
ADOLESCENTS' RIGHT TO PARTICIPATE DURING STATUTORY INTERVENTION

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ABSTRACT

Social work practice remains concerned about the widespread human rights abuses and the exclusion of children's voices during statutory intervention. As stipulated by The United Nations Convention on the Rights of the Child (1994), confirmed by The African Charter on the Rights and Welfare of the Child (1999) and the Children's Act (Section 10, 38 of 2005), it is of paramount importance that the child, which includes the adolescent, must experience freedom of expression as well as the right to be heard during statutory proceedings. However, it is argued that despite the national and international focus on the importance of child participation, the question remains if children do understand and receive the opportunity to participate in practise. This article reflects on adolescents' understanding and experiences of their right to participate during statutory intervention.

Key words:

participation, human rights, adolescent, statutory intervention

INTRODUCTION

Children are entitled to the rights stipulated within the Constitution of the Republic of South Africa 16th Amendment Act 1 of 2009. As stipulated in Section 16(b) of the Bill of Rights, all people, including children, have the right to freedom of expression, which includes freedom to receive and impart information or ideas (Constitution of the Republic of South Africa 16th Amendment Act 1 of 2009). Section 10 and 61 of the Children's Act 38 of 2005 supports specifically the right to freedom of expression by stating that any child who is of such an age, maturity and stage of development that enables it to participate in any matter concerning itself has the right to participate, express its views and have due consideration be given to its views in the decision-making process.

Although the rights of children have been emphasised over decades in countries world-wide, this awareness primarily focuses on the protection of children, rather than encouraging their active participation in the decision-making processes (Freeman in Kruger and Spies, 2006). Participation in this context refers not only to children's right to express their opinions in matters that affect them, but also to have these opinions heard in an age appropriate manner (United Nations Convention on the Rights of the Child, 1994). Although the United Nations Convention on the Rights of the Child stressed the fact that children have the right to provision, protection and participation, McLeod (2007) indicated in her research that even though social workers believe that they were listening to children and could even describe their efforts in detail, the children still felt that they had not been heard. This implies that professionals should not only focus on the welfare rights of the child, but should also listen to them and take their wishes and feelings into account, especially during the process of statutory intervention, which consists of three phases, namely prevention and early intervention, statutory intervention, and reunification services (Kleijn, 2004). Statutory intervention can thus be defined as: "Interventions that may occur before court involvement, during court involvement or as a result of court" (The State of Queensland, 2007:3). As the golden rule of statutory intervention is that the ruling should ultimately be in the best interest of the child, whether it be for the child to reside with his/her parents or be removed (Kleijn, 2004), participation as a basic right of a child as embedded in the principle of "The best interest of the Child" should always be respected (Children's Act 38 of 2005:16-18).

In the South African context, the question can be asked whether children currently receive enough and efficient opportunity to participate during the

process of statutory intervention and if they do, or do not, what are their experiences in this regard? Based on the problem statement the following research question guided the study: What are the experiences of adolescent children regarding their right to participate during statutory intervention?

Therefore, the purpose of this article is to report on a study that was conducted by the authors in collaboration with fourth year social work students at the University of Pretoria, focusing specifically on the experiences of adolescents (also referred to as children) regarding their right to participate during the process of statutory intervention. Although a child is defined in the Children's Act 38 of 2005 as "a person under the age of 18" this study will focus on children in the age group 12-17 years, also referred to as the adolescent life phase.

The article will describe the theoretical background of the right of an adolescent child to participate during the process of statutory intervention, the research methodology utilised in the study, the empirical results of the study as well as conclusions based on these results.

LITERATURE REVIEW

In order to understand the context and empirical findings of the study, the following components regarding a conceptual and theoretical framework will briefly be discussed: the concept and basic principles regarding child participation, relevant legislation pertaining child participation, and adolescence as a developmental life phase.

