

**The formulation of scale items for the best interest
of the child**

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- The participants – for setting aside time, sharing their knowledge and experience about the research topic, and providing me with valuable insight
- My late father, Abdul Wagiet Dempers – for motivating me to complete my research dissertation.

DECLARATION OF THE RESEARCHER

I, Nuraan Dempers, hereby declare that the manuscript with the title *The formulation of scale items for the best interest of the child* is my own work. All references used or quoted were acknowledged by citing in text and also by referencing in the bibliography. I further declare that I have not previously in its entirety, or in part, submitted the said manuscript at any other university to obtain a degree.



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LETTER OF PERMISSION

Permission to submit the article for examination purposes

I, the research supervisor, hereby declare that the input and effort of Ms Nuraan Dempers in writing this manuscript reflects research done by her on this topic. I hereby grant permission that she may submit this article for examination in partial fulfilment of the requirements for the degree Magister in Social Work in Forensic Practice.

A handwritten signature in black ink, appearing to read 'Lizane Wilson', written in a cursive style.

Dr Lizane Wilson

Research supervisor

PREFACE

The dissertation is presented in article format as indicated in Rule A.5.4.2.7 of the North-West University Potchefstroom Campus Yearbook.

- The dissertation consists of Section A which covers Part 1: Introduction and Part 2: Literature Review.
- The article is presented in Section B. The article is intended to be submitted to the *Journal of the Society for Social Work and Research*. The researcher followed the APA referencing style and guidelines for authors of the journal.
- Section C consists of a summary of the research study, recommendations and conclusions.
- Section D consists of the annexures.
- In Section A and C the researcher used the Harvard referencing guide provided by North-West University.

ABSTRACT

TITLE: THE FORMULATION OF SCALE ITEMS FOR THE BEST INTEREST OF THE CHILD

Although there is a high reported incidence of child sexual abuse cases in South Africa, which in itself is cause for concern, a great concern is what happens to children who have reported abuse to the authorities. To what extent can children be assured that their reported incident will be investigated, processed and appropriately heard, and that a fair but just decision will be made that protects the child victim while also preventing the abuse from re-occurring?

This study, which forms part of a larger study, is aimed at formulating a scale design and potential items for measuring child-centeredness, child participation and best interest of the child (BIOC) application based on the results obtained from Objectives 1 and 2 of the larger study. The scale items were identified by means of a focus group research design which allowed an opportunity for experts in a group setting to design items for the BIOC scale. Three focus group discussions were held with legal professionals with expert knowledge of the application of the BIOC principle and of child sexual abuse cases. During the focus group discussions, the potential list of items was modified by removing, changing or replacing words. Through this process, the potential list of items was refined, formulated and evaluated.

Key words: best interest of the child (BIOC), child sexual abuse, formulation, scale items.

DEFINING THE KEY CONCEPTS

1. Formulation

The fundamental meaning of formulation is the putting together of components in appropriate relationships, structures, according to formula (<https://en.m.wikipedia.org/wiki/>).

2. Scale items

A scale is a type of composite measure that is composed of several items that have a logical or empirical structure among them. That is, scale makes use of differences in intensity among the indicators or a variable (<https://www.thoughtco.com/>).

3. Best interest of the child

Every child, especially child victims and witnesses, in the context of [Law] [Act], has the right to have his or her best interest given primary consideration, while safeguarding the rights of an accused or convicted offender (UNODC & UNICEF, 2009:7).

TABLE OF CONTENTS

DECLARATION OF THE RESEARCHER.....	I
DECLARATION OF THE LANGUAGE EDITOR	II
LETTER OF PERMISSION.....	III
PREFACE	IV
ABSTRACT	V
DEFINING THE KEY CONCEPTS:.....	VII



SECTION A:	ORIENTATION TO THE RESEARCH	VIII
PART 1:	ORIENTATION TO THE RESEARCH	2
1.1	INTRODUCTION AND DISCUSSION OF THE PROBLEM STATEMENT	2
1.2	RESEARCH AIM AND OBJECTIVES	5
1.3	RESEARCH METHODOLOGY	6
1.3.1	Research approach	6
1.3.2	Research design.....	7
1.3.3	Sampling method.....	7
1.3.4	Sampling.....	7
1.3.5	Population	8
1.3.6	Sample inclusion criteria	9

1.3.7	Sample exclusion criteria	9
1.4	DATA COLLECTION.....	10
1.5.	DATA ANALYSIS	12
1.6	ETHICS.....	12
1.5.1	Legal authorisation	12
1.5.2	Process of sample recruitment and informed consent.....	12
1.5.3	Confidentiality and anonymity.....	15
1.5.4	Publishing and storing results.....	15
1.5.5	Research expertise.....	15
1.5.6	Trustworthiness	16
1.6	CHOICE AND STRUCTURE OF RESEARCH REPORT	17
1.7	CONCLUSION	18
1.8	REFERENCE LIST	19
PART 2:	LITERATURE REVIEW	22
2.1	INTRODUCTION.....	22
2.2	THE BEST INTEREST OF THE CHILD PRINCIPLE.....	23
2.3	THE DEVELOPMENT OF THE BEST INTEREST OF THE CHILD PRINCIPLE IN SOUTH AFRICA	25
2.3.1	McCall v McCall.....	25
2.4	INTERNATIONAL AND NATIONAL DOCUMENTS PERTAINING TO THE BEST INTEREST OF THE CHILD.....	26
2.4.1	International legislation	26

2.4.2	National legislation.....	29
2.5	CHILD PARTICIPATION	34
2.6	CHILD-CENTEREDNESS.....	35
2.7	FACTORS THAT CONTRIBUTE TO THE BEST INTEREST OF THE CHILD IN THE CRIMINAL JUSTICE SYSTEM.....	36
2.7.1	Before the child’s testimony in the criminal justice system	36
2.7.2	During the child’s testimony in the criminal justice system	36
2.7.3	After the child’s testimony in the criminal justice system	38
2.8	CONCLUSION	39
2.9	REFERENCE LIST	40



SECTION B:	A SCALE DEVELOPMENT STUDY OF THE BEST INTEREST OF THE CHILD	45
1.	Abstract	46
2.	Introduction.....	47
3.	Literature review.....	48
9.	Factors that contribute to the best interest of the child in the criminal justice system.....	46
10.	Instrument development and validation	55
10.1	Scale design	55
10.2	Generation of items	56
10.3	Assessment of face and content validity as well as reliability.....	58
10.4	Demographic profile of the respondents	59
11.	Table: The formulation of scale items for the best interest of the child.....	60
12.	Conclusion	79

13.	Reference list.....	78
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SECTION C	SUMMARY OF RESEARCH STUDY, RECOMMENDATIONS & CONCLUSION.....	81
1.	INTRODUCTION.....	82
2.	SUMMARY	82
3.	RECOMMENDATIONS.....	88
4.	LIMITATIONS OF THE STUDY	88
5.	REFLECTION OF THE STUDY	85
6.	CONCLUSION	86
7.	REFERENCE LIST.....	87
	COMBINED REFERENCE LIST.....	92



SECTION D:	ANNEXURES A – G.....	99
ANNEXURE A:	ETHICAL APPROVAL	100
ANNEXURE B:	CONSENT FORM FOR PROSECUTORS	102
ANNEXURE C:	CONSENT FORM FOR FORENSIC SOCIAL WORKERS	108
ANNEXURE D:	CONSENT FORM FOR DEFENSE ATTORNEYS.....	114
ANNEXURE E:	INITIAL BIOC SCALE	121
ANNEXURE F:	REFINED BIOC SCALE	134
ANNEXURE G:	ARTICLE 1: AUTHOR GUIDELINE	147



**SECTION A:
ORIENTATION TO THE RESEARCH**



PART 1:

ORIENTATION TO THE RESEARCH

1 Heading 1 sal nie druk nie. Moenie uitvee nie – dit sal verkeerde nommering tot gevolg hê.

1.1 INTRODUCTION AND DISCUSSION OF THE PROBLEM STATEMENT

The impact of violence in South Africa continues to devastate many lives, including those of children (Songca, 2019:316). Research shows that the majority of crimes committed against children are of a sexual nature (Hesselink & Dastile, 2016:12-13). The rise in sexual crimes by and against children has magnified their vulnerability and heightened the concern for their safety and development. Various policies and legislation developed over the past two decades provide protection for children, especially those who go through the criminal justice system (Songca, 2019:317). Even though policies and legislation are in place, the question remains whether we are doing enough to protect our children and whether we are taking the best interest of the child into consideration. Ally (2017) argued that despite the robust constitutional and international legal protection for children's right to participation and expression, current laws in South Africa fail to adequately protect and enable this right, especially since children are seen as "future adults" and not the human beings that they are in the present. It needs to be taken into account that there is a high reported incidence of child sexual abuse which in itself is cause for concern. However, a greater concern is what happens to children who have reported abuse to the authorities? To what extent can children be assured that their reported incidents will be investigated, processed and appropriately heard, and that a fair but just decision will be made aimed at protecting the child victim while also preventing the abuse from re-occurring?

In terms of Article 28(2) of the South African Constitution, a child's best interest is vitally important in every matter concerning the child (South Africa, 1996:15). Therefore, the government of South Africa attempts to uphold the Best Interest of the Child (BIOC) principle, as evident in the South African Children's Act (No 38 of 2005) (South Africa, 2005), the Criminal Law (Sexual Offences and Related Matters) Amendment Act (No 32 of 2007) (South Africa, 2007), and the Child Justice Act (No 75 of 2008) (South Africa, 2008). BIOC is a focal point of the Children's Act (South Africa, 2005) and is of concern to social workers working in various child-centred contexts, including state departments and the Department of Social Development, and those working in the criminal justice court system (Wessels *et al.*, 2016). Although this principle, in essence, refers to the different contexts in which adults consider a child's interests when taking decisions on behalf of the child, it has to adhere to the best interest of the child. Not

only is the best interest of the child important, but the Children's Act 38 of 2005 clearly states in Section 10 that "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 participation in an appropriate way and views expressed by the child must be given due consideration" (Wessels *et al.*, 2016). Cashmore (2002:838) emphasised that "it is important to note that children's participation does not mean that children have the right to determine the outcomes of decisions made, but rather means that children should be listened to and that their views taken into consideration". In order to focus on a child's needs and best interest, their care, support and wellbeing need to be viewed from a child-centred perspective. Having a child-centred perspective helps us to understand children and their needs so that we can work in their best interest. Being child-centred is also about supporting and maintaining their rights. Therefore, adhering to the child's best interest principle implies that child participation is included, and that this is done through a child-centred perspective.

Research documents that there are practical implications when implementing the BIOC principle, given the high numbers of reported child sexual abuse cases. The appropriate application of the BIOC principle therefore depends on the successful introduction of a complex array of procedures, behaviours and processes, most of which require careful, informed and trained scrutiny and weighting to ensure that an assessment of a child's circumstances was conducted in such a way that on a case-by-case manner the BIOC principle was adequately served. It further follows that the assessment of effective application is dependent upon the actions of multiple role-players, often not working in unison and often working on different aspects of the investigative process. After conducting extensive research, it was discovered that no documented evidence could be found of existing instruments that have specifically been developed to evaluate whether BIOC principles are being adhered to and effectively applied in the best interest of the child in larger systems such as the justice system.

There is a need to develop a standardised instrument and to conduct regular surveys of BIOC implementation. This research can therefore contribute to the effective monitoring and evaluation of South Africa's children's courts, specifically the criminal court environment. To help achieve this, a group of researchers, through an overarching research project called *The development of a best interest of the child monitoring system for the judicial system in South Africa: The BIOC-MS study* at North-West University, aim to develop a "BIOC watch" or monitoring system (MS) as their main scientific artefact or output. This BIOC monitoring system will in the long term serve as a public information instrument and feedback mechanism consistently monitoring BIOC implementation at macro level (Wessels *et al.*, 2016). This study (referred to as Study 3) forms part of the wider study.

The wider study enabled the researchers to conceptualise and introduce a “universal” measurement tool to help determine the extent to which the BIOC principle is applied in South African courts and in the justice system. The main aim of the project was therefore to contribute to knowledge generation in that a scale would be developed and validated that measures BIOC adherence in criminal courts. This newly developed scale will be used to assess various factors involved in the practical implementation of the BIOC principle as represented in the activities of various role-players, particularly in the processes of the criminal court. Practically, it will enable large-scale data-gathering which could guide the multi-disciplinary team towards promoting care and adequate protection in the best interest of the child in the criminal court system. This will help to ensure the continuous evaluation and improvement of services to child victims in the criminal court. This indirect value contribution of the scale or measurement tool will be to improve the monitoring of criminal justice services to child victims (Wessels *et al.*, 2016).

The research questions of the larger project on a BIOC monitoring system for the criminal court system are reproduced here for clarification purposes:

- What, from literature, are the contributing factors to child-centred court practices and the consistency with which the best interest of the child in the judicial system is applied? (Study 1)
- What are the moderating and mediating contextual factors that contribute to the implementation of child-centred practices and the best interest of the child principle in the judicial system? (Study 2)
- What will be the item formulations needed in an instrument to measure child-centeredness, child participation and the best interest of the child in the judicial system? (Study 3)
- What is the face and content validity of the newly developed BIOC scale formulation? (Study 4)
- Does the latent construct of the BIOC tool have sufficient construct validity as established by means of the Rasch model? (Study 5)
- To what extent is the BIOC principle applied consistently within the South African criminal justice system according to functionaries within that system? (Study 6) (Wessels *et al.*, 2016:8).

These six research questions will be answered through the larger study, while question 3 will be answered in this study. For the purpose of this study, the following research question was answered: *What will be the item formulations needed in an instrument to measure child-centeredness, child participation and the best interest of the child in the judicial system?*

In this study the researcher contributed to the larger study by filling the gap of designing items for the Best Interest of the Child (BIOC) scale by preparing a scale design, formulating items and qualitatively refining these items. During this process, the researcher had to focus on what would be the item formulations needed in an instrument to measure child-centeredness, child participation and BIOC application based on the integrated results obtained in Objective 1 (Study 1: systematic literature review) and Objective 2 (Study 2: in-depth interviews) of the large study. In this study (Study 3), focus group discussions were conducted with legal professionals with expert knowledge regarding the application of the BIOC principle and child sexual abuse cases. During the focus group discussions, the potential list of items was modified by removing, changing and/or replacing the wording of the scale items. Through this process, the potential list of items was refined, formulated and evaluated.

1.2 RESEARCH AIM AND OBJECTIVES

This study forms part of a larger study called *The development of a best interest of the child monitoring system for the judicial system in South Africa: The BIOC-MS study* – or the BIOC-MS study for short. The large study has eight objectives of which the first six cover the scale development process and the last two focus on obtaining a first snapshot of BIOC application in the criminal justice system in South Africa. All the objectives in the larger study are listed here for convenience. The objective for this specific study was Objective 3 (To formulate a scale design and potential items for measuring child-centeredness, child participation and BIOC application on basis of the integrated results obtained in Objectives 1 and 2 of the large study).

Objectives of large study:

1. To identify by means of a rapid literature review available evidence of possible factors that influence the effective implementation of best interest of the child principle in the criminal justice system.
2. To obtain by means of in-depth interviews with various functionaries working within the judicial system those procedural and operational (behavioural) factors that contextually contribute to BIOC application in the judicial system.

3. **To formulate a scale design and potential items for measuring child-centeredness, child participation and BIOC application on basis of the integrated results obtained in Objectives 1 and 2.**
4. To establish the face and content validity of the newly designed BIOC measure qualitatively and quantitatively by utilising an expert cognitive testing panel.
5. To establish the construct validity and internal consistency reliability of the newly designed BIOC measure by means of Rasch analysis and Cronbach's Alpha.
6. To compile a profile of trends regarding the extent to which BIOC is served in the criminal justice system.

The above set of research objectives will be achieved by means of six small-scale studies associated with this large proposal. Each study will be conducted by a postgraduate student in forensic practice. The large study will thus consist of six individual research articles that will be submitted for each student to fulfil the requirements of the degrees hosted by the subject group of Social Work.

1.3 RESEARCH METHODOLOGY

1.3.1 Research approach

The achievement of the first six objectives within the bigger project will culminate in the development of a standardised scale that has sufficient construct validity and reliability to be used in future repetitive studies, and in the development of a database system for the purpose of monitoring BIOC compliance. The meta framework for the larger study is pragmatic and consists of Fraser, Richman, Galinsky and Day's Design and Development paradigm (2009) incorporating scale development methodology (De Vellis, 2012) as the different sub-studies incorporated in the larger project. This will enable the researchers to conceptualise, design and empirically test a measurement instrument or scale and implement it in reality.

In this study, a systematic scale development process was followed, essentially reflecting the guidelines of theory exploration, and construct development, item generation and testing (De Vellis, 2012: 76-110). During the scale development process, a deductive approach was used as it concentrates on using theory and already-formed conceptualisation of constructs to generate items within its domain (Tay & Jebb, 2017:2). For the purpose of this study, the researcher obtained information from Study 1 (systematic literature review) and Study 2 (in-

depth interviews) for construct development and took the process further by designing items for the BIOC scale design.

Theory is important when developing a scale as it can guide the scale developer through the scale development process (Noar, 2003:624). According to Tay and Jebb (2017:2), when measuring a new construct that has not been measured, this requires literature reviews and focus groups with the target population. During the theory exploration phase, information was obtained from Study 1 and Study 2, which assisted with construct development and item generation.

During the item generation phase, a small item pool (SIP) design strategy was used, whereby 20 items were designed for each construct (De Vellis, 2012). During item generation, inclusivity of items was pursued rather than exclusivity. This allowed participants to test the potential list of items developed by the researcher. Participants in the focus group setting had the opportunity to contrast and test item meanings against given definitions for each construct.

1.3.2 Research design

A qualitative descriptive design was used in this study. Sandelowski (2000:334) suggested that the goal of qualitative description is to provide a comprehensive synopsis of events using terms by those involved in the events. Qualitative descriptive designs produce findings close to the data given (Sandelowski, Voils, & Knafl, 2009:78). Qualitative descriptive design was seen as applicable for this study as the research design allowed the researcher to describe the feedback received from the participants and therefore to stay close to the data given.

1.3.3 Sampling method

The sample was purposively selected. In this study, participants with expert knowledge of BIOC implementation and the management of child sexual abuse cases were recruited by invitation.

1.3.4 Sampling

Three samples were recruited by the mediators identified using purposive sampling. The scale design has to be formulated in practical language as it will be used by average as well as advanced level employees. Hence, proficiency in the appropriate language was assessed prior to selection. A Flesch-Kincaid calculator (<http://www.readabilityformulas.com/flesch-grade-level-readability-formula.php>) was used to establish the appropriate reading level for the new items.

This allowed the researchers to sample staff at various levels who voluntarily offered to participate, have an interest in the topic, are directly involved in BIOC implementation, and were willing to participate.

The researcher aimed to recruit a minimum of five people for each focus group and a maximum of 14 participants. In this way a reasonable opportunity was created for repetition in comments. The samples were selected primarily from the populations as defined in 1.3.5. Ten (10) participants were purposively recruited for the focus groups.

Sample 1 consisted of four members from the prosecutors at the Sexual Offences Courts in the Western Cape. These four members included two prosecutors from the Mitchells Plain Magistrate's Court and two prosecutors from Khayelitsha Magistrate's Court. The other prosecutors at the Sexual Offences Courts could not form part of the research study as their demanding caseloads and pending court cases did not allow time for this.

Sample 2 consisted of three members from all the private forensic social workers in the Western Cape. The mediator informed various private forensic social workers at different private organisations of the study. However, only three private social workers specialising in forensic social work made themselves available to participate in the research study.

Sample 3 consisted of three members from all the defence attorneys in the Western Cape. The mediator approached the defence attorneys from Legal Aid in Stellenbosch and Bellville, but was unsuccessful. They were unable to assist due to demanding caseloads and time constraints. The mediator continued to recruit defence attorneys, ending with only four participants who were available to form part of the research study.

For practical reasons, as mentioned below, the samples were primarily selected from the Western Cape.

1.3.5 Population

Population refers to the totality of individuals, events, organisation units, case records or other sampling units with which the research problem is concerned (Strydom & Delpont, 2011:223). The research population for this study consisted of all prosecutors at the Sexual Offences Courts as well as private forensic social workers and defence attorneys involved in the representation, investigation, assessment, or decision making with respect to children who have been the victims of sexual abuse, or deal with the courts in situations requiring care decisions to be made in the Western Cape. The reason for electing this province was that court procedures and processes are assumed to be well established in this specific context (Sadan, Dikweni &

Cassiem, 2001) and as a convenience factor, the researcher is also located in the Western Cape. This afforded the researchers the opportunity to attract design input that originated from a well-developed system. It was further assumed that child-centeredness was well developed and would therefore be observable in this context.

1.3.6 Sample inclusion criteria

In all the studies within the constraints of this larger study, samples will be largely similar in that they utilise the same sample population. However, each study focused on a slightly different provincial area. The sample for this study consisted of employees from the Department of Justice, specifically prosecutors, private forensic social workers and defence attorneys involved in the representation, investigation, assessment and/or decision making with respect to children who have been the victims of sexual abuse, or who deal with the courts in situations requiring care decisions to be made, or as perpetrators of youth offences. In all these situations, these officials play a direct or indirect role in applying or implementing the BIOC principle in their actions pertaining to child cases.

Specific inclusion criteria for prosecutors (subgroup 1) and defence attorneys (subgroup 2) were:

- First-hand experience in dealing with cases involving decision-making regarding children according to the BIOC principle
- A minimum of two years' experience in this context within criminal courts
- Knowledgeable about court procedures.

Specific inclusion criteria for private forensic social workers (subgroup 3) were:

- A postgraduate qualification in forensic practice
- If no postgraduate qualification, an additional two years of experience were required
- Registered social worker with the South African Council for Social Service Profession (SACSSP).

1.3.7 Sample exclusion criteria

Exclusion criteria for subgroup 1:

- Prosecutors who have no experience in cases involving children.

Exclusion criteria for subgroup 2:

- Defense attorneys who have no experience in cases involving children.

Exclusion criteria for subgroup 3:

- Social workers doing only generic social work duties not associated with forensic assessments.

1.4 DATA COLLECTION

The objective of this study was to empirically, and with consideration and integration of the results of Studies 1 and 2, start the design of a BIOC measurement tool. Focus group methodology was most appropriate for this type of study as it allowed extensive opportunity for experts in a group setting to creatively and constructively design items for the BIOC scale. This method is consistent with scale development processes normally described as the small item pool (SIP) design strategy (De Vellis, 2012). This process provided participants with the opportunity to contrast and test item meanings against given definitions for each construct. As a general rule of thumb about 20 items should be designed for each construct although inclusivity rather than exclusivity was pursued. As a further activity in the design process, the researcher obtained descriptions from group members regarding observable "indicators" of the BIOC principle in their work environments from the participants' answers to following question: What observable area/activity/process/policy/procedure in your work environment would be most indicative of the BIOC principle being effectively implemented? For example, the presence of a child-friendly interview room may be an observable indicator of effective BIOC implementation. The objective of this question was to draw concrete responses from participants in this regard and to assist in constructing a list of measurable indicators of BIOC, which is to be used in the empirical testing of the scale and model development (Objective 7). The purpose of this exercise is to enter validation variables, a useful principle for establishing construct validity (De Vellis, 2012).

The design of the scale consisted of a description of the scale constructs based on the results of the previous two studies, the inclusion of constructs from the Children's Act (2005) as well as *MCall v MCall* and the input received from the participants during the focus group discussions.

In this study, the data collected via the focus groups was NOT in the form of verbal data collected by means of a conventional interview schedule. Based on the need for content evaluation, the groups focused on evaluating the items of a draft scale based on the themes derived from Studies 1 and 2. The researcher proceeded as follows:

- (1) A list of preliminary items was formulated beforehand by the researcher on basis of the construct definitions which have been identified through Studies 1 and 2. Standard question formulation guidelines were used to ensure that the items were not too long, did not contain ambiguity or double-barrelling.
- (2) As many items as possible were formulated in this way and presented in table format (see Annexure E). This was the first draft of the BIOC questionnaire. Likert-type scaling (Polytomous data in Rasch) was used and a preliminary evaluation of the items by the lead researchers was done before exposing the draft scale to the focus groups.
- (3) The newly formulated scale was then given to each focus group for discussion and deliberation. The researcher explained each construct and handed out the questions in typed format so that participants could familiarise themselves with the content.
- (4) The researcher then read out each question and allowed time for discussing the meaning of the item and its wording. She also asked if the item, as formulated, reflects the construct it is supposed to measure.
- (5) Next, the researcher recorded the ideas or suggestions regarding the formulated item and facilitated a commonly understood version of the item.
- (6) Once the group had reached consensus, she proceeded to the next question.
- (7) At conclusion of each construct, she asked the group whether they were satisfied that the questions appearing for that construct are indeed the final list of questions and whether there was a need for additional questions not yet listed.

