

**AN EXPLORATION OF THE ETHICAL FRAMEWORK OF EXPERT WITNESSES  
IN CHILD VICTIM COURT CASES.**

**By**

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**August 2020**

## **DECLARATION**

I, Tanya Marie Robinson, student number 33207690, declare that this thesis, entitled “An exploration of the ethical framework of expert witnesses in child victim court cases”, is my own work and that all the sources that I have used or quoted have been indicated and acknowledged using complete references.

I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any other higher education institution.

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**Date :** August 2020

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## ABSTRACT

Presidential Promise *“I will propose to cabinet that all crimes against women and children should attract harsher minimum sentences. We agree with the women of the country that the state should oppose bail and parole for perpetrators of rape and murder against women and children.”* - President Cyril Ramaphosa, SUNDAY TIMES, September 8 2019.

Violent acts are daily committed against children. Accordingly, it is imperative to focus on violence against children, but more specifically on the expert testimony of professionals in court cases relating to children affected by violence. Violence is widespread in South African society. South Africa has been described as having the highest prevalence of violence and violence-related injury in the world among countries where this is measured. Limited research is available on an ethical framework for expert witnesses in child victim court cases. The expert witness plays a critical role in child victim cases and court proceedings, and experts must, therefore, act professionally and meet the necessary ethical standard in delivering expert testimony. This study is approached from the angle of deontological theory, the aim of which is to ensure truthful evidence to the judge in court. Deontological ethics encapsulates moral obligation and underpins duty for duty's sake, virtue as its own reward and letting justice be done though the heavens fall. This explorative qualitative study contextualises violent crimes committed against children and the role and duties of expert witnesses to deliver professional and high-quality testimony. The study aims to explore the ethical framework of the professionals who stand as expert witnesses in child victim court cases. Bronfenbrenner's ecological systems theory is used in this study as it stresses the significance of exploring children in the framework of various settings. The system theory creates an understanding of the social phenomenon of violent crimes committed against children. Themes which emerged during the study are the importance of the qualifications and experience of expert witnesses; the impact that expert witness testimony has in case matters; the necessity for expert witnesses working with children to be trained in court case proceedings; the professional, ethical codes of expert witnesses; and the professional role of the expert witnesses. Participants have provided information concerning the three research questions of this study, namely how violent crimes against children manifest, what ethical complexities exist when working with children in violent crime cases and what aspects a possible ethical framework should include in guiding the expert witness in child victim court cases, for experts to engage in such a forensic process. This study added rich information about expert witness testimony in violent crime cases committed against

children and provided an ethical framework for experts working in the field. This study unpacked the importance of expert testimony in court cases concerning children affected by violent crimes. It provided meaning to the critical involvement of professionals standing as expert witnesses where violence have been committed against children.

UKUPHENYWA KWEMIGOMO YOKUZIPHATHA KOFAKAZI ABANGOSOLWAZI  
EMACALENI ABANTWANA ABAYIZISULU (N EXPLORATION OF THE ETHICAL  
FRAMEWORK OF EXPERT WITNESSES IN CHILD VICTIM COURT CASES)

Isithembiso sikaMongameli: *“I will propose to cabinet that all crimes against women and children should attract harsher minimum sentences. We agree with the women of the country that the state should oppose bail and parole for perpetrators of rape and murder against women and children.”* – nguMongameli Cyril Ramaphosa, icaphunwe kwiphephandaba le-SUNDAY TIMES, kuMandulo 8, 2019.

Izingane zihlukunyezwa ngodlame nsuku zonke. Ngokwengqubo eyejwayelekile, kusemqoka ukuthi kugxilwe kudlame olubhekiswe kwizingane, kanti ikakhulu kugxilwe phezu kobufakazi obunqala bosolwazi emacaleni asenkantolo amayelana nezingane ezihlukunyezwa wudlame. Udlame lugcwele izwe lonke eNingizimu Afrika. INingizimu Afrika kudala ichazwa njengezwe elinenani eliphezulu lezenzo zodlame kanye nezigameko zokulimala ngodlame emhlabeni, uma ilinganiswa namanye amazwe omhlaba. Kunocwaningo oluncane kwisakhiwo semigomo yokuziphatha kofakazi emacaleni enkantolo abandakanya izingane njengezisulu. Ngakho-ke, ufakazi onobungoti udlala indima esemqoka emacaleni ezingane eziyizisulu, kanti izingqubo zasenkantolo kanye nosolwazi, kufanele basebenze ngendlela eqeqeshekile futhi bahambisane namazinga afunekayo okuziphatha kahle uma bethula ubufakazi ngobungcweti. Lolu cwaningo ludingidwa ngokusebenzisa ithiyori i--deontological theory, kanti inhloso yayo le thiyori ukuqinisekisa ukuthi kwethulwa ubufakazi obuyiqiniso phambi kwejaji lasenkantolo. Imigomo yokuziphatha yethiyori ye-deontological ethics ifaka phakathi ukuzibophelela ngokwehlukana okuhle nokubi kanye kanti lokhu kuxuba ngokomsebenzi nomsebenzi; kufanele kufinyelelwe kwimpokophelo yethiyori, ubulungiswa kufanele benziwe , noma kumnyama kubomvu. Lolu cwaningo oluphenyayo olwencike kwingxoxo lwehlukana izehlakalo ezahlukene zodlame olubhekiswe kwizingane kanye nendima kanyennomsebenzi wofakazi abangosolwazi uma bethula ubufakazi obuqeqeshekile kanye nobufakazi bezinga eliphezulu. Ucwano luhlose ukuphenya uhlaka lwemigomo yokuziphatha lwabasebenzi abangosolwazi abavela njengofakazi abangosolwazi emacaleni ezisulu eziyizingane. Ithiyori yohlelo lwe-ekholoji lukaBronfenbrenner isetshenziswe kulolu cwaningo njengoba yona igcizelela ukubaluleka kokuphenya izingane ngaphansi kwezizinda ezahlukene zesakhiwo. Ithiyori yezinhlelo yakha ulwazi olumayelana nodaba lwabantu lwamacala anezenzo ezinodlame aqondiswe

kwizingane. Izindikimba ezivele ngesikhathi socwaningo zona zigcizelela ukubaluleka kweziqo kanye nolwazi lofakazi abangosolwazi; umthelela wobufakazi bofakazi emacaleni; isidingo sofakazi abangongoti abasebenza ngezingane ukuba baqeqeshwe ngezingqubo ezilandelayo ezinkantolo zamacala; imigomo yokuziphatha yosolwazi abangofakazi; kanye nendima esezingeni eliphezulu yofakazi abayizingcweti. Abadlalindima bahlinzeke ngolwazi olumayelana nemibuzo emithatho yalolu cwaningo, ngelandelayo; ngabe amacala anodlame oluqondiswe kwizingane aqala kanjani? Ngabe yiziphi izixakaxaka ezimayelana nokuziphatha ezikhona uma usebenza nezingane ezibandakanyeka kumacala anodlame, kanti ngabe yiziphi izinhloko zokuziphatha ezingavela okufanele zifakwe ekuholeni ufakazi ongusolwazi kumacala anodlame aqondiswe kwizingane ukuze osolwazi bakwazi ukuqhuba uhlelo olunjalo lwesiforensiki. Lolu cwaningo lwengeza ulwazi olunothile olumayelana nokwethulwa kobufakazi wusolwazi onobungoti kumacala anodlame aqondiswe kwizingane kanti futhi lolu cwaningo lunikeza uhloko lwemigomo yokuziphatha yosolwazi abangofakazi abasebenza kulowo mkhakha. Ucwaningo luveza ukubaluleka kobufakazi obuqotho emacaleni ezinkantolo amayelana nezingane ezithinteka emacaleni anodlame kanti futhi ucwaningo lunikeza incazelo yokubandakanyeka kabanzi kwabasebenzi abavela njengofakazi abaqotho lapho kunesenzo sodlame olwenziwe phezu kwezingane.

## UPHANDO LWESAKHELO SOKUZIPHATHA KWAMANGQINA AZIINGCALI KUMATYALA ABANDAKANYA AMAXHOBANGABANTWANA

Nasi isithembiso sikaMongameli: *“Ndiza kuthethana nendlu yowiso mthetho ndiphakamise ukuba onke amatyala abandakanya abafazi nabantwana anikwe izigwebo eziqatha. Siyavumelana nabafazi belizwe lethu ngokuthi umbuso mawungayivumeli ibheyile okanye ukuxolelwa kwesigwebo kubantu ababanjelwe ukudlwengula nokubulala abafazi nabantwana.”* - Mongameli Cyril Ramaphosa, SUNDAY TIMES, 8 KweyoMsintsi, 2019.

Mihla le kubakho izenzo ezibuhlungu kakhulu ezenziwa kubantwana. Ngoko ke, kunyanzelekile ukugxila kubundlobongela obenziwa kubantwana, ngakumbi kubungqina beengcali obunikwa ezinkundleni xa kuxoxwa amatyala amalunga nabantwana abachatshazelwe bubundlobongela. Ubundlobongela buligqibile ilizwe loMzantsi Afrika. UMzantsi Afrika uchazwa njengelona lizwe liphambili kumazwe ehlabathi ekuphandwe kuwo, xa kuthethwa ngobundlobongela kunye nokwenzakala okubangelwe bubundlobongela. Lunqongophele uphando olufumanekayo ngesakhelo sokuziphatha kwamangqina aziingcali kumatyala amaxhobangabantwana. Ingqina eliyingcali lidlala indima ebaluleke kakhulu kumatyala amaxhobangabantwana neenkqubo zeenkundla zamatyala, ngoko ke iingcali kufuneka ziziphathe ngokusesikweni, zihambe ngokwemiqathango yokuziphatha efanelekileyo xa zinika ubungqina. Esi sifundo sivelela kwinkalo yophando ngobume nokulindeleke emsebenzini, ngcingane leyo yaziwa ngokuba yideontological theory ngokwesiNgesi, ngenjongo yokuqinisekisa ukuba umgwebi wetyala unikwa ubungqina obunyanisekileyo enkundleni. Indlela yokuziphatha yobume nokulindeleke emsebenzini ibandakanya isimilo esisulungekileyo kwaye ibethelela ukuzinikezela emsebenzini; ukwenza okulungileyo njengesivuno; nokuqinisekisa ukuba kwenziwa ubulungisa nokuba kubi kangakanani na. Esi sifundo siyintshayelelo nesisekelwe kuzathuzo siqwalasela ulwaphulo mthetho olububundlobongela kubantwana nendima kunye nomsebenzi wamangqina aziingcali ekunikeni ubungqina obufanelekileyo nobukumgangatho ophezulu. Isifundo sijonge ukuphonononga isakhelo sokuziphatha kwabasebenzi abaphakanyiswa njengeengcali kumatyala amaxhobangabantwana. Kusetyenziswe ingcingane kaBronfenbrenner yolwalamano kwezentlalo njengesiqhamo sesimilo esisukela ebuntwaneni, apho kugxininiswa ekubalulekeni kokuqwalasela abantwana kwiimeko ngeemeko. Ingcingane yeenkqubo yenza ukuba kuqondakale imeko yezentlalo ekhokelela kulwaphulo mthetho olububundlobongela

kubantwana. Imixholo evele ngexesha kuqhutywa olu phando yeyokubaluleka kweziqinisekiso zemfundo kunye namava amangqina aziingcali; ifuthe lobungqina obunikwa yingcali etyaleni; imfuneko yokuba amangqina aziingcali asebenza nabantwana aqeqeshelwe ukuzazi iinkqubo zeenkundla zamatyala; ingqokelela yemigaqo nemimiselo yokuziphatha ngokusesikweni kwamangqina aziingcali; kunye nendima esesikweni yamangqina aziingcali. Abathathi nxaxheba banike ulwazi malunga nemibuzo emithathu yolu phando, mibuzo leyo ithi ziluhlobo luni izenzo zolwaphulo mthetho olububundlobongela kubantwana, bobuphi ubunzima obufumanekayo xa kusetyenzwa nabantwana kumatyala olwaphulo mthetho olububundlobongela, kwaye kungafuneka sithathele ngqalelo ni isakhelo sokuziphatha esinokuqulunqwa kubantwana ekukhokeleni amangqina aziingcali xa enika ubungqina kumatyala amaxhoba angabantwana, ukuze akwazi ukumelana nenkqubo yophando. Esi sifundo songeza ulwazi olutyebileyo malunga nobungqina bamangqina aziingcali kumatyala obundlobongela kubantwana kwaye sinika isakhelo sokuziphatha kwiingcali ezisebenza kweli candelo. Kwakhona, esi sifundo sidandalazisa ukubaluleka kobungqina beengcali ematyaleni amalunga nabantwana abachatshazelwe bubundlobongela kwaye sinika intsingiselo yokubandakanywa kwabasebenzi beli candelo njengamangqina aziingcali xa kukho ulwaphulo mthetho olububundlobongela kubantwana.



## **KEY TERMS**

Bronfenbrenner's ecological system; children; child court case proceedings; deontic theory; ecological systems framework; ethics; expert witness testimony; expert witness; violent crimes; victimisation of children.

## **EDITOR'S DECLARATION**

I, Caryn Bronwyn O'Mahony, hereby declare that I have proofread and edited the PhD thesis entitled "An exploration of the ethical framework of expert witnesses in child victim court cases" by Tanya Marie Robinson.

My qualifications are as follows: B(Hons) English from the University of Pretoria

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## DEDICATION

*“There can be no keener revelation of a society’s soul than the way in which it treats its children.”– Nelson Mandela, former President of South Africa. (Children’s Fund Launch, 1995, p.1)*

The crimes committed against the most vulnerable segment of the population is a reality that society faces daily. An ancient African proverb of the Kikuyu people, a tribal group in Kenya, says, “When elephants fight, it is the grass that suffers.” In its purest form, it means that when the mighty fight, it is the vulnerable who are hurt (Walters & Bradbury, 2012, p. 25)<sup>1</sup>. Children represent society’s weakest members, which makes it morally corrupt and ethically unacceptable not to address the violent crimes committed against children and not to fulfil the duty bestowed on expert witnesses in court cases to ensure that justice is served.

Expert witness testimony is central to the determination of many disputes involving children and the protection of children and their rights. The role of the expert witness is to assist the court, with opinion evidence, under circumstances where the expert is better placed than the court would be to express such opinion, to draw certain conclusions and to explain the reasons which underpin the views expressed. An expert witness in a matter involving children should not be an advocate for his or her client, but should rather be independent and should have the sole purpose of assisting the court in determining the issues in an objective, fair manner, while always safeguarding and considering as paramount the best interests of children, above all other considerations (Bollo, 2019).

To each child that has been a victim of violent crimes: **I trust that this study will guide professionals to commit to their duties to help you.**

To the children of Africa who have been denied their right to a fair childhood: **May you find peace.**

To each parent who has lost a child to violent crime: **Believe that I will do my utmost every day to commit to improving services to children and to show society the wrongs committed against children.**

This thesis is dedicated to our vulnerable society and to speak for those who are often not heard.

---

<sup>1</sup> The *Manual of Publication of the American Psychological Association 7<sup>th</sup> edition* is used for all references throughout this work.



Violence and Injury Prevention, WHO.

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I am eternally grateful to my family, who support me in all my endeavours. Thank you for your emotional support, your encouragement and for truly believing in me. A special thanks to my mother, father and brother. Thank you to my mother for showing me the strength of fighting for those who can not fight for themselves. Due to her own childhood experience, there is no person better to have taught me how to be genuinely committed to facilitating change and standing up for child protection and safeguarding children.

To my children, Blainson, Tauwri and Quinykki: I love you dearly and want to protect you from the dangers of the world and give each of you the grit to become an empowered, brave woman and man. I trust that I can teach you to love learning as much as I do. Live with passion and change the world with every step you take. Love academia as your best friend! When I think of the many hours you have spent in my study, sleeping under the table reading books so that mom may work, I cherish these academic times we have shared. Even though you are little now, you show an understanding and a rare work ethic, which is the only way to respond to and solve severe social problems, inspiring me to continue contributing. You are all three a true blessing!

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Thank you to my colleagues and friends for your continued support. I have worked with many incredible professionals standing for the cause of child protection. I understand and admire your passion and your commitment, and your work does not go unnoticed in society at large.

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To all my colleagues not personally named, thank you for your contribution to this study. Thank you for your input during the past years to support and provide insight into violent crime cases affecting children and expert witness testimony in court case proceedings.

## **ABBREVIATIONS AND ACRONYMS**

BEST	Bronfenbrenner's Ecological Systems Theory
CVCC	Child Victim Court Cases
DNA	Deoxyribonucleic acid
DT	Deontic Theory
EW	Expert Witness
NATSCEV	National Survey of Children's Exposure to Violence
NGO	Non-Governmental Organisation
NPA	National Prosecuting Authority
SAPS	South African Police Services
TBC	Teddy Bear Clinic
UNICEF	United Nations International Children's Emergency Fund
WHO	World Health Organisation

## CONTENTS

<b>Chapter 1</b>	<b>Introduction and summary</b>	<b>1</b>
1.1	Introduction	1
1.2	Background and context	1
1.3	Deontological ethical lens of the study	4
1.4.	Statement of the research problem	4
1.5.	Rationale and significance of the study	6
1.6.	Aim and objectives of this study	8
1.7.	Research questions	9
1.8.	Assumptions	9
1.9	Clarification of concepts	10
1.9.1	Categories of violent crime	11
1.9.2	Child	12
1.9.3	Ethics	12
1.9.4	Ethics related to expert witness testimony	13
1.9.5	Expert testimony	13
1.9.6	Expert witnesses	14
1.9.7	Violence against Children	14
1.10	Summary	15
<b>Chapter 2</b>	<b>The extent and impact of violent crimes committed against children</b>	<b>16</b>
2.1	Introduction	16
2.2	Unfolding violent crimes committed against children	16
2.3	A historical context of the culture of violence in South Africa	19
2.4	Traditional beliefs and values rooted in South African cultures	21
2.5	Poverty increases the risk of victimisation of children	25
2.6	Childhood violence in the family structure	28
2.7	Substance abuse and violent crimes	29
2.8	Patterns of violence during children's life-course	30



2.9	Violence affects children’s development .....	33
2.10	The burden of the victimisation of children.....	35
2.11	Violence against children and the cost to society.....	36
2.12	Summary.....	37
<b>Chapter 3</b>	<b>An ecological framework relating to the complexity of children experiencing violence.....</b>	<b>38</b>
3.1	Introduction .....	38
3.2	Systems theory as the interdisciplinary study of systems .....	38
3.3	Bronfenbrenner’s Ecological Systems Theory .....	39
3.4	Levels of Bronfenbrenner’s ecological system .....	40
3.5	Violence against children in the home environment.....	45
3.6	Violence against children in the school setting .....	45
3.7	Violence against children in the community .....	46
3.8	The expert witness interrelates in the systems addressing violent crimes committed against children in court proceedings .....	47
3.9	Ethics of expert witnesses applying deontology.....	48
3.10	Summary.....	51
<b>Chapter 4</b>	<b>Expert witnesses and expert testimony in child victim court cases .....</b>	<b>53</b>
4.1	Introduction .....	53
4.2	The legal system as an essential response to child victims’ cases .....	53
4.3	The distinction between expert and non-expert evidence .....	55
4.4	Roles and duties of the expert witness .....	57
4.5	Expert witnesses testifying in court.....	59
4.6	The process of expert witness testimony and examination in the courtroom ....	61
4.7	The significance of expert witnesses in court case proceedings.....	64
4.8	Guiding principles for expert witnesses in providing testimony in court .....	65
4.9	Summary.....	67
<b>Chapter 5</b>	<b>Methodology.....</b>	<b>67</b>

5.1	Introduction .....	67
5.2	Research design .....	67
5.3	Population group.....	69
5.4	Sampling method .....	69
5.4.1	Sample Criteria.....	70
5.4.2	Gatekeepers.....	70
5.4.3	Sampling technique .....	70
5.5	Data collection .....	71
5.6	Pilot study.. .....	73
5.7	Data analysis and verification .....	73
5.7.1	Data analysis process .....	74
5.7.2	Data verification.....	74
5.8	Ethical considerations .....	77
5.8.1	Actions and competence of researchers .....	78
5.8.2	Avoidance of harm to the participants .....	79
5.8.3	Debriefing of participants.....	80
5.8.4	Voluntary participation and informed written consent from the participant .....	81
5.8.5	Deception of participants.....	81
5.8.6	Compensation .....	82
5.8.7	Violation of the participants' privacy, anonymity and confidentiality .....	82
5.9	Publication of the findings .....	83
5.10	Summary.....	84
<b>Chapter 6 "The professional experience of expert witness testimony":</b>		
<b>Presentation of findings .....</b>		<b>85</b>
6.1	Introduction .....	85
6.2	Introducing the participants.....	85
6.3	Theme 1: The importance of the qualifications and experience of expert witnesses.....	86
6.4	Theme 2: The impact that expert witness testimony has in case matters .....	89

6.5	Theme 3: Training of expert witnesses working with children in court case proceedings .....	91
6.6	Theme 4: Professional, ethical framework of the expert witnesses.....	94
6.7	Theme 5: The professional role of the expert witnesses.....	97
6.8	Summary.....	100
<b>Chapter 7 Interpretation of the findings .....</b>		<b>102</b>
7.1	Introduction .....	102
7.2	The involvement of professionals standing as expert witnesses where violent crimes have been committed against children .....	102
7.2.1	The importance of the expert witness being qualified and experienced.....	103
7.2.2	The impact that expert witness testimony has in case matters.....	104
7.2.3	Expert witness training working with children in court case proceedings where violent crimes have occurred .....	107
7.3	Professional ethical codes and defining the expert's role in delivering expert testimony.. .....	109
7.3.1	The deontic moral duty of the expert witness .....	110
7.3.2	The professional role of expert witnesses .....	113
7.4	An ethical framework for expert witnesses considering their ethical responsibility in violent crimes cases committed against children .....	115
7.5	Summary.....	117
<b>Chapter 8 Summary, conclusion and recommendations.....</b>		<b>118</b>
8.1	Introduction .....	118
8.2	Summary.....	118
8.2.1	Chapter 1: Introduction and summary .....	118
8.2.2	Chapter 2: The extent and impact of violent crimes committed against children.....	118
8.2.3	Chapter 3: An ecological framework relating to the complexity of children experiencing violence.....	119
8.2.4	Chapter 4: Expert witness testimony in child victim court cases.....	119
8.2.5	Chapter 5: Methodology .....	119
8.2.6	Chapter 6: 'The professional experience of expert witness testimony': Presentation of findings.....	120

8.2.7 Chapter 7: Interpretation and findings .....	120
8.3 Recommendations .....	121
8.3.1 The qualifications and experiences of expert witnesses.....	121
8.3.2 The impact expert witnesses have in case matters .....	121
8.3.3 The training of expert witnesses.....	121
8.3.4 A figure of the process of expert witness engagement and an ethical framework that infuses it. ....	122
8.4 Summary.....	127
8.5 Conclusion .....	128
List of References .....	129
Appendix A: Ethical Approval received from UNISA CLAW ethics reviews committee.....	143
Appendix B: Approval received from The Teddy Bear Clinic to conduct research at the organisation.....	145
Appendix C: Approval received from South African Police Services for the request to conduct research at the organisation .....	146
Appendix D: Approval received from National Prosecuting Authority for the request to conduct research at the organisation .....	149
Appendix E: Participation Information Sheet .....	152
Appendix F: Participant Consent Form.....	155
Appendix G: Interview Guide.....	156
Appendix H: Profile of research participants.....	159
Appendix I: Confidentiality agreement with the research assistant.....	163
Appendix J: Confidentiality agreement with the co-coder.....	165
Appendix K: Examples of recent crimes committed against children in a South African context .....	167
Appendix L: HPCSA generic rule for medical practitioners .....	181
Appendix M: Ethical code SACSSP .....	203

## FIGURES

Figure 3.1: Bronfenbrenner's Ecological Systems Theory. Adapted from Psychology Notes HQ, Retrieved January 10, 2018 from <a href="https://www.psychologynoteshq.com/bronfenbrenner-ecological-theory/">https://www.psychologynoteshq.com/bronfenbrenner-ecological-theory/</a> .....	41
---	----

Figure 8.1: A structure of the process and ethical aspects for expert witnesses in child victim court cases. .... 123

**TABLES**

Table 2.1: The impact of violence on children during their development. .... 33

## **Chapter 1 Introduction and summary**

### **1.1 Introduction**

The harmful consequences of violence against children must be understood, as violence against children is damaging for victimised children and society. Violence committed against children creates a climate in which social injustice is deemed acceptable. A pilot study was done to ensure the need for this study. Accordingly, it is imperative to focus on violence against children, but more specifically on the expert testimony of professionals in court cases relating to children affected by violence. There are many challenges with ethics where expert witnesses are required in court cases involving child victims of crime, and the deontological ethical lens provides clarity on professional ethics. This chapter will focus on the deontological ethical lens that was selected as appropriate for this study. The background will be provided to contextualise the importance of creating an understanding of the violence committed against children and the role of expert witness testimony in court processes about children. The dilemma of violence committed against children and the significance of expert witness testimony will be outlined to create an understanding of the researched topic. There is a link between violent crimes committed against children and the need for expert witnesses in child victim cases. Experts providing credible testimony to the court allows for cases to be prosecuted and allows for the safeguarding of children. It will highlight the rationale and significance of this study. The aim and objectives of this study will also be provided, and essential terms will be clarified to explain their meaning in the discussion.

### **1.2 Background and context**

Ward, Ganz, Casey, Zheng, and Fang (2017, p.7) explains that children for part of the most criminally victimised segment of the population. A substantial number of children face many, severe poly-victimisations through a single year (Ward et al., 2017, p. 7). Children arrive before the court as victims of violent crimes. These children require experts who can, with the necessary skills and essential ethical demeanour, present information and views about their case. Children have the highest rates of traditional crime victimisation committed against them and are vulnerable to falling victim to violent crimes (Vorster & Magne, 2018, p. 2). Violent crimes linked to children comprise of victimisation such as murder and sexual assault. Further offences committed against children include non-family abduction, assault, robbery and theft.

Children are often unprotected from child maltreatment, neglectful behaviour, brutal and cruel bodily abuse, sexual harm, injury, exploitation and sexual abuse. Family abduction, exposure to domestic violence and school assault specific to childhood is a real and current problem which many children face (Finkelhor, 2008, p. 10). Hsiao, Fry, Ward, Ganz, Casey, Zheng and Fang. (2018, p. 24) found that, when compared to children worldwide, South African children suffer remarkably high levels of violence, brutality and cruelty. The enormity of violence impacts children daily. Charles (2018, p. 1) reports that more than 2 600 children were murdered in South Africa since 2016. Five percent of all murders in society are the murders of children. Rape statistics of children remain problematic in the community. Children are victims in 41% of the 124 526 rapes reported, according to the latest available annual statistics. The non-governmental organisation, Save the Children (2009, p.6), highlights the shocking reality of crimes committed against children and describes these crimes as disturbing. Society is aware of the rates of abuse. It appears that the taking of appropriate action is, however, still a challenge. Children are often murdered by strangers, but also by people familiar to the children. It is imperative to understand that violence against children cannot only be controlled from the perspective of criminal justice. Additional looking-glass perspectives are needed to facilitate change, not only from a criminal justice perspective, but also from a social justice perspective. Crime against children is a multifaceted problem and requires a response from a selection of multidisciplinary role players (Vorster & Magnes, 2018, p. 2). Children often disclose abuse months after the abuse has occurred and sometimes do not disclose it at all. This is because of anxiety or because children feel threatened by others not to reveal the abuse. It is often the case that medical evidence is missing, as the physical injuries of the children may have healed. The emotional suffering remains and often, the family as a systemic unit requires assistance and support because of the inflicted trauma (Charles, 2018, p. 1). A multidisciplinary approach must be implemented to address crimes committed against children.

Hsiao et al. (2018, p. 54) present nation-wide data representations of the frequency of violent crimes involving vulnerable children in a South African context. The representations of information indicate that one in five children (19.8%) are sexually abused. The global average shows sexual abuse of 18% for girls and 8% for boys. One in three children (34.4%) has experienced physical violence. One in six (16.1%) children reported emotional abuse, compared with the global average of 36%.

One in eight (12.2%) children reported being neglected compared to the worldwide average of 16.8%. Alarming statistics show that one in six (16.9%) children say that they have witnessed violence. It is concerning that children are often victims of violent crimes. This study applies a holistic view to violent crimes committed against children and is all-inclusive and not limited to certain violent crimes. During this study, the phenomenon of violent crimes committed against children is viewed through a universal approach.

According to Finkelhor (2008, p. 12) despite enormous publicity about crime and youth, children's vulnerability to crime is often not adequately addressed in court proceedings. Testimony by experts is ethically challenging and complex. It has been found repeatedly that expert witnesses do not have a well-developed understanding of their ethical duty related to the giving of evidence in court (Candilis, Weinstock & Martinez, 2007, p. 3). Locally and abroad, it has often been found that the professionals involved in cases where violent crimes have been committed against children are police officers, mental health specialists, medical practitioners and professionals from other social science fields (Lake & Jamieson, 2016, p. 1171). An expert can be any person with knowledge, skill or experience of an area or discipline beyond that expected of a layperson. Expert witnesses are often exceptionally knowledgeable in their professional field, well-educated and qualified, superior in their field and able to communicate effectively. Expert witnesses called to court often feel nervous, underprepared, overwhelmed and concerned about their ethical sense of duty. Expert witnesses are not always familiar with and do not always understand their ethical framework, as experts may not have received adequate training and may not have experience in preparing for and in appearing in court. Experts who are ill-equipped for testifying in court may, inadvertently, seem to conduct themselves in an unethical manner (Sapir, 2007, p. 16). Any expert witness appearing in court must have a basic understanding of the legal process that will unfold in court. It will assist if expert witnesses are prepared for what the court expects of them and are prepared for cross-examination. Proper preparation of experts serves the best interests of children victims. Expert witnesses must act most ethically, be adequately prepared for appearance in court and have enough knowledge of the court process so as not to harm the case in any way. A definition of an expert witness is provided in section 1.9.

Expert witnesses play a significant part in legal proceedings when violent crimes have been committed against children. Expert witness testimony can benefit a case if



it is well delivered, or it can break a case (Foxcroft, 2011, p. 18). In court cases, learned professionals are discredited and their expert testimony is questioned and can be dismissed. Counsel attempts to discredit expert witnesses and make them appear unethical and untrustworthy (Gould & Martindale, 2009, p. 205). Expert testimony is crucial for making decisions in court cases. The Court ultimately comes to a decision based on an evaluation of the expert testimony delivered during the hearing, often by more than one expert with differing views. In cases concerning children affected by violent crimes, the lack of credible expert evidence may result in the perpetrator not being prosecuted. It ultimately will lead to further victimisation of children. Expert witnesses should wholly understand and appreciate their ethical responsibility. Expert witness testimony materially affects the vulnerable population group - the criminally victimised children.

### **1.3 Deontological ethical lens of the study**

The deontological ethical lens through which this study will be viewed forms part of the normative approach. This theory will be unpacked in detail in section 3.9. As the study matter is concerned with ethical responsibilities, deontological ethics is suited to the topic. In modern moral philosophy, deontology is explained as a normative theory. It gives an explanation about choices which are morally essential, prohibited or sanctioned. Deontology falls within the realm of moral methods that steer and consider options of what an individual ought to do (Alexander & Moore, 2016, p. 2). The normative ethical stance that guides the integrity of an action based on regulations is a proper stance to begin exploring the ethical framework of expert witnesses in child victim court cases. The deontic theory allows for establishing the ethical framework of the expert witness by considering what is prohibited and what is permitted as an expert witness. See section 3.9.

Hsiao et al. (2018, p. 24) point out that children are one of the largest vulnerable populations who fall victim to criminalised behaviour, and that there is thus a need for ethical professional persons to take on case matters to deal effectively and ethically with the child victim. This chapter will contextualise the importance of this research. It will accordingly provide information on criminally victimised children and the responsibility of the expert witness in court proceedings and moral dilemmas in expert testimony.

### **1.4. Statement of the research problem**

Violence against children is a child rights issue and a sizeable public health concern (Levci, 2018, p. 1). Physical injuries for children and the experience of violence have long-lasting consequences for children's psychological and social development. These experiences furthermore have an impact on their overall behaviour as well as their overall health outcomes. The results of crimes committed against children can affect them well into adulthood and have an overall negative impact on the victim (Vorster & Magnes, 2018, p. 2). When cases of violence against children are heard in court, the experts in these cases must adhere to a high level of moral stature, to ensure that the child's voice is represented, and the child's rights are protected. This is, however, not always the case, as professionals do not always live up to their ethical duty. All violent crimes committed against children should be considered equally important, and therefore this study will include all violent crimes affecting children.

It is essential to explore and understand the ethical duty of expert witnesses participating in cases where violent crimes have been committed against children in the South African context. The ethical responsibility and the integrity of expert witnesses in cases where children are involved must be well considered. There are various pitfalls and problems relating to expert witness testimony. These problems include complaints regarding a lack of impartiality and openness, that the process is excessively adversarial, that the services are disproportionately costly and that use of expert witnesses is often nothing more than a wasteful exercise (Butler-Sloss & Hall, 2002, p. 207).

The importance and relevance of expert witness testimony are often questioned. It is necessary to clarify the role and significance of expert witnesses in the legal system. Using an expert witness is a costly process, and it is imperative that expert witness testimonies are credible and that they make the impact that they are intended to make in court. The problems described above, among others, make it essential to study the process of expert witness testimony in cases where children are affected, to prevent expert witness testimony from becoming a derisory matter.

According to Sanders (2007, p. 2), the ethics of expert witnesses are a topic where it appears that reliance is placed on ethical standards, and acknowledgement of the current situation and status quos are accepted and trusted. However, there is a lack of agreed and established ethical standards. Therefore, a lack of unanimity remains among professionals about appropriate steps that should be taken to encourage and ensure ethical behaviour by expert witnesses. The emotional and

financial costs of disreputable and unethical expert witnessing are substantial. This burden on society is both economic and emotive as the work is intricate and challenging (Foxcroft, 2011, p. 18). The problems with expert witness ethics and unethical expert witness behaviour are challenging and need attention. Expert witness testimony comes with many difficulties, and there is a need for the controversial features of expert witnesses and expert testimony to be considered in research (Campher, 2014, p. 3).

Locally and internationally, the availability of credible expert witnesses with high ethical standards is becoming increasingly problematic in the legal system (Allan & Meintjes-Van der Walt, 2006, p. 14; Candilis et al., 2007, p. 3; Campher, 2014, p. 3; Schryer, Afros, Mian, Spafford, Lingard, 2009, p. 216,). Accordingly, research can add significant value to creating a framework of high ethical parameters for experts when they are involved in cases dealing with violent crimes committed against children. Downes (2006, p. 6) explains challenges with expert evidence have tended to begin by narrating paragraphs and sections from judgments decrying the extent to which adversarial bias is faced. Expert witnesses are called paid agents, suggesting that expert witnesses are “hired guns”. This mainly occurs when counsel is intent on proving a particular case and must attempt anything to discredit the expert (Sanders, 2007, p. 34).

Expert witnesses are mostly not hired guns, but some experts deliver unethical services and will be paid agents, despite being aware of their ethical duties. Woolf (1995, p. 7) explains that there are expert witnesses whose primary expertise is to carefully create and craft reports which conceal anything that might be to the disadvantage of their clients. This is unethical behaviour. It reveals the tragedy of what expert witnesses have, in some instances, become in the industry. It simultaneously highlights the need for the development of an ethical framework for expert witness testimony, to ensure that expert witnesses understand their responsibility and to provide testimony that is accompanied by moral expert insight.

### **1.5. Rationale and significance of the study**

Modern-day society has seen the progress of science in most disciplines and fields. The advances in science make it possible to describe and clarify complex concepts and principles. The availability of forensic evidence in criminal law litigation has assisted the courts in formulating a good understanding of matters and come to

conclusions on complex issues. Similarly, in civil law, a complicated case cannot be executed without a clinical judgment involving expert evidence (Campher, 2014, p. 14).

The opinion and views of an expert are essential in many fields (Lerm, 2015, p. 1). Expert opinion is necessary for matters that are heard before the court. Presiding judges, who have limited knowledge and experience, would find themselves in uncharted waters and will not be able to decide on those matters without the experts' input and guidance. Expert witnesses must make valuable contributions. Expert witnesses must possess scientific knowledge and adequate experience in their disciplines and be able to give their opinions in a logical, precise and defensible manner (Lerm, 2015, p. 1).

Expert insight, experience and knowledge are especially valuable in cases concerning children. Experts need to continuously update their knowledge, develop their understanding, study and be relevant with their knowledge of matters. Even very experienced experts may base their views on outdated methods and research, and this can be harmful to cases (Campher, 2014, p. 14).

An ethical framework for expert witnesses in court proceedings concerning children affected by violent crimes is indispensable (Foxcroft, 2011, p. 28). Guidance needs to direct expert witnesses in cases. Research can contribute to understanding the ethical framework of expert witnesses in cases concerning violent crimes committed against children (Hayes & Craddock, 1992, p. 26).

Although the literature is available about expert witness testimony (Schryer et al., 2009, p. 87), the issues and concerns about the ethics guiding the expert witness remain blurred (Candilis et al., 2007, p. 18). The court can reject expert witness testimony if it is found to be inappropriate or not credible. It seems that in South African courts, as in courts all over the world, the ethics guiding expert testimony is a controversial issue. This emphasises the need to develop ethical guidelines for experts in cases where violent crimes have been committed against children. A problem-solution approach is needed to understand the various problems and dilemmas the expert witness may face and find an ethical framework to guide experts.

Inadequate research is available on ethical frameworks for expert witnesses in court cases involving children victims. Information and knowledge on this subject matter can assist when considering the ethical responsibility of expert witnesses. Research on this topic gives deliverance to the standards, ethics, and credibility when experts deliver testimony. Research on this subject matter ought to generate ethical

guidelines concerning the ethical responsibility of expert witnesses in child victim court cases.

Since time immemorial, judges have criticised the lack of independence and objectivity and neutrality of expert evidence (Lerm, 2015, p. 2). Some expert witnesses may be naturally biased to serve those who employ and adequately remunerate them. This will result in the expert witness being viewed as a paid agent. Cautionary remarks about expert witnesses resonate in courts around the globe, including South Africa. There are many questions regarding expert witnesses and expert testimony which remain unanswered (Perling, 1999, p. 2). Credible expert evidence is of extreme importance in child victim court cases, as child victims often depend on the expert testimony for the credibility of their case. It is vital to acknowledge that the evidence of expert witnesses plays a substantial role in legal matters. Inaccurate testimony can be detrimental to children and children's cases (Lerm, 2015, p. 87). For the children's sake, it is imperative to have a framework for expert witnesses in a court case. This is in the interest of the broader community and society, as children form an integral and important part of communities (Sanders, 2007, p. 12).

This study will contribute to the academic body of knowledge by generating an ethical framework which can be used to explain the ethical responsibility of expert witnesses in cases concerning children who are victims of violent crimes. Expert witnesses play a crucial role in child victim cases and court proceedings. Expert witnesses must act in a professional, objective and neutral manner and meet the required ethical standard in delivering expert testimony. In many cases, expert witness testimony is the only voice of reason in protecting victimised children. The ethical responsibility of expert witnesses in these cases is of great value for the purpose of serving victimised children (Lerm, 2015, p. 3; Candilis et al., 2007, p. 18).

### **1.6. Aim and objectives of this study**

This study aims to explore the ethical framework of professional persons who stand as expert witnesses in child victim court cases. This research provides the ethical framework for expert witnesses involved in cases where crimes have been committed against children. Accordingly, the ethical dilemma of the professional person in child victim court cases is addressed.

The specific objectives of this study include the following:

- Outline the extent, nature and manifestations of violent crimes committed against children at a global level and within a South African context, to create an appreciation of the heinousness of violence against children.
- Explore the essential elements of the ethical challenges that expert witnesses are likely to encounter in child victim court cases.
- Establish an ethical framework for expert witnesses, outlining their ethical responsibility in dealing with cases where violent crimes have been committed against children.

### **1.7. Research questions**

This research answered the following set out questions:

- How do violent crimes against children manifest, resulting in a need for experts to engage in a forensic process?
- What are the ethical complexities when providing expert testimony for children in violent crime cases?
- What aspects should a possible ethical framework include to guide the expert witness in child victim court cases?

The proposed research questions have guided the study to ensure that answers have been formulated to explain the ethical framework of the expert witness in child victim court cases. The assumptions made in this research are set out below.

### **1.8. Assumptions**

The research is born from the assumption that the ethical framework of expert witnesses in violent crime cases committed against children remains unclear. A heavy burden lies on expert witnesses to be principled in their testimony, and there is, thus, a need for the expert witness to be guided by an ethical framework that can assist them in conducting themselves ethically. Many expert witnesses belong to professional bodies with which they may or, in many cases, are obliged to register in their field of specialisation. There are no specific guidelines for them on expert witness testimony.

Expert testimony certainly makes a considerable impact and adds value to the court's knowledge and understanding of evidence. It contributes to cases where matters are complex and comes with complicated elements. Judges and magistrates are, at times, not able to make determinations without the insight and input of expert witnesses. Instead of expert witnesses attending court to assist the court, they come under the power and influence of legal practitioners. Expert witnesses' views are

swayed, and accordingly, they wrongfully support the views of the counsel or client who is calling them as an expert witness (Lerm, 2015, p. 1).

Cases involving contingency fee agreements may present instances of enticement for counsel to call expert witnesses as “hired guns”, to succeed at all costs. This is an example where an ethical duty will be in conflict with a craving for gain. These challenges and problems add to the expert witnesses’ ethical dilemma — a good point of departure to consider adequate standards of experts’ field of study. Expert ethical behaviour ought to be determined by the requirements and criteria of the specific discipline and area of practice of the expert witness in question. Professional registration bodies and organisations have endorsed codes of conduct for their registered members (Sanders, 2007, p. 38; Moenssens, 2016, p. 4).

The boards of registration guide professionals such as medical practitioners, psychologists, social workers and other health professionals in terms of professional conduct. However, in addition to the information in their code of conduct on professional behaviour, these professionals need detailed guidelines and assistance when it comes to them taking on the duty to act as expert witnesses professionally. Although professionals often reach out to their boards of registration for help in these matters, they often do not obtain the necessary insight, support and guidance from their boards to provide them with adequate information, guidance and protection. Expert witnesses are often left vulnerable and exposed when they must fulfil their duties (Moenssens, 2016, p. 4).

In various cases, expert witnesses are portrayed as being “hired guns” or mere advocates for the party who has called them to testify. It is said that the expert witness’s expertise is put on sale to the highest bidder. At times, expert witnesses do make themselves guilty of such unethical behaviour. However, this label is often used simply to discredit an honest expert in an attempt to win a case. Due to the conduct of a small number of individuals, expert witnesses are unfairly labelled as “hired guns” or paid agents. However, it is not necessarily always accurate or factual and can be slanderous. The paid agent label does yet cast aspersions upon the ethics of expert witnesses (Beran, 2009, p. 39).

### **1.9 Clarification of concepts**

It is essential to understand the terminology that is used in this study to refer to various concepts. These concepts focus on research themes. The themes include information concerning children affected by violent crimes and information relating to

expert witnesses involved in violent crime cases in court proceedings where children are involved. The following are concepts relevant to this study and are defined accordingly.

### ***1.9.1 Categories of violent crime***

This study used The South African National Survey of Children's Exposure to Violence (NATSCEV) victimisation category meanings. It includes all classifications of victimisation that may affect children (Kirby & Dwyer, 2013, p. 59). The following categories are relevant here:

- *Conventional Crime* – This classification includes robbery, theft, and the destruction of property. It also adds being attacked with an object or weapon and being attacked with no object or weapon, an endeavoured confrontation or assault, a threatened attack or a threat of being compromised. This grouping includes kidnapping, attempted abduction, and hate crimes and unfair attacks (Vorster & Mages, 2018, p. 2).
- *Child Maltreatment* – This grouping comprises various abuse types, including psychological and emotional abuse, physical abuse, carelessness and neglect and abduction and capturing by parents and caregivers (Kirby & Dwyer, 2013, p. 59).
- *Peer and Sibling Victimization* – This grouping includes children who are confronted and assaulted by a group of children who may be aggressors. Victimization includes hitting or beating by children. It further refers to children being pursued and chased, grabbed and pressed to participate in an activity by other children. It also includes teasing and emotional bullying by other children. This kind of victimisation includes children falling to dating violence (Kirby & Dwyer, 2013, p. 59).
- *Sexual Victimization* – This grouping includes sexual interaction and contact and fondling by an adult known to the child. This can be someone known to the child or a stranger, can be an adult and can also be another child or an adolescent. Sexual victimisation includes tried and attempted or completed and finalised sexual intercourse. It further provides exposure to flashing, revealing and exposure to sexual behaviour and related images and pictures, and sexual harassment. Sexual victimisation includes consensual sexual conduct and acts with an adult (Kirby & Dwyer, 2013, p. 59).



- *Witnessing and Indirect Victimization* – This consists of children being exposed to violence including neighbourhood, community and family violence (Vorster & Magnes, 2018, p. 2).
- *School Violence and Threats* – This victimisation consists of threats or actual harm directed at the child's school, including real bomb threats against children's schools, as well as property damage to the school (Vorster & Magnes, 2018, p. 2).
- *Internet Violence and Victimization* – This form of victimisation includes cyber and internet threats, stalking, harassment and unwanted online sexual solicitation (Harris & White, 2013, p. 474).

### **1.9.2 Child**

Children form part of the most defenceless and vulnerable people in society. Correspondingly, the Children's Act, (Act No. 38 of 2005), the African Charter on the Rights and Welfare of the child (1990) and the Organisation of African Unity (1999) view a child as a human being who is under the age of 18 years old United Nations Children's Fund (UNICEF) (2016). The Convention on the Rights of the Child (2018, p. 16) describes a child as an individual under the age of 18, but further provides that this is the case unless the laws of a country set the legal age for adulthood to be younger (UNICEF, 2018). In the latter case, the Committee on the Rights of the Child (the monitoring body for the Convention) explains that States must be urged to evaluate the age of majority if it is set below 18 years and, accordingly, increase the level of protection for all children under 18.

### **1.9.3 Ethics**

The term ethics implies preferences which encourage and influence human behaviour in relationships and interactions, agreeing and acting according to a protocol or code of principles. Ethics furthermore suggests following the rules of conduct and setting out the responsibility of the researcher and the standards of conduct of a given profession (Bless, Higson-Smith & Kagee, 2006, p. 46). *Values* explain what is valuable and appropriate. Both *ethics* and *morality* deal with right and wrong (Babbie, 2011, p. 56). Professionals may act unprofessionally. However, this may not be inherently unethical. For example, to be late for a professional session with a client is unprofessional and not providing a good professional impression. Still, this action is certainly not unethical (Harris & White, 2013, p. 193).

#### ***1.9.4 Ethics related to expert witness testimony***

Expert witness ethics is a matter about which there is a fair degree of resigned acceptance of the status quo (Downes, 2006, p. 2). Due to a lack of agreement on ethical standards and an absence of understanding concerning what steps should be taken to encourage actions and behaviour that is ethical, the ethics of expert witnesses remain a complicated subject matter (Lerm, 2015, p. 87). The expenses incurred in securing even mediocre and unethical expert witness testimony are significant. These expenses include costs connected to wading through unethical expert testimony. Importantly, the wasted costs occasioned by poor capability or a lack in ethics of expert witnesses, who are factfinders, can lead to inaccurate inferences, decisions and conclusions, which is highly problematic (Sanders, 2007, p. 87).

#### ***1.9.5 Expert testimony***

Martin (2003, p. 23) explains expert testimony as being testimony relating to the systematic, methodological, practical and professional subject, given by a qualified professional to testify about, because of expert knowledge, publications on the subject matter and specialised training and experience in the field and subject matter. Testimony of witnesses ought to be confined to reports of concrete facts within their examination, observations, information, knowledge, and memory recollection. Expert witness testimony ought to overall and generally state facts and statements perceived by the expert witness. Opinion testimony is normally considered incompetent, irrelevant, and inadmissible. However, it is considered and allowed in the case of properly qualified expert testimony. Duquette (1981, p. 326) argues that the expert witness's role is not bound to testimony in court but is more comprehensive and not linked to only being a witness and giving evidence in court. For instance, parents or children's counsel may need discussion and consultation with expert witnesses on how to appropriately deal with their client and determine the best interests of their client. Accordingly, further involvement of expert witnesses is often the case in matters involving children. Counsel may need assistance in creating a treatment plan and on what can reasonably and realistically be expected from the mental health practitioner and the social service agency. Neutral association, cooperation, and collaboration with more professionals, as part of the legal counsel's advocacy, but apart from the needs of evidence in chief, cross-examination, re-examination at trial is at times needed and urged (Schryer et al., 2009, p. 229).

### ***1.9.6 Expert witnesses***

References to expert witnesses in this study will denote all professional persons involved as experts in the court process when violent crimes have been committed against children. Expert witnesses are qualified individuals by training and experience. The parameters of such expertise include scientific, technical and specialised knowledge and the skills to support this knowledge with providing an understanding of the evidence or to determine a fact (Sutherland, 2009, p. 67). Competent, skilled and qualified expert witnesses can give testimony in the form of an opinion and attitude. In contrast, in practice, lay witnesses or non-experts commonly cannot offer a belief in their testimony. It is imperative to understand that judges have broad discretion and the power to accept or not accept a witness as an expert. The question of whether a professional is approved and qualified in court as an expert may vary depending on the case and on the judge (Duquette, 1981, p. 326). The consideration and decision to accept, qualify and acknowledge a witness as an expert witness, and for an expert to be a credible expert witness, considers two factors. Firstly, an expert's education, training and the length, intensity and type of experience need to be considered. Secondly, the credibility of experts is based on their academic qualifications, the poise and confidence with which they answer the questions that are put to them, their demeanour and character, their objectivity and candour and their status in their professional career (Wilcox & NicDaeid, 2018, p. 100). A skilled and trained cross-examiner will commonly limit the scope of the witness' expertise (Schryer et al., 2009, p. 216). The role of the expert must be understood and limited to the expert witness's set of skills.

### ***1.9.7 Violence against Children***

Pinheiro (2006, p. 26) observes that crimes committed against children include all types of bodily physical and emotional mental aggression and violence. It provides damage, harm, injury, mistreatment and abuse. Furthermore, violence includes neglect and negligent treatment, maltreatment, cruelty, harm and exploitation. Violence includes sexual violation and sexual abuse. The World Health Organisation (2018, p. 1) states that violence against children comprises all types and forms of violence committed against individuals under 18 years old. This includes children being perpetrated and violated by parents, caregivers, peers, romantic and non-romantic partners, outsiders and strangers. It is found that, for the most part, aggression and violence against children involve at least one of the six main types of interpersonal

violence. The victimisation tends to take place at different stages and phases during children's development. The types of victimisation that take place when children are offended against are maltreatment, bullying, youth violence, sexual violence and emotional, mental and psychological abuse. It is imperative to recognise that violence committed against children is a psycho-social phenomenon which is multifaceted and a complex crisis and dilemma. Its causes are rooted in the personal, individual, close and connected relationships, and on family, community and societal levels (Hsiao et al., 2018, p. 54).

The above clarification of concepts allows the reader to conceptualise the content of the study and to read the text with a sound understanding.

### **1.10 Summary**

This chapter introduces the topic of crimes that are violent in nature and that are committed against the most vulnerable population, namely children. It furthermore presents the role of expert witnesses and testimony in court proceedings relating to crimes committed against children. The magnitude of violence against children is discussed, and a context is provided to understand that children are the most criminally victimised segment of the population. The chapter also discusses the deontic theory. This theory was used to consider the ethical framework of the expert witness. The notions of expert witnesses and expert witness testimony are deliberated upon and explained. The importance of expert witness testimony is considered, as expert witnesses must deliver good quality testimony in all cases, but even more so in cases where children are involved, due to the vulnerability of children and the need to protect them, the court being the upper guardian of all children. In addition, the importance of the expert witness's ethical duties is considered in this chapter. A clarification of the essential concepts of this study is presented to familiarise the reader with terminology that is used throughout the study.

The thesis is structured according to 8 Chapters. To follow is Chapter 2 that will focus on the extent and impact of violent crimes committed against children. Chapter 3 will focus on an ecological framework relating to the complexity of children experiencing violence. Chapter 4 will focus on the expert witnesses and expert testimony in child victim court cases. Chapter 5 will focus on the methodology. Chapter 6 will present the findings, and Chapter 7 will provide an interpretation of the results.

## **Chapter 2 The extent and impact of violent crimes committed against children**

### **2.1 Introduction**

The South African legal framework highly prioritises human rights and is underpinned by the South African Constitution. However, children are daily being offended, harmed and wronged by violence, despite the legislative protections that are in place. This chapter focuses on violent crimes committed against children and accordingly creates a platform for understanding the importance of addressing violent crimes committed against children (section 2.2). The magnitude and degree of violence and victimisation against children in a South African context will be discussed in section 2.3, to create a historical context of the background and culture of brutality and violence that exists in South Africa. Because victimisation of children is problematic, it is imperative that expert evidence is used in court proceedings to ensure that children are heard, the evidence is provided, and that justice can be served. This chapter elaborates on victimisation rooted in traditional beliefs and cultures, poverty, family structure and substance abuse. An explanation will be given for patterns of violence during children's course of life, and how violence affects children's development. The burden of victimisation and the cost to society will be discussed accordingly.

### **2.2 Unfolding violent crimes committed against children**

Proudlock, Mathews and Jamieson (2014, p. 18) explain children are the largest vulnerable population falling victim to criminalised behaviour. Finkelhor (2007, p. 12) states violent crime against children is an unfortunate but real social problem. Children endure a substantial load of victimisation and abuse, as they are defenceless due to their dependency on adults and their physique. Furthermore, violations and crimes against children are substantially less likely to come to police attention and to be reported than crimes against adults. Children's grievances are often not taken seriously. It is found that children are often voiceless or do not have a good voice.