Child participation

According to Kirby and Sinclair in Mitchell, Franklin, Greco and Bell (2009:310), the term participation "covers a broad continuum of involvement in decisions involving many different processes". Mitchell et al. (2009:310) explain further that "...the interpretations of the term [participation] include taking part, being present, being involved or consulted." This is confirmed by Rifkin and Kangere ([sa]:42) who postulate that "participation is best seen as a process, rather than an outcome of an intervention." Habashi, Driskill, Lang and DeFaico (2010:237) give a more clear description referring to the fact that "participation involves child/ren, youth or minors as being active in decision-making within their societies, communities, programmes and services." This definition directs us to the context of children specifically as well as their involvement in services that professionals render to them, which may include the process of statutory intervention. More explicitly tapering

this concept, Viviers (2010:20) defines the concept of child participation as follows: "...a process that recognises the strengths, abilities and capacities of children to contribute to and share in decisions that affect their lives and the communities that they live in at a household, community, service provision, policy (national) and global level". Fortin (2009) confirms the latter by indicating that professionals should remember that children have the capacity to provide an extremely clear and insightful account of their own needs, if adults took the trouble to ask.

A reflective analysis of several studies on children's participation is summarised by International Save the Children Alliance (2010) as follows:

Participation is an act of having the opportunity to express a view, influence decision-making and achieve change. Children's participation is an informed and willing involvement of all children, including the most marginalised and those of different ages and abilities, in any matter concerning them either directly or indirectly. Children's participation is a way of working and an essential principle that cuts across all programmes and takes place in all arenas - from home to government, local to international level.

Although Van der Wele, Vandresse and Verhyde (2006) emphasise that participation is beneficial to the child's development and crucial for achieving self-fulfilment, child participation during the process of statutory intervention should not be taken for granted. The basic principles underpinning child participation are of paramount importance and should always be taken in consideration during professional service rendering. Viviers (2010:91), as well as Viviers and Blakenberg (2008:2), outline the following most relevant basic principles for the facilitation of participation by children during the process of statutory intervention:

- The role of adults: This principle has to do with the involvement of an adult person in supporting the child during the participatory process.
- Transparency, accountability and honesty: To be transparent means that participation and communication have to be clear, leaving nothing unexplained to the child, thus no hidden agendas.
- Self-determination: This principle gives an opportunity to children to decide when, how and what to do as participants.
- Sharing and access to information: Children should have access to all the information they need concerning their participation. They have a right to share and be provided with all information to partake in the process.

- Views of the child: It is useless to ask an opinion of a child, but not give due consideration to that opinion. The views of the child concerning their participation have to be considered important and nothing should be done without taking into account the opinions and the feelings of the child.
- Non-discrimination against children: All children need to feel welcome and not discriminated against to aid their participation and to be fair and considerate. There has to be no discrimination against any child irrespective of language, beliefs, sexual orientation, disability or any other important aspect of the child's life.

The description of the concept participation implies that children are no longer regarded as the passive product of child rearing practices (Kruger, 2006), but that they have the right to participate in an appropriate manner. This right is embedded in different legislative frameworks and policy documents. Several examples of these policy documents will be discussed in the following section.

Legislation pertaining to child participation

A child's right to participate is clearly indicated and described in different legislative documents and policies. Many international conventions promote public participation by children, for instance the United Nations Universal Declaration of Human Rights and the African Charter on the Rights and Welfare of the Child, amongst others (Gwandure and Mayekiso, 2011). The African Charter on the Rights and Welfare of the Child (1999) specifically stipulates that:

In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

In the South African context the above stipulations are echoed in the Children's Act (38 of 2005), which describes the right of the child regarding participation as follows:

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child, has the right to participate in an appropriate way and views expressed by the child must be given due consideration.

The preceding discussion highlights that children are no longer viewed as passive victims of parental and adult disputes (Kaganas and Diduck, 2004; Diduck, 2003). Therefore, children are now more acknowledged as autonomous individuals who have the right to information and participation in all aspects that significantly affect them (Children's Act 38 of 2005; James, 2003). Different authors (Block, Oran, Oran, Baumrind and Goodman, 2010; Tapp, 2006; Bilson and White, 2005) regard participation and the best interests of the child as being inseparable, stating that if a child is not permitted to participate, his/her best interests are not being met. Therefore, it implies that relevant legislation and protocols instruct professionals in practice to create the opportunity for children to participate during the statutory intervention process.

Although there seems to be ample legislation advancing the participation of children as described above, the United Nations (United Nations Report, 2012) remains concerned about the fact that child participation continues to face challenges such as cultural barriers and adult resistance, lack of resources and capacity, as well as sustainable support. However, despite the existence of these challenges, it is of paramount importance that the application of basic principles is imperative during the process of statutory interventions which involve children.

