

**An examination of the implementation of Khulisa  
Social Solutions' juvenile diversion programmes in  
KwaZulu-Natal**

by

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## **Declaration**

I declare that this dissertation, as titled “*An examination of the implementation of Khulisa Social Solutions’ juvenile diversion programmes in KwaZulu-Natal*” is a reflection of my own effort. Additional sources which have been used in this study have been acknowledged by means of complete references.

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N. Ntshangase

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First and foremost, I would like to thank God, without Him I could not have done this. *“The Lord is my strength and my shield. I trust Him with all my heart. He helps me, and my heart is filled with joy. I burst out in songs of thanksgiving” Psalms 28:7*

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**All of you are awesome, May God bless you abundantly, above and beyond measure!!!**

## **Dedication**

I dedicate this dissertation to my Mother (**Nombuso Zulu**). I appreciate you for giving me the liberty to make my own choices and for trusting me to make the right choices in life. Thank you for supporting me at all times and for making every effort to ensure that my aspirations materialise. You did this even if it meant discomfort for you. I appreciate all that, I appreciate you and I love you very much. May the hand of Christ be upon you at all times.

## **Abstract**

The practice of diversion has grown and spread throughout South Africa. The Child Justice Act (75 of 2008) contributed considerably to the formal practice of diversion and has helped diversion service providers to better implement juvenile diversion. This study aimed at examining the implementation of Khulisa's juvenile diversion programmes in Durban, KwaZulu-Natal. The theories framing this study were: the theory of Differential Association by Edwin Sutherland and the labelling theory. The objectives of this study were to examine the implementation of the Positively Cool and the Silence the Violence programmes, and to determine the challenges faced by Khulisa in implementing these programmes. To achieve these objectives, the study adopted a qualitative research paradigm where purposive sampling was used to locate the files of divertees. Data was collected from the database and 32 case files of Khulisa divertees with the age range of 12-17 years. The sample contained divertees from different race groups including; Black (15), Indian (14), Coloured (2) and White (1). Data was analysed using the qualitative content analysis method. The findings of the study revealed that Khulisa implements their programmes in line with the Child Justice Act. Prevalent issues affecting the implementation of these programmes as identified from the case files were; reasons for juvenile offending which included peer pressure, individual factors, economic circumstances, social circumstances, catalysts for offending behaviour, drugs and alcohol use, circumstantial offending and stress and negative labels. Other factors impacting on the programmes were: family support, group work, diversion as a form of restorative justice and programme compliance with the Child Justice Act. Challenges encountered by Khulisa when implementing diversion programmes included issues of having to deal with the harsh socio-economic circumstances of divertees, lack of parental support, recidivism and challenges in facilitating group work. Furthermore, recommendations were made for the practice of diversion programmes, policy and legislation, and future research.

## **Acronyms**

CBD	Central Business District
CESA	Consulting Engineers South Africa
CJS	Criminal Justice System
CRC	Convention on the Rights of the Child
DCS	Department of Correctional Services
DSD	Department of Social Development
FGC	Family Group Conference
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
JICS	Judicial Inspectorate for Correctional Services
KZN	KwaZulu-Natal
NGOs	Non-Governmental Organisations
NPA	National Prosecuting Authority
NPO	Non-Profit Organisation
NICRO	National Institute for Crime Prevention and the Reconciliation of Offenders
RSA	Republic of South Africa
SA	South Africa
SALRC	South African Reform Commission
SAPS	South African Police Services
STV	Silence The Violence
UN	United Nations
UNICEF	United Nations Children’s Fund
VOM	Victim Offender Mediation

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## **CHAPTER ONE: ORIENTATION TO THE RESEARCH**

### **1.1 Introduction**

Diversion is defined as the channelling of prima facie cases away from the criminal justice system to reintegrative programmes (Badenhorst, 2013, Badenhorst and Conradie, 2004). It is practiced in a wide range of contexts and its programmes are implemented in various South African communities. The Constitution of the Republic of South Africa acknowledges the rights of children and provides that children have a right to family and parental care and guidance and not to be detained except as a measure of last resort (RSA, 1996, Section 28 (1)). Therefore, imprisonment is not a recommended option for children in conflict with the law. Hence, the significance of diversion as an alternative for handling children in conflict with the law without resorting to imprisonment is evident. This study seeks to examine the implementation of diversion programmes in a South African context, with specific focus on KwaZulu-Natal. A study such as this is particularly essential for the child justice system and for diversion service providers. Looking into the implementation process, challenges encountered in implementing diversion (as the objectives of this study stipulate) should bring insight into the recommendations for diversion programmes.

This chapter introduces the reader to the focus of this research study. The chapter also contains an outline of what this study is about, the reasons why it is significant and who will benefit from it. The chapter first explains the context of the study and its rationale. Then it continues to discuss issues that contributed to the choice of this study, that is, the problem that this research study aims to understand and address. Furthermore, the aim of the study, including its objectives and the questions that it aims to answer are outlined. This chapter then discusses the value of the study.

Definitions of key concepts are given in this chapter to allow the reader to get a clear understanding of how concepts are contextualised to fit into the study. The concepts defined are: juvenile; diversion; and diversion programmes since these carry the basis of the study. In addition, this chapter gives an outline of the methodology used in the study to collect and analyse data in order to arrive at conclusions that affirm the study's purpose. An outline of each chapter for the full research study is then explained. This chapter concludes by

explaining the limitations of the study including the difficulties encountered in data collection and analysis.

## **1.2. Context of the study**

In Africa, there are many socio-economic challenges faced by young people. According to Chigunta (2002), a majority of the youth population in Africa has demands which have serious consequences for education, production, consumption, property, employment and other general opportunities. Moreover, most African youth grow up in families characterised by poor socialisation of children, domestic violence, abuse, broken marriages, lack of food, malnutrition, lack of access to basic needs; resulting in many psychological pressures, being drawn into street life, joining gangs and engaging in menial activities, of which others resort to crime (Chigunta, 2002, Mkabela and Castiano, 2010). These social problems further enforce youth to detach from their family environment and create their own social structures where they will find some sense of belonging. Curtain (2000) cited in Chigunta (2002) states that unemployment has been recognised as the most serious socio-economic problem facing most developing countries, particularly those in Africa. Unemployment has many detrimental effects on the country's population. It increases the influence of poverty, hunger, malnutrition and inequalities.

Crime in South Africa is a major social issue facing the country and it has taken the Criminal Justice System (CJS) major efforts and mobilisation of resources both from the state and private organisations to curb crime. The issue is quite unique in the South African context because of the history of apartheid which promoted violence among its black citizens, thus, creating a culture of violence. Most young people grow up in this culture, which is further enforced by the mass media that portrays cruel and violent incidents of crime. As Edwin Sutherland's theory of differential association states, criminal behaviour is learned (Cressey, 1964), thus these young people learn criminal offending behaviour and practice it in their immediate surroundings.

Pillay (2001) outlines the socio-economic challenges facing South Africa as: macroeconomic policy, the labour market, poverty and inequality, the social sector, globalisation, the economy and fiscal decentralisation. The South African government has long put measures in place to address these issues. However, as Amollo (2009) and Pillay (2001) note, the country

still has a high incidence of poverty and inequalities emerging in new dimensions; there are still high levels of unemployment, and crime is increasing and becoming more violent. This impacts negatively on the country's likelihood to attract foreign investment in order to promote economic growth. As mentioned by Chigunta (2002) in the African context and Pillay (2001) in the South African context, unemployment is a major problem facing the South African youth. Abe Thela, president of the Consulting Engineers South Africa (CESA) in his presidential report indicated that unemployment in SA is estimated at 25.4%, including that 50% of the unemployed population is youth between the ages of 15-24 years (CESA, 2015). Overall, there are many other challenges that define South Africa's socio-economic context. Among these are also broken families, gang activities, culture of violence, HIV/AIDS, corruption, inappropriate housing, water and sanitation problems (Amollo, 2009; Pillay, 2001; Durojaye, 2012). These conditions have a role to play in increasing the level of crime in SA, and if crime is to be addressed, different stakeholders have to work together and address this problem holistically.

### **1.2.1. Location of the study**

This study was conducted in KwaZulu-Natal (KZN), South Africa. Therefore, the socio-economic and political context of KZN is significant in understanding the background of this study. KZN is one of the provinces that have a high rate of crime in SA with 15.7% in 2015 following Gauteng at 28.7% (Statistics South Africa, 2015; SAPS, 2014). KZN is the second largely populated province in SA with an estimate of 10 819 130 people following Gauteng at 11 328 203 people (Statistics South Africa, 2011). This large population follows rural-urban migration, where in most instances people move to urban areas without any means of survival and end up staying in the streets, others resort to crime in order to buy food, some join gangs to get a sense of belonging and the lucky ones make it in a much better way. This is one of the ways in which crime increases rapidly in urban areas. According to Adato, Lund and Mhlongo (2007) nearly half of KZN's population lives in urban areas, and KZN has a high rate of employment-related migration. Budlender (2014) indicates that 65% of migration in KZN is work-related.

KZN is said to have the highest rates of HIV/AIDS infections in all provinces of South Africa, accounting for 27% of all infections in the country (Dorrington and Johnson, 2002

cited in Adato et al., 2007). Just as the population is high and many social issues are evident in this province, so is crime a great social issue infringing on people's safety. Children who come from poverty stricken and broken families end up getting involved in criminal activities. However, this does not imply that criminal behaviour is directly linked to rough socio-economic and political conditions evident in the country, rather that many young offenders emanate from backgrounds characterised by such issues.

### **1.3. Rationale for the study**

Exploratory research always has an element of searching for something new and discovering what has been hidden or ignored in existing literature. Such research explores new subjects, new interests and seeks to develop new insights into the phenomenon under study (Terre Blanche, Durrheim and Painter, 2006). This research sought to understand the implementation of diversion programmes which was achieved by focusing on a specific organisation (Khulisa) which provides diversion services to different communities in SA. Specific focus was on the KZN Province. According to Maxfield and Babbie (2014) exploratory research in criminological studies is usually focused on crime, criminal justice policy issues and when policy change is considered. Although this study is not about policy analysis, it contains elements of such since the practice of diversion is largely embedded on the legislative framework governing children in conflict with the law in SA (the Child Justice Act No. 75 of 2008). Thus, an examination of the existing policy and legislation was evident in chapter two of this dissertation, the research focus however remained on the implementation of diversion programmes. Justice organisations use different techniques of problem analysis to study behavioural patterns and come up with appropriate responses to such (Maxfield and Babbie, 2014). In exploring the challenges that are faced by Khulisa when implementing their diversion programmes, this study recommended appropriate responses to those challenges in order to enable diversion service providers to better implement their programmes.

#### **1.3.1. Inadequate literature**

There is insufficient literature on the implementation of juvenile diversion programmes in South Africa. Existing studies focus on the implementation of the Child Justice Act No. 75

of 2008 and on the analysis of this Act in respect of diversion, but seldom on the process of implementing diversion programmes by organisations that have been accredited to provide such services. This study does not only analyse the implementation of diversion programmes, it also zooms into Khulisa Social Solutions as one of the key NGOs in South Africa that provide diversion services. This is one of the advantages of a qualitative research approach, it provides richer, more contextualised and authentic interpretations of the phenomenon being studied by virtue of its ability to capture rich, contextual data (Bhathacherjee, 2012).

### **1.3.2. Weaknesses with existing studies**

The inadequacy of literature on diversion programmes is the main cause for dissatisfaction with the existing literature. Most studies on diversion (Badenhorst and Conradie, 2004; Davis and Busby, 2006; Muntingh, 2001; Wood, 2003) were conducted before the enactment of the Child Justice Act, thus the practice of those diversionary services was not based on a particular legislative framework. This caused fragments within the diversion system because different diversion service providers devised their own strategies for dealing with issues that arose in the process of implementing diversion. This study, therefore, is context specific since it looks at the practice of diversion in SA after the enactment of the Child Justice Act which stipulates clear guidelines regarding the way in which diversion should be implemented, thus enabling diversion service providers to better implement diversion programmes. Very few studies (Berg, 2012; Davis and Busby, 2006; Rousseau, Kruger and Van Oosterhout, 2011; Van der Merwe, 2007) look at the challenges encountered by diversion service providers in implementing diversion programmes. This is a cause for concern since these studies are crucial, particularly for enabling the evaluation of diversion. Such evaluation is not only essential for diversion service providers, but also for courts and the whole CJS, including policy makers, in assessing the effectiveness of the Child Justice Act, thus enabling amendment where deemed necessary.

The rationale for this study also developed out of curiosity on the part of the researcher with regards to the implementation of diversion programmes. After continuous contact with Khulisa, reading existing literature and constant consultation with the university supervisor, the researcher developed an interest in the area of the implementation of diversion programmes by NGOs that have been accredited to provide these services. Since Khulisa was

already on the core and the researcher had previously made contact with the organisation, it seemed more desirable to conduct the study within this organisation, provided the organisation has long been providing diversion services in South Africa, even before the Child Justice Act was enacted.

#### **1.4. Problem statement**

In a broader context, it is evident that there is a high rate of crime in South Africa. SAPS (2014) reported cases of crime in South Africa and the category of contact crimes added up to a total of 104 289 reported cases for the period of April 2013 to April 2014. Notwithstanding these alarming reports, the total number of property-related crimes was 89 711 in the same period of 2013/2014 (SAPS, 2014). The focus on these crimes is by reason that a high number of crimes committed by juveniles in South Africa are contact crimes and property related crimes/ economic offences as indicated by Smit's NICRO research report (2011).

As indicated above, most crimes are committed by juveniles. "South Africa has alarmingly high crime rates and a significant proportion of offences are committed by juveniles" (Van der Merwe and Dewes, 2009, p. 571). Pelsers's (2008) study attests to this as it indicates that most child offenders committed their first offence at the age of: 10-15 years (43.5 %); 16-18 years (35.9%) and 19-25 years (18.7%). Since most crimes are committed by juveniles, there is, therefore, a huge need for diversion services to be readily available because imprisonment is not regarded as the best option for dealing with children in conflict with the law.

The problem persists in South Africa that there are children who are sentenced to imprisonment and some of them are detained in prison awaiting trial. The DCS (2013/2014) annual report gives an account of the number of offenders who are sentenced to imprisonment and those who are awaiting trial. In the year 2013/2014 a total number of 107 696 offenders were sentenced to imprisonment (DCS, 2013/2014). It is not clear how many of these were children (under the age of 18 years). However, in 2011, it was reported that there were 305 un-sentenced children (below the age of 18 years) in prison and 541 children who were sentenced to imprisonment, which constituted a total of 846 children in prison (Jules-Macquet, 2014). Moreover, a great number of these children (45%) committed aggressive crimes (Jules-Macquet, 2014), which may be attributed to the current state of violence evident among families and communities that most children grow up in. Having

children in prison is a cause for concern considering that South African prisons have bad conditions. The issues of concern in contemporary South African prisons are, *inter alia*, overcrowding, deaths in prison, access to health care, gang-related violence, suicide, sexual assaults and torture (Jansen and Achiume, 2011; JICS, 2013/2014). Therefore the prison environment is not conducive to the growth and development of children.

Concerns regarding these issues resulted in state parties and different government departments regulating that alternative programmes should be devised which will prevent children from being imprisoned, instead place them in programmes where they can obtain life skills. Both international and national legislation and policies (see Chapter 2) condemn the imprisonment of children under the age of 18 years. The constitution of the Republic of South Africa also condemns that children be put in prison, except as a measure of last resort. The other issue that supports the reason why children should not be imprisoned is that juvenile courts are overburdened and correctional facilities are crowded. Thus, it is better to allow courts to deal with more serious crimes, and divert petty offences, although there are conditions around the diversion of serious offences in the Child Justice Act which are described in the following chapter. Diversion is important for this reason since it allows children to be diverted away from the formal court procedure to reintegrative programmes. It is these programmes which this study aims to understand and analyse how they are implemented.

A number of concerns have been raised regarding the practice of diversion that have been evident over the years while some arose since the enactment of the Child Justice Act. One major concern is that diversion referrals have gradually been decreasing since the implementation of the Child Justice Act (Khumalo, 2010). Khulisa Social Solutions, one of the key NGOs providing for diversion in South Africa, indicates this decrease in diversion referrals in a report that shows a decrease of diversion nationwide from 5 890 cases in 2009/2010 to 2 065 cases in 2011/2012 (Khumalo, 2010). The numbers of diversion referrals are continuing to decrease, which is a cause for concern not only for diversion service providers but also for the CJS.

Diversion service providers are also experiencing challenges in the practice of diversion as according to the stipulations in the Child Justice Act of 2008 (Khumalo, 2010; Davis and Busby, 2006; Gallinetti, Kassar, and Ehlers 2006; Skelton, 2005; Van der Merwe, 2007). These problems vary but they include the following:

Criminal justice personnel and other diversion service providers still need training on how to effectively implement the CJA (Khumalo, 2010).

The practice of diversion is characterised by racial discrimination, favouring the privileged while excluding the disadvantaged (Khumalo, 2010; Skelton, 2005).

There are issues around the way in which juvenile offenders who have committed serious offences are dealt with in the CJS. Problems arise in trying to strike a balance between the interests of the offender and protection of the community (Gallinetti et al. 2006; Skelton, 2005).

Harris cited in Skelton (2005, p. 134) uses the term „soft-hard bifurcation“ to explain the process where soft cases get diverted while hard cases go through the formal court procedure. For example, soft cases being petty offences (such as public drunkenness and pickpocketing) and hard cases being serious crimes such as murder and rape.

There are imbalances of power in the practice of diversion. For instance, the decision to or not to divert lies within few individuals in authority, namely; the prosecutor, probation officer or judicial officer, with the prosecutor being the main actor (Skelton, 2005).

These problems have caused fragments within the diversion system, thus, for diversion to be better implemented, these issues have to be addressed. Diversion has proven to be a suitable approach for dealing with children in conflict with the law in South Africa; therefore it is essential that enough resources and efforts are invested in making diversion work for children, their parents or guardians and diversion service providers.

### **1.5. Aim of the research**

The aim of this research was to examine the implementation of Khulisa Social Solutions“ juvenile diversion programmes.

This research focused on understanding Khulisa“s juvenile diversion programmes through delving into the implementation process and issues affecting the implementation of these programmes. Furthermore, this analysis brought insight into the challenges encountered by Khulisa when implementing both the Positively Cool and STV diversion programmes.

## **1.6. Research objectives**

The objectives of the study are:

1. To examine the implementation of the Positively Cool diversion programme.
2. To examine the implementation of the Silence the Violence programme.
3. To uncover the challenges encountered by Khulisa in implementing juvenile diversion programmes.
4. To suggest recommendations for Khulisa's juvenile diversion programmes.

## **1.7. Research questions**

The key questions of the research:

1. How does Khulisa implement the Positively Cool diversion programme?
2. How does Khulisa implement the Silence the Violence programme?
3. What challenges are encountered in the implementation of Khulisa's juvenile diversion programmes?

## **1.8. Underlying assumptions of the study**

This study suggests that the implementation of diversion programmes involve a number of procedures and protocols which need to be assured in order to arrive at the appropriate diversion programme. Children in conflict with the law have to be monitored in the duration of the programme. The motive behind this is to ensure that they attend the programme through to the end and that the procedures stipulated in the Child Justice Act are adhered to. This study also assumes that diversion programmes are effective in imparting life skills to children in conflict with the law.

There are challenges which are encountered by diversion service providers in implementing diversion programmes (Davis and Busby, 2006; Khumalo, 2010; Skelton, 2005; Steyn, 2012). From the researcher's consultation with Khulisa staff members, it was indicated that there are challenges faced by the organisation when implementing juvenile diversion programmes.

Furthermore, this study assumes that there is still room for improvement in diversion programmes. Although diversion programmes are implemented properly, the fact that there are challenges encountered signifies that recommendations need to be made in order to improve the implementation of these programmes to the satisfaction of both the service users (children in conflict with the law) and service providers (Khulisa stakeholders/ employees).

### **1.9. Value of the study**

This research study holds much value for Khulisa since it examines the organisation's diversion programmes and investigates the challenges that are encountered by the organisation in implementing its programmes. The context specificity of the research will enhance the study in that it will provide rich and detailed information on the topic of study (Bhathacherjee, 2012). This will further allow the researcher to make necessary recommendations for the implementation of diversion programmes within the organisation. This can lead to the enhancement of resources provided by the government (as the sole funder of Khulisa) to improve the diversion service rendering process. It can also enable Khulisa to grow and gain exposure even to other civil society organisations/ stakeholders who may take interest and decide to get involved in this organisation, either through volunteerism, donations or rendering resources and expertise.

The study also holds relevance for the discipline of criminology in that it will contribute to the epistemological growth of the discipline. This will further enhance educational institutions that provide the course of criminology in taking cognisance of the importance of including diversion in the learning curriculum so that Criminology students can be well aware of the implementation of diversion and the legislation that provides for diversion in South Africa.

Other organisations, in South Africa and in other countries can benefit from this study, particularly those that provide diversion services for children in conflict with the law. The Child Justice Act has been very influential in its provision for diversion in a manner that other countries such as Namibia have drawn on this legislative framework to provide a better justice system for children in conflict with the law in that country (Schulz, 2009). Therefore, the implementation process of diversion can provide solutions for other diversion service providers and give insight into the way they could better implement diversion programmes

such that the organisation is enhanced while reducing the level of crime committed by juveniles.

The recommendations of this study also hold relevance for other organisations apart from Khulisa that are accredited to provide diversion services for juveniles. This explains the significance of social science research in that it produces multiple accounts of a phenomenon and describes different observations in the world, all in an effort to produce knowledge (Maxfield and Babbie, 2014; Terre Blanche et al., 2006). This study will benefit the wider community since it will make people aware of Khulisa and the services that are provided by the organisation which will further raise community awareness on juvenile diversion services. As part of social science research, this study is also significant for policy development and implementation (Bhathacherjee, 2012; Maxfield and Babbie, 2014). The Child Justice Act has been implemented for over 5 years now and policy makers are looking forward to receiving and addressing concerns that could be raised by researchers and diversion service providers which will eventually lead to the amendment of the Act where deemed necessary.

## **1.10. Definition of key concepts**

### **1.10.1. Juvenile**

There are various definitions to the term „juvenile“. Hornby (2010) in the Oxford Advanced Learner’s Dictionary defines a juvenile as;

- a) A young, not fully developed person
- b) Of or relating to or characteristic of or appropriate for children or young people.

From the definition provided by the Oxford Advanced Learner’s Dictionary, it can be concluded that the term juvenile is synonymous to the term „child“. Thus, in an attempt to define a juvenile, this study used the definition provided in the Child Justice Act No. 75 of 2008. This Act defines a child as “any person under the age of 18 years and in certain circumstances means a person who is 18 years or older but under the age of 21 years...” (RSA, 2008 p. 7). In addition, the Department of Social Development (2007) and the Children’s Act No. 38 of 2005 define a child as any person below the age of 18 years. In

consideration of the above and for the purposes of this study, a juvenile was defined as any person under the age of 18 years.

### **1.10.2. Diversion**

Diversion is generally defined as the channeling of prima facie cases away from the criminal justice system with or without conditions to programmes that are reintegrative (Badenhorst, 2013; Badenhorst and Conradie, 2004; Berg, 2012; DSD, 2007; Khumalo, 2010; Zondi, 2002). Diversion can take place prior arrest, charge, plea, trial or sentencing (SALRC, 2000 cited in Badenhorst and Conradie, 2004). The Child Justice Act 75 of 2008 defines diversion as the “diversion of a matter involving a child away from the formal court procedures in a criminal matter by means of procedures established by chapter 6 and chapter 8” (RSA, 2008 p. 8). Chapter 6 of the Child Justice Act (CJA) deals with diversion by a prosecutor in respect of minor offences and chapter 8 provides mainly for diversion, including its objectives, consideration, options etc. (RSA, 2008). The Department of Social Development (DSD) provides an in-depth definition of diversion which states that “diversion is the process by which a child who have been charged with having committed a criminal offence(s) [is] diverted from the formal criminal justice system in lieu of prosecution, into programmes that are more restorative by nature and that hold the child accountable for his/her actions” (DSD, 2007 p. 3). This suggests that diversion is closely linked to the concept of restorative justice in its aim to promote accountability, reintegration and reconciliation. Wood (2003, p. 1) introduces another element of diversion in his definition which 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”. This definition outlines the intention of diversion to reduce crime and reoffending for children in conflict with the law.

### **1.10.3. Diversion programme**

A diversion programme is defined as “a programme in which the child who has been diverted is required to participate, and which has been designed to achieve the objectives of diversion” (DSD, 2007 p. 3). A diversion programme aims to improve the behavior of an individual in order to prevent further offending.

## 1.11. Methodology

### 1.11.1. Motivation for the use of secondary data

This study used secondary data sources. Secondary data collection was used because of the shortage of resources for primary data collection. One problem that is identified in research is that working with minors presents ethical issues, which has the ability to make the research take longer than intended. Moreover, using the organisation's database and case files enriched the study since it provided credible information that is genuinely kept for the organisation's use.

### 1.11.2. Data collection

Data was collected from the following sources:

- Khulisa database
- Khulisa case files

The research focused on Khulisa's juvenile diversion programmes, for both males and females (between the ages 12-17 years); who have committed schedule 1 or 2 offences.

Khulisa's Diversion Programmes:

**Being Positively Cool** : Senior Mini Diversion Programme (8 weeks)

: Senior Diversion Programme (16 weeks)

**Silence the Violence diversion programme:** focuses on children displaying violent behavior and those who have committed offences which display violence, e.g. assault, assault with intent to inflict grievous bodily harm etc. This programme also takes 16 weeks.

### **1.11.3. Data analysis**

Data was analysed through qualitative content analysis which encompassed an examination of case files and the database of Khulisa. Data was analysed against the Child Justice Act and the diversion programmes. The steps in data analysis included familiarisation and immersion, inducing themes, coding the data, elaboration and interpretation and checking. The obtained data was interpreted and analysed in conjunction with the objectives of the study.

### **1.12. Structure of dissertation**

**Chapter one:** This is an introductory chapter that gives insight into the context and rationale for the study, the study objectives and questions, including the background of the study. Furthermore, this chapter discusses the value of the study and its underlying assumptions, also included is a brief outline of the methodology used in the study. Key concepts are defined in this chapter for the purposes of ensuring that the reader understands and is well aware of what the study is addressing. This chapter also discusses the limitations of the study.

**Chapter two:** This chapter gives a review of the literature used to support and give insight into the significance of this study. Literature review also creates a basis for the current study.

**Chapter three:** In this chapter two theories are explained which frame this study. These theories were also used to answer the research questions as presented in chapter 5 of this dissertation.

