and in doing so, starts with the policy ambiguity and conflict model where implementation perspectives are developed.

Policy conflict plays a major role and is “central in distinguishing between decision-making models; it is just as relevant when distinguishing between descriptions of the implementation process” (Matland, 1995:156). According to rational model since goals are agreed upon, it is possible to subject people to certain constraints. Additionally according to this model, decision-making is defined in such a way that it does not allow for conflict to exist. This is a different case though for the bureaucratic which makes an emphasis on conflict.

Furthermore it is noted that “for conflict to exist there must be an interdependence of actors an incompatibility of objectives, and a perceived zero-sum element to the interactions” (Matland 1995:156). Conflict will also exist when more than one organisation see a policy as relevant to them. Top-down approach treats conflict as something that can be influenced and should be minimized. Top-down approach sees conflict as something that can be manipulated. Bottom-up approach disagrees with this, citing that policy’s conflict level cannot be manipulated because of subject matter.

Matland shows how policy ambiguity in implementation can be characterized into two categories which are ambiguity of goals and ambiguity of means. Goal ambiguity leads to misunderstanding and uncertainty and therefore to failure in implementation. Ambiguity also



affects policy means in many ways, when the technology needed to reach policy goals is not available and when uncertainties exist about roles that each organisation must play. It is important to note that the degree inherent to a policy affects the implementation process. Matland introduces us to the comprehensive model which is made up of four perspectives to better understand where each model is appropriate. The first one is the Administration Implementation: low policy ambiguity and low conflict. These are outcomes determined by resources. Administrative implementation outcomes can be achieved if there are appropriate resources. This type of decision-making theory is best suited for a rational top-down approach. This is because with rational approach, low levels of ambiguity make it easy to know exactly which actors are to be active in implementation and there is also low conflict which is ideal for top-down approach since it regards conflict as something that can be manipulated.

Moreover, there are about three types of mechanisms that can be used to ensure compliance, they are: normative; remunerative and coercive. Normative mechanisms are mostly used where there is low conflict and ambiguity; the second one is the political implementation: low policy ambiguity and high policy conflict. This is also ideal for the top-down model, since here goals are clearly defined but there exists an element of disagreement. When goals are incompatible with political implementation, outcomes are decided upon by power. In this political implementation sometimes parties will bargain in order to reach an agreement. Coercive mechanisms are mostly effective in political implementation. The third perspective is experimental implementation: high policy ambiguity and low policy conflict. Outcomes in this perspective depend on the actors involved and the contextual conditions that exist. This perspective is best suited for bottom-down approach as there is high consideration for all actors' involved and bottom-up approach is best suited in describing conditions in this category.

The last perspective is symbolic implementation: high policy ambiguity and high policy conflict is also best suited for bottom-down approach. Symbolic implementation plays an important role in confirming new goals and reaffirming old ones. Professionals play an important role; hence the association with bottom-up as it considers actors and not just the ones on top who are authoritative but all actors are intensely involved. This approach is better than other approaches in that it finds an appropriate place in implementation for each model and does not only take some parts of the model but looks at each model as whole in that particular perspective.

The third author that looks at implementation is Weimer (2005). Weimer speaks about adoption and implementation and how these two are linked. Once a decision has been made, it is adopted and then implemented; “collective decisions inherently involve cooperation. Collective decisions begin as proposals in political arenas and culminate in effects on people” (2005:261). Furthermore, adoption is a phase that begins with formulation of policy proposal and implementation phase starts with the adoption of a policy (2005). Adoption phase is where political feasibility and what determines it are considered. Political feasibility is not concerned with acceptance of policy by the people but rather concerned with feasibility of adoption of policy. Additionally, Weimer looks at political feasibility in great detail in terms of what influences political feasibility and does this by providing a checklist – it is importance to identify the relevant actors; understand the motivation and beliefs of actors; assess the resources that they have; and choose the arena where decisions are made (2005).

The three authors look at implementations and the problems that lead to implementation failures. They all try to provide ways and means to address these problems either by looking at alternative models or strengthening the adoption phase. Both Matland and Parsons approach this in a similar way even though they choose different ways of synthesizing the two approaches. Weimer on the other hand chose to look at adoption and implementation and why adoption is just as important. Implementation is complex because the goals might be clearly defined but how they are implemented is another matter as there are other actors and resources involved. Also, political influences and in some instances goals might not be well understood by all. Each approach presents a different view which does not address all the problems that lead to implementation failure.

Implementation is complex and operates on different spheres, involving many stakeholders or actors. Also implementation is dependent on available resources. Ripley and Franklin (cited in Hill and Hupe, 2002:61) maintain that “the implementation processes involve many important actors holding diffuse and competing goals who work within a context of an increasingly large and complex mix of government programs that require participants from numerous layers and units of government who are affected by powerful factors beyond their control.” Additionally for Hill and Hupe (2002:10) successful implementation means achieving the goals and objectives set out and comparing what was accomplished with what was anticipated. Policy implementation of the Children’s Act No. 38 of 2005 would be evident in proceedings and dealings that have to do with children; how the courts treat children; how the governments provide places of safety for children in need and how foster

care cases are handled. It would be evident in the smooth running of every aspect that has to do with children running according to the terms stated in the Act.

## **2.6 DEFINITION OF STREET LEVEL BUREAUCRACY**

The concept of street-level bureaucracy was first coined by Lipsky (1980), cited in Weimer and Vining (2005), who argued that policy implementation in the end comes down to the people who actually implement it. He argued that state employees should be seen as part of the policy-making community and as exercisers of political power. Street-level bureaucrats include police officers, and other individuals, who on a daily basis interact with regular citizens and provide the force behind the given rules and laws in their areas of expertise. Additionally, they include “public workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work” (Lipsky, 1980:3).

Street level bureaucrats deliver policy that is immediate and personal. By definition street level bureaucrats work at jobs characterised by a relatively high degree of discretion and regular interaction with citizens (Lipsky, 1980:27). Street level bureaucrats are often the employees of government departments who work directly with the clients or the communities, example of street level bureaucrats are teachers; police; social workers or correctional service workers. Moreover “from management’s perspective, street level bureaucrats are resource units to be applied to a task; but because of the nature of their tasks, workers experience their work situations as individuals” (1980:31).

## **2.7 CHARACTERISTICS OF STREET LEVEL BUREAUCRATS**

Observably, street level bureaucrats’ work is often under conditions where

Resources are chronically inadequate relative to the tasks workers are asked to perform; the demand for service tends to increase to meet supply; goal expectations for the agencies in which they work tend to be ambiguous; vague or conflicting; performance oriented towards goal. Achievement tends to be difficult if not impossible to measure and clients are non-voluntary (Lipsky, 1980: 27-28).

Another defining characteristic of street level bureaucrats is that they, according to Moody and Musheno (2000), tend to share common experiences and common concerns and are bound by hierarchical relationships. Furthermore, “a defining characteristic of street level work and what distinguishes it from other work at bottom of bureaucracies is the street level workers’ direct contact with citizens” (2000:334). According to Lipsky (1980), the issue of few resources in comparison to case load is another characteristic of street level bureaucracy.

It can be further observed that “street level bureaucrats often spend their work in a corrupted world of service. They believe themselves to be doing the best they can under adverse circumstances, and they develop techniques to salvage service and decision-making values within limits imposed upon them by the structure of their work” (Lipsky, 1980:xiii). This speaks to the lack of resources that street level bureaucrats are faced with and the need to make discretionary decisions. They have to come up with ways of dealing with large volumes of cases within their structures. This also shows why street level bureaucrats have to find ways to control their clients and be able to distribute what resources and time available in a fair and just way without showing favouritism.

Against the backdrop of the above, it can be argued that street level bureaucrats form a substantial part of government employees from different policy areas, who share different characteristics which include interaction with citizens or clients and the use of discretion in their jobs. Another defining characteristic of street level bureaucracies is that they are “labor intensive in the extreme. Their business is providing service through people, and operating costs of such agencies reflect their dependence upon salaried workers” (Lipsky, 1980:5).