Three focus groups were conducted. The second and third focus groups worked on the outputs of the first group, and the focus of the group changed to refine the items as necessary. Thus, each consecutive focus group worked with a new iteration of the scale, which led to the systematic improvement and refinement of the new instrument. This allowed for the formulation of a better scale design in that compounded design instead of segregated design was used. An audio recording was produced of each focus group discussion and the information that was obtained was analysed by the researcher.

The focus groups with the prosecutors and defence attorneys were conducted at a private meeting room at the court where the participants were based. This room ensured the privacy of the participants. During the focus group discussion the door was locked to avoid any interruptions that might occur. The court manager informed the staff beforehand that a meeting would be in progress. The mediator arranged the venue for the focus group discussions beforehand with the administrative clerks at the different departments where the focus groups were held. The mediator clearly stipulated that the venue should be private and non-

threatening. The focus group with the social workers was conducted at a private meeting room at one of the municipal offices, which ensured privacy for the participants and was a central venue for the social workers. During the focus group discussions, the door was locked to avoid any interruptions. The duration of the focus groups was between two and three hours.

1.5 DATA ANALYSIS

This study focused on the design of items for a new BIOC scale. Hence, no interview-based qualitative data was produced, as was indicated under the data collection section. The efforts of the focus groups were incorporated under the refinement stage as indicated above and culminated in a refined and semi-finalised measurement scale. The focus groups' contributions were used creatively to construct, review and refine the items for each theoretical construct identified for this study. The researcher reviewed the semi-finalised questions during an in-house discussion group. The end-product of this part of the study is a list of observable indicators of BIOC implementation (see Annexure F) that will be placed in the final BIOC data collection package for Studies 5 and 6.

A tape-based analysis was used, where the researcher listened to the recordings of the focus group and then created an abridged transcript. This transcript is usually much shorter than is the full transcript in a transcript-based analysis. Notwithstanding, this type of analysis was helpful because the researcher focused on the research question and only transcribed the portions that assisted to understand the phenomenon of interest (Onwuegbuzie, Dickinson & Leech, 2009:4-5).

1.6 ETHICS

1.6.1 Legal authorisation

Permission to conduct the study was obtained from the National Department of Justice. Goodwill permission was obtained from the National Prosecution Authority in the Western Cape.

1.6.2 Process of sample recruitment and informed consent

1.6.2.1 Recruitment of prosecutors

After ethical clearance had been obtained from the Health Research Ethics Committee, North-West University, the gatekeepers were informed that the study may commence. The gatekeeper for the prosecutors appointed the mediator. The recruitment process for the prosecutors consisted of the following stages:

(1) Preliminary compilation of potential participants: The mediator was contacted by the researcher, and the aim and purpose of the study explained to him.

(2) Information and obtaining interest: Information on the aim of the study, the risks and benefits of the study, expectations, invitation letters and informed consent forms were emailed by the mediator to the potential participants who met the inclusion criteria, giving potential participants time to consider participation. The potential participants were also given the opportunity to ask questions about the study to the mediator via email and have them answered by the mediator. The potential participants were asked to contact the mediator within five working days to inform the mediator of their willingness to participate.

(3) Completion of consent forms: Once the participants had indicated that they were willing to participate, the mediator arranged with the participants to sign the informed consent forms in the presence of their administrative clerk, an independent person. The informed consent forms were emailed to them beforehand. It was expected of the participants to bring the signed informed consent forms with them on the date of the focus group discussion.

(4) The mediator provided the researcher with the names and contact details of the participants who were willing to take part in the study.

(5) The researcher contacted the participants to provide the date and venue for the focus groups.

1.6.2.2 Recruitment of forensic social workers

The recruitment process for the forensic social workers consisted of the following stages:

(1) Recruitment of a mediator: A suitable mediator was recruited, in this case a social worker at the Department of Social Development, Cape Winelands Region, who knows the social workers in the field and is not directly associated with the project. She recruited the social workers for the study.

(2) Preliminary compilation of potential participants: The mediator was contacted by the researcher, and the aim and purpose of the study explained to her.

(3) Information and obtaining interest: Information on the aim of the study, the risks and benefits of the study, expectations, invitation letters and informed consent forms were emailed by the mediator to the potential participants who met the inclusion criteria, giving potential participants time to consider participation. The potential participants were given the opportunity to ask questions about the study to the mediator via email and have them answered by the mediator.

The potential participants were requested to contact the mediator within five working days and inform the mediator of their willingness to participate.

(4) Completion of consent forms: The mediator arranged with the participants to sign the informed consent forms in the presence of their administrative clerk. The forms were emailed to them well in advance. It was expected of the participants to bring the signed informed consent forms with them on the day of the focus group discussion.

(5) The mediator provided the researcher with the names and contact details of the participants who were willing to take part in the study. The researcher contacted the participants to provide the date and venue for the focus groups.

1.6.2.3 Recruitment of defence attorneys

The recruitment process for the defence attorneys consisted of the following stages:

(1) Recruitment of a mediator: A suitable mediator was recruited, namely a social worker at the Department of Social Development, Cape Winelands Region DSD, who knew the defence attorneys working in the field of child sexual abuse. She recruited the defence attorneys for the study. She was not directly associated with the project.

(2) Preliminary compilation of potential participants: The mediator contacted the researcher who explained the aim and purpose of the study to her.

(3) Information and obtaining interest: Information on the aim of the study, the risks and benefits of the study, expectations, invitation letters and informed consent forms were emailed by the mediator to the potential participants who met the inclusion criteria, giving potential participants time to consider participation. The potential participants were given the opportunity to ask questions about the study to the mediator via email and had them answered by the mediator. The potential participants were requested to contact the mediator within five working days and inform the mediator of their willingness to participate.

(4) Completion of consent forms: The mediator arranged with the participants to sign the informed consent forms in the presence of their administrative clerk. The consent forms were emailed to the participants well in advance and they were instructed to bring the informed consent forms with them on the day of the focus group discussion.

(5) The mediator provided the researcher with the names and contact details of the participants who were willing to take part in the study. The researcher contacted the participants to provide the date and venue for the focus groups.

1.6.3 Confidentiality and anonymity

Only the project leaders and researchers involved in this project had access to the data in order to ensure confidentiality. Confidentiality in the focus group discussions was discussed with the participants and they were reassured that what they share would stay confidential. As only partial confidentiality could be maintained in the focus groups, this was explained to the participants and discussed during the onset of the focus group discussion. During this discussion, group rules were established to ensure partial confidentiality. The privacy of the participants was respected as the venues where the focus group discussions were conducted were private and non-threatening. The researcher conducted the interviews at various offices convenient to the participants. It was also made clear to the participants that they had the right to decide when, where, to whom and to what extent they wanted to disclose their views regarding the BIOC in the judicial system. In order to ensure anonymity each participant was allocated a number instead of using names. Written consent was obtained from the participants to partake in the focus groups and to audio-record the focus groups.

1.5.4 Publishing and storing data and results

As all the focus group discussions were audio-recorded, these recordings were removed from the audio-recording device directly after the focus group discussions and saved on the researcher's password-protected laptop. The recordings were deleted from the audio-recorder once they had been transcribed. Hard copies of the transcribed interviews were safely stored in a locked cabinet in the researcher's office; no-one except the researcher had access to this cabinet. These reports were password protected on the computers of the researcher and the study leader. All analysed data will be sent to the Social Work Division of the North-West University, Potchefstroom Campus, to be sent to the COMPRES research office.

On completion of the study, the results and findings of the larger study will be presented at a session to which all the participants will be invited. Furthermore, an e-mail with the results and findings will be sent to each participant as well as to the Department of Justice. The study results will be obtainable from the University's library while published articles will be available to participants for reading.

1.5.5 Research expertise

It is the ethical obligation of each of the researchers in the project to have the relevant skills and technical competence to undertake the proposed study. The project leaders should be accountable and run the entire project in an ethically correct manner. The two project leaders have the necessary background, expertise, qualifications and professional registrations to

implement the entire project. Prof Wessels, the one project leader, has experience in rapid reviews, semi-structured interviews and focus groups. Prof Roestenburg, the other project leader, has experience in semi-structured interviews, focus groups, statistical analysis and applying the Rasch model as a statistical set of techniques in research studies. The study leader for this study, Dr Wilson, has experience in semi-structured interviews and focus groups.

Objectivity and the ability to conduct the research properly form part of the ethical responsibilities of the researcher. According to Strydom (2011:123), “researchers are ethically obliged to ensure that they are competent, honest and adequately skilled to undertake the proposed investigation”. For the implementation of the research project, a degree in social work is needed, which the researcher has. She also has four years of fieldwork experience, and is registered with the South African Council for Social Service Professions (SACSSP). In addition, the researcher has the necessary skills and knowledge of court procedures and the implementation of the relevant acts, as well as current modules in Forensic Social Work Practice. This all contributed to the researcher’s knowledge and skills to implement the research study. The researcher obtained the necessary training to facilitate a focus group, as she was exposed to a mock focus group which was approved by her supervisor. She also completed the TRREE training modules (modules 1, 2, 3 and 4) in order to further equip her for this study.

1.6 TRUSTWORTHINESS

According to Bryman (2016:717), trustworthiness is a set of criteria that has been advocated by a team of researchers for assessing the quality of qualitative research. It assists the researcher to meet the criteria of credibility, dependability, transferability and conformability. According to Botma, Greeff, Malaudzi and Wright (2010:232), trustworthiness has four epistemological standards, namely truth value, applicability, consistency and neutrality. The above-mentioned will be discussed in Table 1 below.

Table 1: The four epistemological standards of trustworthiness

Epistemological standards	Strategies	Application
Truth value	Credibility	The researcher ensured credibility in this study through prolonged engagement by establishing rapport with the participants. The focus group works on refinement of a scale design; at the end

		of this process the signing off on the finalised scale design by the focus group will signify and confirm the truth value of the project. The different versions of the scale draft will be stored as evidence of the process and to evaluate the authenticity of the item formulations at the end of the project.
Consistency	Dependability	An auditing approach was followed during the research process. Complete records will be kept of the research process. Consistency was improved in that different focus groups sequentially reviewed a refined version of the scale, each time confirming the meaning and logical composition of the items, thus improving the consistency of the scale product and outcome of this research component.
Applicability	Transferability	The researcher ensured transferability by providing a thorough description of the process, context and participants involved in the research. Applicability was further confirmed by the fact that the participants in this study represented the context for which the scale is formulated, thus contributing to high levels of applicability
Neutrality	Confirmability	Confirmability in this study was established by keeping an audit trail and documenting the research process.

Source: Botma et al., 2010:232-234.

1.7 CHOICE AND STRUCTURE OF RESEARCH REPORT

The dissertation follows the article format as prescribed by North-West University. The dissertation consists of the following sections:

Section A

- Part 1: Orientation to the research (NWU Harvard referencing style)
- Part 2: Literature review (NWU Harvard referencing style)

Section B: Article (APA referencing style)

Section C: Summary, evaluation, conclusion and recommendations (NWU Harvard referencing style)

Section D: Appendices

Journal of the Society for Social Work and Research has been identified as a potential journal for submission.

1.8 CONCLUSION

This study forms the third part of a larger study aimed at designing and developing, by means of a pilot test, a new measurement instrument for the regular, periodic measurement of the extent to which the Best Interest of the Child (BIOC) principle is implemented in the Criminal Justice Court System (Wessels *et al.*, 2016). In this section, the researcher indicated the process that was followed to reach her overall aim and objectives through various methods and approaches in order to obtain information for the completion of this research study. The researcher outlined the research approach used and how she purposefully selected the participants for the study. The researcher also indicated how legal authorisation was obtained to conduct the study and how adherence to all the other ethical aspects was ensured.

The next section, section 2, is a literature review that sheds light on the BIOC principle, which is not always met in the South African criminal justice system. The literature review provided context and a better understanding of the concepts of BIOC, child-centeredness and child participation, which should be taken into consideration in the criminal justice system.

The following section will also focus on international and national legislation that deals with the protection of the BIOC principle. In addition, an overview of the historical development of the BIOC in South Africa will be provided.

1.9 REFERENCE LIST

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PART 2:

LITERATURE REVIEW

2 Heading 1 sal nie druk nie. Moenie uitvee nie – dit sal verkeerde nommering tot gevolg hê.

2.1 INTRODUCTION

Crime and violence against children is a highly disturbing problem. In addition, child sexual abuse, specifically in South Africa, is becoming a growing phenomenon. Research showed that the majority of crimes committed against children are of a sexual nature (Hesselink & Dastile, 2016:12-13). Statistics revealed that “about one in seven girls and one in twenty five boys will be sexually abused before they turn 18” (Townsend & Rheingold, 2013:1). “Identified incidents of child sexual abuse are declining with the primary reason that only about 38 percent of child victims disclose that they have been sexually abused – some never disclose” (Meinck *et al.*, 2017:2). Other reasons are that throughout the disclosure process, many children described not being believed, lack of support and inadequate protective action (Meinck *et al.*, 2017, 2017:2). Under-reporting of child sexual abuse in South Africa is explained by numerous factors, including the poor quality of service provision at the level of the police, health workers and the criminal justice system (Mahlalela, Johnson & Mills, 2017:6). Stigma and myths about rape in South Africa, which either blame or implicate the victim as culpable, further contribute to under-reporting. The rape victim experiences feelings of guilt and/or fear of being blamed by their community or family (Rape Crisis Cape Town Trust, 2017). Questions can be raised about what happens to children who have reported abuse to the authorities. To what extent can children be assured that their reported incident will be investigated, processed and appropriately heard and that a fair but just decision will be made that protects the child victim while also justly prevents the abuse from re-occurring? In terms of Article 28(2) of the Constitution (1996), a child’s best interest is vitally important in every matter concerning the child (South Africa, 1996:15). The government of South Africa should therefore attempt to uphold the Best Interest of the Child (BIOC) principle, as evident in the South African Children’s Act No 38 of 2005, Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 of 2007, and Child Justice Act No 75 of 2008.

The literature review showed that the BIOC principle is not always adhered to in the South African criminal justice system. This is caused by various factors such as the under-reporting of rape in South Africa, fear of secondary trauma at the hands of the police, fear of not being believed and/or of being blamed, fear of stigmatisation, and lack of faith in the criminal justice

system (Naidoo, 2013:210; Rape Crisis Cape Town Trust, 2017). Research showed that child participation is supported internationally since the adoption of the United Nations Convention of the Rights of the Child (Moses, 2008:327). In the South African context with the focus on Section 10 of the Children's Act 38 of 2005, every child has the right to participate in any matter concerning themselves, depending on their age, maturity and stage of development. In other words, a child's views must be given due consideration (Barrie, 2011:128). Moses (2008:329) stressed that the concept and practice of child participation is only prevalent in theory; it is not practised in the criminal justice system, which often leads to the best interest of children not being met. The process of before, during and after a child testimony in the criminal justice system was also questioned. The South African Police Services (SAPS), being the first line of reporting of crimes against children, often show little empathy towards child victims. Instead of making children feel safe, they are insensitive, which often leads to non-reporting of sexual abuse of children (SALC, 2002:57-60). Police misconceptions and disregard for the sensitivities surrounding sexual abuse cases are also contributory factors for non-reporting, which is a concern especially since the police statement is the foundation of any criminal case (Mahlalela *et al.*, 2017:17). In court, the child's credibility is often questioned during the process of cross-examination, which is another contributory factor to the child's best interest not being served. Stolzenberg and Lyon (2014:1) stated that attorneys exhibit little sensitivity to the age of the child in selecting their questions, which are often confusing and do not fall within the comprehension level of the child. Even after the child's testimony in the criminal justice system their best interests are not served. The support of children after they have provided testimony, although critically important, has received insufficient attention (Robert & Pantell, 2017:4).

The purpose of this literature review is to provide context for the study to follow. The researcher will, within this literature review, analyse the concepts of the BIOC, child-centeredness and child participation from various literature sources in order to provide insight that the BIOC is of paramount importance and should be taken into consideration within the criminal justice system.

The section will also focus on international and national legislation pertaining to the protection of the BIOC principle. In addition, an overview of the historical development of BIOC in South Africa will be provided.

2.2 THE BEST INTEREST OF THE CHILD (BIOC) PRINCIPLE

English (2011:1) stated that "best" is never defined. The United Nations Convention on the Rights of the Child (UNCRC) does not offer a precise definition and is not prepared to outline the common factors of the best interests of the child. Packing an agenda in the vocabulary that everyone understands can undermine the very walls erected by the law against individual

preferences and prejudice. Barrie (2011:126) argued that the question of determining what exactly a child's best interests are, should be determined by the circumstances of each case. He stated that the judiciary has, over the years, attempted to lay down guidelines. Before the Children's Act 38 of 2005 was enacted, South African legislation did not provide a list of factors to be applied when a court has to deal with a child's best interests. This vacuum was generally deplored as subjective opinions could arguably have impeded objective judgements in specific cases.

According to Bonthuys (2006:5), in order to make sense of what the courts have done with the best interest principle in South Africa, it is necessary to determine whether the best interest is a value, a principle of interpretation, a rule or a right. Since 2000, based on the cases of *Christian Education South Africa v Minister of Education* and *Minister for Welfare and Population Development v Fitzpatrick*, there has been a tendency to hold that the best interest creates a right independent of the other rights contained in Section 28(1) of the Constitution. Nonetheless, in some of the very same cases, the BIOC is also called a 'standard' or a 'principle'. The fact that the Constitutional Court has not dealt with the best interest principle in the same way as it normally treats other rights, creates the impression that the best interest is not really a fundamental right, or at least not a right like all the other rights (Bonthuys, 2006:6-7). He stressed that in none of these cases was it actually necessary to use the best interest as a right, as other rights were more directly applicable (Bonthuys, 2006:7).

Bonthuys (2006:5) stressed that in the *Christian Education* case, in addition to mentioning the best interest, the court held that the decision could have been made on the basis of the child's rights to dignity and freedom and security of the person in order to limit the parent's rights to freedom of religion. The *Fitzpatrick* matter could have been decided on the basis of the child's right to family or parental care, or to appropriate alternate care when removed from the family environment. In the *Du Toit* matter, apart from focusing on legislation which infringed the best interest of the children, the court looked at the parental rights to equality and dignity. Bonthuys (2006:5) continued to argue that this case could equally have been decided on the basis of the child's rights to parental care.

In *De Reuck v Director of Public Prosecutions*, in addition to the best interest right, the rights to privacy and freedom of expression of an adult with child pornography in his possession were limited by children's rights to dignity. The *Sonderup* case was the exception to the cases discussed above, given that it challenged the Hague Convention directly, basing its argument on the fact that it did not give effect to the best interest of children (Bonthuys, 2006:8-9). According to Bonthuys (2006), these Constitutional Court cases highlighted that the best

interest principle does not have to be referred to as a right as there are other children's rights that are more directly applicable in these matters.

2.3 THE DEVELOPMENT OF THE BEST INTEREST OF THE CHILD (BIOC) PRINCIPLE IN SOUTH AFRICA

As long ago as 1969, the standard of the child's best interest was described by our courts as a golden thread that runs throughout the fabric of our law relating to children (*McCall v McCall*, 1994:3). During 1994, and for the first time in South African legal history, in the case of *McCall v McCall*, Judge King put forth a list of 13 criteria that could serve as a guide in determining the BIOC principle (Bekink & Bekink, 2004:24). With the advent of the Constitution in 1996, the BIOC principle was given constitutional recognition. In addition, the Children's Act 38 of 2005 is the most recent development in legislation to determine the best interest of the child in order to provide assistance to the courts. The following factors listed of *McCall v McCall* should not be regarded as a *numerus clausus*, as the court stated that any other relevant factor may be brought before the court (Bekink & Bekink, 2004:24). This list only serves as a guide. Nevertheless, it has to a great extent assisted our courts in determining the BIOC.

2.3.1 *McCall v McCall*

In the *McCall v McCall* case (1994), a comprehensive checklist of 13 factors was drawn up for decision makers to consider when trying to reach an outcome that would adhere to the BIOC principle. The criteria listed in the *McCall* decision are as follows (*McCall v McCall*, 1994:205-206):

- (a) The love, affection and other emotional ties that exist between parent and child, and the parent's compatibility with the child;
- (b) The capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires;
- (c) The ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings;
- (d) The capacity and disposition of the parent to give the child the guidance that he requires;
- (e) The ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs – generally speaking, the provision of economic security;

- (f) The ability of the parent to provide for the education, well-being and security of the child, both religious and secular;
- (g) The ability of the parent to provide for the child's emotional, psychological, cultural and environmental development;
- (h) The mental and physical health and moral fitness of the parent;
- (i) The stability or otherwise of the child's existing environment, taking into account the desirability of maintaining the *status quo*;
- (j) The desirability or otherwise of keeping siblings together;
- (k) The child's preference, if the Court is satisfied that in the particular circumstances the child's preference should be taken into consideration;
- (l) The desirability or otherwise of applying the doctrine of same sex matching;
- (m) Any other factor that is relevant to the particular case with which the Court is concerned.

2.4 INTERNATIONAL AND NATIONAL DOCUMENTS PERTAINING TO THE BIOC PRINCIPLE

2.4.1 International legislation

International human rights law and domestic family law recognise children as among the most vulnerable members of society. Nearly every major human rights treaty recognises the need for the special protection of children. The United Nations Convention on the Rights of the Child also enshrines the principle that in all legal actions, "the best interest of the child" shall be a primary consideration. The principle of the BIOC is one of the four pillars of the UN's Convention on the Rights of the Child (CRC) together with non-discrimination (article 2), survival and development (article 6), and child participation (article 12) (Centre for Child Law, 2014:1).

Declaration of the Rights of the Child 1924 and 1959

The Declaration of the Rights of the Child 1924 (Geneva Declaration of the Rights of the Child, 1924:21-43) is not binding on members. However, the preamble provides a duty that "mankind owes to the child the best it has to give" and consequently, committed nations to the development, protection and raising of children (Freeman, 1996:1-2). Despite the limitations of

this Declaration, it prepared the ground for the “progressive development of international norms and standards with regard to the rights and well-being of the child” (De Villiers, 1993:293).

The Declaration of the Rights of the Child (1959) again stressed that mankind owes the child the best it has to give. Although the scope of this Declaration is wider than that of the 1924 Declaration, its emphasis was still on the protection and welfare of the child (Freeman, 1996:3). Despite the reference to rights, the principles of the Declaration could at best be regarded as moral rights, merely containing moral entitlements (De Villiers, 1993:293). However, Basson (2004:45) illustrated that this was good progress in the conceptual thinking of children’s rights as the Declaration adopts a language of entitlement which is not prevalent in the 1924 Declaration. This proves that children were finally being recognised as holders of rights and not as mere objects. Despite the fact that the Declarations are not legally binding on members and that they make no specific reference to the BIOC principle, their true value lies in the awareness of rights and the welfare of the child.

The United Nations Convention on the Rights of the Child 1989

The United Nations Convention on the Rights of the Child (UNCRC) is a comprehensive treaty on the rights of the child and the most universally accepted human rights document in history. The UNCRC has been ratified by 196 countries, which clearly demonstrates the wide level of acceptability of this convention. Currently, the UNCRC enjoys universal ratification in Africa, which contrasts with only partial adherence to the regional counterpart, the African Charter on the Rights and Welfare of the Child (Viljoen, 2000:133-137).

The rights in the United Nations Convention on the Right of the Child 1989 (UNRC) concentrate heavily on participation and protection, and on adults granting children everything considered to be in the child’s best interest. Freeman (1992:59) argued that a child deprived of the rights in the UNCRC will grow up very differently from one who is afforded those rights. Article 3(1) of the UNCRC affords recognition to the best interests’ principle which lies at the heart of this chapter, and is arguably the most important provision in this Convention (Freeman, 2002:98). Article 3(1) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law or administrative authorities, the best interests of the child shall be a primary consideration (Freeman, 2002:98).

Article 3(1) emphasises that “governments and public and private bodies must ascertain the impact on the children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies”.

Therefore, the best interests of the child is the most important principle in all matters concerning the child, and state members are bound to fulfil this obligation (Kurki-Suonio, 2000:192-193).

The Convention on the Rights of the Child has repeatedly stressed that the UNCRC should be considered as a whole and has emphasised its interrelationships, in particular between those articles it has elevated to the status of general principles (Articles 2, 3, 6 and 12) (UNICEF, 2007:37). Consequently, the principles of non-discrimination, survival and development, and respect for the views of children are all relevant to determine what are in the BIOC as well as in the best interest of children as a group.

The inclusion of the BIOC principle in the CRC has helped to clear the perception of the child as a real person in his or her own right, someone who must be considered autonomously. Taking the best interest principle seriously has served as a basis for evaluating the laws, policies, practices and the budget decisions for state parties, which has helped to increase the visibility of children and their rights (Tun, Cave, Trotter & Bell, 2007:42).