As this study focuses on the experiences of adolescents regarding participation during the process of statutory intervention, it is necessary to briefly discuss adolescence as a developmental life phase. In this regard, Schofield (2005) expresses the opinion that one way of reconciling the potentially competing, but also potentially complementary, discourses of participation rights and welfare rights may be to take an approach that draws on theories of child development. Proper understanding of theories of child development can assist professionals in both the task of ascertaining the wishes and feelings of children in a specific developmental life phase, as well as the way in which professionals take account of the evidence of those wishes and feelings.

Listening to the adolescent child when making decisions that affect their lives should be more than offering them the right to share their views. It should focus on understanding the adolescents' points of view, as well as their developmental life tasks, striving to make sense of what their lives have meant to them and viewing the world through their eyes (Kruger and Spies, 2006:175). The most prominent life tasks of adolescents to take note of are the following:

- The need to master problems experienced in and outside the family system.
- The urgency to experience a sense of autonomy and individuality.
- The expansion of the capacity for abstract thinking and mastering of new and more complex ways of thinking.
- The need to attain emotional independence from significant others.
- The development of an own identity.
- The task to relate to significant others, as well as the society in a more mature way.

In order to give due consideration to the above life tasks, professionals should have a practical framework, which will guide the professional to approach the child in a child-centred way. This will enable professionals to assess the adolescents' developmental needs and abilities, as well as their participation rights before making any decisions during the process of statutory intervention.

RESEARCH METHODOLOGY

The study was conducted to gain insight into the experiences of adolescents regarding participation during the process of statutory intervention. The qualitative approach appeared to be the most appropriate method, as it aided the researchers in their task to obtain subjective personal information from the participants. Within the qualitative approach, the researchers utilised the collective case study design. This design was chosen because the researchers wanted to explore the experiences of a number of cases in a specific context (Fouche and Schurink, 2011), in order to make comparisons between cases regarding their experiences.

The population of the study consists of all adolescent children between the age of 12-17 years, who were registered at non-governmental welfare organisations in Pretoria and who were involved in the process of statutory intervention, including all three phases. A sample of 70 adolescents was randomly selected from a list, consisting of the target population, by utilising systematic sampling (Strydom, 2011). The first participant was selected randomly from the list, where after all subsequent participants were selected according to a particular interval.

To collect the data from the selected participants, semi-structured interviews, guided by a semi-structured interview schedule, were utilised. Semi-structured interviewing was especially suitable for this study as the

researchers were particularly interested in the personal experiences (Greeff, 2011) of the participants regarding their right to participate during the process of statutory intervention.

With the consent of the participants, an audio recording was made of all the interviews. The collected data was thematically analysed according to Creswell's model of qualitative data analysis, as described by Schurink, Fouche and De Vos (2011). It included collecting the data, transcribing the interviews and analysing the data with the aim to identify themes.

To ensure the trustworthiness of the qualitative information, the researchers primarily made use of peer reviewing and member checking as outlined by Glesne (2006):

- **Member checking:** The accuracy of the responses received from the participants was checked by the researchers on the spot, by paraphrasing responses and seeking clarity where possible. The use of a tape recorder made it possible for the researchers to reflect on what the participants actually said and to think more deeply about their responses. Reference to field notes also highlighted the observations made by the researchers during the discussions.
- **Peer review and debriefing:** This entailed external reflection and input into the study. The pilot interviews conducted before the main study gave the researchers invaluable input into the research process. The team (students) received regular feedback from the authors (lecturers) and meetings were held to scrutinise the data collected and other research issues.

DISCUSSION OF FINDINGS

The discussion on the research findings will be presented in two sections, namely the biographical profile of the participants and a discussion of the identified themes.

Biographical profile of the research participants

The biographical profile of the research participants can be summarised as follows:

Gender: The majority of the participants were female, namely 75%, and the rest male (25%).

Age: All the participants were between the ages 14-17 years, which fall in the adolescent developmental life phase.

Educational level: The educational level of the participants varied between grades 7-12. Although some of the participants were in grade 7 and 8, they were already in the adolescent developmental life phase according to their age.

Themes

The responses of the participants resulted in the identification of the following three themes:

- Theme 1: Participants' understanding of participation.
- Theme 2: Nature of participants' experiences of participation during the process of statutory intervention.
- Theme 3: The challenges adolescents experience with regard to participation during the process of statutory intervention.

Each of these themes will be discussed and supported by narratives from the transcribed interviews and further complemented by a literature control.

