

**YOUTH DIVERSION FOR FIRST TIME OFFENDERS:
A VIEW FROM PRIMARY CAREGIVERS AND
FAMILY MEMBERS**

MARLEE LOUISE ELS

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FAMILY MEMBERS**

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November 2012**

DECLARATION

I, Marlee Louise Els, declare that:

1. The research reported in this dissertation, except where otherwise indicated, is my original research.
2. This dissertation has not been submitted for any degree or examination at any other university.
3. This dissertation does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.
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Signature:

Date: November 2012

As the candidate's supervisor, I have approved this dissertation for submission.

Signature:

Name: Dr. Hema Hargovan

Date: November 2012

DEDICATION

This research is dedicated to two very special souls that passed early in 2011 after bravely fighting chronic and ultimately fatal illnesses; Pixie and Tiffany. Your loss was more than I could bear, and at times when I felt like giving up, it was your courage, strength and will to live that inspired me and kept me going. I have learnt so much from the two of you and I sincerely hope that I can one day make a difference in other people's lives, the way you did in mine.

Love you always and forever. Until we meet again...

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ABSTRACT

In recent years, youth offending has become the subject of widespread public interest and over the past few decades, various child reform movements have taken place. Child justice reform efforts focus on children's reintegration into their families and communities and the enhancement of prospects for a crime-free life in the future. It is a system that focuses on holding children responsible through restorative justice approaches. The Child Justice Act (75 of 2008) seeks to achieve this balance by reflecting societal concerns and responding reflectively and proportionately to children in the criminal justice system. The Act is based on restorative justice principles and provides the framework for a criminal justice system specifically geared to deal with youth offenders. Section 2 of the Act makes specific provisions for the diversion of children away from the criminal justice system to suitable reintegrative and rehabilitative diversion programmes. Currently diversion programmes are aimed at the youth, with minimal input required from parents and family members. While much has been written and researched about how dysfunctional families can contribute to children turning to crime, the role of parents and families more generally in preventing repeat offending and misbehaviour is under-researched. There is also a dearth of research on the implementation and outcomes of diversion programmes and more specifically on the role of the family before, during, and after the diversion process. An intriguing issue is how parents of children attending a diversion programme view their child's offending behaviour, the diversion process itself, their involvement in the process, and ways that can be introduced to improve and/or increase their level of involvement. The study found that the majority of the children benefitted from the programme in terms of positive behaviour change and preventing reoffending. Parents who had supported their children during the course of the programme tended to have better relationships with their children, and were able to sustain the outcomes of the programmes more efficiently. This study concludes by making recommendations in respect of how restorative justice values and principles can be adequately incorporated and enhanced through the participation of all children in conflict with the law in Family Group Conferencing.

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CHAPTER 1

INTRODUCTION

In the little world in which children have their existence, whosoever brings them up, there is nothing so finely perceived and so finely felt, as injustice

(Dickens, 1863: 50).

1.1. Introduction

In earlier societies, no distinction was made between childhood, adolescence, and adulthood, and children who were seen as „miniature adults’, were considered the property of their parents. Not only were children expected to act like adults (without proper guidance and support), but they were also harshly disciplined and punished for deviating from the prescribed behavioural code set out for them by adult society. In the absence of specific legislation to deal with child offenders, children who displayed deviant and criminal behaviour were exposed to cruel and inhumane treatment. It was believed that if a child’s will was not broken by harsh punishment, society would soon fall into disarray and become disorderly. Punishment included beatings, floggings, and stoning. In some cases children would even be given the death penalty for continually disobeying their parents (Bezuidenhout, 2008: 2-4). While children were not always treated differently from adults, today it is widely accepted that they are “less responsible for their actions” and “more responsive to change” (Peacock, 2008: 61). Similarly Ron Taffel, a psychologist and parenting expert, says that “even as kids reach adolescence, they need more than ever for us to watch over them. Adolescence is not about letting go. It is about hanging on during a very bumpy ride” (cited in Nelson, 2012). Children and adolescents need love, support, and care from parents and primary caregivers (hereafter cumulatively referred to as parents) in order to stay out of trouble and to reach their full potential.

The recently implemented Child Justice Act 75 of 2008 (hereafter referred to as the Act) has a strong restorative justice ethos and provides the framework for a criminal justice system (CJS) specifically geared for children in conflict with the law. Section 2 of the Act makes specific provisions for the diversion of child offenders away from the formal CJS. The

integration of the child back into the family and community is one of the main objectives of diversion. Through restorative diversion programmes, child offenders have the opportunity to express their views about the impact the crime has had on them, their families, and their victims. Not only does diversion encourage children to take responsibility for the harm they cause, but it also creates an opportunity for them to talk about the circumstances surrounding their offending behaviour (Gallinetti, 2009: 43). By diverting children “away from punitive justice and providing them with a context in which to change their antisocial ways, it stands to lay the foundations for a much safer, healthier society” (Pinnock, 2009).

According to the United Nations World Youth Report (2003: 202), the family is the primary institution of socialisation and plays an important part in the prevention of youth offending. It can be said that family life ultimately determines a nation’s stability and strength, and that the well-being of any society depends on the ability to “prepare well-adjusted, responsible, well-educated young people to step forward as the older generation passes” (Naidoo, 2007: 52). However, in a multi-racial and multi-cultural society such as South Africa, the task of defining ‘family’ becomes difficult, as will be elaborated upon in the forthcoming chapters.

My main aim is to explore the experiences of parents whose children have attended and/or graduated from Khulisa’s youth diversion programmes. The aim of this research is to understand the role of families in the diversion process: whether families are sufficiently involved during the diversion programmes, and if not, whether it is possible to involve them at the referral, programme, and post-programme stages - and what ways could be introduced to improve and/or increase their level of involvement.

In recognising the contextual specificity of South African families, I adopt a broad definition of families in this research and accept its all-encompassing character and emphasis on non-nuclear family structures. I therefore prefer Ansell’s (2005: 66) view that in the context of communities in the Third World, families may be “close knit or diffuse, hierarchical or egalitarian, extended or nuclear, female headed or polygynous, co-resident or scattered”.

This research also seeks to explore the role of family and/or significant others in sustaining the outcomes of the diversion programmes. One way in which the effectiveness of these programmes can be determined is by eliciting the views of significant family members such

as parents. The main question to be asked is, “What are the experiences of parents whose children have attended and/or graduated from Khulisa’s youth diversion programmes?”

The Act (Section 2(b)) itself is committed to promoting a spirit of *ubuntu*, and states that “parents, appropriate adults and guardians should be able to assist children in proceedings in terms of this Act and, wherever possible, participate in decisions affecting them” (Section 3(g)). *Ubuntu* not only refers to and includes key values of compassion, group solidarity, respect, human dignity, conformity to basic norms, and collective unity, but also denotes humanity and morality (Sloth-Nielson & Gallinetti, 2011: 69). According to the Act, *ubuntu* can be achieved through:

...fostering a child’s sense of dignity and worth, reinforcing children’s respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safe-guarding the interest of victims and the community, supporting reconciliation by means of a restorative justice response, and by involving parents, families, victims and, where appropriate, other members of the community affected by the crime in procedures in terms of this Act in order to encourage the reintegration of children.

The *ubuntu* philosophy is characterised by an understanding that child offenders are connected to and rooted in their families and communities, and that a child’s sense of dignity and worth, as well as respect for the human rights and freedoms of others, are reinforced. Thus, any resolutions regarding the outcome of a child’s sentence should take the victim, the child’s family, and community into account (Sloth-Nielson & Gallinetti, 2011: 70). The Act further states that diversion programmes must “include a restorative justice element which aims at healing relationships, including the relationship with the victim” (Section 55(2)(b)), it should “seek to ensure that the child understands the impact of his or her behaviour on others, including the victims of the offence, and may include compensation or restitution” (Section 55(2)(c)), and it must “involve parents, appropriate adults, or guardians, if applicable” (Section 55(2)(h)).

My interest in issues affecting children and the protection of their rights inspired me to engage in a preliminary desktop study on Khulisa’s ‘Positively Cool’ diversion programme in 2010, as part of my Honours studies in criminology. This exercise provided me with valuable insights into the nature and extent to which young people are being diverted from court. One of the findings of my research was that continuous monitoring and evaluation of the active involvement of families and communities in diversion programmes are crucial for

their successful implementation (Els, 2010: 64). However, the role of families is ignored by both legislation as well as the „implementers’ of diversion programmes, who are currently non-governmental organisation (NGO) service providers. I therefore have a practical objective for doing this research. My aim is firstly, to be able to suggest possible changes to the provisions for diversion in the Act and the way in which diversion programmes are developed and implemented, and secondly, to suggest ways in which diversion programmes may be developed and implemented in the future by the relevant government departments such as the Department of Social Development (DSD), Khulisa and other NGO services providers.

The study is located at two sites offering the same diversion programmes, namely Pinetown and Phoenix. I chose Pinetown primarily because I grew up there and was concerned with the number of youth coming into conflict with the law in the area. I also had easy access to an NGO who provides diversion services for youth who are diverted from the Pinetown court. Similarly, youth are referred by the Phoenix court to the diversion programmes run by Khulisa in Phoenix. By exploring two sites I was able to expand and broaden my research area, draw similarities, and make comparisons.

This research employs a qualitative participatory approach. By attending actual sessions during the diversion programmes I was able to observe the involvement of children and their parents. Face-to-face interviews with the parents of the youth enabled me to obtain first-hand information on parents’ experiences of the whole diversion process and the outcomes thereof. I spent time at Khulisa’s premises at both sites and observed how the diversion programme facilitators and the rest of the staff at Khulisa interacted with the parents and vice versa.

1.2. Conceptual definitions

In this dissertation I make use of a range of terms and concepts that may not be familiar to the reader. It is therefore essential that key concepts relating to child offending and justice are clarified and explained.

1.2.1. Child

According to the Children’s Act (38 of 2005) and the Child Justice Act (75 of 2008), a child refers to any individual who is under the age of 18 years. The Act can be applied to three

categories of children: children below 10 years of age at the time of the commission of the offence, children older than 10 years but younger than 18 years at the time of the arrest, and persons who are 18 years or older but under 21 years of age. It is important to note that children under the age of 10 years cannot be held criminally liable for their actions and are usually referred to a children's court where they receive counselling. In certain circumstances, a 'child' could also refer to an individual who is older than 18, but under the age of 21 years. Thus, if the individual was under the age of 18 years when committing the offence, but is currently older than 18 (but younger than 21 years), the Act will still regard and treat such an individual as a child (Gallinetti, 2009: 15). For the purposes of this study, the definition of a child as provided for in the Act will be used, seeing that only individuals who are under the age of 18 years can be considered for diversion. For the purposes of this study the terms 'child' and 'youth' will be used interchangeably.

1.2.2. Diversion

Diversion is closely linked to restorative justice and is the referral of cases away from formal criminal court procedures in order to protect children from the negative effects of the formal justice system (Gallinetti, 2009: 43). In terms of youth offending, Botha (2007: 5) defines diversion as the formal referral of cases concerning children accused or charged with offences, away from a formal court to suitable diversion programmes. Diversion does not make offenders less accountable or responsible for their actions; instead it provides them with the opportunity to re-think their lives without acquiring a criminal record (Nieman, 2002: 16).

According to the Act any child under the age of 18 years can be diverted. However, in order for a child to be considered for diversion and consequently avoid the stigmatisation of acquiring a criminal record, he or she must first acknowledge and accept responsibility for the harm caused (Beukman, 2008: 162). Diversion can be achieved on three levels: prosecutorial diversion, preliminary inquiry diversion, and trial diversion (Gallinetti, 2009: 43).

1.2.3. Diversion programmes

There are various formal and informal diversion programmes designed to aid young offenders in conflict with the law (Botha, 2007: 5). Not only do these programmes aim to teach the children to take responsibility for their actions, it also seeks to prevent recidivism. Formal

diversion programmes are structured and generally requires a period of supervision, whereas informal diversion programmes do not require supervision and are generally loosely structured. Formal diversion programmes include programmes such as those offered by the Youth Empowerment Scheme (YES), the National Institute for Crime prevention and the Reintegration of Offenders (NICRO), and Khulisa. Informal diversion programmes include an oral or written apology, a warning by the prosecutor, as well as symbolic restitution to the victim by the offender (Beukman, 2008: 162, 166).

1.2.4. Family members, appropriate adults and primary caregivers

Families are “social groups that are related by blood (kinship), marriage, adoption, or affiliation with close emotional attachments to each other that endure over time and go beyond a particular physical residence” (Amoateng & Richter cited in Sherriff, Seedat & Suffla, 2010). This definition is relevant in the South African context considering its all-encompassing character and consequent emphasis on non-nuclear family structures (Ansell, 2005: 66).

A „family member’ in relation to a child can refer to a parent of the child or any other person who has parental responsibilities and rights in respect of the child, namely a grandparent, brother, sister, uncle, aunt, or cousin of the child, or any other person with whom the child has developed a significant relationship based on psychological or emotional attachment which resembles a family relationship. According to the Children’s Act (38 of 2005), an appropriate adult refers to any member of a child’s family, including siblings who are older than 16 years of age. An appropriate adult however, also refers to a „caregiver’. A caregiver, according to the Children’s Act (38 of 2005), can be defined as:

...any person other than a parent or guardian who factually cares for a child and includes; a foster parent, a person who cares for a child with the implied or express consent of a parent or guardian of the child, a person who cares for a child whilst the child is in temporary safe care, the person at the head of a child and youth care centre where a child has been placed, the person at the head of the shelter, a child and youth care worker who cares for a child who is without appropriate family care in the community, and the child at the head of a child-headed household.

1.2.5. Delinquency, misbehaviour and crime

In previous years juvenile delinquency was the most common word used to refer to crimes committed by children. Today however, it has been acknowledged that „juvenile

delinquency' has a negative label attached to it, and as a result, the word misbehaviour is used in its place. Misbehaviour does not have negative connotations attached to it and can be defined as any type of wrongdoing. Misbehaviour includes concepts such as criminal offences and status offences. A criminal offence can be defined as "an illegal action committed by an individual who can be blamed for it and can be punished by the authorities", whereas a status offence can be defined as "an antisocial action that involves a threat, violation or infringement of the stability and security of society and its members" (Bezuidenhout, 2008: 9-10).

All criminal offences are dealt with in the Act and are divided into three schedules depending on the seriousness and severity of the offences. Schedule 1 offences are the least serious while Schedule 3 deals with the most serious offences (Gallinetti, 2009: 16).

1.2.6. Risk and protective factors

Risk factors refer to "characteristics of the individual or the circumstances that are associated with the harmful or otherwise negative outcome" (Maree, 2008: 56). Similarly, Walsh and Ellis (in Maree, 2008: 56), describe a risk factor as something in the individuals' personal characteristics or their environment that increases the likelihood of violent misbehaviour. „At risk' can thus be defined as "a set of presumed cause and effect dynamics that places the child or adolescent in danger of negative future events" (Naidoo, 2007: 5).

Protective factors refer to and represent "characteristics of the individual or his or her circumstances that mediate or buffer the effects of the risk factors" (Maree, 2008: 57). These factors are also linked to the concepts of resilience and desistance.

1.2.7. Recidivism

The word recidivism is derived from the Latin word *recidere* (which literally means „to fall back'), and can generally be defined as the "reoccurrence of a negative behaviour pattern" (Schoeman, 2002: 36). Song and Lieb (1994: 3) define recidivism as the rearrest, reconviction, or a return to prison of an individual who has previously been convicted of a crime, while Maltz (cited in Rubin & Dodge, 2009: 3) views it as the "reversion or relapse to criminal acts of an offender who has been subject to punitive sanctions or rehabilitative treatment for previous conduct".

In terms of crime and youth offending however, recidivism refers to “an individual’s tendency to persistently and repeatedly engage in criminal conduct or to habitually relapse into crime subsequently leading to rearrest, reconviction and reincarceration” (Schoeman, 2002: 38). In this research a broader definition of recidivism is adopted and includes not only those cases that involve the police, but also cases relating to the reoccurrence of negative behaviours such as criminal and/or antisocial acts.

1.2.8. Restorative justice

Howard Zehr (cited in Skelton & Batley, 2006: 6) defines restorative justice as a process that seeks to involve “those who have a stake in a specific offence to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible”.

According to the Act, restorative justice can be defined as:

...an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation.

Thus, restorative justice can be seen as an approach to justice that seeks to promote reconciliation, restitution, and responsibility through the involvement of all stakeholders, namely parents, families, victims, and communities. Rather than focusing on the crime specifically, restorative justice focuses on the wrongdoing as well as the crime committed against individuals and their communities (Schulz, 2009: 1). In so doing, any harm caused by the offence can be identified and addressed through accepting responsibility, making restitution, preventing recidivism, and promoting reconciliation and reintegration (Gallinetti, 2009: 14).

The Act is firmly based on the principles of restorative justice and with the assistance of NGO service providers such as Khulisa and NICRO, various restorative justice practices are designed and implemented.

1.2.9. Family Group Conferencing

Family Group Conferencing (FGC) is an example of a diversion programme and is also firmly based on restorative justice principles. Family decision-making approaches such as FGC share a common set of goals, namely “the participation of family in child protection, the

strengthening of families and kinship networks, the connection or reconnection of children to their family and wider kinship group, and the continuity of care for children” (McCold, 2008: 31). Thus, since families and communities have traditionally dealt with offending behaviour, it is believed that they know best how to deal with a child’s offending and deviating behaviour.

FGC provides the victim and offender with an opportunity to tell their stories, as well as finding a solution to the problem that is agreed upon and accepted by all parties involved. Participants involved in FGC include the victim, the family and other support persons of the victim, the offender, and the family and other support persons of the offender. Other concerned parties who can attend these sessions include the police, social workers or affected members of the community, as well as a facilitator (Nieman, 2002: 20).

1.2.10. Key role players

A key role player refers to a person who assumes or acts out a necessary and particular role. Once a child has been charged with a criminal offence, there are various key role players that he or she will come into contact with. These include police officials (members of the South African Police Service (SAPS) or municipal police service); probation officers (qualified social workers who have been appointed as probation officers); prosecutors (individuals who have been appointed to investigate and prosecute crimes); presiding officers (judicial officers presiding at the child justice court); and the inquiry magistrate (judicial officer who presides at the preliminary inquiry). A diversion service provider refers to service providers who have been accredited to deliver diversion services (Gallinetti, 2009: 14).

1.2.11. Khulisa Social Solutions

Khulisa Social Solutions is a national NGO that is not only committed to reducing crime through the professional development and delivery of initiatives and programmes, but also aims to empower individuals, restore relationships, and develop communities (Khulisa Social Solutions, 2011).

Khulisa works in partnership with numerous role players such as corporations, NGOs and government departments in order to coordinate and facilitate projects that are focused on crime reduction, victim empowerment, poverty alleviation, ex-offender rehabilitation,

enterprise development, and community upliftment. All programmes are designed using a holistic perspective which provides a „multi role-player framework’ thus allowing for large scale interventions to take place (Khulisa Social Solutions, 2011).

1.3. Overview of the different chapters of the research study

The first chapter of this study provided a brief introduction to the topic of youth offending in general, the treatment of youth, youth justice, the role of family, youth diversion, as well as the research objectives identified for this study.

Chapter 2 deals with the research methodology used for this study: the background and outline of the research problem; the research aims and objectives, including key questions to be answered; the relevance and value of the study; the research approach and design; the sampling procedure; data collection; data analysis; ethical issues and considerations; reliability and validity; and the challenges and limitations of the study.

Chapter 3 focuses on the background of the study and takes a deeper look into the two sites used for the study, namely Pinetown and Phoenix. Infrastructure and basic services, demographics and social characteristics, as well as crime and violence is discussed separately for both sites.

Chapter 4 focuses on youth, youth offending, and the family, and the main theoretical framework used for the study. The family and the importance of family support as well as the relevant theories pertaining to youth offending and family support are discussed.

Chapter 5 deals with youth justice and the diversion of youth offenders in South Africa and abroad. Here the focus is on the major laws, acts, treaties, and instruments that have changed the ways in which children and youth are treated by the CJS. Diversion and FGC is also discussed.

Chapter 6 is the data analysis chapter where the data collected during the research is analysed and interpreted. The data in this chapter is also compared to and grounded with a review of the relevant literature.

Chapter 7 offers conclusions and recommendations pertaining to the research results of the study. This chapter looks at whether or not parents have been sufficiently involved in the diversion programmes offered by Khulisa, whether their children have re-offended since the programmes, and whether or not parental support is necessary from the outset, during, and after the programmes have been completed. This chapter also proposes FGC as a way in which parents can be actively involved during the diversion process, thereby strengthening familial relationships as well as empowering parents to effectively deal with their children's behaviour in the future.

1.4. Conclusion

While children were often harshly treated for displaying forms of misbehaviour in the past, today various laws, treaties, and practices have emerged to deal specifically with youth offenders. In South Africa, the Act is based on a restorative justice framework and reinforces the notion of *ubuntu*, stating that individuals are rooted in and connected to their families and communities. Diverting children away from the CJS is one of the primary objectives of the Act; it ultimately encourages the rehabilitation and reintegration of children back into their families and communities. Families play crucial roles in their children's lives; I therefore wanted to understand their roles during the diversion process, explore their experiences during the course of the programmes, and find out whether or not they had any part in sustaining or not sustaining the outcomes of the programmes.

The next chapter discusses the research methodology used for this study.

CHAPTER 2

METHODOLOGICAL ORIENTATION

2.1. Introduction

Although each research project is unique, depending on a number of variables (such as time, place and approach), all research projects must have “a clearly stated research problem or goal” as well as a “research design that tells how the data will be gathered and analyzed” (Bailey cited in Tshem, 2009: 73). This chapter provides a description of the methodology utilised in conducting the research and includes an outline of the research problem, research aims and objectives, relevance and value of the study, research approach and design, sampling procedure, data collection, data analysis, ethical issues and considerations, reliability and validity, as well as the challenges and limitations of the study.

2.2. Background and outline of the research problem

There is a dearth of research on the implementation of diversion programmes in South Africa and very little information available on the actual outcomes of these programmes. The starting point for this study was a comprehensive review of articles, books, legislation, documents, and online NGO reports, policy documents, municipal reports, and conference papers on child justice reform and diversion, both globally and in South Africa. The study is socio-legal in nature and draws from law and social sciences, specifically community development, criminology, and sociology. The main focus of the study is the role of family and significant others in sustaining the outcomes of diversion programmes. I therefore explored firstly, the actual level of involvement of families and caregivers at the inception and during the course of the diversion programmes; secondly, if involvement was minimal, whether it would be possible to involve them at the referral, programme and post-programme stages; and thirdly, in what ways their involvement could be improved or increased.

2.3. Research aims and objectives

I began this research with an examination of the most important legislative and policy developments in child justice and more specifically diversion, in South Africa and abroad. While I deemed it necessary to explore the main theoretical underpinnings and objectives of

diversion as a way of dealing with children in conflict with the law, the main focus of my study was the role of parents in the diversion process, with specific focus on the diversion programme that their children had been referred to and attended. Through face-to-face interviews with parents I wanted to find out whether the programme has had a positive influence on the participants in terms of behaviour change and recidivism.

I was particularly interested in the capacity of family members to deal with their children after completion of the programme, in whether the family had contributed to the outcomes being sustained or not, and whether parents themselves still face challenges with regards to their children's behaviour. Through in-depth interviews with key informants such as the programme manager and programme facilitator I obtained perspectives on whether or not parental involvement and support is necessary from the outset, during the programme, and/or after the programme. While restorative justice outcomes are explicit in the Act, it was also important to obtain first-hand information about whether restorative justice values and principles had been sufficiently incorporated in the programme as required by the Act. I also explored the potential for the incorporation of FGC as a significant component of pre-trial diversion programmes.

Today it is widely accepted that families are responsible for the socialisation of their children, that children acquire their norms and values within families, and that it is the responsibility of families to monitor and ensure that their children conform to these norms and values (Tshem, 2009: 30). I made use of a family systems approach which proposes that individuals are open systems that constantly interact with the environment, thus exchanging information and energy (Cloete & Stevens, 1995: 65). Communities and societies are thus generally viewed as systems with highly integrated parts that function together with each part contributing to the smooth functioning of the whole (Henslin cited in Tshem, 2009: 30). This approach advocates the importance of family as well as the importance of basic tasks and functions they are expected to perform (Cloete & Stevens, 1995: 65).

The study draws on sociological and criminological theories concerned with youth offending, youth justice, and family support in general. Since the 18th century, numerous theories and explanations on youth offending and youth justice have emerged. The family systems, reintegrative shaming, and restorative justice theories are not only concerned with the question of „why’ people commit crimes, but also focus on ways in which to support and

rehabilitate both victims and offenders. The larger objective of this study was to determine how diversion programmes can be improved so that re-offending is minimised.

The key questions for this study are:

- What is the role of family, if any, in sustaining the outcomes of the programmes?
- In what ways should families be involved in youth diversion programmes?
- Has the behaviour of young people who have participated in the youth diversion programmes changed in any significant ways?
- Has there been re-offending since participating in the diversion programmes?
- How do we evaluate the effectiveness of youth diversion programmes?
- What is the potential for the incorporation of FGC into all diversion programmes?

Broader objectives and questions that will be looked at and answered in this study are:

- What are the most important legislative and policy developments in child justice and more specifically diversion, in South Africa and abroad?
- What are the main theoretical underpinnings and objectives of diversion as a way of dealing with children in conflict with the law?

2.4. Relevance and value of the study

Currently, the practical implementation of diversion remains a challenge; with the general lack of awareness of available programmes or even the lack of programmes to which children could be diverted (Gallinetti, 2009: 12), especially in rural areas. Furthermore, government departments such as the DSD are finding it extremely difficult to provide these programmes due to a lack of funding, limited resources, and time constraints. Given these implementation challenges, it is an accepted fact that diversion programmes have to be implemented through partnerships and collaboration with NGOs (Department of Justice & Constitutional Development, 2010: 20), mainly service providers like NICRO and Khulisa. However, a major question for the state departments who fund these programmes is whether the programmes are working in terms of generating positive behavioural changes and reducing or preventing recidivism.

This study is concerned with the role of family and/or significant others in sustaining the outcomes of the diversion programmes offered by Khulisa. One way in which the

effectiveness of the programmes can be determined is by eliciting the views of family members such as parents and primary caregivers.

Furthermore, in keeping with international currents in the criminal justice sector which call for evidence-based policy and practice, the Act specifically makes provision for the establishment of an integrated information management system with the main aims being mapping the flow of children through the CJS, effectively monitoring and analysing trends and interventions, and providing qualitative and quantitative data relating to arrests, assessments, preliminary inquiries, diversion, and sentencing (Department of Justice & Constitutional Development, 2010: 30).

Currently no information is available on how family members see their roles when their children come into conflict with the law and are referred by the court to Khulisa's diversion programmes. Questions such as whether they have been sufficiently involved, and their roles in sustaining or not sustaining the programme outcomes remain largely unanswered. In the light of these challenges, the need for a study of this nature is self-evident. It is envisaged that the research will be beneficial not only to the funders (government departments and overseas donors), but also to the service providers as it will assist in informing and refining their future practice in terms of the development, implementation, and accreditation of diversion programmes.

This research makes a valuable contribution to research on youth diversion in South Africa. While countries such as New Zealand, Australia, and England have recognised the importance of hearing from and including families and communities in youth diversion programmes (Osmand, 1994; Polk, Adler, Muller & Rechtman, 2003; Moffatt, 2011), currently no information or research is available on this topic in South Africa, due in part to the fact that the Act has only been in operation for the past two years.

2.5. Research approach and design

A research design can be defined as the "planning of any scientific research from the first to the last step" (Bless & Higson-Smith cited in Tshem, 2009: 73). It is important to outline the research design of each study to enable other interested researchers to replicate the study.

Due to the fact that research methods and techniques are task specific, different studies will utilise different methods or techniques to best suit their research goals and objectives (Mouton, 2002: 38), and thus the nature of the data and the research problem will ultimately influence the choice of research design and methodology. The predominant approaches to conducting research in the social sciences are qualitative and quantitative paradigms. Not only does each paradigm approach the research question differently, but each has its own set of advantages and disadvantages (Neuman, 2000: 16).

While qualitative research typically includes attention to dynamic processes and aim to discover or develop new concepts, quantitative research looks at static categories and imposes preconceived categories on the individuals and the events that they observe (Gerson & Horowitz in May, 2002: 199). The choice of a research design and methodology is not only dependent on the nature of the data, but on the research problem as well (Leedy & Ormrod, 2005: 86). For the purposes of this study, a qualitative approach was deemed most appropriate. My aim was to obtain information from parents regarding their children's behaviour during and after completion of a youth diversion programme, thereby gaining a deeper understanding of how Khulisa's programmes are being implemented and how parents have experienced them.

