

**An exploration into the BIOC victim in  
operational practices related to victim-offender  
mediation: A case study**

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## **PREFACE**

This dissertation is submitted in partial fulfilment of the requirements for the degree Master in Social Work in Forensic Practice. The Social Work Forensic Practice curriculum consists of a total of 188 credits. Of these credits, the research dissertation accounts for half of these credits (188 credits).

This dissertation is presented in article format in line with the general academic rules of the North-West University (NWU, 2015). The first section of the dissertation provides an orientation to the study and outline of the research report. The second section provides the manuscript prepared according to the guidelines of the journal that the manuscript will be submitted to. The third and final section includes the conclusions of the study.

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*If it was not for God where would I be!!!*

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## **ABSTRACT**

**Title:** An exploration into the BIOC victim in operational practice related to victim-offender mediation: A case study

**Key words:** BIOC, victim, offender, best interest of the child, victim offender-mediation, operational practices, child.

The study is based on the identified gap between the guiding principles, related acts, and the practice of victim-offender mediation (VOM) when child victims are involved. As a result of this gap all sorts of cases involving child victims, even child sexual abuse, are involved in VOM. Literature point out the need for research to evaluate how victims are being treated; examining activities, guidelines followed and the actions of role players during the implementation of VOM. Therefore, the focuses of this study on the current process of victim-offender mediation implementation (in this study referred to as operational practice) by probation officers and their manner of considering the needs of child victims.

The aim of the research is to determine if the formal victim-offender mediation operational practices as applied by probation officers can be described as in the best interest of the child victim.

The researcher used of a qualitative method with a case study design.

The findings revealed consistency regarding the conduct of the formal operational practices of victim offender mediation with the child victim. The study furthermore determined that the formal victim-offender mediation operational practices can be described as mostly in the best interest of the child victim. A minority of cases were considered as not suitable for victim offender process. Based on the results of the study the researcher formulated guidelines to those who make decisions regarding the incorporation of best interest of the child victim in the victim offender mediation.

## OPSOMMING

**Titel:** Die beste belang van die kindslagoffer in operasionele praktyk wat verband hou met slagoffer-oortreder bemiddeling

**Sleutelwoorde:** BIOC, slagoffer, oortreder, beste belang van die kind, slagoffer oortreder-bemiddeling, operasionele praktyke, kind.

Die studie is gebaseer op die geïdentifiseerde gaping tussen die hoofbeginsels, verwante handeling en die praktyk van slagoffer-oortreder bemiddeling wanneer kinderslagoffers betrokke is. As gevolg van hierdie gaping, is allerhande gevalle waarby slagoffers van kinders betrokke is, selfs seksuele misbruik van kinders, by slagoffer-oortreder bemiddeling ter sprake. Literatuur dui op die behoefte aan navorsing om te evalueer hoe die slagoffers behandel word deur aktiwiteite te ondersoek, riglyne te volg en die optrede van rolspelers tydens die implementering van slagoffer-oortreder bemiddeling te bestudeer. Daarom was die fokus van hierdie studie op die huidige implementeringsproses van slagoffer-oortreder bemiddeling (in hierdie studie na verwys as operasionele praktyk) deur proefbeamptes en die wyse waarop hul die behoeftes van kinderslagoffers in ag neem.

Die doel van die navorsing was om vas te stel of die formele slagoffers-bemiddelingsbedryfspraktyke soos deur proefbeamptes toegepas, beskryf kan word in die beste belang van die kindslagoffer.

Die navorser het van 'n kwalitatiewe metode gebruik gemaak met 'n gevallestudie-ontwerp.

Die bevindinge het konsekwentheid openbaar aangaande die toepassing van formele operasionele praktyke van slagoffer-oortreder bemiddeling met die kindslagoffer. Die studie het verder vasgestel dat die formele praktyke vir die formele slagoffer-oortreder bemiddeling as hoofsaaklik in die beste belang van die kindslagoffer beskryf kan word. Slegs enkele sake word as nie geskik beskou vir slagoffer-oortreder bemiddeling. Op grond van die resultate van die studie het die navorser riglyne geformuleer aan diegene wat besluite neem oor die inlywing van die beste belang van die kindslagoffer in die slagoffer-misdadiger bemiddelingsproses.

## TSHOSOBANYO

**Setlhogo:** Dikgatlhego tsa batswasetlhabelo ba bana mo mokgwatsamaisong wa ditiro o o amanang le tsereganyo ya motswasetlhabelo-molatifadiwa

**Mareo a botlhokwa:** BIOC, motswasetlhabelo, molatifadiwa, dikgatlhego tsa bana, tsereganyo ya motswasetlhabelo-molatifadiwa, mokgwa wa ditiro, ngwana.

Thutopatlisiso e ikaegile mo phatlheng e e bonweng magareng ga dintlhatheo, melao e e maleba, le tiragatso ya tsereganyo ya motswasetlhabelo-molatifadiwa (VOM) fa batswasetlhabelo ba bana ba amega. Ka ntlha ya phatlha eno mefutafuta ya dikgetsi tse di akaretsang batswasetlhabelo ba bana, tota le tshotlakako ya thobalano ya bana, di akarediwa mo VOM. Dikwalo di supa fa go na le tlhokego ya dipatlisiso go sekaseka gore batswasetlhabelo ba tsholwa jang; ditiro tsa go tlhatlhoba, dintlhatheo tse di latelwang le dikgato tsa batsaya karolo mo tiragatsong ya VOM. Ka jalo thutopatlisiso e e tlhomile mogopolo mo thulaganyong ya ga jaana ya tiragatso ya tsereganyo ya motswasetlhabelo-molatifadiwa (mo thutopatlisisong eno e bidiwa mokgwatsamaiso wa ditiro) ka batlhankedi ba teko le tsela eo ba sekegelang tsebe ditlhoko tsa batswasetlhabelo ba bana ka yona.

Maikaelelo a patlisiso ke go tlhomamisa fa mokgwatsamaiso wa ditiro wa tsereganyo ya motswasetlhabelo-molatifadiwa wa semolao, jaaka o diragatswa ke batlhankedi ba teko o ka tlhalosiwa o le mo dikgatlhegong tsa motswasetlhabelo wa ngwana.

Mmatlisisi o dirisitse mmeo wa khwalitatifi ka moralo wa patlisiso ya tobiso.

Diphitlhelelo di senotse tlhomamo malebana le tiragatso ya mokgwatsamaiso wa ditiro wa tsereganyo ya motswasetlhabelo-molatifadiwa le moswasetlhabelo wa ngwana. Thutopatlisiso gape e tlhomamisitse gore mokgwatsamaiso wa ditiro wa tsereganyo ya motswasetlhabelo-molatifadiwa wa semolao o ka tlhalosiwa go le gantsi o le mo dikgatlhegong tsa motswasetlhabelo wa ngwana. Dikgetsi di se kae di bonwe di sa tshwanele thulaganyo ya motswasetlhabelo le molatifadiwa. Mmatlisisi o tlhamile dikaelo go bao ba tsayang ditshwetso mabapi le kakaretso ya dikgatlhego tsa batswasetlhabelo ba bana mo tsereganyong ya motswasetlhabelo-molatifadiwa a ikaegile ka diphitlhelelo tsa thutopatlisiso.

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## **LIST OF ABBREVIATIONS**

**BIOC: Best interest of the child**

**VOM: Victim offender mediation**

**CV: Child victim**

**RJ: Restorative justice**

# CHAPTER 1: ORIENTATION TO THE STUDY

## 1.1 Introduction

This chapter provides an orientation to the study by stipulating the importance of the study and discussing the literature that put the research in context. It states the aim, research designs and steps of the research process and outlines the ethical principles and strategies that guided the study. Lastly, the structure of the report is outlined.

## 1.2 Contextualization

The focus of the research was to explore and establish whether the operational practice of **victim-offender mediation (VOM)** is in the best interest of the child victim. VOM entails creating a safe and structured opportunity for the victim and the offender to meet and discuss the crime committed against the victim and to, with the assistance of a mediator, develop a plan to address the harm (Violence against children, 2012: 8-9). VOM can be requested for child and adult victims and offenders. For the purpose of this study, the focus was on child victims.

According to the South African Law (Constitution of the Republic of South Africa Act, 108 of 1996; Children's Act, 38 of 2005), all decisions affecting children should be guided by the best interest of the child standard. According to Children's Act, 38 of 2005, children's best interests are paramount and must be applied in any matter concerning their care, protection and well-being. This standard therefore also applies to VOM, if a child victim is involved. Within the context of VOM, the **best interest of the child** is defined as taking into consideration the child victim's age, maturity, stage of development, gender, background, physical and emotional security, disability and any other relevant characteristics (see Children's Act, 38 of 2005) when conducting VOM. The term **operational practice** refers to the activities, guidelines and way in which victims are treated when conducting VOM (Spies, 2009: 16-17).

Although South African legislation defines a **child** as a person under the age of eighteen (Children's Act, 38 of 2005), it does not define the term **child victim**. The Department of Justice and Constitutional Development (2008:7) however proposed a definition of 'victim' and based on this definition, for purpose of this study, a child victim is defined as a person under the age of eighteen who has suffered harm, including physical or mental injury, emotional suffering, or substantial impairment of his or her fundamental rights, through acts that are in violation of the criminal law and who participated in VOM.

### 1.3 Problem statement

According to Makiwane (2015: 80), restorative justice is regarded as a recent development in countries such as South Africa, New Zealand and Australia. Furthermore, it is a process which does not only consider the interests of offenders but also those of victims. In South Africa, restorative justice operates through different programs. One of the programs is the VOM program which the Probation Services Act, 35 of 2002 stipulates as a process that is about the promotion of reconciliation, restitution and responsibility, involving a child, parents, family members, victims and the community at large.

Children's Act, 38 of 2005 specifies that "the children's court may, where circumstances permit, refer a matter brought or referred to a children's court to any appropriate any lay-forums, including a traditional authority, in an attempt to settle the matter by a way of mediation out of court". Children's Act, 38 of 2005 however states "the lay-forums may not be held in the event of a matter involving the alleged or sexual abuse of a child". In the Correctional Services Act, 111 of 1998, the rehabilitation of offenders form part of their vision, where in most cases VOM is one of the conditions in parole proceedings. The Department of Justice and Constitutional Development (2008:7) states that VOM is part of the correctional program in the rehabilitation of an offender and it is often seen as a process of addressing soft crimes, but it can also be used as a process of addressing violent crime cases. Looking at the above, it is clear that these acts create a loophole which in the end would mean that, in practice, all sorts of cases involving child victims, even child sexual abuse, can be involved in VOM.

Several sources point out significant benefits and advantages of VOM for the child victim (Gal, 2011; McGlynn *et al.*, 2012:220; Van der Merwe, 2013). Gal (2011) for instance focused her study on child victims and agrees with previous research that, despite the problems with restorative justice and the different models, it still provides significant benefits for victims (Gal 2011:113). According to her research and the research to which she refers, victims who have been part of a mediation program are more likely to receive answers to their questions, are less afraid of their aggressors, are more likely to receive an apology and accept it and feel better because they have been included in the process (Gal, 2011:124). Van der Merwe (2013:1034) for instance, after conducting an evaluation of the restorative justice procedures in the child justice act, concludes that VOM is part of the healing process of child victims and plays a very important role in addressing the need of child victims to regain self-power, acceptance, to let go of the feelings of guilt, to confirm them not being responsible for the offence and to reclaim their innocence as children. McGlynn *et al.*, (2012:220) in reference to restorative justice programs in sexual violence cases in New Zealand, the United States, Europe and South Africa, have concluded that, although studies are limited and only a "hand

full victim-survivors” have participated in the studies, it does seem that restorative justice processes could be to the advantage of victims (McGlynn *et al.*, 2012:223).

Those who argue in favour of VOM with child victims all point out the following conditions: it should be closely monitored (Uotila & Sambou, 2010:191); the parties should be able to meet and talk about their experiences of the wrong; the parties should discuss and agree on how to make things better between them; the parties should recognize that many wrongs do not make it right and the parties should discuss and agree on how future safety might be assured (Noll & Harvey, 2008, quoted in Gavrielides, 2012:637). Since the offender in many cases is either a family member or known to the victim (Seto *et al.*, 2015:43; Veith, 2012:259), the power relationship between the parties is important and should be considered, especially if VOM is part of the parole process. Gal (2011:135) also refers to the concerns when the offender is a family member of the victim, especially when communities do not have the resources to monitor the process. However, she argues that these aspects can be overcome if VOM is suitably structured and the victim receives support during the process (Gal, 2011:162).

Some studies point out the negative impact of VOM with child victims. Victims for instance indicated that they were pressured during the mediation process, while others experienced anxiety and fear about the face to face meetings with the offender (Choi *et al.*, 2010:867, 2013:116; Venter, 2005:17). With reference to VOM processes in New-Zeeland and Australia, Gal (2011: 126-132) identified a number of negative aspects. These are the imbalance in power between the child and other role-players, the victims who are sometimes ignored during the discussion, the fact that parents or caregivers are overbearing and making decisions on behalf of the child and that victims are sometimes victimized or intimidated. Although the aim of restorative justice is to restore the relationship between the victim, offender and community, Bradt and Bouvern-De Bie (2009:183) found a stronger focus on the response of the offender (Bradt & Bouvern-De Bie 2009:184). These experiences should be weighed against the best interest of the child victim.

Quite a number of international studies concluded that VOM is not advisable if the victim needs special protection (Uotila & Sambou, 2010:191) or where a parent and a child are involved (Uotila & Sambou, 2010:197). This immediately brings to mind cases of incest where family members are involved. In South Africa, the Children’s Act, 38 of 2005 specifically prohibits the Children’s Court to refer child sexual abuse matters to “lay-forums”. This however does not mean that VOM is not seen as part of an offender’s rehabilitation and part of parole requirements.

Choi (2012:113) and Walgrave (1995, cited in Spies, 2009:16-17) draw attention to a gap between the guiding principles of restorative justice and the practice of meeting the needs of victims, hence they believe that research is needed to assess the operational practices and evaluate how victims are being treated, examining activities, guidelines followed and the actions of role players. Choi and Gilbert (2013:128) state that there seem to be a misunderstanding and inconsistency in the application of VOM principles, the structure needed in helping to create consistency and the achievement of outcomes. This means that well-structured operational VOM will limit victimizing and unintended limiting consequences. Finally, Gal's (2011:162) admonishment that the VOM program should fit the culture and society and that the particular victim should be considered, which underlines the need for trained and emphatic mediators.

#### **1.4 Contribution of the study**

The contribution of this research is thus threefold. In the first instance, it provides a summary of literature of the link between concepts such as "best interest of the child", restorative justice and VOM. Secondly, it provides empirical data to the restorative justice system with regard to whether the process of VOM implementation is applying the best interest of the child standard and thirdly, it provides guidelines to decision makers and mediators regarding incorporating the best interests of the child in the VOM process.

As VOM is a process that starts when the decision is made to institute it and its effects may be felt years after it has been formally completed, this study was limited to the formal VOM process. Hence, the unit of analysis was the VOM case record and the probation officers responsible for VOM. VOM usually formally ends when the mediator indicates in a written report that the process has been concluded, giving feedback to relevant offices (Venter, 2005:30).

#### **1.5 Research question and aim**

Based on the problem statement, the researcher utilized the following research question: What do the formal victim offender mediation operational practices entail to be in the best interest of the child victim?

The aim of the research was to determine if the formal victim offender mediation operational practices can be described as in the best interest of the child victim.

