

## IMPLEMENTATION OF ADOPTION IN SOUTH AFRICA: PERSPECTIVES FROM PRACTITIONERS IN THE WESTERN CAPE

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### **ABSTRACT**

*In South Africa adoption as a form of alternative care had decreased despite a supportive legal and policy environment. This qualitative exploratory study explored adoption policy implementation. Semi-structured interviews were conducted with four social workers and two magistrates implementing adoption in the Western Cape. Data were thematically analysed using Lipsky's theory of street-level bureaucracy. Results indicate significant problems in implementation, including lack of adoption services by the Department of Social Development (DSD) social workers; overuse of foster care; and difficulties in registration of the birth of abandoned babies and babies assumed to be foreign. Recommendations for practice are provided.*

**Keywords:** *adoption, alternative care, legal and policy framework, policy implementation, practitioners, street-level bureaucracy*

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### INTRODUCTION

The Children's Act 38 of 2005 (RSA, 2005) was drafted as part of the legislative reform after the advent of democracy in South Africa and has been argued to lay a sound foundation for a developmental approach to child care and protection (Proudlock & Jamieson, 2007), although it was recognised that significant budget allocations would need to be made for successful implementation (Barberton, 2006; Budlender, Proudlock & Monson, 2007). It included a section on adoption as one of the options for placement for children in need of alternative care. This was argued to be one of the most cost effective options (Barberton, 2006), which has the additional advantage of more permanence than institutional care and foster care (Schaffer, 1998; Simon & Altstein, 1996).

Adoption practice was regulated by various laws and policies. For a full list of international instruments, laws and policies, strategic plans and guidelines see Figure 1.

### FIGURE 1

#### DOCUMENTS RELATED TO THE LEGAL AND POLICY FRAMEWORK OF ADOPTION

##### **International instruments**

The United Nations Convention on the Rights of the Child (United Nations, 1989)

The African Charter on the Rights of the Child (1990)

##### **South African Laws**

Constitution of South Africa, 1996, specifically Section 28 (RSA, 1997a)

Children's Act, 2005 (RSA, 2005)

Social Service Professions Act, 1978 (RSA, 1978)

Children's Amendment Act, 2007 (RSA, 2007)

Second Children's Amendment Act, 2016 (RSA, 2017)

Children's Amendment Bill, 2020 (RSA, 2020a)

##### **Strategy Documents**

Adoption Policy Frame Work and Strategy, written by DSD, 2010 (RSA, 2010b)

The Department of Social Development Strategic Plan for 2010 – 2015, (RSA, 2010e)

##### **Policy Documents**

White Paper for Social Welfare, 1997 (RSA, 1997b)

The National Norms and Standards for Child Protection, 2010 (RSA, 2010f)

National Child Care and Protection Policy, 2019 (RSA, 2019)

Revised White paper on Families, 2021 (RSA, 2021)

##### **Regulations**

General regulations pertaining to the Children's Act, 2010 (RSA, 2010a)

Regulations relating to the requirements and conditions for registration of a speciality in adoption social work, 2020 (RSA, 2020b)

##### **Implementation Guidelines**

The practice guidelines on national adoption, no date (RSA, no date)

The implementation guidelines of the register on adoptable children and prospective adoptive parents (RACAP), 2010 (RSA, 2010c)

Annexure M: Accreditation policy for service providers rendering adoption services in South Africa, 2010 (RSA, 2010d)

Implementation of these laws and policies was dependent on a range of different people in different government departments, statutory bodies, non-governmental organisations and private organisations.

For a summary of different role players and their main responsibilities in adoption practice, see Figure 2.