This study is based on a „sociological model’; a scientific inquiry that is also “social practice aimed at solving certain theoretical and empirical problems” (Mouton, 2002: 18). In addition, it is descriptive and exploratory in nature. Exploratory studies are conducted in cases where no or very little prior research has been conducted. Descriptive research includes empirical generalisations, facts, data, narratives and stories, and provides truthful descriptions of phenomena in the world. In addition, descriptive studies make claims about “*how* things are” and “*what* the actual state of affairs or fact of the matter is” (Mouton, 2002: 102).

Qualitative research is a broad approach that aims at describing and understanding human behaviour rather than merely explaining it. It is flexible, discovery orientated, exploratory, and usually involves in-depth collection and analysis of information from small groups of participants. It is especially effective in obtaining culture-specific information about the values, opinions, behaviours, and social contexts of particular populations, and also has the ability to provide rich and complex textual descriptions of how people experience a given

issue (Mack, Woodson, MacQueen, Guest & Namey, 2005: 4). In addition, qualitative research is said to be naturalistic (emphasises the study of attitudes and behaviours in their „natural settings’ as well observing the „normal course of events’ without interfering or intervening); process orientated (it studies processes over time); and context sensitive (emphasises aspects of social, historical and physical contexts for understanding the social world) (Centre for Civil Society, 2003: 49).

According to Leedy (cited in Tshem, 2009: 76), qualitative research can be regarded as a „warm’ approach that is primarily concerned with human beings, their interpersonal relations, values, and belief systems. Thus, qualitative researchers are not only concerned with “objectively measurable „facts’ or „events’, but also with the ways that people construct, interpret and give meaning to these experiences” (Gerson & Horowitz in May, 2002: 199). Qualitative data therefore provides the most meaningful data as it gives account of those who have had first-hand experience. Furthermore, researchers are not only able to get a more “in-depth understanding of a situation”, but they also get to know the participants personally as they are drawn into the world of the participants (Tshem, 2009: 75). Generally qualitative research investigates small and distinct groups in-depth, and makes context-based generalisations (Nieman, 2002: 172).

As mentioned previously, qualitative research examines phenomena in their natural settings, attempts to capture what is happening without being judgmental, presents people in their own terms, and tries to represent them from their own perspectives so that the reader can see, appreciate, and understand their views. An advantage is that this method involves rich, contextual perspectives on different issues mentioned by participants, as well as the possibility of producing new theories and hypotheses (Centre for Civil Society, 2003: 49). With qualitative research methods, the relationship between the researcher and the study participant is less formal, more flexible, and there is greater spontaneity and adaptation in the interaction between the study participant and the researcher, thus giving participants the opportunity to respond in greater detail, and more elaborately (Mack, et al., 2005: 4).

However, the limitation with this approach is the costs involved in studying large groups of participants. Due to these financial and time constraints, researchers often choose to study smaller groups of people with the result that the findings cannot be generalised to the wider population (Centre for Civil Society, 2003: 49). However, I concur with Mack, et al. (2005:

2) who states that “gaining a rich and complex understanding of a specific social context or phenomenon typically takes precedence over eliciting data that can be generalised to other geographical areas or populations”.

2.6. Sampling procedure

A sampling method can be defined as “a method employed by a researcher who instead of studying the whole population collects information from a group identified and chosen from the population of choice” (Tshem, 2009: 75). It also refers to “the unit of analysis, the number of units and how to choose those units” (Tshem, 2009: 75). Sampling is dependent on various practical considerations such as size, time, and costs, and due to these concerns, a researcher will generally seek to obtain a sample that is representative of the entire population. It is important to remember that one is very unlikely to draw a perfect representative sample.

A purposive, non-probability sampling technique was adopted. Purposive sampling involves grouping participants according to preselected criteria relevant to a particular research question, as well as using the judgement of the researcher who selects cases with a specific purpose in mind (Neuman, 2000: 198). Non-probability samples are used when small-scale research is undertaken (Somekh & Lewin, 2005: 219). I made use of non-probability, purposive sampling which depends on the availability and willingness of the participants to participate, and selected cases that are typical to the population in question (Terre Blanche, Durrheim & Painter, 2009: 139). I obtained rich data from parents and key informants in order to gain insight into a particular phenomenon and not necessarily to generalise the sample to the broader population (Patton, 2002: 40).

Some advantages to using these sampling methods are that they are less time consuming (no need for call backs), flexible, simple (no need for sample frames), and cost-effective. However there are also disadvantages, namely interviewer/researcher bias, the timing of the interviews (availability of participants), possibly unreliable information/statistics, and inability to generalise findings to the wider population (Ginns, 2009).

The study population for this study was essentially parents of children who have attended, completed and/or graduated from Khulisa’s youth diversion programmes. As required by the

Act, all the children are first time offenders that have committed Schedule 1 and 2 offences. Only cases referred by the Pinetown and Phoenix Courts to Khulisa's diversion programmes were included. Parents whose children are currently in the process of completing the programme and parents whose children have completed and graduated from the programme were included in the interviews. This particular time frame was chosen because although both parents and their children need at least a month after the programme to observe whether or not any „real' behavioural changes have taken place, and whether or not parents are able to effectively deal with their children's behaviour, it was important for me to understand how parents and children (who are currently going through the programme) experience the programme and how they view themselves in relation to their own involvement and support.

Sample size is usually decided on prior to data collection and depends on the resources and time available as well as the objectives of the study. According to Mack, et al. (2005: 4), “purposive sample sizes are often determined on the basis of theoretical saturation”. In qualitative research it is not necessary to collect data from everyone in a community in order to validate one's findings. Only a sample (or subset) of a population is selected for any given study (Mack, et al., 2005: 4). For the purposes of this research it was decided that twenty parents would be interviewed in order to fully understand their roles and experiences during the course (and after) the programmes.

2.7. Data collection

Qualitative data can be collected in various ways, namely observation, focus groups, interviewing, or obtaining relevant documents (Nieman, 2002: 172). The bulk of non-reactive research in sociology and crime and justice studies falls into the category of existing documents/statistics (also referred to as archival and secondary data analysis) (Kraska & Neuman, 2008: 431). For the purposes of this study I utilised the following data collection methods: „existing documents/statistics' analysis, semi-structured, face-to-face interviews, and participant observation.

2.7.1. Existing documents and statistics

While the main sources of existing documents are government departments involved in crime control, recent trends towards the privatisation of crime control efforts means that private organisations have to be considered as well. Secondary sources of data in the form of files

are usually available at public or private organisations for the purposes of policy decisions, or as a public service (Kraska & Neuman, 2008: 327). However, NGOs are not held to the same degree of transparency as government departments. This information is therefore difficult to access. In order to conduct research at Khulisa, I had written a letter requesting permission to have access to their organisation (see Appendix 1). Due to the fact that I had previously conducted documentary research at Khulisa, I was easily able to gain access.

2.7.2. Interviews

Conducting interviews offers contrasting ways to approach the social world and adds to the power and utility of qualitative approaches. In-depth interviews refers to a conversation between a researcher and a participant with the aim of collecting detailed information about that person, or their perspectives and experiences of a particular issue (Centre for Civil Society, 2003: 24). This data collection method provides one with an ideal opportunity to obtain information about individuals' personal histories, experiences, and perspectives (Mack, et al., 2005: 4). In order to overcome language barriers, all interviews were conducted in the language that made participants feel most comfortable. I therefore made use of interpreters when participants preferred to converse in Zulu. This was especially helpful in keeping the conversations going and allowing me to probe when necessary.

Twenty semi-structured, face-to-face interviews consisting of mainly open-ended questions were conducted with parents. I was interested in finding out whether and to what extent family members were equipped to deal with their children after completion of the programmes; whether or not the programmes had had a positive influence on participants in terms of behaviour changes and recidivism; whether the families had in some way contributed to the outcomes not being sustained; whether family involvement and support is necessary from the outset, during the programmes, and thereafter, to sustain the outcomes; whether restorative justice values and principles had been sufficiently incorporated in the programmes as required by the Act; and I wanted to explore the potential for FGC to be incorporated as a significant component of pre-trial diversion programmes, thereby compelling the involvement of families during the process.

I also interviewed key informants such as the diversion manager, diversion coordinator, diversion facilitators, and a senior prosecutor in order to obtain rich, in-depth information on the content, delivery, and challenges of the programmes, as well as the children's behaviour.

Semi-structured interviews consist of standard questions as well as one or two tailored questions to get clarification on an individual's reasoning (Leedy & Ormrod, 2005: 184). This is also known as probing; used to increase the richness and depth of responses (Patton, 2002: 372). By using open-ended questions and probing, participants are given the opportunity to respond in their own words. I mostly utilised open-ended questions to obtain the most information. Not only are open-ended questions appropriate when participants are required to explain or describe subjective feelings or opinions (Nieman, 2002: 176), but they also evoke responses that are "meaningful and culturally salient to the participant, unanticipated by the researcher and rich and explanatory in nature" (Mack, et al., 2005: 4).

Furthermore, with semi-structured interviews, the format of the interview was less rigid, allowing some flexibility in order to gain a „fuller-picture' and letting the conversation flow. I was also able to explore general views and opinions in more detail. The disadvantages to using semi-structured interviews are: interviewing skills are required, preparation must be carefully planned, they are often time consuming and resource intensive, confidentiality must be ensured, and data analysis skills are required (Muese & Olson, 2007). In order to overcome these challenges, I ensured that all research participants signed an informed consent form, and guaranteed all participants anonymity. In addition, I carefully planned and set up interviews to minimise time constraints and get the maximum number of interviews per day.

Conducting face-to-face interviews have various advantages such as "enabling the researcher to establish rapport with potential participants" and therefore "gain their cooperation", and by so doing yield high response rates (Leedy & Ormrod, 2005: 184). Personal interviews also allow the researcher to seek follow-up information and clarify ambiguous answers. Conducting face-to-face interviews however can prove to be very time consuming (Leedy & Ormrod, 2005: 185).

Parents, Khulisa's diversion manager, the diversion coordinator, and the facilitators of the diversion programmes, as well as the senior public prosecutor at the Pinetown Court, were

interviewed. Interviews allowed participants to answer the questions in their own words and without any restrictions. While all the parents and informants were asked similar questions (see Appendices 4, 5, 6 & 7), probes were used to extract new or interesting information from each interview session. A digital recorder was used to ensure that the information was accurately stored.

2.7.3. Participant observation

In addition to open-ended, face-to-face interviews, I also took on a qualitative, overt, participatory observation approach. I attended an English and Zulu Family Dialogue session, and an English Parent Workshop run by Khulisa at Pinetown and Phoenix. Participatory research aims to reflect and explore the views, feelings, experiences, and concerns of participants from their own perspectives. Overt participant observation refers to the fact that a group under study is aware of the researcher's presence, and permits it. Before the sessions started, the diversion programme facilitators introduced me as a researcher and explained to the parents the purpose of my research (Miller & Brewer, 2003: 214).

By attending these sessions I was not only able to observe the involvement of the children and their parents, but to see to what extent they participated in the sessions. I also observed the parents' reactions to the questions asked during the face-to-face interviews. In addition to this, I spent time at Khulisa's premises in Pinetown and Phoenix and observed how the diversion programme facilitators and the rest of the staff interacted with the parents and vice versa.

An advantage to using overt participant observation is that the participants involved are aware that they are being studied, allowing the researcher to be subjective and interact with the participants in a symbolic manner. Another advantage is that the participants will see the researcher as „neutral' and will be more likely to be open and honest with him/her. On the other hand, a disadvantage of using overt participant observation could be that the participants, knowing that they are being observed, may either over- or under-exaggerate their behaviour, feelings, and views. This is known as the „reactive effect', where information becomes distorted (Miller & Brewer, 2003: 215).

2.8. Data analysis

Qualitative content analysis was utilised to categorise and unravel textual readings for the literature review. I also made use of qualitative document analysis, otherwise known as qualitative content analysis which refers to “collecting and analyzing interpretively a systematically selected set of documents, including text and/or visual images” (Kraska & Neuman, 2008: 437). In this way, themes, meanings, and cultural and social significances can be uncovered. Qualitative document analysis can be described as a systematic approach aimed at answering research questions (Kraska & Neuman, 2008: 437).

Advances in computing software have provided opportunities to greatly assist and enhance data analysis. The data collected from the interviews with parents and key role players was therefore analysed manually as well as by means of a qualitative data analysis computer programme called „NVivo’. NVivo uses coding to manage, query, and graphically model data relationships. Coding is the process whereby a researcher carefully reads through the transcribed data and divides it into meaningful, analytical units. Coding can therefore be defined as “marking segments of data with symbols, descriptive words or unique identifying names” (Maree, 2011: 105). Not only does this allow for the codes to act as a collection of points for significant data, but it also allows the researcher to “quickly retrieve and collect together all the text and other data that they have associated with some thematic idea so that the sorted bits can be examined together and different cases compared” (Maree, 2011: 105).

2.9. Ethical issues and considerations

“Ethical considerations in any research should be of utmost importance since the manner in which research is conducted and the findings that are released both have a direct or indirect consequence to people’s lives” (Naidoo, 2007: 37). Research ethics deals mainly with the interaction between individuals being studied and researchers conducting the studies. Hence, whenever research is conducted, the well-being of the research participants is the main priority.

In this study I adhered to the following ethical considerations: no harm to participants, confidentiality and anonymity, and informed consent. All the interviews were conducted in a separate office, at Khulisa’s regional offices in Pinetown and Phoenix, ensuring confidentiality and privacy from Khulisa staff. All the participants were informed that their

participation was completely voluntary and that they were free to withdraw from the research at any stage of the process.

A confidentiality contract was drawn up and signed between the researcher and the organisation (see Appendix 2). In addition, the anonymity of the parents and their children was assured.

Informed consent refers to “telling potential research participants about all aspects of the research that might reasonably influence their decision to participate” (Monette, et al. cited in Naidoo, 2007: 38). Before each interview was conducted, the participants took the time to read and sign an informed consent form pertaining to the study (see Appendix 3).

2.10. Reliability and validity

Although it is rarely possible to eliminate all errors that may arise during a research process, due to the nature of the study and the data collected, I was mindful of problems that might arise in terms of the validity and reliability concerning my research techniques. The manner and reason for which the data is collected can have an impact on the reliability and validity of the research (Kraska & Neuman, 2008: 332-333).

2.10.1. Reliability

Reliability has been explained by Mouton (cited in Naidoo, 2007: 33) as the “application of a valid measuring instrument to different groups under a different set of circumstances that should lead to the same observation”. If data collection is kept constant, that is, if the same measures are used under the same conditions, the data collected should be similar from situation to situation (Mouton, 2002: 111). Hence, De Vos (cited in Naidoo, 2007: 34) summarises reliability as the “extent to which independent administration of the same instrument (or highly similar instrument) consistently yields the same or similar results under comparable conditions”. In order to ensure reliability in this research study, all family members and key role players were interviewed using the same interview schedules and interview techniques.

2.10.2. Validity

In general, validity can be viewed as a synonym for the “best approximation of the truth” (Mouton, 2002: 109). Similarly, Naidoo (2007: 32) describes validity as the trustworthiness and accuracy of instruments as well as the data and findings of a research project. Validity has also been explained by Corbetta (cited in Naidoo, 2002: 32) as “the degree to which a given procedure for transforming a concept into a variable actually operationalizes the concept that it is intended to”. Thus, validity is a measure that seeks to assess the concept in question, accurately and correctly. By encouraging family members and key role players to be open and honest during the interviews as well as by guaranteeing their anonymity, validity for this study was ensured.

Reliability problems, such as stability reliability, develop when definitions or methods of gathering data changes over time. Validity problems occur when a researcher’s theoretical definitions do not match those of the organisation that collected the information. Another threat to the validity of a research study is the fact that the researcher has no control over how and what information is collected (Kraska & Neuman, 2008: 333).

2.11. Challenges and limitations of the study

As with all research projects, I experienced some challenges and limitations in conducting this research study. They are discussed below.

- **Time consuming**

The research was extremely time-consuming as face-to-face interviews were conducted with all the participants. In many instances parents were not available or did not keep to their appointments. Transcribing and analysing qualitative interviews is also a very time-consuming process.

- **Inability to generalise**

Due to the qualitative nature of the study, and the fact that only parents whose children have been diverted from the Pinetown and Phoenix Courts were interviewed, generalisability to the wider population of children and family members was limited.

- **Ethical issues**

Although the children of the parents were talked about and mentioned in this study, no contact was made directly with the children, and thus there were no perceived ethical issues. In addition, a social worker was on standby in case parents and primary caregivers experienced any discomfort during the interviews. Lastly, all participants were assured anonymity by reading, agreeing to and signing an informed consent form.

- **Debriefing**

All parents and primary caregivers were properly debriefed before the interviews took place. The purpose and main goals of the research, as well as the process to be followed was thoroughly explained to all research participants.

- **Secondary data**

Although there is a vast amount of literature available on child justice and diversion, statistics in the South African context as well as the importance of family support in sustaining diversion programmes, was difficult to obtain. This is mainly due to the lack of proper record keeping on the part of relevant government departments such as the National Prosecuting Authority (NPA) and the Department of Justice and Constitutional Development (DOJCD). According to Muntingh (2003: 41) there are gaps in the monitoring processes when it comes to capturing information regarding children and families who have attended diversion programmes.

- **Accuracy**

It is difficult to verify the information obtained from interviews with parents. They may over- or under-exaggerate responses depending on perceived advantages or disadvantages.

- **Financial expenses and compensation**

Due to the fact that the interviews were held at Khulisa's premises, I compensated family members for transport costs incurred in going to and from Khulisa. In addition, refreshments such as hot beverages, fruit juices, and biscuits were provided to the parents during the interviews. I also remunerated the interpreters who assisted me during the interviews in Pinetown.

2.12. Conclusion

This chapter provided an in-depth discussion on the methodological orientation used for this research study. The main aim of the study is to understand the role of family members during the diversion process as well as to explore in what ways their involvement can be improved. For this purpose, I made use of a qualitative research approach and conducted twenty-five face-to-face interviews with parents and key role players. I also observed Family Dialogue and Family Workshop sessions during which I was able to obtain rich, in-depth data concerning parents, their children, and their views on the diversion programmes offered by Khulisa.

The next chapter focuses on the background of the study by looking at the two sites used in this research, namely Pinetown and Phoenix.

CHAPTER 3

BACKGROUND TO THE STUDY

...we need to remain sensitive to the reality that we are still an African society in which the majority of the people and communities live under severe deprivations and afflictions that are no fault of theirs
(Babangida, 2002).

3.1. Introduction

“Youth crime is not by definition transnational in its scope, but it is an international problem, and it raises cross-national concerns” (Winterdyk cited in Hazel, 2008: 12). In recent years youth offenders have become the subject of widespread public interest and today it is clear to see that youth misbehaviour and crime have become a serious social concern in the majority of countries around the world, and especially so in developing countries such as South Africa. The problem of youth offending is also becoming more complicated and universal. According to the United Nations World Youth Report (2003: 189), global rates of youth offending have been steadily increasing since the 1990s. While the reasons and factors that influence the high rates of youth offending differ from country to country, the issues related to this phenomenon are common to most places in the world.

Pinetown, a semi-industrial town located on the western periphery of the Durban municipal area, and Phoenix, a predominantly Indian township about 35 kilometres north of Durban, were chosen as the study areas for this research. These two sites were considered appropriate because of their diverse populations, high rates of unemployment, crime, and violence, and the fact that they mirror many other areas in South Africa. Furthermore, the same NGO service provider delivers diversion programmes at both sites, with referrals from a single identifiable source, namely the Pinetown and Phoenix Courts. In this chapter, I provide a profile of the two sites.

3.2. A history and profile of Pinetown and Phoenix

In the next section infrastructure and basic services, demographics and social characteristics, and crime and violence in relation to both Pinetown and Phoenix will be discussed.

3.2.1. Pinetown

Pinetown is located about 16 kilometers northwest of Durban. Originally established in 1850 around the Wayside Hotel, along the main wagon route between Pietermaritzburg and Durban, Pinetown was named after the then governor of Natal, Sir Benjamin Pine. During the Second Boer War, the British used Pinetown to build a concentration camp where they housed women and children. No longer considered a separate municipality, Pinetown is today a part of the larger eThekweni Municipality. A predominantly light industrial town, it was only during the late 1960s and early 1970s that Pinetown started thriving as an industrial town (KZN.co.za, 2008).

3.2.1.1. Infrastructure and basic services

Pinetown spreads over an area of 71.85 km² (Frith, 2009), and after the Second Boer War it was modernised, with the development and establishment of infrastructures such as tarred roads, post boxes, piped water, telephones, and uninterrupted electricity. However, the compulsory segregation of race groups after the 1950s (largely fueled by the Indian and Black informal settlements „penetrating’ the White inner city residential areas) resulted in further segregation with Black residential areas (Southern Pinetown) being designed separately to those of the White residential areas (Northern Pinetown) (Maree, 1995: 57-58).

Areas such as Marianhill and St. Wendolins were mainly occupied by Blacks until the passing of the Group Areas Act in 1966, resulting in these areas then being occupied by Coloured and Indian communities. This resulted in the development of Black townships in the suburbs of Mariannridge, Mpola, Tshelimnyama, and Savannah Park. Black communities in the Nazareth area were also forced by the Group Areas Act to move into townships in the Klaarwater and Marianhill areas, which were later turned into the Bantu Township and Marianhill Park Township respectively. Similarly, St. Wendolins was declared a Black area leading to legal occupation of the land (Maree, 1995: 58-60).

After 1966 however, the Motala Farm area, Dassenhoek (Pineview), Nagina, Regency Park, Washington Heights and Welbedacht were declared Indian group areas, and remained largely undeveloped. According to Maree (1995: 60), this „ad hoc’ approach to development in Pinetown South resulted in “inadequate provision being made for major facilities and amenities which could serve the area as a whole”. From the 1980s onwards, the situation for Black, Indian and Coloured communities began to improve when the Natal Provincial Administration took on the responsibility for the development and planning of these areas. This resulted in the provision of basic and essential services to Black areas such as Thornwood, St. Wendolins, Dassenhoek, Luganda, Nazareth, Marianhill II (Mpola and Tshelimnyama), Savannah Park II and III, Klaarwater, Southampton Park, and Insiswakazi (Maree, 1995: 61).

Today, Pinetown Central has a large number of flats and complexes that are easily accessible from the central business district. Pinetown suburban areas include Ashley, Caversham Glen, Highland Hills, Mosely Park, Manors, Padfield Park, New Germany and Cowies Hill. The traditional shack dwellers’ movement, Abahlali base (Mjondolo), is also very strong in Pinetown and surrounding areas, especially in the Motala Heights, Motala Farm, Mpola and New eMaus settlements (KZN.co.za, 2008).

The Westmead and New Germany industrial areas provide employment for the majority of people living in Pinetown. The country’s leading chain stores are located here. The area is serviced by a private hospital (Crompton), a private medical centre (MediCross), and a government hospital in Mariannhill (St. Mary’s). Pinetown has several primary and secondary schools including Benjamin Pine Primary School, Sarnia Primary School, Pinetown Boys’ High School, and Pinetown Girls’ High School (KZN.co.za, 2008).

Pinetown offers a range of recreational areas and parks such as Lahee Park, Pinetown Cricket Club, and the Ashley Sports Ground which offers various sporting opportunities such as cricket, hockey, soccer, tennis, netball, swimming, bowls, and rugby. However, Lahee Park is not always accessible to black residents (from Pinetown South) as transport is costly and therefore prohibitive (Maree, 1995: 6).

Khulisa, Open Door Crises Centre, LifeLine, Home and Family Life Foundation, Pinetown-Highway Child and Family Welfare Society, and Phinduvuye Community Development

Project, are some of the NGOs, service providers, and community-based organisations in Pinetown.

Pinetown North is a far older and more developed area compared to Pinetown South. As a result of the Group Areas Act, Black, Indian, and Coloured areas were excluded from local development initiatives resulting in different approaches being utilised for the different races and their living conditions. The differences between the North and South are as clear as day and night. Compared to Pinetown North, Pinetown South's organisation, development, and maintenance are disorganised and limited due to the unequal distribution of funds for infrastructural development that came with apartheid (Maree, 1995: 72). Not only did urbanisation under apartheid place pressure on Black, Coloured, and Indian family structures and support structures from extended families, but schools, as well as traditional and customary legal structures, were manipulated for the purposes of social control (Simpson, 1998). As Maree (1995: 88) states "it is evident that the quality of the facilities in the South leaves much to be desired when compared to those available in the North".

There are police stations in Kwadabeka, Pinetown, Hillcrest, Mariannhill, and Kwadengezi (KZN.co.za, 2008). The Pinetown Magistrate's Court deals with less serious civil and criminal cases. As a court of first instance, it deals with approximately 80 cases of youth offending per month, and on average approximately 11 children are sentenced to a diversion option and/or programme each month (Telephonic interview with prosecutor on 8 April 2012).

3.2.1.2. Demographics and social characteristics

Pinetown has a population of approximately 100 037 inhabitants and of these approximately 37 602 people are under the age of 19. Although there are a number of primary and secondary schools, only a small number of young people complete and pass Grade 12. Approximately 19 270 individuals have some form of primary education, 4 922 have completed primary education, 28 713 have some form of secondary education, whilst only 19 559 individuals have completed Grade 12. A further 10 083 individuals studied further, whereas 17 489 individuals have never schooled or are currently not schooling (Statistics SA, 2012). The majority of Pinetown's residents have no or very little education. Limited access to education has been linked to unemployment and poverty as well as criminal and deviant

behaviour. It has been found that completing school (Grade 12) significantly reduces the chances that a child will engage in crime (Leoschut & Burton, 2009: 2). This could possibly be attributed to Pinetown's high crime rates.

Only 30 388 individuals are employed, whilst 37 880 individuals are unemployed for numerous reasons such as being a scholar or student, a pensioner, or unable to work due to illness or disability. Around 5 593 households in Pinetown have no income at all, 3 617 households earn between R76 801 and R153 600 per annum, 3 612 households earn between R19 201 and R38 400 per annum, 3 579 households earn between R38 401 and R76 800 per annum, whilst 3 495 households earn between R9 601 and R19 200 per annum (Statistics SA, 2012). From these statistics, it is clear to see that a large majority of people living in Pinetown do not have employment, and those who do, earn very little or no money at all. Thus, it is safe to assume that a large proportion of people who live in Pinetown, live in poverty. It is universally accepted that both economic inequality and relative deprivation are major factors in the contribution of high crime rates. Living and growing up in poverty increases the likelihood of individuals becoming involved in crime (United Nations Office on Drugs and Crime & the Latin America and the Caribbean Region of the World Bank, 2007: 8).

According to Statistics SA (2012), a total of 33 665 individuals are either married, traditionally married, in a polygamous marriage, or living together like married partners, whilst approximately 66 373 individuals have never married, are separated, widowed, or divorced. Hence, a large number of children are growing up in „broken homes' or come from incomplete families. Furthermore, research consistently shows that children from single-parent households, with ruptured family ties, and without father figures, are more at risk and more likely to engage in antisocial and deviant behaviour (McCord, Widom & Crowell, 2001: 75).

3.2.1.3. Crime and violence

The overall rates of contact and property crimes have increased in Pinetown from April 2003 to March 2011. Increases were noted for the following crimes: sexual crimes (88 to 111); assault (424 to 638); assault with the intent to inflict grievous bodily harm (GBH) (192 to 213); robbery with aggravating circumstances (698 to 827); burglary at businesses (434 to

567); burglary at residential areas (1 188 to 1 407); drug-related crimes (241 to 420); and shoplifting (570 to 736). Decreases were noted for the following crimes: murder (27 to 25); attempted murder (68 to 40); robbery (421 to 315); theft of motor vehicles and motorcycles (890 to 585); and theft out of or from motor vehicles (1 075 to 585) (South African Police Service, 2012).

Pinetown's high crime rates could be attributed to the high levels of unemployment, high rates of drug abuse, community disorganisation, poverty, incomplete families, inadequate recreational facilities, limited access to educational opportunities, a lack of basic services, as well as neglected service buildings such as schools and market areas.

3.2.2. Phoenix

The sprawling Indian township of Phoenix is situated 20 kilometers northwest of Durban. It is closely linked to the Phoenix settlement established by Mahatma Gandhi in 1904. Prior to the 1970s, Phoenix was predominantly occupied by sugarcane plantations and estates, with Indians working as labourers. During 1976 municipal housing was developed for the Indian community, and up until the 1990s Phoenix was divided into plain units made up of 23 areas. Today, Phoenix is considered one of South Africa's oldest and largest Indian settlements (Makhatini & Moodley, 2011).