Violence and victimisation against children are prevalent in society. Violence affects the overall health of children. It further affects children's overall well-being. Violence has broad intergenerational effects as well as substantial economic and emotional costs to society. Violence infringes on children's rights, and children are left unprotected from cruelty, mistreatment, negligence, maltreatment, abuse and degradation as observed in numerous legal documents (Vorster & Magnes, 2018, p. 2). Children are, nevertheless, resilient and present with grit in times of adversity and

hardship. However, their vulnerability and helplessness in general society should not be undervalued. The rights of children remain on the global agenda for conversation at many fora. Since the beginning of democracy in South Africa, the dialogue on child rights has concentrated on the realisation of such imperatives (Abrahams & Mathews, 2011, p. 34).

According to Gilbert, Browne, Fergusson, Webb & Janson (2009, p. 2), a critical factor in violence against children is child maltreatment. Maltreatment includes various forms of abuse such as bodily harm, sexual violation, psychological cruelty, neglectful mistreatment, emotional corruption and exploitation. The term child maltreatment is used in Section 28(1) (c) of the South African Constitution but is not explicitly outlined in the Children's Act No. 38 of 2005. In cases where brutality and violence take place and where children are victimised, evidence exists that children face devastating offences, including severe physical abuse, harmful emotional abuse and fierce sexual abuse. Furthermore, children often face the dangers of neglect and exploitation (Mathews, Jewkes & Abrahams, 2013, p. 15).

Violence against children is a multifaceted and convoluted problem with serious outcomes. The complexity of this social problem has led to multiple explanations. It makes monitoring of the prevalence of violence complex. To critically analyse patterns, trends and guide action plans for prevention is problematic (Abrahams & Mathews, 2011, p. 25). The World Report on Violence and Health defines violence as the deliberate use of influence and power, intimidated or actual, resulting from or which is to be expected to cause general harm, death, emotional-psychological damage, and deprivation (World Health Organisation, 2002, p.14). The World Health Organisation (2012a, p. 16) acknowledges the intricacies of violent crimes committed against children. Violence committed against children is defined as physical and mental violence, injury and abuse and neglect. The definition includes the deliberate use of brutal bodily force and power, intimidated or actual, against children by another person or a group of people. This force and power either result in or can result in, a real and possible detriment to children's general well-being, actual existence, overall growth and daily self-respect. This description encapsulates the fundamental elements clarifying the conceptualisation of violence where children are involved. It highlights how violence widens further than bodily injuries and includes the devastating emotional effect on children. The definitions reveal that violence takes place in various places and communities and across diverse relations. Violent crimes committed against

children are shifted from the home and the family unit to the general community, and from the public societal neighbourhood into children's private home environments and surroundings. This experience of violence is multi-layered for children. Violence accordingly leads to acute disturbance and trouble in both the immediate and prolonged lifespan.

The Department of Social Development (2012, p. 3) points out that South Africa lacks systematic research focussed on the magnitude and range of violence suffered by children. The most frequent types of violence which children endure, as reported in South Africa, are physical and sexual violence. These forms of violence take place in the home and in the community. Educational, school-based and early life victimisation studies provide an understanding into the force experienced by children and explain that abuse is often under-reported (Mathews, 2014, p. 25; Violence against Children in South Africa, 2012, p. 3).

Crime statistics specify the extent of violence experienced by children in the South African context. The statistics are limited by the absence of routinely disaggregated data by age and because some categories, such as neglect and ill-treatment, are often not reported. Although specific groups such as homicide and sexual assault are routinely reported, it continues to be challenging to determine accurate figures. Underreporting of violence victimising children is widespread, and values are grossly underestimated (Mathews, 2014, p. 25).

Children ought to feel secure and protected at home, in their school and their communities. However, it is in these places that violence often takes place. Usually, the victimisation takes place at the hands of trusted people. Abuse wears a familiar face for many children (Violence against Children in South Africa, 2012, p. 3). Globally, three-quarters of children between two and four experience either emotional-psychological aggression or the infliction of bodily harm, or both abusive practices. The children's parents or caregivers often impose these abusive practices at home. Worldwide, the inflicted injury on children leads to enormous damage to children's well-being. It is devastating to be faced with regular media publications referring to babies being vehemently abused and where both girls and boys are being coerced into sexual enactments (Abrahams & Matthews, 2011, p. 23).

Publications provide information that adolescents fall victim to murder in their communities. Bloodshed and brutal violence against children know no boundaries. Children are confronted with violence during all developmental phases and in diverse

settings. Shocking statistics show that 60% of children aged one, in 30 countries, are regularly put in danger by violent discipline practices. It has been found that approximately a quarter of children aged one are physically shaken as a discipline method. This punishment physically injures nearly one in 10 children aged one. Globally, one in four children under the age of five is living with a mother who is victimised by partner violence (Abrahams & Matthews, 2011, p. 23).

Worldwide, 15 000 000 adolescent girls aged 15 to 19 have experienced forced sexual intercourse or other involuntary sexual acts. Only 1% of adolescent girls who suffered sexual violence sought help from professionals. In 28 countries, data revealed that 90% of adolescent girls who experienced coerced sexual intercourse reported that they knew their sexual perpetrator (UNICEF, 2017, p. 1). Data from six countries revealed that acquaintances, fellow students, and partners were among the most referred to offenders of sexual violence committed against adolescent boys. Universally, an adolescent is killed every seven minutes by an act of brutal violence. It has been found that in certain ethnic groups, murders are more prevalent. In America, adolescent boys from African American or black non-Hispanic populations are almost 19 times more likely to be murdered than non-Hispanic, white adolescent boys (Ajumobi, 2018, p.2).

Data gathered globally provides insight and explains that half the population of young children live in countries where corporal punishment at school is not outlawed. Three-quarters of documented school shootings over the past 25 years took place in America. UNICEF noted a need for urgent action if governments are serious about addressing violence committed against children (UNICEF, 2017, p. 1). It is imperative to support measures by embracing action plans and encourage a change in adult behaviour. For example, restrictive access to guns and other weapons and teaching individuals of a community, including children, parents, caregivers, teachers, and other role players to acknowledge the violence in all its various shapes, is crucial. Additionally, it should be achievable to report violent crimes safely. Violence against children ought to be considered from a system perspective, to understand the complexity of violence in different settings and the influence of violence on various role players, however, with a severe short- and long-term impact on children (UNICEF, 2017, p. 1).

### **2.3A historical context of the culture of violence in South Africa**



The Centre for the Study of Violence and Reconciliation (2009, p. 5) explains that the high levels of violent crimes in South Africa are entrenched in the country's past. The entrenchment of a culture of violence will be discussed in this section to create a context for the victimisation of children in South Africa. The era of Apartheid left South Africa with societal wounds and profoundly entrenched the culture of violence in the nation. Norman, Schneider, Bradshaw, Jewkes, Abrahams, Matzopoulos & Vos (2010, p. 2) explain that violence was used as a solution to problems and that people in power sanctioned this violence. The Apartheid era generated an atmosphere of violence and oppression and further provided a platform where violence became a norm and was used as a conflict resolution strategy (Bruce, 2009, p. 1).

Bruce (2009, p. 1) describes violence committed against children in South African society as being a significant problem. The reasons for violence are multifaceted. It is rooted in the inequalities and wrongs of South Africa's history. It is known that the high incidence of violent behaviour is rooted in colonialism. Apartheid normalised and created an acceptance to rationalise violent crimes. Hardship, deprivation, disparity and high levels of unemployment, weak law enforcement, rapid urbanisation, inadequate housing, and poor education outcomes underpin social dynamics that fuel brutality, cruelty and violence (Seedat, Niekerk, Jewkes, Shahnaaz & Kopano 2009, p. 3). Apartheid has had a strong effect and has left scars on the South African society. It has had a long-lasting impact on people, including adults and children, their families and their overall family life. For example, the migrant labour system created settings where fathers were absent in the lives of their children and mothers had to raise their children alone. Racial oppression and the disproportionate power and economic prospects contributed to communities where violence was prevalent because of social-emotional difficulties (Morrell, Jewkes & Lindegger., 2012, p. 2).

Many reasons are provided to explain the high level of violence in South African communities. These elevated levels of violent crimes are partly due to historical differences between cultural groups, which caused tension between people living in South Africa. Poverty, destitution, job-loss and unemployment affect children directly and indirectly. Factors such as substance abuse, such as alcohol and drug abuse, lead to people behaving violently and hurting others, especially vulnerable children. Family organisation and childhood exposure to violence play a role in children's own involvement in violent crimes as well (Morrell et al., 2012, p. 8).

Social norms and values are factors which contribute to violent crimes and which affect children. Large numbers of the South African population hold on to traditional gender norms and cultural beliefs. These beliefs pose a risk factor and can lead to risky cultural practices that may include violence elements. Possible risk factors include family struggles, parental substance abuse, unfortunate school connections, neighbourhood hardships, pro-violence mindsets, inadequate or toxic parent-child relationships, punitive, cruel and erratic discipline, inadequate parental monitoring and mentoring and socioeconomic disadvantages. Certain risk factors are pertinent to specific types of violence and certain environments. A set of risk factors are found in all kinds of violence committed against children. Factors include impoverishment and unemployment, norms and values, substance abuse, family structures, and dysfunction (Violence against Children in South Africa, 2012, p. 2).

#### **2.4 Traditional beliefs and values rooted in South African cultures**

Jewkes, Dunkle, Koss, Levin, Nduna, Jma and Sikwyiya (2006, p. 24) discuss the traditional beliefs and values that are held in South African society by various population groups. Significantly, numerous cultural groups assume that men have the right to exert influence and power over women and children. In these societies and cultures, some cultural beliefs give men the power to inflict harm onto children and allow for taking sexual advantage of females and children. These masculine power dynamics include exploitation and manipulation. This dynamic especially takes place where persons in authority emotionally and psychologically influence children. Males who are the head of the household bring in the position of power and exert power over other family members. Jewkes et al. (2006, p. 54) point out the tragic consequences of this, as children may construe that it is acceptable to be abused by influential male figures. An example of this is where infants are raped, as a punishment to show the child's mother, who is really in control and who really has the power in the household. This criminal behaviour is seen as acceptable in some communities, and it is a taboo to talk about it, let alone report it. Traditional gender norms can harm men, as well. Men are expected to show masculine characteristics such as hardness, aggression, influence, courage, and bravery. Males use aggression as a manner of displaying manhood. Men do so, particularly when feeling disempowered due to societal disparities (Jewkes et al., 2006, p. 54).

Madu, Idemudia and Jegede (2002, p. 2) explain that cultural beliefs act as a risk factor and indicate violent crimes committed against children. Children are viewed as

the property of adults. This perception denies children their right to recognition and their human rights as children. Children are not given the necessary protection for their vulnerability. Unconditional conformity of children and being subservient to grown persons, specifically males, make it probable for child abuse to go undetected. Overall, children do not have the resources, strength, or ability to report crimes committed against them. Associated with this is the conviction that child abuse, like other domestic violence, should be kept in secret and remain private. Children know and are often conditioned to believe that abuse should never be talked about outside the home environment. Sexual abuse of girls is frequently kept secret because the girls fear that they will be stigmatised by society. According to Leclerc-Madlala (2002, p. 34), the overall sense that children can be victimised and that communities should absorb the silence, remains a reality in South African society, but it is also similar in many other countries. It perpetuates the cycle of the victimisation of children within the context of South Africa.

Wadesango, Rembe and Chabaya (2011, p. 6) define culture as a source of social identity which gives people an interpretation for behaviour, actions, and social relationships in their lives. While valuable to society's members, cultural and traditional practices and rituals can occasionally be harmful and detrimental to one's dignity. This particularly relates to the dignity of girls. Appropriate actions should be taken to remove harmful societal, community and cultural practices which affect the general well-being and welfare, dignity and pride, overall growth, and development of children. According to Wadesango et al. (2011, p.8), traditions and cultural practices harmful to children's general health and life must be addressed. A failure to address harmful practices will impact on children's overall safety.

Tradition is defined as the rituals, customs, belief systems and value systems of a community, which govern and form members' behaviour and actions. Many cultural practices can be beneficial. However, some of these practices undermine the dignity of girls. Such methods include virginity testing. (World Health Organisation, 2012b, p. 3). Kaarsholm (2005, p. 4) explains that virginity testing involves a bodily examination by a woman of senior age. This older woman is a person in the child's community. The goal of such analysis is to find out if a girl's hymen is intact. It is determined by penetrating the vagina with a finger or object.

Mwambene and Sloth-Nielsen (2011, p. 7) explain another practice is called *Ukuthwala*. *Ukuthwala* is a form of abduction that involves girls being taken by a male

or a group of men with the intent of compelling the girl's family to approve of marriage negotiations. In the past in Africa, especially among the Nguni, this was an acceptable cultural practice. *Ukuthwala* was a condoned, albeit wrong, path to marriage for girls of marriageable age. It is essential to explain that this cultural practice does not involve girls being raped. *Ukuthwala* was not done with impunity. It entails payment of a herd of cattle to the girl's father or legal guardian. More recently, *Ukuthwala*'s connotation and reference are to a negative and more harmful practice. In the Eastern Cape, *Ukuthwala* has become a practice which includes abduction, brutality, and rape. *Ukuthwala* practices include girls being forced into marriage as young as twelve years old, in order to commit to much older adult men—who are old enough to be these girls' grandparents (Mwambene & Sloth-Nielsen, 2011, p. 7) (See: Appendix K).

Another traditional practice is female genital mutilation, also known as female circumcision or female cutting. This refers to any alteration of normal female genitalia without any medical benefit to the female. Female genital mutilation takes place in around 28 countries worldwide. These traditional practices take place mostly in African, Middle Eastern and Asian countries (Magoha & Magoha, 2000, p. 1).

Similarly, circumcision for males poses certain dangers for boys. Male circumcision is a widespread phenomenon in South Africa, where more than a third of males are circumcised. Male circumcision, as a rite of passage for young men, can have negative consequences for the boys. Due to the inadequate control by the government and authorities, many boys die every year (Davis, 2013, p. 5; Gwata, 2009, p. 8)

Limited information exists on the pervasiveness of these cultural and traditional practices and the psychosocial effect on the victims. The Children's Act No. 38 of 2005 bans the methods of virginity testing and forced early marriage. However, it appears that these practices continue within certain communities. For young girls, traditional practices such as virginity testing and *ukuthwala* result in silencing and subduing girls to control their sexuality. The practice of male circumcision can be life-threatening for boys. Traditional methods and their impact on children are a social phenomenon that demands more collaborative debate and is still an area which is not fully explored.

Trafficking in body parts is a practice which impacts on young children and often does not get the attention that it desperately needs. Motloug (2016, p. 3) explains how body trafficking takes place. There are cases where traffickers coerce and mislead victims into giving up an organ. There are cases where victims formally or informally

agree to sell an organ. The victims are often defrauded and are not paid at all or are paid substantially less than the negotiated price. Vulnerable persons are treated for an illness which may or may not be present. The victims are tricked into believing that they are ill or must undergo an operation because their complaint, and thereupon organs are taken without the victim's consent or knowledge. Certain persons are more vulnerable to body part trafficking. Vulnerable communities, such as the albino communities and children, are victimised because of their vulnerabilities. Body parts from specific people, such as albino people, are sought-after, with the consequence that attacks on people with albinism in Africa are on the rise (Baker, 2017, p. 1). There is a growing demand for albino body parts among political hopefuls in the run-up to elections in several African countries. It is believed that body parts of albino people have supernatural powers from which they can benefit. Certain body parts are more profitable. Sexual body parts are profitable, and lips and tongues are of high value (Baker, 2017, p. 1).

Fellows (2010, p. 8) explains that body parts are marketed and utilised for practices and rituals relating to witchcraft. *Muti* refers to traditional medicine in South Africa and other African countries. The word *muti* is taken from the Zulu word *umuthi*. *Umuthi* means "tree" and refers to whose root is *-thi*. *Muti* is often used as a slang word for medicine and other traditional practices. *Muti* includes the creation of medications that claim to heal illnesses, increase economic wealth, or hurt one's competitors and enemies (Bailey, 2010, p. 10).

Body parts are taken from living persons as this is believed to improve and boost power. The purpose may not be to murder the person. The person is, however, likely to pass away because of their wounds and infection caused by the removal of their body parts. In some incidences, the person is murdered before the removal of the body parts (Fellows, 2010, p. 8). Fellows (2010, p. 6) shockingly reveals that victims of *muti* murders are typically children. The reason why children fall victim to *muti* murders is that children are frailer and more defenceless against such brutal attacks, as they are vulnerable. Children are undeveloped and young. It is believed in certain cultures, that children have used a small amount of their good luck and health. Therefore, their body parts are more robust and more filled with magic powers than those of adults (Motlounge, 2016, p. 3).

It is often difficult to prosecute *muti* murder cases because it is difficult to trace the body parts of the victims. It has been found that body parts are usually moved over

long distances and across borders from the dismembered body of the victim. The Human Tissues Act No.65 of 1983 is the only legislation in place that addresses the topic of the use of body parts in South Africa. This Act forbids the sale of human tissue. However, it does not recognise the use of body parts for traditional practices (Motloun, 2016, p. 3). Victimization of children for cultural and traditional methods is a cruel phenomenon that is often silenced, and many people feel uncomfortable speaking openly about the reality of such victimization. This is of great concern, as many children fall victim to such cruelty (Motloun, 2016, p. 3).

### **2.5 Poverty increases the risk of victimisation of children**

According to UNICEF (2009, p. 2), deprivation and poverty is the leading risk factor for child labour practices. Many children in South Africa work to ensure the survival of their families. Children are forced to look after their parents and younger siblings and must therefore enter the workforce at a young age. The HIV/AIDS pandemic and the related loss of adult income-earners is a reality for these children. Children may be forced to work with criminal peers because they are desperate and impoverished. Children also often want to escape domestic violence and abuse which they suffer at home and enter the workplace to look after themselves and survive. Adults may also force children into labour for the profit which they can gain from the work the children do and thereby exploit the children. The exploitation of children is an ongoing concern and mirrors the unhealthy society and psychopathologies that exist in communities (Charman, 2006, p. 5).

Jewkes et al. (2006, p. 4) highlight that violence occurs across all economic settings. Violence is, however, concentrated in less economically developed urban areas. In a similar vein, the World Health Organisation (2012c, p. 27) points out that child abuse happens in all socio-economic communities. Globally, poverty is a central cause of child abuse. The Centre for the Study of Violence and Reconciliation (2009, p. 34) explains that deprivation heightens the risk of a variety of forms of violent crimes. It is difficult for children with a lack of resources to cope with violence as they are often not adequately protected when compared to children who may have access to more resources. Children in less economically developed urban areas are especially defenceless and vulnerable to violence. Access to electricity offers better lighting in the streets and homes and reduces danger zones. Access to resources is linked to the

incurred crime committed against children. For children to have clean water in or near the home means that they do not need to spend hours gathering water, often placing them in danger when en route. This exercise often becomes child labour, together with exposing children to the threat of violence along the way. Access to education in African societies, or more accurately, the lack thereof, is hugely problematic for children. Education provides children with the opportunity to learn about and be aware of their rights. A safe school environment further protects children against violence (Levci, 2018, p. 3).

Norman et al. (2010, p. 34) draw attention to the elevated levels of violence in South Africa. Violence tends to be focused on less economically developed urban areas. Violence is often found in townships and poor informal settlements. Historical differences in South Africa have led to the concentration of violence being more specific to low socio-economic communities. Disparities include disparities in access to resources, services, ranging from helping professions, police services to essential social and infrastructure services, including access to safe school environments, which are often not available for children in impoverished communities. Many social inequalities remain in society and such inequalities provide fertile ground for brutality and violence committed against children. South Africa has been left with scattered, fragmented family structures which encourage violence. Children are brought up in single or child-headed households or often live with their grandparents (Mwambene & Sloth-Nielsen, 2011, p. 7). Children typically benefit from residing with both parents; however, the nuclear family is not the only family structure which can give adequate care to and can safeguard children. Violence is committed against children in nuclear families as well and this is commonly accompanied by domestic violence against women in the family. Grandparents and extended family members have, for centuries, provided care to children. Parental care by extended family members or other role players is not always adequate, as they may be weak, vulnerable, sick or might be exploiting the child for financial gain (Norman et al., 2010, p. 34).

Violence against children has been, and continues to be, a challenge in society. Violent crimes against children are more prevalent in low socio-economic areas, but are not discriminative to status and colour. Similarly, children worldwide share the risk of being impacted by brutal crimes. Children form part of a vulnerable population group and are easily targeted and exploited (The Centre for the Study of Violence and Reconciliation, 2009, p. 35).

Wiley (2008, p. 12) observes that many aspects of poverty are particularly salient to children affected by violent crimes. Unemployment causes family stress and often leads to aggressive actions towards children. Unemployment leads to men staying at home and in the community during the day. On the other hand, parents who work long hours and travel long distances for work leave children unsupervised for extended periods in communities where many individuals are on the street. Crowding in children's home environments, where many families, extended family members and friends reside in a dwelling, may also place children at a higher risk for sexual victimisation. Children living in these kinds of crowded conditions are aware of adult sexual activity. Sleeping in the same small dwelling, in the same room or bed or on the floor with older children and adults gives rise to conditions in which sexual abuse can occur easier and more frequently. It may not always be the case that abuse ensues, but the risk of abuse materially increases in such circumstances and environments. These are contributing factors to children entering the workplace out of hopelessness and desperation to provide for themselves, their siblings, and their families.

South Africa's Child Labour Programme of Action describes child labour as work by children under 18. This work is exploitive, dangerous, and inappropriate for the children's age and ability. This work is detrimental and harmful to their education and their overall development. Children labourers work for monetary and other compensation, which victimises the children and infringes on their rights. Harm is caused by labour which prevents children from attending school regularly and from benefiting from studies because they have no time for homework and rest (The Republic of South Africa and International Labour Organisation, 2012, p. 6).

Ramkissoon, Lewis, and Nethavhakone (2008, p. 13) explain the commercial sexual exploitation of children. Commercial sexual exploitation of children is the use, procuring and offering of children for prostitution, to generate pornography and for pornographic acts. The Children's Act No. 38 of 2005 defines trafficking of children to mean the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within and across the border of South Africa. Any action may be used, for example, threat, intimidation, force, influence, power, and other forms of coercion. Other means may include kidnapping, fraud, dishonesty, abuse of power, the giving and accepting of payments and advantages to achieve the consent of a person having control of children. This is also the case with illegal adoptions (South Africa, Children's Act No. 38 of 2005). Human trafficking is a global crime that affects countless victims



around the world and is rooted in extreme poverty and dire socio-economic circumstances (Ramkissoon et al., 2008, p. 24; Van der Watt, 2018, p. 28).

## **2.6 Childhood violence in the family structure**

Leoschut (2017, p. 53) remarks that it has become a common phenomenon in South Africa to have single-parent households, child-headed households, and households where children live with their grandparents. In South Africa, family structures have become increasingly more complex and very few children live with what is considered their biological father and mother. Children are orphaned, one parent might have passed away, or parents may not be able to look after their children. The parental situation, family dynamics and living arrangements of children indicate that children often do not live with a nuclear family that consists of both biological parents and biological siblings. The average family in South Africa fits the profile characterised by dysfunctional traits that have an impact on the children and the children's general well-being.

Cluver, Orkin, Boyes, Gardner, and Meinck (2011, p. 21) explain that when children have reduced and restricted contact with parents and caregivers due to complicated family homes, the connection deteriorates. Reactive attachment disorder can become rampant. Children accordingly battle with attachment bonds. Attachment problems can have adverse effects on children. Circumstances allow for children being left with individuals who do not adequately care for them. Children may be neglected and mistreated and even abused. A longitudinal study (Cluver et al., 2011, p. 32) found that children who are orphaned because of AIDS and illnesses related to AIDS, are statistically more at risk of victimisation. Orphaned children are severely victimised, more than any other grouping of children. Generalisations should, however, not be resorted to, so as to not perpetuate the belief that children who are part of a nuclear family are never abused. Children are also maltreated, abused, and neglected in nuclear family units. Offenders are more likely than non-offenders to have a history of some form of childhood abuse. It is also suggested that perpetrators have often themselves witnessed violence, mainly violence directed at and associated with their mothers (Richter & Dawes, 2008, p. 42). Residing with parents is not always a protective factor and can put children at risk. Accordingly, the assumption should not be made that a home with two parents or caregivers is still better for children than other family structures. Whether the primary caregiver is a parent, grandparent, extended family member or other significant role player, children need consistency and stability

in relationships. Children need adults in whom they can trust, with whom they connect with and bond, who can provide love and affection, provide care and protection, who can prioritise the child's best interests and with whom they can form a healthy attachment (Cluver et al., 2011, p. 35).

The COVID-19 pandemic started during the time of compiling this research. It was significant to see how this pandemic had an impact on violent crimes committed against children. There was an increase in phone calls to helplines asking for help because of violence. The COVID-19 pandemic had an impact on increased violence in the family structures (Omar, 2020).

## **2.7 Substance abuse and violent crimes**

There is a link between the use of alcohol, drugs, violence, and brutal crimes (Vellios & Walbeek, 2018, p. 2). In 2010, of the 48 countries in the World Health Organisation African region, South Africa had the highest per capita alcohol intake by people aged 15 years and older. South African society has a remarkably harmful pattern of alcohol consumption (World Health Organisation, 2014, p. 4). Vellios and Walbeek (2018, p. 4) indicate that risky drinking is related to many social harms and is responsible for alcohol-related homicides and violence, alcohol-related abuse, and injury.

Substance abuse impedes parental ability and capacity to care for and look after their children. Parents cannot act with responsibility for their children when they have intoxicated themselves, and this can lead to fatal accidents. Children have reported that, occasionally, according to their lived experience, one or both parents and caregivers were too intoxicated to care for them. The children explained that they felt at risk and were afraid of what their parents or caregivers might do to them (Jewkes et al., 2009, p. 15). The struggle with impulse control and lowered inhibition associated with substance use may also affect caregivers and cause them to react in negative ways that they may not otherwise do. For example, they may display aggressive, violent and irresponsible behaviour, which may result in violence against children. Substance abuse has a significant impact on violence against children. Still, the South African society, like many other societies, does not fully comprehend the link between alcohol and drug abuse and violence against children (Richter & Dawes, 2008, p. 24).

Children become victims of violence, not only because of substance abuse by those in their home, but also because of substance abuse by individuals in the

children's broader environment. Perpetrators of sexual abuse are often inebriated at the time of the crime (Leoschut & Burton, 2006, p. 6).

The use of substances and violence is an interchangeable and vicious cycle. Victims of abuse and victimisation often revert to alcohol and drugs to cope with the emotional trauma they have endured. Ultimately, this pattern perpetuates in violent crimes being committed in society (Jewkes et al., 2009, p. 34). The predisposition of a large proportion of society to abuse alcohol and drugs is concerning considering the link between such abuse and violent crimes against children. Authorities and organisations protecting children against violent crimes find themselves in a position where they need to address this social dilemma (Vellios & Walbeek, 2018, p. 21).

To address substance abuse in society, the National Liquor Act No. 59 of 2003 specifies that no person under the age of 16 may be hired and/or be working in a licenced premise where alcohol is being sold or consumed unless they are apprenticed or receiving training. Not all businesses that sell or make liquor are permitted. This is especially the case with shebeens. Historically, a shebeen was a dwelling where alcoholic beverages were illegally sold, without a licence. The term has spread far from its origins in Ireland to Africa. More recently, in South Africa, many shebeens are entirely legal and licenced (Livio, 2009, p. 1).

Between 165 000 and 250 000 children are found to be working in the liquor industry and shebeens (Levci, 2018, p. 5). These estimated figures incorporate children who work in the family business where parents are owners of shebeens. Often, shebeens are run adjacent to the owner's home or dwelling. Often working in the family business is seen as part of household chores (Charman, 2006, p. 3). Vellios and Walbeek (2018, p. 5) explain that children involved in this kind of business are defenceless to sexual and physical abuse by intoxicated clients. Children's health is likely to be affected. Children themselves may start to use, and abuse alcohol and other substances (Levci, 2018, p. 5).

## **2.8 Patterns of violence during children's life-course**

Once the power of the authorities has deteriorated to the level of threat of violence, the subsequent shift to actual violence is no longer an ethical and moral problem, but a matter of survival and to exist (Gould, 2018, p. 1). Lake and Jamieson (2016, p. 1168) point out that violence starts in the home environment. Young children are generally more at risk of physical abuse, neglect and abandonment due to their defencelessness and vulnerabilities. In a school environment, there is still corporal

punishment to be found. Bullying and sexual violence has become more prevalent and is problematic in school settings. Adolescent boys are most at risk of social violence and being hurt by a violent act. Teenage girls are more likely to experience sexual and physical abuse, especially in the context of dating relationships. Various types of violent crimes are more prevalent at different stages of children's lives. It is troubling how violent behaviour and cruelty affects children's daily lives and their psychosocial functioning. Early incidents of violence increase the risk of victims developing into perpetrators themselves later in life. The impact of violence often has detrimental outcomes for children in their later lives (Payne & Gainey, 2009, p. 26). Pinheiro (2006, p. 36) explains that infanticide, abandonment and reject, neglect, mistreatment and physical abuse are the most widespread forms of violence affecting children under the age of four. This violence stays concealed in the home. Young children are not able to report these violent behaviours and are exclusively dependent on their parents and caregivers to provide for them, to nurture and care for them. As children become more independent, different forms of abuse are more prevalent. For example, corporal punishment in schools, sexual violence and bullying. Physical, emotional, and psychological, and sexual abuse, including sexual violence and harassment, occur across different settings. These settings include the home, the school, and the community sector. Sexual victimisation impacts on both girls and boys. Sexual violence is, however, more prevalent amongst girls. Primary school children are at higher risk of sexual abuse, although it is not limited to this age group (Proudlock et al., 2014, p. 12).

Bruce (2009, p.12) explains that the patterns of sexual victimisation change as children get older. Adolescent boys aged 15 and older are more likely to be victims of homicide and violent crimes in community settings. This is mainly due to the everyday use of weapons and violent masculinities. Adolescent girls experience early forms of intimate partner violence and sexual abuse in dating relationships. Sizable numbers of South Africa's girls reported that their first sexual experience was forced and against their will. Many girls and boys in the South African context do not consider having sex against your will as sexual violence. The adolescent children in certain communities view it as a norm in intimate relationships. Bruce (2009, p. 12) explains that the social approval and acceptance of several forms of violence is an essential factor that must be considered in the perpetual cycle of violence. Social norms are carried forward from one generation to the next. While males are still viewed as having authority and power

over women and children in the family and the community, even in this modern age, the cycles of violence will continue. A patriarchal society legitimises violence against women and children. It is a means of keeping the men in power and exerting control.

Pervasive violence in society desensitises children to violence. It furthermore normalises the use of force. In the Western Cape in South Africa, this social pandemic is prevalent. The escalating gang violence on the Cape Flats is troubling, and many children fall victims to violent crimes in this community and neighbouring communities. There are many similar communities to be found spread all over South Africa. In some parts of the Cape, criminals are providing children as young as 12 with guns and children are being violently abused and manipulated by adults for personal gain. Children are dragged into intensifying gang wars and violent crimes. Gangsters are recruiting children in the belief that the children are less likely to be searched and found during police operations (Seedat et al., p. 10). Children's defencelessness and vulnerabilities are exploited by drawing the children into gang-related activities.

Seedat et al. (2009, p.12) describe violence against children to not merely be a child rights problem but a substantial public health concern. Bodily injuries, the damage inflicted, and the experience of violence have negative consequences for children. The damage inflicted is on an emotional, psychological, and social level. Violent crimes impact children's behaviour, as well as their well-being. These effects do have a long-lasting impact on children's well-being, well into old age. With risk and protective factors, some consequences related to specific areas of welfare. Depression, substance abuse, anxiety, suicidal behaviour, reproductive health problems such as unwanted pregnancy, sexually transmitted diseases and sexual dysfunction are some of the consequences associated with exposure to violence (World Health Organisation, 2012a, p .43). According to Edwards (2005, p. 12), many children in South Africa struggle with anxiety, depression, acute stress, and post-traumatic stress symptoms. Mental health problems are rife among children, and only a small percentage of children receive therapy and professional support after traumatic incidences. Traumatic events impact overall well-being and brain development. This can lead to complications in learning (Berkowitz, 2003, p. 14).

Many factors such as age, developmental level, personality, prior and repeated traumatic experiences, impact on the outcome of exposure to violence for children. Children are affected in different ways; younger children exposed to violence are prone to regression while children of pre-school age and toddlers may become over-

attached, struggle with separation anxiety, and have tantrums. Children of school age and adolescents may struggle more with difficulty concentrating, display mood alterations and disruptive behaviour in their home environment and at school (Berkowitz, 2003, p. 16).

Van der Merwe and Dawes (2007a, p. 10) discuss the intergenerational diffusion of violent crimes. Being raised in environments and circumstances characterised by ongoing stress from early childhood negatively affects children's developing neurology. Children raised in these complex, violent climates often present with general anxiety and distress, poor self-regulation and are hypervigilant. Boys who are raised in such conditions are likely to develop extreme anti-social behaviour patterns. While violent behaviour has an impact on individuals, it also has significant consequences for society. Exposure to hostility and violent behaviour socialises children to perpetuate cycles of violence in society. Violence ends in diminished social attachment and cohesion and influences a country's social and economic wealth. For example, there are connections between violence in society, HIV/AIDS and other related social problems (Norman et al., 2010, p. 16).

## **2.9 Violence affects children's development**

Foster and Brooks-Gunn (2011, p. 24) have found that younger children's experience and exposure to violent behaviour affects the development of trust and exploratory behaviours that lead to independence and grit in children. Older children exposed to violence and brutality are concerned about their actions and what they could have done to incite violent behaviour. The children further consider what they could have done to avoid becoming a victim and blame themselves. Violent crimes erode self-esteem and may lead to severe mental health conditions, including severe distress and social isolation. Exposure to violent behaviour, brutality and viciousness affect children's ability to connect with others and form healthy, functional relationships. Violent behaviour disturbs children's performance at school and makes them vulnerable to victimisation as adults and violent crimes committed against children have a direct and immediate impact on them and often have detrimental long-term effects on their lives, which can be exceptionally traumatic, or even fatal. Table 2.1 presents the impact of violence on children during their development.

*Table 2.1: The impact of violence on children during their development.*

<b>Development.</b>	<b>Impact of violence on the children.</b>
<p>Infants and toddlers (0-4 years)</p>	<p>Separation anxiety. Irritabilities and outbursts. Anxieties and fear to explore. Sleep pattern troubles. Emotive and expressive stress. Fear of being rejected and alone. Regressive toilet behaviour and difficulties in language development.</p>
<p>Childhood (4-12 years)</p>	<p>Invasive and disturbing thoughts. Feelings of not belonging and experiencing a sense of rejecting the self. Feelings of responsibility, self-blame and shame. Numbing of emotions and disorientation. Low self-worth and a lack of self-respect. Incapability to connect to others and to form healthy relationships. Powerlessness. Inability to focus. Disruptive and negative behaviour patterns. Poor social and academic school performance.</p>
<p>Adolescence (12-18 years)</p>	<p>Mental health difficulties. Aggression and high levels of frustration. Substance abuse and smoking. Risky, promiscuous sexual behaviour. Self-harming and suicidal tendencies. Change in eating patterns, poor nutrition and lack of exercise.</p>
<p>Adulthood (18 years and over)</p>	<p>Developing symptoms of post-traumatic stress disorder, mood disorder and anxiety disorder. Self-harming and suicide attempts. Contracting diseases because of sexual behaviour or from sexual victimisation, for example, HIV and AIDS Heart problems and heart diseases.</p>

	Struggling with overall and stress-related diseases such as having a stroke and developing anorexia, bulimia, or obesity.
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*Note:* Adapted from *Effects of Physical Family and Community Violence on Child Social Violence* (p. 43) by H. Foster and J. Brooks-Gunn, 2011, A & M University Press.

Table 2.1 does not reflect on how the effect of violence accumulates and affects individuals from youth to adulthood. The impacts that are evident during infancy will be compounded if the person faces additional violence later in childhood or adulthood. Medical evidence exists that encountering violent behaviour during early childhood prevents longevity. Violence has an enormous impact on a child’s lifecycle. Violent behaviour during childhood leads to a risk of developing mental health problems, for example, adjustment disorder, post-traumatic stress disorder, mood disorder and anxiety disorder. These disorders may become progressively more problematic during adolescence and young adulthood and can lead to self-harming behaviour and suicide. Children may partake in substance abuse and risky sexual actions as a coping mechanism. Children may also display behavioural problems such as aggression. This places children and those around them at further risk of violent behaviour and crime (Foster & Brooks-Gunn, 2011, p. 12). Burton (2006, p. 2) explains that risky sexual activities and behaviour can lead to an early onset of teen pregnancy, contracting sexually transmitted diseases and being infected with HIV and AIDS. It is concerning that the National Youth Victimization Study explained that more than a quarter of children in South Africa stated that they are most afraid of being murdered. A fifth of children indicated that they were terrified of rape and sexual assault. It is frightening that so many children are confronted with such thoughts. Many South African children fear to live in their home environment and are scared of playing in the streets of their communities.

**2.10 The burden of the victimisation of children**

Mavangu and Thomson-de Boor (2013, p. 2) explain that gender norms dictate child-rearing practices. In traditional gender norms and values, child-rearing and caregiving are widely perceived as the woman’s domain. Traditionally, men are viewed as wage-earners and providers. Single parents head many families, and the associated stress may result in punitive and unpredictable parenting practices. Values, norms, and family structures all impact on aggressive patterns in the home environment.

Mikton (2008, p. 12) reports that in a South African context from a medical, social welfare and criminal justice perspective, the lost productivity costs of violence against



children have not been estimated. Studies from developed settings submit that acting on and effectively responding to abuse is costly. This cost includes economic costs of lost productivity and negative human capital costs. The overall burden of violence is substantial. Investing in prevention strategies and action plans will potentially address the ferocious intergenerational cycle of violence against children (Mavangu & Thomson-de Boor, 2013, p. 5).

Seeth (2017, p. 14) reports that up to 34% of South Africa's children are victimised by sexual brutality and physical abuse before they turn 18. Nearly a quarter of children in South Africa have been exposed to violence in their families. It is found that more than half of all reported crimes committed against vulnerable children are sexual crimes. Viviers (2013, p. 15) refers to different types of violent crimes committed against children. These include victimisation, which includes homicide, attempted murder, sexual offences, common assault, and assault with intent to do grievous bodily harm. Reported crimes against children are incredibly high, and this does not include the many crimes which remain unreported (Beckett & Warrington, 2014, p.3). There are many reasons why violent crimes committed against children are not reported. Children may be too young to report the crime or to tell someone what happened. Children may feel that they do not have the right to say what has happened to them. Children may remain silenced and victimised because of fear of revictimization. Children may be afraid to speak up because they fear the perpetrator and repercussions (Berzofsky, Krebs & Smiley-McDonald, 2012, p. 1) Children are unsure of the consequences that will materialise when they report the crime. Children are often voiceless and vulnerable. It has also been found that children do not know where to report the crime that was committed against them (Viviers, 2013, p. 23).

Violence against children has various faces and forms. It takes place by the known, the unknown and in different settings, such as in the home environment, the community, the school, in a care facility, justice systems and places of work. Violence against children in South Africa is widespread. It is challenging to obtain accurate information on crimes committed against children (Violence against Children in South Africa, 2012, p. 3).

## **2.11 Violence against children and the cost to society**

Violent crimes committed against children places a cost on society, which involves costs associated with healthcare systems, criminal justice support structures and supportive government agencies (Abrahams & Matthews, 2011, p. 13). Foster and

Brooks-Gunn (2011, p. 6) explain that costs are correspondingly sustained by the non-governmental organisations providing protection and emotional and financial assistance to children, family units and to the community. Society carries the costs of reduced efficiency resulting from the legacy of violent crimes impacting on adult victims who suffered violence in their childhood. A consequence of victimised children is that children who witness violence regularly tend to live with the assumption that violence is part of life and is used to resolve conflict (Leoschut, 2017, p. 14). Violence is perpetuated cyclically as victims and offenders start their own families where the cycle of violence continues, and this places a substantial burden on society (Violence against Children in South Africa, 2012, p. 23).

## **2.12 Summary**

This chapter explained how violent crimes unfold, and the impact violent crimes have on children. A context was provided regarding the historical philosophy of violence in South Africa and the association between Apartheid and violent crimes. The traditional beliefs and values rooted in the South African society were discussed, and the relation between these beliefs and values and the victimisation of children was explored. It was also shown how poverty increases the risk of victimisation. Childhood violence in family structures was discussed, and the link between substance abuse and violent crimes was indicated. The impact of violence on children was discussed, along with the patterns of violence during children's life-course and how violence affects children's development. The burden of victimisation and the cost to society showed that the victimisation of children is problematic to the individual, the family and society at large.

To appreciate the immense problem and impact that violent crimes have on society and on child victims, an ecological framework will be presented in the next chapter. In considering an environmental context, the complexity of violence against children will be discussed in Chapter 3, which will focus on the system's theory, and specifically on Bronfenbrenner's ecological systems theory.

## **Chapter 3 An ecological framework relating to the complexity of children experiencing violence**

### **3.1 Introduction**

Violence is a convoluted problem; there is no single reason to explain why children experience violent crimes. Violence against children is a social dilemma. It is best understood as the intricate interaction of factors leading to devastation for children. This devastation is widespread and filters into the children's homes, schools, and communities. The role and duty of expert witnesses in court cases relating to violent crimes committed against children are of the utmost importance as they can play a crucial role, either in justice being served or in allowing for re-victimisation. Expert evidence is frequently of critical importance in proceedings relating to children, and there are cases in which it is determinative. Given the importance of the outcome of court proceedings for the child and bearing in mind that judges have no psycho-social-medical training or specialist expertise, the dependence of the court on the skill, knowledge, and above all the professional and intellectual integrity of the expert witness cannot be overemphasised. Different components of a system need to be considered in a discussion on violence against children and the role of expert witness testimony in child victim court cases. This chapter will focus on the systems theory, and specifically, Bronfenbrenner's ecological systems theory. It will provide an understanding of the social problem of violent crimes committed against children. It will further look at how violence takes place in microsystems, mesosystems, exosystems, macrosystems and chronosystems. The complexity of violence in these systems will be described to obtain an international view of how violence against children is pervasive in homes, school, and communities.

### **3.2 Systems theory as the interdisciplinary study of systems**

Beven (2006, p. 12) describes the systems theory as the study of systems. A system is a collection of interconnected elements that are organic or created. Spatial and temporal boundaries characterise systems. A system is bordered and shaped by its environment while its structure, purpose and nature define a system. A system is expressed in its operation. A system can be more than the total of its parts if it articulates co-operation or evolving behaviour. A portion of the system changes other parts of the system. The growth and modification of a system that is self-learning and adapting varies, depending on how well the system is adjusted to its environment (Wilkinson, 2006, p. 131). Specific systems function primarily to support another

system. This takes place where one system aids in the maintenance of the other system to avoid malfunction. Systems theory's goal is to methodically learn about a system's subtleties, constrictions, circumstances and defining beliefs and values. It can be recognised and applied to systems at each level of functioning (Miller & Page, 2007, p. 213). The application of systems theory can assist in creating a platform of understanding of the critical role of the expert witnesses and expert testimony in the interconnected system related to violent crimes committed against children. Accordingly, Bronfenbrenner's ecological systems theory will be discussed below.

### **3.3 Bronfenbrenner's Ecological Systems Theory**

American psychologist Urie Bronfenbrenner developed the Ecological Systems Theory. This theory was developed to explain the inherent interaction between the qualities of children and their environment and their influence on how the children will grow and develop. Bronfenbrenner stresses the significance of exploring children in the framework of various settings. These settings are known as ecological systems (Oswalt, 2015, p. 3). Children find themselves entangled in multiple ecosystems at the same time. This enmeshment often starts in the home environment system, moving into the more extensive school system and then the most spread-out system, which is society and culture. These systems unavoidably work together and impact each other in all facets of children's lives (Psychology Notes HQ, 2013, p. 2).

Given the place of systems theory in this study, Bronfenbrenner's Ecological Systems Theory (Bronfenbrenner, 1979, p.23) is respected in considering the situations in which violent crimes are committed against children and the multifaceted transposable factors contributing to violence and the impact of this on children. The systems theory can assist in creating an understanding of this social phenomenon, and the theory is therefore applied to this study. Bronfenbrenner's Ecological Systems Theory emphasises that people, including children, affect their external social and community environments. The contexts of the social environment impact upon one another, as well as on the individual (Mathews, 2014, p. 32). This theory provides a framework for understanding the factors that improve or reduce children's risk of violent crimes. Bronfenbrenner's theory considers the intricate interaction amongst people, role players and their environments. The theory considers multiple levels of interaction, such as personal, association and societal, throughout a person's lifetime (Oswalt, 2015, p. 3). The theory is suitable for this study as it combines an understanding of the historical and current individual and societal factors and other considerations affecting

children's lives. Understanding of the phenomenon is promoted by the factors which enhance helplessness and defencelessness in the environment (Miller & Page, 2007, p. 213).

Proudlock et al. (201, p. 9) finds it essential to consider this complex interplay as well as the resilient role that socialisation plays in preserving violent crimes. Socialisation is a practice which teaches people the values and norms of a given society or group so that they can function within the boundaries of such groupings. Social agents such as individuals, groupings or institutions teach the individual what is expected of him or her in society. In early development, children's essential reference is their family and the role players in their home. Socialisation agents influence children as they grow older. Educationalists, headteachers, leaders and students shape socialisation. Children are also directly and indirectly affected by broader socialising agents in the community. These agents are the media, social media, religious beliefs, cultural and traditional ideas and institutions and policymakers. Friends and peers influence children as well (Oswalt, 2015, p. 3). Children who live in dangerous areas may begin to experience violent crimes as a norm and may be socialised into accepting and tolerating violent behaviour. This will occur unless there are corrective sources of socialisation limiting and changing these influences (Violence against Children in South Africa, 2012, p. 3). A discussion will follow on the levels of Bronfenbrenner's ecological system.

### **3.4 Levels of Bronfenbrenner's ecological system**

Bronfenbrenner's ecological system presents different systems that interrelate. The microsystem, mesosystem, exosystem, macrosystem and chronosystem are illustrated in Figure 3.1.

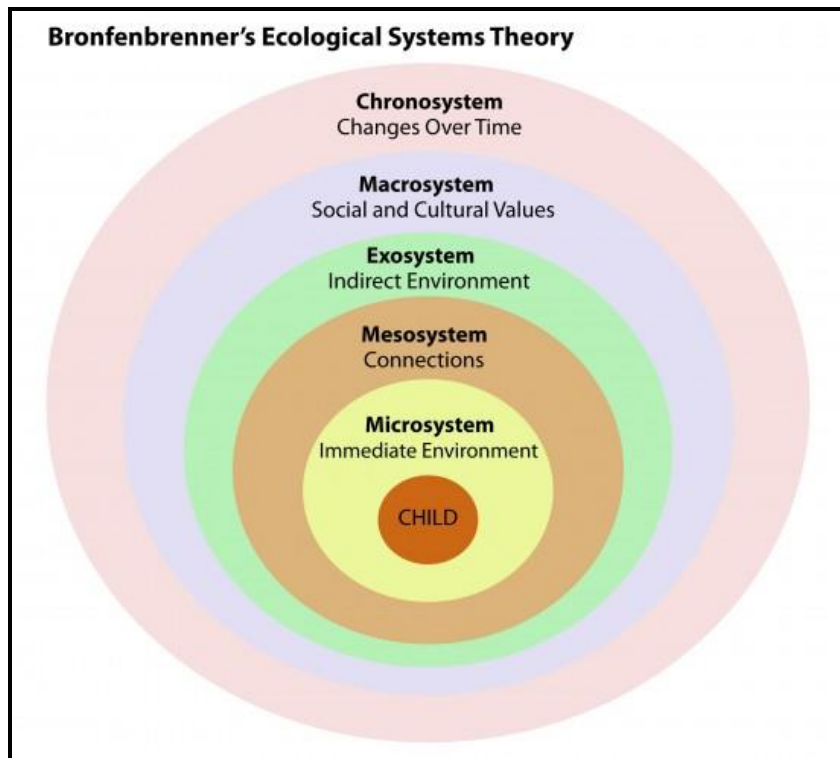


Figure 3.1: Bronfenbrenner's Ecological Systems Theory (Psychology Notes HQ, 2018, p.12).

As illustrated above, the microsystem is the immediate environment in which children move around. The microsystem includes the children's home environment, educational facility, friendship groups and community (Oswalt, 2015, p. 2). Interactions in the microsystem involve personal relationships with various role players such as members of the family, school friends, educators, and caregivers. The influences go back and forth. The interaction between the groups, individuals and children will affect how children grow. The way the children respond to and treat individuals in their microsystem will impact treatment of other individuals (Psychology Notes HQ, 2013, p. 2). Fostering nurturing and caring connections promotes healthy development. It is, however, possible for two siblings to experience the same microsystem, but the development of the two siblings may be different. Children's characteristics, personality traits, such as temperament, which is shaped by distinctive genetic and biological factors, co-determine treatment by others (Van der Merwe et al., 2011, p. 62). A significant finding by Bronfenbrenner is that siblings in the same ecological system can have diverse perceptions about their environment (Science Sundays, 2009, p. 3).

Factors of a biological and personal nature, for example, a person's income, education, gender, age, substance abuse and other abuse, affect the probability of victimisation (Morojele & Brooks, 2006, p. 45). Children are vulnerable because they are defenceless as they cannot protect themselves in the same way that adults can

defend themselves. Individual risk factors, for example, age and gender of the children, affect children's vulnerability. Younger children tend to be more at risk of physical violence than older children. Girls are at higher risk of sexual abuse and exploitation and harmful traditional practices than boys. It has been found that boys are significantly more at risk of physical injury. South African studies show a connection between substance abuse and violent behaviour (Vellios & Walbeek, 2018, p. 32).

The mesosystem embraces a collaborative relationship with the different microsystems. The mesosystem is a system of microsystems. It involves connections between the home and school environments, between friendship groups and family and between family members and religious organisations (Oswalt, 2015, p. 2). When parents actively participate in their children's lives and their friendships with peers and spend quality time with their children, it has an impact on their development. Their development is affected positively, and children function optimally. When parents disapprove of and criticise their children's friends, children experience disequilibrium and conflicting emotions and this harms children's development (Psychology Notes HQ, 2013, p. 2).

Abrahams and Jewkes (2005, p. 21) found that negative child-parent relationships increase the risk of children becoming victim-perpetrators. Positive child-parent relationships are a preventative measure against the risk of victimisation or becoming a perpetrator. An individual's closest social group, which includes friends, partners and family members shapes that individual's behaviour and experiences. Families are a significant influencer in children's lives. Families can be a protective factor against victimisation; however, a dysfunctional family unit promotes risk.

Nduna and Jewkes (2012, p. 42) identify the family as the most basic socialising setting for children. A family structure can teach children the importance of a sound value system and what norms are expected from children in society. Connected relationships and positive parenting help children to be well regulated and resilient when faced with hardship. Family units are varied and often divided due to divorce, migrant labour practices and the impact of HIV and AIDS in South Africa. Many children are raised in female-headed households and child-headed households. Financial stressors and the burden of single parenting can limit availability to children. Limited time and unavailability threaten the stability of parenting (Barbarin & Richter, 2001, p. 31). The HIV pandemic has a damaging effect on many families. The HIV pandemic has produced high levels of orphaning and increased children's vulnerability to

maltreatment, abuse, and abandonment. Domestic violence has a substantial negative impact on children's long-term mental health (Nduna & Jewkes, 2012, p. 29).

The exosystem relates to the connections between two or more settings. This connection to other people and places may not always include the developing children, but even so concerns them indirectly (Van der Merwe & Dawes, 2007b, p. 18). For example, this may consist of the parents' workplaces, the broader neighbourhood and other distant family members (Psychology Notes HQ, 2013, p. 2).

The community-level includes various settings in which social connections take place, for example, schools and neighbourhoods. The community's characteristics may be contributing factors and victimisation may be promoted in the environment. Tolerance to violence in communities relates to violent behaviour found in communities (Violence against Children in South Africa, 2012, p. 2). School environments and structures play an essential role in safeguarding children from violence. Educational settings often expose children to violence and may socialise violent behaviour. Boy and girl children are exposed to corporal punishment, cruel and humiliating forms of psychological punishment, sexual and gender-based violence and bullying. Many young girl children are faced with sexual coercion and harassment in their school environments. A school climate that is tolerant of violence promotes violence as a regular part of the school experience (Violence against Children in South Africa, 2012, p. 4). Violence is on the increase in school environments, and disturbing video footage shows how children are sexually harassed at school and how teachers beat children with objects (Wolhuter, 2017, p. 21). Many South African settlements are poor and deprived of social organisation. Children often witness gang violence or protest actions and participate in dangerous riots. Exposure to violence is commonplace in many South African communities and children's lived experience shows that they often face high levels of violent crimes in their neighbourhoods (Burton, 2006, p. 1).

The macrosystem is the broadest and most distant assortment of people and places to children. These macrosystems have a substantial impact on children. This system includes cultural patterns and values, beliefs, ideas, political and economic approaches (Oswalt, 2015, p. 2). Children in war-scarred communities will develop differently than children in peaceful communities (Psychology Notes HQ, 2013, p. 2). The societal level includes broad societal factors such as well-being, financial, scholastic, and societal policies (World Health Organisation, 2012b, p. 2). These factors all have an impact on children's development and overall emotional and



physical growth. The well-being and wealth of a society is a determining factor relating to the violence children may be exposed to in such a community.