Theme 1: Participants' understanding of participation

This theme refers to the participants' understanding of participation as a concept within the process of statutory intervention. Most of the participants seemed to have a lack of knowledge regarding the meaning of participation within this context, as well as the existence of their right to participate actively during the process of statutory intervention. Although some of the participants were aware of the right of participation, they could not articulate the meaning thereof in the context of statutory intervention. The following excerpts from the transcripts attest to this:

"I am not ignorant, but I wasn't told what participation is and how I play a role to participating."

"...I don't really know anything about my rights"

"I know I have right to my own opinion, that's what I know. I'm not really, like, aware of those rights because I don't know them."

It seems thus that, although children in general are taught in the school system what their rights are according to law, the deeper meaning of participation during the process of statutory intervention as a specific right is

not fully explained to them. The implication thereof is that the true value of what this right entails is not always implemented and fully experienced by children.

Hinton (2008) confirms that children are regretfully often perceived as passive and dependent on adults for care and unable to participate and decide independently. It is imperative that children are informed about the details and process of participation, as well as their specific rights in this regard. This is also supported by Archard and Skivenes (2009:293) who note that: "To ensure that the child's voice is authentic and given proper due, children clearly need to be adequately informed about and able to understand the issues at stake." A quotation from one of the transcripts supports the participants' need in this regard namely:

"...before the court I did not know that I also have the right to participate...."

It is thus important to highlight that social workers have the responsibility to inform children about their right to participate during the process of statutory intervention. It seems, however, that most of the participants experienced that social workers failed to explain their rights and inform them in this regard. One of the participants mentioned that:

"...they did not explain to us what was happening. They just said 'you are going to court'... So I did not know what was going to happen."

Theme 2: Nature of participants' experiences of participation during the process of statutory intervention

This theme focuses on the participants' experiences regarding the opportunity to participate during the process of statutory intervention.

According to Johnson, Ivan-Smith, Gordon, Pridmore and Scott (1998), participation has become the core element in the development of children, but that instead children are often either being marginalised or excluded with regards to their right of participation. The experience of marginalisation by one of the participants can be confirmed with the following quotation: "*They didn't ask us questions, they only asked the person that was there with us.*" Knutson (1997) elaborates by postulating that children should be included in overall strategies and procedures and indicates further that true development is achieved by obtaining observations and insights from children. When children are excluded and marginalised during statutory intervention

processes, it may contribute to re-traumatisation. With reference to the latter, some participants experienced feelings of fear, discomfort and anxiety during the process of statutory intervention. These feelings that can be regarded as a form of re-traumatisation are encapsulated in the following utterances of participants:

“I was scared because I was not sure of what was going to happen....”

“...I thought it was going to be a horrible thing....”

“The police came and took me, they said they are taking me to some other foster parents... they did not even tell me where I am going. They just tell me ‘we are going to take you to some other place’...I was scared, I thought I did something wrong.”

Furthermore, some participants mentioned that they experienced disempowerment before, during and after court procedures, due to the fact that they did not have the opportunity to become actively part of the decision-making process. According to Grobler and Schenck (2009), all human beings including children, have the capacity for self-determination, which includes the capacity to make their own decisions or at least contribute to the decision making process that affects their lives. The following two statements underscore this experience:

“...I told myself that there is nothing that I can do, I will just go to court and stay.”

“...Sometimes I just asked myself why did they have to choose this thing for me. I was supposed to choose for myself.”

It is of paramount importance that children should feel empowered by receiving the opportunity to participate during the process of statutory intervention. This is confirmed by Copen (2000:2) who emphasises that “children should not be discriminated against nor otherwise be prevented from gaining access to our courts, simply because they are children.” The information revealed by the participants attested to the fact that the majority did not receive the opportunity to actively participate during the process of statutory intervention. Quotations to support this finding follow below:

“...they say I’m a child and I can’t make my own decisions.”

“They never asked me anything....”

Research conducted by Leeson (2007), rightfully indicated that children who were not allowed to participate in the decision-making process experienced feelings of helplessness, frustration and detachment, as well as a sense of a

lack of identity. Thus, in the context of the process of statutory intervention, professionals in the field of child protection not only have the responsibility to inform children about their right to participate, but also have to provide them the opportunity to do so.