Additionally, Alienation is another defining characteristic of the street level bureaucrats’ work. Remarkably this alienation “not only affects their commitment to jobs and clients, but, as it also affects the quality of their vocational experiences, it is a significant statement about public policy itself, considering the millions of people who are engaged in street level employment” (Lipsky, 1980:75). Alienation distinguishes the work done by street level bureaucrats from other jobs as there is the issue of discretion which street level bureaucrats have to apply in respect to the services they provide to their clients. Lipsky is further of the view that “street level bureaucrats often have relatively good relations with other workers; the peer structures in street level bureaucracies often are quite strong – street level bureaucrats work in isolation, but they seek and receive support from other workers” (1980:76). Because of the nature of their work, for example social workers will rely on the support from other colleagues as they work under conditions that are confined within their profession. They experience the same fatigue, lack of resources and having to make discretionary decisions regarding services that they offer to their clients. Street level bureaucrats are alienated not only from other workers but also from clients.

Notably “street level bureaucrats are alienated from their clients in four particular respects in that, they tend to work only in segments of the product of their work; they do not control the

outcome of their work; they do not control the raw materials of their work and they do not control the pace of their work” (Lipsky, 1980:76). This is so for social workers because in order for them to deliver some of the services they depend on others – for placement of children they depend on the court; for advertising they depend on the media; for obtaining legal placement documents they depend on the judges and courts. It is therefore not possible for the social workers to control the outcome of the case or even to know when a case will be finalised. There is always something that either hinders or fast tracks the progress of the case.

This is because street level bureaucrats work on segments and not the entire case from start to finish. In the example above, they advise; provide therapeutic services and then forward their recommendations to the courts and the courts have to decide on whether to place the child in a place of safety or keep the child with family members. Also because of the limited resources and the lack of control regarding resources, it becomes impossible for the social workers to control on how a case will conclude. Additionally, “street level bureaucrats also tend to work only on segments of the process; in the name of efficiency, convenience, or optimal utilization of resources the world of social services has become more and more specialised” (Lipsky, 1980:77).

Furthermore, “alienated work leads to dissatisfaction with the job [and] job dissatisfaction affects commitment to clients and to the agencies for which they work” (Lipsky, 1980:79). It is important to note that due to the conditions which the street level bureaucrats work, they often end up dissatisfied in their work because they are sometimes unable to fulfil the needs of clients and at the same time are faced with constraints imposed by their seniors or policies. Street level bureaucrats may end up alienated from other workers as well as from clients. Another defining characteristic of street level bureaucrats is that they “work in jobs with conflicting and ambiguous goals” (1980:79). However “agency goals may be ambiguous because they have accumulated by accretion and have never been rationalised, and it remains functional for the agency not to confront its goals conflicts” (:79).

## **2.8 THE ROLE OF STREET LEVEL BUREAUCRATS**

It is important to look at the role of street level bureaucracy in delivering or implementing public policies. Street level bureaucrats “play a critical role in citizen entitlements; either they directly provide public benefits through services or they mediate between citizens and their new but by no means secure estates. The poorer people are, the greater the influence street

level bureaucrats tend to have over them” (Lipsky, 1980:6). Furthermore, street level bureaucrats also play a dual role which is that of providing welfare and that of social control.

Another dual role is reflected in the fact that “street level bureaucrats absorb a high share of public resources and become the focus of society’s hopes for a healthy balance between provision of public services and a reasonable burden of public expenditure” (Lipsky 1980:12). Also, street level bureaucrats command a degree of expertise in some policy area (for example social workers) and workers such as teachers can and are regarded as experts in their fields because of the extensive training they received (1980).

Also street level bureaucrats also play an advocacy role where they are expected to use their knowledge, skill and position to provide the best treatment or services for the clients (Lipsky, 1980). The fact that street level bureaucrats should be advocates for clients is articulated explicitly in the professional training and canons of lawyers, doctors, social workers, teachers and others (1980). Street level bureaucracy plays a significant role in public policy making and implementation because of the direct link to the citizens. Furthermore “public policy is not best understood as made in legislatures or top floor suites of high ranking administrators, because in important it is actually made in crowded offices and daily encounters of street level workers” (Lipsky, 1980:xii). The point is that “policy conflict is not only expressed as the contention of interest groups but is also located in the struggles between individual workers and citizens who challenge or submit to client processing” (1980:xii).

Moreover street level bureaucrats play an important role in policy making because the “policy making roles of street level bureaucrats are built upon two interrelated facets of their positions: relatively high degree of discretion and relative autonomy from organisational authority” (Lipsky, 1980:3). Discretion and the issue of autonomy are the key words in illustrating how street level workers play a part in policy making. Street level bureaucrats exercise discretion in dealing with citizens and in implementing public policy. Their interaction with citizens or clients thus allows them to ‘make’ policy. Also

Street level bureaucrats are not only policy-making actors in a policy process, but to a certain extent, they are policy formers rather than implementers. The political character of this role is also implied by the fact that the tasks of street level bureaucrats depending on the policy domain ultimately involve the allocation of particular goods and services in the society (Lipsky, 1980:84).

Furthermore, according to Moody and Musheno (2000) street level bureaucrats’ decisions and actions are viewed as policy or as being equivalent to policy. Street level bureaucrats

play a role in policy making and implementation because when they deliver services, “they actualise policy” and “in this sense they are policy makers at least metaphorically” (2000:341). Street level bureaucrats work with clients and it is important to touch on the client relationship; “clients in street level bureaucracy are non-voluntary. The poorer the person the more he or she is likely to be the non-voluntary client of not one but several street level bureaucracies” (Lipsky, 1980:54). This role makes it possible for street level bureaucrats to exercise their power and to decide in some instances whether to play the role of service provider to the client or to play a control role if the situation permits because at times there are limited resources. It is because of this non-voluntary role that street level bureaucracy can exercise discretion because client has no other choices but to wait for decision of street level workers.

The street level bureaucrats are seen to be playing another role from the client’s viewpoint and according to Lipsky (1980), the roles of street level bureaucrats are extensive as the functions of government and intensively experienced, as daily routines require them to interact with the street ministers of education, dispute settlement, and health services. Collectively street level bureaucrats absorb a high share of public resources and become the focus of society’s hopes for a healthy balance between provision of public services and a reasonable burden of public expenditures” (1980:12).

### 2.8.1 ADVOCACY ROLE

According to Lipsky (1980:72) “street level bureaucrats are often expected to be more than benign and passive gatekeepers. They are also expected to be advocates, that is, to use their knowledge, skill, and position to secure for clients the best treatment or position consistent with the constraints of the service.” Also, other street level bureaucrats “display degrees of advocacy in their obligations as public servants to be responsive to the citizens who pay their salaries” (1980:72). Additionally the tension that exists is the “helping orientation of street level bureaucrats incompatible with their need to judge and control clients for bureaucratic purposes” (1980:73).

Social workers strive to advocate for the needs of their clients because that is what they are trained to do. For example where there are disasters or in a situation where a family cannot afford feeding for various reasons, social workers can dispense social relief. However, this is a temporary intervention and should not be dispensed to one family for more than three months since it is expected that the social worker will be able to assist that family to source

other means of food. At times the social workers will dispense social relief to the families even if they have already dispensed to the families regardless of the three months rule, because social workers feel compelled to dispense social relief considering the situation. Lipsky (1980:73) notes that “advocacy is incompatible with organisational perspectives” because “the organisation hoards resources, the advocates seeks their dispersal to clients. The organisation imposes tight control over resource dispersal if it can; the advocate seeks to utilize loopholes and discretionary provision to gain client benefits.”

Furthermore the advocacy role of street level bureaucrats

is incompatible with controlling clients; street level bureaucrats usually must make judgements about clients on matters unrelated to appropriate service. Advocacy is also incompatible with the responsibility of street level bureaucrats to prepare clients for presentation to other workers or other bureaucracies. One of the most substantial checks on workers who deal with clients is the social and other pressures that arise from the fact that a client is later seen and processed by still other workers or is presented to outsiders (Lipsky, 1980:73).

Social workers for example, are faced with a dilemma on daily basis as in the case of those working under child care and protection where in some instances they have to make difficult decisions concerning placement of children in place of safety of trying to preserve a family through psychosocial support services and not only that but in court proceedings involving placement of children, social workers have to provide professional advice to Judges and other institutions.