**Chapter four:** The methodology used to conduct the study is explained in this chapter. This chapter also explicates the data collection and analysis methods, including the procedure for the selection of cases that were used in the study.

**Chapter five:** This chapter analyses and explicates the findings of the study. It largely encompasses data interpretation and presents findings in conjunction with the research questions and objectives.

**Chapter six:** Conclusions and recommendations are given in this chapter. A summary of the whole research and the findings of the study is also presented here.

### **1.13. Limitations of the study**

The limitations of this study include that data collection was secondary, thus there was no interaction with participants to get first-hand information, however the study drew upon credible sources found directly from Khulisa.

Another limitation was that this study was conducted through one organisation, Khulisa Social Solutions. However, this was also an advantage because the organisation is big, has a long and positive history in diversion service provision and it has branches in different South African communities. Therefore, focusing on one organisation contextualised the study.

A number of limitations were encountered in data collection. These include the following:

- Some responses, especially by parents and divertees in the files were very brief; some were one word answers. This made it hard to get the point of what was being said.
- One file indicated that the divertee was a male, while the other report in the same file indicated that the divertee was a female. This resulted in uncertainties regarding the actual gender of the divertee.
- Some children who were not English speakers, including their parents could not express themselves well in writing, thus it was difficult to make sense of what they were saying.
- Some children, because of lack of understanding, responded to what they were not asked, thus they did not answer the exact questions they were expected to answer.
- Some files were incomplete as certain forms were missing in the files.
- The new forms for the evaluation of sessions did not specify which session is being evaluated, thus making it difficult for a third party to identify the evaluated session.
- Some sessions were mixed in between the files, necessitating that facilitators compile files well and make the information flow logically.

In view of these limitations, the researcher maintains that the findings of the study were reliable, taking into consideration that clarity was sought by the researcher from the Khulisa Office Coordinator to ensure that what the researcher documented was the correct information and that further details were obtained regarding that which was not thoroughly documented in the files.

## **1.14. Conclusion**

This chapter has explained what this study is about and has provided for its epistemological stance. The context of the study was explained using an analysis of the socio-economic conditions of Africa, South Africa and KwaZulu-Natal. This was done in order to give an understanding of the conditions with which the study was conducted from a broader perspective narrowing it down to the province in which the study is focused on. After raising issues of inadequate literature and weaknesses in existing literature, the researcher paved a way for the reader to understand the rationale of this study. Curiosity on the part of the researcher about the implementation of diversion programmes by Khulisa was also highlighted as one of the reasons for conducting this study. This chapter has indicated that there is a high rate of crime committed by juveniles in South Africa which necessitates diversion for the purposes of addressing this issue and of effectively dealing with children in conflict with the law. It has also raised the concern that diversion referrals have been decreasing since the enactment of the Child Justice Act coupled with other challenges that are experienced when implementing diversion.

This study aims to answer the main research question regarding the implementation of diversion programmes. Therefore, throughout the entire study, reference was made to diversion programmes, bearing in mind that the focus of the study was on Khulisa's diversion programmes since data was collected from the organisation's database and case files. To answer the research questions, secondary data from Khulisa was used. Cases were selected carefully in order to yield credible results. Furthermore, the limitations of the study were explained, including those pertaining to data collection. The following chapter will give a review of the literature.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1. Introduction**

This literature review will begin by orientating the reader to the ideas of diversion then move on to analyse existing legislation and policies governing diversion at both international and national levels. This will give insight into the background of diversion and how legislation and policies regard it significant, particularly in dealing with children in conflict with the law. The literature review will inspect the Child Justice Act closely as the main framework providing for the practice of juvenile diversion in South Africa. A number of provisions that are stipulated in the Act will be explained in conjunction with the practice of diversion. This review will proceed to explain the links between juvenile diversion and restorative justice. The two concepts overlap, thus indicating that the practice of diversion is influenced by restorative justice. Furthermore, the benefits of diversion programmes for children who are placed in those programmes will be examined in order to understand the reasons why these programmes are largely recommended for children in conflict with the law. The review will continue by partly discussing the importance of adolescence as a developmental stage and juvenile recidivism in South Africa.

Previous studies that evaluated diversion will be explored. These studies examined the effectiveness of diversion in achieving its intended objectives. A review of these studies will create a basis for this study as it will give insight into the successes and challenges that have resulted from the practice of diversion. Moreover, the literature review will conclude by discussing in greater detail, the challenges that are encountered in implementing the Child Justice Act, with specific focus on the Act's provisions on diversion. This constitutes an important part of this study since one of the study's objectives is to uncover the challenges encountered by Khulisa in implementing diversion programmes. This literature review will align the reader with the background information pertaining to this research study and will convince the reader of the importance of this study as it highlights the existing gaps in literature, which this study aims to fill.

The high rate of crime committed by juveniles in South Africa indicates a huge need for diversionary services (life skills programmes, VOM, FGCs and outdoor activities). A number of organisations are in existence in South Africa to provide diversion programmes, not only for children in conflict with the law, but also for adult offenders. Two of the most prominent

Non-Governmental Organisations (NGOs) in SA (Khulisa Social Solutions and NICRO) provide such programmes for juveniles. Diversion programmes are significant due to their ability to provide life skills while also being educational and therapeutic. They aim at providing holistic interventions intended to help people grow emotionally, psychologically and mentally, thus enabling them to make proper decisions which would have positive effects in the present and future life of each individual. A number of challenges infringing on the implementation of diversion programmes have been reported (Davis and Busby, 2006; Steyn, 2012; Van der Merwe, 2007). These include challenges associated with children in conflict with the law, their parents or guardians, diversion strategies, diversion service providers and the diversion system (Davis and Busby, 2006; Steyn, 2012; Van der Merwe, 2007). This literature review will expatiate further on these challenges.

The processes involved in fostering juvenile diversion are centered on the Child Justice Act. This instrument provides guidelines and procedures for the consideration of diversion, as well as insights on the aims and objectives of diversion, and diversion programmes (RSA, 2008). It makes provision for all issues concerning the diversion of children in conflict with the law. Diversion referrals have been decreasing since the implementation of the Child Justice Act (Badenhorst, 2011; Wakefield, 2011a; Waterhouse, 2011). This has been a cause for concern since the Act aims to simplify diversion service provision for service providers and the Criminal Justice System (CJS); however the converse is reflected by the decreasing number of statistics on diversion referrals. A number of measures have been instituted to address this issue, including the training of police officers and other criminal justice personnel on the provisions of the Child Justice Act (Badenhorst, 2011); however the situation remains the same.

## **2.2. Policy and legislation governing juvenile diversion**

### **2.2.1. International legislation**

Children in conflict with the law have always been considered deserving of punishment that is different and better than that provided for adult offenders. International legislation takes cognisance of the vulnerability of child offenders and the negative impact that incarceration has on them as young, developing beings. Thus, efforts were made by the CJS around the world to ensure that child offenders receive treatment that is rehabilitative and reintegrative.

### a) The United Nations Convention on the Rights of the Child (CRC) 1989

This is a dominant legislative framework governing the rights of children at an international level. According to Wakefield (2011b) the CRC was the first agreement that exclusively focused on codifying the rights of children in the international arena. South Africa ratified the CRC in 1995 in an effort to make it applicable to the South African context and to ensure the protection of the rights of children (Jacobs-du-Preez, 2002; Wakefield, 2011b). Wakefield (2011b) further notes that after ratifying the CRC, the South African government then started on the voyage of harmonising its provisions in order to make them comply with international standards, by instructing the South African Law Reform Commission (SALRC) to investigate this compliance with the CRC. Article 37 (b) of the United Nations CRC (1989) states: *„No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time“*. This article suggests that imprisonment is not the best option for child offenders. Although not plainly stated, this provision advocates that child arrest should only be considered after all other possible restorative options have been exhausted and when imprisonment is the only considerable option left. The CRC also states that every minor has a right to the measures of protection required by his or her condition as a minor (UN, 1989). Measures of protection may include protecting the child from incarceration and the damaging effects of such on the growth and development of the child.

Article 40 (3) of the CRC states:

*„States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected“*.

According to Badenhorst and Conradie, (2004) this article provides for diversionary measures without reverting to a formal trial. Therefore, the CRC recognises the importance of using alternative means in handling children in conflict with the law.

Article 40 (4) of the CRC outlines possible alternative options that could be used in dealing with child offenders as it states:

*„A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence“.*

This provision signifies that a range of dispositions should be used as alternatives to institutional care. It thus provides that diversion options should be made available in all „UN“ countries to ensure that children are not arrested, except as a measure of last resort.

#### **b) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**

This instrument has provisions aimed at ensuring a proper justice system for children in conflict with the law- taking into consideration their age and stage of development. Rule 1 (3) of the Beijing Rules (1985) stipulates:

*„sufficient attention should be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law and of effectively, fairly, and humanely dealing with the juvenile in conflict with the law“.*

Resources such as the family and community are used in diversion options, mainly in Victim Offender Mediation (VOM) and Family Group Conferences (FGCs) to offer support to the child offender and to safe-guide the child so that he or she does not continue with offending behavior. Rule 11 of the Beijing Rules (1985) also makes provision for diversion to be used as an alternative to prison sentencing and detention for children in conflict with the law. Rule 11.1. states that *„consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below“.* In addition, Rule 11.3. states: *„Any diversion involving referral to appropriate*

*community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application".* These provisions clearly favour the use of diversion in juvenile cases, including the need to secure consent from the child concerned and/or from the guardian regarding attendance to or participation in diversionary programmes. A commentary for Rule 11.4 of the Beijing Rules states:

*"Rule 11.4. recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed...."* (NCJRS, 1986 p. 8).

It is evident from this commentary that diversion is not only offender-oriented but it is also victim-oriented in that it makes consideration of victims of crime and necessitates restitution of some sort to those victims.

#### **c) The United Nations Guidelines for the Protection of Juvenile Delinquency (Rayadh Guidelines)**

These guidelines were adopted and proclaimed by the General Assembly resolution in 1990 in an effort to prevent juvenile offending (UN, 1990a). Guideline 58 states that *„law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system"* (UN, 1990a). This provision is significant in that it takes cognisance of the necessity to respond to the needs of children in conflict with the law, thus providing programmes that are reintegrative. Diversion is central to guideline 58 as it stipulates that child offenders should be referred to such programmes as deemed fit in dealing with children in conflict with the law.

#### **d) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN Jdl Rules)**

These rules were adopted by the General Assembly in December 1990 (UN, 1990b). They aim to ensure that juvenile detainees and offenders receive fair treatment which is considerate

of their age and stage of development (UN, 1990b). The Jdl Rules support the CRC in its provision that imprisonment should always be used as a measure of last resort. The detention of juveniles before trial is also discouraged. Rule 17 states "...[d]etention before trial shall be avoided to the extent possible and limited to exceptional circumstances...". This necessitates the use of different forms of alternative sentences which are non-custodial. Rule 38 and 39 provides for accessibility of education to all children in conflict with the law. Regarding children of compulsory school age, the rules state that such education has to be provided outside of the detention facility (UN, 1990b). Thus, children of compulsory school going age should not be detained, but released into the care of their parents and be provided with possible diversionary options which will encourage them to take responsibility for their wrongful actions and learn skills which will help enforce law-abiding behaviour.

### **2.2.2. National policy and legislation**

#### **a) Correctional Services Act No. 111 of 1998**

This Act regulates community corrections to afford sentenced offenders an opportunity to serve their sentence in a non-custodial setting, and to enable people subject to community corrections to lead a socially responsible and crime free life during the period of their sentence and in future (RSA, 1998). These measures incorporate diversion and they aim to give children in conflict with the law an opportunity to serve their sentence outside of prison, which enables them to continue with their education and still be under the care and guidance of their families. This is also a means of promoting the reintegration of offenders into their respective communities which is one of the objectives of diversion.

#### **b) Constitution of the Republic of South Africa Act No. 108 of 1996**

Section 28 (1) (h) of the Constitution indicates that every child has a right not to be detained, except as a measure of last resort and that children have a right to special protection and interventions that respect their age and development. This portion of the constitution provides for the protection of children including those who are in conflict with the law and it makes an important provision regarding the use of imprisonment as a measure of last resort. This is consistent with the provisions of the CRC, which also advocate that imprisonment should be

used as a measure of last resort. It must be noted, however, that thus far the Constitution of the Republic of South Africa has not incorporated juvenile diversion.

### **c) Child Justice Act No. 75 of 2008**

The Child Justice Act is an important piece of legislation providing for diversion in respect of children in conflict with the law. This is the main instrument used in handling matters pertaining child offenders in South Africa. The main aim of the CJA of 2008 as stated out in the preamble is to:

*“Establish a Criminal Justice System for children, who are in conflict with the law in accordance with the values underpinning our Constitution and our international obligations, by among others, creating, as a central feature of this new criminal justice system for children, the possibility of diverting matters involving children who have committed offences away from the criminal justice system, in appropriate circumstances, while children whose matters are not diverted, are to be dealt within the criminal justice system in child justice courts;*

*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.”*

Child Justice Act, 75 of 2008- Preamble.

This preamble summarises the centrality of diversion in the Child Justice Act in SA. Diversion has been recognised as a more appealing alternative to the CJS when dealing with child offenders. Its confidence is based on the principles underlying the provisions of the Act regarding diversion, which encourage accountability, reintegration and reconciliation. These enforce a rather ideal approach to child justice as opposed to the punitive CJS.

### **d) Children’s Act No. 38 of 2005**

This is also an important piece of legislation that promotes the use of restorative justice in cases involving children. Section 69 of the Children’s Act makes provision for a pre-hearing conference to be held in response to any matter brought to the court regarding a child (RSA,

2005). It outlines „mediation“, „settling disputes“ and „defining issues to be heard by the court“ as the intentions of a pre-hearing conference (RSA, 2005). Section 70 (1) of the Children’s Act states that *„the children’s court may cause a family group conference to be set up with the parties involved in a matter brought to or referred to a children’s court, including any other family members of the child in order to find solutions for any problem involving the child“*. A FGC is one of the diversion options used to resolve any matter concerning a child, and to get the child concerned to assume responsibility for the crime committed. The Children’s Act also makes provision for the appointment of a suitably qualified person to facilitate a FGC (RSA, 2005). This is essential in ensuring that restorative justice/ diversion services are provided by qualified personnel who will ensure a balance of interests for all parties involved.

Section 72 of the Children’s Act makes provision for the settling of matters out of court and it obliges the court to consider such a settlement, provided that all parties agree on the settlement (RSA, 2005). It is important to note that these sections of the Children’s Act do not specifically deal with children in conflict with the law per se, however, the Act stipulates that *„any matter involving a child“*, which may include a criminal matter. Moreover, the need for VOM and FGCs usually arise in cases where, in this instance, children have bridged the law.

#### **e) White Paper for Social Welfare (1997)**

This is an influential government policy paper that encourages different stakeholders to work collaboratively in tackling many of the issues facing South Africa, including poverty, unemployment, inequality, crime etc. The White Paper for Social Welfare (1997) provides specific guidelines aimed at the provision of services regarding juveniles in conflict with the law (Roestenburg and Oliphant, 2012). It states that juveniles are connected to their families, communities and their culture, thus, there is a need to provide rehabilitative services which should aim to strengthen these ties. It also states that diversion and effective alternative sentencing programmes aimed at preventing reoffending should be developed from within the community (White Paper for Social Welfare, 1997). These programmes are aimed at reducing the overall rate of crime in SA. The White Paper takes cognisance of the need to preserve family and community ties in order to help child offenders escape criminal offending behavior, and diversion programmes are central to these efforts as they also enforce the strengthening of these ties in families and communities.

The White Paper for Social Welfare (1997) supports the provisions of the Constitution of the Republic of SA and the CRC in its agreement that children should be held in custody only as a measure of last resort. It also supports the provisions of the Child Justice Act by stating that children in conflict with the law should be released into the care of their parents or guardians to await trial in their homes instead of awaiting trial in prison (White Paper for Social Welfare, 1997). Regarding diversion services, the White Paper states that: child offenders should be diverted away from the CJS as way of complying with the Beijing Rules; Welfare and other organisations will make arrangements regarding the development and rendering of diversionary services and; the Department of welfare will support the development of legislation that will legitimise diversion in all magisterial districts (White Paper for Social Welfare, 1997). The results of the latter provision are seen in the enactment of the Child Justice Act of 2008, indicating that suggested recommendations in the White Paper are receiving consideration and monitoring.

#### **f) Probation Services Act No 116 of 1991**

The Probation Services Act contributes to the practice of diversion in South Africa by making provisions for probation services which incorporate the duties of probation officers who play a pivotal role in the diversion process. The Probation Services Act (1991) outlines the functions of a probation officer which include conducting an assessment, care treatment and support, referral for treatment and support, and provision of mediation in respect of victims of crime; early instruction including family group conferencing and; restorative justice as part of appropriate sentencing and diversion. These functions are reflective of the provisions of the Child Justice Act regarding the assessment of children in conflict with the law and the requirements of probation officers in fulfilling the objectives of diversion as stipulated in the Act.

It is evident from a wide range of international legislation as well as national policy and legislation that diversion is not a new phenomenon. Diversion services have been provided for prior the enactment of the Child Justice Act in SA. Nonetheless, the Act aimed to make it feasible for the CJS and diversion service providers to implement diversion programmes.

## **2.3. The Child Justice Act No. 75 of 2008**

### **2.3.1. Background of the Child Justice Act**

The Child Justice Act became operational on the 1<sup>st</sup> of April 2010 after many years of civil society engagement and parliamentary reviews (Badenhorst, 2011). The Issue Paper on Juvenile Justice which was published in 1997 proposed a separate Bill to provide for procedures on the management of children in conflict with the law (Badenhorst, 2011). This was followed by a Discussion Paper which was published by the South African Law Reform Commission (SALRC) in 1998 and was accompanied by a draft Child Justice Bill (Badenhorst, 2011; Skelton and Gallinetti, 2008). The Child Justice Bill 49 of 2002 was introduced into parliament in August 2002. Civil society organisations and government role players took consideration of the proposed Bill and recommended changes to be made. Skelton and Gallinetti (2008) argue that the Portfolio Committee strongly resisted the idea that all children should be considered for diversion irrespective of the alleged offence. These children were not going to be assessed by a probation officer nor appear at a preliminary inquiry (Skelton and Gallinetti, 2008).

After years of engagement, the Department of Justice and Constitutional Development released a new version of the Child Justice Bill in 2007, which allowed government role players and public to comment, including children. This Bill excluded children over the age of 14 years, who have committed serious offences from benefiting from the CJS (Skelton and Gallinetti, 2008). According to the Bill, these children could be held in prison awaiting trial, which does not support the best interests of the child principle and is not consistent with the need to decrease the number of children awaiting trial in prison. The Bill passed by the National Assembly in 2008 ensured that all children will be assessed; appear before a preliminary inquiry and that all children can be considered for diversion, although it provided that children who have committed serious offences would be diverted in exceptional circumstances (Skelton and Gallinetti, 2008). Badenhorst (2011) further adds that the Bill was passed in September 2008 and signed into law by Kgalema Motlanthe in May 2009, which was then implemented in April 2010. This records a long, and extensive process in the development of the Child Justice Act, thus implying that close consideration of the Constitution of the Republic of SA and other international instruments regarding the rights of children were accounted for in the development of this instrument.

The main aim of the Child Justice Act embodies the implementation of diversion. This Act aims to provide a framework for child justice that is grounded on the principles of restorative justice and is inclusive of victims of crime as allegedly committed by child offenders (Moyo, 2013). Section 2 of the Child Justice Act outlines the objectives of the Act and includes that the Act aims to provide special programmes designed to break the cycle of crime and to encourage children to become law-abiding citizens, and to prevent children from exposure to the effects of the formal CJS by using appropriate processes and services such as diversion which are more suitable to the needs of children (RSA, 2008). There is a strong link between the objectives of the Act and the objectives of diversion. Thus the Act is a prominent instrument in the promotion of the use of diversion in cases involving children in conflict with the law. The objectives of diversion as stipulated in section 51 (a-k) of the Child Justice Act 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 and to meet the particular needs of the individual child (RSA, 2008). Moreover, diversion aims 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 and to encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm (RSA, 2008). The objectives of diversion are also 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 and to reduce the potential for re-offending (RSA, 2008). The Child Justice Act also includes preventing the child from having a criminal record, promoting 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 as other objectives of diversion.

To summarise these objectives, diversion aims to promote the reintegration of the child into his or her family and community through providing diversion services which will hold the child accountable for the crime he or she has committed without having to go through the formal court procedure in a criminal matter. Diversion has many benefits for an individual child including the avoidance of a criminal record, preventing stigmatisation and providing an opportunity to account for wrongful behaviour. These are the benefits that could not be attainable to children in conflict with the law prior the implementation of diversion in South Africa.

### **2.3.2. Consideration of diversion**

Section 51 (1) of the Child Justice Act indicates that any matter may be considered for diversion if the child: acknowledges responsibility for the offence, has not been unduly influenced to acknowledge responsibility, and has a prima facie case against him/her. Further to this, the child, parent or guardian, if available, must give consent to diversion, and the prosecutor must indicate that the matter may be diverted (RSA, 2008). This allows all children, including those who have committed serious offences (schedule 3) to be considered for diversion, although such consideration is given only in exceptional circumstances. A prosecutor must authorise the diversion of schedule 2 offences and the Director of Public Prosecutions must authorise the diversion of schedule 3 offences after consultation with the victim or any person with a direct interest in the affairs of the victim and after consulting with the police official responsible for the investigation of the matter (Badenhorst, 2013; NPA Directive I. 5, 6, 2010; RSA, 2008). However, because of the nature of the offence and the need to ensure protection of society, the diversion of schedule 3 offences only takes place if exceptional circumstances exist. These exceptional circumstances include: a particular youthfulness, low developmental level of a child, presence of a particular hardship, vulnerability or handicap, where the victim prefers diversion to trial should he or she not want to testify in court, undue influence exerted upon the child in the commission of an offence exists, compelling mitigating circumstances such as diminished responsibility, or if the witnesses for the prosecution are fragile and/or unwilling to testify (NPA directive J. 2, 2010). These directives indicate the low likelihood of diverting schedule 3 offences.

The Child Justice Act provides for the consideration of diversion in three stages of the criminal justice process (Badenhorst, 2013; NPA Directive, 2010). Section 41 of the Act provides for the diversion of a schedule 1 offence before a preliminary inquiry (RSA, 2008). If the child has not been assessed, the prosecutor may dispense with assessment if it is in the best interest of the child to do so {Child Justice Act, s 41 (3)}. The inquiry magistrate may also divert a case during the preliminary inquiry if the child is 10 years or above but below the age of 14 years (Badenhorst, 2013; Wakefield, 2011a). A case may also be diverted at the trial in a Child Justice Court at any time before the prosecutor closes the case against the child (Wakefield, 2011a). Therefore cases involving children accused of committing crime can be reviewed at any stage of the criminal justice process, provided new information arises

which was previously not known, so that a proper and suitable diversion option is selected for the child concerned.

Diversion options should be selected with consideration of a number of factors in order to ensure that the child concerned benefits from diversion. According to Section 54 of the Child Justice Act, the selection of a diversion option should take into consideration the level of a diversion option (whether it is level 1 or 2); the child's cultural, religious and linguistic background; the child's educational level, cognitive ability, domestic and environmental circumstances; the proportionality of the selected option to the circumstances of the child, the nature of the offence and the interests of society and; the child's age and developmental needs (RSA, 2008). This provision has implications for probation officers, since they are required to assess all circumstances surrounding the child before recommending a diversion option. Although the prosecutor is not obliged to opt for the recommendation provided by the probation officer, a good recommendation based on concrete facts of the case would make the prosecutor's decision more viable. Diversion service providers also assess the child in order to establish the appropriate diversion programme for the child concerned.

### **2.3.3. Diversion programmes according to the Child Justice Act**

The Child Justice Act also makes provision for diversion programmes in order to ensure that children benefit from them and that further criminal offending is prevented. Section 55 (2) of the Child Justice Act states that diversion programmes must: *impart useful skills, include a restorative justice element; include an element which seeks to get the child to understand the implications of his/her behaviour and the impact of such on others, which may include restitution or compensation; be presented in a location accessible to the child; allow suitability for use in a variety of circumstances and for varied offences; allow measurement of effectiveness; be developed and promoted with a view to equal application and access throughout the country and; if applicable involve parents or guardians and appropriate adults* (RSA, 2008).

The Child Justice Act stipulates that the Cabinet member responsible for social development must establish and maintain a system of accreditation of diversion programmes, which must contain; criteria for the evaluation of diversion programmes and the concept of diversion programmes, mechanisms to monitor diversion programmes and diversion service providers and, measures for the removal of diversion programmes and diversion service providers from

the system where appropriate (RSA, 2008). Evaluation and monitoring is important in ensuring that diversion programmes fulfil the objectives of diversion as stipulated in the Child Justice Act.

#### **2.4. Juvenile diversion and restorative justice**

A question might arise regarding the inclusion of restorative justice in diversion literature. It has been noted in the above literature that restorative justice appears more often in general literature on diversion. First, the Child Justice Act makes mention of restorative justice in one of the objectives of diversion outlined below. Secondly, studies similar to that of Wood (2003); Muntingh (2001) and De Jager (2008) which are largely based on diversion consequently refer to aspects of restorative justice as important features in diversion. Some of the aims of restorative justice are embodied in diversion, thus there is an overlap between the two which further enhances the practice of diversion.

In her study, Hargovan (2011) raised questions regarding the link between restorative justice and diversion. She questioned whether diversion has a restorative justice philosophy, i.e. does it address harms and curses? Is it victim oriented? Are offenders encouraged to take responsibility? Are all stakeholder groups involved? Is there an opportunity for dialogue and participatory decision making? And is it respectful to all parties? Diversion does, to a certain extent have a positive response to these questions; however it does not completely portray all aspects of restorative justice. It does encourage offenders to take responsibility, but there are limitations to its tendency to be victim-oriented, to involve all stakeholder groups, and to provide an opportunity for participatory decision making. Wood (2003) stated that the Child Justice Bill provided for the statutory inclusion of procedures for restorative justice as one of its advantages in promoting the practice of diversion in South Africa. It can thus be concluded that there is a thin line between restorative justice and diversion and the two concepts influence each other positively.

Diversion incorporates elements of restorative justice. Some of the objectives of diversion that are stipulated in the Act reflect the restorative elements of diversion. These include that diversion aims to *encourage the child to be accountable for the harm caused by him or her, to promote the reintegration of the child into his/her family and community* and to *provide an opportunity for those affected by the harm to express their views and its impact on them*

(RSA, 2008 Section 51). *Furthermore, diversion aims 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 and to reduce the potential for reoffending* (RSA, 2008 Section 51). These objectives complement restorative justice in its approach to juvenile crime by encouraging responsibility among child offenders, involving victims of crime and promoting compensation and restitution.