## FIGURE 2 SUMMARY OF RESPONSIBILITIES OF MAIN SERVICE PROVIDERS IMPLEMENTING ADOPTION SERVICES

National Department of Social Development (DSD)	Adoption social worker (DSD, CPO's & private)
<p>Directorate: Adoption and International Social Services (ISS)</p> <p>Departments:</p> <ul style="list-style-type: none"> <li>• Registrar of Adoption</li> <li>• Central Authority</li> <li>• International Social Services (ISS)</li> </ul> <p>The Directorate: Alternative Care</p> <p>Department:</p> <ul style="list-style-type: none"> <li>• Adoptions</li> </ul> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Regulates practice</li> <li>• Manages RACAP</li> <li>• Prescribes accreditation process of adoption social workers</li> <li>• Processes Form 30</li> <li>• Maintains adoption register</li> </ul>	<p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Provides psycho-social services to all parties</li> <li>• Conducts the adoptability assessment and prepares the report.</li> <li>• Promotes adoption services</li> <li>• Recruits prospective adoptive parents.</li> <li>• Assesses prospective adoptive parents to adopt.</li> <li>• Matches adoptable children with prospective adoptive parents.</li> <li>• Submits applications to DSD to register children and prospective adoptive parents on RACAP.</li> <li>• Compiles the adoption application reports and submits to provincial DSD</li> <li>• Requests recommendation letters from the DG of DSD.</li> <li>• Presents adoption reports children's court</li> <li>• Offers after care services to all parties</li> </ul>
<p style="text-align: center;"><b>Provincial Department of Social Development (DSD)</b></p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Renders adoption services</li> <li>• Provides recommendation letters for adoption</li> <li>• Subsidises CPOs</li> <li>• Monitors service provision of CPOs</li> <li>• Build stakeholder capacity</li> </ul>	<p style="text-align: center;"><b>South African Police Services (SAPS)</b></p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Places children in temporary safe care, and refers cases to DSD</li> <li>• Assists in tracing family of abandoned children; provides police report</li> <li>• Issues police clearance certificates</li> </ul>
<p style="text-align: center;"><b>Department of Health (DoH)</b></p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Provides health and social work services to people with crisis pregnancies</li> <li>• Provides medical examination of adoptable children</li> <li>• Provides age estimation of children without birth certificates</li> <li>• Provides temporary safe care for abandoned children and refers to DSD/CPOs</li> </ul>	<p style="text-align: center;"><b>South African Council for Social Services Professionals (SACSSP)</b></p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Registers professionals to render services</li> <li>• Regulates adoption practice</li> <li>• Provides ethical standard for social services professionals (Social workers)</li> <li>• Registers social workers for an adoption speciality</li> </ul>
<p style="text-align: center;"><b>Department of Home Affairs (DHA)</b></p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Registers births of adoptable children</li> <li>• Supplies identity documents and death certificates</li> <li>• Maintains birth and population register</li> <li>• Records adoptions</li> <li>• Records a change of name and surname for adopted children</li> <li>• Issue new birth certificate for adopted children</li> </ul>	<p style="text-align: center;"><b>Department of Justice and Constitutional Development (JoJ&amp;CD)</b></p> <p>Directorate: Adoptions</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Maintains the National Register of Sex Offenders</li> <li>• Manages judicial proceedings of children's courts</li> <li>• Employs magistrates as presiding officers at the children's court, who oversee the signing of consent to adoption of biological parents, consider adoption applications &amp; issue adoption orders</li> <li>• Employs magistrates as presiding officers in the High Court, who hear rescission applications for adoption orders</li> </ul>

The wide range of role players, with different perspectives and investments, made this a very complex field to work in and this impacts on implementation.

The National Child Care and Protection Policy recognised DSD as the lead department coordinating the national childcare and protection system, although it was not the sole provider of these services. This responsibility was divided between the national DSD and the provincial DSD (RSA, 2019). National DSD housed the Directorate: Adoption and International Social Services, which was made up of three departments, namely the Registrar of Adoptions, the Central Authority and International Social Services. The Directorate: Alternative Care also included an adoptions department (Barberton, 2006). National DSD regulated adoption practice by developing legislation, policies, strategic plans and practice guidelines on adoption and monitored the implementation of adoption services. National DSD also managed the Register on Adoptable Children and Prospective Adoptive Parents (RACAP). The Director General (DG) of the national DSD prescribed the accreditation process of social workers in private

practice, and the accreditation process for Child Protection Organisations (CPOs) (Bosman-Sadie, Corrie & Swanepoel, 2013; RSA, 2010d). Prospective adoptive parents had to apply for a certificate to check with the Department of Justice and Correctional Services (DoJ & CD) that they were not recorded in the National Register for Sex Offenders through a Form 30 submitted to the national DSD (Bosman-Sadie *et al.*, 2013). The Registrar of Adoptions kept a register of all national adoptions in the National Adoption Register and assisted with origin enquiries and tracing of adopted person/s (RSA, n.d.).

The provincial DSD was recognised in policy as having a role to play in facilitating adoptions, although this role was not being fulfilled. Recommendation letters for a specific adoption were provided by the provincial DG of DSD or their delegates. The provincial DSD subsidised the CPOs for adoption programmes, monitored CPOs' funding and services rendered by CPOs and adoption social workers in private practice (RSA, 2010b). It was also responsible for building the capacity of adoption stakeholders through training and promoting adoption services in communities (RSA, n.d.).

The South African Police Service (SAPS) had responsibilities both towards the children who may be adopted as well as the prospective adoptive parents. SAPS placed children in need of care and protection in temporary safe care and referred the matter to the DSD or designated CPOs. They assisted in tracing biological family of abandoned children and provided the police report to the social worker handling the case (RSA, n.d.). SAPS issued a clearance certificate to show that a prospective adoptive parent was fit to adopt a child (Bosman-Sadie *et al.*, 2013; RSA, 2019).

Facilities in the Department of Health (DoH) were often the first port of call for people experiencing crisis pregnancies and were the places where biological mothers could access medical and social work services related to adoption (RSA, 2019). The DoH provided medical examinations and screening of children for adoption; age estimation of children without birth certificates; and medical care for abandoned children, and provided temporary safe care before referring the children to the DSD and CPOs (RSA, n.d.).

The DoJ & CD implemented the Children's Act in conjunction with DSD (Bosman-Sadie *et al.*, 2013). The National DoJ & CD had a directorate responsible for adoptions (Barberton, 2006). The DoJ & CD also maintained the National Register for Sex Offenders, where the particulars of prospective adoptive parents were checked as part of screening for suitability to adopt a child (RSA, 2019).

The DoJ & CD managed the judicial proceedings of the children's courts that issue adoption orders (RSA, 2019). Magistrates served as presiding officers at the children's court and considered adoption applications and issued the adoption orders based on their assessment (Zaal, 2008). Consent to an adoption by biological parents had to be signed in the presence of the presiding officer in the Children's Court (Bosman-Sadie *et al.*, 2013; RSA, 2010a). Presiding officers in the High Court heard rescission applications for adoption orders (RSA, n.d.).