## 2.8.2 RESOURCES

Resources or lack of resources are part of the problem that is faced by street level bureaucrats. According to Lipsky (1980:29)

Resource inadequacy is not only a theoretical consideration but a highly practical one as well. This is because it appears to the public that resources are manipulable and hence subject to calculated change. There are several ways in which street level bureaucracies characteristically provide fewer resources than necessary for workers to do their jobs adequately.

Street level bureaucrats experience high caseloads in comparison to their resources and it is because of that lack of resources that street level bureaucrats have to use their discretion in services being delivered to clients. In some organisations the issue of resources cannot be solved and street level bureaucrats have to use the little resources available to them to provide services and decide who gets what.



## **2.9 STREET LEVEL BUREAUCRATS AND DISCRETION**

This section of the research paper looks at the decision making role of street level bureaucracy and how this ties in with the issue of discretion. The discretion of street level bureaucracy tends to be redistributive as well as allocative. By determining eligibility for benefits they enhance the claims of some citizens to governmental goods and services at the expense of general tax payers “and those whose claims are denied” (Lipsky, 1980:8-9). This again shows that even in decision making the street level bureaucrats exercise discretion in terms of who to give the service to and whom to deny.

There are a number of problems with street level bureaucrats and in order to understand why street level bureaucrats have to understand discretion, it is important to understand these problems. Street level bureaucrats have to deliver services to their masses with limited resources, also according to Lipsky (1980:81)

Street level bureaucrats manifestly attempt to do a good job in some way, given the limited resources at hand and the general guidance provided by the system. [Also the] street level bureaucracy work with inadequate resources in circumstances where the demand will always increase to meet the supply of services. Thus they can never be free from implications of significant constraints. With these constraints they have broad discretion with respect to utilisation of resources (by definition). They also confront uncertainties that arise from difficulties in measuring and evaluating work performances.

The core problem is the lack of resources or inadequate resources which is why in their work street level bureaucrats have to exercise discretion as well. This brings us to the issue of discretion which is the power the street level bureaucrats have in order to make decisions pertaining to their jobs.

For Lipsky (1980:9) “Street level bureaucrats are also the focus of citizen reactions because of their discretion opens up the possibility that they will respond favourably on behalf of people.” Additionally, “street level bureaucrats have considerable discretion to determine the nature and quality of benefits and sanctions (1980:9).” Moody, Musheno and Palumbo (1990) point out the dilemma of discretion in delivery because of the negative and positive aspects of such. For example social workers work in communities where the people are poor, where population growth is high and there is a high demand for their services. There are shortages in the resources and capacity available to assist these communities and social workers have to from time to time make discretionary decisions as to whom to give services to and whom can afford to wait for the services.

In the Children's Act no 38 of 2005, foster care placement is one of the services that social workers have to provide for children. Placing a child in foster care requires a court order and sometimes there are delays. Since the first priority is ensuring the child is in a safe place, social workers have to use their discretion as to whether to remove the child while waiting for the court date and place the child in a temporary place of safety or with a temporary foster parent. Also street level bureaucrats consider themselves to be professionals and according to Lipsky (1980), as such they should and are expected to exercise discretion.

Because street level bureaucrats are professionals who work with limited resources and yet have to meet the demands of citizens, it is rather important for them to have coping mechanisms and discretion is one of those mechanisms which allows them to decide what issues of clients need immediate attention. Where discretion cannot help in making decisions regarding who and what services to give to clients, there are other mechanisms that can be used as an answer to limited resources. These could be either in the form of using tricks to decrease the demand for the service, limiting information to clients regarding available services, imposing a variety of psychological costs on clients. Another strategy would be to ration services by setting priorities among tasks determined by establishing number of selected clients (Lipsky, 1980). Another coping mechanism would be to standardise or routinise work of street level bureaucrats.

Street level bureaucrats enjoy a large amount of discretion in their daily job of implementing policies and this becomes a problem when it comes to the issues of accountability, control and performance. Moody and Musheno (2000) note two roles linked to discretion - that of state agent and that of citizen agent. The state agent narrative "acknowledges the inevitability of discretion and emphasizes that this guides street level choice; street level workers use their discretion to make their work easier, safe and more rewarding" (2000:329). Discretion is acknowledged but the threat of this discretion towards democracy is problematic. On the other hand citizen agents are those

Who act in response to individual and circumstances. They do not describe what they do as contributing to policy making or even as implementing policy. They also do not describe their decision and actions as based on their views of the correctness of the rules, wisdom of the policy or accountability to any hierarchical authority or democratic principle (Moody and Musheno 2000:329).

This very view of citizen state becomes a problem when it comes to how the street level bureaucrats have to account and how their performance has to be measured.

Furthermore, Hill and Hupe (2007:280) reiterate what Lipsky says about street level bureaucrats and discretion; “street level bureaucrats necessarily have discretion and forced to use it; discretion and rules are interrelated.” Also, arguably “discretion allows them freedom of action” (2007:281). There must be a way to control discretion because as much as discretion is seen to be incompatible with democratic governance, it is something that cannot be taken away as it forms part of how street level bureaucrats perform or deliver public policy. Additionally “street level bureaucrats seek ways to manage their own work. The labour conditions under which public officials at the street level work” is characterised by some realities which necessitates their being able to exercise discretion (2007:281). Moreover, “the essence of street level bureaucracies is that they require people to make decisions about other people; street level bureaucracies have discretion because the nature of service provision calls for human judgement that cannot be programmed and which machines cannot substitute” (Lipsky, 1980:161).

In the reading *The assault on human services: bureaucratic control, accountability and the fiscal crisis*, the author argues that “bureaucratic accountability is virtually impossible to achieve among lower level workers who exercise high degree of discretion, at least where qualitative aspects of their work are involved. Nonetheless public managers are pressured to secure or improve workers accountability through manipulation of incentives and other aspects of structure (Lipsky, 1980:159). Accountability refers to patterns of behaviour and is the link between bureaucracy and democracy (1980). Administrative control should be strengthened and there must be a bureaucratic accountability policy which should have these conditions. Also “agencies must know what they want workers to do, where objectives are multiple, agencies must know how to measure workers performance, agencies must be able to compare workers to one another to establish a standard for judgement and agencies must have incentives and sanctions capable of disciplining workers” (1980:161). These conditions would be able to guide, to serve as legislative prescripts that guide street level bureaucrats because due to the nature of street level bureaucrats, it is not easy for management to exercise control as they depend upon street level workers to deliver under conditions of limited resources with high demand and have to make decisions that require discretion.

Performance measures in place will also help with how they deliver services, however in some instances it may be difficult for managers or supervisors to measure performance because of the nature of their work. It can also be noted that “street level bureaucrats’ interactions with clients tend to take place in private or beyond scrutiny of supervisor”

(Lipsky, 1980:169). Street level bureaucrats are “public actors acting in the public domain, they are held publicly accountable for the results of their work” Hupe and Hill (2007:283). And there are different types of accountability ranging from public accountability; public administrative accountability (Lipsky, 1980). Accountability is categorised into system, organisation and individual accountability. Professional accountability is when street level bureaucrats are accountable to their peers and it takes place within the organisation.

## **2.10 ACCOUNTABILITY**

Lipsky (1980:160) also argues that have argued that,

Many street-level bureaucrats use their influence over policy to serve their own interests; they change policy to make their work easier and safer or thwart, impede policy with which they do not agree rather than to serve the needs of the clients and the public. That is why bureaucracies need to find ways of improving accountability.

Accountability is the “link between bureaucracy and democracy; modern democracy depends on the accountability of bureaucracies to carry out declared policy and otherwise administer the ongoing structures of governmentally determined opportunity and regulation” (1980:160). Basically this means that even though street level bureaucrats who are implementers of policies have the discretion and freedom, they are however still accountable, given the discretion they have, they are still accountable to the public, to their superiors as well.