3.2.2.1. Infrastructure and basic services

Around 1904 Phoenix merely comprised "100 acres of land with several main buildings clustered together on a small hill"; known as the „Apex' area (Pillay, 2008: 28). With the implementation of the Group Areas Act, the late 1970s to early 1980s saw the development of Phoenix as a large residential area for Indians. The houses given to the Indians under the apartheid regime were tiny semi-detached properties built very close to each other (Makhatini & Moodley, 2011). Suburban and residential areas in Phoenix include Southgate, Greenbury, Rainham, Stonebridge, Centenary Park, Centenary Heights, Rockford, Clayfield, Longcroft, and Rydalvale. Today the Phoenix area spreads over 29.65 km² (Frith, 2009).

During the late 1990s, the Phoenix Business Centre was established and Gem City became one of Phoenix's largest shopping centres. It was after the development of the Phoenix Plaza however that the area became a focal point for commercial activities. The rent office, grant

office, and post office are in close proximity to the Phoenix Plaza, which means that all the basic needs of the residents in Phoenix and surrounding areas are met here (Pillay, 2008: 28). According to Makhatini and Moodley (2011), the current giant Bridge City development on Phoenix's border with KwaMashu is expected to be "a catalyst for significant economic growth in the Phoenix, Inanda, Ntuzuma and KwaMashu region". In addition, Phoenix has a well developed industrial area with the presence of big companies such as SAB Miller and Coca-Cola. The industrial area together with Phoenix's Business Centre provides employment for Phoenix residents.

Shopping centers such as the Phoenix Plaza, Gem City, and Starwood Mall also provide employment opportunities for the residents of Phoenix. The Lynx Club Mature, various food courts, as well as taverns and shebeens can be found in and around Phoenix (Makhatini & Moodley, 2011). Public education is provided for by numerous primary and secondary schools, Technikons, and F.E.T. colleges. Some of the schools found in Phoenix include Allingham Primary School, Brookdale Secondary School, Foresthaven Secondary, Greenbury Primary, Palmview Secondary School, and the Phoenix Technical School (eThekwini Municipality, 2011).

In terms of health care, the Phoenix Community Health Centre officially opened in February 1985, and has been providing primary healthcare services for the residents of Phoenix since then. Numerous role players, including the City Health Department, provide "preventative, promotive, curative as well as rehabilitative services" (KwaZulu-Natal Department of Health, 2001). In addition to the Community Health Centre, there are a variety of clinics in the Phoenix area as well as the Mahatma Gandhi Hospital.

Today Phoenix has over 600 religious institutions. The Emperumal Hindu Temple in Mt. Edgecombe and the historic Phoenix settlement was built in 1875 and is considered one of the oldest temples in the country. The temple was originally the spiritual home of Mahatma Gandhi and today it is a place of worship as well as a place for people to socialise with one another and celebrate various festivals (Makhatini & Moodley, 2011).

Phoenix has only one Magistrate's Court and one police station (eThekwini Municipality, 2011). The Phoenix Magistrate's Court deals with approximately 65 court cases related to

youth offending per month. On average approximately 7 children per month are referred to a diversion option and/or programme (Telephonic interview with prosecutor on 8 April 2012).

While Phoenix has numerous sports facilities, it was only during 1999 that the Phoenix Community Centre built a multi-purpose indoor sports centre offering various sporting opportunities such as darts, pool and indoor soccer. Today this centre is utilised by various sport clubs to host a variety of sporting events (Makhatini & Moodley, 2011).

A number of government departments and NGOs provide the residents of Phoenix with basic and essential services such as victim support, HIV/AIDS counselling, and skills development (Conradie, Hargovan & Chetty, 2008: 10). The Department of Social Development, Phoenix Child and Welfare Society, Trauma Unit, Victim Empowerment Unit, Phoenix Crises Centre, Love Life, Khulisa, and various other organisations are all located in Phoenix.

In terms of „township standards’, Phoenix is said to be a well-developed area; not only have the houses and the business district improved over the years, but the infrastructure in and around Phoenix is constantly being upgraded and revamped. Today Phoenix is described by its residents as a „thriving community’, with a strong sense of cohesion rarely found in more affluent suburbs. However it is important to note that although Phoenix has a number of schools, sports grounds, libraries, halls, and public swimming pools, and although most of the semi-detached houses have been built up and turned into beautiful homes, and developments have taken place within the business district, very little integration, as with all townships, has taken place (Makhatini & Moodley, 2011).

3.2.2.2. Demographics and social characteristics

Phoenix has a population of approximately 169 163 inhabitants, with approximately 59 723 people under the age of 19. While Indians constitute the majority of the population (157 032), it is otherwise quite diverse. Blacks make up 10 239, Coloureds 1 765, and Whites 123. In terms of schooling, an estimated 29 982 individuals have some form of primary school education, and 61 700 have some form of secondary education. Around 9 406 individuals have completed primary school and 39 178 have completed Grade 12. Only 6 647 people have studied further. Approximately 22 248 people have never schooled

or are currently not schooling (Statistics SA, 2012). As mentioned previously, low educational levels have been linked to unemployment, poverty, drug abuse, and crime.

In Phoenix, 55 655 people are currently employed, whilst a staggering 68 423 people are not working. Approximately 10 893 households earn between R38 401 and R76 800 per annum, 9 919 households between R19 201 and R37 400 per annum, 5 907 households between R76 801 and R153 600 per annum, and 5 147 households between R9 601 and R19 200 per annum. It is estimated that 2 709 households have no income at all (Statistics SA, 2012). It is clear that Phoenix has a very high rate of unemployment, contributing to the high levels of poverty and crime in the area. Neighbourhoods characterised by poverty and unemployment are more likely to produce children who are at a higher risk of becoming involved in delinquent and criminal behaviour (McCord, et al., 2001: 89). Owing to the poverty experienced at home, youth may resort to criminal activities as a means of survival (Simpson, 1998).

In terms of marital status, a total of 71 921 people are either married, married by tradition, in a polygamous marriage, or living together like married partners, whilst approximately 97 239 people have either never married, are separated, divorced, or widowed. In addition, youth are considered to be „at risk’ of committing offences since the majority of them come from single-parent households (Conradie, et al., 2008: 8). Being raised in a single-parent household increases the risk of a child becoming involved in antisocial behaviour (Nieman, 2002: 43). Single parents often have to work long hours to support themselves and their families and as a result may not have adequate supervision for their children. Furthermore, economic and emotional resources are limited in these homes (McCord, et al., 2001: 76).

3.2.2.3. Crime and violence

The overall rates of contact crimes have decreased in Phoenix from April 2003 to March 2011. Decreases were noted for the following crimes: murder (61 to 32); attempted murder (139 to 111); assault (2 074 to 1 875); assault GBH (562 to 549); robbery (549 to 166); robbery with aggravating circumstances (624 to 567); theft of motor vehicles and motorcycles (525 to 360); theft out of or from motor vehicles (927 to 548); and drug-related crimes (1 254 to 1 180). Increases were noted for the following crimes: sexual crimes (205 to

296); burglary at businesses (145 to 165); burglary at residential premises (673 to 742); and shoplifting (427 to 453) (South African Police Service, 2012).

While crime is slowly on the decrease in Phoenix, there are still many drug-related crimes, sexual crimes, and high rates of shoplifting. Due to low education levels, the high number of incomplete families, community disorganisation, poverty, and unemployment, Phoenix struggles to get crime under control.

3.3. Conclusion

This chapter aimed to provide the reader with some background information regarding the two sites used for this research, namely Pinetown and Phoenix. The socio-political histories of the development of Pinetown and Phoenix were discussed, as were the infrastructures and basic services, demographics, social characteristics, and crime and violence. It is clear to see that due to a lack of infrastructure and services, mainly attributed to the apartheid era, both Pinetown and Phoenix are disorganised communities where unemployment, poverty, incomplete family structures, and crime rates are very high.

The next chapter deals with youth, youth offending and the family, and highlights the main theoretical framework used throughout this research study.

CHAPTER 4

YOUTH, YOUTH OFFENDING AND THE FAMILY (THEORETICAL PERSPECTIVES)

A person is a person through other persons... We would not know how to think, or walk, or speak, or behave as human beings unless we learned it from other human beings... A person is entitled to a stable community life, and the first of these communities is the family
(Tutu, 2012).

4.1. Introduction

From the beginning of time individuals have lived in families. Families are considered the pillars of society; influencing the way in which society is structured, organised, and how it functions. The family plays a vital role in the socialisation, nurturing, and care of children and youth. Not only is the family at the centre of an individual's life, it also provides its members with psycho-emotional and economic support (Department of Social Development, 2011: 8). The majority of children live and grow up in families, and as a result, the personality and character of an individual is shaped by his or her family.

Tischler (cited in Tshem, 2009: 31) claims that it is “often their exposure to their families that may lead them to the door of the criminal justice system”. Thus, the child is never in isolation and his experiences with all the different systems will have an effect on his behaviour (Naidoo, 2007: 12). As discussed earlier (Chapter 3), both Pinetown and Phoenix have high numbers of ‘broken homes’ and incomplete family structures. In Pinetown alone, 66 373 individuals have either never married, are separated or divorced, compared to 33 665 individuals that are married or living together like married partners. Similarly, in Phoenix approximately 97 239 individuals have never married, are divorced or separated, whilst 71 921 individuals are married or living together as married partners. In both Pinetown and Phoenix, divorce and separation rates are much higher than actual marriage rates, resulting in the majority of children growing up in incomplete families without mother or father figures.

Over the decades numerous theories and explanations concerning youth and youth offending and the role of the family in general, have been put forward. This chapter highlights the key theoretical perspectives and literature relating to youth, youth offending, and the family.

4.2. A historical perspective on youth and youth offending

Today most people are of the opinion that children require nurturing and protection and that they should be cherished; this however has not always been the case. During the Middle Ages childhood was a considerably short period: “children were mixed with adults as soon as they were considered capable of doing without their mothers or nannies, not long after a tardy weaning” (Newburn cited in Maguire, Morgan & Reiner, 2007: 615). As „little adults’ children were assigned various functions and roles that included being chambermaids or wives (in the case of girls), and mine or factory workers (in the case of boys). Although they were socially treated like adults, they were denied the privileges that adults enjoyed (Lambert, 2008).

Child mortality substantially increased during the 16th and 17th centuries due to a lack of attention to and recognition of children as unique beings in need of love and care. During this era only two stages of human development were recognised, namely infancy (birth to about 6 years), and adulthood. Children’s social worth was determined in terms of their economic value to the family and the community (Bezuidenhout, 2008: 2).

Due to the fact that there was no legislation protecting children, childrearing practices in England and America were authoritarian and characterised by cruel and inhumane treatment; reinforced by both the church and state. This, coupled with the belief that children were the property of their parents, gave parents the right to abuse and treat their children in *any* way they saw fit (own emphasis). It was only during the 1690s that the view on children changed slightly; mainly due to John Locke who proposed that children were neither innately good, nor innately bad at birth. Instead Locke saw the child’s mind as a *tabula rasa* (blank slate) which was influenced by environmental factors, thus emphasising the importance of learning during infancy (Moore, 2006: 13, 19-20).

Even though there was a realisation that children had their own needs which were separate from those of adults, their value was still measured in terms of the services they could

perform. During the 17th century children could start working full-time and contribute to the economic survival of the family. It was believed that all children were born sinners and that it was the parents' responsibility to seek the adult potential in children in order to move them closer to God, and ultimately salvation (Moore, 2006: 6, 20). If a child's will was not broken by harsh treatment, it was believed that society would soon fall into disorder. Since the most important danger facing the youth was believed to be crime, the main goal of childrearing was „salvation”.

It was only during the 18th and 19th centuries that society started questioning the meaning of childhood and that children became less objects of economic value and more objects of sentimental value. Children of working class families however, were still expected to contribute to the economic welfare of their families, whilst children from the middle class families were expected and encouraged to focus on their education (Moore, 2006: 3). It is clear that from the outset, children were expected to fit into the adult world and behave like adults without receiving any guidance or support. With little or no knowledge about the psychosocial development of children, children's normal behaviour was often perceived as forms of misbehaviour. It was Stanley G. Hall, with his publication of *Adolescence* in 1904, who first laid the foundation for the scientific study of childhood and adolescence. By the 20th century, children's sentimental value became more widespread, leading to various reforms that not only affected the way in which children were seen, but also the way that children were treated (Moore, 2006: 3).

4.3. Youth offending in South Africa

At the end of the 19th and beginning of the 20th centuries, South African youth found themselves both the victims and perpetrators of political violence. As opposition to the apartheid government increased, the distinction between criminal and political crimes became distorted. Not only were the state's security forces committing crimes against political opponents, but those engaged in „the struggle” started using various forms of violence as legitimate weapons against the system itself. This resulted in a society in which “the use of violence to achieve political and personal aims became widespread” (Schönteich & Louw, 2001). The socio-economic and political transition post-1994 brought with it a „culture of violence”; resulting in a vulnerable state, vulnerable and weakened family structures, and widespread conflict within and between communities. This, in turn, led to “an increase in

levels of crime as disaffected individuals - notably township youth - became involved in criminal activity” (Schönteich & Louw, 2001).

Black families in South Africa were severely affected by apartheid; children and young adults who grew up during the apartheid era are often referred to as the „lost generation’ (Zenzile, 2008: 3). Not only did the apartheid system sanction inequality (such as denying Black people access to basic services such as nutrition, housing, health services, and education), but it also forced people to relocate to „homelands’ which disrupted family units and children’s schooling. The migrant labour system which was an important part of the South African workforce and economy, directly contributed to an increasing number of incomplete families. When parents leave their homes in search of work elsewhere, they are able to support their families back home, but their absence has severe negative effects on the socialising process of their children, especially in the case of young boys (Maree, 2008: 64). In addition, the use of children as labourers left most Black, Indian and Coloured children marginalised (Henrard, 1995). Apartheid particularly affected the lives of Black children who were offered little or no protection from the state as their families, communities, and societies were being destroyed by political violence (UNICEF, 2009: 1).

As a result of apartheid, many young people were unable to obtain a proper education and prepare for employment, leaving them alienated, frustrated, and predisposed to becoming involved in acts of violence and crime. Many became involved in both state and non-state forces, seeing themselves as important political actors (UNICEF, 2009: 1). This radical behaviour often landed them in trouble with the law, and because there was no proper child justice legislation in place, high numbers of children were subjected to inhumane treatment by the authorities, including being thrown into prison (Zenzile, 2008: 3). Due to apartheid and the conditions it created, it can be said that the youth grew up in a „culture of violence’, where unlawful and criminal activity was seen and understood as legitimate and socially acceptable (Simpson, 1998).

Children who grew up during the apartheid era, who are now older and have their own children and families to take care of, still have to endure the difficulties and pressures associated with poverty and unemployment. Little or no education, parental loss of control over the youth, the breaking of ties with traditions, and a lack of supervision has resulted in many people turning to various forms of violence, misbehaviour, and crime. Due to a lack of

education and/or employment, many adults still find themselves „trapped’ in situations that offer no way out in which to better their lives. So although the apartheid era is over and liberty has been attained, it can be said that:

...the legacy of apartheid in which racist beliefs were enshrined in the law, denying and violating the majority of the population of their basic human rights, continues to influence many people’s daily lives and opportunities (UNICEF, 2009: 1).

South Africa is a relatively young nation with approximately 54% of the population below the age of 25 (Zenzile, 2008: 14). It is clear to see that because of apartheid, South African youth today face challenges that are completely different from those faced by their parents. The disempowerment caused by the previous political regime has negatively affected a large proportion of South Africans. Yet, while apartheid has had a negative effect on the way in which children were raised and treated, youth misbehaviour today cannot be explained by the effects of apartheid alone. There are various other social and individual factors that play a role in whether or not a person will ultimately become involved in misbehaviour and crime. These factors include: age, race/ethnicity, gender, genetic factors, personality traits, intelligence, community disorganisation, economic inequality and relative deprivation, unemployment, substance abuse, incomplete families, lack of parental supervision, family violence and abuse, and antisocial peer associations.

4.4. Theoretical perspectives on youth offending and the family

It is essential to understand the context in which early theories on youth offending was based, bearing in mind that these theories influenced criminological thinking for many years. Today, modern theories and explanations for crime are the products of two main schools of thought, namely the classical and positivist schools. Ultimately, both classical and positivist theories are concerned with deterring crime and highlighting the role of punishment. While the classical theory advocates that the punishment should fit the crime, the positivist school claims that the punishment should fit the individual, and that the individual should be suitable for rehabilitation (Walsh & Hemmens, 2008: 76).

4.4.1. Earlier theories

At the heart of Cesare Beccaria and Jeremy Bentham’s classical theory is the assumption that the offender is someone capable of exercising free will and rationality. According to this theory child offenders are seen as rational actors who, through the exercise of free will,

choose whether or not to commit a crime. Instead of focusing on the individual offender, classical theorists are mainly concerned with the crime and the punishment that goes with it. Criticisms surrounding this theory include the refusal to see or separate children and adult offenders, as well as the concept of hedonism, which fails to take into account aggravating and mitigating circumstances (Lilly, Cullen & Ball, 2011: 22). Despite this theory's limitations, it is important to recognise and understand the impact that classical thinking has had on the treatment and punishment of offenders, particularly young offenders (Burke, 2005: 26, 52). Classical thinking had a huge impact on criminological theory, criminal justice practice, and especially on jurisprudence in both Europe and America. By striving to achieve equal justice for all, the use of capital punishment, corporal punishment, and torture, subsequently declined, leaving a gap for a more „modern' CJS to be established (Newburn, 2008: 119). South Africa's Child Justice Act (75 of 2008) provides for such a „modern' system by adopting more „humane' ways of punishing and treating child offenders and emphasising restorative values, principles, and practices through various mechanisms, namely assessment and preliminary inquiry phases, referral to diversion, and FGC.

The advancement of technology and scientific knowledge in the 19th century moved theorists away from classical assumptions toward a more scientific view of human behaviour (also known as positivism), with proponents of the positivistic school seeking scientific methods to explain crime by utilising scientific research techniques. Positivist theorists such as Cesare Lombroso, Enrico Ferri and Raffaele Garofalo were concerned with determining the biological, psychological, and social causes of criminal behaviour (Walsh & Hemmens, 2008: 78). Individual positivism locates the source of crime within the individual and sees child offending much like any other behaviour; predetermined by certain risk factors (Burke, 2005: 53). Sociological approaches to crime claim that people are the products of their environments and that socialisation, inequalities, and social structures, all lead to criminal behaviour (Schmallegger, 1997: 106). Sociological positivism sees an individual's social factors as the primary cause for committing a crime and locates the sources of crime in the social context, external to the individual (Burke, 2005: 91). Various theories relevant to child offending and the treatment of child offenders developed under this label, namely systems theory, social disorganisation theory, strain theory, differential association theory, and drift and delinquency theory, discussed below.

4.4.2. Family systems theory

The family systems theory (hereafter referred to as systems theory) was developed during the course of family research and was first introduced by Dr. Murray Bowen in the early 1950s. Originally used as a theory to understand schizophrenic patients, Bowen soon discovered that there were common patterns of „human emotional systems’ and shifted his focus from individual patients to family units or systems (Brown, 1999). Bowen realised that by addressing and treating families as units, the recovery process of individuals was accelerated. Since then however, various „strains’ of the systems theory have emerged, all of which share the guiding principle that “problem behavior exhibited by a child or adult can never be understood devoid of its relational context” (McHale & Sullivan, 2007: 1). Hence, the solution to changing an individual’s behaviour lies in the family. The systems theory sees society (and ultimately the family) as a system with different but interrelated parts, and believes that behavioural problems stem from dysfunctions within the family unit or system. Thus, the behaviour of an individual is not only shaped by interpersonal factors, but by the system as a whole (McHale & Sullivan, 2007: 1).

System theorists are only concerned with the present (the individual’s current interaction patterns and interpersonal relationships), and hold that a person develops specific interaction patterns to communicate with different people. For example, parent-to-parent interaction will differ from parent-to-child interaction. In addition, the theory views man as “an open system which is constantly in interaction with the environment, exchanging energy and information” (Cloete & Stevens, 1995: 65). In other words, individuals are constantly in interaction with each other; they engage in „transactions’ with each other and systems in the environment, and as a result individuals and systems influence each other.

A system can be defined as a “set of components organised in a particular way in interacting with one another” (Cloete & Stevens, 1995: 65), which not only comprises of “separate elements but also the relationship amongst the units” (Naidoo, 2007: 12). According to the proponents of the systems theory, family systems consist of interrelated elements and structures that interact in patterns, has boundaries, functions by the law of Composition (the whole is more than the sum of its parts), uses messages and rules to shape its members, and consists of a series of subsystems (Morgaine, 2001; Ambrosino, Heffernan, Shuttlesworth & Ambrosino, 2008: 55). Both theoretical approaches that fall under the systems theory,

namely the functionalist paradigm and the conflict paradigm, see society as a system in which human behaviour is not only a result of interpersonal factors but shaped by the system itself.

From a functionalist perspective, society is viewed as a system of highly integrated parts that function together in order to reach equilibrium and ensure the smooth functioning of the whole. In addition, each part of the system is analysed to see whether or not it is working, and if not, the problems are diagnosed and solutions formulated to restore the balance. Not only is the family regarded as the most fundamental subject of study, but it is also seen as a very important part of the system because of the basic functions it is expected to perform (Cloete & Stevens, 1995: 65; Zastrow, 2010: 49). According to the functionalist perspective, the family has four primary functions, one such function being the 'socialisation' or 'education' of its members. Socialisation is the process whereby individuals learn the values, norms, roles, skills, culture, and expectations of society from previous or older generations (Naidoo, 2007: 12). Thus it can be said that individuals not only have the capacity to visualise themselves and reflect on their experiences, they are also able to evaluate their actions and feelings and consciously decide to make necessary or desired changes.

Conflict theorists consider the family to be the most basic social unit and most suited to meet the needs of young people and children, providing them with a suitable environment for optimal growth, upbringing, development, and identity, as well as a sense of stability and continuity (Tshem, 2009: 31). From a conflict perspective society is seen as a system characterised by instability, conflict, and disorder. Such conflict might prompt a group to organise and put mechanisms in place to prevent future deviance (Burke, 2005: 153-154). Similarly, one of the key objectives of the FGC is to provide a mechanism through which victims, offenders, and family members can develop a plan of action with the necessary input from all required participants, with the overall aim of rehabilitation and prevention of recidivism.

Ultimately, both the functionalist and conflict perspectives hold similar views on family life, namely that the family is a system of interrelated parts, with the parts either being in consensus or conflict with each other. Functionalist theorists however believe that society is held together by consensus among the different interrelated parts, and conflict theorists argue that society is held together in the face of conflict.

4.4.2.1. The importance of family

It has been said that “the strength of a nation derives from the integrity of the home” (Amoateng, Richter, Makiwane & Rama, 2004: 4). Families can be defined as social groups that are “related by blood (kinship), marriage, adoption, or affiliations with close emotional attachments to each other that endure over time and go beyond a particular physical residence”. In addition, family groups share the following features: “they are intimate and interdependent, they are relatively stable over time, and they are set off from other groups by boundaries related to the family group” (Amoateng & Richter cited in Amoateng & Heaton, 2007: 13-14). A household on the other hand, can be defined as a communal or residential unit that is made up of primary relatives as well as some distant kin and non-kin (Gray, 2000: 6).

Families are the primary source of an individual’s development, as well as being the building blocks of communities and societies. Not only are families the most important sources of social support, but strong, stable and supportive families have a positive influence on the well-being of children. Functional families are able to control the behaviour of misbehaving members as well as provide and care for dependent and vulnerable individuals (Amoateng, et al., 2004: 4-5). A family’s roles, relationships and responsibilities are socially constructed by institutional norms. Thus, a family can be seen as “an intergenerational social group organized and governed by such social norms regarding descent and affinity, reproduction, and the nurturant socialization of the young” (Amoateng & Richter cited in Amoateng & Heaton, 2007: 13).

Families offer support and assistance to its members in the form of emotional support, instrumental help (transportation, shopping), child caregiving, financial assistance, as well as informational assistance (advice and information about jobs and social services) (Bromer & Henly, 2004: 943). Family support, especially emotional support, is a vital factor for reducing continued negative behaviour (Unruh, Povenmire-Kirk & Yamamoto, 2009: 212). A strong family has the capacity to enable its members to positively contribute to their own development and prosperity, as well as the betterment of society. Strong families usually have access to a range of different resources (financial, emotional, material), which enable them to meet the various needs of their members. Families have the capacity to make each and every member feel appreciated, recognised, and valued. Furthermore, strong families are better equipped to effectively deal with conflict, stress, and crises (Department of Social

Development, 2011: 9). While it is a known fact that the home environment is a significant factor contributing to youth offending, it is important to keep in mind that different families may have different strengths, needs, and vulnerabilities (Nieman, 2002: 42).

Children usually acquire their values and norms within families and it is the responsibility of families to monitor and ensure that their children (and any other individuals in their care) conform to these values and norms. Regardless of the type of control mechanisms (negative, positive, formal or informal) used by a particular society, it is vital for any society to have these mechanisms in place so that they can influence members to conform to the group's values and norms (Tshem, 2009: 30).

Deviant behaviour can be defined in terms of specific family structures in which the family is seen as a system of “functional demands that organises the way in which members of the family interact” (Minuchin cited in Cloete & Stevens, 1995: 66). The majority of families fall within the „normal’ boundaries, but it is the extreme poles that tend to cause deviant behaviour. For example, in the case of a highly disengaged family system, family members are loosely attached to one another and criminal behaviour can develop easily because there are no definite rules and behavioural directives laid down for children. On the other hand, in a highly enmeshed family system, members are excessively concerned with one another and rules are rigidly applied, making parents overreact to the slightest deviation (Cloete & Stevens, 1995: 67). These types of family structures are clearly visible in both the Pinetown and Phoenix areas. Due to extended, multi-generational, and combined families, children often find themselves under the watchful eyes of their aunts, uncles, cousins, grandmothers, and parents. On the other hand, many children grow up in incomplete families which means that they have very little or no supervision at all.

Misconduct and deviance by one member of a family influences and affects all the other members. Thus, if a child in a family displays deviant and antisocial behaviour, it affects the entire family and the community as well. Similarly, deviance and misbehaviour displayed by one member of a family is a reflection on the family unit itself. Thus, when a child in a family displays antisocial and deviant behaviour, there are both complex and hidden conflicts within the family that are pushing the child in that direction. Criminal behaviour therefore leads to and becomes a relationship problem. In order to determine why an individual continues to act in an antisocial manner, the specific system in which the individual finds

himself must be analysed (Cloete & Stevens, 1995: 65). The child can be considered as part of a bigger environment where he is affected by others such as his family, his school environment, and his friends.

Victims are also seen as a part of the system; they are members of families, societies, and communities, and thus any harm caused to a victim directly and indirectly affects their families and communities. By involving families and communities in FGC, families are empowered, become part of the decision making process, and are able to educate their children about the consequences of engaging in criminal and deviant activities. In addition, utilising FCG, family members along with victims, have support and can be cared for and nurtured by their respective family units or systems.

4.4.2.2. Families in South Africa

Generally families are multidimensional and dynamic in nature; they affect and are affected by various social, economic, cultural, as well as political institutions which form the basis of the social structure of any society. Hence, changes in the structure and functions of the family can be linked to broader changes in other institutions in the family's environment (Amoateng & Richter in Amoateng & Heaton, 2007: 1). In South Africa and abroad families have had to adapt to numerous social trends ranging from colonisation, urbanisation, and migration, to globalisation.

Apartheid, racial segregation, and the migrant labour system have done untold damage to families in South Africa. Wage workers used to live in urban areas near their places of employment while their families were required by law to stay in the rural areas. Thus, it can be said that labour migration and mobility laws radically undermined the traditional family system (Kalule-Sabiti, Palamuleni, Makiwane & Amoateng in Amoateng & Heaton, 2007: 89). It has been documented that “children who become persistent offenders tend to grow up with more negative family and school experiences” (CSV, 2009: 6). Where many children grew up in single parent families or in circumstances characterised by the absence of a primary caregiver, it is clear to see that colonisation, industrialisation, urbanisation, and apartheid-imposed restrictions have negatively affected family and household formation patterns in South Africa (Amoateng & Richter in Amoateng & Heaton, 2007: 3).

In addition, globalisation has also impacted the family in a variety of ways: through the prevalence of more egalitarian relationships between women and men leading to increasing participation of women in work outside of the home and in public life, as well as the growing tendency for family relations to be based on the sentiments of love rather than economic or social concern (Amoateng & Richter in Amoateng & Heaton, 2007: 2). South Africa's history and political economy still continue to mould the quality of life for many families in significant ways. It is important to keep in mind however, that family structures and types have always and will continue to change and evolve (Department of Social Development, 2011: 7).