## 1.6 Research method

The research method used in this study is described next together with a literature and empirical study.

### 1.6.1 Literature study

The purpose of a literature review is to place the research in context, to assist with a well thought-out research plan (Esterberg, 2002, quoted in Delport, Fouché & Scurink, 2011:300) and to relate previous research and theory to the problem under investigation (McMillan & Schumacher, 2010:73). In other words:

*“[t]he reviews should reveal what research questions have been asked, which research questions have been resolved and which remain in question, and what research questions might still need to be asked” (Jacobs, 2013:105).*

With the literature review, the researcher studies previous studies as well as the opinions of experts to find answers to research questions. When previous researchers conducted research on victim offender mediation, they made use of different ideas, knowledge, approaches and perspectives as their purpose or aims were not necessarily the same as this study. For example, the research of Choi, Gilberts and Green (2013: 115) provides an understanding of juvenile offenders' experiences in the restorative justice delivery processes and based on the findings, they made suggestions in moving toward victim-sensitive restorative justice.

Recommendations made in previous research may serve as research guidelines to future researchers. Thus, in her research, De Klerk (2012:53) recommends that victim offender mediation (VOM) may be used for less serious crimes but for serious crimes, a victim impact statement should rather be used. This kind of recommendation and the findings in this research guided the researcher on a VOM process that might be in the best interest of the child victim

In view of the stated purpose of this literature study, the concepts of “child victim” (CV), “in the best interest of the child” (BIOC), “restorative justice” (RJ) and “victim offender mediation” (VOM) are discussed where after the focus shifts towards factors that may give an indication on whether or not VOM can be considered to be in the best interest of the child, especially when it comes to child victims. The mentioned terms are therefore used as acronyms throughout the rest of the text.

### **1.6.1.1 Meaning of “child victim”**

The South African legislation defines a child as a person under the age of eighteen (Children’s Act, 38 of 2005), however, it does not define the term child victim. The Department of Justice and Constitutional Development (2008:7) proposed a definition of ‘victim’ and based on this definition, for purposes of this study, child victim is defined as a person under the age of eighteen who has suffered harm, including physical or mental injury, emotional suffering, or substantial impairment of his or her fundamental rights, through acts that are in violation of the criminal law and who participated in VOM. According to Gal (2011:3), children are regarded as vulnerable to crime and stand a risk of being victimized before they reach the age of eighteen. Finkelhor (2011) added by saying that children are the most victimized segments of the population.

According to the Department of Social Development, the Department of Women, children and people with disability and UNICEF (2012:9), a child as a victim means that they have less capacity to protect themselves as compared to adults and further state that children lack information about their rights and the ability to recognize violent acts as wrong. However, whenever they are able to recognize violent acts as wrong, there will be factors which put them in a fearful position when the offender is in the position of authority.

The Department of Social Development, the Department of Women, children and people with disability and UNICEF (2012:9) further state that there are different types of violence against children and they occur in different settings of their lives. In some instances, people close to the victim are aware of the violence, but the act is not reported because it has taken place in a secluded space.

The Violence against Children (2012) holds the same sentiment that children experience violence in different setups such as at home, at school, in the community, in justice systems and in the workplace. This includes sexual abuse, physical abuse, corporal punishment, emotional abuse and neglect which all have an influence on the child victim through their lifespan and affect their normal development.

Finkelhor (2011) mentioned that child victimization by parents is generally considered to have quite lasting developmental consequences. There are events like stranger abductions and homicides which Finkelhor (2011) considers as rare, however, they have a tremendous impact. It should be further stated that as much as some events as the above-mentioned are regarded as low impact or low risk, they could have huge consequences to the child victim, public health and the society.

The Department of Social Development, the Department of Women, children and people with disability and UNICEF (2012:11) regard violence against children not as a child rights issue only but also a major public health concern. Putting aside the physical injuries, the experience of violence towards a child victim is said to have severe and long-lasting consequences for their psychological and social development.

Victimization against children does not only pose a danger to the child's rights of life, it also threatens their survival and their development is jeopardized. Violence against children has serious short- as well as long-term effects on the child's development, e.g. emotional, cognitive, behavioural and social aspects (Hodgkin & Newel, 2002:85, 94). It said that the consequences of crime towards a child as a victim may include depression, substance abuse, anxiety, suicidal behaviour, unwanted pregnancy and post-traumatic stress symptoms. The brain development of a large number of South African child victims is affected which leads to difficulties in learning and cognition functioning (Department of Social Development, Department of Women, children and people with disability & UNICEF, 2012:11).

Gal (2011:42) reckons that, if child victimization is a danger to the healthy development of a child, it is upon society to ensure the healthy development and healing of a child victim. Gal (2011:57) further mentions that a child victim has unique needs that differ from one child to the other, considering their different strengths, vulnerability and the extent of victimization and support.

Hence, Gal (2011:4) made it clear in her study that her intention was to look at the victimization of a child holistically, addressing different crimes of which some occur lesser than others, such as physical assault, property crimes, emotional abuse and neglect. Gal pointed out that studies tend to pay attention to the consequences of child victimization looking only at abuse. Less attention is paid on the full spectrum of crimes against children.

Gal (2011) repeated the sentiments of Finkelhor and Dzuiba-Leatherman already made in 1994, that the research arena neglected child victimization. More attention is given to sexual abuse and less is done regarding other crimes against children such as physical assault, property crimes, emotional abuse and neglect. She further mentioned that the academic arena focuses mainly on the secondary victimization of children and does not pay attention on the child's understanding of the process, including the restorative justice.

Following the work of Finkelhor (2008) on the phenomenon of child victimization that has not been studied as a whole, Gal's (2011) aim in her book was to explore ways to address the difficulty faced by victimized children through the criminal justice process, looking at restorative

justice and the needs and rights of a child victim. The broader perspective is to examine existing practices that address child victim and to expand the horizons of related research as child victims is an under-researched field.

### **1.6.1.2 Meaning of “in the best interest of the child”**

The meaning of the concept “best interest of the child”, which is used in different fields like law, social work and medicine, is not easy to describe. As Mnookin (1975, quoted in Bonthuys, 2006:23) puts it:

*“[d]eciding what is best for a child poses a question no less ultimate than the purposes and values of life itself”.*

Semple (2011:760) furthermore refers to the standard as “a daunting challenge for legal decision-makers”. In this section, the different attempts to define the concept are studied.

#### **1.6.1.2.1 Legal definition**

Different jurisdictions grapple with the meaning of “best interest of the child”. In the European Union, the “Brussels IIbis Regulation” states that jurisdiction must be established in the light of “the best interest of the child” (Lenaerts, 2013:1305). The standard is however not defined, which means that the courts must determine in each case what is in the best interest of the child, after taking all factors into consideration (Lenaerts, 2013:1325). In Ontario, Canada, factors relevant to determine the standard have been included in legislation but Semple (2011:761) states that this adds nothing to the “unwieldy vagueness of the term”. He refers to one view that, to find the best interest in each case, is a legal standard which means that socio-moral and social-control decisions must be taken by a judge and another view that it is not a legal standard as judges do not have all the social data to their disposal (Semple, 2011:769-770). He also refers to the *Geremia*-case where the judge ruled that

*“Implementing the best-interests-of-the-child precept requires objectivity, not a legal education” (Semple, 2011:770).*

Although South African courts have not specifically defined the standard but have rather indicated that the context of each case will assist the courts to decide what is in the best interest of the child (Barry, 2011:127; Bonthuys, 2006:24), some factors have been referred to in previous judgements which may serve as guidelines (Barry, 2011:126). Some of these factors are economic, social, moral and religious considerations, the child’s sense of security, the wishes of the child and the physical, moral, emotional and spiritual welfare of the child. Children’s Act, 38 of 2005 has improved the matter to some extent by listing 14 factors that must be considered when deciding on what is in the best interest of the child. These factors

include the child's age, gender and background as well as disabilities and the need for security. However, the Act is not clear on what the influence of age, gender and background should be in deciding the BIC. The Constitution of the Republic of South Africa Act, 108 of 1996, stated that a child's best interests are of paramount importance in every matter concerning the child. The practical way in which the legislation is applied can be seen in the case of *J v J*. In this case, a full bench (that is three judges) of the Cape High Court allowed further evidence to be included in the original court record, holding that, when a court sits as upper guardian of children, it has extremely wide powers to determine what is in the best interest of the child and is not bound by "limitation of evidence presented" (Barry, 2011:133).

From a social work viewpoint, the judgement in *P v P (13 May 2016)* by the Supreme Court of Appeal is important. In this case, the Court decided that it was in the best interest if the children to remain in the custody of their mother. The court also decided not to follow the recommendations of experts, being a family advocate, a social worker, a family counsellor, two clinical psychologists and a psychiatrist, holding that "while a court may need and benefit from an expert's opinion, the expert witness should not assume the function of the court" (Barry, 2011:131). The judgement seems to be at odds with the Canadian view referred to in the previous quote.

With regard to South African courts, Bonthuys warns that, because the "best interest" is often indeterminable and subject to judicial discretion, it can easily lead to prejudice and discrimination (Bonthuys, 2006:23).

Sloth-Nielsen and Kruuse (2013) researched the South African case law between 2007 and 2012 with regard to children's rights and the meaning of "the best interest of the child". From their discussion, the following conclusions can be drawn firstly, in legal matters, a court should give "focused and informed attention" to the rights of all children who will be affected by the court case. Secondly, where children are involved, the best interest of the child forms the basis and starting point from which a matter is to be considered and thirdly, the context in which the children find themselves is very important.

#### **1.6.1.2.2 Medical decision making**

The best interest of the child is also a guiding principle in medical decision making in both the United States and the United Kingdom (Ross, 2013:899). However, what it means, is not always clear. Some of the problems are whether the best interest of a child should be "solely self-regarding" or rather "reasonable" in the light of other interests, whether it should only focus on current interests and whether parental values should be considered (Ross, 2013:899).

Some authors have tried to define the concept from a medical viewpoint. Buchanan and Brock (1990, quoted in Ross, 2013:900) define it as that “which will maximally promote the patient’s good” but the paramount interest of the child is balanced by the child’s other interests as well as the needs and interests of the family. The definition of the American Medical Association links a medical definition to law by asking what a reasonable person would choose for himself in similar circumstances (AMA, 2010, quoted in Ross, 2013:200). The British Medical Association also uses a broader definition, considering

*“(1) the patient’s own ascertainable wishes, feelings and values; (2) the patient’s ability to understand and participate in decision-making; (3) the risks of harm or suffering as well as the likelihood of benefit; (4) the views of parents and family; (5) relevant religious or cultural considerations; and (6) consequences of delaying or refusing treatment” (BMA, 2001, quoted in Ross, 2013:200).*

### **1.6.1.3 Limitations and challenges of the concept BIOC**

The challenges to define the concept have compelled Reece (1996, quoted in Ross 2013:200) to state that:

*“While everybody agrees that the child’s welfare should be paramount, nobody knows what children’s welfare demands”.*

The challenges faced with defining the concept can be illustrated by the case of the Australian girl Tamar Stitt (Starr, 2015:25), a ten-year-old girl who was diagnosed with liver cancer. Her parents decided – against the advice of medical practitioners - that it was in her best interest that she should be treated with natural therapies as they believed chemotherapy would kill her. The girl ultimately died and the question could now be asked whether they did indeed act in their child’s best interest. Another example is the one to which Banks and Nøhr (2011) refers. The victim was a teenage Palestinian girl who accused her father of sexual assault. Instead of referring the matter to the authorities, the social worker and head teacher decided to use an informal VOM between the victim and her parents. The reasons for their actions were firstly that referring the matter to the Israeli authorities would seem as if they were working with the enemy who was occupying the country. Secondly, the girl would be removed from her parents and be kept in an Israeli facility during the investigation and thirdly, the only breadwinner in the house would be removed if the father was found guilty and imprisoned. The practitioners thus preferred to act “illegally” as they thought it in the best interest of the child.

#### **1.6.1.4 Summary**

In light of the above discussion, it seems that the concept “best interest of the child” is context-bound and tells any practitioner to take all relevant facts and factors into consideration, bearing in mind that it is not just a factor but the starting point for all dealings with a child. It also means that BIOC is not static, in other words something that may be in the BIOC of a certain child at eight years might not be in BIOC when the child is 16. This also means that the BIOC cannot simply be viewed from one perspective. This research thus did not view BIOC from the perspective of the child or the mediator alone, but all relevant factors were considered in every case.

As it was necessary for this research to set out factors that could be used to ascertain whether a VOM process was in the best interest of the CV, those factors are discussed only after discussion of RJ and VOM.

#### **1.6.1.5 Restorative justice (RJ) and victim offender mediation (VOM)**

Victim-offender dialogues are one of the ways in which VOM can be effective. However, before the concept and the practice in South Africa can be described, it is necessary to understand the philosophical basis of VOM, being RJ.

##### **1.6.1.5.1 Restorative justice**

According to Llewellyn (1998), Luyt (1999) and Zehr (1990, all three quoted in Venter, 2005:14, 20), restorative justice is a process through which the aftermath of an offence is collectively dealt with by all the parties involved in the particular offence. Braithwaite (1996, quoted in Venter, 2005:13), Calhoun and Pelech (2013:69), (Choi *et al.*, 2010:859) and Eglash (1977, quoted in Gavrielides, 2012:620) describe it as an attempt not only to restore physical loss but to also restore the relationship between the victim, offender and the community as the restorative justice concept does not see crime as a mere violation of law, but as a profound expression of disrespect and a violation of people and relationships.

Restorative justice is based on principles of accountability, skills development and safety of the community (De Klerk, 2012:18). It also uses the starting point that persons who are more securely bound to their communities will be less likely to commit an offence (Steyn & Lombard, 2013:334). Umbreit (2002: xxxvi) added by saying that restorative justice is an international development which offers a fundamental different framework in understanding the response to crime and victims. The lens of restorative justice shifted the attention from what needed to

be done to how the needs of victims, offenders and the community harmed by the crime could be addressed (Beck *et al.*, 2011:5).

The purpose of restorative justice is to empower the victim (Choi *et al.*, 2010:857; Gavrielides, 2012:631) and to tend to the victim's physical, emotional and mental well-being and to involve deliberate acts by the offender to regain dignity and trust (Choi *et al.*, 2013:115; Venter, 2005:18). According to Beck *et al.* (2011:5), restorative justice is not a punishment but a way of promoting healing for victims, offenders and the community. It is seen as an effective alternative to the traditional justice system which "steals" the conflict away from the parties (Christie, 1977, quoted by Gavrielides, 2012:620; Uotila & Sambou, 2010:189). Where the victim often faces insensitive treatment, he/she is left voiceless without an opportunity to give input to the outcome of the matter and feels that justice is not done (Choi *et al.*, 2013:114; Gavrielides, 2012:635; Justice Project, 2000, quoted in Venter, 2005:19; McGlynn *et al.*, 2012:218).

The most commonly used restorative justice processes are VOMs, family conferences, circles and community councils, with VOMs the most popular (Choi *et al.* 2013: 115; Gal 2011:121-122; Gavrielides 2012:621). According to Umbreit (2002: xxxvi), the restorative justice is a victim centered response to crime. The emphasis is on crime that includes different parties such as the victim, offender, families and the community. It is about a clear set of values, principles and guidelines for practice.