Lipsky (1980:160) further states that “accountability refers to patterns of behaviour. Only if a pattern of behaviour exists can predictability, and therefore accountability, exist.” This means that for accountability to exist street level bureaucracies must look into their behaviour patterns and change them in order to improve on accountability. The prerequisites to bureaucratic accountability are: agencies must know what they want workers to do; where the objectives are multiple and conflicting, agencies must be able to rank their preferences; agencies must know how to measure workers performance; agencies must be able to compare workers to one another to establish a standard for judgement and agencies must have incentives and sanctions capable of disciplining workers (Lipsky, 1980). Additionally they must be able to prevail over the incentives and sanctions that may operate” (Lipsky, 1980:161); for example in the department of social development there is a performance assessment instrument that is used to measure the performance of the social workers. This tool helps to determine whether the employee deserves a bonus or a pay progression. Each social worker is linked through this assessment tool into their performance and this in a way ensures accountability.

Hill and Hume (2007) introduce three types of accountability namely public-administrative accountability; participatory accountability and professional accountability. Here “accountability is seen as a social relationship in which an actor feels an obligation to explain and justify his conduct to some significant other” (Bovens, 1998:172 cited by Hill and Hupe, 2007). Public accountability as defined by Meijer and Bovens (2005) cited by Hill and Hume (2007), “distinguishes between accountor and an accountee. The former can be an individual or organisation”. This type of accountability distinguishes roles in terms of who is the accountee in this case being the street level bureaucrat and employer as accountor.

Moreover according to Hill and Hume (2007) Public-administrative accountability is all about accountability to the political heads. The second type of accountability is professional accountability which speaks to the accountability to the peers and how one has to account to their peers. Lastly participatory accountability is directed towards the citizens because “street level bureaucrats are held accountable in participatory citizenship” (Hill and Hume, 2007:290). It is important to note that “street level bureaucrats practice multiple accountability. In their daily contacts, co-workers and colleagues working within the same or related organisation give street level bureaucrats advice and support, accept referrals and divert their attention when necessary” (2007:291).

## **2.11 COPING MECHANISMS**

It has already been established that street level bureaucrats are faced with dilemma of having to make discretionary decisions as a result of inadequate resources and high case loads. As a result “street level bureaucrats attempt to do a good job in some way. The job however, is in a sense impossible to deal in ideal terms. How is the job to be accomplished with inadequate resources, few controls, indeterminate objectives and discouraging circumstances” (Lipsky, 1980:82)?

There are three ways of dealing with such;

First is to develop patterns of practice that tend to limit demand, maximise the utilization of available resources, and obtain client compliance over and above the procedures developed by their agencies. Second they modify their concept of their jobs, so as to lower or otherwise restrict their objectives and thus reduce the gap between available resources and achieving objectives. Third they modify their concept of the raw material with which they work-their clients –so as to make more acceptable the gap between accomplishments and objectives (Lipsky, 1980:83).

There are also different coping mechanisms that Lipsky (1980) lists and these are routines and simplifications; rationing of services where limitation of access and demand is imposed. Cost of service; time; monetary costs; withholding information and psychological costs are some of the tools that can be used to ensure that the coping mechanism mentioned above to serve to decrease service demand, do serve to ensure that the available resources will be enough for the available for the community as these tools will tend to limit the number of beneficiaries. For example, since social workers work under conditions where there are not enough resources, they too have to use some of these coping mechanisms in order to deal with caseloads. Moreover not all clients are aware of the social relief food parcels that are available to them in the situation where they are in distress and social workers do not go around telling people to come and get assistance because there are limitations in terms of resources as well as budget implications.

## **2.12 CONCLUSION**

In conclusion street level bureaucrats work in conditions that require them to make discretionary judgements. It is this discretionary judgement that enables them to implement policies, to make decisions regarding citizens and delivery of services. Street level bureaucrats play a critical role in policy making and implementation since they interact with citizens. With this discretion come problems because it becomes difficult for managers to control or to supervise street level workers. The problem being that street level workers are expected to provide services to the masses with limited resources; taking away their discretion would not work. It is the duty of the managers to find way of controlling street level bureaucrats and of ensuring that the street level bureaucrats are aware of their critical roles as policy implementers, as state agents and not as citizen agent.

Discretion tends to cloud how street level bureaucrats see themselves, it tends to give them the impression that they do not have to account and to even work to deliver to citizens or even meet demands of citizens. Because discretion becomes a problem when it interferes with democracy, control measures have to be exercised. Earlier studies have also supported Lipsky's (1980) theory on street level bureaucracy by identifying similar types of coping mechanisms or strategies across different national settings and policies. Street level bureaucrats feel an enormous workload and experience a gulf between demand and resources. It is in such situations that they use their discretion and apply various coping mechanisms which decrease clients demands for services, ration resources, routinize work by classifying clients in standards; categories and also using rule of thumb for processing these categories

including creaming. Other methods that are applied include controlling clients, modifying policy objectives and developing cynical perceptions of clients. These mechanisms however seem to distort the implementation of social policy.

The identification of these coping mechanisms across different spectrums implies a strong support for the relevance and generalization of street level bureaucracy theory. The street level bureaucracy theory shows the attitude of street level bureaucrats and how important it is in explaining discretionary behaviour in terms of coping as compared to the actual resources. It is also important to note that subjective capacity is more important than objective capacity in reducing coping as an alternative.

Even though Lipsky (1980) does not necessarily speak of political control, the relevant kind of political control in relation to street level bureaucrats' behaviour at the local level is the extent to which the behaviour of street level bureaucrat reflects policy preferences of their supporters, in this case being the politicians. Although Lipsky's theory of street level bureaucracy seems relevant in many different policy areas, it is best suited for the social policies then regulatory policies. The demand among clients outweighs the resources and the supply of social services. Social policies are most often characterised by weak clients whom street level bureaucrats can easily dominate or influence, target group of regulatory policies are often much more powerful.

The street level bureaucracy framework is relevant in the study on implementation analysis of Children's act no 38 of 2005 because social workers are implementers of the Act. The street level bureaucracy framework is most relevant as it recognises the working conditions of the street level bureaucrats and in this case those are the social workers. They have huge cases but the resources and budget is scarce. This theoretical framework is also relevant because "a defining characteristic of street level work and what distinguishes it from other work at the bottom of bureaucracies is the street level worker's direct contact with citizens" (Moody and Musheno, 2000:334). Additionally Social workers deal directly with clients within communities and therefore this makes this framework relevant to the study. Not only that but the study focuses on the implementation of the Children's act no 38 of 2005 and as such this theoretical framework is relevant because street level bureaucrats are seen a policy implementers of this Act.

## Chapter 3

### CASE STUDY AND FINDINGS



Figure 2: *uMzinyathi District municipality map* (South African Local Government Website, 2015).

### 3.1 INTRODUCTION

This chapter examines the Children’s Act no 38 of 2005 and its implementation at uMzinyathi District. uMzinyathi District is one of the districts under Midlands Cluster with six service offices, one facility (a Child and Youth Care Centre) and two one stop development centres. These offices and facilities are located in both rural and urban areas within uMzinyathi district. This chapter identifies and analyses some of the key implementation issues that have emerged and what some of the consequences are. The chapter will look at 4 offices within uMzinyathi district, two from rural and two from urban part of uMzinyathi. The chapter starts by looking at the role of the Department of Social Development in foster care issues which includes: how cases are handled in court; processes with prospective foster parents; and the role of Social Workers in the placement of children in need of foster care placement.



The vision of the department is that of “a caring and self-reliant society” and the mission of the department is to “transform our society by building conscious and capable citizens through the provision of integrated social development services” (Annual Performance Plan, 2014-2015). The department of social development caters for the needs of society by providing integrated services and this is done in collaboration with other stakeholders namely: nonprofit organisations and other departments that deal with the provision of services to different vulnerable families and people including older persons, persons with disabilities, etc.

There are a number of legislative mandates and documents that guide the department in the above task; the first of these documents is the Constitution.

### 3.1.1 THE CONSTITUTION

The Department of Social Development gets its core mandate from the South African Constitution under Section 27 (1) (c) which provides for the right of access to appropriate social assistance to those unable to support themselves and their dependents. Section 28 (1) of the Constitution also sets rights for the children regarding appropriate care, nutrition, shelter, health care and social services. Also Section 4 further identifies welfare services and population development as one of the functional areas (Constitution of the Republic of South Africa, 1996).