In the light of these historical influences, the South African family can be seen as both an institution in decline and an institution responsive to social change. Not only have social changes led to the fragmentation of families and extended family systems, it has also been responsible for an increase in non-traditional family households. In addition, rural-urban migration has been associated with changes in family composition, unstable family relationships and sexual partnerships, transformation of the socialisation and other functions of families, patterns of household dissolution, female-headed households, and the dissolution of social networks (Amoateng, et al., 2004: 11-12).

The majority of youth in South Africa (as is the case in Pinetown and Phoenix) live in unique family situations which are very different from „ideal' or „typical' South African families (Naidoo, 2007: 13). The changing nature of families in South Africa must be understood in the context of its history of colonialism, the effects of apartheid, and the political and economic systems which were in place at the time. Ultimately, the South African family is said to be a product of South Africa's history (Department of Social Development, 2011: 25).

Family types and patterns are also influenced by demographical, political, legal, religious, and economic factors which change relationships between husbands and wives, parents and children, as well as between members of the conjugal family and their kin. Due to the multicultural characteristics of families, households are becoming more and more diverse with family units taking on a variety of forms which may or may not involve individuals living together under one roof. It is important to keep in mind however, that the form or structure of a family does not necessarily indicate how healthy the family is or how they function. The different types of family structures include nuclear families (consisting of a

father, mother, as well as their biological or adopted children); extended families (consisting of several generations of the same family living in the same household); multi-generational families (consisting of and including up to three-generational households); single parent families (families where children are raised by a single parent); child-headed families (where all members are under the age of 18 years); and blended families (blended, mixed or step-families that have come into effect as a result of remarriages after the divorce or the death of spouses) (Amoateng & Richter in Amoateng & Heaton, 2007: 2, 55).

4.4.3. Social disorganisation theory

Social disorganisation theory shifts away from psychological and biological explanations of crime to factors that are beyond the control of the child (Lilly, et al., 2011: 46). Emile Durkheim, saw the breakdown of community and family systems as factors that increase social and community disorganisation (Burke, 2005: 91-92). Clifford Shaw and Henry McKay, sociological theorists, also view „social disorganisation’ as resulting in increased antisocial and criminal behaviour. Social disorganisation can be described as the “breakdown of the power of informal community rules to regulate conduct”, and is created by the constant reorganisation and redistribution of neighbourhood populations (Walsh & Hemmens, 2008: 109). In their examination of juvenile court records, Shaw and McKay found that a large majority of youth offenders came from similar neighbourhoods and discovered the existence of „natural areas’ which not only contributed to crime and delinquency, but did so completely independently of other factors such as race or ethnicity. They concluded that “it was the nature of the neighbourhoods - not the nature of the individuals who lived within them - that regulated movement in crime” (Burke, 2005: 97).

According to Walsh and Hemmens (2008: 110), social disorganisation affects and impacts on crime and delinquency in two ways. Firstly, lack of formal and informal social controls within communities and neighbourhoods facilitates crime by failing to inhibit and/or prevent it. Secondly, values supporting antisocial behaviour are likely to develop due to the absence of pro-social values. This absence of social controls coupled with the presence of delinquent values, cause youth to have both positive and negative inclinations towards crime and delinquency which are transmitted across generations until they become embedded and integral to the community and neighbourhood. Social disorganisation is thus seen as the breeding ground for delinquency and criminality. Of importance are the child’s intimate

associations and relationships with gangs and other types of delinquent groups. As a consequence of being in contact with these groups, a child will “by virtue of his participation in their activities”, learn various techniques (such as stealing), and eventually become involved in binding and long-lasting relationships with his delinquent friends (Newburn, 2008: 193). Deteriorating neighbourhoods, low education levels, fragmented families, loss of control over the youth, and low income levels are all major consequences of social disorganisation.

This theory is relevant to child offending and the development of diversion programmes. By taking youth offenders’ social environments into consideration, diversion providers and programme developers may be able to aid and prepare family members and children to deal with challenges such as negative peer pressure that may arise in the future.

4.4.4. Strain theory

Robert Merton’s strain theory, also known as the anomie theory, claims that individuals are more likely to commit crimes when their goals (such as economic success) are blocked, and they cannot find legitimate means of achieving them (Burke, 2005: 99). According to Merton (cited in Featherstone & Deflem, 2003), the social structure strains cultural goals and values, “making action in accord with them readily possible for those occupying certain statuses within society and difficult or impossible for others”. Due to the fact that the class structure works in such a way that the greatest pressures towards deviation are exerted upon the lower strata, the combination of social structure and cultural emphasis will produce intense pressure for deviation (Featherstone & Deflem, 2003).

Like adults, children also desire power and material possessions, but due to the dire circumstances they find themselves in, there are often no legitimate means for them to attain these goals; as a result they often turn to crime or substance abuse to achieve their goals. In this research study it was found that the majority of parents and family members live in poverty, and thus it was not surprising that more than half of the children were arrested for financially motivated or property related crimes such as theft and shoplifting. As Merton notes, “it is this cultural imbalance that leads to people being prepared to use any means, regardless of their legality, to achieve those goals” (Burke, 2005: 100). Merton refers to five modes of individual adaptation as a response to the pressures exerted by various social

structures: conformity (accepts both the cultural goals of society and the means of achieving them), retreatism (rejects both the cultural goals and the means of achieving them), ritualism (rejects the goals, but accepts the means of achieving them), rebellion (rejects both the goals and the means of achieving them), and innovation (accepts the goals, but rejects the means of achieving them) (Featherstone & Deflem, 2003).

4.4.5. Differential association theory

The differential association theory presented by Edwin Sutherland explores how differential forms of organisation leads to different cultural influences and mechanisms. Social groups are arranged differently; while some support criminal activity, others are against such behaviour (Lilly, et al., 2011: 47). At the core of the differential association theory is the notion that “if an individual is exposed to more ideas that promote law-breaking than they are [to] ideas that act as barriers to such conduct, then criminal conduct becomes highly likely” (Newburn, 2008: 193). These differential associations however vary in intensity, frequency, and duration and it is usually the earlier, long-term, intense associations that tend to be more influential in an individual’s life (Newburn, 2008: 194). Sutherland (cited in Tshiwula, 2006: 22) also suggests that criminal behaviour, much like normal behaviour, is learned through interactions with others (close social groups such as family, friends and acquaintances), and that the process of becoming an offender is similar to that of becoming law-abiding.

Not only has Sutherland’s theory had a major impact on criminology and sociology as a whole, it also emphasises the fact that it is not only environmental conditions that cause individuals or children to offend, but that there are other stronger influences which affect crime, such as people’s social interactions and associations.

4.4.6. Drift and delinquency theory

Unlike most theories concerning youth offending, the drift and delinquency theory sees child offenders as being somewhere between freedom and control. David Matza acknowledges the fact that the child has both free will and rational choice, but points to external forces that could impact the child’s behaviour. Children are susceptible to both peer and adult influences. The child is thus seen as in a state of drift, but as he grows older, he will drift less and eventually stop committing crimes. By utilising a cost-benefit analysis, and depending on the strength of the bonds between the child and his parents, or the child and his peers, the

child will go with the choice that makes him feel better about himself (Tshiwula, 2006: 25).

As Matza stated:

Those who have been granted the potentiality for freedom through the loosening of social controls but who lack the position, capacity, or inclination to become agents in their own behalf, I call drifters, and it is in this category that I place the juvenile delinquent (cited in Lilly, et al., 2011: 105).

Hence, child offenders should be seen as being in a state of drift: in need of care, attention, and guidance and should not be seen as bad or evil (Tshiwula, 2006: 25).

4.4.7. Labelling theory

Howard Becker and Edwin Lemert's labelling theory emerged during the 1950s, and in contrast to other theories, is more concerned with how and why particular people come to be defined as deviant, whilst also focusing on society's reaction to deviance. Labelling theorists are of the opinion that individuals are not inherently deviant or criminal, but that it is society's reaction to their offences that produces more deviance. They divide deviance into primary and secondary deviances: primary deviance is the primary or original act committed, whilst secondary deviance refers to the labelling and stigmatisation of an individual that often leads to secondary deviance (Burke, 2005: 142; Lilly, et al., 2011: 139-140). When children get labelled and stigmatised during the criminal justice process they often accept, adopt, and live out the negative labels associated with and given to them.

The labelling theory has had a profound impact on the way in which children were and still are treated during the criminal justice process. Realisation of the adverse effects that labelling has on a child, the CJS is cautious in the way it labels, sentences, and treats child offenders. By removing the child from the CJS, both the stigma of criminal and delinquent labels and the financial burdens associated with criminal justice processing is reduced and/or avoided. Child justice reform efforts are an acknowledgment on the part of the state that they have not been able to prevent re-offending and that the CJS has the "potential to reinforce patterns of offending through the establishment of delinquent identities" (Newburn, 2008: 220). Similarly, the language, frameworks and objectives currently used in the Act is a reflection of the influence that the labelling theory has had on it. Drafters of the Act realised that going through the CJS and acquiring a criminal record would lead to a variety of negative consequences for youth offenders, including recidivism, and that diversion is a way of preventing this from happening.

In Britain 1988, the Home Office Green Paper stated that “most young offenders grow out of crime as they become more mature and responsible”, and that they need encouragement and support from friends, family, and society to become law abiding citizens once again.

Even a short period in custody is quite likely to confirm them as criminals; particularly as they acquire new criminal skills from the more sophisticated offenders... they see themselves labelled as criminals and behave accordingly (Newburn, 2008: 221).

4.4.8. Restorative justice theory

During the 1990s, the emergence of restorative justice, especially in relation to youth offending, influenced the way child justice reform took place throughout the world. Seen as “a postmodernistic paradigm shift in criminal justice thinking” (Hargovan, 2007: 87), responses to child offending may be viewed from a restorative justice perspective. Restorative justice is a mixture of theory and practice and includes programmes such as restitution, diversion, Victim Offender Meditation (VOM), and FGC. Instead of talking through a third party such as a lawyer, restorative processes and practices create opportunities for offenders to talk about their offending behaviour and the factors associated with it. This allows the offender to accept responsibility, express remorse, apologise, and attempt to make amends for the offence committed and harm caused. The root causes and circumstances that lead to the offending behaviour in the first place are also addressed. Furthermore, it is believed that through the use of restorative justice practices, the offender will gain a better understanding of themselves, their offence, and its consequences, and would be less likely to re-offend (Muncie, Hughes & McLaughlin, 2006: 243).

John Braithwaite’s seminal work *Crime, Shame and Reintegration* set the theoretical foundations of restorative justice (Sloth-Nielson cited in Davel, 2000: 420). According to him painful and/or retributive approaches to crime do not minimise or reduce recidivism, and that for “informal justice to be restorative justice, it has to be about restoring victims, restoring offenders and restoring communities as a result of participation of a plurality of stakeholders” (cited in Marotta, 2009). This can be said to stem from “an acknowledgement that conscience is generally a more powerful weapon to control misbehaviour than punishment” (Dignan, 2005: 102).

At the heart of Braithwaite’s reintegrative shaming theory is the concept of shaming, both reintegrative shaming and disintegrative/stigmatising shaming. Whilst acknowledging the

wrongful act, the theory recognises that child offenders should be valued and respected (Losoncz & Tyson, 2007). The child offender's sense of guilt and shame is thus integral to his understanding and acceptance of the consequences. A sense of shame "comes from assimilating the perceived expressions of guilt offered by others", whilst guilt is "only made possible by [the] cultural processes of shaming" (Braithwaite cited in Marotta, 2009). Reintegrative shaming can thus be considered to be effective both in the prevention of crime and in responding to crime (Harris, Walgrave & Braithwaite, 2004).

4.4.8.1. Risk and security

This „new’ penology of justice, also known as „Radical Criminology’ or „Left Realism’, is concerned with the prediction of risk and the various techniques that can be used in the identification, classification, and managing of children according to the seriousness of their offences. Thus the focus has shifted to „children at risk, and the management of that risk’. In this case risk can be seen as something that can be used to control and organise the future. In terms of offending, there has been a gradual increase in predictive and rational choice models (compared to socially-orientated approaches to crime causation); in prioritisation of deterrence (compared to rehabilitation and welfare interventions); in cost-effective and consumerism in crime control; and more emphasis being placed on individual responsibility (rather than collective or societal responsibility for crime prevention). According to Newburn (2008: 333), “the growing importance and visibility of risk-orientated thinking and practice can be seen across the whole of the criminal justice system”. Thus, it can be said that the CJS is now less concerned with fault, moral sensibility, diagnosis, intervention, and responsibility, and more concerned with “techniques to identify, classify and manage groupings sorted by dangerousness”. It is now possible to say that we live in a risk society and that there has been a “drift in the public agenda away from economic inequality to the distribution and control of risks” (Ericson & Carriere cited in Newburn, 2008: 329).

Diversion and the use of diversion programmes can be seen as ways of measuring and controlling at-risk children. By assessing the child (pre-trial assessment), the court is able to decide on the best diversion option for that child, and in doing so, prevent recidivism. In South Africa, restorative justice principles were first introduced into the child justice system during 1994, and since then numerous government policy documents such as the *Issue Paper*, *Discussion Paper* and the *Report* of the Law Commission has made use of restorative justice

(Sloth-Nielson cited in Davel, 2000: 420). Similarly, one of the primary aims of the newly implemented Act is to:

...expand and entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law, while ensuring their responsibility and accountability for crimes committed.

4.4.8.2. Retributive justice vs. restorative justice

While both retributive justice and restorative justice focus on restoring the balance or equality between the victim and the offender, the ways of doing so are different. Retributive justice focuses on the offence, places blame for past behaviours, and seeks to punish the offender for the offence committed. Restorative justice on the other hand focuses on the offender, aims to change future behaviour, and seeks to treat rather than punish the offender (Roche in Johnstone & Van Ness, 2007: 77). Restorative justice is concerned with repairing the harm caused and healing all the parties involved.

O’Conner (2010) defines retributive justice as a “systematic infliction of punishment justified on the grounds that the wrongdoing committed by a criminal has created an imbalance in the social order that must be addressed by action against the criminal”. Retributive justice is a legal principle which dictates that punishment for a crime is acceptable as long as it is a proportionate response to the crime committed. In this view, crime is seen as a wrong against the state or government instead of a wrong against individuals or communities, and focuses mainly on proving guilt and placing blame. Thus, it is up to the state to seek justice in terms of punishing the offender. Retributive justice is commonly associated with concepts such as ‘just deserts’ and ‘an eye for an eye’ and ‘a tooth for a tooth’. Hence, this type of justice system will often inflict punishments such as loss of property, imprisonment, and in some cases, even a loss of life (Wiesen, 2011). The primary aim of retributive justice is to inflict pain and suffering, whilst the victims are ignored. Thus, it can be said that retributive justice is backward-looking in the sense that it is usually a response to a past event of injustice or wrongdoing. A retributive justice system does not allow the offender to take responsibility for the crime committed and does not give the community a chance to be a part of the justice system (Janse van Rensburg, 2010: 12). As Maiese (2004) stated “retribution can therefore be seen as vengeance curbed by outside intervention and the principles of proportionality and individual rights”.

Restorative justice, on the other hand, sees crime as a violation against people and relationships as well as seeing people and communities as victims. O’Conner (2010) defines restorative justice as a “systematic response to wrongdoing that emphasises healing the wounds of victims, offenders and communities caused or revealed by the criminal behaviour”. Restorative justice theorists believe that those most affected by the crime should be involved in the conflict resolution process. While denouncing offending behaviour, restorative justice focuses on the strengths rather than the weaknesses of both the offender and victim in order to promote reconciliation and reintegration back into their respective communities (Umbreit, 1998). Not only does restorative justice bring all the concerned parties together (offenders, victims, respective support systems, community members, and key role players), but it also attempts to “engage them in a process of reconciliation and reparation” which gives both offenders and victims the opportunity to talk about their experiences and achieve mutually agreeable solutions (Mantle, Fox & Dhimi, 2005: 3). Through restorative justice practices a range of goals can be met:

...a meaningful experience of justice for victims of crime and healing of trauma which they tend to suffer, genuine accountability for offenders and their reintegration into law-abiding society, recovery of the social capital that tends to be lost when we hand our problems over to professionals to solve, and significant fiscal savings, which can be diverted towards more constructive projects, including projects of crime and community regeneration (Johnstone & Van Ness in Johnstone & Van Ness, 2007: 5).

Currently the judicial system is moving away from a retributive CJS where offenders are seen as individuals who violated the laws of the country, towards more restorative and rehabilitative processes (Nieman, 2002: 1), such as diversion programmes. According to Skelton and Batley (2006: 7), the majority of processes and programmes offered to children in the past were considered and described as restorative in nature. However, not all diversion programmes are restorative in nature and diversion does not necessarily translate into restorative justice. Various questions need to be asked, such as “does it address harms and causes, is it victim orientated, are offenders encouraged to take responsibility, are all stakeholder groups involved, is there opportunity for dialogue and participatory decision making”, and lastly, “is it respectful to all parties” (Hargovan, 2009).

To determine whether or not a programme or process is in fact restorative in nature, practitioners and scholars refer to and often make use of a ‘continuum’ of restorative justice. By so doing, one is able to declare a programme to be either less or more restorative. Thus, if a diversion programme addresses the harms and causes of the offence and encourages the

offenders to take responsibility but ignores the victims of the crime, it can be said that the programme is „potentially’ or „partially restorative’ (Skelton & Batley, 2006: 7). Khulisa’s diversion programmes answers „yes’ to three of the above statements. It address the harms and causes, encourages the child to take responsibility, as well as giving the child an opportunity for dialogue and participatory decision-making. The victims however, are absent from the programme and sessions. This means that not all of the stakeholders are involved, and as a consequence, not all parties are respected. Thus, the „Positively Cool’, „Silence the Violence’ and „New Directions’ diversion programmes can be categorised as only „partially restorative’.

4.5. Conclusion

Restorative justice practices, such as FGC and diversion programmes for child offenders, are good examples of elements still found in the abovementioned theories in child justice systems around the world today. Diversion programmes take both social and individual factors into consideration when deciding on a treatment and can thus be said to deal with the child offender in a holistic and restorative manner.

The overall theoretical perspectives used for the purposes of this research include family systems theory, restorative justice theory, and reintegrative shaming theory. These theories have been used in various studies such as those by Kim and Webb (2009), Miethe, Lu and Reese (2000), Tyler, Sherman, Strang, Barnes and Woods (2007), McGivern (2009), Losoncz and Tyson (2007), Naidoo (2007), and Tshem (2009).

The next chapter focuses on youth justice and diversion both nationally and internationally, and looks at the main legislations, acts and instruments that have been developed and implemented over the years.

CHAPTER 5

YOUTH JUSTICE AND DIVERSION

You will achieve more in this world through acts of mercy than you will through acts of retribution

(Mandela, 2011).

5.1. Introduction

With the introduction of the new concept „childhood’ in the 17th century, more and more people realised that children had the potential to be both good and evil, and that they required protection and discipline in order to ensure that they do not become involved in antisocial and delinquent acts (Newburn cited in Maguire, et al., 1997: 615). Further reform movements during the 18th and 19th centuries led to the establishment of child welfare agencies, institutions for child offenders, and ultimately, the establishment of the first juvenile court; attempting to remove children from the adult CJS altogether and provide them with individualised treatment (Davel, 2000: 384).

The dominant ideology was „welfarism’; a focus on children’s *needs* rather than their *deeds*. However, the informality of the welfare model was challenged in the United States Supreme Court case of *In re Gault* (87 US 1 1967), changing the parameters of child justice policy in the United States and across the globe. Not only did this case encourage the commencement of the „back to justice’ era, but it also introduced *due process* guarantees into juvenile court procedures (Davel, 2000: 385). Thus, youth offenders were guaranteed many of the same procedural rights as adult offenders including the right to a counsel, to appeal, to protection against self-incrimination, and to a transcript (Schmalleger, 1997: 545). Today however, the debates surrounding welfarism and justice have been superseded by the realisation that child justice practice and policy are diverse and cannot be explained by either model. Hence „combined justice and welfare approaches’ and/or „dual or mixed systems’ have emerged; aiming to focus on both the needs and the deeds of the child (Davel, 2000: 385).

In South Africa, while child justice reform has a long history dating back to the pre-colonial era, it is inextricably linked to social and political developments at various points in the country's history. During the 1970s and 1980s, thousands of children were subjected to torture, detention without trial, and arbitrary and political arrests. Ultimately, the realisation that children have to be dealt with differently is apparent in the many reform movements both in South Africa and internationally, with the turning point in South Africa dating from the country's democratic transition, ushering in a new era in child justice reform efforts (Botha, 2007).

In his opening speech to the first democratically elected parliament in 1994, Nelson Mandela set the stage for juvenile justice reform in South Africa:

The Government will, as a matter of urgency, attend to the tragic and complex question of children and juveniles in detention and prison. The basic principle from which we will proceed from now onwards is that we must rescue the children of the nation and ensure that the system of criminal justice must be the very last resort in the case of juvenile offenders (Skelton, 2002).

5.2. International child justice reform instruments

Up until the 18th century children were not recognised as having any special status and their age did not afford them any special protection. During the 1600s and 1700s in England, youth offenders were kept in the same prisons and subjected to the same punishments as adult offenders (Peacock, 2008: 61). The first piece of legislation that established a separate child justice system for children in conflict with the law, was the 1899 Illinois Juvenile Court Act (1899 Ill Laws 131 et Seq). This family court stated that “the delinquent child had ceased to be a criminal and had the status of a child in need of care, protection, and discipline directed toward rehabilitation” (Cox cited in Cox, Allen, Hanser & Conrad, 2007).

Since then, many jurisdictions have followed the Illinois example and enacted legislation that deal with aspects of child justice as well as establishing separate institutions for the treatment of children in conflict with the law. This has set the stage for a veritable international overhaul of child justice. Together with many regional and international treaties, conventions and charters, state parties have been obliged to examine existing provisions at the national level with a view to get into alignment with international good practice, with the overriding guiding principle being „the best interest of the child’ within a human rights framework. This means that ultimately, children in conflict with the law should be seen as children, tried as

children, and punished as children. Children's rights have been formally recognised and there is no longer a legal question as to whether the rights and fundamental freedoms in the United Nations Declaration of Human Rights also apply to children (September, 2006: S65).

5.2.1. The United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (1989) (Convention) sets out guidelines for creating and maintaining human rights within child justice systems, as well as dealing with the administration of child justice itself. The Convention assists countries in the creation and delivery of children's rights-based programmes and services. Government and state agencies have an obligation to develop laws and procedures that deal specifically with youth offenders. In South Africa, these laws and procedures have influenced decisions regarding diversion programmes and pre-trial community services (Sloth-Nielson in Sloth-Nielson & Gallinetti, 2004: 22, 26).

The Convention is based on four primary principles: best interests of the child, non-discrimination, child participation, and the right to survival and development. The 'best interests of the child' principle aims to serve as a guideline in all matters involving children, and all matters that are relevant to child justice, affecting decisions relating to administration, policy formation, and diversion. The 'non-discrimination' principle is considered to be central to the Convention and states that no child should be discriminated against. The principle of 'child participation' (Article 12) has given children a chance to have their say in decisions concerning them whilst ensuring and providing for competent legal representation for children who appear in court. The 'right to survival and development' principle applies to all children, especially those that have been deprived of their freedom. It focuses on the health and well-being of children as well as their rights to recreation, leisure and health, social and welfare services (Sloth-Nielson in Sloth-Nielson & Gallinetti, 2004: 22-24).

Article 40 of the Convention deals mainly with the administration of child justice, and states that state responses to child offending have to treat children in a way that will not only promote their sense of self-worth and dignity, but also promote the reintegration of children back into society. Various practices have been designed in South Africa that are non-punitive and reintegrative. An important example of such a practice is diversion (Sloth-Nielson in

Sloth-Nielson & Gallinetti, 2004: 26). The reintegration of children back into a community can be successful with the help of restorative justice programmes such as FGC and VOM.

Important aspects regarding child justice are mentioned in Article 40(3) of the Convention. Firstly, government and state agencies are encouraged to develop laws and procedures that deal specifically with child offenders. In South Africa, these laws and procedures influence decisions regarding diversion programmes and pre-trial community services. The second aspect can be found in Article 40(3)(a), which states that there should be a minimum age and that all children who are younger than specified, cannot be recognised as having criminal capacity. In South Africa, the minimum age used to be 7 years, but with the implementation of the Act, has been raised to 10 years. A third and very important aspect deals with the diversion of child offenders. Article 40(3)(b) states that wherever possible, government agencies should use judicial proceedings as a last resort and that in such cases the human and legal rights of the child should be safeguarded. Due to this provision, concepts of diversion are no longer seen as discretionary services provided for by welfare and private organisations. The diversion of a child however, can only take place once he or she has accepted responsibility and guilt for the offence committed. This aspect has had a major influence on South African practice and policy; the Act dedicates an entire chapter to the diversion of child offenders (Sloth-Nielson in Sloth-Nielson & Gallinetti, 2004: 26-28).

5.2.2. Other relevant guidelines

Other relevant guidelines and rules can be found in the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the United Nations Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty (Minimum Standards). The Riyadh Guidelines deals mainly with children and sets out strategies that will prevent them from committing crimes. Based on social policies that focus on children, their families, and their communities, some of the most important principles are the importance of family involvement, education, and more attention being paid to the emotional, cultural, and psychological life of the child, as well as the importance of community involvement, community-based solutions, financial support by governments, and NGOs offering services to young people (Skelton & Tshehla, 2008: 18-20). The Beijing Rules set out the most fundamental elements in an effective juvenile justice system, including

aspects such as the minimum age of criminal capacity, the aims of juvenile justice, the scope of discretion, diversion and adjudication, as well as the sentencing of offenders (Skelton & Tshehla, 2008: 21). The Minimum Standards are mainly responsible for the management of child offenders and deal with children who have been deprived of their liberty. As far as possible, children under the age of 18 years should not be deprived of their liberty, and where this is done, it should be done as a measure of last resort (Skelton & Tshehla, 2008: 25).

5.2.3. African Charter on the Rights and Welfare of the Child

The Convention heavily influenced the African Charter on the Rights and Welfare of the Child (African Charter) implemented in 1999. It is used to supplement and enhance the Convention. The African Charter also promotes restorative justice values in all aspects of children's rights and welfare. It has had an exceptional influence and impact on the way that the government and its agencies deal with the punishment of child offenders. „Diversion’, „restorative justice’ and „reintegration’ are just some of the key concepts that have been integrated into South African child justice systems (Gallinetti, Muntingh & Skelton in Sloth-Nielson & Gallinetti, 2004: 32).

The Act commits itself to the provisions made in the African Charter by incorporating indigenous values in terms of the treatment of youth offenders, as well as including restorative justice elements such as diversion and FGC. In addition, *ubuntu* has been mentioned as a key aim of the Act. Deeply embedded in African values and beliefs, the theory of *ubuntu* reinforces communitarianism and states that “one’s personhood depends on one’s relationship with others” (Sloth-Nielson & Gallinetti, 2011: 70). Thus, youth offenders are seen as rooted in their families and communities. *Ubuntu* values incorporated into the Act include the protection of youth offenders’ human rights, as well as fostering their sense of dignity and self-worth. Lastly, the Act moves away from retributive procedures to make way for more rehabilitative practices to take place. The Act can therefore be seen as an “Africanised statute, based on the prominence given to restorative justice and *ubuntu*” (Sloth-Nielson & Gallinetti, 2011: 71, 85).

5.3. International reform initiatives

Canada's Juvenile Justice Act of 1965 indirectly set the legal foundation for court-ordered mediation between victims and young offenders. During the 1980s and 1990s, Canadian aboriginal sentencing and healing circles developed and aimed to empower the community affected by the offending behaviour. The Belgian federal government also introduced modifications to the Juvenile Justice Act in 2005, which gave prominence to restorative approaches such as mediation and conferencing (Miers in Roche, 2004: 451, 455).

With the passing of the Children, Young Persons and Their Families Act in 1989, New Zealand became the forerunner in juvenile justice reform efforts internationally; setting out the general principles that dealt with government intervention, the lives of children and youth that came into conflict with the law, as well as the management of youth justice. This system was strongly influenced by aboriginal models (such as Maori concepts of conflict resolution), and an attempt to shift towards a justice approach that would have positive outcomes for children who come into conflict with the law (Morris & Maxwell in Roche, 2004: 84). The main principle of this Act is to "encourage and support the family as the principal arbiter of decisions affecting its members" (Miers cited in Roche, 2004: 459), whilst also promoting the use of diversion in both courts and institutions. The most popular approach is FGC that directly involves the individuals affected by the crime (Muncie, et al., 2006: 244).