Theme 3: The challenges adolescents experience with regard to participation during statutory intervention

This theme refers to the challenges the participants were faced with as a result of not actively participating during the process of statutory intervention.

Some of the participants indicated that they experienced feelings of disrespect towards them due to the way the process of statutory intervention was facilitated by professionals. Disrespect in this context refers to the challenge, namely that some participants' views were disregarded during the statutory process, which implies that their capacity to contribute to the decision making process was not acknowledged. Kruger (2006) confirms in her research that adults tend to make decisions about the lives children have to live and that the voices of these children are disregarded. This challenge remains a concern, as indicated by some of the participants in this study:

"I didn't like what the social worker was doing. Since she brought me into that place, she didn't even come once... and look what is happening."

"Okay, what I think is that the social worker should be more in touch with the client, like the foster child, because I never even got to speak to my social worker or the doctor, she won't call, nothing."

"I would say that children have the right to be taken seriously...."

It is of paramount importance that children's views, and more specifically adolescents', be recognised and respected in society. Perkins (2006:1) concurs with this statement by arguing as follows: "The adolescent is striving to be a responsible person in the society. This desire is achieved by being responsible and a need to be recognised in the society." If this desire cannot be met in the life of the adolescent child, such a child's sense of self will not be fully integrated (Louw and Louw, 2007).

The finding emanating from this is that most of the participants indicated that they would like to receive the opportunity to be listened to during the process of statutory intervention. One of the participants articulated the following regarding this challenge: *"I would like the social workers to listen to the children's ideas so that they can make the decision on those ideas."* In this

regard, Section 9 (2) in the African Charter on Human and People's Rights (1981) clearly states that "Every individual shall have the right to express and disseminate his opinions within the law." This section thus also acknowledges the right of a child to participate and to become part of the decision-making process during statutory intervention.

Another challenge, namely that court procedures have to take place in a language that the child can understand, was voiced by a participant as follows: "*I couldn't understand anything; they were speaking Afrikaans.*" Viviers (2010:94) supports this principle which should underpin child participation with the following statement: "All children have the right to be communicated within the language of their choice and a language that they understand."

The majority of the participants attested to the lack of preparation to participate before, during and after court proceedings. Depriving children of the right to be appropriately prepared to participate during the process of statutory intervention was identified as a major challenge in this study. Viviers (2010) highlights that the intention of preparing children for their participation, is an enabling as well as a protective measure. One of the participants responded on this challenge as follows: "*They don't tell us anything, they just involve us.*"

CONCLUSIONS

The above research findings constitute the experiences of adolescents regarding participation during statutory intervention. Based on the research findings and the literature verification, the following conclusions can be drawn:

- The majority of the participants felt that social workers failed to explain and inform them about the meaning of participation, as well as their right to participate during the process of statutory intervention. The implication of this is that these participants experienced a lack of understanding of participation as a concept as well as the execution of their right to participate during the statutory process. Hence they were not able to articulate the deeper meaning of their right to contribute to the decision making process during statutory intervention.
- The most prominent experience by the participants was that they felt excluded from the decision making process during the statutory intervention process. This led to disempowerment, marginalisation and feelings of fear, anxiety and helplessness (Knutson, 1997). These experiences may prevent the adolescent from successfully accomplishing

his/her most important life tasks, such as developing a sense of autonomy and own identity, and the mastering of problem solving skills (Kruger and Spies, 2006).

- Several challenges in the field of statutory intervention and child participation emerged from the study. The participants felt that their capacity to contribute to the decision making process during statutory intervention needs to be acknowledged by professionals and that they have the right to be listened to in their own language (Viviers, 2010; Viviers and Blakenberg, 2008). Social workers need to prepare children extensively to participate in the statutory intervention process.
- The findings confirmed that the right of the child to participate in any matter concerning that child, as stipulated in Section 10 of the Children's Act 38 of 2005, is not always recognised by professionals involved in statutory intervention. Both Viviers (2010) and Kruger (2006) agree that children's voices must receive more recognition.
- Social workers will add value to children's well-being by creating opportunities for children to participate actively during the statutory intervention process (Clark and Statham, 2005). This will enhance emotional safety and stability in an already troublesome life of the child that has to face statutory intervention, which is predominantly characterised by trauma.
- The fact that the study only focused on the adolescent child has the limitation that the findings cannot be generalised to children in all age groups, as the developmental tasks of children in the different developmental stages differ from each other.

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