The Department of Home Affairs (DHA) was responsible for the provision of birth registration services, identity documents and death certificates, and the maintenance of the birth and population register. They recorded adoptions in the register, recorded the change of a child's surname in the births register and issued the new birth certificate for an adopted child (RSA, 2019, n.d.).

According to the Social Services Professions Act 110 of 1978 (RSA, 1978), the South African Council for Social Service Professions (SACSSP) registered professionals to render services; regulated adoption practice; provided ethical standards in relation to professional conduct of the social service professionals; and registered adoption social workers for an adoption speciality.

Adoption social workers hold the primary responsibility for providing adoption services (Bosman-Sadie *et al.*, 2013; Louw, 2017). Although social workers in the employ of DSD were initially excluded from a definition of an adoption social worker in Section 1 of the Children's Act, the Children's Second Amendment Act 18 of 2016 (RSA, 2017) rectified this oversight and included them in the definition. Thus adoption services could be offered by either social workers employed by DSD or CPOs, or in private practice as long as they met the accreditation requirements outlined in the Act (RSA, n.d.).

To provide adoption services, adoption social workers in private practice needed to be accredited by national DSD, registered with SACSSP as a social worker, and registered as an adoption specialist with SACSSP. These criteria were updated in regulations and it remained to be seen how they are implemented ( Pieterse, 2019; RSA, 2019; RSA, 2020b). Social workers in the employ of an accredited CPO had to be registered as a social worker with SACSSP, but did not have to be registered as an adoption specialist (RSA, n.d.; RSA, 2020b). The criteria for a social worker in the employ of the DSD to be considered an accredited adoption social worker have not been specified and remain unclear.

The DSD Adoption Framework and Strategy document (RSA, 2010b) outlined the role of social workers in adoption. Social workers provided psycho-social services to biological parents, the child and prospective adoptive parents, before and after the adoption of the child. They conducted the assessment of the adoptability of the child, managed all relevant investigations and compiled a report on each adoptable child. They were responsible for promoting adoption services and recruiting prospective adoptive parents. They completed the assessment of the eligibility of the prospective adoptive parents including all relevant investigations. They matched adoptable children with suitable prospective adoptive parents. They submitted the applications to the DSD for the registration of unmatched adoptable children and prospective adoptive parents on RACAP. Adoption social workers also compiled the adoption application reports and submitted them to the provincial DSD and requested recommendation letters from the provincial head of DSD. They presented the adoption reports in the children's court for the finalisation of adoption. Adoption social workers also offered after-care services to biological parents and to the adoptive families (RSA, 2010a).

These frontline workers, described by Lipsky (2010) as street-level bureaucrats, controlled access to services by interpreting government laws, policies and guidelines through their face-to-face interactions with public and other service providers in a range of different service provision sites.

## **RESEARCH INTO ADOPTION PRACTICE**

The largest study of adoption in South Africa was commissioned by the national government (Mokomane & Rochat, 2010, 2012; Rochat, Mokomane, Mitchell & The Directorate, 2016). This study sketched the practice of adoption and investigated the problems faced in adoption. It utilised the National Adoption Register for national statistics on adoption and key informant interviews and focus groups in four provinces of South Africa. The research outlined a number of difficulties in adoption practice, including service provider obstacles, resource allocation obstacles, knowledge-based obstacles and socio-cultural obstacles (Mokomane & Rochat, 2010, 2012; Rochat *et al.*, 2016).

Recommendations from the study by Mokomane and Rochat (2010, 2012) and Rochat *et al.* (2016) were made to maximise the use of the opportunities to improve the practice of adoption in the Children's Act. These recommendations included efforts to indigenise adoption practice to make it more acceptable to Black Africans, which had been recommended by various researchers (Gerrand & Nathane-Taulela, 2015; Gerrand & Warria, 2020; Harber, 1999). In South Africa adoption was based on the Western notion of adoption, which was unpopular with Black Africans (Buckenberger, 2020; Gerrand, 2017; Gerrand & Stevens, 2019). Black Africans tended to prefer informal kinship care, which was the most common form of alternative care in South Africa and other African countries and thought to be more suitable to African culture (Drah, 2012; Gerrand & Warria, 2020; Van der Walt, 2018). However, as the number of children requiring alternative family placement increased, the capacity of these traditional, informal networks was depleted (Drah, 2012; Emovon, 2021; Emovon, Gutura & Ntombela, 2019) and a more suitable form of adoption could be useful to place children who could not be accommodated in kinship care.

Other researchers outlined the ethical challenges inherent in adoption practice, including the competence of the practitioners implementing adoption, the commercialisation of adoption, and the conflicting rights of different interested parties involved in adoption needed to be considered (Fluke, Goldman, Shriberg, Hillis, Yun, Allison & Light, 2012; Harris-Short, 2008; Pieterse, 2019; Raleigh, 2018).

Legal scholars also commented on improving practice for those children in need of alternative care. Zaal (2008) argued that there has been insufficient guidance on the operation of the children's courts since their inception. Magistrates have significant discretion in the interpretation of the Children's Act (Bosman-Sadie *et al.*, 2013), since some of the laws relating to work done in the children's court were ambiguous, particularly in terms of placement for adoption (Zaal, 2008).