### 3.1.2 OTHER LEGISLATIVE PRESCRIPTS

There are about 18 other legislative prescripts that form part of legislative framework of the department of social development as listed in the Annual Performance Plan (2014-2015), and they are:

- The National Welfare Act, 1978 (Act No. 100 of 1978)

The Act aims to provide for the establishment and constitution of a South African Welfare Council; regional welfare boards and certain committees; it also seeks to define their powers and functions as well as to provide for welfare programmes and for the registration of welfare organizations; and to provide for incidental matters (National Welfare Act 100 Of 1978, 1). This is relevant to this research study because street level bureaucrats (which are Social Workers in this instance in the department of Social Development) fall under Welfare sector and according to this Act, Social Workers have to adhere to the rules of the council, and the Welfare council has to

ensure that certain policies are adhered to in order to promote social stability and regulate registration of welfare organisations.

- Social Services Professions Act (Act No. 110 of 1978)

The Act provides “for the establishment of a South African Council for Social Service Professions; to define its powers and functions; for the registration of social workers, student social workers, social auxiliary workers and persons practicing other professions in respect of which professional boards have been established and for control over the professions regulated under this Act; and for incidental matters” (Social Service Professions Act 110 Of 1978, 1). This Act is relevant in that each and every Social worker or auxiliary worker within the department is required to register with the Council in order to practise as a professional and every year there is a requirement to renew with the Council. If one fails to do this, he/she is not allowed to practice as either a Social Worker or Social Auxiliary Worker.

- Children’s Act, 2005 (Act No. 38 of 2005)

The Act “gives effect to the rights of children contained in the Constitution. It also sets out principles relating to the care and protection of children by defining parental roles and responsibilities. The Act also covers amongst others, issues relating to early childhood development; children in alternative care and foster care” (Children’s Act No. 38 of 2005). It is pertinent to underscore that the current study is concerned mostly with the issue of alternative and foster care which forms part of this Act. -

- Children’s Amendment Act, 2007 (Act No. 41 of 2007)

The aim of this Act is “to amend the Children's Act, 2005, so as to insert certain definitions; to provide for partial care of children; to provide for early childhood development; to make further provision regarding the protection of children; to provide for prevention and early intervention; to provide for children in alternative care; to provide for foster care; to provide for child and youth care centres and drop-in centres; and to create certain new offences relating to children; and to provide for matters connected therewith.” The relevance is in the emphasis on the care and protection of children and it includes foster care placement which the current research is about.

- Child Justice Act (Act No. 75 of 2008)

The aim of the Act is “to establish a criminal justice system for children, who are in conflict with the law and are accused of committing offences, in accordance with the values underpinning the Constitution and the international obligations of the Republic and also to provide for the minimum age of criminal capacity of children” (Child Justice Act (Act No. 75 of 2008). This Act in summary stipulates that even though a child may have committed a crime or be accused of such, they still need to be protected as they are still children and still vulnerable therefore needed to be treated differently to adult criminals.

The above-mentioned are some of the legislative mandates that are relevant to the department and they work together in guiding the department as well as other stakeholders in how they should deliver the services to the community as well as ensure that everyone has access to these services and promote integration within departments. The department of Social Development for example does not work alone in placing children under foster care, Department of Justice; South African Social Security Agency (SASSA); Department of Health and Social Development, all work together in ensuring that the placement of children is a smooth process.

### 3.2 CUSTOMER SERVICE CHARTER

The department of Social Development has about 6 service clusters which reflect Batho Pele principles. These service clusters are listed in the Annual Report (2011/2012) of the department of Social Development. These are:

Name of Service Cluster	List of Services
Youth	Treatment of substance abuse Counselling Legal and court services Skills training Internship
Women	Shelters for abused women Victim Empowerment Counseling Skills Training and development
Older Persons	Grants Residential Care' Service centres

Persons with Disabilities	Disability grant Residential Care Service Centres Skills training and development
Children and Families	Child grants Grant-in-aid Adoption Services Foster care Children's Home' Child protection services Skills training and development Family support services
Organisations and Communities	Registration, funding and training Internships Assistance and setting up Early childhood Development Research and development

Table 2: *Service Cluster* (DSD Annual Report, 2011/2012)

### 3.3 SITUATIONAL ANALYSES DEPARTMENT OF SOCIAL DEVELOPMENT

According to the population statistics in the Annual Performance Plan (2014-2015), KwaZulu-Natal has a population of about 10, 2 million with about 2, 3 million households. According to the statistical report in the Departments Annual Performance Plan (2014-2015) the population is distributed as follows:

### 3.4 POPULATION STATISTICS

Name of District	Total number of population
EThekwini Metro	3, 468 824
Harry Gwala	500 211
ILembe	528 525
UThungulu	894 372
UMkhanyakude	614 074
Zululand	902 668
Amajuba	442 077
UMzinyathi	495 791
UThukela	715 184
UMgungundlovu	988 553

Ugu	709 949
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Table 3: *KZN Population Statistics* (DSD Annual Performance Plan Report, 2014/2015)

According to the population statistics, uMzinyathi district has the second lowest population in KwaZulu-Natal and this has implications in terms of how resources are distributed and how budget is allocated (Annual Performance Plan, 2014/2015). According to the population statistics, mortality rate also has an impact on the allocation of resources and in KwaZulu Natal, as a result of HIV/Aids prevalence, a prevalence of 26,2 compared to the 18,3 % prevalence rate in the country.

The total death rate as a result of AIDS is said to be 57% in KwaZulu-Natal and 47% for South Africa while life expectancy is at 43 years in KwaZulu-Natal and 51 years of age in South Africa. This brings to the attention the issue of foster care. With KwaZulu-Natal having a high rate of deaths due to HIV/AIDS, this gives rise to high cases of children in need of foster care placements. Because of such high rate of deaths, most children are left orphaned and vulnerable and in need of care and protection. The death rate increases the number of children that are left orphaned and vulnerable. This puts pressure on the system and there is a demand for children to be placed on foster care as a result of deaths due to HIV/AIDS, some children need to be placed in foster care urgently. Furthermore the HIV and AIDS statistics indicate that UMzinyathi Cluster had a prevalence rate of 29, 2%. As a result of HIV/AIDS prevalence KwaZulu-Natal has the highest number of children receiving social grants in the form of support as well as foster care grant.

Furthermore, according to the Department of Social Developments Annual Performance Plan (2014/2015) the latest available statistics indicate that 133 052 children were receiving foster care grant. This is following from one of the mandates as stipulated in the Children's Act, 2005 Act No. 38 of 2005, which establishes that the department of social development must provide care and protection to children in need of care and foster care as one of those services.

Poverty is another aspect that gives one a clear picture of UMzinyathi district that even though it is the second lowest in terms of population, it has however one of the highest number of population affected by hunger . According to the statistics found in the Department of Social Developments Performance Plan (2014/2015), uMzinyathi has 40% of people with a monthly of R400 and R800. Also according to the statistics, districts that are

regarded as rural like uMzinyathi are more dependent on government than other districts because of high unemployment rate as well as high poverty levels.

The Children’s Act No 38 of 2005 is part of a body of legislation that exists to protect children and guide those who deal with children’s issues. This is an important piece of legislature that is to be used in children’s’ courts and by everyone who is dealing with children. The legislation helps recipients to understand and interpret concepts, follow procedures since the issues that are dealt with are of a sensitive nature and pertain to the care and protection of children, early intervention and family issues. The Children’s Act consists of 22 chapters which stipulate how the Act should be interpreted; the objectives of the act; how the Act should be applied and implemented. The Act also unpacks the parental responsibilities and rights; how the children’s courts work as well as the court proceedings.

### **3.5 BREAKDOWN OF CHILDREN’S ACT NO 38 OF 2005**

The Children’s Act No 38 of 2005 is divided into different chapters. The Act has a section on how it should be interpreted, objectives of the Act, how it should be implemented. The Act also unpacks the parental responsibilities and rights as well as how the children’s court work. Below is a breakdown of the Chapters in the Children’s Act No 38 of 2005.