A restorative justice process can be initiated in four instances after an offence has been committed: prior to any legal action being instituted, during the trial, after judgement but before sentence and after sentence (De Klerk, 2012:15-16). If the process starts before legal action is instituted, the case is often withdrawn and if it is instituted after judgement, it usually has an effect on the sentence (Steyn & Lombard 2013: 335).

#### **1.6.1.5.2 Victim-offender mediation and - dialogues**

VOM is as a method of conflict resolution and one of the practical ways in which restorative justice may be achieved (Umbreit, 1993, quoted in Venter, 2005:26; Venter, 2005:15). It has its roots in North America in 1974 (Williams-Hayes *et al.*, 2004:57) and is based on traditions of indigenous people in countries such as Canada, New Zealand and even the Khoikhoi in South Africa with elements of the South African principle of *ubuntu* (Steyn & Lombard, 2013:334; Venter, 2005:16).

VOM is important in the restorative process as it creates a safe environment to enable crime victims to talk directly with their offenders and enables the offender to take responsibility and

to see and hear for himself what the human impact of his actions were (Choi *et al.*, 2013:115; De Klerk 2012:14; Gavrielides, 2012:621; Plaatjies, 2008:122; Venter, 2005:25). It also gives the participants the opportunity to express their feelings and to request the offender to explain why they were victimized, which is, according to Venter (2005:25), a question many victims ask. On the other hand, it also gives the offender an opportunity to understand his own pain and victimization which might enable him to better understand his victim (Zehr, 2002 quoted in Plaatjies, 2008:121). VOM often includes an agreement on how the offender will make amends to the victim (Uotila & Sambou, 2010:190). These direct “confrontations” between the victim and offender are called victim-offender mediation.

The fact that the victim is able to be heard during VOM and is able to confront the offender seems to be very important for the victim. Research done in South Africa by Venter (2005:25) confirms that victims have shown tolerance and the perpetrators are able to reach a point of expressing their remorse. Gavrielides (2012:628) quotes a victim saying

*“I want an apology acknowledging that I was raped as a boy and they are sorry”*

McGlynn *et al.* (2012:219; 225,228) also mention cases where an adult victim wanted the offender to see him/her as a real person who had been harmed and not just as a crime statistic. They also refer to other victims who said that they just wanted the offender to hear him/her.

*“It’s made me understand my position as a victim and see him as the offender, which has enabled me to resolve a lot of conflict [ . . . ] in retrospect . . . it was more important to have my say and have him listen than for him to go to prison”.*

The victims in these cases were adult victims of sexual assault whose dignity and humanity were in the first instance attacked (Gavrielides, 2012:638). Through VOM, these victims were able to win back some of their lost dignity and humanity. However, it is not clear if it will be the same for the child victim. A study conducted by Banks and Nohr (2011) referred to an incident where an informal VOM assisted in solving the matter without unnecessary hardship for the child victim who was sexually assaulted by her father.

#### **1.6.1.5.3 The VOM-process**

VOM is a dialogue-driven process in a safe and controlled setting where the participants are allowed to develop a mutually acceptable plan or contract to restore the harm done by the crime (Choi *et al.*, 2013:115; Gavrielides, 2012:632; Williams-Hayes *et al.*, 2004:57). The process should be voluntary (Choi *et al.*, 2010:860; Plaatjies, 2008:118; Uotila & Sambou, 2010:191) and openness and honesty between the participants are very important

(Gavrielides, 2012:622; Williams-Hayes *et al.*, 2004:57). The participants include the mediator, victims, offenders and also family members or other interested parties. Van Wormer (2004) recommends that mediators should be social workers as she believes that restorative justice is a terrain known by social workers. They have the remedies to social problems due to achieved professional and academic credibility. The process usually consists of initial separate discussions between the mediator and participants where the process is explained and where the parties would show their willingness to try to find a solution (Choi *et al.*, 2013:115). At this initial meeting, participants are also provided with the skills and knowledge necessary to participate in successful VOM (Venter, 2005:27). After the preparation, one or more face-to-face meetings are held where all the participants are present and it seems that more than one meeting between all the participants are rare (Uotila & Sambou, 2010:196).

The mediation usually culminates in an agreement between the parties (Steyn & Lombard 2013:333). In this agreement, the offender would usually accept responsibility for his actions, offer an apology and may show his remorse. The agreement may also include further actions to be taken by the offender, for instance monetary or other means of restoration (Venter, 2005:25). It is important to note that the VOM process is voluntary and that the content of each agreement will reflect the circumstances of the particular case (Dhami, 2012:58), It is furthermore emphasized that the participants should not be forced into agreement as studies show that VOM is usually more successful if the focus is on the dialogue rather than the agreement.

The last phase of VOM is monitoring to ensure that the conditions of the agreement are adhered to. If this is completed, the court and other professional role players can be informed that the matter has been finalized (Venter, 2005:30).

It is evident from the discussion that role-players need to prepare for VOMs to be successful. Venter (2005:74-75) provides guidelines for VOM which include that the focus should always be on the victim, that the offenders should accept responsibility for their actions prior to VOM and that the dialogue must be facilitated by a well-trained, objective facilitator. Amstutz (1999:70) as well as McGlynn *et al.* (2010:226;236) stress the necessity of preparation prior to the face-to-face meeting as well as well-informed or professional mediators, issues that were also raised by Choi *et al.* (2012:127).

It was important for this study to indicate that VOMs are not easy to complete. McGlynn *et al.* (2012:228) refer to an adult victim that indicated that the dialogue “drained” her and “it dangerously unhinged me at the time because it was like reliving it” while Gavrielides (2012:637) also refers to it as “not a soft option” but “tough and it entails pain”. VOMs are also

not a quick answer for all cases and should only be used once the victim is ready for it. It should furthermore also be accepted that in some cases, there will not be any reconciliation (Plaatjies, 2008:136; Venter, 2005:43). This was succinctly summarized by a secondary victim in one of the VOMs which Steyn and Lombard (2013) researched:

*"I regretted agreeing to take part in it. Seeing him made me angry. Not all crimes must be referred to victim-offender mediation. The process was useless and brought more pain than healing when you see the offender"*  
(Steyn & Lombard, 2013:343)

#### **1.6.1.5.4 Advantages of VOM**

The use of VOM has shown a number of advantages, such as the following:

- It is sensitive to victims and their needs (Uotila & Sambou, 2010:189; Choi *et al.*, 2013:114).
- It allows for a broader, more creative range of solutions than are possible in traditional courts (Gavrielides, 2012:634).
- Victims experience the process as a "journey of healing" (Choi *et al.*, 2013:116; Calhoun & Pelech, 2013:68) which affords them the opportunity to acquire answers from the offender, to receive a genuine apology and/or restitution, to share their victimization experiences with the offender and to assist offenders to become better people (Choi *et al.*, 2010:864; Gavrielides, 2012:633).
- The offenders are held accountable for their deeds and are given the opportunity to understand the human impacts of their behaviour on their victims (Choi *et al.*, 2010:858, 861).
- It redresses harms experienced by victims and produces high levels of satisfaction amongst participants (Williams-Hayes *et al.*, 2004:60; Choi *et al.*, 2010:858; Choi *et al.*, 2013:114).
- It increases perceptions of safety and empowerment among crime victims and reduces fear (Choi *et al.*, 2013:116; McGlynn *et al.*, 2012:214; Williams-Hayes *et al.*, 2004:60).
- It improves the victims' perceptions of their psychological and physical health (Choi *et al.*, 2013:116).
- It seems to reduce recidivism amongst participating offenders, especially among lower-risk offenders (Choi *et al.*, 2013: 114,116; Williams-Hayes *et al.*, 2004:61) but also with more serious crimes (McGlynn *et al.*, 2010:217), although research by Davies (2009, quoted by Uotila & Sambou, 2010:202) and other studies referred to by Williams-Hayes *et al.* (2004:60) indicated no clear impact on recidivism rates.

#### **1.6.1.5.5 Concerns regarding restorative justice and VOM**

Restorative justice, being relatively new in the South African and international legal setup, is not free from obstacles and challenges. Uotila and Sambou (2010:190) indicate that one of the first concerns when VOM was introduced in Finland was the protection of the weaker party. Therefore, in the Finish system, it is not usually used in cases where violence is involved and care is taken to protect child victims during the process which includes that the minor victim must personally give his/her consent to VOM and that the parent or guardian must also agree to it (Uotila & Sambou, 2010:191).

Concerns have also been raised about the treatment of victims during the process and the fact that the victims are marginalized (Choi *et al.*, 2013:114). In their study, Choi *et al.* (2013:122, 124) found that some victims felt that they were coerced in the process and that they did not have the opportunity to honestly state their case. It was also felt that the process was “rushed” and that the victims were not adequately prepared for VOM (Choi *et al.*, 2013:123). It is also considered time-consuming and resource intensive (McGlynn *et al.*, 2010:237). Pressuring of victims was also raised by other researchers (Venter, 2005:17). Some victims also experience anxiety and fear about the face-to-face meeting with the offender (Choi *et al.*, 2010:867; Choi *et al.*, 2013:116).

Some critics are also of the opinion that it is seen as a soft approach to crime, that it may underestimate violence against women and that the rights of the offender are more important than the rights of the victim (Amstutz, 199:70; Choi *et al.*, 2013:116; McGlynn *et al.*, 2012:214; Venter, 2005:17) with the offenders using VOM to improve their chances of parole or, in the case of juvenile offenders, “to keep their records clean” (Choi *et al.*, 2010:865).

Another serious concern is that VOM amounts to re-victimization of the victims. Choi *et al.* (2013:114,116) refer to a number of studies which indicate that victims might perceive the process as re-victimization and Wemmers and Cyr (2005, quoted in Calhoun & Pelech, 2013:68) indicate that victims may also feel re-victimized if the offender denies responsibility. Studies also indicate that victims may resort to destructive self-blame to explain the harmful event (Calhoun & Pelech, 2013:68). This is an important aspect that needs to be studied, especially in CV matters as re-victimization cannot be in the interest of the child.

It also seems that the process of VOM should not be started until the initial anger has abated (McGlynn *et al.*, 2010:238; Venter, 2005:43). However, as Venter (2005:66) indicates, if done correctly, the victim is elevated to become a real person, not only an object to be abused.

Finally, the research by Uotila and Sambou (2010:198) indicates that the majority of cases had been settled prior to the VOM. Hence, this was the only research referring to prior settlement and further research on this aspect is indicated.

#### **1.6.1.6 VOM and CV**

Uotila and Sambou (2010:191) indicate that the applicability of VOMs where child victims are involved is closely monitored in Finland with the general viewpoint that crimes involving children should not be referred to mediation if the victims need special protection. The authors opine that VOM should not be advisable where the mediation should be between a parent and an under-aged child (Uotila & Sambou, 2010:197) which immediately brings to mind cases of incest where family members are involved. The Children's Act, 38 of 2005 specifically prohibits the Children's Court from referring CV matters to "lay-forums". This, however, does not mean that VOM is not seen as part of an offender's rehabilitation and part of parole requirements. However, the study of Uotila and Sambou was a small case study and did not focus on CV victims while they were still children. Research on the effect of RJ and VOM on child victims is still lacking.

Although the study by Banks and Nohr (2011) referred to ethical issues, it is an example where an informal VOM assisted in solving the matter without unnecessary hardship for the child victim who had been sexually assaulted by her father. This research is, however, again a very small study with particular circumstances that played a role.

Since the offender in many cases is either a family member or known to the victim (Seto *et al.* 2015:43; Veith, 2012:259), the power relationship between the parties is important and should be considered, especially if the VOM is part of the parole process. Gal also refers to the concerns when the offender is a family member of the victim, especially when communities do not have the resources to monitor the process (Gal 2011:135). However, she argues that these aspects can be overcome if VOM is suitably structured and the victim receives support during the process (Gal, 2011:162).

Finally, Gal's (2011:162) admonishment that the VOM program should fit the culture and society and the particular victim should be considered, which underlines the need for trained and emphatic mediators.

### **1.6.1.7 Summary**

McGlynn *et al.* (2010:239) conclude with the following:

Restorative justice has a role to play in meeting some of the needs and expectations of some victim-survivors, by giving them a voice by which to tell of their harm, by granting a measure of control over the treatment of their complaint and by helping to ensure that their experience is honoured, treated seriously and with respect, such that they gain some measure of justice.

The question is whether this also holds true for CV, which will be the case *if* it is in the best interest of the child victim. To ascertain whether VOM (which, for the study is limited to the prior arrangements until the actual VOM or interview has been completed) is in the best interest of the victim, factors should be set out against which the data could be weighed. In view of the literature study, the researcher in this study identified the following factors that could be considered when conducting VOM when a child victim is involved:

#### **1.6.1.7.1 Factors to indicate that the VOM was in the best interest of the CV victim:**

1. The child's sense of security was considered and maintained.
2. The child's age and developmental level were considered.
3. Any disability or impairment of the child was considered.
4. The wishes and needs of the child were considered.
5. The physical, moral, emotional and spiritual welfare of the child was considered and ensured.
6. The child was not blamed by any role player for his/her attitude towards VOM and also not for crime.
7. The economical and scholastic welfare of the child was considered.
8. The cultural and social background of the victim was considered.
9. The mediator ensured that the VOM would not be emotionally detrimental to the victim.
10. The process was explained to the victim.
11. The victim was physically, emotionally and spiritually prepared for VOM.

12. The victim was told that he/she may be personally present with a guardian and/or may prepare a victim impact statement to be read by a guardian.
13. The mediator ensured that the victim understood the decision-making process and the impact of his/her decisions.
14. The victim was able to explain his/her feelings and emotions towards the offence and the offender.
15. The victim was able to express his/her anger and hurt to the offender.
16. There is no evidence of coercion or force against the victim by any party including the mediator, offender, victim's family, offender's family or social workers involved.
17. The victim was not intimidated or threatened by any party involved.
18. There is no evidence of any power play in the process.
19. The offender accepted responsibility for his actions.
20. The offender explained to the victim what the reasons for his actions were.
21. The offender offered an apology.
22. The victim was given the opportunity to accept or reject the apology.
23. The offender offered some kind of restoration.
24. The victim was allowed to indicate what he/she wanted with regard to restoration.
25. An agreement acceptable for the victim was reached.
26. The victim expressed his/her satisfaction with the process.
27. The victim expressed forgiveness.
28. Enough time was given during the process for all issues to be canvassed.
29. The victim was given the opportunity to ask questions.
30. "Time out" breaks were given when the VOM became emotionally overburdening.
31. There are positive signs that the victim was winning back his/her dignity and humanity.

As the research was limited at the end of the actual dialogue, issues of healing and closure might not yet have been present and are therefore not included in the list.

#### **1.6.1.7.2 Factors that indicate that the VOM was not in the best interest of the victim:**

Although a negative response to any of the factors referred to above may give an indication that the best interest of the victim was not served, specific negative factors to look for are:

- No or not enough preparation
- The victim was not considered when planning was done
- The victim was not contacted
- The victim was not treated respectfully
- The offender or his supporters was allowed to threaten or bully the victim
- The sole purpose of VOM was to allow the offender to go on parole or to minimize his sentence
- The parents of the victim overpowered his/her through the process
- Decisions were made for the victim and not by the victim
- The mediator was not prepared
- The mediator rushed the proceedings

From the literature study, it was also evident that, although a number of studies have been completed on RJ and VOM, the empirical data in respect of the effect of RJ and VOM on CV is still very limited, which means that the literature study could not fully answer to the research. It was therefore necessary to embark on an empirical study as set out in the next section.