Diversion of youth offenders, such as court cautions were first initiated in Britain from the 1960s onwards (Koffman & Dingwall, 2007). With the Children and Young Persons Act of 1969, the notion of using diversion was introduced as a means of keeping child offenders out of the formal CJS (Newburn in Maguire, et al., 1997: 641). Various other countries such as New Zealand, Australia, Canada and America also make use of diversion for this purpose as well as rehabilitating children and encouraging reintegration back into their families and communities. When diversion was first practiced, interventions were based within institutions and mainly designed to provide moral re-education and treatment in order to prevent recidivism. Today however, there is a move towards more community-based interventions (Monyatsi, 2008: 8).

The international instruments and reforms that have been discussed have the following in common: the desire to control the treatment of child offenders, to reduce their chances of coming into contact with the CJS, and to involve members of the family and community in

restorative justice type programmes (Muntingh, 1997). Thus, it is evident that diversion and the involvement of families is quickly becoming an essential feature of child justice systems, both nationally and internationally.

5.4. Child justice reform initiatives in South Africa

All the international instruments discussed above strive towards one goal, and that is to create an „ideal’ child justice system. A top priority is the promotion of the well-being of children and the protection of their rights. The main focus of any child justice system however, should be to divert child offenders away from formal criminal procedures. In cases of diversion, children should be treated according to their individual needs, with the involvement of parents, families, and communities. If the child cannot be diverted and must be processed through the CJS, he or she must have legal representation and be encouraged to participate in the decision making process. Presiding officials should be guided by the principles of proportionality and always act in the best interests of the child. Any hearings involving children should take place in an „atmosphere of understanding’ (Skelton & Tshehla, 2008: 26).

Efforts to establish a separate child justice system in South Africa can be traced back to the 1980s. However, it was only with the ratification of the Convention on 16 June 1995 that South Africa embarked on the journey to develop separate legislation for children that come into conflict with the law (Monyatsi, 2008: 22). As of 2009, 193 countries have ratified and accepted the Convention including, Australia, Canada, India, Iran, New Zealand, Saudi Arabia, Ireland, and the United Kingdom. There are only two countries that have yet to sign the treaties - Somalia and the United States.

5.4.1. The Child Justice Act 75 of 2008

South Africa’s Child Justice Act 75 of 2008 aims to mirror the provisions in international instruments and guidelines and has been influenced by legislation in countries such as New Zealand, Australia, England, and Canada. The Act deals with issues such as age and criminal capacity, pre-trial detention, pre-trial assessment, preliminary enquiry, diversion, the child justice court, sentencing, legal representation, and the expungement of records.

The Act applies to three categories of children: children below the age of 10 years, children older than 10 years but younger than 18 years, and individuals older than 18 years but younger than 21 years (Gallinetti, 2009: 15). The criminal offences that are dealt with in the Act are divided into three schedules depending on the severity of the offence. Schedule 1 consists of less serious offences such as common assault, blasphemy, *crimin injuria*, theft (value must be lower than R 2500), and trespassing. Schedule 2 offences include robbery, public violence, arson, theft (value must be more than R 2500), and abduction. More serious offences such as treason, murder, kidnapping, and rape are placed under Schedule 3 (Gallinetti, 2009: 67).

Due to the fact that the Act created particular procedures for children that would see to their needs and rights, it is of pivotal importance that the Act is applied to the right group of children. The Act therefore deals with issues concerning the age of a child in terms of “the minimum age for prosecution of a child or minimum age of criminal capacity, the age until which criminal incapacity is presumed but may be rebutted, and determining the age of a child” (Gallinetti, 2009: 17).

Section 28(1)(g) of the Constitution provides that detention should be used as a measure of last resort and for the shortest period of time. In order to facilitate and manage children who come into conflict with the law, the Act has created the preliminary enquiry which is “aimed at preventing children from getting ‘lost’ in the system”, and to “ensure that an individualised response is used in each case” (Gallinetti, 2009: 38). It is usually at the assessment and preliminary inquiry phase that the decision to divert a child is made.

The Act has the following key objectives and aims in relation to diversion:

...to centralise diversion as an option for children in the CJS, to expand and entrench the principles of restorative justice, to minimise the potential for reoffending through placing increased emphasis on the effective rehabilitation and reintegration of children, to balance the interest of children and those of society and victims, and to create a system which in broad terms takes into account the long-term benefits of a less rigid criminal justice process that suits the needs of children in conflict with the law in appropriate cases (Sloth-Nielson & Gallinetti, 2004: 65-66).

5.5. Diversion

Diversion, which is primarily based on restorative justice principles, seeks to refer cases away from the formal criminal court procedure in order to protect children from the negative

effects of the CJS (Botha, 2007: 5). Diversion may be defined as the “channelling of children into appropriate reintegrative programmes and services, where the intervention of the formal court system is not necessary” (Mbambo, 2005: 76). A more holistic definition is given by Monyatsi (2008: 8) who defines diversion as “strategies developed in the youth justice system to prevent young people from committing crime or to ensure that they avoid formal court action and custody if they are arrested and prosecuted”.

According to Wood (cited in Tshem, 2009: 44) the development of diversion programmes is “concurrent with the establishment of separate child justice” and in many ways diversion may be seen as the core of the Act. Initially youth diversion programmes were established with the aim of addressing the high crime rates found in most countries (Monyatsi, 2008: 26), however today the concept of diversion embodies the idea of a restorative justice system for children who come into conflict with the law.

Diversion is considered to be very flexible in nature and depending on the child offender, can either be conditional or unconditional. Unconditional diversion includes cautioning, whereas conditional diversion will include sending the youth offender to a programme which they need to attend and complete. Diversion can also be divided into formal and informal diversion. An example of informal diversion is receiving a police caution, whereas formal diversion entails sending the child offender to a diversion programme, such as those offered by Khulisa (Gallinetti, et al. cited in Sloth-Nielson & Gallinetti, 2004: 37).

Section 28(1)(g) of the Constitution provides that detention should be used as a measure of last resort, and for the shortest appropriate period of time. Diversion promotes more humanitarian and less stigmatising responses to child offences than punitive sentences (Monyatsi, 2008: 9). Diversion can take place prior to the arrest, trial, conviction and sentencing of the child offender, and alternative measures to sentencing include warnings, restitution agreements, and community service orders (Muntingh, 1997). Most specific to this discussion are the provisions relating to diversion at the pre-trial stage of child justice processes. Section 34 provides for the pre-trial assessment of a child. Every child accused of committing an offence (including children younger than 10 years of age) are required to undergo assessment. This process is intended to aid investigators and prosecutors in deciding the best treatment for the child in line with the „best interests of the child’ principle. So doing, the age of a child can be assessed with the help of social workers and unique

recommendations can be formulated with regards to the child in question (Gallinetti, 2009: 34). It is usually at the assessment and preliminary inquiry phase that the diversion determination is made.

Whether or not a child becomes a candidate for diversion is also dependent on the availability of diversion programmes, the presence of an NGO service provider near the child's home, the seriousness of the offence (only Schedule 1 and Schedule 2 offences may be considered), previous convictions (Skelton, 2009: 9), and whether or not the child has accepted responsibility for the offence (Gallinetti, et al. in Sloth-Nielson & Gallinetti, 2004: 33). By so doing, the child will avoid the stigmatisation of having a criminal record and the negative effects of the CJS (Mbambo, 2005: 76). Diversion promotes more humanitarian ways of dealing with child offenders (Wood, 2003).

The preliminary inquiry is conducted by an inquiry magistrate and should ideally take place before the plea. In this way the "court may even develop an individual diversion option that meets the purpose of the particular matter" (Anderson, 2003: 5). Through the preliminary inquiry, the Act now provides a set of compulsory decisions that need to be taken regarding the child so that all role players are aware of, and have reached general consensus when it comes to the management of the case. So doing, professionals and role players are able to collect all the relevant information regarding the child, such as the child's circumstances as well as the various diversion options available (Gallinetti, 2009: 38).

5.5.1. The objectives of diversion

The objectives of diversion are clearly set out in Section 51 of the Act and include the following: encouraging the child to take responsibility, promoting reintegration, preventing stigmatisation, and reducing the chances of recidivism. Diversion can be achieved at three levels: prosecutorial diversion (for minor offences) (Section 41); after the pre-trial assessment is conducted at the preliminary inquiry (Section 34); and during the trial in a child justice court (Section 52). Section 54 deals with the selection of diversion options, Section 57 deals with the monitoring of a diversion option, Section 60 deals with the diversion register, and Section 56 deals with the accreditation of diversion programmes (Gallinetti, 2009: 34-50).

The primary aims of diversion are to make offenders responsible and accountable for their actions, to provide opportunities for reparation, to identify underlying problems motivating offending behaviour, to prevent most first-time or petty offenders from receiving a criminal record and being labelled as criminals (as this may become a self fulfilling prophecy), to provide educational and rehabilitative programs for the benefit of all parties concerned, and to lessen the caseload of the formal CJS (Naidoo, 2007: 21).

The objectives of diversion programmes are set out in Chapter 8 of the Act. They are:

- to deal with a child outside the formal criminal justice system in appropriate cases,
- to encourage the child to be accountable for the harm caused by him or her,
- to meet the particular needs of the individual child,
- to promote the reintegration of the child into his or her family and community,
- to provide an opportunity to those affected by the harm to express their views on its impact on them,
- to encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm,
- to promote reconciliation between the child and the person or community affected by the harm caused by the child,
- to prevent stigmatising the child and prevent the adverse consequences flowing from being subject to the criminal justice system,
- to reduce the potential for re-offending,
- to prevent the child from having a criminal record,
- to promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society.

Furthermore, diversion options should not be exploitative, harmful or hazardous to a child's physical or mental health, must be appropriate to the age and maturity of the child, and should not interfere with the child's schooling (Naidoo, 2007: 22).

Whilst diversion programmes aim to impart useful skills, they should also include a restorative justice element that aims to heal relationships, including relationships with the victim. Some examples of these programmes are: developmental life skills and life centre models which focus on life skills education such as personal awareness, communication

skills, conflict resolution, family life, and crime prevention; peer and youth mentorships which refer to friends, youth and adult mentors in the community who are responsible for forming relationships with the child and offering him/her guidance and support and acting as big brothers or sisters to the child; wilderness and adventure therapy programmes which are ideal for children who experience serious behavioural and emotional problems and focus on outdoor experimental learning used in cases of level three diversions; vocational skills training and entrepreneurial programmes which seek to assist children who are out of school or unemployed and are especially useful to children on the brink of adulthood; restorative justice programmes including programmes such as FGCs and VOM; counselling and therapeutic programmes which deal with children who commit behavioural and mental health related offences such as substance abuse; family-based programmes which focus on the entire family and places the child back in the care of his or her family on condition that specific support services are given to both the child and his or her family; and combination programmes which usually combine different elements from various programmes into a single programme where different elements can include life skills training, vocational skills training, FGCs as well as adventure therapy (Mbambo, 2005: 82).

Thus, it can be said that diversion meets and advocates the five key elements of restorative justice, namely facing reality (inviting full participation and consensus); accepting responsibility (seeking full and direct accountability); expressing repentance (healing what has been broken); reconciliation (reuniting what has been divided); and making restitution (strengthening the community to prevent further harm) (Monyatsi, 2008: 26).

5.5.2. Youth diversion programmes offered by Khulisa

Khulisa is an NGO committed to reducing crime and empowering individuals through various programmes and initiatives. These programmes are based on restorative justice principles which make Khulisa's work consistent with developments in the official adoption of restorative justice in South Africa. Khulisa's mission is to inspire constructive values and behaviours using approaches and programmes that promote sustainable development in individuals, communities, and enterprises (Steyn, 2005: 73). Three youth diversion programmes are offered, namely the 'Positively Cool', the 'New Directions', and the 'Silence the Violence' programmes. While all the programmes are similar in nature, they vary slightly according to duration, content, and intensity.

5.5.2.1. The ‘Positively Cool’ diversion programme

The „Positively Cool’ diversion programme is a life skills programme that includes all the essential skills necessary for the management of a child’s life. The programme consists of 24 hours facilitated sessions that include a briefing, an assessment, a Parent Workshop, a Family Dialogue, and a community project. The target audience is children between the ages of 8 and 18 who have committed Schedule 1 or 2 offences, and who have been approved by the court and found to be suitable candidates for diversion. The programme is delivered over a period of 8 weeks by suitably qualified facilitators in the area of the court district at a venue that is easily accessible to the participating children. One or more of the following outcomes are expected on completion of the programme: development of self-awareness, development of self-management skills, improved self-esteem and self-image, replacing of negative behaviour with positive behaviour, understanding the impact of behaviour on self and other people, rebuilding of damaged relationships in the community, and empowering of self in peer relationships (Khulisa, 2009).

5.5.2.2. The ‘New Directions’ diversion programme

The „New Directions’ diversion programme is a community-based, non-custodial intervention for youth diverted from the court or referred by schools, the police, or parents. New Directions is primarily aimed at first-time offenders and children who have committed minor offences, and attempts to determine and resolve the underlying problems associated with offending behaviour as well as teaching necessary life skills to participants. The New Directions programme is for youth aged between 14 and 18, is based on the principles of *ubuntu*, and follows a humanistic approach to the management and treatment of young offenders. The programme consists of 23 sessions delivered over a period of 16 weeks. The three main outcomes of the programme are: personal and systematic change and development, behavioural change, and the application of knowledge to real life (Khulisa Social Solutions, 2011).

5.5.2.3. The ‘Silence the Violence’ diversion programme

„Silence the Violence’ (STV) is a violent and aggressive behaviour diversion programme that takes participants on a journey of discovery in which they become aware of the extent of their own violence, where it comes from, as well as learning how to make effective non-violent choices. Not only does STV illustrate how violence, which is not always physical, is

ingrained in our cultures and belief systems and how it emerges in daily interactions, it also allows participants to learn practical ways of minimising their violent behaviour. The STV programme is for youth aged between 14 and 18 years who have committed violent offences, and consists of 14 sessions delivered over a period of nine weeks. One or more of the following learning outcomes are expected on completion of the programme: the ability to recognise the different levels of violence, an understanding of violence and its origins, greater awareness of the effects of violence, improved listening skills, greater empathy for people, improved staff-inmate relationships, increased self-esteem, improved self-care, and deeper commitment to one's true self (Khulisa Social Solutions, 2011).

5.5.3. Advantages and disadvantages of diversion

There are numerous advantages to using diversion such as offering the child an opportunity to take responsibility for his actions, giving the child an opportunity to pay some form of restitution, the prevention of a criminal record, and very importantly, the prevention of stigmatisation (Gallinetti, et al. cited in Sloth-Nielson & Gallinetti, 2004: 32). Diversion programmes are innovative and less expensive than formal court procedures, and reduces the court caseloads, the amount of time officers spend to process a case, and the length of time during which the juvenile is involved in the juvenile justice system (Regoli & Hewitt cited in Van Der Westhuizen, 2004: 64).

However, a disadvantage is that it can only take place once the state has enough evidence to prosecute the child and the child has acknowledged and admitted to the crime. The child's right to due process may be hampered if this is not the case (Gallinetti, et al. cited in Sloth-Nielson & Gallinetti, 2004: 33). Due to the fact that the power to divert often depends on the public prosecutor, this means that there is no uniformity when it comes to diverting children. As a result of the discretionary powers held by prosecutors, prejudices and inconsistencies in terms of race, class, and gender can influence whether or not a child will ultimately be diverted (Tshem, 2009: 48).

Diversion may lead to encapsulation or net-widening and re-labelling (Muntingh, 1997; Wood, 2003). Various writers allude to the fact that merely moving children from secure institutions into local or community-based alternatives is similar to that of „community incarceration'. Thus, once a community develops such controls, it can be seen in the same

light as incarceration; “it appears that receiving help or treatment from agencies is more stigmatising than being arrested and processed in the justice system” (Elliot cited in Muntingh, 1997). Described as “an extension of the criminal justice system to persons who might not otherwise be captured”, diversion can result in net-widening thus broadening its power even further to “spread to non-legal or extra-legal standards of behaviour which support the kind of world favoured by the managers of the system” (Tshem, 2009: 48). So doing, the CJS extends its reach and increases the number of individuals who are subject to its jurisdiction (Muntingh, 1997).

Lastly, a lack of resources, especially in the rural areas, as well as a lack of follow-up sessions and support services (inadequate monitoring) are also considered to be difficulties and disadvantages in the implementation of diversion programmes (Tshem, 2009: 48).

5.6. Family Group Conferencing

FGC was first pioneered and implemented in New Zealand during 1989, and sought to overcome problems created by the large numbers of young offenders, as well as to incorporate the value system of the indigenous Maori tribe (Tshem, 2009: 63). Since then however, FGC has been further adapted and adopted in countries such as Australia, Asia, South Africa, North America, and Europe (van Ness, Morris & Maxwell in Morris & Maxwell, 2003: 7). In South Africa, FGC is similar to mechanisms utilised by traditional African societies for the resolution of conflicts, whereby all members affected by the crime, including the victims, extended family and community members, are involved in the resolution and decision-making process.

FGC is one of several conflict resolution mechanisms based on the values of restorative justice that seeks to establish a greater degree of community control and is aimed at reparation rather than retribution (Neff, 2004: 138). Conferencing is defined as “a process in which any group of individuals connected and affected by some past action come together to discuss any issues that have arisen”, and includes “community members most affected by the offence, personalises the consequences of the misbehaviour, and allows for the harm suffered to be expressed in very personalised terms with little guidance from the facilitator” (McCold cited in Morris & Maxwell, 2003: 44). According to the Act (Section 61(1)(a)), FGC can be described as “an informal procedure which is intended to bring a child who is alleged to have

committed an offence and the victim together, supported by their families and other appropriate persons”.

According to Branken (cited in Tshem, 2009: 62), it is “families and communities that know best how to deal with the offending behaviour”. Hence, the involvement and presence of the offender’s family goes beyond being there to support the offender; “the family of the offender is instrumental in finding and determining the outcome and in facilitating the formulation of an appropriate plan” (Tshem, 2009: 67).

In general, FGC is aimed at youth between the ages of 14 and 18 who have committed less serious offences and have admitted guilt for the offence committed (Tshem, 2009: 65). FGC includes the primary victims and offenders and support persons of victims and offenders such as family members or friends of victims (van Ness, et al. in Morris & Maxwell, 2003: 7). According to the Act, FGC may be attended by the following persons: the child and his or her parent, an appropriate adult or a guardian, any person requested by the child, the victim of the alleged offence, his or her parent, an appropriate adult or a guardian (where applicable), any other support person of the victim’s choice, a probation officer, the prosecutor, a police official, as well as a member of the community in which the child resides (van Ness, et al. in Morris & Maxwell, 2003: 7). Young offenders should play an active role in the FGC so that they are able to understand the harm caused and take responsibility for that harm, as well as being given a sense of ownership regarding the outcome of the process (Tshem, 2009: 67).

The FGC has three basic phases: preparation (the offender, along with his or her family should be adequately prepared regarding the processes of FGC); facilitation (during this phase the offender is given an opportunity to acknowledge the offence and the victim is afforded an opportunity to speak, ask questions and receive clarity, after which a possible outcome and agreement is reached); and monitoring (this phase is critical for both success and confidence building) (Tshem, 2009: 66).

A primary function of FGC is to place greater control and responsibility in the hands of families themselves, which will result in higher appraisals of procedural fairness as well as increase the satisfaction among participants during the decision-making process (Neff, 2004: 140). FGC aims to make the offender realise the impact of their actions on the victim; provide an opportunity for the offender to go through the process with adequate support from

his or her family; provide a platform for victims by acknowledging and giving them an opportunity to express their feelings about what has happened; acknowledge the offender's family as the primary guardians of the offender who should be given the chance to deal with the situation in their own family way; give an opportunity to repair the damage done to the victims; allow participants to reach a solution satisfactory to both the offender and the victim in a non-hostile situation; provide a supportive and healing environment to the victims, the offender and to his or her family; as well as aim to prevent recidivism (Tshem, 2009: 68).

Thus, it is clear to see that not only does FGC hold offenders accountable for their actions, but it is also responsive to victims; "it could provide victims with both a presence and a voice and with the opportunity for some healing, for some understanding of what happened and why, and for some closure" (McCold cited in Morris & Maxwell, 2003: 46). Furthermore, FGC contributes to the empowerment and healing of the community as a whole as it involves community members called to the meeting to discuss the offence, its effects, and how to remedy the harm caused (Tshem, 2009: 68).

5.7. Conclusion

From the literature reviewed it is clear to see that a number of policies, laws, acts, and treaties have been developed over the years to specifically deal with youth offending, both nationally and internationally. Due to these rapid reforms, a number of acts and policies have been put in place to treat youth offenders in a rehabilitative and restorative manner. Some of these restorative programmes include diversion and the use of FGC. However, there are various challenges when it comes to the implementation of these practices and programmes such as a lack of resources and inconsistencies in the interpretation of the Act by different key role players.

The next chapter analyses and interprets the data collected through face-to-face interviews with parents and key role players.

CHAPTER 6

FAMILY MATTERS (DATA ANALYSIS)

We must do all we can to empower parents and communities to protect our youth and to encourage healthy behaviour
(Corzine, 2011).

6.1. Introduction

The important role that parents and family members play in children's lives cannot be emphasised enough; "many family-related protective factors are linked to positive outcomes in adolescence and beyond" (Robinson, Power & Allan, 2011: 57). Parents and family members help their children to grow and develop by providing a loving and safe home environment, taking an interest and being involved in their children's lives, and by instilling positive values and morals in their children. Good, healthy and positive relationships between parents and their children will ultimately provide children with the social and emotional skills to tackle stressful life events. These skills are not only important and useful inside the family environment, but also outside in the school and community environment (Baxter, Higgins & Hayes, 2012).

Leedy and Ormrod (2005: 150) posit that "there is „no single right' way to analyse the data in a qualitative study"; instead the researcher must (through inductive reasoning), "sort the information and eventually categorise it into small sets of abstract, underlying themes". In most instances qualitative data analysis takes place in five steps, namely familiarisation and immersion, inducing themes, coding, elaboration, and interpretation and checking (Terre Blanche, Durrheim & Kelly in Terre Blanche, et al., 2009: 322-326). This study will contribute not only to the evaluative research on youth diversion but also to the implementation of programmes in practice. I used a qualitative approach to analyse information obtained from parents about their experiences with regards to their family life, their children, the diversion process, and the outcomes thereof.

In order to achieve the objectives of my study I interviewed parents of youth that had participated in diversion programmes at Khulisa's Pinetown and Phoenix sites. The interviews were conducted over a period of 10 months; from 5 September 2011 to 11 July 2012. Since Khulisa runs exactly the same diversion programmes at both sites I extended my study to two sites. This enabled me to interview a more diverse sample of parents and draw comparisons. I also interviewed key informants at both sites.

The role of the prosecutor in the diversion of youth is of paramount importance. I therefore deemed it necessary to interview the senior public prosecutor (hereafter referred to as the prosecutor) at the Pinetown Court, the main referral source for Khulisa's diversion programmes at the Pinetown site. I interviewed the diversion manager in Pinetown and diversion coordinator in Phoenix, as well as the diversion facilitators at both sites. In addition, I manually recorded field notes based on my observation of programme sessions consisting of Parent Workshops and Family Dialogue sessions.

This chapter is structured according to two main themes and various sub-themes: in the first section I focus on 'family matters' by providing a profile of the parents in the study, their perspectives on their children, and their family life with their children. I then go on to focus on 'diversion matters' by examining how parents experienced diversion and the diversion programme. In all of these 'matters' I include the perspectives of the main role player, namely the family, represented by parents, and the secondary role players, namely the prosecutor (CJS), diversion manager, coordinators, and diversion facilitators.

6.2. Parent profiles

Initially, a total of 77 parents whose children are currently in or have been through the programme were contacted; 36 in Pinetown and 41 in Phoenix. However, of the 77 calls made, only 25 parents were available and willing to participate in the research. Five parents with whom I had made appointments did not show up. Thus, a total of 20 parents were interviewed; 10 from Pinetown and 10 from Phoenix. This next section provides a profile of the 20 parents who participated in the research.

6.2.1. Race and gender

Of the 10 parents interviewed in Pinetown, nine were Black and one was White. Black parents mainly consisted of biological mothers (n=6), a biological father (n=1), an aunt (n=1), and a grandmother (n=1), whilst the one White parent was the biological mother of the child. In Phoenix, the majority of the parents are Indian (n=8), followed by Black (n=2). Indian parents mainly consisted of biological mothers (n=5), biological fathers (n=2), and both parents (n=1), whilst both Black parents are the biological mothers of their children. It was only in Pinetown that children were being taken care of by guardians, whilst all the children in Phoenix are being taken care of by their biological parents. In both cases where the aunt and the grandmother are taking care of the children, the biological parents have either passed, or their whereabouts are unknown, as the grandmother explained, "*the mother died in 2000, I can't remember the father because they weren't married*". Similarly, the aunt is taking care of her late sister's child.

In order to prevent racial prejudice, SAPS does not record the relationship or link between race and crime in their official statistics; as a result this information is difficult to obtain. However, there is evidence to suggest that there are major differences in the levels of both victimisation and offending between the different race groups in South Africa (CSVR, 2007: 131). According to Maree (2008: 73), Black people are overrepresented in terms of arrest, conviction, and incarceration. In this study, Blacks made up the majority in Pinetown and Indians the majority in Phoenix. This can mainly be attributed to the Group Areas Act where people were compelled to live in designated areas separated according to race. In this case, both Pinetown (South) and Phoenix are mainly occupied by Black and Indian races and are considered to be Black and Indian living areas (see Chapter 3). However, it is not necessarily race alone that contributes to crime, but the economic and social conditions that these race groups find themselves in. Due to deprivation, inequality, and a lack of opportunities, individuals will often turn to crime in order to relieve or better their current situation.

6.2.2. Marital status

The majority of parents in Pinetown were single (n=7), and married (n=2), whilst only one parent was divorced. In Phoenix, on the other hand, the majority of parents were married (n=9), while only one parent was single. It is clear to see that more children in Pinetown are growing up in incomplete families. Although one parent from Phoenix said that she was

single, she was living with the child's biological father. While more than half of all the parents are married (n=11), not all of them are married to the child's biological parent since many of them have remarried due to the death or separation of their partners. A parent in Phoenix who said she was married to the child's biological parent described how the father was having an affair and how this affected their lives:

He's got another woman and I was so depressed... It's affecting my son as well... Sometimes they get into an argument and he's standard 8 and it affected him, sometimes he comes home from school and he just wants to go away and do his homework at a friend's house and then he comes back late...

In some instances, parents have remained single after the death or separation from their partners. A parent from Pinetown attributed her separation from her husband to his alcoholism and the fact that her “*children couldn't even focus at school*”. A father from Pinetown said that he does not know the whereabouts of the child's mother who had left them when the child was just three years old (he is now 15).

Research has consistently showed that children from single-parent households, with ruptured family ties and without a father figure are more at risk and more likely to engage in antisocial and deviant behaviour. Single parents often have to work long hours in order to support themselves and their families, and as a result, are unable to supervise their children. In addition, economic and emotional resources are limited (McCord, et al., 2001: 75-76). Thus, being raised in single-parent household increases the risk of a child becoming involved in antisocial and criminal behaviour (Nieman, 2002: 43).

6.2.3. Employment status

Over half of parents in Pinetown were employed (n=6), just under half were unemployed (n=3), whilst one caregiver was a pensioner. Of those who are unemployed, two households have no income at all, whilst one household is financially dependent on the grandmother's pension. In Phoenix, the opposite was true, with the majority of parents being unemployed (n=6), followed by employed (n=4). However, while the majority of parents in Phoenix are unemployed, in many instances their partners are working (n=4), and thus, the majority of households have an income (n=8), with only two households being dependent on grants for their livelihood. Both parents from Phoenix who are dependent on grants said that they struggle financially with an income of less than R300 a month and have to make do with the very least at times. From this data it becomes clear that the majority of households in

Pinetown have in general less income compared to those in Phoenix. This could also explain why the children from Pinetown committed property (and thus financially motivated) crimes, compared to interpersonal and drug-related crimes committed by children in Phoenix.

More than half of the parents live in poverty and barely make enough money to last them through the month. Not only has economic recessions and rapid urbanisation resulted in a lack of employment opportunities for many individuals, but it has caused many South Africans to fall into poverty. Thus, it is clear to see that adult unemployment has devastating consequences for children and youth. In accordance with the strain theory, individuals who are poor and unemployed are generally at a greater risk of becoming involved in crime and criminal activities (Weatherburn, 2001: 5).