<b>item</b>	<b>Chapter</b>	<b>Topics covered</b>
1	Chapters 7 and 9	These chapters cover protection of children where the national protection register is discussed in full as well as what protective measures are there relating to health of children.
2	Chapter 9	This chapter of the Act discusses in detail children in need of care and protection and this chapter covers identification of children in need of protection, those that have to be removed into a place of safety. This chapter also covers the court processes relating to the removal of a child from their home to a place of safety; how to obtain a court order and duration of court orders.
3	Chapters 10; 15 and 16	These Chapters of the Act cover the contribution order; adoption as well as inter-country adoption.

4	Chapter 17 and 18	These Chapters of the Act talk about crimes or acts committed to children. Chapter 17 talks about child abduction and chapter 18 deals with trafficking of children and what should courts do in such instances. These chapters also define abduction and trafficking in relation to abduction by a parent; guardian or any other person with parental responsibility towards a child. Chapter 18 covers surrogate motherhood.
	Chapter 20	This Chapter covers enforcement of the Act in terms of how places of care for the children should comply and be registered with the Department of Social Development. This chapter specifies how child and youth care centre; partial care facilities, shelters and drop in centres should be inspected.
	Chapter 21 and 22.	Respectively these chapters deal with administration of the Act where the delegation and duties of the Minister; MECs of Social development; provincial heads of Social development and Director-General. The final chapter 22 deals with all other matters relating to the amendment of laws and transitional matters.

Table 4: *Breakdown of Children’s Act No. 38 of 2005*

### **3.6 OBJECTIVES OF CHILDREN’S ACT NO. 38 OF 2005**

The objectives of the Children’s Act No. 38 of 2005 as stated in the Act itself are to “promote the preservation and strengthening of families; to give effect to the constitutional rights of children which are family care or parental care or appropriate alternative when a child is removed from family environment; social services; protection from maltreatment ,neglect ,abuse or degradation and to ensure the bests interests of a child are of paramount importance in every matter concerning the child.”

The other objectives of the Act as stated are to “make provision for structures, services and means for promoting and monitoring the sound physical, psychological intellectual, emotional and social development of children; to strengthen and develop community structures which can assist in providing care and protection for the children.”

Moreover the Act also stipulates “the protection of children from discrimination, exploitation and any other physical, emotional or moral harm or hazards; to provide care and protection to children; to provide care and protection to children who are in need of care and protection; to

recognise the special needs that children with disabilities may have and generally to promote the protection, development and well-being of children.”

Furthermore, the Children’s Act No. 38 of 2005 document states how the Act must be implemented. According to document, “the Act must be implemented by organs of state in the national, provincial and, where applicable, local spheres of government subject to any specific section of this Act and regulations allocating roles and responsibilities in an integrated coordinated and uniform manner.” In the implementation of this Act “local spheres of government in the implementation of this Act, take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act.”

This research looks at the Social Workers and their role in implementation as stated in the Act; the Act is to be implemented by all organs of the state, at national, provincial and local spheres. This study particularly looks at the implementation processes at uMzinyathi district as this district has offices that are situated in rural and urban area. This factor is important as it allows the study to show whether or not the area that the offices are situated in, has any impact on how the Act is implemented. The Children’s Act No. 38 of 2005 needed to be implemented by street level bureaucrats and in implementing it, they would exercise their discretion. We can observe that “street level bureaucrats are public workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in execution of their work” (Lipsky, 1980:3).

The street level bureaucrats are the employees in government departments who work directly with clients in communities; they implement the policies and Acts at this level because of their involvement with clients. The street level bureaucrats would be Teachers, Police, Social Workers or Correctional service workers. This is a relevant theoretical framework because the Children’s Act No 38 of 2005 is implemented by street level bureaucrats and the issue of discretion becomes problematic when they have to make decisions on who to get service and who should not.

Remarkably street level bureaucrats deliver a policy is immediate and personal; “by definition street level bureaucrats work at jobs characterised by relatively high degree of discretion and regular interaction with citizens (Lipsky, 1980:27). Street level bureaucrats “play a critical role in citizen entitlements either they directly provide public benefits through services or they mediate between citizens and their new but by no means secure estates” (Lipsky 1980:6). Street level bureaucrats have a role to play in the implementation of policies



because they command a degree of expertise in some policy area (Lipsky 1980). For example Social Workers can and are regarded as experts in their field because of the intense training they have received.

Lipsky (1980) further states that “policy making roles of street level bureaucrats are built upon two interrelated facets of their positions: relatively high degree of discretion and relative autonomy from organisational authority” (Lipsky, 1980:13). Discretion and autonomy are the key words that best characterises the role that street level bureaucrats play in policy making.

The Children’s Act No. 38 of 2005 document states the inter-sectoral implementation of the Act. According to the document “all organs of state in the national, provincial and where applicable, local spheres of government involved with the care, protection and well-being of children must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to children.”

### **3.7 FOSTER CARE: CHAPTER 12**

This section of the Act talks about foster care; it looks at the processes that should be followed by Social Workers or Officials that deal with placement of children in foster care or renewal of placement. The Act is very specific about how foster care cases should be handled and it unpacks the processes, the roles of all actors involved. According to the Act foster care is defines as “a child is in foster care if the child has been placed in the care of a person who is not the parent or guardian of the child as a result of an order of a children’s court or a transfer in terms of section 171 and it excludes the placement of a child in temporary safe care or in the care of a child and youth care centre” (Children’s Act No. 38 of 2005: Chapter 12).

The Act also stipulates clearly the purpose of foster care which is to protect and nurture a child by providing a safe environment; promote the goals of permanency planning and connecting the child to nurturing family relationships intended to last a lifetime. Basically the Act unpacks why a child should be placed in foster care and the role of the Social workers in coordinating the placement by compiling reports, providing supervision and support during court proceedings. The role of a Social Worker in placing a child in foster care is critical and is in line with one of constitutional rights of a child in that a child has a right to “family care or parental care , or to appropriate alternative care when removed from the family environment” (The Constitution, Chapter 2 section 28 (1)).

It is a legislative mandate of the department to ensure the constitutional rights of children and Social Workers in the department must ensure this. The department has in the few years embarked on the project of capacitating Social Workers on the on the Children's Act No. 38 of 2005: Chapter 12. According to the Annual report for 2013/14 the department managed to capacitate 234 social workers on the children's Act, Foster Care regulations as well as the Adoption and Draft Guidelines for registration of Child and Youth care centres" (Annual Report 2013/2014).

### **3. 8 POLICY IMPLEMENTATION ISSUES**

A number of issues or problems were uncovered from field work research conducted in uMzinyathi District regarding the implementation of the Children's Act no 38 of 2005. Below is a list of questions that were asked during the group interviews, individual interviews as well as other consultations with district management in uMzinyathi. A summary of responses have been documented below. These are the questions;

- Are you in possession of a copy of Children's Act no 38 of 2005?
- Who are the street level bureaucrats involved in the implementation of Children's Act no 38 of 2005?
- What is the Role of actors in the implementation of Children's Act no 38 of 2005, foster care?
- What implementation issues were encountered by street level bureaucrats involved in implementation?
- What strategies are put in place to implement the Act in uMzinyathi District?
- What Challenges and successes related to implementation of the Act?
- How may the implementation issues be resolved?

#### **3.8.1 POSSESSION OF A COPY OF CHILDREN'S ACT NO 38 OF 2005**

The Act is an important legislative prescript and provides guidelines and definitions. It is important that each and every Social worker has a copy and is capacitated on the Act in order to ensure that cases are handled properly and appropriately. The Act also helps in differentiating between different types of services and how each service is to be executed for example the Act is very specific in terms of what foster care is and what alternative care is. It

is thus very important that social workers have a copy of the Act at all times. Social Workers in the department have copies of the Act with the exception of a few and most have been capacitated on the Act. Most Social workers have and agree that they possess a copy of the Act.

Questionnaires were sent out and based on the responses; the findings show that of the 30 Social workers that responded, only two do not possess a copy of the Act. And of the group session held with 6 Social workers that work as foster care coordinators, it was found that they always ensure that new Social workers in the department attend induction workshop and during that workshop, everyone is issued a copy of all relevant legislative prescripts. The two Social Workers interviewed without copies (one from Glencoe Service Office and one from uMsinga Service Office) will be included in the induction workshops scheduled for the upcoming financial year 2015/2016.