General Comment 14 of the UNCRC seeks to ensure the application of and respect for the BIOC by the US parties to the Convention on the Rights of the Child (CRC, 2015:1). The full application of the BIOC requires the development of a rights-based approach, which engages all factors in order “to secure the holistic, physical, psychological, moral and spiritual integrity of the child and promote his/her human dignity” (UNCRC, 2013:14). Strengthening the understanding and application of the right of children to have their best interest assessed and taken as a primary consideration or the paramount consideration is the main objective of this General Comment.

According to the UN Convention on the Rights of the Child, four general principles constitute the basic values of the CRC. These four principles focus on the (1) best interest of the child as a primary consideration in all matters affecting the child; (2) the right to life, survival and development, (3) the right to be heard and participate, and (4) non-discrimination. Emphasis is specifically placed the “right of the child to be heard” as it is one of the most innovative provisions of the CRC and confirms that legal status assumes that children should, in accordance with their evolving capacities (assessed on the basis of the age and maturity), be regarded as capable of participating in proceedings affecting them. Article 12 of the CRC stipulated that children have the right to be heard in all matters affecting them, in particular in judicial and administrative proceedings (UNRC, 1989:1-2). Krappmann (2010:501-502) defined participation as a good term as it consists of the child’s views, listening and giving due weight to their views and focusing on their interest and goals. The latter stressed that this notion captures the essential feature of the CRC as it gives recognition “that the child is a human being, who

has the right to be respected as a unique individual with his own perspective and personal intentions by fellow human beings and also by the state, its institutions and other organisations” (Krappmann, 2010:501).

2.4.1 National legislation

The African Charter of the Human and Peoples’ Rights (1981)

The African Charter of Human and Peoples’ Rights (hereafter referred to as the Charter) does not contain any specific rights or duties for children. However, Article 18 (3) provides for the protection of children. Moreover, the care of children, in the context of the family, is seen as a “virtue” in the African “historical tradition” (Viljoen, 2000:216). As a result, in the traditional African context, children are of social and economic importance to the whole community; and the whole community provides for the material and moral welfare of its children. It is evident that in the traditional African community, children are seen as an investment which ensures that the child’s best interest is adhered to.

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

The UNCRC inspired the drafting of the African Charter on the Rights and Welfare of the Child (Olowu, 2002:127) (hereafter referred to as ACRWC), which is the first regional binding instrument that recognises a child as a possessor of rights. The ACRWC has been described, in comparison with other regional treaties, “as a pioneering treaty and the most progressive of the treaties on the rights of the child” (Olowu, 2002:130). The ACRWC acknowledges the critical situation facing most children in Africa as a result of unique factors such as their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and that because of children’s physical and mental immaturity, they need special safeguards and care (Lloyd, 2008:35).

Constitution of the Republic of South Africa

The Constitution of the Republic of South Africa of 1996 (hereafter referred to as the Constitution) transformed the BIOC into a constitutional imperative. Section 28(2) of the Constitution was understood as a guarantee that the child’s best interest must be the paramount consideration in every matter concerning a child. The Constitution imposes a stricter requirement in Section 28(2) in respect of the BIOC than which had been applied in terms of Article 3(1) of the UNCRC and Article 4(1) of the ACRWC. These articles respectively render the child’s best interest “a primary consideration” and “the primary consideration” in matters concerning the child (Heaton, 2009:34). Heaton (2009:34) concluded that the word “paramount”

contained in Section 28(2) of the Constitution thus elevates the best interests of the child to be superior in any matter concerning a child.

Therefore, considering the wording used in Section 28(2) of the Constitution at face value, it appears that the paramountcy principle can act as a 'trump card', outweighing all other factors (Skelton, 2010:241). Nonetheless, the rights of the child are not superior to other rights and they should not be, since it would represent "positive discrimination" of children against other groups, for example women, workers and the disabled, which would be contradictory to other principles in international treaties and to other constitutional claims (Vuckovic Sahovic, Doek & Zermatten, 2012:99-100).

The Children's Act 38 of 2005

The Children's Act 38 of 2005 is one of the national legislative documents that serve as a guide to ensure that the best interest of the child is implemented in the criminal justice system. The promulgation of the Children's Act was preceded by a long process before it became the Act it is today. The process of enacting the Children's Act began with the South African Law Reform Commission (hereafter SALC) acting on widespread responses in connection with the Child Care Amendment Act (Sloth-Nielsen & Van Heerden, 1996:247).

2.4.2.4.1 South African Law Commission

There was a call for a more comprehensive Child Care Act and a need to "Africanise" child care which required more development (SALC, 2002:1). In May 1998, the SALC published an Issue Paper for general information. The next step in the drafting process was a Discussion Paper (SALC, 2001:103), followed by a Report (SALC, 2002:57-60) and a Draft Children's Bill. The discussion included recommendations as to how to determine the child's best interest which included the direct participation of the child (SALC, 2002:1).

2.4.2.4.2 Issue Paper on the BIOC

The following objectives have been identified by the then Department of Welfare as critical factors that must be addressed with regard to the prevention and combatting of commercial sexual exploitation of children: the establishment of international and national cooperation; the development of prevention strategies and identification of children at high risk; provision of early intervention; enhancement of protection through policy, legislation and programmes, advocacy, community mobilisation and monitoring, as well as the creation of specialised units or personnel, and safe shelters for children. Recovery and reintegration of children should be

enhanced through the provision of comprehensive counselling and support services, and facilities for child victims and their families (Bonthuys, 2006:5).

2.4.2.4.3 Discussion Paper on the BIOC

In the Discussion Paper, the Commission recommended putting into operation Section 8A of the Child Care Act, 1983. This section was inserted by the 1996 amendment and provides that a child may have legal representation at any stage of a proceeding under the Child Care Act, 1983. It is obligatory for the children's court to inform a child "who is capable of understanding, at the commencement of any proceeding, that he or she has the right to request legal representation at any stage of the proceeding" (SALC, 2002:31-32). However, in order to provide greater guidance on the question of when children should have an enforceable right to legal representation in care proceedings, the Commission recommended in the Discussion Paper that legal representation, at state's expense, must be provided automatically for a child involved in any proceedings under the new children's statute, in the following circumstances: (a) where it is requested by the child; (b) where it is recommended in a report by a social worker or an accredited social worker; (c) where it appears or is alleged that the child has been sexually, physically or emotionally abused; (d) where the child, a parent or guardian, a parent-surrogate or would-be adoptive or foster parent contests the placement recommendation of a social worker who has investigated the current circumstances of the child; (e) where two or more adults are applying in separate applications for the placement of the child with him, her or them; (f) where any other party besides the child will be legally represented at the hearing; (g) where it is proposed that a child be trans-racially placed with adoptive parents who differ noticeably from the child in ethnic appearance; (h) in any other situation where it appears that the child will benefit substantially from representation either in regard to the proceedings themselves or in regard to achieving the best possible outcome for the child (SALC, 2002:32).

2.4.2.4.4 Report Paper on the BIOC

The intention of the South African Law Reform Commission was to comply with the children's rights enumerated in Article 12 of the UNCRC and Section 28 of the Constitution, which is evident in the final report of the Commission. The Children's Act 38 of 2005 was generally welcomed by society as it shifted from a parent-centred approach to a child-centred approach in which the rights of the child were enhanced.

The following is an indication how the interpretation of law was shifted from a parent-centred approach to a child-centred approach:

Section 7(1) of the Children's Act lists 14 factors that courts must consider when deciding the BIOC. These factors are similar to, but more detailed than, the *McCall* factors. The factors listed in Section 7(1) of the Children's Act are the following:

- (a) the nature of the personal relationship between –
 - (i) the child and the parents or any specific parent; and
 - (ii) the child and any other care-giver or person relevant in those circumstances
- (b) the attitude of the parents or any specific parent towards –
 - (i) the child and;
 - (ii) the exercise of parental responsibilities and rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
- (d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from –
 - (i) both or either of the parents; or
 - (ii) any brother or sister or other child, or any other caregiver or person, with whom the child has been living;
- (e) the practical difficulty and the expense of a child having contact with the parents, or any specific parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents or any specific parent on a regular basis;
- (f) the need for the child –
 - (i) to remain in the care of his or her parent, family, extended family;
 - (ii) to maintain a connection with his or her family, extended family, culture or tradition;
- (g) The child's –
 - (i) age, maturity and stage of development;
 - (ii) gender;

- (iii) background and
- (iv) any other relevant characteristics of the child;
- (h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
 - (i) any disability that the child may have;
 - (j) any chronic illness from which a child may suffer;
- (k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
- (l) the need to protect the child from any physical or psychological harm that may be caused by –
 - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- (m) any family violence involving the child or a family member of the child; and 21
- (n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

Although the factors contained in section 7 are similar to the list developed in the case of *McCall*, there are a few differences. First, section 7 has a wider application in comparison to the *McCall* list. Section 7's application is not limited to parents, but applies equally to a caregiver or any relevant person in the child's life. Secondly, unlike the *McCall* list, Section 7 does not include "same sex matching". Thirdly, Section 7 does not specify the ability to provide economic security, but puts a strong emphasis on the emotional, intellectual and spiritual well-being and stability of children.

The Centre for Child Law (2013) held that the *McCall* list contrasts with the Children's Act as Section 7 does not contain the "child's preference" as a factor to be considered. However, "Section 7(g) does include the child's maturity and developmental stage, which are often the criteria to consider when taking children's wishes into account, but it does not specifically

mention the wishes of the child”. The final difference is that the McCall list was not exhaustive and the court could consider any other relevant factors, but Section 7 does not state that the court may consider any other factors; it is not an open-ended list (Ferreira, 2010:73).

For a determinate answer as to what would constitute the BIOC, Parker (1994:26-41) argued that all the options must be known, all possible outcomes of each case option must be known, the probabilities of each possible outcome occurring must be known and the values attached to each outcome must be known. Barrie (2011:126) and Bonthuys (2006:24) supported Parker’s statement by emphasising that the best interest of a particular child should depend on the surrounding circumstances and that each case should be decided on its own merits.

2.5 CHILD PARTICIPATION

Due to the global manifestation of problems such as violence and sexual exploitation, child protection is an important response that inspires a wide range of international policies and programming (Ruiz-Casares, Collins, Tisdell, Kay & Grover, 2017:1-2). Furthermore, it is essential to stop considering these children and young people only as “victims”, as they are rights-holding individuals whose dignity and physical and psychological integrity must be respected. Children’s rights require a different approach that respects children and young people and their capacities, and involves them as active participants in finding solutions to issues affecting them. Children and young people’s participation is necessary for effective and respectful protection, as required by the United Nations (UN) Convention on the Rights of the Child (CRC).

The “concept and practice of children’s participation has assembled increased attention and is supported internationally since the adoption of the United Nations Convention of the Rights of the Child” (UNCRC) (Moses, 2008:327). The UNCRC outlines in article 12 that a child who is “capable of forming his or her own views has the right to express those views freely in all matters affecting the child. The views of the child will be given due weight in accordance with the age and maturity of the child.” *McCall v McCall* (1994:201-207) also stressed that child participation and the weight attached to the specific child’s expression depends on the “child’s necessary intellectual and emotional maturity to give his expression of the preference, a genuine and accurate reflection of his feelings towards and relationship with each of his parents, in other words to make an informed and intelligent judgement”.

In terms of Section 10 of the Children’s Act 38 of 2005, every child has the right to participate in any matter concerning themselves, depending on their age, maturity and stage of development

– in other words, a child’s views must be given due consideration (Barrie, 2011:128). The South African Constitution adopted in 1996 gives full recognition to children’s rights, which means children are treated as full participants in society and as legitimate rights-bearers. However, this is only prevalent in theory (Moses, 2008:329). Even though the Constitution grants children a range of special rights, it does not specifically refer to the right of children to participate in matters and decisions affecting their lives. Historically, children in South Africa have played important roles as political and public actors: they are recognised as having contributed in critical ways to the country’s social transformation to democracy through their involvement in student uprisings, school boycotts and the armed struggle. However, despite this, children tend in practice not to be viewed as stakeholders who are important to consult when developing programmes and policies. According to the government’s ratification of the UNCRC in 1995 and the African Charter on the Rights and Welfare of the Child in 2000, the state must ensure that children have the opportunity to be heard in matters that affect their lives (Moses, 2008:329).

2.6 CHILD-CENTEREDNESS

Child-centeredness is fundamental in safeguarding and promoting the welfare of every child. Child-centeredness means keeping the child in focus when making decisions about their lives and working in partnership with them and their families (HM Government, 2013:9). The United Nations Convention on the Rights of the Child (UNCRC) is an international agreement that protects the rights of children and provides a child-centeredness framework for the development of services to children. The UK Government ratified the UNCRC in 1991 and, by doing so, recognises children’s rights to expression and receiving information (HM Government, 2013:10). In the European setting a “child-centred society is a positively loaded one”. It refers to a society that does not perceive children as target groups for social measures as citizens, but as social actors in their own right, especially with the right to make their presence known, voice their opinions and judgements, and be heard and listened to (Hennum, 2014:411). Children and youth are entitled to equal identity and equal justice as adults. Hence, it is necessary to meet children’s needs, understanding their reality and protecting their developmental potential. Steinberg, Woodhouse and Cowan (2000:7) stated that in the realm of law, a child-centred perspective asks that we reframe legal doctrines that are focused on “parents’ rights”, and instead refocus on children’s needs and experiences. Furthermore, it requires that we constantly ask: “What does this policy or practice mean to children? Is children’s welfare served or disadvantaged by this policy choice?”

2.7 FACTORS THAT CONTRIBUTE TO THE BIOC IN THE CRIMINAL JUSTICE SYSTEM

Literature argues that the BIOC principle is not always met in the criminal justice system and therefore it is necessary to determine what factors contribute to the BIOC in this context. This is especially evident during the process before, during and after the child's testimony in the criminal system.

2.7.1 Before the child's testimony in the criminal justice system

The South African Police Services (SAPS) is the first line of reporting of crimes against children. Although it is expected that they have to respond with empathy, patience and professional sensitivity to a complaint, the South African Law Commission (SALC) (2002:57-60) found that police investigation procedures are insensitive to the state in which the child was when they made the statement to the police or when they testified in court. Research showed that police was identified as being ambivalent or outright threatening, blaming, judgemental, lacking empathy, insensitive and at times discouraging the victim from opening a case (Mahlalela, Johnson & Mills, 2017:14). Furthermore, questioning by police contributed to many child victims experiencing feelings of secondary trauma and victimisation. SAPS should make children feel safe and secure, and not instil further damage by re-victimising the child. SAPS's understanding of the child's cognitive development as a complainant and a witness is limited. Poor statements from SAPS members also hamper the effective assessment of cases by prosecutors when exercising discretion to prosecute or not (Conradie, 2003). These often results in cases being delayed for further investigation or cases being thrown out due to the lack of sufficient and accurate information. Waiting for committal and trial was identified as one of the key difficulties by children across all jurisdictions.

According to the Children's Act 38 of 2005, the BIOC is of paramount importance for courts to consider. One of the factors clearly stipulates that "the child's physical and emotional security and his or her intellectual, emotional, social and cultural development should be taken into consideration", which is contradicted by the manner in which children are treated during the court process, especially when they have to wait long periods for trial.

2.7.2 During the child's testimony in the criminal justice system

2.7.2.1 Negative factors affecting the child witness during the child's testimony

In court, the child's credibility is often questioned during the process of cross-examination, which is another factor contributing to the child's best interest not being served. Cross-

examination often leads to children being victimised all over again, especially since children find it upsetting to talk about traumatic events as they re-live the abuse.

Attorneys exhibit little sensitivity to the age of the child in selecting their questions (Stolzenberg & Lyon, 2014:1). Attorneys and state prosecutors often ask questions that are confusing and do not fall within the comprehension level of a child. Furthermore, in many cases prosecutors have no training in questioning a child who has experienced sexual abuse. The South African Law Commission (SALC) concluded that this limited understanding on the part of the court officials results in insensitive treatment of the child and secondary victimisation, which are not in accord with the BIOC (Schiller & Spies, 2006:36).

It is evident from above that the BIOC principle is not always adhered to in the criminal justice system. It is stated in the Constitution that the BIOC principle, and the implementation thereof, is of paramount importance. The Criminal Procedure Act 51 of 1977 allows for a child-friendly environment. However, it seems that the application is inadequate as the same standards and protocol that are followed when cross-examining adults are often used for the children.

2.7.2.2 Positive factors affecting the child witness during the child's testimony

Even though it is argued that the BIOC principle is not implemented in the criminal justice system, it is hoped that it will be utilised by intermediary services tailored to protect the child witness from intimidating court proceedings.

Intermediaries are utilised to help limit the stress and anguish that child victims and witnesses have to endure during the court proceedings, which can be identified as a positive factor that contributes to the best interest of the child being served in the criminal justice system. The Constitutional Court conceded that Section 170A(1) should be regarded as a protective measure for child victims and child witnesses with the implicit aim of reducing secondary trauma. The first of these specialised, child-friendly courts was established in Wynberg, Cape Town, in 1993. These courts allow for in-camera proceedings, the prohibition of publishing a child's identity, the use of intermediaries, closed-circuit television and one-way mirrors (South African Law Commission, 2002:27-28).

The use of intermediaries is advantageous as it allows the child witness to avoid testifying in an open court. The primary purpose of the intermediary is to shield the child from intimidation or the hostility of cross-examination (Songca, 2019:331). The court may, on the appointment of an intermediary, order that the witness shall then give his or her evidence at any place. For a child witness to be in a separate room creates an atmosphere that is conducive for a child to speaking freely about events relating to the offence. According the Fambayasi and Koraan

(2018:20), the child conveys his or her experiences to a person skilled in dealing with children. This person knows how to communicate with a child and how to do so in a manner that is neither intimidating nor embarrassing to the child. At the same time, this person is able to communicate what the child has conveyed to him or her to the adults in court. In short, this person acts as a link to bridge the communication gap between the child and the court. It is evident that many courts have now adopted the practice of using intermediaries as well as closed-circuit television to try to avoid the fear of the child for the perpetrator (Fambayasi & Koraan, 2018:20).

2.7.3 After the child's testimony in the criminal justice system

The support of children after they have provided testimony, although critically important, has received insufficient attention (Robert & Pantell, 2017:4). In a study of long-term consequences, 176 children were interviewed 12 years after testifying (Quas & Goodman, 2012:323-350). Children who testified when they were younger had more severe externalised symptoms. According to Robert and Pantell (2017:4-6), testifying repeatedly was associated with negative mental health outcomes, and testifying about severe abuse had higher levels of trauma-related problems. It was therefore discovered that child victims and witnesses after testimony should receive ongoing psychosocial support and counselling, not only for any victimisation that may have occurred but also for children's experiences of testifying at trial. The recognition of these consequences and the provision of post-witness counselling services can be provided through existing public resources, privately funded organisations and volunteer organisations.

The American Academy of Paediatrics (AAP) recommends that confidentiality be maintained with respect to child witnesses before, during and after any courtroom appearance. Publicity and loss of privacy may prolong the child's sense of shame and stigma stemming from the abuse beyond the immediate courtroom appearance. Furthermore, public disclosure of events precipitating a school-aged child's appearance in court has the potential to lead to exclusionary behaviour and bullying by other children (Putnam & Finkelhor, 2006:114-135).

Another contributory factor that hinders the child witness's healing process after testimony is the fear of appeals, which is common and may lead to re-trials (Robert & Pantell, 2017:6). Children experience anxiety while waiting to learn whether there will be a second trial and whether they will need to endure testifying in court again. This situation creates continuing stress and an emotional rollercoaster for children. Therefore, after the child's testimony more attention should be given to ensure that ongoing and long-term follow-ups are conducted to assess the child for depression, sleep disorders and changes in school functioning, with appropriate referral for

counselling and mental health services. Being alert to parent/guardian depression also is important because of the potential impact on the child (Robert & Pantell, 2017:7).

2.8 CONCLUSION

Children, being part of the most vulnerable groups, are being sexually exploited. This exploitation occurs throughout society regardless of age, sexual orientation, race and social stance. For this reason, various international and national instruments charged to protect children have devised policies and legislation in order to protect these children. However, the question remains whether these instruments have reached their goal in terms of protecting children from sexual abuse and sexual exploitation.

One theme charactering most attempts to protect children seems to be the Best Interest of the Child (BIOC) principle, which should and must be adhered to in all matters pertaining to children. The question of what the best interests of the child entail seems to have various answers. It is clear that child witnesses are being subjected to secondary trauma during court proceedings by both prosecutors and defence attorneys as a result of the manner in which they pose questions to these child witnesses. In addition to the original trauma, child witnesses are required to relive the trauma by the relating the details of their victimisation to the court.

However, the utilisation of court intermediaries, who act as mouthpieces for child witnesses within the criminal justice system, help to limit the trauma and stress of court proceedings on child witnesses.

Legislative frameworks, laws, policies and other efforts should therefore be aimed at ensuring the recognition of children's rights.

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SECTION B:

ARTICLE:

**A SCALE DEVELOPMENT STUDY OF THE
BEST INTEREST OF THE CHILD**



SECTION B

A SCALE DEVELOPMENT STUDY OF THE BEST INTEREST OF THE CHILD

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1. Abstract

Purpose: This study forms part of a larger research project (called *The development of a best interest of the child monitoring system for the judicial system in South Africa: The BIOC-MS study* – or the BIOC-MS study for short) aimed at designing and developing a new measurement instrument to be used for regular, periodic measurement of the extent to which the Best Interest of the Child (BIOC) principle is implemented in the criminal justice court system. This study, which was the third study within a larger research project, was aimed at formulating a scale design and potential items for measuring child-centeredness, child participation and BIOC application based on the integrated results obtained from sub-studies 1 and 2 of the large research study.

Methods: Systematic scale development steps were followed, reflecting the guidelines of theory exploration, construct development, item generation and testing. A qualitative descriptive design and focus-group methodology were used.

Value: This newly developed scale will be used to assess various factors involved in the practical implementation of the best interests of the child principle as represented in the activities of different role-players, particularly in the processes of the criminal court. This will ensure continuous evaluation and improvement of services to child victims in the criminal court.

Keywords: Best interest of the child (BIOC), formulation, scale items.

2. Introduction

Children, being one of the most vulnerable population groups in society, are sexually exploited. This exploitation occurs throughout society regardless of age, sexual orientation, race and social stance. The high reported incidences of child sexual abuse are in themselves a cause for concern. However, what happens to children who have reported abuse to the authorities? Current research identified that the best interest of the child (BIOC) principle is not always adhered to in the South African criminal justice system (Prinsloo, 2008; Schiller & Spies, 2006).

According to the Children's Act 38 of 2005, the BIOC principle is of paramount importance, and must be considered when any decisions relating to children are made. One of the guidelines clearly stipulates that "the child's physical and emotional security and his or her intellectual, emotional, social and cultural development should be taken into consideration". Unfortunately, this is not always the way in which children are treated during court proceedings. Based on the high number of reported incidences of child sexual abuse, questions can be raised regarding the practical implications of implementing the BIOC principle. Legislative frameworks, laws and policies should be adhered to in order to ensure recognition and visibility of children and their rights. The application of the BIOC principle is dependent upon the successful introduction of a complex array of procedures, behaviours and processes, most of which require careful, informed and trained scrutiny and weighting to ensure that an assessment of the child's circumstances is conducted in such a way that on a case-by-case basis the BIOC principle is adequately served (Wessels *et al.*, 2016).

No documented evidence could be found of existing instruments specifically developed and used to evaluate whether the best interest of the child is being met in larger systems such as the justice system, and whether the BIOC principle has been effectively applied within that context. As a result of this lack of information and in response to an observed lack of available methodology to

evaluate the justice environment for its capacity to apply the BIOC principle, the researcher decided to participate in the larger research project aimed at addressing this issue.

This study played a small but significant role in the larger research project aimed at designing and developing a new instrument for the regular, periodic measurement of the extent to which the Best Interest of the Child (BIOC) principle is implemented in the criminal justice court system. This study, which was the third study within the larger project, focused on the design of items for the BIOC scale by preparing a scale design, formulating items and qualitatively refining these items. The data obtained during Studies 1 and 2 was used as input in this study.

3. Literature review

Child sexual abuse, specifically in South Africa, is a growing phenomenon as “one in seven girls and one in 25 boys will be sexually abused before they turn 18” (Townsend & Rheingold, 2013). Previous literature clearly indicated that reported cases of child sexual abuse are declining, which is worrisome, specifically after statistics revealed that only about 38% of child victims disclose that they have been sexually abused (Meinck et al., 2017). The question remains: What is the reason for the non-reporting of sexual abuse among children? Naidoo (2013) found that barriers to reporting included fear of retaliation by the perpetrator, fear of secondary trauma at the hands of the police and health providers, fear of stigmatisation, lack of empowerment, and lack of faith in the criminal justice system such that reporting would lead to arrest of the perpetrator. These barriers further contribute to underreporting, as rape victims experience feelings of guilt and/or fear of being blamed by their community or family (Rape Crisis Cape Town Trust, 2017). Eastwood (2003) investigated the matter and reported that the court system’s insensitivity to children is one of contributory factors to the non-reporting of child sexual abuse cases. He stressed that being insensitive to children and allowing abusers exemption from punishment may contribute to non-reporting and lead to non-compliance with national legislation which clearly stipulates that the best interest of children is of paramount importance.