Section 55 (2) (b) of the Child Justice Act states that diversion programmes must, where reasonably possible, include a restorative justice element which aims at healing relationships, including the relationship with the victim. One of the diversion options outlined in the Act can partly achieve this requirement since it includes „making restitution of a certain object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored“ (RSA, 2008). This may cause inequalities within the system of diversion in that offenders who cannot afford a payable object would not make such restitution and some victims who were victimised in a way that cannot be compensated (e.g. assault) may be excluded from restitution. In these instances other means of restitution can be used which victims may or may not be satisfied with. In cases involving property crime, which have the highest numbers in crime statistics in South Africa (Statistics South Africa, 2014), it is not uncommon to find that perpetrators of those crimes are financially disadvantaged, causing them to deprive others of their belongings. It is in these occasions, in the researcher’s opinion, that restitution becomes a problematic factor.

## **2.5. Benefits of diversion**

Diversion has a number of benefits for those considered for it. In Wood’s (2003) study of *Diversion in South Africa*, numerous benefits of diversion were outlined by children. These include that diversion „helps the child to learn from his or her mistakes, gives the child a second chance for the future, prevents children from getting a criminal record, teaches children new skills and, keeps children out of prison“ (Wood, 2003 p. 10). Some children in Wood’s study however indicated that diversion has no benefits because it allows „guilty children to get off easily,“ and some children were unsure of the benefits of diversion. In another study conducted by Muntingh (2001) in cooperation with the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), the majority of juveniles who

reported their reasons for finishing the diversion programme stated that it was because they were afraid of the law, prison and getting criminal record. This may bring about a contradiction in terms of the benefits of diversion for juveniles as they may only participate in diversion programmes in order to avoid getting a criminal record, thus presenting higher chances of reoffending. In response to this contradiction, CJS personnel should ensure that the intentions of diversion are clearly explained to child offenders before they are enrolled for the programme.

## **2.6. Adolescence as a crucial stage of development**

It has been observed that a great majority of offenders start committing crime in their teen years. Adolescence is regarded as a crucial stage in the development of an individual mainly because it is a stage when one attempts to develop and affirm identity (UNODC, 2004). In addition, Erickson (1959) cited in Peacock and Theron (2007) considers the developmental stage of adolescence as a critical and vulnerable stage for the development of identity for a particular individual. This is a stage when one tries to maintain a sense of „uniqueness“ which defines who they are, while also seeking „familiarity“ with significant others. The issue arises when an adolescent does not have the necessary support system (family, community) to foster the development of a positive identity. Moreover, family issues (violence, lack of communication, lack of love etc.) are likely to cause adolescents to detach from their family and identify more with their peers. The UNODC (2004) states that adolescence is characterised by the likelihood of moving from reliance on the family to individuality; moving from childhood to adulthood. This process causes strain on children, which in most cases explains why most of them abuse drugs to relieve stress (UNODC, 2004).

Peacock (2007) draws on the correlation between an individual's identity and their support or reference group. He argues that the identity of an individual reflects the values and the normative support of his or her reference groups. One can either accept or reject these norms and values and settle for an identity that is either defined by these or not. However, it is worth noting that adolescents are vulnerable to societal influences, which, in most cases causes their identity to be shaped by their surrounding environment. A study on preventing substance abuse among the youth indicated that the media plays a significant role in displaying the inappropriate use of substances, in particular, licit substances (UNODC, 2004). Adolescents recognise the abuse of substances and try them out in their secret spaces.

Adolescents are most vulnerable to peer pressure because of the need to obtain a sense of belonging and acceptance. The UNODC (2004) indicates that peer pressure takes its toll when adolescents feel that it is much safer to take drugs than to risk losing the support of the group, including the identity and status that comes with being part of the group. Therefore, adolescents are vulnerable to the point where they can easily commit crime so that they can please the peer group which they identify with.

## **2.7. Juvenile recidivism in South Africa**

Offenders have a tendency to reoffend and the likelihood of such recidivism depends on the intervention given and the circumstances which caused them to offend in the first place. A study done by Van Biljon, Strydom and Vermeulen (2011) indicated that the high risk of future criminal offending is directly proportional to the age of entry into the CJS. Thus, the younger the age of entry into the CJS, the higher the risk of recidivism in the future. This study suggests that interventions aimed at preventing and reducing recidivism should screen for factors which cause criminal offending in order to be able to treat the actual root causes of crime. Such interventions should also be specific to each offender's context since offenders commit crime for varying reasons.

There are variations to reoffending, Kubrin and Stewart (2006) state that these variations are between recidivism among people who commit serious offences and those who commit minor offences. Those who commit serious crimes are usually the ones who have committed offences in the past; have drug problems and are less educated (Kubrin and Stewart, 2006). The study also revealed that those with strict supervision during probation or parole are more likely to recidivate (Kubrin and Stewart, 2006). Predicting recidivism among ex-prisoners is likely due to the issues of rejection that they face when they go back to the community from prison. Kubrin and Stewart (2006) argue that inmates that are released from prison face a number of challenges including finding housing, securing employment, receiving treatment and complying with terms of supervision. All these challenges further press them to go back to the life they have been living inside the prison since the world does not have anything better to offer them, thus increasing the likelihood of recidivism.

Recidivism is a cause for concern in the South African CJS. The South African Briefing Paper on recidivism (2012) estimated recidivism to be up to 47%, which was attributed to

overcrowding in South African prisons. In Addition, at the *Conference for Open Society Foundation for South Africa* (2010), it was reported that out of a total number of 167 790 first convictions in 2009, only 7% of those reoffended. A study done by Vapi and Boyle (2004) cited in Ngabonziza and Singh (2012) reported that South Africa's prison population comprises 60% repeat offenders. The aforementioned reports reveal a decrease in the rate of reoffending in South Africa from 2004 to 2012. This may be attributed to a number of mechanisms that have been adopted by the CJS to reduce recidivism including; diversion, restorative justice and offender rehabilitation and reintegration programmes. The Briefing Paper (2012) states that people reoffend because of a number of personal and circumstantial factors including the individual's social environment of peers, family and community; and lack of support systems and appropriate policies to help in the process of reintegrating offenders back into families and communities. These factors lead to a cycle of crime consisting of the criminal act, leading to SAPS intervention, which further leads to courts, prison, and finally a return to the community where the offender commits crime again (Ngabonziza and Singh, 2012). This is how the cycle of crime is repeated in a way that promotes recidivism.

Different writers have identified characteristics of recidivists which can also be conceptualised as factors that predict recidivism (January, 2007; Tadi and Louw, 2013). Antisocial personality features are regarded as characteristic of recidivists, including the maturity gap which encourages teens to mimic antisocial behavior (January, 2007). Past criminal behavior also yields high rates of recidivism. Other socio-economic factors increase the likelihood of reoffending, these include poor educational and career training, poor housing, over-population, slum or shack dwellings, poverty, unemployment, problematic childhood (poor parent-child relationships), and substance abuse (January, 2007; Tadi and Louw, 2013). Other demographic factors include: age; in that younger offenders recidivate more than older offenders, race; indicating that black people possess a greater risk or recidivism than other racial groups, gender; indicating that males recidivate more than females (although there is no clarity on this demographic factor), and marital status which is also unclear, however, studies indicate that married people are less likely to reoffend when compared to unmarried people (Tadi and Louw, 2013). Programmes aimed at reducing crime and recidivism should also make means to address these factors in order to be effective.

## **2.8. Effectiveness of diversion programmes**

Diversion has been evaluated in South Africa, although not many studies have been done in that area of research. Muntingh (2001) conducted a study in conjunction with NICRO looking at the effectiveness of diversion in reducing recidivism, among other factors. The study revealed that 76 offences were reported by the respondents involving 68 individuals, some committed more than one offence after attending a diversion programme (Muntingh, 2001). Theft was reported to have the highest number of recidivists over a 34-36 month period, which was followed by housebreaking (Muntingh, 2001). Muntingh made a similar point in his study that most recidivists committed property crimes (2001).

Muntingh's (2001) study evaluated each diversion programme separately. Results showed that the majority of children who were impressed most about the programme were those who attended the Youth Empowerment Scheme „YES“ (NICRO's programme). When asked what they learnt about the programme, most indicated „to do the right things“; „crime doesn't pay“; „to stay away from bad influences/friends“ and „to take responsibility for one's actions“ (Muntingh, 2001, p. 31). According to Muntingh's (2001) study, 90 from a total of 226 children completed the YES programme. This reflects a percentage of 39.8%, indicating that most children were enrolled for the YES programme and some of them appreciated it or were patient enough to attend through to the end. Some of the reasons raised by children who completed the programme included being afraid of law or prison and getting a criminal record (Muntingh, 2001). When children were asked about the change brought about by the programme, most of them (13.3%) indicated that they were not interested in crime anymore (Muntingh, 2001). This is a good indication of behavioral change among divertees, however participant responses should not be the only means of identifying the effectiveness of a programme, but consultation with parents/ guardians of divertees regarding change of behavior could add credible value to understanding the effectiveness of the programme.

Wood (2003) did an evaluation of diversion in South Africa drawing upon three studies that had been done previously. In this evaluation, Wood used recidivism as a means to evaluate the diversion programmes. From the first study consisting of 468 individuals, 7% of juvenile offenders had reoffended in the first 12 months after completing a diversion programme. In a second study of the same individuals done two years later, 356 individuals were interviewed and a further 10% had reoffended (Wood, 2003). Another evaluation was done by SAYSTOP which proved to be effective, however there was less achievement reported in getting

offenders to respect and show empathy to their victims (Wood, 2003). The rates of reoffending reported in this study were significantly low, showing that diversion does, to a certain extent reduce recidivism, although it does not necessarily prevent it.

A study looking at the present position and future provisions of diversion was conducted after the release of the Child Justice Bill of 2002 in SA by Badenhorst and Conradie. In this study, the views of 307 magistrates in Gauteng were obtained regarding whether they deem diversion to be effective or not. According to Badenhorst and Conradie (2004) the results of the study revealed that out of a total of 97 respondents, only 7 „*definitely agreed*“ that diversion is working while the majority (63) „*agreed*“ that diversion is working. Prosecutors were asked if they consider diversion in all deserving cases, in response to this, 52.6% (51) indicated „*no*“ while 47.4% (46) indicated „*yes*“ (Badenhorst and Conradie, 2004). When the same question was asked, this time questioning the consideration of diversion in all cases involving juveniles; responses yielded a „*no*“ in 27.8% (27) of the respondents and a „*yes*“ in 72.2% (70) of the respondents (Badenhorst and Conradie, 2004). This is a positive reflection of prosecutor’s understanding of the need and significance of using diversion in cases involving children in conflict with the law. If diversion is to succeed, all criminal justice personnel need to have a clear understanding of diversion and seek to apply it appropriately and effectively.

Van Biljon et al. (2011) conducted a study evaluating the influence of a diversion programme on the psycho-social functioning of youth in conflict with the law in the North West province. This study evaluated Khulisa’s life-skills programme which is called the „Positively Cool programme“ (Van Biljon et al., 2011). The results of the study indicate little improvement among child offenders who went through the programme when comparing pre and post-test findings. Quantitative data evaluated the programme based on positive functioning, self-perception, trauma dynamics, relationships and decision-making abilities (Van Biljon et al., 2011). Among these factors, most yielded an average above 50% in the post-test, indicating a positive influence of the programme on divertees. However, trauma dynamics and self-perception yielded an average below 50% in the post-test. Van Biljon et al. (2011) explains possible reasons for this when stating that those who did not improve in self-perception experienced a lack of positive self-image which influenced their happiness, and those who did not improve in trauma dynamics experienced a sense of trauma because they were unable to control the environmental influences in life. Qualitative data from the study shows that more participants indicated that their behavior had changed for the better after attending a

diversion programme (Van Biljon et al., 2011). This study indicates that although diversion programmes help divertees to a certain extent, more interventions would help in improving the psycho-social functioning of children in conflict with the law in order to avoid further offending in the future.

## **2.9. Challenges encountered in the implementation of diversion**

All diversion programmes have specific objectives, strategies and expected outcomes. Diversion programmes use a variety of strategies, including life skills training, community service, arts and music, mentoring, family and victim involvement, FGCs, VOM and outdoor interventions (Steyn, 2012). Most diversion programmes include a restorative element, are rehabilitative, impart useful skills essential for challenging criminal behavior and include cognitive restructuring. They address issues such as self-belief, conflict resolution, relationship between crime and law, parent-child relationships, children's rights, responsible decision-making and future planning (Badenhorst and Conradie, 2004). Different organisations or diversion service providers devise their own diversion programmes aimed at accomplishing the objectives of diversion as stipulated in the Child Justice Act and to meet the organisation's vision and objectives.

A number of challenges are reportedly encountered in the implementation of diversion programmes. Steyn (2012) conducted a study identifying the challenges of diversion strategies in meeting the diversion objectives of the Child Justice Act. He argued that group approaches which are used in most diversion programmes do not meet the individual needs of participants (Steyn, 2012). In some instances, the programme content and its activities are not realistic in terms of meeting programme goals (Davis and Busby, 2006; Steyn, 2012). Children are sometimes matched inappropriately to programmes, which may be attributed to lack of necessary training among service providers (Davis and Busby, 2006). Other problems with diversion strategies include that most crimes committed by juveniles are property-related offences which is due to the challenges of poverty and inequality that are rife in South Africa, and lack of follow-up is seen as dangerous since divertees can experience a sense of failure if they cannot implement the good intentions of the diversion programme (Steyn, 2012; Van der Merwe and Dewes, 2009). Moreover, Steyn (2012) highlights that children can easily recidivate because of lack of parental support and insight into the diversion programmes. Some parents are too defensive over their children, thus they declare their children to be

innocent despite the diversion order (Steyn, 2012). In some instances, the environment where a child offender lives is not conducive to behavioral change (Steyn, 2012). Peer influence and gangs are likely to negatively influence the child which had been diverted in a way that enforces a return to crime. Steyn (2012) asserts that some children who are part of diversion programmes are underdeveloped cognitively, thus making it difficult to verbalise and express their thoughts and emotions. This in turn makes the programme less meaningful to the individual child. Another concern raised by Steyn (2012) is that the reintegration of offenders into communities usually seems difficult because in some communities children are not accepted owing to the previous offences that they committed.

There are other challenges associated with the diversion system. Steyn (2012) raises the issue of the absence of a national database on diverted children. His argument is that this creates loopholes in the system because some children can be diverted by different courts to different programmes (Steyn, 2012). Another concern is that the diversion system is open to abuse since children can agree to diversion in order to escape prosecution and for the purposes of avoiding a criminal record (Muntingh, 2001; Steyn, 2012). Although these are incorporated into the objectives of diversion, it is the researcher's opinion that a child has to take responsibility for the offence he/she committed in order to avoid future offending.

Questions have also been raised regarding the victim's limited involvement in diversion programmes, which further questions the programme's ability to meet the reconciliation and reintegration objectives of diversion (Steyn, 2012). Diversion programme's service providers have to bear in mind the importance of aligning diversion programmes with the objectives of diversion in order to fulfil the objectives of the Child Justice Act. Concerns have been raised by some researchers (Khumalo, 2010; Skelton, 2005) regarding the practice of diversion in South Africa being characterised by urban bias, racial, economic and gender discrimination. Skelton (2005) uses the term „soft-hard bifurcation“ to explain the process where soft cases get diverted while hard cases are put beyond the reach of a restorative solution and channeled through the CJS.

A research study conducted by Van der Merwe (2007) for Khulisa outlines the problems that are faced by facilitators when facilitating the „Silence The Violence“ diversion programme. It was noted that some children are illiterate thus it is difficult communicating with them and getting them to understand and undertake certain tasks, while also some non-English speakers experienced communication barriers. Khulisa's facilitators indicated that they experienced

problems when facilitating the sessions (Van der Merwe, 2007). These problems included that some learners have painful personal experiences such as poverty, abuse, lack of love etc.; some have big problems that the facilitator cannot help with because of lack of information; children's painful experiences are the same as facilitators', thus an experience of additional pain (Van der Merwe, 2007). This difficulty necessitated a need for counselors to be available for referral of children who are in need of counseling where the facilitator could not help. Regarding the programme content and the facilitation of sessions, a number of problems were also experienced by facilitators. Of these is that certain sessions in the programme content were too complicated to be understood by children; some topics like gender equality caused conflict between the two sexes, the time-frames allocated to different sessions were too short, thus facilitators could not go in-depth with the topics that they felt needed more time and; not all children opened up equally (Van der Merwe, 2007). Van der Merwe (2007) raises a similar concern to that raised by Steyn (2010; 2012) regarding group discussions which fail to draw the attention of all participants and happen to be time consuming and less effective.

Prosecutors are central to the administration of diversion in South Africa. The final decision to or not to divert comes from them. However, prosecutors are also experiencing problems in facilitating the practice of diversion. According to Gallinetti (2009) the challenges that prosecutors face in enabling diversion include: lack of diversion programmes and referral institutions, lack of cooperation from other stakeholders, especially the Department of Social Development; lack of cooperation from children and their parents, difficulties in implementing FGC programmes since some children have no sound family base, no contactable address for some children, and lack of training on diversion. These challenges necessitate that different stakeholders take responsibility and ensure that they fulfill their roles in enabling the effective practice of diversion.

Gallinetti (2009) highlights that diversion is mainly practiced in big cities like Durban, Pietermaritzburg, Johannesburg, Pretoria and Cape Town. She further adds that it becomes a cause for concern that diversion services are not readily available in rural areas since crimes also occur in those areas and children who commit those crimes deserve the same treatment as that obtained by those who reside in the aforementioned cities. The diversion of serious offences is also a concern since it is improbable and if children who commit serious crimes are placed in secure care facilities, they present a security risk; whereas if their cases proceed to trial, they get long periods of imprisonment (Gallinetti, et al., 2006; Skelton, 2005). Lack of understanding of diversion and restorative justice by the community is also regarded as

one of the challenges in the practice of diversion (Gallinetti, et al., 2006; Steyn, 2012). Thus, the need for public awareness-raising on diversion and the provisions of the Child Justice Act.

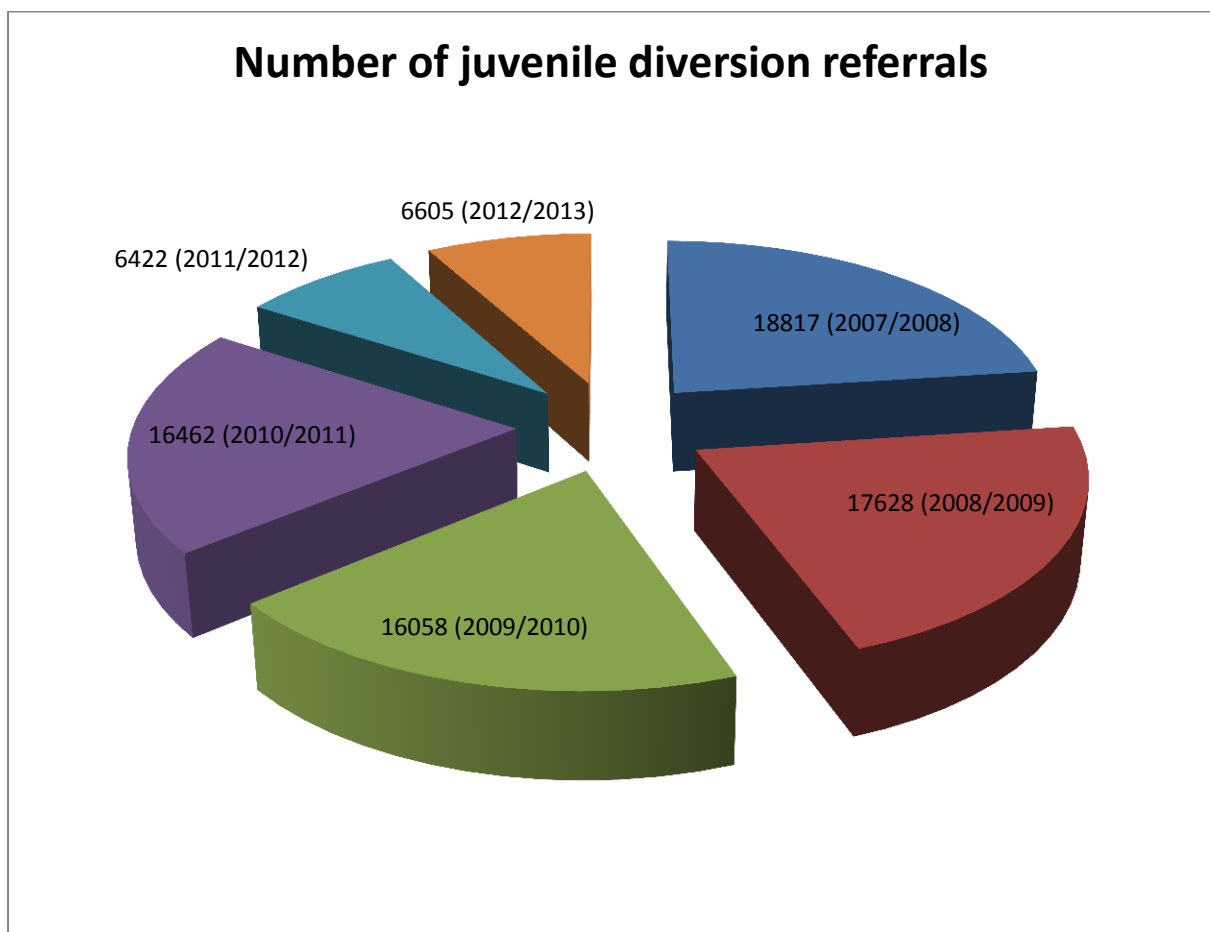
### **2.9.1. The decrease in diversion referrals since the implementation of the Child Justice Act**

The Child Justice Act was implemented in April 2010; however, diversion had been practiced prior the implementation of the Act in South Africa. There has been a rising concern regarding the decrease in the number of diversion referrals since the implementation of the Act. This is ironic because the Act is intended to make the diversion referral process easier for criminal justice personnel and for diversion service providers; however the converse was experienced in that there were more diversion referrals before the Act as compared to the period after the Act was enacted. Muntingh (2010) estimated diversions to be about 22 000 per year. The National Prosecuting Authority (NPA) - 2012/2013 report indicates that 37 422 adult and child offender cases were diverted during 2005/2006; 44 474 cases in 2006/2007 and 50 361 cases in 2009/2010. There was significant increase in diverted cases from 2005 to 2010 according to the NPA report. Badenhorst (2011) asserts that during the period April 2007 to September 2007 an average of 1 627 children were diverted each month. Badenhorst (2011) further highlights that the majority of children sentenced and awaiting trial in prisons committed aggressive crimes, and the second majority of these children committed economic crimes. Smit's (2011) NICRO report also makes a similar observation that the majority of child offenders in SA commit contact and property related/economic offences.

A study on the implementation of the Child Justice Act by Badenhorst (2011) indicates the number of diversion referrals 6 months after the enactment of the Act (1 April 2010 to 30 September 2010). In this study Badenhorst (2011) indicates that 7 736 children were diverted nationally. Of these 408 were in the 10-13 years age group; and 7 328 were in the 14-17 years age group (Badenhorst, 2011). During the first quarter of the 2010/2011 financial year, from the 1<sup>st</sup> of April 2010- 30<sup>th</sup> of June 2010, 3 321 children were diverted nationally and during the second quarter of the same financial year, from the 1<sup>st</sup> of July 2010 to the 30<sup>th</sup> of September 2010, a total number of 4 415 children were diverted nationally (Badenhorst, 2011). Although these statistics indicate a slight increase in the number of diversion referrals from the first to the second quarter after the implementation of the Act, the NPA failed to meet its diversion target in the first quarter (Badenhorst, 2011). There are a number of

reasons attributed to this decrease in diversion. One is that there had been a decrease in the number of arrests since the implementation of the Act and most diverted cases are schedule 1 offences, thus there are less diversions of schedule 2 and 3 offences (Badenhorst, 2011; Berg, 2012; Wakefield, 2011a; Waterhouse, 2011). Khulisa also reported a decrease in diversion referrals nationwide from 5 890 cases in 2009/2010 to 2 065 cases in 2011/2012 (Berg, 2012). Other studies (Badenhorst, 2013; Berg, 2012) have been done on the implementation of diversion in South Africa since the enactment of the Child Justice Act. This follows the stipulations in the Act that the Minister of Justice and Constitutional Development must, within one year after the implementation of the Act and every year thereafter, submit reports to the parliament on the implementation of the Act (Wakefield, 2011a). The aforementioned studies reveal the number of diversion referrals before and after the implementation of the Act. Figure 1 below displays a graphical representation of juvenile diversion referrals from the year 2007 to 2013.

Figure 1: Number of juvenile diversion referrals



Source: NPA, 2012/2013; Steyn, 2012; Badenhorst, 2013; Berg, 2012

## **2.9.2. Challenges faced in the implementation of the Child Justice Act**

### **2.9.2.1. Decrease in the number of child arrests**

A decrease in the number of diversion referrals is one of the major challenges faced in the implementation of the Child Justice Act. This is because the basis of the Act is centered on the diversion of cases involving children in conflict with the law. Therefore most of the challenges faced in the implementation of the Act affect the diversion of cases away from the CJS. The decrease in the number of arrests had been mentioned earlier on. The number of children arrested decreased from 10 000 children per month in 2008 to an average of 6 286 children per month in 2010 since the implementation of the Child Justice Act in SA (Wakefield, 2011a). Badenhorst (2011) makes a similar observation by reporting that during 1 April 2010 to 30 June 2010 a total number of 19 487 children were charged by the SAPS which translates to an estimated 6 495 children per month. It is reported that the number of children awaiting trial in prison and the number of children sentenced to prison also decreased (Badenhorst, 2011; Wakefield, 2011a). Badenhorst (2011) reports a total of 1 155 children in detention in prison on 31 May 2010. Of these 425 were un-sentenced awaiting trial and 731 were sentenced to imprisonment. In August 2010 this number of children in detention had decreased to 922 (Badenhorst, 2011). There are various reasons that could be attributed to this decrease including the rise of the minimum age of criminal capacity from 7 to 10 years (Badenhorst, 2011), the SAPS using alternative methods of policing children and that during the world cup there was a general decrease of crime in SA (Badenhorst, 2011; Badenhorst, 2012).