### **1.6.2 Empirical study**

#### **1.6.2.1 Design**

Fouché, Delport and De Vos (2011:142-143) discuss the meaning of the term “research design” and define it as a step in the research process which refers “to all the decisions we make in planning the study – decisions not only about what overall type or design to use, but

also about sampling, sources and procedures for collecting data, measurement issues and data analysis plans". However, prior to deciding on a research design, the researcher first needs to set the paradigm or reference framework from which the study will be done (Mertens, 2007:215) and which will serve as a lens through which reality is interpreted (Nieuwenhuis, 2010:48). The paradigm also guides the researcher in actions to be taken during the research (Strydom, 2011:513).

In this study, the researcher opted for a constructivist-pragmatic paradigm where attributes of both paradigms were used. According to the constructivist paradigm, there are more than one social constructed reality, which means that the views of the participants and the perspectives of the researcher were considered during the research.

As this research focus was on the best interest of the child victim and the discussion above already indicated that the concept "best interest of the child" is not fixed but may vary from case to case, the various "realities" of the concept as predicted by different role players was studied. As the researcher was studying a social construct where it was believed that different people would see the reality of the child victim and the best interests of children involved in VOM differently, a constructivist paradigm was appropriate while the pragmatic paradigm gave scope on the way in which the research could be done.

A research design which was most fitting for the chosen paradigm was a case study design as conceptualized by Yin (2003). In this case study design, the victim offender mediation operational practices were investigated as the contemporary phenomenon within the real-life context of probation officers working in the Bojanala district. As the boundaries between the context and phenomenon were not clear in this research, the best interests of the child were context bound and the boundaries between best interest of the child and victim offender mediation might not always be clear.

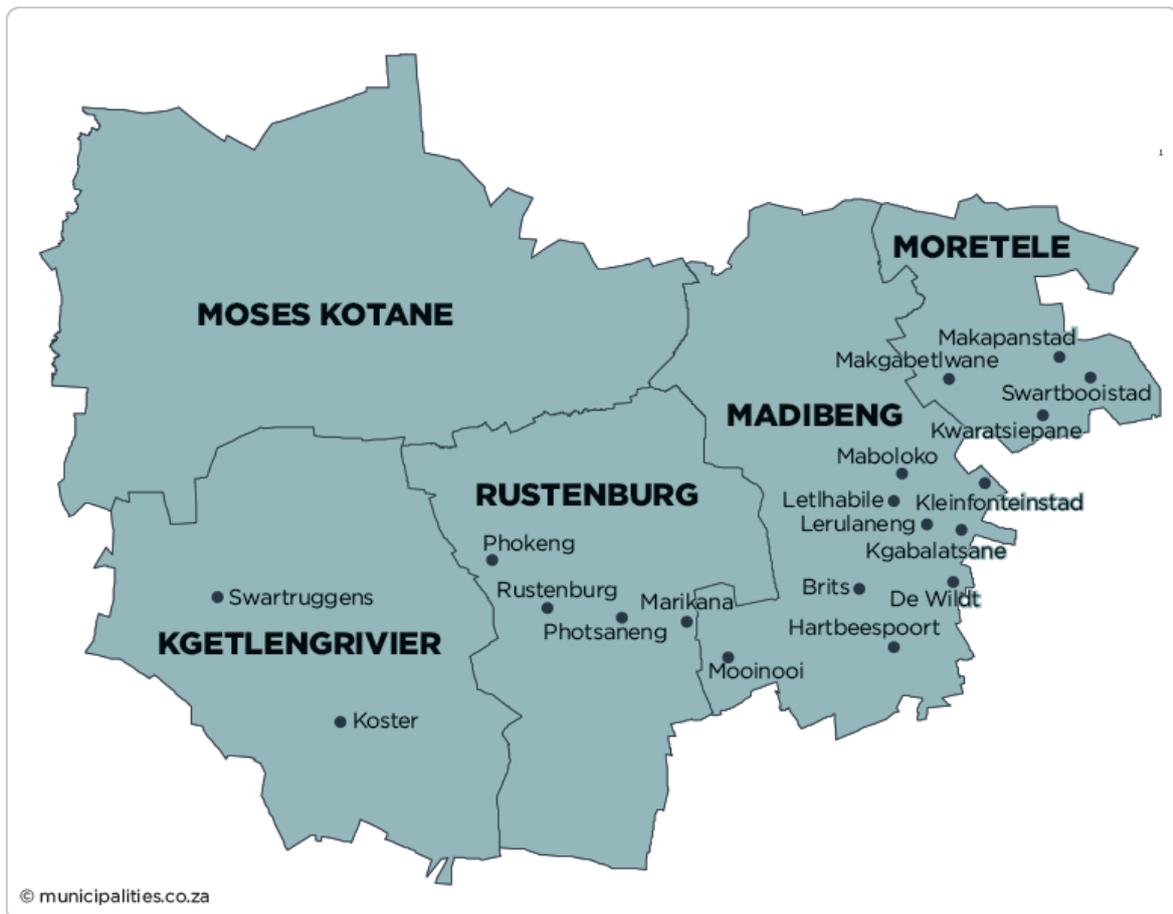
Since the focus of the intended research was to explore and find out what the victim offender operational practice entailed to be considered in the best interest of child victim, an exploratory case study approach was followed in this research. The researcher also considered it to be an embedded single case study as according to Yin (2003:41), this type of case study focuses on a single case with more than one unit of analysis, which in this research was on the analysis of case records and in-depth interviews with different probation officers at a single site.

The researcher used BIOC as the analytical frame to compare the empirical results of the case study. In this research, bearing in mind that there were two units of data collection, namely the

case records and probation officers all under Bojanala district, the results were categorized under one single case as the Bojanala district.

### 1.6.2.2 Population and research setting

The population for this research consisted of all victim offender mediation case record/files where child victims were involved and the responsible probation officers in the four service points of the Bojanala district of the North West province. This district borders on the Waterberg District municipality to the north, Kenneth Kaunda district to the south, City of Tshwane and Ngaka Modiri Molema district. The Bojanala district has a population of 1 507 505 due to mining in the district. It has five service points, namely Moretele, Madibeng, Rustenburg, Kgetlengrivier and Moses Kotane and because of the aforementioned, provides an opportunity to obtain rich data. **See Figure 1.1**



**Figure 1.1: The research setting**

The Bojanala district was chosen by the researcher because it was accessible and service points were not far from each other. The research did not experience much financial

constraints. The Bojanala district was not a unique case, but served as a critical case in determining what the victim offender operational practice entails to be considered in the best interest of child victims.

### **1.6.2.3 Sampling method**

The researcher made use of purposeful sampling. This type of sampling is, according to Strydom and Delpont (2010b:392), based entirely on the judgement of the researcher as the researcher needs a sample with specific characteristics, namely case records of VOM where CVs were involved as well as the different probation officers who had specific experience of conducting VOMs.

However, the decision on the sample was informed by general aspects regarding sampling, for example the purpose of the study (to determine whether VOMs are in the best interest of the CV), the focus of the study (VOM and CV), the primary data collection strategy and the availability of informants [in this study the VOM case records and probation officers] (McMillan & Schumacher, 2010:328).

As the decision of the sample (being only VOM with CV and the responsible probation officer) was made by the researcher, the researcher was very specific about the parameters or selection criteria for participants (Maree, 2007, quoted in Strydom & Delpont, 2010b:392).

Although the BIOC is different for children of different ages, the focus of the study was to describe probation officers' consideration of BIOC during the VOM process and not on to give a detailed explanation of what BIOC means in terms of different age groups. Therefore, the ages of children to be considered for the study were not narrowed down. It was furthermore difficult to justify a focus on a specific age group due to the fact that no statistics were available to determine a profile of child victims that participate in VOM. Narrowing down ages could also result in a too low sample size.

### **1.6.2.4 Proposed sample, sample size & motivation**

In qualitative studies, there are no rules for determining sample size. It depends on what is useful, available and can be done with the available time and resources (Strydom & Delpont, 2011:391). Malterud, Siersma and Guassora, (2016:1753) propose the concept 'information power' and suggest that determining a sample size with enough information power will be subject to the particularities of the study. These particularities include the aim of the study, sample specificity, use of established theory, quality of dialogue and analysis strategy.

Malterud *et al.* (2016:1754) emphasize that a sample size will be estimated in the planning phase but must be continuously evaluated during the research.

In estimating an adequate sample size, the researchers took into account the aim of the study (which she considers to be specific rather than broad indicating a smaller sample size), the particular experience and knowledge that the participants had of VOMs, the intended use of a specific theory (namely the BIOC, calling for a smaller sample size), her (the researcher's) estimation that the quality of the dialogue during interviewing should be adequate (researcher as well as participants were social workers and trained in interviewing and verbal communication, calling for a smaller sample size, but considering that the researcher was a novice researcher, increasing the sample size was indicated) and the exploratory cross-case analysis to uncover realistic and pragmatic descriptions of considerations of BIOC during VOMs.

Based on these considerations, a purposive sample of fifteen probation officers with at least one case record of each was initially aimed for. This would have left room for an adequate sample if not all the probations officers agreed to participate. The researcher also had the option to increase the number of case records per probation officer. The researcher, under the guidance of the supervisor, continuously appraised information power during data-collection, supported by preliminary analysis. After doing so, the researcher is of the opinion that sufficient rich data was gained from a sample of 35 VOM case records and 7 probation officers, as not all fifteen probation officers agreed to take part in this research.

#### **1.6.2.5 Sample inclusion and exclusion criteria**

To be accepted as part of the sample, the participants were probation officers, who were part of the formal structure of VOM and probation officers within the Bojanala district. The probation officers who consented to participate were requested to select case records from their caseload that meet the following criteria:

- The formal and structured VOM
- Any case including type of offence involving child victims
- Completed closed cases
- Not older than 1 years
- The victim child under the age of 18

Samples were excluded if:

- The case record did not fit the inclusion criteria.
- The concerned probation was officer no longer employed at the service point.
- Probation officers were from other districts.
- Probation officers refused to take part in the research.

#### **1.6.2.6 Process of sample recruitment and informed consent**

Sample recruitment commenced after obtaining consent and permission from all relevant legal parties. The process of obtaining permission and consent is discussed later on in this section.

An independent person explained the research to all seven probation officers, provided them each with a consent form to complete and they agreed to participate in this proposed study. The independent person co-signed the consent form. The consent form included the aim of the study, why they had been invited to be part of the study, what was expected of them, possible benefits and risks when they agreed to participate, how their confidentiality would be protected as well as the role of the researcher. The participants were allowed a week to decide if they wanted to participate before the independent person collected the consent forms. The signed consent form was returned to the researcher before commencement of the interviews.

#### **1.6.2.7 Data collection methods**

The researcher made use the following data collection methods.

**Document analysis.** Ritchie and Lewis (2003) in Strydom and Delpont (2011:377) refer to document analysis as the study of existing documents to understand their substantive content and illuminate deeper meanings from the style and content. The case records which the researcher was studying can be considered as primary sources as it was the original written material of the VOM.

It was the official documents created by and under the control of government officials (the probation officers who also formed part of the research or the participants) (Strydom & Delpont, 2011: 377,379). The researcher decided on this method of data collection because the information was available, the case records were not affected by the research and the research did not intrude on the CV.

In view of the fact that children were involved in the research, the researcher considers it an advantage that there was no need to interview the children again which was to reduce re-victimization and would prevent the reliving of the offence, court case and VOM. The researcher acknowledges that this type of data collection has disadvantages, like incompleteness and bias to which Strydom and Delport (2011:382-383) refer, but in view of the sensitive nature of the research phenomenon, the researcher considered the advantages stronger than the disadvantages.

The researcher designed a data collection instrument based on the work of Dhimi (2012:49-50) and Jelínek and Matoušková (2015:140) to capture the data from the case records (See Addendum B). The instrument covered two sections which included: Section A: the background information of the child victim, offender and VOM and Section B: VOM operational practices. Section B was designed to focus on VOM operation practices (such as was the child prepared) and capture BIOC aspects (such as the child victim's age, maturity, stage of development, gender, background, physical and emotional security and disability). Although aspects such as sex and ethnicity were considered sensitive information, they were also BIOC aspects and therefore essential to be captured for purposes of this study.

The researcher had to bear in mind that, although the permission might be granted to conduct case analysis, each case was being managed by the probation officer. The way in which the researcher planned to access the case records, was that probation officers were requested to each select five case records that met the criteria and made a photocopy of it. For the sake of protecting privacy and confidentiality, the researcher requested the probation officers to anonymize the case record copy by removing all personal identification information on the case records so that the child victim remained anonymous. The researcher did not have access to original case records, only the anonymized copies. The case record notes and audio-recordings were taken off-site for purposes of analysis.

In collecting this data, the researcher carefully read through the case records and captured data according to the items on the instrument. Once the case records were analysed and data captured, interviews were conducted with the probation officers.

**Interviews.** The researcher conducted in-depth interviews with the probation officers. According to Creswell *et al.* (2007:87), the qualitative interview aimed to obtain valuable information from participants, to help the researcher to understand the BIOC phenomena within the context of VOM and to help with finalizing the findings. The core instruction to participants was: "describe and explain how you conducted the VOM with (particular case)". This single open question left space for rich data to be collected.

The interviews were scheduled on a time and a date that suited both the participants and the researcher. The interviews took about 60 minutes each. Refreshments such as water were provided for each participant. Permission was asked from the supervisor of each service point to provide a private room where the researcher conducted the interviews. Each participant was informed that the interview was audio recorded. The researcher acted professionally at all times. Audio-recordings were transcribed verbatim with the purpose to prevent any assumptions on the researcher's part. The researcher took field notes during the period of data collection on observations made and reflections with specific focus on VOM operational practices and BIOC aspects.

With the help of the reviewed literature, the researcher was able to refine and revise the problem statement. Literature on BIOC informed the researcher of the data and matters highlighted in literature were considered in the discussion of the findings.

#### **1.6.2.8 Trustworthiness**

Trustworthiness has to do with the question whether there exists a high degree of congruence between what is written in the research report and what is actually in the data, as well as congruence between the meanings of phenomena as explained by the researcher and as actually meant by the participants (McMillan & Schumacher, 2010:330). Lincoln and Guba (1999, cited in Schurink *et al.*, 2011:419-421) assess the trustworthiness of qualitative research such as this research, on four aspects, being credibility, transferability, dependability and conformability.

- Credibility has to do with the congruence between research findings and reality. In this study, the researcher ensured credibility by sources and methods triangulation (using different data collection methods, namely case records analysis and interviews) as well as analysis triangulation (co-coder). The research assistant (co-coder) was a research psychology intern from the North- West University. The coding and deductions were discussed between the researcher and co-coder until consensus was reached on its meaning. The researcher also took field notes to record real observation and to maintain accuracy. Data was transcribed by a transcriber. Both the co-coder and transcriber signed a confidentiality agreement. To get further consensus on the meaning of the data, the research supervisor resumed her role by checking the data and the analysis and by conducting the reflective discussions with the researcher.
- Transferability answers the question on whether the research findings can be transferred to other comparable situations. It must be remembered that the research is about people

and their perspectives, which means that precisely the same situation and results will never be created (Botha, 2007:92). However, the transferability was improved by giving detailed information in the research with regard to the way in which the data was captured, analysed and explained. Transferability was further enhanced by referring to different VOMs that were held independently of each other by different probation officers with different participants.