The chronosystem adds the element of time. This system shows the impact of change and constancy in the environment of the children. The chronosystem includes family structure changes, parents' employment status, societal changes, economic cycles and wars (Pinheiro, 2006, p. 65). The different systems simultaneously influence children. Bronfenbrenner's Ecological Theory explains the variety of interconnected influences on the development of children. Mindfulness to settings offers interpretation of children's behaviour in unique settings (Psychology Notes HQ, 2013, p. 2).

Figure 3.1 illustrates the different contexts in children's lives. The figure shows that home, family and the school influence children, while the community influences the home and school contexts. The community, in turn, is positioned in a broader society, which is also influenced by several factors, for example, macro-factors such as government policy. Van der Merwe and Dawes (2007b, p. 32) explain that consideration should be given to risk and protective factors at each level. Risk factors are actions and conditions which increase children's risk to harm. Protective factors in one setting may compensate for risk in another setting. More risk means less protection for children (Herrenkohl et al., 2003, p. 14). Possible risk factors include domestic violence, substance abuse by parents, school detachment, neighbourhood shortcomings, pro-violence norms and attitudes, attachment complexities with parent-child relationships, punitive and erratic discipline, inadequate supervision by parents and socio-economic disadvantages (Ward, Martin, Theron & Distiller, 2007, p. 24). Protective factors comprise a supportive school environment, participation in extracurricular activities, family assistance, unity and supervision of children, all of which are essential protective factors. Secure attachments in child-parent bonds and stable family units contribute to protective factors. Access to childcare facilities and emotional-social support in the community is crucial protective factors. Pro-social attitudes, a positive attachment to school, high self-esteem, an internal locus of control, are potential protective factors. Healthy communication patterns and mentoring adult relationships are also both protective factors for children, promoting well-being (Ward, Flisher, Zissis, Muller & Lombard, 2001, p. 4).

The following section will focus specifically on violence against children in the home environment.

### **3.5 Violence against children in the home environment**

Wiley (2008, p. 17) observes that in South Africa, where human rights are highly prioritised, in addition to the South African constitutional and legal framework, so many injustices nevertheless continue to affect children. These harms often take place in children's home environments. An environment that is supposed to provide safety to children instead creates intense fear for numerous children (Violence against children in South Africa, 2012, p. 7). Wrongs impacting on children include violence, hardship, patriarchy and gender violence, socialised insubordination, enslavement, and the silencing of children. These conditions contribute to the victimisation of children. South Africa has particularly high rates of both bodily and sexual mistreatment of children (Africa Check, 2017). Progressive, rights-based legislation exists to protect children. However, this progressive legislation is not attentively applied. Violent crimes committed against children cannot be lowered without simultaneously improving the social and economic climate of the country (Foster & Brooks-Gunn, 2011, p. 41).

Leoschut (2009b, p. 12) explains that assault reported by children often takes place in children's home environments. It is evident that the perpetrators are familiar to the victims and that the children's vulnerability and the safety of the home environment become violated. Unsafe home environments leave children in an exceptionally vulnerable place because children then cannot feel safe in their own homes due to domestic violence. Children are victims not only in their home environments but also in their broader learning environments, as will be described below.

### **3.6 Violence against children in the school setting**

The pervasive nature of violent crimes in South African communities has long been debated. Substantial evidence suggests that South African children are overexposed to various forms of victimisation during their childhood. Victimisation of children often takes place in the setting of the school environment (Leoschut, 2017, p. 4). Price-Robertson et al. (2013, p. 13) stress that children spend most of their day at school. Teachers and caretakers in educational environments must care for and safeguard children. However, violence is part of many children's everyday life in their school environments. Adults and peers are often to be found as perpetrators in the school environment. Many cases refer to children to be being physically and sexually violated in their school environments by peers and educators (Motau, 2017, p. 2).

Motau (2017, p. 4) describes gender-based violence as a reality in South African schools. Gender-based violence is rife in both under-resourced and privileged schools. Girls are sexually exploited, raped, abused, harassed and assaulted by boys. Teachers abuse their authority to make sexual demands of children, with threats of punishment or promises of improved grades. South African schoolgirls have been attacked in toilets, classrooms, corridors, in dormitories and behind school buildings. These school-related abuse incidences take place before, during and after school. Violence is directed towards girls and boys in schools and is a growing problem. South Africa is second, after Jamaica, with the most incidents of violent crimes committed in schools. Some pupils have become so desensitised to violence that when they witness violence, they record it on their cell phones and post it on the internet. School environments are no longer safe environments for students, and school violence has become a reality (April, 2018, p. 1).

### **3.7 Violence against children in the community**

Community violence is one of the most prevalent forms of exposure to violence among children in South Africa (Collings, Valgee & Penning, 2013, p. 1). Leoschut (2009a, p. 14) reports that people in communities regularly hurt children. In South Africa, community members – including children – describe their communities as being plagued by fights and crime, and they experience their community as an unsafe environment. The Department of Social Development (2014, p. 1) categorises violent crimes against children as physical and mental violence. Violence can take place in the form of child murder, sexual corruption, child handling and trafficking, dangerous customary cultural traditions, child labour practices, mistreatment, and incidental cruelty. Violence is not confined to one area-specific level, but perpetuates in a home environment, at educational facilities, in the neighbourhood and community and at official levels. Both adults and children can be role players, as participants in and victims of violent crimes. South Africa has high statistics on violent crimes, however, violent crimes affecting children are not unique to South Africa. The situation in South Africa, to a large extent, mirrors world trends of crime. Peripheral considerations compounding complexities around violence include housing problems, poverty, job loss, detachment in parental relationships, parental and caregiver substance abuse, lack of resources for mental health problems and risks concerning challenging behaviour of children (The Department of Social Development, 2014, p. 1).

The media daily reports on an enormous amount of crimes against children. Some of these cases include horrendous crimes committed against children and provide insight into the way that children are affected by violent crimes daily. Headings of articles as shown in Appendix K include shocking entries reading as follows: “Confession expected in Brakpan triple child murder case”; “Bloemfontein dad allegedly stabs his kids, killing 6-year-old daughter”; “Mom allegedly shoots husband, 2 children on camping trip before turning the gun on herself”; “Verulam mom gets suspended sentence for dumping new born in rubbish bag”; “E Cape Social Development warns against *Ukuthwala*”; “Rape of eight-month old baby in Cape Town ‘sickening’”; “Child preyed on by ‘serial rapist neighbour’ to undergo hysterectomy”; “Man convicted of raping and murdering his 18-month-old niece”. Crime against children is rife and is a social dilemma that is crying out for crisis intervention to ensure the safety of children (Mwambene & Sloth-Nielsen, 2011, p. 7).

### **3.8 The expert witness interrelates in the systems addressing violent crimes committed against children in court proceedings**

The justice system plays an essential part in society’s response to violent crimes committed against children. Expert witnesses must show courts the way. Multi-disciplinary perspectives, consultation and in-court expert testimony are necessary. Expertise is mostly needed in the fields of medicine, psychology, psychiatry and social work. Skill is required both to substantiate and to educate the courts about crimes committed against children (Sanders, 2007, p. 1). Non-legal professionals often feel uneasy in a legal setting as the adversary process is foreign to their professions. Good professional relationships between expert witnesses and legal representative provide for less anxiety for expert witnesses and increase professional effectiveness in court. Legal representatives need to make full use of expert witnesses in a court process as this is in the interests of victimised children (Duquette, 1981, p. 325). Courts rely heavily on expert opinion, and often the specialist advice determines what happens in the case. Expert testimony influences decisions in the courtroom and plays a role in determining what happened to children and who perpetrated the offence, and it ultimately influences the conclusions drawn in the courtroom. From a systemic view, expert witness testimony plays a central role in violent crimes court cases where children have been affected. Well trained and ethical professionals are needed to master the duties of this specific task (Downes, 2006, p. 7). Sanders (2007, p. 1) agree that children are one of the largest vulnerable populations who fall victim to criminalised

behaviour. There is a need for ethical professional persons to take on the case matters and to deal effectively and ethically with the child victim.

### **3.9 Ethics of expert witnesses applying deontology**

Chonko (2012, p. 3) explains that professionals use theories and empirical literature as a foundation to support their expert views. This embedded empirical approach helps and guides expert opinions. Respective theories highlight distinct points. Theories influence decision-making styles of expert witnesses and have an impact on their decision rules. It further shapes the outcome of expert witnesses' duties to others, reaching an ethically correct decision.

To understand ethical decision-making, it is imperative to know that not all decisions are always made in the same way, and various strategies can be applied. The ethical theory explains that a theorist uses a standard set of goals for decision making to reach success. Different thoughts and procedures can be applied to come to the correct professional conclusion. These goals are inclusive of beneficence, least harm, respect for independence and justice (Chonko, 2012, p. 3; Crisp, 2012, p. 257). Chonko (2012, p. 5) explains that the principle of beneficence directs the decision-maker to do what is right and proper. This priority to do well makes for an ethical perspective and a workable solution to an ethical dilemma acceptable. It is vital to note, like beneficence, least harm deals with situations in which no choice appears beneficial.

In such case matters, professional decision-makers seek to do the least harm possible and to do harm to the smallest number of people. The rule to respect autonomy must be understood clearly. This principle of respect for independence asserts that decision-making should focus on granting individuals the ability to be autonomous and independent and to be able to come to decisions to apply to their lives. Individuals ought to have as much control as possible over their lives. The individuals themselves are often the only people who genuinely understand their chosen lifestyle entirely. The justice ethical principle explains that decision-makers must focus on procedures that are reasonable to those involved. Ethical decisions must be aligned with ethical theory. This is only not the case when there may be extenuating circumstances. Cases with extenuating circumstances must contain a

meaningful and essential distinction from similar trials that validate the paradoxical decision (Crisp, 2012, p. 257; Misselbrook, 2013, p. 211).

Broad categories of the ethical theory consist of deontology, utilitarianism, rights and virtues. The deontological class of ethical theories explains that professionals ought to abide by their obligations, responsibilities and duties when engaged in decision making and ought to consider ethics (Alexander & Moore, 2016, p. 2). This means that individuals have a strong focus on obligation to another because upholding their duty is what is considered ethically correct. An expert witness must do what is morally right. This is needed to ensure that expert witnesses fulfil a respectful, knowledgeable and professional role during a case.

Furthermore, expert witnesses must provide well-considered ethical and insightful opinions on a specific subject. Practical ethical theories are rooted in the ability to predict the consequences of action and behaviour. Expert witnesses need to ensure that they have carefully and critically reviewed their expert opinions and their decision-making processes. Expert witnesses ought to understand the enormity of the impact that their opinions, decisions, and recommendations may have in a case matter. This is a factor which must be especially considered where children are involved. Professionals acting as expert witnesses in cases concerning children have an enormous responsibility, as their conclusions will be considered in court and will have an impact on the children's lives.

Ethical theories are based on rights. The rights recognised by society are safeguarded and given the highest priority. Individuals may bestow powers upon others if they have the ability and resources to do so. Expert witnesses need to consider all individuals' rights regarding all information in a case matter and they must apply a wide lens when evaluating and assessing cases, to ensure that all positions are well-considered, and everyone's rights are considered in the process. Not only should the rights of clients be considered, but also those of colleagues. To provide a well-deliberated view, an expert witness must review all positions and work collaboratively to provide the court with a professional perspective and considered expert opinion. It will ensure that expert witnesses give attention to the rights of everyone that needs to be considered in a case matter. The virtue ethical theory recognises individuals by their character rather than by action. Typical and extraordinary efforts must be regarded as well when considering unethical conduct (Chonko, 2012, p. 4; Misselbrook, 2013, p. 211).

Expert witnesses need to be open-minded and able to respect and understand not only an individual, but a system and its functioning holistically. A holistic view should be allowed for expert witness testimony, to ensure that a context is provided, and an understanding of the case matter is obtained. Expert witnesses must assume a moralistic role, as this will guide their testimony and provide for an ethical expert witness testimony.

The researcher decided to apply the theory of deontology, as deontology guides and produces exceptionally reliable and constant decisions, since choices are built on the professional's set of duties. The researcher's view of ethics aligns with the theory of deontology and the focus on consistent decision-making is vital so as to act ethically. A deontological ethical lens will accordingly be applied to this study. Waller (2005, p. 2) explains that deontology is a moral-ethical theory using rules, guidelines, and procedures to differentiate right from wrong.

Deontology is linked to the philosopher Immanuel Kant. Deontology promotes that moral actions adhere to universal moral laws. Application of deontology is easy. It involves professionals following the rules and doing their respectful duty. A deontic approach fits well with natural intuition about what is seen to be ethical and unethical: consequentialism judges actions and behaviour by results. Deontology does not necessitate weighing the costs and benefits of a situation. Deontology avoids subjectivity, ambiguity, and uncertainty. Deontic expert witnesses must follow set rules and apply themselves accordingly (Alexander, 2016, p. 32). Despite its strengths, a rigid application of deontology can produce results that many people find undesirable. Deontology requires that no rules be violated and to set firm boundaries to ensure credible expert testimony. A deontic outlook is especially applicable in cases concerning violent crimes committed against children, as expert witnesses will have firm boundaries to promote the moral obligation of the professional to make sure that the court understands the impact of crimes on children and the vulnerability that children face due to violent crime, as this forms part of expert witness's ethical obligation when working with case matters concerning violent crimes.

Kant's most characteristic input to ethics was his firmness in explaining that actions possess moral worth when duty is done for its own sake. Kant announced this idea as something accepted by the universal moral consciousness of human beings. Kant later illustrated that deontology is a crucial component of any rational morality (Crisp, 2012, p. 270; Waller, 2005, p. 3). Kant opposed the principle of judging every

action by its consequences as the correctness of an effort depends not on its results. Accuracy depends on considering a moral rule that can be a universal law. According to Kant, it would be erroneous, unethical, and immoral to tell a lie. It is, thus, challenging to retain a strict deontological perspective. Kant believed that the principle of universal law requires that one never tell lies. A conceivable solution would be to formulate the maxim of the action with enough precision to define the conditions under which it is permitted to tell lies. Kant did not explore such solutions as this is not what deontology represents (Alexander, 2016, p.32).

To apply deontology to the testimony of expert witnesses ensures that expert witnesses are not focussed on the consequences of their evidence and for expert witnesses to remain focused on the ethical responsibility to do what is morally needed, consistent and truthful. The provision of testimony that is truthful, accurate, consistent, and harmonious in child victim court cases will allow for an ethical lens, where professionals focus on the importance of their moralistic testimony and their duty to deliver expert, truthful, moral evidence.

In deontological ethics, an action is deemed morally appropriate and correct because of some characteristic of the action itself, not for the reason that the result of the action is decent. Deontological ethics retains that certain acts are morally obligatory irrespective of their consequences for human welfare. The deontic expert witness's world view is to align with expressions such as "Virtue is its own reward", "Let justice be done, though the heavens fall" and "Duty for duty's sake" (Waller (2005, p. 2).

### **3.10 Summary**

This chapter focused on the system's theory, and specifically on Bronfenbrenner's ecological systems theory, and is considered the complexity of the social problem of violent crimes committed against children. A platform was provided for understanding how violent crimes committed against children are a problem that exists in different contextual settings, transcends from one setting to another and is interrelated between settings. The importance of having a systemic view about violent crimes committed against children and not to view violence against children in a vacuum was highlighted. Violent crimes against children were explained in the context of the home, school, and community. Violent crimes against children and child victim's court cases ought to be viewed from a systemic perspective, where various factors and role players participate in various levels of collaboration. The chapter briefly introduced the integral role of the expert witness in child victim court proceedings, and the critical



role of the system to address violent crimes affecting children. To this end, the deontological theory was introduced, where the focus is on a moral position to deliver expert witness testimony.

Chapter 4 will extensively focus on the role of the expert witness and expert witness testimony in child victim court cases.

## **Chapter 4 Expert witnesses and expert testimony in child victim court cases**

### **4.1 Introduction**

Chapter 4 focuses on the expert witness and expert witness testimony. In child victim court cases, the expert witness has a crucial part to play in ensuring that justice is served. The professionalism and ethics of an expert witness translate into the expert witness's testimony and are imperative, as this testimony gives an understanding of the case matter and assists the judge in contextualising the crime that has taken place against children. This chapter sketched the importance of expert witness testimony and provided more insight into the role and duties of expert witnesses in child victim court cases. Further information will be provided about expert witnesses and how witnesses can prevent controversy about their role and duties.

### **4.2 The legal system as an essential response to child victims' cases**

The legal system is an essential part of a society's reaction to cases where children have been wronged. When children are harmed, the criminal justice system allows for justice to be served and to address the harms that have been done to children. The courts often need expert guidance to contextualise the case and to add value and create an understanding of the details of the case matter by applying expert knowledge. Courts need to be informed in their considerations and decisions, by drawing on testimony of expert witnesses from various professions. Reports, joint expert meeting minutes and in-court expert witness testimony by medical practitioners, psychologists, psychiatrists, social workers, and other professionals are required to provide a context and understanding of violent crimes committed against children (Allan & Meintjes-Van Der Walt, 2006, p. 303). Expert testimony enables the court, by providing it with well-considered information and specialist knowledge, to act in the best interests of children. This information and specialist knowledge give understanding to the court and assist the court in its decision-making processes.

Expert witnesses often do not feel as comfortable in court as in their practices, as the court and its rules are foreign to experts. Legal professionals need to attain a basic understanding of the expert witness's professional field. Expert witnesses need to understand the legal system. A mutual appreciation of each other's professional areas strengthens cases. An understanding between legal professionals and expert witnesses in child victim court cases promotes the prosecution of the case matter in such a way as to best serve the interests of vulnerable children (Duquette, 1981, p. 325). Vogelsang (2001, p. 1) has found that professionals are often profoundly

concerned and indignant about being subpoenaed to deliver expert witness testimony. Most expert witnesses fear the witness stand and feel uneasy about being cross-examined. The stress relating to expert witness testimony and the interrogation by legal professionals create turmoil for expert witnesses, and the pressure of court appearances make expert witness testimony a daunting task. If experts have a sound ethical platform to work from, it will provide them with more security and will allow for better evidence to be rendered (Sagiv, 2015, p. 229).

Swann (2002, p. 310) refers to several cases in which judges have voiced their opinions of experts and their testimony. Views were mostly negative, while other aspects were more positive. Criticisms by judges mostly relate to expert witnesses misleading the court. Furthermore, there has been criticism of experts not expressing firm opinions as to whether an event has happened and experts not expressing firm views as to whether children were telling the truth. Expert witnesses must inform the judge, do an assessment of the case matter's details, give a professional opinion to the court and, if need be, consult with other experts. A letter of instruction and mandate should provide the framework of what is expected from the expert in taking on the case. The primary duties of expert witnesses should comprise objectivity, neutrality and conducting proper research in each case matter (Swann, 2002, p.311).

The well-being of children is essential in society. The expert witness plays a critical role in cases concerning children where violent crimes have been committed. The court is the upper guardian of children and it is therefore imperative that the court obtains knowledge and information from experts to assist the court. A testament to this is the importance of protecting children. This is enshrined in the 1996 Constitution which refers to the upholding and safeguarding of children's rights. The government must protect and promote the survival, development, and well-being of children to promote children's well-being in society. South Africa is a signatory to many international treaties. These include the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the United Nations Convention on the Rights of the Child, and the Millennium Declaration, of which the Millennium Development Goals are the targets for achievement (UNICEF, 2017, p. 3). Treaties and implementation through programmes and services are an expression of a government's commitment to giving effect to the agreement. Showing interest in such covenants and obligations will undoubtedly enhance children's rights (Abrahams & Matthews, 2011, p. 1).

The Children's Act No. 38 of 2005 determines that children should be protected against violent crimes. It defines the terms abuse, exploitation, and neglect. The Children's Act outlines measures for the prevention of, early detection of and response to violent crimes committed against children. Section 1 of the Act describes abuse as bullying, exploitation, physical, sexual, emotional, and psychological harm (Abrahams & Mathews, 2011, p. 6). It defines neglect as a failure in the exercise of parental responsibilities to provide for the necessary physical, intellectual, emotional, or social needs of children. The Act describes sexual abuse as sexual molestation, using children for sexual gratification, deliberately exposing children to sexual activity or pornography, or the commercial sexual exploitation of children. The Act is at odds with the Sexual Offences and Related Matters, Amended Act No. 32 of 2007 concerning age and the definition of rape and sexual assault (South Africa, 2007, p.14). The Children's Act describes a child as anyone under the age of 18 (Centre for Child Law, 2012, p. 4). Sexual activity between consenting 16- and 17-year-olds would be sexual abuse. The Children's Act does not define consensual sexual activity between children. The definition section in the Act does not cover rape. The Sexual Offences Act and Related Matters, Amended Act No. 32 of 2007 defines sexual assault. The absence of a shared description hinders intersectional collaboration and the establishment of the needed service delivery (Mathews, 2014, p. 12).

#### **4.3 The distinction between expert and non-expert evidence**

Expert testimony plays an important part in child victim cases as it educates and informs the court as to the child's experience of violent crime. Expert witness testimony achieves a range of tasks. Expert witness testimony is used to verify facts that cannot be proven otherwise through lay testimony and to place admissible opinion evidence before the court. Testimony is further used to elaborate on narratives and to draw conclusions and inferences from facts. The ability to deliver expert testimony is only possible through the application of specialised knowledge and skill. Evidence must be relevant and helpful to the court. It is not the intention or role of expert witnesses to assume the role of the judge and to make decisions. Expert testimony must create reasonable reliance, confidence and trust in expert testimony are essential (Swann, 2002, p. 310). Expert witnesses cannot be used to admit inadmissible evidence. It is vital that specialist testimony assist the trier of fact in providing an understanding through giving evidence and to assist the court to make determinations. Expert testimony offers information to the court that non-experts cannot and are not

competent and skilled to provide. Expert witnesses may respond to hypothetical questions and provide opinions and views on such questions, while the non-expert may not answer to such matters. Expert witnesses can testify not only from facts perceived professionally outside of the court proceedings, but also from circumstances known to the experts at and before the court proceedings (Baker, 1992, p. 326).

Experts may give testimony based on background information not related to the court proceeding's events. Expert testimony is essential for many reasons. Expert testimony allows for inference which is correctly connected to that specific profession and which is beyond the knowledge of the layperson. The admissions of expert opinions assist the judge. Knowledge of experts can benefit the process of decision making and create more clarity on a matter. Expert witnesses must have the necessary skills, knowledge and understanding and experience in and related to the appropriate field, in other words, they must be suitably qualified. Once expert witnesses are trained as experts, any alleged deficiencies in the professional's credentials are considered critically and will affect the expert's credibility and integrity (Allan & Meintjes-Van Der Walt, 2006, p. 303).

It is critical to determine that expert witnesses are indeed experts in their field and can deliver and contribute to the court expert evidence. The helpfulness analysis is an informal way of deciding whether expert witness testimony is needed to help judges in their pursuit of understanding and facts (Sagiv, 2015, p. 229). Factors which judges must consider when determining whether expert testimony is helpful, include the sophistication of the expert's knowledge and the ability to give clarity to the court and whether the evidence is likely to mislead and create confusion. Judges must determine whether expert testimony is speculative or accurate and adds value. When a judge finds that the testimony is prejudicial, confusing, misleading, and wastes time, expert witnesses can be dismissed (Baker, 1992, p. 345).

Experts must be qualified in a field where they can offer expert testimony. The area of knowledge cannot be limited to general education and must extend to specialised expertise. Expert statements are drawn from professional persons who are experts in their respective fields and who are well informed and experienced in a specific area. Experts gain knowledge through training, formal education, and experience. Allan and Meintjes-Van Der Walt (2006, p. 303) pointed out that while South African courts are not explicit about what the specific criteria are that professional persons must satisfy before they are regarded as expert witnesses, it is

vital for professionals to have theoretical and practical knowledge (Boezaart, 2009, p. 24). The court must be convinced that witnesses are qualified to testify as expert witnesses on the subject concerned. Expert witnesses need to provide the court with a résumé to assure the court of their expertise on the subject matter (Sagiv, 2015, p. 229).

#### **4.4 Roles and duties of the expert witness**

Cases involving children will be filled with challenges if expert testimony was not provided to the court. Children's evidence is often problematic as to the children's vulnerabilities, fears, and understanding of what has happened to them. Expert witness testimony allows the child's case to be factually presented to the court. Swann (2002, p. 306) explains that the roles and responsibilities of expert witnesses have evolved over many years. However, the roles and duties have mostly been determined through the court's expectations of professionals. Professional bodies define the responsibilities, roles and duties of professionals. Expert witnesses have a unique and essential role, namely, to give an expert opinion to the judge. Courts depend on expert witnesses as, separately from law matters, courts do not have the expertise to make findings of different fields without the guidance of expert witness testimony. Professionals need encouragement to appear as expert witnesses because they often have fears about going to court and feel anxious as a result. For several professionals, the time involved to appear as an expert witness is additional work, and often professionals in these fields are already overloaded. The professionals are accustomed to the scrutiny of their work; however, preparing and delivering testimony in court can be taxing. There are many cases, but it is challenging to find sufficient, well qualified expert witnesses (Allan & Meintjes-Van der Walt, 2006, p. 45). The crossing point between the scientific and legal realms can be difficult. The scientific process places a high value on change. The legal process seeks to effect resolution and finalisation of disputes. Perceived differences between professions contribute to the difficulty in the two sets of professionals' experiences coming to the same understanding of a situation and in drawing similar conclusions (Allan & Meintjes-Van der Walt, 2006, p. 45).

Expert witnesses experience distress that affects their roles as they perceive the court as an intimidating, foreign setting. For expert witnesses, giving evidence is challenging, as specialist witness testimonies are often scrutinised to the point where experts are attacked, and their ethics questioned. The questioning of the expert's

ethics places expert witnesses in vulnerable positions and even well-versed and highly qualified professionals prefer not to appear as expert witnesses in court cases (Swann, 2002, p. 306).

Swann (2002, p. 307) emphasises that the most critical role of expert witnesses, and expert witness testimony is to assist the judge in providing knowledge and insight into the case matter. To fulfil these duties, expert witnesses need to understand that they have a responsibility to the court. Expert witnesses do not have a duty to the party which commissioned them. The role of the expert witness is to assess the case matter and to provide opinions within the relevant field of expertise. It is often found that expert witnesses have different views. It is the judge's role to work through the evidence given by the experts and make sense of the evidence. The role of the experts is to express professional opinions based on their own experience, knowledge, and expertise. Experts can give views on the matter in which they are trained and in which they have the necessary qualified knowledge (Vogelsang, 2001, p. 76) and they are at times expected to consult with other experts, especially in complicated cases. Difficulties arise when several experts give their opinions in one matter, without having conferred with each other before the hearing. Judges have encouraged experts to consult with other experts and to set out agreements and disputes, in the form of joint expert minutes. If necessary, directions should be given by the court. There is no doubt that expert consultations save time and narrow issues to be brought before the court. If one expert in a matter attempts to unduly influence another expert in the case into changing their views, this ought to be stressed to the court and highlighted in testimony. If expert witnesses are in doubt about any aspect of their role in the matter and feel unduly influenced by any party or legal representative, the expert witnesses should consult with their legal representatives. Integrity is critical in delivering expert testimony (Swann, 2002, p. 307).

Swann (2002, p. 307) states that the general duties of expert witnesses in child victim court cases are to show integrity and objectivity. The evidence offered by an expert witness must be the independent, objective, and neutral product of the expert witness. Expert witnesses need to deliver independent guidance to the court about matters within their expertise, by way of objective, unbiased opinion. Expert witnesses should not experience role confusion; they should not assume the role of advocate or judge but should state the facts or assumptions on which their opinion is based. They should not neglect to consider material facts that detract from their conclusions or

views. Expert witnesses should make it clear when questions or issues fall outside their areas of expertise. Expert witnesses' opinions that are not adequately researched lead to insufficient information being presented to the court, which is problematic. The court must be informed if opinions were not researched. Expert witnesses must make clear that their opinion is an interim opinion. If, after an exchange of reports, expert witnesses change their views, the changed views must be discussed with the other legal professionals without delay and, when appropriate, brought to the attention of the court. Reports may refer to documents, for example, photographs, plans, calculations, surveys and assessment reports. These documents must be provided to counsel as addenda to the report (Lerm, 2015, p. 2; Sanders, 2007, p. 3), or if that is not possible, they must be provided to counsel as soon as possible before the commencement of the hearing of the matter.

Professionals do register at their professional bodies, however, many do not feel that their ethical codes provide a framework and ethical guideline that is good enough for them to feel protected in their role as expert witnesses and feel that such codes only give a general overview of their ethics. For ease of reference Appendix L presents the Health Professions Council of South Africa (HPCSA) general ethical rule for medical practitioners, and Appendix M refers to the ethical code of the South African Council for Social Service Professions (SACSSP). A general overview of ethical standards is provided in these codes. No specific ethical framework exists that details an expert witnesses' ethical conduct in regard to court proceedings.

#### **4.5 Expert witnesses testifying in court**

Expert testimony is persuasive and compelling when the expert's opinions, conclusions and recommendations are built on a foundation of facts as information forms the foundation of expert witness testimony. The judge first needs a broad perspective that includes who did what, where, when and to whom. Accordingly, details must be added to provide further context and a comprehensive background. Expert witnesses need to contextualise the information in court proceedings (Swann, 2002, p. 306). Expert witnesses need to provide the judge with detailed and precise observations and assessment results. The judge must understand what expert witnesses recognise to be relevant to the court's inquiry. Expert witnesses who have performed assessments, observations and consultations with the children, family members, collaterals and the environment, presenting this information from a systemic view, are generally more persuasive to the court. These expert witnesses will describe



what they have observed and assessed and will accordingly draw appropriate inferences from their findings and include their expert opinions (Voselsang, 2001, p. 32).

In child victim court cases, the expert witness's knowledgeable understanding of the case increases the expert witness's credibility and trustworthiness. Expert witnesses may provide their views on other experts' work and findings when working in a similar or same field. Expert witnesses may draw inferences from the information and by their reasoning, connect the observed factual data to their opinions and conclusions. The importance of systematic thinking, which attaches the primary data and expert witnesses' conclusions, should be emphasised. The judge will be persuaded by expert witnesses who lead the judge through the information, the reasoning and then to the findings (Duquette, 1981, p. 335). The legal-expert collaboration involves experts educating counsel about the specific discipline of the expert and informing the counsel how the discipline can answer the relevant legal questions presented.

The counsel assists the expert in explaining court procedures and rules and guides experts to feel more comfortable in court. Often expert witnesses, even experienced and skilled experts, are anxious about giving testimony to the court (Vogelsang, 2001, p. 76). Counsel must prepare the expert witness before testimony is given, as this will help experts to deliver evidence in a calm manner, with confidence (Allan & Meintjes-Van der Walt, 2006, p. 24). An interdisciplinary process may benefit from a general description of the witnessing process and of what to expect of direct and cross-examination. The preparation will generally be an essential part of the case conference between the counsel and the expert. After the views and explanations have been furnished by the expert, the counsel will begin considering questions to be asked in court. The counsel needs direct and straightforward conclusions from the expert (Vogelsang, 2001, p. 76).

Experts should think of their testimony, not as being like talking to colleagues or peers, but more like addressing a lay person. Expert witnesses should keep their testimony as simplistic and direct as possible. The evidence must be accurate and truthful. Experts should participate actively in the refinement of their conclusions for testimony. The counsel must understand the limits of what experts can say considering the information in the case and provide general advice to expert witnesses about the court appearance (Sagiv, 2015, p. 229).

#### **4.6 The process of expert witness testimony and examination in the courtroom**

Expert witnesses will be sworn in when they are called to testify. They can stand or be seated when delivering evidence. The process of examining expert witnesses starts with the process of evidence in chief and direct examination. In a question-and-answer format, the counsel who called the expert elicits the witness's testimony. There is no formula for presenting a case in court. The presentation must be clear, logical and brief, and be persuasive of the expert witness's final opinion. The evidence must be clear to a layperson. A report or expert summary handed in before the hearing will be of great assistance to the expert witness, who may consult the document. Extraneous notes may not, as of right, be consulted. The judge is not a specialist and needs to obtain a well-educated view on the subject matter (Allan & Meintjes-Van der Walt, 2006, p. 24).

In direct examination, expert witnesses and their testimony should promote the credibility of the testimony. The counsel asks the facilitating questions, but all attention is focused on the expert witness. The counsel strengthens the credibility of the evidence of the expert witness through the presentation of their case. The questions must enable the expert witnesses' account, conclusions and recommendations, with the assistance of the report or expert summary. The process of giving evidence to the court is structured by providing an introduction and qualifying the qualifications and experience of the expert witness. Thereafter a presentation of the foundation of facts will take place. An interpretation of factual data will then occur, coupled with the development of theory. The expert witness will then be taken through conclusions and recommendations that they have on the case matter (Sagiv, 2015, p. 229).

Duquette (1981, p. 335) explains that even though the counsel is asking the questions, the expert witness should address the judge. Facts need to be presented to the judge. It is good practice for witnesses in court proceedings to maintain eye contact with the judge, as the judge is the principal listener. The expert's testimony is, from time to time, interrupted by objections from the opposing counsel. Generally, objections are based on a claimed failure to conform with rules of evidence. The judge will allow the objecting counsel to state the objection and the grounds for it. Accordingly, the judge will hear an argument from the counsel against whom the objection has been raised. The judge will rule on the objection. The proceedings will continue. If a question directed to the expert witness has been objected to, the judge

will address the witness or may direct the counsel to withdraw the question or put the question in another way to the expert.

The test for expert witnesses is to keep the focus on the testimony. The expert witness must assist the judge in following the testimony and in making sense of the case. The expert witness must speak unhurriedly, clearly, and loudly. Expert witnesses must take their time in answering questions. Expert testimony should not be rushed and must be conveyed with accuracy, to reflect truthfulness. Often expert witnesses do not understand how to deal with opinion testimony. When counsel requests experts' opinions, counsel is asking for the expert's clinical judgment, based either on proved facts, or on assumed facts, based on the hypothesis that those facts are eventually proved. The expert witness needs to remain calm and focused and be respectful to the judge and legal counsel (Sagiv, 2015, p. 229).

Cross-examination is the process by which the opposing counsel cross-examines the expert witness after the evidence in chief has been led. This form of examination is demanding on expert witnesses. Following cross-examination, the re-direct examination or re-examination can be done by the counsel who originally called the expert witness, but only to clarify aspects raised in cross-examination. After re-examination is complete, the judge may ask questions; however, often, the judge asks questions during the examination and cross-examination process as well. After asking questions, the judge will normally allow counsel to ask any questions which may arise from the answers to the judge's questions. The expert witness will then be excused by the judge when the court does not need the expert witness for further testimony (Duquette, 1981, p. 335).

Sagiv (2015, p. 229) notes that, in cross-examination, the counsel aims to undermine and attempts to discredit the weight of the expert witness's evidence. The legal counsel's probing must not be taken as a personal attack. It is purely tactical and merely a method to unnerve the expert witness. Judges practice a curbing authority in their courts and will preserve proper decorum. The judge must dutifully protect an expert witness from intimidation, provocation, and undue humiliation. On cross-examination, the counsel aims to control the dialogue. Unlike direct examination, the examiners can use leading questions. A technique often used in an examination is to use close-ended questions, such as "Isn't it true ...?" or "Is it fair to say that ...?". These questions must be answered with yes or no. Another technique is pacifying and soothing the expert witness into a pattern of assent, concession, and acceptance. A

series of non-controversial questions are put to the witness that can be easily answered in the affirmative, and the expert witness may feel comfortable to concede to aspects that would not normally be admitted. The expert witnesses must listen carefully to each question and answer wholly, if a yes or no is not a sufficient answer (Sagiv, 2015, p. 229).

Skilled cross-examination is commonly short, specific, and limited. The cross-examiners provide an opportunity for expert witnesses to retell their suppositions. Expert witnesses must use any opportunities provided to them to reiterate and clarify their expert position. Expert witnesses must understand questions, and if a question is not understood, the expert witness should ask for it to be rephrased or clarified. During cross-examination, the counsel may set a fast pace of question-answering. Expert witnesses should consider questions carefully and pause briefly before answering each question. Strategically, counsel may ask compound questions to confuse expert witnesses. It is imperative that expert witnesses answer all parts of the questions accurately and ask for clarity when needed (Duquette, 1981, p. 335).

Legal representatives may reference from manuscripts, scientific journals, and papers to assist them with the examination process (Duquette, 1981, p. 335; Muckle, 2016, p. 2). These documents must be acknowledged as trustworthy and authoritative. Expert witnesses must always have the opportunity to first prepare themselves if materials are put to them and must take their time to work through any such documents before they respond.

The counsel may provoke anger and defensiveness. Experts ought to remain relaxed and personally detached and should not be arrogant with their opinions but must provide well-versed information. Counsel may refer to organisational procedure manuals to discredit experts on policy and papers. Cross-examination may be experienced as a debate between witness and counsel. When expert witnesses are comfortable with the legal setting, they cope better with this debate and provide the information that is requested. Questioning will focus on the expert witness's set of expertise. Unless the counsel is remarkably well prepared, expert witnesses have the advantage, as it is their field of expertise which is being traversed. In the cross-examination process, it is critical to focus on reiterating and supporting central conclusions whenever possible. Expert witness testimony needs to be robust, reliable, and consistent, despite the cross-examiner's attempt to complicate, create confusion

and cast uncertainty. Expert witnesses need to remain calm, collective, and firm in their conclusions (Muckle, 2016, p. 2).

Expert witnesses are limited to their knowledge and expertise. Experts may express initial doubts about their views and indicate that the views are preliminary; however, they must provide the necessary reasoning which supports the views. Delivering expert witness testimony is challenging. Expert witnesses need the necessary qualifications, training and experience to succeed as an expert witness. Preparation from counsel is essential for the expert witness to deliver calm, good quality, expert testimony (Allan & Meintjes-Van der Walt, 2006, p. 24).

#### **4.7 The significance of expert witnesses in court case proceedings**

Professionals who act as expert witnesses perform a crucial role in court proceedings. Judges and the court depend on expert witness opinions to understand scientific evidence before the court, to make informed decisions. In recent years, the role of expert witnesses has become more onerous, and the demands of instructing parties have increased. Factors that should be considered in appointing expert witnesses are the expert witnesses' credibility, procedure, impartiality, professionalism, training and accreditation (Muckle 2016, p. 2).

Muckle (2016, p. 2) explains that expertise in the relevant subject matter remains a crucial factor in determining who are to be experts, and the credibility of experts' stated expertise will be tested. Professionals who take instructions to act as expert witnesses must know that their knowledge will be examined in detail by the opposing legal counsel. Expert witnesses' opinions will be balanced against the opinion of expert witnesses instructed by opposing parties. Experts' qualifications and experience are of vital importance in the deliverance of expert testimony. Expert witness testimony gives rise to obligations that go beyond advising a specialist subject. Expert witnesses must be able to demonstrate a genuine understanding of the procedural requirements for providing evidence in court and they must be able to meet deadlines and produce written reports that comply with court regulations. They should understand the procedures for giving evidence under examination and cross-examination, and they should demonstrate skills in giving oral testimony in stressful situations (Allan & Meintjes-Van der Walt, 2006, p. 24).

Expert witnesses' testimony should express an independent and objective view and, if needed, be critical of contentions put forward by their directing party. Before

accepting instructions, expert witnesses must make appropriate checks to ensure they are not precluded from acting because of a conflict of interest. Expert witnesses must understand what a conflict of interest is and appreciate the legal tests for bias. Expert witnesses, and those who instruct them, should recognise that the primary responsibility of expert witnesses is always to the court. Expert witnesses must be truthful and sincere in what they tell the judge. It must be the case even if it does not assist the party who is settling the fees (Muckle, 2016, p. 2).

Expert evidence can be undermined if the expert witnesses' methodology in preparing and writing reports is unprofessional and if the oral testimony is not argued forcefully under examination. Reports should be structured and written in language that the judge can easily understand. Opinions expressed in writing and verbally must comply with procedural requirements and include formal declarations. The focus on professionalism applies to all aspects of an expert's role in court. Professionalism includes how experts dress and how they conduct themselves in court proceedings (Sagiv, 2015, p. 229). Experts need to have subject matter expertise and demonstrate formal expert witness training. Expert witness testimony is a challenging and rewarding role. Legal counsels who instruct expert witnesses are likely to expect experts who are not only qualified in their specialist subject area but who also understand how to discharge their statutory duties as experts. Expert witnesses ought to be proficient, skilled and able to give testimony that meets the importance, intricacy and magnitude of the appropriate case matter (Muckle, 2016, p. 2).

#### **4.8 Guiding principles for expert witnesses in providing testimony in court**

The integrity and reliability of litigation processes hinge, in part, on the truthful, impartial, responsible testimony of expert witnesses. This evidence explains scientific concepts and is required to articulate professional knowledge. Expert statements must be independent and unbiased, while expert witnesses must be qualified and fulfil an ethical role (Muckle, 2016, p. 2).

There are many problems relating to opinions from expert witnesses as the opposing counsel's first strategy to winning their case is often to attempt to discredit experts. Ethical guidelines are imperative for all professionals delivering expert witness testimony. This is not only to guide expert witnesses, but to also protect them. Professional bodies and organisations attempt to provide professionals with guidelines, but much-needed attention should be provided to preserve expert witnesses and to ensure that they are comfortable and empowered in court while they

are delivering specialist testimony. Professionals can easily be considered as acting unprofessionally and as conducting themselves in an unethical manner (Sagiv, 2015, p. 229). Expert witnesses have an ethical commitment to assist in the administration of justice. Payment of expert witness fees should not be made contingent upon the outcome of the case. Compensation of expert witnesses should be reasonable and commensurate with the time and effort of reviewing information and literature, for writing professional reports and for court preparation and attendance. An expert witness must not be a supporter of either party in the litigation. Expert witnesses must have relevant, recent and considerable experience in the area in which testimony is to be provided. Expert witnesses need to be well prepared for giving evidence. Opinions delivered in expert witness testimony should be neutral, unbiased and imbedded in literature. It is imperative that when ideas are based on the expert witness's professional experience, this fact is asserted. Expert witnesses should testify honestly and truthfully without excluding any relevant information. Expert witnesses should have no conflict of interest, either actual or potential, with the client or any of the legal representatives; and they must protect the privacy of records and communication where appropriate (American Medical Association, 2005, p. 3).

Expert witness qualifications and expert witness ethics are essential aspects that confirm the quality of expert witness testimony. Expert witnesses need to register to practice in their professional field. They must be board certified in their profession. They must hold an appropriate specialist qualification, if applicable. Expert witnesses must have been actively involved in practice and have the required experience in the area of expertise which is covered by their testimony. They must be equipped with the necessary knowledge on the subject matter (Muckle, 2016, p. 2)

The expert witness's review of the facts needs to be truthful, thorough and impartial. It must not exclude any relevant information to create a view favouring either the plaintiff or the defendant. The testimony must reflect the scientific evidence and accepted practice standards prevalent at the time of the event in question. The expert witness must be prepared to submit his or her evidence for analysis (Muckle, 2016, p. 2).

Allan and Meintjes-Van der Walt (2006, p. 24) suggest that all professional bodies need to consider how to protect and guide professionals who are delivering expert witness testimony. Guidelines must carefully consider what is required to ensure that professionals understand their duty as expert witnesses and to provide high-quality

evidence. Expert witness testimony must be relevant and reliable, and expert witnesses ought to be flexible and be able to retain intellectual rigour in expert witness testimony (Berger, 2000, p. 3).

#### **4.9 Summary**

Chapter 4 focused on the essential roles, duties and obligations of expert witnesses to the court. This chapter highlights the importance of expert testimony in cases where children have been affected by violent crimes. The roles and duties of expert witnesses were explained. The position of expert witnesses and their sense of responsibility to the court were contextualised. This chapter pointed out that delivering professional, excellent quality testimony is complicated, but that it is indeed possible if expert witnesses are well prepared and have the support of their legal counsel. Expert witnesses can never be too well prepared for their day in court. Chapter 5 will focus on the methodology of this study.

### **Chapter 5 Methodology**

#### **5.1 Introduction**

Chapter 5 explains how this research was done. The method refers to the concepts, guidelines, procedures and methodologies that the scientific society applies. The research methodology gives structure and guidance to the research process. Setting out the appropriate methodology in a study is of importance as it is the roadmap to be used in research. The method enables the researcher to find the necessary information to generate knowledge of the subject matter. It further allows the researcher to come to certain conclusions and to formulate recommendations (Grinnell and Unrau, 2011, p. 39). The research designs, the scientific method, the population group and sampling methods are discussed. Attention is given to the data collection, analysis and verification processes, and to how the pilot study was done. Chapter 5 focuses on the ethical considerations and explains the ethical responsibilities of the researcher.

#### **5.2 Research design**

Grinnell and Unrau (2011, p. 45) see the scientific approach as the thoughts, procedures, methods, rules and techniques that the research community uses to solve problems and gain understanding. The scientific approach is the people's perspective of seeing the world, their world outlook. Applying science includes using multiple methods. Making the methods scientific is scientific appreciation. A constructivist approach was employed as a conceptual structure to guide the study. The researcher



has a social constructivist outlook. Qualitative researchers are undoubtedly subjective, and research findings are produced amongst the researcher and participants. Constructivism is where participants become involved in all stages of the process and grow into partners. Participants pursue insight into the world in which they socialise. Participants can change the path of the process and have a say in all that occurs (Creswell, 2007, p. 98).

An explorative qualitative approach to research was followed to design the research study. Grinnell and Unrau (2011, p. 234) explain that qualitative research is centred on the interpretative and exploratory perspective. This perspective contends that real experiences are described by the participants' beliefs of their perceptions. Personal and subjective reality is explored through the approach of qualitative research. This approach assumes that the only way to get information on the subjective reality of the participants is to ask them. The answers to this subjective reality will be explained in words, not in numbers. Qualitative data is produced in the form of text. The qualitative research approach explores a social problem maze with various entrance points and paths.

Merriam (2009, p. 35) identifies a few traits that most qualitative research studies have in common. Studies are performed in natural settings where the participants carry out their daily activities. Interviews are often done in a relaxing, neutral and non-researching atmosphere. In the interviews, the questions to be asked are not always conceptualised and operationally defined at the outset. Questions can, however, be predetermined. Berg and Howard (2017, p. 178) explain that qualitative information gathering is affected by what participants are faced with and their concerns. Qualitative studies are different from quantitative studies. Quantitative studies stress the significance of structured and standardised measurement instruments. In qualitative research, meanings are drawn from the gathered information. Qualitative information is presented to others using processes that are natural and familiar.

According to Neuman (2009, p. 98), an explorative qualitative method suits the subject matter of exploration. It delivers the necessary research results that can add value to the subject matter, in this case, exploring the ethical framework of the expert witness involved in cases of violent crimes committed against children. The overall goal of exploratory research studies is to become familiar with the facts, the persons and their concerns. It is furthermore useful in developing a well-rounded picture of what is taking place. It produces various ideas and, accordingly, develops tentative theories

and conjectures to decide on the feasibility of doing the research. The research poses questions and refines problems for systemic inquiry. Techniques are developed and this provides a sense of direction for forthcoming research. Exploratory research goals align with exploring the subject matter of violent crimes committed against children and the ethical responsibility of the expert witness in child victim court cases.

### **5.3 Population group**

Berg and Howard (2017, p. 76) define a population as any cluster of subjects who are of research interest. A population is a grouping from which a sample is selected. In this study, the population includes professional persons, i.e., police officers, mental health specialists, medical practitioners and legal professionals including attorneys, advocates and prosecutors, that could provide information as to expert witness testimony. The police officers, mental health professionals and medical practitioners can add value to the experience of being an expert witness. The legal professionals can add value through their views of expert witness testimony and the application of that testimony in court proceedings. A few governing bodies were approached to stand as gatekeepers for this study, including the South African Police Services (SAPS), National Prosecuting Authority of South Africa (NPA), and the Teddy Bear Clinic (TTBC). TTBC is an organisation situated in Johannesburg, Gauteng, which provides holistic services to children ranging from age three to 18, who have been victims of abuse. These gatekeepers provided names of professionals whom they considered able and suitable as per the selection criteria, to add value to the study, and they provided names of possible participants. Geographically, the participants who were included in this study resided in KwaZulu-Natal, Western Cape and Gauteng in South Africa. Logistically, this allowed for face-to-face interviews.

### **5.4 Sampling method**

Qualitative research is a formidable tool for enabling learning more about a subject matter (Merriam & Grenier, 2019, p. ix). The benefit of qualitative research is its ability to provide sophisticated written explanations of an individual's experience of a matter. Qualitative research includes information from a human perspective. It is not necessary to collect data from everyone in a community to get valid findings. In qualitative research, a sample part of a population is selected. The objectives and characteristics of the study, such as size and diversity, define which and how many participants to choose (Mack, Woodsong, Macqueen, Guest & Namey, 2005, p. 5). The sampling strategy used will be discussed in more detail in the sections below.

#### ***5.4.1 Sample Criteria***

The sample included professionals involved in cases concerning violent crimes committed against children. Participants who formed part of this study reside in the KwaZulu-Natal, Western Cape and Gauteng provinces in South Africa. The professionals who were selected included expert witnesses who deliver testimony in court proceedings and legal professionals who work with witnesses in child victim court cases. Expert witnesses who are typically involved in cases where violent crimes have been committed against children include police officers, mental health specialists and medical practitioners. Legal professionals who work with expert witnesses include attorneys, advocates, presiding officers and prosecutors. The selection criteria involved focussing on police officers, mental health specialists and medical practitioners who have been called as expert witnesses in cases where children are victims of crime, and legal professionals, including attorneys, advocates and prosecutors, who work with child victim court cases and who have experience in working with expert witnesses. The professional persons selected to participate in the study had at least 15 years of experience of expert witness testimony. This allowed for the gathering of rich information from the participants.

#### ***5.4.2 Gatekeepers***

Gatekeepers were approached to give permission to interview various professionals. These professionals were from different disciplines. The different professionals were all members of either the SAPS (see Appendix C), the NPA (see Appendix D) or TTBC (see Appendix B). Bound (2012, p. 89) explains that gatekeepers have the authority to grant or deny access to a population. Gatekeepers are officers of organisations tasked to serve the populations they manage. Gatekeepers have the responsibility to ascertain the risk of the research to the population. Gatekeepers must evaluate whether the study being proposed constitutes a risk, not only to the participants, but also to the population they serve. Gatekeepers must be assured that the research is beneficial to the same demographic group.

#### ***5.4.3 Sampling technique***

Grinnell and Unrau (2011, p. 92) state that judgemental sampling is a non-probability sampling technique. The researcher chooses elements to be sampled. Selection is based on the researcher's understanding and professional judgement. This form of judgement sampling is also known as purposive and authoritative sampling. Researchers often use purposive sampling. A specific criterion is used for

selecting professionals, determined by the research question. The sample size is predetermined by theoretical saturation. The theoretical saturation is the point at which newly collected information no longer gives further insights.

Snowball sampling, also known as chain referral sampling, was used to improve the participation rate. Participants refer the researcher to other participants who may be able to contribute and who do contribute to the study. Snowball sampling assists researchers in locating and recruiting participants (Emmel, 2013, p. 36). The sampling frame consists of people who could make up the sample until enough cases have been included in the study. The researcher must go on with selecting participants until nobody else with those qualities can be found or until data saturation has taken place (Berg & Howard, 2017, p. 87).

The sample size was fixed at a minimum of 20 and a maximum of 40 professionals who are expert witnesses or who work with expert witnesses in child victim court cases. Forty participants were interviewed in this study. Interviews were held with five professionals from the different disciplines to ensure that value was added from the various professional disciplines and perspectives. Dr Zulu from the SAPS and Dr Ramaite from the NPA provided names of officials who met the selection criteria and who could be approached as possible candidates to participate in this research study. These officials were telephonically contacted and received further information through e-mail, and appointments were accordingly scheduled to interview the participants. Dr Omar, director of The Teddy Bear Clinic, provided the researcher with names of possible research participants who are knowledgeable on the subject matter. These medical professionals were then telephonically contacted, and the research project was discussed with them. Accordingly, an e-mail was sent to them that included all the information of the research project and an invitation for participation. Thereafter an interview was arranged at a time and place which were suitable for the participant.

Purposeful sampling, which is generally used for identifying and selecting information-rich cases related to the study topic, was selected as a suitable sampling method for this study.

### **5.5 Data collection**

Berg and Howard (2017, p. 87) explain that data collection is a method of collecting information from relevant informants. Information is accumulated to find answers to the research problem. Data collection is also used to test the research

question and assess the results. Data are collected to develop a greater understanding of the research topic. In this study, information was collected through semi-structured interviews. Schedules led the interviews (see Appendix G) and the same interview schedule was used with all the participants. It took place even though participants were from different disciplines. Semi-structured interviews are particularly appropriate for investigating complex processes and for controversial and personal issues. When doing a semi-structured interview, the researcher uses predetermined questions compiled in the format of an interview schedule. This interview schedule only guides and does not dictate the questions during the interview (Berg & Howard, 2017, p. 76). An interview schedule is a fitting tool to engage with the participants and to choose the narrative landscape (Creswell, 2003, p. 84). Researchers should make use of suitable questions related to each topic to address the matter in which they are interested (Grinnell & Unrau, 2011, p. 281). Questions are logically ordered from simple to complex and from broad to more specific. It helps the participants to acclimatise to the pattern of the interview schedule. Creating an interview schedule in advance assists the researcher to ensure that all aspects of a topic are covered (Creswell, 2003, p. 84). Aspects of the interviewing of participants in this study are briefly discussed below.

- *Administrative details and arranging of interviews*

Initial contact was made by telephone and by e-mail with the professionals. A participant information sheet and informed consent form (See Appendix F) were sent to the potential research participants. Interviews were scheduled with the participants who agreed to partake in the study. Face-to-face interviews were done with one participant at a time. For the convenience of the interviewees, the interviews were conducted at their workplace. Each interview was scheduled to take a maximum of an hour, including a 5-minute debriefing period.