One of the examples of a lack of clarity in law is related to the accreditation of adoption social workers. Contestation about the accreditation process was created by the exclusion of DSD social workers in a definition of an adoption social worker in the Children's Act. Some saw this as an omission, and DSD social workers continued to process adoptions in the Western Cape until a legal opinion released in 2012 by DoJ & CD argued that this was not permitted (Bosman-Sadie *et al.*, 2013). Despite the Children's Second Amendment Act (RSA, 2017), which included the DSD social workers in this definition, the DSD had still not resumed providing adoption services. The accreditation requirement for DSD social workers was not spelled out in the Children's Second Amendment Act (RSA, 2017), and it was not clear which criteria apply to the DSD social workers, as different criteria were specified for those in private practice and those employed in a CPO.

Despite the recommendations made to improve access to adoption by Mokomane and Rochat (2010, 2012; Rochat *et al.*, 2016), the number of adoptions declined to even lower levels, with just over 1 000 adoptions registered in 2018 (Pieterse, 2019). Problems related to adoption as an option for alternative care outlined by Mokomane and Rochat (2010) continued to be experienced (Pieterse, 2019), with challenges in the bureaucratic processes to finalise adoption being particularly significant (Blackie, 2014; Honiball, 2019).

A significant time has passed since the base-line research conducted by Mokomane and Rochat (2010, 2012) was concluded and it was useful to investigate to what extent the recommendations have impacted on reducing barriers to adoption and increasing the number of children adopted. In addition, the Western Cape was not included in the key informant interviews and focus groups in the baseline study on adoption in South Africa (Mokomane & Rochat, 2010, 2012; Rochat *et al.*, 2016). Research on adoption practice did not rely on a specific theoretical framework and the theory of street-level bureaucracy offers useful ways to examine the impact of complex organisational behaviour on policy implementation (Brodkin, 2012).

## THE CURRENT STUDY

The current research uses Lipsky's (2010) theory of street-level bureaucrats to understand adoption practice in the Western Cape, the fourth largest of South Africa's nine provinces, in land size and population (RSA, 2018).

Lipsky (2010) argued that certain conditions lend themselves to policy implementation becoming more fluid. These conditions existed where (1) policy was ambiguous and had multiple or even conflicting objectives, and (2) when practitioners had discretion in implementation. Although discretion was seen to be important to respond to clients' needs, unauthorised discretion, based on personal views, could subvert formal policies and managerial strategies (Brodkin, 2012). Examining the impact of this unauthorised discretion was most important when it influenced behaviours to develop in a systematic way (Lipsky, 2010).

Interactions between the public and the representatives of government authority could be simultaneously both potentially helpful and alienating (Brodkin, 2012). Social workers, magistrates serving as presiding officers in the children's court and police officers could be ambivalently experienced, in that their interventions in people's lives could be both appreciated and reviled (Brodkin, 2012). Lipsky (2010) recognised the tendency to vilify those faceless bureaucrats that represent authority of the state, such as the DHA, but warned against a simplistic understanding of the impact of the role players. He argued that problems in policy implementation need to be understood as an interaction between personal actions and structural elements in the system.

The current study aimed to address the gaps in current knowledge of the practice in this localised area, because the Western Cape which had a specific socio-economic and political landscape that is significant for adoption practice.

The Western Cape was one of only two provinces where Black Africans were not the majority, although they were the second largest population group (36%) (RSA, 2018). It had the highest population of Coloured people (46%) and White people made up only 16% of the population (RSA, 2018). Compared to the rest of South Africa, more people living in the Western Cape had access to services and resources associated with affluence. However, economic status was racially skewed in the Western Cape, as in the rest of the country, with Black Africans being least affluent, and Whites and Indians/Asians most affluent (RSA, 2018). A total of 80 566 children aged 0–17 years are reported to have lost a father, 29 950 are maternal orphans and 10 941 are double orphans (RSA, 2018). Since the first democratic elections in South Africa in 1994, the Western Cape has been one of only two provinces in South Africa where the ANC has not won a majority of the votes in the provincial government. Over time the Democratic Alliance has increased its success in the provincial elections and has held a majority since the 2009 (RSA, 2018).

## **METHODOLOGY**

### **Research question**

This paper reports on data related to adoption practice gathered during a study of the experience of transracial adoption in the Western Cape. Initial analysis of data revealed that most practitioners did not find transracial adoption to present additional difficulties to adoption in general. Ways practitioners understand transracial adoption, and the impact of race on transracial adoption, were explored in another paper.

The focus of this paper is: Difficulties in the provision of adoption service and features of the practice of adoption which mitigate these difficulties in the Western Cape.

A qualitative research method (Erickson, 2018) was used as this method is best suited to exploring complex phenomena from the perspective of insiders.

### **Sampling**

It was difficult to get a complete list of all adoption social workers and magistrates serving as presiding officers in children's court in the Western Cape. The first author was a member of the National Adoption Coalition of South Africa (NACSA), who provided a list of adoption social workers and agencies in February 2020, including four private social workers, four Designated Child Protection Organisations (Wandisa, ACVV, ABBA, NORSA) and two NGO adoption agencies (Cape Town Child Welfare, Magdalena Huis/Badisa). A full list of social workers working in these three contexts could not be gleaned from this list, but social workers were recruited through purposive snowball sampling (Laher & Botha, 2012) and most were members of this networking organisation.