- Dependability answers questions about the logical exposition of the research report, in other words does it make sense. To enhance dependability, the researcher clearly set out the research question and method and gave enough detail from the research data to enable a reader to follow the reasons for deductions and recommendations. When there were other explanations for data, the researcher also provided those.
- Conformability or objectivity answers the question whether another researcher would be able to confirm the findings. With this in mind, the researcher provided details about methods of data procuring, data capturing, analyses and interpretation. The researcher ensured that those aspects were further enhanced by providing ample quotes from the case records and probation officers as an annexure to the research.

Schurink *et al.* (2011:421) indicate that the way in which qualitative studies should be assessed is subject to different views and indeed McMillan and Schumacher (2010:330) do not use the above-mentioned aspects. However, it is according to the researcher's opinion that the ultimate question that must be answered was whether there was enough evidence in the research to enable an independent researcher to assess the research by using the provided content (methods, literature study, analyses and deductions) and come to the same conclusions.

#### **1.6.2.9 Data analysis methods**

Content analysis of each of the two data units (case records and interviews) was followed by combining and organizing the data into one data set. Content analysis, according to Creswell *et al.* (2007:101), can be described as a qualitative data analysis process which has a systematic approach to identify and summarize the data. The process helps in viewing the data in a different way, a way which will enable the researcher to find keys to understanding and interpreting the data.

Conduction of the content analysis for purposes of this study consisted of the following steps: preparation of data, coding of data, establishing the themes, structuring the data and interpreting the data (Creswell *et al.*, 2007:103-113).

Firstly, the researcher did content analysis by gathering all the collected data, including the field notes and transcripts, compared the information collected from the case records and interviews and made sense out of it.

Secondly, the meaning of the findings was coded. Thirdly, specific words were categorized into themes and sub-themes. The researcher initially thought of making use of program Atlas Ti to help in analysing the data, however, it was eventually done manually. The researcher consulted with an internal North-West University qualified coder.

Fourthly, the researcher contemplated the findings against BIOC literature to confirm or refute literature trends and to ensure theoretical consistency.

After all the above-mentioned steps had been followed, the researcher interpreted the data to come to a conclusion regarding the research question, namely “can the formal victim offender mediation operational practices be described as in the best interest of the child victim?”

Finally, when no new information emerged from the further data collection, the researcher achieved data saturation.

Once data collection commenced, the researcher kept all hard copies secure in a locked cabinet in her office. Audio recordings were destroyed as soon as the data was transcribed. Electronic information is kept on a personal computer which is password protected and backup hard copies are stored in a locked cabinet. After completion of the research and at the time of submitting the final report for examination, the complete data set will be given to Compres (the research unit) for storage for the required period after which it will be destroyed.

#### **1.6.2.10 Ethical aspects**

Research ethics involve guidelines and standards of conduct that apply to researchers (De Vos *et al.*, 2011:114-120). This study was approved by the Health Research Ethics Committee (HREC) of the Faculty of Health Sciences (See Addendum A).

The ethical standards that guided this research are discussed next.

##### **1.6.2.10.1 Probable experience of the participants**

The participants were expected to participate in an in-depth interview where they were required to share their perspectives or experiences of facilitating the victim offender mediation with the child victim in order to ascertain their consideration of the best interest of the child victim during victim offender mediation.

The interviews were scheduled on a time and a date that suited them and the researcher. The interviews took about 30 to 60 minutes each. Refreshments such as water were provided for each participant. Permission was asked from the supervisor of each service point to provide a private room where the researcher conducted the interviews. Each participant was informed that the interview would be audio recorded. The researcher acted professionally towards the participants at all times.

#### **1.6.2.10.2 Dangers / risks and precautions**

This study entailed a medium risk. Possible dangers could have been that the data fell into “wrong hands” while the researcher was conducting the research. Even though the researcher did not reveal the identity of those involved in VOM, their identities and personal data could become known if the researcher did not exercise due care in the handling of the data. Therefore, the researcher at all times ensured that the “raw data” collected, i.e. the VOM case records and interview notes, were kept under lock and key in her office.

Article 3 of the Universal Declaration for Bioethics and Human rights (UNESCO, 2006) states: “The best interest and welfare of the individual should have priority over the sole interest of science or society”, hence this study focused on the operational aspect of VOM when dealing with child victims using BIOC as a theoretical lens. The researcher did not make any direct contact with the CV who participated in VOM, but rather with the relevant probation officers and case records.

These records were not public property, hence the researcher did acknowledge that there was some ethical risk involved as the researcher came into possession of confidential and perhaps even intimate data with regard to the participants. As explained earlier, copies of case records were anonymized before data analyses took place. The researcher obtained the necessary permission from all relevant parties (Head of the Department of Social Development-North West Province and service point supervisors). These parties fulfilled the role as gatekeepers in this study.

An independent person was appointed and the researcher ensured that this person was trustworthy, trained to explain the research and understood the consequences of not keeping data confidential. The co-coder was requested to sign a confidentiality agreement.

Another risk could have been if the probation officers experienced boredom or an emotional response to the line of questioning. They could also feel that they were being “checked up on”. The researcher took precautionary measures against boredom, namely upholding a creative way of asking questions and sticking to the time limit and the purpose of the research. For

emotional responses, the researcher sought out the assistance of the mediator to discuss the concerns in private, took time by listening to the participants and later alleviated the concerns by reflecting back to the purpose of the research in an honest manner.

#### **1.6.2.10.3 Benefits**

The researcher did not predict any direct benefits to the participants. The purpose of the study was to determine whether VOM was in the best interest of CV. Future victims and participants in VOM will thus benefit indirectly from the research as the researcher should be able, after the research, to make recommendations with regard to the practice of VOM in South Africa. The legal system and probation officers may also indirectly benefit from the research as it might indicate possible problems with the way in which VOMs are currently managed.

Finally, as VOM is part of restorative justice which has as one of its purposes to “bring justice back to the people” (Choi *et al.*, 2010:859; Gal, 2011:10), the community will indirectly benefit as the research also includes recommendations for better community involvement. Probation officers will also benefit if the decision makers use the recommendations to improve the BIOC aspects of the VOM operational process. It was not foreseen that the risks would outweigh the benefits.

#### **1.6.2.10.4 Vulnerable participants**

Although a vulnerable group, namely CVs, was the focus of the study, they were not directly involved in the study as data was obtained from case records. The researcher specifically decided on this course as she did not want CV victims, who had already experienced the actual crime, the court proceedings and VOM, to be further victimized or traumatized.

**Incentive and remuneration of participants (subjects):** No remuneration was payable but refreshments such as water were provided. The probation officers were interviewed during office hours and that was included in the request letter.

#### **1.6.2.10.5 Legal authorization**

The researcher explored the feasibility of the study and was granted permission by the Head of the Department of Social Development - North West Province to use one service point (Madibeng) to determine if VOM was conducted with children, if there were sufficient case records and if the content would help in the interpretation. She gained access to three case records that were first anonymized by a probation officer. She then analysed and evaluated them. Based on this exercise, the researcher was positive that it would be possible to conduct this study.

For the formal research to take place, the researcher obtained permission from the following parties. Firstly, from the small-group committee of the subject group Social Work of the North-West University Potchefstroom. Secondly, from COMPRES (Community Psychosocial Research: Scientific Research Committee) of the School of Psychosocial Behavioural Sciences. Thirdly, from the Health Research Ethics Committee (HREC), Faculty of Health Sciences Ethics Office of the same university. Fourthly, from the gatekeeper who is the Head of the Department of Social Development North West Province. After written permission was obtained from all legal parties, service point offices (supervisors), with the role as mediators in the study, were approached to ask permission to conduct the research at their offices. When the permission was granted, participant recruitment took place.

#### **1.6.2.10.6 Goodwill permission /consent**

A goodwill permission letter was distributed to the supervisors of the different service points, which stated the aim and relevant detail of the proposed research. The service point supervisors as the gatekeepers were requested to communicate to probation officers that participation was voluntary and that the researcher would provide them with an information and consent form.

#### **1.6.2.10.7 Privacy/Confidentiality**

The privacy and confidentiality of participants in VOM were ensured, by not publishing or making their personal details known by any means. The prerogative of the CV and other participants in VOM to decide when, where and how, if ever and to what extent their “attitudes, beliefs and behaviours will be revealed” (Strydom, 2011:119) would be respected. To ensure their privacy and also considering that caring and fairness should, according to McMillan and Schumacher (2010:339), be part of the researcher’s thinking and actions, the researcher:

- Used anonymized case record copies.
- Used codes and pseudonyms during the data capturing.
- Immediately deleted all data that might identify a VOM participant.
- Assigned each participant a participant number during the data analysis process and reporting.
- Kept personal control of the data by keeping hard copies in a lockable cabinet and electronic copies on a password protected computer in the office of the researcher.

- Informed the participants about the people who will have access to the data, namely the researcher, research assistant and supervisor.
- Explained to the probation officers that the findings and results will be kept private, anonymous and that their identity will be protected.
- Do not have access to case records, neither do the co-coder and the research supervisor - only to anonymized copies.
- Obtained signed confidentiality agreements from the co-coder and transcriber.
- Must see to it that the audio recordings are destroyed as soon as the data has been transcribed.

#### **1.6.2.10.8 Monitoring the research**

Prof Ryke (research supervisor) monitored the implementation and progress of the research. This entailed contact with the student at least bi-weekly, closely following the progress of the study, monitoring signed documents, inspecting the data collection procedures and inspecting collected and analysed data. She also provided six-monthly progress and monitoring reports to the research committee and HREC respectively. She informed HREC and obtained consent for all amendments to the study.

#### **1.6.2.10.9 Expertise**

The researcher is a qualified Social Worker and registered with the South African Council for Social Service Professions, registration number 10-31340. The researcher has seven years' experience working as a Social Worker. The researcher has completed a module on research methodology as part of the MSW program, TRREE ethics, IBM SPSS Statistics training, Atlas.ti training and a qualitative interviewing workshop. The research project was guided by the study leader (Prof Ryke) assigned to the researcher. She is an associate professor with 25 years' experience in academia, has supervised 16 MSW students (five in forensic practice) and 7 doctoral students. Currently, she is supervising five Masters students and one PhD student. She has published 22 articles in academic journals.

#### **1.6.2.10.10 Facilities**

The data was gained from probation officers and their case records in the North West Province Bojanala District (Madibeng, Kgetleng, Rustenburg, Moses Kotane and Moretele Service

Point). The researcher identified office space conducive for the case records analysis and for the interviews with the help of the office supervisors at the different service points.

#### **1.6.2.10.11 Announcement of study results**

Once the study had been approved, a summary of the results and link to the full report was sent to the Department of Social Development, service point supervisors and participating probation officers. A copy of the research report was shared with the Chief Directorate Corporate Services of the Department of Social Development North West Province, as requested.

### **1.7 Definition of key terms**

- **Child victim:**

The Department of Justice and Constitutional Development (2008:7) proposed a definition of 'victim' and based on this definition and for purposes of this study, child victim is defined as: a person under the age of eighteen who has suffered harm, including physical or mental injury, emotional suffering, or substantial impairment of his or her fundamental rights, through acts that are in violation of the criminal law and who participated in VOM.

- **Offender:**

A person committing an illegal act.

- **Best interest of the child:**

Children's Act, 38 of 2005 has improved the matter to some extent by listing 14 factors that must be considered when deciding on what is in the best interests of the child. These factors include the child's age, gender and background as well as disabilities and the need for security. However, the Act is not clear on what the influence of age, gender and background should be in deciding the BIOC. It also repeats in the Constitution of the Republic South Africa Act, 108 of 1996 stating that a child's best interests are of paramount importance in every matter concerning the child.

- **Victim offender mediation:**

VOM is as a method of conflict resolution and one of the practical ways in which restorative justice may be achieved (Umbreit, 1993, quoted in Venter, 2005:26; Venter, 2005:15).

- **Operational practices:**

A process in a safe and controlled setting where the participants are allowed to develop a mutually acceptable plan or contract to restore the harm done by the crime (Choi *et al.*, 2013:115; Gavrielides, 2012:632; Williams-Hayes *et al.*, 2004:57).

- **Child:**

The South Africa legislation defines a child as a person under the age of eighteen (Children's Act, 38 of 2005).

## **1.8 Structure of the report**

The choice of structure for the report is in line with Rule G.1.2.1.5.2 as per yearbook of the Faculty of Health Sciences, North-West University, Potchefstroom Campus (2015). The student used the article format and considered *Acta Criminologica: Southern African Journal of Criminology* for the publishing of the research article.

The dissertation was edited for language correctness. See Addendum C for the confirmation of the editor.

The research report consists of the following sections:

### **Chapter 1: Orientation to the study**

Chapter 1 serves as an orientation to the study. It includes a literature study and explains the research method in detail.

### **Chapter 2: The manuscript**

Chapter 2 contains the manuscript, reports the findings of the study and offers an overview of different identified themes and sub-themes. The manuscript is prepared according to the guidelines of *Acta Criminologica: Southern African Journal of Criminology*. *Acta Criminologica* is a national journal which promotes academic and professional discourse and the publishing of research results on the subject of crime and victimization, conflict, deviance, abuse of power and reaction to crime and other conflict related phenomena. The APA Style of referencing is required by this journal (See Addendum D) for the author guidelines.

### **Chapter 3: Conclusion and recommendation**

The results of this research led to the formulation of conclusions together with recommendations to the relevant role players and future research. These are provided in Chapter 3.

#### **Bibliography**

In this section, all the quoted sources are listed.

#### **List of addendums**

In this section, all addenda referred to in the research are listed.

## **CHAPTER 2: THE MANUSCRIPT**

### **TITLE: AN EXPLORATION INTO THE BIOC VICTIM IN OPERATIONAL PRACTICES RELATED TO VICTIM-OFFENDER MEDIATION**

#### **Abstract**

The study investigated the best interest of the child victim in operational practices related to victim-offender mediation. The victim offender mediation is one of the systems within justice, used to restore peace among parties which have been affected by crime. In this research, the main focus was on the child victim and the perpetrator. VOM investigations highlight that the process is facilitated by the Department of Social Development together with the Department of Justice as the referral system.

The best interest of the child victim as the paramount priority in the facilitation of victim offender mediation, the Children's Act, 38 of 2005 served as a guideline in any matter concerning the care, protection and well-being to the child victim during the process of victim offender mediation.

The purpose of the study was to explore the best interest of the child victim in operational practices related to victim offender mediation in Bojanala district. Furthermore, the study utilized the exploratory case study approach to compare empirical results from case records and in-depth interviews with probation officers from different service point within the same district.

The study outcome shows consistency regarding the conduct of the formal operational practices of victim offender mediation with the child victim in maintaining the best interest of the child victim. There was a minority view that not all cases should be considered or are not suitable for victim offender process.

The approach taken by the researcher was to provide a summary of literature concerning the term "Best interest of the child", restorative justice, victim offender mediation and the implementation of victim offender mediation if the best interest of the child victim is applied. The researcher proposes guidelines to those who make decisions regarding the incorporation of the best interest of the child victim in the victim offender mediation.

## 2.1 Introduction and problem statement

This chapter contains the manuscript, reports the findings of the study and offers an overview of different identified themes and sub-themes. The problem statement focus of the research was to explore and determine whether the operational practice of **victim-offender mediation (VOM)** is in the best interest of the child victim.

VOM entails creating a safe and structured opportunity for the victim and the offender to meet and discuss the crime committed against the victim and to develop a plan to address the harm with the assistance of a mediator, (Violence against children, 2012: 8-9). VOM can be requested for child and adult victims and offenders. For the purpose of this study, the focus was on child victims.