### **2.9.2.2. Lack of training of police officers**

There are rising concerns about the lack of training of police officers in South Africa regarding the provisions of the Child Justice Act (Badenhorst, 2011; Berg, 2012; Khumalo, 2010; Smit, 2011; Steyn, 2010; Wakefield, 2011a; Waterhouse, 2011). This lack of training resulted in police officers to neither arrest nor apprehend children who allegedly committed crimes. According to Wakefield (2011a) a representative of the SAPS at the parliamentary hearing indicated that at every police station there are police members who receive training on the Act. In 30 July 2010, 6 279 SAPS members had received training on the Act (Badenhorst, 2011; Wakefield, 2011a). Of those trained, 5 138 were trained in phase one (one

day information session), 990 were trained in phase two (2 days in-service training), and 151 were trained in phase three (one-week training course) {Badenhorst, 2011; Wakefield, 2011a}. Therefore, from a total of 150 319 police officers in SA, only 4.2% had received training on the Act. This is indeed a cause for concern, thus proving to be one of the main issues infringing on the practice of diversion in SA.

Budget issues have also been raised as one of the problems infringing on the implementation of the Child Justice Act in SA (Wakefield, 2011a; Waterhouse, 2011). According to Wakefield (2011a) R52 million was the amount of money required to implement the Child Justice Act, however only R30 million was allocated to this. This is one of the issues leading to the insufficient training of police officers and inadequate service providers (probation officers and prosecutors) to foster the implementation of the Child Justice Act in general and diversion in particular. Another problem faced in the implementation of the Act is the non-existent integrated information management system (Steyn, 2012; Waterhouse, 2011) which further creates loopholes in the child justice system. The shortage and unavailability of probation officers is also an issue of concern (Badenhorst, 2011; Waterhouse, 2011). Probation officers play an essential role in diversion since all children must be assessed by a probation officer should they come to be in conflict with the law unless otherwise stated by the prosecutor. The assessment report is also essential as it can influence the decision to or not to divert. Insufficient community awareness-raising on the Act has contributed to the existing fragments in the Child Justice Act implementation process (Badenhorst, 2011; Waterhouse, 2011). Furthermore, Badenhorst (2011) adds that since the implementation of the Act, visible information sharing, awareness-raising and communication to the public about the Act has been scarce. Without sufficient knowledge and understanding of diversion and the provisions of the Act, it is rather impossible for communities to support the implementation of the Child Justice Act.

Criminal capacity is important in the consideration of diversion. Badenhorst (2011) argues that the evaluation of criminal capacity of a child above the age of 10 years but below 14 years should be assured since, for instance, level 2 diversion options take a period of up to 24 months. It would therefore be unacceptable to expect a child without the necessary criminal capacity to comply with a diversion order for such a long time.

One of the major concerns in the child justice system is the inaccurate statistical information provided in the CJS. An indication of this inaccurate information is reflected in the number of

children the SAPS charged, summoned or issued with a written notice to appear in court in the first year of the implementation of the Act (Wakefield, 2011a; Waterhouse, 2011). This number is reportedly 75 436 children, of these only 32 494 were reportedly assessed by the police which is a concern considering that almost all children who allegedly commit crime should be assessed by a probation officer (Wakefield, 2011a; Waterhouse, 2011). Furthermore, only 14 471 preliminary inquiries were conducted in that period (Waterhouse, 2011). This would mean that 42 942 of these children who were not assessed either fell in the category of those diverted before the preliminary inquiry for schedule 1 offences (reportedly 2 444); or those under the age of 10 years who are presumed not to have criminal capacity and are dealt with according to section 9 of the Act (reportedly 795 children) {Wakefield, 2011a; Waterhouse, 2011}. The inaccuracy in statistical data presents problems in the CJS which not only affects role-players in the system, but also those who take interest in the proceedings and eventually the evaluation of the functioning of the child justice system.

## **2.10. Conclusion**

In the above literature review the different international and national policies and legislative frameworks governing juvenile diversion have been raised and explained. It is thus apparent that diversion is not a concept unique to SA but has been recognised at an international level and different government departments have considered adopting it in order to provide an effective justice system for children in conflict with the law. However, the goal remains the same which is to attain a point where juvenile offending is no longer an issue in this country. This literature review has also explained the importance of the Child Justice Act and how it has contributed largely to the child justice system in SA. It is the researcher's opinion that other countries which do not yet have clear guidelines on how to deal with children in conflict with the law should draw on this instrument. This could promote adherence with international standards regarding ensuring the best interests of the child in all circumstances. The Act has been explained in alignment with diversion programmes which has given insight into the process of implementing diversion programmes. It is evident, from the above literature that few studies have been conducted on the implementation of diversion programmes in SA, thus this research is important in that it is focused on bridging that gap.

The above literature has also explained the importance of understanding diversion from the perspective of restorative justice because the aim is not only to enable the child offender to

take responsibility for the crime committed, but also to reconcile all parties affected by a crime incident while ensuring that the child gets the necessary intervention to address offending behavior. Diversion has a number of benefits for children, including its restorative elements which enable the child concerned to live a normal life in the family and community after making amends with people who were affected by the crime committed by the child. Moreover, the importance of diversion was explained in conjunction with its potential to reduce reoffending among children in conflict with the law. Therefore, the review of previous studies evaluating the effectiveness of diversion proved significant in this literature review. Such studies have shown that diversion has been very influential, *inter alia*, in slightly reducing recidivism, getting children to take responsibility for their offences and avoiding the likelihood of children getting a criminal record.

The challenges faced by the child justice system and diversion service providers are a cause for concern. Addressing these challenges and making recommendations for anticipated problems could help in the process of implementing diversion programmes. For that to be achieved, different stakeholders need to work together collaboratively through sharing resources, funds and expertise to make the process feasible and effective. It is also important that the parents or guardians of minors take responsibility and follow up on these programmes to ensure that children learn and apply what is being taught in these programmes in order to reduce the potential for future offending.

## **CHAPTER THREE: CONCEPTUAL AND THEORETICAL FRAMEWORK**

### **3.1. Introduction**

Various theories are used in research in order to locate a study within a particular frame of reference. Theories provide a lens from which one can view the phenomenon under study (Bhattacharjee, 2012). They are also used to design and implement the study, that is, in data interpretation (Bhattacharjee, 2012). The theories explained in this chapter frame the concepts of juvenile offending and diversion. As juveniles are not separate beings but are part of a larger society, in the same way the theories used hereunder aim to understand juveniles from the perspective of a wider society. In some way society has a role to play in shaping people's thinking, thus influencing their behaviour. Therefore, the actions of juveniles are not only as a result of their psychological make-up, but a combination of intrapersonal, interpersonal and wider societal influences.

Two main theories are used to frame the topic of this study. One is the prominent theory of differential association by Edwin Sutherland and the second one is the Labelling theory. According to Patrick and Marsh (2005) diversion emerged as a result of the observation that imprisonment imparts labels on offenders which reinforce criminal behavior. Moreover, criminal behavior is learned from intimate peer groups that children associate with, while diversion programmes aim to teach life skills which help children to become responsible decision makers. The theory of Differential Association maintains that criminal offending is learned through association with significant intimate groups which the juvenile associates with (Lilly, Cullen and Ball, 2014). This theory is used in this study to explain how diversion programmes are structured in a way that seeks to address issues of interpersonal influence among juveniles. It also helps in the analysis of challenges that are experienced in diversion strategies pertaining juvenile's detachment from peers who enforce criminal behaviour.

This chapter also discusses the Labelling theory. This theory has been widely used in criminological research to understand the importance of juvenile diversion (Patrick and Marsh, 2005). According to this theory, state intervention or imprisonment imparts labels on juveniles which enforce criminal offending; whereas diversion reduces labelling by diverting children away from the criminal justice system (Lilly et al., 2014; Patrick and Marsh, 2005). This chapter further explains the criticisms of this theory.

### **3.2. The theory of Differential Association**

The theory of differential association was proposed by Edwin Sutherland (1833-1950) {Lilly et al., 2014}. This theory suggests that criminal behaviour is learned through association with other juvenile groups. The theory explains why one becomes a delinquent. This theory has nine propositions as explained by Sutherland and Cressey, (1970, p. 75-76) cited in Lilly et al. (2014). According to Sutherland and Cressey, criminal behaviour is learned and it is learned in association with other persons in a process of communication, this learning occurs within intimate personal groups (Lilly et al., 2014). Moreover, the learning of criminal behaviour includes the techniques of committing crime, which sometimes are very complicated, and sometimes very simple and the specific direction of motives, drives, rationalisations and attitudes (Sutherland and Cressey, 1970 cited in Lilly et al., 2014). The direction of these motives and attitudes is learned from definitions of legal codes as favourable or unfavourable and people become delinquent because of an excess of definitions favourable to the violation of law over definitions unfavourable to the violation of law (Sutherland and Cressey, 1970 cited in Lilly et al., 2014). Furthermore, Differential Association may vary in frequency, duration, priority and intensity, and “the process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all the mechanisms that are involved in any other learning” (Sutherland and Cressey, 1970 p. 76, cited in Lilly et al., 2014). Sutherland further explained that “while criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values since non-criminal behaviour is an expression of the same needs and values” (Sutherland and Cressey, 1970, p. 76 cited in Lilly et al., 2014) .

Reflecting on the propositions of this theory, one only offends because of the influence from intimate groups with which one associates. This excludes the inherent potential within an individual to display criminal offending behaviour. In response to this theory Lilly et al. (2014) state that those fortunate enough to grow in conventional neighbourhoods learn to do all the good things and those with the misfortune of growing in slums learn to do criminal activities. If criminal behaviour is learned as Sutherland proposes, then law abiding behaviour can also be learned. The premise behind the use of this theory in this study is that the learning process does not only influence one negatively (learning criminal offending) but also positively (in that one can learn good behaviour through diversion programmes). When juveniles are diverted away from the formal court procedure to reintegrative diversion

programmes, the potential for „labelling“ (which usually occurs in the prison environment) is reduced. This also has implications for reduced „learning“ of criminal offending.

Juveniles are vulnerable to environmental influences. Warr (2002) asserts that adolescents can be influenced by peers who are not actually present during a delinquent event or by peers whom they have never encountered (for example, television celebrities). Thus, the process of learning criminal behaviour is not only dependent upon close relations within primary groups, but with those whom adolescents consider important in their lives at that point in life. Additionally, a study by Thornburg (1982) cited in Warr (2002) indicated that peer influence generally exceeds that of parents during the adolescent stage. However, there are differing views with regards to this. Since people are not homogenous beings, some may indicate the converse in that for some adolescents, parental influence is quite stronger than peer influence. In most adolescents, learning criminal behaviour occurs within gangs and there is a high prevalence of gang activity in South African prisons. Thus, diversion programmes aim at alleviating this issue of criminal behavioural influence among children in conflict with the law as it aims to avoid imprisonment by all reasonable means.

### **3.2.1. Evaluation of Differential Association theory**

The critiques of the theory of Differential Association argue that the theory fails to describe the origin of crime (Cressey, 1964). Questions have also been raised regarding the theory's account for other crimes (Lilly et al., 2014). Although Sutherland had claimed that the theory could account for white collar crime, he also noted that most white collar criminals are not living in poverty and they were not reared up in slums or in badly deteriorated families (Sutherland, 1940 cited in Lilly et al., 2014). Furthermore, the theory is criticised for omitting the consideration of free will; being based on a psychology assuming rational deliberation, ignoring the role of the victim, not explaining the origin of crime, ignoring biological factors and assuming that everyone has equal access to criminal and anti-criminal behaviour patterns (Cressey, 1964). However, despite these criticisms, the theory remains ideal in its broad features being the emphasis on socially learned behaviour, the parameters of social interaction and the similarities in learning legal and illegal conduct (Warr, 2002). Moreover, Sutherland's theory is influential in explaining the basic process through which criminal offending takes place and it is a suitable framework for understanding juvenile offending behaviour which is an integral component of this study .

### 3.3. Labelling theory

The basic premise behind the use of imprisonment is that it corrects offenders of their criminal behaviour; however imprisonment has irreversible effects on individual offenders. When explaining this, Lilly et al. (2014) state that the idea is that state intervention reduces crime, either by scaring offenders, rehabilitating them, or incapacitating them so that they are no longer free to victimise other people. Conversely, the labelling theory of crime opposes this line of reasoning by cautioning that rather than reducing criminal behaviour, state intervention labels and reacts to offenders as criminals and ex-felons thus deepening the very behaviour it was meant to alleviate (Cressey, 1964). According to Patrick and Marsh (2005) the labelling theory proposes that delinquent behaviour and being labelled by powerful authorities in the society is most likely to influence juveniles to believe themselves to be deviant, thus creating secondary deviance. Frank Tannenbaum (1938) cited in Lilly et al. (2014) is said to be the earliest scholar to coin the principle that state intervention is criminogenic because it „dramatises evil“. Thus, labelling theory sees imprisonment as a reinforcement of criminal behaviour. This is more of a sensitive matter for juveniles considering their vulnerability to environmental influences and their critical stage of identity formation (adolescence). The basic idea behind the introduction of diversion stems from this line of reasoning since it diverts juveniles away from the prison environment and aims at providing non-custodial sentences while also providing the child with the necessary skills to promote law-abiding behaviour.

As the theory of Differential Association stipulates, learning criminal behaviour occurs within intimate personal groups. Bernburg, Krohn, and Rivera (2006) support this by stating that deviant groups provide a form of social support which allows deviant activities to be accepted. Furthermore, the labelled person is thus increasingly likely to become involved in other deviant groups, which leads to reoffending (Bernburg et al., 2006; Lilly et al., 2014; Patrick and Marsh, 2005). The process through which labelling may increase the likelihood of associating with deviant groups occurs when labelled teenagers become aware of stereotypical beliefs in their communities or when they think that these beliefs exist based on their learned perception of what people think about criminals, the fear of rejection may cause them to withdraw from interaction with conventional peers (Bernburg et al., 2006). Therefore, most offenders are defined falsely as criminals (Lilly et al., 2014). This does not imply that offenders do not violate the law; rather the falseness of definition is tied to the idea

that most criminal labels do not only judge the offender's behaviour, but also publicly degrade the offender's moral character (Lilly et al., 2014). Diversion then seeks to provide a solution to this confusion which results from labelling on the child offender. According to Patrick and Marsh (2005), when juveniles are diverted away from the prison environment, they will develop less secondary deviance patterns which result from being labelled as „deviant“. Moreover, diversion programmes involve public service activities which according to Hirschi (1969) cited in Patrick and Marsh (2005) provide children in conflict with the law with linkages to the larger society, which can reduce deviant activities.

### **3.3.1. Evaluating the labelling theory**

Like any other theory, the labelling theory received some criticisms. This theory was criticised based on the idea that not only behaviour but extra-legal factors (race, class, gender) shape who is labelled and that labelling increases criminal behaviour (Lilly et al., 2014). Contrary to this, Lilly et al. (2014) explained that research studies repeatedly found that the seriousness of the crime is the largest determinant of labelling by criminal justice personnel than the offender's social background. Moreover, the labelling theory proposes that state intervention causes further criminality (Lilly et al., 2014). Critics of the theory also argue that many offenders become deeply involved in crime before they are handed over to the criminal justice system (Mankoff, 1971 cited in Lilly et al., 2014). Despite the criticisms of the theory in explaining criminal behaviour, labelling theory has been influential in explaining the need for diversion programmes and has contributed to increased use of these programmes in cases involving children in conflict with the law.

### **3.4. Conclusion**

This chapter has explained the two theories which contextualise this research namely; juvenile offending and diversion. Although both these theories differ (Differential Association and Labelling theory), they share a common understanding of crime which is based on individuals with whom a particular offender associates and the labelling which accompanies the offending behaviour that results from such socialisation. Edwin Sutherland's theory is thorough in its view of crime as a result of interpersonal influence. Juveniles, by virtue of their stage in life, identify more with peers, thus they spend a lot of time with them, which further reinforces the learning of criminal behaviour. Since learning involves

understanding the techniques, drives, attitudes and rationalisations of crime (Sutherland and Cressey, 1970 cited in Lilly et al., 2014), it is likely that juveniles commit crime repeatedly and accept this as their lifestyle. Diversion programmes are aimed at reversing this process and to help juveniles to reconstruct a firm identity that is not associated with criminal offending behaviour.

The labelling theory is in opposition to the idea that state intervention can correct offending behaviour and rehabilitate the offender. Taking into consideration the harsh prison conditions of South African prisons, it is likely to agree that imprisonment is not a suitable alternative specifically for child offenders. Therefore diversion programmes were introduced for this very reason to provide an alternative to imprisonment which will reduce the potential for labelling juveniles as „deviant“ and thus reintegrate them into their communities, while enabling them to take responsibility for their crimes. This theory has contributed to the spread of diversion programmes (Patrick and Marsh, 2005). Moreover, agencies that provide diversion services have also increased and spread throughout country. The following chapter will elaborate on the methodology used to conduct this study.

## **CHAPTER FOUR: RESEARCH METHODOLOGY**

### **4.1. Introduction**

A research methodology is a collection of methods used to conduct a research study and to arrive at conclusions regarding the topic of study. According to Beneitio-Montagut (2011) cited in Monyepao (2014) methodology refers to a systematic and theoretical analysis of the theories used in a particular field of study. This chapter seeks to describe in greater detail the different methods that were used to conduct this study and to answer its main question. Maxfield and Babbie (2009) cited in Berg (2012) state that every research project needs to have a clearly defined research design that explains how data will be gathered and analysed. This is further discussed in 4.2 below.

The advantage of social science research is that it provides contextualised and authentic interpretations of the phenomenon being studied by utilising a collection of methods that systematically produce new discoveries about the social world (Bhattacharje, 2012; Bachman and Schutt, 2011 cited in Berg, 2012). The objectives and answering of research questions of this study were achieved through the use of secondary data namely; Khulisa's database and the case files of divertees. The sampling strategy used in this study is non-probability sampling and the sampling method is purposive sampling. Purposive sampling incorporates selecting cases that are typical of the population under study (Terre Blanche et al., 2006). The rationale for the use of a purposive sampling technique was to allow for representativeness of juvenile divertees as subjects through which the aim of the study was achieved. Furthermore, the focus of the study was on the implementation of diversion programmes in KwaZulu-Natal, thus divertees were purposefully selected from the KZN database.

Data was collected from the case files of divertees and also from the database of Khulisa. Access was granted by the organisation with the researcher's assurance that data will be used only for the intended purposes and that confidential information will be securely stored. Taking into consideration that this study is based on secondary documentary data, qualitative content analysis was used as an analysis method to identify themes aimed at answering the research questions that underpin this study. This chapter further explicates on the ethical considerations of the study.

This chapter continues by explaining the situational analysis of Khulisa and their diversion programmes. Two diversion programmes are explained namely; the Positively Cool and the Silence The Violence (STV) programme. The researcher elaborated on the background of Khulisa, the information regarding Khulisa's diversion programmes, the role of Khulisa in the diversion programme, the database and its representation of divertees, and the programme content of both the Positively Cool and the STV programme. Moreover, this chapter concludes by explicating the stages in the process of implementing Khulisa's diversion programmes.

## **4.2. Research design**

In order to conduct a research study through to the end, one needs to have a sound research design which will help in producing credible results. A research design is defined as a blueprint or plan to guide data collection and analysis, i.e. it is a bridge between the research questions and the implementation of the research (Bhattacharjee, 2012; Durrheim, 2006; Steyn, 2013). A research design includes the techniques that will be used in conducting the study which include the sampling procedure, data collection and data analysis methods (Bhattacharjee, 2012; Durrheim, 2006; Steyn, 2013). These depend on the purpose of the study (to analyse the implementation of Khulisa diversion programmes); the paradigm chosen (qualitative paradigm); the context of the research (examinations of Khulisa diversion programmes in KwaZulu-Natal); and the research techniques used to collect and analyse data (Khulisa database and case files which were analysed through qualitative content analysis).

According to Terre Blanche and Durrheim (1999) research has four stages that enable it to act as a bridge between the research questions and the execution of the research. These stages are: „1) defining the research question; 2) designing the research; 3) implementing or executing the research and 4) writing up the research report“ (Terre Blanche and Durrheim, 1999, p. 30). These stages are also evident in this study as reflected in the series of chapters. Chapter one of this study provides a detailed description of the research question, chapter four elucidates the design of this research and its implementation, while chapter five presents the findings and chapter six provides the conclusions and recommendations to the study. This study followed an iterative approach, one that enabled the researcher to go back and forth through the stages of the research to ensure that the study answers the main research question

(Terre Blanche et al., 2006). Therefore in adopting this design, the researcher was open to analysing divertees' experiences of diversion programmes.

The paradigm chosen to conduct this study was the qualitative research paradigm. „Qualitative research is research that seeks to preserve the integrity of narrative data and attempts to use the data to exemplify unusual or core themes embedded in contexts“ (Terre Blanche et al., 2006 p. 563). A qualitative paradigm was chosen because of its interpretive nature. This paradigm enabled the researcher to identify and use themes which emanated from the data in order to analyse data and write up findings. The use of this paradigm also enhanced the quality of the research in that it brought insight into the implementation of diversion programmes.

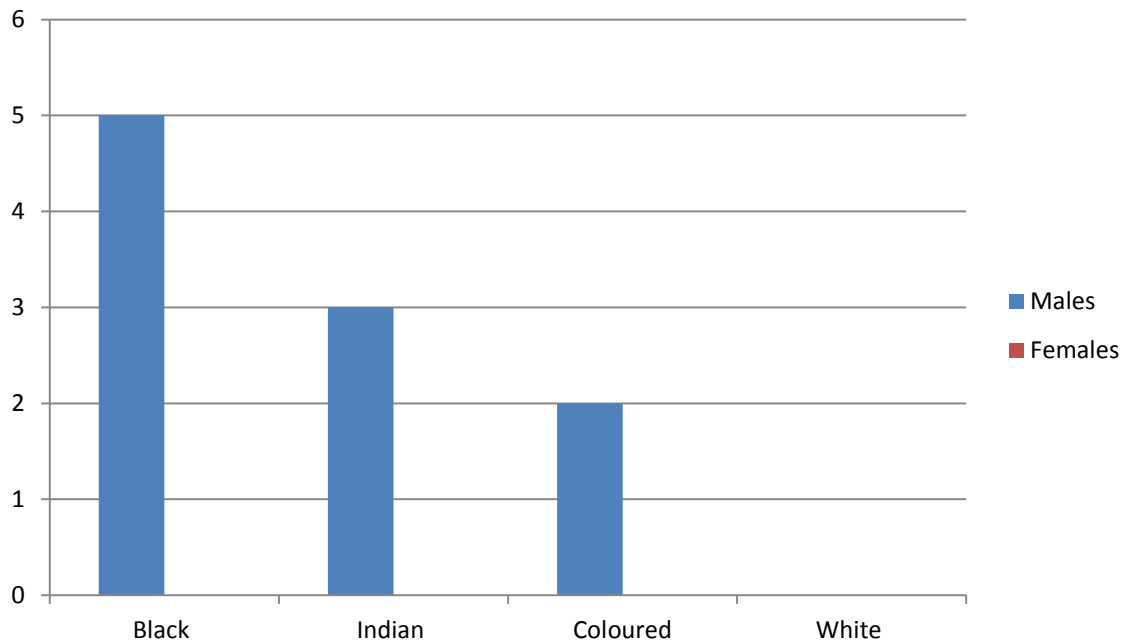
#### **4.2.1. Sampling strategy**

According to Durrheim (2006, p. 44) “sampling involves decisions about which people, events, behaviours and/or social processes to observe”. The main aim of sampling is representativeness (Durrheim, 2006). The sampling strategy used in this research study was non-probability sampling. According to Bhattacharjee (2012) non-probability sampling is a sampling technique where some units of the population have a zero chance of being selected or where the probability of being selected cannot be determined. A non-probability sampling technique was selected because this is a qualitative study and because the researcher was purposive regarding the participants that should make up the study, thus there was no need for random selection.

The sampling method used to conduct this study was purposive/ judgemental sampling. Purposive/judgemental sampling includes selecting cases that are typical of the population under study (Terre Blanche et al., 2006). Purposive sampling helps researchers to focus on subjects that characterise the population of interest (Steyn, 2013). In using purposive sampling, the researcher selected cases of child offenders as opposed to adult offenders since this study is based on juvenile diversion. Moreover, the focus was on divertees that were referred from courts which are in Durban, KwaZulu-Natal and those that were referred to Khulisa. The researcher selected cases where all stages of intervention had been completed (assessment, programme sessions, graduation and follow-up).

Khulisa diverts only schedule 1 and 2 offences, thus the sample of this study did not involve divertees who had committed schedule 3 offences. The reason behind this is that Khulisa is only accredited to provide diversion programmes for schedule 1 and 2 offences, and not schedule 3 offences which are more serious in nature. Figure 4.1 and 4.2 below are graphical representations of the total sample of this study.

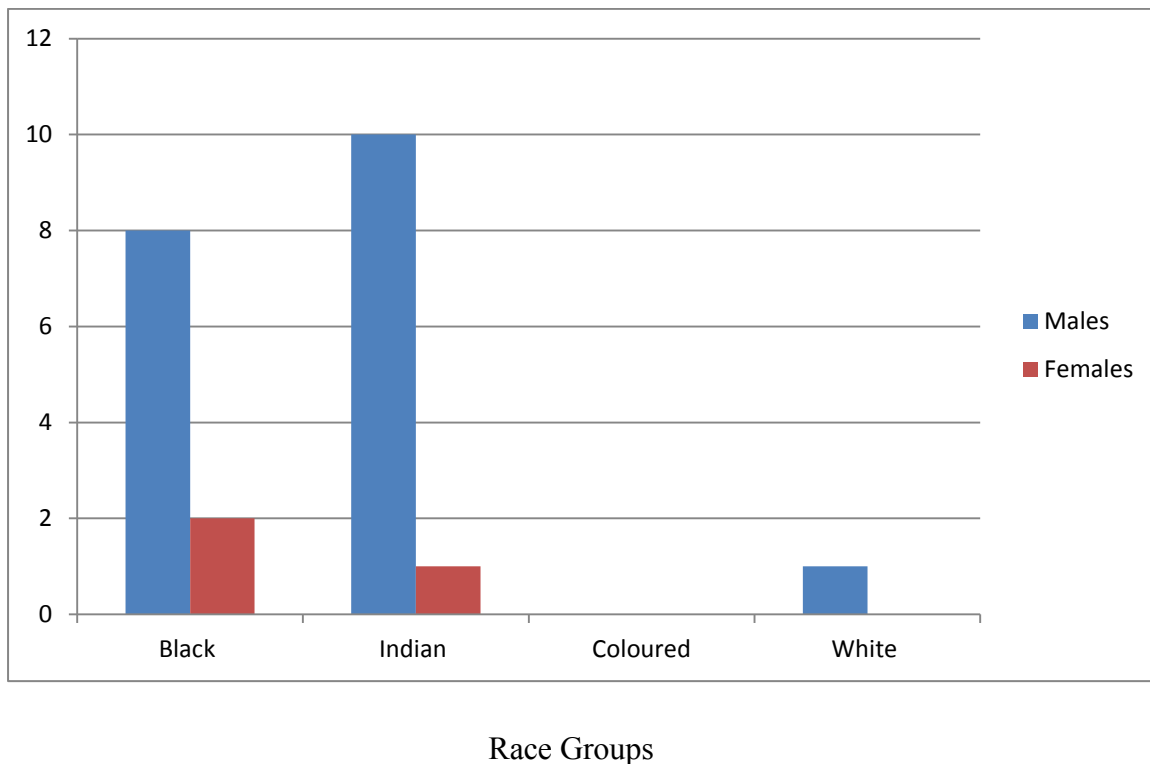
Figure 4.1 Khulisa Divertees (12-15 years)



Race groups

Source: Khulisa case files

Figure 4.2: Khulisa Divertees (16-17 years)



*Source: Khulisa Case files*

The above two graphs illustrate the sample of this study. From the graphs it is deduced that the total sample of this study consisted of 29 males and 3 females. Moreover, the distribution of race groups differed. There were a total of 15 black divertees, 14 Indian divertees, 2 Coloured and 1 White divertee. Divertees who fell among the age range of 12-15 years were a total of 10 and those in the age range of 16-17 years were a total of 22.