- *The language of the interviews*

All interviews were conducted in English to prevent problems with translations, as translation of information obtained from interviews can be distorted if not translated carefully (Grinnell & Unrau, 2011, p. 47). Furthermore, English is the official language used in South African courts. All participants who participated in the study were found to be conversant in English.

- *Recording apparatus*

In the informed consent forms, which participants were required to complete prior to participation in this research, they gave permission that the interviewer

could make written notes and an audio recording of the interview. Detailed hand-written notes were made on the interview schedule during all the interviews. For the sake of being meticulous, the interviewer audio-recorded each interview while making notes. The recording apparatus used in the interviews was a digital voice recorder which electronically transcribed the recorded interviews. The research assistant checked the transcribed recordings for accuracy.

- *Research assistant*

A thoroughly trained research assistant helped to arrange the interviews and acted in a supportive capacity concerning the administration related to the research study. The research assistant signed a confidentiality agreement (See Appendix I). Berg and Howard (2017, p. 158) describe an assistant as a researcher who is hired to support and give assistance when conducting the study. Research assistants are often experienced in research methods and appropriately qualified. The responsibility of the research assistant is to assist with the administrative process of the research study, like sending out consent forms, scheduling and confirming meetings and any other administrative and interview tasks that may arise.

### **5.6 Pilot study**

One pilot interview was held with a professional person to test the interview schedule and to make any necessary changes. Grinnell and Unrau (2011, p. 187) explain that the pilot study is the last stage of preparation. For the pilot study, an individual was drawn from the population group that the researcher was studying. The researcher interviewed the participant. The researcher then reviewed the distribution of responses to each question, listened to the recording, read all comments and coded what she had heard and read, in order to identify any problems with the wording or presentation of the questions. The researcher revised those questions in the interview schedule, which the participant did not seem to interpret as the researcher had intended, or which did not work well for other reasons. The conducting of a pilot study contributed to finalising a high-quality, tested interview schedule that was used in the interviews included in the research results. The pilot interview was excluded from the study results.

### **5.7 Data analysis and verification**

According to Grinnell and Unrau (2011, p. 184), a systemic and purposeful approach is used in analysing qualitative data. Data analysis is a complex process and is not linear. The information must be considered carefully to make sense of the information. The main steps of data analysis include transcription preparation and deciding on a preliminary plan for data analysis. The analysis consists of a double approach of coding, including an initial phase of coding and the second phase of coding. The analysis includes data interpretation and theory building and assessing the reliability of the results. The researcher needs to be flexible in data analysis, as data analysis is not a linear approach.

### ***5.7.1 Data analysis process***

ATLAS.ti is a computer-assisted qualitative data analysis software programme. The software helps the researcher disclose and systematically examine sophisticated phenomena covered in unstructured information. ATLAS.ti offers tools to allow the researcher to find, code and understand results in the material. ATLAS.ti evaluates the importance of information and provides a visualisation of the often-multifaceted thematic relationships between the information (Lewins & Silver, 2007, p. 57).

### ***5.7.2 Data verification***

According to Morse, Barrett, Mayan, Olson & Spiers (2002, p. 236), verification is the procedure of authenticating, confirming and being satisfied. Verification is the process to ensure trustworthiness and rigour. These devices are interwoven into each step of the review. Verification builds a robust study by finding and correcting mistakes before they are built into the developing model, and before they destabilise the analysis process (Berg & Howard, 2017, p. 176). Morse et al. (2002, p. 76) mention that following the principles of qualitative inquiry ensures that the study is self-correcting. Qualitative research is iterative rather than linear. A qualitative researcher moves between design and implementation. Qualitative research provides congruence among question design, literature, recruitment, data collection plans and assessment. Information is methodically examined. The focus is well-preserved, and the fit of data and the conceptual work of the evaluation and understanding are considered and frequently verified. Verification strategies help the researcher identify when to resume, interrupt or change the research process to achieve reliability and validity and to ensure rigour. The analytical research approach strengthens strategies and ensures efficiency. Many research decisions may underlie the sampling selection, which entails

responsiveness to the needs of developing a variant, to achieve substantiation and to develop theory (Morse et al., 2002, p. 79).

Morse et al. (2002, p. 87) explain that, with an investigation, verification strategies that confirm reliability are actions such as ensuring methodological coherence, sampling sufficiency, developing a dynamic relationship between sampling, data collection and analysis, thinking theoretically and theory development. Each of these strategies will be considered.

- *Methodological coherence* seeks to ensure congruence between the research question and the elements of the approach. The interdependence of qualitative research needs the problem to match the method, which matches the information and the analytical processes. As the research evolves, the process may not be linear. It is due to the data calling for adjustments and for methods to be altered (Morse et al., 2002, p. 95). Sampling schemes may be developed, or the course of action may be changed entirely. The fit of these parts with data to meet the analytical goals must be coherent with each other, confirming the previous section and the methodological assumptions as complete.
- *The sample must be appropriate*, consisting of participants who have insight into and knowledge about the research topic. An adequate sample ensures a capable and successful saturation of categories, together with optimal superior data. Sampling adequacy, evidenced by congestion and replication, means that enough data to account for all aspects of the phenomenon have been gathered (Morse et al., 2002, p. 96). Morse et al. (2002, p. 98) explain that saturating data ensures replication in categories and replication safeguards understanding and entirety.
- *Collecting and analysing data concurrently* creates a collaboration between what is known and what one needs to know. The iterative interaction between data and analysis is the principle of attaining reliability and validity.
- *Thinking theoretically* involves ideas arising from information and re-confirmed with new information. New ideas are generated that must be verified against information previously gathered. Thinking theoretically involves macro–micro perspectives. It means slowly moving forward without making intellectual leaps. Continuous verification and re-examination and building a solid foundation is needed (Morse et al., 2002, p. 102).



- *Theory development* is a verification strategy to ensure trustworthiness. Trustworthiness allows for integrity, transferability, reliability and confirmability of the information (Morse et al., 2002, p.106). The theory will not be developed in this study.

The services of a co-coder, Ms Simone Lamberti, were used in this study. Berg and Howard (2017, p. 172) describe a co-coder as a highly experienced researcher who independently codes the data and, through a process of consensus discussion, agrees on the themes and codes. Ms Lamberti has vast experience in working with data and making sense of information through applying analytical thought. She is a qualified legal practitioner and has extensive experience in research and law, specifically in matters involving children, analysing research and analysing literature in court cases involving children. Ms Lamberti's expertise contributed to and added value in the process of making sense of the data. Ms Lamberti signed a confidentiality agreement (see Appendix J), which ensures trustworthiness.

For finding meaning in qualitative data, the right tool should be used. Researchers must be methodologically mindful with data coding techniques. Researchers must not presume that pre-established instruments are allied to their research model. Piloting time and time spent on developing tools is essential, since the outcome is likely to be a data coding technique which is aligned and better suited to discovering the meaning which the researcher is searching for in the raw information (Blair, 2015, p. 26).

Many researchers involved in scrutinising qualitative data consider what all the data means. Answers that lie within the information are not always clear. Methods need to be used to find these answers. Robson (2002, p. 387) explains that, before findings can be interpreted, the messages that lie within the information need careful consideration. Morgan and Krueger (1997, p. 32) state that the methods used for analysis and reporting should not be left unexamined. They should be scrutinised in the early phases of the research process. Content analysis is dependent on creating codes applicable to data, to build data into meaningful categories to be evaluated and interpreted. Stemler (2001, p. 12) discusses two approaches to the coding of data. New coding is where codes are drawn from the text. Priori coding is where codes are created beforehand and applied to the text. Faherty (2010, p. 59) explains that there is no absolute rule to coding. In this study, it was necessary to be open to data coding methods and to use a pilot as a means of discovery.

The researcher's role in this study was embraced. The subjectivity of the researcher's role was debated with the co-coder. It was needed to ensure that the emerging themes could be discussed in detail with the co-coder. Ultimately, this led to a balanced and verified view. The choice of research methods is influenced by the researcher's values and principles (Greenbank, 2003). The analysis of the information was not a neutral pursuit but was steeped in the researcher's epistemological and ontological assumptions (Mauthner & Doucet, 2003). The researcher acknowledges that any coding is likely to be a subjective and interpretive process. The validity of the research results becomes a question of hermeneutics. The results are interpreted and translated by the researcher according to the researcher's position. During the co-coding process, the researcher was especially aware of a neutral pursuit, along with the co-coder, to ensure that the emerging themes were critically reviewed. The co-coder is a director at BBM Law and has ten years' experience. During this process, a continuous discussion was done to ensure that the differences and commonalities between the co-coder and the researcher became integrated, up to the point where rich qualitative themes emerged from the data analysis.

### **5.8 Ethical considerations**

Researchers are ethically bound and must own responsibility. Researchers have a responsibility towards those who partake in the research project, both human and non-human participants. Researchers have a duty towards their scientific discipline and practice field, which requires them to be truthful and trustworthy in the reporting of their research (De Vos, Strydom, Fouché & Delport, 2011, p. 327). The research conducted is in line with guidelines set out in the Unisa Research Ethics Policy (Unisa, 2014, p. 1). This study was guided by well-formulated research ethics principles drawn, firstly, from the Belmont Report (Miracle, 2016, p. 223). The Belmont Report summarises the ethical principles and ethical guidelines for research when participants are human.

Three core principles are identified in the Belmont Report. These principles are respect for persons, beneficence, and justice. Furthermore, three primary areas of application are stated in the Belmont Report. These are informed consent, assessment of risks and benefits and selection of subjects. The Belmont Report is a document that provides the moral framework to comprehend the guidelines for the use of humans in research (Morris, 2006, p. 89).

The Singapore Statement bound this research to the guidelines set out on Research Integrity (Resnik & Shamoo, 2011, p. 71). The principles and responsibilities summarised in the Statement provide a foundation for more comprehensive and specific guidance worldwide. The Singapore Statement includes four principles, namely honesty, accountability, professionalism, and stewardship. The Singapore Statement includes fourteen responsibilities. These responsibilities of the researcher refer to data integrity, data sharing, record keeping, authorship, publication, peer review, conflict of interest, reporting misconduct and irresponsible research, communicating with the public, complying with regulations, education, and social responsibility (Resnik & Shamoo, 2011, p. 71). In addition to the ethical considerations in the Belmont Report and the Singapore Statement, the researcher also obtained ethical clearance from the College of Law Ethical Clearance Committee from the University of South Africa (UNISA) (see Appendix A).

#### ***5.8.1 Actions and competence of researchers***

Respectable researchers must be honest, competent, skilled, and ethically committed to doing research (Babbie, 2011, p. 87). Babbie (2011, p. 91) observes that research progresses when researchers are honest and open. When researchers have ego defences and deception, research is hindered. Research projects must be done in their entirety, in an ethically correct manner. The researcher's professionalism is essential in gaining the trust of and co-operation from everyone involved in the research project (Yates, 2004, p.45). The researcher prides herself on her professionalism. The researcher has completed prior PhD research studies, supervised master's research students at the University of the North-West and is an experienced researcher with high ethical standards. The researcher has, in past studies, worked closely with research assistants and has trained various research assistants to meet the requirements for an assistant.

The research assistant was suitably qualified to fulfil the role of assistant. The researcher briefed the research assistant on the subject matter and did the necessary training to ensure that the research assistant had a well-developed understanding of the research project and strived for a high standard of work quality. The research assistant was given a task list to ensure that the research assistant understood the allocated tasks in the research project. The tasks included assuming a supportive research role to assist the researcher where necessary, assuming an organisational role for filing research documents, and assuming an administrative role for setting up

appointments (Grinnell & Unrau, 2011, p. 183). The research assistant was asked to sign a confidentiality agreement to ensure that all information gathered remains confidential.

### ***5.8.2 Avoidance of harm to the participants***

The most critical ethical rule in research is that research must not harm participants (Babbie, 2007, p. 97). The researcher was, therefore, committed to following the highest standard of ethics to safeguard the participants so that no harm would come to them. Rubin and Babbie (2011, p. 187) emphasise that research should, under no circumstances hurt the participants in a study. In social science, emotional harm is the primary concern, but precautions must be taken to avoid any physical injury as well, as this cannot merely be ruled out. Damage can easily be caused to participants. Researchers must weigh the risks against the possible benefits of the specific research project. Researchers have an ethical duty to safeguard participants within all possible reasonable limits, from any form of emotional and physical discomfort or harm (Berg & Howard, 2017, p. 176).

Interviews were done with professional persons who stand as expert witnesses in court proceedings concerning violent crimes committed against children and legal professionals working with expert witnesses. Violent crimes committed against children are a sensitive subject matter, even for professionals working in the field. The participants were suitably informed about the research topic and the process. This was done to ensure that the participants could decide whether they wished to partake in or withdraw from the study. Professionals may, for example, have recently had a severe case which may place them in a vulnerable position. Such factors must be considered. The vulnerability of the professional persons involved was recognised as this could play a role in the interview. Before starting the interviews, the researcher confirmed that the participants understood the process of data collection. The participants' level of comfort was also verified.

The term beneficence is often known as the duty to maximise potential benefits and minimise probable harm. Experienced discomfort that may arise from partaking in a research project is often minimal in comparison with real-life situations. Researchers are, however, rightfully sensitive to injury that may be caused to participants (Grinnell & Unrau, 2011, p. 186). Monette et al. (2005, p. 98) point out that research may have positive effects on participants. Possible harm should never, however, be minimised. In this study, the participants were rendered free to choose whether they would like to

participate in the study. There was no pressure put on participants to partake in the research study. No possible benefits were presented to them to convince them to participate in the research study.

### ***5.8.3 Debriefing of participants***

Debriefing sessions are discussions held with participants, which take place after data collection. These meetings are intended to work through the participants' experience and to discuss any effect that the research might have had on them. The debriefing also seeks to answer any questions and to dispel misconceptions (Berg & Howard, 2017, p. 176). Controlled and reflective process in qualitative research allows for self-reflection. Debriefing assists with solving a problem that may have been generated by the study and can, accordingly, be corrected (Grinnell & Unrau, 2011, p. 189). The most effective debriefing method is to discuss the participants' feelings about the project immediately after the session.

After completion of the project, the researcher creates an opportunity to rectify any misperceptions that may have arisen in the minds of participants. Such interviews can be described as a procedure by which any relevant information about the project that has been withheld and misrepresented is made known to participants. If proper debriefing is not possible by the researcher, participants ought to be referred to a counsellor (Bless, Higson-Smith & Kagee, 2006, p. 142). In some cases, participants may experience harm during the research. It is crucial in these circumstances to terminate the information gathering with the participant. Harm must be prevented to any participant. A research project intends to be a learning experience for both the participant and the researcher. The ideal opportunity to complete the learning experience is with a debriefing session (De Vos et al., 2011, p. 248).

The researcher provided a debriefing opportunity after each session, to ensure that each participant would experience closure after the session and to confirm that the participant had processed the information that was shared during the session. The researcher prevented any possible foreseeable risk and discomfort, and it was imperative that the participants were guaranteed that their emotional needs were prioritised in the process. A designated counsellor was appointed for exclusive use of the participants if they experienced a need for emotional support after the interview process. In this way, the designated counsellor could assist with instances of vicarious trauma suffered by a participant if the need arose for help after the interviewing process. This was done because no countertransference stimulated by exposure of

the child's traumatic experience can be left unattended, as it may have a short- and long-term impact on the participants.

With each participant, a discussion unfolded as to whether they would like to receive a summation of the research when completed. Participants who indicated that they would like feedback on the study provided their details on a mailing list, and a research summary will be mailed to them. Shared trust, tolerance, partnership, an appreciation of the researcher's capacity and the participants' capabilities is essential in a research project. It is crucial to have clear agreements and realistic expectations between a researcher and participants that will create relatively few limitations and many options for action (Berg & Howard, 2017, p. 176).

#### ***5.8.4 Voluntary participation and informed written consent from the participant***

A fundamental precept of research ethics is voluntary participation. Participation must be voluntary. No participant should ever be forced to participate in a project (Rubin & Babbie, 2011, p. 287). Participants must never be deceived and must always be informed that they are partaking in a study. Possible consequences of a research must be discussed, and clear, informed consent must be given by participants (Grinnell & Unrau, 2011, p. 165).

When the prospective participants were telephonically contacted to discuss the research topic and to arrange a meeting, written informed consent was discussed. An informed consent form (see Appendix F) was e-mailed to the participants, and those prospective participants who agreed to an interview completed the informed consent form before the beginning of the interview. Before an interview, the researcher explained the informed consent form to the participants and obtained written informed consent (Berg & Howard, 2017, p. 176). Participants need to participate voluntarily and of their free will. Withdrawal from the study must be discussed with participants. It was explained to the participants that withdrawal at any stage, without disclosing any reasons for their withdrawal, was understandable and acceptable.

Prior to the interview and at the beginning of the interview, the researcher communicated to the participants that the researcher needs essential information. The reasons for the interviews were made clear (Grinnell & Unrau, 2011, p. 169).

#### ***5.8.5 Deception of participants***

The participants were not deceived in any manner. All information was discussed openly with the participants before they committed to taking part in the study. The

concept of deception refers to misleading participants. This occurs when researchers deliberately misrepresent facts or withhold information from participants (Struwig & Stead, 2001, p. 271). According to Berg and Howard (2017, p. 176), deception involves providing limited information or incorrect facts to promote participation. Neuman (2000, p. 145) asserts that deception takes place when the researcher intentionally misleads participants by way of written or verbal instructions. In this study, the researcher did not deceive the participants in any way. When deception takes place in a study, meaningful research cannot be generated.

#### ***5.8.6 Compensation***

Royse (2004, p. 176) draws attention to the question of whether it would be unethical to compensate participants. It seems sensible to compensate participants for costs incurred. For example, for time spent away from work, free time spent on the project and time and money spent on transportation. It is noteworthy that, when participants are compensated with money, questions may be asked about the ethical aspects relating to payments received. Individuals may only want to participate for the sake of compensation. This can compromise the ethics of research (Rubin & Babbie, 2011, p. 187).

In this study, professional persons were interviewed, and their time is valuable. The researcher travelled to the participants to ensure that only a short time was taken out of their professionally billed hours. No compensation was given to the professionals participating in this study, as the incentive for professionals to participate in this study should be to share knowledge on this subject matter and to add value to their field.

#### ***5.8.7 Violation of the participants' privacy, anonymity and confidentiality***

This study sees a violation of privacy, the right to self-determination and confidentiality as similar concepts. Privacy, confidentiality, and anonymity need to be prioritised to protect human participants (Rubin & Babbie, 2011, p. 165), as indicated below.

- *Privacy* implies personal privacy. Confidentiality suggests the handling of information in a confidential manner. Confidentiality is an extension of privacy. Confidentiality refers to agreements to limit access to private information. Self-determination is a person's right. Self-determination suggests that individuals have the right and competence to evaluate available information. Individuals may weigh alternatives against one another and come to their conclusions (De Vos et al., 2011, p. 276). The informed consent form explained that interviews would be

audio recorded, and participants would need to permit the interview to be audio recorded. All possible means of protecting the privacy of participants were applied in this study.

- *Confidentiality* was discussed with the participants and explained in the informed consent form. The researcher explained to the participants that recorded information would only be used for research purposes and would be confidential. Confidentiality means that only the researcher and research assistants would be aware of the participants' identities. Both the researcher and assistants are committed to confidentiality. The confidential information is privileged. The researcher ensured that a confidential research process was followed. This was done by enclosing a confidentiality clause in the informed consent form. It was similarly done with the research assistant and co-coder, both of whom signed a confidentiality agreement. Ethical guidelines on confidentiality were closely followed to ensure that the collected information would be treated as privileged. Confidentiality places a duty on professionals to protect the information confided to them (De Vos et al., 2011, p. 276).
- The terms *anonymity* and *anonymous* cannot be used as the same term and cannot be used interchangeably with "confidential" (Rubin & Babbie, 2011, p. 165). Anonymous information guarantees the privacy of participants. At times, researchers make sure of anonymity. Participants may wish to maintain complete anonymity (De Vos et al., 2011, p. 278). The researcher and research assistant were aware of the participants' identities. However, anonymity was guaranteed in the thesis, as the participants' details were not made available, and codes were used to refer to participants.

### **5.9 Publication of the findings**

De Vos et al. (2011, p. 187) recommend that the results of a study must be presented to the reading public in a written format. Otherwise, a highly scientific research investigation will not add the necessary value. The results of this study are disseminated in the form of a thesis. Scientific articles will be drawn from the thesis for academic publications. In recognition of their participation in the research project, each participant will receive an electronic copy of the thesis, and a summary will be written in more lay language that will make it easier to understand. This study shall contribute to creating an ethical framework that can be used to explain the ethical responsibility of the expert witness in cases related to violent crimes committed against children.



The information will be made available to other professionals in an article format to ensure that the benefit of the study reaches other stakeholders in the process, namely professionals working with violent crimes that affect children; and expert witnesses and legal professionals who work with expert witnesses in cases of violent crime against children. The researcher has an interest in the above-mentioned community and in adding value to that community through research publications. As violent crimes against children have an immense impact on the South African community, this study aims to add value to the way in which this social phenomenon is addressed, with potential answers to problems found in expert witness testimony. Accordingly, the community will benefit from this research project. De Vos et al. (2011, p. 189) contend that findings ought to be shared with participants. It gives participants a form of recognition and will facilitate a good relationship with the community. Participation in a research project should be a learning experience for not only the researcher but also other staff and the research participants. A research report will be made available to participants in this study and to others who may be concerned with the research, through academic publications.

#### **5.10 Summary**

The methodology of this study was elaborated in this chapter. A qualitative research approach was used to gather the information on the subject matter with a purposive sampling technique and a snowball method. Particular attention was given to the ethical considerations in this study. This was done to ensure a principled study approach. The research findings will be published in the format of a thesis. This research will contribute to the study field. Academic articles will be made available. Chapter 6 will focus on the presentation of the research findings.

## **Chapter 6 “The professional experience of expert witness testimony”:**

### **Presentation of findings**

#### **6.1 Introduction**

This chapter focuses on the emerging themes that arose during the research and allows the reader to engage with the research findings. A summary of information will illustrate a range of themes that emerged from the interviews with the research participants. Extracted quotes from the interviews will let the reader develop a deeper understanding of the participants' views and will accordingly provide information to answer the set-out research questions. Participants provided insight into the questions as to how violent crimes against children manifest themselves, for experts to engage in such a forensic process. Furthermore, participants provided information on the ethical complexities when working with children in violent crime cases. Additionally, participants gave insight into aspects that a possible ethical framework should include in guiding the expert witness in child victim court cases.

#### **6.2 Introducing the participants**

Each participant in this study added value and provided an understanding of the subject matter of expert witness testimony in child victim court cases. Referral to expert witnesses in this study is a reference to all professional persons involved as experts in the interaction process and at court when violent crimes have been committed against children. Expert witnesses are qualified individuals by training and are experienced in scientific, technical or other specialised knowledge to assist, in creating an understanding of the evidence or in determining a fact (Sutherland, 2009, p. 67).

Participants included in this study were professional persons (police officers, mental health specialists, medical practitioners, and legal professionals). The issue of violence against children is a complex, emotionally penetrating, and tragic topic. Still, the participants in this study presented with an artful proficiency in dealing with these topics as skilled and mindful professionals. The 40 participants who were interviewed in this study provided well-considered thoughts on the subject matter. The information obtained from the participants further captured the voices of participants and represented them and their experiences in as pure a form as possible. The participants all brought a unique element to their descriptions and explanations and allowed for an understanding of their social world through their voices and lenses (Aluwihare–Samaranayake, 2012, p. 339). Reference to the research participants' area of speciality, organisation and experience has been captured in a table (See

Appendix H). To ensure the confidentiality of all participants, no personal details were provided. Information is only offered about the participants' profession and experience.

This study allowed for the participants' accounts and provided a platform where they could share their experiences concerning expert witness testimony in child victim court cases. The sample delivered multi-disciplinary views and generated exceptional knowledge from specialised participants. Five themes were focussed on during the research discussion, namely; the importance of the qualifications and experience of expert witnesses; the impact that expert witness testimony has in case matters; training of expert witnesses working with children in court case proceedings; professional, ethical codes of the expert witnesses and the professional role of expert witnesses. Information answering the research questions will also be discussed. A selection of verbatim quotes that were considered by the researcher to be most expressive of the participants' lived experiences, and emic point of view is given in *italics*, with an indication of the relevant transcript paragraph number allocated by the Atlas.ti 7 software.

The following five themes emerged from the data

- Theme 1: the importance of the qualifications and experience of expert witnesses.
- Theme 2: the impact that expert witness testimony has in case matters.
- Theme 3: training of expert witnesses working with children in court case proceedings.
- Theme 4: professional, ethical codes of the expert witnesses.
- Theme 5: the professional role of expert witnesses.

Firstly, the importance of the qualifications and experience of expert witnesses will be considered.

### **6.3 Theme 1: The importance of the qualifications and experience of expert witnesses**

In interviewing the participants, they explained the importance of the fact that expert witnesses have the appropriate academic qualifications and experience. The participants explained that it is of critical importance that expert witnesses can provide information and add value to the court with the necessary expertise and skills. Participants indicated that both professional qualifications and experience are essential as this allows for professional authority in expert testimony. Qualifications and experience are determined by the professional person's training and qualifications,

the number of years an expert witness has worked in the relevant field, specific work experience and skill that is related to the case, published work, certifications, or licences, as well as awards and peer recognition. Participants provided information explaining how challenging it is to provide testimony, even for experienced and well-qualified professionals.

Participant 4, a legal practitioner, explained the importance of an expert witness's qualifications and experience and alluded to the fact that an expert witness with limited years of experience is not an authoritative expert witness. It is furthermore stated that the superiority of the qualification can also be considered when delivering expert testimony.

*It depends from matter to matter but I can tell you I know of cases where if it comes down to the experts and the one person has a PhD in maths from Harvard for instance and the other person has a technical diploma in maths, the more qualified expert will prevail. Experts should be appropriately qualified. The level of qualification depends. Depending on the matter it's not only academic qualification that is required but the experience is significant. I will not rely on an expert with 5 years or 2 years' experience (paragraph (hereafter "par.", 17).*

Participant 7, a legal practitioner, explained what it means to be a qualified expert witness and for courts to qualify and disqualify experts as witnesses. The participant described the importance of an expert witness's qualifications, experience, skills, and whether a court will recognise a witness as an expert witness who can add value to the court proceedings. It was highlighted that actively being involved in and dealing with child victim court cases is imperative and allows expert witnesses to be knowledgeable about a subject and puts them in an authoritative position.

*Qualified means that if you have a junior general practitioner who has not undergone a course in identifying sexual offences or has never dealt with sexual abuse, he cannot be called as an expert witness. If you deal with a professional who deals with several cases that work for example at the Teddy Bear Clinic, the professional is more experienced to deliver an expert opinion. Experts need to have a resume with all their qualifications and this needs to be presented to the court. If somebody objects and says no the professional is not appropriately qualified the expert may be disqualified. A professional's qualifications, skills and experience are essential (par. 25).*

Participant 13, a legal practitioner, explained how expert witnesses are attacked under cross-examination. The participant highlighted that, when expert witnesses are cross-examined, their qualifications are often dissected as advocates and attorneys may attempt to discredit the expert witness.

*The sister, a professional nurse came and testified. And on qualifications the defence asked her ma'am: "tell me your qualifications"; she just said, "professional nurse"; he said "no ma'am what are your qualifications?" She*

*insisted on saying professional nurse. He said, "what qualifications did you do?", and she said "no, the Department of Health took me to the college where I did the course of a professional nurse". "What courses?". We had 30 minutes with that sister. The attorney used that 30 minutes and tried to discredit the sister (par. 52).*

Participants explained the importance of experience and emphasised that experience may be more important than the actual qualifications of an expert witness. Participant 15, legal practitioner, highlighted the importance of knowledge and the value added by the expert witnesses when having several years of experience and having developed skills as an expert witness.

*I will instead take someone with 10 years' experience or 20 years' experience than someone that has got 5 degrees (par. 73).*

Participant 16, a mental health practitioner, explained that not all experts who are accepted in courts are truly expert witnesses. In rural and remote areas, professionals may lack expert knowledge; however, they are still recognised as experts in the courts because no other professionals are available. The participant emphasised that specialised experience is needed in cases to allow professionals to act as expert witnesses, as it is a specialised field.

*In my honest opinion, especially in the rural areas, somebody will be qualified as an expert witness just based on their experience and I do not always believe that it is enough because it is a specialisation field. Some courts work with expert witnesses as if they are expert witnesses, but they are not necessarily really experts, but they do have some experience. Child law is such a very complex field that you must have specialised knowledge to be able to apply that to cases. So not all cases are trialled with expert witnesses who are expert witnesses. It is problematic (par. 80).*

The participants explained that expert witnesses should be appropriately qualified and have the necessary experience to ensure that they can deliver expert witness testimony and accordingly speak with authority. One is not necessarily more important than the other. However, the experience is vital. Professionals must be able to explain and quantify to the court why they can deliver expert testimony, explain to the court their qualifications and experience and why they can assist the court with their input. Experts must continuously update their knowledge and study relevant research. One can have a very experienced expert, but if that expert is still following practices and basing views on outdated methods and research, this can be harmful to the case. In rural areas, a professional may stand as an expert, but they are not necessarily an expert due to the limited availability of qualified professionals. It has been highlighted that it is a problem. However, it must be considered that this may be the only available option to assist in the matter. It is thus imperative that professionals standing as

experts, even in more remote or rural areas, strive to be appropriately qualified with the needed experience, as esteemed experts will assist the court in making the required determinations.

The subsequent theme that emerged is the impact that expert witness testimony has in case matters.

#### **6.4 Theme 2: The impact that expert witness testimony has in case matters**

Participants provided the following information concerning the impact that expert witness testimony has in case matters. Often in cases, expert testimony is needed to explain information to the court. Participants highlighted how expert witness testimony has a bearing on cases and how good evidence can assist the court. Weak evidence can have a detrimental impact on a case. Participant 4, a legal practitioner, highlights the influential role that expert witnesses have in court case proceedings.

*You can win or lose the case it depends obviously on the facts of each matter, but yes expert testimony has a considerable impact (par. 16).*

Participant 14, a legal practitioner, explained that cases could be lost because of expert witness testimony as courts heavily rely on information obtained from expert witnesses. The participant highlighted that expert testimony from expert witnesses is an essential part of the administration of justice.

*I will lose my case because of the testimony of an expert witness. The court relies on the evidence of an expert witness. Let us say the complainant said I was raped five times by different men then the expert witness comes and says no injuries were found (par. 69).*

Participant 17, a police officer, explained the importance of the information provided by expert witnesses to the court. It is highlighted that expert witness testimony comes with responsibility, especially in matters concerning children. Expert witness testimony is of critical importance as children are vulnerable and defenceless and often cannot speak for themselves.

*I think the most crucial aspect for an expert witness is to provide the court with information that the court can use to determine actions. In terms of children, the responsibility of an expert witness is more because of a child's vulnerability. An expert witness working with children must be knowledgeable and have expertise working with children as children are vulnerable. As forensic experts working in the field of child law, we have the responsibility, not to allow children to fall through cracks. And this, unfortunately, happens very often with children, especially when they are very young. Like these cases that cannot be trialled in a criminal court because the child is too young to be a witness or children with intellectual disabilities who are more vulnerable witnesses, you have kind of a double vulnerable witness because of the fact that the child is a child and the child is a child with a limitation. I had a recent experience where I wrote a report where the social workers did not do their work correctly. The social workers terminated the*

*case; they closed the file. All the work that was supposed to be done was not done and the instructions of the children's court were not followed. That child is still not protected. We must have a way of protecting children because they cannot speak for themselves (par. 94).*

Participant 22, a legal practitioner, emphasised that sub-standard expert witness testimony can have a detrimental impact on the victim's case and deny justice taking its course and consequently has a systemic effect.

*Well if it is substandard certainly, I think that would be playing into the defence's hands. It will undoubtedly fail the victim, not promoting the best interest of the victim. It denies justice. You know it would not be serving the best interest of justice, not serving the best interest of any victim. You know as a system, as a professional, one would be failing the system and failing society. There is no room for sub-standards (par. 143).*

According to Participant 24, a mental health practitioner, experts compile sub-standard reports and errors can have devastating effects on the family in court case proceedings caused by human error.

*I believe where the report is not carefully written you know that the information is not gathered sequentially, where there is no indication of the qualifications and experience of the evaluator and ongoing supervision and training, it is problematic. It is unprofessional where the reports are not even read thoroughly. Where there are discrepancies if you look at the report say that it was written in 2016 and then you notice the child's last session was in 2017. I mean those kinds of human errors, but a forensic report must be proofread, checked, edited everything before it is signed off. Making comments or statements, sweeping statements are a problem. It is about thorough, very concise, clear and methodical and meticulous intervention. One cannot allow any room for errors in the assessment process. We are dealing with lives. One mistake could result in the devastation of the demise of a child (par. 169).*

According to Participant 27, a legal practitioner, the impact of expert witness testimony is enormous and can ultimately determine the outcome of the case.

*I can win my case; I can lose my case based on the expert witness (par.185).*

Participant 32, a legal practitioner, explained the importance of good quality expert witness testimony and the impact that sub-standard evidence can have on cases involving children.

*If testimony is sub-standard and inaccurate, it can contradict the child's statement and testimony. That is not in the best interest of the child so when professionals testify it is essential to ensure good testimony and that the evidence provided is accurate (par. 206).*

Participants explained the importance of good quality expert witness testimony as the courts rely heavily on expert testimony. Participants expressed that testimony ultimately moulds court case proceedings and poorly drafted expert reports and

evidence can lead to cases being lost. The participants explained that expert testimony is an essential part of the administration of justice.

The next theme that will be presented is the training of expert witnesses.

### **6.5 Theme 3: Training of expert witnesses working with children in court case proceedings**

The following information was provided by professionals concerning the training of expert witnesses. Participant 6, a legal practitioner, highlighted the role of training the expert witness and that training is imperative. It is further illuminating that preparing expert witnesses is essential when expert witnesses deliver testimony in court. The explanation is provided that on-going training is vital.

*I do not think any course or code of ethics should include training on legal aspects because it is not expected from experts to be attorneys. It is, however, necessary for attorneys to prepare experts. I think it might be helpful to guide attorneys and advocates (par. 20).*

Participant 9, a mental health practitioner, reinforced the importance of ongoing training, having an experience that generates knowledge for professionals.

*I think years of experience and qualifications are essential. I mean you can have like six years of experience but only have seen three abused children. It is not good. So, the number of children that you see also plays a role. Experience, training and ongoing training are significant. You need to know what you are doing (par. 39).*

Participant 25, a legal practitioner, explained that the training of expert witnesses is essential. The participant stated that often expert witnesses who come from private practices provide better services than expert witnesses from government organisations and draws this back to private practitioners being paid better, having more time and resources to do training. The participant highlighted the importance of training, specific to investigation, report writing, and being cross-examined in court.

*Professionals in private practice do good jobs, most of them. They get paid for it especially the costly ones. I mean you spend a lot of money and they do go the extra length to provide a good report. My experience working with government social workers has not been good. It may be a generalisation, but my experience. I must say most of the time the reports are not well written. There are spelling errors; they do not know how to write reports; they do not do proper assessments. Sometimes you will find the social worker does go home and do the home visits and will go and see the school and then another social worker does not. I feel like some professionals lack adequate training. Not enough instruction, not enough skills; this creates problems with expert testimony. Some experts under cross-examination freeze and you know they may even have a good report but under cross-examination, they do not do well. Then they fall flat as a credible witness. There must be training in terms of being on the witness stand, being cross-examined on your report, learning how to write a proper report and do appropriate*



*investigations. They cannot just say we did an investigation. I generally think in the private sector I do not have issues, some of them there are issues but not really but in terms of government, I believe there is a lot of training and work that needs to be done with those social workers (par. 175).*

Participant 30, a legal practitioner, explained that knowledge should be shared, and training of new experts should be done by professionals who have experience in expert witness testimony. The participant explained that professionals are often scared to come to court. The participant highlighted the importance of expert witness testimony that is done by experienced and well-trained professionals.

*Often doctors don't come to court and the nurse or sister must come to the court. Unfortunately, the sister and nurses are the escape route for the doctors. Doctors do not want to go to court. The doctors will tell the nurse to do the examination and will observe to make sure they are not called to court. Doctors don't have time to come to court. It is often problematic as doctors need to come to court and explain to the court what has happened. Training is incredibly important; the older doctors are more experienced they must be the ones who train the new professional nurses and new doctors. It is crucial that professional training takes place. Like with us, the state advocates, they will be the ones which give a workshop because they are more experienced (par. 198).*

Participant 33, a mental health practitioner, stated that training, especially small group training, is essential and that professionals with the needed experience should train professionals new to the field.

*We must help with training. It is the responsibility of the more senior professionals to train and to share experiences. Professionals must go for supervision and mentorship as this will add value to professional conduct. It is a professional duty to share skills and knowledge with other professionals (par. 225).*

Participant 35, a legal practitioner, explained that not only an academic qualification and experience are needed, but that expert witnesses should be accredited to be able to deliver expert witness testimony in court. The participant speaks to the issue that expert witnesses are not necessarily adequately trained. There is a need to accredit and qualify expert witnesses before they deliver expert witness testimony.

*Academic qualification is needed to be an expert, for example, postgraduate qualifications such as a masters or PhD. Formal training, skills and experience accredits professionals and qualifies professionals (par. 242).*

According to Participant 36, a mental health practitioner, it is essential that professionals understand their role and that the part of an expert witness is well defined in training. The participant explained that professionals become confused about their roles, and this creates a lack of professionalism.

*The most important thing that you can contribute to the court as a psychologist is your expertise and knowledge. You know I had sat around the table the other*

*day, a round table with 12 lawyers as they go and three of us psychologists. One psychologist kept on saying, as a grandmother she thinks. We are not here as grandmothers but as experts. A professional, scientific approach is essential (par. 259).*

Participant 38, a mental health practitioner, highlighted the importance of expert witnesses receiving the correct training.

*Training of psychologists is very often theoretical and not practical. So, they have a lecturer who reads about it and then tells the students how it should be and I always say it is like a person who has to tell a blind person what a rabbit looks like, but he has never seen a rabbit. He went to the dictionary and looked up the rabbit and now he is explaining what a rabbit looks like, but he has never seen one. Unfortunately, that is what happens in training and experts accordingly don't know what to expect in court (par. 273).*

Participant 39, a mental health practitioner, referred to the ignorance of expert witnesses and indicated that expert witnesses often do not recognise that they are in court to deliver an expert opinion. The participant highlighted the importance of training and the lack of training that professionals receive during their formal qualification concerning expert witness testimony.

*There is not enough training on how to be an expert witness and a lack of guidelines and protocols. I think that social workers do not even know why they are called as an expert witness and don't also see themselves as experts. I do not believe there is enough training. We certainly did not get any training that formed part of our course work when doing my degree in delivering expert testimony (par. 296).*

Participants also referred to the importance of the training needed to be able to work with children when children are involved in court cases. According to Participant 40, a police officer, expert witnesses need to have special skills, especially when interviewing children.

*Children are interviewed by qualified professionals, who are experts on that field. It is not everybody who does that. We do have the psychologists and social workers who are called in to help the police to address questions to children. Not all professionals are trained to ask questions to children that have been victimised, (it is) a professional skill (par. 310).*

The participants emphasised that appropriate and high-level training is of critical importance. Participants elaborated that often, experts are not appropriately trained, and this creates errors in expert testimony that has a detrimental impact on a case. The participants expressed that the correct form of training is needed when working with children. Training is required that may not be included in a formal qualification. Professionals highlighted a need to accredit and qualify expert witnesses before they deliver expert witness testimony to the court.

## 6.6 Theme 4: Professional, ethical framework of the expert witnesses

During the interview, information was provided by the participants concerning the professional, ethical code of expert witnesses. Participant 23, a mental health practitioner, explained that as a social worker, the Social Worker's Council provides limited information and that professionals are often left to their own devices.

*Our council is not efficient when it comes to delivering the letters and provide us with new information (par. 154).*

Participant 24, a mental health practitioner, highlighted the lack of information available on ethical guidelines.

*As far as I know, there is not a structured guideline but think they are busy. I think the governing bodies are busy defining forensics as a specialised field and we can register as forensic social workers. They will have an ethical guideline for us to follow. At this stage, I think I mainly depend on other additional training and things that I went on for guidance on the ethical guidelines (par. 170).*

Participant 28, a mental health practitioner, stated ethical standards and codes are not clear. Often there is confusion about the expectations of the expert and how experts should conduct themselves in court case proceedings.

*Not very clear on the guidelines because I am not aware of the instructions. It might be a shortfall on my side, but the ethics are so important. Confidentiality, in any case, is essential. When you testified, you could not talk to other professionals about your testimony. When you walk out of court, a professional needs to conduct themselves carefully and professionally, an expert needs to remember you are not friends with the prosecutor because he called you to testify. Be professional. Experts must follow the court rules (par. 191).*

According to Participant 31, a legal practitioner, ethical codes do not provide enough information to guide expert witnesses.

*I do not think ethical codes explain in simple terms the expert witnesses' responsibility (par. 203).*

Participant 33, a mental health practitioner, explained that the ethics guiding expert witnesses are not clear.

*I think if you are working in forensic practice, in general, ethics is different from standard practice. Professionals are confused about what is ethically expected from them as experts (par. 228).*

The participants expressed concern regarding adequate information and guidance on their professional, ethical responsibility and are concerned as to ethical pitfalls. The information obtained from the participants showed that often expert witnesses do not feel protected by their governing bodies and that they feel that they are in the dark as to what exactly their roles are, the expectations and how ethics are associated with the task of being an expert witness. Participants presented information

highlighting that they are uncertain as to the specific rules regarding expert witnesses and providing expert witness testimony. Participants provided information on the ethical complexity of working with children in violent crime cases. The information presented showed the hugely complex task of working in this field and how difficult it is for expert witnesses working with violent crime cases. Complexities that were highlighted included the difficult positions expert witnesses are placed in by legal counsel, the pressure put on the expert witnesses and confidentiality aspects of forensic practices.

Participant 20, a mental health practitioner, explained that often counsel places expert witnesses under challenging positions, and this creates complexities for the expert witness.

*Advocates and lawyers are not always right. They expect of an expert witness to act on their behalf and they would try very hard to influence an expert witness (par. 126).*

Participant 33, a mental health practitioner, explained that an ethical complexity that remains problematic in forensic practices is that of confidentiality. The participant stated that professionals often struggle with the concept of confidentiality in child victim court cases.

*If you are working in forensic practice, the ethics is different from standard practice. Many people feel confused about confidentiality (par. 225).*

Participant 34, a legal practitioner, explained that expert witnesses change their statements, and this has ramifications in the case matter. When professionals change their narrative, it becomes a complex ethical dilemma as it shows that the expert witness is not trustworthy.

*I think the most important thing is once an expert witness has taken a view on something, they must not waiver or change their belief in the cross-examination if they state something like the fact they must also be able to back it up with facts and come up with a prognosis or a statement; they cannot later change their minds, contradicting themselves. Some expert witnesses tend to get caught out on what they say, they change their account from one day to the next (par. 235).*

Participant 36, a mental health practitioner, explained that professionals standing as expert witnesses often face ethical dilemmas and to testify as an expert is not always an easy task.

*The role of the expert witness is not to align oneself to any single party but to be objective in the evaluation process to ensure that you know that the professional opinion comes across based on facts. The expert witness plays a critical role in aligning oneself to neutrality in terms of the validity and the reliability of the assessment process. It is to ascertain the integrity and credibility. The expert witness is assigned with a critical task. The expert witness must not become a*

*hired gun and whosoever utilises the services of that expert witness (must ensure) that the expert witness does not align himself or herself to that individual. Often experts face ethical dilemmas. Apparently boundaries are needed clarifying the role and responsibility of the expert witness (par. 260).*

The participants highlighted that taking on the role as an expert witness is a challenging role and comes with several ethical complexities and expert witnesses can find themselves in a moral dilemma. Professionals may attempt to be proficient. However, the nature of the role is complex and ethically challenging. Participants stated that they do have an ethical code as professionals but not an ethical framework that professionally guides them to deliver expert testimony. Participants explained that an ethical framework, as a minimum, should highlight the duties of an expert witness. A framework must describe how a credible expert witness presents, describe the role of the expert witness, set out the qualifications and experience of the expert witness and elaborate on supervision that is needed to work with child victims court cases.

Participant 5, a mental health practitioner, explained her perceived lack of guidelines or protocol that expertly guide professionals working in the field. The participant referred explicitly to social work practice.

*There is a problem in many instances, not just in being an expert witness. There is not enough training on how to be an expert witness. Guidelines and protocols are not available, and this makes it difficult for expert witnesses (par. 18).*

Participant 6, a mental health practitioner, described the importance of understanding the duties of an expert witness and highlighted the need for these duties to be included in a possible ethical framework.

*The duties of an expert should be included in a framework. It often happens that people think because I am a social worker that I can speak about anything regarding all matters of social work. It is a danger because you should instead confine yourself to that specific area of expertise that you have, for example, a professional who has experience in sexual abuse of children must only focus on delivering testimony on sexual violence. You must limit yourself to what you know (par. 80).*

Participant 27, a legal practitioner, explained that within an ethical framework, it would be wise to include a description of the expert witness's role of presenting facts and separating these facts from personal emotions.

*As an expert with ethics, one needs to keep emotions out of the evaluative process. It is essential to separate the feelings from the facts and to be aware of that. Clinical supervision is helpful in assisting professionals in dealing with complex cases. To have very healthy and clear boundaries about events and feelings is imperative. Sitting with a victim narrating or giving an account of what happened to them is difficult. Experts need to make sure that they remain professional and objective (par. 187).*

Participant 33, a mental health practitioner, explained that an ethical framework must include information defining who can call themselves experts and provide guidelines on the qualifications of expert witnesses.

*Not everybody is qualified to call themselves experts. You need to be able to prove that you do have extensive knowledge and skills in doing forensic work and acting as an expert witness. More harm can be done if you do not know. Experts must be adequately qualified. It would be good if a framework can provide specification on qualifying who can call themselves experts (par. 226).*

Participant 36, a mental health practitioner, highlighted the need to include the importance of continued supervision into a possible ethical framework.

*Supervision is critical. Continued supervision. I still go for supervision, and I will always go for supervision because it is just better to get somebody else's perspective as well and to be open to the supervisor's guidance (par. 260).*

Participant 37, a legal practitioner, stated that the professional's legal obligation to give expert testimony should be highlighted in a possible ethical framework.

*It is a legal obligation and duty to be an expert witness to the court when called to give testimony. If you are the doctor treating the child or you are the person that was consulted by the lawyer or by the family, you have an obligation. Your purpose is to assist the court. You are there to provide the court with a better understanding of the case (par. 265).*

According to Participant 38, a mental health practitioner, an ethical framework should be descriptive as to independence, knowledge and skills.

*Your professionals must act independently. You should not be influenced by the system, by the legal people and so on. You should have the knowledge and skills in terms of assessment (par. 274).*

Participant 39, a mental health practitioner, explained essential aspects to include and describe in a possible framework that can guide expert witnesses.

*Objectivity, professionalism, the correct qualifications, experience are all important aspects when thinking of a real expert. An understanding of the law is helpful but not a necessity (par.297).*

Participants explained that it is essential to give an explanation in a possible ethical framework to help expert witnesses in understanding their responsibility and make it clear what is expected from them as it is a difficult task to stand as an expert witness in a case matter.

The following section will discuss the theme of the professional role of the expert witness.

### **6.7 Theme 5: The professional role of the expert witnesses**

The participants provided the following information regarding the professional part to be played by expert witnesses. Participant 7, a legal practitioner, explained that

expert witnesses should have extraordinary knowledge on subject matters in their specific field of expertise and take on a particular role. The participant described the vital role of that of an expert witness and explained that expert witnesses should guide the court and be of assistance to the court.

*When I am in court, and I engage an expert witness, it is because that person has knowledge that is not within my experience. For example, a medical expert is there to provide the court with information that is not within the ordinary understanding but a specialist area. The expert is in court to provide clarity on the case. To guide the court is crucial; this will be the role of the expert (par. 27).*

Participant 38, a legal practitioner, highlighted that the role of the expert witness is to explain terminology and foreign concepts to the court. It is furthermore critical that the expert witness provides knowledge and insight to the court as this will assist the court to understand and make sense of the case matter.

*We rely on medical experts to put us into the shoes of the victim to understand what the victim went through during the violent crime. The professionals need to explain the medical terminology and to explain complicated medical terms that are foreign to a layperson (par. 30).*

The importance of providing an understanding to the court and the role that expert witnesses play in proceedings are highlighted by Participant 10, a legal practitioner.

*The role of the expert witness is to assist the court in terms of understanding the child and what the child has gone through. Expert witnesses can provide clarity about whether the child is a credible witness. Professionals are not on a side but play an objective role and are neutral (par. 42).*

The role of being knowledgeable is highlighted by Participant 19, a legal practitioner.

*Experts need to be knowledgeable and real experts in their field. The role of an expert witness is not to define if somebody is guilty or not but to provide information to the court. It is for the court to eventually make the decision (par. 120).*

The role of an expert to be objective and factual was highlighted by Participant 21, a legal practitioner.

*What I expect from an expert witness is objectivity. While experts can give their opinion, they must be objective and, they must be factual. Experts need to be accurate. Factually there was a bruise, and factually there was a tearing of the hymen, factually there was this and this (par. 131).*

Participant 22, a legal practitioner, emphasised the vital task of an expert witness and the role of being objective and neutral.

*The role of the expert witness is not to align oneself to any single party but to be objective in the evaluation process to ensure that you know that the professional opinion comes across based on facts. Expert witnesses have a critical role in*

*aligning themselves to neutrality in terms of the validity and the reliability of the assessment process (par. 143).*

Participant 24, a mental health practitioner, highlighted that expert witnesses have a duty to the court, and this is the essential role of the expert witness.

*Professionals working in the field where violent crimes have been committed against children have a duty to the court. Someone who gives themselves out as an expert must be an expert and be able to provide insight and knowledge to the court, as this is their duty (par. 170).*

Participant 26, a police officer, expressed that the role of the expert witness in cases concerning victimised children is for expert witnesses to provide the court with the voice of the children. The importance of professionalism and being well prepared was highlighted.

*What is essential of the expert witness is to be the voice of the child. Very often, the child cannot testify, and then the expert witness acts as the voice of the child. It is crucial for the expert witness then to give the court an indication of exactly what happened. In terms of professionalism, the expert witness should do a thorough investigation. An expert witness should be prepared, know what the contents of your report are, and your report should be based on a thorough examination, assessment in terms of what happened (par. 182).*

Participant 30, a police officer, explained the role of the expert witness to be a professional that provides information. Expert witnesses must be able to provide the court with valuable information on the case.

*The role of the expert witness is to provide the court with knowledge and insight about the alleged crime for the magistrate to understand various factors that must be considered and have insight into what happened. The expert must provide the court with important and critical information that must be found by the court to make sense of the case (par. 200).*

The participants highlighted the critical role of expert witnesses and provided information on the duty of expert witnesses to the court. The participants stressed that expert witnesses should always be well prepared, have extraordinary knowledge and provide knowledge and insight to be able to guide the court. It was further elaborated that the role of expert witnesses is to provide information on terminology and foreign concepts as these terms are often unfamiliar to the court. Participants highlighted that it is imperative to assist and give understanding to the court and to make sense of the case matter. The importance of an objective, neutral and professional role was explained and seen to be critical in defining the role of an expert witness. Explanations of the role of the expert witness included that professionals working with cases involving children and standing as expert witnesses should be able, as part of their role, to provide the court with the voice of the child.



Participants explained that professionals play an essential part in violent crime cases as, initially, professionals take on the role of assessing the case matters that can later turn into delivering expert testimony. Participant 3, a mental health practitioner, explained a case she was involved in and how she had to engage in the process in the case and deliver expert testimony.

*I had a case a while ago. I was the first person to assess a little boy. He was very young, 3 years and 8 months old when I first saw the child and I did an assessment. The child could provide me with information in terms of, the child was sexually abused. He was raped. He could give me information and the way that we conduct this assessment helped me to testify in court because I could give the information. It was only a medical person who testified because the child is too young to testify and me. I think in a case like that, it is crucial that there is an expert witness who can testify on behalf of the child (par. 3).*

Participant 3, a legal practitioner, explained that the expert witnesses must provide factual evidence and accurate findings and understand the correct protocol and the forms that need to be completed.

*Experts must give evidence to the best of their abilities. I want expert witnesses to provide factual evidence based on their consultation with the victim. Experts' findings must be their findings, and they must give full and accurate descriptions (par. 10).*

Participant 14, a legal practitioner, explained that often in violent crime cases, where violence has been committed against children, the expert witness testimony provides the opportunity where the child's voice can be heard.

*I think mostly the child victims... are scared. They do not know how to say what happened. They do not talk about it. You will have either a mom or a dad or somebody saying this is what happened to the child. The child does not have their voice. Experts are critical because they can be the one giving the child the voice or determine what happened using those various types of testing and asking the child. If you just say to any child what happened they are not going to say what happened, but I know there are ways, you give them toys, and they draw. It is imperative because those experts are the ones that can extract the information out of the child and provide evidence as to what happened to the child (par. 70).*

The participants highlighted the critical role of the professionals acting as the expert witnesses in child victim court cases. The importance of experts in violent crime cases cannot be overemphasised, as experts are needed to understand the victimisation that has taken place.

## **6.8 Summary**

This chapter presented the research findings and information as to themes discussed during the interviews with the participants. Accordingly, information was provided on the importance of the qualifications and experience of the expert

witnesses. The impact of the expert witness's testimony on a case matter was elaborated on in this chapter. Further information was provided on the training of expert witnesses working with children in court case proceedings. Research participants offered their views on the professional, ethical codes of the expert witnesses. Chapter 7 will focus on the interpretation of the findings.