The sample included four adoption social workers employed in different contexts, a social worker working in a private adoption agency, a social worker working in a designated CPO and two private social workers who had previously worked for DSD. DSD refused permission for us to interview any social workers currently employed, because the DSD was not rendering adoption services at that time. A list of all magistrates presiding over children's court in the Western Cape could not be compiled and social workers who were interviewed recommended magistrates with experience as presiding officers in children's courts. They were all approached and two agreed to be interviewed.

### **Data gathering**

Data gathering was done via semi-structured interviews (Bell, 2010; McGrath, Palmgreen & Liljedahl, 2019), either at their offices or via an online platform. All participants signed consent forms to be

interviewed with the understanding that they would remain anonymous. The interviews were audio recorded and transcribed by the researcher.

### **Data analysis**

Analysis of the data involved a thematic analysis of the content (Gibbs, 2008). After transcription, the first author reread the interview transcripts and reviewed her notes taken at the interviews. Initial themes that emerged were noted. The bureaucratic difficulties in implementing adoption emerged as a significant theme and were reportedly experienced universally in adoption practice and not limited to transracial adoption. Themes related to these difficulties in the provision of an adoption service and features of the practice of adoption which mitigate these difficulties in the Western Cape were consolidated. Once sub-themes were chosen, findings based on these themes were explored fully. These are described in this paper and illustrated with quotes.

### **Ethical considerations**

Ethical aspects of the research that were considered included the impact that the research might have on the participants and on the communities that are affected by the research (Birch, Miller, Mauthner & Jessop, 2012).

It was particularly important to consider the possible conflict of interests present in this research. This research was conducted by a practitioner-researcher (Bell & Nutt, 2002), who was an insider in the field in both her personal and professional capacity. There was no personal connection between her and any of the participants interviewed, although she was a member of a networking organisation, the National Adoption Coalition of South Africa (NACSA).

Positionality of the first author might have impacted on the research (Elliot, Ryna & Holloway, 2012). The first author is a White adoptive mother to two adopted children. She worked as a clinical psychologist, providing psychological support to the adoption community. Her involvement in the field was part of her interest in the phenomenon, and her previous experience may have influenced the types of questions she included and excluded, and the interpretation of the research data gathered.

## **RESULTS**

Results from the research showed that the practitioners involved in adoption used their discretion to shape adoption practice in ways that match the criteria outlined by Lipsky (2010). They made complex decisions based on ambiguous policies in which different, often conflicting, objectives needed to be balanced in demanding work environments characterised by limited resources.

### **The context of adoption practice**

Practitioners interviewed emphasised the technical demands in making decisions about a placement based on a complex legal and policy framework, in which many factors need to be considered. The complexity of decision making was exacerbated by the involvement of different government departments and different practitioners, with different interests.

Social workers and magistrates felt the pressure of the life-changing decisions they make. They worried about the outcomes of their decisions, even if all the procedures were followed correctly. The emphasis that the practitioners placed on the need to have extensive work experience and personal life experience was indicative of the sense that wise decisions lie beyond the realm of what is included in explicit policy.

*You have to make a decision and you feel like Solomon. That's difficult.* (Magistrate 1)

One of the key features of the policy was that it attempted to balance the needs of three different categories of people: the biological family, the adopted child and the prospective adoptive parents. This created a range of ethical dilemmas.

*...and there is a little girl somewhere in the middle.* (Social worker 1)



There was sometimes a conflict of interest between the needs and expectations of the prospective adoptive parents and the needs of the adoptable child. While social workers had compassion for the prospective adoptive parents' expressed preferences in terms of age, health, circumstances of conception and family involvement of a child, they argued that the reality of the availability of the babies also had to be considered. Social workers commented that babies available for adoption come from non-ideal circumstances, otherwise they would not be available for adoption. Social workers emphasised that prospective adoptive families who wished to adopt a new-born baby with no social or health concerns were unrealistic.

*Families want a unicorn [perfect] baby, [but] we don't have unicorn babies. The baby is either hurt [there is something wrong with the child] or comes from a hurt environment [the child comes from an unsuitable environment]. (Social worker 3)*

The right of the biological father or his extended family to have first option to care for their child was reported to be denied where the biological mother did not know the identity of the biological father or chose to withhold this information. Magistrates reported that social workers made inadequate efforts to explore these options with the birth mother who wanted to place a child for adoption.

*Once a mother gives consent for an adoption... it's like the Holy Grail ... don't go there [avoid that topic] ... don't ask about the family. (Magistrate 2)*

Practitioners commented that they find it difficult when the biological family expressed a preference for the child to remain in institutional care, rather than making them available for adoption. In such cases the biological parents refused to sign consent for adoption, even though they were unable to provide a permanent home for a child.

*I think some social workers are very pro parental rights and not pro children's rights, ultimately, you know. (Social worker 4)*

Adoption social workers reported working under demanding work conditions. This included long work hours, working in unsafe environments and dealing with the circumstances that lead to children becoming adoptable, including extreme poverty and widespread abuse.