A literature review raised questions such as the following: What happens to child sexual abuse cases that are being reported to authorities, and to what extent are these cases being dealt with? In terms of Article 28(2) of the Constitution (1996), the child's best interest is crucial in every matter pertaining to the child (South Africa, 1996). Therefore, the government of South Africa attempts to uphold the Best Interest of the Child (BIOC) principle, as evident in the South African Child Care Act No 38 of 2005, Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 of 2007 and Child Justice Act No 75 of 2008.

4. The best interest of the child (BIOC) principle

In order to make sense of the BIOC principle, it is important to determine whether the best interest is a value, a principle of interpretation, a rule or a right (Bonhuys, 2006). To start with, the "best" has never been defined. No conclusive definition is available, nor is an outline available of the common factors pertaining to the best interest of the child in order to make the BIOC aspects politically and rhetorically more useful than the rights enumerated in the United Nations Convention on the Rights of the Child (UNCRC) (Barrie, 2011; English, 2011; UNCRC, 1989). The BIOC was therefore determined by the circumstances of each case, especially since the judiciary has over time attempted to lay down laws but it never sufficed (Barrie, 2011). However, this changed when the Children's Act 38 of 2005 was enacted and a list of factors was provided for the best interest of the child application (Barrie, 2011).

5. The development of the best interest of the child principle in South Africa

During 1994, and for the first time in South African legal history, in the case of *McCall v McCall*, Judge King put forth a list of 13 criteria that could serve as a guide in determining the best interest of the child (Bekink & Bekink, 2004). With the advent of the Constitution in 1996, the best interests of the child were given constitutional recognition. In addition, the Children's Act 38 of 2005 is the most recent development in legislation determining the best interests of the child so as to provide assistance to the courts. The following factors listed in *McCall v McCall*

should not be regarded as a *numerus clausus*, as the court stated that any other relevant factor may be brought before the court (Bekink & Bekink, 2004). This list only serves as a guide. Nevertheless, it has to a great extent assisted our courts in determining the best interests of the child.

McCall vs McCall (1994) focuses on certain factors that may help decision makers to make decisions in the best interest of the child. These factors focus on addressing the basic physical needs of children, such as food, clothing, housing and economic security. It has to do with the emotional ties and compatibility that exists between parents and children. Moreover, it is about addressing the needs and desires of children through means of a parent's character or temperament and the impact thereof. Communicating and showing insight as a parent towards a child's feelings is paramount. A parent's ability to provide for the child's overall well-being, such as the child's educational, emotional, psychological, environmental development and physical health, is alluded to in the criteria of McCall vs McCall (1994). The comprehensive checklist also emphasises the child's preference, especially if the court is satisfied that in the particular circumstances the child's preference should be taken into consideration.

According to the Centre for Child Law (2013), the McCall list differs from the Children's Act as Section 7 does not contain the child's preference as a factor to be considered. However, "Section 7(g) does include the child's maturity and developmental stage, which are often the criteria to consider when taking children's wishes into account, but it does not specifically mention the wishes of the child". The final difference is that the McCall list was not presented as exhaustive and hence the court could consider any other relevant factors. However, Section 7 does not state that the court may consider any other factors; it is not an open-ended list (Ferreira, 2010).

6. International and national documents pertaining to the best interest of the child

The best interest of the child is a principle recognised by both international and national legislation, which contributes to the visibility of children and their rights. International human rights law and domestic family law recognise children as among the most vulnerable members of society. Nearly every major human rights treaty recognises the need for the special protection of children. The UN's Convention on the Rights of the Child also enshrines the principle that in all legal actions, "the best interests of the child shall be a primary consideration (Centre for Child Law, 2014). The Declaration on the Rights of the Child 1924 (Geneva Declaration of the Rights of the Child, 1924) was identified as the document that prepared the ground for the "progressive development of international norms and standards with regard to the rights and well-being of the child" (De Villiers, 1993). During 1989 the United Nations Convention on the Rights of the Child (UNCRC) was established and was identified as the comprehensive treaty on the rights of the child and the most universally accepted human rights document in history. UNCRC 1989 focused strongly on participation and protection, and on adults granting children everything considered to be in the child's best interests. The UNCRC inspired the drafting of the African Charter on the Rights and Welfare of the Child (ACRWC) (Olowu, 2002), which was the first regional binding instrument recognising a child as a possessor of rights. The ACRWC has been described, in comparison to other regional treaties, as "a pioneering treaty and the most progressive of the treaties on the rights of the child" (Olowu, 2002). The ACRWC acknowledges the critical situation facing most children in Africa as a result of unique factors such as their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and the special safeguarding and care they need because of their physical and mental immaturity (Lloyd, 2008). The Constitution of the Republic of South Africa of 1996 transformed the best interests of the child into a constitutional imperative. Section 28(2) of the Constitution was understood as a guarantee that the child's best interests must be the

paramount consideration in every matter pertaining to the child. The Constitution imposes stricter requirements in Section 28(2) in terms of the best interests of the child than which had been applied in terms of Article 3(1) of the UNCRC and Article 4(1) of the ACRWC (Heaton, 2009). The Children's Act 38 of 2005 is one of the national legislative documents that serve as a guide to ensure that the best interest of the child is implemented in the criminal justice system. The Children's Act 38 of 2005 was generally welcomed by society as it shifted from a parent-centred approach to a child-centred approach, in which the rights of the child were enhanced.

7. Child participation

The concept of child participation outlines that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child. Significant attention was given to the concept and practice of child participation, and it was supported internationally since the adoption of the UNCRC (Moses, 2008). *McCall v McCall* (1994) stipulated that the views of children will be given due weight in accordance with their age and maturity. Child participation also involves making informed and intelligent judgement, based on child's age, maturity and stage of development. Historically, children in South Africa contributed in critical ways to the country's social transformation to democracy through their involvement in student uprisings, school boycotts and the armed struggle. According to Ally (2017: 34-35), an important component of the best interest of the child principle is the recognition of the need to protect children's participation rights. In this regard, international law frameworks have highlighted the special obligation on states to ensure that the right of a child to be heard is respected, protected and fulfilled. National legislation has also recognised the right of children to participate in matters concerning them. Daly (2017) argued that despite the robust constitutional and international legal protection for children's right to participation and expression, current laws in South Africa fail to adequately protect and enable this right, especially since children are seen as "future adults" and not the human beings that they are in the present. Furthermore, in

practice, children tend not to be viewed as stakeholders who should be consulted when developing programmes and policies that impact them. According to the government's ratification of the UNCRC in 1995 and the African Charter on the Rights and Welfare of the Child in 2000, the state must ensure that children have the opportunity to be heard in matters that affect their lives (Moses, 2008).

8. Child-centeredness

The concept of child-centeredness means keeping the child in focus when making decisions about their lives and working in partnership with them and their families (HM Government, 2013). Child-centeredness is fundamental to safeguarding and promoting the welfare of every child. International agreements protect the rights of children and provide a child-centred framework for the development of services to children, and by doing so recognise children's rights to expression and to receive information (HM Government, 2013). Literature indicates that within the European setting, there is a strong focus on a child-centred society, where children are perceived as social actors with the right to make their presence known, voice their opinions and be heard and listened to (Hennum, 2014). The application of the best interest of the child principle includes adopting a child-centred approach with the focus on children's needs and experiences. Childhood studies and policies have become integrative over the years, drawing from various disciplines and professionals concerned with the best interest of the child. It is therefore important that role-players advocating for children must remain in constant conversation and remain updated about new developments in order to serve the best interests of the child by adopting a child-centred approach.

9. Factors that contribute to the best interest of the child in the criminal justice system

The South African Police Services (SAPS) is the first line of reporting in terms of crimes against children, specifically when children are making the statements. Throughout the process, it is

expected that the police must respond with empathy, patience and professional sensitivity to complaints.

However, it was found that police was seen as either ambivalent or outright threatening, blaming, judgemental, lacking empathy, insensitive and, at times, actively discouraging the victim from opening a case (Mahlalele, Johnson & Mills, 2017, p. 14). Police misconceptions and disregard for the sensitivities surrounding a sexual offences case are not only traumatic for the victim but are also detrimental to the justice system. A police statement is the foundation of any criminal case, yet police are not sensitive to the fact that the victim's ability to recollect the traumatic event may impact the victim's recollection over time (Mahlalele, Johnson & Mills, 2017, p. 17).

The responsibility of the SAPS is to make children feel safe and secure, and not inflict further damage by re-victimising the child. Poor statements from SAPS also hamper the effective assessment of cases by prosecutors when exercising discretion to prosecute or not (Conradie, 2003). This often results in cases being delayed for further investigation or cases being thrown out due to the lack of sufficient and accurate information.

Attorneys and prosecutors exhibit little sensitivity to the age of the child in selecting their questions (Stolzenberg & Lyon, 2014). Attorneys and state prosecutors often ask questions that are confusing and do not fall within the comprehension level of a child. Furthermore, in many cases, prosecutors have no training in questioning a child who has experienced sexual abuse. Due to these prosecutors' limited understanding and their insensitive treatment, they contribute to secondary victimisation of the child witness.

It is hoped that the utilisation of intermediary services, tailored to protect the child witness from intimidating court proceedings, will alleviate the situation. The intermediary is utilised to assist in limiting the stress and trauma that a child victim and witness have to endure during court proceedings. Intermediaries allow the child witness to avoid testifying in an open court, but rather in a separate room where the child can speak freely about events relating to the offence.

The support of children after they have provided testimony, although critically important, has received insufficient attention (Robert & Pantell, 2017). Testifying about abuse is associated with negative mental health outcomes and high levels of trauma-related problems. Hence, child victims and witnesses should receive ongoing psychosocial support and counselling once they have testified, not only for any victimisation that may have occurred but also for the children's experiences of testifying at trial (Robert & Pantell, 2017).

10. Instrument development and validation

10.1 Scale design

The study adopted the design and development paradigm of Fraser, Richman, Galinsky and Day (2009) incorporating scale development methodology (De Vellis, 2012). The scale development methodology enabled the researcher to conceptualise and design a measurement scale, and provided the steps that were followed in the study, essentially reflecting the guidelines of theory exploration, construct development, item generation and testing (De Vellis, 2012).

The design of the scale consisted of a description of the scale constructs based on the results of the previous two studies. Study 1 of the larger project did extensive research to determine what factors contribute to the application of the best interest of the child in the criminal justice system. Study 2 used the information from Study 1 and formulated an interview schedule to conduct in-depth qualitative interviews with legal professionals in order to obtain information about what they describe as most important indicators for the application of the best interest of the child principle. The present study, Study 3, incorporated the information from the previous two studies, designed items for the BIOC scale, and prepared a scale design which was produced for focus groups to evaluate the content, formulate new items and refine the potentially listed items on the BIOC scale.

In Study 2, which formed part of the design process, descriptions were obtained from group members regarding observable "indicators" of the BIOC principle in their work environments.

This was done by posing the following question to the group members: What observable area/activity/process/policy/procedure in your work environment would be most indicative of the BIOC principle being effectively implemented? For example, the presence of a child-friendly interview room may be an observable indicator of effective BIOC implementation.

Scale constructs furthermore included constructs from the Children's Act 38 of 2005 as well as *McCall vs McCall* and the input received from the participants during the focus group discussions. The initial scale consisted of six dimensions, which consisted of 23 subthemes and was later transcribed into 185 items.

Extensive research was undertaken to assess whether previous scaled development studies can be considered before developing a new measurement instrument. It appears that no formal assessments have been done by any party on BIOC application and that there is no single set of criteria that can be used for measuring BIOC implementation in macro contexts such as the court (Wessels *et al.*, 2016).

10.2 Generation of items

In this study, a list of preliminary items was formulated beforehand on the basis of the construct definitions that have been identified through Studies 1 and 2. Standard question formulation guidelines were used to ensure items are not too long and do not contain ambiguity or double-barrelling. At least 20 items were formulated for each construct although inclusivity, rather than exclusivity, was the goal. A Likert-type scale was used and a preliminary evaluation of the items was done before the draft scale was exposed to the focus groups. A Flesch-Kincaid calculator (<http://www.readabilityformulas.com/flesch-grade-level-readability-formula.php>) was used to establish the appropriate reading level for the new items, specifically because the study focused on using practical language as it used by most average and advanced level of employees.

The present study incorporated a focus group methodology, as it was the most appropriate for this type of study, giving an opportunity for experts in a group setting to creatively and

constructively design items for the BIOC scale. This method was consistent with scale development processes normally described as the small item pool (SIP) design strategy (De Vellis, 2012). This process provided participants with the opportunity to contrast and test item meanings against given definitions for each construct. The objective of the focus group discussions was to obtain concrete responses from participants in a group setting, which assisted in constructing a list of measurable indicators of BIOC that will be used for empirical testing of the scale and model development in sub-study 7. The purpose was to enter validation variables, a useful principle for establishing construct validity (De Vellis, 2012).

The different samples for the focus group discussions were purposively selected from three populations. Population 1 consisted of prosecutors at the Sexual Offences Courts and Population 2 consisted of private forensic social workers while Population 3 consisted of defence attorneys involved in representation, investigation, assessment or decision making with respect to children who have been the victims of sexual abuse, or defence attorneys who deal with the courts in situations requiring care decisions to be made in the Western Cape.

Three focus groups were conducted. The first focus group consisted of four members from the prosecutors at the Sexual Offences Courts in the Western Cape. These four members included two prosecutors from Mitchells Plain Magistrate's Court and two prosecutors from Khayelitsha Magistrate's Court. The second focus group consisted of three forensic social workers in private practice in the Western Cape. The third focus group consisted of three defense attorneys in private practice in the Western Cape. The same process was followed during each focus group discussion: A copy of the newly formulated scale was given to each focus group member before the focus group discussion commenced. During the focus group discussion the researcher first read each dimension and sub-theme to the group. Each item was then read out loud and the participants were asked to consider the following: whether the item reflects the sub-theme adequately enough; and whether the item is judgemental, "auto-answerable" (i.e. leaves no

option but to answer in one or other extreme), too difficult to answer, ambiguous or conflates two ideas into one. It was explained to the participants that the draft presented various ways of formulation, and that it was possible that some of them would be eliminated towards the finalisation stage. The participants were asked not to eliminate items at this stage unless a strong case was made, as elimination would be done at a later stage through a quantitative study.

Time was then allowed to discuss each item. Once the group had reached consensus, the researcher proceeded to the next item. At the conclusion of each item the researcher asked the group whether they were satisfied that the questions appearing for that construct were indeed the final list of questions, and whether there was a need for questions currently not on the list. All the ideas and suggestions regarding the formulated item were recorded by the researcher.

During the initial phase of the study, the first focus group worked on the prime potential list of items, which was refined and evaluated. A new list was produced after the first group discussion where the researcher had to delete and edit suggestions that were made during the discussion. The second focus group worked on the refined list of the first focus group. The researcher followed the same process where she had to refine the second list of items in preparation for the third focus group. The third and final focus group also refined the new list of items obtained from the second group. After the final discussion with the third focus group, the researcher refined the list, delivering a final list of items for the BIOC scale. An audio-recording was produced of each focused group discussion, which was not analysed but used as a reference source.

10.3 Assessment of face and content validity as well as reliability

The item pool, comprising 185 initial items, was evaluated for expert review during the focus group discussions. Participants with expert knowledge on BIOC implementation and child sexual abuse cases were asked to review the items. The purpose of this important step was to construct, review and refine items for each theoretical construct identified on the BIOC scale. During focus

group discussions, modification to the items were made. As this study only focused on the development of the scale, the assessment of the face and content validity of each item will be conducted in the fourth study of the larger research project, by means of the Rasch model.

10.4 Demographic profile of the respondents

The gender contribution was quite uneven among participants of the study, which included seven female participants and three male participants. In terms of their education level, all of them completed tertiary education and held a bachelor's degree or above. One of the participants held a master's degree and another was in the process of completing her master's degree. The focus group with the prosecutors consisted of participants that were either the control or chief prosecutors of the sexual offences court in the Western Cape Province. Both the forensic social workers and defense attorneys had their own private practices. All of them had expert knowledge regarding BIOC application and child sexual abuse cases, as they often deal with such cases in the criminal justice system.

10.5 Final instrument

In this study, the BIOC scale consisted of six dimensions, listed as:

- (1) Rate the following in terms of actions taken regarding child clients in the court system as you have observed these in your immediate work environment.
- (2) Child victim's responses: Rate the following in terms of how you perceive actions in response to the child victim's responses during court cases.
- (3) Rate the following in terms of how you perceive court processes involving children in your immediate work environment.
- (4) Rate the following in terms of how you perceive the actions of presiding officers and prosecutors in response to court.
- (5) Rate the following in terms of how holistic children are approached in court.
- (6) Rate how you observed court practices involving children in CSA cases.

The participants in the present study were purposively selected because they have expert and extensive knowledge regarding the aforementioned constructs. None of the dimensions were eliminated because the participants were all in agreement that these dimensions should form part of the BIOC scale, as confirmed by the literature review undertaken beforehand.

11. The formulation of scale items for the Best Interest of the Child scale

Table 1: Development of the Best Interest of the Child (BIOC) scale

The information in the table reflects how the BIOC scale themes and items were formulated and refined.

The following abbreviations were used in the table:

- FG1 refers to Focus Group 1 (prosecutors)
- FG 2 refers to Focus Group 2 (forensic social workers)
- FG 3 refers to Focus Group 3 (defence attorneys)

The words in italics and in inverted commas were modified (either removed, replaced or changed).

Dimension	Sub-theme	Item	Motivation	Results/revisions
1. Rate the following in terms of actions taken regarding child clients in the court system as you have observed these in your immediate work environment	1.1 Intermediary system	Effectively prevents contact between child witnesses and <i>adult</i> perpetrators	<u>Focus Group 1 (FG 1)</u> -The word adult must be removed, because adult perpetrators is a bit too specific, especially if we look at children that turned 18 or 19 who can also be the perpetrator <u>Focus Group 2 (FG 2)</u> - The word effectively was removed because you either prevent or you don't	Prevents contact between the child witness and the perpetrator

Dimension	Sub-theme	Item	Motivation	Results/revisions
	The witness testifying room for children	Protects children from intimidation during <i>court processes, attorneys or alleged perpetrator</i>	(FG1): -words in italic should be removed and be replaced with testimony, as it describes the process in one word	Protects children from intimidation during testimony
		<i>Provides a child-friendly room</i>	(FG1): Removed the item, because according to the previous literature the witness testifying room should not be child-friendly with specific reference to toys, colouring books etc. as it is a cause of distraction	Item was removed Reference source: UNICEF, 2009. Justice in Matters involving Child Victims and Witnesses of Crime
		Facilitates effective communication between child witness and professionals	(FG 1): Should be moved to the sub-theme 1.2 not relevant for the witness testifying room (sub-theme 1.1)	
		Ensures that child witnesses are allowed breaks during hearings	(FG 1): Should be moved to the sub-theme 1.2 not relevant for the witness testifying room (sub-theme 1.1)	
	Intermediaries			
		Facilitates effective communication between child witness and <i>professionals</i>	FG2: The word <i>professionals</i> is too broad; it should be replaced with <i>legal professionals</i> specifically since the focus is on the criminal justice system	Facilitate effective communication between child with and legal professionals
		Explain court	FG1:	Item was removed

Dimension	Sub-theme	Item	Motivation	Results/revisions
		procedures to children and parents in a simplified and understandable manner	Item should be removed it is not the responsibility of the intermediary to explain the court process, it is either the Court Preparation official or the prosecutor	
		Succeeds in making the court process less traumatic for child witnesses	FG2: Duplication of items to be avoided, especially with the same meaning	Item was removed
		Able to adapt their communication style accordingly	FG:2 - The item sounds sound broad -What specifically would they be focusing on e.g. age, needs and development level - Item should be more specific - The following words should be added “to developmental levels of the child”, which is a more holistic term to use	Able to adapt their communication style according to developmental levels of the child
		Have good interviewing techniques	FG:1: Should remove the item because the intermediary does not interview the child; she is the mouthpiece between the legal professionals and the child witness	Reference source: Fambayasi & Koraan, 2018:20

Dimension	Sub-theme	Item	Motivation	Results/revisions
		Are able to safeguard child witnesses from potential harm	FG1: Should be more specific with the wording “potential harm” as it is too broad. In the case of child victims and witnesses it should be referred to as psychological harm.	Are able to safeguard child witnesses from potential psychological harm. Reference source: Robert & Pantell, 2017:4-6
		Are skilled in observing behaviour before responding	FG1: Duplication of what was previously stated with reference to “intermediaries have good observational skills”	Item was removed to avoid duplication of items with the same meaning
	Sub-theme 1.2: Cross-examination of children should be dealt with in a more sensitive manner			
	Cross-examination practices in our courts	Are done by lawyers who have knowledge about childhood development	FG2: Item should be restructured to be clear and specific	Are done by lawyers who are knowledgeable about childhood development
		Do not encourage prosecutors to object to damaging practices	FG1: Item should be moved as it is not applicable to cross-examination, as it is in contravention with what is stated in the item	Item was removed as prosecutors are allowed to object
	Sub-theme 1.3 Prosecutors and lawyers need to be better trained to work with children in order to be more		FG1: The sub-theme 1.3 should be divided into two sub-themes, as the prosecutors’ and lawyers’ job	Subtheme 1.3 will solely focus on the prosecutors. - Prosecutors need to be better trained to work with children

Dimension	Sub-theme	Item	Motivation	Results/revisions
	sensitive when cross-examining children - Prosecutors and lawyers		descriptions are different. Prosecutor will serve as the child's attorney, whereas the lawyer focuses on discrediting the child	Sub-theme 1.4 will solely focus on the lawyers - Lawyers need to be better trained to work with children
	Prosecutors	Are <i>not sensitive</i> to a child's developmental stages	FG 2: <i>Not sensitive</i> should be changed to "understand" as it is not a question of being insensitive but rather that prosecutors do not understand the developmental stages of children - Lack of knowledge /understanding make them insensitive	Prosecutors do not understand a child's developmental stages Reference source: Schiller & Spies, 2006:36
	Lawyers	Are <i>not sensitive</i> to a child's developmental stages	FG2: The same applies for lawyers <i>Not sensitive</i> should be changed to <u>understand</u> as it is not a question of being insensitive but rather that lawyers do not understand the developmental stages of children	Lawyers do not understand a child's developmental stages Reference source: Schiller & Spies, 2006:36
	Sub-theme 1.5 Some lawyers should not cross-examine children who have been raped			

Dimension	Sub-theme	Item	Motivation	Results/revisions
	Lawyers	Are insensitive towards the impact of cross-examination on the child victim's <i>testimony</i>	<p>FG2:</p> <ul style="list-style-type: none"> - Purpose of lawyer is to rattle the child, to win the case - They want to have an impact on the child testimony - The focus of the item should be on the child's "mental health" and "testimony" <p>FG3:</p> <ul style="list-style-type: none"> - The item should be removed as it is mentioned in the previous item "are not educated well enough about CSA" - Because they are not educated, they do not understand the impact of cross-examination on the child's mental health 	Item was removed
	Sub-theme 1.6 Oath-taking by children within the court setting remains a problem			
	Oath-taking practices in our court		<p>FG1:</p> <p>Words should be added to the construct under the sub-theme 1.6 to make the item stronger</p>	Oath-taking practices in our courts should be regulated
Dimension 2: Child victim responses: rate the following in terms of how you				

Dimension	Sub-theme	Item	Motivation	Results/revisions
perceive actions in response to the child victim's responses during court cases.				
	Subtheme 2.1: Adult presence			
	In our court....	Are addressed by court personnel and not the child	FG2: The first item in sub-theme 2.2 was moved to 2.1 and divided as it was identified as being double-barrelled	Children are not addressed directly by legal personnel
	Sub-theme 2.2 Intermediaries and court personnel speaking directly to the child			
	Intermediaries	Are addressed by court personnel and not the child	FG2: - Item was divided into two items, because it was double-barrelled - One item was moved to sub-theme 2.1 - Item was shortened	Are addressed by court personnel
	The Criminal Procedures Act makes provision for the use of intermediaries and...			
		Are present in the witness testifying room	FG1: Item not relevant as the intermediaries are present in the witness-testifying room and not the Act	Item must be moved to sub-theme 1.1 under construct of the witness-testifying room