## **Chapter 7 Interpretation of the findings**

### **7.1 Introduction**

In this chapter, the findings of this research project will be built together to form a mosaic of understanding of the data. It is imperative in research to evaluate to what extent the findings made in this study support or refute findings from other researchers and authors. Accordingly, this information will be encapsulated in this chapter. The training, qualifications and experience of the experts, and the impact that they have in violent crime cases where children are involved, will highlight the critical role experts play in court matters through delivering expert testimony. The importance for experts to engage in a forensic process where violent crimes against children manifest will be considered.

The system's theory as the interdisciplinary study of systems will highlight the importance of the involvement of expert witnesses in violent crime cases. Without the involvement of expert witnesses, violent crime cases will often remain unsolvable. Bronfenbrenner's ecological systems theory (section 3.3) will offer understanding as to how each part of a system makes a system whole and how the expert witness is the glue that holds the system together to address violent crimes committed against children and for justice to be served. The professional role of expert witnesses along with the ethical codes of expert witnesses form the backbone of an ethical framework. Essential aspects that should be included in an ethical framework will be particularised while considering the theory of deontology.

### **7.2 The involvement of professionals standing as expert witnesses where violent crimes have been committed against children**

The research findings and literature showed that the expert witness plays a central role in cases where violent crimes have been committed against children. Violent crimes affect children daily and it is evident that courts need input from experts to ensure that justice is served. The extent of violent crimes committed against children involving children is widespread (section 2.2) and, expert views to assist the court is critical. The literature explained that children are the largest vulnerable population falling victim to criminalised behaviour and pointed out that children suffer rates of conventional crime victimisation which are substantially higher than the general adult population (section 2.2).

Readings highlighted the tragedy of children being victimised by crime and underline this real social problem in society (Finkelhor, 2007, p. 12; Proudlock et al.,

2014, p. 18). The research results demonstrated how the expert witness fits into the system when violence has been committed against children. The results spoke of the training, qualifications, experience and impact that an expert witness needs when involved in violent crime case matters and, in particular, when acting as an expert witness in court.

### ***7.2.1 The importance of the expert witness being qualified and experienced***

The research findings highlighted that it is crucial that the expert witness is qualified and has the necessary experience to testify as an expert in violent crime cases where children are involved. The findings also showed the importance of expert witness testimony and that testimony can provide valuable information and add value to the court. The experts' expertise and skills and the contribution experts make in cases were found to be of critical importance as the expert witnesses' professional qualification, expertise and experience allows for professional authority in testimony. An expert's professional standing is determined by their professional qualification, their years of work experience, their specialised skills that relate to the case, the professional's publications, the professional's certifications, and licences, as well as awards and peer recognition that the expert can provide to underpin the expert skills which will be brought to bear during testimony. The findings revealed how challenging it is to provide testimony, even for experienced and well-qualified professionals and stressed how demanding it can be to deliver evidence in a court.

Literature supported the research findings. The literature explained that an expert must be qualified on the subject matter of the offered testimony. Their fields of knowledge cannot be limited to scientific and technical expertise but must extend to specialised expertise. Expert statements are drawn from professional persons who are experts in their respective fields and are well informed and experienced in a specific area. Experts' knowledge is gained through experience and training as well as by formal education. While South African courts are not explicit about what the specific criteria are that professional persons must satisfy before they may be regarded as experts, professionals need to have theoretical and practical knowledge (Boezaart, 2009, p. 24). The court must be convinced that witnesses are qualified to testify as expert witnesses on the subject concerned. Expert witnesses need to provide the court with a detailed resumé to assure the court of professional expertise specific to the subject matter (Allan and Meintjes-Van Der Walt, 2006, p. 303; Sagiv, 2015, p. 229).

Good quality testimony and the ethics of the behaviour of the expert witness are two crucial qualities that provide for true expert testimony. Expert witnesses need to have a current, valid, and unrestricted licence to practice in their professional field. Expert witnesses must be, where relevant, board-certified in their profession and hold an equivalent specialist qualification, must have been actively involved in the practice, and must have specialised expert knowledge on the subject matter. Experience and expertise are essential. Expert witnesses' review of the facts needs to be truthful, thorough, and impartial. Expert witnesses must not exclude any relevant information to create a view favouring either the plaintiff or the defendant. Expert witness testimony must reflect scientific evidence and reflect practice standards. The expert witness's fee for expert testimony should not be contingent upon the outcome of the case (Muckle, 2016, p. 2).

### ***7.2.2 The impact that expert witness testimony has in case matters***

The research findings spoke to the effect that expert witness testimony has in case matters (section 4.2). Findings showed that expert witness testimony has a significant impact on case matters and carries a lot of weight. The results showed that often in cases, expert testimony is required to explain evidence to the court and to provide an understanding of specific subject matters. The research findings described how good evidence could assist the court and weak testimony can have a detrimental impact on a case and illustrated the influential role that expert witnesses have in court case proceedings. The results illuminated the significance of good quality expert witness testimony as the courts rely heavily on such evidence. The research findings spoke to the fact that testimony ultimately moulds court case proceedings and poorly drafted expert reports and testimony can lead to cases being lost. The results of this study demonstrated that expert testimony is an essential part of the administration of justice.

The literature in this study confirmed the findings in this study. The literature explained that expert testimony is persuasive and compelling if the conclusions, opinions and recommendations are based on a solid foundation of facts. Factual information forms the foundation of expert witness testimony. The judge first needs a broad perspective that includes who did what, where, when, and to whom and, accordingly, additional details must be provided. The literature explained that it is vital that expert witnesses contextualise the information for court proceedings (Swann, 2002, p.306). The judge needs to hear about detailed specific observations of the

expert witness and must understand what the expert witness recognises to be relevant to the court's inquiry. Experts who have consulted with the children and their families from a systemic view are generally more persuasive to the court as they apply a wide lense of intervention. The application of systems theory can assist in creating a platform of understanding the critical role of the expert witness and expert testimony in the interconnected system related to violent crimes committed against children. Such witnesses describe what they observed and assessed and then draw inferences from their findings, including their expert knowledge (Vogelsang, 2001, p. 32).

In child victim court cases, the expert's professional knowledge of the case strengthens the expert's persuasion to the court. The factual basis for the crucial information behind an expert's testimony should be established, either by the expert or by previous witnesses. Experts are thus able to draw inferences from the data and, by their reasoning, connect the observed factual data to their opinions and conclusions. The importance of systematic thinking, which attaches to the primary data and the expert's findings, should be emphasised. The judge will be persuaded by expert witnesses who lead the judge through the information, the reasoning and then to the results (Duquette, 1981, p. 335). The legal-expert collaboration involves experts educating counsel about the experts' field of study and informing counsel how professional expertise can add value to the matter. Counsel must prepare experts and should support the expert.

Many experts with excellent skills, who are specialists in their field, are nevertheless apprehensive about appearing in court and worried about their ability as an expert witness (Vogelsang, 2001, p. 76). Counsel ought to support the expert witness and assist the expert with the courtroom experience. Counsel should prepare the expert witness to testify, as this will help the expert in delivering well-considered, quality testimony (Allan & Meintjes-Van der Walt, 2006, p. 24). An interdisciplinary approach, preparation and conference between the counsel and experts is beneficial in cases. After being educated by experts, counsel considers a strategy of questioning to be asked in court. Counsel needs clear, direct, and unswerving conclusions from experts. Experts should carefully consider their testimony. The testimony should be put forward to court as an accurate discussion between colleagues, but one that uses terminology that a layperson would appreciate. Experts should participate actively in the refinement of their conclusions for evidence. The counsel should appreciate the limitations of experts, considering the information of the case and counsel must provide

general direction and advice to the expert witness about their courtroom appearance (Sagiv, 2015, p. 229).

Literature validated the research findings. The empirical information explained that experts play an essential part in society's response relating to violent crimes committed against children. Courts need to be guided by a range of appropriate professionals as this will allow the court to obtain an understanding from a multi-professional perspective. Consultation and in-court expert testimony are needed from professionals in the fields of medicine, psychology, psychiatry, social work and other professions, both to substantiate and to educate the courts as to the crimes committed against children (Sanders, 2007, p. 1).

Professionals that are not legally trained often feel uncomfortable in the legal setting. The adversarial process of litigation is foreign to their training and professional experience. Collaboration with legal representatives dramatically improves other professionals' effectiveness in court. It is advantageous for legal representatives to make use of medical and social-psychological experts in the court process in the interests of the children, so as to present to the court a psycho-social consideration of the case matter (Duquette, 1981, p. 325). The courts rely heavily on expert opinion, and the expert's view often influences the outcome of the determination. Expert testimony influences decisions in the courtroom and plays a role in determining what happened to children and impacts on the conclusions drawn in the courtroom. The expert witness testimony plays a central role, from a systemic view, in violent crime court cases where children have been affected. Given the place of systems theory in this study, Bronfenbrenner's ecological systems theory (Bronfenbrenner, 1979) is respected in making sense of the circumstances in which violence against children occurs and elaborating on the complex interchangeable factors contributing to violence and the impact on children. It is imperative to have well trained and ethical professionals to master the duties of this specific task as violent crimes committed against children are a multifaceted problem (Downes, 2006, p. 7). Accordingly, there is a need for professionals, to deal with case matters professionally, deliver excellent quality expert testimony and to pride themselves in respect of their ethics (Sanders, 2007, p. 1).

### ***7.2.3 Expert witness training working with children in court case proceedings where violent crimes have occurred***

From a systemic point of view, expert witness testimony plays a central role in violent crime court cases where children have been affected. Case matters are often complicated, and training is essential. It is critical to have well trained and ethical professionals to master the duties of this specific task (Downes, 2006, p. 7). Children endure a significant burden of victimisation, as children are vulnerable due to their reliance on adults and their smaller stature. Violence against children is rife, affecting the health, social and psychological well-being of large numbers of children in South Africa. Vorster and Magnes (2018, p. 2) explain that violence has a substantial intergenerational impact, with considerable monetary and social costs. It violates children's rights to be protected from maltreatment, neglect, abuse and degradation as enshrined in various legal documents (Vorster & Magnes, 2018, p. 2). As violence against children affects many parts of society, Bronfenbrenner's ecological systems theory, as outlined in section 3.3, is valuable to professionals acting as expert witnesses as it will provide a broad systemic understanding of the impact which violent crimes against children have, not only on the child but on the society. Milner and Page (2007, p. 213) explain that an understanding of the total system, which will include all role players when a child is victimised, is essential. The impact on society, will assist professionals in obtaining appreciation of children's vulnerability in different spaces and will allow expert witnesses to understand how to holistically investigate violent crimes against children and how to systemically provide all information to the court to assist the court in ultimately reaching a decision. For an expert to have a complete understanding of violent crimes committed against children and to present the information to the court, expert skills are needed. Professionals can only obtain this expertise by receiving proper training, thus training is essential to credible expert witness testimony.

The research findings provided information about the training of expert witnesses working with children in court case proceedings when violent crimes have been committed and highlighted the vital role of training expert witnesses. Professional and on-going training for experts is highlighted as essential in the results. The research findings emphasised the importance of expert witness preparation and showed that preparing expert witnesses when delivering testimony in court is critical; court preparation should form part of professional training.



The research results provided information that explained that expert witnesses from private practices often offer better services than expert witnesses from government organisations. This is potentially due to private practitioners being paid better and having more time and resources available to them. The findings further highlighted the importance of training specifically related to investigation, report writing, and being cross-examined in court. The research results explained that professionals are often concerned about attending court and try to shift the responsibility onto others because of their apprehension about what might happen to them when the court cannot manage the scrutinising testimony. The research results highlighted the critical role of expert witness testimony that is presented by experienced and well-trained professionals. The research findings highlighted the need for appropriate and high-level training and the results show that experts are often not appropriately trained, leading to errors in expert testimony and harming case matters. The participants expressed that appropriate training is needed when working with children. The research results spoke to the fact that training is required that may not be included in professionals' formal qualification.

The literature supported the research findings and spoke of professional fear that prevents the professional from attending court. Professionals are often profoundly concerned and indignant about being subpoenaed to deliver expert witness testimony as they feel that they are not appropriately trained. Most professionals fear the witness stand and feel uneasy about being cross-examined (Vogelsang, 2001, p. 1). The stress relating to expert witness testimony and the interrogation and potential criticism by legal professionals create turmoil for expert witnesses, and the pressure of court appearances make expert witness testimony a daunting task. The need for experts to have appropriate training, appreciate the expert witness role and have a sound ethical platform to work from ought to be brought to bear on expert witnesses and will ultimately lead to better testimony (Sagiv, 2015, p. 229).

The expert witness forms part of the system when considering all the role players involved when a violent crime has been committed against a child. From a systemic view, the child is at the centre and is surrounded by many role players and factors that present when being a victim of a violent crime. As the expert witness forms an integral part of this system, the expert witness must receive the necessary training, as the research findings and the literature suggests it is appropriate, so as to ensure that

children are not re-victimised during or as a result of expert witness testimony (Sagiv, 2015, p. 229).

Systems theory underpins a holistic view to be adopted when viewing social pathology, such as violent crimes against children. An understanding of Bronfenbrenner's systems theory allows for the application of a holistic perspective. It underlines the fact that crimes against children do not take place in a vacuum, they are not dealt with in isolation and that many factors must be considered with a systematic perspective. The expert witness must recognise that a systemic approach when dealing with violent crimes against children will allow for expert testimony that has considered all aspects of violent crime with a wide lens and a holistic perspective (Sagiv, 2015, p. 229). A systemic understanding of violent crimes against children, as presented in sections 3.4–3.7, allows professionals to develop a thorough knowledge of violence committed against children. The presentation of Bronfenbrenner's ecological system offers the different systems (microsystem, mesosystem, exosystem, macrosystem and chronosystem) that illustrate that professionals do not see violent crimes committed against children in isolation and that all aspects must be thoroughly considered.

### **7.3 Professional ethical codes and defining the expert's role in delivering expert testimony**

Violent crimes committed against children are a severe problem in society, and when children are being victimised by crime, justice must be served. For this to take place, the expert witness must be able to provide well-considered expert testimony to assist the court. Not only must expert witnesses be well trained and have the necessary qualifications and experiences, they must also aim for an ethical high ground and be able to take a strong ethical stance as they have a duty to the court to be trustworthy and ethical practitioners (Vorster & Magnes, 2018, p. 2). As the research results indicated, ethics are essential to ensure that professionals do not face ethical dilemmas when working as experts. Research findings indicated that professionals feel confronted with ethical dilemmas.

The ethical theory explains that a theorist uses a standard set of goals for decision-makers to seek and achieve success. These goals include beneficence, least harm, respect for autonomy, and justice (Chonko, 2012, p. 3; Crisp, 2012, p. 257). Chonko (2012, p. 5) explains that the principle of beneficence guides the decision-maker to do what is right and proper. Ethics must guide professionals and the ethical

framework for professionals must be based on the principle of beneficence, as expert witnesses must do what is right and proper when providing testimony to the court. The research findings relayed and discussed the professional, ethical codes of the expert witnesses that are of crucial importance. However, it appears that these codes are not necessarily enforceable, and some experts are dismissive of the applicable codes of conduct

### ***7.3.1 The deontic moral duty of the expert witness***

The research results provided information concerning the professional understanding of ethical codes of expert witnesses (section 1.1). The findings show that professionals stated that their councils and boards of registration are not forthcoming with information and professionals feel left to their own devices to understand what fitting conduct is. The results showed concern as to access to adequate information and guidance on professional, ethical responsibility and professionals appeared concerned as to ethical pitfalls. The research findings spoke of expert witnesses not feeling protected by their governing bodies and that they are in the dark as to their roles, expectations and ethics relating to the role of being an expert witness. The research results highlighted that professionals are uncertain as to the specific rules regarding the expert witness and which may be applicable to them when providing expert witness testimony. This is troubling, as professionals acting as expert witnesses in cases concerning children have a large responsibility, as their conclusions are heavily relied upon in court and have an impact on children's lives.

Participants provided information on the ethical complexity of working with children in violent crime cases. Research results showed the complex task of working in this field and how difficult it is for expert witnesses working with violent crime cases involving children (section 6.6). Complexities that were highlighted included the difficult positions expert witnesses are placed in by legal counsel, the pressure experienced by the expert witness, confidentiality aspects of forensic practices, and the overall moral complexities faced by the expert witness when providing testimony. Results provided insight as to the importance of a possible ethical framework to support expert witnesses in understanding their responsibility and to make it clear what is expected from professionals, as it appears to be a daunting task to stand as an expert witness in case matters.

The literature in this study underlined the same difficulties concerning experts delivering testimony and the question relating to ethics in section 4.8. The literature in

this study showed that expert witness testimony comes with specific challenges and difficulties. In reviewing the literature, Sanders (2007, p. 2) explained that there is a fair amount of acceptance relating to a status quo of an expert witness. Foxcroft (2011) explained that there is a lack of agreed-upon ethical standards and, therefore, a lack of consensus concerning which steps should be taken to encourage ethical behaviour. The costs of unethical expert witnessing are substantial (Foxcroft, 2011, p. 18). According to Campher (2014, p. 3), the problems with expert witness ethics and unethical expert witnessing are challenging, and that these problems need attention. Locally and internationally, the availability of credible expert witnesses with high ethical standards is increasingly becoming problematic (Allan & Meintjes-Van der Walt, 2006, p. 14; Candilis et al., 2007, p. 3; Schryer et al., 2009, p. 216). Downes (2006, p. 6) indicates problems with expert evidence by reciting paragraphs from judgments decrying the extent to which adversarial bias is encountered. Expert witnesses are often referred to as paid agents, alluding to the fact that expert witnesses are merely “hired guns” (Sanders, 2007, p. 34). Downes (2006, p. 1) explains that there is a breed of litigation hangers-on, whose primary expertise is to structure reports, concealing aspects that might be to the disadvantage of their clients.

The research findings echoed the problems and concerns as reflected in the literature (section 4.7). Participants highlighted that expert witnesses are often not always fully aware of their ethical responsibilities and professionals are often left to their own devices as their professional registration boards do not provide them with the necessary guidance and support to fulfil their ethical duties, leaving professionals feeling exposed. Professionals highlighted that there are many challenges for expert witnesses, and experts do not feel protected and supported, creating immense anxiety for professionals. This leads to professional risk and professional vulnerability.

The research addressed the issue of professionals not delivering quality expert testimony and the difficulties for experts testifying. The research results showed that training, experience and qualifications are all contributing factors to developing an esteemed ethical expert witness, however, it is often difficult to find appropriate training as part of a professional’s skills. It appears that there is a lack of real investment into teaching professionals how to become expert witnesses who can deliver good quality testimony in the courts. The research results showed that there is an overall feeling that professionals who are required to provide evidence feel alone and not well-supported and experience the delivery of evidence as demanding and professionally

taxing. The literature and the research results outlined the issues of “hired guns” and litigation hangers-on and talked about the problems of the ethical dilemmas professionals are often faced with and the complexities around delivering expert testimony (Downes, 2006, p. 1; Sanders, 2007, p. 34).

The literature supported the findings, explaining the moral duty of expert witnesses, the importance of experts’ knowledge and the critical role experts play in court case proceedings. This study was viewed through a deontological ethical lens that forms part of the normative theory. The study matter concerned itself with ethical responsibilities, as deontological ethics is suited to the topic because of the importance of ethical decision making when working with victimised children. In contemporary moral philosophy, deontology is one of the normative theories regarding which choices are morally required, forbidden or permitted. In other words, deontology falls within the domain of reliable methods that guide and assess options of what an individual ought to do (Alexander & Moore, 2016, p. 2). The importance of an expert witness’s ethical responsibility and of being guided by a strong moral responsibility was highlighted through this study. The researcher found that it is of critical importance that professionals standing as expert witnesses hold the normative ethical position that judges the morality of an action based on rules. This position is appropriate to take when professionals have taken on the moral responsibility that comes with the territory of standing as an expert witness in child victim court cases.

The deontic theory in this study assisted in providing clarity and in determining the ethical responsibility of the expert witness by considering what is forbidden and what is permitted as an expert witness. The study results highlight that the proficient expert witness is a professional who ensures ethical and moral etiquette and values the ethical duty to assist the court. Such highly esteemed professionals and experts act independently; are not influenced by the system, by counsel and other individuals; have the knowledge and the skills in terms of assessment; keep emotions out of the evaluative process and are aware of emotional transference; remain objective and professional; are honest and have integrity; have healthy and explicit professional boundaries; are guided by ethical guidelines; and at all times act professionally with a high moral commitment to their professional ethical code.

For the esteemed expert witnesses, the ethical and moral etiquette forms part of their professional make-up and they are people of virtue, who are able to navigate their way through tough ethical choices and dilemmas. The study results highlight the

significant *deon* (duty) of the expert witness where a professional has a fixed commitment to abide by a set of moral principles, and nothing else. It forms the cornerstone of an excellent expert witness and will ultimately serve the interests of the court when providing expert testimony (Allan & Meintjes-Van der Walt, 2006, p. 14). The study results highlighted how an esteemed expert witness's moral make-up describes behaviour, values and principles that are ethical, no matter what the cost. True experts may not be graciously rewarded and may find themselves in dilemmas. However, their character and moral compass will guide them to be honest, true to the case and to remain firm on their views, so as to provide accurate and factual evidence on the case matter. The research results show the importance that professionals acting as expert witnesses understand the *deon* (the duty) and are guided by the virtues of mind, their character and sense of honesty and their moral obligations towards the case matter. The participants in this study highlighted the importance of professional integrity and that professionals who stand as expert witnesses must develop the integrity to deal with complicated case matters and be resilient, as delivering testimony in court can be a taxing experience.

The research results highlighted that ignorance on the professionals' part, together with a lack of skill, can lead to professional, ethical dilemmas and unfold into unethical and ineffective expert witness testimony. Participants in the research showed that to provide expert testimony is a specialised, developed skill and that it can be said that expert witnesses need expert skills and specialist knowledge; otherwise, so-called experts are not truly experts. In discussing ethics, it is critical to consider the professional role of expert witnesses.

### ***7.3.2 The professional role of expert witnesses***

Research findings described the importance of expert witnesses having extraordinary knowledge on subject matters in their specific field of expertise and that expert witnesses take on a particular role (section 6.7). The results described the significant role and the duties that expert witnesses fulfil and explained that expert witnesses ought to guide and be of assistance to the court. The research results highlighted that the role of expert witnesses is to give meaning to terminology and foreign concepts in court case proceedings. The findings highlighted that expert witness provides the court with knowledge and insight as this will assist the court in understanding and making sense of complex case matters. The findings highlighted the critical role and duty of the expert witness to be objective and neutral and the expert

witness's moral obligation to the court. The research results presented information as to the vital role of expert witnesses and their duties in violent crime cases as, initially, professionals take on the appointment to assess case matters that can later turn into delivering expert testimony to assist the court.

Literature supported the findings that experts should have extraordinary knowledge on the subject matter of violent crimes committed against children. The research explains that "children are the largest vulnerable population falling victim to criminalised behaviour" (Proudlock et al. 2014, p. 18). Finkelhor (2007, p. 12) explains that children suffer rates of conventional crime victimisation, which are substantially higher than the general adult population. It is an unfortunate but real social problem. Children experience a considerable burden of victimisations as they are defenceless due to their dependency on adults and their physique. Inappropriately, crimes against children are considerably less likely to come to police attention than crimes against adults, as children are often not taken seriously and are not given a proper voice. Violence against children is widespread, affecting the health, social and psychological well-being of large numbers of children in South Africa (section 2.10). Violence has far-reaching intergenerational consequences with substantial economic and social costs. Violence violates children's rights to be protected from maltreatment, neglect, abuse and degradation; as enshrined in various legal documents (Vorster & Magnes, 2018, p. 2). Children are resilient in times of adversity. However, their vulnerability within families and society should not be underestimated. The rights of children have remained on the global agenda for discussion at various fora. Since the advent of democracy, the discourse on child rights has focussed on the realisation of such imperatives (Abrahams & Mathews, 2011, p. 34).

Literature supported the findings in the research and explained that professionals who act as expert witnesses perform a crucial role in court proceedings to address violent crimes committed against children. Judges and the court depend on expert witness opinions to understand scientific evidence before the court, to make informed decisions. In recent years, the role of the expert witness has become more onerous, and the demands of instructing parties have increased. Factors that should be considered in appointing the expert witness are the expert witness's credibility, procedure, impartiality, professionalism, training and accreditation (Muckle, 2016, p. 1). The research results, similar to the literature, explained the critical need for

professionals to be knowledgeable and experts in their field to be able to deliver expert testimony.

Muckle (2016, p. 2) explains that expertise in the relevant subject matter remains a crucial factor in determining who is to be an expert and the credibility of experts' stated expertise will be tested. Professionals who take instructions to act as experts will be aware that their knowledge will be examined in detail by opposing legal counsel. An expert's opinion will be balanced against the opinion of experts instructed by opposing parties. Experts' qualifications and experience are of vital importance in delivering expert testimony. Expert witness testimony gives rise to obligations that go beyond advising on a specialist subject. Expert witnesses must be able to demonstrate a genuine understanding of the procedural requirements for providing evidence in court and they must be able to meet deadlines and produce written reports that comply with court regulations. Experts must be dependable in the expert witness box and they should understand the procedures for giving evidence under examination and cross-examination. The expert witness must be able to demonstrate skills in providing oral testimony in stressful situations (Allan & Meintjes-Van der Walt, 2006, p. 24).

Experts' evidence should express an independent view that is both objective and, if necessary, critical of arguments put forward by their instructing party. Before accepting instructions, expert witnesses must make appropriate checks to ensure they are not precluded from acting because of a conflict of interest. It is imperative that the expert witness understands what a conflict of interest is and appreciates the legal tests for bias. Expert witnesses, and those who instruct them, should recognise that the primary duty of the expert witness is always to the court. The experts' primary responsibilities are to be truthful and honest in what they tell the judge even if it does not assist the party who is paying the experts' fees (Muckle, 2016, p. 2).

#### **7.4 An ethical framework for expert witnesses considering their ethical responsibility in violent crimes cases committed against children**

The research results showed that there is a need for an ethical framework to guide professionals working in this challenging field (section 6.6). The findings showed that a framework can assist in guiding professionals and consequently allowing experts to provide a better-quality testimony to the court, that is beneficial to the case and which achieves justice.

As explained in section 3.9, the researcher applied the theory of deontology, as deontology guides and produced very consistent decisions, since choices are based



on the individual's set duties. It was explained that the researcher's view of ethics aligns with the theory of deontology and the focus on consistent decision-making is vital, so as to act ethically. Deontology is an ethical theory that uses rules to distinguish right from wrong. Deontology is easy to apply, and it requires that people follow the rules and do their duty (Waller, 2005, p. 2). An ethical framework for expert witnesses ought to be based on the principles of deontology. Expert testimony plays a critical role in litigation. Witness preparation plays a crucial role in the presentation of expert testimony. A framework of rules and principles to provide useful, ethical guidance in the area is needed. That framework does not presently exist (Wentworth, 2018, p. 81).

The research findings and the supporting literature promote the following aspects to be included in an innovative, ethical framework to guide expert witnesses:

- Expert witnesses must carefully consider their own biases and foibles.
- Expert witnesses must adopt a broader approach to ethics that takes full account of all the forces affecting the courtroom.
- Expert witnesses must embrace ethical thinking where professional values are used as a filter to guide good moral choices.
- Expert witnesses must understand ethical boundaries and ethical duties that include being professional, neutral, objective, honest and transparent.
- Expert witnesses must be duty-bound, if they do have ethical uncertainties, to reach out to supervisors for professional supervision and guidance.
- Expert witnesses must familiarise themselves with an understanding of court rules, court procedures, courtroom demeanour, methods of presentation of testimony (in examination in chief and cross-examination).
- Expert witnesses have to report and address interferences and coaching by counsel and must always be neutral. Expert witnesses must be mindful of the tailoring of opinions and have firm boundaries and not allow such tailoring.
- Expert witnesses must always take the moral high ground and professionally conduct themselves. Respect must be shown to any party involved in the matter. Expert witnesses must remain objective, impartial and neutral.
- Expert witnesses must deliver well-considered reports and reports must be carefully drafted and considered. The reports must be professional and provide clarity on the issue at hand, and all factors should be considered and reflected upon in the report. The report must attempt to assist the court to ensure that the court obtains information from an expert view.

- Expert witnesses must be informed about avoiding assumptions, have sound reasoning and be focussed on the correctness of conclusions.
- Expert witnesses must be well prepared and knowledgeable about their subject matter.
- Expert witnesses must, before they deliver expert testimony, be prepared and witness preparation by counsel is essential to manage expert witness angst.
- Expert witnesses must at all times apply ethical discretion.
- Expert witnesses must continuously check expert impartiality.

The research results and literature highlighted that an ethical framework ought to guide the expert witness to promote ethical behaviour and prevent ethical dilemmas from unfolding. The framework should include specifications regarding the expert witness's code of conduct; the general duties to the court; the content of an expert report and a supplementary report to provide further opinions or changed professional views; the responsibility of the expert witness to comply with the court's discretion; and conferencing of experts. The research findings and literature showed the importance for professionals acting as expert witnesses to have an ethical framework as this will be of assistance and will support and safeguard the expert witness.

### **7.5 Summary**

Chapter 7 provided the reader with an understanding of integrating the research findings with supporting literature. This chapter evaluated whether the research results support or refute findings from other researchers and authors. Information was provided that showed that the literature supports the research results. Chapter 8 will focus on the summary, recommendations, and conclusions of this study.

## **Chapter 8 Summary, conclusion and recommendations**

### **8.1 Introduction**

In this final chapter of this study, an understanding will be provided in fulfilment of the aims of this research. A summary of each preceding chapter will first be presented to assimilate the content of this study. Recommendations and research directives will then follow. The thesis ends with a conclusion.

### **8.2 Summary**

A summary of the preceding chapters and their central ideas and arguments will be reflected. This chapter will explore the ecological framework of the expert witnesses in child victim court cases. It will provide an ethical framework for expert witnesses involved in cases where crimes have been committed against children. Accordingly, the moral dilemma of expert witnesses in child victim court cases will be addressed. This study outlined the extent, nature and manifestations of violent crimes committed against children at a global level and within a South African context, to create an understanding of the enormity of violence against children and this chapter will assist in providing an ethical framework. The ethical framework will address the essential elements of the ethical challenges which the expert witnesses perceive to encounter in child victim court cases. An ethical framework for expert witnesses, outlining their ethical responsibility in dealing with cases where violent crimes have been committed against children, will be formed.

#### ***8.2.1 Chapter 1: Introduction and summary***

Chapter 1 provided the reader with an understanding of the detrimental outcomes of violence against children. An explanation was provided on how violence against children is damaging, not only for the victimised children, but for society as a whole and creates a climate in which social injustice is tolerable. This chapter introduced the important role of expert witnesses and expert testimonies in the courtroom. Chapter 1 described the deontic theory, which falls into the domain of moral theories, which is part of normative theories. The importance of expert witnesses applying deontology to ensure an ethical stance was highlighted. Chapter 1 explained the essential concepts used in this study to provide the reader with an understanding of the terminology.

#### ***8.2.2 Chapter 2: The extent and impact of violent crimes committed against children***

Chapter 2 focused on violent crimes committed against children and created an understanding of the critical importance of addressing violent crimes committed

against children. This chapter gave an explanation of violence directed towards children, which is a multi-faceted, complex problem with severe consequences. The extent of violence committed against children was elaborated on, providing a historical context of the culture of violence in South Africa. Victimization rooted in traditional beliefs was dissected, and writings elaborated on cultural practices, poverty, family structures and substance abuse. Chapter 2 explained patterns of violence during children's course of life and described how violence affects children's development. A central focus of Chapter 2 was the burden of victimisation and the cost to society when crimes are committed against children.

### ***8.2.3 Chapter 3: An ecological framework relating to the complexity of children experiencing violence***

Chapter 3 focused on Bronfenbrenner's Ecological Systems Theory, provided an understanding of the social problem of violent crimes committed against children and elaborated on the various systems, i.e., microsystems, mesosystems, exosystems, macrosystems and chronosystems and the interchangeable and transient difficulties arising from such committed violence in the system. The complexities of violence in these systems were dealt with in Chapter 3 and it provided an international view of how violence against children is pervasive in homes, school, and communities. Chapter 3 provided insight into the integral role of the expert witness in child victims' court proceedings and their critical role in the system to address violent crimes affecting children. Deontological theory provided information on the moral position of expert witnesses to deliver credible testimony.

### ***8.2.4 Chapter 4: Expert witness testimony in child victim court cases***

Chapter 4 focused on expert witnesses and expert evidence. This chapter explained that the legal system is an essential response to child victim cases. It is demonstrated that the courts often need expert guidance to contextualise the situation, to add value and create an understanding of the details of the case matter by applying expert knowledge. Chapter 4 described the role and the duties of expert witnesses to the court. This chapter provided information on the difficulties with expert testimony and the importance of employing professionals who can deliver good quality testimony.

### ***8.2.5 Chapter 5: Methodology***

Chapter 5 provided methods and referred to the ideas, rules, techniques and approaches that were applied. An explanation was given of the explorative qualitative approach that was followed to design the research study. The scientific method, the

population group and the sampling methods were set out in Chapter 5. Attention was given to the data collection, analysis and verification processes, and how the pilot study was conducted. Particular attention was given to the ethical considerations that ensured principled research. An in-depth understanding was given to the scientific method of this study.

### ***8.2.6 Chapter 6: 'The professional experience of expert witness testimony': Presentation of findings***

Chapter 6 introduced the participants of the study and elaborated on the value which these participants added to this study. This chapter provided the reader with the research findings and direct quotations derived from the participants, to allow for an understanding of the topic. This chapter offered the participants' accounts and shared their experiences with the reader concerning expert witness testimony in child victim court cases. The five themes which emerged from this study were discussed in Chapter 6. Information was provided on the importance of the qualifications and experience of expert witnesses. The impact of the expert witness's testimony on a case matter was elaborated on in this chapter. Further information was provided on the training of expert witnesses working with children in court proceedings. Chapter 6 provided information on the participants' views on the professional, ethical codes of expert witnesses.

### ***8.2.7 Chapter 7: Interpretation and findings***

Chapter 7 provided the reader with an understanding of integrating the research with supporting literature. This chapter explained whether the results of this study support or refute findings from other researchers and authors. Chapter 7 gave meaning to the critical involvement of professionals standing as expert witnesses where violent crimes have been committed against children. An explanation was given of the importance of expert witnesses being qualified and experienced and revealed how challenging it is to provide testimony, even for experienced and well-qualified professionals, and stresses how demanding it can be to deliver evidence in a courtroom. The chapter dealt with the impact that expert witness testimony has in case matters. An explanation was given regarding expert witness training in working with children in court case proceedings where violent crimes have occurred. It was explained that, from a systemic view, expert witness testimony plays a central role in violent crime court cases where children have been affected. The importance of the professional, ethical codes and defining the expert's role in delivering expert testimony was provided. This chapter provided information concerning the professionals'

understanding of the ethical codes of expert witnesses and the deontic moral duty of expert witnesses. Particular emphasis was given to the professional role of expert witnesses and the expert's duties. Chapter 7 described the need for an ethical framework for expert witnesses considering their moral responsibility in violent crime cases committed against children.

### **8.3 Recommendations**

Based on the findings of this study, recommendations can be made about the qualifications and experiences of expert witnesses. The impact which expert witnesses have on cases, the training of expert witnesses and the ethical framework guiding expert witnesses in child victim court cases can be considered.

#### ***8.3.1 The qualifications and experiences of expert witnesses***

It is recommended that expert witnesses require specialised knowledge, and authentic and credible experts must be specialists in their field. This specialised knowledge must be obtained from being qualified as a specialist, through academic endorsement, certification, publication, education and experience. Expert witnesses must have developed the necessary rigour in their field to provide the court with a high-quality testimony. Recognition must be given to the fact that expert witness testimony is a scientific art and studying, education and experience is essential to develop expert skills, ultimately leading to trustworthy and credible expert evidence, to properly and effectively assist the court in case matters concerning children affected by violent crimes.

#### ***8.3.2 The impact expert witnesses have in case matters***

It is recommended that professionals must recognise the enormous impact which expert witness testimony has in case matters and the way the expert testimony of a case can influence the case. It is essential that expert witness testimony is thus received from well-versed professionals and to ensure that expert witnesses are well prepared and have the rigour and grit to ensure that the court gets their statement by being professional, reliable and providing the court with evidence that is reliable.

#### ***8.3.3 The training of expert witnesses***

It is recommended that training is seen as an ongoing essential for expert witnesses in order to provide the court with testimony which is reliable, credible and trustworthy. Expert witness training must equip experts with the ability to set out the right evidence, using the proper techniques, to produce the right results.

Core components of intensive expert witness training should include the expert's role in the court proceedings; the rules of evidence as they apply to the expert's opinion; explaining the laws that govern experts expressing views in a written report or by oral evidence in the witness box; exploring ways in which the well-prepared expert can succeed in the witness box; report writing and communication skills; suggestions on how to prepare a report that persuades; court procedures to narrow the points of disagreement between opposing expert opinions; understanding the aims and methods of examination and cross-examination; and explaining how and why the advocates ask questions at the hearing.

**8.3.4 A figure of the process of expert witness engagement and an ethical framework that infuses it.**

A figure illustrating the process and the ethical aspects for expert witnesses is of critical importance in child victim court cases and the following structure should be accepted. Figure 8.1 presents a cluster of important concepts illustrating all central parts of expert witness testimony that needs to be infused by the ethical framework.



*Figure 8.1: A structure of the process and ethical aspects for expert witnesses in child victim court cases (Robinson, 2020)*

Important elements of the expert witness testimony are clustered together, allowing for an understanding to develop the significance of expert evidence. All parts of expert testimony must be infused by the ethical framework. All illustrated elements form part of a whole to promote credible and robust expert testimony.

#### *8.3.4.1. Approach to expert evidence*

An expert witness may be retained to give opinion evidence in the proceedings, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some situations, an expert may be appointed as an independent adviser to the court.

The purpose of the use of expert evidence in proceedings, often concerning the complicated subject matter, is for the court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge based on training, study or experience. However, the use or admissibility of expert evidence remains subject to the overriding requirements. To be admissible in a proceeding, any such evidence must be relevant.

Even if applicable, any such evidence may be refused to be admitted by the court if its probative value is outweighed by other considerations such as the evidence being unfairly prejudicial, misleading or will result in an undue waste of time. An expert witness's opinion evidence may have little or no value unless the assumptions adopted by the expert, for example, the facts or grounds relied upon, and his or her reasoning is expressly stated in any written report and in oral evidence given.

The court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert testimony, to always comply with their duties associated with the overarching purpose in the court.

#### *8.3.4.2. Interaction with expert witnesses*

Parties and their legal representatives should never view an expert witness retained or partly retained by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views in alignment with the party's interests.



A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert or assisting an independent expert in the preparation of his or her evidence.

Any witness retained by a party to prepare a report or give evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based on the specialised knowledge of the witness should, at the earliest opportunity, be provided with all relevant information, whether helpful or harmful to that party's case, to enable the expert to prepare a report of a genuinely independent nature.

Any questions or assumptions provided to an expert should be delivered in an unbiased manner and in such a way that the expert is not confined to addressing particular, irrelevant or immaterial issues.

#### *8.3.4.3. Role and duties of expert witnesses*

The purpose of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the court or become an advocate for the cause of the party that has retained the expert.

It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The court will, with the assistance of the evidence of the experts, reach its conclusion.

Experts should be prepared to willingly change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

#### *8.3.4.4. Contents of the expert witness's report and related material*

The contents of an expert's report must conform with good ethical practice. Reports must be accurate, clear and precise. The expert acknowledges that their opinions are based wholly or substantially on specialised knowledge arising from their training, study or experience. The expert must have identified in the report the questions that the expert was asked to address.

The expert must sign the report and attach to it copies of documents that record any instructions given to the expert; and documents and other materials that the expert has been instructed to consider as exhibits.

Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

#### 8.3.4.5. *Conference of experts and joint reporting*

Parties, their legal representatives and experts should be familiar with aspects relating to discussions of experts and joint reports. To facilitate the proper understanding of issues arising in expert evidence and to manage specialist evidence following the overarching purpose, the court may require experts who are to give evidence or who have produced reports to meet to identify and address the issues not agreed to between them and to reach an agreement where this is possible. In an appropriate case, the court may appoint a registrar of the court or some other suitably qualified person to act as a facilitator at the conference of experts.

It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the court whether a conference of experts and a joint report or minutes by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceedings. The parties should discuss the necessary arrangements for any conference and joint report or minutes. The methods discussed between the parties should address:

- Listing professionals who should be part of preparing the joint report or minutes.
- Preparing a list of issues to assist the experts in the conference and, if so, whether the court, the parties or the experts should help in preparing such a list.
- The agenda for the conference of the experts.
- Arrangements for the provision, to the parties and the court, of any joint report, minutes or any other report as to the outcomes of the conference.

The purpose of the conference of experts is for the experts to have a comprehensive discussion on issues relating to their field of expertise, with a view to identifying matters and concerns in a proceeding about which the experts agree, partly agree, or disagree and provide reasons. For this reason, the conference is attended only by experts. Unless the court orders otherwise, the parties' lawyers will not participate in the meeting but will be provided with a copy of any conference report or minutes.

Subject to any other order or direction of the court, the parties and their lawyers must not involve themselves in the conference of experts' process. They must not seek to encourage an expert not to agree with another expert or otherwise attempt to influence the outcome of the conference of experts. The experts should raise any queries they may have concerning the process.

Experts should prepare for a conference of experts by ensuring that they are familiar with all the materials upon which they base their opinions. Where expert reports in draft or final form have been exchanged before the conference, experts should attend the meeting familiar with the reports of the other experts. Before the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist in identifying and refining those areas of disagreement.

At the conclusion of the conference of experts, unless the court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint report or minutes. The joint report or minutes should be clear, understandable and concise. It should summarise the views of the experts on the identified issues, including a brief explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge.

#### *8.3.4.6. General duties to the court*

An expert witness is not an advocate for a party and has a paramount duty, overriding any responsibility to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

#### *8.3.4.7. Content of the expert report*

Every report prepared by an expert witness for use in court shall clearly state the opinion or opinions of the expert and should say, specify or provide:

- The name and address of the expert.
- The qualifications of the expert preparing the report.
- The assumptions and material facts on which each opinion expressed in the report is based.
- The reasons for and any literature or other materials utilised in support of such opinion.
- If applicable, that a particular question, issue or matter falls outside the expert's field of expertise.
- Any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications.

- The extent to which any opinion which the expert has expressed involves the acceptance of another person's view, the identification of that other person and the opinion expressed by that other person.
- A declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate, save for any matters identified explicitly in the report, and that no issues of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court.
- Any qualifications on the opinion expressed in the report without which the report is or may be incomplete or inaccurate.
- Whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
- Where the report is lengthy or complicated, a summary of the report at the beginning of the report.

#### *8.3.4.8. Supplementary report following a change of opinion*

Where an expert witness has provided to a party or that party's legal representative a report for use in court, and the expert after that changes his or her opinion on a material matter, the expert should provide to the party or that party's legal representative a supplementary report. In any subsequent report, the expert may refer to the material contained in the earlier report without repeating it.

#### *8.3.4.9. Duty to comply with the court's directions*

If directed to do so by the court, an expert witness shall:

- Confer with any other expert witness.
- Provide the court with a joint report specifying, as the case requires, matters agreed and matters not decided and the reasons for the experts not agreeing.
- Abide in a timely way by any direction of the court.

## **8.4 Summary**

This study explored the ethical framework of the professional persons who stand as expert witnesses in child victim court cases. This research provided an ethical framework for expert witnesses involved in cases where crimes have been committed against children. The ethical dilemma of expert witnesses in child victim court cases was addressed. This study outlined the extent, nature and manifestations of violent crimes committed against children at a global level and within a South African context and created an appreciation of the heinousness of violence against children. This study

explored the essential elements of the ethical challenges the expert witnesses perceive to encounter in child victim court cases. This study provided an ethical framework for expert witnesses outlining their ethical responsibility in dealing with situations where violent crimes have been committed against children. The ethical framework presented in this study will ensure expert witness testimony to be embedded in a deontic theory and for expert witnesses to be morally guided in their evidence in violent crime cases and to fulfil their duty to do what is right, just and professional.

### **8.5 Conclusion**

Crimes committed against children worldwide and within a South African context are devastating. The research concludes that crimes committed against children globally and within a South African context are devastating. Professionals working in this field face a daunting task. Experts face many ethical challenges and complexities in working in child victim court cases. Expert witness testimony is a challenging field. Professionalism and ethics must be prioritised when working with child victim court cases. An ethical framework is needed to guide experts in providing expert testimony in child victim court cases to promote ethical behaviour and prevent ethical dilemmas.

## LIST OF REFERENCES

- Abrahams, N., & Jewkes, R. (2005). Effects of South African men's having witnessed abuse of their mothers during childhood on their levels of violence in adulthood. *American Journal of Public Health, 95* (10), 1811–1816.
- Abrahams, K., & Matthews, T. (2011). *Child Rights Manual: Handbook for Parliamentarians*. Parliament of the Republic of South Africa. Cape Town: UNICEF Print.
- Africa Check. (2017). *Levels of child sexual abuse in South Africa even higher than the activist claimed*. Retrieved April 19, 2018 from <https://africacheck.org/reports/levels-child-sexual-abuse-south-africa-even-higher-activist-claimed/>.
- Ajumobi, F. (2018). *Violence against children is pervasive*. New York: Vanguard Press.
- Alexander, L. (2016). *Legal, Moral, and Metaphysical Truths: The Philosophy of Michael S. Moore*. London: Oxford University Press.
- Alexander, L., & Moore, M. (2016). *Deontological Ethics*. Retrieved March 15, 2017 from <http://plato.stanford.edu/archives/win2016/entries/ethics-deontological/>.
- Allan, A., & Meintjes-Van der Walt, L. (2006). *Expert evidence*. London: Oxford University Press.
- Aluwihare–Samaranayaka, D. (2012). Ethics in Qualitative Research: A view of the Participants' and Researchers' World from a Critical Standpoint. *International Journal of Qualitative Methods, 11* (2), 64–81.
- American Medical Association (2005). *Guidelines for expert witness qualifications and testimony*. Retrieved January 25, 2019 from [www.asahq.org/publicationsAndServices/standards/07.pdf](http://www.asahq.org/publicationsAndServices/standards/07.pdf).
- April, S.T. (2018). *Violence in South African Schools*. Retrieved August 18, 2018 from <https://www.lovetheworldsat.org/blog/2018/03/27/violence-in-south-african-schools/>.
- Babbie, E. (2007). *The Practice of Social Research*, 11th ed. Boston: Wadsworth/Thompson Learning.
- Babbie, E. (2011). *Introduction to Social Research*, 5th ed. Boston: Wadsworth/Thompson Learning.

- Bailey, B. (2010). *Muti killings is a way of life in rural areas*. Retrieved July 10, 2018 from <http://www.iol.co.za/news/south-africa/muti-killigs-is-a-way-of-life-in-rural-areas-470606>.
- Baker, T.E. (1992). The impropriety of expert witness testimony on the law. *Kansas law Review*, 40, 326–359.
- Baker, C. (2017). *The killing of people with albinism is driven by myth and international inaction*. Retrieved July 8, 2018 from <https://mg.co.za/article/2017-09-20-the-killing-of-people-with-albinism-is-driven-by-myth-and-international-inaction/>
- Barbarin, O.A., & Richter, L.M. (2001). *Family influences on socio-emotional development*. London: Routledge Publisher.
- Beckette, H., & Warrington, C. (2014). *Suffering in Silence: Children and unreported crime*. London: University of Bedfordshire.
- Beran, R.G. (2009). The role of the expert witness in the adversarial legal system. *Journal of Law and Medicine*, 17, 133.
- Berg, B.L., & Howard, L. (2017). *Qualitative research methods for the social science*. London: Pearson Publication.
- Berger, M. (2000). *Expert Testimony: The Supreme Court's Rules. Vol XVI No 4. Issues in science and Technology*. Retrieved May 15, 2018 from <https://issues.org/berger/>
- Berkowitz, S.J. (2003). Children exposed to community violence: The rationale for early intervention. *Clinical Child and Family Psychology Review*, 6 (4), 293–302.
- Berzofsky, M., Krebs, C., & Smiley-McDonald, H. (2012). *Victimisation not reported to the Police, 2006-2010*. New York: RTI International.
- Beven, K. (2006). A manifesto for the equifinality thesis. *Journal of Hydrology*, 320(1), 18–36.
- Blair, E. (2015). A reflexive exploration of two qualitative data coding techniques. *Journal of Methods of Measurement in the Social Sciences*, 6(1), 14–29.
- Bless, C., Higson-Smith, C., & Kagee, A. (2006). *Fundamentals of social research methods: An African perspective*. Cape Town: Juta & Co Ltd.
- Boezaart, T. (2009). *Child Law in South Africa*. Cape Town: Juta & Co Ltd.
- Bollo, C. (2019). *Personal Communication*. Cape Town.

- Bound, M. (2012). *Ethics in Qualitative Research, Gatekeepers* [Doctoral thesis, Nova South-eastern University]. Retrieved January 30, 2018 from <http://academia.edu/1526314/Ethics-in-Qualitative-Research-Gatekeepers>.
- Bronfenbrenner, U. (1979). *The Ecology of Human Development: Experiments by Nature and Design*. Harvard: Harvard University Press.
- Bruce, D. (2009). Dictating the local balance of power: Election-related violence in South Africa. *South Africa Crime Quarterly*, 28, 3–9.
- Butler-Sloss, E., & Hall, A. (2002). Expert witnesses, court, and the law. *JR Soc Med*, 95(9), 431–434.
- Burton, P. (2006). Easy pre: Results of the National Youth Victimization Study. *South African Crime Quarterly*, 16, 1–6.
- Campher, J. (2014). *Exploring the role of competency assessments in forensic interviewing for child victims of sex offences between five to ten years old*. [Unpublished Master's thesis]. The University of Cape Town.
- Candilis, P.J., Weinstock, R., & Martinez, R. (2007). *Forensic Ethics and the Expert Witness*. Berlin: Springer Science and Business Media.
- Centre for Child Law. (2012). *Children at the Centre: A guide to the registration of child and youth care centres*. Retrieved October 23, 2018 from <http://www.centreforchildlaw.co.za>.
- Charles, M. (2018). *Cape Argus: 41% of rapes committed in South Africa are against children*. Retrieved October 23, 2018 from <https://www.iol.co.za/capeargus/news/41-of-rapes-committed-in-south-africa-are-against-children-15037185>.
- Charman, A. (2006). *Children making and selling liquor in South Africa: A child labour-related rapid assessment*. Sustainable Livelihood Consultants. TECL Report No 49. Pretoria: Department of Labour.
- Chonko, L. (2012). *Notes on Ethical Theories* [PowerPoint slides]. The University of Texas at Arlington, DSEF. Retrieved October 28, 2018 from [www.dsef.org/wp-content/uploads/2012/07/EthicalTheories.pdf](http://www.dsef.org/wp-content/uploads/2012/07/EthicalTheories.pdf).
- Cluver, L., Orkin, M., Boyes, M., Gardner, F., & Meinck, F. (2011). Transactional Sex amongst AIDS-Orphaned and AIDS-Affected Adolescents Predicted by Abuse and Extremely Poverty. *Acquired Immune Deficiency Syndrome*, 58(3), 336–343.



- Collings, S.J., Valgee, S.R., & Penning, S.L. (2013). Development and preliminary validation of a screen for interpersonal childhood trauma experiences among school going youth in Durban, South Africa. *Journal of Child & Adolescent Mental Health*, 25, 23-34.
- Creswell, J.W. (2003). *Research design: qualitative, quantitative, and mixed methods approach*. Newbury Park: Sage Publications.
- Creswell, J.W. (2007). *Qualitative inquiry and research design: Choosing among five approaches*. Newbury Park: Sage Publications.
- Crisp, R. (2012). A third method of Ethics? *Philosophy and Phenomenological Research*, 90 (2), 257–273.
- Davis, R. (2003). *Daily Maverick. When culture and policing collide: Circumcision deaths and ukuthwala — unpunished crimes*. Retrieved February 13, 2017 from <https://www.dailymaverick.co.za/article/2013-10-11-when-culture-and-policing-collide-circumcision-deaths-and-ukuthwala-unpunished-crimes/#.WmNgkKiWbb0>.
- Department of Social Development. (2014). *Violence against children and consequences for South Africa*. Retrieved June 12, 2018 from <http://pmg.org.za/committee-meeting/17477/>.
- De Vos, A.S., Strydom, H., Fouché, C.B., & Delport, C.S.L. (2011). *Research at Grass Roots*, 4th ed. Pretoria: Van Schaik Publishers.
- Downes, G. (2006). *The use of expert witnesses in court and international arbitration processes*. 16<sup>th</sup> Inter-Pacific bar Association Conference 2006. Retrieved January 17, 2017 from <http://www.aat.gov.au/about-the-aat/engagement/speeches-and-papers/the-honourable-justice-garry-downes-am-former-pre/the-use-of-expert-witnesses-in-court-and-international>.
- Duquette, D.N. (1981). The expert witness in child abuse and neglect: an interdisciplinary process. *Child Abuse and Neglect*, 5, 325–334.
- Edwards, D. (2005). Post-traumatic stress disorder as a public health concern in South Africa. *Journal of Psychology in Africa*, 15(2), 125–134.
- Emmel, N. (2013). *Sampling and choosing cases in qualitative research: A realist approach*. Newbury Park: Sage Publications.
- Faherty, V. (2010). *Wordcraft: Applied Qualitative Data Analysis (QDA): Tools for Public and Voluntary Social Services*. Newbury Park: Sage Publications.