*I was so, so tired, I was dead tired. I'd been in real danger. I'd been horrified, and I had been driving up and down looking for a Black person to take this child. (Social worker 1)*

These challenging work conditions, without adequate financial rewards and the financial instability in organisations that offer adoption services made it an unpopular field for social workers. Social workers reported that this made experienced social workers consider leaving adoption practice.

*It's a difficult path to walk on. It's the most traps and pitfalls and explosions [challenges in implementation, with negative personal consequences]. ... it's a very difficult field to work in. (Social worker 2)*

Social workers spoke of having to manage bureaucratic delays in the behind-the-scenes 'people-processing agencies' such as the DHA, the SAPS and national DSD. Screening an adoptive parent was negatively affected by several bureaucratic delays. Social workers reported that they had to deal with frustrated adoptive parents, where there were delays in SAPS issuing the police clearance. This inconvenience was exacerbated since the police clearance was valid only for six months, and application had to be made repeatedly at different stages of the adoption process. Social workers interviewed reported that confirmation that a prospective adoptive parent's name did not appear in Part B of the Child Protection Register could take more than seven months to arrive. Social workers also commented on the irony that they knew that the Child Protection Register was not being updated by the DoJ & CD, making the certificates meaningless.

The intended role of RACAP in streamlining matchmaking between prospective adoptive parents and adoptable children (RSA, 2010c) had been hampered by many difficulties. Social workers reported that

for many years RACAP was simply a spreadsheet, emailed to adoption service providers on occasion. Social workers also commented on how difficult it is to access RACAP and this also discouraged its use.

*National [DSD] is closed doors [is uncommunicative] about RACAP. You have to jump through fire hoops to get at it [There are many unreasonable steps required to access RACAP]. (Social worker 3)*

Social workers reported significant discrepancies in the use of RACAP. From the interviews it was not clear whether all adoptable babies and prospective adoptive parents need to be listed on RACAP. Some social workers interviewed argued that social workers were justified in not listing babies they have assessed as adoptable and with families they have screened. These social workers believe that it was appropriate to match their own clients, because they knew the circumstances of the adoptable baby and had built a relationship with the families.

Other social workers expressed negative attitudes towards agencies that did not list their prospective adoptive parents and adoptable children on RACAP. These social workers reported that this limited use of RACAP was driven by competition between adoption service providers. Practitioners commented that they experienced animosity from other provinces, and that they saw the Western Cape as being a law unto itself.

*I said that [explaining the omission of the DSD social workers in the definition of adoption social workers], and a woman flew up and said "You mustn't talk about things you don't know about"... I was mos that bloody woman from the Republic of the Western Cape [implying that the Western Cape sees itself as a law unto itself]. (Social worker 1)*

Social workers also reported that agencies were reluctant to match an adoptable child with a family screened in the Western Cape. Social workers attributed this to territoriality and competition between provinces.

Finalising adoptions were reported to be delayed by the Registrar of Adoptions at national DSD, which recorded an approved adoption order, and DHA, which processed the change of surname of the child in the population register. Social workers reported that adoptive parents sometimes waited a year before receiving the child's amended birth certificate, which impacted on the prospective adoptive parents being able to apply for maternity leave, maternity benefits and getting travel documents for their children.

Adoption practice is characterised by idiosyncratic service delivery, which was exacerbated by a lack of formal training and a clear career path to adoption social work. There was not always agreement between different role players on how to interpret the law to fulfil their responsibilities. Various elements in the process were left to the discretion of practitioners, including the screening processes for adoptive parents. Significant discrepancy in practice related to the different understandings as to when a child could be declared adoptable, and when they could be placed on the RACAP list or placed with adoptive parents.

*And that's my gripe with the Child Protection Organisations: they consider all adoptable children as children in need of care [implying that while adoptable children who have been matched with suitable adoptive parents are no longer in need of care]. (Social worker 1)*

Although presiding officers in children's courts were bound by the legal requirements of the Children's Act, they had some discretion in how they preferred to process and evaluate the applications submitted by the social workers and how they managed the heavy demands of their workload.

*Between all of those [other demands on the time of the presiding officer at children's court], they are going to look at your case. It's not a priority. It's going to take a back seat. (Social worker 3)*

Delays in court proceedings disadvantage children, since it delays the implementation of a permanent placement for the child and older children are more difficult to place (Zaal, 2008).

In summary, the practitioners working in adoption found their work emotionally, ethically and practically demanding. They faced a host of challenges in their work and had to contend with many bureaucratic delays as a result of the many different steps involved in adoption and the range of departments required to finalise an adoption. There were also many areas where lack of clarity or disagreements over the interpretation of the laws resulted in different ways of implementing the laws. This created confusion and difficulties in collaboration and fuelled the underlying animosity between different role players, especially those in other provinces.

### **Gaps between policy and practice**

The way adoption was practised met conditions outlined by Lipsky (2010) for gaps between policy and practice to develop. Three practices impacted negatively on the successful implementation of adoption, including accreditation difficulties for adoption social workers, the overreliance on foster care and the difficulties in registering the birth of babies at DHA. There were also aspects of adoption practice that worked well in the Western Cape.

None of the practitioners questioned the need for the accreditation of adoption social workers. However, accreditation presented a significant obstacle to adoption social workers and caused significant contestation between different role players in this study. Magistrates and social workers in this study lacked clarity about who could offer adoption services, and what the requirements were for registration as an adoption speciality at the SACSSP. The requirements were recently listed in a government gazette (RSA, 2020b) and it remains to be seen how these would be implemented.