The majority of divertees (16) committed the offence of possession of dagga, followed by assault with intent to inflict grievous bodily harm with 7 divertees. Other divertees committed theft (6), common assault (1), common robbery (1) and malicious injury to property (1). The majority of divertees who were charged for the possession of dagga were from the Phoenix and Wentworth areas. This suggests that the use of drugs is rife in those communities.

This study focused on different communities in Durban. From the sample of this study, 11 divertees were from Phoenix, 6 from uMlazi, 5 from Wentworth and 4 from Ntuzuma. Other divertees were from Tongaat (2), Verulem (2), Inanda (1) and Merebank (1). This distribution

of the sample is not a reflection of the entire diversion programme at Khulisa, therefore, cases that were selected were those which served the purposes of this study.

#### **4.2.2. Data collection**

According to Bhattacharjee (2012) in case research, the researcher is a neutral observer in a social setting and not necessarily an active participant who gets involved in participant observation. The same was evident in this study in that the researcher was an observer of the case files and database of juvenile divertees without having first hand interaction with them. Scoot (2006) uses the term „mediate“ to explain indirect access to data by an observer where past behaviour must have been inferred from its material traces and events that happened at some point in time. These records serve as evidence which is needed to validate the findings of a particular study (Scoot, 2006). Thus, in this study, data was collected from two Khulisa diversion programmes, viz. the Positively Cool Programme and the Silence The Violence (STV) Programme. Among these two programmes, the Positively Cool programme has two sub-programmes which are: senior mini diversion programme and the senior diversion programme. During data collection, the researcher did not obtain cases of child offenders who did the senior diversion programme (16 weeks). This resulted in the research study being based on the senior mini diversion programme (8 weeks) and the STV programme.

Data was collected from 32 case files of juvenile divertees. All divertees were from different communities in Durban and they were all referred to Khulisa. Cases that were selected were the ones in which divertees had finished the programme and where follow-up had been conducted. Case files were made available at the Khulisa office in Durban, CBD. The researcher accessed the files in the office because of the sensitivity and confidentiality of the information contained in the files. The database was also accessed at Khulisa as access was granted by the person responsible for such at Khulisa. The information obtained from files is presented in chapter five of this dissertation. Khulisa provides diversion programmes for juveniles between the ages of 12-17 years, thus files contain the information of juveniles from that age range. However the researcher examined files from 2014, and among those files follow up was conducted in 2015 when some juveniles who were 17 years the previous year had turned 18 years. Thus in some files or in some cases in the database, the age of juveniles is 18 years, yet they were below that age when they entered the programme. Among the case

files that were reviewed, the majority of juveniles (27) did the 8 week positively cool programme, and a few (5) did the STV programme.

Data collection took a period of 5 weeks since the researcher had to go back and forth to Khulisa offices in order to obtain accurate information.

#### **4.2.3. Data analysis**

Data was analysed through qualitative content analysis. This analysis method was used because it enhanced the analysis of acquired data in conjunction with the objectives of the study. In this study, secondary data was analysed with a view to give meaning to people's subjective experiences. This was done with caution in order to guide against altering people's experiences as documented in the files to suit the researcher's personal beliefs. In applying the qualitative content analysis method, the researcher used the five steps of data analysis as explained by Terre Blanche and Durrheim (1999). The first step was familiarisation and immersion where the researcher familiarised herself with the data that was gathered from Khulisa case files. During this stage the researcher is expected to read through texts many times, make notes, draw diagrams and brainstorm certain ideas pertaining to the data collected (Terre Blanche and Durrheim, 1999). In doing this the researcher read the data repeatedly and highlighted texts with different colours for scrutiny reasons and made notes for use in the analysis of findings.

The second step is inducing themes where the researcher is expected to look at data and work out the organising principles that naturally underlie the obtained data (Terre Blanche and Durrheim, 1999). In this step the researcher made labels following the highlights that were made during the familiarisation and immersion stage. All case files were written in English except for a few instances where a diverteed did not know how to explain something in English and they used IsiZulu. Most divertees, including non-English speakers, wrote in English, although it was difficult making sense of some sentences for divertees with poor English skills. Many themes arose from the data, however the researcher had to re-arrange these and make sub-themes in order to make data manageable, presentable and understandable to the reader.

The third step in data analysis was coding the data. Coding data entails marking different sections of data as relevant to the identified themes (Bhattacharjee, 2012; Neuman, 2004; Terre Blanche and Durrheim, 1999). In doing this, the researcher arranged sections of data that were highlighted with the same colour marker into one group and did the same with every other theme and sub-theme that had the same colour marker. Themes were labelled accordingly as the researcher engaged deeply with the data. Data was coded using key subjects in case files namely; divertees which were coded with „D“, facilitators which were coded with „F“, parents which were coded with „P“ and the assessment reports which were respectively coded with „AR“. The findings of the study are presented in accordance with this coding system. New themes emerged and some were removed and given new categories. In total 5 themes arose from the data coupled with sub-themes under each theme. Furthermore, the challenges faced in implementing the diversion programme were identified and explained in conjunction with the themes and sub-themes that had already been identified.

The fourth step adopted by the researcher in analysing data was elaboration. According to Terre Blanche and Durrheim (1999), in this step the researcher explores themes more closely in order to capture the finer nuances of meaning that were not initially captured by the original coding system. Bhattacharjee (2012) explains it as the analysis of coded data which enables the researcher to determine which themes appear most frequently, their contexts and how they are related to each other. In applying this, the researcher read through the themes that had been induced and coded. This included checking whether all aspects relating to the juvenile diversion programme were touched on, including other factors that affect either directly or indirectly on the practice of diversion programmes at Khulisa. The remarkable thing about the data which was discovered when analysing it was that there was an overlap between the impact of the programme and the likelihood of recidivism in that, in most cases where divertees indicated that they benefitted less from the programme, there was also a high likelihood of recidivism. Thus these factors were explained interchangeably in the findings chapter.

The final step in data analysis was interpretation and checking. In this step the researcher is expected to read through the data with a fine tooth comb in order to check for correspondence and fix weaker points (Terre Blanche et al., 2006). In doing this the researcher analysed the data in conjunction with the objectives of the study in order to judge if the interpretation responded to the main research question. The researcher also checked if her personal views did not infringe on the objectivity of the findings. In this step the researcher learned that there

are instances where she made a big deal out of trivial matters in her interpretation. This was fixed and help was sought from other people who were familiar with the topic of study to check the interpretation and how sensitive matters were presented and reflected upon during data analysis.

### **4.3. Trustworthiness**

Due to the nature of this study, in that no individual face to face contact with respondents occurred and that the researcher only dealt with case files and the database of Khulisa, there were no pressing issues of credibility that needed to be scrutinised. According to Thomas & Magilvy (2011) cited in Manyepao (2014) interpretive research seldom has a set of methods that are required to validate research findings and ensure credibility. However since the kind of information contained in this study is not from public domain, but from an organisation that has a set of policies and procedures regarding the dissemination of confidential information, the researcher had to ensure that such conditions were adhered to. Therefore in an attempt to ensure the credibility of the research findings the researcher drew upon the database obtained directly from Khulisa. The researcher made comparisons with the information from the database to check if the files complemented the database. Cases from KwaZulu-Natal, Durban were utilised in order to establish the context of the study.

Research needs to have concrete data sources which will yield information that is truthful, thus valuable to readers. Certain criteria are used to validate the quality of a research study based on data collection sources. One criterion is credibility which determines whether the findings of a study are sincere, believable and undistorted (Bhattacharjee, 2012; Scoot, 2006; Shenton, 2004). To ensure credibility in this study, the researcher took accurate records from Khulisa case files and the authenticity of the people in the diversion programmes was validated through confirming their identity numbers which were attached in the files, however such details are not revealed in this study since they are confidential. The dependability of the findings was assured through providing clear descriptions of the phenomenon being studied (diversion programmes), the context of the study (as presented in chapter 1) and the methodology used to conduct the study through to the end (chapter 4).

Conformability is another way of inspecting the quality of a research. It mainly checks the extent to which the findings reported in a study can be confirmed by others (Bhattacharjee,

2012; Shenton, 2004). The researcher assured this through presenting the data taken from the case files and database to the office co-ordinator at Khulisa in order to identify whether the recorded information is a reflection of what is recorded in the aforementioned data sources. Khulisa divertees and other staff members will be given an electronic copy of the finished thesis where they can clearly reflect on the reported findings. The last criterion for determining the quality of the research findings is transferability. Transferability refers to the extent to which the findings can be generalised to other settings (Bhattacharjee, 2012; Shenton, 2004). In ensuring this, the researcher described the context of the research in detail and provided clear descriptions of the structure, process and assumptions of the study.

#### **4.4. Ethical considerations**

It is important to uphold ethics in social science research because that helps in reinforcing ethical behaviour with an emphasis on honesty and openness and avoiding the manipulation of social science research (Bhattacharjee, 2012; Neuman, 2004). Due to the nature of the study, in that data was collected from secondary sources; there are no pressing ethical issues of concern. However, it remained important that the anonymity of divertees reported in case files and in the database be protected, thus the researcher ensured that such was addressed. Anonymity is obtained when the researcher protects the privacy of research participants by not disclosing their identity after data collection (Bhattacharjee, 2012; Neuman, 2004). In ensuring this, the researcher did not reveal the identity of divertees, their names and identification details were not revealed in data analysis. In the presentation of research findings, the researcher named divertees' files with case numbers. For example, the first divertees' file was named „case 1“, and the same procedure was followed for all 32 cases.

Confidentiality was maintained with regard to the information that Khulisa holds confidential and unique in their diversion programmes, such as the diversion programmes manual. Bhattacharjee (2012) and Neuman (2004) hold it in confidence that in most social science research, confidentiality is an important ethical principle to uphold. In this research, permission was also obtained from Khulisa to conduct the study within the organisation and the researcher made agreements with the organisation in terms of the kind of information that could be revealed and that which could not be revealed in the dissemination of findings.

For security reasons, data was kept in the researcher's computer and it was password protected. It was also kept in the researcher's email archives to ensure that the researcher does not lose data as it should be kept safe for a period of up to 5 years. The motive behind this was to ensure that if data is needed in future to validate the findings of the study; it can be available to do so. Furthermore, if another researcher has an interest in the data and makes agreements with Khulisa to use the data for a certain project, then it can be available for such use.

## **4.5. Situational analysis of Khulisa and their diversion programmes**

### **4.5.1. Khulisa Social Solutions**

Khulisa is a registered Section 21 Non-Profit Organisation, with the registration number: 1998/001994/08 (Khulisa, 2009). This organisation has been in existence for over 17 years. The vision of the organisation is ensuring „A[a] safer, healthier and more prosperous South Africa, where all people, especially youth, have access to the information, skills and opportunities they need to contribute to equitable local and national development“ (Khulisa, 2009). The vision of the organisation reflects its broad focus in terms of combating the social ills facing the country in a manner that will promote equality and access to resources. The vision also reflects the organisation's commitment to promoting safety in South Africa, which can be done through combating crime. Diversion programmes aim at equipping child offenders with life skills that will help promote law-abiding behaviour, thus enhancing safety and security.

Khulisa is a collaborative organisation that works with different stakeholders including corporations, NGOs and the government to coordinate and facilitate projects aimed at poverty alleviation, crime reduction, victim empowerment, enterprise development and community upliftment (Khulisa, 2009). Khulisa uses a holistic approach to social issues, taking into consideration that South Africa is a country characterised by a variety of social ills which are interconnected, necessitating that strategies to combat such also be holistic. The core values of the organisation are: caring, service, integrity, partnership, collaboration, efficient delivery, innovation and creativity, transparency, accountability, sharing knowledge and insights, feedback, lifelong learning and; a long-view of the future (Khulisa, 2009). These values reflect the organisation's commitment to bring about transformation in a manner that respects

the dignity and worth of all people while fostering socio-economic development. Moreover, what is essential about Khulisa, particularly within the context of this study, is their attempt to promote social change among the lives of young offenders, through diversion programmes, which not only help them avoid imprisonment and getting a criminal record, but also equips them with the necessary life skills to promote good behaviour while fostering reconciliation.

#### **4.5.2. Khulisa's programmes**

Khulisa has five main programmes ranging from corporate, prevention, early-intervention, rehabilitation and reintegration. A diversion programme is part of the early intervention programme that intervenes after crime has occurred. Early intervention programmes are defined in the Financing Policy (1999, p. 13) as services that „target children, youth, families, women, older persons and communities identified (through a developmental risk assessment) as being vulnerable or at risk and ensure, through strengths-based developmental and therapeutic programmes, that they do not have to experience statutory intervention of any kind“. From a criminological perspective, early intervention aims to reduce crime and delinquency. The sub-programmes of Khulisa's early intervention programme are: Justice and Restoration Programme; "Mirror" Self-Development Programme; Diversion Programme; Restorative Justice, Conflict Resolution and Peace making Programme; and the Shine Women's Empowerment Programme. This study is solely based on the diversion programme of Khulisa. According to Khulisa, diversion is:

*"...[A] process of channeling children away from the formal court system to programmes that are reintegrative. Diversion happens when a child acknowledges responsibility for the act and both they and their respective parents or guardians agree to go the Diversion route. Diversion allows a child to avoid the stigmatising and often brutalising effects of the criminal justice system as well as affording the child the opportunity to avoid a criminal record. Diversion in essence teaches children to be responsible for their actions and teaches them the life skills to avoid further trouble. Diversion is very closely linked to the concept of restorative justice. Restorative justice is about offenders making amends for what they have done and trying to heal relationships between offenders and their victims, families and*

*communities*” (<http://khulisaservices.co.za/programmes/early-intervention/diversion-programme>)

Seemingly, Khulisa has a comprehensive definition of diversion which complements the definition provided in the Child Justice Act as indicated in the second chapter of this dissertation. This description is appealing in that it incorporates the purpose of diversion for children in conflict with the law, aimed at teaching children to take responsibility for their actions and teaching them life skills intended to prevent future offending. More so, the sole aim reflects back to the fight against crime and the intention to reduce repeat offending, particularly among child offenders.

#### **4.5.3. The role of Khulisa in diversion programmes**

Khulisa outlines the role that they play in the diversion programme including their duties and responsibilities toward juvenile divertees, the programme itself and the parents/guardians of divertees. A sheet outlining the role of Khulisa is attached in each case file for each individual divertee so that they understand the scope of Khulisa. Therefore the roles of Khulisa in their diversion programmes are to: *Reinforce the spirit of Ubuntu, respect the dignity and rights of parents and diversion participants, be a positive influence on participants and encourage responsibility and accountability. Further roles include being available to consult with parents during and after the programme, where possible provide a mentor for participants, develop life skills of value to participants and provide opportunities for learning and the expression of pro-social values and attitudes. Khulisa also ensures that they provide a safe facilitation environment, establish boundaries and limits, provide suitable programme materials, offer feedback to participants and parents, liaise on an on-going basis with the court and maintain and secure all records with regards to the participant. Moreover, they provide accurate and truthful feedback to the court on the participant's performance during the programme, supervise mentors where utilised and offer training to ensure the competence of all staff.*

Khulisa also has governing rules which guide the diversion programme and divertees. These governing rules are meant to guide the behaviour of children who attend the diversion

programme. The rules state that: *participants may not attend the programme under the influence of drugs or alcohol, they may not bring drugs, alcohol, weapons, or other dangerous items into sessions and all involved in the programme should treat others with respect. Furthermore, personal hygiene should be maintained, no violence of any kind will be tolerated, no criminal activity is allowed and punctuality should be maintained.*

The rules outlined above are included in the same sheet as that which outlines the role of Khulisa in a diversion programme. Divertees and their parents/guardians are expected to sign a consent form for attending group sessions and to adhere to all the requirements of the programme as explained to them during the introductory session. Such agreements are crucial in that they formalise and professionalise the services of Khulisa, thus ensuring that consent is given as one of the factors required for consideration of diversion as stipulated in Section 51 (1) of the Child Justice Act (RSA, 2008).

#### **4.5.4. Khulisa's Database**

Both the case files and database of Khulisa were used to conduct this study. The purpose of explaining the database in respect of the study's findings is to give an overview of Khulisa's diversion programmes and the divertees in each programme. The database gives general demographic information of Khulisa divertees, including their names, age groups, offence committed, the details of the diversion programme each divertee was referred to and when follow-up was conducted.

Khulisa started keeping records of their diversion programmes in a new database in November 2014. Therefore the period of this study was from January 2014 to August 2015 since the researcher wanted to focus on current cases in order to contextualise the study. The cases which are recorded in the database are those which have been completed and where aftercare follow-up have been done with divertees. The database has a record of both juvenile and adult diversion programmes and the divertees in each of the programmes. Khulisa is focused on juvenile diversion as compared to adult diversion. This is probably because the initial focus of diversion was towards child offenders. In addition the Child Justice Act prioritises diversion as an alternative to imprisonment in handling cases involving children in conflict with the law. As a result, this study is based solely on the diversion of child offenders.

The database also reflects a small proportion of female divertees as compared to male divertees. There are also more divertees in the age group of 16-18 years as compared to the 12-15 years age group. Studies and statistics have indicated this trend among child offenders, in that most crimes are committed by juveniles (Patrick and Marsh, 2005; Pelsner, 2008). This eventually leads to recidivism among child offenders if such behaviour is not challenged in the early stages.

Regarding female and male offenders, it is evident that there is a huge difference between the number of females and males who are detained for committing crime. An alarming majority of males are detained and sentenced for crime as compared to females. This is attested by the Department of Correctional Services (DCS) Annual report (2013/2014) which indicated that the total number of sentenced females was 2 490, while males amounted to 105 206 in the year 2013/2014. The same report indicated the number of sentenced offenders by crime category (aggressive, economic, sexual, narcotics, and other) and gender which showed that among these crime categories, most females (997) committed aggressive crimes, while the majority of males (57 977) committed crime which falls under the same crime category (DCS, 2013/2014). Evidently, there is a great gap in the ratio of males and females who commit crime in SA. Thus, the Khulisa database reflects the same trend of crime and gender in South Africa, in this context focusing on KwaZulu-Natal. The database however, does not indicate the racial groups of divertees.

#### **4.5.5. Khulisa's Diversion Programmes Content**

Khulisa has a unique programme content for each diversion programme. In this section, the focus is on two diversion programmes namely; the Positively Cool mini and senior diversion programme and the STV. The Positively Cool mini and senior diversion programmes have the same content, the only difference is that the mini programme is less intensive and it is programmed to fit the mental and developmental capacity of young children and those who have committed petty offences, while the senior programme is more intensive. There are a number of juveniles in this study's sample who were found to have done the senior diversion programme (11) and few (5) who have done the STV programme, thus the majority of juveniles (16) attended the senior mini diversion programme (see chapter 4). Programme sessions start after school from 15h00-16h30 for an hour and 30 minutes since most children

attend school in the morning. The programme consists of 24 hours facilitated sessions which include a briefing and assessment session, the parent’s workshop, a family dialogue, individual counselling/mentorship (where necessary) and a community project. The other diversion programme called „Facing your Shadow“ has been excluded from Khulisa’s diversion programmes because it is a sexual offender’s programme and Khulisa is not accredited to provide diversion for such offences since they fall under schedule 3 offences.

a) The Positively Cool Diversion Programme

The main aim of the Positively Cool programme is to develop each individual through essential life skills, creating a sense of accountability and responsibility and restoring relationships with family and community members. This aim is aligned with the objectives of diversion as stipulated in the Child Justice Act and the aims of diversion as explained by Khulisa. This programme also places much emphasis on reconciliation and restoration which are promoted by restorative justice. Section 55 (2) (a-c) of the Child Justice Act indicates that a diversion programme has to impart useful skills; include a restorative justice element and; include an element which seeks to ensure that the child understands the impact of his or her behaviour on others. Therefore the aim of this programme was developed with the aforementioned factors in mind. Steyn (2012) also mentioned in his study that diversion programmes incorporate a variety of strategies including life skills training, community service and victim involvement.

The broad outcomes of the Positively Cool programme are: the development of self-awareness; the development of self-management skills; building self-esteem and self-image; replacing negative behaviour with positive behaviour; understanding the impact of behaviour on self and other people; rebuilding of damaged relationships in the community and; empowering self in peer relations.

The content of the Positively Cool diversion programme is structured in a way that it has a total of eight sessions. The table below indicates how sessions are lined up in the programme.

Table 4.1: Mini and Senior Positively Cool Diversion Programme content

<b>Session Number</b>	<b>Title of Session</b>
	Introduction
1	Who am I?

	Parent's workshop
2	Winning in communication
3	Emotional intelligence
4	Healthy relating
5	Responsibility
6	Me and my crime
7	Making amends
8	Motivation for change
	Family dialogue
	Community service
	Graduation
	Aftercare programme

*Source: Khulisa case files*

The first session is an introduction into the programme where the basics of the programme are covered and divertees get to know each other and the facilitator. This session is followed by the first session titled „Who am I“. The aim of this session is to help divertees to discover themselves by knowing their identity. The specific outcomes of this session encompass the understanding of personal identity, showing an understanding of the concept of identity, and understanding one's own identity features. This session is important since the topic of identity is a critical one among adolescents, as most divertees are in that stage of development in life. Moreover the environment at which they live is essential in this regard because society has a huge role to play in the identity formulation of adolescents. Hence, it is essential that Khulisa helps divertees to discover their identity and the impact that society has in shaping that identity. Divertees are also given homework where they can seek the help of their parents or guardians and this enables them to reflect well on the activities that were done in the session and think of how they can be applicable to their lives.

The parent's workshop is held in between the first and the second session depending on the facilitator of a particular diversion programme. Khulisa prioritises the involvement of parents in the diversion programme. The reason for this is that children who are in the juvenile diversion programme are minors, thus they are still under the care of their parents and guardians as they have not reached the age of majority. For a child to be placed in a diversion programme, the parent or guardian has to consent to it. Section 3 (g) of the Child Justice Act states: “parents, appropriate adults or guardians should be able to assist children in

proceedings in terms of this Act, and wherever possible, participate in decisions affecting them". Hence, Khulisa is abiding by the stipulations of the Act in involving parents or guardians of children in the implementation of the diversion programme. The other motive behind ensuring that parents are involved in the programme is that it also helps Khulisa as an organisation to follow up on the progress of each child after receiving feedback from parents or guardians. Parents/guardians are the ones who spend more time with their children (for those who live with them), thus they know more about how the child is responding to the programme. Khulisa also acts as a support system for parents/guardians of divertees since most of them are troubled by the behaviour of their children. Khulisa helps by providing an environment where parents can share their experiences and ideas on how they can deal with the issues they face regarding their children's offending behaviour.

The second session of the programme is winning in communication. This session aims to encourage positive communication styles among divertees and their associates. According to the Khulisa diversion programme manual, the main aim of this session is to develop good communication skills and to understand and address obstacles to effective communication. Learning outcomes include the identification of different forms of communication, the definition of communication and understanding the 10 commandments to good listening. In this session divertees are expected to complete a life application task which enforces the application of the skills learned during the session. It is essential for divertees to get a good grasp of communication skills since most problems, especially in families and with peers are caused by lack of communication. Offending can also result from lack of communication since it causes frustration on children considering their stage of development in life.

The third session of the Positively Cool programme is „emotional intelligence, why do I feel the way I feel“. In this session divertees are assisted in addressing emotional poverty, impulsivity and social alienation by increasing emotional literacy and emotional intelligence and facilitating awareness of emotions. The aim of this session links with the broad aim of developing self-awareness among divertees. The fourth session is healthy relating which provides the context in which to learn more about healthy relationships and developing basic interpersonal skills. This session also promotes good peer relations and relationships with the community. The fifth session is titled „responsibility“. The session is very important in that it is much aligned with the objectives of diversion as stipulated in the Child Justice Act, provided accepting responsibility is one of the prerequisites for being accepted into the diversion programme. A thorough understanding of this session can lead to reduced

reoffending among juveniles. The objectives of this session are: helping divertees to understand the meaning of the word response-ability, helping divertees take responsibility for their behaviour, helping them confront past criminal behaviour and who they blamed for such behaviour and; empowering them to understand what it means to be a truly responsible person.

The sixth session is titled „me and my crime“. This session helps divertees name their violent side, identify their original self and get introduced to the non-violent communication model. The session comprises certain aspects of social constructionism, in that it helps divertees identify their socially constructed image based on their personal history, often including abuse or trauma (Burr, 2003). It also takes cognisance of the idea that people’s reality is made up of their experiences.

The seventh session is making amends. This session enables divertees to make amends to the people they have harmed, thus freeing themselves from guilt. It also enables them to put their decision to change into action. This session reinforces reconciliation and reintegration as the principles of restorative justice (Hargovan, 2011).

The final session is motivation for change. This session covers the summary of the programme through art and drama therapy. The way forward from the termination of the programme is also discussed in this session. Divertees are assisted to identify the significance of all the sessions they have done and also to reflect on how they can apply them in their lives and how that can bring change in their lives. Badenhorst and Conradie (2004) state that diversion programmes help divertees to make responsible decisions and plan for the future after an impartation of life skills. This is intended to ensure that juveniles do not commit crime again and find themselves back in the diversion programme or in the justice system.

Community service follows after the last session. Khulisa calls this community service „Ubuntu-In-Action“. According to Steyn (2012) diversion programmes can include outdoor activities, and Ubuntu-In-Action is a form of outdoor activity that Khulisa gets their divertees to engage in. The aim of getting divertees to do this is giving back to the community. The other motive behind this is to encourage divertees to use the same hands they used to hurt, to help people in need. All divertees are expected to do community service and in all case files, there are reports of how divertees performed in this. All reports are positive and illustrate that juveniles enjoy giving back to the community. This session includes a restorative circle where facilitators enforce the importance of making amends, apologising and restoring

relationships among divertees and their counterparts. Divertees form a network of support for each other.