Dimension	Sub-theme	Item	Motivation	Results/revisions
	Children are protected by not appearing in court	But in a child-friendly room	FG1: As previously mentioned under sub-theme 1.1, the witness-testifying room should not be child-friendly with specific reference to toys, colouring books etc. as it is a cause of distraction	Item was removed Reference source: UNICEF, 2009. Justice in Matters involving Child Victims and Witnesses of Crime
		As contact with the accused is regulated if necessary	FG1: There is no need for contact between the child and the accused, therefore the item should be removed	Item was removed Reference source: Fambayasi & Koraan, 2018:20
		As <i>children</i> in SA courts are forced to confront the accused	FG1: Children are not forced to confront the accused, but only if the child is requested to do or if necessary (identify the accused) If the attorney objects to a 158 recommendation according to the criminal procedures, the child will confront the accused, however only if necessary	As children in SA courts are confronted by the accused if necessary
		And shields the child from hardships in court	FG2: Item can be shortened	And shield from hardships in court
	Sub-theme 2.3 Prosecutor's responsibility to prepare the child for court and ensuring that the			

Dimension	Sub-theme	Item	Motivation	Results/revisions
	child is ready to testify			
	Prosecutors	Explain <i>children's</i> roles to them	FG1: Prosecutors explain the role-players to the children The word <i>children</i> will be removed and replaced with role-players	Explain role-players to them Reference source: Australian Law Reform Commission, 2010
		Approach children with a sensitive, <i>victim centred</i> approach	FG1: The word <i>victim centred</i> was replaced with <i>child-centred</i> We need to move away from the baseline of the word <i>victim</i> and view these children as survivors instead, even if the accused is not found guilty	Approach children with a sensitive, child-centred approach
		Plan that sexual offense cases are prioritised and expedited	FG1: Not the role of the prosecutor, they do not have the power to expedite It is the role of the judicial magistrate	Item was removed
		Ensure that children are effectively prepared by informing them about court proceedings	FG1: Item was removed to avoid duplication of items Present item has the same meaning as the first item of “make an effort to prepare children for court proceedings”	Item was removed
		Ensure that children are given information about court proceedings	FG2: The word appropriate was added to the item to	Ensure that children are given appropriate information about

Dimension	Sub-theme	Item	Motivation	Results/revisions
			ensure that <i>appropriate</i> information are given to children	court proceedings
		Ensure that children are effectively prepared by informing them about court proceedings	FG2: Duplication of items, was previously discussed	Item must be removed
		<i>Reflect</i> patience in allowing the child witness to <i>comprehend</i> information <i>disseminated</i>	FG2: Item was simplified to make it clear and understandable Words in italics were either changed or removed in the item	Show patience in allowing the child witness to understand information given
	Sub-theme 2.4 Court personnel's feelings about children			
	Court personnel	Fail to keep victims informed about the accused's court process	FG2: Duplication of item as it was previously mentioned - Has the same meaning as the previous item	Item was removed
		Fail to keep victims informed about the progress of their case	FG3: Should be more specific as SAPS is responsible for informing child witnesses/parents about the progress of their case Add another construct after court personnel, such as SAPS	SAPS fails to keep victims informed about the progress of their case
	Sub-theme 2.5 Children know precisely what is			

Dimension	Sub-theme	Item	Motivation	Results/revisions
	expected of them			
	Children as witnesses in our courts	<i>Consistently</i> give more accurate testimony	FG1: The word in the item “consistently” is a very strong word to use; should be replaced with “often”	Often gives more accurate testimony
		<i>Appears to be</i> more relaxed throughout the court process	FG3: The words ‘appear to be’ sounds ambiguous, and it should be removed to make it more clear	Are more relaxed throughout the court process
		<i>Appears to be</i> communicating more effectively due to the intermediary system	The words “appears to be” sound ambiguous, and it should be removed to make it more clear	Communicate more effectively due to the intermediary system
Dimension 3: Rate the following in terms of how you perceive court processes involving children in your immediate work environment				
	Sub-theme 3.1 A need exists for role clarification			
	Some role-players in the court system	Fail to advise children of court appearances	FG2: Duplication of item as it was mentioned before and it has the same meaning	Item was removed
	Sub-theme 3.2 Communication between SAPS, forensic social workers and court personnel occurs as			

Dimension	Sub-theme	Item	Motivation	Results/revisions
	Court processes are not effectively managed as	Court personnel behave irregularly towards children	FG1: Item was removed because it sounded confusing, especially the word “irregularly”	Item was removed
		Court personnel tend not to understand the <i>importance</i> of effective communication among <i>professionals</i>	FG1: - Item is a general statement - Item is unclear - The word “professionals” should be changed to “state official” in order to have a more clear understanding FG2: - The word “importance” should be changed to “value” - Court personnel do understand the importance, it is the value that they do not comprehend	Court personnel tend not to understand the value of effective communication among state officials
		Due to failure of personnel diligence and lack of resources children are sometimes exposed to the presence of the accused	FG2: Item is too long and double-barrelled, should be divided into two items	Item: Due to failure of personnel diligence Item: Due to the lack of resources children are sometimes exposed to the presence of the accused
	Sub-theme 3.3 Where a child is the offender, the case must be settled as quickly as possible			

Dimension	Sub-theme	Item	Motivation	Results/revisions
	Cases involving child offenders ...	Do not <i>enjoy</i> the preferential treatment they are supposed to <i>enjoy</i>	FG1: The word “enjoy: should be changed as “receive” The word enjoy sounds as they want to have fun and it remains a serious matter	Do not receive the preferential treatment they are supposed to receive
	Sub-theme 3.4 A child may not be detained with other offenders			
	Child offenders	Are treated in the same manner as in other cases involving children	FG1: The word offender should be added to the item to make it more specific FG2: The item is confusing and should be compared to child victims and child offenders as the sentence already makes reference to child offenders in the beginning	Are treated in the same manner as in other cases involving child victims
	Sub-theme 3.5 Recurrent postponed cases contribute to secondary trauma experienced by children			
	The way court cases are conducted	May demoralise child victims	FG2: The word “victim” should be changed to children in general A strength-based approach should be used as we no longer view	May demoralise children

Dimension	Sub-theme	Item	Motivation	Results/revisions
			children of sexual abuse as victims, but rather as survivors	
		May increase anxiety in child victims	FG2: The word “victim” should be changed to children in general A strength-based approach should be used as we no longer witness children of sexual abuse as victims, but rather as survivors	May increase anxiety in children
Dimension 4: Rate the following in terms of how you perceive the actions of presiding officers and prosecutors in response to children in your court context				
	Sub-theme 4.1 Prosecutors must act in the best interest of the child			
	Court personnel should be trained in child development			
		And <i>consider</i> an understanding of the effects of long-term abuse <i>as vital</i>	FG1: The words “as vital” in the item should be removed to have a clear understanding of the item FG2: The word	And reflect an understanding of the effects of long-term abuse

Dimension	Sub-theme	Item	Motivation	Results/revisions
			<p>“consider” should be changed to “reflect”</p> <p>It is not a matter that should be considered but rather reflected</p>	
		<p>As they lack training on child psychology or symptoms related to child trauma</p>	<p>FG2: The word “training” should be changed to “understanding”</p> <p>- The word “child psychology” can be changed to “victimology” as it described the victim’s situation more in-depth</p> <p>FG3: The word “victimology” should be changed to a more simplified version of the word so that professionals understand the terminology used</p>	<p>As they lack understanding on child psychology or symptoms related to child trauma</p>
		<p><i>And should get more training on childhood development to improve systematic safeguards for child victims</i></p>	<p>FG2: Item should be shortened</p> <p>Italic phrase in item was previously mentioned in other items under sub-theme 4.1</p>	<p>Improve systematic safeguards for child victims</p>
		<p>As they are <i>ignorant</i> of the <i>special</i> needs of sexually abused children</p>	<p>FG2: The word “special” should be replaced with “unique”</p> <p>Special needs sounds confusing as it can refer to a child who is</p>	<p>As they have not been trained regarding the unique needs of sexually abused children</p>

Dimension	Sub-theme	Item	Motivation	Results/revisions
			<p>differently abled</p> <p>FG3: The word “ignorant” should be changed to “not trained” - No training received on special needs of sexually abused</p>	
		As staff behaviour may prove detrimental to the efficacy of the child testimony or the emotional well-being of potentially highly traumatised children	<p>FG2: The item is identified as being double-barrelled and should be divided into two items</p>	<p>Item: as staff behaviour may prove detrimental to the efficacy of the child testimony</p> <p>Item: as staff behaviour may prove detrimental to the emotional well-being of a traumatised child</p>
	Sub-theme 4.2 The perceived level of experience of presiding officers and prosecutors			
	Presiding officers	Are committed, sensitive and empathic to <i>special</i> needs presented by young witnesses	<p>FG2: The word “special” should be changed to “unique”</p> <p>Special needs sounds confusing as it can refer to a child who is differently abled</p>	Are committed, sensitive and empathic to unique needs presented by young witnesses
	Prosecutors	Do not know the impact of testifying on a child	<p>FG2: The word “know” should be replaced with “understand”, as prosecutors are aware of the impact</p>	Do not understand the impact that testifying has on a child

Dimension	Sub-theme	Item	Motivation	Results/revisions
			of testifying on the child, but do not understand this	
		Re-traumatise children by undermining their ability to testify	FG3: Not the role of the prosecutor, item should therefore be removed	Item was removed
	Sub-theme 4.3 Level of assistance to children during and after the court case			
	Child victims ...	Do not receive supportive services according to the Victim's Charter	FG2: The structure of the item should be rectified to make it clear The words "according to" should be replaced with "as stated in"	Do not receive supportive services as stated in the Victim's Charter Reference source: Service Charter for Victims of Crime South Africa, 2006
		<i>Seem to</i> receive integrated assistance at all times	FG2: The words "seem to" in the item sound ambiguous - They either get support or they do not	Receive integrated assistance at all times
	Sub-theme 4.4 Effects of court experiences on the child		FG2: The words "court experience" should be changed to "testimony" as the words court experience is very broad. The testimony is more relevant	Effects of testimony on the child
		Make it difficult for children to focus for the duration of the <i>court case</i>	FG1: The words "court case" should be replaced with "evidence",	Make it difficult for children to focus for the duration of the evidence

Dimension	Sub-theme	Item	Motivation	Results/revisions
			because the focus should be on the child's testimony when giving evidence	
		Makes children feel <i>disempowered and powerless</i>	FG1: The words "disempowered" and "powerless" have the same meaning and therefore only one word should be used	Makes children feel disempowered
Dimension 5: Rate the following in terms of how holistic children are approached in court				
	Subtheme 5.1: Centrality of the child's best interest principle over and above interests of others such as the parent			
		Focus more on the rights of the parent than the child		
		Actively seek joint parental agreements and permission regarding the child		
		Encourage child participation consistent with the Children's Act		
		Consult children in matters concerning them		
		Let children participate actively in		

Dimension	Sub-theme	Item	Motivation	Results/revisions
		decisions affecting their lives		
Dimension 6: Rate how you observed court practices involving children in CSA cases				
	Sub-theme 6.1 In court practices regarding children in CSA cases....			
		It is not easily considered to remove an alleged perpetrator from the home	FG3: The item sounds confusing and it is not clear Item should be removed as reference was made to the removal process of the perpetrator in previous items discussed	Item to be removed
	Sub-theme 6.2 Extent to which the bond between child and parent is taken into account			

Dimension	Sub-theme	Item	Motivation	Results/revisions
		Consider the <i>positive</i> bond between parent and child in their recommendation	FG2: The word “positive” should be changed to “healthy” A parent can have a positive bond with the child but that does not mean that they have a healthy relationship. The same refers to a child’s attachment to a parent/caregiver.	Consider the healthy bond between parent and child in their recommendation

12. Conclusion

The present study began with a robust process where information was obtained from the two previous studies that formed part of the larger project called *The development of a best interest of the child monitoring system for the judicial system in South Africa: The BIOC-MS study* – or the BIOC-MS study for short. Study 1 focused on defining and describing the BIOC construct and its factors from a rapid literature review. Study 2 furthered this description by focusing on the practical descriptions from various role-players in the criminal courts. Studies 1 and 2 provided detailed descriptions of the BIOC construct and its components (factors) as artefacts, which were key to develop the BIOC scale items in Study 3 (this study), which focused on objective 3 of the large study. Study 3 took the process further by attempting to design items for the BIOC scale by preparing a scale design, formulating items and qualitatively refining these items. The present study incorporated a focus group methodology, as it was most appropriate for this type of study, because it allowed the opportunity for experts in a group setting to creatively and constructively design items for the BIOC scale. This method was consistent with scale development processes normally described as the small item pool (SIP) design strategy (De Vellis, 2012). This process

provided participants with the opportunity to contrast and test item meanings against given definitions for each construct.

Three focus group discussions were conducted in this study. An expert review procedure was followed where participants were given the opportunity to formulate and refine the potential items on the BIOC scale. The initial scale consisted of six dimensions, which consisted of 23 sub-themes and which was transcribed into 185 items. The final refinement phase with the third focus group resulted in six dimensions, seven sub-themes and 170 items.

Face and content validity was not conducted in this study as it forms part of Study 4 of the larger research project. The latent structure and validity of the BIOC scale will be assessed in Study 5 of the larger project. The other sub-studies in the larger project will attempt to assess construct reliability. This study specifically focused on the formulation of a scale design and potential items for measuring child-centeredness, child participation, and BIOC application on the basis of the integrated results obtained in the two previous studies. This study, forming part of a larger project, contributes to the conceptualisation of a global measurement tool enabling the development of comprehensive indicator information systems at macro level in order to assist with the evaluation of the extent to which the BIOC principle is applied in South African courts and in the justice system.

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SECTION C

SUMMARY OF RESEARCH STUDY, RECOMMENDATIONS AND CONCLUSION

3

4



1. INTRODUCTION

This study is the third sub-study of six sub-studies within a larger project called *The development of a best interest of the child monitoring system for the judicial system in South Africa: The BIOC-MS study* (BIOC-MS study). The aim of the larger project is to develop and design a Best Interest of the Child (BIOC) scale to measure the extent to which the BIOC principle is implemented in the South African criminal justice system. This study (Study 3) obtained information from the previous two studies, which focused on a systematic literature review and in-depth qualitative interviews with legal professionals to determine how the best interest of the child is implemented in the criminal justice system. This present study took the process further by designing items for the BIOC scale by preparing a scale design, formulating items and qualitatively refining these items. In this section, the researcher will give a summary, conclusions as well as recommendations regarding the study.

2. SUMMARY OF THE RESEARCH QUESTION, AIM AND OBJECTIVES

This section will explain how the research question was answered and how the aim and objectives of the study were achieved.

2.1 Research question

The primary research question guiding this study was: What will be the item formulations needed in an instrument to measure child-centeredness, child participation and the best interest of the child in the judicial system? The research question was answered by accomplishing the research aim and objectives of this study.

2.2 Aim and objectives

The aim of this study was to formulate a scale design and potential items for measuring child-centeredness, child participation and BIOC application based on the integrated results obtained in Objectives 1 and 2 (Studies 1 and 2) of the large study called *The development of a best interest of the child monitoring system for the judicial system in South Africa: The BIOC-MS study* (BIOC-MS study).

Therefore, the aim of this study was accomplished by using a qualitative descriptive design as well as a systematic scale development process. Focus groups were used to refine the scale. The focus groups consisted of legal professionals with expert knowledge of the application of the BIOC principle and of child sexual abuse cases. The study was implemented in the Western Cape Province. The sample population of the study consisted of four state prosecutors from the

Mitchell's Plain and Khayelitsha magistrate's courts, three forensic social workers from a private practice in Somerset-West and three defense attorneys from a private attorney office in Caledon. The focus groups were held in different geographical areas within the Western Cape Province for the convenience of the participants.

As the potential list of items was formulated and refined during the focus group discussions, one theme that stood out in all attempts to protect children was the best interest of the child. Even though the best interest of the child assists courts in determining the outcome of a court case, there are factors that are not taken into consideration by legal professionals, which contributes to the best interest of the child not being met in the criminal justice system.

This study revealed a common understanding among legal personnel that the failure to implement the best interest of the child principle often led to child victims and witnesses being re-victimised. During the focus group discussions, the potential list of items was modified through removing, changing and/or replacing the wording of items. Participants removed an item when it was not a true reflection of what was said or was not accurate. For example, one of the items stated that "cross-examination in our courts does not encourage prosecutors to object to damaging practices", which was removed because prosecutors are allowed to object. When items sounded ambiguous, the wording was changed to make it more clear and specific. For example, "appear to be more relaxed throughout the court process" was changed to "are more relaxed throughout the court process". Items that were double-barrelled were divided into two items to make it more clear and understandable. For example, "court processes are not effectively managed as due to failure of personnel diligence and lack of resources children are sometimes exposed to the presence of the accused" was changed to "court processes are not effectively managed as due to failure of personnel diligence" and "court processes are not effectively managed as to the lack of resources children are sometimes exposed to the presence of the accused".

Participants felt that prosecutors and lawyers should not be stated in one sub-theme because their job descriptions are different. Therefore, sub-theme 1.3, "prosecutors and lawyers need to be better trained to work with children in order to be more sensitive when cross-examining children", was divided into two different sub-themes, namely subtheme 1.3, "prosecutors need to be better trained to work with children" and sub-theme 1.4, "lawyers need to be better trained to work with children". If items were too broad, they were changed in order to provide clarity to those professionals working with children. The afore-mentioned information was how the potential list of items was refined, formulated and evaluated.

The legal professionals participating in the focus group discussions added value to the study in that their expert knowledge and practical experiences contributed to the success of finalising the BIOC measurement instrument. The researcher was able to contribute to the larger study by preparing a scale design, formulating the items and qualitatively refining these items for the BIOC scale.

3. RECOMMENDATIONS

In view of the information obtained from this study, the following was recommended:

- Legal professionals (prosecutors, defense and forensic social workers) in the criminal justice system working with children should receive specialised training on child development. They should be exposed to a system of continuous training that includes literature research and presentations on best practice models.
- Legal professionals in the criminal justice system need to develop a system where they can meet quarterly to report on the impact of court cases pertaining to the best interest of the child and how to deliver adequate services to child victims.
- Legal professional working with child victims should adopt a more integrative approach to ensure quality services to children.
- Intermediary services should be mandatory to all child victims and witnesses under the age of 18, without any exception, in order to avoid being confronted by the alleged perpetrator.

4. LIMITATIONS OF THE STUDY

The following factors were seen as limitations:

Social workers in the child protection field were excluded from the target group because during the initial group discussion with the members of the larger project it was decided that only certain legal professionals would form part of the study.

Child protection social workers would have been beneficial for the study, since they focus on the best interest of the child and make recommendations to the Children's Court on a regular basis.

The present findings were obtained from prosecutors, forensic social workers and defense attorneys in the Western Cape Province. The researcher acknowledges that the relatively small number of participants proves to be a limitation as the generalisation of the research results is not possible.

The researcher interviewed a relatively small number of participants due to the unavailability of legal professionals. Participants were recruited well in advance but due to time constraints and overburdened caseloads they were unable to participate in the study.

Participants were unable to set a date that would accommodate all legal professionals on the same day, which limited the overall number of participants that could take part in the study.

5. REFLECTIONS OF THE STUDY

Participants were open and honest, and felt that the initiative of developing a BIOC measurement instrument would lead to the effective implementation of the best interest of the child principle. It was revealed that legal professionals lack knowledge pertaining to children holistically, with specific reference to prosecutors and defense attorneys. Prosecutors receive some form of training with regard to the development and needs of children, which is organised by the National Prosecuting Authority, whereas defense attorneys receive no training at all. Defense attorneys argued that they are not insensitive towards children, but rather lack knowledge pertaining to children overall. It was revealed that legal professionals working with children in the criminal justice system should be trained on child development and in particular the dynamics of child sexual abuse. This study also discovered that the lack of understanding among professionals often leads to children being traumatised.

Not only do some legal professionals lack understanding of the development of children, they are also unaware of the policies and legal documents that are in place to safeguard children, with specific reference to the Victim's Charter. Even though references are made to international and national legislative documents pertaining to the best interests of the child principle, legal professionals do not always adhere to these documents when dealing with child abuse cases. One of the findings articulated that presiding officers often proceed with court cases when the child victims are tired and need a break, which is not in the best interests of the child.

This study also revealed that even though legislation and policy documents are up to standard, not all legal professionals understand the implementation thereof, specifically pertaining to children. A need for role-clarification exists among multiple role-players, as they do not understand each other's roles when working with child victims, which can hamper service delivery and proper quality services to children. Those advocating for children should remain in conversation with one another in order to remain updated on new information and developments to serve the best interests of the child. A collaborative approach is needed, and therefore regular meetings should be held with multiple role-players to work effectively with one another in order to serve the best interests of the child.

This study also revealed that legal professionals are grateful for the utilisation of intermediary services, which can limit stress and trauma for children. However, it was discovered that presiding officers often ignore it when a child is tired or restless, and continue with the court case. Not all courts have intermediary systems in place. It was also revealed that there is a lack of after-care and support services to child victims and witnesses after testimony. Bearing the aforementioned factors in mind, are legal professionals adhering to and implementing the best interests of the child in the criminal justice system?

6. CONCLUSION

According to Songca (2019:316-317), the impact of violence in South Africa continues to devastate many lives, including those of children. In addition, children experience violence in all settings – from the privacy of their homes to their neighbourhoods and from communities to their schools. Moreover, many children experience a co-occurrence of different forms of victimisation during their childhood, known as poly-victimisation. According to research it was evident that the majority of crimes committed against children are of a sexual nature (Songca, 2019:316 -317). Some of these studies show that sexual violence by and against children is on the increase. Questions can therefore be raised whether the best interest of the child principle is being upheld in the criminal justice system.

This study (referred to as Study 3) forms part of a large research project called *The development of a best interest of the child monitoring system for the judicial system in South Africa: The BIOC-MS study* – or the BIOC-MS study for short. This sub-study was aimed at designing and developing, by means of a pilot test, a new measurement instrument to be used for regular, periodic measurement of the extent to which the Best Interest of the Child (BIOC) principle is implemented in the criminal justice system. No documented evidence could be found of existing instruments that have been specifically developed and used to evaluate whether the BIOC principle is being adhered to and whether the best interest of the child is met in larger systems such as the criminal justice system. This study (Study 3) afforded the researcher the opportunity to conduct focus group discussions with legal professionals within the criminal justice system to assist in refining, formulating and evaluating a potential list of items on a BIOC scale. The participants contributed to the success of the study through their expert knowledge of BIOC implementation and the management of child sexual abuse cases. Suggestions, recommendations and the refinement of items contributed to the new list of items, which can be used for the BIOC scale, which will be validated in the next study of the larger project. Participants contributed to the refined list of items for the BIOC scale, which will assist in

monitoring whether the best interest of the child principle is implemented within South African criminal justice system.

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**SECTION D:
ANNEXURES A – G**



ANNEXURE A: Ethical Approval

2 October 2019

ETHICS APPROVAL LETTER OF STUDY

Based on approval by the North-West University Health Research Ethics Committee (NWU-HREC) on 02/10/2019, the NWU-HREC hereby approves your study as indicated below. This implies that the NWU-HREC grants its permission that, provided the general conditions specified below are met and pending any other authorisation that may be necessary, the study may be initiated, using the ethics number below.

Study title: The formulation of scale items for the best interest of the child																			
Principal Investigator/Study Supervisor/Researcher: Dr L Wilson																			
Student: N Dempers-26458519																			
Ethics number:	N	W	U	-	0	0	0	7	6	-	1	7	-	A	1	-	0	2	
	<small>institution</small>				<small>Study Number</small>						<small>Year</small>			<small>Status</small>				<small>Sub-study</small>	
	<small>Status: S = Submission; R = Re-Submission; P = Provisional Authorisation; A = Authorisation</small>																		
Application Type: Sub-study																			
Commencement date: 02/10/2019											Risk:	Minimal							
Expiry date: 31/10/2020																			
Approval of the study is provided for a year, after which continuation of the study is dependent on receipt and review of an annual monitoring report and the concomitant issuing of a letter of continuation. A monitoring report is due at the end of October annually until completion.																			

General conditions:
<i>While this ethics approval is subject to all declarations, undertakings and agreements incorporated and signed in the application form, the following general terms and conditions will apply:</i>
<ul style="list-style-type: none">• <i>The principal investigator/study supervisor/researcher must report in the prescribed format to the NWU-HREC:</i><ul style="list-style-type: none">- <i>Annually on the monitoring of the study, whereby a letter of continuation will be provided annually, and upon completion of the study; and</i>- <i>without any delay in case of any adverse event or incident (or any matter that interrupts sound ethical principles) during the course of the study.</i>• <i>The approval applies strictly to the proposal as stipulated in the application form. Should any amendments to the proposal be deemed necessary during the course of the study, the principal investigator/study supervisor/researcher must apply for approval of these amendments at the NWU-HREC, prior to implementation. Should there be any deviations from the study proposal without the necessary approval of such amendments, the ethics approval is immediately and automatically forfeited.</i>• <i>Annually a number of studies may be randomly selected for active monitoring.</i>• <i>The date of approval indicates the first date that the study may be started.</i>• <i>In the interest of ethical responsibility, the NWU-HREC reserves the right to:</i>

- request access to any information or data at any time during the course or after completion of the study;
- to ask further questions, seek additional information, require further modification or monitor the conduct of your research or the informed consent process;
- withdraw or postpone approval if:
 - any unethical principles or practices of the study are revealed or suspected;
 - it becomes apparent that any relevant information was withheld from the NWU-HREC or that information has been false or misrepresented;
 - submission of the annual monitoring report, the required amendments, or reporting of adverse events or incidents was not done in a timely manner and accurately; and/or
 - new institutional rules, national legislation or international conventions deem it necessary.
- NWU-HREC can be contacted for further information via Ethics-HRECApply@nwu.ac.za or 018 299 1206

The NWU-HREC would like to remain at your service and wishes you well with your study. Please do not hesitate to contact the NWU-HREC for any further enquiries or requests for assistance.