One of the consequences of this lack of clarity was a great deal of contestation between interest groups in adoption, which social workers reported a significant erosion of trust between DSD social workers and those practising in other contexts.

*I am not keen to get quoted on Facebook. I am quite afraid to send [information about my practice] out, because I don't know who is a spy, and who is not. (Social worker 1)*

This contestation played out when private practitioners needed to renew their accreditation with DSD in 2015. Social workers reported being burdened by how administratively demanding the accreditation process was and how inefficiently it was administered. One social worker in private practice commented that she believed DSD had punished her by withholding accreditation unnecessarily.

*They were forever forgetting us [the CPO] on the list. (Social worker 1)*

However, the social worker previously employed by the DSD argued that these delays were caused by a lack of qualified staff to implement the accreditation process.

Social workers commented on hostility between the DSD and private adoption agencies and DSD social workers.

*I think the problem is national DSD, who are making decisions or wanting to do things who [are] are not on the ground. And I think [agency name] is sometimes seen as the little black sheep, because we won't sit back down. We have taken the Home Affairs to court, we have taken the Central Authority to the High Court before; because sometimes it needs to be done, because decisions they are making are not right. (Social worker 4)*

DSD has questioned the appropriateness of adoption being done by private social workers. They argue that charging fees for this work creates ethical questions and likened adoption to the sale of the child (RSA, 2013b). Social workers interviewed reported that this narrative and the racialised cultural barriers to adoption impacted negatively on the cooperation between government and private sectors.

*The Department of Social Development .... hate the White registered specialists because they think, and they might be right, that adoption is part of the child protection system and it should not be used, it should not be utilised as a business. (Social worker 1)*

Certain clauses in the proposed Children's Amendment Bill included the removal of the option for adoption professionals to charge fees (RSA, 2020a). This threatened the financial viability of private adoption services and returned the adoption service provision to DSD, which created further animosity.

*So, it's basically a state monopoly on everything; a state monopoly on adoptions. (Social worker 4)*

In turn social workers in private practice questioned the competence of the DSD social workers to deal with adoption services considering the overwhelming workload and lack of opportunities for skills development and supervision.

*We're not saying DSD social workers should not do adoptions. By all means, if they are trained properly. (Social worker 4)*

However, lack of personal and professional support was also reported to be a problem for social workers employed in DSD. Under these difficult work environments, practitioners lack the time and opportunities to educate themselves about adoption practice, and to develop the necessary skills and strategies to manage the demands of the work.

*They [social workers employed at DSD] don't want to learn. They don't want to grow. They [are] just in survival mode. (Social worker 3)*

Lack of support also prevented social workers from doing things like referring a specific case to a private adoption social worker, because it might have made them unpopular at work.

*But you can't think out of the box, not as a DSD social worker. Because you can't go against the grain, because you know, you're gonna rub against someone else. (Social worker 3)*

Despite a legal and policy framework that values permanency and prioritises adoption as a placement option, the number of foster care placements vastly outnumbers adoption and continues to grow. Most practitioners agreed that once a baby or child has been placed in foster care, that child would never be declared adoptable, and the placement would never be changed to an adoption.

*It's like a runaway train. You will never get that child away from that foster parent and into adoption. (Magistrate 2)*

One of the magistrates commented that the situation in DSD, including a demanding work environment, conflicting role responsibilities, not offering adoption services, and a poor relationship with private adoption social workers had several negative consequences for child protection work. This resulted in a diminished pool of prospective adoptive parents, as DSD historically represented a more affordable option of adoption.

Social workers and magistrates interviewed said that a particularly negative consequence was that child protection officers employed by DSD did not recognise an adoptable child and seldom referred children to adoption services. This was particularly problematic in the case of abandoned children, who ended up in foster care, despite meeting requirements for adoption specified in the Children's Act.

*If the child doesn't happen to land up with an adoption social worker... the child will never go the adoption route unless you have a very wide-awake magistrate. (Magistrate 2)*

The overreliance on foster care was also seen to be driven by a cultural bias against adoption by Black South Africans.

*To some social workers, adoption is a bad thing. And it's okay if a child stays for ever in foster care or in an institution because it's just anything but adoption... because of their [social workers'] own perceptions and life experience. (Social worker 2)*

Conflicting demands related to the financial needs of Black South Africans and the opportunity that the foster care grant offers an income also drove the high number of foster care placements, especially if

these placements are in kinship care. The primary problem with the overuse of the foster care system was said to be the lack of permanency for the children, especially if they were in institutional foster care.

Social workers commented that the oversight demands that were required in a foster care placement were also a massive drain on institutional resources in the DSD and the DoJ & CD, which further diminishes human and other resources for adoption. Some social workers interviewed were also of the opinion that some families abused the foster care grant as a way of earning an income.

*The other thing is that when it's foster care, there is a foster care grant. So, unfortunately, a lot of people see it as a way of [getting an] income. (Social worker 2)*

Other difficulties reported in the implementation of adoption related to difficulties registering the birth of adoptable children. Social workers were permitted to register the birth of a child to facilitate an adoption. Registering a baby born to, or assumed to be born to, a woman who is not South African was reported to be particularly difficult. These women may not have wanted to consent to an adoption in court out of fear of being deported, and these adoptions were then sometimes processed as if the baby had been abandoned.