A family dialogues is held where a divertee, his/her parent or guardian and facilitator sit together to discuss the progress of the divertee and whether the diversion programme has made any considerable change in the divertee's life since he/she started attending it. When divertees have completed the whole programme, they graduate, where they get certificates as a token of accomplishment. This serves as an encouragement for divertees since it recognises the skills they have acquired from the programme.

The aftercare programme is implemented as a follow up strategy for Khulisa divertees. Steyn (2012) identified lack of follow-up as one of the challenges facing current diversion strategies. However, Khulisa ensures that follow-up is conducted for all divertees. Follow up starts after 3 months of completion of the programme, and then in 6 months and 12 months. In conducting this follow-up, Khulisa makes telephone contact with divertees and their parents to check if each divertee is applying the skills learnt in the programme and if they are exhibiting behavioural change. However, in some instances Khulisa makes follow-up prior the 3 month interval if need be. Khulisa also holds group work with divertees who have completed the programme as another follow up strategy. If Khulisa facilitators discover, upon telephone contact that the divertee is reoffending or not showing positive behavioural change, the divertee is summoned by Khulisa to meet with his or her facilitator or mentor to sit and address such behaviour.

#### b) The Silence the Violence Programme

The STV programme is separate from the Positively Cool programme in that its focus is on helping divertees to discover themselves and become aware of the extent of their own violence, where it comes from and learn effective and non-effective choices. According to Khulisa, this programme illustrates how violence, which is not always physical, is rooted in people's culture and their belief systems and how violence emerges in people's daily interaction. The table below indicates the content of this programme. This table does not include the parent's workshop, family dialogue, community service, graduation and aftercare programme because these have been explained in the Positively Cool programme above. The same process is followed in the STV programme, what differs are the sessions conducted in each programme.

Table 4.2. The STV programme content

<b>Session Number</b>	<b>Title of Session</b>	<b>Objectives of the session</b>
1.	Three levels of violence	Identifying three levels of violence/ crime, accountability for violence and finding the willingness to change
2.	Theory of violence	To understand the theory behind the cycle of violence, to discuss the reasons for violence and to understand one's own feelings of guilt and shame
3.	Two sides of yourself	To identify and name one's violent side and to identify one's original self. To introduce the non-violent communication model
4.	Personal value system and self-esteem	To discover the importance of one's values in society, to understand one's own values and to take responsibility for one's violations of the past
5.	The wisdom circle	To promote self-restoration and to let go of one's secrets
6.	Integration of theory	Integration of basic concepts and making them relevant to one's own life and the creation of a sense of ownership of the theory
7.	Loss of innocence	To explore the past and the impact of violence on each person, to develop awareness, accountability and truth-telling, and to develop listening and empathy skills
8.	Victim impact	Victim impact awareness and understanding the cycle of violence
9.	Making amends	Discovering one's primary apology language and understanding that apologising is a choice
10.	The road ahead	To facilitate the recognition of individual and group work, Celebrations and closure

*Source: Khulisa case files*

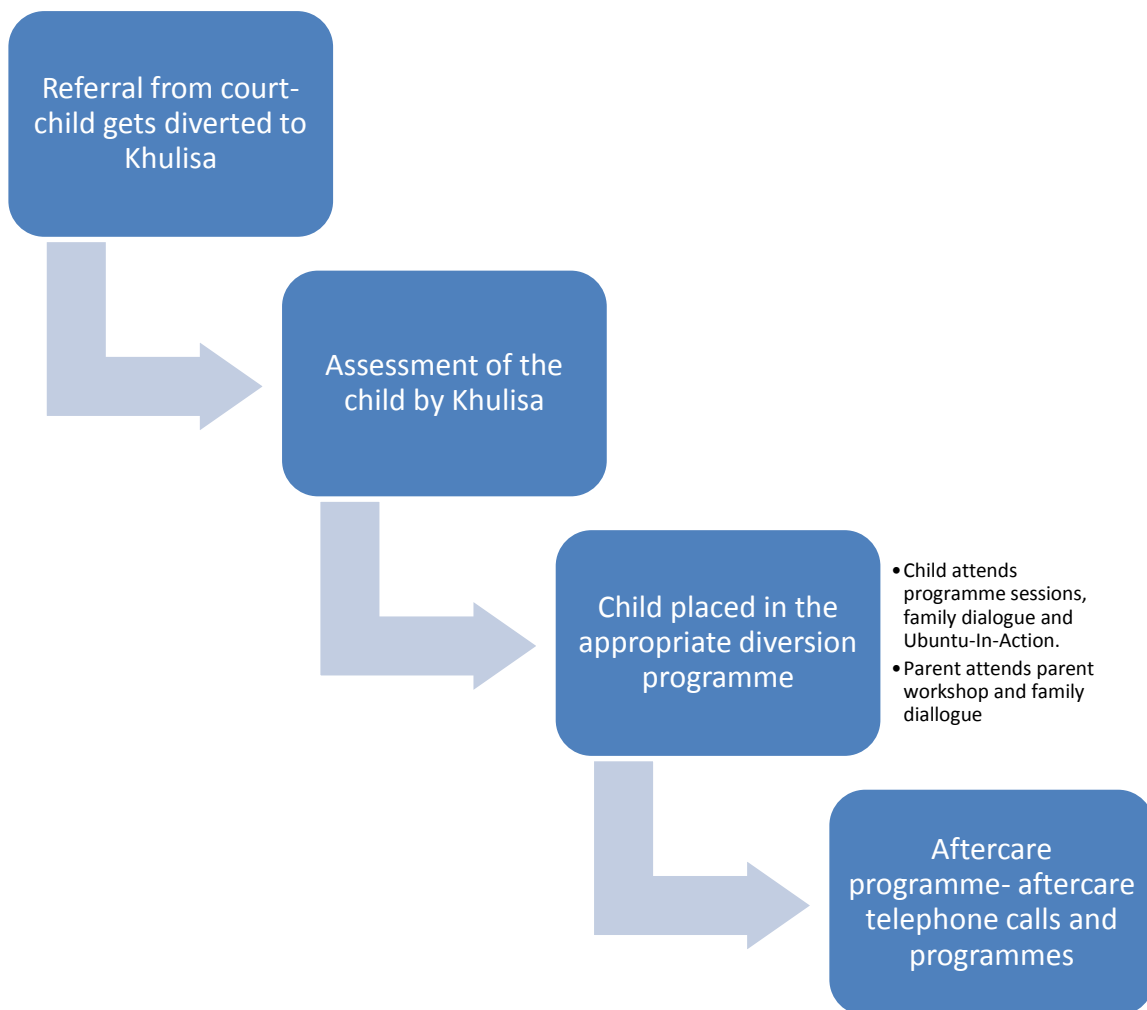
Each of these sessions has their specific outcomes and focus on challenging violent behaviour in different dimensions. This programme also has restorative elements since it incorporates

sessions that seek to restore harm, involve victims and promote reconciliation. The broad outcomes of this programme are: recognising three levels of violence, understanding violence and its origins, having awareness of the effects of violence, improving listening skills, increasing empathy for people, improving relationship and interpersonal skills, increasing self-esteem and improved self-care and, having a deeper commitment to one's true self.

#### 4.5.6. Stages in the process of implementing Khulisa's diversion programmes

Khulisa's diversion programme incorporates a series of stages which each particular divertee has to go through if accepted into the programme. Figure 4.3 below illustrates this process.

Figure 4.3: Stages in the process of implementing Khulisa's diversion programme



Source: Case files

Khulisa works with courts from the different communities that they serve. Hence the whole process of diversion begins at court where Khulisa gets referrals of divertees who have been referred to a diversion programme. Procedures for diversion referral are stipulated in Chapter 8 of the Child Justice Act. The process begins with the child being arrested by the police or issued an informal warning, then the child is referred to a probation officer for assessment; a preliminary inquiry is held within 48 hours of child arrest/issue of informal warning (Berg, 2012; RSA, 2008; Wood, 2003). A preliminary inquiry determines whether a child should be diverted or not. If the prosecutor decides that the child should be diverted, Khulisa then takes over at this stage. However, if the prosecutor decides against diversion, then the child is referred to the child justice court for plea and trial, where a pre-sentence report is required from the probation officer and then the child gets a sentence (Berg, 2012; RSA, 2008). The child may be acquitted if not found guilty.

Khulisa assesses each child after receiving a referral from court and before entry into the diversion programme. The reason for assessment is to get the background information on a particular diverttee, including their family history, relationship with peers, socio-economic circumstances under which a diverttee lives and other factors which may be of concern regarding the diverttee. Assessment also helps the facilitator to see if a diverttee will be in need of mentorship. It also helps Khulisa to identify the reason behind the offending behaviour of a child, thus enabling them to place the child in a suitable diversion programme. When a child has been assessed by a facilitator at Khulisa, he or she is then placed into a programme to attend all sessions as planned by Khulisa and required by the diversion system. A report is given back to the court regarding compliance or non-compliance with the programme. Khulisa then does follow-up after 3 months of completion of the programme, which necessitates that diverttees attend aftercare programmes.

#### **4.6. Conclusion**

A research methodology not only helps the reader to understand the context of the study and how the study was executed through to the end, but it also provides a context in which to enable other researchers who may have an interest in the same field to conduct similar studies. This chapter has served the very purpose it was intended for in providing a detailed

analysis of the procedure that was followed in executing this study and arriving at conclusions that answer the research questions.

The use of case files and the database as a data collection strategy enabled the researcher to easily access data in the time suitable for the researcher since Khulisa did not have constraints with regard to the time in which the researcher came to the office. The use of qualitative content analysis as a data analysis strategy made it possible for the researcher to raise issues specific to the study, including the background understanding of the lives of divertees. Bhattacharjee (2012) explains the importance of this as he states that thinking like a researcher requires visualising the abstract from actual observation to identify hidden concepts and patterns, and synthesising those patterns into generalisable laws and theories that apply to other contexts. Therefore, research (and its design) enables researchers to make observations and analyse them against the broader scheme of theories governing the world.

Trustworthiness needs to be assured for any given study in order to establish the study's truth value, its dependability, conformability and transferability. Ensuring these is important (in this context) for the organisation through which the study is conducted, the institution which guides the research study, the readers and other researchers who may, at some point want to draw from this study in future research. Thus the researcher ensured that the study is trustworthy and explained in detail the steps taken to ensure such trustworthiness. Moreover, ethical principles guiding the study were explained.

This chapter also explained Khulisa's diversion programmes and the content of each of the two programmes (the Positively Cool and STV programme). In so doing, it was explained that these two programmes have different sessions, however the process followed in implementing them is similar. The information in the database was also expounded including the process followed in the implementation of Khulisa's diversion programmes. The chapter that follows will present in detail the findings of this study.

## **CHAPTER FIVE: DATA INTERPRETATION AND PRESENTATION OF FINDINGS**

### **5.1. Introduction**

Diversion programmes are crucial in imparting life skills to children in conflict with the law. According to Khulisa, diversion programmes aim to help divertees develop self-awareness and self-management skills, to build self-esteem and self-image, to replace negative behaviour with positive behaviour and to understand the impact of behaviour on self and other people (Khulisa, 2009). Diversion programmes use a variety of strategies which include life skills training, community service, family and victim involvement and other outdoor activities (Badenhorst and Conradie, 2004; Steyn, 2012). Khulisa's diversion programmes incorporate these elements. Divertees are expected to attend all sessions and conduct all the required activities before they finish and graduate from the programme. Divertees are also aware of the legal consequences of not complying with the diversion order, thus they make an effort to comply and avoid getting a criminal record, although there are those who do not comply in some instances.

This chapter captures the analysis of data generated for the study. The researcher divided this chapter into two sections. Section one focuses on the issues prevalent in the case files of divertees. A number of themes were identified, these are: reasons for juvenile offending, family support throughout the programme, group work, diversion as a form of restorative justice and compliance with the Child Justice Act. Part two analyses the challenges faced by Khulisa in implementing their diversion programmes. The challenges identified included the socio-economic circumstances of divertees, lack of parental support, recidivism, and challenges faced in facilitating group work sessions. The diversion programmes are unpacked for insight into the process through which Khulisa implements these programmes and the prevalent issues faced when implementing the Positively Cool and STV diversion programmes.

## **SECTION ONE: PREVALENT ISSUES IN THE IMPLEMENTATION OF THE POSITIVELY COOL AND STV DIVERSION PROGRAMMES**

Case files contain information which is recorded in various forms including the assessment form, preliminary inquiry form (attached in some files), progress reports, group work sessions, community work feedback form and aftercare follow-up forms. This data analysis contains snippets from Khulisa divertees, facilitators, parents and guardians and assessment reports. Data was coded accordingly in a manner in which comments from divertees were coded with „D“, comments from facilitators with „F“ and comments from parents were coded with „P“. Moreover, data from the assessment reports was coded with „AR“. Data was collected from the responses of the aforementioned subjects and from reports commenting on the progress of divertees.

The findings of this study have been analysed in conjunction with the conceptual and theoretical frameworks used in this study (see chapter three) and the literature review discussed in chapter two of this dissertation. These findings are based on the Positively Cool and the STV diversion programmes. Themes and sub-themes were carefully identified from the collected data to answer the research questions. The purpose for identifying themes was to explore issues prevalent in the case files of divertees that affect the diversion programme. Terre Blanche and Durrheim (1999) state that themes should preferably arise naturally from the data, but at the same time they should also have a bearing on the study's research questions. Section two of this chapter explains the challenges faced by Khulisa in implementing their diversion programmes.

### **5.2. Reasons for juvenile offending**

Factors that have been identified from the case files which constitute the reasons for juvenile offending are: peer and environmental influence, individual factors, economic circumstances, social circumstances, catalysts for offending behaviour, drug or alcohol use, circumstantial/unintentional offending and, stress and negative labels. These factors have been identified because of their relevance in seeking to understand the motive behind juvenile offending and in observing each child holistically. These factors are discussed below.

### **5.2.1. Peer and environmental influence: criminal offending as learned behaviour**

According to the theory of Differential Association as advocated by Edwin Sutherland (1947) cited in Lily et al. (2014), criminal behaviour is learned within intimate groups with which juveniles associate. In addition, adolescents are more susceptible to environmental pressures and peer influence as compared to people in other stages of development (UNODC, 2004). Therefore, children are likely to become influenced by the environment and by those around them to commit crime. An indication of this was found in one example of a divertee who was charged with possession of dagga, where the facilitator explained:

*“He lives in an area where drugs are rife and smokes drugs with his friends when they are together”* F- case 22

This divertee could have been influenced by his peers and the environment he lived in to use drugs. In some communities, the use of drugs is normal because the majority of people use them, thus such tendencies influence adolescents to use drugs. Children at this stage in life (adolescence) enjoy experimenting and are easily influenced to conform to certain behaviour. Warr (2002) explains that adolescents can be influenced by peers who are not actually present during a delinquent event or by peers whom they have never encountered. This indicates the extent to which juveniles are likely to be influenced by significant others who matter to them, or those whom they consider to be „*wool*“.

Below are examples of how divertees were influenced by peers to engage in offending behaviour:

*“All my friends were doing it so I was thinking it is cool too”* D- case 19

*“I was under the influence of peer pressure and was stressed so I smoked”* D- case 18

*“The youth joined his friends as they were also smoking dagga”* F- case 21

Khulisa’s diversion programmes aim to change the psychological make-up of juveniles so that they do not perceive crime as a „*wool thing*“ as reflected by the divertee in case 19 quoted above. Divertees in cases 18 and 21 also reflect influence from peers to commit crime. Steyn (2012) argues that often times the environment where a child offender lives is not conducive to behavioural change, thus some children reoffend if they do not receive the necessary

support. Most divertees indicated in their files that the one thing they enjoyed the most about school was spending time with their friends. This suggests that adolescents value friendships and „*hanging out*“ with their peers, which in turn causes them to identify with those peers and end up aiming to please them in order to be accepted.

### **5.2.2. Individual factors**

Individual factors such as low self-esteem, poor self-control, negative attitude, inadequate social coping skills, depression and anxiety can influence one’s decision to commit crime (UNODC, 2004). Those with a negative attitude towards their surroundings and their circumstances are more likely to resort to crime. Individual factors, which influence the personality of a particular individual, are, to a certain extent influenced by society. According to Burr (2003), personality can be viewed as a philosophy for explaining human behaviour which is in turn largely imbedded in society. From the divertees files it was seen that individual factors had an influence on their behaviour. A number of divertees were reported to have issues pertaining to these factors. The parent of a divertee in one of the case files stated:

*“He has a bit of a negative attitude and sometimes is uncooperative”* P- case 31

The other parent indicated that what worried her about her child’s behaviour was that she was:

*“Secretive, moody and aggressive”* P- case 2

Children who display a negative attitude usually do not care about the implications and consequences of their actions. Thus, they act can irrationally and commit crime easily because they have lost sight of the positive in life. Other individual factors, as those indicated in case 2 may also cause one to offend as they suggest lack of concern for those in close proximity to the individual concerned.

Additional factors which influence the decision to commit crime among adolescents include; being male and being young (UNODC, 2004). Similarly, at the time of the study; a majority of divertees at Khulisa were male and they were adolescents. Behaviours such as those indicated in the comments above were prevalent among adolescents because of the sensitivity

of their stage of development. Such behaviour also increased the risk of crime among adolescents.

### **5.2.3. Economic circumstances**

Chapter one of this dissertation highlighted the economic circumstances facing many South African residents. It is evident that the issue of poverty is a concern and it is related to crime and juvenile offending (Amollo, 2009; CESA, 2015; Pillay, 2001). The economic circumstances in which some juveniles in South Africa live under are a strain which causes them to resort to crime as a remedy or a coping mechanism. A majority of divertees at Khulisa were experiencing financial constraints. When explaining the financial hardships of one divertee, the facilitator said:

*“He lives with his paternal aunt who is 62 years old. There are 6 of them at home and they survive on her grant and the child support grant” F- case 5*

For some divertees, the assessment reports indicated:

*“He comes from a home with financial constraints and both parents are not working” AR- case 32*

*“His mother is a domestic worker. The family struggles financially” AR- case 11*

In addition, one divertee stated:

*“I stole clothes from Mr Price at Gateway because I wanted clothes and couldn’t afford them” D- case 6*

The above comments suggest some correlation between financial hardship and offending behaviour. A comment from the divertee in case 6 shows that the reason for committing crime was due to lack of finances. For some children, crime was the only means through which they could survive since there were no other means of provision at home. Therefore, such circumstances contributed greatly to offending behaviour among many divertees.

#### 5.2.4. Social circumstances

Some children live in broken families with lack of love and parental support. Pelsler (2008) referred to the findings of a study that was conducted by the Centre for Justice and Crime Prevention (CJCP) on young offenders which revealed that most offenders (53%) indicated that they had not received emotional support from their fathers, who were either not around or if they were, did not care much about their children. Such unfortunate tendencies are likely to cause pressure on children which may result in offending. Problems at home are usually the cause for gang activity and result in children spending more time with their peers which leads to peer pressure (children learn criminal behaviour from intimate group as according to Edwin Sutherland's theory of Differential Association). In some files, the following conditions were explained:

*"He has poor relationships with his father and his siblings and there is violence at home which is of concern to the child"* F- case 8

*"The one thing that worries me about my family is that they don't love me and they don't trust me"* D- case 11

*"His parents separated when he was still young. He started staying with his mother and step father in 2013. He grew up in a home where there was domestic violence subjected to his mother. He therefore tried to rescue his mother by hitting his step dad with an iron object (crowbar) and his step father laid a charge of assault against him"* F- case 30

The above comments reflect issues pertaining to poor relationships between family members, lack of love, distrust, broken families and domestic violence. Circumstances such as these are likely to shift children away from the family environment to the environment of peers. The danger arises when peer groups are used as a substitute for family love since this may foster various sorts of behaviour including the use of drugs and violence. Khulisa takes cognisance of these issues, thus their diversion programmes incorporate sessions that aim at fostering positive communication between divertees and their families and communities.

### 5.2.5. Catalyst for offending behaviour

Disruptive events most likely cause pain and strain on children which becomes difficult to deal with appropriately. These events act as catalysts for offending behaviour among juveniles. Some children used crime (smoking dagga) as a coping mechanism to deal with some of those events. These include the death of loved ones, being infected with an incurable disease or being rejected by those whom one loves and trusts. Such matters are crucial to children and they can cause them to function inappropriately. Some of these events are indicated in the files as follows:

*“The unexpected thing that happened in her life was for her to lose her parents in 2 years (mom died in 2005 and dad in 2006). She therefore had to stay with her grandparents, she also lost her brother when she was doing grade 9” F- case 9*

*“His mom passed away a few years ago [committed suicide] and last year his grandmother passed away” F- case 26*

*“In 2012 her dad was diagnosed with HIV. In 2013 she ran away with a boy after we hit her for bunking school. End of 2013-parents had problems and her dad left home for 5 months” P- case 20*

The first two comments are reflections from facilitators pertaining to issues that could have caused offending behaviour among divertees. The third comment was given by the parent of the divertee as an indication of the tragic events that affected the life of the divertee. Most of these events concern families and the relationships that children had with their family members. For instance, comments from cases 9 and 26 concern the death of key family members, case 20 concerns a major change in the family as the father of the divertee was diagnosed with an incurable disease and other issues in the family were prevalent as parents separated for some time. A study conducted by UNICEF (2010) on the views on juvenile offending indicated that family troubles were one of the main causal factors to juvenile offending. Seemingly, these events, as experienced by juveniles, became a threat which influenced their decision to commit crime.

### 5.2.6. Drug and alcohol use

Drug and alcohol use is one of the pressing issues facing South Africa today. Most people, especially the youth are using/abusing drugs and the levels of alcohol consumption are alarmingly high (UNODC, 2004). Young people usually get introduced to drugs by their peers. According to the UNODC (2004), during the adolescent stage, peer groups replace family as a support unit and children go to great lengths to maintain acceptance and status in the group. Thus, it becomes a challenge for a juvenile to escape the use of drugs while still identifying with peer groups that encourage the use of alcohol and drugs. Families also have a role to play in promoting the use of drugs and alcohol among children. Some children grow up in families where parents or other key members in the family use alcohol and drugs, and do not prohibit children from using such. This use of alcohol and drugs then causes children to act irrationally and commit crime. One such example is when a Khulisa divertee stated:

*“I robbed someone. I was drunk and did not intend to do it” D- case 29*

This particular divertee acted under the influence of alcohol, as he indicated that he did not intend to do it. The influence of drugs and alcohol was also seen from the concerns raised by parents of divertees that were charged for possession of dagga. The report from their parents stated:

*“His friends have a negative influence on him because they drink alcohol and use different substances” P- case 3*

*“His friends influence him negatively because they are older and introduced him to alcohol and drugs and when he is drunk he becomes violent and aggressive and doesn't pay attention to his school work” P- case 8*

The father of the divertee (case 3) was also an alcoholic and the child grew up with both parents. This also might have influenced his alcohol drinking behaviour, which at some point, seemingly led to the use of drugs. The comment from the divertee's parent in case 8 suggests that there is a close relationship between drugs, alcohol use and aggressiveness. Furthermore, drugs and alcohol use negatively affect other areas in a person's life including school performance and relationships with family members. The comments from case 3 and 8 also indicate a close relationship between drugs and alcohol use, peer pressure and crime.

### 5.2.7. Circumstantial/ unintentional offending

Some divertees commit crime based on the circumstances they are faced with at that point in time. This happens when juveniles find themselves in situations where they get triggered to do criminal activities without intending to do so. One such divertee was quoted above (case 30). The divertee hit his step-father while trying to protect his mother who was being beaten by his step-father. His step-father then laid a charge of assault against him and he was placed in a diversion programme for this reason. When reporting on this, the facilitator stated:

*“He therefore tried to rescue his mother by hitting his step dad with an iron object (crowbar) and his step father laid a charge of assault against him” F- case 30*

The divertee’s reaction to the situation was not ideal; however in the event that he felt the need to protect his mother, he acted without thinking of the consequences of his actions. Thus, his behaviour was a result of circumstance and it could be said that he did not intend to hurt his step-father. A study conducted by UNICEF (2010) indicated that domestic violence/dysfunction in families was one of the factors leading to juvenile offending. In this case, it is reflected that the divertee committed crime (assault) as a result of domestic violence. Another case, which is slightly different, is of a child who stole from a store because he wanted to provide for a gathering that was organised with his friends. When explaining the reason for stealing the divertee stated:

*“I stole chocolate in a store because we had a party and I did not have anything to contribute, so I was going to sell chocolate to get money for contribution” D- case 4*

This case was classified as circumstantial offending because the divertee stole so that he could provide for the party and probably did not want to be seen as one lacking among his friends. Adolescents have a tendency to seek the approval of their peer groups in order to receive acceptance (UNODC, 2004). In so doing, they go as far as committing crime, which they could not have initially intended. They could also do this because of the fear of being labelled by some of their friends and community as those who are „suffering“. Thus, in order to retain „coolness“, they go beyond the limits of law-abiding behaviour in order to attain uniformity with the groups they identify with.

### 5.2.8. Stress and negative labels

Some children find it difficult to deal appropriately with stress and the pressures that come with being a teenager, considering that they are most vulnerable at this stage. It has been discussed that some children faced a variety of issues in their families, communities and personal lives and where they did not receive the necessary support and guidance they needed, they most likely ended up adopting negative behaviour, such as committing crime in order to deal with such. Ward, der Merwe, and Dewes (2013) links stress with lower socio-economic status and asserts that people who are lower in socio-economic class are more likely to experience greater stressors while they lack protective devices like resources and opportunities. Struggling with such stress, some juveniles resort to crime. One divertee stated:

*“I smoke weed because it helps me to be stress free”* D- case 31

When looking into the background of this child, it was apparent that his parents were separated and he did not have good communication with them, thus he stayed with his grandparents. He was also reported to have a negative attitude and to be uncooperative at times. Being faced with such stressful factors, he found smoking to be a coping mechanism. The Briefing Paper (2012) states that people reoffend because of a number of personal and circumstantial factors including the individual’s social environment of peers, family and community; and lack of support systems. These are factors that juveniles face in their lives, which at some point cause stress and frustration that leads to crime.