According to the South African law (Constitution of the Republic South Africa Act, 108 of 1996; Children's Act, 38 of 2005), all decisions affecting children should be guided by the best interest of the child standard. Children's Act, 38 of 2005 states that children's best interest is paramount and must be applied in any matter concerning their care, protection and well-being.

This standard therefore also applies to VOM if a child victim is involved. Within the context of VOM, **best interest of the child** is defined as taking into consideration the child victim's age, maturity, stage of development, gender, background, physical and emotional security, disability and any other relevant characteristics (see Children's Act, 38 of 2005) when conducting a VOM. The term **operational practice** refers to the activities, guidelines and way in which victims are treated when conducting a VOM (Spies, 2009: 16-17).

Although South African legislation defines a **child** as a person under the age of eighteen (Children's Act, 38 of 2005), it does not define the term **child victim**. The Department of Justice and Constitutional Development (2008:7) however proposed a definition of 'victim' and based on this definition and for purposes of this study, child victim is defined as: a person under the age of eighteen who has suffered harm, including physical or mental injury, emotional suffering, or substantial impairment of his or her fundamental rights, through acts that are in violation of the criminal law and who participated in a VOM.

## 2.2 Method

The researcher opted for a constructivist pragmatic paradigm following the exploratory case study in the qualitative method. It was an embedded single case study which focused on the single case with more than one unit of analysis.

Among the initial fifteen participants who were mentioned in the initial phase, only seven gave consent to participate in this research. All seven forming Bojanala district from five different service points (The Department of Social Development: North West Province).

The researcher designed a data collection instrument for capturing data from the two units. This included case records analysis of 35 case records, the material of VOM and in-depth core questions describing and explaining how the 7 probation officers conducted VOM with the particular case.

The content analyses of the two units were combined into one set. It was prepared, coded, theme extracted, structured and interpreted manually. The researcher consulted with the co-coder from the University. The findings were contemplated against the BIOC literature to confirm literature trends and consistency.

The researcher was able to maintain the ethical matters such as authorization, safety measures on data, precautionary measures, informed consent, privacy and confidentiality. This research study was approved by the University's ethics committee.

The participants had four to nine years' experience practicing as probation officers and fourteen to twenty-five years doing generic social work. They obtained their Social Work degrees from different universities. They received restorative justice training (victim offender mediation being one of the modules) from the Department of Social Development North West Province. As it was critical in this study to include sex and ethnicity, during the analysis of 35 case records it was found that among the CV who participated in VOM, there were 18 black females, 15 Black males, 1 coloured male and 1 white male.

All the findings were transcribed in a verbatim manner. The researcher checked the accuracy and the findings were compared verified with the literature regarding the best interest of the child victim. To protect the privacy of the participants, the researcher numbered each participant and the numbers could not be linked to an individual or a specific service point.

### **2.3 Findings**

The researcher and the co-coder came to a consensus which concluded into five themes. These themes were further divided into sub-themes. Table 1 summarizes the themes and sub themes. These themes and sub themes were then described and illustrated with direct quotations. A discussion of the findings and conclusions follows thereafter. The researcher highlighted the five themes regarding the BIOC victim in operational practices related to VOM in **Table 2.1**.

**Table 2-1: Summary of themes and sub-themes regarding the best interest of the child victim in operational practices related to the victim offender mediation**

<b>Theme 1: VOM Preparation</b>	<b>Theme 2: Addressing Needs</b>	<b>Theme 3: VOM Process</b>	<b>Theme 4: VOM Post process</b>	<b>Theme 5: Restorative justice</b>
Rapport building Assessment Procedure to be followed Preparing conducive environment for child victim needs Prior contacts with the child victim Ensuring readiness of the child victim Ensuring voluntary participation	Safety Socio economic	Attending to developmental needs of the child victim <ul style="list-style-type: none"> <li>• Expressive language</li> <li>• Physical development</li> <li>• Cognitive development</li> </ul> Adjustment of VOM process to meet level of the child victim Gauging emotions Addressing triggered emotions Showing sensitivity and respect to cultural diversity <ul style="list-style-type: none"> <li>• Language</li> <li>• Values and morals</li> <li>• Spirituality</li> </ul> Accommodating child victim’s school needs Child victim support system Portraying professional conduct <ul style="list-style-type: none"> <li>• Skills</li> <li>• Adhering to rules and regulations</li> <li>• Ensuring confidentiality and privacy</li> </ul>	Outcome Impact of VOM on child victim Accountability Initial purpose of VOM and mandate Feedback Aftercare of VOM	Systems and lack of Knowledge Awareness campaign

### **2.3.1 THEME 1: VOM PREPARATION**

Preparation of a child victim prior to the actual victim offender mediation was divided into seven sub-themes, namely rapport building, assessment, procedures to be followed, preparing the environment to be conducive to the child victim needs, prior contact with the child victim, ensuring voluntary participation and ensuring readiness of child victim.

#### **Rapport building**

The participants highlighted the importance of trust and building a relationship to put the child victim at ease before the actual VOM. The participants regarded the rapport building process as a way of accommodating the child victim to be free. They made use of different techniques in building rapport with the child victim. The following is a direct quote from an interview:

Participants 4: "Yes for an example working with children, I have to build a relationship with them first so that they can trust me and become more familiar with me before I can start with the victim offender mediation."

#### **Assessment**

From the findings, it was clear that the participants took the child victim through a thorough assessment process which served as guideline in conducting the victim offender mediation. They considered the specific unique needs of each child victim. The following is a quote from an interview:

Participant 7: "Remember we do thorough assessments. It helps us in terms of preparation".

#### **Procedure to be followed**

The participants highlighted that victim offender mediation is not a blind process; hence, they made the child victim aware of the content of the process before the actual VOM. In that way, the child victim was given the opportunity to decide on their participation. All details of VOM process were explained, including the role of the mediator and role players. The following is a quote from an interview:

Participants 6: "We explain everything to them, we make them aware what is going to happen and somehow we get them ready for VOM. We do this in the beginning before it happens".

### **Preparing the environment to be conducive to the child victim's needs**

The majority of the participants indicated the importance of providing the right conditions for the child victim before resuming the actual victim offender mediation. Environmental factors seemed to be important as it impacted positively on the child's well-being during the VOM process. The following is a direct quote from an interview:

Participant 6: "Yes environment is ready for them; it is child friendly for them. Physically I make sure that my office makes them feel welcomed".

### **Prior contact with the child victim**

During the case record analysis, the researcher found that the participants had three to four contact sessions with the child victim before the actual VOM process. The findings from the participants clearly indicated that prior contact helped both the child victim and the participants in preparing for the initial VOM process. It was clear that the participants needed time before initiating the first VOM session, moreover when working with the child victim. The following is a direct quote from an interview:

Participant 4: "Maybe I do two to three visits just to check how she is coping with the incident before I can tell him or her about my intention of including him or her in the VOM process".

### **Ensuring readiness of the child victim**

The above sub-theme also emerged from the findings of this research. The participants made it clear that the child victim had to be in a state of being fully prepared and ready before participating in the VOM process. The following are direct quotes from an interview:

Participant 4: "As soon as the child is ready, it is then that we can proceed with mediation"  
Participant 5: "In the first place the victim was contacted telephonically to check as to whether he was emotionally ready to meet with the offender or the person who hurt her. Impact of offence lead to checking of emotional readiness, reaction towards the offender"

### **Ensuring voluntary participation**

The analysed case records revealed that the child victim who participated in the VOM process gave consent to it. The participants further confirmed that they allowed the child victim to participate in VOM process on their own free will which they considered as of utmost importance. They made it clear that the child victim should not be forced to partake in the VOM process, however, voluntarily participation seemed not to be the case with the offender. The following is a direct quote from an interview:

Participant 1: “and if they say they do not want to participate you cannot force them. Remember this person had been hurt and maybe he or she is scared also to face the offender. So we cannot force them to participate to avoid secondary victimization”.

### **2.3.2 THEME 2: ADDRESSING NEEDS**

The above-mentioned theme was divided into two sub-themes and they include: the need for safety and the need for socio economic status. The following is a detailed discussion on the findings regarding the above-mentioned theme and sub-theme.

#### **Need for safety**

The majority of the participants made it clear that they strived to create a protective condition for the child victim. In doing so, they eliminated danger or any risky situation which might impose harm to the child victim. They reassured the child victim before the actual VOM process. The following is a direct quote from an interview:

Participant 1: “You cannot just take the child straight to the offender. The security of the child, you must make sure that the child is with the guardian or parent at the secured space where the child can be able to feel free and secured”.

#### **The need for socio economic status**

Participants acknowledged that the child victims were from different backgrounds, looking at the state of poverty and financial constraints. However, alternative means were made in order to accommodate the child victims who might have financial difficulties in accessing their offices. The following is a direct quote from an interview:

Participant 7: “In most cases we provide our own means in terms of transport”.

### **2.3.3 THEME 3: VOM PROCESS**

The process of VOM seems to be important as it is how the main purpose is fulfilled and the mediators adhere to specified guidelines. The discussion of the VOM process as the main theme is divided into sub-themes and further sub-themes also emanated. These are attending to the developmental needs of the child victim (expressive language, physical development and cognitive development), adjustment of VOM, gauging emotions, addressing triggered emotions, showing sensitivity and respect to cultural diversity (language, values and morals, spirituality), accommodating child victim school needs, child victim support system and portraying professional conduct (skills, adhering to rules and regulations and ensuring confidentiality and privacy).

### **Attending to developmental needs of a child victim**

The sub-theme *attending to developmental needs of a child victim* is further divided into three further sub-themes, namely *expressive language*, *physical development* and *cognitive development*. These are discussed below.

#### ***Expressive language***

From the findings of this research, the participants strongly believed that child speech was of importance and that language skills did vary from one child victim to the other. It was found that the participants were sensitive to the fact that children's way of expressing themselves during the VOM process was not the same. The following are direct quotes from an interview:

Participant 2: "Assessing him or her you will be able to realize that she can maybe answer you fluently as you are asking him or her questions"

Participant 1" Depending on the stage issues if the child is still a minor and he or she cannot express herself verbally".

#### ***Physical development***

During data collection on case records, the researcher identified that the participants conducted VOM mostly with children who were not physically challenged, however, the participants were able to put their plan in place when it came to meeting the physical needs of a child victim. The following is a direct quote from an interview:

Participant 2: "Depending on the disability that I can realize or observe in the child. I have to make some means to accommodate depending on the disability".

#### ***Cognitive development***

From the findings, it emerged that a child's cognitive level was assessed in order to know on which level the child was functioning as well as their developmental maturity. This knowledge will help in the VOM process. The following is a direct quote from an interview:

Participant 5: "We do consider their developmental stage. We try to explain in according to their level of understanding".

### **Adjustment of process to meet the developmental level of the child victim**

The findings show that the participants made use of techniques in order for the child victim to participate effectively during the VOM process and according to their level of development. The following is a direct quote from an interview:

Participant 1: “You can also use some other methods, such as giving the child something to draw about what happened and then to check as to whether the child will be able to tell you more about the incident based on the drawing.”

### **Gauging emotions**

From the findings, it seems as if all the participants used observation skills during the VOM process as one of the fundamental tools to take note of unpleasant emotions. They observed verbal or non-verbal cues. The following is a direct quote from an interview:

Participant 3: “So when the child is crying or emotional, as a worker you will be able to notice through observing non-verbal expressions. It becomes easier through the continuous contact with the child victim. It gives you the open door to get to know the child better”. “And you know when you must ask her a question, and when not. Sometimes the child cannot respond verbally, or she will respond by giving a non-verbal queue, maybe by nodding the heard, then you will be able to see that, no this question is a little bit too much, maybe it touched her or maybe she does not like it”.

### **Addressing triggered emotions**

The findings of this research indicate that the participants always had a plan in place in case of any triggered unpleasant emotions during the VOM process. They made it clear that the needs of the child victim were of the utmost importance, hence they would not hesitate to stop the process and consider the referral system. The following is a direct quote from an interview:

Participant 3: “Yes we go back to one on one; we deal with them separately, do some counselling and go for some one on one intervention.

### **Showing sensitivity and respect to cultural diversity**

The fifth sub-theme under the main theme VOM process is *showing sensitivity and respect to cultural diversity*. This sub-theme is further divided into three sub-themes, namely *language, values and morals, spirituality*. These are discussed next.

#### ***Language***

The participants acknowledged that, in most cases, language can be a problem, however, alternative ways had to be put in place in order to accommodate the child victim. Help is requested to break the language barrier, however, the child victim have to consent to any decision taken towards the VOM process. The following are direct quotes from an interview:

Participant 2: "Language is most of the time a problem because in South Africa we are dealing with many languages. We always try, even if it means that people who are involved (during the VOM), if they understand better, they will explain further".

Participant 1: "So in that regard if maybe there are languages barriers you will, with the child's approval, request an interpreter. If the child is not ready to get a stranger involved, then it means that you must give it another try; give it a chance until the child gives the consent for an interpreter. And (even) if there are no language barriers, we always emphasize cultural diversity, so that we can deal with people irrespective of their culture or background".

### ***Values and morals***

The participants made it clear that the values and morals of the child victim were of importance and that they always made sure that the child victim's uniqueness was accommodated during the VOM process. The following are direct quotes from an interview:

Participant 1: "We make sure that his values are respected. Cultural needs are also addressed in assessment with the victim child".

Participant 7: "I do take that into consideration like for instance you know the moral issues for a whole lot of them it is taboo to talk about sexual matters".

### ***Spirituality***

*Spirituality* is the last sub-theme which emerged from the sub-theme showing sensitivity and respect to cultural diversity. The findings reveal that the majority of the participants had the same perspective, however, one seemed to differ. The majority emphasized the importance of the child victim's choice when it came to the involvement of a spiritual leader. The one participant who differed from this was of the opinion that children had no idea and understanding of different things around them including spirituality. The following are quotes from an interview:

Participant 2: "Spiritually I would say we let her make a choice regarding whether he or she want his or her pastor to be involved. The pastor of his or her choice to be in the mediation.

Participant 6: "And then as for as spiritual is concerned I do not worry much about this specific issue because young children have less knowledge about spirituality depending on age.

### **Accommodation of school needs**

The findings in this research indicate that the participants did not interfere with the child victim's school attendance. They considered and accommodated the school's needs. They did make prior arrangements with the schools, parents and caregivers. The following is a direct quote from an interview:

Participant 7: "In terms of school, normally I make a prior arrangement with the parents and with the school. I arrange with them so they may understand that the child will attend school on a particular day and the particular teacher can assist the child in terms of homework's. And also in terms of the work that he/she may be left behind, it helps a lot mostly most school are very accommodative".

### **Child victim support system**

The case records indicate that the child victims were informed about different role players who were allowed to be part of the VOM process, including parents or guardians. From the interview, it was clear that the participants considered the support system as one of the things which contributed positively to the child victim during the process of VOM. It helped the child victim to cope during the VOM process, reduced unpleasant emotions and considered the age of the child victims which meant that some might have separation anxiety or might be afraid of strangers. The following are direct quotes from an interview:

Participant 4:" "We do not meet with the children alone always we will make sure that the children have somebody who can accompany them and can be part of victim offender mediation".

Participant 5: "In most cases we encourage the guardian or the parents to accompany the child so that she should be around a person he or she is used to. So that is how I ensure the sense of security. Because at that point I will be a totally new person the child might you know absolute stranger".