6.3. Child profiles

During the interviews the parents provided information about their children as well as valuable insights into different aspects of their lives. According to Khulisa's files in Pinetown, the majority of children attended the „Positively Cool' (n=5), followed by the „New Directions' (n=4) and the „Silence the Violence' (n=1) diversion programmes (see Chapter 5). In Phoenix, all the children attended the „Positively Cool' diversion programme (n=10). In Pinetown, all the children completed the programmes (n=10), and in Phoenix eight children completed the programme and two are currently still in the programme.

6.3.1. Age

The majority of the children were 17 years old (n=11), followed by 15 year olds (n=4), 18 year olds (n=3), and 16 year olds (n=2). More specifically, in Pinetown just over half of the children were 17 years old (n=6), followed by 18 year olds (n=2), 15 year olds (n=1), and 16 year olds (n=1). In Phoenix half of the children were 17 years old (n=5), followed by 15 year olds (n=3), 18 year olds (n=1), and 16 year olds (n=1). While most of the children were 17 years at the time of the interviews, many of them had been arrested and diverted to the programme a year before, when they were 16 years old. This trend is consistent with findings from both national and international studies which state that the peak age for youth offending is 16 years old whilst more violent and serious crimes are committed by older children (CSVSR, 2007: 121; Booyens, Beukman & Bezuidenhout, 2008: 48). In addition, studies on criminal activity by age consistently indicate that rates of youth offending begin to increase

during pre-adolescence, peaks during late adolescence, and decreases again during young adulthood (McCord, et al., 2001: 67).

6.3.2. Gender

The majority of the children were male (n=17), whilst only three were female. More specifically, from Pinetown there were eight males and two females and in Phoenix nine males and one female. Thus, at both sites, males outnumbered their female counterparts. Newburn (in Maguire, et al., 1997: 628), confirms this phenomena and states that “it is generally male youth that are seen as particularly problematic” and that both “official statistics and self-report studies confirm the fact that offending is more widespread among males”. In addition, males and females generally commit different types of offences, as Smith and McAra (2004: 3) affirm: “there is a substantial difference between boys and girls in levels of serious delinquency” and “boys remain much more likely to be involved in serious delinquency”.

6.3.3. Neighbourhood and community perceptions

Parents in Pinetown lived in the following areas: Clermont (n=4), Kwadabeka (n=1), Westville (n=1), St. Wendolins (n=1), Kwanengezi (n=1), Shongweni (n=1), and Mayville (n=1). Parents in Phoenix did not divulge their specific residential areas or units. „Phoenix’ will refer to the general area.

Parents in Pinetown generally felt that they lived in good neighbourhoods (n=6), with just under half viewing their neighbourhoods as bad (n=4). The parents who claimed that they lived in good communities came from the following areas: Westville (n=1), Kwanengezi (n=1), Clermont (n=2), Shongweni (n=1), and Mayville (n=1). Parents in these areas said that although there is some form of crime in their areas, it is not „too bad’. A parent living in St. Wendolins had the following to say about crime in her area; “*the community is not good at all, most young people are involved in stealing cars, so that’s the greatest crime in the area*”. This parent also expressed her unhappiness and concerns about the community itself because the young people are drop-outs who just sit at home. The parents who thought Clermont was a bad community (n=2), thought so because of the prevalence of crime and drugs, particularly „Whoonga’. One mother also expressed concerns about the community influencing her children negatively.

Parents from Phoenix, on the other hand, generally felt that they live in bad neighbourhoods (n=6), with less than half of them describing their neighbourhoods as average (n=3), and only one parent indicating that they live in a good neighbourhood. The main reasons for viewing their neighbourhoods negatively were the high rates of substance abuse and crime. Other reasons included bad friends (n=1), and rude or nosey neighbours (n=2). As one parent in Phoenix explained, “...*the crime is not so bad, but there’s a lot of drugs*”. Another alluded to the involvement of taxi drivers in Phoenix who offer drugs to young children at very low prices. Another parent described how the children on her street are taking drugs and how her husband too has a problem with drugs and alcohol. Not only are drugs a problem, but as one parent in Phoenix explained:

...it’s a very bad place... because our area, one, there are taverns, drug dealers a whole of things they’re selling around there, shebeens, clubbing also, there is the nearest club and it’s only R5 to go to KwaMashu.

It is evident from the parents’ responses that most of them live in disorganised neighbourhoods and communities where substance abuse and crime is rife. According to the social disorganisation theory, neighborhoods characterised by high rates of substance abuse, poverty, crime and unemployment are more likely to produce children who are at risk of becoming involved in delinquent and criminal behaviour. The likelihood of a young person becoming involved in serious criminal activity during adolescence greatly increases if he or she grows up in an adverse environment (McCord, et al., 2001: 89). Thus, when children observe frequent delinquent activities taking place within their neighbourhoods, as is the case with the majority of children in this study, they start to perceive such behaviours as „normal’ and acceptable and are more prone to committing those types of acts themselves (Estévez, Emler & Wood, 2009: 5).

6.4. Family life matters

This section focuses on the family life of parents and their children and includes a discussion on family composition, relationships among family members, and consequences of committed crimes on both the child and the household.

6.4.1. Family composition

Families in the study mostly lived in combined or multi-generational households (n=12). In these households not only the parents are expected to care for their own children but other

family members such as brothers, sisters, mothers, fathers, cousins, and grandchildren as well. Only seven households can be classified as nuclear where the parents live with their children, whilst one parent said that she is currently living separately from her family. Due to health reasons she has had to move back home and as a result her children are staying with their father. In Pinetown it was found that the majority of households were multi-generational or combined households (n=8), with only one nuclear household, and one parent who lives away from home. In contrast, the majority of households in Phoenix were nuclear (n=6), with only four combined or multi-generational households. Most of South Africa's youth live in family situations that are very different when compared to the „ideal' or „typical' South African family (Naidoo, 2007: 13). It became clear that due to various social issues including death of family members, poverty, and unemployment, a large majority of households in Pinetown (n=8), have had to put their resources together to look after one another in any way they can. While some families moved back into the parental home, others were living with brothers, sisters, aunts, and uncles.

6.4.2. Family relationships

According to Crawage (2005: 96), children's primary relationships within the family are crucial in shaping lifelong aspects of their development. Good parent-child relationships not only promote a child's self-esteem and sense of self-worth, it also gives them hope for a better future. However, it is important to note that it is not the relationship itself which acts as a protective factor against misbehaviour, but the form and quality of the relationship (Sutherland, Merrington, Jones, Baker & Roberts, 2005: 21). Thus, the poorer the child's interaction with family members, the higher the risk is of that child engaging in criminal behaviour.

Overall, parents described their relationships with their children as good (n=15), followed by average or okay (n=4), and bad (n=1). Parents from Pinetown generally had good relationships with their children (n=9), with only one mother claiming to have a bad relationship with her child. In Phoenix, parents generally described their relationships as good (n=6), whilst four parents said that their relationships were average or okay. The parents who said that they enjoyed good relationships with their children described their relationships as open and honest. While it is a known fact that some issues are taboo and should not be mentioned in the Zulu culture, most Zulu parents claimed to have good, open,

and honest relationships with their children. Most parents also said that they talk to their children about life and things that they should look out for, such as bad friends. One parent in Phoenix said that she often talks to her child in the hope that he will become a better person and will be able to take care of himself once she is gone. As she explained:

He's my everything so now I am open and I'm also trying to protect him from this things... I have to talk to him „okay, you mustn't sleep around', because I know they are sleeping, „if you sleep then you use condom, there is AIDS, and if your girlfriend gives birth to a baby who's going to look after it? I'm not a granny; I'm not going to look after your baby. You must be a grownup, complete your matric and go to the tertiary, see other things later, because I'm going to pass and I just want you to be somewhere, because I'm old', he used to tell me „no mama', but I'm old.

The parents from Phoenix who said their relationships with their children were okay or average generally blamed the child; citing dishonesty or a lack of interest displayed by the child. Those with bad relationships described their children as distant and withdrawn.

When parents were asked to describe their child's relationships with the rest of the family or household, the parents generally felt that their children had good relationships with other family members (n=10), followed by okay (n=8), and bad (n=2). More specifically, in Pinetown the majority of parents claimed that their children had good relationships with their family members (n=6), whilst three parents claimed the relationships were okay or average, and one parent claimed that her child has bad relationships with his family members. In Phoenix the majority of parents said that their children's relationships were okay or average (n=5), followed by good (n=4), whilst only one parent said that their child has a bad relationship with the rest of the family. The children with good relationships generally get on with their siblings and respect their parents and/or elders. Those who said that their children's relationships were okay usually attributed it to sibling rivalry among the children.

One very touching story came from a mother from Phoenix who described the „tricky' relationship between her son, his uncle (her brother), and his father. After her husband had an affair with another woman, her son became very angry at his father and saw his uncle as a new father figure. After a while the child's father returned home only to find that his relationship with his son was non-existent. In order to better their relationship, the mother would always try and intervene and mediate when it comes to the father and his son, as she explained:

...because I am in the middle, I'm in the middle, I need my husband and I need my child, if they are not getting along, I am in trouble... I'm just in the middle; I have to balance everything...

6.4.3. Family time

Just over half the parents (n=12) said that they spend a lot of quality time together as a family, either talking, watching movies, going to church, or doing house chores together: six parents said they spend some form of quality time together whilst two parents indicated that they do not spend any quality time together as a family. Interestingly families in Phoenix seemed to be more close-knit than the ones in Pinetown. A parent from Phoenix explained that they “*always go out as a family*” and that they celebrate special occasions together as a family; “*...everything is family...*”. Whilst realising the need for it, two parents from Phoenix said that they do not spend any quality time together. By spending time together as a family, whether it is a nuclear or combined family, parent-child relationships are strengthened and children will be less likely to become involved with deviant peers, which in turn decrease their chances of committing antisocial and deviant acts (Crawage, 2005: 96).

6.4.4. Offences and surrounding circumstances

Crimes that children were most commonly arrested for included shoplifting and theft (n=11), possession of drugs (n=5), assault (n=3), and damage to property (n=1). Very interestingly, all 10 parents from Pinetown said that their children were arrested for property crimes such as shoplifting or theft, whilst the most common crimes committed by children in Phoenix were possession of drugs and assault. It was noted that all the children from Phoenix attended the „Positively Cool’ programme although they were arrested for drug-related offences and assault, whilst the children from Pinetown attended the „Positively Cool’, „New Direction’ and STV programmes even though none of them were arrested for violent crimes. It would therefore make more sense for children from Phoenix to have attended the STV programme rather than the „Positively Cool’ diversion programme. According to the prosecutor, the most common crimes that youth are arrested and diverted for in Pinetown include theft, assault, *crimin injuria*, and malicious damage to property. The nature of the crimes committed by these children is similar to youth offending trends in general (Palmary, 2003).

Overall parents’ reactions to their children’s offences can be described as: shocked (n=6), angry (n=4), scared (n=3), heartbroken (n=2), confused (n=2), disappointed (n=1),

embarrassed (n=1), and indifferent (n=1). One caregiver from Pinetown was especially shocked to hear about the arrest of her son after he had stolen some chocolates from a store. Not only is she able to leave money lying around the house without anyone stealing it, she also claims to buy her children chocolates, cake, chips, and whatever else they may ask for.

A very shocking story came from a mother in Pinetown who was heartbroken after learning of her son's arrest. Although her son was arrested on a Wednesday, she was only notified two days later when the child had his first court appearance, on the Friday morning. Court officials contacted her at 10 past 10 in the morning to be at Pinetown Court at 11. However, due to transport issues, she was unable to make the specified time and arrived late. As a result, they had already taken her son to Westville prison where he spent the entire weekend. Besides the fact that this child had a five-day prison experience, her greatest concern was that he had been abused and sexually assaulted. As she explained, "*they made him mop the floors and even though he didn't tell me that he was sexually abused, I think that they probably did*". The Act clearly states that imprisonment of children should be used as a last resort; according to the Act (Section 3(20)(1)), "a child may not be arrested for an offence referred to in Schedule 1, unless there are compelling reasons justifying the arrest". Since this child was caught in possession of stolen clothes, this would classify as a minor offence and would not justify being arrested and taken to prison. Furthermore, Section 3(20)(3)(d) of the Act states that parents and family members should be notified immediately after the arrest of their children. In this particular case the mother was only notified after her son had already spent two days in prison.

Although the majority of parents claimed that they were shocked or angry to find out about their children's offences, more than half (n=11), noticed some form of behavioural change in their children just before the incident took place. While some parents only noticed minor changes such as hanging out with bad friends, bad attitude, poor school performance or bunking school, others noticed more drastic changes such as social withdrawal, coming home late, and failing grades. The parents whose children were arrested for drug-related crimes especially noticed changes taking place. As one mother from Phoenix explained:

...some money was missing at home, some things from my husband's bag at home, so when I noticed that the money was missing, then I just suspected, and I did some praying also and then I just realised there's something about this child not right...

It is clear to see from parents' reactions that although most of them knew something was going on in their children's lives, many of them ignored the warning signs, and those who noticed the signs did not have the knowledge or resources available to do something about it. Thus, it can be said that information concerning support groups and/or organisations that are able to assist parents and family members in these areas are lacking. In disorganised and poverty stricken communities there are often not enough programmes available, or parents are unaware of the different support services and programmes available to them (see Chapter 3). In order to empower family members, more effort should be placed on parent workshops and raising awareness on substance abuse, and ultimately, the prevention of youth offending.

6.4.5. Punishment/discipline

Just over half of the parents punished and/or disciplined their children (n=11), whilst nine indicated that they did not punish or discipline their children at all. In Pinetown, just over half of the parents did not punish or discipline their children (n=6), with only four parents punishing them in some way or the other. In Phoenix it seemed that discipline was taken more seriously: six parents indicated that they punished or disciplined their children, and only four parents did not discipline their children. The most popular form of punishment was „grounding', whereby children are not allowed to leave the house or neighbourhood and are denied, for example, TV time, followed by having to do extra house chores. One mother in Pinetown denied her daughter a birthday present after she was caught shoplifting, whilst another mother told her daughter that she could no longer take part in a dance production. While punishing your child is a good measure of showing them that there are consequences to one's actions, it is also important to remember that harsh or excessive punishment will not necessarily deter a child from re-offending. Inconsistent discipline, excessively severe or aggressive discipline, poor parental management, and physical punishments have all been associated with the development of delinquent behaviour as well as an increase in defiance in children (McCord, et al., 2001: 78).

Interestingly, at both sites and in the majority of cases where parents did not punish their children, they did however have a strong „heart to heart' with them. Thus, while most parents did not resort to punishing their children, they did talk to them about various issues regarding crime and the consequences thereof. For example, one mother from Pinetown thought that it

was more important to get to the root of the problem than merely punishing your child, as she explained:

...I try to teach them if there's a problem to sit down, and show him what is the problem. I just said „you must see the roots of the problem and not the stem’, because once I start shouting at him, he doesn’t listen.

6.4.6. Reasons for committing the offence

Reasons for involvement in criminality included the following: bad friends and/or peer pressure (n=9), followed by self defence (n=4), no reason (n=3), a mistake/accident (n=1), to make money (n=1), unknowing (n=1), and opportunistic (n=1). Peer pressure was the most common reason for parents in both Pinetown and Phoenix for their children’s offending behaviour. While parents were generally aware of the fact that their children had negative peers, they failed to take any action. In one case a mother from Pinetown told of how her daughter was with an older friend who usually shoplifts; *“on that day she was showing her how to shoplift, and that was the day that she got caught”*. One of the most powerful factors in the development of antisocial behaviour is deviant peer influences. Negative peer pressure can affect a child both directly and indirectly. In the case of direct peer pressure, children are coerced into taking risks. Due to the fear of rejection, or the desire for peer approval, the child will be indirectly influenced by his or her peers (Scott & Steinberg, 2008: 21). Some parents even claimed that their children stole for their friends and not themselves. Those who claimed it was self defence said that their children were „attacked’ first and thus had to defend themselves and retaliate. As one mother said, *“he was tired of being bullied and decided to fight back”*. According to Craig and Harel (2001), many countries around the world struggle with the issue of school violence and aggression. They furthermore state that “childhood bullying is associated with antisocial behaviour in adulthood, such as criminality”. Although this particular child said that he was „tired’ of being bullied and decided to fight back, he nonetheless resorted to violence to solve his problems and as a result, became a „bully’ himself.

Another parent from Phoenix described how his child stole a cell phone from the social worker who was interviewing him in order to administer a drug test on him. As the father further explained, *“he just said that he just found it and took it”*. One mother who was ill and could not work or bring money into the household said that her son sold pirated Digital Versatile Discs (DVDs) so that he could make some money to buy himself clothes. This case

specifically relates to what Maree (2008: 58) says, namely “it is not poverty per se that contributes to crime, but how people experience their financial situation within their social environment”; because his mother was unable to work, the child took it upon himself to earn some money.

6.4.7. Substance abuse

According to the South African National Council on Alcoholism and Drug Dependence (SANCA) (in Department of Community Safety and Liaison, 2011), there are a range of new and „interesting’ drugs available to youth, and children are experimenting with drugs at younger ages. As a result, many more children are being treated for drug dependency and addictions than ever before. According to Clare Savage of SANCA, “peer pressure and the availability of more and more drugs are putting a lot of pressure on children, who want to fit in and be part of the cool group” (cited in Department of Community Safety and Liaison, 2011).

Just over half of the parents (n=11), indicated that their children were using drugs or alcohol. Six parents claimed that their children were not using any substances, whilst three parents did not know whether their children were using substances or not. Cigarettes followed by marijuana seemed to be the most popular choice for these children. Even though some children had not told their parents, or tried to deny it, their parents still knew about it. As one parent from Phoenix explained, “*I wouldn’t say that he’s not taking cigarettes because the children don’t do it in front of us, they want to hide and do it... but I think that he is doing it, I won’t lie*”. One parent from Pinetown even claimed that her son stopped using substances during the programme, but started again when the programme ended, “*...whilst he was in the programme he stopped taking it, and now, since then, he’s gone back to using it*”. She further added that she noticed a change in his behaviour when he started using glue, and that was when she realised that something was going on.

Another parent from Phoenix, (whose son just recently stopped using „sugars’) expressed her concern; “*...he was caught for drugs twice, but it’s just now I don’t know if he’s tampering again, so I need to go see my pastor and tell the social worker also*”. When asked whether or not they are planning to do a drug test on him, she replied by saying that they have already sent him for one detox session, but that she thinks his cravings for the drug are still there.

Although this child had been in trouble for drugs before, the parent had no idea that he was still using. When asked how she found out about this, she explained:

...and then I realised in my front yard they were doing it, and we didn't notice, we never noticed. How they got caught out now, another person, in fact, one of my son's friends borrowed the cell phone and they were filming each other smoking and then that parent who they borrowed that phone from, that uncle, I think the boy forgot to wipe it off or put it off or something, and then he noticed it's in the phone and then he brought it to my notice.

Generally the use of drugs and alcohol, in the case of children, is a criminal offence in itself. Numerous studies have shown a strong link between drug use and crime, and it can be said that people who use illegal drugs will generally commit more crimes than those who do not (McCord, et al., 2001: 74). The majority of the children caught in possession of drugs were either using the drugs or claimed that they were selling it for friends. High levels of substance abuse not only contribute to increased levels of crime, but also contribute to a veritable criminal industry. Activities include drug production, drug trade, and elements of violence and corruption. Young people living in poverty where parents are unemployed, as is the case with a large majority of these children, can easily become involved in drug dealing which makes them more at risk of becoming both the victims and perpetrators of crime (Maree, 2008: 60).

6.4.8. Consequences of offending on families

Parents were asked to share their views on how their children's behaviour had affected their lives in general and their relationships with their children more specifically. The majority of the parents said that their households were affected in some way or the other (n=18), whilst two parents claimed that their households were not affected at all. Thirteen parents felt that their children's offences altered the nature of their relationships in some way or the other, whilst seven parents said that it did not affect their relationships with their children.

According to the systems theory, individuals are not in isolation and are always in interaction with each other, and as a result, their actions will affect and influence those around them. Some of the ways in which children's offending behaviour had affected their families included strained relationships between husband and wife; blaming the other parent for the child's behaviour. The involvement of children in substance abuse especially affected

families in Phoenix negatively as it led to other more serious offences such as theft. As a mother from Phoenix explained:

He still took things from the house and went and sold it... as a parent I overlooked that, stealing my rings, I overlooked it as a mother, but now there's only so much they can do, they can't overlook everything that he does.

While some parents merely stated that they could no longer trust their children, others blamed themselves and saw themselves as having failed as parents. Although almost all relationships were affected in some way or other it was clear that most parents still had hope for their children and believed in them. This is good to know because family support, especially emotional support, is a vital factor for reducing and preventing continued negative behaviour. If children have good, warm relationships with their parents or caregivers and receive unconditional love from them, they are less likely to re-offend (Unruh, et al., 2009: 212).

6.5. School matters

At least 18 children were at school, with only a small number of children not schooling (n=2). Five children were in Grade 12, followed by four in grade 9, four in grade 10, and three in grade 11. One child was at a technical college due to the fact that he had failed a grade and was battling with peer pressure at school. One mother from Phoenix, whose child was in Grade 12 at the time, explained how she battled to get her child back into school after discovering that he had been truanting for an entire month. She only managed to get him back into school through the intervention of the social worker and pastor. One parent from Pinetown claimed that she did not know whether her child was at school or not. When asked what her child was doing at the time, the mother said that he worked every second week from Friday through to Tuesday. A parent from Phoenix, whose child was not schooling, said “*I let him leave school, but he was in Grade 10*”. When asked why her child was not schooling and what he was doing at the time, the parent replied that he showed no interest at school and that he had failed every subject. She further added that she “*had numerous calls from school as well about his behaviour and attitude*”.

According to Croninger and Lee (cited in Terhoeven, 2009: 10), dropping out of school is “the ultimate form of education withdrawal by learners who are likely to have trouble in school” and that “learners who drop out of school, face substantially higher unemployment

rates, lower lifelong earnings, *higher incidence of criminal activity* and have a greater likelihood of health problems than students who complete high school” (own emphasis).

The majority of parents (n=12), said that their children come home straight after school, whilst six parents indicated that their children come home but thereafter “*hang out with friends*” in the neighbourhood and only return home later in the afternoon or evening.

6.5.1. Extra-curricular activities

Half the children in Pinetown and Phoenix take part in afterschool and extra-curricular activities. Extra-curricular and afterschool activities included sports (soccer, cricket and netball); cultural activities (drama, dance and music); academic activities (debating); and various church related activities (youth groups and church choirs). Being involved in constructive activities and hobbies decreases the chances that a child will become involved in antisocial and delinquent behaviour. This is mainly due to the fact that the child will feel a sense of belonging in supportive social networks, as well as having established good relationships with reliable and responsible people (Sutherland, et al., 2005: 30).

While some parents mentioned a lack of interest as a reason for their children not taking part in any extra-curricular activities, others blamed the school itself for not providing children with the opportunity to take part in sporting activities. One parent from Phoenix said, “*in school they don’t have any sporting activities, they don’t have any sport days they don’t do any sports, nothing. They’ve got a massive school ground but they don’t do anything*”.

6.5.2. School performance

Those children who performed badly at school generally had poor relationships with their teachers, were failing subjects, and were truanting. Research shows that school attendance and connectedness are very important factors in reducing violent and offending behaviour. Having a strong bond with or a commitment to school is an important protective factor against crime and violence (Verlinden, Hersen & Thomas, 2000: 12). Thus, good relationships with teachers and classmates, good school performance, as well as security and participation opportunities, are all considered to be protective factors in the school environment (Simoes, Matos & Batista-Foguet, 2008: 391). Thirteen children had good relationships at school which could possibly deter them from committing crime in the future.

A lack of and poor parental supervision has been directly linked to youth misbehaviour and criminal activity. Children who are not adequately supervised are more likely to engage in antisocial and delinquent behaviour compared to children who are supervised (McCord, et al., 2001: 78). In most cases, parents were aware of their children's whereabouts on the day they were arrested or caught (n=16). Only four parents said that they did not know where their children were, who they were with, or what they were doing. In some instances children had met up with bad friends while out on an errand for their parents and became involved with criminal elements in the neighbourhood. Although parents knew where their children were, the children still committed crimes when there was no adult supervision available. One mother in Pinetown was completely unaware of her child's whereabouts; *"I didn't even know that he has gone to Pavillion; he was supposed to be at home. I didn't know where was he"*.

6.6. Friends matter

During adolescence, children tend to spend less time with their families and more time with their peers. They establish new and more mature relationships, ultimately acquiring a new set of values and an ethical system as a guide to socially acceptable behaviour. Peers have a powerful influence on the development of a child, especially in contexts of social disadvantage where social support offered by the peer groups can compensate for the lack of other forms of support (Crawage, 2005: 101-102).

Most parents said that their children have good relationships (n=13) at school with teachers and friends with only few indicating that their children had bad relationships (n=3) at school or that their relationships were average (n=2).

Half of the parents at both sites felt that their children had bad friends, mainly because of the negative peer pressure they felt these friends exert on their children. While some parents feel hopeless and helpless when it came to their children's bad friends, others were very determined in letting them know that they need to stay away. One parent from Phoenix actually took drastic action by going out and directly speaking to the friend:

...so I go out and look for that friend, I'll speak to that friend „hey, don't give me trouble, I'm struggling for him to be a better person, but now you come with your ideas, very bad ideas... '.

It is clear to see that the majority of parents feel their children are behaving badly because of the negative influence peers have on them. This is in line with the drift and delinquency theory, the differential association theory as well as research which states that factors such as delinquent peer behaviour, peer approval of delinquent behaviour, attachment or allegiance to peers, time spent with peers, and peer pressure to commit delinquent acts are associated with youth misbehaviour and crime (McCord, et al., 2001: 80).

6.7. Diversion matters

Overall the majority of parents (n=18) at both sites were relieved and happy to learn that their children were not going to prison and were diverted to Khulisa's diversion programme. One parent in Pinetown however said she did not care what happened to her child, whilst another parent in Pinetown said that she was not happy about it. She thought that Khulisa might be a good thing but later realised that it caused some financial problems, *"I thought it was the right thing, but it knocked me financially"*. Very surprisingly, the parent from Pinetown who claimed that she did not care what happens to the child, said, *"I didn't care if he goes to jail or if he goes to attend Khulisa sessions, but basically, if it was my decision he would be sent to jail"*. During the interview this particular parent had made it known that her child was very naughty, gave her lots of problems, and that she was fed up with him.

6.7.1. Accepting responsibility

According to the Act, before a child can be considered for diversion he/she needs to accept responsibility for the crime committed. However, whether children actually accept personal responsibility or whether they just want to avoid going through the CJS, is unknown. In Pinetown, the majority of parents said that their children did take personal responsibility for the crimes committed and that they were sorry for what they had done (n=8), one parent said that they were not sure whether or not their child was genuinely sorry and another parent said that her child did not accept any responsibility at all and blamed everything on his friends. This particular child stole chocolates from Pick and Pay. In Phoenix, all of the parents claimed that their children had taken responsibility for the crimes committed.

6.7.2. Parental support

As mentioned in Chapter 4, parental support is crucial in terms of preventing recidivism, and both the prosecutor and Pinetown's diversion manager indicated that family members play a

major role in both the causation and prevention of youth offending. Starting from the premise that the most important influence in a child's life is his or her parents, the prosecutor emphasised the importance of values and morals inculcated by parents, and that "*what you sow is what you reap*". While acknowledging outside influences such as bad friends and negative peer pressure, he is adamant about the influence and commitment of parents in the life of children, stating that:

...the lesson to be learnt there and the role that I feel, is that parents need to get more involved; it's not just about giving money, it's not just the material things, the love, the support, the monitoring, all needs to happen, knowing where your child is constantly is an important factor...

This view was echoed by Pinetown's diversion manager who added:

It's evident that children, depending on where they grow up and the environment that they grow up in is determining who they are. Your values, your morals, how do you see the world, how do you act, so I think definitely your family context and your values and your inputs from parents is directly involved and the way they discipline children is directly... and what they are exposed to as children, I think it has a direct impact on crime and causation of crime.

In terms of parental involvement and support, all key informants alluded to the importance of parents taking an active role in their children's lives. As Pinetown's diversion manager stated, "*I think it's very good to have that interaction and feedback between parents and have their involvement because when Khulisa is not there anymore, they are sitting with the child*" and "*I think a support system is very important during the whole process and afterwards*". Whilst acknowledging the need for increased parental involvement and supervision, diversion facilitators were nevertheless concerned about how parents will be able to support their families without the necessary income if they were to stay at home to spend time with their children.