Negative labels also have an influence on the offending behaviour of a person (Lilly et al., 2014; Patrick and Marsh, 2005). Children are sensitive beings and most of them internalise the labels imposed on them by those whom they highly regard. Some children live in families that speak negatively to them and communities that reject them. During the adolescent stage, children are likely to experiment a lot of things, thus, if they face rejection and labelling because of one offence they have committed, that discourages them and somehow fosters the kind of behaviour that they are labelled as. This is one of the concerns raised by Steyn regarding diversion programmes. He stated that the reintegration of offenders into communities usually seems difficult because in some communities children are not accepted owing to the previous offences that they committed (Steyn, 2012). A group work report from one facilitator indicated:

*“During the session of winning in communication, most divertees indicated that they were of the opinion that negative words spoken against their lives were the reason they are in their specific situations” F- case 32*

According to Patrick and Marsh (2005) the labelling theory proposes that delinquent behaviour and being labelled by powerful authorities in the society is most likely to influence juveniles to believe themselves to be deviant, thus creating secondary deviance. This reflects what is expressed about divertees in the above comment (case 32). Being labelled as „deviant“, „criminal“, „foolish“, and „irrational“ made some children to internalise these labels and began to live in alignment with the labels imposed on them. If this is not addressed, it can be a danger because it can cause reoffending until a culture of crime is created in the life of a child.

### **5.3. Family support throughout the diversion programme**

#### **5.3.1. Parent workshops and family dialogues**

Family support is a necessity in the success of diversion programmes. Children need to be supported, loved and accepted by their parents and other family members. A family is a basic unit of growth, love and acceptance for any individual at any stage of life. Although literature states that adolescents move from reliance on their families and identify more with their peers at this stage in life (UNODC, 2004), they still need to feel a sense of belonging that comes from being in a family environment. Such support was crucial during the diversion programme to foster learning and change of behaviour. Section 55 (2) (h) of the Child Justice Act stipulates that diversion programmes should, if possible, involve parents or guardians and appropriate adults (RSA, 2008). Khulisa designed their programmes in a way that parents had to be involved in the progress of the child throughout the programme. This included attending the parent workshop, the family dialogue session and helping the child do homework and life application tasks. The parent also needed to cooperate with the child, for example, where the child wrote a letter of apology to the parent, the parent needed to show willingness to forgive the child and help him/her to move towards positive behavioural change. A facilitator in one file had this to say about a family dialogue:

*“Children were also asked how they would like their parents to support them in order to behave well, and they responded that they want good advices from their parents and they needed to be respected as well. In closing the family dialogue session, one parent offered some talk to the youth with which they responded well”* F- case 7

Family dialogues required attendance from the facilitator, the diveree and the parent of the diveree. During this meeting, all parties expressed their concerns and sought to find a way forward that will be in the best interest of the child and the whole family as indicated in the above comment. The facilitator helped parties in their discussion and encouraged them to come up with a way forward. Family dialogues are restorative in that they provide a platform where a child can openly share his or her struggles with the parent/guardian and apologise for bad behaviour. Moreover, Section 61 and 62 of the Child Justice Act makes provision for VOM and FGCs (which are fully restorative) to be held in respect of children in conflict with the law (RSA, 2008). Therefore, diversion programmes played an important role in fostering restoration and reconciliation between diverees, victims and their respective families and communities.

Diverees’ files indicated whether a child was supported by anyone in the family, be it a parent or a guardian. In some files, it was indicated that diverees received support from their family members and in some files it was said that diverees were not supported by anyone throughout the programme. Regarding parental support, facilitators stated this about diverees:

*“His mom was involved in the process throughout the programme”* F- case 21

*“His mom showed interest in his progress through engaging telephonically”* F- case 22

The above comments from cases 21 and 22 indicate that parental support was provided for diverees through attending parental sessions and through telephone calls for instances where the parent or guardian could not be physically present at Khulisa when needed. Parental support enabled diverees to make considerable progress, provided they were willing to change their behaviour. Some diverees were supported by their grandparents, siblings and some by their relatives. Conversely, some parents or guardians did not see the need to attend neither the family dialogue nor parent workshop sessions. Steyn (2012) stated that lack of familial support and insight into the diversion programme is a challenge facing current

diversion strategies. It is thus essential that parents who don't place much effort in supporting their children during the programme become more involved for the sake of their children and for the purposes of making service provision viable for Khulisa.

#### **5.4. Group Work**

Groups have dynamics which arise and grow as the group progresses from the beginning stages to the end stages. Toseland and Rivas (2005) define group dynamics as the forces that result from the interaction of members in the group. One of the factors that arose often during group sessions was that some divertees had to attend the diversion programme in the event of final exams and wanted to terminate the group before the end of the year. Thus, in addressing this they agreed as the facilitator reported:

*“All youth attended the session on time since it is now the school holiday, we have decided to double up on sessions so that the group can complete within the year. This was therefore the second session of the day” F- case 16*

This suggests that facilitators had open communication with divertees and sought to find a way to deal effectively with issues arising as the group grew. The sole aim was for all divertees to benefit from the group work experience. In other instances group members agreed with the facilitator about changing the time of the group in order to accommodate members who could not make it to the session during the time initially agreed upon. Such changes were made to ensure that everyone is able to attend sessions as required. This also gave a sense of belonging to divertees, fostered commonality among group members and made them feel that they matter in the group; these are some of the advantages of group work (Becker, 2009; Toseland and Rivas, 2005). One dimension of group dynamics evident in the group was cohesion and it is discussed below.

##### **5.4.1. Group cohesion**

As divertees continuously engaged together in group sessions and did activities together, they learned to be open to one another and developed interest in the affairs of their counterparts. This built up group cohesion, which moved them away from merely attending sessions together to caring for and supporting one another. The effects of group cohesion include: willingness to listen, affiliation, reduced tension and negativity, satisfaction with the group

experience and member's influence on each other (Becker, 2009; Toseland and Rivas, 2005). During the diversion programme, it was evident, in some groups that members created a network of support for one another. One facilitator said this in a group session report (healthy relating):

*"The youth had formed a network of support for each other"* F- case 31

The network of support that the facilitator comments on fostered a sense of unity among divertees and their facilitator. Group cohesion also enforced positive relationship building among divertees. If divertees are able to form a support network, they can, with the help of the facilitator encourage one another to move towards positive behavioural change.

In some sessions, it was indicated that divertees were initially shy and scared to share their experiences, however as the group progressed, they got used to each other and were able to share their experiences openly. Feelings of self-confidence and self-esteem are some of the effects of group cohesion (Toseland and Rivas, 2005). Sharing experiences is important because of the likelihood that divertees have similar experiences, which is also one of the advantages of group work (Toseland and Rivas, 2005). The facilitator, in a group session report indicated this about one female divertee:

*"She interacted well with other members. Initially she was shy but eventually she opened up"* F- case 20

Opening up and sharing experiences can help children become aware of ideologies that hold them back and keep them in their current state. In support of this notion, Burr (1995) cited in Khumalo (2010) asserts that discourses serve to structure people's identity and their personal experiences. In the same way, discourses can be used to deconstruct negative labels about children in conflict with the law and construct an identity that is appealing in the eyes of divertees themselves, their families and communities.

#### **5.4.2. Mentorship**

Group work allowed facilitators to engage closely with divertees and discover the information that was not initially obtained during assessment. As the facilitator engaged with divertees, he or she was likely to discover certain concerns about their lives which were not

initially identified. Moreover, if the facilitator identified concerns which needed individual attention for a particular diverttee, he or she allocated a mentor to that diverttee.

A number of diverttees were identified as those who were in need of mentoring thus, they were allocated mentors by Khulisa. A facilitator said this about one diverttee:

*“She has a good attitude, however she can be arrogant when she wants to. She has low self-esteem. She ran away from home because her parents don’t approve of her boyfriend and wanted her to stop seeing him. She needs mentorship”* F- case 20

A number of issues were identified about this diverttee which necessitated mentorship. It was clear that such issues could not be addressed in a group setting, thus, in an attempt to meet the individual needs of the child, mentorship was considered. This addresses one of the challenges identified by Steyn (2012) that group approaches fail to meet the individual needs of diverttees. Moreover, giving individual attention to diverttees could help address the root causes of offending. The facilitator reported these issues about another diverttee who was considered for mentorship:

*“He has a health problem which caused him to drop out of school. His parents are divorced. He is troublesome at school, he bunks classes, and he broke a school pipe at one time”* F- case 28

Mentorship helped such children to effectively deal with the main issues which caused the offending behaviour, since these issues were likely to negatively affect performance in other areas including school and relationships with family and peers. The use of mentors was a consideration of the recommendation made by one researcher, Van der Merwe, who indicated that one of the challenges faced by Khulisa in facilitating diversion programmes is that facilitators had to deal with problems beyond the facilitator’s reach including poverty, abuse and lack of love (Van der Merwe, 2007). Such issues need special attention, which may require counselling and mentorship. Hence, the availability of mentors helped in dealing with these issues with great care and where the need for intervention was beyond Khulisa’s reach, referrals were made to other relevant institutions.

### 5.4.3. The impact of group work

Group work indicates the impact of the programme on divertees. During sessions, divertees explained their experience of the programme, and their responses in sessions indicated how the programme was impacting on them. According to Section 55 (2) of the Child Justice Act, diversion programmes should impart useful skills and include an element which seeks to get the child to understand the implications of his/her behaviour and the impact of such on others (RSA, 2008). These skills aim to help divertees understand the impact of their actions and take responsibility for them in order to avoid such occurrences in the future. In a letter of agreement to change, one divertee indicated:

*“I want to work hard and make my life better”* D- case 17

Another divertee stated:

*“I want to quit smoking, it will be hard but I will try. I want to stay away from all bad friends, and focus on my school work so I can pass matric”* D- case 19

These divertees indicated a desire for change in their behaviour which would eventually improve their relationships with family members. More so, some divertees were actually reported to have been showing positive behavioural changes. The impact of the programme was judged based on different aspects including that the programme helps, *inter alia*, in restoring relationships, building positive self-esteem, enforcing self-discovery and positive behavioural change. One divertee’s parent stated this about her child:

*“He has improved in decision making and positive peer influence”* P- case 20

This suggests that the programme was having a considerable impact on divertees, seeing that parents witnessed changes in behaviour and in association with peers. Other divertees showed improved personal effectiveness related to components of the programme, improved performance in life activities, effective coping skills under pressure, ability to demonstrate the application of acquired skills, less likelihood of recidivism and positive behavioural changes. Conversely, there are divertees who showed poor progress in these areas and some showed improvement in some areas and poor performance in other areas. The other poor performance area was recidivism. With regards to recidivism, there was a great concern since most divertees’ progress reports indicated that divertees had poor performance in that area. However the topic of recidivism will be elaborated further in section two of this chapter.

#### **5.4.4. Group work evaluation**

According to Toseland and Rivas (1998, p. 366) group evaluation is important because of its ability to “demonstrate the usefulness of a specific group or a specific group work method to an agency, a funding source, or society”. For this reason, at the end of each session, Khulisa divertees had to evaluate themselves, the content of the session and the facilitator. This evaluation required each divertee to reflect on the session itself, the facilitator, the content of the session and the applicability of what was learned in the session to the divertee. In doing this, divertees had to fill out a form which mostly required ticks and partly required written comments. Challenges that were encountered with some files were that some divertees did not evaluate sessions, some evaluation forms were not filled and in some instances there were only two or three evaluation forms in a file. However, one of the divertees who evaluated one session said:

*“The session was interesting and somewhat useful to my life” D- case 20*

Moreover, this divertee said he could apply half of the training that he received in his life. The reason behind this is not clear, it could be because the content was irrelevant to his life or he could have had a negative attitude towards the diversion programme. The latter could be a challenge in that the divertee would not benefit from the programme and end up reoffending. Davis and Busby (2006) assert that children are sometimes matched inappropriately to programmes. This became a challenge because it infringed on the ability of the programme to meet the needs of the divertee. Furthermore, this resulted in children not taking interest in the programme.

One other divertee evaluated the group and said that sessions were useful to him and his life. There was only one session that he said was *somewhat* useful to him and his life. Thus, it can be said that some divertees benefited from programme sessions and some did not.

#### **5.5. Diversion as a form of restorative justice**

The main aim of diversion is to divert children in conflict with the law away from the formal court procedure into reintegrative programmes (Badenhorst, 2013, Badenhorst and Conradie, 2004). Moreover, Moyo (2013) states that the Child Justice Act aims to provide a framework for child justice that is grounded on the principles of restorative justice and is inclusive of

victims of crime as allegedly committed by child offenders. This places diversion within the framework of restorative justice aiming to promote reconciliation and reintegration. VOM and FGCs are part of diversion and these are restorative approaches to crime. Diversion programmes also promote restorative justice and some of the sessions conducted in Khulisa's diversion programmes include restorative elements. It has been discussed above that family dialogues provided a platform where divertees could make amends to their parents and share the desired change on the part of the divertee. Additionally, Khulisa encouraged reconciliation during programmes by incorporating sessions like „*healthy relating*“ and „*making amends*“ and also through their community service.

#### **5.5.1. Restorative group session- ‘healthy relating, making amends’**

Throughout the diversion programme, Khulisa strived to involve parents and guardians of children and ensure that each child had supportive family members in order to encourage reintegration with the family. The premise behind this practice was that crime is not merely a violation of law but of human relationships (Anderson, 2003; Bazemore and Schiff, 2013; Maepa, Batley, Dissel, Dodd, Leggett, Mbambo, Muntingh, Naude, Prinsloo and Skelton, 2005; Skelton, 2002; Ward et al., 2013). It is therefore vital to preserve these relationships as they are fundamental to human beings. The fourth session of Khulisa's Positively Cool diversion programme was on healthy relating. This session provided a context in which to learn more about healthy relationships as well as the development of some basic interpersonal skills. Part of this session focused on helping divertees to develop a plan of action to address relationship problems and to discover the characteristics of a good relationship. The session of making amends was the 7<sup>th</sup> session of the Positively Cool programme and the 9<sup>th</sup> session of the STV programme. These sessions helped divertees in making amends to all the people they had harmed through the crime(s) they committed and also gave them an opportunity to put their decision to change into action. This incorporates restorative justice since it aims to involve the child offender, the victim, and the families concerned to identify collectively and address harms through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation (RSA, 2008). One divertee wrote a letter of agreement to change to his mother and said:

*“I hope you can find it in your heart to forgive me for the pain I caused you”* D- case 22

Another divertee wrote a letter of agreement to change to his teacher and said:

*“I am sorry for the wrong doings I have done ... I will give you respect, stay away from bad company and join successful people”* D- case 28

The divertee in case 22 indicated remorse for the harm he had caused his mother and sought to have a better relationship with her. Khulisa encourages divertees to make amends to the people they have hurt in their lives. This includes their parents and their victims. In the second comment from case 28, the divertee wrote a letter of apology to his teacher whom he had treated badly and sought reconciliation with her. Section 55 (2) of the Child Justice Act states that diversion programmes should include a restorative element and an element which seeks to help the child take responsibility for his or her actions. Therefore, diversion programmes not only address the individual needs of the child but also reintegrate the child with his or her family and community.

### **5.5.2. The restorative circle**

During community service, divertees were given a chance to sit and engage with one another and the facilitator in what was called the „restorative circle“. One facilitator stated this about community service and the restorative circle:

*“A clean- up campaign was held which was followed by a restorative circle around crimes and methods of apology when we hurt the ones closest to us”* F- case 4

This restorative circle was one of Khulisa’s ways of affording divertees a chance not only to talk about strategies for making amends but also to put them into action. Facilitators stated that towards the end of the programme divertees were given an opportunity to have one-on-one sessions with the facilitator to sit and discuss the applicability of the programme in each divertee’s life. In doing this, facilitators helped divertees find strategies to facilitate change in their lives. This aimed at helping divertees maintain good behaviour even after the termination of the programme because in some cases, as Steyn (2012) states, the environment

at which a child lives is not conducive to behavioural change. This, coupled with follow-up could help divertees maintain good behaviour upon termination of the programme.

## **5.6. Compliance with the Child Justice Act, No. 75 of 2008**

### **5.6.1. Diversion referral**

The range of diversion options indicated in the referral form for a diversion programme are (in accordance with either section 53 (1), (2), (3) and (4) of the Child Justice Act applicable to the youth): oral, written or mediated apology; supervision and guidance order; reporting order; compulsory school attendance order; family time order; peer association order; good behaviour order; community service; symbolic restitution; restitution of a specified object; provision of some service or benefit to specified victims; payment of compensation, and VOM.

All divertees in Khulisa diversion programmes were referred from courts. Thus, Khulisa works with various courts in the different areas of service as according to the scope of the Organisation. The referral form from court contained basic information regarding the child, including his or her name, age, offence committed, residential address, programme referred for and parent/guardian identification details. For a child to be referred for a diversion programme, he or she had to meet the criteria for diversion as stipulated in the Child Justice Act. Section 52 (1) of the Act states that diversion should be considered if the child acknowledges responsibility for the crime, has not been unduly influenced to acknowledge responsibility, the child and his or her parent consent to diversion and if the prosecutor indicates that the matter may be diverted (RSA, 2008). With regards to acknowledging responsibility, divertee's files indicated that divertees acknowledged responsibility for their crimes. However there was one divertee with whom it was not clear how he got involved in the programme because he narrated:

*"I was locked in a room with my friend's dagga and the police came and found me with it. It was not mine"* D- case 32

This divertee could have agreed to attend the programme to avoid going to jail, thus he admitted to have committed the crime without intending to do so. Alternatively, he could have said this because he was scared of admitting the truth.

In terms of consenting to the diversion programme, the child and the parent or guardian had to sign a consent form that allowed the child to attend and participate in group sessions. In doing this, Khulisa ensured that they implement their programmes in line with the provisions of the Child Justice Act.

### **5.6.2. Compliance or Non-compliance with the programme**

Section 57 (1) of the Child Justice Act makes provision for the appointment of a probation officer or suitably qualified person to monitor divertee's compliance with the diversion order. Subsection 2 states that if the child fails to comply with the diversion order, the matter may be referred back to court in writing. Fortunately for Khulisa, there were rare cases where children did not comply with the diversion order. In this study, 31 divertees from a total of 32 complied with the diversion order and graduated at Khulisa. Only one divertee did not comply with the order and in this instance the facilitator reported:

*“He did not attend sessions, he was non-compliant. He did not show any interest in the diversion programme” F- case 25*

For this particular case the facilitator suggested that the matter should proceed to the Child Justice Court. Conversely, for those who complied with the programme, their cases were withdrawn having accomplished the objectives of diversion. Some divertees did not attend all sessions of the programme, in such instances they had to make up for the lost sessions before they could graduate. In making up for these sessions, they attended one-on-one sessions with the facilitator in the time agreed upon. Regarding one divertee the facilitator stated:

*“The child successfully finished Khulisa’s diversion programme. He missed a few sessions but covered up for them. He adhered to the rules of the group and interacted positively with fellow group members. He displayed positive behavioural changes” F- case 26*

Divertees had various reasons for complying with the programme. A study conducted by Muntingh (2001) indicated that most divertees complied with the programme because they were afraid of prison and did not want to get a criminal record. Divertees were encouraged to attend the programme owing to the fact that their cases will be withdrawn, however their

attendance was expected to meet the objectives of diversion including promoting reintegration and reducing the potential for re-offending.

### **5.6.3. Programme achievement of the objectives of diversion**

Section 51 of the Child Justice Act stipulates the objectives of diversion which have been discussed in chapter two of this dissertation. In the case files of divertees, facilitators attached a sheet explaining how the programme met the objectives of diversion as stipulated in the Act. The extent to which the objectives of diversion were met in the programme was explained differently in the files since Khulisa had different facilitators. Some facilitators explained as follows:

*“He seems to have learnt from his mistakes and his parents supported him throughout the programme. His progress will be monitored through aftercare telephone calls and programmes”* F- case 1

*“The youth met all the objectives of diversion as set in Section 51 of the Act by attending the facilitated sessions and by being able to comply with all the instructions. He appeared to have benefitted from the programme”* F- case 2

*“His mom showed interest in his progress via telephone calls. His progress will be monitored through aftercare programmes and calls”* F- case 22

Comments from the facilitator in case 1 do not clarify how the objectives of diversion were met during the programme. The facilitator in case 2 explained briefly about the objectives of diversion and in case 22, the facilitator did not explain how the programme met the objectives of diversion. In some cases, facilitators explained everything that happened in the programme from the parent’s involvement, child’s behaviour and progress in the programme to attendance in sessions and completion of tasks. This implies that some facilitators explained the implementation of the programme and did not really focus on the aspects that are addressed by the Act in the objectives of diversion. However this will be explained further in the challenges section presented below.

## **SECTION TWO: CHALLENGES FACED BY KHULISA IN IMPLEMENTING DIVERSION PROGRAMMES**

A number of challenges arise when implementing diversion programmes. Challenges are inevitable in any of the strategies aimed at bringing change. Steyn (2012) conducted a study that focused on identifying the challenges faced by diversion strategies in meeting the diversion objectives of the Child Justice Act. In addition, Van der Merwe (2007) also conducted a study based on Khulisa's STV diversion programme. These studies have shown different challenges that infringe on diversion strategies which need to be addressed not only by diversion service providers but also by the child justice system. This section examines the challenges that Khulisa faces in implementing their programmes based on the data obtained from case files. These challenges are associated with the broad outcomes of the Positively Cool and STV diversion programmes and the implementation process of these programmes.

### **5.7. Background and socio-economic circumstances of divertees**

South Africa is a country that is struck by many socio-economic ills which have made many of South Africa's youth to grow up in challenging and difficult circumstances without having the necessary resources to escape those conditions (Amollo, 2009, Pillay, 2001). The majority of divertees at Khulisa came from disadvantaged backgrounds characterised by poverty; unemployment of parents/guardians; violence; lack of communication, love and support; and lack of proper housing. In one file the parent of a divertee stated:

*"There is a little struggle in finances at home, there are family quarrels and we don't have our own home, so we are living in grandparent's house. The father was an alcoholic"* P- case 3

Such circumstances are strenuous and may cause children to commit crime. Since the act of committing crime is caused by the interplay of different factors that trigger an individual to deviate, addressing crime also needs a holistic approach that will tackle all these factors. Van der Merwe (2007) noted from his study that many children have painful personal experiences such as poverty, abuse, lack of love etc. Moreover, in some cases divertees were found to have major problems which the facilitator could not help with because of lack of information (Van der Merwe, 2007). The problem persists at Khulisa; however strategies were taken to

address this challenge by ensuring that mentors are available to give individual guidance and support to divertees who are in need of such.

### **5.8. Lack of parental support**

It was evident from the files of divertees that some children did not receive support from their parents/ guardians. In other cases, it was indicated that children did not have open communication with their family members, resulting in anxiety that caused children to find a sense of belonging among their peers who at times encouraged them to commit crime. This was usually the case regarding crimes like possession of dagga and the use of other drugs. Since families are a basic unit of support, children who lack parental support usually have many behavioural issues, which also infringe on their ability to perform well at school. Steyn (2012) raised lack of parental support as one of the issues facing diversion strategies which may cause children to reoffend.

Notable from one of the case files was that some parents did not respond with interest when they filled in the forms (e.g. parent workshop evaluation forms and family dialogue evaluation forms). Some of them gave one word answers which made it difficult to understand and trust how genuine their responses were. Some parents did not attend sessions at all; however Khulisa was able to communicate with them through telephone calls. In one file, the facilitator reported:

*“Calls were made for the family dialogue and some of the parents insisted to the divertee that they are the only ones who should attend and so the youth came alone”*

F- case 13

Lack of parental support negatively affects the diversion programme and infringes on the family reintegration efforts of Khulisa. The involvement of parents in the programme is vital for the purposes of monitoring attendance and ensuring that the child receives the support required in the diversion programme. The Child Justice Act states that parents have to consent to the diversion programme (RSA, 2008). Their responsibility does not end with consenting to diversion but extends to their involvement in the programme once the child has been referred for diversion.

## 5.9. Recidivism

One of the objectives of diversion as stipulated in Section 51 (i) of the Child Justice Act is to reduce the potential for re-offending (RSA, 2008). Since the diversion programme is a life skills programme, it is ideal that the intended outcomes of the programme should focus on ensuring that divertees learn and apply the necessary skills that the programme aims to teach. Reducing the potential for re-offending would be a result of the application of the skills learned in the programme. Van Biljon et al. (2011) reported that the high risk of future criminal offending is directly proportional to the age of entry into the CJS. Seemingly, most people enter the CJS at a young age. Therefore, juveniles are facing a high risk of reoffending; however, strategies like diversion programmes aim at altering this tendency by offering better opportunities for child offenders. Drawing on the labelling theory, imprisonment imparts labels that further enforce criminal behaviour among people (Lilly et al., 2014). Thus, diversion programmes were seen as an appealing strategy for dealing with children in conflict with the law.

Khulisa did progress reports for their divertees which explained how each divertee was performing in the programme. Among the aspects of progress in the report was recidivism. Facilitators explained if the divertee was showing signs of recidivism judging from the behaviour of the divertee during sessions and from the parent/guardian's report. The challenge that arose from this was that with most case files divertees showed poor progress when it came to reduction in recidivism.

The facilitator reported this in a progress report of one divertee:

*“The child fairly shows improved performance in life activities and fairly shows personal effectiveness related to components of the required outcome of the programme. Progress against recidivism is fair, the child also fairly shows positive behavioural changes” F- case 3*

With this particular divertee, little progress and change was evident since he started attending the diversion programme. While this was true for this particular divertee, other divertees showed good progress during the programme, although there were some areas that still needed attention. The issue of concern was that if diversion programmes do not reduce the likelihood of re-offending, the rate of crime committed by juveniles would continue increasing, thus infringing on the safety of people.

### 5.10. Challenges with facilitating Group work

Khulisa's diversion programmes are mainly implemented through group work since all sessions take place in a group setting. Through group work, facilitators were able to see the progress of divertees and judge if the divertee was learning from the programme. There were challenges that Khulisa faced while implementing group work. One was that there were sometimes language barriers since some children could not understand English. Facilitators used English when facilitating sessions because it is an official language in SA. However there were instances where children could not communicate thoroughly in English, and some could not understand when the facilitator spoke, thus making it difficult to help the divertee get the best out of the programme. For one divertee (case 10), the facilitator indicated that the divertee could not communicate in English, thus the facilitator had to explain sessions in both English and IsiZulu. Moreover, this is one of the challenges that Van der Merwe (2007) raised in the study of the effectiveness of the STV programme. This is an issue that Khulisa has to look into when devising their programmes.

The other challenge was that some divertees were not willing to open up and share their personal experiences with the group. Sharing experiences was essential in promoting group cohesion and solidarity which are necessary in the development of the group. For some divertees, the issue was not the „unwillingness“ to share experiences but they feared opening up thinking that would revive pain from past experiences. When evaluating the programme, one divertee stated that a part of the programme he enjoyed least was:

*“When we had to talk about our childhood, because it made me think of memories I wanted to forget” D- case 17*

In other instances the facilitator indicated that some divertees did not want to open up, however as the group progressed, they became free to share their personal experiences. Conversely, some remained resistant and only shared when probed. Van der Merwe (2007) also raised this concern as he noted that not all divertees open up equally in the group. Those who were able to share in the group encouraged others to also do the same because they started to feel that they were in a safe environment to share personal issues/ experiences.