- Fellows, S. (2010). *Trafficking body parts in Mozambique and South Africa*. Pretoria: Research Report.
- Finkelhor, D. (2007). *Developmental Victimology: The Comprehensive Study of Childhood Victimization*. Newbury Park: Sage Publications.
- Finkelhor, D. (2008). *Childhood Victimization: Violence, Crime, Abuse in the Lives of Young People*. London: Oxford University Press.
- Foster, H., & Brooks-Gunn, J. (2011). *Effects of Physical Family and Community Violence on Child Social Violence*. Texas: A & M University Press.
- Foxcroft, C.D. (2011). Ethical issues related to psychological testing in Africa: What I have learned (so far). *Online readings in psychology and culture*, 2(2), 7.
- Gilbert, R., Wodom, C., Browne, K., Fergusson, D., Webb, E., & Janson S. (2009). Burden and consequences of child maltreatment in high-income countries. *The Lancet*, 373(9657), 68–81.
- Gould, C. (2018). Beaten Bad. The life stories of violent offenders. *ISS Monograph*, 192.
- Gould, J.W., & Martindale, D.A. (2009). *The Art of Science of Child Custody Evaluations*. New York: Guilford Press
- Gravetter, F.J., & Forzano, L.B. (2003). *Research methods for the behavioural sciences*. Boston: Wadsworth/Thomson Learning.
- Greenbank, P. (2003). The role of values in educational research: the case for reflexivity. *British Education Research Journal*, 29, 791–801.
- Grinnell, R.M., & Unrau, Y.A. (2011). *Social work research and evaluation: Foundations of Evidence-Based Practice*. London: Oxford University Press.
- Gwata, F. (2009). *Traditional male circumcision: What is its socio-cultural significance among Xhosa men?* Centre for Social Science Research (CSSR) Working Paper No. 264. Aids and Society Research Unit. Retrieved October 5, 2017 from <http://www.cssr.uct.ac.za/sites/cssr.uct.ac.za/files/pubs/WP264.pdf>.
- Harris, J., & White, V. (2013). *Oxford Dictionary of Social Work & Social Care*. London: Oxford University Press.
- Hayes, S.C., & Craddock, G. (1992). *Simply Criminal*. Sidney: Federation Press.
- Herrenkohl, T.I., Hill, K.G., Chung, I.J., Guo, J., Abbott, R.D., & Hawkins, J.D. (2003). Protective factors against serious violent behaviour in adolescence: A prospective study of aggressive children. *Social Work Research*, 27, 179–191.

- Hsiao, C., Fry, D, Ward, C.L, Ganz, G., Casey, T., Zheng, X., & Fang, X. (2018). Violence against children in South Africa: the cost of inaction to society and the economy. *BMJ Global Health*, 3 (1).
- Jewkes, R., Abrahams, N., Mathews, S., Seedat, M., van Niekerk, A., Suffla, S., & Ratele, K. (2009). *Preventing rape and violence in South Africa: Call for leadership in a new agenda for action*. Retrieved May 29, 2017 from [www.mrc.ac.za/gender/prev\\_rapedd041209.pdf](http://www.mrc.ac.za/gender/prev_rapedd041209.pdf).
- Jewkes, R., Dunkle, K., Koss, M., Levin, J., Nduna, M., Jma, N., & Sikwyiya, Y. (2006). Rape perpetration by young rural South African men: Prevalence, patterns, and risk factors. *Social Science and Medicine*, 55, 1231–1244.
- Jewkes, R., Levin, J., Mbananga, N., & Bradshaw, D. (2002). Rape of girls in South Africa. *The Lancet*, 359, 319–321.
- Jewkes, R., Sikweya, Y., Morrell, R., & Dunkle, K. (2009). *Understanding men's health and use of violence: Interface of rape and HIV in South Africa*. Retrieved May 20, 2017 from [http://www.mrc.ac.za/gender/violence\\_hiv.pdf](http://www.mrc.ac.za/gender/violence_hiv.pdf).
- Kaarsholm, P. (2005). Moral panic and cultural mobilisation: Responses to transition, crime, and HIV/AIDS in KwaZulu-Natal. *Development and Change*, 45, 140–146.
- Kirby, M., & Dwyer, K. (2013). *Violent Crimes against Children*. Retrieved August 14, 2017 from <http://cga.ct.gov/2013/rpt>.
- KwaZulu Natal, South Africa. (1985). Human Tissue Act No. 65 of 1983. *Juta Statues*, 1. Retrieved April 20, 2018 from <http://www.kznhealth.gov.za/humantissueact.pdf>.
- Lake, L., & Jamieson, L. (2016). Using a child rights approach to strengthen prevention of violence against children. *South African Medical Journal*, 106(12), 1168-1172.
- Leclerc-Madlala, S. (2002). On the Virgin Cleansing Myth: Gendered Bodies, AIDS and Ethnomedicine. *African Journal of AIDS Research*, 1, 87–95.
- Legget, T. (2005). *Terugskiet (returning fire): Growing up on the street corners of Manenberg, South Africa*. In L. Dowdney (ed.), *Neither war nor peace: international comparisons of children and youth in organised armed violence* (pp. 296-315). Rio de Janeiro: Vivo Rio/ISER/IANSA.
- Leoschut, L. (2009a). *Running Nowhere Fast: Results of the National Youth Lifestyle Study*. Cape Town: The Centre for Justice and Crime Prevention.

- Leoschut, L. (2009b). *Results of the National Youth Lifestyle Study*. Cape Town: The Centre for Justice and Crime Prevention.
- Leoschut, L. (2017). *Poly-victimization: Understanding multiple forms of victimisation among South African youth*. Cape Town: The Centre for Justice and Crime Prevention.
- Leoschut, L., & Burton, P. (2006). *How rich the rewards? Results of the 2006 National Youth Victimization Survey*. Cape Town: The Centre for Justice and Crime Prevention.
- Lerm, H. (2015). Beware the “hired gun”. Are expert witnesses unbiased? *De Rebus*, 36.
- Levci, E. (2018). *Children’s Act Explained*. UNICEF. Retrieved October 2, 2018 from [yourbookchoice.com/downloads/children-s-act-explained-unicef.pdf](http://yourbookchoice.com/downloads/children-s-act-explained-unicef.pdf).
- Lewins, A., & Silver, C. (2007). *Using software in qualitative research: A step-by-step guide*. Newbury Park: Sage Publications.
- Mack, N., Woodsong, C., Macqueen, KM., Guest, G., & Namey, E. (2005). *Qualitative Research Methods: A Data Collector’s Field Guide*. Triangle Park: Family Health International.
- Madu, S.N., Idemudia, S.E., & Jegede, A.S. (2002). Perceived parental disorders as risk factors for child sexual, physical, and emotional abuse among high school students in the Mpumalanga province, South Africa. *Journal of Social Science*, 6(2), 103–112.
- Magoha, G.A.O., & Magoha, O.B. (2000). Current global status of female genital mutilation: A review. *East African Medical Journal*, 77(5), 268–272.
- Martin, M. M. (2003). Expert Testimony: 'Helpfulness' Rather Than 'Necessity' Standard. *New York Law Journal*, 229.
- Mathews, S. (2014). Violence against children in South Africa: Developing a prevention agenda. *South African Child Gauge*. Cape Town: Children’s Institute, UCT.
- Mathews, S., Jewkes, R., & Abrahams, N. (2013). Exploring mental health adjustment of children post-sexual assault in South Africa. *Child Sexual Abuse*, 22(6), 639–657.
- Mathews, S., Abrahams, N., Jewkes, R., Martin, L., & Lombard, C. (2013). The epidemiology of child homicides in South Africa. *Bulletin of the World Health Organization*, 91, 562–568.

- Mauthner, N. & Doucet, A. (2003). Reflexive accounts and accounts of reflexivity in qualitative data analysis. *Sociology*, 37, 413–431.
- Mavangu, M., & Thompson-de Boor, H. (2013). *So, we are ATM Fathers: A Study of Absent Fathers in Johannesburg*. Centre for Social Development in Africa. Johannesburg: University of Johannesburg and Gender Justice.
- Merriam, S.B. (2009). *Qualitative research: A guide to design and implementation*. Hoboken: John Wiley and Sons, Ltd.
- Merriam, S.B. & Grenier, R.S. (2019). *Qualitative Research in Practice. Examples of Discussion and Analysis*. 2nd ed. San Francisco: Jossey-Bass.
- Mikton, C. (2008). Preventing violence and reducing its impact: How development agencies can help. *Injury Prevention*, 14(1), 279.
- Miller, N. & Page, S. (2007). A critical reflection of Bronfenbrenner's development ecology model. *Problems of education in the 21<sup>st</sup> century*, 69.
- Miracle, V.A. (2016). The Belmont Report: The Triple Crown of Research Ethics. *Dimensions of Critical Care Nursing*, 35 (4), 223–228.
- Misselbrook, D. (2013). Duty, Kant, and Deontology. *British Journal of General Practice*, 63 (609), 211.
- Moenssens, A. (2016). *Ethics: Codes of Conduct for Expert Witnesses*. Hoboken: John Wiley and Son, Ltd.
- Morojele, N.K., & Brooks, J.S. (2006). Substance use and multiple victimisations among adolescents in South Africa. *Addictive Behaviours*, 31, 1163–1176.
- Morris, T. (2006). *Social Work Research Methods: Four alternative paradigms*. Newbury Park: Sage Publications.
- Morse, J.M., Barrett, M., Mayan, M., Olson, K., & Spiers, J. (2002). Verification Strategies for Establishing Reliable and Validity in Qualitative Research. *International Journal of Qualitative Methods*, 1 (2).
- Morrell, R., Jewkes, R., & Lindegger, G. (2012). Hegemonic masculinity/masculinities in South Africa: Culture, power, and gender politics. *Men and Masculinities*, 15(1), 20.
- Morgan, D., & Krueger, R. (1997). *The focus group kit*. Newbury Park: Sage Publications.
- Motau, E. (2017). Time to reflect on abuse at schools. *Pretoria News*. Retrieved January 14, 2018 from <https://www.iol.co.za/pretoria-news/time-to-reflect-on-abuse-at-schools-9412421>.

- Monette, D.R., Sullivan, T.J., & De Jong, C.R. (2005). *Applied social research: a tool for the human services*. 6th ed. Boston: Thomson Brooks Cole.
- Motloug, N. (2016). Body Parts Trafficking an undercover market in South Africa. *Shorthand Social*. Retrieved January 10, 2018 from <https://social.shorthand.com/SABCNewsOnline/uCPHdGDjOhc/body-parts-trafficking-an-undercover-market-in-sa>.
- Muckle. (2016). *Expert evidence – “Expert Shopping”*. Retrieved July 15, 2018 from <https://www.muckle-llp.com/enews/expert-evidence-expert-shopping/>.
- Mwambene, L., & Sloth-Nielsen, J. (2011). Benign accommodation? *Ukuthwala*, ‘forced marriage’ and the South African children’s Act. *African Human Rights Law Journal*, 11(1), 1–22.
- Nduna, M., & Jewkes, R. (2012). Disempowerment and psychological distress in the lives of young people in Eastern Cape, South Africa. *Journal of Child and Family Studies*, 21,1018–1027.
- Neuman, W.L. (2000). *Social work methods: Qualitative and Quantitative*. Boston: Allyn and Bacon.
- Neuman, W.L. (2009). *Social research methods: Qualitative and quantitative approaches*, 7<sup>th</sup> ed. Boston: Allyn and Bacon.
- Norman, R., Schreider, M., Bradshaw, D., Jewkes, R., Abrahams, N., Matzopoulos, R., and Vos, T. (2010). Interpersonal violence: An important risk factor for disease and injury in South Africa. *Population Health Metrics*, 8(32).
- Officer of the High Commissioner on Human Rights. (1989). Convention on the rights of the child. UN General Assembly Resolution 44/22. Geneva: United Nations. Article 19.
- Omar, S.B. (2020). Personal Communication. Johannesburg: Teddy Bear Clinic.
- Oswalt, A. (2015). Urie Bronfenbrenner and child development. Gulf Bend Center. Retrieved February 22, 2018 from [http://gulfbend.org/poc/view\\_doc.php?type=doc&id=7930&cn=28](http://gulfbend.org/poc/view_doc.php?type=doc&id=7930&cn=28).
- Payne, B., & Gainey, R. (2009). *Family Violence and Criminal Justice: A Life-Course Approach*. 3rd ed. Albany: LexisNexis/Matthew Bender.
- Perling, L. (1999). *Expert Evidence: The Problem of Bias and Other Things*. Newbury Park: SAGE Publishers.
- Pinheiro, P.S. (2006). *World Report on Violence against Children*. Geneva: United Nations.

- Price-Robertson, R., Higgins, D., & Vassallo, S. (2013). Multi-type maltreatment and polyvictimization. A comparison of two research frameworks. Australian Institute of Family Studies. Retrieved June 10, 2018 from <https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence30june/Exh-666-013.pdf>.
- Prinsloo, M. (2007). A profile of fatal injuries in South Africa: 7th annual report of the NIMMS 2005. Retrieved July 28, 2018 from <http://196.21.144.194/crime/national2005.pdf>
- Proudlock, P., Mathews, S., & Jamieson, L. (2014). *Children's rights to be protected from violence: A review of South Africa's laws and policies*. Cape Town: Children's Institute.
- Psychology Notes HQ. (2013). *What is Bronfenbrenner's Ecological Systems Theory?* Retrieved January 10, 2018 from <https://www.psychologynoteshq.com/bronfenbrenner-ecological-theory/>.
- Ramkisson, Y., Lewis, R., & Nethavhakone, M. (2008). *Child trafficking and the commercial sexual exploitation of children in South Africa: A child labour related rapid assessment study*. TECL Paper No 55. Department of Labour.
- Resnik, D.B., & Shamoo, A.E. (2011). The Singapore Statement on Research Integrity. *PMC*, 18 (2), 71–75.
- Robson, C. (2002). *Real world research*. 2nd ed. New Jersey: Blackwell Publishing.
- Richter, L.M., & Dawes, A.R.L. (2008). Child abuse in South Africa: Rights and wrongs. *Child Abuse Review*, 17, 79–93.
- Royse, D. (2004). *Research methods in social work*. Boston: Thomson BrooksCole.
- Rubin, A., & Babbie, E. (2011). *Essential research methods for social work*. 3rd ed. Boston: Thomson Brooks Cole.
- Sagiv, M. (2015). Cultural Bias in Judicial Decision Making. *Boston College Journal of Law & Social Justice*, 35 (2), 229.
- Sanders, J. (2007). Expert Witness Ethics. *Fordham Law Review*, 76(3)
- Sansone, L. (2009). The Making of Suriland: The Binational Development of a Black Community between the Tropics and the North Sea. In M. Cervantes-Rodriguez, R. Grosfoguel, & E. Mielants (Eds.) *Caribbean Migration to Western Europe and the United States: Essays on Incorporation, Identity, and Citizenship* (pp. 169–188). Philadelphia: Temple University Press.

- Sapir, G.I. (2007). *Qualifying the Expert Witness: A practical Voir Dire*. Retrieved June 29, 2017 from <http://www.forensicmag.com/article/2007/01/qualifying-expert-witness-practical-voir-dire>.
- Save the Children. (2009). *Keeping Children out of Harmful Institutions: Why we should be investigating in family-based care*. London: Save the Children's Resource Centre.
- Science Sundays. (2009). *Live Journal*. Retrieved July 17, 2018 from <http://sheldon-penny.livejournal.com/290935.html>.
- Schryer, C.F., Afros, E., Mian, M., Spafford, M., & Lingard, L. (2009). The Trial of the Expert Witness. *Written Communication*, 26 (3), 215–247.
- Seedat, M., Van Niekerk, A., Jewkens, R., Suffla, A., & Ratele, K. (2009). Violence and injuries in South Africa: prioritising an agenda for prevention. *Lancet*, 374: 1011–1022.
- Seeth, A. (2017). *Violence against children – a 'National disaster'*. Johannesburg: City Press.
- South Africa. (1996). Children's Act, No. 38 of 2005. *Government Gazette*, 28944, 20060619, notice No. 610.
- South Africa. (2007). Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. *Government Gazette*.
- Stemler, S. (2001). An overview of content analysis. *Practical Assessment, Research & Evaluation*, 7, 137–146.
- Struwig, F.W., & Stead, G.B. (2001). *Planning, designing and reporting research*. London: Pearson Publication.
- Sutherland, R. (2009). *Expert evidence – the role duties and responsibilities of the expert witness in litigation*. Retrieved February 3, 2017 from <http://www.terrafirmachambers.com/articles/ExpertEvidence-RoleDutiesandResponsibilitiesoftheExpertWitnessincourtProceedings.pdf>
- Swann, A. (2002). The roles and duties of the expert witness. *Child Care in Practice*, 8 (4).
- Swann, M. (2017). *'Spanking Judgement' encroaches on parents' freedom*. Retrieved February 10, 2018 from <https://www.news24.com/news24/Columnists/GuestColumn/spanking-judgment-encroaches-on-parents-freedom-20171024>



- The Centre for the Study of Violence and Reconciliation. (2009). *Why does South Africa have rates of violent crime?* Retrieved May 3, 2017 from [http://www.csvr.org.za/docs/study/7.unique\\_about\\_SA.pdf](http://www.csvr.org.za/docs/study/7.unique_about_SA.pdf).
- UNICEF. (2009). *Situation Analysis of Children in South Africa*. Retrieved June 10, 2018 from [https://www.unicef.org/esaro/African\\_Charter\\_articles\\_in\\_full.pdf](https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf) .
- UNICEF. (2016). *The African Charter On The Rights And Welfare Of The Child*. Retrieved June 10, 2018 from [https://www.unicef.org/esaro/African\\_Charter\\_articles\\_in\\_full.pdf](https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf) .
- UNICEF. (2017). *Violence against children pervasive in homes, school and communities*. Retrieved June 10, 2018 from [https://www.unicef.org/esaro/African\\_Charter\\_articles\\_in\\_full.pdf](https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf) .
- UNICEF. (2018). *The Convention On The Rights Of The Child - Unicef.org*. Retrieved July 14, 2018 from [https://www.unicef.org/spanish/crc/images/Guiding\\_Principles.pdf](https://www.unicef.org/spanish/crc/images/Guiding_Principles.pdf).
- Unisa (2014). Policy on Research Ethics. Retrieved July 20, 2019 from [https://www.unisa.ac.za/static/corporate\\_web/Content/Colleges/CGS/documents/Policy-on-Research-Ethics-rev-appr-Council-20.09.2013.pdf](https://www.unisa.ac.za/static/corporate_web/Content/Colleges/CGS/documents/Policy-on-Research-Ethics-rev-appr-Council-20.09.2013.pdf).
- Un-News Un Daily News - Un.org. (2017). Retrieved July, 10, 2018 from <https://news.un.org/en/tags/un-daily-news>.
- Van der Merwe, A., & Dawes, A. (2007a). Monitoring child unintentional and violence-related morbidity and mortality. *Journal of Child and Adolescent Mental Health*, 19(2), 95–113.
- Van der Merwe, A., & Dawes, A. (2007b). Youth violence: A review of risk factors, causal pathways and effective intervention. *Journal of Child and Adolescent Mental Health*, 19(2), 95–113.
- Van der Merwe, A., Dawes, A., & Ward, C. (2011). *The development of youth violence: An ecological understanding*. Cape Town: UCT Press.
- Vellios, N.G., & van Walbeek, C.P. (2018). Self-reported alcohol use and binge drinking in South Africa: Evidence from the National Income Dynamics Study, 2014-2015. *South African Medical Journal*, 108, 1-13.
- Violence against Children in South Africa. (2012). Retrieved March 7, 2017 from [http://www.cjcp.org.za/uploads/2/7/8/4/27845461/vac\\_final\\_summary\\_low\\_res.pdf](http://www.cjcp.org.za/uploads/2/7/8/4/27845461/vac_final_summary_low_res.pdf).

- Viviers, A. (2013). *The study on violence against children in South Africa. Special Summary for Teens*. Retrieved June 23, 2017 from [www.dwcpa.gov.za](http://www.dwcpa.gov.za).
- Vogelsang, J. (2001). *The Witness Stand: A Guide for Clinical Social Workers in the Courtroom*. Philadelphia: Haworth Press.
- Vorster, R.W., & Mages, T.J. (2018). *Child victims of violence: The stories behind SA's child abuse statistics*. Retrieved December, 9, 2018 from <http://www.ngopulse.org/article/2018/05/31/child-victims-violence-stories-behind-sa%E2%80%99s-child-abuse-statistics>
- Wadesango, N., Rembe, S., & Chabaya, O. (2011). Violation of women's rights by harmful traditional practices. *Anthropologist*, 13(2), 121–129.
- Waller, B. N. (2005). *Consider Ethics Theory, Readings, and Contemporary Issues*. London: Pearson Longman Publishing.
- Walter, E., & Bradbury, A. (2012). *When Elephants Fight*. Victoria: Orca Book Publishers.
- Ward, C.L., Ganz, G., Casey, T., Zheng, X., & Fang, X. (2017). The Economic Burden of Violence Against Children in South Africa. *International Journal of Environmental Research and Public Health*, 14(11), 1431.
- Ward, C.L., Flisher, A.J., Zissis, C., Muller, M., & Lombard, C. (2001). Exposure to violence and its relationship to psychopathology in adolescents. *Injury Prevention*, 7, 297–301.
- Ward, C.L., Martin, E., Theron, C., & Distiller, G.B. (2007). Factors affecting resilience in children exposed to violence. *South African Journal of Psychology*, 37(1), 165–187.
- Wentworth, R. (2018). Ethical Testimony in Cases of Suspected Child Maltreatment: Society Guidelines. *Academic Pediatrics*, 16 (2).
- Western Cape, South Africa. (2004). *National Liquor Act No. 59 of 2003*. Government Gazette, 466(26294). Cape Town: Government Printers. 26 April 2004.
- Wilcox, A.M., & NicDaeid, N. (2018). Jurors' perceptions of forensic science expert witnesses: Experience, qualifications, testimony style and credibility. *Forensic Science International*, 291, 100–108.
- Wiley, B. (2008). Human security and human rights interaction. *International Social Science Journal*, 59(1).
- Wilkinson, D.M. (2006). *Fundamental Process in Ecology: An Earth Systems Approach*. London: Oxford University Press.

- Wolhuter, B. (2017). *The surge in school violence*. Retrieved January 18, 2018 from <https://www.iol.co.za/news/south-africa/kwazulu-natal/surge-in-school-violence-10961212>.
- World Health Organisation. (2002). *World report on violence and health: summary*. Geneva: World Health Organisation.
- World Health Organisation. (2012a). *Violence and Health in Africa*. Geneva: World Health Organisation.
- World Health Organisation. (2012b). *Female Genital Mutilation. An Overview*. Geneva: World Health Organisation.
- World Health Organisation. (2012c). *Report on the consultation on child abuse prevention*. Geneva: World Health Organisation.
- World Health Organisation. (2014). *Global Status Report on Alcohol and Health*. Geneva: World Health Organisation.
- World Health Organisation. (2018). *Violence against children fact sheet*. Geneva: World Health Organisation.
- Woolf, M.R. (1995). *Access to Justice, Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales*. London: HMSO Publications.
- Yates, S.J. (2004). *Doing social science research*. Newbury Park: SAGE Publications.

# APPENDIX A: ETHICAL APPROVAL RECEIVED FROM UNISA CLAW ETHICS REVIEWS COMMITTEE



## UNISA CLAW ETHICS REVIEW COMMITTEE

Date 20170904

Reference: ST43 OF 2017  
Applicant: TM Robinson  
Staff: Prof Rika Snyman

Dear TM Robinson

**Decision: ETHICS APPROVAL  
FROM 4 SEPTEMBER 2017 to 3  
SEPTEMBER 2022**

**Researcher:** TM Robinson

**Supervisor:** Prof Rika Snyman

**Co-supervisor:** Dr Bernadine Benson

**An exploration of the ethical responsibility of expert witnesses in child victim court cases.**

**Qualification:** Doctor of Philosophy

Thank you for the application for research ethics clearance by the Unisa CLAW Ethics Review Committee for the above mentioned research. Ethics approval is granted for 5 years.

*The CLAW Ethics Review Committee reviewed the Low risk application on 4 September 2017 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment. The decision was ratified by the committee.*

The proposed research may now commence with the provisions that:

1. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.
2. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the CLAW Committee.



Open Rubric

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PO Box 392, UNISA, 0003 South Africa  
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3. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
4. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.
5. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
6. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data require additional ethics clearance.
7. No field work activities may continue after the expiry date 3 September 2022. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

**Note:**

*The reference number ST43 of 2017 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.*

Yours sincerely,



PROF D GOVENDER  
Chair of CLAW ERC  
E-mail: govend1@unisa.ac.za  
Tel: (012) 429-9482



PROF OS SIBANDA  
Acting Executive Dean : CLAW  
E-mail: sibanos@unisa.ac.za  
Tel: (012) 429-8374

## APPENDIX B: APPROVAL RECEIVED FROM THE TEDDY BEAR CLINIC TO CONDUCT RESEARCH AT THE ORGANISATION



### REQUEST FOR PERMISSION TO CONDUCT RESEARCH

Dear Dr. Omar,

My name is Tanya Marie Robinson, and I am a student at the University of South Africa (UNISA) for the degree of 90040 DOCTOR OF PHILOSOPHY in Criminal Justice. My student number reads as follow: 33207690. The research I wish to conduct for my Doctoral thesis involves "An exploration of the ethical responsibility of expert witnesses in child victim court cases." This project will be conducted under the supervision of Prof Snyman and Dr Benson (UNISA, South Africa).

I am hereby seeking your consent to interview professional persons involved in child victim court cases. I have provided you with a copy of my thesis proposal, as well as a copy of the approval letter which I received from the UNISA Research Ethics Committee.

Upon completion of the study, I undertake to provide a bound copy of the full research report to your department/organisation. If you require further information, please do not hesitate to contact me on 082 682 6686 or e-mail [tmrobinson@mweb.co.za](mailto:tmrobinson@mweb.co.za). Thank you for your time and consideration in this matter.

Yours sincerely,  
Tanya Marie Robinson

#### Permission

I, Dr. Shaheda Omar hereby stand as gatekeeper for the Teddy Bear Clinic and give consent to assist Prof. Tanya Robinson to interview professionals in our network.

  
\_\_\_\_\_  
Signature

24/10/2017  
\_\_\_\_\_  
Date



University of South Africa  
Preller Street, Muckleneuk Ridge, City of Tshwane  
P.O. Box 207 1 UNISA, 2003 South Africa

**APPENDIX C: APPROVAL RECEIVED FROM SOUTH AFRICAN POLICE SERVICES FOR THE REQUEST TO CONDUCT RESEARCH AT THE ORGANISATION**



Privaatsak/Private Bag X 94

Verwysing/Reference:	3/34/2
Navrae/Enquiries:	Lt Col Joubert AC Thenga
Telefoon/Telephone:	(012) 393 3118

**DIVISION: RESEARCH  
SOUTH AFRICAN POLICE SERVICE  
PRETORIA  
0001**

- A. The Provincial Commissioner  
**GAUTENG**
- B. The Divisional Commissioner  
**VISIBLE POLICING**
- C. The Divisional Commissioner  
**DETECTIVE SERVICES**

**PERMISSION TO CONDUCT RESEARCH IN SAPS: AN EXPLORATION OF THE ETHICAL RESPONSIBILITY OF EXPERT WITNESSES IN CHILD VICTIM COURT CASES: DOCTORATE DEGREE: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: TM ROBINSON**

- A
  - 1. The above subject matter refers.
  - 2. The researcher, TM Robinson, is conducting a study with the aim *to explore the ethical responsibility of the professional persons that stand as expert witnesses in the child victim court cases.*
  - 3. The researcher is requesting permission to interview members at the Victim Support Unit, Linden.
  - 4. The proposal was perused according to National Instruction 1 of 2006. This office recommends that permission be granted for the research study, subject to the final approval and further arrangements by the office of the Provincial Commissioner: Gauteng.
  - 5. We hereby request the final approval by your office if you concur with our recommendation. Your office is also at liberty to set terms and conditions to the researcher to ensure that compliance standards are adhered to during the research process and that research has impact to the organisation.

**PERMISSION TO CONDUCT RESEARCH IN SAPS: AN EXPLORATION OF THE ETHICAL RESPONSIBILITY OF EXPERT WITNESSES IN CHILD VICTIM COURT CASES: DOCTORATE DEGREE: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: TM ROBINSON**

6. If approval granted by your office, this office will obtain a signed undertaking from researcher prior to the commencement of the research which will include your terms and conditions if there are any and the following:
  - 6.1. The research will be conducted at his/her exclusive cost.
  - 6.2. The researcher will conduct the research without the disruption of the duties of members of the Service and where it is necessary for the research goals, research procedures or research instruments to disrupt the duties of a member, prior arrangements must be made with the commander of such member.
  - 6.3. The researcher should bear in mind that participation in the interviews must be on a voluntary basis.
  - 6.4. The information will at all times be treated as strictly confidential.
  - 6.5. The researcher will provide an annotated copy of the research work to the Service.
7. If approval granted by your office, for smooth coordination of research process between your office and the researcher, the following information is kindly requested to be forwarded to our office:
  - **Contact person:** Rank, Initials and Surname.
  - **Contact details:** Office telephone number and email address.
8. A copy of the approval (if granted) and signed undertaking as per paragraph 6 supra to be provided to this office within 21 days after receipt of this letter.
9. Your cooperation will be highly appreciated.

**B-C** 1. Copy for your information.

  
**LIEUTENANT GENERAL  
DIVISIONAL COMMISSIONER: RESEARCH  
DR BM ZULU**

**DATE:** 2018/03/19





Private Bag X94	Pretoria 0001	Fax No. Fax No.	(012) 393 2128
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Your reference/U verwysing:

My reference/My verwysing: 3/34/2

THE DIVISIONAL COMMISSIONER: RESEARCH  
SOUTH AFRICAN POLICE SERVICE  
PRETORIA  
0001

Enquiries/Navrae: Lt Col Joubert  
AC Thenga  
Tel: (012) 393 3118  
Email: JoubertG@saps.gov.za

Ms TM Robinson  
University of South Africa

**RE: PERMISSION TO CONDUCT RESEARCH IN SAPS: AN EXPLORATION OF THE ETHICAL RESPONSIBILITY OF EXPERT WITNESSES IN CHILD VICTIM COURT CASES: UNIVERSITY OF SOUTH AFRICA: DOCTORATE DEGREE: RESEARCHER: TM ROBINSON**

The above subject matter refers.  
You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 1 of 2006.

Further arrangements regarding the research study may be made with the following office:

The Provincial Commissioner: Gauteng:

- **Contact Person:** Capt Nevumbani
- **Contact Details:** (011) 547 9131

Kindly adhere to paragraph 6 of our Attached letter signed on the 2018-03-19 with the same above reference number.

  
LIEUTENANT GENERAL  
DIVISIONAL COMMISSIONER: RESEARCH  
DR BM ZULU

DATE: 2018/06/06

# APPENDIX D: APPROVAL RECEIVED FROM NATIONAL PROSECUTING AUTHORITY FOR THE REQUEST TO CONDUCT RESEARCH AT THE ORGANISATION

## Administration



Tel: +27 12 845 6000

Victoria & Griffiths  
Mxenge Building  
123 Westlake Avenue  
Weavind Park  
Pretoria

P/Bag X752  
Pretoria  
0001

Enquiry: Mr Marius Bester  
Email: [mjbester@npa.gov.za](mailto:mjbester@npa.gov.za)  
Phone: 0128456274  
Date: 16/10/2017

**Dr Tanya Marie Robinson**  
**1842 Tarascon Avenue**  
**Dainfern Valley Estate**  
**Fourways**  
**Johannesburg**

**RE: APPROVAL OF REQUEST TO CONDUCT ACADEMIC RESEARCH  
WITH PROSECUTORS IN REGARDS TO THE ETHICAL RESPONSIBILITY  
OF EXPERT WITNESSES IN CHILD VICTIM COURT CASES**

### Corporate Service Centres:

- Finance & Procurement
- Human Resources
- Development & Management
- Information Management
- Research & Policy Information
- Risk & Security

**Dear Prof. Robinson**

Thank you for showing interest in conducting research in the NPA. The purpose of this memorandum is to inform you that your request to conduct research with prosecutors in the NPA in regards to the ethical responsibility of expert witnesses in child victim court cases has been approved.

The NPA appreciates that the topic has been approved by the UNISA College of Law, Research Ethics Review Committee. Please consider and/or adhere to (whichever is applicable) to the below-mentioned in support of your research:

1. The request is supported by the NPA Sexual Offences and Community Affairs (SOCA) unit, and it should be noted and understood that information about the work can only be utilised with the NPA's explicit written approval and permission.

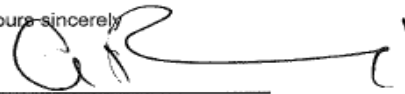
2. The research request focuses on gathering information from prosecutors on the ethical responsibilities of professional witnesses in cases that involve children as victims.
3. Permission to conduct research is limited to interviewing prosecutors from a sample to be drawn by the research applicant from a list of prosecutors supplied by the NPA's SOCA unit.
4. Permission is specifically subject to the stated aims and objectives of the research as stated in your research proposal, i.e.
  - i. That the aim and objective of this research is to explore the ethical responsibility of the professional persons that stand as expert witnesses in child victim court cases.
  - ii. That it furthermore aims to provide an ethical framework for expert witnesses in cases where crimes have been committed against children with the specific objectives to:
    - a. Outline the extent, nature and manifestations of violent crimes committed against children at a global level and within a South African context to create an understanding of the enormity of violence against children.
    - b. Explore key elements of the ethical challenges the professional persons perceive to encounter in child victim court cases.
    - c. Establish an ethical framework for experts outlining their ethical responsibility in dealing with cases where violent crimes have been committed against children.
5. Upon completion of the research project, it is suggested that a copy of the report be sent to the NPA for perusal and approval. This is specifically to prevent the inappropriate interpretation and publication of the latter mentioned information.
6. In your case there will be no need to complete FORM A, which is the request for access to records of a Public Body, Section 18(1) of the Promotion of Access to Information Act, 2000, since your research study involves interviews with participants.

RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH: DR. T.M. ROBINSON (16/10/2017)

7. Please inform the Director of Public Prosecutions in the province of your intent to conduct research with the prosecutors before approaching them and if necessary refer him or her to the NPA Research Management Unit in terms of your research having been approved.

Kindly keep the NPA informed about further developments on this research, and please direct all correspondence and communication directly to Mr. Marius Bester at [mjbester@npa.gov.za](mailto:mjbester@npa.gov.za) or (012) 845 6273

Yours sincerely,



**Dr. Silas Ramaite SC**

**Deputy National Director of Public Prosecutions: Administration and**

**OWP**

**Date:**

24/10/2017

RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH: DR. T.M. ROBINSON (16/10/2017)

## APPENDIX E: PARTICIPATION INFORMATION SHEET



### PARTICIPANT INFORMATION SHEET

Ethics clearance reference number: ST43 of 2017

Research permission reference number:

2017/2018

Title: An exploration of the ethical responsibility of expert witnesses in child victim court cases.

#### Dear Prospective Participant

My name is Tanya Marie Robinson and I am doing research with Prof Rika Snyman and Dr Bernadine Benson, in the Department of Criminal Justice, College of Law towards a PhD degree at the University of South Africa. We are inviting you to participate in a study entitled an exploration of the ethical responsibility of expert witnesses in child victim court cases.

#### WHAT IS THE PURPOSE OF THE STUDY?

This study is expected to collect important information that could provide an ethical framework for expert witnesses involved in cases where crimes have been committed against children. This research will ultimately address the ethical dilemma of the professional person that takes in the role as the expert witness in court proceedings relating to children and violent crimes.

#### WHY AM I BEING INVITED TO PARTICIPATE?

We obtained your information from the organisation/department of \_\_\_\_\_. Professional persons affiliated with this department/organisation are suitable candidates to interview as they fit the criteria of professional persons working with violent crimes and children and acting as expert witnesses in these matters.



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**WHAT IS THE NATURE OF MY PARTICIPATION IN THIS STUDY?**

The study involves interviews that will take a maximum of an hour of your time. Topics covered in the interview will include your experience as an expert witness in cases where violent crimes have been committed against children. It will further introduce the topics of ethical responsibility and the expert witness and suggestions pertaining to a possible ethical framework to guide professionals. Thought on the current system regulation professional persons and the benefit of expert witness testimony in child violent crimes will also be discussed.

**CAN I WITHDRAW FROM THIS STUDY EVEN AFTER HAVING AGREED TO PARTICIPATE?**

Participating in this study is voluntary and you are under no obligation to consent to participation. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a written consent form. You are free to withdraw at any time and without giving a reason.

**WHAT ARE THE POTENTIAL BENEFITS OF TAKING PART IN THIS STUDY?**

No compensation will be given to the professional persons taking part in this study as the incentive to take part in this study is for the participant to share their knowledge on this subject matter and to add value to their field.

**ARE THERE ANY NEGATIVE CONSEQUENCES FOR ME IF I PARTICIPATE IN THE RESEARCH PROJECT?**

There are no foreseen negative consequences if you form part of this study.

**WILL THE INFORMATION THAT I CONVEY TO THE RESEARCHER AND MY IDENTITY BE KEPT CONFIDENTIAL?**

For the purposes of this research, violation of privacy, the rights to self-determination and confidentiality can be viewed as being synonymous. This study will do all that is required to



ensure privacy, confidentiality and anonymity. The interviews will be audio recorded and participants need to feel comfortable with this process and give permission that the interview can be audio recorded. All possible means of protecting the privacy of participants will be applied.

The information recorded in the interview will only be used for research purposes and will be treated as confidential. All information obtained is treated as privileged. Confidentiality places a strong obligation on professionals to guard jealously the information that is confided to them.

Information given anonymously ensures the privacy of subjects. Anonymity will not be ensured in this study as the researcher and research assistant will be aware of the identity of the participant. In completing the interview guide the researcher will ask for the participant's name, credentials and experience. The participant's name will not be used in publications but the researcher will be able to link the gathered information of the person to the participant and the process will thus not ensure anonymity.

#### **HOW WILL THE RESEARCHER(S) PROTECT THE SECURITY OF DATA?**

Hard copies of your answers will be stored by the researcher for a period of five years in a locked cupboard/filing cabinet in Dainfern Valley, Johannesburg for future research or academic purposes; electronic information will be stored on a password protected computer. Future use of the stored data will be subject to further Research Ethics Review and approval if applicable. After five years hard copies will be shredded and/or electronic copies will be permanently deleted from the hard drive of the computer through the use of a relevant software programme.

#### **WILL I RECEIVE PAYMENT OR ANY INCENTIVES FOR PARTICIPATING IN THIS STUDY?**

No compensation will be given to the professional persons taking part in this study.



## APPENDIX F: PARTICIPANT CONSENT FORM



### CONSENT TO PARTICIPATE IN THIS STUDY

I, \_\_\_\_\_ (participant name), confirm that the person asking my consent to take part in this research has told me about the nature, procedure, potential benefits and anticipated inconvenience of participation.

I have read (or had explained to me) and understood the study as explained in the information sheet.

I have had sufficient opportunity to ask questions and am prepared to participate in the study.

I understand that my participation is voluntary and that I am free to withdraw at any time without penalty (if applicable).

I am aware that the findings of this study will be processed into a research report, journal publications and/or conference proceedings, but that my participation will be kept confidential unless otherwise specified.

I agree to the recording of the interview.

I have received a signed copy of the informed consent agreement.

Participant Name & Surname..... (please print)

Participant Signature.....Date.....

Researcher's Name & Surname.....(please print)

Researcher's signature.....Date.....



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# APPENDIX G: INTERVIEW GUIDE



## INTERVIEW GUIDE

Let the interviewee tell their story and use the questions below as probes/reminders.

### (TOPIC 1) THE PROFESSIONAL ROLE OF THE EXPERT WITNESS.

*(Give meaning to the professional role of the expert witness).*

**Probe:** Explain the duties, the contribution, and the role that an expert witness should play in cases where violent crimes have been committed against children.

**Probe:** Elaborate on the robust professionalism expected from expert witness testimony.

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### (TOPIC 2) THE ETHICAL RESPONSIBILITY OF THE EXPERT WITNESS.

*(Conceptualize the ethical responsibility of the expert witness).*

**Probe:** Describe the expert witness's ethical responsibility when working with child victim court cases?

**Probe:** Do professional ethical codes explain in simple terms the expert witnesses' ethical responsibility?

**Probe:** Are you of the opinion that expert witnesses take sufficient responsibility in delivering good quality expert witness testimony?

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**(TOPIC 3) TRUSTWORTHINESS OF EXPERT WITNESS TESTIMONY.**

*(Describe features of credible expert witness testimony).*

**Probe:** What are your frustrations, if any, with expert witness testimonies?

**Probe:** Conceptualize professional errors when delivering expert witness testimonies.

**Probe:** Provide a criteria describing a competent expert witness.

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**(TOPIC 4) THE CONTRIBUTION OF EXPERT WITNESS TESTIMONY.**

*(Describe how expert witness testimony would contribute in child victim court cases).*

**Probe:** Conceptualize the contribution of expert witness testimony.

**Probe:** Describe the impact that high-or-substandard quality expert witness testimony can have on a case matter.

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**(TOPIC 5) AN ETHICAL FRAMEWORK FOR EXPERT WITNESS TESTIMONY.**

*(Define a possible ethical framework guiding expert witness testimony).*

**Probe:** What are the most important points that should be included in a possible ethical framework guiding expert witness testimony?

**Probe:** Conceptualize unprincipled and principled behaviour of the expert witness that should be highlighted in a possible ethical framework.

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## APPENDIX H: PROFILE OF RESEARCH PARTICIPANTS

<b>Participant</b>	<b>Profession</b>	<b>Organisation</b>	<b>Years of experience</b>
Participant 1	Mental health practitioner	The Teddy Bear Clinic (TTBC)	27 years
Participant 2	Police Officer	The South African Police Services (SAPS)	15 years
Participant 3	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	19 years
Participant 4	Legal practitioner	The Teddy Bear Clinic (TTBC)	10 years
Participant 5	Mental health practitioner	The South African Police Services (SAPS)	18 years
Participant 6	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	15 years
Participant 7	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	22 years
Participant 8	Legal practitioner	The Teddy Bear Clinic (TTBC)	14 years
Participant 9	Mental health practitioner	The Teddy Bear Clinic (TTBC)	18 years
Participant 10	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	10 years
Participant 11	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	12 years

Participant 12	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	29 years
Participant 13	Legal practitioner	The Teddy Bear Clinic (TTBC)	13 years
Participant 14	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	17 years
Participant 15	Legal practitioner	The Teddy Bear Clinic (TTBC)	20 years
Participant 16	Mental health practitioner	The Teddy Bear Clinic (TTBC)	13 years
Participant 17	Police Officer	The South African Police Services (SAPS)	12 years
Participant 18	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	18 years
Participant 19	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	25 years
Participant 20	Mental health practitioner	The South African Police Services (SAPS)	13 years
Participant 21	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	25 years
Participant 22	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	16 years
Participant 23	Mental health practitioner	The South African Police Services (SAPS)	12 years

Participant 24	Mental health practitioner	The South African Police Services (SAPS)	16 years
Participant 25	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	15 years
Participant 26	Police Officer	The South African Police Services (SAPS)	10 years
Participant 27	Legal practitioner	The Teddy Bear Clinic (TTBC)	11 years
Participant 28	Mental health practitioner	The South African Police Services (SAPS)	13 years
Participant 29	Medical practitioner	National Prosecuting Authority of South Africa (NPA)	19 years
Participant 30	Police Officer	The South African Police Services (SAPS)	12 years
Participant 31	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	15 years
Participant 32	Legal practitioner	The Teddy Bear Clinic (TTBC)	10 years
Participant 33	Mental health practitioner	The South African Police Services (SAPS)	15 years
Participant 34	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	14 years
Participant 35	Legal practitioner	National Prosecuting Authority of South Africa (NPA)	23 years

Participant 36	Mental health practitioner	The South African Police Services (SAPS)	15 years
Participant 37	Legal practitioner	The Teddy Bear Clinic (TTBC)	18 years
Participant 38	Mental health practitioner	The Teddy Bear Clinic (TTBC)	9 years
Participant 39	Mental health practitioner	The South African Police Services (SAPS)	13 years
Participant 40	Police Officer	The South African Police Services (SAPS)	22 years

# APPENDIX I: CONFIDENTIALITY AGREEMENT WITH THE RESEARCH ASSISTANT



## RESEARCH ASSISTANT CONFIDENTIALITY AGREEMENT

Title of the study: "An exploration of the ethical responsibility of expert witnesses in child victim court cases".

Researcher: Tanya Marie Robinson

University: University of South Africa, Criminal Justice Department.

The aim of this study is to explore the ethical responsibility of expert witnesses in child victim court cases. This research will provide an ethical framework for expert witnesses involved in cases where violent crimes have been committed against children. This research will ultimately address the ethical dilemma of the professional person that takes in the role as expert witness in court proceedings relating to children and violent crimes.

I, Janette Nel, agree to:

1. Keep all the research information shared with me confidentially by not discussing or sharing the research information in any form or format (e.g. disks, tapes, transcripts) with anyone other than the Head Researcher;
2. Keep all research information in any form or format secure while it is in my possession;
3. Return all research information in any form or format to the Head Researcher when I have completed the research tasks;
4. After consulting with the Head Researcher, erase or destroy all research information in any form or format regarding this research project that is not returnable to the Head Researcher (e.g. information sorted on computer hard drive).

Research Assistant:

JANETTE NEL

(print name)

*Janette Nel*

(signature)

31/10/2017

(date)




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Head Researcher:

Tanya Robinson  
(print name)

  
(signature)

31/10/2017  
(date)

If you have any questions or concerns about this study, please contact:

Tanya Robinson

082 686 6686

tmrobinson@mweb.co.za

This study has been reviewed and approved by the Research Ethics Committee at UNISA. For questions regarding participants rights and ethical conduct of research, contact the researcher's supervisors at the University.



# APPENDIX J: CONFIDENTIALITY AGREEMENT WITH THE CO-CODER



## CO-CODER CONFIDENTIALITY AGREEMENT

Title of the study: "An exploration of the ethical responsibility of expert witnesses in child victim court cases".

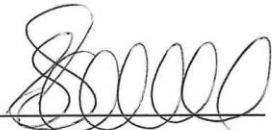
Researcher: Tanya Marie Robinson

University: University of South Africa, Criminal Justice Department.

The aim of this study is to explore the ethical responsibility of expert witnesses in child victim court cases. This research will provide an ethical framework for expert witnesses involved in cases where violent crimes have been committed against children. This research will ultimately address the ethical dilemma of the professional person that takes in the role as expert witness in court proceedings relating to children and violent crimes.

I, Simone Lamberti, agree to:

1. Keep all the research information shared with me confidentially by not discussing or sharing the research information in any form or format (e.g. disks, tapes, transcripts) with anyone other than the Head Researcher;
2. Keep all research information in any form or format secure while it is in my possession;
3. Return all research information in any form or format to the Head Researcher when I have completed the research tasks;
4. After consulting with the Head Researcher, erase or destroy all research information in any form or format regarding this research project that is not returnable to the Head Researcher (e.g. information sorted on computer hard drive).

Co-Coder: Simone Lamberti  6/08/19  
(print name) (signature) (date)




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Head Researcher:

Tanya Marie Robinson

(print name)

  
\_\_\_\_\_  
(signature)

06/08/2019

(date)

If you have any questions or concerns about this study, please contact:

Tanya Robinson

082 686 6686

tmrobinson@mweb.co.za

This study has been reviewed and approved by the Research Ethics Committee at UNISA. For questions regarding participants rights and ethical conduct of research, contact the researcher's supervisors at the University.



## APPENDIX K: EXAMPLES OF RECENT CRIMES COMMITTED AGAINST CHILDREN IN A SOUTH AFRICAN CONTEXT

*Confession expected in Brakpan triple child murder case*

2019-07-12 07:40

Correspondent

**news24**



Firearm. Photo. (Getty images/Gallo images)

A surprise confession could possibly be made on Friday in the Brakpan family murder case that left three children and their mother dead, **Netwerk24** reported.

News24 reported that a mother from Sallies village in Brakpan was suspected to have shot and killed her three children before setting their house alight and turning the gun on herself. Police spokesperson Captain Pearl van Staad told **News24** that the incident happened just after 17:00 on Wednesday. The children were aged 19, 17 and 10, respectively. The house had also been set alight, according to Van Staad. "The owner of the house managed to extinguish the fire and tried to check for his family. He found his wife with their three children in the living room with the bullet wounds of a 9mm pistol, which was lying on the floor next to his wife," police said in a separate statement. The weapon used belongs to the 40-year-old woman's husband. He claimed to have been at work at the time of the incident, Van Staad said on Thursday. "It is alleged that the mother shot the children and then shot herself," Van Staad said. "The husband's firearm was lying next to her. He said he was away working." According to Netwerk24, the family has a history of domestic violence. The Afrikaans online subscription news service quoted a community policing forum source

claiming that the children appeared to have been drugged before being shot. The source reportedly said the woman had asked her husband for money for clothes for the children. He reportedly gave her the keys to the safe, which is how she managed to get hold of the pistol. When police accompanied the husband into the house to fetch his clothes, his belongings were reportedly found packed into cardboard boxes. Van Staad told News24 police are awaiting results into what caused the fire at the house, though it is believed that the woman set fire to the living room where the shootings took place. An inquest docket has been opened.

*Bloemfontein dad allegedly stabs his 2 kids, killing 6-year-old daughter*

2019-07-10 07:18

Correspondent

**news24**



Handcuffs. (Duncan Alfreds, News24, file)

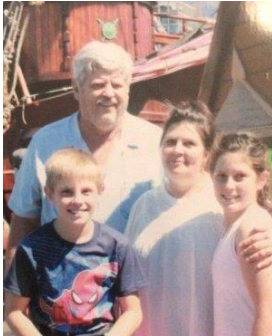
A father of two young children was arrested for allegedly killing his 6-year-old daughter and the attempted murder of his 2-year-old son in Bloemfontein, Free State police said in a statement on Tuesday. According to Free State police spokesperson Colonel Thandi Mbambo, the girl died of her stab wounds, while the suspect's 2-year-old son was rushed to hospital after allegedly being stabbed at Namibia Square, Mangaung, on Tuesday morning. Mbambo said Mangaung police were called to a scene at Namibia Square, in Bloemfontein, on Tuesday at about 08:00 to find the lifeless body of a girl on the street. As they observed the scene, they found a 2-year-old boy who was also stabbed. "Fortunately for [the boy], emergency assistance arrived on time and he was rushed to hospital for medical attention," Mbambo said. Mbambo said the children's teenage aunt went to look for them after their grandmother informed her that the suspect had taken the children while she was preparing them for crèche and threatened to kill them. The father was arrested when he was found in his shack while attempting to commit suicide, police said. According to **The Star**, Free State MEC for Police, Sam Mashinini, visited the scene and addressed the community on issues relating to domestic violence and the circumstances around the gruesome attack on the two children. Mbambo said the suspect is expected to appear at the Bloemfontein Magistrate's Court to face charges of murder and attempted murder.

*Mom allegedly shoots husband, 2 children on camping trip before turning the gun on herself*



2019-07-03 15:02

Joanie Bergh



Teresa Meyer, Luhan, Lurese and Luhan Jr. (Photo: Supplied)

The rural community of Moorreesburg, in the Western Cape's Swartland district, is in shock after a local woman allegedly killed her family while on a camping trip

Teresa Meyer (48) then shot herself too. The incident happened at a camping ground in the Cederberg. Western Cape provincial police haven't yet determined exactly when the murders took place but have narrowed it down to between 18 June at 5pm and Thursday 27 June at around 10.40am. Police responded to a call from a farm in the Clanwilliam area. They found the bodies of all four family members on the scene. Luhan (58) and Teresa Meyer and their two children, Lurese (12) and Luhan Jnr (10), had all been shot in the head. According to neighbours in Moorreesburg, the family had moved there from Riebeek West about two years ago. Luhan was a former science teacher while Teresa often travelled to Pretoria on business, the neighbours say. The couple had apparently been planning on emigrating with their kids. "We don't know exactly what happened. We're in terrible shock," a neighbour, who doesn't wish to be named, tells YOU. "I got home last night and saw everyone standing outside in the street. The police were everywhere. I asked one of the children what had happened and he said, 'Uncle Luhan and auntie Teresa were shot dead. The children too.' "Teresa shot them all, then committed suicide. It's horrific," the neighbour says.

On the face of it the couple were happily married and the family was close-knit. None of their friends or neighbours suspected anything was amiss. Lurese and Luhan Jnr had both been pupils at Dirkie Uys Primary School in Moorreesburg. "The children in the street were often over there to play with Teresa and Luhan's children. They were

wonderful people. “The dad, Luhan, was a gentle person and kind. He always said if the kids struggled with a school subject, they could ask him and he’d help. He often road bikes in the street with little Luhan and my own son.” Teresa didn’t look unhappy, another neighbour says. “I can’t imagine she’d do such a thing. One thinks of family murders and somehow assumes the dad would do something like that.” She says the parents in the neighbourhood have decided not to share any details of the murders with their children because it’s too upsetting. “It’s terribly hard for us to have to tell our children uncle Luhan and auntie Teresa are dead, and their [the children’s] little friends too. “One doesn’t expect a family to go camping and the mom to plan a whole murder. You don’t expect she’ll take a gun with her with the idea in her head. “The murders shouldn’t have happened. We feel guilty that none of us suspected a thing; that none of us noticed something wasn’t right”. Clanwilliam police are investigating the circumstances surrounding the family’s deaths.