### **Portraying professional conduct**

The seventh sub-theme under the VOM process theme, namely *Portraying professional conduct*, is further divided into three sub-themes which are *skills, adhering to rules and regulations, ensuring confidentiality and privacy*. These are discussed below.

#### **Skills**

The participants made it clear that their profession did help in the VOM process as they had the opportunity to make use of their different skills imparted during their training with different

institutions of higher learning and together with the internal training they received from the department pertaining the restorative justice. The following is a direct quote from an interview:

Participant 6: "Working professionally we look at the content of the crime as to what happened and what needs to be done. Because I mean as officers of the law, as professionals we came to understand better than they do understand".

### ***Adhering to rules and regulations***

The findings in this research show that the participants were being guided by regulations during the process of VOM. They did not impose their own rules, however were guided by workplace regulations which seemed to be in favour of the child victim. The following is a direct quote from an interview:

Participant 6: "We always refer to regulations, how things are done".

### ***Ensuring confidentiality and privacy of the child victim***

The participants made it clear that confidentiality was one of the professional conducts when it came to the child victim. They further mentioned that each role player participating in the VOM process had to sign a confidentiality clause and adhere to it. However, when it comes to privacy, some children did not prefer the presence of their parents or caregivers as they might then not be free to express themselves. The following are direct quotes form an interview:

Participant 7: "In terms of confidentiality, remembers whoever who participate in the VOM we make sure that they sign the confidential clause. To make sure that whatever is discussed there is confidential. The people I work with, as far as I know, are very professional".

Participant 6: "But if the parents are inside in the office, she will not be comfortable to open up. Remember the purpose is to assist her. So it is better to request the parents to stay behind or to stay outside the office so that she can be comfortable.

## **2.3.4 THEME 4: POST VOM PROCESS**

The post VOM process as a main theme is divided into six sub-themes, namely outcome, impact of VOM on child victim, accountability, initial purpose of VOM and mandate, feedback and aftercare.

## **Outcome**

The collected information demonstrates a high percentage which, according to the participants, determines satisfaction, productivity, success and a favourable outcome of VOM. However, among all the participants there was a concern about a small percentage (20%) highlighting certain aspects of VOM being overlooked, VOM not being appropriate and the extent of impact it might have on the child victim. On that note, one participant mentioned one specific case which they totally believed should not have been referred for VOM. The following are direct quotes from an interview:

Participant 7: "The outcome is good 80% is good"

Participant 6: "The outcome can be 80/20 being positive successful and 20 or less negative".

Participant 1: "Like in the case whereby the child was raped and the Court is expecting the VOM and now it negatively affects the very same child that it means that session will not be a success".

## **Impact of VOM on child**

The participants in this study clearly identified that the VOM process had a significant impact on child victims which can be either be positive or negative. The following are direct quotes from an interview:

Participant 3: ""Sometimes, you know I believe that healing is a process, so most of the time you will find they are not satisfied, they become angrier. Sometimes there are those instances where parties will be satisfied but there are those circumstances whereby you found out, especially the victim is angrier".

Participant 4: "And they are able to express their feelings, the impact of the offense and come to reconciliation with both of them".

## **Accountability**

It emanated from the research that the participants were able to identify that offenders' attitude regarding the crimes they had committed against the child victim helped the child victims' healing process. Many offenders appeared to be genuine, willing to participate in the process, accepted and owned up to their wrong-doings and understood the impact of their crimes towards the child victim. The following is a direct quote from an interview:

Participant 4: “For him to confirm it also help the victim to accept his apology and all those things because he can see that he is remorseful. He comes to understand the implications of all these mistakes and also acknowledge the offense that he committed”.

### **Initial purpose of VOM and mandate**

From the findings of this research, the participants highlighted that VOM was facilitated as a direct instruction from the Court. This mandate served as the initiator in the process of VOM with set goals which had to be achieved at the end of the process. However, although the court expects the facilitation of VOM, there was one participant who was concerned that VOM might not always be in the best interest of the child victim. The following are direct quotes from an interview:

Participant 1:” Remember the goal of this process is to restore peace.

Participant 3: “Usually it is Court which decides that they have to go through the process”.

Participant 1: Even the victims feel bad after partaking in the process. The VOM process makes them feel like they are being victimized again”.

### **Feedback**

The participants made it clear that, after all had taken place, feedback should be given to the relevant role players such as the Department of Social Development as well as the source of referral which is the Court. The analysis of the case records also shows that all the referrals were made through the Court. The following is a direct quote from an interview:

Participant 1: “Then you just take feedback to where VOM was requested”.

### **After- Care**

It is noted, based on the analysis of the case records that all the offenders were known to the child victims and some were even from the same household. The participants clearly indicated that VOM does not only end with feedback to the relevant parties, but they also ensured that the best interest of the child victim, even after the process had taken place, was protected. The post process helped the participants to cater for the child victim’s psychological and safety needs. The following is a direct quote from an interview:

Participant 6: “Either the offender or the child is removed but most of the time we try to protect the victim more than the offender, we can also refer the child to a psychologist for counselling”.

### 2.3.5 THEME 5: RESTORATIVE JUSTICE

The last identified theme has to do with different systems and lack of knowledge and awareness campaign and is discussed next.

#### **Systems and lack of knowledge**

The participants made it clear that the child victim was connected to different systems which contributed to their well-being and acted as a source of strength. Those systems included the immediate environment of the child victim, such as the family, community and school. Hence, the systems had to have knowledge of what the VOM process, as part of restorative justice, entailed. The following are direct quotes from an interview:

Participant 1: “Basically I will say I am well aware that our **communities** are not aware of the VOM that is why it does not always bring the positive results on it”.

Participant 3: “Some communities are not aware of this issue of restorative justice”.

#### **Awareness campaign**

The participants believed that enlightening the community regarding the VOM process as part of restorative justice would help in the future as both parties would be on the same page. However, it needs planning and stakeholders who are willing to execute the plan. The following is a direct quote from the interview.

Participant 1: “So I will think that the stakeholders who are responsible for the victim offender mediations must make more awareness to the communities not necessarily on specific cases but the victim offender mediation in general must be advocated to the communities (general public) so that they can understand the positives about it. Because they are not even aware, even the victims they feel bad about the whole thing for them it is more like they are being victimized again. So if there are awareness campaigns, I think it can ease the situations”.

## 2.4 Discussion

The research findings from Bojanala district presented with the level of consistency and are very much far apart from each other. There is less possibility that the participants might have an influence on one another when referring to the findings.

Although the participants were operating from different offices, it seemed as if they did follow the same formal operational plan which might have been set by the Department of Social

Development - North West Province. However, one or two participants had different views concerning some aspects regarding the formal operational practices of VOM with the child victim.

The research findings were given a thorough analysis and it turns out that they support theoretical views regarding the operational practices of victim offender mediation in taking the best interest of the child victim into consideration. Both the findings from the case records and in-depth interviews show a high possibility that aspects which revolve around the best interest of the child victim were considered before the initial VOM process, during the actual process and post VOM process. Choi *et al.* (2013:15), Gavrielides (2012:632) and Hayers *et al.* (2004:57) mentioned that the VOM process must have a setting and a plan in order to restore harm.

The researcher wishes to point out that the findings demonstrate that the participants were able to uphold professionalism during the process of VOM and ascribed to their training, both graduate and specialized. This is in support of the recommendations made by Van Wormer (2004) that mediators should be social workers, as the VOM terrain is known by Social Workers. As a result, it will be natural to consider the well-being of the child victim. According to Choi *et al.* (2013:15), the mediator's knowledge and skills are of the utmost importance as it adds to the success of victim offender mediation, moreover to the involvement of the child victim.

The findings show that all the children who participated in the VOM process were vulnerable and victimized in different ways. It was also found that children were victimized by people they knew very well, in a setup of familial and extra familial. According to Violence against Children (2012), children experience violence in different setups such as home, school, community, justice systems and workplace. Among these, there is sexual abuse, physical abuse and neglect which affect them throughout their lifespan and their normal development. However, the findings also show that mediators considered child protection in terms of child contact with the offender before and after the mediation.

In relation to the initial process of victim offender mediation, the findings show that thorough preparation was initiated and it sufficiently covered aspects that revolved around the child victim and their needs. The participants made several contacts to ensure the readiness of the child victim as was suggested by McGlynn *et al.* (2010:238) and Venter (2005:66). The process of VOM with the child victim should not start until their emotions and burning issues have been addressed.

Similarly, the findings highlight that each child victim was treated differently based on their unique needs and age. Different perspectives were applied in making sure that the best interest of the child victim was served.

Findings show that the participants had different views when it came to whether all cases referred for VOM served the best interest of the child victim and their view is in line with Uotila and Sambou (2010:191) that crimes involving children should not be referred to mediation if the victims need special protection. For this reason, cases in Finland are closely monitored. The researcher is of the opinion that an advocacy for such as the initiative taken in Finland can also be a good opportunity for South Africa. Different professionals and departments speak on behalf of the child victim, in the process considering the best interest of the child victim.

There are several factors of concern which include the secondary victimization or re-victimization of the child victim from the initial process of VOM. Choi *et al.* (2013:114,116) referred to a number of studies which indicated that victims might perceive the process as re-victimizing and Wemmer and Cyr (2005, quoted in Calhoun & Pelech, 2013:68) indicated that victims might also feel re-victimized if the offender denies taking responsibility. The findings of the present study suggest that, from the first contact with the child victim prior the initial VOM process, they experienced unpleasant emotions which might proceed during the initial process and after the VOM. However, the findings clearly indicate that the participants had a plan in place, ready to attend to child victim's emotional needs and their survival thereafter.

The initial initiator of victim offender mediation was clearly to be the Court, to which, in the end, according to Venter (2205:30), feedback should be given to as soon as the VOM process has been finalized. Although the Court initiates VOM, VOM commencement totally depends on the child victim's willingness to partake. Prior preparation and empowerment on voluntarily participation were of importance. The findings show that the participants seemed to have produced best possible outcomes to VOM, in terms of enticing the readiness and comfortability of the child victim. It seemed as if the child victim was not deprived from freely participating in the process of VOM, as the matter affected them directly. They were allowed to practice choice and learned to make an informed decision towards their participation in the VOM process. The child victim preparation served as a guideline which gave them the responsibility to be aware that they played a role and had a say in the VOM process.

The findings also reveal that child victims agreed to partake in the VOM process with expectations and wishes, the expectations and wishes that seemed to have had an influence on the success or failure of the VOM process. The case record findings highlight several

reasons why the child victim agreed to take part in the VOM process. Among these, Gavrielides (2012:628) echoes that victims have shown tolerance when perpetrators are able to show a point of remorse and accountability. The victims see the process as a sense of regaining dignity.

The best interest of the child is a broad concept, which is defined and used differently within different contexts. In the VOM context it might cause harm to a child victim if it is not addressed in a correct and appropriate way, this refers to the principles of children's rights, needs, evaluating and balancing all the necessary elements when deciding about a child victim.

## **2.5 Conclusion**

Table 2 lists best interest of the child (BIOC) and not best interest of the child factors based on the Children's Act, 38 of 2005 and literature referred to throughout this study. Using this list as a yard stick, the researcher concludes that the VOMs reviewed for this study fit each one of the BIOC list items. It seems as if the mediators never overlooked them during the formal practices of VOM with the child victim. Looking at determining factors of best interest of the child versus the factors which indicate that VOM might not have been conducted in a manner which does not fit best interest of the child.

**Table 2-2: Determining factors of best interest of the child versus factors not fitting the best interest of the child.**

Best interest of the child	Not best interest of the child
<ul style="list-style-type: none"> <li>• the child’s sense of security was taken into account and maintained</li> <li>• the child’s age and developmental level was taken into account</li> <li>• any disability or impairment of the child was taken into account</li> <li>• the wishes and needs of the child were taken into account,</li> <li>• the physical, moral, emotional and spiritual welfare of the child was taken into account and ensured</li> <li>• the child was not blamed by any role player for his/her attitude towards the VOM or for any crime</li> <li>• the economical and scholastic welfare of the child was taken into account</li> <li>• the cultural and social background of the victim was taken into account</li> <li>• the mediator ensured that the VOM would not be emotionally detrimental to the victim</li> <li>• the process was explained to the victim</li> <li>• the victim was physically, emotionally and spiritually prepared for the VOM</li> <li>• the victim was told that he/she may be personally present with a guardian and/or may prepare a victim impact statement to be read by a guardian.</li> <li>• the mediator ensured that the victim understood the decision-making process and the impact of his/her decisions</li> <li>• the victim was able to explain his/her feelings and emotions towards the offence and the offender</li> <li>• the victim was able to express his/her anger and hurt to the offender</li> </ul>	<ul style="list-style-type: none"> <li>• no or not enough preparation</li> <li>• the victim was not taken into account when planning was done</li> <li>• the victim was not contacted</li> <li>• the victim was not treated respectfully</li> <li>• the offender or his supporters was allowed to threaten or bully the victim</li> <li>• the sole purpose of the VOM was to allow the offender to go on parole or to minimize his sentence</li> <li>• the parents of the victim overpowered him/her through the process</li> <li>• decisions were made for the victim and not by the victim</li> <li>• the mediator was not prepared</li> <li>• the mediator rushed the proceedings</li> </ul>

Best interest of the child	Not best interest of the child
<ul style="list-style-type: none"> <li>• there was no evidence of coercion or force against the victim by any party including the mediator, offender, victim's family, offender's family or social workers involved</li> <li>• the victim was not intimidated or threatened by any party involved</li> <li>• there was no evidence of any power play in the process</li> <li>• the offender accepted responsibility for his actions</li> <li>• the offender explained to the victim what the reasons for his actions were</li> <li>• the offender offered an apology</li> <li>• the victim was given the opportunity to accept or reject the apology</li> <li>• the offender offered some kind of restoration</li> <li>• the victim was allowed to indicate what he/she wanted with regard to restoration</li> <li>• an agreement acceptable for the victim was reached</li> <li>• the victim expressed his/her satisfaction with the process</li> <li>• the victim expressed forgiveness</li> <li>• enough time was given during the process for all issues to be canvassed</li> <li>• the victim was given the opportunity to ask questions</li> <li>• "time out" breaks were given when the VOM became emotionally overburdening</li> <li>• there were positive signs that the victim was winning back his/her dignity and humanity</li> </ul>	

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## **CHAPTER 3: CONCLUSIONS AND RECOMMENDATIONS**

This chapter presents the conclusion and recommendations. The recommendations were drawn from the findings. A summary regarding the process of this research, from the initial phase up to the end, is also provided. The aim of this research was “to explore if the formal victim-offender mediation operational practices can be described as in the best interest of the child victim”. The aim served as a guideline, which presented to be obtainable and realistic. The aim was reached in conjunction with a literature study and empirical study.

### **3.1 Literature study**

The literature study served the purpose of placing the research in context and leading to a well thought plan. It gave reference to previous research and provided a guideline to the current research. In particular, it provided a link between the core concepts of the study, namely:

- Child victim
- Best interest of the child victim
- Victim offender mediation
- Restorative justice

The literature study revealed a primary concern with the term child victim and the studies thereof. Literature highlighted the need of a broader perspective in examining the existing practices which address child victims. Limited research on the child victim exists and expanding of the horizon is needed in this regard.

In the literature, several relevant facts and factors have been taken into consideration when dealing with a child, moreover the child victim. It was necessary for the researcher to set out factors to ascertain whether the VOM process is in the best interest of the child victim (Factors discussed in Chapter 2).

The literature review highlighted the victim offender mediation as one of the systems within the restorative justice with the aim to offer the victims a voice in the controlled justice process.