*All that I can say, if [a] foreign baby is abandoned, [it] makes it easier to have that child registered and adopted and everything. ...They [adoption social workers] deal with it as an abandoned baby. (Magistrate 1)*

Social workers also expressed frustration with DHA for not allowing a biological father to register the birth of a child, despite this right being recognised in law.

*The big problem we have here in Cape Town, 20 years on, is the ineffectiveness of Home Affairs and the prevailing discrimination against natural fathers. (Social worker 1)*

Social workers reported that it was exceedingly difficult to register the birth of a child. Social workers reported that officials at DHA would sometimes decide that a particular baby was born to foreign parents based on the appearance of the child, especially children with a darker skin colour. Instead of issuing these children a birth certificate, the staff at DHA would give them a handwritten notice of birth which did not allow them to be declared adoptable.

*So, that's a very frustrating thing. The birth mother has never been registered. You cannot register the child. You need ...to get a late birth registration ... and someone to testify that this is a South African citizen. It's just a mission and a half. (Social worker 2)*

Despite frustrations of practitioners regarding adoption practice, there was agreement that adoptions are working better in the Western Cape than in other provinces.

*Western Cape is a great place to work. So, we [adoption social workers] are very grateful to be here. (Social worker 4)*

The successful implementation of adoption in the province was reported to be driven significantly by the discretion of important role players, including those in provincial DSD and specific individuals involved in the adoption field. Obtaining the letter of recommendation from DSD as required by Section 239 of the Children's Act (RSA, 2005) was very challenging in some provinces. Decisions about the recommendation letters were made in meetings of panels of relevant stakeholders in the provinces. These panel meetings were reported to be notoriously difficult to arrange and time consuming.

*To control private practitioners, they instituted panels all over the country [to consider the adoption application]. And they would refuse to issue the recommendation in terms of Section 239 of the Children's Act, [which] states that no social worker will take an adoption to court, the application, if the HOD of Social Development has not recommended it. So, they were having fun. Six hours, in a day the private practitioners had to sit there, the table was so full, you couldn't even hear, you just sat. ... And then they wouldn't sign the documents that the panel recommended. [We would say:] "What does the panel say?" The panel says: "Yes", and I just*

*sometimes think. They haven't got a clue. It's not specialists sitting there. It's ordinary bureaucrats with an attitude. And we all gotta be so nice.* (Social worker 1)

Social workers interviewed reported that these recommendation letters were easier to get in the Western Cape because of the support of the DG of DSD in the province. For example, the procedure in the Western Cape had been streamlined so that the DG of DSD signed the recommendation letter himself after considering the social worker's report rather than getting the letter signed by a panel of social workers as was being done in other provinces. Doing this himself shortened the waiting period significantly.

*[The DG of SDS in the WC] is a strong believer [in children's rights]; he strongly believes in adoptions.* (Social worker 1)

The social workers interviewed reported that the Western Cape had a well-functioning provincial chapter of the National Adoption Coalition of South Africa (NACSA), which includes social workers employed by the DSD. These networks were used to discuss issues relating to adoption provision, to secure appropriate placements of children and the specific support and lobbying required.

One of the ways in which discretion inherent in this position was used was to support adoption as a placement option. This could be done when presiding officers encouraged foster parents who came for an extension for a foster care grant, to consider adoption instead.

Implementation of the policies related to adoption were challenged by a range of difficulties including difficulties social workers face being accredited as adoption social workers, the overreliance of the foster care system, where adoption might provide a better placement option, and bureaucratic difficulties faced when working with government departments such as DoH, DHA and DoJ&CD.

## CONCLUSION

The poor implementation of the Children's Act caused opportunities inherent in the progressive and generally facilitative legislation and policies to be lost. Difficulties experienced in the implementation of adoption in the Western Cape were very similar to those found nationally more than a decade ago (Mokomane & Rochat, 2010). Rather than these difficulties being addressed, there had been a reduction in the number of children adopted annually. Implementation was negatively impacted by de facto policy created to deal with difficult work environments in which practitioners were called upon to make difficult decisions in the light of unclear or conflicting outcomes of policy.

## RECOMMENDATIONS

Greater thought needs to be given to what circumstances are needed to create an environment, with adequate resources and suitable work conditions to make the best decisions about the best placement options for children in need of family care. Resources that were required to implement the Children's Act (Barberton, 2006; Budlender *et al.*, 2007; Proudlock & Jamieson, 2007) have not been made available and those in the field need to advocate for the needed resources to ensure that adoptions take place as had been envisaged in the legislation. This will reduce the workload and administrative burdens of the practitioners.

There is a significant need to offer psychological support to practitioners to mitigate the impact of the emotional demands of their work.

More clarity is needed about the implementation of mechanisms intended to support timeous placement of children, such as RACAP.

Training in the provision would assist in achieving greater consistency in adoption practice. Adoption practice would also be greatly supported if there was a greater understanding about adoption among those employed at DHA, and the DoH. Training offered to staff at these government departments would be invaluable.

However, this good work relies heavily on the discretion of these individuals who are seen to work outside the system. Policy needs to be reviewed to include these aspects that support adoption.

Research conducted by social workers in the field would be invaluable, since they are insiders in this field with fewer barriers to entry.

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