In addition to interviews with key informants I observed the interaction of parents during the Parent Workshop and Family Dialogue sessions. It became evident that parents do not take the sessions very seriously with some parents coming late for the sessions and some not attending at all. The parents who did attend were very quiet and hardly contributed to the dialogue. However, I observed that the diversion facilitators at both sites were really good at encouraging participation from the parents and helping them to open up and be honest about issues affecting their lives. Furthermore, I also observed that during the Family Dialogue sessions, in which participants are required to bring a parent with them, many brought

brothers, sisters, cousins, or aunts instead. When I asked the facilitators whether or not this will have an impact on the intended outcomes of the sessions, they both replied that it would in some way or other. Although they encourage children to bring older family members, they also mentioned that many parents cannot make the sessions due to work commitments and have to send family members who might be available during that time. It was also evident that there seemed to be generational conflict between the parents and their children causing parents not to know how to parent or discipline their children in this „new age’.

All the parents said they supported their children during the time that they attended Khulisa. This is important for successful outcomes. Children who have supportive networks are better able to handle stressful events such as peer pressure from negative friends (Carr & Vandiver, 2001). Parental support ranged from financial support to emotional support; some parents supported their children by giving them money for transport costs whilst other parents would remind their children to go to Khulisa’s sessions. Supporting and caring for children will make them feel loved, valued, and like they belong to a caring social network (Unruh, et al., 2009: 213).

When asked how important it was to support their children during this time, nearly all the parents (n=19) felt it was very important with only one parent in Phoenix indicating that it was not important. This particular parent felt that it was something that the children had to go through without the help of their parents. One parent from Pinetown however, felt that even though she supported her child, he was still getting into trouble. As she stated:

...it’s very difficult to support him because he doesn’t speak about how the sessions were, what they were doing in the sessions, and I don’t care now, I no longer care about the child and I wish he could die.

6.7.3. Challenges concerning family support and involvement

The prosecutor at Pinetown claims that one of his biggest challenges has to do with the guardians and the issue of responsibility. Often a child will be arrested but his or her guardians cannot be located which creates a problem for the police and prosecutors alike. In other cases the guardians have been traced but refuse to have anything to do with their children.

Pinetown's diversion manager said that money, work, and a general lack of involvement or interest from family members are their greatest challenges. In many instances parents do not have money or transport to attend the required sessions, and find it difficult to take time off from work to attend the Parent Workshop and Family Dialogue sessions. She also believes that some parents simply do not care for their children or the latter might be living with guardians who do not take an interest in the children's lives.

The diversion coordinator at Phoenix cited mainly work or work-related commitments for non-attendance or non-compliance. Another challenge is the lack of in-depth information on children's backgrounds and circumstances when they are first taken into the programme. At the beginning they are reluctant to learn or be involved, but as time passes and facilitators meet with and get to know the parents, it becomes apparent that the children's problems are more serious than initially indicated. She alluded to the need for greater involvement of family members in diversion programmes in order to effectively reduce the rates of recidivism:

...sometimes you just think whether we really can make a difference, and if we really wanted to make that much of a difference we have to spread our range maybe to the family as well.

While Pinetown's diversion facilitator does not experience any major challenges when it comes to parental support and involvement, the diversion facilitator at Phoenix feels that parents are too trusting of their children and often make excuses for them. In some cases parents do not trust their children at all, which not only impacts on the outcomes of the programmes, but also hampers communication between the children and their parents, the children and the facilitators, as well as the parents and facilitators. In terms of parental involvement, she claims that you do get some parents that care about whether their children attend the programme or not and then you also get parents who do not care at all.

6.7.4. Parents' views on diversion and the programmes

The majority of parents (n=15), felt well informed and involved during the course of the diversion programmes. Only five parents felt that they did not know what was going on or felt that they were not contacted often enough. The three parents who said they were not well informed indicated that they had personal experiences where sessions were cancelled without their prior knowledge, and as a result had wasted time and money going to and from Khulisa.

According to the prosecutor, parents should be part of the diversion process, right from the start throughout the entire process. According to him there can never be enough that a parent can do to support their child, and further explained:

...they need to be there, they need to be supporting their child, because part of the problem is lack of support; if children feel they do not have the support of parents, then they are bound to go wayward, and choose their own support systems, and sometimes their choice of support systems is not necessarily the right choice, for example, bad friends.

Overall, nearly all the parents (n=19) agreed that it was important for them to be involved in the programme, with only one parent from Phoenix indicating that there was no need for parental involvement. Parents want to be involved for various reasons; some want to learn new things, others simply want to support their children. Two mothers said it was not only Khulisa's responsibility to change their children: "*Khulisa is building my child and so I also need to be involved in that process. It shouldn't be the sole responsibility of Khulisa*", and "*it's not just Khulisa's baby, it's my child and Khulisa is assisting me in how to raise my child*".

Whilst not all parents felt sufficiently involved at times, it is good to know that almost all the parents *want* (own emphasis) to be involved in these diversion programmes, especially considering how vital parental involvement and support is for the prevention of recidivism. This also means that the service provider is able to rely on parents for their continued assistance during and after the duration of the programme.

The diversion manager at Pinetown suggested that by getting parents to participate in a compulsory parent session either during the week or on weekends, parents would be „compelled’ to become involved in the programme. Similarly, the facilitator believed that family involvement is a very important factor, though difficult to get. She suggested offering parents the opportunity to attend a parental programme at the beginning of the process where parents would be given some form of parenting skills as a way of increasing involvement. The importance of parental involvement in children's everyday lives was also emphasised by the coordinator in Phoenix. This facilitator also felt that it was a good idea to incorporate FGC into the programme as a way of including and involving family members as well as informing them about their child and what they can do to better the situation. As she explained:

...if you are all parties living at home, that are directly involved with the child, if you want the child to come out of that situation, we need to do certain things, we need to live in a certain way and we need to speak to the child a certain way, I think those kind of things.

Overall the majority of parents (n=14), thought that the programme was good, while four indicated that it was „good but had some problems with it’, and one parent said it was „not good’. This particular parent from Phoenix said that her child showed no signs of positive behavioural changes. One parent from Pinetown whose husband attended the sessions was unable to answer the question.

Parents who liked the programme cited two reasons, namely the positive changes they could see in their children, and the fact that they themselves were involved through the Parent Workshops and Family Dialogue sessions. Parents who could see changes in their children generally shared the same sentiments; they were at home more often, they had changed friends and that they had become more helpful around the house. One parent, whose child’s behaviour had not improved, still thought that it was a good programme after hearing other parents’ accounts about how their children had changed for the better. Parents really seemed to enjoy the interactive sessions with other parents where they could share experiences and challenges they faced through their children’s behaviour. Ultimately, parents were extremely positive about the support they received from Khulisa, and the opportunity they got to interact with other parents. As one mother from Pinetown said, “*...that thing was to make us grow as a parent because we learn from the other parents and situations and then even our children learn from other children’s situations*”.

Some of the criticisms of the programme from parents included that the programme was too short, and that they felt excluded. A parent from Phoenix explained, “*at the moment I feel excluded, because even though your child has been through the programme, you have no idea what it was about*”. Another parent from Phoenix felt that Khulisa’s programme was good but that they should be more pro-active and have monthly forums and programmes with learners in both primary and high schools. Based on her child’s behaviour at home, one parent from Phoenix did not believe that the programme was working. Even though she learnt at the Parent Workshop that her son was behaving really well, she explained that she had a completely different experience at home:

...he's a completely different person at home, he's a different person altogether and when she told us what they do with them and how they all open up and they communicate, they talk and everybody's involved, I was shocked, I told her that he's a really good actor because he doesn't do any of this at home. He was listening here and outside of this classroom he's still doing the same things.

In terms of doing follow-ups and receiving feedback from the organisations, the prosecutor does not have any contact with the child or the child's family, and only minimal contact with the service provider itself. Prosecutors receive a compliance report on completion of the programme from the service provider which includes information on the programme itself, the attendance of the programme, how it benefited the child, and/or further recommendations. Feedback from parents at both sites were varied; some negative and some positive. Overall however, feedback seems to be positive at both the Pinetown and Phoenix areas. Pinetown's facilitator often receives calls from parents reporting how well their children were doing in school, that they had passed their grades with distinctions, or that they were studying towards a degree at a university. There are only a small number of children who re-offend and those, according to the facilitator in Pinetown, are usually children who have been or are involved in drugs.

If it has been found that a child is not attending the sessions or has been non-compliant with the regulations stipulated by the diversion programme, facilitators will fill in a non-compliance form and refer the matter back to court. They do not have any contact with the child or their families thereafter.

6.7.5. Family Group Conferencing

In terms of introducing FGC as a component of the diversion programmes, the prosecutor, the diversion manager at Pinetown, the diversion coordinator and diversion facilitator at Phoenix, all agreed that it would benefit family members. The prosecutor was quite vocal in emphasising the importance of the family:

...whether it's before or during, it's crucial, because it's like an addict, you can't only deal with the addicts... there's more, because it's not only affecting the addict. He's coming from some family; he's sitting somewhere where he's affecting others. In other words, besides the fact of affecting others... it's no use treating him without treating others, you also need to deal with how others relate to him.

It is quite clear that not only will a FGC process assist and empower parents to deal with their children's offending behaviour, but also assist them in other areas of their lives. Although

there are no official FGC sessions in the programme, facilitators indicated that they often implement FGC methods in the Family Dialogue sessions to get the parents and children interacting around challenges they are facing, and find ways in which they can resolve issues together. Some challenges identified in this approach by both the diversion manager and diversion facilitator in Pinetown include non-cooperation between different state departments, not reaching set targets, specific regulations concerning the implementation of FGC, transport, incomplete families, and getting the cooperation and involvement of all role players.

Nearly all the parents (n=18), felt it was a good idea to include FGC in the diversion programme. One father from Pinetown really liked the idea of a FGC, *“I would like to be a part of the FGC because I stay with the child, so I can hear what is the solution, and I can be part of the solution”*. While one parent from Phoenix thought a FGC would just take up more of their time, another parent from Pinetown thought it would not work in her case since her husband was an alcoholic. Although there are various factors to consider when recommending and implementing FGC, parents are in the main receptive to the idea and would be willing to attend such sessions if they were available.

6.7.6. Behavioural changes after programmes

The most positive aspect of feedback from the parents at both sites was the behaviour changes noted in their children. Only three parents said that their children’s behaviour had not improved, but had deteriorated. Those who saw positive changes generally felt that their children had learned from their mistakes, were now able to take responsibility for things, had changed their bad friends, were spending more time at home, and were participating in household chores. These behavioural changes are in line with restorative justice theories and practices, such as the use of diversion. Not only are children able to take responsibility for the crime committed, but they are also more likely to change their negative behaviour and less likely to reoffend in the future. The parents whose children’s behaviours had not changed or slightly changed, felt that the outcomes of the programme could not be sustained. Once the programme stopped their children continued hanging out with the same friends and doing the same things.

6.7.7. Recidivism

While none of the children had re-offended since completion of the programme, two children's behaviours had deteriorated. One child from Pinetown went back to using substances: *"there's no offence that has been committed, but he has gone back to smoking, has now started alcohol and is continuing with his friends"*. Overall, the programmes were successful in effecting positive behaviour change and preventing recidivism.

The parents who were still experiencing problems with their children cited the following: the children were not studying or showing interest in school work, they had a bad attitude, they were lazy, they were hanging out with bad friends, they were involved in substance abuse, and disobeying house rules. Even though not many parents were aware of the actual contents of the programme they all liked the programme because of the positive changes they could see in their children. Interestingly, a large majority of the Zulu speaking parents from Pinetown were especially appreciative of the Khulisa mentors who were involved with the running of the programme.

Some of the suggestions made by parents on how the programme may be improved included extra-curricular activities for children, on-going mentorship, programmes in schools, mandatory drug tests for children, and talking more and writing less.

In terms of repeat offenders, the prosecutor and his team were unable to say whether a child had been through the system before or not: *"...that is a big problem, I personally won't know, there is no data base or system that has that where we can say the child has offended and has received diversion before at the outset"*. The only indication that a child is a repeat offender is if the service provider tells them that the child had been through the system before.

6.7.8. Effectiveness of diversion programmes

Khulisa uses „short term and long term evaluation' to determine whether programmes have been successful and have had an impact on the child's life or not. For the short term evaluation the following factors are taken into account: the child's attendance, homework, involvement in group discussions, whether they had changed their friends, and their overall interactions. Feedback from the parents and family members also proves to be very useful in determining whether or not positive behaviour changes have taken place. Long term

evaluation takes place in the form of a follow-up call which is made by the facilitators and/or programme assistants 3, 6 and 12 months after completion of the programme. Parents are asked to provide feedback on the child's behaviour, how the child is performing at school, behaviour, challenges faced by parents, and whether or not the programme has made a difference in terms of the child's behaviour. Khulisa's main interest in making these phone-calls is parental feedback on the child's behaviour indicating whether there had been positive or negative changes compared to when the child first arrived.

While the main referral source is the prosecutor, he was unable to say whether or not these diversion programmes are in fact successful or not. He has to rely on the reports he receives from the service provider, as well as the number of re-offending cases. However, he seldom gets youth that have re-offended, and based on this he believes the programmes are successful. However, he also added:

...my own view is that I'm not too sure whether the best thing is for the service provider to provide the service, do the assessment prior to the service and assess that way whether it's successful or not, like a referee and player.

In general Khulisa's staff members feel that the diversion programmes have a good and positive impact on children and are effective in preventing recidivism. They added however, that it is up to the individual child whether or not the programmes will be effective. While the diversion manager in Pinetown sees the programmes as therapeutic and effective, she realises the need for the inclusion of more restorative justice practices. Phoenix's coordinator claims that they have a success rate of approximately 90% with only a handful of children that re-offend.

6.7.9. Challenges concerning diversion

The main challenge concerning diversion is the prevalence of drug abuse and dependency. According to the prosecutor, a large proportion of children who come through the system are addicted to drugs in one form or the other, and that "*there's no quick fix solution for drug problems*". According to the diversion manager in Pinetown, while it may seem that the programme is ineffective, there are underlying problems that are not being dealt with:

...these children come through the programme and they come to the sessions under the influence and you're actually addressing the secondary problem, you addressing the crime that was committed now, not the primary problem in the first place of this child using drugs.

Another challenge in terms of diversion is the issue of funding. According to the prosecutor, the Parliament Portfolio Committee advises and promotes the use of diversion, yet there are no funds or resources available for this purpose:

...as if we paid lip service to this thing, but we don't have the finances, the resources, to back up what we tell, big ideas, and that is my biggest problem, because it also has serious repercussions for access to justice.

Another concern highlighted by the staff at Khulisa was the general lack of interest and commitment and non-compliance from the children who attend the diversion programmes mainly related to the recently implemented Act. Before the implementation of the Act children were remanded back to court after the completion of the diversion programme. Since the Act has been in place however, this is not the case. Children and families tend to view diversion as a „soft option’ where they only have to attend one or two sessions: “*...it happens that children don't feel that sword hanging over their head, that if they don't finish the programme they are not going to be rearrested*”.

A major challenge for the facilitator in Pinetown is non-attendance and non-compliance of children due to negative peer pressure. Participants who are friends with other children who have been through the programme before often see it as a soft option and tell them that they do not have to take the programme so seriously. Due to these and other negative influences, children take the programme lightly and stop attending sessions. Another challenge is the issue of the high and ever increasing school drop-out rates. As a result, children are not able to understand the programme as well as they should. They are unable to complete their homework because they cannot read or write well, and get other family members to complete the homework for them. Hence children cannot take full advantage of the benefits of the programme.

Other challenges cited by the facilitator at Phoenix are: difficulty in getting the message across because children are playful during the sessions, the „no care’ attitude of some of the participants, and, despite having been given a timetable indicating the dates and times, youth still arrive late for the sessions.

The biggest concern for the prosecutor is the lack of family support once the programme is completed, when there is no one to help or supply future aid to the family:

The question arises, „what after that?’, there’s no service provider now, who are the people that need to ensure that this doesn’t happen again... surely the parents should have some role over there, to take over from where the programme ended.

6.7.10. Concluding remarks

This section will highlight last comments from key role players and parents about diversion, their children, and their lives, as they stand at the moment. Most parents were grateful for the services rendered by Khulisa; seeing the programme as a second chance. A parent from Phoenix who really liked the idea of including FGC into the programmes thought:

...that FGC, it would be well if they include us as parents too then it will be okay, because it’s nice for us to know, and even if we can learn and even if we can help the people in our community, other parents too who don’t know, to share the knowledge.

A final comment by a parent from Phoenix is extremely positive and alludes to her sense of empowerment after her involvement with the programme:

When I came to Khulisa, it all worked out for the better and I learnt a lot of things over here and I also felt this place that I come here I had to learn a lot of things, by you talking to me and me talking to you as a system, or family, we need to hear things and talk about things... you need to share with one another, listen to that share, and help them out, pick them up don’t put them down.

Pinetown’s manager acknowledged that diversion is a learning process in terms of the Act, and that there were advantages to having minimum standards and proper accreditation of programmes:

...you’re going to give that child value, it’s not just a programme that’s „hambok’ and that doesn’t mean anything... it’s based on research and it’s registered and there’s value for that child coming through that programme, it’s not a waste of the child’s time.

Pinetown’s facilitator saw the programme as „very powerful’ and an „all-rounder’ programme that anyone can benefit from, whether they had been in conflict with the law or not. In addition, she adds that uniformity in interpretation of the Act among all role players, especially between the courts and SAPS, would go a long way in helping children become better people and prevent re-offending:

...that’s the main thing where our SAPS representatives are actually trained on the Act and understand that from you this is what happens to the child, this is what the child goes through to in order to make them a better person, because in that way we’d actually have a better South Africa.

6.8. Conclusion

From the analysis it is clear that a large majority of children grow up in incomplete families, live in disorganised neighbourhoods, and are economically disadvantaged. Overall, parents and key role players agreed that parental involvement is not only necessary, but crucial in sustaining the outcomes of diversion programmes. In most cases parents said that they supported their children and have seen some positive changes in their behaviour as a result. There was an overall consensus between parents and key role players that diversion programmes can be improved by incorporating an element of FGC; ultimately providing a completely restorative and rehabilitative programme to youth offenders and their families.

In the next chapter the main conclusions from the findings will be elaborated upon, and recommendations provided.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

A fundamental concern for others in our individual and community lives would go a long way in making the world the better place we so passionately dreamt of... It is so easy to break down and destroy. The heroes are those who make peace and build
(Mandela, 2008).

7.1. Conclusions

This chapter discusses the main conclusions that can be drawn from this research study as well as suggesting recommendations in response to the main challenges experienced in the diversion of youth out of the CJS, as well as the problems experienced by family members and key role players during the process of diversion.

The primary aim of this research was firstly to explore the experiences of family members whose children had attended and/or graduated from Khulisa's youth diversion programmes; secondly to understand the role of family members during the diversion process; thirdly, whether the latter had been sufficiently involved during the course of the diversion programme; and finally, what ways could be found to improve and/or increase their level of involvement so that the outcomes of diversion may be sustained and in so doing ultimately prevent repeat offending. Furthermore, I also aimed to explore whether reform of certain provisions relating to diversion in the Act is warranted so that diversion programmes may be more efficiently implemented in the future by relevant government departments and NGO service providers.

This research study proposes that family involvement and support is not only necessary, but a crucial factor in the sustainability of the diversion programme outcomes. While a lot has been written and researched about how dysfunctional families can contribute to children turning to crime, the role of parents and families more generally in *preventing repeat offending and misbehaviour* (own emphasis) is under-researched. Currently diversion programmes are aimed at the youth, with minimal input required from parents and family

members. I wanted to find out whether or not parents felt that they were sufficiently involved in the programmes and in what ways their involvement can be increased so they can become active participants in the programmes and in the post-diversion period. Apart from these factors, the decision to interview parents was also motivated by documented research over many decades on the importance of the family in preventing crime. Parents and close family members more than anyone else, have intimate knowledge of children's lives and the roots of their deviant behaviour.

This research study began with a comprehensive review of articles, books, legislation and documents regarding youth offending, the family, youth justice and diversion; globally and in South Africa. A qualitative research approach was deemed most appropriate as I wanted to gain a deeper understanding of how parents and family members experienced diversion programmes and what effects the programmes had on their children's lives. A total of twenty parents and family members from Pinetown and Phoenix were interviewed using in-depth, semi-structured, face-to-face interviews. This allowed me to obtain information about the participants' personal histories, their experiences, as well as their understandings and perspectives. Key informants and role players were also interviewed to gain a deeper understanding of the process and challenges experienced with diversion, the children, and their families. I adopted an overt, participatory approach and observed first-hand both the children's and parent's involvement and interest in the programmes.

This research confirmed that youth offending in the South African context is historically intertwined with the country's political struggles and transition to democracy. Not only did the after-effects of the apartheid era lead to a rapid rise in criminal activity amongst the youth, but it also resulted in a 'culture of violence'. In addition to increased crime levels, the oppressive laws of the apartheid regime weakened family structures and created widespread conflict within and between different communities (Schönteich & Louw, 2001). Pinetown (South) and Phoenix are both historically disadvantaged areas which lack adequate resources and services, have high rates of unemployment and poverty, and neighbourhoods riddled with criminal activity and drug abuse. Both areas are characterised by years of social disorganisation with more and more youth coming into conflict with the law, primarily due to experimentation with drugs and negative peer influences.

The literature shows that the Child Justice Act mirrors both international and national guidelines and requirements. Primarily based on restorative justice philosophies, values, and principles, the Act has set the framework for a CJS specifically geared to deal with youth offenders. The primary objective of the Act is to keep youth offenders out of the criminal justice system by diverting them to appropriate diversion programmes.

Although South Africa is working towards establishing one of the best child justice systems and child justice legislation in the world, the implementation of these programmes and policies are a cause for concern. It became apparent from the research that one of the biggest challenges in terms of the implementation of these youth diversion programmes is funding. While there are numerous policies and legislations that emphasise the use of diversionary approaches, very little funding is made available to the departments and organisations for this purpose; negatively impacting on access to justice for many. While funding is the main responsibility of the DSD, it is difficult for them to sustain these programmes in the current economic climate. According to Wakefield (2011: 46), the implementation of the Act would require approximately R52 million, yet an amount of only R30 million was allocated to the justice cluster for these purposes. Resources are thus limited which hampers the efficient implementation and sustainability of the programmes. The quality of the programmes is also compromised. In order to address this issue, greater cooperation between government departments are required, as well as allowing for increased budgetary allocations to be made to the different sectors involved in the implementation of the Act.

Social and criminological theories concerning youth offending have gradually moved from punishing and incarcerating children, to a „new’ penology of justice concerned with the prediction of risk as well as the identification, classification, and managing of children at risk. Diversion is one of the ways of measuring and controlling at-risk children, whilst at the same time keeping the child’s best interest at heart. This approach incorporates restorative justice values and practices. The Act states that the principles of restorative justice need to be entrenched in the CJS by ensuring that children take responsibility and are held accountable for their actions. In addition to taking responsibility, it is crucial for family members to be adequately involved in the diversion process. This is line with the family systems theory which claims that individuals are connected to and influenced by their family systems. Problem behaviour displayed by one member of the family is an indication of a larger problem within the family structure and needs to be dealt with holistically.

Even though restorative justice is one of the primary goals of the Act, not all diversion programmes are restorative in nature. In order to determine whether or not diversion programmes are restorative, practitioners and scholars make use of a „continuum’ of restorative justice (Skelton & Batley, 2006: 7). While Khulisa’s diversion programmes aim to address the harm caused by the offence by encouraging youth offenders to take responsibility for their actions, it ignores the victims of the crime which means that all parties are not involved in the decision making process, and thus the programmes can be described as being only „partially restorative’. By including or incorporating FGC as an element of these programmes they will be fully restorative as it will not only focus on the children and their families, but will include the victims of the crime as well.

According to the Act, diversion programmes should not only promote the dignity and well-being of the child but also contribute to the development of his or her sense of self-worth and ability to contribute to society, and take into consideration the age and maturity of the child. Diversion programmes should not be exploitive, harmful, or hazardous to a child’s physical or mental health and should not interfere with the child’s schooling. The research found that Khulisa’s diversion programmes are life skills programmes that include all the necessary and essential skills for the management of a child’s life. While the objectives of these programmes are similar to those of diversion outlined in the Act, proper evaluative mechanisms are needed to determine whether or not the programmes are successful. Section 55(2)(f) of the Act states that all diversion programmes should be “structured in a way that their effectiveness can be measured”. Thus, the Act (section 56(2)(b)) provides for quality assurance through the effective monitoring and evaluation of programmes and service providers.

Khulisa uses both short term and long term evaluation. Short term evaluation is based on the child’s attendance, homework, involvement in group discussions, and their overall interactions, whilst long term evaluation takes place in the form of follow-up calls. Questions regarding the behaviour of the child are asked: how the child is doing in terms of school, behaviour, challenges that the parents are facing, and how the programme has impacted on the child’s behaviour thus far. By conducting these follow-up calls Khulisa is able to determine whether or not the programmes have been successful in terms of behaviour change and recidivism. However, this measure of determining the effectiveness of the programmes is a cause for concern since it is not considered to be constant and accurate; there is always

the risk or chance that parents will lie to me or the facilitator in order to keep their children out of court.

The main research findings suggest that the majority of youth offenders referred for diversion in the Pinetown area were Black, male, 17 years old, charged with theft, and came from poor socio-economic backgrounds. Family members were mainly single or divorced, and employed with only one breadwinner in the family. In Phoenix the findings were similar with the majority of youth offenders referred for diversion being Indian, male, 17 years old, charged with drug related offences and assault, and came from poor socio-economic backgrounds. Family members in Phoenix were generally married and unemployed with only one breadwinner in the family. These characteristics and factors need to be taken into consideration in the development and implementation of programmes in the Pinetown and Phoenix areas. Programmes need to take into account the demographic factors and not use a „one size fits all’ approach. They should be tailor-made for the children who participate in them and also accommodate the needs of parents and family members.

Not only are families considered to be the pillars of society, they also play an important role in both the prevention and causation of youth offending (United Nations World Youth Report, 2003: 202). Due to the fact that the majority of children grow up in families, it can be said that their personalities and characteristics are shaped by their family systems. Families can also assist their members through emotional support, financial assistance, instrumental help, as well as child caregiving. Research has indicated that family support, especially emotional support is a very important factor for minimising continued negative behaviour (Unruh, et al., 2009: 212). Thus, deviant behaviour can be seen and defined in relation to specific family structures; whilst most families fall within the „normal’ boundaries, it is the extreme poles that tend to lead to or cause deviant and criminal behaviour (Cloete & Stevens, 1995: 66).

Children mainly benefitted from the programme in terms of behaviour modification and re-offending. On the one hand, only two parents indicated that their children’s behaviour had worsened. Both children were male, 17 years old, Black, committed theft, and came from a poor area, namely Clermont. In both cases the families were incomplete with children being taken care of by their biological mothers because their fathers had passed away. In addition, in both cases the families were struggling financially with more than five people living in one

household. Furthermore, these parents mentioned that their children had negative or bad friends, that they were performing badly at school, did not take part in any after school or curricular activities, and that they both used substances such as cigarettes or marijuana. While one parent corporally punished her child for committing the offence, the other was unable to punish or discipline her child because of her own illness. On the other hand, positive behaviour changes included a change of friends, commitment to school, increased interpersonal relationships with family members, spending less time with friends and more time with family, quitting substances, and helping out with house chores.

While most parents agreed that their children had changed for the better, some children still displayed behavioural problems: bad attitude, fighting with siblings, a lack of commitment to school and not doing house chores. More serious problems included substance abuse and associating with negative peers. Although some parents felt that they were fully able and equipped to deal with their children's behaviours upon completion of the programme, others felt that they needed additional assistance in dealing with them, especially in cases where the children were addicted to substances. While all of Khulisa's youth diversion programmes offer lifetime membership to Khulisa in order to provide ongoing support for children and their families, more should be done to support family members after completion of the programmes. Single parents especially liked the idea of mentors who would keep an eye on their children and act as big brothers or sisters.

The abuse of drugs amongst children was another cause for concern for role players and parents alike. According to Casavant and Collin (2001), "illegal drug use is „almost automatically' associated with criminal behaviour". It can be said that people who use illegal drugs will generally commit more crimes than those who do not. The earlier a child starts experimenting with drugs and alcohol, the more frequent the use and the more potent the drug will be, ultimately increasing the risk of engaging in antisocial and criminal behaviour (McCord, et al., 2001: 74). This trend was consistent with my findings which indicated that the majority of children were in fact using some form of substance and were mostly committing property crimes.