Some divertees showed lack of interest in the programme by not wanting to reflect their learning experience in writing. Most sessions required divertees to respond in writing to what was being taught and discussed in the group. Some children wrote one word answers and

some wrote things that could not be understood because of bad English and some because of the lack of understanding of what was required. This made it difficult to judge whether the divertee was grasping what was being taught and to identify his/her feelings and willingness to change in the programme.

Other challenges concerned the impact of the programme on divertees. Facilitators expressed their view of divertees' progress and performance in the progress reports. In some reports, the programme did not seem to make a considerable impact on divertees. Some divertees were reported to exhibit poor performance in all aspects of the programme in which they were expected to be making progress. This included behavioural change, recidivism, completion of homeworks and tasks and demonstrating ability to cope under pressure. This might have been caused by divertee's unwillingness to learn from the programme, or there might have been other issues that divertees were dealing with which infringed on their progress in the programme. Moreover, some divertees indicated that they did not see the need for change in their lives. When one divertee was asked what he would change in his life if he had a chance to, he said:

*"...I wouldn't change anything, I love myself and my life" case 18*

The challenge with this divertee was that he smoked dagga and he narrated that that he started smoking because he was under the influence of his friends and he was stressed. An expectation would be that the divertee could desire change regarding the kind of company he keeps and to quit smoking.

Other issues included that some divertees complained about the venue being far and too hot, hence they could not concentrate during the group because of tiredness and being lethargic by the time they get to the venue where the group session was conducted. Facilitators indicated that attendance was poor in some sessions, especially in the introductory session. In some instances, two from a total of six children would come for the introductory session. This increased the work load of facilitators in that they had to follow up on these children and arrange a separate time to meet with them in covering for those sessions. Some divertees were not clear about what they had to do when evaluating sessions, thus they would tick in two options when they were actually supposed to tick one. Therefore one could not tell which the correct option was. This infringed on the improvement of the programme because every divertee's evaluation is important in improving the skills of facilitators and the overall programme. Others did not write in sections where they had to evaluate in writing. Another

common occurrence in most cases in this study's sample was that the group continued through exam time for scholars, thus facilitators complained about the issue that divertees did not do their homeworks during that time because they had to study for exams. In other instances, divertees wanted to finish the group within the year. In addressing this, they doubled up some sessions so that they could finish the group before the end of the year. The problem that arose when doubling sessions was that divertees were usually tired during the second session of the day and could not concentrate thoroughly. Some divertees complained about hunger as they had not eaten before they came to the session. They suggested that Khulisa should provide food for them during the group sessions.

### **5.11. Conclusion**

Five themes were identified from case files which aimed at exploring issues that arise while implementing the Positively Cool and STV diversion programmes. The identified themes indicated that there were possible reasons for juvenile offending, namely: peer pressure, individual factors, economic and social circumstances, major events/ catalysts for offending behaviour, drugs and alcohol use, circumstantial offending and, stress and negative labels. Other prominent issues were family support which is essential throughout the diversion programme; group work as a means of facilitating programme sessions, and diversion as a form of restorative justice. This points to the notion that diversion has restorative elements as indicated through some sessions that were conducted which included making amends and encouraging responsibility among child offenders. Khulisa implements their diversion programmes in line with the Child Justice Act which provides guidelines for the implementation of diversion. Khulisa's diversion programmes also aim to meet the diversion objectives stipulated in the Child Justice Act.

Khulisa has faced numerous challenges in implementing holistic initiatives in juvenile crime prevention. These challenges included the background of divertees which was often characterised by violence, pain, lack of communication and lack of parental love and support. Other challenges included recidivism since most divertees showed signs of such, and additional challenges were encountered while implementing group work during programme sessions. These challenges have, and continue to provide opportunity for improvement and growth in the organisation. The following chapter will provide the summary, conclusions and recommendations for the entire study.

## **CHAPTER SIX: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

### **6.1. Introduction**

The essential outcome of any research study is meeting its intended objectives. The researcher attests that this study met its main aim, thus making it relevant to the discipline of criminology and the CJS, specifically for diversion strategies. This chapter provides a summary of the study's findings in line with its initial objectives. It also explains the extent to which these objectives have been met. Moreover, the chapter highlights other issues of concern that were discovered while analysing data. Recommendations are given for Khulisa diversion programmes. Other recommendations are given for policy and legislation and for future research. The recommendations given are based on the findings of the study and the literature reviewed in the second chapter of this dissertation, including the researcher's analysis and observations.

### **6.2. Summary and conclusions**

The main aim of this study was to examine the effectiveness of Khulisa's juvenile diversion programmes. The basic premise behind this study was that imprisonment is not ideal for child offenders since it imparts negative labels. Thus, diversion is essential since it diverts children in conflict with the law away from the formal court procedure to reintegrative diversion programmes.

The theoretical frameworks guiding this study were the Differential Association theory and the Labelling theory. The theory of Differential Association, on one hand, provided insight into the way in which criminal behaviour is learned among peer groups whom juveniles associate with (Lilly et al., 2014). On the other hand, the Labelling theory explained the significance of diversion by pointing out that imprisonment imparts negative labels which further reinforce offending behaviour (Patrick and Marsh, 2005). This study was conducted through the use of case files and the database of Khulisa. Case files included information regarding the biographical details of each child, their parent or guardian, the whole process involved in diversion referral and the placement of each child in a diversion programme. Files also included information regarding the performance of children in diversion

programmes, signs of behavioural change and improvement in relationships with family and peers. Data was analysed through qualitative content analysis, where the researcher identified themes based on the data collected from the files of divertees. Findings were then presented based on the identified themes. The challenges faced by Khulisa in implementing diversion programmes were also presented in relation to the data obtained from the case files.

### **6.2.1. The extent to which the objectives of the study have been achieved**

The objectives of the study were:

1. To examine the implementation of the Positively Cool diversion programme.
2. To examine the implementation of the Silence the Violence programme.
3. To uncover the challenges in the implementation of Khulisa's juvenile diversion programmes.
4. To suggest recommendations for Khulisa's juvenile diversion programmes.

The objectives of the study were achieved and the research questions were answered. The first two objectives "to examine the implementation of the Positively Cool diversion programme" and "to examine the implementation of the Silence the Violence programme" were achieved as the study gave a detailed analysis of how the programmes are implemented and the issues affecting the implementation of these programmes. The process of implementing Khulisa's diversion programmes began with referrals from court. Khulisa, as a diversion service provider ensured that children who were referred for diversion were placed in the suitable programme that would meet the needs of the child. Khulisa also ensured that each child attended the programme based on the schedule offence committed. The Child Justice Act differentiates offences according to schedule one, two and three. Similarly, diversion options differ as level one, two and three. Thus, Khulisa sought to ensure that divertees receive the appropriate diversion option for a particular schedule offence, except for schedule three offences which Khulisa is not accredited to provide diversion services for.

Divertees are assessed by Khulisa to establish their background, family relationships, reasons for committing crime and willingness to attend the programme. Assessment helped facilitators to understand the socio-economic circumstances through which each child lived

and the issues of concern to the child which might have been cause for offending behaviour. During assessment, divertees were encouraged to talk about other issues of concern that facilitators needed to know about, including any difficulties they might have been experiencing. This helped facilitators to identify children who were in need of mentorship and provide such to those children. After assessing divertees, each child was placed in a suitable diversion programme to attend all the required sessions, including family dialogues, graduation and community service. Parents and guardians were notified of the importance of attending parent workshops and of following up on the progress of divertees at home. Khulisa has follow-up programmes for divertees who have completed the diversion programme in order to establish whether or not they are applying what they learned in the programme. This incorporates the process through which Khulisa implements their diversion programmes.

During the process of implementing the Positively Cool and the STV diversion programmes, a number of factors were identified which impact on divertees and the manner in which diversion programmes are implemented. From these, numerous themes were identified which incorporate the reasons for juvenile offending such as: peer pressure, individual factors, economic and social circumstances through which most divertees live under, catalysts for offending behaviour, drug and alcohol use and stress and negative labels. Seemingly, some children committed crime without actually intending to do so and some because of the circumstances they were facing at that point in time.

Khulisa's diversion programmes are implemented through facilitated group sessions. Therefore group work forms an essential part of the programme. During group sessions, cohesion among divertees was established and they began to care for one another and open up to share their personal experiences. Where certain divertees were identified as in need of individual attention, they were assigned mentors who dealt with them outside of the group. Seemingly, the group had a positive impact on divertees, although it was not a flawless strategy since there were divertees who did not benefit much from it, considering the negative manner in which they evaluated the group experience. Another factor that arose from the files was that of diversion as a form of restorative justice. Diversion has elements of restorative justice and includes restorative practices (VOM and FGCs). Moreover, during programme sessions, issues relating to making amends and taking responsibility were included to enforce reconciliation and reintegration.

Family support is crucial in diversion programmes. Khulisa emphasised that parents and guardians should be involved in diversion programmes in order to provide the necessary support to divertees. Khulisa's juvenile diversion programmes consist of children who are below the age of 18 years. These children are under the care of their parents or guardians, thus it is essential that Khulisa consults parents and includes them in the programme.

As a diversion service provider, Khulisa monitors compliance with the diversion order given to each divertee. Section 57 (1) of the Child Justice Act stipulates that the magistrate, inquiry magistrate or the child justice court must identify a probation officer, or other suitable person to monitor the child's compliance with the diversion order. As an accredited organisation, Khulisa is suitable for monitoring a child's compliance with the diversion order, thus the court entrusts that role to Khulisa. This makes the implementation of diversion programmes less scattered because one service provider deals with the child through to the end. In this way, the court knows who to consult if they need any information regarding a particular child.

The third objective was to uncover the challenges that Khulisa faces when implementing their diversion programmes. This objective was also achieved because the researcher was able to identify challenges from the files of divertees. A number of challenges were identified from the case files. These challenges correlated with the challenges identified by Steyn (2012) in his study of the challenges faced by diversion strategies, and those identified by Van der Merwe (2007) in a study evaluating the effectiveness of Khulisa's STV diversion programme. The STV programme differs from the Positively Cool in that its focus is on children who have committed crimes of a violent nature, while the Positively Cool programme focuses on various petty crimes. The challenges identified differed, ranging from the harsh socio-economic circumstances of divertees, facilitating group work, lack of parental support and the likelihood of recidivism among divertees who were in the programme and those who had completed it. Some follow-up reports indicated that divertees were not behaving well and they were continuing with the crimes they committed in the first place. Other divertees within the programme were already repeat offenders, yet they did not indicate willingness to change behaviour.

Among the challenges identified, it was evident that the socio-economic circumstances at which most divertees lived under caused strain resulting in criminal behaviour. Some divertees committed crime as a coping mechanism due to the difficulties they were facing at

home, particularly those who smoked dagga. The majority of divertees in this study were charged for possession of dagga, theft and assault. Among these three offences, most divertees were charged for possession of dagga. This is a prevalent issue among adolescents and it is caused mainly by peer pressure. The UNODC (2004) attests to this as it states that the majority of adolescents seek acceptance from their peers and are willing to do anything to get a sense of belonging in the group, even if it means using drugs. Most divertees who were charged for this crime in this study mentioned that they smoked dagga because they were under the influence of peer pressure and they wanted to be „cool“. Some indicated that their friends smoked dagga, thus they also wanted to „try it out“. These peer influences necessitate that children be guided by their family members and community to ensure that such activities do not persist in communities.

It has been reiterated that parental support is essential in diversion programmes. However, some children did not receive the necessary support from their parents and guardians. This became a challenge for Khulisa since they needed the child’s parent or guardian not only to consent to diversion, but also to support the child throughout the programme. Steyn (2012) identified lack of parental support as one of the challenges facing diversion strategies. Consequently, some children did not attend sessions and came with incomplete tasks and homework.

The fourth objective of this study was “to suggest recommendations for Khulisa’s juvenile diversion programmes”. This objective was also achieved as the study gave recommendations for diversion programmes. These are presented in 6.4.1 of this chapter.

### **6.2.2. The underlying assumptions of the study**

The underlying assumptions of this study included that the implementation of the Positively Cool and the STV diversion programmes involve certain procedures and protocols which need to be followed in order to arrive at the appropriate diversion programme. Having arrived at the appropriate diversion programme, diversion service providers have to ensure that divertees get the best out of the programme by providing life skills at the time and location that is easily accessible to divertees. The other assumption of this study was that diversion service providers inevitably face challenges when implementing their diversion programmes.

Many writers attest to this including Steyn (2012), Davis and Busby (2006), Khumalo (2010), Skelton (2005) and Van der Merwe (2007). The findings of this study have demonstrated that many challenges are encountered when implementing diversion programmes. Thus, the findings of the study correlate with its underlying assumptions.

### **6.3. Socio-economic circumstances of divertees- the importance of an integrated approach to service delivery**

Research has a tendency to provide additional information than initially intended by the researcher. It is then up to the researcher to decide whether to use that information if it will enhance the study, or not if it will complicate the findings of the study. In the context of this study, issues pertaining to the socio-economic circumstances of divertees seemed relevant in understanding divertees holistically.

At the time of this study, the majority of divertees from Khulisa lived under harsh socio-economic conditions. Some had strained relations with their family members, and some did not even have relationships with some key family members. A number of divertees were reportedly born out of wedlock, some did not have relationships with their fathers, and some did not know the whereabouts of their fathers. Considering that most divertees were males, it was a challenge that they had to grow up without a father figure. Broken families, domestic violence and lack of communication are among the main issues characterising South African communities (Amollo, 2009; Durojaye, 2012). This being a common issue, specifically in black South African families, it is not surprising that most divertees faced such challenges in their growth. Other children lived in families with greater financial constraints and high levels of poverty which placed them in a lower socio-economic status. Children had to deal with these issues as they grew up. Consequently, they ended up getting involved in gang activities in order to find a sense of belonging, some used drugs and some become violent towards others. Steyn (2012) mentioned that one of the challenges faced by diversion strategies is that most crimes committed by juveniles are property-related crimes which he attributed to the high levels of poverty and inequality evident in South Africa.

Crime can be better challenged from its roots. It is for this reason that crime prevention initiatives should not only focus on addressing behavioural issues but also seek insight into other issues that people deal with on a daily basis, including their past experiences. Khulisa

has notable competence when it comes to providing mentors for children who are facing difficult circumstances in their personal lives and those who have a sense of vulnerability. Criminal behaviour is likely to emanate from these circumstances, thus the need to address them.

The circumstances that most divertees faced at home included financial problems, poverty, domestic violence, lack of communication, abuse, absent fathers, quarrels and lack of support. Some parents did not take interest in the lives of their children; some did not even see the need to attend parent workshops and family dialogue sessions (which are essential to divertees and to Khulisa). Strain caused by a child's misbehaviour possibly led to this lack of interest for some parents and guardians. However, Khulisa tried to reiterate the importance of attending these sessions to parents and guardians.

## **6.4. Recommendations**

### **6.4.1. Recommendations for Khulisa's diversion programmes**

Previous research on Khulisa's diversion programmes identified some challenges that paved a way for some improvements in the programme. Van der Merwe's (2007) study indicated a number of challenges with Khulisa's STV programme, some of these challenges were also identified in this study. Similarly, Steyn's (2012) study on the challenges faced by diversion strategies in meeting the objectives of diversion as stipulated in the Child Justice Act provided great insight into some of the challenges that Khulisa also faces in the diversion programmes.

#### **6.4.1.1. Family support**

Parental or guardian support is essential in juvenile diversion programmes, thus Khulisa has to ensure that all divertees receive such support. The importance of family support should be reiterated in all stages of the diversion programme, i.e. during the assessment of a child by a probation officer, during the preliminary inquiry, parent workshops, family dialogue sessions and even through telephone calls. Additionally, Khulisa could give a token of appreciation to all parents and guardians who support their children during the programme. They could also be given small booklets which contain reflective questions for both the child and the parent

that each child would have to return to the facilitator after every session together with the homework task. This should be a prerequisite for finishing the diversion programme, thus children who do not have that book filled and returned to Khulisa would not be allowed to graduate. The court would have to approve this as a means of showing their support for this strategy. Moreover, a child should be exempted in exceptional cases where there are no means of parental or guardian support.

#### 6.4.1.2. An integrated approach to service delivery

The White Paper for Social Welfare (1997) places greater emphasis on the collaboration between different organisations such as government and private, NGOs, NPOs, FBOs and CBOs in adopting an integrated approach to service delivery. Khulisa has also adopted this integrated approach to service delivery. They work with different organisations including the DSD which is their main funder and other government and private organisations. These partnerships should be used for the benefit of divertees, for example Khulisa could use their partnership with the DSD to follow up on divertees and encourage parental or guardian involvement. A number of divertees and parents indicated in the files that they would like Khulisa to do home visits in order to inspect the circumstances at which families live and how divertees behave at home. This may be beyond the scope of the diversion programme, however, Khulisa could work with social workers from the DSD who could conduct home visits to those families. To avoid heavy caseloads for both Khulisa and the DSD staff, only children who seem to be in need of such guidance and follow-up should be prioritised.

Different organisations could also share stories of success and failure in order to learn from each other. It is recommended that government and private agencies should organise conferences and workshops where different diversion service providers can share experiences and strategies for tackling their most common and difficult challenges. They could also consider the possibility of sharing resources among each other so that those organisations which lack can be subsidised to improve their services.

An integrated approach to service delivery should also be used to challenge recidivism among child offenders. Crime emanates from the interplay of factors that affect individuals including intrapersonal, interpersonal and societal factors. As a result, different organisations should work together through sharing expertise, resources and assets to address the different issues affecting many South African families. In addition, issues of dysfunctional families,

domestic violence, lack of communication, unemployment and inequalities also need to be addressed through collaborative partnerships between different organisations and stakeholders. Such issues have an impact on the offending behaviour of juveniles. Thus, it is essential that these issues are challenged at the discretion of the whole society and not be limited to Khulisa as these are structural challenges. Counselling sessions and mentorship also help divertees to learn the appropriate strategies for responding to issues beyond their control without resorting to crime.

#### 6.4.1.3. Group work sessions

Language barriers were identified as one of the problems faced in group work. To address this, Khulisa should ensure that divertees are allocated to facilitators who speak the same language as those divertees. For instance, IsiZulu speaking children should not be allocated to English speaking facilitators unless they are sure of their understanding of English. Divertees could also be given an opportunity to consent being allocated to facilitators who speak their preferred language. This would enhance adherence to the programme as divertees would feel valued, thus, find the programme worthwhile. Moreover, Khulisa should make manuals of different languages, depending on the prominent language in the area of service. Therefore, in KZN they could make sure that programme manuals that are written in IsiZulu are available for children who cannot understand English.

Children need to be screened appropriately before they are placed into diversion programmes. Some of them indicated in programme evaluation that they found the content of the programme irrelevant to them and could not apply it in their lives. This is likely to happen when the programme neither addresses the needs of the child nor the core issues which led to the offending behaviour in the first place. The other issue faced by Khulisa was that some children did not attend sessions and there was no consistency in attending different sessions. This became a challenge for facilitators who had to ensure that all divertees keep in track with all sessions of the programme. To address this, Khulisa needs to reiterate among parents and guardians that children have to attend sessions and miss out only if they are facing circumstances beyond their control. The other concern which some divertees raised about the programme was that they had to attend sessions with empty stomachs. It is not the responsibility of Khulisa to provide food for divertees, however to enhance the learning process for all divertees they could provide some snacks or fruits just to retain concentration during the sessions.

#### 6.4.1.4. General recommendations for the diversion programme

A number of parents and divertees recommended that the diversion programme should be expanded since it is deemed to be effective. Parents and guardians illustrated their gratefulness for the work that Khulisa does with their children, some indicated that they observed the behaviour of their children changing as they continued in the programme. This gave rise to concerns regarding the short-term focus of the programme. Due to the great number of children continuously entering the diversion system and being diverted to diversion programmes, it would be highly unlikely for Khulisa to expand their programmes any longer. However, this recommendation could be considered, provided the necessary resources to extend the programme are made available. It is also worth noting that Khulisa's primary aim is to equip children with the necessary skills for addressing offending behaviour, and what follows after that is the application of those skills in their entire lives. Thus, Khulisa is not seeking to create dependence on the services they provide to children in conflict with the law. Upon termination of the programme, the duty lays within the child him/herself (to change behaviour) and his/her respective parent/guardian and the community to support the child. Thus, these relations are enforced in the duration of the diversion programme.

Khulisa should consider teaching divertees about the basic values of life. While most divertees are at the adolescent stage, it is essential that these values be taught to them in the diversion programme. Adolescence is a critical stage in a person's life because it is when one's identity is formed, thus forming an identity based on the basic values of life could help manage identity crisis. These values include respect, humility, honesty, etc. Love should be the basis in developing these values, emphasising on the African spirit of Ubuntu. It is the researcher's opinion that if these values could be emphasised, divertees would benefit greatly such that other skills that are taught in the programme would be easily applicable in their lives.

#### **6.4.2. Recommendations for policy and legislation/ the Child Justice Act**

Diversion programmes should be clearly embodied in international legislation. Thus far, international legislation does not provide clear guidelines on diversion, it only provides that alternative (restorative) measures should be taken in handling children in conflict with the

law without resorting to imprisonment. Moreover, nationally, the Child Justice Act thoroughly stipulates all measures regarding diversion, however it partially stipulates procedures for the implementation of diversion programmes. Therefore, diversion programmes need to be provided for in policy and legislation, including the duration of the programme and certain measures of handling children who are not consistent in attending the programme. The motive for this would be to create uniformity that would allow for the collective evaluation of various diversion programmes provided by different organisations/diversion service providers.

### **6.4.3. Recommendations for further research**

One of the main focus points of exploratory research is to formulate questions about which areas future research has to address (Bachman and Schutt, 2011 cited in Berg, 2012). This study has investigated one of the less researched areas in criminological research which is the area of diversion programmes. Previous research has focused more on the legislation and policy guiding diversion, without looking into diversion service provider agencies and the diversion programmes they provide. Thus, this study was essential in the contemporary child justice system to better understand and facilitate diversion programmes. However, this study did not quantitatively evaluate the effectiveness of diversion in South Africa. Future evaluative studies need to focus on evaluating the possibility of diversion in reducing the rate of juvenile reoffending, which would further decrease the rate of crime in South Africa.

Further research should also focus on the restorative elements of diversion, particularly how restorative diversion options (FGCs and VOM) are implemented in a way that complements restorative justice practices.

The other point of concern that future research should focus on is the issue of adult diversion. Khulisa provides programmes for adult offenders, however, there is no legislative framework or policy that provides for adult diversion, and hence it is still practiced informally. This study suggests that policy research should advocate for the development of legislation that will govern the implementation of adult diversion, so that other diversion service providers can highly consider rendering adult diversion programmes. Such research should also

investigate the possibility of the public and private sector in supporting the provision of resources and expertise for the implementation of these programmes.

## **6.5. Conclusion**

The findings of this study indicate the significance of the Positively Cool and the STV diversion programmes. The processes followed when implementing these programmes is similar, except for the sessions covered in each of the programmes. Different diversion service providers can learn from the findings of this study since some of them could be experiencing the same challenges as those experienced by Khulisa. The recommendations made in the context of this study are applicable to other diversion service providers and to the child justice system as a whole. This study has shown that diversion service providers not only focus on providing diversion programmes, but because they deal with complex beings, they extended their services to other areas including counselling, mentorship and aftercare follow-up programmes. Although Khulisa faces many challenges in implementing their programmes, they have made a considerable impact in the lives of divertees.

Challenges pertaining to the socio-economic circumstances of divertees and lack of parental support require the mobilisation of resources and networking of government departments and other stakeholders including communities to tackle this issue. Nevertheless, funds made available by the DSD have made it possible for Khulisa to fulfil its roles, but the apparent challenges indicate a necessity for increased funding. An integrated service delivery approach which encompasses working together with different stakeholders to promote the effective provision of diversion services to communities is essential in this regard.

It is true that this study has not answered all questions regarding diversion programmes, but it has contributed considerably to the epistemological growth of the implementation of diversion programmes in South Africa. Further research needs to address other issues such as evaluating the effectiveness of diversion programmes, exploring aspects of diversion as forms of restorative justice and the currently informal practice of adult diversion.

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## Appendix 1: Permission letter from Khulisa



Khulisa Social Solutions  
125 Prince Alfred Street  
205 Convention House Building  
Durban  
24 April 2015

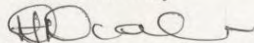
To whom it may concern

**RE: Letter granting permission to conduct research with juveniles who have been part of Khulisa's Diversion Programme.**

This letter serves to grant Nondumiso Ntshangase permission to conduct her research study with our clients who have been part of Khulisa's Juvenile Diversion Programme. The researcher will work with the Area/Programme Coordinators from Umlazi, Phoenix and KwaMashu. Area/Programme Coordinators have been equipped with necessary skills to work with offenders.

As the organization we are looking forward to working together and building a good working relationship.

Yours Sincerely



Nolwazi Ncalane (Office Supervisor – Social Worker)

**KHULISA SOCIAL SOLUTIONS NPC : DURBAN**

Directors: DNM Mokhobo (Chairperson), LA van Selm (Managing), M Lubega, TDS Madinginye, KC Makhubele, IC Mann, DA McCartney, PMK Mvulane, Prof R Peacock PhD, ZD Qwemesha, P Simelane-Modiselle  
Suite 205 Convention House, 125 Prince Alfred Street, Durban, 3001, Kwa-Zulu Natal  
Tel: +27 31 332 0220 Fax: +27 31 332 0228 Email: info@khulisa.org.za Website: www.khulisa.org.za  
Registration No:98/001994/08 VAT Number: 4160197192 PBO Number (Tax Exemption): 930010654

## Appendix 2: Ethical clearance letter from the University of KwaZulu-Natal



03 September 2015

Ms Nondumiso Ntshangase 211511576  
School of Applied Human Sciences – Criminology  
Howard College Campus

Dear Ms Ntshangase

Protocol reference number: HSS/1161/015M

Project title: An analysis of the implementation of Khulisa Social Solutions' Juvenile diversion programmes in KwaZulu-Natal.

### Expedited Approval

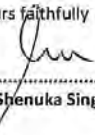
In response to your application dated 13 August 2015, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol have been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. Please note: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

  
.....  
Dr Shenuka Singh (Chair)

/px

cc Supervisor: Dr Gopal

cc Academic Leader Research: Professor J Steyn

cc School Administrators: Ms Ayanda Ntuli

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Humanities & Social Sciences Research Ethics Committee

Dr Shenuka Singh (Chair)






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