### 3.8.2 WHO ARE THE STREET LEVEL BUREAUCRATS INVOLVED IN THE IMPLEMENTATION OF CHILDREN'S ACT NO 38 OF 2005

The Act is very clear on who the actors are and it is stated in the Act that “the Act must be implemented by organs of state in the national, provincial and, where applicable, local spheres of government subject to any specific section” (Children’s Act no 38 of 2005 Chapter 1, section 4). All the Social workers as well as Management have responded to this question by confirming that they are all aware that the Act is implemented by different actors from different departments. There were no different responses regarding who is involved in the implementation of the Act.

According to the research findings, the actors involved in the implementation of the Act are the department of social development; department of justice; department of health; department of economic development; South African police service, NPOs. It is basically all the government and non-government departments certified to work with children. According to Montjoy and O’ Toole (1979:465) most mandates require more than one agency to implement a policy.

Based on the findings, it means that in most instances for a policy implementation is not the task of a sole agency; more are involved and with more agencies involved, it must be kept in mind that these individuals within “have their own values and seek to attain these within limits of human abilities to absorb and process information” (Simon, 1957). According to Montjoy and Toole (1979) these individuals that form part of agencies usually have

similarities in terms of their beliefs and preferences and mostly share organisations beliefs as well.

### 3.8.3 ROLE OF ACTORS IN THE IMPLEMENTATION OF CHILDREN'S ACT NO 38 OF 2005, FOSTER CARE

The Act unpacks the roles and responsibilities of a professional dealing with children and in section 62 of the Act, it is stated that professional reports are required by the courts. The question is: what are they required for? The Foster Care Act section 184, states that “before a children’s court places a child in foster care by court order in terms of section 156, the court must consider a report by a designated social worker about, the cultural, religious and linguistic background of the child and the availability of a suitable person with a similar background to that of the child who is willing and able to provide foster care to the child” (Children’s Act no 38 of 2005, Foster Care, section 184 (1)). Social workers in uMzinyathi have to, according to the Act interpret, educate and implement the Act. They are also required to ensure that all reports and decisions follow the guidelines as stated in the Act.

Responses from interviews unpack the role of actors involved in implementation. These roles include being an interpreter, educator, report writer, attending court proceedings and providing Counseling for children and families involved in foster care placement. Every Social worker that was interviewed and completed the questionnaire stated that they have to conduct visits to first ascertain that the child is indeed in need of foster care placement, thereafter a care plan is formulated for each child or children involved. The Social worker has to write a report that is required by the courts in foster care placement cases and not only that but the Social workers are also required to be present during the court proceedings and to testify as well.

According to the research findings all the Social Workers are aware of their roles however a representative from Social Services at District level did state that sometimes even though everyone is aware of their roles and responsibilities, the quality of the professional reports is sometimes not satisfactory and cannot be used in court which delays the placement. The respondents at District level further stated that the quality of investigations conducted by some of the Social workers does compromise the foster care cases and thus delaying the process of placement. The quality of Social Workers reports is important in court as it helps the Magistrate take decisions regarding placement. The report carries information from inception of foster care investigation to situational analysis and all details pertaining to the

case and who has been identified as foster care parent. These reports are important because decisions made regarding placement of the child depend on a full descriptive report because a child has to be placed with someone that is trustworthy and capable of being a parent to the child. However District Management confirms that everyone is aware of their roles and responsible with the exception of the social workers that have been newly appointed and have not gone through the induction process and those that have been inducted but are still not familiar with the processes.

#### 3.8.4 IMPLEMENTATION ISSUES ENCOUNTERED BY STREET LEVEL BUREAUCRATS INVOLVED IN IMPLEMENTATION

The Act is very clear in terms of what should be implemented, who should implement and how. Social workers at uMzinyathi have been capacitated but research findings through questionnaires and interviews conducted show that some chapters in the Act have been misinterpreted by other implementing stakeholders. In terms of foster care, it has been found that budget allocation is not enough for publication of the names of children to be placed under foster care. According to the findings from questionnaires, the issue of unabridged birth certificates, lack of training and resources are also delaying the process. Also the Act apparently clashes and tend to go against other legislations for example the legislation passed on termination of pregnancy and the age stipulated thereof, gives children the right to terminate without the consent of parent regardless of the child's reasoning capacity. This law also prevents the role players from protecting the life of an unborn child.

A Senior Official who is a Manager in one of the selected offices felt that since there is a Child Protection Week and other awareness campaigns that take place in the District, these awareness or events can be used to workshop and capacitate the communities as well as Officials on the sections of the Act that speak to foster care.

Also a Social Worker from in uMsinga cited that there are large volumes of backlogs in the foster care placements as a result of the processes that have to be followed; there are not enough Social Work Supervisors to cover all the Social Workers that have to investigate the cases. The lack of staff; resources in terms of motor vehicles needed to conduct visits; delays at the Home Affairs when applying for unabridged birth certificates and misinterpretation of the Act by some Officials are some of the reasons cited by the Social Worker in uMsinga Office.

At District level, through a group session with Management, issues pertaining to the unfilled funded posts for Social Worker Supervisors as well as limited state vehicles and budget are the most critical issues that are affecting the cases from being finalised in due course and this has resulted in foster care backlog. Notably, this compromises the placement of children and therefore affects implementation of the Act, foster care.

### 3.8.5 STRATEGIES PUT IN PLACE TO IMPLEMENT THE ACT IN UMZINYATHI DISTRICT

According to the District Manager and Management team, Social workers go through induction process where they are capacitated and given copies of all relevant Acts. This was further confirmed by all Social workers during one of the group sessions. UMzinyathi district has put in place capacity building workshops to ensure that every Social worker that is employed by the department is capacitated. There are in-service workshops held as well and there are guidelines put in place for Social workers who work in foster care places. When new social workers are employed in the department, they go through induction processes where they are given all the legislative prescripts that the department is mandated. There are also norms and standards that are put in place to guide social workers in terms of case load and proceedings. Based on findings the induction workshops are effective and as a result all Social workers that were interviewed have a clear understanding of the Act and follow all processes.

### 3.8.6 CHALLENGES AND SUCCESSES

In the group sessions held with District Management in uMzinyathi, they acknowledge that the implementation of the Act has been a success even though there have been a few challenges. The challenges that were cited regarding the Act range from lack of resources; limited budget as well as interpretation of the Act by other stakeholders. The district has been successful in implementing the Act in terms of understanding the Act, interpreting the Act and capacitating everyone who is involved with children.

There were a few challenges encountered which have to do with implementation. The identified challenges range from delayed publication; unabridged birth certificates; shortage of vehicles and other necessary resources, court proceedings that get delayed and misunderstanding of the Act by some stakeholders. UMzinyathi District needs to strengthen capacity building workshops and ensure that every Social worker has a copy of the Act. In uMsinga service office the area is too wide and there are a few vehicles and the Social

workers felt there should be more vehicles so they can be able to conduct investigations properly and also be able to cover the wide area under their jurisdiction.

Another challenge identified during the group discussion with uMzinyathi District Management in uMsinga service Office and Nquthu Service office is that there are more than 15 Social Workers in each office and only one Supervisor per Office which is a problem. This is because each and every foster care case has to be looked at by the Supervisor before it goes to court; lack of personnel will obviously lead to delays in the process. The District has to ensure that all critical posts are filled in order to accelerate the placement of children in foster care.

### 3.8.7 HOW MAY THE IMPLEMENTATION ISSUES BE RESOLVED?

According to research findings, a few implementation issues have been identified and they all have to do with lack of resources and these can be resolved by reallocation of budget. Some of the problems with implementation of the Act have to do with misinterpretation and according to the Social workers in UMzinyathi district they should be involved when the Act is formulated and the Act must be reviewed again in order to address issues of contradiction between the Act and other legislations.

The Social workers that were interviewed indicated that implementation issues can be solved through budget reallocation as one of the challenges is that of lack of budget. Management at uMzinyathi district indicated that more budget must be allocated to foster care placement and reviews. Foster care placements have to be reviewed every two years and new placements take time to go to court. Some of the Social workers feel the Act needs to be reviewed in order to cover everything and not to contradict other legislation.