Yours sincerely,



Digitally signed by Wayne Towers
Date: 2019.10.02 16:19:02 +0200

Prof Wayne Towers
Chairperson NWU-HREC



Digitally signed by Prof Minnie Greeff
Date: 2019.10.03 06:53:04 +0200

Prof Minnie Greeff
Head of the Faculty of Health Sciences Ethics Office

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20 August 2019

File Reference: 0.1.5.4.2

ANNEXURE B: Consent form for Prosecutors



INFORMED CONSENT FORM FOR PROSECUTORS

TITLE OF THE LARGE PROJECT: The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study"

PRINCIPAL INVESTIGATORS FOR LARGE PROJECT: Prof C Wessels and Prof W Roestenburg

TITLE OF THE RESEARCH STUDY: The formulation of scale items for the best interest of the child

ETHICS REFERENCE NUMBERS: NWU-00076-17-A1-02

PRINCIPAL INVESTIGATOR FOR RESEARCH STUDY: Dr L Wilson

POST GRADUATE STUDENT: Nuraan Dempers

POST GRADUATE STUDENT: ADDRESS:
North West University
Subject Group: Social Work
Privatebag X6001
POTCHEFSTROOM
2520

CONTACT NUMBER: 018 2991683

You are invited to take part in a **research study** that forms part of my MSW in Forensic Practice studies. This study represents a sub-study of a large study with the title "The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study". The large study has the reference number: NWU-00076-17-S1 and is led by researchers at Social work, Proff CC Wessels and WJH Roestenburg and colleagues B Saunders and L Willson (Wessels, Roestenburg, Saunders, & Wilson, 2016). Briefly, the larger study aims at designing, developing, by means of a pilot test, a new measurement instrument that is to be used for regular, periodic measurement of the extent to which the "Best Interest of the Child principle" (BIOC) is implemented in the Criminal Justice Court System.

Please take some time to read the information presented here, which will explain the details of this study. Please ask the researcher or person explaining the research to you any questions about any part of this study that you do not fully understand. It is very important that you are fully satisfied that you clearly understand what this research is about and how you might be involved. Also, your participation is **entirely voluntary** and you are free to say no to participate. If you say no, this will not affect you negatively in any way whatsoever. You are also free to withdraw from the study at any point, even if you do agree to take part now.

This study has been approved by the Health Research Ethics Committee of the Faculty of Health Sciences of the North-West University (NWU-00076-17-A1-O2) and will be conducted according to the ethical guidelines and principles of Ethics in Health Research: Principles, Processes and Structures (DoH, 2015) and other international ethical guidelines applicable to this study. It might be necessary for the research ethics committee members or other relevant people to inspect the research records.

What is this research study all about?

- Study 3 is part of a larger study that aims to design and develop a new measurement instrument that is to be used for regular, periodic measurement of the extent to which the "Best Interest of the Child principle" (BIOC) is implemented in the Criminal Justice Court System.
- In study 3 we plan to:

Formulate and refine a list of potential items for measuring child-centeredness, child-participation and BIOC application in the court context. Items were formulated on the basis of integrated results obtained from two former studies, which showed us those factors that need to be considered for the new scale.
- In study 4 we plan to:

Measure quantitatively your relative agreement regarding the refined list of items for the BIOC scale, before we test the scale in reality (study 5). This is called *scale content development*.
- This study will be conducted in the Western Cape and will involve a focus group discussion by experienced health researchers trained in research focus group discussions. Fourteen participants will be included in this part of the study. The participants will include prosecutors from the sexual offences courts in the Western Cape, private forensic social workers and defence attorneys working at the sexual offences courts.

Why have you been invited to participate?

- You have been invited to participate because you are a prosecutor working in the criminal court where children who are victims of sexual abuse have to testify. You also have experience of children testifying in court and how the best interest of the child is served in the South African court system.
- You also fit the research as you have first-hand experience in dealing with cases involving decision-making regarding children according to the BIOC principle; you have a minimum of two years' experience in this context within criminal courts and you are knowledgeable about court procedures.
- You will not be able to take part in this research if you have no experience working with children in a criminal court as you may not be able to make any contribution to the topic of this research.

What will be expected of you?

- Study 3: You will be expected to attend one focus group discussion and share your views of the best interest of the child in criminal courts where the child is a victim of sexual abuse. During this focus group you will discuss and make input regarding items on a draft BIOC scale. You will receive the Word document draft copy of the new scale two weeks before the focus group discussion. You are requested to make a print-out of this document before the group and to study the item formulations. You may reflect on the items in response to two questions: 1) *To what extent does this item reflect BIOC in my work context?* And 2) *What other examples of BIOC can I identify that have not been reflected in each section of the scale?* These and other questions will be discussed during the focus group.
- The duration of the focus group will be between 2 and 3 hours. Frequent breaks and refreshments will be provided to prevent exhaustion. The researcher will arrange a time that suites you and should have minimal influence on your work. The focus groups will be conducted at a private meeting room at the court. All focus group discussions will be audio recorded.
- Study 4: Approximately one month after the focus group you will receive a revised electronic copy of the scale for your perusal. For this purpose, you will be requested to provide us with a valid e-mail address. You will then be requested to rate your agreement to each final item on a three-point agreement scale and submit this to the researchers for statistical analysis. This will contribute to the final set of items to be included in the new scale.

Will you gain anything from taking part in this research?

- There will not be any direct or indirect benefit for you to participate in this study, but this will be an opportunity to share your knowledge and experiences of the best interest of the child where children have to testify in a criminal court.
- Your participation will benefit the child justice system in that the researchers will be able to develop a scale that can be used to evaluate the child justice context in future.

Are there risks involved in you taking part in this research and what will be done to prevent them?

- The risks in this study are minimal because the topic does not involve any personal information but more of a sharing of your knowledge regarding the best interest of the child principle in criminal courts.
- The benefits of this study outweigh the risks.

How will we protect your confidentiality and who will see your findings?

- Anonymity of the findings will be protected by using codes and not any names during data collection. Your privacy will also be respected by conducting the focus groups at a place that provides privacy. The focus groups will take place at a private meeting room at the court. This room will ensure the privacy of the participants.
- The results of your participation will be reflected in the revised scale items, whilst the audio recordings will only be used as reference should the researchers be unsure about a comment regarding an item. The audio recordings will be deleted once data have been transcribed. Only the researchers will have access to the findings. Findings will be kept safe by locking any hard copies in locked cupboards in the researcher's office and for electronic data it will be saved on the researcher's password protected laptop. Data will be stored for 5 years in a locked cupboard at COMPRES Office, North West University.

What will happen with the findings or samples?

- The findings of this study will only be used for the BIOC Project. This study is the third study in the BIOC Project to validate a best interest of the child monitoring system for the judicial system in South Africa. The results of this study will also be used for the next study, which will be study 4 in the larger project.

How will you know about the results of this research?

- We will provide you with a copy of the revised scale for rating in study 4, and a final report of the results once the larger project is completed. The findings of the research will also be shared with you by Prof Cornelia Wessels and Prof Wim Roestenburg in the form of information sessions to the profession on how BIOC will be monitored post development of the scale.
- You will be informed of any new relevant findings by the Project leaders in the form of publications.

Will you be paid to take part in this study and are there any costs for you?

You will not receive any remuneration to take part in the study but a token of appreciation. There will be no costs involved for you, if you do take part in this study. If you do have traveling costs, you will be refunded for that.

Is there anything else that you should know or do?

- You can contact Prof Cornelia Wessels at 018 299 1676 or Prof Wim Roestenburg at 018 285 2270 if you have any further questions or have any problems.
- You can also contact the Health Research Ethics Committee via Mrs Leanie van Ronge at 018 299 1206 if you have any concerns that were not answered about the research or if you have complaints about the research.
- You will receive a copy of this information and consent form for your own purposes.

Declaration by participant

By signing below, I agree to take part in the research study titled: The formulation of scale items for the best interest of the child that forms part of the Project: The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study"

I declare that:

- I have read this information/it was explained to me by a trusted person in a language with which I am fluent and comfortable.
- The research was clearly explained to me.
- I have had a chance to ask questions to both the person getting the consent from me, as well as the researcher and all my questions have been answered.
- I understand that taking part in this study is **voluntary** and I have not been pressurised to take part.
- I may choose to leave the study at any time and will not be handled in a negative way if I do so.
- I may be asked to leave the study before it has finished, if the researcher feels it is in my best interests, or if I do not follow the study plan, as agreed to.
- I agree to the audio recording of the focus groups.

Signed at (*place*) on (*date*) 20....

.....
Signature of participant

.....
Signature of witness

Declaration by person obtaining consent

I (*name*) declare that:

- I clearly and in detail explained the information in this document to
.....
- I did/did not use an interpreter.
- I encouraged him/her to ask questions and took adequate time to answer them.
- I am satisfied that he/she adequately understands all aspects of the research, as discussed above
- I gave him/her time to discuss it with others if he/she wished to do so.

Signed at (*place*) on (*date*) 20....

.....
Signature of person obtaining consent

.....
Signature of witness

Declaration by researcher

I (*name*) declare that:

- I explained the information in this document to
- I did not use an interpreter
- I encouraged him/her to ask questions and took adequate time to answer them and was available should he/she ask any further questions.
- The informed consent was obtained by an independent person.
- I am satisfied that he/she adequately understands all aspects of the research, as described above.
- I am satisfied that he/she had time to discuss it with others if he/she wished to do so.

Signed at (*place*) on (*date*) 20....

.....
Signature of researcher

.....
Signature of witness

ANNEXURE C: Consent form for Forensic Social Workers



INFORMED CONSENT FORM FOR FORENSIC SOCIAL WORKERS

TITLE OF THE LARGE PROJECT: The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study"

PRINCIPAL INVESTIGATORS FOR LARGE PROJECT: Prof C Wessels and Prof W Roestenburg

TITLE OF THE RESEARCH STUDY: The formulation of scale items for the best interest of the child

ETHICS REFERENCE NUMBERS: NWU-00076-17-A1-02

PRINCIPAL INVESTIGATOR FOR RESEARCH STUDY: Dr L Wilson

POST GRADUATE STUDENT: Nuraan Dempers

POST GRADUATE STUDENT: ADDRESS:
North West University
Subject Group: Social Work
Privatebag X6001
POTCHEFSTROOM
2520

CONTACT NUMBER: 018 2991683

You are invited to take part in a **research study** that forms part of my MSW in Forensic Practice studies. This study represents a sub-study of a large study with the title "The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study". The large study has the reference number: NWU-00076-17-S1 and is led by researchers at Social work, Proff CC Wessels and WJH Roestenburg and colleagues B Saunders and L Wilson (Wessels, Roestenburg, Saunders, & Wilson, 2016). Briefly, the larger study aims at designing, developing, by means of a pilot test, a new measurement instrument that is to be used for regular, periodic measurement of the extent to which the "Best Interest of the Child principle" (BIOC) is implemented in the Criminal Justice Court System.

Please take some time to read the information presented here, which will explain the details of this study. Please ask the researcher or person explaining the research to you any questions about any part of this study that you do not fully understand. It is very important that you are fully satisfied that you clearly understand what this research is about and how you might be involved. Also, your participation is **entirely voluntary** and you are free to say no to participate. If you say no, this will not affect you negatively in any way whatsoever. You are also free to withdraw from the study at any point, even if you do agree to take part now.

This study has been approved by the Health Research Ethics Committee of the Faculty of Health Sciences of the North-West University (NWU-00076-17-A1-O2) and will be conducted according to the ethical guidelines and principles of Ethics in Health Research: Principles, Processes and Structures (DoH, 2015) and other international ethical guidelines applicable to this study. It might be necessary for the research ethics committee members or other relevant people to inspect the research records.

What is this research study all about?

- Study 3 is part of a larger study that aims to design and develop a new measurement instrument that is to be used for regular, periodic measurement of the extent to which the "Best Interest of the Child principle" (BIOC) is implemented in the Criminal Justice Court System.
- In study 3 we plan to:

Formulate and refine a list of potential items for measuring child-centeredness, child-participation and BIOC application in the court context. Items were formulated on the basis of integrated results obtained from two former studies, which showed us those factors that need to be considered for the new scale.
- In study 4 we plan to:

Measure quantitatively your relative agreement regarding the refined list of items for the BIOC scale, before we test the scale in reality (study 5). This is called *scale content development*.
- This study will be conducted in the Western Cape and will involve a focus group discussion by experienced health researchers trained in research focus group discussions. Fourteen participants will be included in this part of the study. The participants will include prosecutors from the sexual offences courts in the Western Cape, private forensic social workers and defence attorneys working at the sexual offences courts.

Why have you been invited to participate?

- You have been invited to participate because you are a forensic social worker working in the criminal court where children who are victims of sexual abuse have to testify. You also have experience of children testifying in court and how the best interest of the child is served in the South African court system.
- You also fit the research as you have a post graduate qualification in forensic practice/or an additional two years of experience working in this field and registered social worker with the SACSSP.
- You will not be able to take part in this research if you have no experience working with children in a criminal court as you may not be able to make any contribution to the topic of this research.

What will be expected of you?

- Study 3: You will be expected to attend one focus group discussion and share your views of the best interest of the child in criminal courts where the child is a victim of sexual abuse. During this focus group you will discuss and make input regarding items on a draft BIOC scale. You will receive the Word document draft copy of the new scale two weeks before the focus group discussion. You are requested to make a print-out of this document before the group and to study the item formulations. You may reflect on the items in response to two questions: 1) *To what extent does this item reflect BIOC in my work context?* And 2) *What other examples of BIOC can I identify that have not been reflected in each section of the scale?* These and other questions will be discussed during the focus group.
- The duration of the focus group will be between 2 and 3 hours. Frequent breaks and refreshments will be provided to prevent exhaustion. The researcher will arrange a time that suites you and should have minimal influence on your work. The focus groups will be conducted at the Centre for Child, Youth and Family Studies, Wellington. All focus group discussions will be audio recorded.
- Study 4: Approximately one month after the focus group you will receive a revised electronic copy of the scale for your perusal. For this purpose, you will be requested to provide us with a valid e-mail address. You will then be requested to rate your agreement to each final item on a three-point agreement scale and submit this to the researchers for statistical analysis. This will contribute to the final set of items to be included in the new scale.

Will you gain anything from taking part in this research?

- There will not be any direct benefit for you to participate in this study, but this will be an opportunity to share your knowledge and experiences of the best interest of the child where children have to testify in a criminal court.
- Your participation will benefit the child justice system in that the researchers will be able to develop a scale that can be used to evaluate the child justice context in future.

Are there risks involved in you taking part in this research and what will be done to prevent them?

- The risks in this study are minimal because the topic does not involve any personal information but more of a sharing of your knowledge regarding the best interest of the child principle in criminal courts.
- The benefits of this study outweigh the risks.

How will we protect your confidentiality and who will see your findings?

- Anonymity of the findings will be protected by using codes and not any names during data collection. Your privacy will also be respected by conducting the focus groups at a place that provides privacy. The focus groups will take place in the boardroom at the Centre for Child, Youth and Family studies to ensure your privacy. The results of your participation will be reflected in the revised scale items, whilst the audio recordings will only be used as reference should the researchers be unsure about a comment regarding an item. The audio recordings will be deleted once data have been transcribed. Only the researchers will have access to the findings. Findings will be kept safe by locking any hard copies in locked cupboards in the researcher's office and for electronic data it will be saved on the researcher's password protected laptop. Data will be stored for 5 years in a locked cupboard at COMPRES Office, North West University.

What will happen with the findings or samples?

- The findings of this study will only be used for the BIOC Project. This study is the third study in the BIOC Project to validate a best interest of the child monitoring system for the judicial system in South Africa. The results of this study will also be used for the next study, which will be study 4 in the larger project.

How will you know about the results of this research?

- We will provide you with a copy of the revised scale for rating in study 4, and a final report of the results once the larger project is completed. The findings of the research will also be shared with you by Prof Cornelia Wessels and Prof Wim Roestenburg in the form of information sessions to the profession on how BIOC will be monitored post development of the scale.
- You will be informed of any new relevant findings by the Project leaders in the form of publications.

Will you be paid to take part in this study and are there any costs for you?

You will not receive any remuneration to take part in the study but a token of appreciation. There will be no costs involved for you, if you do take part in this study. If you do have traveling costs, you will be refunded for that.

Is there anything else that you should know or do?

- You can contact Prof Cornelia Wessels at 018 299 1676 or Prof Wim Roestenburg at 018 285 2270 if you have any further questions or have any problems.
- You can also contact the Health Research Ethics Committee via Mrs Leanie van Ronge at 018 299 1206 if you have any concerns that were not answered about the research or if you have complaints about the research.
- You will receive a copy of this information and consent form for your own purposes.

Declaration by participant

By signing below, I agree to take part in the research study titled: The formulation of scale items for the best interest of the child that forms part of the Project: The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa; "The BIOC-MS study"

I declare that:

- I have read this information/it was explained to me by a trusted person in a language with which I am fluent and comfortable.
- The research was clearly explained to me.
- I have had a chance to ask questions to both the person getting the consent from me, as well as the researcher and all my questions have been answered.
- I understand that taking part in this study is **voluntary** and I have not been pressurised to take part.
- I may choose to leave the study at any time and will not be handled in a negative way if I do so.
- I may be asked to leave the study before it has finished, if the researcher feels it is in my best interests, or if I do not follow the study plan, as agreed to.
- I agree to the audio recording of the focus groups.

Signed at (*place*) on (*date*) 20....

.....
Signature of participant

.....
Signature of witness

Declaration by person obtaining consent

I (*name*) declare that:

- I clearly and in detail explained the information in this document to
.....
- I did/did not use an interpreter.
- I encouraged him/her to ask questions and took adequate time to answer them.
- I am satisfied that he/she adequately understands all aspects of the research, as discussed above

- I gave him/her time to discuss it with others if he/she wished to do so.

Signed at (*place*) on (*date*) 20....

.....
Signature of person obtaining consent

.....
Signature of witness

Declaration by researcher

I (*name*) declare that:

- I explained the information in this document to
- I did not use an interpreter
- I encouraged him/her to ask questions and took adequate time to answer them and was available should he/she ask any further questions.
- The informed consent was obtained by an independent person.
- I am satisfied that he/she adequately understands all aspects of the research, as described above.
- I am satisfied that he/she had time to discuss it with others if he/she wished to do so.

Signed at (*place*) on (*date*) 20....

.....
Signature of researcher

.....
Signature of witness

ANNEXURE D: Consent Form for Defense Attorneys



INFORMED CONSENT FORM FOR DEFENCE ATTORNEYS

TITLE OF THE LARGE PROJECT: The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study"

PRINCIPAL INVESTIGATORS FOR LARGE PROJECT: Prof C Wessels and Prof W Roestenburg

TITLE OF THE RESEARCH STUDY: The formulation of scale items for the best interest of the child

ETHICS REFERENCE NUMBERS: NWU-00076-17-A1-02

PRINCIPAL INVESTIGATOR FOR RESEARCH STUDY: Dr L Wilson

POST GRADUATE STUDENT: Nuraan Dempers

POST GRADUATE STUDENT: ADDRESS:

North West University
Subject Group: Social Work
Privatebag X6001
POTCHEFSTROOM
2520

CONTACT NUMBER: 018 2991683

You are invited to take part in a **research study** that forms part of my MSW in Forensic Practice studies. This study represents a sub-study of a large study with the title "The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study". The large study has the reference number: NWU-00076-17-S1 and is led by researchers at Social work, Proff CC Wessels and WJH

HREC General WICF Version July 2016

Page 1 of 7

Roestenburg and colleagues B Saunders and L Wilson (Wessels, Roestenburg, Saunders, & Wilson, 2016). Briefly, the larger study aims at designing, developing, by means of a pilot test, a new measurement instrument that is to be used for regular, periodic measurement of the extent to which the "Best Interest of the Child principle" (BIOC) is implemented in the Criminal Justice Court System.

Please take some time to read the information presented here, which will explain the details of this study. Please ask the researcher or person explaining the research to you any questions about any part of this study that you do not fully understand. It is very important that you are fully satisfied that you clearly understand what this research is about and how you might be involved. Also, your participation is **entirely voluntary** and you are free to say no to participate. If you say no, this will not affect you negatively in any way whatsoever. You are also free to withdraw from the study at any point, even if you do agree to take part now.

This study has been approved by the Health Research Ethics Committee of the Faculty of Health Sciences of the North-West University (NWU-00076-17-A1-O2) and will be conducted according to the ethical guidelines and principles of Ethics in Health Research: Principles, Processes and Structures (DoH, 2015) and other international ethical guidelines applicable to this study. It might be necessary for the research ethics committee members or other relevant people to inspect the research records.

What is this research study all about?

- Study 3 is part of a larger study that aims to design and develop a new measurement instrument that is to be used for regular, periodic measurement of the extent to which the "Best Interest of the Child principle" (BIOC) is implemented in the Criminal Justice Court System.
- In study 3 we plan to:

Formulate and refine a list of potential items for measuring child-centeredness, child-participation and BIOC application in the court context. Items were formulated on the basis of integrated results obtained from two former studies, which showed us those factors that need to be considered for the new scale.
- In study 4 we plan to:

Measure quantitatively your relative agreement regarding the refined list of items for the BIOC scale, before we test the scale in reality (study 5). This is called *scale content development*.
- This study will be conducted in the Western Cape and will involve a focus group discussion by experienced health researchers trained in research focus group discussions. Fourteen participants will be included in this part of the study. The participants will include prosecutors from the sexual offences courts in the Western Cape, private forensic social workers and defence attorneys working at the sexual offences courts.

Why have you been invited to participate?

- You have been invited to participate because you are a defence attorney working in the criminal court where children who are victims of sexual abuse have to

testify. You also have experience of children testifying in court and how the best interest of the child is served in the South African court system.

- You also fit the research as you have first-hand experience in dealing with cases involving decision-making regarding children according to the BIOC principle; you have a minimum of two years' experience in this context within criminal courts and you are knowledgeable about court procedures.
- You will not be able to take part in this research if you have no experience working with children in a criminal court as you may not be able to make any contribution to the topic of this research.

What will be expected of you?

- Study 3: You will be expected to attend one focus group discussion and share your views of the best interest of the child in criminal courts where the child is a victim of sexual abuse. During this focus group you will discuss and make input regarding items on a draft BIOC scale. You will receive the Word document draft copy of the new scale two weeks before the focus group discussion. You are requested to make a print-out of this document before the group and to study the item formulations. You may reflect on the items in response to two questions: 1) *To what extent does this item reflect BIOC in my work context?* And 2) *What other examples of BIOC can I identify that have not been reflected in each section of the scale?* These and other questions will be discussed during the focus group.
- The duration of the focus group will be between 2 and 3 hours. Frequent breaks and refreshments will be provided to prevent exhaustion. The researcher will arrange a time that suites you and should have minimal influence on your work. The focus groups will be conducted at a private meeting room at the court. All focus group discussions will be audio recorded.
- Study 4: Approximately one month after the focus group you will receive a revised electronic copy of the scale for your perusal. For this purpose, you will be requested to provide us with a valid e-mail address. You will then be requested to rate your agreement to each final item on a three-point agreement scale and submit this to the researchers for statistical analysis. This will contribute to the final set of items to be included in the new scale.

Will you gain anything from taking part in this research?

- There will not be any direct or indirect benefit for you to participate in this study, but this will be an opportunity to share your knowledge and experiences of the best interest of the child where children have to testify in a criminal court.
- Your participation will benefit the child justice system in that the researchers will be able to develop a scale that can be used to evaluate the child justice context in future.

Are there risks involved in you taking part in this research and what will be done to prevent them?

- The risks in this study are minimal because the topic does not involve any personal information but more of a sharing of your knowledge regarding the best interest of the child principle in criminal courts.
- The benefits of this study outweigh the risks.

How will we protect your confidentiality and who will see your findings?