*Verulam mom gets suspended sentence for dumping new born in rubbish bag*

2019-07-02 08:51

Jenna Etheridge

**news24**



(PHOTO: Getty Images)

A Verulam woman received a six-year suspended sentence for attempted murder after she left her new born son in a rubbish bag on the side of the road, the National Prosecuting Authority (NPA) said this week. The identity of the mother has been withheld to protect the identity of the child. In her plea, the 31-year-old accused said she became depressed and lost her job after her partner found out that she was pregnant and ended their relationship, KwaZulu-Natal NPA spokesperson Natasha Kara said. She carried the baby to full term without medical care or assessment and eventually delivered the baby by herself. "The placenta and amount of blood overwhelmed her. She took a bath and then wrapped the baby in an item of her clothing and newspaper before placing him in a refuse bag, which was left along the roadside," said Kara. "Further, she advised that she was aware of the fact that the child could have died when she placed him in the refuse bag and expected the refuse bag to be removed by the waste services," said Kara. News24 reported in January that a scrap collector heard the baby crying and told a passer-by, who called Reaction Unit South Africa (RUSA).

After a brief investigation of the surroundings and with the help of the community, RUSA director Prem Balram said they managed to identify the mother. "The woman eventually told us 'it is my baby,'" he said at the time. They were later inundated with queries about the well-being and adoption of the baby. Kara said that a victim impact statement from the baby's father was handed up in the Verulam Regional Court last week. "Here, the father stated his shock at hearing about the incident, saying that he

did not expect the accused to commit such an offence," she said. After pleading guilty, the Court sentenced her to six years in jail, wholly suspended for five years on condition that she was not convicted of any offence involving the elements of assault, child abuse and/or the ill treatment of children. Kara said she also had to undergo correctional supervision and attend programmes aimed at rehabilitation, therapy and counselling.



**Image: SABC News**

Police in the Eastern Cape opened a case of abduction against a 26 year old man from Bhaziya outside Mthatha for allegedly taking a 15 year old girl to Limpopo to become his wife. The Eastern Cape Social Development Department has warned parents who arrange marriages between their children and older men under the custom of ukuthwala, that they will face the full might of the law. This comes after police in the province opened a case of abduction against a 26-year-old man from Bhaziya outside Mthatha for allegedly taking a 15-year-old girl to Limpopo to become his wife. This after the girl's family negotiated with her husband's family for her to marry the man. The department's Head of Department (HOD), Ntombi Baart says they cannot fold their arms while the girl's rights are being violated. "It is so sad that the parents can resort to selling out, if I may call it, their children under the pretext of the tradition which they are practicing. As a Department of Social Development, we wish to call upon the parents to avoid the temptation of selling their children. You can approach the Department to seek alternative care for the children. We have sought to find an alternative care for the child as well as ensuring that the child goes to school on Monday," says Baart.

The girl's mother who wishes to remain anonymous, has admitted taking part in the marriage negotiations. "This boy came and asked for my daughter's hand in marriage. I told him that education is important, and he promised that he will send my child to school. I was naïve enough to think I was lucky; someone came to promise my child. I asked him how old he is, and he said he is 26, and that I must not be misled by his big body as he was born in 1992. I was force by the conditions to do this because our children get pregnant at a tender age and we are left to raise their kids," explains the mother.

*Missing girl, 4, found raped, killed and dumped in a pit toilet*

26 July 2019 - 11:00BY NONKULULEKO NJILO



The body of four-year-old Naledi Chaka, who went missing on Sunday, was found dead in this pit toilet in Bloemfontein on July 25, 2019. **Image: Provided/ SAPS**

A four-year-old Bloemfontein girl, who was reported missing on Sunday, was found dead in a pit toilet on Thursday. She had been raped. Following the gruesome discovery, a 36-year-old man was arrested by police. He allegedly lured the little girl with sweets. Naledi Chaka was last seen near her home in Selosasha, Zone Two, on Sunday. "About 5pm, an unknown male asked the little girl to go with him and promised to buy her sweets," said police spokesperson Col Thandi Mbambo. Prior to her disappearance, Chaka had been dressed in a grey and pink jacket, blue pants and black running shoes.



Four-year-old Naledi Chaka was found raped, killed and dumped in a pit toilet. A 36-year-old man has been arrested.

**Image: Provided/ SAPS**

On Wednesday, police found her pants and shoes near her home. The suspect is expected to appear in the Thaba'Nchu Magistrate's Court soon on charges of kidnapping, rape and murder.

*Rape of eight-month-old baby in Cape Town 'sickening'*

03 July 2019 - 14:16BY IAVAN PIJOOS



It was alleged that the baby was left in the care of her grandmother when the incident happened. **Image:** 123RF/Sfpater

Police have confirmed that an eight-month-old baby was allegedly raped at Bonteheuwel over the weekend in Cape Town. The baby was allegedly left in the care of her grandmother when the incident happened on Saturday afternoon, according to police spokesperson Cpt FC van Wyk. "My level of nausea far outweighs my disgust at this case," City of Cape Town ward councillor Angus McKenzie said in a post on Facebook. "Our communities have lost absolute respect for themselves when an eight-month-old baby is so violently assaulted".

McKenzie said he was in tears when a family member graphically explained to him what had happened. "While heart breaking and sickening combined, as a community we've yet another opportunity to stand together and unite against this evil that besets us. "I am shattered but remain hopeful that this incident will not only unite our community but also give this baby the future she deserves," McKenzie wrote. Van Wyk said a rape case had been opened: "Our detectives are following up on all leads". He said no arrests had yet been made.

*Child preyed on by 'serial rapist neighbour' to undergo hysterectomy*

02 July 2019 - 10:15BY TIMESLIVE



An 11-year-old girl will have to undergo a hysterectomy after allegedly being brutally raped by a neighbour.

**Image:** 123RF/belchonock

An 11-year-old girl will have to undergo a hysterectomy after allegedly being repeatedly raped by a neighbour in Port Elizabeth. The 26-year-old man, who cannot be identified until he pleads, was arrested last week for allegedly raping and sexually assaulting four underage girls in Kwazakele. He appeared in the New Brighton magistrate's Court on Monday as an enraged woman described the agonising trauma her 11-year-old niece was suffering after allegedly being raped by him over a three-year period. Herald LIVE reported on Tuesday that the child was lying in hospital awaiting a date to undergo a hysterectomy - an operation to remove her uterus.

*Man convicted of raping and murdering his 18-month-old niece*

A man has been convicted of raping and murdering his brother's 18-month-old child

NEWS

*1 month ago*

TimesLIVE reported earlier that the alleged rapist, who lived in the same street as the four girls, lured them to his house by promising to buy them chips and sweets. Police spokesperson Cpt Andre Beetge said the alarm was raised after an 11-year-old girl was admitted to Dora Nginza Hospital on June 24. She was bleeding from her private parts. The girl told the doctor who examined her, two days later, that she had been raped. He said she had also mentioned the man's name and another victim. Shortly afterwards three more girls had come forward to open cases against the suspect. Beetge said a nine-year-old girl opened a rape case, a second nine-year-old girl opened a sexual assault case while a 12-year-old girl opened an attempted rape case. The incidents happened between 2017 and 2018. The man was arrested and charged with two cases of rape, one attempted rape case and a sexual assault case. Motherwell cluster commander Maj-Gen Dawie Rabie said the children seemed to have fallen prey to a serial rapist. "We urge parents in this area to come forward where more child victims are identified. We also need parents to see the serious need of better adult supervision when children are allowed to play outside in the streets".

*Man sentenced to two life terms for double rape, plus 15 years for murder*

25 July 2019 - 17:10 BY ERNEST MABUZA



A man has been sentenced to two life terms for rape and 15 years for murder. The high Court imposed this sentence on Phumzile Nekene, 35, who committed these offences in November 2016

**Image:** Gallo Images/Thinkstock

The high Court in Johannesburg has sentenced a 35-year-old man to two life terms - plus another 20 years - after he was found guilty of murder, kidnapping and two counts of rape. Acting judge Simon Radasi on Thursday imposed the sentence on Phumzile Nekene of Mogale City for murdering Paul Jacques April and for raping and kidnapping a woman. The Court ordered that the rape victim's name be withheld to avoid secondary victimisation. The incidents which led to the convictions took place on November 13, 2016 in Randfontein. April and the woman were walking home together with Nekene, who suddenly produced a knife, grabbed April and stabbed him to death. He then forced the woman to a veld where he forcefully undressed and raped her. Nekene forced the complainant to accompany him to another place, where he raped her again. Despite the overwhelming evidence against him, Nekene maintained his innocence and pleaded not guilty. Nekene, who has been in custody for six months awaiting trial, also has a previous conviction of assault with intent to inflict grievous bodily harm. The defence sought a lenient sentence and focused on the fact that the accused had been under the influence of alcohol during the commission of the crimes. It also argued Nekene had been in detention while awaiting trial. However, senior state advocate Paul Nel presented a victim impact statement which detailed how traumatised the woman was. Nel said the woman felt that Nekene had denied her the right to say no when she did not want to engage in sexual intercourse. National Prosecuting Authority Gauteng spokesperson Phindi Mjonondwane said Radasi ruled that it would be a flimsy reason for the Court to consider the period Nekene had spent in custody as a compelling circumstance to deviate from the prescribed minimum



sentence. The Court ordered that the two life terms for rape run concurrently with the 15-year sentence imposed for murder and the five-year sentence for kidnapping.

**APPENDIX L: HPCSA GENERIC RULE FOR MEDICAL PRACTITIONERS**



**HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA**

GUIDELINES FOR GOOD PRACTICE  
IN THE HEALTH CARE PROFESSIONS

**ETHICAL AND PROFESSIONAL RULES OF THE HEALTH  
PROFESSIONS COUNCIL OF SOUTH AFRICA AS  
PROMULGATED IN GOVERNMENT GAZETTE R717/2006**

(SECOND EDITION)

BOOKLET 2

PRETORIA  
29<sup>th</sup> May 2007

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## ETHICAL AND PROFESSIONAL RULES

Practice as a health care professional is based on a relationship of mutual trust between patients and health care practitioners. The term "profession" means "a dedication, promise or commitment publicly made".<sup>1</sup> To be a good health care practitioner, requires a life-long commitment to sound professional and ethical practices and an overriding dedication to the interests of one's fellow human beings and society.

In the course of their professional work health care practitioners are required to subscribe to certain rules of conduct. To this end the Health Professional Council of South Africa has formulated a set of rules regarding professional conduct against which complaints of professional misconduct will be evaluated. These rules are reproduced in this booklet.

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<sup>1</sup> Pellegrino, ED. Medical professionalism: Can it, should it survive? *J Am Board Fam Pract* 2000; 13(2):147-149 (quotation on p. 148).

<b>TABLE OF CONTENTS</b>
--------------------------

1.	DEFINITIONS.....	6
2.	INTERPRETATION AND APPLICATION.....	9
3.	ADVERTISING AND CANVASSING OR TOUTING.....	9
4.	INFORMATION ON PROFESSIONAL STATIONERY .....	10
5.	NAMING OF A PRACTICE.....	11
6.	ITINERANT PRACTICE.....	11
7.	FEES AND COMMISSION.....	12
8.	PARTNERSHIP AND JURISTIC PERSONS.....	12
9.	COVERING .....	13
10.	SUPERSESSON.....	13
11.	IMPEDING A PATIENT.....	14
12.	PROFESSIONAL REPUTATION OF COLLEAGUES.....	14
13.	PROFESSIONAL CONFIDENTIALITY.....	14
14.	RETENTION OF HUMAN ORGANS.....	14
15.	SIGNING OF OFFICIAL DOCUMENTS.....	15
16.	CERTIFICATES AND REPORTS .....	15
17.	ISSUING OF PRESCRIPTIONS .....	16
18.	PROFESSIONAL APPOINTMENTS.....	16
19.	SECRET REMEDIES .....	17
20.	DEFEATING OR OBSTRUCTING THE COUNCIL OR BOARD IN THE PERFORMANCE OF ITS DUTIES.....	17
21.	PERFORMANCE OF PROFESSIONAL ACTS .....	17
22.	EXPLOITATION.....	17
23.	MEDICINE.....	17
24.	FINANCIAL INTEREST IN HOSPITALS .....	18
25.	REPORTING OF IMPAIRMENT OR OF UNPROFESSIONAL, ILLEGAL OR UNETHICAL CONDUCT .....	19
26.	RESEARCH, DEVELOPMENT AND USE OF CHEMICAL, BIOLOGICAL AND NUCLEAR CAPABILITIES .....	20
27.	DUAL REGISTRATION .....	20
28.	REPEAL.....	21

## ETHICAL AND PROFESSIONAL RULES OF THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

<b>NOTE</b>
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This Booklet contains the Draft Regulations concerning the ethical and professional rules that the Health Professions Council of South Africa (HPCSA) has recommended to the Minister of Health.

Health care practitioners who decide not to follow the guidance in this Booklet (including the Annexure), must be prepared to explain and justify their actions and decisions to patients and their families, their colleagues and, if necessary, to the courts and the HPCSA.

**GOVERNMENT NOTICE**

**DEPARTMENT OF HEALTH**

**No. R. 717**

**04 AUGUST 2006**

**HEALTH PROFESSIONS ACT, 1974 (ACT NO. 56 OF 1974)**

**ETHICAL RULES OF CONDUCT FOR PRACTITIONERS REGISTERED UNDER THE  
HEALTH PROFESSIONS ACT, 1974**

The Health Professions Council of South Africa has, in consultation with the professional boards and with the approval of the Minister of Health, under section 49 read with section 61(2) and 61A (2) of the Health Professions Act, 1974 (Act No. 56 of 1974), made the rules in the Schedule.

**SCHEDULE**

**1. Definitions**

1. In these rules, any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context indicates otherwise -

**“Act” means the Health Professions Act, 1974(Act No. 56 of 1974);**

**“annexure” means an annexure to these rules;**

**“association”** means a form of practising where two or more practitioners practise for their own account, but share communal assets or facilities;

**“board”** means a professional board established in terms of section 15 of the Act;

**“canvassing”** means conduct which draws attention, either verbally or by means of printed or electronic media, to one’s personal qualities, superior knowledge, quality of service, professional guarantees or best practice;

**“close collaboration”** means consultation by a practitioner at one stage or another in the treatment of a patient with another practitioner and the furnishing by the latter practitioner, at the end of such treatment, of a report on the treatment to the practitioner whom he or she consulted;

**“dental specialist”** means a dentist who has been registered as a specialist in a speciality or subspeciality in dentistry in terms of the Regulations relating to the Specialities and Subspecialities in Medicine and Dentistry, published under Government Notice No. R. 590 of 29 June 2001 as amended;

**“dispensing optician”** means a person registered as such in terms of the Act and the Rules for the registration of Dispensing Opticians, published under Government Notice No. R. 2339 of 3 December 1976;

**“impairment”** means a mental or physical condition which affects the competence, attitude, judgement or performance of professional acts by a registered practitioner;

**“independent practice”** means a practice where a registered health profession is conducted by a health practitioner without the supervision of another health practitioner;

**“itinerant practice”** means a practice which a practitioner conducts on a regular basis at a location other than at his or her resident practice address;



“**medical scientist**” means a person registered under the Act as a biomedical engineer, clinical biochemist, genetic counsellor, medical biological scientist or medical physicist;

“**medical specialist**” means a medical practitioner who has been registered as a specialist in a speciality or subspeciality in medicine in terms of the Regulations relating to the Specialities and Subspecialities in Medicine and Dentistry, published under Government Notice No. R. 590 of 29 June 2001 as amended;

“**optometrist**” means a person registered as such under the Act;

“**pharmaceutical concern**” means a company registered as such under the Pharmacy Act, 1974 (Act No. 53 of 1974);

“**practitioner**” means a person registered as such under the Act and, in the application of rules 5, 6 and 9 of these rules, also a juristic person exempted from registration in terms of section 54A of the Act;

“**private practice**” means the practice of a health practitioner who practises for his or her own account, either in *solus* practice, or as a partner in a partnership, or as an associate in an association with other practitioners, or as a director of a company established in terms of section 54A of the Act;

“**public company**” means a company registered as such under the Companies Act, 1973 (Act No. 61 of 1973);

“**public service**” means a service rendered by the state at the national, provincial or local level of government and includes organizations which function under its auspices or are largely subsidized by the state or recognized by a board for the purposes of these rules;

“**resident practice**” means a place where a registered health practitioner conducts his or her practice on a daily basis;

“**section**” means a section of the Act;

“**specialist**” means a practitioner who is registered as a specialist in a speciality or subspeciality (if any) in terms of the Regulations relating to the Specialities and Subspecialities in Medicine and Dentistry, published under Government Notice No. R. 590 of 29 June 2001as amended, and who confines his or her practice to such speciality or subspeciality;

“**supervision**” means the acceptance of liability by a supervising practitioner for the acts of another practitioner; and

“**touting**” means conduct which draws attention, either verbally or by means of printed or electronic media, to one’s offers, guarantees or material benefits.

## **2. Interpretation and application**

2. (1) Failure by a practitioner to comply with any conduct determined in these rules or an annexure to these rules shall constitute an act or omission in respect of which the board concerned may take disciplinary steps in terms of Chapter IV of the Act.
- (2) Conduct determined in these rules or an annexure to these rules shall not be deemed to constitute a complete list of conduct and the board concerned may therefore inquire into and deal with any complaint of unprofessional conduct which may be brought before such board.
- (3) At an inquiry referred to in subrule (2) the board concerned shall be guided by these rules, annexures to these rules, ethical rulings or guidelines and policy statements which the board concerned or council makes from time to time.

## **3. Advertising and canvassing or touting**

3. (1) A practitioner shall be allowed to advertise his or her services or permit, sanction or acquiesce to such advertisement: Provided that the advertisement is not unprofessional, untruthful, deceptive or misleading or causes

consumers unwarranted anxiety that they may be suffering from any health condition.

- (2) A practitioner shall not canvass or tout or allow canvassing or touting to be done for patients on his or her behalf.

**4. Information on professional stationery**

4. (1) A practitioner shall print or have printed on letterheads, account forms and electronic stationery information pertaining only to such practitioner's –
- (a) name;
  - (b) profession;
  - (c) registered category;
  - (d) speciality or subspeciality or field of professional practice (if any);
  - (e) registered qualifications or other academic qualifications or honorary degrees in abbreviated form;
  - (f) registration number;
  - (g) addresses (including email address);
  - (h) telephone and fax numbers;
  - (i) practice or consultation hours;
  - (j) practice code number; and
  - (k) dispensing licence number (if any).
- (2) A group of practitioners practising as a juristic person which is exempted from registration in terms of section 54A of the Act or a group of practitioners practising in partnership, shall print or have printed on letterheads, account forms and electronic stationery information pertaining only to such juristic person or partnership practitioners' -
- (a) name;
  - (b) profession;
  - (c) registered category;
  - (d) speciality or subspeciality or field of professional practice (if any);
  - (e) registered qualifications or other academic qualifications or honorary degrees in abbreviated form;
  - (f) registration number;
  - (g) addresses (including email address);

- (h) telephone and fax numbers;
  - (i) business hours;
  - (j) practice code number;
  - (k) exemption from registration in terms of section 54A of the Act; and
  - (l) dispensing licence number (if any).
- (3) A practitioner shall not use prescription forms or envelopes on which the name or address of a pharmacist is printed.

#### **5. Naming of a practice**

5. (1) A practitioner shall use his or her own name or the name of a registered practitioner or practitioners with whom he or she is in partnership or with whom he or she practises as a juristic person, as a name for his or her private practice.
- (2) A practitioner referred to in subrule (1) may retain the name of such private practice even if another practitioner, partner of such partnership or member of such juristic person is no longer part of such private practice: Provided that the express consent of the past practitioner or, in the case of a deceased practitioner the consent of the executor of his or her estate or his or her next-of-kin, has been obtained.
- (3) A practitioner shall not use, in the name of his or her private practice, the expression "hospital", "clinic" or "institute" or any other expression which may give the impression that such private practice forms part of, or is in association with, a hospital, clinic or institute.

#### **6. Itinerant practice**

6. A practitioner may conduct a regularly recurring itinerant practice at a place where another practitioner is established if, in such itinerant practice, such practitioner renders the same level of service to patients, at the same fee as the service which he or she would render in the area in which he or she is conducting a resident practice.

**7. Fees and commission**

7. (1) A practitioner shall not accept commission or any material consideration, (monetary or otherwise) from a person or from another practitioner or institution in return for the purchase, sale or supply of any goods, substances or materials used by him or her in the conduct of his or her professional practice.
- (2) A practitioner shall not pay commission or offer any material consideration, (monetary or otherwise) to any person for recommending patients.
- (3) A practitioner shall not offer or accept any payment, benefit or material consideration (monetary or otherwise) which is calculated to induce him or her to act or not to act in a particular way not scientifically, professionally or medically indicated or to under-service, over-service or over-charge patients.
- (4) A practitioner shall not share fees with any person or with another practitioner who has not taken a commensurate part in the services for which such fees are charged.
- (5) A practitioner shall not charge or receive fees for services not personally rendered, except for services rendered by another practitioner in his or her employment or with whom he or she is associated as a partner, shareholder or locum tenens.

**8. Partnership and juristic persons**

8. (1) A practitioner shall practise only in partnership or association with or employ a practitioner who is registered under the Act, and only in respect of the profession for which such practitioner is registered under the Act.
- (2) A practitioner shall practise in or as a juristic person who is exempted from registration in terms of section 54A of the Act only if such juristic person complies with the conditions of such exemption.
- (3) A practitioner shall practise in a partnership, association or as a juristic person only within the scope of the profession in respect of which he or she is registered under the Act.

- (4) A practitioner shall not practise in any other form of practice which has inherent requirements or conditions that violate or potentially may violate one or more of these rules or an annexure to these rules.

**9. Covering**

9. (1) A practitioner shall employ as a professional assistant or locum tenens or in any other contractual professional capacity for a period not exceeding six months, only a person -
- (a) who is registered under the Act;
  - (b) whose name currently appears on a register kept by the registrar under section 18 of the Act; and
  - (c) who is not suspended from practising his or her profession.
- (2) A practitioner shall help or support only a person registered under the Act, the Pharmacy Act, 1974 (Act No. 53 of 1974), the Nursing Act, 1978 (Act No. 50 of 1978), the Social Service Professions Act, 1978 (Act No. 110 of 1978), the Dental Technicians Act, 1979 (Act No. 19 of 1979), or the Allied Health Professions Act, 1982 (Act No. 63 of 1982), if the professional practice or conduct of such person is legal and within the scope of his or her profession.

**10. Supersession**

10. A practitioner shall not supersede or take over a patient from another practitioner if he or she is aware that such patient is in active treatment of another practitioner, unless he or she -
- (a) takes reasonable steps to inform the other practitioner that he or she has taken over the patient at such patient's request; and
  - (b) establishes from the other practitioner what treatment such patient previously received, especially what medication, if any, was prescribed to such patient and in such case the other practitioner shall be obliged to provide such required information.

**11. Impeding a patient**

11. A practitioner shall not impede a patient, or in the case of a minor, the parent or guardian of such minor, from obtaining the opinion of another practitioner or from being treated by another practitioner.

**12. Professional reputation of colleagues**

12. A practitioner shall not cast reflections on the probity, professional reputation or skill of another person registered under the Act or any other Health Act.

**13. Professional confidentiality**

13. (1) A practitioner shall divulge verbally or in writing information regarding a patient which he or she ought to divulge only -
- (a) in terms of a statutory provision;
  - (b) at the instruction of a court of law; or
  - (c) where justified in the public interest.
- (2) Any information other than the information referred to in subrule (1) shall be divulged by a practitioner only -
- (a) with the express consent of the patient;
  - (b) in the case of a minor under the age of 14 years, with the written consent of his or her parent or guardian; or
  - (c) in the case of a deceased patient, with the written consent of his or her next-of-kin or the executor of such deceased patient's estate.

**14. Retention of human organs**

14. (1) A practitioner shall only for research, educational, training or prescribed purposes retain the organs of a deceased person during an autopsy.
- (2) The retention of organs referred to in subrule (1) shall be subject -
- (a) to the express written consent given by the patient concerned during his or her lifetime;
  - (b) in the case of a minor under the age of 14 years, to the written consent of such minor's parent or guardian; or

- (c) in the case of a deceased patient who had not previously given such written consent, to the written consent of his or her next-of-kin or the executor of his or her estate.

**15. Signing of official documents**

15. A student, intern or practitioner who, in the execution of his or her professional duties, signs official documents relating to patient care, such as prescriptions, certificates (excluding death certificates), patient records, hospital or other reports, shall do so by signing such document next to his or her initials and surname printed in block letters.

**16. Certificates and reports**

16. (1) A practitioner shall grant a certificate of illness only if such certificate contains the following information -
- (a) the name, address and qualification of such practitioner;
  - (b) the name of the patient;
  - (c) the employment number of the patient (if applicable);
  - (d) the date and time of the examination;
  - (e) whether the certificate is being issued as a result of personal observations by such practitioner during an examination, or as a result of information which has been received from the patient and which is based on acceptable medical grounds;
  - (f) a description of the illness, disorder or malady in layman's terminology with the informed consent of the patient: Provided that if such patient is not prepared to give such consent, the practitioner shall merely specify that, in his or her opinion based on an examination of such patient, such patient is unfit to work;
  - (g) whether the patient is totally indisposed for duty or whether such patient is able to perform less strenuous duties in the work situation;
  - (h) the exact period of recommended sick leave;
  - (i) the date of issue of the certificate of illness; and



- (j) the initial and surname in block letters and the registration number of the practitioner who issued the certificate.
- (2) A certificate of illness referred to in subrule (1) shall be signed by a practitioner next to his or her initials and surname printed in block letters.
- (3) If preprinted stationery is used, a practitioner shall delete words which are not applicable.
- (4) A practitioner shall issue a brief factual report to a patient where such patient requires information concerning himself or herself.

#### **17. Issuing of prescriptions**

- 17. (1) A practitioner authorized in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), to prescribe medicines shall issue typewritten, handwritten, computer-generated, pre-typed, pre-printed or standardized prescriptions for medicine scheduled in Schedules 1, 2, 3 and 4 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), subject thereto that such prescriptions may be issued only under his or her personal and original signature.
- (2) A practitioner authorized in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), to prescribe medicines shall issue handwritten prescriptions for medicine scheduled in Schedules 5, 6, 7 and 8 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), under his or her personal and original signature.

#### **18. Professional appointments**

- 18. (1) A practitioner shall accept a professional appointment or employment from employers approved by the council only in accordance with a written contract of appointment or employment which is drawn up on a basis which is in the interest of the public and the profession.
- (2) A written contract of appointment or employment referred to in subrule (1) shall be made available to the council at its request.

**19. Secret remedies**

19. A practitioner shall in the conduct and scope of his or her practice, use only –
- (a) a form of treatment, apparatus or health technology which is not secret and which is not claimed to be secret; and
  - (b) an apparatus or health technology which proves upon investigation to be capable of fulfilling the claims made in regard to it.

**20. Defeating or obstructing the council or board in the performance of its duties**

20. A practitioner shall at all times cooperate and comply with any lawful instruction, directive or process of the council, a board, a committee of such board or an official of council and in particular, shall be required, where so directed to -
- (a) respond to correspondence and instructions from the council, such board, a committee of such board or an official of council within the stipulated time frames; and
  - (b) attend consultation at the time and place stipulated by the council, such board, a committee of such board or an official of council.

**21. Performance of professional acts**

21. A practitioner shall perform, except in an emergency, only a professional act -
- (a) for which he or she is adequately educated, trained and sufficiently experienced; and
  - (b) under proper conditions and in appropriate surroundings.

**22. Exploitation**

22. A practitioner shall not permit himself or herself to be exploited in any manner.

**23. Medicine**

23. (1) A practitioner shall not participate in the manufacture for commercial purposes, or in the sale, advertising or promotion of any medicine or in any other activity which amounts to trading in medicine.

- (2) A practitioner shall not engage in or advocate the preferential use or prescription of any medicine, if any valuable consideration is derived from such preferential use or prescription.
- (3) The provisions of subrules (1) and (2) shall not prohibit a practitioner from -
  - (a) owning shares in a listed company;
  - (b) manufacturing or marketing medicines whilst employed by a pharmaceutical concern;
  - (c) whilst employed by a pharmaceutical concern in any particular capacity, performing such duties as are normally in accordance with such employment; or
  - (d) dispensing in terms of a licence issued in terms of the Medicines and Related Substances Act, 1965.
- (4) A practitioner referred to in subrule (3) shall display a conspicuous notice in his or her waiting room and also, if appropriate, verbally inform his or her patient about the fact that he or she -
  - (a) owns shares in a listed public company which manufactures or markets the medicine prescribed to such patient; or
  - (b) is in the employ of the pharmaceutical concern which manufactures such medication.
- (5) A practitioner may prescribe or supply medication: Provided that such practitioner has ascertained the diagnosis of the patient concerned through a personal examination of such patient or by virtue of a report by another practitioner under whose treatment such patient is or has been.
- (6) In the case of a patient with a chronic disease the provision of subrule (5) shall not apply.

#### **24. Financial interest in hospitals**

24. (1) A practitioner who has a financial interest in a private clinic or hospital shall refer a patient to such clinic or hospital only if a conspicuous notice is displayed in his or her waiting room indicating that he or she has a financial interest in such clinic or hospital and if such patient is verbally informed about the fact that the said practitioner has an interest in such clinic or hospital to which such patient is being referred.

- (2) A practitioner referred to in subrule (1) shall not participate in the advertising or promotion of any private clinic or hospital, or in any other activity which amounts to such advertising or promotion for personal gain.
- (3) A practitioner referred to in subrule (1) shall not engage in or advocate the preferential use of any private clinic or hospital, if any valuable consideration is derived by such practitioner from such preferential use.
- (4) The provisions of subrule (3) shall not prohibit such practitioner from owning shares in a listed public company.
- (5) A practitioner referred to in subrule (4) shall display a conspicuous notice in his or her waiting room and also verbally inform his or her patient about the fact that he or she -
  - (a) owns shares in a listed public company which manages such private clinic or hospital to which he or she is referring such patient;
  - (b) is the owner or part owner of such private clinic or hospital; or
  - (c) is in the employ of such private clinic or hospital or the listed public company that owns such private clinic or hospital.
- (6) A practitioner may admit a patient to such private clinic or hospital: Provided that such practitioner -
  - (a) has ascertained the diagnosis of the patient concerned through a personal examination of such patient or by virtue of a report by another practitioner under whose treatment such patient is or has been;
  - (b) has informed such patient that such admission in such private clinic or hospital was necessary for his or her treatment; and
  - (c) has obtained such patient's consent for admission to such private clinic or hospital.

**25. Reporting of impairment or of unprofessional, illegal or unethical conduct**

- 25. (1) A student, intern or practitioner shall -
  - (a) report impairment in another student, intern or practitioner to the board if he or she is convinced that such student, intern or practitioner is impaired;
  - (b) report his or her own impairment or suspected impairment to the board concerned if he or she is aware of his or her own impairment or has

been publicly informed, or has been seriously advised by a colleague to act appropriately to obtain help in view of an alleged or established impairment, and

- (c) report any unprofessional, illegal or unethical conduct on the part of another student, intern or practitioner.

**26. Research, development and use of chemical, biological and nuclear capabilities**

- 26. (1) A practitioner who is or becomes involved in research, development or use of defensive chemical, biological or nuclear capabilities shall obtain prior written approval from the board concerned to conduct such research, development or use.
- (2) In applying for written approval referred to in subrule (1), such practitioner shall provide the following information to the board concerned:
  - (a) Full particulars of the nature and scope of such research, development or use;
  - (b) whether the clinical trials pertaining to such research have been passed by a professionally recognized research ethics committee;
  - (c) that such research, development or use is permitted in terms of the provisions of the World Medical Association's Declaration on Chemical and Biological Weapons; and
  - (d) that such research, development or use is permitted in terms of the provisions of the applicable international treaties or conventions to which South Africa is a signatory.

**27. Dual registration**

- 27. A health practitioner who holds registration with more than one statutory council or professional board shall at all times ensure that -
  - (a) no conflict of interest arises from such dual registration in the rendering of health services to patients;
  - (b) patients are clearly informed at the start of the consultation of the profession in which the practitioner is acting;

- (c) informed consent regarding the profession referred to in paragraph (b) is obtained from the said patient;
- (d) patients are not consulted in a dual capacity or charged fees based on such dual consultation; and
- (e) the ethical rules applicable at a given moment to the profession in which the practitioner is acting, are strictly adhered to.

**28. Repeal**

28. The Rules Specifying the Acts or Omissions in respect of which Disciplinary Steps may be taken by a Professional Board and the Council, published under Government Notice No. R. 2278 of 3 December 1976 and Government Notice No. R. 1379 of 12 August 1994, as amended by Government Notice No. R. 1405 of 22 December 2000 are hereby repealed.

**ME TSHABALALA-MSIMANG**  
**MINISTER OF HEALTH**

## **Ethical guidelines for good practice in the health care professions**

The following Booklets are separately available:

- Booklet 1:** *General ethical guidelines for health care professions*
- Booklet 2:** *Ethical and professional rules of the health professions council of South Africa as promulgated in government gazette r717/2006*
- Booklet 3:** *National Patients' Rights Charter*
- Booklet 4:** *Professional self-development*
- Booklet 5:** *Guidelines for making professional services known*
- Booklet 6:** *Guidelines on over servicing, perverse incentives and related matters*
- Booklet 7:** *General ethical guidelines for health researchers*
- Booklet 8:** *Ethical Guidelines for Biotechnology Research in South Africa*
- Booklet 9:** *Research, development and the use of the chemical, biological and nuclear capabilities of the State*
- Booklet 10:** *Seeking patients' informed consent: The ethical considerations*
- Booklet 11:** *Confidentiality: Protecting and providing information*
- Booklet 12:** *Guidelines for the management of patients with HIV infection or AIDS*
- Booklet 13:** *Guidelines withholding and withdrawing treatment*
- Booklet 14:** *Guidelines on Reproductive Health management*
- Booklet 15:** *Guideline on Patient Records*
- Booklet 16:** *Canvassing of patients abroad*
- Booklet 17:** *Guidelines for the management of health care waste*

**APPENDIX M: ETHICAL CODE SACSSP**



**South African Council for Social  
Service Professions**

**Policy Guidelines for  
Course of Conduct, Code of Ethics  
and the Rules for Social Workers**



**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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**TABLE OF CONTENTS**

<b>Preamble</b>	<b>1</b>
<b>1. Legislative Mandate</b>	<b>4</b>
<b>2. Philosophy of the Code of Conduct</b>	<b>4</b>
<b>3. Purpose of South African Social Service Professions' Code of Ethics</b>	<b>4</b>
<b>4. Guiding Ethical Values and Principles</b>	<b>5</b>
<b>5. General Ethical Standards</b>	<b>8</b>
5.1 Social Workers' Ethical Responsibilities towards the profession	8
5.2 Social Workers' Ethical Responsibilities towards Client Systems	14
5.3 Social Workers' Ethical Responsibilities towards Colleagues and other Social Workers	33
5.4 Social Workers' Ethical Responsibilities in Practice Settings	37
5.5 Social Workers' Ethical Responsibilities to the Broader Society	42
<b>6. Implementation</b>	<b>44</b>
<b>7. Failure to comply with the Code of Ethics: Legal implications</b>	<b>44</b>
<b>8. Evaluation and Review of Policy Document</b>	<b>44</b>
<b>Annexures</b>	<b>45</b>
Annexure A: Professionals Ethical Responsibilities as Social Workers	47
Annexure B: HIV infection and AIDS Policy Guidelines of the South African Council for Social Service Professions	49
Annexure C: Confidentiality within occupational settings	59
Annexure D: A letter of protest (Guideline)	61
Annexure E: Information regarding <i>Promotion of Access to Information Act</i> , Act No. 2 of 2000	63
<b>Glossary</b>	<b>65</b>
<b>References/Sources</b>	<b>67</b>

**ETHICAL CODE POLICY GUIDELINES FOR SOCIAL WORKERS REGARDING THE CONDUCT OF SOCIAL WORKERS**

**PREAMBLE**

This policy guideline document contains the Code of Conduct for social workers, describing in detail the standards of conduct within which they should work. This introduction is intended to assist you to understand what the codes are for and what they mean for social workers and client systems.

It is anticipated that social workers will recognize in the code the standards to which they already aspire. The Council will promote these standards through making them widely available.

**What is a Code of conduct/ethics?**

The Code of conduct for social workers is a list of statements that describes the standards of professional conduct required of social workers when carrying out their daily activities.

The intention is to confirm the standards required in service provision and ensure that social workers know and understand what standards of conduct Council, employers, colleagues, client systems and the public at large expect of them.

The primary mission of social workers is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, disadvantaged and impoverished.

Social workers promote social justice and social change with and on behalf of client systems. The word "client systems" includes individuals, families, groups and communities.

Social workers are sensitive to cultural and ethnic diversity and strive to end unfair discrimination, poverty and other forms of social injustice. Their activities may be in the form of direct practice, community organisation, supervision, consultation, administration, advocacy, social and political action, policy development and implementation, education as well as research and evaluation. Social workers seek to enhance the

capacity of people to address their own needs and to promote the responsiveness of organisations, communities, and other social institutions to social needs and social problems.

The S A Council for Social Service Professions recognises its responsibility to promote and ensure ethical behaviour and attitudes on the part of all persons registered with it. All persons registered with the Council are referred to generically in this document as social workers/practitioners. Attempts to ensure ethical behaviour and attitudes include articulating principles/values and standards contained in the code of ethics as well as promoting them through education, peer modelling and consultation, developing and implementing methods to help social workers monitor the ethics of their behaviour and attitudes, adjudicating complaints of unethical behaviour and taking corrective action when warranted.

The code of ethics guides all social workers when conducting research, providing direct service, educating learners, performing administrative, supervisory, editorial or consultative functions, being engaged in peer review or social policy, being an expert witness or performing any other role as a social work practitioner.

The code of ethics consists of a Preamble, Guiding principles and values as well as General Ethical Standards. Although the Preamble and Guiding Principles are not in themselves enforceable rules, they should be considered by social workers in arriving at an ethical course of action as they will be taken into account by the Registrar's Committee of Professional Conduct (RCPC), Committee of Preliminary Inquiry (CPI) and Professional Conduct Committee (PCC) when interpreting the Ethical Standards. These are the Committees responsible for dealing with disciplinary inquiry processes. The Ethical Standards set forth specific enforceable rules of conduct for social workers. Most of the Ethical Standards are written broadly, in order to apply to social workers in varied practice roles, although the application of an Ethical Standard may vary depending on the context. The Ethical Standards are not exhaustive i.e. they do not attempt to inform practitioners of what to do in all situations

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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with ethical challenges since practitioners practise in various settings. The fact that a specific conduct is not specifically addressed in the code of ethics, does not necessarily mean that it is either ethical or unethical.

Notwithstanding the existence of a code of ethics, social workers will be faced with ethical dilemmas that are difficult to resolve. In these circumstances, social workers are expected to engage in an ethical decision-making process based on a reasonably coherent set of ethical principles which can stand up to public scrutiny. Some ethical dilemmas may be easily resolved through following these principles as well as applying the guidelines contained in the *Rules relating to the Acts or Omissions of a Social Worker, a social auxiliary worker or a student social worker which shall constitute Unprofessional Conduct*. On the other hand, some ethical issues are not easily resolved and might require considerable deliberation. Social workers are encouraged and expected to consult with colleagues and/or social work bodies/associations or Council when such persons/bodies can add knowledge and/or objectivity to the decision-making process.

Registration with the Council commits members to adhere to the code of ethics. This code applies to practitioners' work-related activities, in other words all activities that are part of the registered person's social work functions. The code of ethics is intended to guide and regulate the activities in which a registered person engages. There is no intention to guide or regulate a registered person's activities outside of this context. Personal behaviour becomes a concern of the respective professions only if it is of such a nature that it undermines public trust in the profession as a whole or if it raises questions about the registered person's ability to carry out his or her responsibilities appropriately as a registered person.

The code is intended to provide standards for a social worker's conduct that can be applied by the South African Council for Social Service Professions. In the process of making decisions regarding their behaviour, registered persons must consider this code of ethics in addition to the *Social Service Professions Act, No 110 of 1978* that defines the parameters of the social service professions in South Africa.

### **1. LEGISLATIVE MANDATE**

#### ***Constitution of the Republic of South Africa (Act 108 of 1996)***

Chapter 2: The Bill of Rights enshrines the rights of citizens which must be upheld by all.

#### ***Social Service Professions Act, 1978***

Section 27(1)(a) of this Act provides the mandate to enact the Code of Ethics.

### **2. PHILOSOPHY OF THE CODE OF CONDUCT**

The South African Council for Social Service Professions believes that this document will help to guide and regulate the behaviour of social workers providing services in all spheres of practice. It will further serve as a guideline to practitioners in carrying out their daily professional duties.

### **3. PURPOSE OF THE SOUTH AFRICAN COUNCIL FOR SOCIAL SERVICE PROFESSIONS' CODE OF ETHICS**

This document will serve as a guideline to ensure that social workers conduct themselves ethically.

Cognisance is taken of the fact that social workers have individual rights as outlined in Chapter 2 of the *S A Constitution, Act 108 of 1996*. As professionals, social workers therefore have the right to be treated with dignity, respect and equality. Social workers also have professional rights that need to be protected and for this purpose social workers have the right to join any professional association of their choice that aims to act in the best interest of social workers. This document, however, focuses on the professional conduct of social workers to ensure that client systems receive an ethical and professional service.

Professional ethics are at the core of the social work profession. Therefore, the profession has an obligation to articulate its values, ethical principles and standards. The code of ethics sets forth these values, principles and standards to guide social workers' conduct as well as provide guidance when faced with ethical challenges. The code is relevant to all social

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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service professions and learners, regardless of their social work functions, the settings in which they work and the communities they serve.

The code of ethics for social workers, student social workers and social auxiliary workers serves six purposes:

- It identifies core values on which social workers' missions are based.
- It summarises broad ethical principles that reflect the professions' core values and establishes a set of specific ethical standards that used to guide social workers.
- The code is designed to help social workers identify relevant considerations when their obligations conflict or ethical uncertainties arise.
- It provides ethical standards according to which the general public can hold social workers accountable.
- The code orientates practitioners new to the field to social work's mission, values, ethical principles and ethical standards.
- The code articulates standards that social workers themselves can use to assess whether their conduct is ethical.

**4. GUIDING ETHICAL VALUES AND PRINCIPLES**

The guiding ethical values and principles relate to the general approach as is reflected in the *Rules relating to the course of conduct to be followed by social workers in the practising of their profession*.

Social workers, student social workers and social auxiliary workers respect the dignity and worth of individuals, families, groups and communities and strive towards providing quality services. Practitioners strive to uphold and protect the fundamental human rights of client systems and themselves, as enshrined in the *South African Constitution and the Bill of Rights*. In pursuit of quality services, social workers aspire and subscribe to the following ethical values/principles.

#### 4.1. Social Justice

Social workers challenge social injustice. Social workers pursue social change, particularly with and on behalf of vulnerable and disadvantaged individuals, families, groups and communities. Their efforts are focused inter alia on issues of poverty, unemployment, discrimination and other forms of social injustice. These efforts seek to promote insight and sensitivity regarding cultural and ethnic diversity. Social workers strive to ensure access to needed information, services and resources, equality of opportunity and meaningful participation in decision making for all people affected by adverse conditions.

#### 4.2 Respect for People's worth, Human rights and Dignity

Social workers accord appropriate respect to the fundamental human rights, dignity and worth of all human beings. They respect the rights of individuals to privacy, confidentiality, self-determination and autonomy, and are mindful that legal and other obligations may lead to **inconsistency and conflict** with the exercise of these rights. Social workers are aware of differences relating for example to age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language and socioeconomic status. They strive to eliminate the effect of biases based on these factors in their work and they do not knowingly participate in or condone unfair discriminatory practices.

#### 4.3 Competence

Social workers strive to maintain high standards of competence in their work. They recognise the boundaries of their particular competencies and the limitation of their expertise. They provide only those services and use only those techniques in which they are qualified by education, training or experience. In areas where recognised social work standards do not yet exist, social workers exercise careful judgement and take appropriate precautions to protect client systems. They maintain their knowledge of relevant scientific and social work information related to the services they provide and they recognise the need for continuous education and development. Social workers make appropriate use of scientific, social work and administrative resources and aspire to contribute to the knowledge base of the profession.

#### **4.4 Integrity**

Social workers behave in an honest manner. They seek to promote integrity in the science, teaching and practice of the profession. In these activities social workers are honest, fair and respectful of others. Social workers strive to be aware of their own belief systems, values, needs and limitations as well as the effect they have on their work. Wherever feasible, they clarify their roles to those involved and function appropriately in accordance with these roles.

#### **4.5 Professional Responsibility**

Social workers uphold professional standards of conduct, clarify their social work roles and obligations, accept appropriate responsibility for their behaviour and adapt their methods to the needs of different client systems. They cooperate with other social workers and institutions as needed in order to serve the best interest of their clients. They are also concerned about the ethical compliance of their colleagues' conduct. When appropriate, they may consult the South African Council for Social Service Professions and colleagues when faced with ethical dilemmas.

#### **4.6 Show care and concern for others' well-being**

Social workers recognise the importance of human relationships. They do not exploit or mislead other human beings during or after termination of a social work relationship. They engage people as partners in the helping process and seek to strengthen relationships among human beings in a purposeful effort to promote, restore, maintain and enhance the well-being of individuals, families, groups, organisations and communities.

#### **4.7 Service delivery**

Social workers' primary goal is to assist individuals, families, groups and communities and address social needs and social problems. Social workers elevate service to others above self-interest. They are encouraged to contribute a portion of their social work time for little or no personal advantage by way of volunteering or providing a community service.



During the process of service delivery the principle of client self determination should be practised by social workers within the boundaries of clients' capabilities and the context of the social needs and social problems they experience.

Services should be accessible to clients, with information about the services to clients and communities being provided openly and transparently. High levels of courtesy, standards and professionalism should be maintained at all times.

## **5. GENERAL ETHICAL STANDARDS**

The following ethical standards are relevant to all the activities of social workers, irrespective of their practice setting. These standards concern ethical responsibilities towards clients, colleagues, other social workers, other professionals and the broader society.

### **5.1 Social Workers' Ethical Responsibilities towards the Profession**

#### 5.1.1 Integrity of the profession

- (a) Social workers work towards the maintenance and promotion of high standards of practice.
- (b) They uphold and advance the values, ethics, knowledge and mission of the profession. Social workers should protect, enhance and improve the integrity of the profession through appropriate study and research, active discussion and responsible criticism of the profession.
- (c) Social workers contribute time and expertise to activities that promote respect for the value, integrity and competence of the social work profession.
- (d) Social workers contribute to the knowledge base of the profession and share with colleagues their knowledge related to practice, research and ethics. Social workers should seek to contribute to the profession's literature and to share their knowledge at meetings and conferences.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- (e) Social workers act to prevent the unauthorised and unqualified practice of the social work profession.

5.1.2 Negligence

- (a) The negligent performance of social work duties could be regarded as unethical. Social work duties should be carried out in a manner that complies with generally accepted standards of practising the profession.
- (b) A social worker's behaviour must not, with due regard to the prestige, status and dignity of the profession, be detrimental to the position of the social worker or the profession as such.

5.1.3 Dishonesty


- (a) Being guilty of, participating in or associating with dishonesty in the execution of social work duties could be regarded as unprofessional behaviour.

A social worker should not be guilty of, participate in or associate with any dishonest activity in the course of carrying out social work duties

- (b) Sharing money received for social work services with any person who contributes or contributed to such services, unless such person is a partner or such sharing of money is reasonably commensurate with such person's contribution to the services rendered, should not take place.

5.1.4 Evaluation and research

- (a) Social workers should monitor, evaluate and research policies, the implementation of programmes and practice interventions.
- (b) Social workers should promote and facilitate evaluation and research to contribute to the development of knowledge.

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- (c) They should critically examine and keep up to date with emerging knowledge relevant to the profession and fully utilise evaluation and research evidence in their social work practice.
  - (d) Those engaged in evaluation or research should carefully consider possible consequences and should follow guidelines developed for the protection of participants. The purpose of the research should be clearly defined in order to ensure that the process of research is justifiable in terms of the end results.
  - (e) Those engaged in evaluation or research should obtain voluntary and written informed consent from participants without any implied or actual deprivation or penalty for refusal to participate; without undue inducement to participate; and with due regard for participants' well-being, privacy and dignity. Informed written consent should include information about the nature, extent and duration of the participation requested and disclosure of the risks and benefits of participation in the research.
  - (f) When participants in evaluation or research are incapable of giving informed consent, social workers should explain the situation appropriately to participants, obtain their agreement to the extent to which they are able, and obtain written consent from an appropriate proxy.
  - (g) Social workers should never design or conduct evaluation or research that does not use consent procedures, such as certain forms of observation and archival research, unless rigorous and responsible review of the research has found it to be justified because of its prospective scientific, educational, or applied value and unless equally effective alternative procedures that do not involve waiver of consent are not feasible.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- (h) They should inform participants of their right to withdraw from evaluation and research at any time without penalty.
- (i) Social workers should take appropriate steps to ensure that participants in evaluation and research have access to appropriate supportive services.
- (j) Those engaged in evaluation or research should protect participants from unwarranted physical or mental distress, harm, danger or deprivation.
- (k) Social workers engaged in the evaluation of services should discuss collected information only for professional purposes.
- (l) Those engaged in evaluation or research should ensure the privacy, anonymity and confidentiality of participants and of the data obtained from them. Participants should be informed of any limits of confidentiality, the measures that will be taken to ensure confidentiality and when any records containing research data will be destroyed.
- (m) Social workers who report evaluation and research results should protect participants' confidentiality by omitting identifying information unless proper consent has been obtained authorising disclosure.
- (n) They should report evaluation and research findings accurately. They should not fabricate or falsify results and should take steps to correct any errors later found in published data using standard publication methods.
- (o) Those engaged in evaluation or research should be alert to and avoid conflict of interest and dual relationships with participants, should inform participants when a real or potential conflict of interest arises, and should take steps to resolve the issue in a manner that makes participants' interests primary.

- (p) Social workers should educate themselves, their students and their colleagues about responsible research practices.
- (q) They should not be involved in plagiarism in evaluation and research.

5.1.5 Education, training and development

Social workers who function as educators or field instructors for learners should –

- (a) provide education only within their areas of knowledge and competence and should provide education based on the most current information and knowledge available in the profession;
- (b) evaluate learners' performance in a manner that is fair and respectful;
- (c) take reasonable steps to ensure that clients are routinely informed when services are being provided by learners; and
- (d) not engage in any dual or multiple relationships with learners in which there is a risk of exploitation or potential harm to the learners. Educators and field instructors are responsible within the social service field and field instructors are responsible for setting clear, appropriate and culturally sensitive boundaries;

In addition, only social workers may function as supervisors during education, training and development of student social workers.

5.1.6 Competency

- (a) Social workers should maintain competency in the areas of service provision through continuing social work education, development, consultation and in conformance with current standards of scientific or social work knowledge.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- (b) They should provide services and represent themselves as competent only within the boundaries of their education, training, certification, consultation received, supervised experience or other relevant social work experience.
- (c) Social workers should provide services in a substantive area or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation and supervision from people who are competent in those interventions or techniques.
- (d) When generally recognised standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation and supervision) to ensure competence in their work and to protect clients from harm.

5.1.7 Incompetence of Colleagues

- (a) Social workers who have direct knowledge of another social worker/colleague's incompetence should consult with that colleague when feasible and assist the colleague to take remedial action. However, the appropriate approach should be adopted when intervening in this way.
- (b) In order to curb incompetencies by practitioners it is recommended that the supervisors and managers of practitioners identify the training needs and implement a development plan.
- (c) Social workers who believe that a colleague is incompetent and who have not taken direct steps to address the incompetence should take action through the appropriate channels established by employers, regulatory bodies and other social work associations of practitioners.

5.1.8 Compliance with legislation, policies and procedures

- (a) Social workers need to comply with social work related legislation, policies and procedures.
- (b) They should be familiar with the procedures relating to ethical conduct. These include the policies and procedures developed by the S A Council for Social Service Professions (SACSSP).
- (c) Social workers who believe that a colleague has acted unethically should seek resolution by discussing their concerns with the colleague when feasible and when such discussion is likely to be productive.
- (d) When necessary, social workers who believe that a colleague has acted unethically should take action through appropriate formal channels (such as contacting the regulatory body, other social work ethics committees and/or social work associations).
- (e) Social workers should also defend and assist colleagues who are unjustly charged with unethical conduct.

5.1.9 Display of Registration Certificate

Persons registered with the South African Council for Social Service Professions must conspicuously display in their office their registration certificate issued to him or her in terms of the *Social Service Professions Act* (reflected in the Rules relating to acts or omissions).

**5.2 Social Workers' Ethical Responsibility Towards Client Systems**

5.2.1 Confidentiality

Confidentiality must be understood in the context of the **right to privacy**. Cognisance should also be taken of the fact that the right to privacy is enshrined in Chapter 2 of the *Constitution of the Republic of South Africa*. The ethical standard aimed at protecting the privacy of clients must be held in the highest regard.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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Contravening or breaching the relevant standard may be regarded as unethical/unprofessional conduct and could lead to disciplinary steps against the practitioner who contravenes the standard.

The rationale for emphasising this right is that within the social service professions, clients are expected to share necessary information within the interviewing sessions irrespective of how embarrassing this may be. The assurance that any knowledge or information shared between the social worker and the client will be kept between the parties ensures openness and the development of trust, which enhances the healing and developmental process.

The right to privacy is premised on two dimensions, namely **the right against intrusion and the right to confidentiality**.

**The right against intrusion** means that **people have the right to keep** certain information about themselves away from others, to keep secrets and to prevent others from prying into their affairs. This dimension regulates the extent to which social workers can encroach on the client's sphere of privacy.