Diversion programmes are not generally aimed at drug users and as a result the root of the problem, which is drug dependency, is not being addressed by the programme. In certain instances children come to the programmes under the influence and miss out on the valuable

lessons taught during the sessions. The implication for service providers is that it may seem as if the programmes are ineffective when in fact the primary cause for the child's offending behaviour has not been dealt with. Family members too find it difficult to communicate with their children when they are using drugs.

The research further found that the majority of children who attended the diversion programmes can be considered to be „at risk' due to the various negative social conditions they find themselves in. They live in disorganised neighbourhoods where poverty and crime is rife, perform badly in school, use substances, and live in unfavourable conditions where only one parent is working. Furthermore, both Pinetown and Phoenix have large numbers of „broken homes' and incomplete family structures. This generally means that financial and emotional resources are limited in these households. Parents have to work harder to support their families and struggle to keep their children's behaviour under control. Long working hours and absence from home, and the issue of generational conflict (where parents do not understand their children and are unable to effectively communicate with them regarding issues which affect them), are just some of the causative factors leading to offending behaviour. While family support is deemed a necessary and crucial part in sustaining the outcomes of diversion programmes, the solution lies in getting parents more involved in their children's lives. If these issues are addressed through programmes, forums, and/or activities within the community, the children would probably not be involved with negative peers and/or criminal and antisocial activities.

Key role players, namely the prosecutor, diversion manager, diversion coordinator and diversion facilitators also emphasised the importance and role of parental support and involvement in reducing negative behaviour and preventing recidivism. Crime not only affects the individual but the larger family system as a whole; leading to a number of difficulties for the parent and child. Therefore, in order to fully understand why an individual commits crime, the family system or unit of the individual needs to be looked at and analysed (Cloete & Stevens, 1995: 65). To effectively deal with their children's offending behaviour, it is imperative that family members are not sidelined and that their involvement is encouraged before, during, and after their children's participation in the programme. Apart from going to court, family members are currently only required to attend the Family Dialogue and the Parent Workshop sessions. While some parents thought that they were sufficiently involved, others felt that they would have liked to be more involved in the

programme and ultimately, their children's lives. In general, parents who supported their children during the course of the programme tended to have better relationships with their children and sustained the outcomes of the programmes more efficiently. The prosecutor, diversion manager, diversion coordinator and diversion facilitators all agreed that parental involvement and support is not only necessary, but crucial in sustaining the outcomes of youth diversion programmes. As Palmary (2003: 2) states, "family support and positive relationships within the family are important resilience factors" against antisocial and criminal behaviour.

One of the biggest challenges mentioned by key role players was the issue of decreased referral rates, which they attributed to the police's lack of understanding when it comes to the diversion of children. Instead of arresting children, key role players claimed that the police are merely warning children without sending them for assessments to determine whether or not the children would actually benefit from a diversion programme. While it is important to keep children out of the CJS, it is just as important that each and every youth offender is afforded the opportunity to attend a diversion programme so that they can learn and grow from the experience. Children do not learn from their mistakes or benefit from attending a life skills programme if they simply receive a warning. In order to prevent this from happening in the future, SAPS should properly train and educate their staff with regards to the requirements stated by the Act, or should appoint selected „professional' individuals, familiar and trained with the Act, to deal with youth offenders specifically. By so doing, the correct measures and steps will be taken when dealing with youth offenders.

7.2. Recommendations

In the following section I propose recommendations on three levels: governmental or state interventions, interventions relating to programme development, and the need for further research on the implementation of diversion.

According to the Act, the state has an obligation to provide appropriate diversion programmes. Even though a substantial amount of funding is currently being provided by the state, it is still inadequate. Service providers are unable to further develop and/or revise the content of their programmes without sufficient funding. Furthermore, to ensure that the „best interests of the child' are upheld, adherence to the minimum standards and norms is crucial.

A positive development is that the DSD is currently in the process of developing this document which will in turn compel service providers to develop, design, implement, and evaluate their programmes according to the minimum standards set by the department in order for them to qualify for funding.

Furthermore, it was also noted that some children and family members do not attend the required sessions due to inadequate financial resources. Family members and children, especially in Pinetown South, have to travel long distances to attend the programmes, causing financial strain on their households. It is recommended that children should be referred to programmes that are offered near their places of residence. In this way greater compliance may be ensured.

In order to prevent children from dropping out of school and experimenting with drugs, programmes that specifically address the long term adverse consequences of drug dependence should be developed. These children should be properly assessed by a qualified social worker prior to referral to a diversion programme. In this way the primary and secondary causes for their offending behaviour can be addressed. More school-based programmes that inform children about these issues will go a long way towards preventing substance abuse.

At the beginning of the diversion process, the case against the child is withdrawn on the grounds that he or she is ordered to attend a diversion programme. As mentioned earlier in Chapter 6, this is extremely challenging for the service provider since they do not have the child's full commitment. While children are warned of the consequences of not attending and completing the diversion programmes, it would be better to keep the case pending until the child has completed and graduated from the programme. If the child has shown remorse and changed his behaviour in a positive manner, the case can be withdrawn.

Of concern is the fact that the court is unable to tell whether or not a child has been through the system before. This makes it difficult to determine eligibility for referral to a diversion programme. A proper case flow management system and national database should be developed where important information regarding youth offenders such as biographical details and social circumstances may be properly documented for further reference. While the Act states that an integrated information management system has been established to

monitor and evaluate the effectiveness of diversion programmes, Wakefield (2011: 47) claims that there are numerous problems when it comes to the collection of data and statistics: “insufficient data are provided to properly assess whether the objectives of the Act are being met”. It is therefore recommended that a national consultative forum with key role players be held to discuss these and other challenges faced by NGO service providers and the CJS. This information should be made available to both state and non-state role players. A proper database will go a long way towards enhancing the work of diversion programme developers, state departments such as the DSD and the DOJCD, and researchers in the field of child justice.

According to the Act (Section 61), FGC may be ordered by the magistrate, the inquiry magistrate, or a child justice court and can either be a diversion option in itself, or it can form part of a diversion option. FGC must be facilitated by a FGC facilitator (probation officer or a diversion service provider) and can be conducted in cases where both the offenders and victims are willing. Section 5(2) of the Act also states that all children who have committed an offence (and is expected to appear at a preliminary inquiry), have to be assessed by a probation officer. According to Wakefield (2011: 47), only 32 494 of the 75 435 children that were arrested during 2010 were assessed by the DSD, which means that approximately 42 941 children were not assessed by a probation officer and can be said to have ‘fallen through the cracks’. It is therefore recommended that prosecutors and service providers should ensure that every child that comes into contact with the CJS is fully assessed by a qualified social worker or probation officer before being sentenced to a diversion programme.

By conducting an assessment on the child, social workers and probation officers will not only be able to assess whether the child has any other underlying problems, such as substance abuse, but they will also obtain valuable information regarding the child, the child’s family, and the child’s family background. Based on the information collected during the assessment, social workers and probation officers will be able to suggest or recommend a programme specific to the needs of the particular child and his or her family. Furthermore, during the assessment, probation officers and social workers should be able to determine whether or not FGC will be suitable for this particular case or child. In this way children can be assessed early on and diversion recommendations made based on proper assessments. Based on the social worker’s report, prosecutors will be able to make informed decisions regarding the child and the diversion option that will be most suited to the child’s needs.

FGC should not be seen as a „soft option’ and it is suggested that all children (regardless of the seriousness of the offence) should be assessed by a social worker before the preliminary inquiry takes place in order to determine whether or not the child and his or her family is suitable and/or available to attend a FGC. If FGC is used as a component of these diversion programmes, it is recommended that these sessions are held at the beginning as well as the end of the programme. Parents, family members and victims can be involved from the outset, during, and after the programme, not only empowering the parents and family members, but the victims and their families as well; ultimately offering a completely restorative process to all parties involved. Using FGC as a diversion order by itself will require further research and training on the part of the service provider. It is therefore recommended that service providers such as Khulisa and NICRO train their diversion facilitators in the process of FGC so that it can be used as an alternative or supplement to their current youth diversion programmes. This will ensure that the services delivered by these service providers will be credible and will add value to the lives of all parties involved. When their psychological, material and spiritual needs have been recognised and addressed, victims will feel that justice has been served. Thus, by including victims in the diversion process, they are empowered, less fearful, and get a chance to express their views in terms of how they (and their families) were affected by the crime committed and the harm caused. In addition, victims are also given the opportunity to heal and in some cases, receive some form of compensation and/or restitution from the offenders and their respective families.

Currently, FGC is considered to be the „lynch-pin’ of the New Zealand youth justice system and lies at the heart of nearly all New Zealand criminal justice procedures. New Zealand has had an overwhelming success rate in the use of FGC with both victims and offenders finding the process more satisfying than those who have gone through conventional diversion programmes (Youth Court of New Zealand, 2012). Furthermore, by involving victims in the diversion process, youth offenders are able to see how their offences have affected those around them; discouraging vigilantism and recidivism and promoting restoration, rehabilitation and reintegration. Through FGC, family members will be able to understand the root causes of their children’s offending behaviour, know how to deal with their children in the future, have improved communication and interpersonal relationships between family members, as well as be assisted in other areas of their lives. All key role players and the majority of parents agreed that FGC would be beneficial to them as well as their children, and that they would attend such sessions if they were made available to them.

The DOJCD is ultimately responsible for the monitoring and evaluation of the children and the diversion programmes. Both NGOs and state departments need to capacitate and strengthen their research divisions so that monitoring and evaluation of every case that is processed through the system is properly captured on a data base for easy reference. With constant and consistent monitoring and evaluation, programmes can be changed and adapted according to the findings of ongoing research and the needs of the children.

Regarding how the impact of the programme is assessed, it must be noted that it is not enough to merely talk to the parents 3, 6, and 12 months after a child has completed and graduated from the programme. In addition to follow-up calls and aftercare sessions, face-to-face interviews with the children themselves should be conducted to determine whether real behavioural changes have taken place or not. This would be a more accurate way of determining the impact the programme has had on the children and their families in general. In addition, interviews should be conducted with key role players such as the educators (if the child is in school) in order to determine whether or not the programme has made a difference to all aspects of the child's life. Not only will such research yield rich data, but service providers can use the information to strengthen and improve their programmes.

Furthermore, in order to provide family members and children with additional support once a programme is finished, it is recommended that all participants are offered ongoing mentor support for up to twelve months upon completion of the diversion programme. Khulisa should also offer training to participants who have recently completed the programmes so that they themselves can act as volunteer mentors and support systems to families in need. Furthermore, by encouraging and helping these children, the mentors themselves will feel a sense of accomplishment by giving something back to the community and making a difference in the lives of other children.

It is recommended that an in-depth qualitative study by researchers experienced in research with children be conducted on a national scale. This is essential to obtain a proper understanding of how they experienced the programmes, how they view their own criminality, what the risk and/or resilience factors are, and whether or not the programme has made a difference in their lives. While evaluative research is still embryonic in South Africa, it is important for diversion programmes to be properly evaluated to maintain minimum standards because they are, in the main, provided by NGO service providers. A comparative

approach will go a long way towards identifying good practice, sharing information, and providing guidance for less resourced service providers in the NGO sector. Service providers and government departments will be better equipped to understand the risk factors that contribute to child offending, what measures need to be put in place in order to prevent further offending, and how the outcomes of diversion programmes may be sustained. This will also enable researchers and programme designers to develop programmes suitable to the needs of the children and their respective families.

Child justice is a barometer for society's broader concerns about safety and stability. While on the one hand adults feel they are losing control when their children misbehave and act in ways that are not in keeping with their expectations, on the other hand they generally understand (at least in relation to their own children), that childhood and adolescence is a time of experimentation. Antisocial behaviour and misdemeanours during adolescence is part of the journey from childhood to adulthood and does not necessarily predict a negative future. This is the tension that society experiences in relation to children who commit crimes and a possible reason why contemporary child justice systems pull in the opposite direction of the tough-on-crime agenda on the one hand, and the increased use of restorative justice on the other (Skelton, 2009: 2).

Child justice reform efforts focus on children's reintegration into their families and communities and the enhancement of prospects for a crime-free life in the future. It is a system that focuses on holding children responsible through using restorative justice approaches. Thus the Act achieves a balance by reflecting these societal concerns and responding reflectively and proportionately to children in the CJS (Skelton, 2009: 4).

While youth offending is a global problem, with greater numbers of younger children engaging in both minor and serious forms of criminal behaviour, it is important to remember that there are many complex, interrelated issues and factors that either encourage or discourage children from taking part in antisocial or deviant activities. In order to effectively deal with and prevent youth offending in the future, the family and the community at large need to be involved in the diversion process, from the outset, during, and after the completion of the diversion programme.

While there are cultural, social, economic, and political differences between and within different families and communities, it is important to build on what has worked elsewhere, changing and adapting ideas to the local needs of the individuals involved. Families and communities are never in isolation; “individuals are shaped by their families, communities and societies, and, in turn, have the opportunity to influence others” (Whitzman, 2008: 250). Through health promotion, urban planning and governance, and poverty reduction, community transformation can take place on a much larger and more holistic scale. As Whitzman (2008: 252) notes:

Increasingly, community safety initiatives are emphasizing a culture of violence prevention, from the home to the schoolyard, the workplace, sites of local and national decision-making and global governance.

While the prevention of youth offending altogether is an ideal, much can be done to rehabilitate and restore youth offenders to prevent recidivism by addressing the root causes of antisocial behaviour in the first place. The commitment, cooperation, and coordination of state and non-state initiatives can help to reduce unemployment, create better living conditions, strengthen families, and uplift communities; all of which will go a long way towards making South Africa a better, healthier and safer place for all its citizens.

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APPENDIX 1

LETTER REQUESTING PERMISSION



UNIVERSITY OF
KWAZULU-NATAL

INYUVESI
YAKWAZULU-NATALI

Ms. Cindy Delomoney
Regional Manager
Khulisa Social Solutions
Pinetown

29 July 2011

Dear Ms. Delomoney

REQUEST FOR PERMISSION TO CONDUCT RESEARCH AT KHULISA SOCIAL SOLUTIONS

My name is Marlee Louise Els and I am a postgraduate student at the University of KwaZulu-Natal (Howard College). I am conducting a research study in fulfilment of my Masters degree in Community Development, under the supervision of Dr. Hema Hargovan. I request permission to carry out my study at your organisation.

My area of research is to determine the effectiveness your youth diversion programmes by exploring the role of family members and primary caregivers in sustaining the outcomes of the programmes. It is hoped that through this research, I will be able to determine whether or not the diversion programmes sufficiently involves family members and primary caregivers and whether or not they are equipped to deal with their children's behaviour upon completion of the programme.

I guarantee that my research will not advantage or disadvantage any family member or employee in any way, nor will it disrupt any organisational processes. I would like to conduct approximately 20 interviews with family members and primary caregivers of

children who have attended and/or graduated from your diversion programmes. All participants will remain anonymous and information gathered will be confidential. This will be achieved by ensuring that identifying information, such as names, surnames or I.D. numbers will not be requested. The recordings from the interviews will not be seen by any person in the organisation, and will be processed by myself or a research assistant from the university. Responses will only be looked at in relation to all others responses and not individually. This means that feedback that will be given to the organisation will be in the form of group responses and not individual responses.

Your cooperation will be deeply appreciated and will greatly impact in contributing to the limited body of knowledge concerning the effectiveness of diversion programmes and the possible roles that family members and primary caregivers could and do play in sustaining the outcomes of these programmes.

Should you have any questions or require further information about the study and its implications, please do not hesitate to contact either myself or my supervisor.

Many thanks,

Marlee Louise Els
(Masters Student)

Email: 207502893@stu.ukzn.ac.za

Dr. Hema Hargovan
(Research Supervisor)

Email: hargovanh@ukzn.ac.za

APPENDIX 2

STUDENT CONTRACT



To Whom It May Concern

RE: STUDENT CONTRACT – DIVERSION RESEACH CONDUCTED 2011 – MARLEE ELS

Khulisa is a section (21) non-profit organisation established in 1997. Khulisa tackles crime holistically, working at all levels of the crime cycle – preventing crime diverting youth away from the criminal justice system, providing alternatives to imprisonment, fostering personal transformation for those who are in prison and assisting with their transition back to society.

Ms M Els approached Khulisa, in her capacity as a student to conduct research at this organisation for the purpose of her Masters Degree in Community Development, at the University of KwaZulu Natal.

I, Marlee Els, (full name)
From (school/institution) UKZN - Howard College

Agree to confidentiality and accountability of all the information (in respect of programme material as well as the youth and their families) that I receive during my research and involvement with Khulisa Social Solutions.

I will be held accountable should I violate this agreement.

Marlee Els
Student

M Kitching
Diversion Programme Manager – Durban Region

Date: 3 August 2011

APPENDIX 3

INFORMED CONSENT FORM



UNIVERSITY OF
KWAZULU-NATAL
INYUVESI
YAKWAZULU-NATALI

INFORMED CONSENT FORM

Name: Marlee Els
Student Number: 207502893
Institution: University of KwaZulu Natal
Degree: Master of Social Science (Community Development)
Research title: Youth diversion for first time offenders: A view from primary caregivers and family members.
Supervisor: Dr. Hema Hargovan
School of Built Environment and Development Studies
University of KwaZulu Natal
Tel: 031 260 7529
Email: hargovanh@ukzn.ac.za

Dear Sir/Madam,

My name is Marlee Els and I am currently enrolled for a Masters degree in Community Development at the University of KwaZulu Natal (Howard College). The requirement for this degree is the completion of a research study. I would like to explore whether or not family members and primary caregivers have been sufficiently involved in these diversion programmes and if they are able to effectively deal with their children upon completion of the programme. Research in this area is very new and limited and I would therefore appreciate the valuable contribution your participation would make.

Participation in this research will entail being interviewed by me at the Khulisa premises at a time that is convenient for you. Participation is voluntary, and no person will be advantaged or disadvantaged in any way for choosing to participate or not to participate in the study. The interview will last for approximately half an hour to an hour, and in order to ensure accuracy, the interview will be audio recorded. In addition, direct quotes from the interviews may be used in the writing up of the research. All responses however, will be kept confidential and no identifying information will be included in the research. The interview material (tapes and transcripts) will not be seen or heard by any person in this organisation, and will only be accessed by myself, my supervisor and possibly a research assistant from the university.

There are no anticipated risks to this study and you may choose to withdraw from the study at any point. Upon completion of the study, the audio tapes and the transcribed material will be kept in a locked cabinet in my home for a reasonable period of time. The results of the study will be reported in the research and a copy of the research will be given to Khulisa Social Solutions.

Thank you for considering participating in and contributing to my research project. If you require any further information you may contact my supervisor Dr Hema Hargovan whose contact details are listed above.

This is to confirm that the researcher has explained to the participant in detail the following:

- The title of the study.
- The purposes of the study and the procedure to be followed.
- The reason for the interview and manner in which the results of the interview will be used.
- The description of the potential benefits to me, the community, Khulisa and the child justice sector generally.
- My participation is entirely voluntary.
- I declare that I have not in any way been coerced/forced to participate in the research.

- Confidentiality will at all times be maintained and personal details will not be divulged or publicised.
- I am free to withdraw from the research at any time without any negative or undesirable consequences to myself or Khulisa.

I (full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

.....

SIGNATURE OF PARTICIPANT

.....

DATE

APPENDIX 4

INTERVIEW QUESTIONS FOR SENIOR PUBLIC PROSECUTOR

Research topic:	Youth diversion for first time offenders: A view from primary caregivers and family members.
Researcher:	Marlee Louise Els
Participant:	Senior public prosecutor (Pinetown)

Biographical details of prosecutor

1. What position do you hold and what does it entail?
2. How long have you been working in this position?

Process of diversion

3. Which organisations are you currently working with in terms of youth offending and diversion?
4. On average, how many children are diverted to youth diversion programmes per month?
5. What types of children are diverted to youth diversion programmes and what types of crimes do they commit?
6. How do you decide whether or not a child will be suitable for diversion?
7. Once a child is considered for diversion, how do you decide upon which organisation and programme to send the child to?
8. How well informed are you (and the other members of your team) of the different diversion options available for youth offenders?
9. Can you please take me through the diversion process - once a child has been arrested, what happens from there?
10. Once you get a case, how would you know whether or not that child has offended before?
11. On average, how many children have previously been arrested for committing crime, and what happens to those children?
12. Once a child has finished and graduated from the diversion programme, do you have contact with the organisation, the child or the child's family thereafter?
13. What type of feedback do you receive from the organisations regarding youth diversion?
14. What are some of the main challenges that you have experienced in terms of the diversion of children?

15. What are some of the main challenges that you have experienced in terms of family support and involvement during the diversion process?
16. Do you think that these programmes are effective in reducing recidivism?

Family members and primary caregivers

17. What role do you think families and primary caregivers play in the causation and prevention of youth offending?
18. Do you think that parental involvement and support is necessary from the outset, during and after the programmes?
19. Do you think that families and primary caregivers want to be involved in these programmes?
20. Do you think it would be possible to incorporate family group conferencing (FGC) as a component of these diversion programmes?
21. Do you think that incorporating FGC into these programmes would have a negative or positive effect on children and their families?
22. Do you have any suggestions as to how family members and primary caregivers could be more involved in these programmes?
23. Are there any other comments that you would like to give in terms of the diversion process or the programmes offered by Khulisa?

Thank you.

APPENDIX 5

INTERVIEW QUESTIONS FOR DIVERSION PROGRAMME MANAGER

Research topic:	Youth diversion for first time offenders: A view from primary caregivers and family members.
Researcher:	Marlee Louise Els
Participant:	Diversion programme manager (Pinetown)

Biographical details of programme manager

1. How long have you been involved with Khulisa?
2. What is your role at Khulisa and what does this role entail?
3. How long have you been involved with the 'Positively Cool', 'Silence the Violence' and the 'New Directions' diversion programmes?

The three youth diversion programmes

4. Can you please tell me more about the three youth diversion programmes offered by Khulisa?
5. What are some of the main challenges that you have experienced in terms of the delivery of the programmes?
6. What are some of the main challenges that you have experienced in terms of family support and involvement during the course of the programmes?
7. What are some of the main challenges that you have experienced in terms of dealing with the children themselves during the course of the programmes?
8. What do you think of these diversion programmes; are they effective in reducing recidivism?

Family members and primary caregivers

9. What role do you think families and primary caregivers play in the causation and prevention of youth offending?
10. What role do you think families and primary caregivers play in sustaining the outcomes of the programmes?
11. Do you think that parental involvement and support is necessary from the outset, during and after the programmes?
12. Which sessions of the programmes include the parents and primary caregivers?
13. Do you feel that parents and primary caregivers have been sufficiently involved in the programmes?

14. Do you think that parents and primary caregivers want to be involved in these diversion programmes?
15. Do these diversion programmes equip and aid the parents and family members to deal with their children's behaviour in the future?
16. How do you determine whether or not these programmes have made a difference to the lives of the children and their parents and family members?
17. Do you think it is possible to incorporate family group conferencing (FGC) as a component of these diversion programmes?
18. Do you think that incorporating FGC into the programmes would have a negative or positive effect on the parents and their children? (Please explain)
19. What type of feedback have you received from the parents and primary caregivers concerning the diversion programmes?
20. Do you have any suggestions as to how family members and primary caregivers could be more involved in these diversion programmes?
21. Are there any other comments that you would like to give in terms of the management of these diversion programmes?

Thank you.

APPENDIX 6

INTERVIEW QUESTIONS FOR DIVERSION PROGRAMME FACILITATORS

5. Can you please tell me more about the three youth diversion programmes offered by Khulisa?
6. How do you determine which programme would be best suited for a particular child?
7. What qualities do you look for in a child to determine whether or not the diversion programme has been successful?
8. If a child has been non-compliant and/or has not graduated from the programme, what happens to that child?
9. How many months after the child has graduated from the programme does the follow-up call get made?
10. Who is responsible for making the follow-up calls?
11. Who do you speak to during the follow-up calls, and what type of questions do you ask?
12. What are some of the main challenges that you have experienced in terms of the delivery of the programmes?
13. What are some of the main challenges that you have experienced in terms of family support and involvement during the course of the programmes?
14. What are some of the main challenges that you have experienced in terms of dealing with the children themselves during the course of the programmes?

The three youth diversion programmes

1. How long have you been involved with Khulisa?
2. What is your role at Khulisa and what does this role entail?
3. How many programmes to you manage/facilitate for Khulisa?
4. More specifically, how long have you been involved with the 'Positively Cool', 'Silence the Violence' and the 'New Directions' diversion programmes?

Biographical details of programme facilitator

Research topic:	Youth diversion for first time offenders: A view from primary caregivers and family members.
Researcher:	Marlee Louise Els
Participants:	Diversion programme facilitators (Pinetown and Phoenix)

Family members and primary caregivers

15. What role do you think families and primary caregivers play in the causation and prevention of youth offending?
16. What role do you think families and primary caregivers play in sustaining the outcomes of the programmes?
17. Do you think that parental involvement and support is necessary from the outset, during and after the programmes?
18. Which sessions of the programmes include the parents and primary caregivers?
19. I have noticed that a lot of people do not attend these sessions, or if they do, it is often not the parents. Why is this, and do you think that it influences the outcomes of the sessions?
20. Do you feel that parents and primary caregivers have been sufficiently involved in the programmes?
21. Do you think that parents and primary caregivers want to be involved in these diversion programmes?
22. Do these diversion programmes equip and aid the parents and family members to deal with their children's behaviour in the future?
23. How do you determine whether or not these programmes have made a difference to the lives of the children and their parents and family members?
24. Do you think it is possible to incorporate family group conferencing (FGC) as a component of these diversion programmes?
25. Do you think that incorporating FGC into the programmes would have a negative or positive effect on the parents and their children? (Please explain)
26. What type of feedback have you received from the parents and primary caregivers concerning the diversion programmes?
27. Do you have any suggestions as to how family members and primary caregivers could be more involved in these diversion programmes?
28. Are there any other comments that you would like to give in terms of the facilitation of these diversion programmes?

Thank you.

APPENDIX 7

INTERVIEW QUESTIONS FOR PARENTS AND PRIMARY CAREGIVERS

Research topic:	Youth diversion for first time offenders: A view from primary caregivers and family members.
Researcher:	Marlee Louise Els
Participants:	Family members and primary caregivers (Pinetown and Phoenix)

Biographical details of parent/primary caregiver

1. Who are you in relation to the child?
2. Are you currently married, single or divorced? (Please explain)
3. Are you currently employed?
4. Are you the sole breadwinner of the household? (If not, please explain)
5. Where do you currently reside?
6. Do you think that you live in a good neighbourhood in terms of crime, drugs, community cohesion, etc.?

Biographical details of child

7. How old is your child now?
8. Is he/she still in school, and what grade are they presently doing?
 - a. If not schooling, why not and what are they presently doing?
9. How are your child's relationships at school with his/her teachers and friends?
10. Does your child take part in any afterschool or extra-curricular activities?
11. Once your child is finished with school, what do they do and where do they go?
12. How are your child's relationships with his/her friends from the neighbourhood?
13. Where does your child currently reside?
14. Does your child use any substances?
15. What type of offence was your child charged with? (Please explain)
16. Did you notice a change in your child's behaviour just before the incident took place?
 - a. If yes, what did you do about it?
17. What was the reason given by your child for committing the offence?
18. Did your child take responsibility for the crime committed? (Please explain)
19. Who was your child living with when he/she committed the offence?
20. Where were you when your child was committing the offence and where did you think your child was?

Family life

21. How many people live in your household? (Please explain)
22. How many children do you have or take care of?
23. How would you describe your relationship with your child?
24. How would you describe your child's relationships with the rest of the family?
25. Do you as a family spend any quality time together? (Please explain)
26. What was your first reaction when you found out about your child's offence?
27. How did this affect your family or household?
28. How did this affect your relationship with our child?
29. Did you punish or discipline your child? (Please explain)

Khulisa and their diversion programme

30. What was your reaction when you found out that your child was being sent to Khulisa?
31. Did you support your child during this time? (Please explain)
32. How important do you think it is to support your child during this time?
33. What do you think of the programme your child attended?
34. What was the extent of your involvement with Khulisa?
35. Do you think it is important for parents and family members to be involved in these diversion programmes?
36. If Khulisa used family group conferencing as a part of the programme, would you be interested in attending those sessions?
37. Has Khulisa changed your child in any way? (Please explain)
38. What challenges (if any) do you still face in terms of your child's behaviour upon completion of the programme?
39. Has your child committed an offence since he/she started or graduated from the programme?
40. Is there anything in particular that you liked or disliked about Khulisa or the programme?
41. Do you have any suggestions as to how Khulisa might do things in the future?
42. Do you have any other comments regarding your lives now, your child or Khulisa?

Thank you.