### **3.2 Empirical study**

The empirical data focused on the restorative justice system with regard to whether the process of VOM process was applying to the BIOC of child victim. The findings of this research provide

ideas for future research and also serve as guideline to different role players who are directly involved in the process of VOM.

### **3.2.1 Method**

The researcher made use of a qualitative approach, which entailed case records analysis and in-depth interviews. They were in line with the aim of the research approach. The research was a good initiative, however, it would have been much more productive if the other eight provinces of South Africa could have been included in the research in order to ascertain uniformity in the VOM practices.

### **3.2.2 Participants**

The seven probation officers who participated were within the inclusion criteria together with the thirty-five case records (five from each probation officer). The participants were from Bojanala district, one district among the four in the North West province.

Initially, fifteen participants were supposed to be part of this research, however, only seven volunteered to take part. As a result, the validity of the study was influenced because there was no way of finding out if the remaining eight (POs) who did not participate in this research, conducted the VOMs in the same way and standards as the POs who participated.

One of reasons for the eight POs not to participate in this research which the researcher identified, was the ongoing strike within the Department of Social Development (North West Province). However, the researcher is of the opinion that there might be other reasons not known to the researcher.

It should be noted that, in the other eight provinces within the same departments, there are probation officers who are also rendering the same services, however, they were not part of this research as the same quality of service delivery could not be confirmed. The findings of this study cannot be extended to the wider population due to the qualitative nature of the study.

### **3.2.3 Measuring tool**

The study of Dhimi (2012:49-50) served as a guideline and helped the researcher to design a data collection instrument to capture data from the case records. Although aspects such as sex and ethnicity are considered sensitive data, they were regarded as essential for the purpose of the study's focus on the best interest of the child. A core question was formulated - a single open-ended question in conducting the in-depth interview with the probation officers. The question left

a space for valuable information. The question helped the researcher to understand the initial phenomena within the context of VOM to the point of finalizing the findings.

### **3.2.4 Ethical aspects**

The researcher carried out the correct rules necessary when collecting data. The proper and correct channels were followed regarding permission from the Department of Social Development in the North West province.

Before the initial research, the researcher explored the feasibility of the study and was granted permission by the Head of the Department of Social Development (North West) to use one service point (Madibeng) to determine if VOM conducted with the child victim had insufficient case records and if the content would help in the interpretation. Access was gained to three case records which were anonymized by the PO and in the end, the researcher found that it was possible to conduct the study.

The process had challenges and the researcher waited a long time to obtain formal approval. The request had to circulate among different offices before reaching the busy office of the HOD. Only one service point manager gave verbal permission, however, refused to sign the goodwill permission. The office of HOD had to intervene and the matter was later resolved. The ongoing departmental strike in the province also prolonged the process.

### **3.2.5 Data analysis**

The researcher was able to obtain meaningful descriptive data from the case records as the primary source and the interviews with the probation officers as the participants. The triangulation analysis was done and the researcher consulted with the co-coder in finalizing the data analysis process. The different sources, theories and methods were applied in explaining the research phenomena, which helped in eliminating any possibilities of being bias.

### **3.2.6 Procedure**

The researcher came across several challenges during the process of data collection. The data collection dates were planned way in advance within five service points of Bojanala district. Kgetleng on the 1<sup>st</sup> October, Rustenburg 2<sup>nd</sup> October, Moses Kotane 2<sup>nd</sup> October, Moretele 3<sup>rd</sup> October and Madibeng 4<sup>th</sup> October 2018. However, a challenge that the researcher was faced with was difficulty for the participants to commit to the set dates. The North West Department of Social Development had been on strike since May 2018.

The main concern of the participants was that they were afraid of their colleagues as a formal meeting with the researcher might mean that they were working while others were on strike. It was then agreed with the gate keepers together with the participants that the set dates would be utilized for the capturing of data on the case records and that in-depth interviews would later be conducted over the phone.

The participants honoured the agreement and the researcher managed to conduct three face to face in-depth interviews. The other four participants were interviewed telephonically as agreed after the initial plan failed. The proposal highlighted that fifteen probation officers would participate in this research, however, not all fifteen gave consent to partake in the research. The strike had negative results on the conducted research in terms of the number of the participants.

The map in Chapter 1 ascertained that the five service points were not far apart from each other, hence the researcher was able to set aside time and travel from one service point to the other. Data was captured from thirty-five case records, five cases each among the seven probation officers (participants).

### **3.3 Findings**

The previous chapter gave a clear discussion on the research findings, where the participants' direct and verbatim quotes also confirmed relevant literature references.

The best interest of the child victim was compared to factors not fitting the best interest of the child victim. The findings suggested that the best interest of the child victim was not overlooked during the VOM process. However, there was a minority who had a strong believe in the category of cases which were not suitable for the VOM process, suggesting that not all cases that involved the child victim were suitable for VOM.

According to the findings, there were five major categories regarding the measure taken by the probation officers in ascertaining the best interest of the child victim during the formal operation of victim offender mediation.

#### **3.3.1 VOM preparation**

Nearly all the probation officers identified the thorough assessment prior to the VOM process as a vital element of thereof. Apparently, it is one of the most important factors that will ensure the readiness of the child victim and consequent voluntary participation.

### **3.3.2 Addressing needs**

The needs and the concern of the child victim were addressed prior to the process of victim offender mediation as a form of taking their well-being into account. Based on this finding alone, the researcher concluded that the best interest of the child victim was a priority in the process of VOM.

### **3.3.3 VOM process**

The findings show that, if the prior process had been handled in a correct and thorough manner, the VOM process could be described as in the best interest of the child victim. With this observation and initial phase guideline, it became easy for the probation officers to make use of acquired different skills learned in their profession as well as training within their departments. This increased the consideration of the child victim's needs.

### **3.3.4 VOM Post process**

The findings show that VOM had an impact on the child victim and that results were expected to be provided to the relevant role players. That led to a concern that not all cases were suitable to be part of the VOM initiative. The participants appeared to have a plan in place in dealing with the aftermath of the VOM process.

The findings of the research present to have a link with the literature study. It demonstrates the evidence that, although a number of studies have been completed on restorative justice and offender mediation, the empirical data regarding the effect of restorative justice and victim is very limited. The researcher is of the opinion that more research is needed on child victims in order to add to the less existing theory. Although this study is of a limited scope, it adds to the few studies done on this topic.

## **3.4 Limitations of the study**

This study offers an exploration to determine if formal victim offender mediation can be described as in the best interest of the child victim. However, during the process of this research, the study encountered a number of limitations.

The researcher acknowledges that the findings and conclusions of this research are limited to the analysis of case records and answers given by participants (PO's) during in-depth interviews. It is emphasized that the child victims did not form part of the research and that they were not

interviewed. It is not a given that the views of the child victims would be similar to the ones of the participants (PO's).

The initial number of participants was supposed to be fifteen, however, it ended up being only seven. This adds up to the limitations of this research because the researcher was unable to find out if the remaining eight who did not participate, would uphold the same standards if taking part in the VOM process.

Another important thing is that the North West province is only one of nine provinces in the Republic of South Africa. Those provinces all have a Department of Social Development and they all render the VOM process. However, the other eight provinces were not included in this research and the results and findings thus did not include the wider population.

### **3.5 Personal reflection**

Initiating and undertaking this research was a significant learning experience for the researcher. It is the understanding of the researcher that the nature of this research is on a different level. One of the things learned, is that research has its frustrations - it needs time, effort, dedication, hard work, flexibility, patience and willingness to learn. In the end, the research was a good and satisfying experience.

The research revealed several professional elements such as values, dignity and the worth of a person, moreover a child, integrity and competency. They lead the researcher to consider possible changes in her professional conduct for future successful practice.

The researcher became aware of the formal practice of VOM with the child victim. The question which was brought to the researcher's attention was the view of the child victim regarding the process of VOM. Do all probation officers in the country of South Africa who are rendering the VOM service uphold the same standard or follow the set guideline by the Department of Social Development.

There are still a lot of gaps that need to be filled by research and the researcher is encouraged to be more involved in future studies.

### **3.6 Recommendations**

The researcher acknowledges the limitations of the study and will use them to make suggestions to further extend research to other provinces of South Africa, including the other three districts within the North West Province. This is important to ensure that there the same standard procedure exists in serving the best interest of the child victim during the formal practice of victim

offender mediation. The research findings brought VOM to the attention as a restorative justice approach which seems not to be well-known within communities.

For future research, it is recommended that:

- the child victim's view on the process of VOM be explored, considering the ethical issues;
- the impact of VOM on the child victim be investigated;
- the guidelines on cases which are suitable for VOM process be formulated;
- when to refer and when not to refer a case for a VOM process be investigated
- a study on awareness campaigns regarding restorative justice in communities be conducted.
- The researcher recommends a follow up on the child victim views.

The researcher further recommends that the research such as this be extended to other provinces of South Africa including the other three districts within the North West Province. To monitor consistency, utilization of same standard procedure and maintaining uniformity.

It is recommended that the Department of Justice together with the Department of Social Development and justice do research that focus mainly on VOM implementation and also give attention to restorative justice awareness campaigns across the country. As much as it seems to be a peace making strategy, the participants clearly regarded it as an initiative that is not well known among other communities. The process tends to bring about the results which arise tension among communities with the idea of injustice, due to the fact that they were either not part of the process or have no idea of what is all about.

The Department of Justice should:

- consider formulating a guideline on cases which are suitable for the VOM process and the sensitivity of these cases should be considered, moreover child sexual abuse cases;
- promote voluntary participation, even among the offenders, as this may contribute to the genuine rehabilitation of offenders; and
- engage in the restorative justice campaigns with the stakeholders.

The Department of Social Development should:

- monitor and evaluate VOM to ensure that the same standard procedure in rendering the VOM process within the nine provinces of South Africa be followed;
- engage into the initiative of restorative justice awareness campaigns; and
- work hand in hand with the Department of Justice in ensuring that sensitive cases such as rape do not form part of the VOM process.

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## Addendum A: HREC approval



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19 March 2019

Dear Prof Ryke

### **APPROVAL OF DOCUMENTS SUBMITTED DURING THE PROGRESS OF THE STUDY**

**Ethics number: NWU-00116-17-A1**

Kindly use the ethics reference number provided above in all future correspondence or documents submitted to the administrative assistant of the North-West University Health Research Ethics Committee (NWU-HREC).

**Study title: The best interest of the child victim in operational practices related to victim-offender mediation**

**Study leader: Prof EH Ryke**

**Student: LM Mokobane-21432538**

**Application type: Single study**

**Risk level: Medium (monitoring report required six-monthly)**

**Expiry date: 31 August 2019 (Monitoring report is due at the end of February and of August annually until completion)**

You are kindly informed that the documentation submitted to the NWU-HREC, as per the conditions set in your approval letter, was reviewed by the designated reviewers. The reviewers have indicated that the submitted documents are acceptable and that you as the researcher can proceed with implementing the aforementioned documentation in your approved project.

We wish you the best as you conduct your research. If you have any questions or need further assistance, please contact the Faculty of Health Sciences Ethics Office for Research, Training and Support at [Ethics-HRECApply@nwu.ac.za](mailto:Ethics-HRECApply@nwu.ac.za).

Yours sincerely

Prof Wayne Towers  
Chairperson: NWU-HREC

Prof Minnie Greeff  
Head of Health Sciences Ethics  
Office for Research, Training and  
Support

Current details: (25239522) G:\My Drive\9. Research and Postgraduate Education\9.1.5.3 Letters Templates\9.1.5.4.1\_In-Progress\_Approval\_Letter\_HREC.docm  
30 April 2018

File reference: 9.1.5.4.1

## ADDENDUM B: DATA COLLECTION INSTRUMENT

### WORKSHEET FOR THE CASE RECORDS ANALYSIS

Section A: Background Information of the child victim		
1	Age of the victim at time of offence.	Age
2	Sex of victim.	M/F
3	Nature of the offence	
4	Was offender known to victim?	Y/N
5	Relationship between victim and offender.	Offender is a (tick correct)  Father Mother Brother Sister Uncle Aunt Cousin Grandfather Grandmother Teacher School friend Boy/girl friend Customary law spouse Other (name) _____ Not indicated
6	Academic particulars: victim.	Grade
7	Race/cultural group of victims.	Black Indian White Coloured
8	Particulars of disabilities and impairments of the victim.	

9	Who requested the VOM?	Victim Offender NGO Parole Board/DCS Court Family member Other (State)
10	Did the victim initially agree to VOM?	Y/N
11	What was his/her motivation for agreeing to the VOM?	
12	How many times was the mediator in contact with the victim prior to the VOM?	1 2 3-4 5+ 0
13	The victim was told that s/he may be personally present with a guardian and/or may prepare a victim impact statement to be read by a guardian.	Y/N
Section B: Worksheet VOM process in Case Record		
13	How the victim was physically, emotionally and spiritually prepared for the VOM.	
14	How the child's sense of security was considered and maintained.	
15	State specific security issues raised by the child (e.g. not to be alone with the offender).	
16	How was the child's age and developmental level considered?	
17	How was any disability or impairment of the child considered?	
18	How were the wishes and needs of the child considered?	
19	State specific wishes or needs.	
20	Describe how the physical, moral, emotional and spiritual welfare of the child was considered and ensured.	

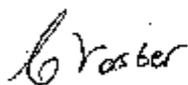
21	Describe the manner in which the mediator ensured that the VOM would not be emotionally detrimental to the victim.
22	Describe any possible instances of blame by any role player for his/her attitude towards the VOM if applicable.
23	How was the economical and scholastic welfare of the child considered?
24	How was the cultural and social background of the victim considered?
25	Describe specific cultural or social issues considered.
26	Describe any evidence of coercion or force exercised on the victim to attend.
27	Describe any evidence of coercion or force exercised on the offender to attend.
28	Describe the outcome of the VOMs.

## ADDENDUM C: LETTER FROM LANGUAGE EDITOR

### DECLARATION

I, C Vorster (ID: 710924 0034 084), Language editor and Translator and member of the South African Translators' Institute (SATI member number 1003172), herewith declare that I did the language editing of a dissertation, written by Ms LM Mokobane (student number 21432538) from the North-West University.

Title of the dissertation: The best interest of the child victim in operational practice related to victim-offender mediation



27 May 2019

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C Vorster

---

Date

*cvlanguage.editing@gmail.com*

# ADDENDUM D: GUIDELINES OF ACTA CRIMINOLOGICA: SOUTHERN AFRICAN JOURNAL OF CRIMINOLOGY. ACTA CRIMINOLOGICA



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## *Acta Criminologica: Southern African Journal of Criminology* GUIDELINES FOR AUTHORS

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### REFERENCING GUIDELINES:

Notes: References and citations should be prepared in accordance with the *Acta Criminologica* adapted APA format (see below examples of various reference listing types). The 'in-text' referencing format is followed by the Journal with full source referencing information listed under the heading: LIST OF REFERENCES (uppercase), which list to be placed at the end of your article. All sources in the List of References must be listed **alphabetically** by author(s)' surname(s), according to the following examples. Please note the indenting of the second and additional lines of a reference listing when longer than one line. Use of full stops in listing: Generally, each separate piece of information is standardly followed by a full stop. A comma only used if part of that one piece of information. Exception being the use of the colon [:] – and not a dash [-] or semi-colon [;] – in a split article or book title and after the place of publication before the name of the publisher.

### LIST OF REFERENCES [EXAMPLES]:

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