The second dimension namely, the **right to confidentiality** is the right to maintain control over information the client chooses to share with a social worker. This regulates the extent to which information a client shares with the social worker should be kept confidential or private between the social worker and the client.

The social service professions are concerned especially with the second dimension, as the helping profession is about sharing information. Irrespective of the legal and ethical duties in this regard, every social worker should realise that to respect a person's right to privacy is to respect the person. Social workers should not solicit private information from clients unless it is essential to providing services or conducting evaluation or research. As in the case of the State that is compelled to respect the privacy of its citizens, it should be second nature to all social workers to honour the privacy of individuals, families, groups and communities. (See section 14 of the *Constitution*, Act 108 of 1996). Once private and confidential information is shared, the standards of confidentiality apply.



(a) *General Guidelines relating to the divulgence of confidential information*

Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers review with clients the circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion occurs as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship. The social worker and the client should enter into a written contract. Mutual agreement on confidentiality and disclosure of information are embedded in a written contract between a client and the social worker.

In providing services to individuals, families, groups and communities, the social worker often has to work within a team context with other social workers. In the process of service delivery and in the best interest of the client, confidential information often needs to be shared. Clients must be made aware of these processes and must give consent to the sharing of information. Furthermore, clients must be informed that the social worker cannot guarantee that all participants will honour such agreements. The social worker therefore, should only divulge information to other professionals who are also obliged to uphold a code of ethics. In all instances, the consent of the client must be obtained.

Social workers must protect the confidentiality of clients when responding to requests from members of the media. In order to prevent misinterpretations, social workers should request that the questions be provided to them beforehand in writing.

Social workers protect the confidentiality of clients' written and electronic records and other sensitive information.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

---

They take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorised to have access. Administrative staff dealing with, for example, files of clients or typing reports, must sign a declaration of confidentiality. (See annexure C for a copy of an example.)

Social workers take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information should be avoided whenever possible and recipients of confidential information should be informed beforehand.

Social workers transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with State statutes governing records.

Social workers should take reasonable precautions to protect client systems' privacy in the event of the social worker's termination of practice, incapacitation, or death.

(b) *Circumstances under which confidential information could be divulged*

Social workers could divulge confidential information that comes to their attention whilst carrying out their duties in the following instances:

**Subpoenas issued by Court to Social Workers to disclose Confidential Information regarding their Client Systems.**

The effect of private privilege is that the court is deprived of relevant evidence and therefore the tendency is towards the restriction of occasions where privilege is claimable. This is the reason why the court will not recognise the privilege between a social worker and client but between a

lawyer and his client as this is a common law and is reflected in section 201 of the *Criminal Procedure Act*, Act No 51 of 1977.

The following options are available to the social worker:

- (i) If a social worker is subpoenaed or ordered to do so by a competent court or is otherwise legally bound to do so: Provided that if disclosure of such information is not part of a recognised statutory function of the social worker in question, that the information may be divulged only under protest. (Copy of the letter of protest which may serve as a guideline is attached as annexure D).
  - (ii) To inform the client that he/she has to disclose the confidential information due to the subpoena issued by the court and not of their own volition.
  - (iii) When a court of law orders social workers to disclose confidential information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or omit the order as narrowly as possible or maintain the records under seal, make it unavailable for public inspection or that the case be heard in camera.
- However, the social worker should inform his or her client as fully as possible, about the disclosure of confidential information and the potential consequences, before the disclosure is made.
- (iv) To bring a high court application challenging the subpoena, where legally advisable to do so.
  - (v) To inform the client that disclosure is required and advise him or her to bring a high court application challenging the subpoena, where legally advisable to do so.
  - (vi) With the informed and written consent of the client . To obtain the written and informed consent from the client and

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

---

if the client cannot give consent, from another legally authorised person on behalf of the client (executor), spouse, or if there is no surviving spouse, a major child of the client or deceased client. In the case of a minor child, consent should be obtained from the parents or guardian.

- (vii) If the client system is suing a social worker, he or she is entitled to disclose information about the matter in so far as it is necessary to defend him or herself.
- (viii) When disclosure is necessary to prevent serious, foreseeable and imminent harm or danger to a client system or other identified person or a community, thus justifying disclosure on the grounds of necessity.
- (ix) To the extent that the divulgence is in the client's interest e.g. treatment reasons.
- (x) In all instances, social workers should disclose as little confidential information as possible in order to achieve the desired purpose. Only information that is directly relevant to the purpose for which the disclosure is made should be revealed.
- (xi) Social workers should inform all clients of the employer's and agency's policy concerning the disclosure of confidential information among the parties involved. This is especially significant in occupational settings where services are rendered to the employees of the organization concerned. (See annexure C).
- (xii) They should not disclose confidential information to third-parties unless clients have authorised such disclosure.
- (xiii) Social workers should not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.

- (xiv) They should not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information.
- (xv) Social workers should protect the confidentiality of deceased clients in line with the abovementioned guidelines.
- (c) *Access to Records/Information*
  - (i) Social workers should provide clients with reasonable access to records concerning only the clients.
  - (ii) Social workers who are concerned that clients' access to their records could cause serious misunderstanding or harm should provide assistance in interpreting the records and consultation with the client regarding the records.
  - (iii) Clients' requests and the rationale for withholding some or all of the records should be documented in clients' files.
  - (iv) When providing clients with access to their records, social workers should take the necessary steps to protect the confidentiality of other individuals identified or discussed in such records as clients should have access to their files with the information relevant only to themselves.
  - (v) Clients can only be provided with copies of the documents in the file, not original copies because if there is a complaint or court case against the social worker, original documents must be presented in court or the relevant tribunal handling the complaint. Copies should be certified as true copies of the original, where same is required.
  - (vi) Should a court of law or a tribunal instruct a social worker to provide the court or the tribunal with the file of a specific client, the social worker is not obliged to hand over the complete file but should make copies of relevant documentation available to the court or tribunal, unless ordered otherwise by such court of law or tribunal.

(vii) In a number of statutes a mandatory duty is placed on social workers to disclose information despite the fact that it will constitute an infringement of the privacy and confidentiality of other people. For example, in section 42(1) of the *Child Care Act*, Act No 74 of 1983, the social worker is obliged to report child abuse. The principle of confidentiality is limited by the fact that the balance of convenience weighs towards protection of the minor's rights and interests than the principle of confidentiality. The other statute is the *Prevention of Domestic Violence Act*, etc.

(viii) Information or records can also be accessed as described in the *Promotion of Access to Information Act*, Act No 2 of 2000. (Refer to Annexure E for further information).

(d) *Confidentiality in Practice Settings*

Social workers must ensure that they manage the affairs of the client, in their offices or private practices, in a manner that optimises the privacy of their clients. They will be deemed guilty of unprofessional conduct should information be lost or overheard in an office environment by other persons who are not involved with the particular client.

5.2.2 Professional Relationships

Social workers should have a truthful, understandable and transparent social work relationship with client systems. They should discuss with clients as early as it is feasible in the therapeutic relationship all appropriate issues, such as the nature and anticipated course of intervention, rights, preferences, confidentiality and whether other team members will be involved, as well as their roles and functions and where appropriate, the fees to be charged.

The social worker cannot refuse crisis intervention to a client system on the grounds of lack of finances. After

crisis intervention, the client should be referred to an appropriate resource.

The lines of communication within the organisation should be clarified in order that clients understand they may have access to the supervisor, manager, director etc. It is recommended that organisations also have a policy in place clarifying the lines of communication. This policy should be discussed with clients at the beginning of a social work relationship.

(a) *Communication with client systems*

Social workers must make reasonable efforts to answer clients' questions and to avoid misunderstandings or misconceptions regarding interventions.

Whenever possible, social workers should provide oral and/or written information using language that is reasonably understandable to the client.

When interpretation services are utilised and the interpreter is not a social worker bound by the code of ethics, the interpreter should sign a declaration of confidentiality. In order to ensure confidentiality, the interpreter must not be someone who is known to the client.

(b) *Client Self-determination*

(i) Respect for the client system's right to decide whether or not to cooperate with the social worker, even in the case of statutory order. Implications of such refusal should be explained to those concerned, including client systems.

(ii) Client systems should be empowered to utilise their abilities optimally.

(c) *Inappropriate Relationships*

(i) Sexual relationships

- Sexual feelings vs sexual contact

Developing a fondness and a sexual desire for a person with whom one has an intimate relationship over a period of time is not unnatural. Experiencing such feelings is obviously not unethical or illegal. However, if such feelings are significant, they should be discussed with a colleague and if necessary worked out therapeutically. If such feelings interfere with the service delivery process, the social worker should terminate treatment/counselling due to objectivity being at stake.

Sexual feelings become the focus of social work ethics and law if they manifest as sexual contact. Sexual contact between social workers and clients is not acceptable and is considered to be a betrayal of the clients' trust and an unfair exploitation of the clients' transference feelings.

Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.

Social workers should not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain close personal relationships when there is the risk of exploitation or potential harm to clients. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain personal relationships has the potential to be harmful to the clients and may make it difficult for social workers and clients to maintain appropriate social work boundaries.

Social workers – not their clients, their clients' relatives or other individuals with whom the clients maintain personal



relationships – must assume full responsibility for setting clear, appropriate and culturally sensitive boundaries.

- Sexual contact after termination of services

Social workers should not engage in sexual intimacies with their former clients since sexual intimacies with former clients are so frequently harmful to clients.

Such intimacies may undermine public confidence in the social service professions and thereby deter the public's utilisation of needed services.

Should social workers elect to engage in such activity following the termination of the social work relationship, they and not their former client, should assume the responsibility of demonstrating that the former client was not exploited, coerced or manipulated.

- Social work services to former sexual partners

Social workers should not provide social work services to individuals with whom they have had a prior sexual relationship. Providing such services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for social workers to maintain appropriate social work boundaries.

- Physical contact

Social workers should not engage in physical contact with clients when there is a possibility of emotional harm to the client as a result of the contact (such as cradling or caressing clients). Social workers who engage in appropriate physical contact with clients are responsible for setting clear, appropriate and culturally sensitive boundaries that govern such physical contact. The physical contact should be understood as a token of encouragement, support or empathy and experienced as such by clients.



- Sexual harassment

Social workers must not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favours and other verbal or physical conduct of a sexual nature.

- (ii) Dual Relationships

The social worker should not be involved in relationship(s) that compromise the social work relationship(s).

If such a dual relationship develops or is discovered after the social work relationship has been initiated, the social worker should terminate the social work relationship in an appropriate manner. He or she should notify the client in writing of this termination, assist the client to obtain services from another social worker and should not engage in any self-enhancing relationship with the client until at least a period of 24 months has elapsed after the termination.

Social workers should always be sensitive to the potential harmful effects of social or other non-social work contact on their work and on those persons with whom they deal.

- (iii) Exploitative Relationships

Social workers do not engage in exploitation which includes coercion, manipulation, blackmail of persons over whom they have authority such as learners, supervisees, employees, members of the community engaged in social development programmes, research participants, and clients.

### 5.2.3 Third party requests for services

When a social worker agrees to provide services to a person or entity at the request of a third party, the social worker should clarify at the outset of the service, the nature of the relationship with each party. This clarification includes the role of the social

worker, the probable use of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

If there is a foreseeable risk of the social worker being called upon to perform conflicting roles because of the involvement of a third party, the social worker should clarify the nature and direction of all parties' responsibilities, enter into a written agreement with the parties concerned and keep them appropriately informed as matters develop. All matters should be dealt with in accordance with the code of ethics.

#### 5.2.4 Gifts and Incentives

Social workers ordinarily refrain from accepting goods, services, or other non-monetary remuneration from clients in return for social services because such arrangements create an inherent potential for conflict, exploitation, and distortion of the social worker-client relationship. The social worker may participate in such an exchange only if it is not socially contra-indicated, and if by so doing, the relationship is not exploitative.

The social worker should disclose to the manager or person in an authority position any gifts or incentives given to them by clients as well as write in the file for the supervisor to note the incentive.

Should a social worker be in private practice and therefore charge fees for services, clear guidelines on the fee structure should be made available to clients and a written contract should be negotiated relating to the payment of such fees.

#### 5.2.5 Dealing with client's money

A social worker may not administer a client's money in an inefficient, irresponsible or negligent manner. Money should be managed properly and records kept of fees charged in all matters dealt with by the social worker in his or her capacity as a social worker (refer to the *Rules relating to acts or omissions*).

5.2.6 Terminating the social worker-client relationship

Social workers should not abandon their client systems.

The social worker who provides services to a client should make an appropriate referral to another social worker when requested to do so by the client.

A social work relationship should be terminated when it becomes reasonably clear that the client no longer needs the service, is not benefiting from, or is being harmed by continuing the service.

Prior to termination of services for any reason, except when precluded by the client's conduct, the social worker discusses the client's views and needs, provides appropriate pre-termination counselling, suggests alternative and appropriate service providers where necessary, clarifies in writing what information may be conveyed to the alternative service provider and takes other reasonable steps to facilitate transfer of responsibility to another provider, if the client system needs one immediately.

5.2.7 Advertising and Public Statements

Social workers are allowed to advertise their services.

It could be regarded as unprofessional conduct to advertise services in an unprofessional manner, or permitting, sanctioning, or acquiescing of such an advertisement.

The advertising of his or her services by a social worker contrary to the following requirements shall be deemed to constitute unprofessional conduct:

No advertisement may contain or imply any comparison between the services, knowledge, skill or efficiency of the advertising social worker and those of another colleague, any other social worker, or any other relevant service provider.

Advertisements may not contain any element of self-promotion of the social worker, the quality of his/her services skills, or efficiency.

*(a) Guiding principles for making social work services known*

- (i) A client has the right to obtain guidance from a social worker on obtaining a second opinion, where appropriate.
- (ii) A social worker is at all times responsible for his or her own professional conduct.
- (iii) When professional services are made known, the rights of the client system are to be protected from misleading promotional, advertising or improper competitive activities between social workers. Publications improperly drawing attention to the titles, professional attainments, personal qualities, superior knowledge or quality or service of a particular social worker, or improperly drawing attention to his or her practice or fees may be construed as unprofessional conduct.
- (iv) Advertising in an unprofessional manner or canvassing and touting for clients is regarded as unethical behaviour and would constitute a breach of professional social work conduct.

*(b) Information that may be included in notifications*

- (i) Information about his or her practice may be published in any medium, printed or electronic, including the Internet and television.
- (ii) There are no limitations on the size or number of times a notice may be published.
- (iii) Direct mailing is permissible, i.e. mailing to post boxes or direct delivery to home owners.
- (iv) Bulk distribution of pamphlets, for example at shopping malls and to passing motorists, is not permissible.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

---

However, pamphlets may be made available and issued individually to existing client systems at the social service practice and also at local information centres such as libraries to persons enquiring about available social services and practices.

- (v) The use of photographs on notifications is permissible.
- (vi) The following information may appear on notifications:
  - Name and surname
  - Profession as registered with the S A Council for Social Service Professions
  - Registered qualifications
  - Registration number with the S A Council for Social Service Professions
  - Practice address and where necessary a map
  - Consulting hours
  - Contact details
  - Fields of specific interest or speciality if it is registered with the S A Council for Social Service Professions
- (vii) Information of financial arrangements, which must be limited to statements relating to formal arrangements, e.g. "credit cards acceptable" or "cash only", is acceptable. Reference may not be made to discounts or fees.

**The aim of publishing notices is to inform client systems of services as well as the whereabouts of social workers. It is not intended to be an instrument for promoting individual practices.**

*(c) Practice notices to clients*

- (i) Social workers may also communicate with their existing clients via practice notices, but such communications may not be distributed to the public at large.
- (ii) These notices may include information about the social worker's own practice arrangements, e.g. services available, new partners and tariff structures.

*(d) Communication with colleagues*

- (i) It should be encouraged amongst social workers to communicate the setting up of a practice or practice address changes to colleagues.
- (ii) Specific fields of practice may be communicated to colleagues.

*(e) Directories and public lists*

- (i) Clients and other social workers should have ready access to accurate, comprehensive and well-presented information about social workers practising privately in their area in order to make informed choices.
- (ii) Directories and public lists with the names of the social workers and their practice details, distributed for the benefit of the members of the public and peers are permissible.
- (iii) All social workers in a specific area should be eligible for inclusion in such directories or public lists.
- (iv) The names and particulars of all social workers listed in such directories and public lists should be of the same size and format.

*(f) Information on social worker stationery (letterhead)*

- (i) Social workers' stationery may contain the following information:

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- Name and surname
  - Title
  - Profession as registered with the South African Council for Social Service Professions
  - Registration number with the South African Council for Social Service Professions
  - Field of interest and/or Registered speciality with South African Council for Social Service Professions
  - Registered qualifications with South African Council for Social Service Professions
  - Addresses
  - Contact details Telephone numbers
  - Hours of consultation
  - Practice code numbers
- (ii) Reference to a social worker's achievements is not allowed.
- (iii) The use of business or appointment cards is permissible.
- (iv) Logos may be used on stationery, but graphics or pictures may not depict anatomical structures or be generally offensive.
- (g) *Practice names*
- (i) Social workers may use as the name of their practice, their own names and/or the names of their partners, together with the words "and partners".
- (ii) The use of expressions that could create the impression that a practice forms part of, or is in association with a group practice comprising practitioners registered, for



instance, with the Health Professions Council of SA should be avoided. (It should be clear and specific that the practitioner is a social worker).

(iii) Social workers are not allowed to practise under special names or titles. A descriptive name of the practice should be limited to the nature of the practice and its geographical location.

(h) *Social workers as authors*

(i) A social worker who is the author or co-author of books or articles may mention his or her name as "author" or "co-author", as the case may be, and indicate his or her social work standing as this promotes the profession's duty to disseminate information about advances in the social service professions.

(ii) Social workers with the necessary knowledge and skills may participate in the presentation and discussion of social issues by means of public address or through the printed and electronic media to lay audiences, provided that no information about their standing is given which may imply that a practitioner is the only, the best, or the most experienced in his or her particular field.

**The SA Council for Social Service Professions retains the final authority for deciding on the acceptability or not of the content and format of notifications put out or printed stationery used by social workers.**

### **5.3 Social Workers' Ethical Responsibilities towards Colleagues and other Social Workers**

#### 5.3.1 Respect

(a) Social workers should treat colleagues with respect and should represent their qualifications, views and obligations accurately and fairly.

- (b) Social workers should exhibit loyalty towards colleagues and therefore avoid unwarranted negative criticism of their colleagues in communication with clients or with other social workers. Unwarranted negative criticism may include demeaning comments that refer to a colleague's level of competence, skill, social work reputation or to individual attributes such as race, ethnicity, national origin, colour, sex, sexual orientation, age, marital status, political belief, religion and mental or physical disability.
- (c) Social workers should work in conjunction with their colleagues and with colleagues of other professions in a spirit of professional cooperation that serves the well-being of client systems.

#### 5.3.2 Confidentiality

- (a) Social workers should respect confidential information shared by colleagues in the course of their social work relationships, interactions and transactions.
- (b) Social workers should ensure that their colleagues understand a social worker's obligation to respect confidentiality and any relevant exceptions to this.
- (c) It is imperative for a social worker to seek written and informed consent of the client prior to disclosing confidential information regarding the client with colleagues or other social workers. This may also include supervision.

#### 5.3.3 Interdisciplinary collaboration

- (a) Social workers who are members of an interdisciplinary team should participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, experiences and research of other members of the team. The ethical obligations of social work, the interdisciplinary team as a whole and of its individual members should be clearly established.

- (b) Social workers for whom a team decision raises ethical concerns should attempt to resolve the concerns through appropriate organisational channels.
- (c) If the concerns cannot be resolved, social workers should pursue other avenues such as consultation with the Professional Board for Social Work/South African Council for Social Service Professions or seek legal opinion, to address their concerns consistent with clients' well-being.

5.3.4 Criticism and disputes involving colleagues

- (a) Social workers should not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance his/her own interests. The best interests of clients should be served at all times and the employer should be served with loyalty.
- (b) Social workers should not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion of conflicts between social workers and their colleagues.
- (c) Criticism of and differences between colleagues should be resolved according to the authority structure of the employer.
- (d) Social workers should protect and defend colleagues against unfair criticism.

5.3.5 Consultation

- (a) Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interest of the client. Consultation with a colleague would provide a perspective in terms of how a reasonable social worker would act in a particular/given situation, however, approval of the client should be sought by the practitioner before consultation.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- (b) Social workers should keep themselves informed about colleagues' areas of expertise and competencies. Thus, consultation should be sought only from colleagues who have demonstrated knowledge, expertise and competence relevant to the subject of the consultation.
- (c) When consulting with colleagues regarding clients, social workers should disclose as little information as is necessary in order to achieve the purposes of the consultation.

**5.3.6 Referral for services**

Referrals should be undertaken in line with the organisation's policies and procedures.

- (a) Social workers should refer clients to other social workers when other social workers' specialised knowledge or expertise is needed to serve clients fully or when social workers believe they are not being effective or making reasonable progress with clients and that additional services are required.
- (b) Referrals and consultations should be made subject to other relevant considerations, including legal and contractual obligations.
- (c) Social workers who refer clients to colleagues or other social workers should take appropriate steps to facilitate an organised, orderly and professional transfer of responsibility (written not verbal transfer).
- (d) Social workers who refer clients to colleagues and/or other social workers should disclose, with clients' written consent, all pertinent information to the new service provider.
- (e) Social workers are prohibited from giving or receiving payment for a referral.

- (f) The performance of acts belonging to a field other than the social service professions, including psychometric testing for purposes of diagnosis and therapy, is regarded as unethical, unless the social workers are appropriately qualified and legally authorised to do so by the Professional Board for Psychology. However, social workers are allowed to use psychometric measuring instruments provided they meet the requirements of the South African Council for Social Service Professions.
- (g) The prevention of a client from procuring advice or assistance from another person who is authorised by law to advise or treat persons concerning their social well-being could be regarded as unprofessional conduct.

#### 5.3.7 Supersession

- (a) Supersession by another practitioner without taking reasonable steps to inform the practitioner originally in charge of the case, in cases where he or she should be aware that the client is receiving services from another social worker, could be regarded as unprofessional conduct.
- (b) A social worker should not accept a client of a colleague unless –
  - (i) the said colleague is not available and the required services cannot be kept in abeyance; or
  - (ii) the colleague consents to it or
  - (iii) the colleague's services have been terminated by the client without encouragement from the social worker: Provided that the explanation to a prospective client that services may not be rendered/provided to him or her unless and until he or she has terminated the services of the colleague shall not be regarded as encouragement.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- (iv) In the event of statutory services, the social worker should contact the social worker or agency already involved in the case to ascertain its status and whether statutory services must still be provided by the original social worker or agency. All reasonable measures must be taken to ensure consensus as to which social worker/agency should continue with the services. Should such consensus not be possible, the second social worker or agency may submit a report to the court clearly marked as a second opinion, and must ensure that the original social worker or agency is informed timeously of all actual and intended court proceedings/hearings.
- (c) The fact that a social worker has previously also been involved in the management of the case of a colleague's client shall not detract from the provisions of paragraph (iii).

**5.4 Social Workers' Ethical Responsibilities in Practice Settings**

This section refers to the *Rules relating to the course of conduct* that concern an employer and a social work setting.

**5.4.1 Supervision/management and consultation**

- (a) Social workers who provide supervision or consultation should have the necessary knowledge and skills to supervise or consult appropriately and should do so only within their areas of knowledge and competence.
- (b) Social workers who provide supervision or consultation are responsible for setting clear, appropriate and culturally sensitive boundaries.
- (c) Social workers should not engage in any dual or multiple relationships with supervisees where there is a risk of exploitation of or potential harm to the supervisee.
- (d) Social workers who provide supervision should evaluate supervisees' performance in a manner that is fair and

respectful as well as record what transpired during supervision or consultation sessions.

- (e) The supervisor could be held liable in an instance where a complaint of alleged unprofessional conduct is lodged against the supervisee/social worker.
- (f) A social worker should be supervised on social work matters by a supervisor who is registered as a social worker.

#### 5.4.2 Performance evaluation

Social workers who are responsible for evaluating the performance of others should fulfil this responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

#### 5.4.3 Client records

- (a) Social workers should take reasonable steps to ensure that records are accurate and reflect the services provided.
- (b) Social workers should include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.
- (c) Social workers' documentation should protect clients' privacy to the extent that is possible and appropriate and should include only information that is directly relevant to the delivery of services. Confidentiality must be ensured in line with the code of ethics.
- (d) Social workers should store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by state statutes and relevant contracts.

5.4.4 Billing

Social workers should establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting. Billing should be done in such a manner that clients are not financially exploited.

5.4.5 Advocacy for sufficient resources

- (a) Social workers should advocate within and outside their agencies for adequate resources to meet clients' needs.
- (b) They should advocate for resource allocation procedures that are open and fair. When not all clients' needs can be met, an allocation procedure should be developed that is non-discriminatory and based on appropriate and consistently applied principles.
- (c) Social workers should take reasonable steps to ensure that adequate agency or organisational resources are available to provide appropriate staff supervision.
- (d) Social workers should take reasonable steps to ensure that the working environment for which they are responsible is consistent with and encourages compliance with the South African Council for Social Service Professions Code of Ethics. Social workers should take reasonable steps to eliminate any conditions in their organisations that violate, interfere with, or discourage compliance with the code of ethics.

5.4.6 Commitment to employers

- (a) Social workers should adhere to legislation, policies and procedures of employers.
- (b) Social workers should work to improve employing agencies' policies and procedures and the efficiency and effectiveness of their services.



- (c) Social workers should take reasonable steps to ensure that employers are aware of their ethical obligations as set forth in the South African Council for Social Service Professions code of ethics and of the implications of these obligations for practice.
- (d) Social workers should be encouraged to report discrepancies between the *Social Service Professions Act*, its regulations and rules and procedures and those of employers.
- (e) Social workers should be diligent stewards of the resources of their employing organisations, wisely conserving funds where appropriate and never misappropriating funds or using them for unintended purposes.

#### 5.4.7 Labour-Management Disputes

- (a) Social workers may engage in organised action, including the formation of and participation in labour unions, to improve services to clients and working conditions.
- (b) The actions of social workers who are involved in labour-management disputes, job actions, or labour strikes should be guided by the profession's values, ethical principles, and ethical standards. Social workers should carefully examine relevant issues and their possible impact on clients before deciding on a course of action.
- (c) Social workers must always abide by the provisions of the *Labour Relations Act*. The following acts could be regarded as unethical/unprofessional behaviour:
  - (i) Doing damage to any property of the employer or a fellow employee
  - (ii) Participation in any action which is a threat to other employees or to participate in any intimidating action
  - (iii) Causing harm in any manner whatsoever to clients or potential clients

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- (iv) Participating in secondary strikes, that is, striking action taken against the strikers' employer in sympathy of a strike at another employer who is engaged in a dispute with its own workforce, that are not in accordance with the provisions of section 66 of the *Labour Relations Act* of 1995
- (v) Participating in any act of violence during the cause of the strike
- (vi) Instigating or participating in an unprotected strike as defined in the *Labour Relations Act*
- (d) Social workers may not refuse without sufficient cause to provide social work services that they took on or for which they were employed.
- (e) A person registered in terms of the *Social Service Professions Act*, 1978, may not employ any person who is obliged to register in terms of this Act, knowing that such person has not been registered.
- (f) Social workers may not breach their contract of service or engage in behaviour that would justify their dismissal.
- (g) Practising or carrying on from his or her offices any business, trade, work or profession apart from the profession he or she belongs to, without the prior written consent of the South African Council For Social Service Professions/Professional Board for Social Work or contrary to a condition, if any, which such a consent is subject to could be regarded as unethical behaviour.
- (h) A social worker may not practise in partnership with a person who is not registered in terms of the *Social Service Professions Act* or share offices with such a person, except with the prior written consent from the South African Council for Social Service Professions/Professional Board for Social Work and subject to such conditions as may be determined.

### **5.5 Social Workers' Ethical Responsibilities to the Broader Society**

This section refers to the Rules relating to the course of conduct that concerns the community.

#### **5.5.1 Social Development**

Social workers should promote the general development of society, from local to global levels and the empowerment of their communities and their environments. Social workers should advocate for living conditions conducive to the fulfilment of basic human needs and should promote social, economic, political and cultural values and institutions that are compatible with the realisation of social justice.

#### **5.5.2 Public emergencies**

Social workers should provide appropriate professional services in public emergencies to the greatest extent possible.

#### **5.5.3 Social and political action**

- (a) Social workers engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services and opportunities they require to meet their basic human needs and to develop fully. Social workers should be aware of the impact of the political arena on practice and should advocate for changes in policy and legislation to improve social conditions in order to meet basic human needs and promote social justice.
- (b) Social workers act to expand choice and opportunity for all people, with special regard for vulnerable, disadvantaged, discriminated against and exploited people, groups and communities.
- (c) Social workers promote conditions that encourage respect for cultural and social diversity within the Republic of South Africa and globally. Social workers should promote

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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policies and practices that demonstrate respect for difference, support the expansion of cultural knowledge and resources, advocate for programmes and institutions that demonstrate cultural competence, and promote policies that safeguard the rights of and confirm equity and social justice for all people.

- (d) Social workers act to prevent and eliminate domination exploitation and unfair discrimination against any person, group, or class on any basis including, race, ethnicity, national origin, colour, sex, sexual orientation, age, marital status, political belief, religion, socio-economic status or mental or physical disability.
- (e) Social workers should not unfairly discriminate against a client on any ground, including on account of social or economic status, colour, sex, sexual orientation, race, ethnicity, national origin, age, marital status, political belief, religion, mental disability, physical disability, socio-economic status, language or nationality.

**6. IMPLEMENTATION**

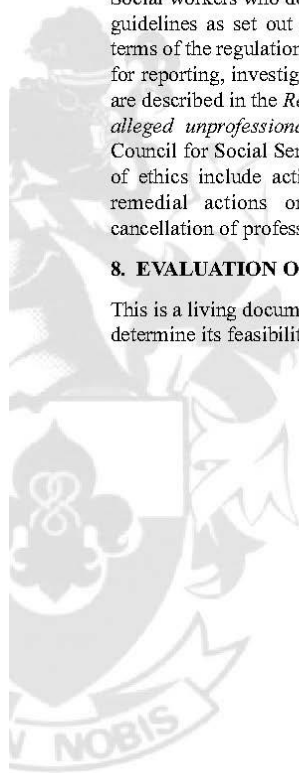
- (a) This document should be implemented indiscriminately – in all areas where social workers are rendering services.
- (b) Council will endeavour to provide training/presentations regarding the code of ethics guidelines with a view to ensuring understanding and empowerment of social workers regarding the content of the document. However, in terms of the *Social Service Professions Act*, No 110 of 1978, professionals are required to adhere to the codes of ethics at all times. Failure to do so may lead to a disciplinary inquiry.
- (c) The guidelines will be used in cases where complaints of alleged unprofessional conduct are received and as a reference manual for practitioners when faced with ethical challenges.

**7. FAILURE TO COMPLY WITH THE CODE OF ETHICS: LEGAL IMPLICATIONS**

Social workers who do not abide with the principles, values, standards and guidelines as set out in this document may be subjected to inquiries in terms of the regulations regarding unprofessional conduct. The procedures for reporting, investigating and resolving complaints of unethical conduct are described in the *Regulations regarding the conducting of inquiries into alleged unprofessional conduct*. The actions that the South African Council for Social Service Professions may take for violations of the code of ethics include actions such as a reprimand and/or warning, a fine, remedial actions or supervision, and time-limited or permanent cancellation of professional practice registration.

**8. EVALUATION OF POLICY DOCUMENT**

This is a living document, therefore, it should be continuously evaluated to determine its feasibility, relevance and effectiveness.

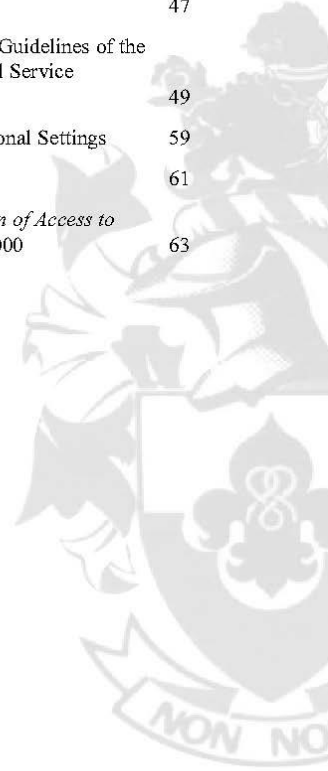


**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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**ANNEXURES**

<b>Annexure A:</b> Professionals Ethical Responsibilities as Social workers	47
<b>Annexure B:</b> HIV infection and AIDS Policy Guidelines of the South African Council for Social Service Professions	49
<b>Annexure C:</b> Confidentiality within Occupational Settings	59
<b>Annexure D:</b> A letter of protest (Guideline)	61
<b>Annexure E:</b> Information regarding <i>Promotion of Access to Information Act</i> , Act No. 2 of 2000	63





**1. PROFESSIONALS' ETHICAL RESPONSIBILITIES AS SOCIAL WORKERS**

**1.1 Dishonesty, fraud and deception**

Social workers should not participate in, condone, or be associated with dishonesty, fraud or deception.

**1.2 Impairment**

- (a) Social workers recognise that their personal problems and conflicts may interfere with their effectiveness as practitioners. They should not allow their personal problems, psycho-social distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional judgment and performance or to jeopardise the best interest of people for whom they have a professional responsibility. If such a condition develops after a professional relationship has commenced and has been conducted in an appropriate manner, the practitioner shall notify the client in writing of the termination of services, and shall assist the client in obtaining services from another social worker.
- (b) Social workers have an obligation to be alert to the signs of personal problems and to obtain assistance for their personal problems at an early stage in order to prevent their performance being significantly impaired.
- (c) Social workers whose personal problems, psycho-social distress, legal problems, substance abuse or mental health difficulties interfere with their professional judgment and performance should immediately seek consultation and take appropriate remedial action by seeking professional intervention, making adjustments in workload, terminating practice or work-related duties until such time as their personal problems no longer impact on their work performance, or taking any other steps necessary to protect clients and others.



**1.3 Misrepresentation**

- (a) Social workers should make clear distinctions between statements and actions engaged in as a private individual and as a representative of the social service profession, a professional organisation, or their employing agency.
- (b) Social workers who speak on behalf of professional organisations should accurately represent the official and authorised positions of the organisations.
- (c) Social workers should ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or results to be achieved are accurate. Social workers should claim only those relevant professional credentials they actually possess and take steps to correct any inaccuracies or misrepresentation of their credentials by others.

**1.4 Acknowledging credit**

- (a) Social workers should take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.
- (b) Social workers should honestly acknowledge the work of and the contributions made by others.

**1.5 Continuing professional development**

- (a) Social workers and supervisors should take reasonable steps to provide or arrange for continuing education and staff development for all their staff. Continuing professional development should address current knowledge and emerging developments related to the social service profession's practice and ethics.
- (b) The S A Council for Social Service Professions is in the process of implementing continuing professional development for the social workers to remain registered with the Council.

**HIV INFECTION AND AIDS: POLICY GUIDELINES OF THE  
SOUTH AFRICAN COUNCIL FOR  
SOCIAL SERVICE PROFESSIONS**

**1. INTRODUCTION**

HIV infection and AIDS are one of the most challenging matters that the authorities have to deal with in South Africa. This is due to the fact that individuals, families, groups and communities are affected by this pandemic in their totality. The effect of HIV and AIDS is broad and relates to the health, social and psychological well-being of those infected as well as their significant others and the communities in which they live.

HIV and AIDS is a sensitive issue and should be addressed with great caution. Caution is even more important when cognisance is taken of the fact that there are not always clear legislative guidelines to deal with the subject matter.

Through this policy the SA Council for Social Service Professions endeavours to provide social service practitioners with ethical guidelines to render professional social services to those infected and affected by HIV and AIDS.

**2. PRINCIPLES**

The South African Council for Social Service Professions has adopted the following principles and points of departure when social workers provide services to HIV positive clients, their families and communities:

- 2.1 Although infection with HIV and AIDS is incurable at present, AIDS is considered to be a manageable life-threatening disease. Social workers should, therefore, adopt a positive attitude to working with such clients, their families and their communities.
- 2.2 It will be regarded as unethical behaviour should a social worker refuse to provide services to HIV and AIDS infected or affected

clients because of the fact that the client concerned is HIV positive. This is regarded as discrimination against the client.

- 2.3 Maintaining client confidentiality regarding HIV status is an ethical obligation of the social worker. Confidentiality should be carefully managed in line with the guidelines provided in this policy.
- 2.4 The social worker has a primary responsibility towards the social well-being of the HIV positive individual. However, certain responsibilities toward significant others that might be in danger of contracting the disease from the individual cannot be ignored.
- 2.5 The fundamental human rights of the infected client should be upheld. Violation of these rights may be construed as unethical behaviour.
- 2.6 No social worker as an employer or otherwise should in any way whatsoever, discriminate against a colleague in the workplace who has contracted this disease.

### **3. CONFIDENTIALITY**

#### **3.1 Legislation**

The *Social Service Professions Act*, No 110, of 1978. (The Act) or its accompanying rules and regulations does not provide for information on the disclosure or non disclosure of HIV status. However, the rules relating to unprofessional conduct are clear on how social workers should treat confidentiality with their clients. (See also paragraph 5.2.1 of the code of ethics).

The above clearly demonstrates the fact that in terms of the Act, there can never be any disclosure, without the express consent of the client or those legally responsible for the client's affairs. It is emphasised that the client's right to confidentiality regarding his or her HIV status must be maintained.

**3.2 Guidelines for the management of clients with HIV infection or AIDS**

A relationship of trust should exist between social workers and their clients. A member of the social service professions is required to be committed to good professional and ethical practices and overriding dedication to the good of one's fellow humans and society for life.

Keeping and maintaining confidentiality regarding HIV status in order to encourage clients with HIV to be tested and treated are supported. Just as HIV testing takes place with voluntary informed consent of the individual, disclosure of the confidential information of a client regarding HIV positive status should always be with the client's consent and justifiable in the circumstances.

**3.3 Current law and S A Courts**

It is clear that confidentiality of a client's HIV status should be maintained. In as far as disclosure of information to the sexual partner of a client is concerned, the South African Council for Social Service Professions is not aware of legislation compelling the disclosure of HIV status to third parties including the individual's partner.

The likelihood exists that the criminal courts may adversely decide against an individual who knowingly infects his or her partner with the lethal HIV virus and applicable positive findings may include conviction for attempted murder or assault with intention to do grievous bodily harm.

There is also a basis of civil liability on delictual grounds for non-disclosure and negligent infection of another person.

**3.4 Disclosure of information regarding HIV status of a client**

It is evident that the HIV positive status of clients must be treated at the highest possible level of confidentiality.

The social worker may not inform colleagues/other professionals of a client's HIV status without that client's written consent. The need for disclosure of information if required by colleagues/other professionals directly involved with the care of the client, must be discussed with the client in order to obtain consent for disclosures considered to be in the client's best interest in terms of care and service delivery.

Whilst admitting that there is no legal clarity regarding this matter, a social worker dealing with disclosure should probably use his or her discretion whether or not to divulge the information to other parties involved. This is particularly so when the client refuses to give consent and the client's sexual partner is at risk or danger. The following guidelines are suggested:

- Provide in-depth counselling to the client on the importance of disclosing to his or her sexual partner and taking other measures to prevent HIV transmission.
- Provide support to the client to make this disclosure.
- When the client still refuses to disclose his or her HIV status or refuses to consider other measures to prevent the infection, counsel the client on the social worker's ethical obligation to disclose such information to warn the sexual partner and request consent to do so.
- Inform the client that as a social worker you may have to breach confidentiality and disclose to the sexual partner his/her status and offer the client an opportunity to disclose to the partner with or without help.

If doubtful that the client disclosed his/her HIV status to the partner, put on record that the client informed you that he/she disclosed to the sexual partner his/her HIV status and request him/her to sign giving consent to the social worker to contact the partner or partners with a view to offering counselling to the partner or partners or to verify the client's communication in a non-discriminatory or embarrassing way.

**Policy Guidelines for Course of Conduct,  
Code of Ethics and the Rules for Social Workers**

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- When informing the client about the importance of disclosure, the client's attention should be drawn to the possibility of violence and other adverse consequences that such disclosure may hold in store for the client concerned as well as his or her significant others. Furthermore, the client should be informed of the accessibility of counselling services that can be made available to the client as well as those that are affected by the disclosure.
- However, the client's attention should also be drawn to possible liability on delictual grounds for non disclosure and negligent infection of another person as well as criminal prosecutions that may be instituted.
- Should a client persist in refusing to consent to disclosure, the social worker should request the client to do so in writing. The social worker should continue with vigorous counselling to win over the confidence and trust of the client with the intention or purpose of acquiring the client's confidence and consent to disclose at least to the sexual partner/s or anybody who may be at risk.
- As a last resort, and if there is a clear and imminent danger to the well-being of significant others or the community at large, the client should be informed of the social worker's intention to disclose the individual's HIV status to those that are in immediate danger unless the HIV positive person obtains an urgent court interdict to prevent the social worker from doing so. The client should be given a period of no more than three days to respond.
- Furthermore, if the client summarily terminates his/her relationship with the practitioner or disappears without trace after having been advised of the need to disclose his/her status to the partner/s, and the social worker is reasonably convinced that the termination or disappearance is linked to the client's reluctance or unpreparedness to disclose his/her status, the social worker should go ahead and disclose the status to the known partner or partners.
- It should be noted that the HIV status of a client should not be recorded in a file that could be accessible to others.

### 3.5 Informed consent

#### 3.5.1 Definition

It is important to clarify exactly what is meant by informed consent. The verb of informed is "to inform". It, therefore, simply means that a person should be advised in detail of all the advantages, disadvantages and risks of a decision and therefore all the pro's and con's so that the person is fully informed when having to make a decision regarding consent. The present legal position, according to a decision of the Court, is that proper pre-counselling will be regarded as the minimum information required to constitute informed consent for an HIV/AIDS test. The same position should be upheld regarding the disclosure of an individual's HIV status.

#### 3.5.2 General guidelines to obtain informed and written consent

- (a) Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. It is recommended that social workers enter into a contract with a client as soon as possible and that this contract is in a written format.
- (b) Social workers should use clear and understandable language to inform clients of the purpose of services, risks related to the services, relevant costs, reasonable alternatives, the client's right to refuse or withdraw consent and the time frame covered by the consent.
- (c) Social workers should allow the clients to ask questions.
- (d) In instances where clients are not literate or have difficulty understanding the primary language in the practice setting, social workers should ensure that the client comprehends by providing them with a detailed verbal explanation.

- (e) In instances when clients lack the capacity to provide informed and written consent, social workers should protect their interests by seeking permission from legally authorised third parties. Social workers should ensure that the third party acts in a manner consistent with client's wishes and interest. Knowledge of the *Mental Health Care Act*, Act No 17 of 2000 and the *Child Care Act*, Act No 74 of 1983, is essential in determining the appropriateness of the signature or informed written consent. Social workers should take reasonable steps to enhance such client's ability to provide informed and written consent.
- (f) In instances where clients are receiving services involuntarily, social workers should provide information about the nature and extent of services including the extent of a client's rights to refuse service.
- (g) Social workers who provide services via the electronic media (such as computer, telephone, radio and television) should inform recipients of the limitations and risks associated with such services.
- (h) Social workers should obtain clients' informed and written consent before audio taping or video taping and interviewing clients or permitting observation of services by third parties.

### **3.6 Principle of clear and imminent danger**

Clear and imminent danger implies that an individual, family, group or community may be at risk or in a position where grievous bodily harm could be done to them.

Social workers have in the first instance a responsibility towards their clients. However, should the well-being of significant others be in danger, the social worker has a responsibility to also protect those that may be at risk.



### **3.7 Collaboration with other professions**

A social worker is not allowed to reveal the HIV status of a client to any other social worker whether or not working in a team context with other social workers concerned. The same principle applies to the supervisor of the social worker, the head of the relevant organisation or supporting staff working within the organisation.

### **3.8 Confidentiality in the practice setting**

The HIV status of a client must not be recorded in anyway whatsoever. Similarly, the HIV status of a client must not be discussed during panel discussions, meetings, within the office without a written consent of a client.

Every staff member must be instructed in the importance of maintaining the privacy of clients. Every practice should have clear procedures to ensure client confidentiality. It is also the duty of the employer to ensure that these procedures are implemented. Social workers and staff should be careful not to disclose confidential information regarding their clients during conversations in the public arena, semi-public areas such as hallways, waiting rooms, elevators, or when communicating over the telephone.

The following is an example of an undertaking of confidentiality that should be signed by an employee of an organisation:

*Address of employer*

Dear .....

**DECLARATION OF CONFIDENTIALITY**

I (full name) .....  
Identity number:..... hereby confirm that I understand that I may not make known any information of any kind whatsoever that has or may come to my attention as a result of my official duties to any unauthorised person whether verbally or in writing, without obtaining the prior approval to do so of the CEO/manager/supervisor/client. This is applicable after having left the employ of my current employer or any time in the future.

Yours sincerely

Signature: .....

Date: .....

**4. OBLIGATIONS OF SOCIAL WORKERS AND EMPLOYING BODIES**

- 4.1 An employer should have a clear policy statement regarding HIV/AIDS in the workplace.
- 4.2 The policy should clearly state that there will be no discrimination against an infected employee or employees who may be affected by being related or close to an infected person and that the principle of confidentiality will be upheld at all times should the infected or affected employee so desire.

**5. CONCLUSION**

Dealing with HIV and AIDS is a challenging matter and therefore social workers should acknowledge the fact that education and the further development of competencies to deal with infected clients and their significant others is imperative. This challenge relates not only to service delivery to infected clients, but also to the facilitation of prevention programmes to combat this pandemic.



### **CONFIDENTIALITY WITHIN OCCUPATIONAL SETTINGS**

A question relating to confidentiality within the workplace when both the client and the social worker are employed by the same employer often arises. The question relates to whether it could be regarded as unethical behaviour if the social worker discloses confidential information regarding the client/employee to the head or management who employ both the client and the social worker, should the employer request the social worker to do so. In dealing with this matter, the following principles should guide the conduct of the social worker:

- The general rules relating to confidentiality as contained in the code of ethics apply.
- The relationship between the social worker and the employer regarding the confidentiality of information obtained from employees must be embedded in the service contract between the social worker and the employer.
- The written contract between the client and the social worker should clearly address the precise manner in which the principle of confidentiality will be implemented, with specific reference to the social worker's responsibilities towards both the employer and the employee.
- If the service contract of the employee (not the social worker) determines that the employer must subject him or herself to the services of the social worker when in the best interest of the employer as well as the employee, and if the employer agreed to this, such disclosure could be regarded as compelling the social worker to disclose the information.
- However, in disclosing information to employers, social workers should disclose only those facts that are of relevance to a specific circumstance and that are required for the successful management of the organisation. As far as possible, the consent of the client should be obtained for the facts to be disclosed and the importance of this should

be explained to the client. The disclosure of the information should be directed to the specific manager concerned and its sensitivity emphasised.

- Under no circumstances is gossiping allowed about co-employees being clients of social workers and social workers are obliged to promote this principle vigorously.



**A LETTER OF PROTEST (GUIDELINE)**

Date: .....

**TO WHOM IT MAY CONCERN**

At the outset I wish to make it clear that in responding to the subpoena to hand over my notes and information regarding (your client's name) to the registrar of the High Court/Magistrate's court, and to give evidence, I am doing so **under protest**.

(Name of social worker)'s reluctance to hand over these documents and to give evidence are based on the following reasons/facts:

1. **Example:** *(Name of Social worker) has the responsibility to provide client X with a safe, confidential and healing space in which he or she can express him or herself freely on anything that may be troubling to him or her.*
2. **Example:** *The breaching of this confidentiality amounts to nothing short of betrayal of my client.*
3. **Example if it is a child involved:** *Example where a child is involved: The Constitution holds as paramount, in all matters affecting children, the best interests of the child. Social worker X does not believe that such a breach of confidentiality would be in (client name)'s best interests.*
- 4.
- 5.

(Name of social worker) does not wish in any way to obstruct the course of justice. However, should the court deem it necessary to obtain this information, (social worker ) would be prepared to meet privately with the Family Advocate/Magistrate on the understanding that he or she does not disclose the details of (social worker's)'s reports and notes but utilises them as a means to make recommendations. The said proposal would serve the best interest of (social worker's) client.

**South African  
Council for Social Service Professions**

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Name of social worker:

Qualification(s):

South African Council for Social Service Professions Registration  
Number:

Private Practice Number:



**INFORMATION REGARDING PROMOTION OF ACCESS TO  
INFORMATION ACT, ACT NO. 2 OF 2000**

The purpose of this Act is to promote a culture of transparency and accountability. In terms of this Act information held by the state and private bodies can be requested and accessed. This includes any person or partnership involved in a professional social service.

Any information that has been written down or recorded in some or other manner can be requested and accessed. When information is requested from the State, the requester need not provide any reasons for doing so. When information is requested from a private person or body, the requester needs to indicate why the information is needed to protect one of his or her rights. (The *Bill of Rights* can be referred to in the *Constitution*).

There are two categories of people who can request information, namely, personal requesters who have a personal interest in the information because the information is about him or her, i.e client, and there are third party requesters.

**Grounds for refusal of information**

**(i) Right to Privacy**

A request can be denied if someone's right to privacy will be undermined.

**(ii) Safety of Individual or Property**

The safety of individuals should not be compromised by disclosure of information.

**(iii) Law Enforcement**

Law enforcement should not be compromised by the disclosure of information, for example when the matter is sub judice.





## GLOSSARY

The Glossary is an addition to "Definitions" as contained in the *Rules relating to the Course of Conduct*.

Terms in this document will have the following meaning:

**Advertisements** – refers to any form of communication, public appearance or introduction which has or may have the effect, directly or indirectly of a social worker in his or her capacity as such, or his or her practice or his or her services or the efficiency thereof being publicised, or clients being solicited, and "advertise" has a corresponding meaning.

**Client systems** – refers to an individual, family, group or community, directly or indirectly, receiving/utilising services from a practitioner in his or her professional capacity or from an organisation and where a verbal or written contract has been entered into.

**Colleague** – refers to any other social service professional in respect of which a professional board has been established.

**Continued Professional Development (CPD)** – refers to a statutorily determined process that requires persons registered with the South African Council for Social Service Professions to obtain a specified number of points by attending or participating in activities of a professional nature in order to remain registered with South African Council for Social Service Professions.

**Employer** – refers to any person who employs or provides work to a social worker in a professional capacity and remunerates the social worker expressly or tacitly undertakes to remunerate, or permits a social worker to assist in any manner in the carrying on or the conducting of a social work practice.

**Other professionals** – refers to the persons registered with other Statutory Councils.

**Partner** (*not referring to sexual partner in Annexure B*) – refers to a colleague or any other person with whom a social worker enters into an agreement jointly to conduct a practice to their mutual benefit and "partnership" has a corresponding meaning.

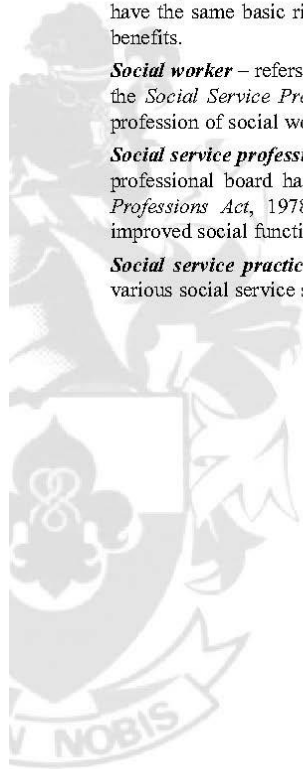
**Practice settings** – refers to an employer who is a social worker or who employs social workers to provide social work services

**\*Social justice** – refers to the ideal condition in which all client systems have the same basic rights, security, opportunities, obligations and social benefits.

**Social worker** – refers to the duly registered person authorised in terms of the *Social Service Professions Act, Act No 110 of 1978* to practice the profession of social work.

**Social service professions** – refers to all professions in respect of which a professional board has been established in terms of the *Social Service Professions Act, 1978*, to provide professional services aimed at the improved social functioning of people.

**Social service practice** – refers to social workers providing services in various social service sectors.



### **REFERENCES/SOURCES**

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**1. Personal Contributions (Drafters and Committee Members/  
South African Council for Social Service Professions)**

1.1 Drafters

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1.2 Disciplinary Policy Committee of SACSSP

Mrs Janet Du Preez

Mrs Mollie Kemp

Dr Annette Janse van Rensburg

1.3 Members of the SACSSP

Council members

**2. Literature**

2.1 Alfred Allan 2002: The Law for Psychotherapists and Counselors. American Counseling Association Ethics

2.2 A Resource Manual HIV/AIDS and the Law: AIDS Law Project and AIDS Legal Network 2003

2.3 General Social Care Council 2001: Codes of practice for social care workers and codes of practice for social care workers employers

2.4 Reamer, F.G 1994. Social Work Malpractice and Liability Columbia University Press

**3. Statutory Bodies**

3.1 Board of Psychology, Health Professions Council of S A (HPCSA) 1999. Draft Ethical Code of Professional Conduct

**South African  
Council for Social Service Professions**

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- 3.2 HPCSA: Acts or omissions which constitute improper or disgraceful conduct
- 3.3 General Social Care Council (GSCC) 2002 Codes of practice for social care workers and their employers. London
- 3.4 South African Council for Educators Handbook for the Code of Professional Ethics: 2002
- 3.5 The Social Service Professions Act, Act 110 of 1978.

**4. Associations**

National Association of Social Workers (NASW) 1999 Code of Ethics

**5. Organisations**

- 5.1 Department of Social Development
- 5.2 Department of Correctional Services
- 5.3 University of the Witwatersrand