## 3.9 CONCLUSION

The Children's Act no 38 of 2005, Chapter 12 stipulates how foster care case have to be handled. The Act first defines what foster care consists of; purpose of foster care; and who can be considered as prospective foster care parent. It further talks of cluster foster care and how to determine placement of a child in foster care. The Act also specifies the number of children to be placed in foster care per household. It also states the duration of foster care placement as well as address the issue of reunification of child with a biological parent. Additionally the Act states the responsibilities and rights of foster parent and how foster care should be terminated. Though the Act is specific in terms of how foster care should be

handled and even stipulates the case load per social worker, however these are not always met as there are problems with resources and court proceedings.

The district must put monitoring systems to ensure that cases follow the guidelines as stipulated in the Act, not only that but budget reallocation is another thing that the district can look at as there are delays in court proceedings as well as in the publication of cases. The district is aware of such problems that exist that prevent the Act to be implemented accordingly.

The department has put in place programme specialist, in the case of foster care; someone is responsible for Children in which foster care falls under. The Programme Manager is responsible for ensuring that the stipulated guidelines are followed by conducting monitoring of cases where they look at how many cases Social workers are able to complete within a month and how many cases have lapsed but due to the fact that there is a staff shortage sometimes it is not possible to monitor all offices. There are systems in place but they need to be strengthened, challenges need to be addressed.

The Act serves as a guideline however because the Children's Act is a top down approach which stipulates the roles of Social workers at the lower level of implementation. According to Parsons and Sabatier's implementation theory, the more layers there are in the process of implementation process, the more difficult it is to implement which is why some of the Social workers felt that they should get involved at the beginning when policy is being formulated as they feel there are gaps.

Additionally there have been difficulties regarding conversion of public policy into action and these difficulties exist mostly in the implementation phase. This affirms Montjoy and O' Toole (1979:465) view that "Governmental programs are normally implemented by organisations, so it may be useful to conceptualize implementation as an organizational problem, one to which organization theory applies."



## Chapter 4

### DISCUSSION AND CONCLUSION

Chapter one looked briefly at public policy and implementation issues relating to public policy. The research paper concludes by looking at certain aspects that are significant in analysing issues that have been raised regarding the implementation of South African Children's Act Chapter 12, Foster Care. The issues that have been raised include:

- The importance of involving everyone concerned in the formulation of a policy, basically applying a bottom-up and top-down approach.
- The need to support policy with relevant structures and systems for successful implementation
- The need to strengthen monitoring and evaluation systems

The case study has shown that uMzinyathi district needs to capacitate all employees on the Act and ensure that every official possesses a copy of the Act. Although the Act is clear in terms of definitions, roles and responsibilities, however successful implementation becomes difficult as a result of the involvement of other actors who in some instances misinterpret the Act.

Also, the guidelines in the Act regarding foster care are explicit, however the lack of resources, staff compliment and turnaround time at courts, make it impossible for a successful implementation. UMzinyathi district has capacitated some of the employees but due to shortage of staff, they are not able to monitor the implementation of the Act.

UMzinyathi district has adopted the Act and all other legislative mandates and even have norms and standards developed within that support and compliment the implementation of foster care. Even though these guidelines, norms and standards are there, sometimes there are difficulties regarding the implementation. As reported, some social workers have voiced out their opinion that the Act utilizes a top down approach and they are not consulted but are expected to implement. Social workers have limited resources yet are expected to perform.

The issue of budget is also a very important aspect considering that how the budget is allocated depends on the size of the population regardless of the area where these offices are situated. UMzinyathi has the least of the budget yet is in need of more resources since some

offices are in the villages, away from civilization; which means even their court processes are not the same and gets delayed oftentimes.

According to Montjoy and O'Toole (1979:466) there are two characteristics for mandates, specificity and resources. "Mandates may be either specific or vague as to the expected administrative actions and they may or may not provide new resources." In the case of the Children's Act, chapter 12, the Act is specific however there are no resources to carry it through.

As stated above that implementation of the Act is a responsibility of many and not limited to Social workers at uMzinyathi. Brinkerhoff and Crosby (2002:85) give us a view on inter-organisational policy implementation; 'the key features of policy implementation is that it is multi-organisational, rarely does a single agency carry out all the tasks associated with implementation.' The problem with the number of actors involved in the implementation is that some are capacitated and some are not; hence sometimes there are conflicting ideas and beliefs between the actors. However involvement of different actors in the implementation is a good thing, in that with the limited resources and shortage of staff, the involvement of NPOs helps close the gaps as they mostly have resources and additional staff to help with case load. Notably, 'increased participation of Civil Society groups and beneficiaries in policy implementation partnerships can be one of the means by which accountability, transparency and responsiveness features of democratic governance are operationalized and reinforced' (2002:88).

Another issue emphasized is that of monitoring the implementation of the Act, which should be done at regular basis and at the moment is not taking place all the time due to shortage of staff. Monitoring reports are produced on a quarterly basis but no personnel takes the responsibility of analysing and verifying the information and according to one of the Supervisors in Glencoe service offices, this is the reason why there is so much backlog when it comes to foster care cases. Some court orders have lapsed and no one was monitoring them and on top of that there are also new cases that are still not finalized.

According to the social worker supervisor, the department must strengthen the partnerships with other departments; ensure that capacity workshops include other actors outside of social development involved in implementation and most importantly monitor case load on monthly basis.

The data collected from the offices in uMzinyathi district show that most of the officials are well capacitated on the Act but share the same sentiments that limited resources; weak monitoring systems; not being involved in the formulation of the Act; misinterpretation of some aspects of the Act by other departments and NGOs have contributed to the Act not implemented properly hence the delay in publications and cases lapse.

According to the findings it is evident that social workers have to play an advocacy role, and this agrees with the view from literature that street level bureaucrats “also display degrees of advocacy in their obligations as public servants to be responsive to the citizens who pay their salaries” (Lipsky 1980:73). Social workers have to, in the case of children, advocate, look out for care and protection of children and ensure that a child is placed regardless of budget issues or any challenges encountered. Social workers advocate for well-being of children and their families and in some instances have to place children in place of safety or foster care without court orders if the situation calls for it. Based on findings under role of actors, it is clear what role the Social Workers play in foster care cases; the roles include conducting visits; providing reports at court; counseling and supporting children in court.

Social workers have to use their discretion as well. According to the findings from research questions, social workers have stated that there are not enough resources to implement the Act properly but there is a need for services. Discretion allows social workers to make decisions and determine the nature and quality of benefits to be given to clients; discretion also allows them to be able to determine who should receive services. Child protection is priority for the department of social development, it is therefore important to social workers to exercise discretion when dealing with child foster care placement cases. The resources may be limited, the delays in the application of unabridged birth certificates, delays in court proceedings may be there but social workers concerned have to exercise their discretion in deciding whether to remove the child immediately and place them in a place of safety or if they should place the child with nominated foster care parent whilst waiting for the proceedings to unfold. The care and protection of every child rests on the shoulders of the social workers’ ability to exercise their discretion.

#### **4.1 CONCLUSION**

The Department of Social Development in the province has demonstrated that there is a will and commitment to realise the legislative mandate as stipulated in the Act. However when conducting the case study, it was discovered that there are limitations which were not

accounted for in the Act and these included budgetary constraints, shortage of qualified staff, lack of supervision, lack of proper structures and difficulties dealing with other stakeholders in implementing the Act.

It has been mentioned in the previous chapter that “mandates require the efforts of two or more agencies for implementation” (Montjoy and O’ Toole, 1984:492). Additionally “converting policy intention into action requires that those charged with execution cooperate toward the achievement of the policy” (1984:492). It is important to have some form of coordination, some form of authority needs to be exercised and the different participants in this process need to share some common interest (:493).

Against the backdrop of the above, it is recommended that the district looks at budget reallocation; ensure that everyone is capacitated and to strengthen partnerships with other stakeholders involved in the implementation process. There is also need to have more capacity building workshops and monthly meetings where case load is discussed and monitoring reports are discussed.

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