- Anonymity of the findings will be protected by using codes and not any names during data collection. Your privacy will also be respected by conducting the focus groups at a place that provides privacy. The focus groups will take place at a private meeting room at the court. This room will ensure the privacy of the participants.
- The results of your participation will be reflected in the revised scale items, whilst the audio recordings will only be used as reference should the researchers be unsure about a comment regarding an item. The audio recordings will be deleted once data have been transcribed. Only the researchers will have access to the findings. Findings will be kept safe by locking any hard copies in locked cupboards in the researcher's office and for electronic data it will be saved on the researcher's password protected laptop. Data will be stored for 5 years in a locked cupboard at COMPRES Office, North West University.

What will happen with the findings or samples?

- The findings of this study will only be used for the BIOC Project. This study is the third study in the BIOC Project to validate a best interest of the child monitoring system for the judicial system in South Africa. The results of this study will also be used for the next study, which will be study 4 in the larger project.

How will you know about the results of this research?

- We will provide you with a copy of the revised scale for rating in study 4, and a final report of the results once the larger project is completed. The findings of the research will also be shared with you by Prof Cornelia Wessels and Prof Wim Roestenburg in the form of information sessions to the profession on how BIOC will be monitored post development of the scale.
- You will be informed of any new relevant findings by the Project leaders in the form of publications.

Will you be paid to take part in this study and are there any costs for you?

You will not receive any remuneration to take part in the study but a token of appreciation. There will be no costs involved for you, if you do take part in this study. If you do have traveling costs, you will be refunded for that.

Is there anything else that you should know or do?

- You can contact Prof Cornelia Wessels at 018 299 1676 or Prof Wim Roestenburg at 018 285 2270 if you have any further questions or have any problems.
- You can also contact the Health Research Ethics Committee via Mrs Leanie van Ronge at 018 299 1206 if you have any concerns that were not answered about the research or if you have complaints about the research.
- You will receive a copy of this information and consent form for your own purposes.

Declaration by participant

By signing below, I agree to take part in the research study titled: The formulation of scale items for the best interest of the child that forms part of the Project: The development of a Best Interest of the Child Monitoring System for the judicial system in South Africa: "The BIOC-MS study"

I declare that:

- I have read this information/it was explained to me by a trusted person in a language with which I am fluent and comfortable.
- The research was clearly explained to me.
- I have had a chance to ask questions to both the person getting the consent from me, as well as the researcher and all my questions have been answered.
- I understand that taking part in this study is **voluntary** and I have not been pressurised to take part.
- I may choose to leave the study at any time and will not be handled in a negative way if I do so.
- I may be asked to leave the study before it has finished, if the researcher feels it is in my best interests, or if I do not follow the study plan, as agreed to.
- I agree to the audio recording of the focus groups.

Signed at (*place*) on (*date*) 20.....

.....
Signature of participant

.....
Signature of witness

Declaration by person obtaining consent

I (*name*) declare that:

HREC General WICF Version July 2016

Page 5 of 7

- I clearly and in detail explained the information in this document to
- I did/did not use an interpreter.
- I encouraged him/her to ask questions and took adequate time to answer them.
- I am satisfied that he/she adequately understands all aspects of the research, as discussed above
- I gave him/her time to discuss it with others if he/she wished to do so.

Signed at (*place*) on (*date*) 20....

.....
Signature of person obtaining consent

.....
Signature of witness

Declaration by researcher

I (*name*) declare that:

- I explained the information in this document to
- I did not use an interpreter
- I encouraged him/her to ask questions and took adequate time to answer them and was available should he/she ask any further questions.
- The informed consent was obtained by an independent person.
- I am satisfied that he/she adequately understands all aspects of the research, as described above.
- I am satisfied that he/she had time to discuss it with others if he/she wished to do so.

testify. You also have experience of children testifying in court and how the best interest of the child is served in the South African court system.

- You also fit the research as you have first-hand experience in dealing with cases involving decision-making regarding children according to the BIOC principle; you have a minimum of two years' experience in this context within criminal courts and you are knowledgeable about court procedures.
- You will not be able to take part in this research if you have no experience working with children in a criminal court as you may not be able to make any contribution to the topic of this research.

What will be expected of you?

- Study 3: You will be expected to attend one focus group discussion and share your views of the best interest of the child in criminal courts where the child is a victim of sexual abuse. During this focus group you will discuss and make input regarding items on a draft BIOC scale. You will receive the Word document draft copy of the new scale two weeks before the focus group discussion. You are requested to make a print-out of this document before the group and to study the item formulations. You may reflect on the items in response to two questions: 1) *To what extent does this item reflect BIOC in my work context?* And 2) *What other examples of BIOC can I identify that have not been reflected in each section of the scale?* These and other questions will be discussed during the focus group.
- The duration of the focus group will be between 2 and 3 hours. Frequent breaks and refreshments will be provided to prevent exhaustion. The researcher will arrange a time that suites you and should have minimal influence on your work. The focus groups will be conducted at a private meeting room at the court. All focus group discussions will be audio recorded.
- Study 4: Approximately one month after the focus group you will receive a revised electronic copy of the scale for your perusal. For this purpose, you will be requested to provide us with a valid e-mail address. You will then be requested to rate your agreement to each final item on a three-point agreement scale and submit this to the researchers for statistical analysis. This will contribute to the final set of items to be included in the new scale.

Will you gain anything from taking part in this research?

- There will not be any direct or indirect benefit for you to participate in this study, but this will be an opportunity to share your knowledge and experiences of the best interest of the child where children have to testify in a criminal court.
- Your participation will benefit the child justice system in that the researchers will be able to develop a scale that can be used to evaluate the child justice context in future.

Are there risks involved in you taking part in this research and what will be done to prevent them?

- The risks in this study are minimal because the topic does not involve any personal information but more of a sharing of your knowledge regarding the best interest of the child principle in criminal courts.
- The benefits of this study outweigh the risks.

ANNEXURE E: Initial BIOC Scale

BIOC (Best Interest of Child) scale	
<p>Instructions to participants in focus group:</p> <ol style="list-style-type: none"> 1. The purpose of the BIOC scale is to measure the extent to which BIOC is implemented in the South African criminal justice system. The researchers want the scale to estimate the extent to which the child is at the center of the justice system's focus and activities. 2. "Dimensions" refers to themes of BIOC as identified from qualitative interviews with attorneys, presiding officers, prosecutors and forensic social workers regarding what they describe as most important indicators. 3. "Sub-themes" are broad areas of indicators/ aspects that should be in place in the justice system to reflect BIOC (Best Interest of the Child). The various participants have indicated that if these aspects are in place, we may state that BIOC is correctly implemented. Our task is to assess to what extent these aspects are in place, by creating the scale and asking personnel at Justice to rate it on our scale. 4. Scales normally are either positively (strength) or negatively (weakness) formulated. Sometimes scales combine positive and negative items. This improves the balance in the scale and prevents systematic completion. During validation analysis reverse scoring is applied to create a uniform direction scale. Please consider the items as either negative/positive as indicated. 5. The draft presented here presents various alternative ways of formulation, and it is possible that some of these may be eliminated towards the finalization stage. At this point, unless a strong case is made, please try not to eliminate items yet, as this will be done at a later stage through a quantitative study. 6. In order to evaluate the different items of this scale, please consider the following: <ol style="list-style-type: none"> a. Whether the item reflects the sub-theme adequately enough b. Whether the item is not judgemental c. Is not "auto-answerable", i.e. leaves no option but to answer in one or other extreme d. Is too difficult to answer e. Is not ambiguous f. Contains two ideas into one 7. Keep in mind that the questionnaire must be answered by people working in courts where children appear as victims and as witnesses. These do not necessarily have expertise or knowledge about social work terms, thus items have to be formulated in simple, everyday language. Thus, if you have suggestions to simplify formulations, please do so 8. Check the word length – the shorter sentences are, the better, so try to shorten item wordings 9. Think of possible alternative items that were not included, and add these please. 	

Dimension 1: Rate the following in terms of actions taken regarding child clients in the court system as you have observed these in your immediate work environment

Sub-Themes ¹ :	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
Sub-theme 1.1: Intermediary system							
<i>The witness testifying room for children...</i>							
+	9	effectively prevents contact between child witnesses and adult perpetrators					
+	11	protects children from intimidation during court processes, attorneys or alleged perpetrator					
+	9	enables court personnel to consider children's needs during hearings					
+	10	enables children to participate more spontaneously in the court case					
+	8	allows intermediaries to explain questions to child witnesses					

+	5	provides a child friendly room					
+	8	facilitates effective communication between child witness and professionals					
+	9	ensures that child witnesses are allowed breaks during hearings					
<i>Intermediaries...</i>							
+	14	ensure that questions are tailored in a developmentally sensitive manner to the child witness					
+	11	succeeds in making the court process less traumatic for child witnesses					
+	9	are skilled in working with children from different ages					
+	10	need to have a cultural sensitive approach to the children					
+	13	explain court procedures to children and parents in a simplified and understandable manner					
+	8	are familiar with the different child development stages					
+	9	are sensitive to the needs of the child witness					
+	7	able to adapt their communication style accordingly					
+	11	are able to address the identified needs of the child witness					
+	4	have good observational skills					
+	4	have good interviewing techniques					
+	8	are able to develop rapport with child victims					
+	14	are able to communicate empathy to the child witness in an age appropriate manner					
+	12	have an understanding of the statutes that govern the rights of children					
+	8	understand the dynamics of child sexual abuse (CSA)					
+	7	can tailor their questions to children's understanding					
+	13	reduce the traumatic effects of the adversarial nature of court processes on children					

+	9	are able to safeguard child witnesses from potential harm					
+	10	Ensure that child witnesses are offered refreshments during court appearances					
+	7	Are skilled in observing behaviour before responding					
Sub-Theme 1.2: Cross-examination of children should be dealt with in a more sensitive manner							
<i>Cross-examination practices in our courts...</i>							
-	15	are done by lawyers who have not adjusted their protocols to deal with child witnesses					
-	7	does not carefully consider the child's interests					
+	10	are done by lawyers who have knowledgeable about childhood development					
+	13	allows prosecutors to build a trusting relationship with the child to reduce stress					
+	11	are based on protocols that tend to prevent harm to children					
-	6	allows too much character damaging statements					
-	9	do not encourage prosecutors to object to damaging practices					
-	12	do not sufficiently consider the linguistic abilities of children compared to adults					
-	13	do not consider a child's limited ability to provide an account of events					
Sub-theme 1.3: Prosecutors and lawyers need to be better trained to work with children in order to be more sensitive when cross-examining children							
<i>Prosecutors and lawyers...</i>							
-	8	are not sensitive to a child's developmental stage					
-	11	are too forceful and cause children to become confused or upset					
Sub-theme 1.4: Some lawyers should not cross-examine children that have been raped							

<i>Lawyers...</i>							
-	7	are not educated well enough about CSA					
-	12	are insensitive towards the impact of cross-examination on the child victim's testimony					
Sub-theme 1.5: Oath-taking by children within the court setting remains a problem							
<i>Oath taking practices in our courts...</i>							
-	12	do not consider that children do not fully understand "morality of lies"					
-	8	fail to demonstrate young children's competence in court					
-	12	do not consider that child-friendly oaths may be misunderstood by young children					
-	13	Over-emphasize the idea that children must satisfy the presiding officer regarding their competency					

Dimension 2: Child victim's responses:

Rate the following in terms of how you perceive actions in response to the child victim's responses during court cases?

Adult presence	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>In our court...</i>							
+	8	child witnesses are always accompanied by an adult					
+	8	officials ensure that child witnesses are properly accompanied					
+	7	child witnesses receive support to minimize trauma					
Sub-theme 2.1: Intermediaries and court personnel speaking directly to the child							
<i>Intermediaries...</i>							
+	9	are addressed by court personnel and not the child					
+	9	are able to interpret questions without changing the meaning					
+	6	protect the child from hostile examiners					
<i>The Criminal Procedure Act makes provision for the use of intermediaries</i>							

		are prioritized and expedited					
+	9	make sure that child victims wait in victim-friendly areas					
+	11	make sure that child victims are not exposed to the accused					
+	15	will advocate during the court process for children who have witnessed or experienced sexual abuse					
+	12	ensure that children are effectively prepared by informing them about court proceedings					
+	12	make sure that children are oriented on the day of the trial					
+	9	do not spend enough time preparing the child witness					
+	9	underestimate the importance of preparation required for child witnesses					
+	11	reflect patience in allowing the child witness to comprehend information disseminated					
+	9	spend time with the child going over their statement					
-	7	do not have time for court preparation					
Sub-theme 2.3: Court personnel's feelings about children							
<i>Court personnel...</i>			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
-	14	such as attorneys and prosecutors ask questions which are not understood by the children					
-	4	allow long waiting times					
-	11	fail to keep victims informed about the progress of their cases					
-	10	fail to keep victims informed about the accused court process					
Sub-theme 2.4: Children know precisely what is expected of them							
<i>Children as witnesses in our courts...</i>							
+	7	are informed of their role in court					

		are prioritized and expedited					
+	9	make sure that child victims wait in victim-friendly areas					
+	11	make sure that child victims are not exposed to the accused					
+	15	will advocate during the court process for children who have witnessed or experienced sexual abuse					
+	12	ensure that children are effectively prepared by informing them about court proceedings					
+	12	make sure that children are oriented on the day of the trial					
+	9	do not spend enough time preparing the child witness					
+	9	underestimate the importance of preparation required for child witnesses					
+	11	reflect patience in allowing the child witness to comprehend information disseminated					
+	9	spend time with the child going over their statement					
-	7	do not have time for court preparation					
Sub-theme 2.3: Court personnel's feelings about children							
<i>Court personnel...</i>			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
-	14	such as attorneys and prosecutors ask questions which are not understood by the children					
-	4	allow long waiting times					
-	11	fail to keep victims informed about the progress of their cases					
-	10	fail to keep victims informed about the accused court process					
Sub-theme 2.4: Children know precisely what is expected of them							
<i>Children as witnesses in our courts...</i>							
+	7	are informed of their role in court					

+	8	know about the timing and progress of proceedings					
+	8	are well-informed and can focus on their testimony					
+	7	know about the nature of the case					
-	12	appear reluctant as they do not understand the situation they are in					
-	9	are not well informed and are reluctant to testify					
-	5	consistently give more accurate testimony					
-	9	appear to be more relaxed throughout the court process					
-	11	Appear to be communicating more effectively due to the intermediary system					

Dimension 3: Rate the following in terms of how you perceive court processes involving children in your immediate work environment

Sub-theme 3.1: A need exists for <u>role clarification</u>	Word Count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Some role-players in the court system...</i>							
-	13	are confused about the roles the should play in providing services to children					
-	7	fail to notify children of court dates					
-	7	fail to advise children of court appearances					
-	11	are unsure of their roles regarding the management of child witnesses					
-	8	fail to enforce high standards of child-centered behaviour					
-	6	appear to act without proper coordination					
-	8	tend not to communicate effectively to one another					
Sub Theme 3.2: Communication between SAPS, forensic social workers and court personnel occurs as...							
-	10	personnel are only interested in the conviction of the accused					
-	10	there is no provision made for planning and strategic development					
-	12	personnel are primarily interested in the protection of the child's emotional well-					

		being					
-	11	there are not dedicated Victim Empowerment Programme coordinators within their structures					
<i>Court processes are not effectively managed as...</i>							
-	6	court personnel behave irregularly towards children					
-	7	multiple-disciplines are not utilized in managing cases					
-	13	court personnel tend not to understand the importance of effective communication amongst professionals					
-	20	due to failure of personnel diligence and lack of resources children are sometimes exposed to the presence of the accused					
Sub-theme 3.3: Where a child is the offender, the case must be settled as quickly as possible							
<i>Cases involving child offenders...</i>							
-	11	do not enjoy the preferential treatment they are supposed to enjoy					
-	5	have overly long waiting times					
-	25	do not consider section 28 of the Constitution which states that a child's interest is the most important consideration in any matter concerning the child					
-	9	are frequently postponed because role-players are not always available					
-	7	lack uniform use of child offender assessments					
Sub-theme 3.4: A child may not be detained with other offenders			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Child offenders...</i>							
+	6	are kept separate from adult offenders					
+?	12	are treated in the same manner as in other cases involving children					
Sub-theme 3.5: Recurrent postponed cases contribute to secondary trauma experienced by							

children							
<i>The way court cases are conducted...</i>							
-	10	May cause delays that lead to painful experiences in children					
-	4	May demoralise child victims					
-	6	May increase anxiety in child victims					
-	7	May cause longstanding emotional distress in children					

Dimension 4: Rate the following in terms of how you perceive the actions of preceding officers and prosecutors in response to children in your court context

Sub-theme 4.1: Prosecutors must act in the best interest of the child	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Prosecutors...</i>							
+	8	reasonably protect child victims and witnesses from trauma					
+	9	Regularly inform child victims and their families about delays					
+	9	clearly uphold and protect the rights of child victims					
+	8	properly and adequately prepare child witnesses for court					
+	10	ensure that child victims are not exposed to the accused					
+	16	effectively apply the best interest standard principle as prescribed in the Children's Act 38 of 2005					
-	10	do not act to protect child witnesses from overzealous questioning					
<i>Court personnel should be trained in child development...</i>			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
+	13	and show an understanding of childhood development in the way questions are formulated					
+	13	and consider an understanding of the effects of long term abuse as vital					

-	12	as they lack understanding of potential impact of cross-examination on child testimony					
-	14	as they lack training on child victim psychology or symptoms related to child trauma					
-	11	especially personnel involved in investigations need training on communicating with children					
-	15	and should get more training on childhood development to improve systematic safeguards for child victims					
-	18	as they are not equipped to deal with child victims in a manner that upholds the BIOC standard					
-	12	as they are ignorant of the special needs of sexually abused children					
-	23	as staff behaviour may prove detrimental to the efficacy of the child testimony or the emotional well-being of a potentially highly traumatised child					
-	11	as the lack of training may cause secondary trauma to children					
+	8	as a specialist approach to CSA is beneficial					
Sub-theme 4.2: The perceived level of experience of presiding officers and prosecutors							
<i>Presiding officers...</i>							
+	12	are committed, sensitive and empathic to special needs presented by young witnesses					
+	9	show expertise in handling traumatised children as their cases					
<i>Prosecutors...</i>							
+	9	come across as having experience in working with children					
+	6	Will help children give better testimony					
-	9	Tend to use questioning techniques that may re-traumatise children					
-	8	re-traumatise children by undermining their ability to					

		testify					
-	5	are insensitive to child-specific difficulties					
-	6	knowledge about child development is limited					
-	9	are insufficiently trained to avoid re-victimization of child victims					
-	6	are demeaning and insensitive to children					
-	10	do not know the impact of testifying on a child					
-	8	have a poor understanding of the BIOC principle					
-	7	do not tailor their questions to children					
Sub-theme 4.3: Level of assistance to children during and after the court case							
<i>The court ...</i>							
+	9	shows understanding of the long-term effects of sexual abuse					
+	11	shows understanding of the assistance children need after the court case					
<i>Child victims...</i>							
-	10	do not receive supportive services according to the Victim's Charter					
-	8	Receive some support but not throughout the process					
+	8	Use available counselling services at sexual offences courts					
+	8	Seem to receive integrated assistance at all times					
-	7	are ill-informed about their rights to assistance					
+	7	are referred to appropriate, free therapy services					
Sub-theme 4.4: Effects of Court experiences on the child							
<i>In our context the way children are handled ...</i>							
-	5	cause children to feel victimized					
-	7	cause children to relive the traumatic event					
-	14	make it difficult for children to focus for the duration of the court case					
-	6	makes children feel					

		disempowered and powerless					
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Dimension 5: Rate the following in terms of how holistic children are approached in court

Sub-theme	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
Sub-theme 5.1: Centrality of the child's best interest principle over and above interests of others such as the parent							
<i>Our courts tend to...</i>							
-	11	focus more on the rights of the parent than the child					
+	10	actively seek joint parental agreements and permissions regarding the child					
+	8	Encourage child participation consistent with the Children's Act					
+	6	Consult children in matters concerning them					
+	9	Let children participate actively in decisions affecting their lives					
Sub-theme 5.2: Psycho-social well-being of the child							
<i>The nature of the court environment...</i>							
+	6	makes children feel safe and secure					
+	14	is characterized by a person-centred approach and which allows the child to be understood					
+	7	makes children a part of decision-making processes					
+	7	takes holistic care of a child witness					
+	8	constantly considers the child's well-being during court appearances					

Dimension 6: Rate how you observed court practices involving children in CSA cases

Sub-theme	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
6.1: Maintaining the stability by not removing children from the home							
<i>In court practices regarding children in CSA cases...</i>							
+	13	the alleged perpetrator is rather removed from the					

		family and not the child					
-	13	a child is too easily removed from the home where a perpetrator lives					
+	14	a child will only be removed if they think the child is in danger					
-	13	it is not easily considered to remove an alleged perpetrator from the home					
-	10	the trauma a child experiences when removed, is not considered					
-	9	are insensitive about children's preferences regarding where they stay					
Sub-theme 6.1: Extent to which the bond between child and parent is taken into account							
<i>Professionals...</i>							
+	8	focus on the strengths of the parent-child bond					
+	10	consider the strengths of attachment between child and preferred parent					
+	11	consider the positive bond between parent and child in their recommendations					
+	11	understand that parents serve as a support structure for their children					
+	11	realize that children become excessively upset when removed from their parents					
+	21	consider that a child needs to be with its parents to receive their support in spite of negative conditions at home					

ANNEXURE F: Refined BIOC scale

BIOC (Best Interest of Child) scale	
Instructions to participants in focus group:	
<ol style="list-style-type: none"> 1. The purpose of the BIOC scale is to measure the extent to which BIOC is implemented in the South African criminal justice system. The researchers want the scale to estimate the extent to which the child is at the center of the justice system's focus and activities. 2. "Dimensions" refers to themes of BIOC as identified from qualitative interviews with attorneys, presiding officers, prosecutors and forensic social workers regarding what they describe as most important indicators. 3. "Sub-themes" are broad areas of indicators/ aspects that should be in place in the justice system to reflect BIOC (Best Interest of the Child). The various participants have indicated that if these aspects are in place, we may state that BIOC is correctly implemented. Our task is to assess to what extent these aspects are in place, by creating the scale and asking personnel at Justice to rate it on our scale. 4. Scales normally are either positively (strength) or negatively (weakness) formulated. Sometimes scales combine positive and negative items. This improves the balance in the scale and prevents systematic completion. During validation analysis reverse scoring is applied to create a uniform direction scale. Please consider the items as either negative/positive as indicated. 5. The draft presented here presents various alternative ways of formulation, and it is possible that some of these may be eliminated towards the finalization stage. At this point, unless a strong case is made, please try not to eliminate items yet, as this will be done at a later stage through a quantitative study. 6. In order to evaluate the different items of this scale, please consider the following: <ol style="list-style-type: none"> a. Whether the item reflects the sub-theme adequately enough b. Whether the item is not judgemental c. Is not "auto-answerable", i.e. leaves no option but to answer in one or other extreme d. Is too difficult to answer e. Is not ambiguous f. Contains two ideas into one 7. Keep in mind that the questionnaire must be answered by people working in courts where children appear as victims and as witnesses. These do not necessarily have expertise or knowledge about social work terms, thus items have to be formulated in simple, everyday language. Thus, if you have suggestions to simplify formulations, please do so 8. Check the word length – the shorter sentences are, the better, so try to shorten item wordings 9. Think of possible alternative items that were not included, and add these please. 	

Dimension 1: Rate the following in terms of actions taken regarding child clients in the court system as you have observed these in your immediate work environment

Sub-Themes ¹ :	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
Sub-theme 1.1: Intermediary system							
<i>The witness testifying room for children...</i>							
+	9	effectively prevents contact between child witnesses and adult perpetrators					
+	11	protects children from intimidation during court processes, attorneys or alleged perpetrator					
+	9	enables court personnel to consider children's needs during hearings					
+	10	enables children to participate more spontaneously in the court case					
+	8	allows intermediaries to explain questions to child witnesses					

+	5	provides a child friendly room					
+	8	facilitates effective communication between child witness and professionals					
+	9	ensures that child witnesses are allowed breaks during hearings					
<i>Intermediaries...</i>							
+	14	ensure that questions are tailored in a developmentally sensitive manner to the child witness					
+	11	succeeds in making the court process less traumatic for child witnesses					
+	9	are skilled in working with children from different ages					
+	10	need to have a cultural sensitive approach to the children					
+	13	explain court procedures to children and parents in a simplified and understandable manner					
+	8	are familiar with the different child development stages					
+	9	are sensitive to the needs of the child witness					
+	7	able to adapt their communication style accordingly					
+	11	are able to address the identified needs of the child witness					
+	4	have good observational skills					
+	4	have good interviewing techniques					
+	8	are able to develop rapport with child victims					
+	14	are able to communicate empathy to the child witness in an age appropriate manner					
+	12	have an understanding of the statutes that govern the rights of children					
+	8	understand the dynamics of child sexual abuse (CSA)					
+	7	can tailor their questions to children's understanding					
+	13	reduce the traumatic effects of the adversarial nature of court processes on children					

+	9	are able to safeguard child witnesses from potential harm					
+	10	Ensure that child witnesses are offered refreshments during court appearances					
+	7	Are skilled in observing behaviour before responding					
Sub-Theme 1.2: Cross-examination of children should be dealt with in a more sensitive manner							
<i>Cross-examination practices in our courts...</i>							
-	15	are done by lawyers who have not adjusted their protocols to deal with child witnesses					
-	7	does not carefully consider the child's interests					
+	10	are done by lawyers who have knowledgeable about childhood development					
+	13	allows prosecutors to build a trusting relationship with the child to reduce stress					
+	11	are based on protocols that tend to prevent harm to children					
-	6	allows too much character damaging statements					
-	9	do not encourage prosecutors to object to damaging practices					
-	12	do not sufficiently consider the linguistic abilities of children compared to adults					
-	13	do not consider a child's limited ability to provide an account of events					
Sub-theme 1.3: Prosecutors and lawyers need to be better trained to work with children in order to be more sensitive when cross-examining children							
<i>Prosecutors and lawyers...</i>							
-	8	are not sensitive to a child's developmental stage					
-	11	are too forceful and cause children to become confused or upset					
Sub-theme 1.4: Some lawyers should not cross-examine children that have been raped							

<i>Lawyers...</i>							
-	7	are not educated well enough about CSA					
-	12	are insensitive towards the impact of cross-examination on the child victim's testimony					
Sub-theme 1.5: Oath-taking by children within the court setting remains a problem							
<i>Oath taking practices in our courts...</i>							
-	12	do not consider that children do not fully understand "morality of lies"					
-	8	fail to demonstrate young children's competence in court					
-	12	do not consider that child-friendly oaths may be misunderstood by young children					
-	13	Over-emphasize the idea that children must satisfy the presiding officer regarding their competency					

Dimension 2: Child victim's responses:

Rate the following in terms of how you perceive actions in response to the child victim's responses during court cases?

Sub-theme 2.1 Adult presence	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>In our court...</i>							
+	8	child witnesses are always accompanied by an adult					
+	8	officials ensure that child witnesses are properly accompanied					
+	7	child witnesses receive support to minimize trauma					
Sub-theme 2.2: Intermediaries and court personnel speaking directly to the child							
<i>Intermediaries...</i>							
+	9	are addressed by court personnel and not the child					
+	9	are able to interpret questions without changing the meaning					
+	6	protect the child from hostile examiners					
<i>The Criminal Procedure Act makes provision for the</i>							

<i>use of intermediaries and...</i>							
+	7	are used without exception in all courts					
+	5	accommodate children with special needs					
+	7	are present in the witness testifying room					
+	6	effectively reduce trauma for child victims					
+	5	offer emotional support to children					
<i>Children are protected by not appearing in court ...</i>							
+	6	but in a child friendly room					
+	8	and shields the child from hardships in court					
+	9	by ensuring children are not exposed to secondary trauma					
+	15	as it is not in the best interest of the child to appear in court					
+	9	as contact with the accused is regulated if necessary					
-	11	as children in SA courts are forced to confront the accused					
+	11	as constant efforts are made to reduce potential stress in children					
Sub-theme 2.3: Prosecutors responsibility to prepare the child for court and ensuring that the child is ready to testify							
			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Prosecutors...</i>							
+	9	make an effort to prepare children for court appearances					
+	11	assist to let children in our court appear confident to testify					
+	11	ask questions in a manner not to confuse the child witness					
+	8	familiarise children with the courtroom and its procedures					
+	5	explain children's roles to them					
+	9	ensure that children are given information about court proceedings					
+	7	approach children with a sensitive, victim-centred approach					

+	9	plan that sexual offense cases are prioritized and expedited					
+	9	make sure that child victims wait in victim-friendly areas					
+	11	make sure that child victims are not exposed to the accused					
+	15	will advocate during the court process for children who have witnessed or experienced sexual abuse					
+	12	ensure that children are effectively prepared by informing them about court proceedings					
+	12	make sure that children are oriented on the day of the trial					
+	9	do not spend enough time preparing the child witness					
+	9	underestimate the importance of preparation required for child witnesses					
+	11	reflect patience in allowing the child witness to comprehend information disseminated					
+	9	spend time with the child going over their statement					
-	7	do not have time for court preparation					
Sub-theme 2.4: Court personnel's feelings about children							
<i>Court personnel...</i>			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
-	14	such as attorneys and prosecutors ask questions which are not understood by the children					
-	4	allow long waiting times					
-	11	fail to keep victims informed about the progress of their cases					
-	10	fail to keep victims informed about the accused court process					
Sub-theme 2.5: Children know precisely what is expected of them							
<i>Children as witnesses in our courts...</i>							
+	7	are informed of their role in court					

+	8	know about the timing and progress of proceedings					
+	8	are well-informed and can focus on their testimony					
+	7	know about the nature of the case					
-	12	appear reluctant as they do not understand the situation they are in					
-	9	are not well informed and are reluctant to testify					
-	5	consistently give more accurate testimony					
-	9	appear to be more relaxed throughout the court process					
-	11	Appear to be communicating more effectively due to the intermediary system					

Dimension 3: Rate the following in terms of how you perceive court processes involving children in your immediate work environment

Sub-theme 3.1: A need exists for <u>role clarification</u>	Word Count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Some role-players in the court system...</i>							
-	13	are confused about the roles they should play in providing services to children					
-	7	fail to notify children of court dates					
-	7	fail to advise children of court appearances					
-	11	are unsure of their roles regarding the management of child witnesses					
-	8	fail to enforce high standards of child-centered behaviour					
-	6	appear to act without proper coordination					
-	8	tend not to communicate effectively to one another					
Sub Theme 3.2: Communication between SAPS, forensic social workers and court personnel occurs as...							
-	10	personnel are only interested in the conviction of the accused					
-	10	there is no provision made for planning and strategic development					
-	12	personnel are primarily interested in the protection of the child's emotional well-					

		being					
-	11	there are not dedicated Victim Empowerment Programme coordinators within their structures					
<i>Court processes are not effectively managed as...</i>							
-	6	court personnel behave irregularly towards children					
-	7	multiple-disciplines are not utilized in managing cases					
-	13	court personnel tend not to understand the importance of effective communication amongst professionals					
-	20	due to failure of personnel diligence and lack of resources children are sometimes exposed to the presence of the accused					
Sub-theme 3.3: Where a child is the offender, the case must be settled as quickly as possible							
<i>Cases involving child offenders...</i>							
-	11	do not enjoy the preferential treatment they are supposed to enjoy					
-	5	have overly long waiting times					
-	25	do not consider section 28 of the Constitution which states that a child's interest is the most important consideration in any matter concerning the child					
-	9	are frequently postponed because role-players are not always available					
-	7	lack uniform use of child offender assessments					
Sub-theme 3.4: A child may not be detained with other offenders			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Child offenders...</i>							
+	6	are kept separate from adult offenders					
+?	12	are treated in the same manner as in other cases involving children					
Sub-theme 3.5: Recurrent postponed cases contribute to secondary trauma experienced by							

children							
<i>The way court cases are conducted...</i>							
-	10	May cause delays that lead to painful experiences in children					
-	4	May demoralise child victims					
-	6	May increase anxiety in child victims					
-	7	May cause longstanding emotional distress in children					

Dimension 4: Rate the following in terms of how you perceive the actions of preceding officers and prosecutors in response to children in your court context

Sub-theme 4.1: Prosecutors must act in the best interest of the child	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Prosecutors...</i>							
+	8	reasonably protect child victims and witnesses from trauma					
+	9	Regularly inform child victims and their families about delays					
+	9	clearly uphold and protect the rights of child victims					
+	8	properly and adequately prepare child witnesses for court					
+	10	ensure that child victims are not exposed to the accused					
+	16	effectively apply the best interest standard principle as prescribed in the Children's Act 38 of 2005					
-	10	do not act to protect child witnesses from overzealous questioning					
<i>Court personnel should be trained in child development...</i>			Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
+	13	and show an understanding of childhood development in the way questions are formulated					
+	13	and consider an understanding of the effects of long term abuse as vital					

-	12	as they lack understanding of potential impact of cross-examination on child testimony					
-	14	as they lack training on child victim psychology or symptoms related to child trauma					
-	11	especially personnel involved in investigations need training on communicating with children					
-	15	and should get more training on childhood development to improve systematic safeguards for child victims					
-	18	as they are not equipped to deal with child victims in a manner that upholds the BIOC standard					
-	12	as they are ignorant of the special needs of sexually abused children					
-	23	as staff behaviour may prove detrimental to the efficacy of the child testimony or the emotional well-being of a potentially highly traumatised child					
-	11	as the lack of training may cause secondary trauma to children					
+	8	as a specialist approach to CSA is beneficial					
Sub-theme 4.2: The perceived level of experience of presiding officers and prosecutors							
<i>Presiding officers...</i>							
+	12	are committed, sensitive and empathic to special needs presented by young witnesses					
+	9	show expertise in handling traumatised children as their cases					
<i>Prosecutors...</i>							
+	9	come across as having experience in working with children					
+	6	Will help children give better testimony					
-	9	Tend to use questioning techniques that may re-traumatise children					
-	8	re-traumatise children by undermining their ability to					

		testify					
-	5	are insensitive to child-specific difficulties					
-	6	knowledge about child development is limited					
-	9	are insufficiently trained to avoid re-victimization of child victims					
-	6	are demeaning and insensitive to children					
-	10	do not know the impact of testifying on a child					
-	8	have a poor understanding of the BIOC principle					
-	7	do not tailor their questions to children					
Sub-theme 4.3: Level of assistance to children during and after the court case							
<i>The court ...</i>							
+	9	shows understanding of the long-term effects of sexual abuse					
+	11	shows understanding of the assistance children need after the court case					
<i>Child victims...</i>							
-	10	do not receive supportive services according to the Victim's Charter					
-	8	Receive some support but not throughout the process					
+	8	Use available counselling services at sexual offences courts					
+	8	Seem to receive integrated assistance at all times					
-	7	are ill-informed about their rights to assistance					
+	7	are referred to appropriate, free therapy services					
Sub-theme 4.4: Effects of Court experiences on the child							
<i>In our context the way children are handled ...</i>							
-	5	cause children to feel victimized					
-	7	cause children to relive the traumatic event					
-	14	make it difficult for children to focus for the duration of the court case					
-	6	makes children feel					

		disempowered and powerless					
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Dimension 5: Rate the following in terms of how holistic children are approached in court

Sub-theme 5.1: Centrality of the child's best interest principle over and above interests of others such as the parent	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>Our courts tend to...</i>							
-	11	focus more on the rights of the parent than the child					
+	10	actively seek joint parental agreements and permissions regarding the child					
+	8	Encourage child participation consistent with the Children's Act					
+	6	Consult children in matters concerning them					
+	9	Let children participate actively in decisions affecting their lives					
Sub-theme 5.2: Psycho-social well-being of the child							
<i>The nature of the court environment...</i>							
+	6	makes children feel safe and secure					
+	14	is characterized by a person-centred approach and which allows the child to be understood					
+	7	makes children a part of decision-making processes					
+	7	takes holistic care of a child witness					
+	8	constantly considers the child's well-being during court appearances					

Dimension 6: Rate how you observed court practices involving children in CSA cases

Sub-theme 6.1: Maintaining the stability by not removing children from the home	Word count		Strongly Disagree	Somewhat disagree	Neutral	Somewhat agree	Strongly agree
<i>In court practices regarding children in CSA cases...</i>							
+	13	the alleged perpetrator is rather removed from the					

		family and not the child					
-	13	a child is too easily removed from the home where a perpetrator lives					
+	14	a child will only be removed if they think the child is in danger					
-	13	it is not easily considered to remove an alleged perpetrator from the home					
-	10	the trauma a child experiences when removed, is not considered					
-	9	are insensitive about children's preferences regarding where they stay					
Sub-theme 6.1: Extent to which the bond between child and parent is taken into account							
<i>Professionals...</i>							
+	8	focus on the strengths of the parent-child bond					
+	10	consider the strengths of attachment between child and preferred parent					
+	11	consider the positive bond between parent and child in their recommendations					
+	11	understand that parents serve as a support structure for their children					
+	11	realize that children become excessively upset when removed from their parents					
+	21	consider that a child needs to be with its parents to receive their support in spite of negative conditions at home					

ANNEXURE G: Article 1: Author Guideline

Author guidelines

Journal of the Society for Social Work and Research

General Guidelines

- Write all manuscripts in English.
- Separate sentences with a single space.
- Use Merriam-Webster's Collegiate Dictionary for preferred spellings.
- Footnotes or endnotes are not allowed.
- For mathematical symbols, Greek letters and other special characters, use normal text or Symbol font. Word Equation Editor/MathType should be used only for formulae that cannot be produced using normal text or Symbol font.
- Electronic files should have the manuscript elements organized in the following sequence: masked title page, abstract, body text, references, appendices (if any), tables, and figures.

Formatting Requirements

- Use 12 pt. Times New Roman font.
- Double-space throughout (except tables and figures).
- Set margins at 1 inch on all sides.
- Submit manuscripts as Word documents with tables and figures placed after the References section.
- Mask the manuscript for anonymous review by following instructions for [Ensuring a Blind Review](#).
 - Self-citations: Replace authors' names with "Author" in the in-text citations and reference list. Alternatively, ensure the text is neutral and does not indicate that you are citing your previous work.
 - In the masked title page attached to the manuscript, include only the running head, article title, and submission date.
 - Mask or remove university names and city or state names from which a reviewer might discern your identity or the identity of your institution. The identifying information will be restored before publication. For example, instead of writing, "This research was approved by the University of North Carolina Institutional Review Board," mask the text to read, "This research was approved by the institutional review board of a large university in the Midwestern United States."
- Qualitative reports that include extensive direct quotes from participants may deviate from standard format in the following ways:

- Participant quotes can be set in italics; if participant quotes are longer than one line, set as a single-spaced block quote.
- Pseudonyms and descriptive information may be enclosed in parentheses following quotes. Example: *“I learned others saw the world differently than I did, and I realized that my perspective was limiting my opportunities.”* (Joe, age 26)

Title Pages

- Include a masked title page as part of the manuscript, listing only the running head, article title, and submission date (i.e., no names, no identifying information).
- Authors’ names, university affiliations, and positions are entered during the submission process; please provide complete information for all coauthors.
- Create a concise, descriptive title of 12–15 words.

Abstract

- Structure abstracts using four headings: ***Objective***, ***Method***, ***Results***, and ***Conclusions***. (Abstracts for methodological reports and certain types of invited papers may deviate from this structure as appropriate.)
 - ***Objective***: Provide a clear statement of the problem, the primary aim of the study, and the major hypothesis or research question.
 - ***Method***: Describe the study design, including a description of participants and sampling methods, setting, data collection procedures, measures, and analytic approach. For quantitative studies, identify the statistical method(s) used.
 - ***Results***: Summarize the major findings.
 - ***Conclusions***: Clearly describe the main outcome(s) of the study and the implications for practice and policy.
- Limit abstracts to 200 words, including headings.
- Set headings in bold italics, followed by a colon and then the first sentence of that section.
- Format the abstract as a single paragraph.
- Place the abstract on the second page of the manuscript.
- Use present tense in the abstract whenever possible.
- Use Arabic numerals for all numbers (except those beginning a sentence).
- Do not include citations in the abstract.

Keywords

- After the abstract, provide five keywords or phrases.
- Separate keywords with commas.
- Use MeSH keywords when possible. Selecting keywords from the [National Library of Medicine’s MeSH index](#) will increase the ability of search engines to locate your paper in electronic databases.

Citations and References

- Citations and references must follow the guidelines of the *Publication Manual of the American Psychological Association, Sixth Edition* (American Psychological Association, 2010).
- All reference entries should include a digital object identifier (DOI) — when available — regardless of whether the source used was in a print or electronic format. The DOI System provides helpful citation-linking tools through [CrossRef.org](https://crossref.org). The [Simple-Text Query](#) option allows you to retrieve DOIs by copying and pasting an entire reference list.
- Authors should ensure that all in-text citations have a corresponding reference entry and that each reference entry is cited in the text.
- Authors are responsible for the accuracy of their reference citations.

Tables

- Tables must follow the guidelines of the *Publication Manual of the American Psychological Association, Sixth Edition* (American Psychological Association, 2010).
- Prepare tables using Word's table tool.
- DO NOT create tables using tabs and spaces.
- Whenever possible, avoid creating tables so wide that they require landscape orientation on the page (sideways).
- Follow APA guidelines for tables with the exception of line spacing: For *JSSWR*, tables should be single-spaced and use Calibri or Arial font (no smaller than 9 pt.).
- Number each table with an Arabic numeral (e.g., Table 2). Supplemental online-only tables should be numbered Table S1, Table S2, and so on.
- The table title should be brief but descriptive; set the table title in headline-style caps and italics.
- Align columns of figures on decimal points.
- Give units of measurement in table notes, not within the table.
- Define all abbreviations and acronyms in table notes.
- Within table notes, use * to indicate *p* values.
- Indicate preferred placement for each figure within the body text (e.g., <Insert Table 1 here>).

Figures

- Figures must follow the guidelines of the *Publication Manual of the American Psychological Association, Sixth Edition* (American Psychological Association, 2010).
- Ensure that figures are high resolution: 300 dpi at a minimum width of 4.5 inches (27 picas).
- Preferred file types are .tif or .eps.

- Authors who created figures as a PowerPoint slide should provide a copy of the original slide upon the manuscript's acceptance for publication.
- Figure artwork that is created in Microsoft Word should be rendered as a static image file (e.g., .tif, .eps, .jpg), which then can be embedded in a Word document.
- Indicate preferred placement for each figure within the body text (e.g., <Insert Figure 1 Here>).
- Number each figure with an Arabic numeral (e.g., Figure 1). Supplemental online-only figures should be numbered Figure S1, Figure S2, and so on.
- Include explanation of any symbols or abbreviation in figure captions so the reader can easily interpret the figure without referring to the text.
- Define all abbreviations and acronyms in figure captions.
- Ensure that any colors used in figures will be distinct when converted to black and white for print.

Math and Numbers

In general, numbers one through nine are written out, except when used to report percentages, exact units of measure (i.e., points on a scale, precise time units), sample sizes, or used in combination with numbers 10 or greater. For example:

- "... seven items that use a 5-point Likert scale."
- "The 3-year study ... almost six-month intervals, or 6 times within the ..."
- "... four of the 15 studies reviewed ..."
- "... an increase of 3% was the smallest percentage reported for ..."
- Do not begin a sentence with a numeral. Rather than merely spelling out a number at the beginning of a sentence, the preferred approach is to rewrite the sentence so that the number occurs within the sentence.
- One space precedes and follows every mathematical expression (e.g., $p = .031$, not $p=.031$).
- Superscripts and subscripts in equations should be typed as such. Ordinals in text do not use superscripts (i.e., 20th century, not 20th century).
- Unless additional digits are necessary, *JSSWR* prefers that values are rounded to two decimal places. However, p values should be reported to two or three decimal places.
- Statistical significance levels (p values) less than .001 should never be reported as zero; instead, report these values as $p < .001$.
- For additional details, see the *Publication Manual of the American Psychological Association, Sixth Edition* (American Psychological Association, 2010).

Other Style Points

- Specialized terms are permitted but should be concisely defined on first use.

- When introducing a term, set the word in italics on first use and provide a definition; drop the italics for subsequent use of the term.
- Avoid jargon, buzzwords, nominalization, and using “impact” as a verb.
- Limit abbreviations to terms repeated three or more times in the text; try to limit use to no more than four or five unfamiliar abbreviations in a manuscript.
- Avoid making words longer than necessary (e.g., suicidality, generalizability, or operationalize when not used as a math term).
- Avoid use of “feels,” “thinks,” or “believes” when reporting participant responses. Instead, ensure objective reporting of such information. Rather than writing, “*participants believed they understood the options ...*,” use “*participants reported they understood the options ...*”
- Reserve the use of “significant,” “significantly,” and “significance” to refer to statistical significance; use in combination with “statistical” or “statistically” (as appropriate) for clarity.

ONLINE SUBMISSION

Authors are encouraged to review the [Submission Checklist](#) before submitting a manuscript. (Note: Our electronic system harvests and uses the article data exactly as entered. Please take time to ensure your entries use correct spelling and grammar.)

What You Will Need for Online Submission

- Article title
- Abstract (can be pasted in the text box)
- Keywords for indexing
- Manuscript, formatted according to *JSSWR* Author Guidelines with masked title page, masked for anonymous review, and saved as a Microsoft Word document
- Cover letter (separate file)
- Author-identifying title page (separate file)
- Coauthor information
 - Full names (with correct spelling) of all coauthors; enter coauthors in sequence of contribution to manuscript
 - Each coauthor’s institution or university affiliation and current position
 - E-mail address for each coauthor
- Supplemental files:
 - A completed [TREND Checklist](#) when submitting a quasi-experimental outcome manuscript
 - A completed [CONSORT Checklist](#) when submitting a paper from a randomized controlled trial
 - Completed copies of the [PRISMA checklist](#) (required) and [PROSPERO registration](#) (strongly encouraged) when submitting a systematic review

Online Submission Process

- All manuscripts must be submitted online using [Editorial Manager](#), JSSWR's online submission platform.
- Register with the journal as an author.
- Log in and click the Submit New Manuscript link.
- Designate one person as the Corresponding Author.
 - Submitting author (you) should be the corresponding author, or the submission file will disappear from your account and you will not be able to complete submission process. This designation can be changed after the submission has been completed.
 - Provide the Corresponding Author's full name, affiliation, physical and e-mail address, and phone number.
- Enter a conflict of interest statement (if none, state none; do not leave blank).
- Enter a statement of funding or support for this research. Some funders require specific wording to be used in acknowledging their support of research.
- Acknowledge that the submission has not been published previously and is not being considered for publication elsewhere.
- Upload supplemental files.
- Identify 1–2 people you want to exclude as potential reviewers (optional).

Submission

Checklist

This checklist summarizes the manuscript requirements. Full explanations and further details are provided in the relevant sections of this document. Ensure that:

- Manuscript is properly masked for the double-masked peer-review process, and all hidden metadata has been removed
- All parts of the manuscript follow the guidelines of the *Publication Guide of the American Psychological Association, Sixth Edition (2010)*
- Text is double-spaced with 1-inch margins on all sides and uses 12 pt. Times New Roman font
- Tables and figures are single-spaced and use Calibri or Arial 9 pt. font or larger
- Figure artwork is the required resolution and file type
- Tables and figures are placed after the References section, with preferred placement points indicated in the text
- Manuscript is saved as a Word document
- Manuscript does not exceed stated page limit
- Title page attached to manuscript contains only running head, article title, and submission date (i.e., no author-identifying information)
- Separate file created for author-identifying title page
- Abstract is 200 words or less and is written and formatted according to guidelines
- Up to five key words or phrases are listed below the abstract; MeSH key words and phrases have been used when possible

- References include active (hyperlinked) DOIs or URLs for all sources, when available
- Authors have properly cited the words and ideas of others
- Manuscripts reporting on studies with human participants include a statement indicating the research received appropriate institutional approvals
- All required supplemental files are included as separate files in specified formats

Submitting a Revised Manuscript

Reviewers often feel an article can be substantially strengthened if the authors are willing to undertake revisions. If submitted within 60 days of the initial decision, revised manuscripts should be resubmitted by amending the original submission file. Authors should carefully read the steps outlined below. Following these steps usually accelerates the rereview process.

- When an author is asked to revise a manuscript, the original submission is moved into the Submissions Needing Revision folder (located in the [Revisions](#) box on the author's [Main Menu](#) page).
- From the Submissions Needing Revision folder, authors have the following options listed under Action (far left column; click on + to display options):
 - View Submission
 - File Inventory
 - Submit Revision
 - Decline to Revise
- Selecting the Submit Revision link triggers the process for uploading a revised manuscript; prompts will lead authors through the submission process for submitting their revision.
- During the process, authors will be presented with a list of the Source Files submitted for the previous version. Authors can choose whether to “carry over” files (e.g., figures or tables that did not require revision) from the previous version to the new revision.
- To retain a source file, the author must select/check the box for that source file.

Responding to Reviewers

The author's response to reviewer comments should be prepared as a separate Word document that is uploaded as part of the resubmission process. The responses will be built into the new PDF in the final step.

JSSWR recommends that authors use a table format for responding to reviewer comments. Whatever format is used, authors should include the following elements:

- Each reviewer comment (cut and paste each comment or provide summary)
- Author's response to each comment

- Page number or location of revision
- Modified text (i.e., cut and paste the revised/added text)

If you disagree with a reviewer's comment, add a clarifying statement to the text because readers might have the same question as the reviewers. If a clarifying statement is not added, describe your rationale. You need not respond positively to all comments from reviewers, but you should justify your decision.